

FEDERAL RESERVE SYSTEM

Docket No. []

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064-ZA15

Proposed Guidance for Resolution Plan Submissions of Certain Foreign-based Covered Companies

AGENCY: Board of Governors of the Federal Reserve System (Board) and Federal Deposit Insurance Corporation (FDIC)

ACTION: Proposed guidance; request for comments.

SUMMARY: The Board and the FDIC (together, the “agencies”) are inviting comments on proposed guidance for the 2021 and subsequent resolution plan submissions by certain foreign banking organizations (“FBOs”). The proposed guidance is meant to assist these firms in developing their resolution plans, which are required to be submitted pursuant to Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). The scope of application of the proposed guidance would be FBOs that are triennial full filers and whose intermediate holding companies (“U.S. IHCs”) have a score of 250 or more under the second methodology (“method 2”) of the global systemically important bank (“GSIB”) surcharge framework. The proposed guidance, which is largely based on prior guidance, describes the agencies’ expectations regarding a number of key vulnerabilities in plans for a rapid and orderly resolution under the U.S. Bankruptcy Code (i.e., capital; liquidity; governance mechanisms; operational; legal entity rationalization and separability; and derivatives and trading activities). The proposed guidance also updates certain aspects of prior guidance based, in part, on the agencies’ review of certain FBOs’ most recent resolution plan submissions and changes to the resolution planning rule. The agencies invite public comment on all aspects of the proposed guidance.

DATES: Comments should be received on or before May 5, 2020.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to both agencies. Comments should be directed to:

Board: You may submit comments, identified by Docket No. [], by any of the following methods:

- Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- E-mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.
- FAX: (202) 452-3819 or (202) 452-3102.
- Mail: Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons or to remove personal information at the commenter's request.

Accordingly, comments will not be edited to remove any identifying or contact information.

Public comments may also be viewed electronically or in paper form in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN 3064-ZA15, by any of the following methods:

- Agency Web site: <https://www.fdic.gov/regulations/laws/federal>. Follow the instructions for submitting comments on the Agency Web site.

- Email: comments@fdic.gov. Include “RIN 3064-ZA15” on the subject line of the message.
- Mail: Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- Hand Delivery/Courier: Guard station at the rear of the 550 17th Street NW Building (located on F Street) on business days between 7 a.m. and 5 p.m.
- Public Inspection: All comments received, including any personal information provided, will be posted generally without change to <https://www.fdic.gov/regulations/laws/federal>.

FOR FURTHER INFORMATION CONTACT:

Board: Mona Elliot, Deputy Associate Director, (202) 452-4688, Division of Supervision and Regulation, Laurie Schaffer, Deputy General Counsel, (202) 452-2272, Jay Schwarz, Special Counsel, (202) 452-2970, Steve Bowne, Senior Counsel, (202) 452-3900, or Sarah Podrygula, Attorney (202) 912-4658, Legal Division. Users of Telecommunications Device for the Deaf (TDD) may call (202) 263-4869.

FDIC: Alexandra Steinberg Barrage, Associate Director, Policy and Data Analytics, abarrage@fdic.gov; Heidilynne Schultheiss, Chief, Resolution Strategy Section, hschultheiss@fdic.gov; Yan Zhou, Chief, Supervisory Programs Section, yazhou@fdic.gov; Ronald W. Crawley, Jr., Senior Resolution Policy Specialist, rcrawley@fdic.gov, Division of Complex Institution Supervision and Resolution; David N. Wall, Assistant General Counsel, dwall@fdic.gov; Celia Van Gorder, Supervisory Counsel, cvangorder@fdic.gov; or Esther Rabin, Counsel, erabin@fdic.gov, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

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I. Background

Section 165(d) of the Dodd-Frank Act¹ and the jointly issued implementing regulation² require certain financial companies, including certain foreign-based firms, to report periodically to the Board and the FDIC their plans for rapid and orderly resolution under the U.S. Bankruptcy Code (the “Bankruptcy Code”) in the event of material financial distress or failure. With respect to a covered company³ that is organized or incorporated in a jurisdiction other than the United States or that is an FBO, the Rule requires that the firm’s U.S. resolution plan include specified information with respect to the subsidiaries, branches, and agencies, and identified critical operations and core business lines, as applicable, that are domiciled in the United States or conducted in whole or material part in the United States.⁴ The Rule also requires, among other things, each financial company’s full resolution plan to include a strategic analysis of the plan’s components, a description of the range of specific actions the company proposes to take in

¹ 12 U.S.C. 5365(d).

² 12 CFR Part 243 and 12 CFR Part 381 (the “Rule”), as amended.

³ The terms “covered company,” “material entities,” “identified critical operations,” “core business lines,” and similar terms used throughout the proposal all have the same meaning as in the Rule.

⁴ 12 CFR Part 243.5(a)(2)(i); 12 CFR Part 381.5(a)(2)(i).

resolution, and a description of the company’s organizational structure, material entities, and interconnections and interdependencies.⁵ In addition, the Rule requires that all resolution plans include a confidential section that contains any confidential supervisory and proprietary information submitted to the Board and the FDIC and a section that the agencies make available to the public. Public sections of resolution plans can be found on the agencies’ websites.⁶

Objectives of the Resolution Planning Process

The goal of the Dodd-Frank Act resolution planning process is to help ensure that a covered company’s failure would not have serious adverse effects on financial stability in the United States. Specifically, the resolution planning process requires covered companies to demonstrate that they have adequately assessed the challenges that their structures and business activities pose to resolution and that they have taken action to address those issues. For FBOs, the resolution planning process focuses on their U.S. subsidiaries and operations.

The agencies believe that the preferred resolution outcome for many FBOs is a successful home country resolution using a single point of entry (“SPOE”) resolution strategy where U.S. material entities are provided with sufficient capital and liquidity resources to allow them to stay out of resolution proceedings and maintain continuity of operations throughout the parent’s resolution. However, since support from the foreign parent in stress cannot be ensured, the Rule provides that the U.S. resolution plan for foreign-based covered companies should specifically

⁵ Under the Rule, all filers must submit a full resolution plan, either every other time a resolution plan submission is required or as a firm’s initial resolution plan submission. *See* 12 CFR Part 243.4(a)(5)–(6), (b)(4)–(5), and (c)(4)–(5); 12 CFR Part 381.4(a)(5)–(6), (b)(4)–(5), and (c)(4)–(5).

⁶ The public sections of resolution plans submitted to the agencies are available at <https://www.federalreserve.gov/supervisionreg/resolution-plans.htm> and www.fdic.gov/regulations/reform/resplans/.

address a scenario where the U.S. operations experience material financial distress and not assume that the covered company takes resolution actions outside the United States that would eliminate the need for any U.S. subsidiaries to enter resolution proceedings.⁷ Nonetheless, the Rule also provides firms with appropriate flexibility to construct a U.S. resolution strategy in a way that is not inconsistent with a firm’s global resolution strategy, as long as those assumptions support the firms’ U.S. resolution strategy and adhere to the assumptions articulated in the Rule.

Recent Developments

Implementation of the Rule has been an iterative process aimed at strengthening the resolution planning capabilities of financial institutions subject to the Rule. The agencies have previously provided guidance and other feedback on several occasions to certain FBOs.⁸ In general, the guidance and feedback were intended to assist the recipients in their development of future resolution plan submissions and to provide additional clarity with respect to the agencies’ expectations for the filers’ future progress.

The agencies are now proposing to update aspects of the *Guidance for 2018 §165(d) Annual Resolution Plan Submissions By Foreign-based Covered Companies that Submitted Resolution Plans in July 2015* (“2018 FBO guidance”).⁹ The 2018 FBO guidance was provided to four FBOs.¹⁰

Several developments inform the proposed guidance:

⁷ 12 CFR Part 243.4(h)(3); 12 CFR Part 381.4(h)(3). Presently, the U.S. resolution strategy of each firm that would be subject to the proposed guidance is a U.S. SPOE resolution strategy, which is designed to have the U.S. IHC recapitalize and provide financial resources to its material entity subsidiaries prior to entering U.S. bankruptcy proceedings.

⁸ See *infra* III. *Consolidation of Prior Guidance*.

⁹ Available at www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170324a21.pdf and www.fdic.gov/resauthority/2018subguidance.pdf.

¹⁰ Barclays PLC, Credit Suisse Group AG, Deutsche Bank AG, and UBS AG.

- The agencies’ review of certain FBOs’ most recent resolution plan submissions and the issuance of individual letters communicating the agencies’ views on and shortcomings contained in the 2018 resolution plans filed by the firms subject to the 2018 FBO guidance (“2018 feedback letters”);¹¹
- Revisions to the content related to payment, clearing, and settlement activities (“PCS”) and derivatives and trading activities (“DER”) in the updated guidance for the resolution plan submissions by the eight largest, most complex U.S. banking organizations in February 2019 (“2019 domestic guidance”);¹² and
- The 2019 amendments to the Rule (“2019 revisions”).¹³

In December 2018, the agencies issued the 2018 feedback letters, which communicated their views on and identified shortcomings contained in the 2018 resolution plans filed by the firms subject to the 2018 FBO guidance. These letters also described the meaningful resolvability improvements made by the FBOs. The FBOs that received this feedback are expected to address their shortcomings and complete the enhancement initiatives described in their 2018 resolution plans by July 1, 2020, as provided in the 2018 feedback letters and confirmed by the letters issued to the firms on July 26, 2019.¹⁴ The review of the resolution plan submissions that resulted in the 2018 feedback letters helped to inform changes to the 2018 FBO guidance, as described below.

¹¹ Available at www.federalreserve.gov/newsevents/pressreleases/bcreg20181220c.htm.

¹² Final Guidance for the 2019, 84 FR 1438 (February 4, 2019).

¹³ Resolution Plans Required, 84 FR 59194 (November 1, 2019). The amendments became effective on December 31, 2019.

¹⁴ See <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20190726a.htm>. For clarity, the shortcoming(s) and the remaining project(s) identified for each firm that would be subject to the proposed guidance in its 2018 feedback letter should be addressed as set forth in each firm’s respective 2018 feedback letter, notwithstanding the consolidation of all relevant prior guidance into the proposed guidance.

In February 2019, the agencies released the 2019 domestic guidance, which reiterated the agencies' expectations for eight domestic firms regarding several elements of their resolution plans and made material updates to guidance relating to PCS and DER. As described below, the agencies are proposing updates to the 2018 FBO guidance regarding PCS and DER, which will more closely align the agencies' expectations in these areas with the expectations described in the 2019 domestic guidance, taking into account issues specific to FBOs. The 2019 domestic guidance also consolidated all prior guidance applicable to the eight firms to which it was directed. In the consultation period for the 2019 domestic guidance, the agencies received comments supporting the consolidation efforts and subsequently indicated their intent to similarly consolidate and request public comment on the 2018 FBO guidance. Accordingly, the agencies are proposing to consolidate and supersede all prior resolution planning guidance that has been directed to the FBOs to which this guidance is proposed to apply ("Specified FBOs" or "firms").

More recently, in November 2019, the agencies finalized the 2019 revisions, which amended the Rule to address changes to the Dodd-Frank Act made by the Economic Growth, Regulatory Relief, and Consumer Protection Act ("EGRRCPA")¹⁵ and improve certain aspects of the Rule based on the agencies' experience implementing the Rule since its adoption. Among other things, the 2019 revisions modified the scope of application of the resolution planning requirement, the frequency of resolution plan submissions, informational content requirements (primarily through the introduction of new plan types), and the Rule's procedures for the identification of critical operations. Consistent with EGRRCPA, the 2019 revisions applied the resolution planning requirement to financial institutions that would be subject to category I, II, or

¹⁵ Pub. L. 115-174 (2018).

III standards under the “domestic tailoring rule” or the “foreign banking organization rule” (together with the domestic tailoring rule, the “tailoring rules”)¹⁶ and certain other covered companies.

Under the 2019 revisions and the proposed scope of guidance, each Specified FBO would be a triennial full filer and will be required to submit a resolution plan every three years, alternating between a full resolution plan and a targeted resolution plan. The 2019 revisions require all triennial full filers to submit a targeted resolution plan on or before July 1, 2021, followed by a full resolution plan in 2024.

In addition, the agencies indicated in the 2019 revisions that they would strive to provide final general guidance at least a year before the next resolution plan submission date of firms to which the general guidance is directed. The 2019 revisions also provided certain technical changes, including the clarification that FBOs should not assume that the foreign parent company takes resolution actions outside of the United States that would eliminate the need for any U.S. subsidiaries to enter into resolution proceedings.

International Cooperation on Resolution Planning

The 2018 feedback letters also noted the importance of the agencies’ engagement with non-U.S. regulators. The Specified FBOs are subject to their home country resolvability expectations, in addition to section 165(d) of the Dodd-Frank Act and the Rule. Resolution of the U.S. operations of a firm domiciled outside the United States with significant global activities (i.e., the Specified FBOs) will require substantial coordination between home and host country

¹⁶ See Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations, 84 FR 59032 (November 1, 2019); Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements, 84 FR 59230 (November 1, 2019).

authorities. The agencies identified three areas in the 2018 feedback letters (legal entity rationalization; PCS; and derivatives booking practices) where enhanced cooperation between the agencies and each firm's home regulatory authorities would maximize resolvability under both the U.S. and home country resolution strategies.¹⁷ The agencies will continue to coordinate with non-U.S. authorities regarding these and other resolution matters (e.g., resources in resolution, communications), including developments in the U.S. and home country resolution capabilities of the Specified FBOs.

Capital and Liquidity

The agencies received several comments on an array of resolution capital and liquidity issues during consideration of the 2019 domestic guidance, but declined to adopt any modifications in the final version.¹⁸ Instead, the agencies indicated that they would continue to consider those comments, coordinate with non-U.S. regulators, and provide additional information in the future on those topics. The agencies continue to evaluate the capital and liquidity guidance and expect that any future actions in these areas, whether guidance or rules, would be adopted through notice and comment procedures, which would provide an opportunity for public input. The agencies further expect to collaborate in taking such actions in a manner consistent with the Board's Total Loss-Absorbing Capacity rule.¹⁹ Therefore, the capital and liquidity sections of the proposed guidance remain unchanged from the 2018 FBO guidance with the exception of two minor clarifications to the capital section.

¹⁷ Available at www.federalreserve.gov/newsevents/pressreleases/bcreg20181220c.htm.

¹⁸ See 84 FR 1442–43 (discussing, among other things, (i) tailoring liquidity flow assumptions; (ii) avoiding false positive resolution triggers; and (iii) other requests).

¹⁹ See generally 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 FR 8266 (January 24, 2017).

II. Overview of the Proposed Guidance

The proposed guidance begins with a description of the proposed scoping methodology and is then organized into eight substantive areas, consistent with the 2018 FBO guidance.

These areas are:

1. Capital
2. Liquidity
3. Governance mechanisms
4. Operational
5. Branches
6. Group resolution plan
7. Legal entity rationalization and separability
8. Derivatives and trading activities

The proposed guidance is tailored for the Specified FBOs as compared to the U.S. GSIBs to account for differences between U.S. GSIBs and FBOs' U.S. footprints and operations. Each substantive area is important to firms in implementing their U.S. resolution strategy, as each plays a part in helping to ensure that the firms can be resolved in a rapid and orderly manner. The proposed guidance would describe the agencies' expectations for each of these areas.

The proposal is largely consistent with the 2018 FBO guidance and the 2019 domestic guidance. Accordingly, the agencies expect that the FBOs that would be Specified FBOs under the proposal have already incorporated significant aspects of the proposed guidance into their resolution planning. With respect to the 2019 domestic guidance, the proposed guidance differs in certain respects, given the circumstances under which a foreign-based covered company's U.S. resolution plan is most likely to be relevant.

As noted above, the proposal would update the PCS and DER areas of the 2018 FBO guidance to reflect the agencies' review of certain Specified FBOs' 2018 resolution plans and revisions contained in the 2019 domestic guidance. It would also make minor clarifications to

certain areas of the 2018 FBO guidance in light of the 2019 revisions. In general, the proposed revisions to the guidance are intended to streamline the firms' submissions and to provide additional clarity. In addition, the proposed guidance would consolidate all guidance applicable to the Specified FBOs into a single document, which would provide the public with one source of applicable guidance to which to refer. The proposed guidance is not meant to limit firms' consideration of additional vulnerabilities or obstacles that might arise based on a firm's particular structure, operations, or resolution strategy and that should be factored into the firm's submission.

Scope of Application

The agencies are proposing to apply the guidance to FBOs whose material financial distress or failure would present the greatest potential to disrupt U.S. financial stability. Specifically, the agencies are proposing to use the method 2 calculation of the GSIB surcharge framework for determining the applicability of this proposed guidance. Accordingly, the proposed guidance would apply to FBOs that are triennial full filers²⁰ and whose U.S. IHCs have a method 2 GSIB score of 250 or more.²¹ The agencies seek comment on all aspects of the proposed scoping methodology.

In proposing a scoping methodology, the agencies seek to provide a framework that is clear, predictable, and based on publicly reported quantitative data. Large bank holding companies, including FBOs' U.S. IHCs, already submit to the Board periodic public reports on their GSIB indicator scores. Since relevant data has been collected in comparable form for U.S.

²⁰ Currently, there are no FBOs that are triennial reduced filers and whose IHCs have method 2 scores of 250 or more. The agencies do not intend for the proposed guidance to apply to such an FBO.

²¹ The Specified FBOs as of the date of this proposal would be Barclays PLC, Credit Suisse Group AG, and Deutsche Bank AG.

GSIBs, FBOs, and other banking organizations in the U.S., a small number of FBOs (those FBOs that currently are expected to be Specified FBOs) have had consistently high method 2 GSIB scores that persist both in comparison to U.S. GSIBs and other FBOs during the periods for which data is available.

