Resolution Plan FAQs

An interagency release of the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation • May 2017

In April 2016, the Federal Reserve Board and the Federal Deposit Insurance Corporation issued guidance for use in developing the 2017 resolution plan submissions by eight large domestic bank holding companies (BHCs).[1]

In response to frequently asked questions regarding the guidance from the BHCs, Board and FDIC staff jointly developed answers and provided those answers to the firms in 2016 so that firms could take them into account in developing their next resolution plan submissions.[2] Those questions and answers are being released to better inform the public about the resolution planning process.

The questions:

- **Comprise common questions asked by different BHCs.** Not every question is applicable to every BHC; not every aspect of the guidance applies to each BHC's preferred strategy/structure;
- **Pertain to the eight large domestic BHCs only.** Other firms required to file resolution plans should not assume that these questions and answers or other communications apply to them.

FAQs Sorted by Topic

The domestic FAQs address questions raised in several topical areas:

- capital
- liquidity
- governance mechanisms
- operational: shared services
- operational: payments, clearing, and settlement
- legal entity rationalization and separability
- derivatives and trading activities
- legal
- general

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1 Bank of America Corporation, Bank of New York Mellon, Citigroup, Goldman Sachs, JPMorgan Chase, Morgan Stanley, State Street Corporation, and Wells Fargo & Company.

2 The FAQs represent the views of staff of the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation and do not bind the Board or the FDIC.

Capital

CAP 1. Capital Pre-Positioning and Balance

Q. How should a firm determine the appropriate balance between resources pre-positioned at the material entities and held at the parent?

A. The 2017 Guidance addresses this issue on page 4. The Agencies are not prescribing a specific percentage allocation of resources pre-positioned at the material entities versus resources held at the parent. In considering the balance between certainty and flexibility, the Agencies note that the risk profile of each material entity should inform the "unanticipated losses" at the entity, which should be taken into account in determining the appropriate balance. For instance, the balance would likely be different for a large, complex, foreign trading subsidiary versus a small, domestic bank subsidiary.

CAP 2. Resolution Capital Guidance vs. TLAC NPR

Q. Do firms need to meet the proposed requirements of the TLAC NPR earlier than indicated in the proposed rule?

A. No.

CAP 3. Definition of "Well-Capitalized" Status

Q. How should firms apply the term "well-capitalized" to material entities outside the U.S. or to material entities not subject to Basel III requirements?

A. Material entities must comply with the local capital requirements and expectations of their primary regulator. Material entities should be recapitalized to meet jurisdictional requirements and to maintain market confidence as required under the preferred resolution strategy.

CAP 4. RCEN Relationship to DFAST Severely Adverse Scenario

Q. How should the firm's RCEN and RLEN estimates relate to the DFAST Severely Adverse scenario (as per the 2014 feedback letters)? Can those estimates be recalibrated in actual stress conditions?

A. For resolution plan submission purposes, the estimation of RLEN and RCEN should assume macroeconomic conditions consistent with the DFAST Severely Adverse scenario.

However, the RLEN and RCEN methodologies should have the flexibility to incorporate macroeconomic conditions that may deviate from the DFAST Severely Adverse scenario in order to facilitate execution of the preferred resolution strategy.

CAP 5. Governance and Triggers

Q. If a firm intends to use a contractually binding mechanism (CBM) and/or establish an IHC to mitigate potential legal challenges to the provision of capital and liquidity to subsidiaries prior to bankruptcy, do the Agencies expect the firm to execute the CBM and/or establish the IHC by October 1, 2016?

A. No. The Agencies are focused on reviewing firms' analyses of how CBMs and/or IHCs would mitigate legal challenges and support the successful recapitalization and funding of subsidiaries prior to bankruptcy. The Agencies encourage firms to submit such analysis as soon as possible on or after October 1, 2016.

Liquidity

LIQ 1. Inter-Company "Frictions" and Inter-Affiliate Deposits

Q. Can the Agencies clarify what kinds of frictions might occur between affiliates beyond regulatory ring-fencing?

A. Frictions are *any* impediments to the free flow of funds, collateral and other transactions between material entities. Examples include regulatory, legal, financial (i.e., tax consequences), market, or operational constraints or requirements. Explicit frictions are described in the 2017 Guidance and include the requirement that firms should not assume that a net liquidity surplus at one material entity subsidiary (including material entities that are non-U.S. branches) can be moved to meet net liquidity deficits at other material entities or to augment parent resources.

Q2. How should firms treat deposits at affiliate banks, including parent deposits? Should firms assume they are, or are not, fungible in resolution?

A. As stated in the 2017 Guidance, the model estimating the net liquidity surplus/deficit for the firm may assume the parent holding company's deposits at the U.S. branch of the lead bank subsidiary are available as HQLA. Further, the stand-alone net liquidity position of each material entity (HQLA less net outflows) should treat inter-affiliate exposures in the same manner as third-party exposures. For example, an overnight unsecured exposure, including deposits, made with an affiliate should be assumed to mature. As noted on page 7 of the 2017 Guidance, firms 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.

LIQ 2. Distinction between Liquidity Forecasting Periods

Q. How long is the stabilization period?

A. The stabilization period begins immediately after the parent company bankruptcy filing and extends until each material entity reestablishes market confidence. The stabilization period may not be less than 30 days. The reestablishment of market confidence may be reflected by the maintaining, reestablishing, or establishing of investment grade ratings or the equivalent financial condition for each entity. The stabilization period may vary by material entity, given differences in regulatory, counterparty, and other stakeholder interests in each entity.

Q2. How should we distinguish between the runway, resolution, and stabilization periods on the one hand, and RLAP and RLEN on the other, in terms of their length, sequencing, and liquidity thresholds?

A. In the 2017 Guidance, the Agencies did not specify a direct mathematical relationship between the runway period, the RLAP model, and RLEN model. As noted in prior guidance, firms may assume a runway period of up to 30 days prior to entering bankruptcy provided the period is sufficient for management to contemplate the necessary actions preceding the filing of bankruptcy. The RLAP model should provide for the adequate sizing and positioning of HQLA at material entities for anticipated net liquidity outflows for a period of at least 30 days. The RLEN model estimates the liquidity needed after the parent's bankruptcy filing to stabilize the surviving material entities and to allow those entities to operate post-filing. As noted in the 2017 Guidance, the RLEN model should be integrated into the firm's governance framework to ensure that the firm files for bankruptcy prior to HQLA falling below the RLEN estimate. See "LIQ 4. RLEN and Minimum Operating Liquidity (MOL)," Question 1, for further detail on the required components of the RLEN model.

Q3. What is the resolution period?

A. The resolution period begins immediately after the parent company bankruptcy filing and extends through the completion of the preferred strategy. After the stabilization period (see "LIQ 2. Distinction between Liquidity Forecasting Periods," Question 1, regarding "stabilization period"), financial statements and projections may be provided at quarterly intervals through the remainder of the resolution period.

LIQ 3. Inter-Affiliate Transaction Assumptions

Q. Does inter-affiliate funding refer to all kinds of intercompany transactions, including both unsecured and secured?

A. Yes.

LIQ 4. RLEN and Minimum Operating Liquidity (MOL)

Q. How should firms distinguish between the minimum operating liquidity (MOL) and peak funding needs during the RLEN period?

A. The RLEN should ensure that the firm has sufficient liquidity in the form of HQLA to facilitate the execution of the firm's resolution strategy; therefore, RLEN should include both MOL and peak funding needs. The peak funding needs represent the peak cumulative net outflows during the stabilization period. The components of peak funding needs, including the monetization of assets and other management actions, should be transparent in the RLEN projections. The peak funding needs should be supported by projections of daily sources and uses of cash for each material entity, incorporating inter-affiliate and third-party exposures. In mathematical terms, RLEN = MOL + peak funding needs during the stabilization period. For the firms subject to section 7 of the 2017 Guidance (dealer firms), RLEN should also incorporate liquidity execution needs of the preferred derivatives strategy (see "DER 1. Preferred Resolution Strategy and Wind-Down Scenarios" in the Derivatives and Trading Activities section).

Q2. Should the MOL per entity make explicit the allocation for intraday liquidity requirements, inter-affiliate and other funding frictions, operating expenses, and working capital needs?

A. Yes, the components of the MOL estimates for each material entity should be transparent and supported.

Q3. Can MOLs decrease as MLEs wind down?

A. MOL estimates can decline as long as they are sufficiently supported by the firm's methodology and assumptions.

LIQ 5. Liquidity Pre-Positioning and Balance

Q. How should a firm determine the appropriate balance between liquidity resources pre-positioned at the material entities and held at the parent? Do the Agencies have a specific ratio allocation in mind?

A. The 2017 Guidance addresses this issue on page 6. The Agencies are not prescribing a specific percentage allocation of resources pre-positioned at the material entities versus resources held at the parent. In considering the balance between certainty and flexibility, the risk profile of each material entity should inform the "unanticipated outflows" at the entity, which should be taken into account in determining the appropriate balance. For instance, the balance would likely be different for a large, complex, foreign trading subsidiary versus a small, domestic bank subsidiary.

LIQ 6. RLAP Guidance Application

Q. The RLAP guidance elements can be applied in different ways that yield disparate outcomes for the same situation. For instance, a parent overnight loan to a material entity could be assumed to unwind (treated as a third-party exposure), or it could be assumed to be trapped (to not augment parent resources). In such situations, what should a firm do to ensure it is applying the guidance appropriately?

A. Firms should interpret and apply the 2017 Guidance in the context of the Resolution Plan Assessment Framework and Determinations paper (April 2016), which states on page 10:

> "*[Firms] must be able to track and measure their liquidity sources and uses at all material entities under normal and stressed conditions. They must also conduct liquidity stress tests that* ***appropriately capture the effect of stresses and impediments to the movement of funds***" (emphasis added).

For instance, the 2017 Guidance states:

- "The [RLAP] model 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."
- An RLAP model that utilizes the U.S. LCR definition of HQLA for each material entity and expands that for the parent to include parent deposits at the U.S. branch of the lead bank subsidiary would be consistent with the 2017 Guidance. For an RLAP model that utilizes an internal stress testing definition of HQLA that is more expansive than the U.S. LCR definition, the Agencies expect the firm to support whether that assumption is consistent with a liquidity stress test that appropriately captures the effect of stresses and impediments to the movement of funds.

The 2017 Guidance also states:

- "[T]he 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**" (emphasis added).
- An RLAP model that assumes zero liquidity flows from material entities back to the parent would be consistent with this statement. Note, parent HQLA (including overnight secured

lending collateralized by Treasury securities), as well as deposits at the U.S. branch of the lead bank subsidiary, would also be consistent with this statement.

In addition, the 2017 Guidance states:

- "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."

A firm's RLAP model should "treat inter-affiliate exposures in the same manner as third-party exposures" only where the results would appropriately capture impediments to the movement of funds. For instance, application of third-party assumptions to inter-affiliate deposits that would result in treatment of inter-affiliate deposits as HQLA, and thus not subject to any impediments to the movement of funds, even though such impediments could exist, would not be consistent with the 2017 Guidance.

More generally, for material entities where the net liquidity position is comprised of a significant third party net outflow offset by an inter-affiliate net inflow, the Agencies note the heightened importance of taking into account "trapped liquidity as a result of actions taken by clients, counterparties, financial market utilities (FMUs), and foreign supervisors, among others" (2017 Guidance, page 7) .

LIQ 7. RLAP, RLEN, and the Runway

Q. The August 2014 feedback letters instructed firms to make the following liquidity assumptions related to the LCR: "…assumptions during the runway period should be at least as severe as the outflow, inflow, and haircut assumptions contained in the …LCR Proposal". How should firms reconcile those instructions with the RLAP and RLEN expectations in the 2017 Guidance?