These comparably high method 2 scores have largely been driven by a reliance on short term wholesale funding (STWF). The STWF factor indicates the potential for significant liquidity outflows and large-scale funding runs associated with STWF in times of stress. Such funding runs may complicate the ability of an FBO to undergo an orderly resolution in times of stress, generating both safety and soundness and financial stability risks. While the agencies believe that there are compelling justifications for using a standalone risk-based measure of STWF as a basis for having heightened expectations for resolution planning, the agencies also understand that a single indicator may not account for other factors that are relevant to the resolvability of an FBO.

In contrast, method 2 of the GSIB surcharge framework is designed to provide a single, comprehensive, integrated assessment of a large bank holding company's systemic footprint. Specifically, the method 2 score assesses a financial institution's asset size, interconnectedness, complexity (including over-the-counter derivatives trading), cross-jurisdictional activity, and reliance on STWF — all important factors in considering resolvability. Thus, the agencies believe that this methodology is an appropriate mechanism for determining the scope of applicability of the proposed guidance.

The agencies believe that a method 2 GSIB score of 250 or more indicates that an FBO has certain characteristics that could present barriers to a rapid and orderly resolution. For example, a firm that funds a large percentage of its assets with STWF — as noted above, a

measure that suggests that a banking organization is more vulnerable to large-scale funding runs and thus increased resolvability risk – would have a method 2 GSIB score of 250 or more. Moreover, a substantial majority of U.S. GSIBs, which are the subject of heightened expectations regarding resolution planning,²² have a GSIB method 2 score of 250 or more, suggesting the need to apply heightened resolution expectations to FBOs that present comparable resolvability challenges. In addition, the proposed guidance would only apply to FBOs with U.S. IHCs because those are the FBOs with the largest consolidated U.S. operations that are subject to resolution under the Bankruptcy Code.

The agencies are not proposing to use the tailoring rules and the accompanying framework for sorting financial institutions into certain tailoring categories, other than to confirm that a firm is a triennial full filer. Several factors for determining a financial institution's tailoring category are important in the context of resolution and the application of this proposed guidance to the Specified FBOs. However, the tailoring rules and tailoring categories were developed to determine application of a broad range of enhanced prudential standards, including the general operation of resolution plan submissions, and were not focused on determining which covered companies should be subject to more detailed resolution planning guidance in light of longer resolution planning cycles and the need for greater coordination between home and host regulators.

Question []: Is the proposed scope of applicability of the proposed guidance appropriate? Should the agencies adopt a different methodology for determining the scope of the proposed guidance? For example, should the proposed guidance apply to FBOs whose U.S. operations have a systemic risk profile (as assessed by the method 1 GSIB score) that is similar to the systemic risk profile of the U.S. financial institutions that are assigned to Category I under the Board's tailoring rules? Should the proposed guidance apply to FBOs that are subject to Category II standards (based on the firm's combined U.S. operations) under*

²² See 2019 domestic guidance.

the Board's tailoring rules? Should the proposed guidance apply to FBOs that have exposure of a certain level (in the range of \$50 to \$100 billion) in one or more of the risk-based indicators identified in the Board's tailoring rules, such as nonbank assets and/or STWF? If the agencies adopt a different scope of application than what is being proposed, should the agencies also modify the content of the guidance, for example by removing certain sections of the guidance? Commenters are invited to explain in detail the basis for their positions.

Question []. Should the agencies outline in the final guidance their methodology and process for determining the FBOs to which the guidance should apply? Should the agencies specify in the final guidance an implementation period for any FBO that did not receive the 2018 FBO guidance, but to which the final guidance will apply? If so, should the implementation period be fixed or subject to adjustment by the agencies?*

Capital: The ability to provide sufficient capital to U.S. non-branch material entities without disruption from creditors is important to ensure that such material entities can continue to provide critical services and maintain identified critical operations as the U.S. IHC is resolved. The proposal describes expectations concerning the appropriate positioning of capital and other loss-absorbing instruments (e.g., debt that the parent may forgive or convert to equity) among the U.S. IHC and its subsidiaries (resolution capital adequacy and positioning or RCAP).²³ The proposal also describes expectations regarding a methodology for periodically estimating the amount of capital that may be needed to support each U.S. IHC subsidiary after the U.S. IHC's bankruptcy filing (resolution capital execution need or RCEN).

Liquidity: A firm's ability to reliably estimate and meet the liquidity needs of the U.S. IHC and its subsidiaries prior to, and in, resolution (resolution liquidity execution need or RLEN) is important to the execution of a Specified FBO's U.S. resolution strategy. Maintaining sufficient and appropriately-positioned liquidity also allows the U.S. IHC subsidiaries to continue to operate while the U.S. IHC is being resolved in accordance with the firm's U.S. resolution strategy. The proposal also describes expectations concerning a

²³ The proposal also would make consistent with the 2019 domestic guidance expectations about intercompany debt.

methodology for measuring the stand-alone liquidity position of each U.S. non-branch material entity.

Governance Mechanisms: An adequate governance structure with triggers that identify the onset, continuation, and increase of financial stress is important to ensure that there is sufficient time to communicate and coordinate with the foreign parent regarding the provision of financial support and other key actions. The governance mechanisms section proposes expectations that firms have playbooks that describe the board and senior management actions of the U.S. non-branch material entities necessary to execute the firm's U.S. resolution strategy. In addition, the proposal describes expectations that firms have triggers that are linked to specific actions outlined in these playbooks to ensure the timely escalation of information to both U.S. IHC and foreign parent governing bodies. The proposal also describes the expectations that firms identify and analyze potential legal challenges to planned U.S. IHC support mechanisms, and any defenses and mitigants to such challenges.

Currently, certain Specified FBOs have relied on contractually binding mechanisms ("CBMs") to ensure that sufficient capital and liquidity is timely provided to material entity subsidiaries prior to the U.S. IHC commencing a bankruptcy case. These structures are designed, in part, to mitigate potential legal challenges to the provision of such support.²⁴ With respect to legal challenges, the certain Specified FBOs assume, therefore, that creditors in a bankruptcy case of the U.S. IHC would exist and would bring a creditor challenge action in any bankruptcy case of the U.S. IHC.

²⁴ The U.S. GSIBs previously adopted CBMs for similar purposes.

Certain Specified FBOs have developed either (i) a secured support agreement whereby the U.S. IHC binds itself to provide pre-bankruptcy support to material entity subsidiaries, supported by perfected security interests in collateral granted by the U.S. IHC;²⁵ or (ii) an unsecured equity purchase arrangement under which the U.S. IHC enters into one or more agreements with a material entity subsidiary to purchase additional equity from that subsidiary prior to the U.S. IHC's bankruptcy. Under this second approach, the subsidiary would, using the funds derived from the equity investment, provide capital and liquidity support to U.S. material entities.

Neither the proposed guidance nor the Rule recommend a specific strategy for ensuring that support is timely provided to material entity subsidiaries and reducing the risk of a successful legal challenge to pre-bankruptcy resolution-related actions. The agencies continue to evaluate the efficacy of CBMs for the Specified FBOs as tools to address each of these objectives. The agencies seek comment on the benefits and costs and relative advantages and disadvantages of each CBM approach for the Specified FBOs.

Question []: Is each CBM approach described above effective as a potential mitigant to potential legal challenges in the case of a U.S. IHC bankruptcy? Is each effective in ensuring the provision of capital and liquidity support to material entities in periods of financial stress? What are the benefits and costs and relative advantages and disadvantages associated with each of the CBM approaches?*

Question []: Does each of the aforementioned CBM approaches appropriately balance the certainty associated with pre-positioning capital directly at U.S. IHC subsidiaries with the flexibility provided by holding recapitalization resources at the U.S. IHC (contributable resources) to meet unanticipated losses at the U.S. IHC subsidiaries? Does each of the*

²⁵ FBOs operating in the United States with U.S. non-branch assets of \$50 billion or more, such as the firms that would be Specified FBOs under the proposed guidance, are required to consolidate certain U.S. subsidiaries under a single, top-tier intermediate holding company. 12 CFR 252.153. In this circumstance, the U.S. IHC would be the entity that enters into a secured support agreement with its U.S. subsidiaries. Separately, some U.S.-based financial institutions have established an intermediate holding company to facilitate the flow of capital and liquidity to material entities prior to bankruptcy.

aforementioned CBM approaches provide sufficient confidence that appropriate levels of capital and liquidity will be timely provided to material entity subsidiaries? Does the absence of a perfected security interest under the equity purchase arrangement materially affect the likelihood that resources would be available to material entity subsidiaries under that approach? Why or why not?

Question []: Are there alternative CBM approaches that would provide equivalent or greater effectiveness in the provision of capital and liquidity to material entities in periods of financial stress? Should the agencies prescribe a specific CBM approach or provide additional guidance on the subject, or neither?*

Question []: Does the existence of a CBM that follows either of the aforementioned CBM approaches have the potential to facilitate or pose a potential conflict with a Specified FBO's home country global resolution strategy? If so, are there alternative approaches that would mitigate the conflict while providing sufficient confidence that appropriate levels of capital and liquidity will be timely provided to material entity subsidiaries?*

Operational: The development and maintenance of operational capabilities is important to support and enable successful execution of a firm's U.S. resolution strategy, including providing for the continuation of identified critical operations and preventing or mitigating adverse impacts on U.S. financial stability. The proposed operational capabilities include:

- Developing a framework and playbooks that consider contingency actions and alternative arrangements to be taken to maintain payment, clearing, and settlement activities and to maintain access to financial market utilities ("FMUs"), as further discussed below;
- Possessing fully developed capabilities related to managing, identifying, and valuing the collateral that is received from, and posted to, external parties and its affiliates;
- Having management information systems that readily produce key data on financial resources and positions on a U.S. legal entity basis, and that ensure data integrity and reliability; and
- Maintaining an actionable plan to ensure the continuity of all of the shared and outsourced services on which identified critical operations rely.

In addition, the proposed guidance outlines expectations that firms' plans should reflect the current state of how the early termination of qualified financial contracts could impact resolution of the firm's U.S. operations.

Branches: U.S. branches of FBOs, while legally distinct from a U.S. IHC, can play a critical role in a firm's U.S. operations. Therefore, the proposal describes expectations regarding the mapping of interconnections and interdependencies between a U.S. branch that is a material entity and other material entities, core business lines, or identified critical operations. In addition, the Specified FBOs would be expected to show how branches would continue to facilitate the firm's FMU access for identified critical operations and to meet funding needs. The proposal also outlines expectations that the Specified FBOs analyze the effects on the firm's FMU access and identified critical operations of the cessation of operations of any U.S. branch that is significant to the activities of an identified critical operation.

Group Resolution Plan: As noted above, the agencies recognize the preferred resolution outcome for the Specified FBOs is a successful home country resolution. U.S. operations of an FBO are often highly interconnected with the broader, global operations of the financial institution. The proposal outlines expectations for these firms to detail how resolution planning for U.S. domiciled entities or activities is integrated into the foreign-based covered company's overall resolution or other contingency planning process.

Legal Entity Rationalization and Separability: It is important that firms maintain a structure that facilitates orderly resolution. To achieve this, the proposal states that a firm should develop criteria supporting the U.S. resolution strategy and integrate them into day-to-day decision making processes. The criteria would be expected to consider the best alignment of legal entities and business lines and facilitate resolvability of U.S. operations as a firm's activities, technology,

business models, or geographic footprint change over time. In addition, the proposed guidance provides that the firm should identify discrete U.S. operations that could be sold or transferred in resolution.

Derivatives and Trading Activities: It is important that a firm's derivatives and trading activities can be stabilized and de-risked during resolution without causing significant market disruption. As such, firms should have capabilities to identify and mitigate the risks associated with their U.S. derivatives and trading activities (including those activities originated from the U.S. entities (as defined below) and booked directly into a non-U.S. affiliate) and with the implementation of their preferred strategies, as further discussed below.

III. Proposed Changes from Prior Guidance

The proposed guidance contains modifications and clarifications informed by the agencies' review of the certain Specified FBOs' 2018 plans, particularly in the areas of DER and PCS. Generally, the agencies' expectations for the Specified FBOs' resolution plan submissions are consistent with their expectations for the U.S. GSIBs' resolution plan submissions, with appropriate tailoring to reflect the firms' foreign parents and their different organizational structures and operations. In addition, the proposed guidance would provide certain clarifications to address the 2019 revisions and changes within the financial industry. The following summarizes the changes relative to the 2018 FBO guidance to which the agencies are seeking comment:

Scope

The agencies have eliminated from the 2018 FBO guidance the paragraph indicating that the expectations apply to certain Specified FBOs. As indicated above, the agencies are proposing to scope application of the proposed guidance by reference to a pre-existing

framework for determining systemic risk. Specifically, the proposed guidance would apply to FBOs that are triennial full filers and whose U.S. IHCs have a method 2 GSIB score of 250 or more. The agencies also are considering the appropriate implementation period for any FBO that becomes subject to the forthcoming final guidance and that was not a recipient of the 2018 FBO guidance.

Operational: Payment, Clearing, and Settlement Activities

The provision of PCS services by firms, FMUs, and agent banks is an essential component of the U.S. financial system, and maintaining the continuity of access to PCS services is important for the orderly resolution of the Specified FBOs' U.S. material entities, identified critical operations, and core business lines. Based upon the review of recent resolution plan submissions and the agencies' engagement with the firms, the agencies believe that the firms that would be Specified FBOs under the proposed guidance generally have continued to develop capabilities to identify and consider the risks associated with continuity of access to PCS services in a resolution under their U.S. resolution strategies. These capabilities are described in the firms' resolution plan methodologies and are included in playbooks for key FMUs and key agent banks.

The 2018 FBO guidance indicated that the resolution plan submission of an FBO to which the 2018 guidance applied should describe arrangements to facilitate continued access to PCS services through those FBOs' resolution. The agencies are now proposing guidance that clarifies the agencies' expectations with respect to the Specified FBOs' capabilities to maintain continued access to PCS services. First, the proposal would state that firms should develop frameworks that articulate their strategies for continued access to PCS services to focus the firms' consideration of this issue. Second, the proposed guidance would provide

clarity regarding firms' playbooks for retaining access to PCS services. Finally, the proposal would distinguish between expectations related to users and providers of PCS services, to reflect the different financial and operational considerations associated with each activity. The agencies believe that the firms that would be Specified FBOs under the proposed guidance generally have methodologies and capabilities in place to address the expectations in this proposal.

Framework. The framework through which a firm maintains continued access to PCS services should incorporate the identification of key clients of a firm's U.S. operations,²⁶ as well as key FMUs and key agent banks for a firm's U.S. material entities, identified critical operations, and core business lines, using both quantitative²⁷ and qualitative criteria, and playbooks for each key FMU and key agent bank. The proposed guidance builds upon existing guidance by specifying that the framework should consider key clients of the firm's U.S. operations (which may include affiliates of the firm), key FMUs, and key agent banks.²⁸ The

²⁶ A client is an individual or entity, including affiliates of the firm, to whom the firm provides PCS services and, if credit or liquidity is offered, any related credit or liquidity offered in connection with those services. In an effort to provide additional clarity, the proposed guidance clarifies that a firm should consider any related credit or liquidity offered in connection with those services only if credit or liquidity is offered. Although this clarification is not expressly included in the 2019 domestic guidance, the agencies' expectation concerning the identification of key clients remains the same for both those U.S. banking organizations and the Specified FBOs.

²⁷ In identifying entities as key, examples of quantitative criteria may include: for a client, transaction volume/value, market value of exposures, assets under custody, usage of PCS services, and if credit or liquidity is offered, any extension of related intraday credit or liquidity; for an FMU, the aggregate volumes and values of all transactions processed through such FMU; and, for an agent bank, assets under custody, the value of cash and securities settled, and extensions of intraday credit.

²⁸ The agencies note that several footnotes have been modified from the corresponding footnotes in the 2019 domestic guidance. *Compare* 84 FR 1452 nn. 13-14 *with* V. *Payment, Clearing, and Settlement Activities* nn. 65-66. These modifications were made for clarification purposes and do not reflect a difference in expectations between Specified FBOs and the eight largest, complex

agencies note that, while the 2018 FBO guidance does not expressly suggest the identification of and development of playbooks for key agent banks, the firms that would be Specified FBOs under the proposed guidance generally considered agent bank relationships in their most recent resolution plan submissions, with each providing a playbook for at least one key agent bank. Because agent bank relationships may replicate PCS services provided by FMUs or facilitate access to FMUs, the agencies are proposing to expressly include the development of playbooks for key agent banks.

In applying the framework, a firm would be expected to consider its role as a user or a provider of PCS services. The proposal refers to a user of PCS services as a firm that accesses the services of an FMU directly through its own membership in that FMU or indirectly through the membership of another entity, including an affiliate, that provides PCS services on an agency basis. A firm is a provider of PCS services under the proposed guidance if it provides its clients with access to an FMU or agent bank directly through the firm's membership in or relationship with that service provider, or indirectly through the firm's relationship with another entity, including a U.S. or non-U.S. affiliate or branch, that provides the firm with PCS services on an agency basis. A firm also would be a provider if it delivers PCS services to a client through the firm's own operations in the United States in a manner similar to an FMU.

The proposal provides that a firm's framework should take into account certain relevant relationships by providing a mapping of U.S. material entities, identified critical operations, core business lines, and key clients of the firm's U.S. operations to key FMUs and key agent banks. This framework would be expected to consider both direct relationships (e.g., a firm's direct

U.S. banking organizations regarding the identification of key clients, key FMUs, and key agent banks.

membership in the FMU, a firm's provision of such key clients of the firm's U.S. operations with PCS services through its own operations in the United States, or a firm's contractual relationship with an agent bank) and indirect relationships (e.g., a firm indirectly accesses PCS services through its relationship with another entity, including U.S. and non-U.S. affiliates and branches, that provides the firm with PCS services on an agency basis). The agencies 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 Specified FBO.