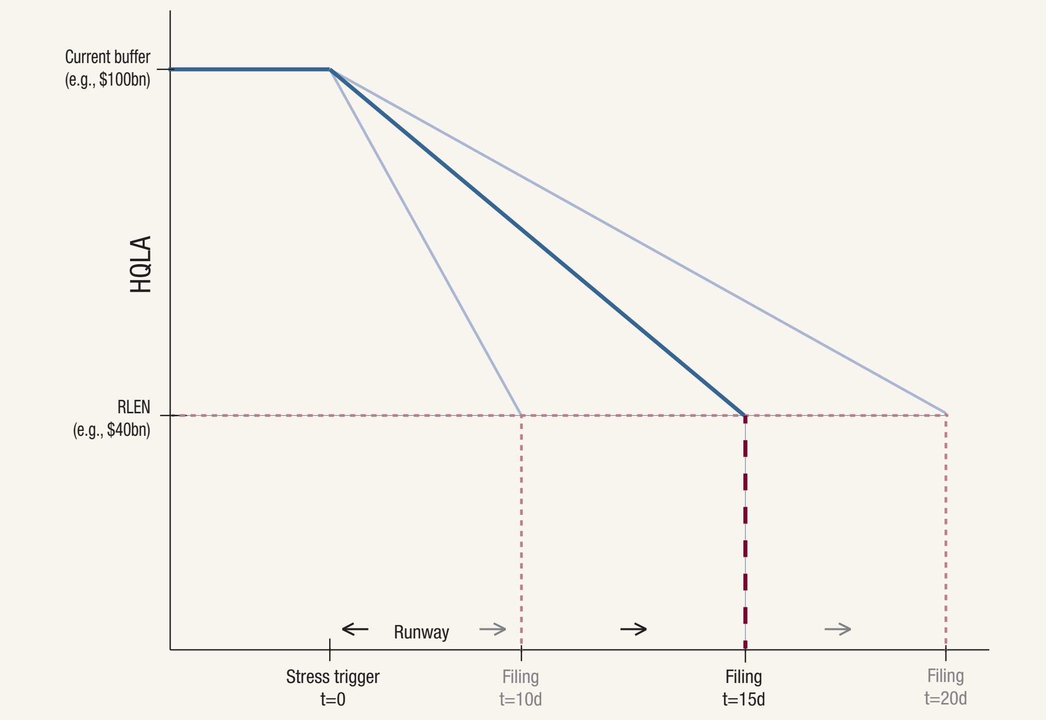
A. The August 2014 feedback letter instruction related to liquidity assumptions during the runway period no longer applies.

- **Liquidity projections during the runway period.** The RLAP and RLEN expectations articulated in the 2017 Guidance supersede the instruction that assumptions during the runway period should be at least as severe as the LCR. The Agencies will *not* focus on firms' liquidity projections during the runway period.

  The development and implementation of an RLEN model make the scenario under which a firm fails, and the duration of runway, less critical in assessing the executability of that firm's resolution plan from a liquidity standpoint. Whether a firm experiences a rapid run or a long drawn out stress over the runway period should not impact the amount of liquidity required by a firm to successfully execute its preferred resolution strategy (RLEN). Rather, the only factor that should be impacted by the severity of runway period outflows should be the *timing* of the filing. This concept is illustrated in figure 1, which shows that more severe outflows during the runway period – the steeper downward sloping line – should simply result in a shorter runway period, say, 10 days as opposed to 15 days, and vice versa.

  Thus for liquidity purposes in SPOE, the RLEN estimate effectively represents the firm's "condition at failure" as referenced in the August 2014 feedback letter. Rather than estimate that failure condition indirectly via an estimate of runway outflows, under the 2017 Guidance firms should estimate it directly via RLEN.

Figure 1. RLEN and filing



- **Relationship of RLAP to runway and RLEN**. As noted in "LIQ 2. Distinction between Liquidity Forecasting Periods," Question 2, the Agencies did not specify a direct mathematical relationship between the runway period, the RLAP model, and RLEN model. To elaborate, a firm's RLAP is a distinct standalone estimate. RLAP and RLEN should be calculated independently of each other. The RLAP estimate should simply inform the necessary amount and positioning of a firm's liquidity to mitigate risks related to resolution stresses, such as ring fencing risk.[3]

  Separately, the RLEN estimate should reflect how much liquidity each material entity needs to execute the firm's preferred strategy post-filing and thus inform the timing of when a firm's parent company should file for bankruptcy.

  With regards to liquidity, these two estimates—RLAP and RLEN—are the most critical to the executability of a firm's resolution strategy, and as such are the focus of the Agencies.

LIQ 8. Inter-Affiliate Transactions with Optionality

Q. How should firms treat an inter-affiliate transaction with an embedded option that may affect the contractual maturity date?

A. For the purpose of calculating a firm's net liquidity position at a material entity, RLAP and RLEN models should assume that these transactions mature at the earliest possible exercise

[3] Note, the Agencies do *not* expect firms to hold sufficient HQLA to cover LCR outflows plus RLEN. A firm's liquidity buffer and positioning should be informed by its RLAP model.

date; this adjusted maturity should be applied symmetrically to both material entities involved in the transaction. See also “LIQ 6. RLAP Guidance Application.”

LIQ 9. Stabilization and Regulatory Liquidity Requirements

Q. As it relates to the RLEN model and actions necessary to re-establish market confidence, what assumptions should firms make regarding compliance with regulatory liquidity requirements?

A. Firms should consider the applicable regulatory expectations for each material entity to achieve the stabilization needed to execute the preferred strategy. Firms’ assumptions in the RLEN model regarding the actions necessary to reestablish market confidence during the stabilization period may vary by material entity, for example, based on differences in regulatory, counterparty, other stakeholder interests, and based on the preferred strategy for each material entity. See also “LIQ 2. Distinction between Liquidity Forecasting Periods.”

LIQ 10. HQLA and Assets Not Eligible as HQLA in RLAP and RLEN Models

Q. The 2017 Guidance states that HQLA should be used to meet estimated net liquidity deficits in the RLAP model and that the RLEN estimate should be based on the minimum amount of HQLA required to facilitate the execution of the firm’s preferred resolution strategy. How should firms incorporate any expected liquidity value of assets that are not eligible as HQLA (non-HQLA) into RLAP and RLEN models?