By developing and evaluating these activities and relationships through a framework that incorporates the elements of the proposed guidance, a firm should be able to consider the issue of maintaining continuity of access to PCS services in a comprehensive manner.

Question []. Is the proposed guidance sufficiently clear with respect to the following concepts: scope of PCS services, user vs. provider, and direct vs. indirect relationships? What additional clarifications or alternatives concerning the proposed framework or its elements, if any, should the agencies consider? For instance, would further examples of ways that a Specified FBO may act as provider of PCS services be useful? Should the agencies consider further distinguishing between providers based on the type of PCS service they provide?

Question []. Is the proposed guidance sufficiently clear concerning expectations related to PCS services provided by a Specified FBO's U.S. material entities, whether branches or non-branches? Should the agencies consider applying different expectations for U.S. material entities based on whether they are branches or non-branch entities? If so, what should be the basis for such differing expectations, and what additional clarifications or alternatives should the agencies consider?

Playbooks for Continued Access to PCS Services. Under the proposal, it is expected that a firm would provide a playbook for each key FMU and key agent bank, whether there is a direct relationship or an indirect relationship (including indirect arrangements through any U.S. or non-U.S. affiliate or branch) between the firm and each key FMU and key agent bank. A Specified FBO also would be expected to provide a playbook for each key FMU and key agent

bank that, among other things, includes financial and operational detail that would support continued access to PCS services for the firm and key clients of its U.S. operations under the firm's U.S. resolution strategy.²⁹

The proposed guidance differentiates the type of information to be included in a firm's key FMU and key agent bank playbooks based on whether a firm is a user of PCS services with respect to that FMU or agent bank, a provider of PCS services with respect to that FMU or agent bank, or both. To the extent a firm is both a user and a provider of PCS services with respect to a particular FMU or agent bank, the firm would be expected to provide the described content for both users and providers of PCS services. A firm would be able to do so either in the same playbook or in separate playbooks included in its resolution plan submission.

Content related to Users of PCS Services. Each playbook for an individual key FMU or key agent bank should include a description of the firm's direct or indirect relationship as a user with the key FMU or key agent bank and an identification and mapping of PCS services to the associated U.S. material entities, identified critical operations, and core business lines that use those PCS services, as well as a discussion of the potential range of adverse actions that could be taken by that key FMU or key agent bank when the firm is in resolution under its U.S. resolution strategy.³⁰ Playbooks submitted as part of the 2018 resolution plan submissions generally mapped the PCS services provided to U.S. material entities, identified critical operations, and core business lines at a granular level, which enhanced the utility of these playbooks.

In discussing the potential range of adverse actions that a key FMU or key agent bank

²⁹ However, the firm is not expected to incorporate a scenario in which it loses key FMU or key agent bank access into its U.S. resolution strategy or its RLEN and RCEN estimates.

³⁰ Examples of potential adverse actions may include increased collateral and margin requirements and enhanced reporting and monitoring.

could take, each playbook would be expected to address the operational and financial impact of such actions on each U.S. material entity, identified critical operation, and core business line, and discuss contingency arrangements that the firm could initiate in response to such adverse actions by the key FMU or key agent bank. Operational impacts could include effects on governance mechanisms or resource allocation (including human resources) of the Specified FBO's U.S. operations, as well as any expected enhanced communication with key stakeholders (e.g., regulators, FMUs, agent banks). Financial impacts could include those directly associated with liquidity or any additional costs incurred by the firm as a result of such adverse actions and contingency arrangements.

Content related to Providers of PCS Services. Under the proposal, a firm that is a direct or indirect provider of PCS services would be expected to identify, in its playbook for the relevant key FMU or key agent bank, key clients of its U.S. operations that rely upon PCS services provided by the firm's U.S. material entities, identified critical operations, and core business lines. Playbooks would be expected to describe the scale and way in which the firm's U.S. material entities, identified critical operations, and core business lines provide PCS services and any related credit or liquidity that may be offered by the firm in connection with such services. Similar to the content expected of users of PCS services, each playbook would be expected to include a mapping of the PCS services provided to each U.S. material entity, identified critical operation, and core business line, as well as key clients of the firm's U.S. operations. If a firm provides PCS services through its own U.S. operations, the firm would be expected to produce a playbook for the U.S. material entity that provides those services, and the playbook would focus on continuity of access for key clients of the firm's U.S. operations.

The proposal states that playbooks should discuss the potential range of contingency

actions available to the firm to minimize disruption to its provision of PCS services to key clients of its U.S. operations and the financial and operational impacts of such arrangements.

Contingency arrangements may include viable transfer of client activity and any related assets or any alternative arrangements that would allow key clients of the firm's U.S. operations to maintain continued access to PCS services. Each playbook also would be expected to describe the range of contingency actions that the firm may take concerning its provision of intraday credit to key clients of its U.S. operations and to provide analysis quantifying the potential liquidity that the firm could generate by taking each such action in stress and in the resolution period. To the extent a firm would not take any such actions as part of its U.S. resolution strategy, the firm would be expected to describe its reasons for not taking any contingency action.

Under the proposal, a Specified FBO should communicate the potential impacts of implementation of any identified contingency arrangements or alternatives to key clients of its U.S. operations, and playbooks should describe the firm's methodology for determining whether it should provide any additional communication to some or all such key clients of its U.S. operations (e.g., due to the client's BAU usage of that access or related extensions of credit), as well as the expected timing and form of such communication. The agencies note that, in the most recent submissions of the firms that would be Specified FBOs under the proposed guidance, these firms generally addressed the issue of client communications and provided descriptions of planned or existing client communications. A firm would be expected to consider any benefit of communicating this information in multiple forms (e.g., verbal or written) and at multiple time periods (e.g., business as usual, stress, or some point in time in advance of taking contingency actions) in order to provide adequate notice to key clients of its U.S. operations of the

action and the potential impact on the client of that action.

In making decisions concerning communications to such key clients of its U.S. operations, the proposal states that the firm also should consider tailoring communications to different subsets of clients (e.g., based on levels of activity or credit usage) in form, timing, or both. Playbooks may include sample client contracts or agreements containing provisions related to the firm's provision, if any, of intraday credit or liquidity.³¹ Such sample contracts or agreements may be important to the extent that the firm believes those documents sufficiently convey to clients the contingency arrangements available to the firm and the potential impacts of implementing such contingency arrangements.

Question []. Are the expectations with respect to playbook content for firms that are direct or indirect users or providers (or both) of PCS services sufficiently clear? What additional clarifications, alternatives, or additional information, if any, should the agencies consider?

Question []. Should the guidance indicate that providers of PCS activities are expected to consider particular contingency arrangements (e.g., methods to transfer client activity to other firms with whom the clients have relationships, alternate agent bank relationships, etc.)? Should the guidance also indicate that firms should consider particular actions they may take concerning the provision of intraday credit to affiliate and third-party clients, such as requiring pre-funding? If so, what particular actions should these firms address?

Question []. Specifically for direct and indirect users of PCS activities, should the guidance indicate that firms are expected to include PCS-related liquidity sources and uses, such as client pre-funding, or specific abilities to control intraday liquidity inflows and outflows, such as throttling or prioritizing of payments? If so, what particular sources and uses should firms be expected to include?

Question []. Specifically for providers of PCS services, are the agencies' expectations concerning a firm's communication to key clients of its U.S. operations (including affiliates, as applicable) of the potential impacts of implementation of identified contingency arrangements sufficiently clear? What additional clarifications, if any, should the agencies consider? Should the agencies expect the firm to communicate this information to key clients of the U.S. operations at specific times or in specific formats?

³¹ If these sample client contracts or agreements are included separately as part of the firm's resolution plan submission, they may be incorporated into the playbook by reference.

Capabilities. Similar to prior guidance, the proposal includes expectations concerning a Specified FBO’s capabilities for understanding and tracking its obligations and exposures associated with PCS activities, including contractual obligations and commitments. The proposed guidance indicates that those expectations would apply with respect to the obligations and exposures associated with PCS activities for each U.S. material entity, whether a branch or non-branch, as any such entity may provide access to PCS services.

Question []. Are the agencies’ expectations concerning these capabilities sufficiently clear? What additional clarifications, if any, should the agencies consider?

Operational: Qualified Financial Contracts

The 2018 FBO guidance indicated that the FBOs that were the subject of the 2018 FBO guidance could discuss in their resolution plan submissions the deployment and impact of certain International Swaps and Derivatives Association (“ISDA”) protocol developments on their resolution plans. The Specified FBOs may use those ISDA protocols to comply with the qualified financial contract stay rules of the Board, Office of the Comptroller of the Currency, and FDIC (“QFC Stay Rules”).³² As firms may comply with the QFC Stay Rules by amending contracts directly, if desired, rather than using the ISDA protocols, and because those ISDA protocols are final and open for adherence, the agencies are proposing to remove language in the guidance related to these developments. The agencies propose to retain an expectation that firms’ plans reflect the current state of how the early termination of qualified financial contracts could impact the resolution of the firm’s U.S. operations.

Legal Entity Rationalization and Separability

³² 12 CFR part 47 (Office of the Comptroller of the Currency); 12 CFR part 252, subpart I (Board); and 12 CFR part 382 (FDIC).

The separability section of the proposed guidance has been updated to provide additional specificity on actionability and generally aligns with the agencies' expectations as described in the 2019 domestic guidance. A firm's separability options should be actionable and should identify impediments and related mitigation strategies in advance. The proposed guidance notes that the Specified FBOs should consider potential consequences to U.S. financial stability of executing each separability option, while also noting that detail and analysis should be commensurate with each Specified FBO's U.S. risk profile and operations.

The proposed guidance has also been updated to reflect revised expectations around maintaining active virtual data rooms for separability options that involve a sale of U.S. operations or businesses ("objects of sale"). Consistent with expectations described in the 2019 domestic guidance, firms would be expected to have the capability to populate a data room with information pertinent to a potential divestiture in a timely manner, rather than to maintain an active data room. The agencies would expect to test this capability by asking firms to produce selected sale-related materials within a certain timeframe as part of future resolution plan reviews.

Derivatives and Trading Activities

The size, scope, complexity, and potential for opacity of a Specified FBO's U.S. derivatives and trading activities³³ may present significant risk to the resolvability of the firm's

³³ "U.S. derivatives and trading activities", means all derivatives and trading activities that are: (1) related to a firm's identified critical operations or core business lines, including any such activities booked directly into a non-U.S. affiliate; (2) conducted on behalf of the firm, its clients, or counterparties that are originated from, booked into, traded through, or otherwise conducted (in whole or in material part) in a U.S. entity (as defined below); or (3) both of the foregoing. A firm should identify its U.S. derivatives and trading activities pursuant to a methodology and justify the methodology used.

U.S. entities.³⁴ Based on the agencies’ review of these firms’ most recent resolution plan submissions,³⁵ the agencies have observed that the firms that would be Specified FBOs under the proposed guidance are increasingly booking U.S. derivatives and trading activities that originate from U.S. entities³⁶ into non-U.S. affiliates. As a result, the booking of U.S. derivatives and trading activities regularly occurs across jurisdictions and creates interconnections and interdependencies among and between the U.S. entities and non-U.S. affiliates of firms that would be Specified FBOs under the proposed guidance.³⁷ It can be difficult for the agencies to evaluate a firm’s U.S. derivatives and trading activities, and related risks to U.S. financial stability during the execution of the firm’s U.S. resolution strategy, without considering these activities on a broader basis (e.g., a cross-jurisdictional, business line basis). This is particularly true for the firm’s U.S. derivatives and trading activities originated from U.S. entities that are booked directly into a non-U.S. affiliate. Greater transparency into these activities is important because the U.S. entities have ongoing responsibilities for U.S. derivatives and trading activities originated from U.S. entities such as management of client relationships, transaction settlement,

³⁴ “U.S. entities” means U.S. IHC subsidiaries and material entity branches.

³⁵ Each of the 2018 resolution plans of the firms that would be Specified FBOs under the proposed guidance identifies certain U.S. derivatives and trading activities (including U.S. prime brokerage services) as an identified critical operation or core business line.

³⁶ Activities “originated” from U.S. entities are those activities transacted or arranged by, or on behalf of those U.S. entities and their clients and counterparties, including any such activity for which the U.S. entity is compensated (directly or indirectly) by a non-U.S. affiliate. These activities also include, for example, those that are sourced or executed through personnel employed by or acting on behalf a U.S. entity. The agencies would expect that a U.S. entity that is significant to the origination of activities for an identified critical operation or core business line would be designated as a U.S. material entity.

³⁷ The Rule requires a Specified FBO to identify, describe in detail, and map to the legal entity the interconnections and interdependencies among the U.S. subsidiaries, branches and agencies, and between those entities and the identified critical operations and core business lines of the Specified FBO, and any foreign-based affiliate. *See* 12 CFR 243.5(a)(2)(i); 12 CFR 381.5(a)(2)(i).

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.

Uncertainty about the execution risk, allocation of losses, and impact on clients and counterparties of the U.S. entities could contribute to a loss of confidence in the firm's U.S. resolution strategy. To facilitate an orderly resolution of its U.S. entities, a Specified FBO should be able to demonstrate the ability to monitor and manage its U.S. derivatives and trading activities in the period leading-up to and during execution of the U.S. resolution strategy without risk of a serious adverse effect on U.S. financial stability. The firms that would be Specified FBOs under the proposed guidance have been developing certain capabilities to identify and mitigate the risks associated with their U.S. derivatives and trading activities and with the implementation of their U.S. resolution strategies. These capabilities seek to facilitate a firm's planning, preparedness, and execution of an orderly resolution of its U.S. entities. Notably, they also may facilitate a home-country led strategy.³⁸

The proposed guidance would clarify the agencies' expectations with respect to such capabilities and a firm's analysis of its U.S. resolution strategy. The proposed guidance also would eliminate the expectations of the 2018 FBO guidance that a firm's U.S. resolution plan include separate passive and active wind-down scenario analyses, the agency-specified data templates, and rating agency playbooks, which is consistent with the 2019 domestic guidance. In addition, relative to the 2019 domestic guidance, the proposed guidance would modify certain expectations for the Specified FBOs to reflect better the structures and business activities of the firms that would be Specified FBOs under the proposed guidance, including the size and

³⁸ An SPOE strategy has been identified as the preferred group resolution strategy for each of the firms that would be Specified FBOs under the proposed guidance. *See supra* Objectives of the Resolution Planning Process.

complexity of their U.S. derivatives and trading activities and the associated risks to the orderly resolution of their U.S. entities. In particular, the proposed modifications would change the scope of activities covered by the *Booking Practices* subsection from derivatives portfolios³⁹ to U.S. derivatives and trading activities.⁴⁰ The proposal would also replace the *Inter-Affiliate Risk Monitoring and Controls* subsection with a new *U.S. Activities Monitoring* subsection to place an appropriate focus on the firm’s ability to provide timely transparency into the U.S. derivatives and trading activities, regardless of where the transactions are booked. Finally, in consideration of the relatively smaller size and less complex nature of the derivatives positions booked directly into U.S. IHC subsidiaries of the firms that would be Specified FBOs under the proposed guidance, the proposal would eliminate the “*ease of exit*” position analysis, “*application of exit cost methodology*,” and “*analysis of operational capacity*” subsections.⁴¹ As described in more detail below, the proposed derivatives and trading activities guidance is organized into five subsections.

Booking practices. To minimize uncertainty, complexity, and opacity around cross-jurisdictional booking practices that could frustrate a firm’s resolution preparedness, a firm’s resolution capabilities should include booking practices for its U.S. derivatives and trading activities that are commensurate with the size, scope, and complexity of a firm’s U.S. derivatives

³⁹ A firm’s derivatives portfolios include its derivatives positions and linked non-derivatives trading positions.

⁴⁰ This modification would extend the scope of the booking practices beyond derivatives portfolios to include, for example, securities financing transactions originated from the firm’s U.S. prime brokerage business on behalf of a U.S. client but booked directly into a non-U.S. affiliate.

⁴¹ While this modification would eliminate the more detailed expectations in subsections on “*application of exit cost methodology*” and “*analysis of operational capacity*,” similar considerations specific to the analysis of a firm’s derivatives strategy are still captured within the “*derivatives stabilization and de-risking strategy*” section.

and trading activities. A firm should have booking practices that provide timely and up-to-date information regarding the structure of and risks associated with the management of its U.S. derivatives and trading activities. In addition to providing transparency with respect to those positions booked into U.S. entities, the booking framework should provide transparency with respect to U.S. derivatives and trading activities booked directly to non-U.S. affiliates. As noted above, due to the cross-border nature of these activities, it can be difficult to evaluate the activities and the related risk in the period leading-up to and during the execution of the firm's U.S. resolution strategy without considering certain activities on a cross-jurisdictional, business line basis.⁴² Therefore, the proposed guidance would clarify the capabilities a firm is expected to have related to its booking practices, including descriptions of its booking model framework and demonstrations of its ability to identify, assess, and report on each U.S. entity that originates or otherwise conducts (in whole or in material part) any significant aspect of the firm's U.S. derivatives or trading activities.

U.S. activities monitoring. The booking, funding, and risk transfer arrangements⁴³ underlying a firm's U.S. derivatives and trading activities create interconnections and

⁴² The scope of the proposed guidance is larger and broader for a Specified 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 because a Specified FBO's U.S. resolution plan may not provide a full (global) legal entity view of its U.S. derivatives and trading activities originated from U.S. entities. In order to understand better the potential risk in resolution (e.g., potential impacts on the stability of U.S. financial markets), the agencies need to understand the material interconnections and interdependencies among and between the firm's U.S. entities and its non-U.S. affiliates that are created through its U.S. derivatives and trading activities, including those positions originated from the U.S. entities and booked directly into a non-U.S. affiliate.