A. A firm’s RLAP model should assume that only HQLA are available to meet net liquidity deficits at material entities. For a firm’s RLEN model, firms may incorporate conservative estimates of potential liquidity that may be generated through the monetization of non-HQLA. The estimated liquidity value of non-HQLA should be supported by thorough analysis of the potential market constraints and asset value haircuts that may be required. Assumptions for the monetization of non-HQLA should be consistent with the preferred resolution strategy for each material entity. See “LIQ 6. RLAP Guidance Application” for detail on assets eligible as HQLA.

LIQ 11. Components of Minimum Operating Liquidity

Q. Do the agencies have particular definitions of the “intraday liquidity requirements,” “operating expenses,” and “working capital needs” components of minimum operating liquidity (MOL) estimates?

A. No. A firm may use its internal definitions of the components of MOL estimates. The components of MOL estimates should be well-supported by a firm’s internal methodologies and calibrated to the specifics of each material entity.

LIQ 12. RLEN Model and Net Revenue Recognition

Q. Can firms assume in the RLEN model that cash-based net revenue generated by material entities after the parent holding company's bankruptcy filing is available to offset estimated liquidity needs?

A. Yes. Firms may incorporate cash revenue generated by material entities in the RLEN model. Cash revenue projections should be conservatively estimated and consistent with the operating environment and the preferred strategy for each material entity.

LIQ 13. RLEN Model and Inter-Affiliate Frictions

Q. Can a firm modify its assumptions regarding one or more inter-affiliate frictions during the stabilization or post-stabilization period in the RLEN model?

A. Once a material entity has achieved market confidence necessary for stabilization consistent with the preferred strategy, a firm may modify one or more inter-affiliate frictions, provided the firm provides sufficient analysis to support this assumption.

LIQ 14. RLEN Relationship to DFAST Severely Adverse scenario

(See "CAP 4. RCEN Relationship to DFAST Severely Adverse Scenario" in the Capital section.)

LIQ 15. Application of Inter-Affiliate Frictions Guidance to Intermediate Holding Companies (IHC)

Q. With respect to an IHC that has been established to facilitate recapitalization or liquidity support to material entities, how should firms apply the RLAP and RLEN guidance for inter-affiliate frictions?

A. For IHCs that provide funds for recapitalization or liquidity support to material entities and do not have any operations or outstanding third-party exposures of their own, the Agencies recognize that fewer potential impediments to the movement of the funds may exist when compared to movements of funds between operating material entities. Still, for both the RLAP and RLEN model, firms are expected to provide an analysis of, and take into account, potential inter-affiliate frictions that may exist between an IHC and material entities.

Specific to the 2017 Guidance for the RLAP model and the Q&A in "LIQ 6. RLAP Guidance Application," it would be inconsistent with the guidance for firms to assume that an IHC could be used as an intermediary to facilitate transfers of net liquidity surpluses at one material entity to another material entity. Instead, firms may only assume a one-way flow of funds from the IHC to the material entity. For the RLEN model, firms should assess the potential for inter-affiliate frictions in transactions from the IHC to material entities as well as from material entities to the IHC. The prohibition on assuming that net liquidity surplus at one material entity could be moved to meet net liquidity deficits at other material entities (page 7 of the 2017 Guidance) does not prohibit the firm from assuming that an IHC may provide liquidity to material entities.

LIQ 16. Access to Reserve Bank Daylight Credit

Q. What assumptions can firms make regarding access to Federal Reserve daylight credit?

A. Access to daylight credit is governed by the Federal Reserve Board's Policy on Payment System Risk (PSR Policy) and generally is provided only to institutions that are in sound financial condition based on their capital ratios and supervisory ratings and subject to the discretion of the Reserve Bank. For the purpose of Section 165(d) resolution plans only, firms may assume that subsidiary depository institutions that are at least adequately capitalized will have access to fully collateralized daylight credit even in cases where the supervisory ratings of the parent assumed in the exercise fall below fair as a result of the condition of the parent firm or an affiliate. However, the plan should not assume depository institutions will have access to intraday credit while undercapitalized, in FDIC receivership, or operating as a bridge bank. This guidance applies only to the Section 165(d) resolution plans and does not modify the PSR Policy.

Governance Mechanisms

GOV 1. Triggers

Q. Do firms need to have all three types of triggers (i.e., capital, liquidity, and market) for each phase (i.e., BAU to stress, stress to runway, runway to recapitalization; and recapitalization to bankruptcy filing/PNV)?

A. No, a firm does not need all three types of triggers for each phase.

Q2. Are firms required to have triggers for each material entity or are firm-wide triggers sufficient?

A. Triggers at the level of the consolidated company may not be sufficient without additional triggers at the material entity level depending upon the firm structure and/or preferred strategy. All triggers may not be applicable to all material entities. For example, pre-funded service entities or foreign branches may not require particular capital or liquidity triggers if they will not need these resources prior to the parent company entering bankruptcy.

Q3. Should firms include a formal regulatory trigger by which the Agencies can directly trigger a contractually binding mechanism?

A. No.

Q4. Could the Agencies clarify what is meant by "synchronized" triggers within the 2017 Guidance?

A. "Synchronized to the firm's liquidity and capital methodologies" in this context means informed by the firm's RCEN and RLEN estimates.

Q5. What are examples of market metrics and market metric triggers?

A. The Agencies are not prescribing specific market metrics or triggers.

Operational: Shared Services

OPS SS 1. Contingency Strategies for Critical Shared Services

Q. What did the Agencies mean by "developing and documenting contingency strategies for critical shared services"?

A. By contingency strategies, the Agencies are referring to the arrangements the firm has in place in order to ensure operational continuity. Components of a contingency arrangement may include, but are not limited to, maintaining service level agreements (SLAs), strengthening contractual agreements, re-alignment of critical shared services within the corporate structure, and plans to substitute critical shared services during resolution.

OPS SS 2. Working Capital

Q. Must working capital be maintained for third party and internal shared service costs?

A. Where a firm maintains shared service companies to provide services to affiliates, working capital should be maintained in those entities sufficient to permit those entities to continue to provide services for six months or through the period of stabilization as required in the firm's preferred strategy.

Costs related to third-party vendors and inter-affiliate services should be captured through the working capital element of the MOL estimate (RLEN).

Q2. When does the six month working capital requirement period begin?

A. The measurement of the six month working capital expectation begins upon the bankruptcy filing of the parent company. The expectation for maintaining the working capital is effective upon the July 2017 submission.

OPS SS 3. Critical Services Mapping/Legal Entity Rationalization Criteria

A. The critical services identification and mapping exercise should help the firm identify potential risk(s) to operational continuity in resolution. The firm's legal entity rationalization criteria should then address identified risk(s) to resolvability. See page 19 of the 2017 Guidance.

OPS SS 4. Third-Party Vendor Contract Terms

Q. Can we wait until our critical third-party vendor contracts are up for renewal to add resolution-friendly terms? What if we are unable to revise these contracts by July 2017 because negotiations are still in process or the vendors will not agree to the terms?

A. The Guidance states, "The firm should update contracts to incorporate appropriate terms and conditions to prevent automatic termination and facilitate continued provision of such services during resolution," which is expected to be addressed by July 1, 2017. Footnote two of the Guidance states, "[for] impediments that arise that are outside of the firm's control 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." If the firm is facing an impediment in meeting the requirements of the Guidance or believes it will be unable to meet the requirements of the Guidance by July 1, 2017, the firm should present detailed support to the Agencies as soon as possible as opposed to waiting until submission of the resolution plan on July 1, 2017.

Operational: Payments, Clearing, and Settlement

OPS PCS 1. FMU Contingency Arrangements

Q. Would the Agencies prefer that firms limit FMU contingency arrangements to only the three examples provided in the guidance (i.e., pre-positioning of additional liquidity at FMUs, limiting intraday credit provisions to clients, and requiring clients to pre-fund settlement activity), or may firms propose additional or alternative arrangements?

A. The 2017 Guidance indicates that contingency arrangements should "not be limited to" the examples noted and firms may propose additional solutions.

Q2. Please clarify the Agencies' expectations regarding providing clients with transparency into contingency arrangements.

A. The 2017 Guidance indicates that firms should provide clients with transparency into potential impacts from implementation of contingency arrangements and consider whether additional actions are appropriate. Where applicable, firms should, on an ex-ante basis (i.e., prior to any stress period), inform wholesale clients of contingency arrangements, such as limiting intraday credit provisions and requiring prefunding of settlement activity, so that the firm and its clients may better understand the potential operational and financial impacts from implementation of such arrangements.

Q3. Please clarify the Agencies' expectations regarding loss of FMU access scenarios.

A. The 2017 Guidance is additive to previous guidance. Footnote 3 of the 2017 Guidance indicates that the "2013 Guidance, the 2014 Letter, and the 2015 Communication, as described in the letters to the firms, continue to be applicable […], except to the extent superseded or supplemented by the provisions of this document." Firms are not expected to incorporate loss of FMU access scenarios into their preferred resolution strategies. Firms should continue to provide analysis regarding the impact associated with the loss of FMU access, but this does not need to be incorporated into the RLEN/RCEN estimates.

OPS PCS 2. Access to Reserve Bank Daylight Credit

(See "LIQ 16. Access to Reserve Bank Daylight Credit" in the Liquidity section.)

Legal Entity Rationalization and Separability

LER 1. Data Room

Q. What information should be in the data room?

A. The 2017 Guidance addresses the data room on page 19. The data room should contain the necessary information on discrete sales options to facilitate buyer due diligence. Including only a table of contents of information that could be provided when needed would not be sufficient.

Q2. Are firms expected to include in a data room described on p. 19 of the 2017 Guidance lists of individual employee names and compensation levels?

A. The firm should include the necessary information to facilitate buyer due diligence. In the circumstance where employee information would be important to buyer due diligence the firm should demonstrate the capability to provide such information in a timely manner. For individual employee names and compensation, the data room may include a representative sample and may have personally identifiable information redacted.

LER 2. Separability

Q. What are the specific expectations regarding separability analyses beyond what is required for the data room?

A. The 2017 Guidance addresses separability beginning on page 19. The actionability of divestiture options should be supported by the firm's legal entity rationalization criteria and the analyses required by SR Letter 14-8.

LER 3. Legal Entity Rationalization Criteria

Q. Is it acceptable to take into account business-related criteria, in addition to the resolution requirements, so that the LER Criteria can be used for both resolution planning and business operations purposes?

A. Yes, LER criteria may incorporate both business and resolution considerations. In determining the best alignment of legal entities and business lines to improve the firm's resolvability under different market conditions, business considerations should not be prioritized over resolution needs.

LER 4. Creation of Additional Legal Entities

Q. Is the addition of legal entities acceptable, so long as it is consistent with the LER criteria?

A. Yes.

LER 5. Clean Funding Pathway

Q. Can you provide additional context around what is meant by clean lines of ownership and clean funding pathways in the legal entity rationalization criteria? Additionally, what types of funding are covered by the requirements?

A. The funding pathways between the parent and material entities and the ownership chain should minimize uncertainty in the provision of funds and facilitate recapitalization. Also, the complexity of ownership should not impede the flow of funding to a material entity under the firm's preferred resolution strategy. Potential sources of additional complexity could include, for example, multiple intermediate holding companies, tenor mismatches, or complicated ownership structures (including those involving multiple jurisdictions or fractional ownerships). Ownership should be as clean and simple as practicable, supporting the preferred strategy and actionable sales, transfers, or wind-downs under varying market conditions. The clean funding pathways expectation applies to all funding provided to a subsidiary material entity regardless of type and should not be viewed solely to apply to internal TLAC.

Q2. The 2017 Guidance regarding legal entity rationalization criteria discusses "clean lines of ownership" and "clean funding pathways." Does this statement mean that firms' legal entity rationalization criteria should require funding pathways and recapitalization to always follow lines of ownership?

A. No. However, the firm should identify and address or mitigate any legal, regulatory, financial, operational, and other factors that could complicate the recapitalization and/or liquidity support of material entities.

LER 6. Separability Options Information

Q. How should a firm approach inclusion of legal risk assessments and other buyer due diligence information into separability options?

A. The legal assessment should consider both buyer and seller legal aspects that could impede the timely or successful execution of the divestiture option. Where impediments are identified, mitigation strategies should be developed.