⁴³ Risk transfer arrangements often apply to a range of services and activities (e.g., trading, management, sales, infrastructure) that are provided, conducted, or used by U.S. entities. The relevant services and activities include those conducted in whole or in material part in the United States. In some instances, risk transfer arrangements may account for a material portion of the

interdependencies among and between a firm's U.S. entities and their non-U.S. affiliates that, if disrupted, could affect materially the funding or operations of the U.S. entities that conduct the U.S. derivative and trading activities or their clients and counterparties. As noted above, the U.S. entities may maintain ongoing responsibilities for U.S. derivatives and trading activities originated from U.S. entities in the period leading-up to and during the execution of the firm's U.S. resolution strategy and a lack of transparency into how these activities are managed could create uncertainty that may impact negatively the orderly resolution of the firm's U.S. entities.

For example, through their derivatives and trading activities, the firms that would be Specified FBOs under the proposed guidance provide trade execution, hedging, securities financing, custody, clearing, and related services for banking firms, hedge funds and other institutional clients and counterparties. Many of these clients and counterparties rely on the firm's execution and financing services to support their participation in U.S. financial markets. The derivatives and trading activities that are originated from the firm's U.S. entities, and then booked to the firm's non-U.S. affiliates, create operational and financial connectivity with the firm's non-U.S. entities; as a client's assets, positions and balances can be booked to or utilized by numerous U.S. and non-U.S. affiliates. In resolution, the U.S. entities may continue to have responsibilities for managing U.S. client relationships and facilitating the unwind of client positions, the settlement of client liabilities, and the transfer of client accounts, regardless of the entity within the global firm to which those positions or assets have been booked.

The rapid withdrawal of client account balances, may have negative impacts (e.g., loss of internalization) on the funding or operations of the firm and its affiliates. Yet, the untimely

U.S. IHC's revenue. Disruption to these risk transfer arrangements could result in unexpected losses to or disruption of U.S. operations.

transfer or other prolonged disruptions in the clients' ability to execute transactions may have negative impacts to those clients or the U.S. financial markets in which they participate.

Therefore, the proposal clarifies the agencies' expectations that a firm address this risk by being able to provide timely transparency into the management of its U.S. derivatives and trading activities, including those originated from U.S. entities and booked directly into non-U.S. affiliates. A firm also should be able to assess the potential impact on the firm's clients and counterparties engaged in U.S. derivatives and trading activities and related risk transfer arrangements among and between the U.S. entities and non-U.S. affiliates.

Prime brokerage customer account transfers. The rapid withdrawal from a firm by U.S. prime brokerage clients can contribute to a disorderly resolution. The firm's resolution plan should address the risk that during a resolution, the firm's U.S. prime brokerage clients may seek to withdraw or transfer customer accounts balances in rates significantly higher than normal business conditions. The proposed guidance confirms that a firm should have the capabilities to facilitate the orderly transfer of U.S. prime brokerage account balances⁴⁴ to peer prime brokers and describes the agencies' related expectations in greater detail. In particular, the proposed guidance clarifies that a firm's U.S. resolution plan should describe and demonstrate its ability to segment and analyze the quality and composition of such account balances.

Portfolio segmentation. The ability to identify quickly and reliably problematic derivatives positions and portfolios is critical to minimizing uncertainty and estimating resource needs to enable an orderly resolution of the firm's U.S. entities. The proposal confirms that a firm should have the capabilities to produce analyses that reflect granular portfolio segmentation,

⁴⁴ "U.S. prime brokerage account" or "U.S. prime brokerage account balances" should include the account positions and balances of a client of the U.S. prime brokerage business, regardless of where the positions or balances are booked.

taking into account trade-level characteristics and at an entity level, for any derivatives portfolio of a U.S. entity.

Derivatives stabilization and de-risking strategy. A key risk to the orderly resolution of the firm's U.S. entities is a volatile and risky derivatives portfolio. In the event of material financial distress or failure, the resolvability risks related to a firm's U.S. derivatives and trading activities could be a key obstacle to the firm's rapid and orderly resolution of any U.S. IHC subsidiary with a derivatives portfolio. The firms' resolution plans should address this obstacle. The proposed guidance confirms that a firm's plan should provide a detailed analysis of its strategy to stabilize and de-risk any derivatives portfolio of any U.S. IHC subsidiary that continues to operate after the U.S. IHC enters into a U.S. bankruptcy proceeding (U.S. derivatives strategy) and provides additional detail regarding the agencies' expectations.⁴⁵ In particular, the proposed guidance clarifies that a firm should incorporate into its U.S. derivatives strategy assumptions consistent with a lack of access to the bilateral OTC derivatives market at the start of its resolution period. The proposed guidance also confirms and clarifies expectations related to other elements that should be addressed in the firm's analysis of its U.S. derivatives strategy, including the incorporation of resource needs into its RLEN and RCEN estimates (forecasts of resource needs); an analysis of any potential derivatives portfolio remaining after the resolution period (potential residual derivatives portfolio); a method to apply sensitivity analyses to the key drivers of the derivatives-related costs and liquidity flows under its U.S.

⁴⁵ Subject to certain constraints, a firm's U.S. derivatives strategy may take the form of a going concern strategy, an accelerated de-risking strategy (e.g., active wind-down), or an alternative, third strategy so long as the firm's U.S. resolution plan supports adequately the firm's ability to execute the chosen strategy.

derivatives strategy (sensitivity analysis); and the impact from the assumed failure of a U.S. IHC subsidiary with a derivatives portfolio (non-surviving entity analysis).

Question []: Should the proposed guidance incorporate a set of criteria explaining the circumstances under which the expectations related to derivatives and trading activities apply to firms that would be Specified FBOs under the proposed guidance? If so, what criteria would be the most relevant indicators of a derivatives and trading portfolio that may pose risks to the orderly resolution of a firm? For example, should the agencies consider some or all of the following indicia: being a foreign GSIB subject to U.S. Internal TLAC requirements, having an identified critical operation or a core business line related to U.S. derivatives and trading activities, or other indicia?

Question []: Is the proposed guidance sufficiently clear with respect to the following concepts: U.S. derivatives and trading activities, activities originated from U.S. entities, risk transfer arrangements, and U.S. prime brokerage accounts? What additional clarifications or alternatives concerning the proposed derivatives and trading practices framework or its elements, if any, should the agencies consider?

Question []: Is the proposed guidance sufficiently clear concerning the scope of expectations related to the Booking Practices and U.S. Activities Monitoring subsections? Should the agencies consider applying a different scope of expectations for these subsections? For instance, should the scope of these subsections only include U.S. derivatives activities, instead of both U.S. derivatives and trading activities (e.g., securities financing transactions)? If so, what should be the basis for such differing expectations, and what additional clarifications or alternatives should the agencies consider?

Question []: Is the proposed guidance sufficiently clear concerning the scope of expectations related to the Prime Brokerage Customer Account Transfers subsection? Should the agencies consider applying a different scope of expectations for this subsection? For instance, should the scope of this subsection only apply to account positions and balances that are booked into U.S. IHC subsidiaries? If so, what should be the basis for such differing expectations, and what additional clarifications or alternatives should the agencies consider?

Question []: Is the proposed guidance sufficiently clear concerning the scope of expectations related to the Portfolio Segmentation subsection? Should the agencies consider applying a different scope of expectations for this subsection? For instance, should the scope of this subsection only apply to U.S. IHC subsidiaries with a derivatives portfolio, instead of both U.S. IHC subsidiaries and U.S. material entity branches with a derivatives portfolio? If so, what should be the basis for such differing expectations, and what additional clarifications or alternatives should the agencies consider?

Format and Structure of Plans

This section has been added to the proposed guidance as part of the consolidation of the prior guidance with the proposed guidance. The proposed guidance states the agencies' preferred presentation regarding the format, assumptions, and structure of resolution plans. Plans should contain an executive summary, a narrative of the firm's resolution strategy, relevant technical appendices, and a public section as detailed in the Rule. The proposed format, structure, and assumptions are similar to those incorporated into the 2019 domestic guidance.

Question []: Do the topics in the proposed guidance discussed above represent the key vulnerabilities of the Specified FBOs in resolution? If not, what key vulnerabilities are not captured?*

Question []: The proposal incorporates portions of, and is generally aligned with, the 2018 FBO guidance and components of the 2019 domestic guidance. Are there any components of the proposal that should be augmented or removed? If so, which provisions? Are there any elements of the proposed guidance that are not relevant to the Specified FBOs? If such is the case, commenters are invited to explain in detail and provide evidence to support their views.*

Consolidation of Prior Guidance

In addition to the 2018 FBO guidance, the agencies have also issued and provided to certain FBOs: the *Guidance for 2013 § 165(d) Annual Resolution Plan Submissions by Foreign-Based Covered Companies that Submitted Initial Resolution Plans in 2012*; firm-specific feedback letters issued in 2014 and 2018; the February 2015 staff communication regarding the 2016 plan submissions; and the July 2017 *Resolution Plan Frequently Asked Questions* (taken together, "Prior Guidance"). The agencies are proposing to consolidate all Prior Guidance into a single document, which would provide the public with one source of applicable guidance to

which to refer. Under the proposal, Prior Guidance would be superseded to the extent not incorporated in or appended to the guidance.

Question []: The proposed guidance reflects consolidation of all applicable Prior Guidance. Should the Agencies consolidate all applicable Prior Guidance? If so, are there additional aspects of Prior Guidance that warrant inclusion, additional clarification, or modification?*

Identified Critical Operations

In the 2019 revisions, the agencies adopted a new definition, “identified critical operations,” to clarify that critical operations can be identified by either a covered company or jointly identified by the agencies.⁴⁶ The agencies are proposing to incorporate this new definition throughout the proposed guidance where, previously, the term “critical operations” was used. This modification does not change the substance of the proposed guidance.

IV. Paperwork Reduction Act

Certain provisions of the proposal contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) (“PRA”). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (“OMB”) control number.

As detailed above, the proposal is largely consistent with the 2018 FBO guidance. The proposed changes are mainly in the areas of derivatives and trading activities and payment, clearing and settlement activities. After considering these proposed changes and any potential PRA impacts, the agencies have determined that, generally, the proposal would not revise the

⁴⁶ 84 FR 59210; 59218.

reporting requirements that have been previously cleared by the OMB under the Board's control number (7100-0346) and under the FDIC's control number (3064-0210). However, as a result of the proposed guidance, for purposes of the PRA analysis, one covered company currently categorized in the 2019 revisions as a triennial full complex foreign filer would be re-categorized as a triennial full foreign filer. Because of the nature of the split in burden between the Board and the FDIC, the FDIC will make an adjustment to its PRA clearance (3064-0210) to account for the one-firm shift in category. The proposal would not add any recordkeeping or third-party disclosure requirements under the PRA. The agencies invite public comment on this assessment.

Comments are invited on:

- (a) Whether the collections of information are necessary for the proper performance of the Board's and the FDIC's functions, including whether the information has practical utility;
- (b) The accuracy of the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;
- (c) Ways to enhance the quality, utility, and clarity of the information to be collected;
- (d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology;
- (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information; and
- (f) Burden estimates for preparation of the waiver request and the calculation of any associated reduction in burden.

V. Text of the Proposed Guidance

Guidance for Resolution Plan Submissions of Certain Foreign-based Covered Companies

I. Introduction

II. Capital

- a. *Resolution Capital Adequacy and Positioning (RCAP)*
- b. *Resolution Capital Execution Need (RCEN)*

- III. *Liquidity***
 - a. *Capabilities*
 - b. *Resolution Adequacy and Positioning (RLAP)*
 - c. *Resolution Liquidity Execution Need (RLEN)*

- IV. *Governance Mechanisms***
 - a. *Playbooks, Foreign Parent Support, and Triggers*
 - b. *Support Within the United States*

- V. *Operational***
 - a. *Payment, Clearing and Settlement Activities*
 - b. *Managing, Identifying, and Valuing Collateral*
 - c. *Management Information Systems*
 - d. *Shared and Outsourced Services*
 - e. *Qualified Financial Contracts*

- VI. *Branches***

- VII. *Group Resolution Plan***

- VIII. *Legal Entity Rationalization and Separability***

- IX. *Derivatives and Trading Activities***

- X. *Format and Structure of Plans***

- XI. *Public Section***
Appendix: Frequently Asked Questions

I. INTRODUCTION

Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5365(d)) requires certain foreign-based financial companies to report periodically to the Board of Governors of the Federal Reserve System (the Federal Reserve or Board) and the Federal Deposit Insurance Corporation (the FDIC) (together the Agencies) their plans for rapid and orderly resolution in the event of material financial distress or failure. On November 1, 2011, the Agencies promulgated a joint rule implementing the provisions of Section 165(d).⁴⁷ Subsequently, in November 2019, the Agencies finalized amendments to the joint rule addressing amendments to the Dodd-Frank Act made by the Economic Growth, Regulatory Relief, and Consumer Protection Act and improving certain aspects of the joint rule based on the Agencies' experience implementing the joint rule since its adoption.⁴⁸ Financial companies meeting criteria set out in the Rule must file a resolution plan (Plan) according to the schedule specified in the Rule.

This document is intended to provide guidance to certain foreign banking organizations regarding development of their respective U.S. resolution strategies (Specified FBOs or firms). Specifically, the guidance applies to FBOs that are triennial full filers⁴⁹ and whose intermediate holding companies required to be formed pursuant to 12 CFR 252 have a method 2 GSIB score of 250 or more. The document is intended to assist these firms in further developing their U.S. resolution strategies. The document does not have the force and effect of law. Rather, it describes

⁴⁷ 76 FR 67323 (November 1, 2011), codified at 12 CFR parts 243 and 381.

⁴⁸ Resolution Plans Required, 84 FR 59194 (November 1, 2019). The amendments became effective December 31, 2019. "Rule" means the joint rule as amended in 2019. Capitalized terms not defined herein have the meanings set forth in the Rule.

⁴⁹ See 12 CFR 243.4(b)(1); 12 CFR 381.4(b)(1).

the Agencies' expectations and priorities regarding these firms' Plans and the Agencies' general views regarding specific areas where additional detail should be provided and where certain capabilities or optionality should be developed and maintained to demonstrate that each firm has considered fully, and is able to mitigate, obstacles to the successful implementation of their U.S. resolution strategy.⁵⁰

The Agencies are providing guidance to the Specified FBOs to assist their further development of a resolution plan for their U.S. operations for their July 1, 2021 and subsequent resolution plan submissions.⁵¹ The guidance for Specified FBOs differs in certain respects from the guidance issued in December 2018 for certain U.S.-based covered companies given the circumstances under which a U.S. resolution plan is most likely to be relevant. The U.S. resolution plan for a Specified FBO would address a scenario where the U.S. operations experience material financial distress and the foreign parent is unable or unwilling to provide sufficient financial support for the continuation of U.S. operations, and at least the top tier U.S. Intermediate Holding Company (U.S. IHC) files for Chapter 11 bankruptcy. Under such a scenario, the Plan should provide for the rapid and orderly resolution of the Specified FBO's U.S. material entities and operations.

⁵⁰ This guidance consolidates the *Guidance for 2018 §165(d) Annual Resolution Plan Submissions by Foreign-Based Covered Companies that Submitted Resolution Plans in July 2015*; the *July 2017 Resolution Plan Frequently Asked Questions*; feedback letters issued to certain foreign-based Covered Companies in December 2018 and in August 2014; the communications the Agencies made to certain foreign-based Covered Companies in February 2015; and the *Guidance for 2013 § 165(d) Annual Resolution Plan Submissions by Foreign-Based Covered Companies that Submitted Initial Resolution Plans in 2012* (taken together, prior guidance). To the extent not incorporated in or appended to this guidance, prior guidance is superseded.

⁵¹ Consistent with prior communications to the firms that would be Specified FBOs under the proposed guidance, they are required to submit resolution plans on or before July 1, 2020 that may be limited to describing changes that those FBOs have made to their July 2018 resolution plans to address shortcomings identified in those resolution plans.

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

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

II. CAPITAL

Resolution Capital Adequacy and Positioning (RCAP): In order to help ensure that a firm’s U.S. non-branch material entities⁵² could be resolved in an orderly manner, the firm’s U.S. IHC should have an adequate amount of loss-absorbing capacity to execute its U.S. resolution strategy. Thus, a firm’s U.S. IHC should hold total loss-absorbing capital, as well as

⁵² The terms “material entities,” “identified critical operations,” and “core business lines” have the same meaning as in the Rule. The term “U.S. material entity” means any subsidiary, branch, or agency that is a material entity and is domiciled in the United States. The term “U.S. non-branch material entity” means a material entity organized or incorporated in the U.S. including, in all cases, the U.S. IHC. The term “U.S. IHC subsidiaries” means all U.S. non-branch material entities other than the U.S. IHC.

long-term debt, to help ensure that the firm has adequate capacity to meet that need at a consolidated level of the U.S. IHC (IHC TLAC).⁵³

A firm's IHC TLAC should be complemented by appropriate positioning of that loss-absorbing capacity between the U.S. IHC and the U.S. IHC subsidiaries. The positioning of a firm's IHC TLAC should balance the certainty associated with pre-positioning internal TLAC directly at U.S. IHC subsidiaries with the flexibility provided by holding recapitalization resources at the U.S. IHC (contributable resources) to meet unanticipated losses at the U.S. IHC subsidiaries. That balance should take account of both pre-positioning at U.S. IHC subsidiaries and holding resources at the U.S. IHC, and the obstacles associated with each. The firm should not rely exclusively on either full pre-positioning or U.S. IHC contributable resources to execute its U.S. resolution strategy, unless it has only one U.S. IHC subsidiary that is an operating subsidiary. The plan should describe the positioning of internal TLAC among the U.S. IHC and the U.S. IHC subsidiaries, along with analysis supporting such positioning.