LER 7. Market Conditions

Q. What is meant by the phrase "under different market conditions" in the Legal Entity Rationalization and Separability section of the 2017 guidance?

A. The phrase "under different market conditions" is meant to ensure that a firm has a menu of divestiture options from which at least some could be executed under different market stresses.

LER 8. Data Room Applicability

Q. Are firms expected to establish a data room and conduct separability analysis, as described in the 2017 Guidance, for an "exit strategy" sale (such as an IPO) of the surviving segment of the firm that exits resolution under the firm's strategy or a segment that is wound down under the firm's strategy?

A. No.

LER 9. Application of Legal Entity Rationalization Criteria

Q. Which legal entities should be covered under the LER framework?

A. All legal entities. The scope of a firm's LER criteria should apply to the entire enterprise.

Q2. To the extent a firm has a large number of similar non-material entities (such as single-purpose entities formed for Community Reinvestment Act purposes), may a firm apply its legal entity rationalization criteria to these entities as a group, rather than at the individual entity level?

A. Yes.

Derivatives and Trading Activities

DER 1. Preferred Resolution Strategy and Wind-Down Scenarios

Q. What is the relationship between a firm's preferred resolution strategy and the passive and active wind-down scenarios required under Section VII of the 2017 Guidance?

A. Section VII of the 2017 Guidance provides that a dealer firm should conduct, in the manner specified, a passive wind-down analysis ("Passive Wind-Down Scenario") and an active wind-down analysis ("Active Wind-Down Scenario") for its derivatives portfolio. The Passive Wind-Down Scenario and Active Wind-Down Scenario are intended to provide a baseline view of the risk profile of the firm's derivatives portfolio and a reference point to compare those scenarios to the firm's preferred resolution strategy. The two wind-down analyses under Section VII are standalone analyses, separate from the firm's preferred resolution strategy; the results of such analyses are generally not required to be incorporated into the preferred resolution strategy's financial forecasts. However, the firm's analyses supporting the Passive Wind-Down Scenario and the Active Wind-Down Scenario should include alternative estimates of RLEN and RCEN for the covered trading entities (passive and active RLEN/RCEN) as well as a discussion of the factors driving differences between the passive and active RLEN/RCEN estimates and the RLEN and RCEN estimates for the same entities under the firm's preferred resolution strategy (see "LIQ 4. RLEN and Minimum Operating Liquidity (MOL)," Question 1, in the Liquidity section). In doing so, the wind-down analyses will help inform an assessment of the preferred resolution strategy's flexibility and resiliency to unanticipated conditions.

A firm's preferred resolution strategy may incorporate one of the prescribed wind down scenarios or an alternative, third scenario. For example, a firm may choose a going concern scenario (e.g., trading entities reestablish investment grade rating and do not enter a wind-down) as its preferred resolution strategy, so long as the firm's resolution plan adequately supports the execution of that scenario and includes the required alternative wind-down scenarios. Likewise, a firm may choose to adopt a combination of wind-down and going concern scenarios as its preferred resolution strategy. For example, the preferred resolution strategy could be a stabilization scenario for the lead bank entity and an active wind-down scenario for the broker-dealer entities.

DER 2. Hedging

Q. What types of risk-reducing bilateral OTC trades, if any, are allowable under the wind-down scenarios required under Section VII of the 2017 Guidance?

A. Under the Active Wind-Down Scenario required in Section VII of the 2017 Guidance, a firm may only hedge positions with exchange-traded and centrally cleared instruments. A firm may engage in certain risk reducing trades such as:

1. To effect the novation of the firm's side of a derivatives contract to a new counterparty, bilateral OTC trades with the acquiring counterparty
2. Bilateral trades with inter-affiliate counterparties that meet the following conditions:
   - Reduce the credit exposure of each participating counterparty and

- Do not materially increase the market risk of any such counterparty on a standalone basis, after taking into account hedging with exchange-traded and centrally-cleared instruments.

The firm must demonstrate the risk-reducing nature of the trade on the basis of information that would be known to the firm at the time of the transaction.

Similarly, under the Passive Wind-Down Scenario a firm may only hedge positions executed with exchange-traded and centrally cleared instruments but the firm should assume there are no risk-reducing, non-clearedbilateral OTC trades.

Q2. Are derivatives used to hedge risks outside of the trading book within the scope of this requirement, such as for MSRs, structural interest rates, or debt instruments?

A. The Passive Wind-Down Scenario and the Active Wind-Down Scenario required in Section VII of the 2017 Guidance are focused on the wind-down of a firm's derivatives positions (trading and hedging positions; regardless of whether they are in the firm's banking book or trading book). Derivatives outside of the trading book are within the scope of those scenarios. Note, derivatives that are used to hedge non-trading positions (e.g., MSR, structural interest rates, balance sheet management, etc.) in the Active Wind-Down Scenario are not themselves required to be actively wound-down and may be reflected in the residual portfolio (see also "DER 1. Preferred Resolution Strategy and Wind-Down Scenarios" and "DER 2. Hedging," Question 1).

DER 3. Stabilization/Ratings/Playbooks

Q. How should a firm determine criteria or assumptions regarding market expectations for the sufficient capital and liquidity levels of covered trading entities?

A. In determining the criteria or assumptions regarding market expectations, a firm should, consistent with its preferred strategy, consider (1) its current counterparty credit risk management approach for dealing with financial counterparties in stress, (2) its experience in dealing with stressed counterparties during the 2008 crisis, and (3) criteria utilized by the rating agencies, as applicable. At a minimum, a covered trading entity should meet any applicable regulatory capital requirements (consistent with the Q&A found at "CAP 3. Definition of 'Well-Capitalized' Status" in the Capital section) and, as applicable, meet minimum FMU membership eligibility requirements.

Q2. Which trading entities are covered by the requirement under Section VII of the 2017 Guidance to develop rating agency playbooks?

A. Under Section VII of the 2017 Guidance, each material entity that conducts more than de minimis derivatives activities should have a well-developed rating agency playbook (that includes entity-specific considerations) for maintaining, reestablishing or establishing investment-grade ratings or the equivalent level of financial soundness necessary for that entity to continue transacting (see previous question).