Finally, to the extent that pre-positioned internal TLAC at a U.S. IHC subsidiary is in the form of intercompany debt and there are one or more entities between the lender and the borrower, the firm should structure the instruments so as to ensure that the U.S. IHC subsidiary can be recapitalized.

Resolution Capital Execution Need (RCEN): To the extent required by the firm's U.S. resolution strategy, U.S. non-branch material entities need to be recapitalized to a level that allows for an orderly resolution. The firm should have a methodology for periodically estimating

⁵³ 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 FR 8266 (January 24, 2017).

the amount of capital that may be needed to support each U.S. IHC subsidiary after the U.S. IHC bankruptcy filing (RCEN). The firm's positioning of IHC TLAC should be able to support the RCEN estimates.

The firm's RCEN methodology should use conservative forecasts for losses and risk-weighted assets and incorporate estimates of potential additional capital needs through the resolution period,⁵⁴ consistent with the firm's resolution strategy for its U.S. operations. The methodology is not required to produce aggregate losses that are greater than the amount of IHC TLAC that would be required for the firm under the Board's final rule.⁵⁵ The RCEN methodology should be calibrated such that recapitalized U.S. IHC subsidiaries have sufficient capital to maintain market confidence as required under the U.S. resolution strategy. Capital levels should meet or exceed all applicable regulatory capital requirements for "well-capitalized" status and meet estimated additional capital needs throughout resolution. U.S. IHC subsidiaries that are not subject to capital requirements may be considered sufficiently recapitalized when they have achieved capital levels typically required to obtain an investment-grade credit rating or, if the entity is not rated, an equivalent level of financial soundness. Finally, the methodology should be independently reviewed, consistent with the firm's corporate governance processes and controls for the use of models and methodologies.

III. LIQUIDITY

The firm should have the liquidity capabilities necessary to execute its U.S. resolution strategy, including those described below. For resolution purposes, these capabilities should

⁵⁴ The resolution period begins immediately after the U.S. IHC bankruptcy filing and extends through the completion of the U.S. resolution strategy.

⁵⁵ 82 FR 8266 (January 24, 2017).

include having an appropriate model and process for estimating and maintaining sufficient liquidity at — or readily available from the U.S. IHC to — U.S. IHC subsidiaries, and a methodology for estimating the liquidity needed to successfully execute the U.S. resolution strategy, as described below.

Capabilities: A firm is expected to have a comprehensive understanding of funding sources, uses, and risks at material entities and identified critical operations, including how funding sources may be affected under stress. For example, a firm should have and describe its capabilities to:

- Evaluate the funding requirements necessary to perform identified critical operations, including shared and outsourced services and access to financial market utilities (FMUs);⁵⁶
- Monitor liquidity reserves and relevant custodial arrangements by jurisdiction and material entity;⁵⁷
- Routinely test funding and liquidity outflows and inflows for U.S. non-branch material entities at the legal entity level under a range of adverse stress scenarios, taking into account the effect on intra-day, overnight, and term funding flows between affiliates and across jurisdictions;
- Assess existing and potential restrictions on the transfer of liquidity between U.S. non-branch material entities;⁵⁸ and
- Develop contingency strategies to maintain funding for U.S. non-branch material entities and identified critical operations in the event of a disruption in the Specified FBO's current funding model.⁵⁹

Resolution Liquidity Adequacy and Positioning (RLAP): With respect to RLAP, the firm should be able to measure the stand-alone liquidity position of each U.S. non-branch material entity — i.e., the high-quality liquid assets (HQLA) at the U.S. non-branch material entity less

⁵⁶ 12 CFR 252.156(g)(3).

⁵⁷ 12 CFR 252.156(g)(2).

⁵⁸ Id.

⁵⁹ 12 CFR 252.156(e).

net outflows to third parties and affiliates — and ensure that liquidity is readily available to meet any deficits. The RLAP model should cover a period of at least 30 days and reflect the idiosyncratic liquidity profile of the U.S. IHC and risk of each U.S. IHC subsidiary. The model should balance the reduction in frictions associated with holding liquidity directly at the U.S. IHC subsidiary with the flexibility provided by holding HQLA at the U.S. IHC or at a U.S. IHC subsidiary available to meet unanticipated outflows at other U.S. IHC subsidiaries.⁶⁰ The firm should not rely exclusively on either full pre-positioning or U.S. IHC contributable resources to execute its U.S. resolution strategy, unless it has only one U.S. IHC subsidiary that is an operating subsidiary.

The model⁶¹ should ensure that on a consolidated basis the U.S. IHC holds sufficient HQLA to cover net liquidity outflows of the U.S. non-branch material entities. The model should also measure the stand-alone net liquidity positions of each U.S. non-branch material entity. The stand-alone net liquidity position of each U.S. non-branch material entity (HQLA less net outflows) should be measured using the firm’s internal liquidity stress test assumptions and should treat inter-affiliate exposures in the same manner as third-party exposures. For example, an overnight unsecured exposure to a non-U.S. affiliate should be assumed to mature. Finally, the firm should not assume that a net liquidity surplus at any U.S. IHC subsidiary that is a depository institution could be moved to meet net liquidity deficits at an affiliate, or to augment U.S. IHC resources, consistent with Regulation W.

⁶⁰ To the extent HQLA is held at the U.S. IHC or at a U.S. IHC subsidiary, the model must consider whether such funds are freely available. To be freely available, the HQLA must be free of legal, regulatory, contractual, and other restrictions on the ability of the material entity to liquidate, sell, or transfer the asset.

⁶¹ “Model” refers to the set of calculations required by Regulation YY that estimate the U.S. IHC’s liquidity position.

Additionally, the RLAP methodology should take into account for each of the U.S. IHC, U.S. IHC subsidiaries, and any branch that is a material entity (A) the daily contractual mismatches between their respective inflows and outflows; (B) their respective daily flows from movement of cash and collateral for all inter-affiliate transactions; and (C) their respective daily stressed liquidity flows and trapped liquidity as a result of actions taken by clients, counterparties, key FMUs, and foreign supervisors, among others.

In calculating its RLAP estimate, the U.S. IHC should calculate its liquidity position with respect to its foreign parent, branches and agencies, and other affiliates (together, affiliates) separately from its liquidity position with respect to third parties, and should not offset inflows from affiliated parties against outflows to external parties. In addition, a U.S. IHC should use cash-flow sources from its affiliates to offset cash-flow needs of its affiliates only to the extent that the term of the cash-flow source from its affiliates is the same as, or shorter than, the term of the cash-flow need of its affiliates.⁶²

Resolution Liquidity Execution Need (RLEN): The firm should have a methodology for estimating the liquidity needed after the U.S. IHC's bankruptcy filing to stabilize any surviving U.S. IHC subsidiaries and to allow those entities to operate post-filing, in accordance with the U.S. strategy.

The firm's RLEN methodology should:

- (A) Estimate the minimum operating liquidity (MOL) needed at each U.S. IHC subsidiary to ensure those entities could continue to operate, to the extent relied upon in the U.S. resolution strategy, after implementation of the U.S. resolution strategy and/or to support a wind-down strategy;

⁶² The U.S. IHC should calculate its cash-flow sources from its affiliates consistent with the net internal stressed cash-flow need calculation in section 252.157(c)(2)(iv) of Regulation YY.

- (B) Provide daily cash flow forecasts by U.S. IHC subsidiary to support estimation of peak funding needs to stabilize each entity under resolution;
- (C) Provide a comprehensive breakout of all inter-affiliate transactions and arrangements that could impact the MOL or peak funding needs estimates for the U.S. IHC subsidiaries; and
- (D) Estimate the minimum amount of liquidity required at each U.S. IHC subsidiary to meet the MOL and peak needs noted above, which would inform the provision of financial resources from the foreign parent to the U.S. IHC, or if the foreign parent is unable or unwilling to provide such financial support, any preparatory resolution-related actions.

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

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

The firm's forecasts of MOL and peak funding needs should ensure that U.S. IHC subsidiaries could operate through resolution consistent with regulatory requirements, market expectations, and the firm's post-failure strategy. These forecasts should inform the RLEN estimate, i.e., the minimum amount of HQLA required to facilitate the execution of the firm's strategy for the U.S. IHC subsidiaries.

For nonsurviving U.S. IHC subsidiaries, the firm should provide analysis and an explanation of how the material entity's resolution could be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk of serious adverse effects on U.S. financial stability. For example, if a U.S. IHC subsidiary that is a broker-dealer is assumed to fail and enter resolution under the Securities Investor Protection Act (SIPA), the firm should

provide an analysis of the potential impacts on funding and asset markets and on prime brokerage clients, bearing in mind the objective of an orderly resolution.

IV. GOVERNANCE MECHANISMS

A firm should identify the governance mechanisms that would ensure that communication and coordination occurs between the boards of the U.S. IHC or a U.S. IHC subsidiary and the foreign parent to facilitate the provision of financial support, or if not forthcoming, any preparatory resolution-related actions to facilitate an orderly resolution.

Playbooks, Foreign Parent Support, and Triggers: Governance playbooks should detail the board and senior management actions of U.S. non-branch material entities that would be needed under the firm's U.S. resolution strategy. The governance playbooks should also include a discussion of (A) the firm's proposed U.S. communications strategy, both internal and external;⁶³ (B) the fiduciary responsibilities of the applicable board(s) of directors or other similar governing bodies and how planned actions would be consistent with such responsibilities applicable at the time actions are expected to be taken; (C) potential conflicts of interest, including interlocking boards of directors; (D) any employee retention policy; and (E) any other limitations on the authority of the U.S. IHC and the U.S. IHC subsidiary boards and senior management to implement the U.S. resolution strategy. All responsible parties and timeframes for action should be identified. Governance playbooks should be updated periodically for each entity whose governing body would need to act under the firm's U.S. resolution strategy.

In order to meet liquidity needs at the U.S. non-branch material entities, the firm may either fully pre-position liquidity in the U.S. non-branch material entities or develop a

⁶³ External communications include those with U.S. and foreign authorities and other external stakeholders.

mechanism for planned foreign parent support, of any amount not pre-positioned, for the successful execution of the U.S. strategy. Mechanisms to support readily available liquidity may include a term liquidity facility between the U.S. IHC and the foreign parent that can be drawn as needed and as informed by the firm's RLEN estimates and liquidity positioning. The plan should include analysis of how the U.S. IHC/foreign parent facility is funded or buffered for by the foreign parent. The sufficiency of the liquidity should be informed by the firm's RLAP and RLEN estimates for the U.S. non-branch material entities. Additionally, the plan should include analysis of the potential challenges to the planned foreign parent support mechanism and associated mitigants. Where applicable, the analysis should discuss applicable non-U.S. law and cross-border legal challenges (e.g., challenges related to enforcing contracts governed by foreign law). The analysis should identify the mitigant(s) to such challenges that the firm considers most effective.

The firm should be prepared to increase communication and coordination at the appropriate time in order to mitigate financial, operational, legal, and regulatory vulnerabilities. To facilitate this communication and coordination, the firm should establish clearly identified triggers linked to specific actions for:

- (A) The escalation of information to U.S. senior management, U.S. risk committee and U.S. governing bodies to potentially take the corresponding actions as the U.S. operations experience material financial distress, leading eventually to the decision to implement the U.S. resolution strategy.
 - i. Triggers should identify when and under what conditions the U.S. material entities would transition from business-as-usual conditions to a stress period.
 - ii. Triggers should also take into consideration changes in the foreign parent's condition from business-as-usual conditions through resolution.

(B) The escalation of information to and discussions with the appropriate governing bodies to confirm whether the governing bodies are able and willing to provide financial resources to support U.S. operations.

- i. Triggers should be based on the firm's methodology for forecasting the liquidity and capital needed to facilitate the U.S. strategy. For example, triggers may be established that reflect U.S. non-branch material entities' financial resources approaching RCEN/RLEN estimates, with corresponding actions to confirm the foreign parent's financial capability and willingness to provide sufficient support.

Corresponding escalation procedures, actions, and timeframes should be constructed so that breach of the triggers will allow prerequisite actions to be completed. For example, breach of the triggers needs to occur early enough to provide for communication, coordination, and confirmation of the provision of resources from the foreign parent.

Support Within the United States: If the plan provides for the provision of capital and liquidity by a U.S. material entity (e.g., the U.S. IHC) to its U.S. affiliates prior to the U.S. IHC's bankruptcy filing (Support), the plan should also include a detailed legal analysis of the potential state law and bankruptcy law challenges and mitigants to providing the Support. Specifically, the analysis should identify potential legal obstacles and explain how the firm would seek to ensure that Support would be provided as planned. Legal obstacles include claims of fraudulent transfer, preference, breach of fiduciary duty, and any other applicable legal theory identified by the firm. The analysis also should include related claims that may prevent or delay an effective recapitalization, such as equitable claims to enjoin the transfer (e.g., imposition of a constructive trust by the court). The analysis should apply the actions contemplated in the plan regarding each element of the claim, the anticipated timing for commencement and resolution of the claims, and the extent to which adjudication of such claim could affect execution of the firm's U.S. resolution strategy. The analysis should include mitigants to the potential challenges to the

planned Support. The plan should identify the mitigant(s) to such challenges that the firm considers most effective.

Furthermore, the plan should describe key motions to be filed at the initiation of any bankruptcy proceeding related to (as appropriate) asset sales and other non-routine matters.

V. OPERATIONAL

Payment, Clearing, and Settlement Activities

Framework. Maintaining continuity of payment, clearing, and settlement (PCS) services is critical for the orderly resolution of firms that are either users or providers,⁶⁴ or both, of PCS services. A firm should demonstrate capabilities for continued access to PCS services essential to an orderly resolution under its U.S. resolution strategy through a framework to support such access by:

- Identifying clients,⁶⁵ FMUs, and agent banks as key from the firm's perspective for the firm's U.S. material entities, identified critical operations, and core business lines, using both quantitative (volume and value)⁶⁶ and qualitative criteria;
- Mapping U.S. material entities, identified critical operations, core business lines, and key clients of the firm's U.S. operations to both key FMUs and key agent banks; and

⁶⁴ A firm is a user of PCS services if it accesses PCS services through an agent bank or it uses the services of an FMU through its membership in that FMU or through an agent bank. A firm is a provider of PCS services if it provides PCS services to clients as an agent bank or it provides clients with access to an FMU or agent bank through the firm's membership in or relationship with that service provider. A firm is also a provider if it provides clients with PCS services through the firm's own operations in the United States (e.g., payment services or custody services).

⁶⁵ For purposes of this section V, a client is an individual or entity, including affiliates of the firm, to whom the firm provides PCS services and, if credit or liquidity is offered, any related credit or liquidity offered in connection with those services.

⁶⁶ In identifying entities as key, examples of quantitative criteria may include: for a client, transaction volume/value, market value of exposures, assets under custody, usage of PCS services, and if credit or liquidity is offered, any extension of related intraday credit or liquidity; for an FMU, the aggregate volumes and values of all transactions processed through such FMU; and for an agent bank, assets under custody, the value of cash and securities settled, and extensions of intraday credit.

- Developing a playbook for each key FMU and key agent bank essential to an orderly resolution under its U.S. resolution strategy that reflects the firm's role(s) as a user and/or provider of PCS services.

The framework should address both direct relationships (e.g., a firm's direct membership in an FMU, a firm's provision of clients with PCS services through its own operations in the United States, or a firm's contractual relationship with an agent bank) and indirect relationships (e.g., a firm's provision of clients with access to the relevant FMU or agent bank through the firm's membership in or relationship with that FMU or agent bank, or a firm's U.S. and non-U.S. affiliate and branch provision of U.S. material entities and key clients of the firm's U.S. operations with access to an FMU or agent bank). The framework also should address the potential impact of any disruption to, curtailment of, or termination of such direct and indirect relationships on the firm's U.S. material entities, identified critical operations, and core business lines, as well as any corresponding impact on key clients of the firm's U.S. operations.

Playbooks for Continued Access to PCS Services. The firm is expected to provide a playbook for each key FMU and key agent bank that addresses considerations that would assist the firm and key clients of the firm's U.S. operations in maintaining continued access to PCS services in the period leading up to and including the firm's resolution under its U.S. resolution strategy. Each playbook should provide analysis of the financial and operational impact of adverse actions that may be taken by a key FMU or a key agent bank and contingency actions that may be taken by the firm. Each playbook also should discuss any possible alternative arrangements that would allow continued access to PCS services for the firm's U.S. material entities, identified critical operations and core business lines, and key clients of the firm's U.S. operations, while the firm is in resolution under its U.S. resolution strategy. The firm is not expected to incorporate a scenario in which it loses key FMU or key agent bank access into its U.S. resolution strategy or its RLEN and RCEN estimates. The firm should continue to engage with key FMUs, key agent banks, and key clients of the firm's U.S. operations, and playbooks should reflect any feedback received during such ongoing outreach.

Content Related to Users of PCS Services. Individual key FMU and key agent bank playbooks should include:

- Descriptions of the firm’s relationship as a user, including through indirect access, with the key FMU or key agent bank and the identification and mapping of PCS services to the firm’s U.S. material entities, identified critical operations, and core business lines that use those PCS services;
- Discussion of the potential range of adverse actions that may be taken by that key FMU or key agent bank when the firm is in resolution under its U.S. resolution strategy,⁶⁷ the operational and financial impact of such actions on the firm’s U.S. material entities, identified critical operations, and core business lines, and contingency arrangements that may be initiated by the firm in response to potential adverse actions by the key FMU or key agent bank; and
- Discussion of PCS-related liquidity sources and uses in business-as-usual (BAU), in stress, and in the resolution period, presented by currency type (with U.S. dollar equivalent) and by U.S. material entity.
 - PCS Liquidity Sources: These may include the amounts of intraday extensions of credit, liquidity buffer, inflows from FMU participants, and prefunded amounts of key clients of the firm’s U.S. operations in BAU, in stress, and in the resolution period. The playbook also should describe intraday credit arrangements (e.g., facilities of the key FMU, key agent bank, or a central bank) and any similar custodial arrangements that allow ready access to a firm’s funds for PCS-related key FMU and key agent bank obligations (including margin requirements) in various currencies, including placements of firm liquidity at central banks, key FMUs, and key agent banks.
 - PCS Liquidity Uses: These may include margin and prefunding by the firm and key clients of the firm’s U.S. operations, and intraday extensions of credit, including incremental amounts required during resolution.
 - Intraday Liquidity Inflows and Outflows: The playbook should describe the firm’s ability to control intraday liquidity inflows and outflows and to identify and prioritize time-specific payments. The playbook also should describe any account features that might restrict the firm’s ready access to its liquidity sources.

*Content Related to Providers of PCS Services.*⁶⁸ Individual key FMU and key agent

bank playbooks should include:

⁶⁷ Examples of potential adverse actions may include increased collateral and margin requirements and enhanced reporting and monitoring.

⁶⁸ Where a firm is a provider of PCS services through the firm’s own operations in the United States, the firm is expected to produce a playbook for the U.S. material entities that provide those services, addressing each of the items described under "Content Related to Providers of PCS Services," which include contingency arrangements to permit the firm’s key clients of the firm’s U.S. operations to maintain continued access to PCS services.

- Identification and mapping of PCS services to the firm's U.S. material entities, identified critical operations, and core business lines that provide those PCS services, and a description of the scale and the way in which each provides PCS services;
- Identification and mapping of PCS services to key clients of the firm's U.S. operations to whom the firm's U.S. material entities, identified critical operations, and core business lines provide such PCS services and any related credit or liquidity offered in connection with such services;
- Discussion of the potential range of firm contingency arrangements available to minimize disruption to the provision of PCS services to key clients of the firm's U.S. operations, including the viability of transferring activity and any related assets of key clients of the firm's U.S. operations, as well as any alternative arrangements that would allow the key clients of the firm's U.S. operations continued access to PCS services if the firm could no longer provide such access (e.g., due to the firm's loss of key FMU or key agent bank access), and the financial and operational impacts of such arrangements from the firm's perspective;
- Descriptions of the range of contingency actions that the firm may take concerning its provision of intraday credit to key clients of the firm's U.S. operations, including analysis quantifying the potential liquidity the firm could generate by taking such actions in stress and in the resolution period, such as (i) requiring key clients of the firm's U.S. operations to designate or appropriately pre-position liquidity, including through prefunding of settlement activity, for PCS-related key FMU and key agent bank obligations at specific material entities of the firm (e.g., direct members of key FMUs) or any similar custodial arrangements that allow ready access to funds for such obligations in various currencies of key clients of the firm's U.S. operations; (ii) delaying or restricting PCS activity of key clients of the firm's U.S. operations; and (iii) restricting, imposing conditions upon (e.g., requiring collateral), or eliminating the provision of intraday credit or liquidity to key clients of the firm's U.S. operations; and
- Descriptions of how the firm will communicate to key clients of the firm's U.S. operations the potential impacts of implementation of any identified contingency arrangements or alternatives, including a description of the firm's methodology for determining whether any additional communication should be provided to some or all key clients of the firm's U.S. operations (e.g., due to BAU usage of that access and/or related intraday credit or liquidity of the key client of the firm's U.S. operations), and the expected timing and form of such communication.

Capabilities. Firms are expected to have and describe capabilities to understand, for each U.S. material entity, its obligations and exposures associated with PCS activities, including contractual obligations and commitments. For example, firms should be able to:

- Track the following items by U.S. material entity and, with respect to customers, counterparties, and agents and service providers, by location/jurisdiction:

- PCS activities, with each activity mapped to the relevant material entities and core business lines;⁶⁹
- Customers and counterparties for PCS activities, including values and volumes of various transaction types, as well as used and unused capacity for all lines of credit;⁷⁰
- Exposures to and volumes transacted with FMUs, Nostro agents, and custodians; and⁷¹
- Services provided and service level agreements for other current agents and service providers (internal and external).⁷²
- Assess the potential effects of adverse actions by FMUs, Nostro agents, custodians, and other agents and service providers, including suspension or termination of membership or services, on the firm’s U.S. operations and customers and counterparties of those U.S. operations;⁷³
- Develop contingency arrangements in the event of such adverse actions;⁷⁴ and
- Quantify the liquidity needs and operational capacity required to meet all PCS obligations, including any change in demand for and sources of liquidity needed to meet such obligations.

Managing, Identifying, and Valuing Collateral: The firm is expected to have and describe its capabilities to manage, identify, and value the collateral that the U.S. non-branch material entities receive from and post to external parties and affiliates. Specifically, the firm should:

- Be able to query and provide aggregate statistics for all qualified financial contracts concerning cross-default clauses, downgrade triggers, and other key collateral-related contract terms — not just those terms that may be impacted in an adverse economic environment — across contract types, business lines, legal entities, and jurisdictions;
- Be able to track both firm collateral sources (i.e., counterparties that have pledged collateral) and uses (i.e., counterparties to whom collateral has been pledged) at the CUSIP level on at least a t+1 basis;
- Have robust risk measurements for cross-entity and cross-contract netting, including consideration of where collateral is held and pledged;

⁶⁹ 12 CFR 243.5(e)(12); 12 CFR 381.5(e)(12).

⁷⁰ *Id.*

⁷¹ 12 CFR 252.156(g).

⁷² 12 CFR 243.5(f)(1)(i); 12 CFR 381.5(f)(1)(i).

⁷³ 12 CFR 252.156(e).

⁷⁴ *Id.*

- Be able to identify CUSIP and asset class level information on collateral pledged to specific central counterparties by legal entity on at least a t+1 basis;
- Be able to track and report on inter-branch collateral pledged and received on at least a t+1 basis and have clear policies explaining the rationale for such inter-branch pledges, including any regulatory considerations; and
- Have a comprehensive collateral management policy that outlines how the firm as a whole approaches collateral and serves as a single source for governance.⁷⁵

In addition, as of the conclusion of any business day, the firm should be able to:

- Identify the legal entity and geographic jurisdiction where counterparty collateral is held;
- Document all netting and re-hypothecation arrangements with affiliates and external parties, by legal entity; and
- Track and manage collateral requirements associated with counterparty credit risk exposures between affiliates, including foreign branches.

At least on a quarterly basis, the firm should be able to:

- Review the material terms and provisions of International Swaps and Derivatives Association Master Agreements and the Credit Support Annexes, such as termination events, for triggers that may be breached as a result of changes in market conditions;
- Identify legal and operational differences and potential challenges in managing collateral within specific jurisdictions, agreement types, counterparty types, collateral forms, or other distinguishing characteristics; and
- Forecast changes in collateral requirements and cash and non-cash collateral flows under a variety of stress scenarios.

Management Information Systems: The firm should have the management information systems (MIS) capabilities to readily produce data on a U.S. legal entity basis (including any U.S. branch) and have controls to ensure data integrity and reliability, as described below.⁷⁶ The

⁷⁵ The policy may reference subsidiary or related policies already in place, as implementation may differ based on business line or other factors.

⁷⁶ MIS infrastructure projects were expected to be completed by 2018.

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

A firm is expected to have and describe capabilities to produce the following types of information by material entity on a timely basis:

- Financial statements for each material entity (at least monthly);
- External and inter-affiliate credit exposures, both on- and off-balance sheet, by type of exposure, counterparty, maturity, and gross payable and receivable;
- Gross and net risk positions with internal and external counterparties;
- Guarantees, cross holdings, financial commitments and other transactions between material entities;
- Data to facilitate third-party valuation of assets and businesses, including risk metrics;
- Key third party contracts, including the provider, provider's location, service(s) provided, legal entities that are a party to or a beneficiary of the contract, and key contractual rights (for example, termination and change in control clauses);
- Legal agreement information, including parties to the agreement and key terms and interdependencies (for example, change in control, collateralization, governing law, termination events, guarantees, and cross-default provisions);
- Service level agreements between affiliates, including the service(s) provided, the legal entity providing the service, legal entities receiving the service, and any termination/transferability provisions;
- Licenses and memberships to all exchanges and value transfer networks, including FMUs;
- Key management and support personnel, including dual hatted employees, and any associated retention agreements;
- Agreements and other legal documents related to property, including facilities, technology systems, software, and intellectual property rights. The information should include ownership, physical location, where the property is managed and

names of legal entities and lines of business that the property supports; and

- Updated legal records for domestic and foreign entities, including entity type and purpose (for example, holding company, bank, broker dealer, and service entity), jurisdiction(s), ownership, and regulator(s).

Shared and Outsourced Services: The firm should maintain a fully actionable implementation plan to ensure the continuity of shared services that support identified critical operations⁷⁷ and robust arrangements to support the continuity of shared and outsourced services, including, without limitation, appropriate plans to retain key personnel relevant to the execution of the firm’s strategy. If a material entity provides shared services that support identified critical operations⁷⁸, and the continuity of these shared services relies on the assumed cooperation, forbearance, or other non-intervention of regulator(s) in any jurisdiction, the Plan should discuss the extent to which the resolution or insolvency of any other group entities operating in that same jurisdiction may adversely affect the assumed cooperation, forbearance, or other regulatory non-intervention. If a material entity providing shared services that support identified critical operations is located outside of the United States, the Plan should discuss how the firm will ensure the operational continuity of such shared services through resolution.

The firm should (A) maintain an identification of all shared services that support identified critical operations; (B) maintain a mapping of how/where these services support U.S. core business lines and identified critical operations; (C) incorporate such mapping into legal entity rationalization criteria and implementation efforts; and (D) mitigate identified continuity risks through establishment of service-level agreements (SLAs) for all critical shared services.

⁷⁷ “Shared services that support identified critical operations” or “critical shared services” are those that support identified critical operations conducted in whole or in material part in the United States.

⁷⁸ This should be interpreted to include data access and intellectual property rights.

SLAs should fully describe the services provided, reflect pricing considerations on an arm's-length basis where appropriate, and incorporate appropriate terms and conditions to (A) prevent automatic termination upon certain resolution-related events and (B) achieve continued provision of such services during resolution.⁷⁹ The firm should also store SLAs in a central repository or repositories located in or immediately accessible from the U.S. at all times, including in resolution (and subject to enforceable access arrangements) in a searchable format. In addition, the firm should ensure the financial resilience of internal shared service providers by maintaining working capital for six months (or through the period of stabilization as required in the firm's U.S. resolution strategy) in such entities sufficient to cover contract costs, consistent with the U.S. resolution strategy. The firm should demonstrate that such working capital is held in a manner that ensures its availability for its intended purpose.

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

⁷⁹ The firm should consider whether these SLAs should be governed by the laws of a U.S. state and expressly subject to the jurisdiction of a court in the U.S.

arrangements to ensure the operational continuity of shared services that support identified critical operations in resolution in the event of the disruption of those shared services.

A firm is expected to have robust arrangements in place for the continued provision of shared or outsourced services needed to maintain identified critical operations. For example, firms should:

- Evaluate internal and external dependencies and develop documented strategies and contingency arrangements for the continuity or replacement of the shared and outsourced services that are necessary to maintain identified critical operations.⁸⁰ Examples may include personnel, facilities, systems, data warehouses, and intellectual property; and
- Maintain current cost estimates for implementing such strategies and contingency arrangements.

Qualified Financial Contracts: The plan should reflect the current state of how the early termination of qualified financial contracts could impact the resolution of the firm's U.S. operations. Specifically, the plan is expected to reflect the firm's progress in implementing the applicable domestic and foreign requirements regarding contractual stays in qualified financial contracts as of the date the firm submits its plan or as of a specified earlier date.

VI. BRANCHES⁸¹

Mapping: For each U.S. branch that is a material entity, the Plan should identify and map the financial and operational interconnections to identified critical operations, core business lines, and other material entities. The mapping should also identify any interconnections that, if

⁸⁰ 12 CFR 243.5(g); 12 CFR 381.5(g).

⁸¹ Note that the PCS framework guidance in Section V. is not limited to U.S. branches, since continuity of access to PCS activities, including through non-U.S. branches, is likely to be essential to the orderly resolution of a firm's U.S. material entities, identified critical operations, and core business lines.

disrupted, would materially affect identified critical operations, core business lines, or U.S. non-branch material entities, or the U.S. resolution strategy.

Continuity of Operations: If the Plan assumes that federal or state regulators, as applicable, do not take possession of any U.S. branch that is a material entity, the Plan must support that assumption.

For any U.S. branch that is significant to the activities of an identified critical operation, the Plan should describe and demonstrate how the branch would continue to facilitate FMU access for identified critical operations and meet funding needs. Such a U.S. branch would also be required to describe how it would meet supervisory requirements imposed by state regulators or the appropriate Federal banking agency, as appropriate, including maintaining a net due to position and complying with heightened asset maintenance requirements.⁸² In addition, the plan should describe how such a U.S. branch's third-party creditors would be protected such that the state regulator or appropriate Federal banking agency would allow the branch to continue operations.

To maintain appropriate liquidity for the purposes of resolution planning, a firm should maintain a liquidity buffer sufficient to meet the net cash outflows for its U.S. branches and agencies on an aggregate basis for the first 14 days of a 30-day stress horizon. In determining the aggregate need of the branches and agencies, the firm should calculate its liquidity position with respect to its foreign parent, U.S. IHC, and other affiliates separately from its liquidity position with respect to external parties, and cannot offset inflows from affiliated parties against outflows to external parties. In addition, a firm may use cash-flow sources from its affiliates to a branch

⁸² Firms should take into consideration historical practice, by applicable regulators, regarding asset maintenance requirements imposed during stress.

or agency to offset cash-flow needs of its affiliates from a branch or agency only to the extent that the term of the cash-flow source from the affiliates is the same as, or shorter than, the term of the cash-flow need of the affiliate. This assumption addresses the scenario where the head office may be unable or unwilling to return funds to the branch or agency when those funds are most needed.

Impact of the Cessation of Operations: The firm must provide an analysis of the impact of the cessation of operations of any U.S. branch that is significant to the activities of an identified critical operation on the firm's FMU access and identified critical operations, even if such scenario is not contemplated as part of the U.S. resolution strategy. The analysis should include a description of how identified critical operations could be transferred to a U.S. IHC subsidiary or sold in resolution, the obstacles presented by the cessation of shared services that support identified critical operations provided by any U.S. branch that is a material entity, and mitigants that could address such obstacles in a timely manner.

VII. GROUP RESOLUTION PLAN

Consistent with the Rule, a firm's resolution plan should include a detailed explanation of how resolution planning for the subsidiaries, branches and agencies, and identified critical operations and core business lines of the firm that are domiciled in the United States or conducted in whole or material part in the United States is integrated into the firm's overall resolution or other contingency planning process. In particular, the plan should describe the impact on U.S. operations of executing the global plan.

VIII. LEGAL ENTITY RATIONALIZATION AND SEPARABILITY

Legal Entity Rationalization Criteria (LER Criteria): A firm should develop and implement legal entity rationalization criteria that support the firm's U.S. resolution strategy and

minimize risk to U.S. financial stability in the event of resolution. LER Criteria should consider the best alignment of legal entities and business lines to improve the resolvability of U.S. operations under different market conditions. LER Criteria should govern the corporate structure and arrangements between the U.S. subsidiaries and U.S. branches in a way that facilitates resolvability of the firm's U.S. operations as the firm's U.S. activities, technology, business models, or geographic footprint change over time.

Specifically, application of the criteria should:

- (A) Ensure that the allocation of activities across the firm's U.S. branches and U.S. non-branch material entities support the firm's U.S. resolution strategy and minimize risk to U.S. financial stability in the event of resolution;
- (B) Facilitate the recapitalization and liquidity support of U.S. IHC subsidiaries, as required by the firm's U.S. resolution strategy. Such criteria should include clean lines of ownership and clean funding pathways between the foreign parent, the U.S. IHC, and U.S. IHC subsidiaries;
- (C) Facilitate the sale, transfer, or wind-down of certain discrete operations within a timeframe that would meaningfully increase the likelihood of an orderly resolution in the United States, including provisions for the continuity of associated services and mitigation of financial, operational, and legal challenges to separation and disposition;
- (D) Adequately protect U.S. subsidiary insured depository institutions from risks arising from the activities of any nonbank U.S. subsidiaries (other than those that are subsidiaries of an insured depository institution); and
- (E) Minimize complexity that could impede an orderly resolution in the United States and minimize redundant and dormant entities.

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

Separability: The firm should identify discrete U.S. operations that could be sold or transferred in resolution, which would provide optionality in resolution under different market

conditions. A firm's separability options should be actionable, and impediments to their projected mitigation strategies should be identified in advance. Firms should consider potential consequences for U.S. financial stability of executing each option, taking into consideration impacts on counterparties, creditors, clients, depositors, and markets for specific assets. The level of detail and analysis should vary based on a firm's risk profile and scope of operations. Additionally, information systems should be robust enough to produce the required data and information needed to execute separability options.

Further, the firm should have, and be able to demonstrate, the capability to populate in a timely manner a data room with information pertinent to a potential divestiture of the business (including, but not limited to, carve-out financial statements, valuation analysis, and a legal risk assessment). Within the plan, the firm should demonstrate how the firm's LER Criteria and implementation efforts meet the guidance above. The plan should also provide the separability analysis noted above. Finally, the plan should include a description of the firm's legal entity rationalization governance process.