This expectation for well-developed rating agency playbooks applies to such trading entities regardless of whether under the firm's preferred resolution strategy the trading entity is wound-down, liquidated, or otherwise expected to be a non-transacting entity.

Q3. Should a firm assume that its trading entities are downgraded to below investment grade at the point of non-viability?

A. Under the Passive Wind-Down Scenario and the Active Wind-Down Scenario required in Section VII of the 2017 Guidance, each trading entity should be assumed to have failed to maintain, establish, or reestablish market confidence sufficient to continue as a transacting entity in the bilateral OTC markets.

A firm's preferred resolution strategy should assume that trading entities are downgraded to below investment grade at the point of non-viability of the parent unless the firm provides well-supported analysis to the contrary.

DER 4. Trading Book Definitions

Q. What is the scope of activity covered in the wind down scenarios required in Section VII of the 2017 Guidance, specifically with respect to non-trading derivatives and non-derivatives trading positions?

A. The wind-down scenarios required in Section VII of the 2017 Guidance are focused on the wind-down of a firm's derivatives positions (trading and hedging positions; regardless of whether they are in the firm's banking book or trading book). The Section VII wind-down analyses may also include non-derivative trading positions that are linked to specific-derivatives transactions (for example, a firm might sell cash securities along with winding-down the derivatives to rebalance risk positions over time). To the extent a firm includes such positions, the firm should present the analysis separately from the schedules specified in the 2017 Guidance Derivatives Appendix.

DER 5. Passive Wind-Down/Rump

Q. Please clarify the particular approach to passive wind down expected by the Agencies.

A. The Passive Wind-Down Scenario required in Section VII of the 2017 Guidance is intended to be a total run-off scenario whereby the wind-down of the firm's derivatives positions results from contractual maturities and limited client initiated terminations. 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—e.g., a portfolio comprised of short-dated, vanilla positions generally should have lower capital and liquidity impacts than a portfolio comprised of long-dated, complex positions.

The Passive Wind-Down Scenario should not include techniques such as compression and step-out, novations, risk neutral transfers of portfolios, or other discretionary client-risk reducing trades. This is a key difference between the Passive Wind-Down Scenario and Active Wind-Down Scenario.

In the wind-down scenarios required in Section VII of the 2017 Guidance, do the Agencies expect projections of RWAs, liquidity, or both to determine when resource depletion occurs and with respect to the systemic risk profile analysis? Please provide more clarity around the Agencies' expectations for the systemic risk profile.

For the Passive Wind-Down Scenario and the Active Wind-Down Scenario required in Section VII of the 2017 Guidance, a dealer firm should include estimated resource needs—i.e., capital and liquidity needs—over time, until the point of total run-off or when resources are depleted—e.g., when an applicable regulator would initiate proceedings for the relevant material entity. Consistent with Question 3 at "LIQ 2. Distinction between Liquidity Forecasting Periods" in the Liquidity section, resource needs can be estimated on a quarterly basis.

Bearing in mind the objectives of an orderly resolution, a dealer firm should assess the risk profile of the residual portfolio in a manner consistent with the attributes noted on page 21 of the 2017 Guidance: size, composition, complexity, and potential counterparties.

DER 6. Derivatives Sales/Active Wind Down

Q. May dealer firms include the transfer of derivatives portfolios as part of larger line of business sales?

A. A firm's preferred resolution strategy may include the transfer of derivative portfolios as part of broader line of business sales. In the event of such a transfer, firms should indicate whether or not the derivatives positions are linked to any securities or other positions and if such positions were included as part of the broader line of business sale. Separately, dealer firms must also provide the Passive Wind-Down Scenario and the Active Wind-Down Scenario required in Section VII of the 2017 Guidance, which should not assume the transfer of derivatives portfolios as part of broader lines of business sales.

DER 7. Break Clauses

Q. In the wind-down scenarios required under Section VII of the Guidance, is it permissible to assume that firms and clients will terminate, when able, derivatives contracts if the contracts with counterparties allows such breaks?

A.*Client-initiated terminations*. In the Passive Wind-Down Scenario and the Active Wind-Down Scenario required under Section VII, dealer firms should assume that counterparties will exercise any contractual termination right, consistent with any rights stayed by the ISDA protocol, (i) that is available to the counterparty following the parent holding company's entry into an insolvency proceeding (e.g., optional early termination right) and (ii) if exercising such right would economically benefit the counterparty ("expected client-initiated terminations").

Firm-initiated terminations. In the Passive Wind-Down Scenario, a dealer firm cannot assume that it can terminate trades on derivatives contracts except where the termination is to facilitate the close-out of an expected client initiated-termination. For example, upon a client-initiated termination the firm may close-out the external or internal leg of a mirrored, back-to-back transaction with a counterparty or affiliates if the firm has the contractual right to terminate the transaction or it would be economically beneficial for the counterparty or affiliates to mutually consent to such termination.

In the Active Wind-Down Scenario, a dealer firm can initiate the termination of trades when it has the contractual rights to do so, such as in cancellable swaps and rights in similar instruments. The firm may also seek, and consent to, the termination of trades on derivatives contracts to facilitate novations and risk reducing trades consistent with Question 1, "DER 2. Hedging."

In all instances, including the firm's preferred resolution strategy, assumptions regarding early terminations (regardless of whether the termination is initiated by the firm or its client) should be adequately supported by the underlying contract and economic benefits to the firm and/or counterparty.

DER 8. Risk Evolution of Derivatives in Wind Down

Q. What are the Agencies' expectations with respect to modeling the evolution of risk factors associated with the derivatives portfolio through the resolution period?

A. The Agencies have not imposed an expectation that firms should model the evolution of risk factors with respect to the Passive Wind-Down Scenario and the Active Wind-Down Scenario required in Section VII of the 2017 Guidance or in the context of a wind-down of its derivatives portfolio under its preferred resolution strategy.

DER 9. Limitation on Access to Bilateral OTC Derivatives Markets

Q. Section VII of the 2017 Guidance regarding the Passive Wind-Down Scenario and the Active Wind-Down Scenario directs the dealer firm to "assume that entities cannot access bilateral over-the-counter (OTC) markets." Please clarify the scope of that limitation and whether the limitation extends beyond OTC derivatives instruments to include bilateral securities financing transactions used to source collateral and securities?