IX. DERIVATIVES AND TRADING ACTIVITIES

A Specified FBO's plan should address the following areas.

Booking Practices.

A firm should have booking practices commensurate with the size, scope, and complexity of its U.S. derivatives and trading activities,⁸³ including systems capabilities to track and monitor

⁸³ "U.S. derivatives and trading activities", means all derivatives and trading activities that are: (1) related to a firm's identified critical operations or core business lines, including any such activities booked directly into a non-U.S. affiliate; (2) conducted on behalf of the firm, its clients, or counterparties that are originated from, booked into, traded through, or otherwise conducted (in whole or in material part) in a U.S. entity (as defined below); or (3) both of the foregoing. A

any such activities booked directly into a non-U.S. affiliate. The following booking practices-related capabilities should be addressed in a firm’s resolution plan:

Derivatives and trading booking framework. A firm should have a comprehensive booking model framework that articulates the principles, rationales, and approach to implementing its booking practices for all of its U.S. derivatives and trading activities, including derivatives and trading activities originated from U.S. entities⁸⁴ that are booked directly into a non-U.S. affiliate.⁸⁵ The framework and its underlying components should be documented and adequately supported by internal controls (e.g., procedures, systems, processes). Taken together, the booking framework and its components should provide transparency with respect to (i) what is being booked (e.g., product, counterparty), (ii) where it is being originated and booked (e.g., legal entity, geography), (iii) by whom it is originated and booked (e.g., business or trading desk), (iv) why it is booked that way (e.g., drivers or rationales for that arrangement), and (v) what controls the firm has in place to monitor and manage those practices (e.g., governance or information systems).⁸⁶

firm should identify its U.S. derivatives and trading activities pursuant to a methodology and justify the methodology used.

⁸⁴ “U.S. entities” means U.S. IHC subsidiaries and material entity branches.

⁸⁵ Activities “originated” from U.S. entities are those activities transacted or arranged by, or on behalf of those U.S. entities and their clients and counterparties, including any such activity for which the U.S. entity is compensated (directly or indirectly) by a non-U.S. affiliate. These activities also include, for example, those that are sourced or executed through personnel employed by or acting on behalf of a U.S. entity. The agencies would expect that a U.S. entity that is significant to the origination of activities for an identified critical operation or core business line would be designated as a U.S. material entity.

⁸⁶ The description of controls should include any components of any firm-wide market, credit, or liquidity risk management framework that is material to the management of the firm’s U.S. derivatives and trading activities.

The firm’s resolution plan should include detailed descriptions of the framework and each of its material components. In particular, a firm’s resolution plan should include descriptions of documented booking models covering the full range of its U.S. derivatives and trading activities.⁸⁷ These descriptions should provide clarity with respect to the underlying booking flows (e.g., the mapping of trade flows based on multiple trade characteristics as decision points that determine on which entity a trade is directly booked and the applicability of any risk transfer arrangements). Furthermore, a firm’s resolution plan should describe its end-to-end booking and reporting processes, including a description of the current scope of automation (e.g., automated trade flows, detective monitoring) of the systems controls applied to the firm’s documented booking models. The plan should also discuss why the firm believes its current (or planned) scope of automation is sufficient for managing its U.S. derivatives and trading activities during the execution of its U.S. resolution strategy.⁸⁸

Derivatives and trading entity analysis and reporting. A firm should have the ability to identify, assess, and report on each U.S. entity that originates or otherwise conducts (in whole or in material part) any significant aspect of the firm’s U.S. derivatives and trading activities (a “derivatives or trading entity”). First, the firm’s resolution plan should describe its method

⁸⁷ The booking models should represent the vast majority (e.g., 95 percent) of a firm’s U.S. derivatives and trading activities, including U.S. derivatives and trading transactions that are originated from U.S. entities and booked directly into a non-U.S. affiliate, measured by, for example, trade notional and gross market value (for derivatives) and client positions and balances (for prime brokerage client accounts).

⁸⁸ Effective preventative (up-front) and detective (post-booking) controls embedded in a firm’s booking processes can help avoid and/or timely remediate trades that do not align with a documented booking model or related risk limit. Firms typically use a combination of manual and automated control functions. Although automation may not be best suited for all control functions, as compared to manual methods, it can improve consistency and traceability with respect to booking practices. However, non-automated methods also can be effective when supported by other internal controls (e.g., robust detective monitoring, escalation protocols).

(which may include both qualitative and quantitative criteria) for evaluating the significance of each derivatives or trading entity both with respect to the firm's current U.S. derivatives and trading activities and its U.S. resolution strategy.⁸⁹ Second, a firm's resolution plan should demonstrate (including through use of illustrative samples) the firm's ability to readily generate current derivatives or trading entity profiles that (i) cover all derivatives or trading entities, (ii) are reportable in a consistent manner, and (iii) include information regarding current legal ownership structure, business activities and volume, and risk profile of the entity (including relevant risk transfer arrangements).

U.S. Activities Monitoring.

A firm should be able to assess how the management of U.S. derivatives and trading activities could be affected in the period leading up to and during the execution of its U.S. resolution strategy, including disruptions that could affect materially the funding or operations of the U.S. entities that conduct the U.S. derivatives and trading activities or their clients and counterparties. Therefore, a firm should have capabilities to provide timely transparency into the management of its U.S. derivatives and trading activities, including such activities booked directly into a non-U.S. affiliate, in the period leading up to and during the execution of its U.S. resolution strategy by maintaining a monitoring framework for U.S. derivatives and trading activities, which consists of at least the following two components:

⁸⁹ The firm should leverage any existing methods and criteria it uses for other entity assessments (e.g., legal entity rationalization or the repositioning of internal loss-absorbing resources). The firm's method for determining the significance of derivatives or trading entities may diverge from the parameters for material entity designation under the Rule (i.e., entities significant to the activities of an identified critical operation or core business line); however, any differences should be adequately supported and explained.

1. A method for identifying U.S. derivatives and trading activities, and measuring, monitoring, and reporting on those activities on a business line and legal entity basis; and
2. A method for identifying, assessing, and reporting the potential impact on (i) clients and counterparties of U.S. entities that conduct the U.S. derivatives and trading activities and (ii) any related risk transfer arrangements⁹⁰ among and between U.S. entities and their non-U.S. affiliates.

Prime Brokerage Customer Account Transfers.

A firm should have the operational capacity to facilitate the orderly transfer of U.S. prime brokerage accounts,⁹¹ including account positions of a client of the firm's U.S. prime brokerage business that are booked directly into a non-U.S. affiliate, to peer prime brokers in periods of material financial distress and during the execution of its U.S. resolution strategy. The firm's plan should include an assessment of how it would transfer such accounts. This assessment should be informed by clients' relationships with other prime brokers, the use of automated and manual transaction processes, clients' overall long and short positions as facilitated by the firm, and the liquidity of clients' portfolios. The assessment should also analyze the risks and loss mitigants of customer-to-customer internalization (e.g., the inability to fund customer longs with customer shorts) and operational challenges (including insufficient staffing) that the firm may experience in effecting the scale and speed of prime brokerage account transfers envisioned under the firm's U.S. resolution strategy.

⁹⁰ For example, risk transfer arrangements might include transfer pricing, profit sharing, loss limiting, or intragroup hedging arrangements.

⁹¹ "U.S. prime brokerage account" or "U.S. prime brokerage account balances" should include the account positions and balances of a client of the firm's U.S. prime brokerage business, regardless of where those positions or balances are booked.

In addition, a firm should describe and demonstrate its ability to segment and analyze the quality and composition of U.S. prime brokerage account balances based on a set of well-defined and consistently applied segmentation criteria (e.g., size, single-prime, platform, use of leverage, non-rehypothecatable securities, liquidity of underlying assets). The capabilities should cover U.S. prime brokerage account balances and the resulting segments should represent a range in potential transfer speed (e.g., from fastest to longest to transfer, from most liquid to least liquid). The selected segmentation criteria should reflect characteristics⁹² that the firm believes could affect the speed at which the U.S. prime brokerage account would be transferred to an alternate prime broker.

Portfolio Segmentation.

A firm should have the capabilities to produce analysis that reflects derivatives portfolio⁹³ segmentation and differentiation of assumptions, taking into account trade-level characteristics. More specifically, a firm should have systems capabilities that would allow it to produce a spectrum of derivatives portfolio segmentation analysis using multiple segmentation dimensions for each U.S. entity with a derivatives portfolio—namely, (1) trading desk or product, (2) cleared vs. clearable vs. non-clearable trades, (3) counterparty type, (4) currency, (5) maturity, (6) level of collateralization, and (7) netting set.⁹⁴ A firm should also have the capabilities to segment and analyze the full contractual maturity (run-off) profile of the

⁹² For example, relevant characteristics might include product, size, clearability, currency, maturity, level of collateralization, and other risk characteristics.

⁹³ A firm's derivatives portfolios include its derivatives positions and linked non-derivatives trading positions.

⁹⁴ The enumerated segmentation dimensions are not intended as an exhaustive list of relevant dimensions. With respect to any product or asset class, a firm may have reasons for not capturing data on (or not using) one or more of the enumerated segmentation dimensions. In that case, however, the firm should explain those reasons.

derivatives portfolios in its U.S. entities. The firm's resolution plan should describe and demonstrate the firm's ability to segment and analyze the derivatives portfolios booked into its U.S. entities using the relevant segmentation dimensions and to report the results of such segmentation and analysis.

Derivatives Stabilization and De-risking Strategy.

To the extent the U.S. resolution strategy assumes the continuation of a U.S. IHC subsidiary with a derivatives portfolio after the entry of the U.S. IHC into a U.S. bankruptcy proceeding (surviving derivatives subsidiary), the firm's plan should provide a detailed analysis of the strategy to stabilize and de-risk any derivatives portfolio of the surviving derivatives subsidiary (U.S. derivatives strategy) that has been incorporated into its U.S. resolution strategy.⁹⁵ In developing its U.S. derivatives strategy, a firm should apply the following assumption constraints:

- *OTC derivatives market access:* At or before the start of the resolution period, each surviving derivatives subsidiary should be assumed to lack an investment grade credit rating (e.g., unrated or downgraded below investment grade). Each surviving derivatives subsidiary also should be assumed to have failed to establish or reestablish investment grade status for the duration of the resolution period, unless the plan provides well-supported analysis to the contrary. As the subsidiary is not investment grade, it further

⁹⁵ Subject to the relevant constraints, a firm's U.S. derivatives strategy may take the form of a going-concern strategy, an accelerated de-risking strategy (e.g., active wind-down) or an alternative, third strategy so long as the firm's resolution plan adequately supports the execution of the chosen strategy. For example, a firm may choose a going-concern scenario (e.g., surviving derivatives subsidiary reestablishes investment grade status and does not enter any wind-down) as its derivatives strategy. Likewise, a firm may choose to adopt a combination of going-concern and accelerated de-risking scenarios as its U.S. derivatives strategy. For example, the U.S. derivatives strategy could be a stabilization scenario for the U.S. bank entity and an accelerated de-risking scenario for U.S. broker-dealer entities.

should be assumed that each surviving derivatives subsidiary has no access to bilateral OTC derivatives markets and must use exchange-traded or centrally cleared instruments for any new hedging needs that arise during the resolution period. Nevertheless, a firm may assume the ability to engage in certain risk-reducing derivatives trades with bilateral OTC derivatives counterparties during the resolution period to facilitate novations with third parties and to close out inter-affiliate trades.⁹⁶

- *Early exits (break clauses):* A firm should assume that counterparties (both external and affiliates) will exercise any contractual termination or other right, including any rights stayed by contract (including amendments) or in compliance with the rules establishing restrictions on qualified financial contracts of the Board, the FDIC, or the Office of the Comptroller of the Currency⁹⁷ or any other regulatory requirements, (i) that is available to the counterparty at or following the start of the resolution period; and (ii) if exercising such right would economically benefit the counterparty (counterparty-initiated termination).

⁹⁶ A firm may engage in bilateral OTC derivatives trades with, for example, (i) external counterparties, to effect the novation of the firm's side of a derivatives contract to a new, acquiring counterparty; and (ii) inter-affiliate counterparties, where the trades with inter-affiliate counterparties do not materially increase either the credit exposure of any participating counterparty or the market risk of any such counterparty on a standalone basis, after taking into account any hedging with exchange-traded and centrally-cleared instruments. The firm should provide analysis to support the risk of the trade on the basis of information that would be known to the firm at the time of the transaction.

⁹⁷ See 12 CFR part 47 (OCC); 252, subpart I (Board); 382 (FDIC).

- *Time horizon:* The duration of the resolution period should be between 12 and 24 months.

The resolution period begins immediately after the U.S. IHC bankruptcy filing and extends through the completion of the U.S. resolution strategy.⁹⁸

A firm's analysis of its U.S. derivatives strategy should take into account (i) the starting profile of any derivatives portfolio of each surviving derivatives subsidiary (e.g., nature, concentration, maturity, clearability, liquidity of positions); (ii) the profile and function of any surviving derivatives subsidiary during the resolution period; (iii) the means, challenges, and capacity of the surviving derivatives subsidiary to manage and de-risk its derivatives portfolios (e.g., method for timely segmenting, packaging, and selling the derivatives positions; challenges with novating less liquid positions; re-hedging strategy); (iv) the financial and operational resources required to effect the derivatives strategy; and (v) any potential residual portfolio (further discussed below). In addition, the firm's resolution plan should address the following areas in the analysis of its derivatives strategy:

Forecasts of resource needs. The forecasts of capital and liquidity resource needs of U.S. IHC subsidiaries required to support adequately the firm's U.S. derivatives strategy should be incorporated into the firm's RCEN and RLEN estimates for its overall U.S. resolution strategy. These include, for example, the costs and liquidity flows resulting from (i) the close-out of OTC derivatives, (ii) the hedging of derivatives portfolios, (iii) the quantified losses that could be incurred due to basis and other risks that would result from hedging with only exchange-traded

⁹⁸ The firm may consider a resolution period of less than 12 months as long as the length of the resolution period is adequately supported by the firm's analysis of the size, composition, complexity, and maturity profile of the derivatives portfolios in its U.S. IHC subsidiaries.

and centrally cleared instruments in a severely adverse stress environment, and (iv) operational costs.⁹⁹

Sensitivity analysis. A firm should have a method to apply sensitivity analyses to the key drivers of the derivatives-related costs and liquidity flows under its U.S. resolution strategy. A firm's resolution plan should describe its method for (i) evaluating the materiality of assumptions and (ii) identifying those assumptions (or combinations of assumptions) that constitute the key drivers for its forecasts of derivatives-related operational and financial resource needs under the U.S. resolution strategy. In addition, using its U.S. resolution strategy as a baseline, the firm's resolution plan should describe and demonstrate its approach to testing the sensitivities of the identified key drivers and the potential impact on its forecasts of resource needs.¹⁰⁰

Potential residual derivatives portfolio. A firm's resolution plan should include a method for estimating the composition of any potential residual derivatives portfolio transactions booked in a U.S. IHC subsidiary remaining at the end of the resolution period under its U.S. resolution strategy. The firm's plan also should provide detailed descriptions of the trade characteristics used to identify such potential residual portfolio and of the resulting trades (or categories of trades).¹⁰¹ A firm should assess the risk profile of such potential residual portfolio (including its

⁹⁹ A firm may choose not to isolate and separately model the operational costs solely related to executing its derivatives strategy. However, the firm should provide transparency around operational cost estimation at a more granular level than material entity (e.g., business line level within a material entity, subject to wind-down).

¹⁰⁰ For example, key drivers of derivatives-related costs and liquidity flows might include the timing of derivatives unwind, cost of capital-related assumptions (e.g., target return on equity, discount rate, weighted average life, capital constraints, tax rate), operational cost reduction rate, and operational capacity for novations. Other examples of key drivers likely also include central counterparty margin flow assumptions and risk-weighted asset forecast assumptions.

¹⁰¹ If, under the firm's U.S. resolution strategy, any derivatives portfolios are transferred during the resolution period by way of a line of business sale (or similar transaction), then those portfolios nonetheless should be included within the firm's potential residual portfolio analysis.

anticipated size, composition, complexity, and counterparties), and the potential counterparty and market impacts of non-performance by the firm on the stability of U.S. financial markets (e.g., on funding markets, on underlying asset markets, on clients and counterparties).

Non-surviving entity analysis. To the extent the U.S. resolution strategy assumes a U.S. IHC subsidiary with a derivatives portfolio enters its own resolution proceeding after the entry of the U.S. IHC into a U.S. bankruptcy proceeding (a non-surviving derivatives subsidiary), the firm should provide a detailed analysis of how the non-surviving derivatives subsidiary's resolution can be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk of serious adverse effects on U.S. financial stability and on the orderly execution of the firm's U.S. resolution strategy. In particular, the firm should provide an analysis of the potential impacts on funding markets, on underlying asset markets, on clients and counterparties (including affiliates), and on the firm's U.S. resolution strategy.

X. FORMAT AND STRUCTURE OF PLANS

Format of Plan

Executive Summary. The Plan should contain an executive summary consistent with the Rule, which must include, among other things, a concise description of the key elements of the firm's U.S. strategy for an orderly resolution. In addition, the executive summary should include a discussion of the firm's assessment of any impediments to the firm's U.S. resolution strategy and its execution, as well as the steps it has taken to address any identified impediments.

Narrative. The Plan should include a strategic analysis consistent with the Rule. This analysis should take the form of a concise narrative that enhances the readability and understanding of the firm's discussion of its U.S. strategy for rapid and orderly resolution in bankruptcy or other applicable insolvency regimes (Narrative). The Narrative also should include

a high-level discussion of how the firm is addressing key vulnerabilities jointly identified by the Agencies. This is not an exhaustive list and does not preclude identification of further vulnerabilities or impediments.

Appendices. The Plan should contain a sufficient level of detail and analysis to substantiate and support the strategy described in the Narrative. Such detail and analysis should be included in appendices that are distinct from and clearly referenced in the related parts of the Narrative (Appendices).

Public Section. The Plan must be divided into a public section and a confidential section consistent with the requirements of the Rule.

Other Informational Requirements. The Plan must comply with all other informational requirements of the Rule. The firm may incorporate by reference previously submitted information as provided in the Rule.

Guidance Regarding Assumptions

1. The Plan should be based on the current state of the applicable legal and policy frameworks. Pending legislation or regulatory actions may be discussed as additional considerations.

2. The firm must submit a plan that does not rely on the provision of extraordinary support by the United States or any other government to the firm or its subsidiaries to prevent the failure of the firm.

3. The firm should not assume that it will be able to sell identified critical operations or core business lines, or that unsecured funding will be available immediately prior to filing for bankruptcy.

4. The Plan should assume the Dodd-Frank Act Stress Test (DFAST) severely adverse scenario for the first quarter of the calendar year in which the Plan is submitted is the domestic and international economic environment at the time of the firm's failure and throughout the resolution process.

5. The resolution strategy may be based on an idiosyncratic event or action. The firm should justify use of that assumption, consistent with the conditions of the economic scenario.

6. Within the context of the applicable idiosyncratic scenario, markets are functioning and competitors are in a position to take on business. If a firm's Plan assumes the sale of assets, the firm should take into account all issues surrounding its ability to sell in market conditions present in the applicable economic condition at the time of sale (i.e., the firm should take into consideration the size and scale of its operations as well as issues of separation and transfer.)

7. The firm should not assume any waivers of section 23A or 23B of the Federal Reserve Act in connection with the actions proposed to be taken prior to or in resolution.

8. The firm may assume that its depository institutions will have access to the Discount Window only for a few days after the point of failure to facilitate orderly resolution. However, the firm should not assume its subsidiary depository institutions will have access to the Discount Window while critically undercapitalized, in FDIC receivership, or operating as a bridge bank, nor should it assume any lending from a Federal Reserve credit facility to a non-bank affiliate.

Financial Statements and Projections

The Plan should include the actual balance sheet for each material entity and the consolidating balance sheet adjustments between material entities as well as pro forma balance sheets for each material entity at the point of failure and at key junctures in the execution of the resolution strategy. It should also include projected statements of sources and uses of funds for

the interim periods. The pro forma financial statements and accompanying notes in the Plan must clearly evidence the failure trigger event; the Plan's assumptions; and any transactions that are critical to the execution of the Plan's preferred strategy, such as recapitalizations, the creation of new legal entities, transfers of assets, and asset sales and unwinds.

Material Entities

Material entities should encompass those entities, including subsidiaries, branches and agencies (collectively, Offices), which are significant to the activities of an identified critical operation or core business line. If the abrupt disruption or cessation of a core business line might have systemic consequences to U.S. financial stability, the entities essential to the continuation of such core business line should be considered for material entity designation. Material entities should include the following types of entities:

a. Any Office, wherever located, that is significant to the activities of an identified critical operation.

b. Any Office, wherever located, whose provision or support of global treasury operations, funding, or liquidity activities (inclusive of intercompany transactions) is significant to the activities of an identified critical operation.

c. Any Office, wherever located, that would provide material operational support in resolution (key personnel, information technology, data centers, real estate or other shared services) to the activities of an identified critical operation.

d. Any Office, wherever located, that is engaged in derivatives booking activity that is significant to the activities of an identified critical operation, including those that conduct either the internal hedge side or the client-facing side of a transaction.

e. Any Office, wherever located, engaged in asset custody or asset management that are significant to the activities of an identified critical operation.

f. Any Office, wherever located, holding licenses or memberships in clearinghouses, exchanges, or other FMUs that are significant to the activities of an identified critical operation.

For each material entity (including a branch), the Plan should enumerate, on a jurisdiction-by-jurisdiction basis, the specific mandatory and discretionary actions or forbearances that regulatory and resolution authorities would take during resolution, including any regulatory filings and notifications that would be required as part of the U.S. resolution strategy, and explain how the Plan addresses the actions and forbearances. The Plan should describe the consequences for the firm's U.S. resolution strategy if specific actions in each jurisdiction were not taken, delayed, or forgone, as relevant.

XI. PUBLIC SECTION

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

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

The discussion of strategy in the public section should broadly explain how the firm has addressed any deficiencies, shortcomings, and other key vulnerabilities that the Agencies have

identified in prior Plan submissions. For each material entity, it should be clear how the strategy provides for continuity, transfer, or orderly wind-down of the entity and its operations. There should also be a description of the resulting organization upon completion of the resolution process.

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

APPENDIX: Frequently Asked Questions

In March 2017, the Agencies issued guidance for use in developing the 2018 resolution plan submissions by certain foreign banking organizations.

In response to frequently asked questions regarding that guidance from the recipients of that guidance, Board and FDIC staff jointly developed answers and provided those answers to the guidance recipients in 2017 so that they could take this information into account in developing their next resolution plan submissions.¹⁰²

The questions in this Appendix:

- Comprise common questions asked by different covered companies. Not every question is applicable to every firm; not every aspect of the proposed guidance applies to each firm's preferred strategy/structure; and
- Reflect updated references to correspond to this proposed guidance for the Specified FBOs (Proposed Guidance).

As indicated below, those questions and answers that are deemed to be no longer meaningful or relevant have not been consolidated in this Appendix and are superseded.

Capital

¹⁰² 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.

CAP 1. Capital Pre-Positioning and Balance

Q. How should a firm determine the appropriate balance between resources pre-positioned at the U.S. IHC subsidiaries and held at the U.S. IHC?

A. The Proposed Guidance addresses this issue in the Capital section. The Agencies are not prescribing a specific percentage allocation of resources pre-positioned at the U.S. IHC subsidiaries versus resources held at the U.S. IHC. In considering the balance between certainty and flexibility, the Agencies note that the risk profile of each U.S. IHC subsidiary should inform the “unanticipated losses” at the entity, which should be taken into account in determining the appropriate balance.

CAP 2. Definition of “Well-Capitalized” Status

Q. How should firms apply the term “well-capitalized”?

A. U.S. non-branch material entities must comply with the capital requirements and expectations of their primary regulator. U.S. non-branch material entities should be recapitalized to meet jurisdictional requirements and to maintain market confidence as required under the U.S. resolution strategy.

CAP 3. RCEN Relationship to DFAST Severely Adverse Scenario

Q. How should the firm’s RCEN and RLEN estimates relate to the DFAST Severely Adverse scenario? 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 U.S. resolution strategy.

CAP 4. Not Consolidated

Liquidity

LIQ 1. Inter-Company “Frictions”

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.

LIQ 2. Distinction between Liquidity Forecasting Periods

Q1. How long is the stabilization period?

A1. The stabilization period begins immediately after the U.S. IHC 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?

A2. The Agencies have not specified 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 U.S. IHC's bankruptcy filing to stabilize the surviving material entities and to allow those entities to operate post-filing. See "LIQ 4. RLEN and Minimum Operating Liquidity (MOL)," Question 1, for further detail on the components of the RLEN model.

Q3. What is the resolution period?

A3. The resolution period begins immediately after the U.S. IHC's bankruptcy filing and extends through the completion of the U.S. 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)

Q1. How should firms distinguish between the minimum operating liquidity (MOL) and peak funding needs during the RLEN period?

A1. The peak funding needs represent the peak cumulative net out-flows 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 U.S. IHC subsidiary, incorporating inter-affiliate and third-party exposures. In mathematical terms, $RLEN = MOL + \text{peak funding needs during the stabilization period}$. RLEN should also incorporate liquidity execution needs of the U.S. resolution strategy for derivatives (see 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?

A2. Yes, the components of the MOL estimates for each surviving U.S. IHC subsidiary should be transparent and supported.

Q3. Can MOLs decrease as surviving U.S. IHC subsidiaries wind down?

A3. MOL estimates can decline as long as they are sufficiently supported by the firm's methodology and assumptions.

LIQ 5. Not Consolidated

LIQ 6. 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 date; this adjusted maturity should be applied symmetrically to both material entities involved in the transaction.

LIQ 7. 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 U.S. IHC subsidiary to achieve the stabilization needed to execute the U.S. resolution strategy. Firms' assumptions in the RLEN model regarding the actions necessary to reestablish market confidence during the stabilization period may vary by U.S. IHC subsidiary, for example, based on differences in regulatory, counterparty, other stakeholder interests, and based on the U.S. resolution strategy for each U.S. IHC subsidiary. See also "LIQ 2. Distinction between Liquidity Forecasting Periods."

LIQ 8. HQLA and Assets Not Eligible as HQLA in RLAP and RLEN Models

Q. The Proposed 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 U.S. 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 U.S. IHC subsidiaries. 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 U.S. resolution strategy for each U.S. IHC subsidiary.

LIQ 9. 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 U.S. IHC subsidiary.

LIQ 10. RLEN Model and Net Revenue Recognition

Q. Can firms assume in the RLEN model that cash-based net revenue generated by U.S. IHC subsidiaries after the U.S. IHC's bankruptcy filing is available to offset estimated liquidity needs?

A. Yes. Firms may incorporate cash revenue generated by U.S. IHC subsidiaries in the RLEN model. Cash revenue projections should be conservatively estimated and consistent with the operating environment and the U.S. strategy for each U.S. IHC subsidiary.

LIQ 11. 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 U.S. IHC subsidiary has achieved market confidence necessary for stabilization consistent with the U.S. resolution strategy, a firm may modify one or more inter-affiliate frictions, provided the firm provides sufficient analysis to support this assumption.

LIQ 12. RLEN Relationship to DFAST Severely Adverse scenario

(See "CAP 3. RCEN Relationship to DFAST Severely Adverse Scenario" in the Capital section.)

LIQ 13. Liquidity Positioning and Foreign Parent Support

Q1. May firms consider available liquidity at the foreign parent for meeting RLAP and RLEN estimates for U.S. non-branch material entities?

A1. For a 30-day RLAP model, firms should use the requirements of Regulation YY in estimating the standalone liquidity position of each U.S. non-branch material entities. Firms should not rely on available liquidity at the foreign parent to meet net liquidity outflows of U.S. non-branch material entities. The firm's RLAP model should ensure that the consolidated U.S. IHC holds sufficient HQLA to cover net liquidity outflows of the U.S. non-branch material entities. For an RLAP model that extends beyond 30 days, firms may consider (after 30 days) available liquidity at the foreign parent to meet the needs for U.S. non-branch material entities. To meet the liquidity needs informed by the RLEN methodology, firms may either fully pre-position liquidity in the U.S. non-branch material entities or develop a mechanism for planned foreign parent support of any amount not pre-positioned for the successful execution of the U.S. strategy. Mechanisms to support readily available liquidity may include a term liquidity facility between the U.S. IHC and the foreign parent that can be drawn as needed. If a firm's plan relies on foreign parent support, the plan should include analysis of how the U.S. IHC/foreign parent facility is funded or buffered for by the foreign parent.

LIQ 14. RLAP Model Time Horizon and Inter-Affiliate Transactions

Q. How should firms treat cash flow sources from affiliates in the RLAP model for models that use time periods in excess of 30 days, given the affiliate cash flow calculation requirements in section 252.157(c)(2)(iv) of Regulation YY?

A. An RLAP model that includes time periods beyond 30 days is not required to adopt the affiliate cash flow calculation requirements in section 252.157(c)(2)(iv) of Regulation YY for inter-affiliate cash flows beyond 30 days. However, beyond 30 days, the RLAP methodology still should take into account for each of the U.S. IHC, U.S. IHC subsidiaries, and any branch that is a material entity the considerations detailed in (A), (B), and (C) in the RLAP subsection of the Proposed Guidance. See Resolution Liquidity Adequacy and Positioning (RLAP) section.

LIQ 15. U.S. Branches and Agencies Liquidity Modeling

Q1. Are firms required to develop a RLAP model for U.S. branches and agencies?

A1. Firms are not required to develop a RLAP model for material U.S. branches and agencies; however, as described in the Liquidity section of the Proposed Guidance, a firm should maintain a liquidity buffer sufficient to meet the net cash outflows for its U.S. branches and agencies on an aggregate basis for the first 14 days of a 30-day stress horizon. These expectations are consistent with the stress testing and liquidity buffer requirements in section 252.157(c)(3) of Regulation YY.

Q2. The Proposed Guidance states that in calculating RLAP estimates the U.S. IHC should calculate its liquidity position with respect to its foreign parent, branches and agencies, and other affiliates separately from its liquidity position with respect to third parties. How should firms interpret the RLAP requirements since RLAP is not required for U.S. branches and agencies?

A2. The RLAP estimates for U.S. non-branch material entities should take into account how cash flows and the stand-alone liquidity profile may be affected by all inter-affiliate transactions, which may include the impact on the U.S. non-branch material entities from flows transacted with U.S. branches and agencies.

LIQ 16. Material Service Entity Liquidity

Q. Is a standalone liquidity position estimate needed for material service entities?

A. For material service entities with no other operations other than providing services only to their affiliates and having no third-party debt obligations, a standalone liquidity position estimate is not required.

Operational: Shared Services

OPS SS 1. Not Consolidated

OPS SS 2. Working Capital

Q1. Must working capital be maintained for third party and internal shared service costs?

A1. 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 U.S. resolution 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?

A2. The measurement of the six month working capital expectation begins upon the bankruptcy filing of the U.S. IHC. The expectation for maintaining the working capital is effective upon the July 2018 submission.

OPS SS 3. Not Consolidated

OPS SS 4. Not Consolidated

Operations: Payments, Clearing and Settlement

To the extent relevant, the PCS FAQs have been consolidated into the updated section of the Proposed Guidance.

Legal Entity Rationalization and Separability

LER 1. Data Room

Q. What information should be in the data room?

A. The Proposed Guidance addresses the data room in the section regarding Legal Entity Rationalization and Separability. 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 in the Proposed Guidance lists of individual employee names and compensation levels?

A2. 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. 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 3. 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 4. Clean Funding Pathways

Q1. 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?

A1. The funding pathways between the foreign parent, U.S. IHC, and U.S. IHC subsidiaries 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 U.S. non-branch material entity under the firm's U.S. 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 U.S. strategy and actionable sales, transfers, or wind-downs under varying market conditions. The

clean funding pathways expectation applies to all funding provided to a U.S. non-branch material entity regardless of type and should not be viewed solely to apply to internal TLAC.

Q2. The Proposed 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?

A2. 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 U.S. non-branch material entities.

LER 5. 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 6. Market Conditions

Q. What is meant by the phrase “under different market conditions” in the Legal Entity Rationalization and Separability section of the Proposed 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 7. Application of Legal Entity Rationalization Criteria

Q1. Which legal entities should be covered under the LER framework?

A1. The scope of a firm’s LER criteria should apply to the entire U.S. operations.

Q2. To the extent a firm has a large number of similar U.S. 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?

A2. Yes.

LER 8. Application of LER Criteria.

Q. Under the Proposed Guidance, is there an expectation that the LER criteria be applied to the legal structure outside of the U.S. operations (e.g. outside of the U.S. IHC or U.S. branch)?

A. The LER criteria serve to govern the corporate structure and arrangements between U.S. subsidiaries and U.S. branches in a manner that facilitates the resolvability of U.S. operations. The Proposed Guidance is not intended to govern the corporate structure in jurisdictions outside the U.S. The application of the LER criteria should, among other things, ensure that the allocation of activities across the firm’s U.S. branches and U.S. non-branch material entities support the firm’s US resolution strategy and minimize risk to US financial stability in the event of resolution.

Moreover, LER works with other components to improve resolvability. For example, with regard to shared services the firm should identify all shared services that support identified critical

operations, maintain a mapping of how/where these services support core business lines and identified critical operations, and include this mapping into the legal rationalization criteria and implementation efforts.

Derivatives and Trading Activities

To the extent relevant, the derivatives and trading FAQs have been consolidated into the updated section of the Proposed Guidance.

Legal

LEG 1. Support Within the United States

Q. 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 in the Support within the United States section of the Proposed 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 Support within the United States section of the Proposed Guidance, 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 need not take the form of a legal opinion.

LEG 2. Contractually Binding Mechanisms

The Proposed Guidance states that the legal analysis described under the heading “Support Within the United States” should include mitigants to the potential challenges to the planned Support and that the plan should identify the mitigant(s) to such challenges that the firm considers most effective. The Proposed Guidance does not specifically reference consideration of a contractually binding mechanism. However, the following questions and answers may be useful to a firm that chooses to consider a contractually binding mechanism as a mitigant to the potential challenges to the planned Support.

Q1. 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?

A1. No. The Agencies do not have a preference as to the form of capital contribution or liquidity support.

Q2. Should a contractually binding mechanism relate to the provision of capital or liquidity? What classes of assets would be deemed to provide capital vs. liquidity?

A2. Contractually binding mechanism is a generic term and includes the down-streaming of capital and/or liquidity as contemplated by the U.S. resolution strategy. Furthermore, it is up to the firm, as informed by any relevant guidance of the Agencies, to identify what assets would satisfy a U.S. affiliate’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?

A3. To the extent a firm utilizes a contractually binding mechanism, such mechanism, including its duration, should be appropriate for the firm’s U.S. resolution strategy, including adequately addressing relevant financial, operational, and legal requirements and challenges.

Q4. Not consolidated.

Q5. Not consolidated.

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)?

A6. 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 U.S. resolution plan submission.

Q7. Not consolidated.

Q8. Should firms include a formal regulatory trigger by which the Agencies can directly trigger a contractually binding mechanism?

A8. No

General

None of the general FAQs were consolidated.