A. The limitation noted above applies only to derivatives. For example, a firm may use reverse repo and stock borrow transactions to source collateral and securities so long as such transactions are on terms consistent with the plan's scenario assumptions regarding counterparty/market expectations.

DER 10. Indirect Access to FMUs During Wind-Down

Q. For the Passive Wind-Down Scenario and the Active Wind-Down Scenario required in Section VII of the 2017 Guidance, please clarify under which circumstances a firm may assume continued access through an affiliate to exchanges and other FMUs?

A. A firm may assume that an entity can retain access to exchanges and other FMUs through an affiliate where this relationship is established prior to resolution, and so long as its margin arrangements with that affiliate are on third-party terms (see also "OPS PCS 1. FMU Contingency Arrangements," Question 3, in the Operational: Payments, Clearing, and Settlement section).

Legal

LEG 1. Emergency Motion

Q. The 2017 Guidance states (page 17) that "the plan should consider contingency arrangements in the event the bankruptcy court does not grant the emergency motion." What are the Agencies' expectations given the industry's focus on complying with the ISDA Resolution Stay Protocol?

A. Firms may present a preferred strategy that makes use of the Protocol. Nonetheless, the Agencies expect firms also to consider the possibility that a bankruptcy court may not timely enter an order that satisfies the Transfer Conditions and/or the U.S. Parent debtor-in-possession Conditions of the Protocol as contemplated in the firm's preferred strategy. See pages 17-18 of the 2017 Guidance.

Q2. Could the Agencies clarify what further legal analysis would be expected regarding the impact of potential state law and bankruptcy law challenges and mitigants to the planned provision of Support?

A. The firms should address developments from the firm's own analysis of potential legal challenges regarding the Support and should also address any additional potential legal challenges identified by the Agencies on pages 10–11 of the 2017 Guidance. A legal analysis should include a detailed discussion of the relevant facts, legal challenges, and Federal or State law and precedent. The analysis also should evaluate in detail the legal challenges identified in the 2017 Guidance under the heading "Pre-Bankruptcy Parent Support," any other legal challenges identified by the firm, and the efficacy of potential mitigants to those challenges. Firms should identify each factual assumption underlying their legal analyses and discuss how the analyses and mitigants would change if the assumption were not to hold. Moreover, the analysis is not required to take the form of a legal opinion.

Q3. Could the Agencies confirm that the "developments" they would like to see incorporated into governance playbooks are the results of the firm's analysis of potential legal challenges regarding the Support?

A. Developments from the firm's analysis of legal challenges regarding the Support include the firm's analysis of the legal challenges regarding the Support. If the firm identifies, or identifies and addresses, other issues (e.g., regulatory vulnerabilities, operational impediments, time constraints, requisite board action, and other events that would materially impede the firm's ability to execute its preferred strategy) as a result of such legal analysis, those developments also should be included.

LEG 2. Contractually Binding Mechanisms

Q. Do the Agencies have any preference as to whether capital is down-streamed to key subsidiaries (including an IDI subsidiary) in the form of capital contributions vs. forgiveness of debt?

A. No. The Agencies do not have a preference as to the form of capital contribution or liquidity support.

Q2. The letter makes reference to a contractually binding mechanism. Does such an agreement relate to the provision of capital or liquidity? What classes of assets would be deemed to provide capital vs. liquidity?

A. Contractually binding mechanism is a generic term and includes the down-streaming of capital and/or liquidity as contemplated by the preferred strategy. Furthermore, it is up to the firm, as informed by any relevant guidance of the Agencies, to identify what assets would satisfy a subsidiary's need for capital and/or liquidity.

Q3. Is there a minimum acceptable duration for a contractually binding mechanism? Would an "evergreen" arrangement, renewable on a periodic basis (and with notice to the Agencies), be acceptable?

A. To the extent a firm utilizes a contractually binding mechanism, such mechanism, including its duration, should be appropriate for the firm's preferred strategy, including adequately addressing relevant financial, operational, and legal requirements and challenges.

Q4. Are there any particular "related actions or agreements" that the Agencies have observed or believe may enhance the effectiveness of a contractually binding mechanism which the firm should consider?

A. Firms should design the appropriate tool(s) that best enhance the likelihood of the enforceability and effectiveness of any contractually binding mechanism.

Q5. Have the Agencies developed (or do they intend to develop) a prototype of a contractually binding mechanism that would address their concerns?

A. No.

Q6. The firm may need to amend its contractually binding mechanism from time to time resulting potentially from changes in relevant law, new or different regulatory expectations, etc. Is a firm able to do this as long as there is no undue risk to the enforceability (e.g., no signs of financial stress sufficient to unduly threaten the agreement's enforceability as a result of fraudulent transfer)?

A. Yes, however the Agencies should be informed of the proposed duration of the agreement, as well as any terms and conditions on renewal and/or amendment. Any amendments should be identified and discussed as part of the firm's next plan submission.

General

GEN 1. Sufficiency of Remediation

Q. Can the Agencies confirm that the action steps we have outlined will remediate our deficiency and/or meet 2017 Guidance expectations?

A. Agency staff cannot confirm whether the actions of the firm are adequate to remediate a deficiency or satisfy the 2017 Guidance. Authority and decision-making relative to resolution plan determinations rest with the respective Boards of the FDIC and Federal Reserve.

GEN 2. October Submission—Public Portion

Q. We have received inquiries regarding the timing of the Agencies' posting of the public portions of the October submissions on their websites, and whether the Agencies would object if a firm were to publish the public portion of its October submission prior to that time.

A. The Agencies intend to post the public portions of the October submissions on their respective websites shortly after the October 1, 2016, due date for the submissions. The Agencies will notify the firms in advance of the intended posting date. The Agencies have no objection to a firm publishing the public portion of its October submission prior to or simultaneous with the posting of such portion by the Agencies.

GEN 3. October Submission Presentation

Q. Do the Agencies have any preference regarding the presentation of information in the October submission?

A. The Agencies would appreciate receiving submissions that clearly separate or identify the content related to remediation of joint deficiencies, progress on shortcomings, and any other content.

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