STANFORD GRADUATE SCHOOL OF BUSINESS | Corporations and Society Initiative

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Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551
Docket No. R–1660; RIN No. 7100–AF 47

Robert E. Feldman
Executive Secretary
Attn: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429
RIN 3064–AE93

Re: Resolution Plans Required

Ladies and Gentlemen:

The resolution planning process is not perfect, but this proposal is harmful because it augments the worst attributes of resolution planning while failing to realize the potential of the process. For the following reasons I oppose the proposed changes and urge you not to move forward.

I. The presumption of the Resolution Planning process is backwards.

The agencies' motivation to "improve efficiency and balance burden" conflicts with the legal standard that bank holding companies and nonbank financial institutions be resolvable under the bankruptcy code.[1] Indeed, the Board has said that the submissions run to tens of thousands

[1] The proposal cites the inordinate time, and associated cost, of preparing resolution plans, and the potential savings resulting from implementing the proposal. *See* 93 Fed. Reg. 21,600, 21,617 (citing 1,137,797 person hours, potentially costing an estimated $39,922,958 in wages). The proposal further states that "firms could reallocate the 712,274 hours used to comply with the Rule to other activities considered to be more beneficial." This argument is specious for two reasons. First, it is likely that these compliance jobs will simply be eliminated, not repurposed into jobs as loan officers. Personnel in retail and commercial banking are more contingent upon economic factors like loan demand than upon the number of compliance jobs. (Further, as you know, banks are enjoying record profitability, meaning there is no indication that they are resource constrained in their hiring decisions.) Second, the definition of whether something is "beneficial" depends on one's perspective. More jobs in lines of business that generate private profits, and thereby bonuses for executives and payouts for shareholders, might provide private benefits in the short term but public costs over the long term. Indeed, it is most likely that any private savings resulting from this proposal will ultimately end up in the pockets of executives or shareholders, providing little benefit to the rest of society.

of pages in length.[2] There are other ways to address the "burden" imposed on GSIBs by the resolution planning process. Rather than treating the banks' structures and business models like immutable laws of physics, and crafting – or "tailoring" – regulations to fit them like a bespoke garment, your agencies should use all the authorities at their disposal to make the institutions smaller, less complex, and thereby more resolvable. That would make resolution planning is less burdensome, without creating additional risk to safety and soundness or financial stability.

II. The proposed filing timeline turns Resolution Planning into a rote exercise.

Every financial crisis is "largely a failure of imagination."[3] For example, studies suggest that bank CEO optimism correlated with poor financial performance during the crisis of 2008.[4] Regulators, likewise, had overly rosy views of the state of the financial system before the crisis.[5] Turning the resolution planning process into a perfunctory exercise undermines a key value of resolution planning of breaking through potential myopia and forcing management and regulators to consider the potential scenarios under which these institutions could meet their demise. After all, it is "grave men, near death, who see with blinding sight[.]"[6]

A particular source of concern is the 2-year submission cycle for GSIBs, and the 3-year cycle is far too long for the Category II & III banks—especially because it includes shorter plans every other cycle, meaning that full plans are only filed every sixth year. History shows that banks can ramp up various risky activities in a relatively short period of time,[7] including in ways that would not

[2] *See* Cong. Research Serv., "Living Wills": The Legal Regime for Constructing Resolution Plans for Certain Financial Institutions 3, 8 (Dec. 4, 2014).
[3] Timothy F. Geithner, *Stress Test* 513-14 (1st ed. 2014); *see also* Fin. Crisis Inquiry Comm'n, *The Financial Crisis Inquiry Report* 194 (1st ed. 2010) (quoting hedge fund manager Steve Eisman as saying: "Everyone really did believe that things were going to be okay … [I] thought they were certifiable lunatics.").
[4] *See* Yueran Ma, *Bank CEO Optimism and the Financial Crisis* (Sept. 2015), available at: https://scholar.harvard.edu/files/yueranma/files/bank.pdf.
[5] *See* FCIC, *supra*, at 13-18 (describing academics, community groups, and state attorneys general relaying warning signs in the subprime mortgage market and the lack of a response by federal regulators); *see also* U.S. Treasury Under Secretary Randal K. Quarles, Remarks to the Money Marketeers, May 10, 2006 ("Regardless of where one falls out in this debate, a broad-based decline in house prices would almost certainly exert a noticeable drag on economic activity … I have to say that I do not think this is a likely scenario … [T]he potential tail risks I've talked about today are just that—possibilities but not likely outcomes. Fundamentally, the economy is strong, the financial sector is healthy, and our future looks bright.") available at https://www.treasury.gov/press-center/press-releases/Pages/js4248.aspx.
[6] Dylan Thomas, *Do not go gentle into that good night*, *in* poets.org, https://poets.org/poem/do-not-go-gentle-good-night (last visited Jun 21, 2019).
[7] *See* FCIC at 65 ("The largest firms became considerably larger. JP Morgan's assets increased from $667 billion in 1999 to $2.2 trillion in 2008, a compound annual growth rate of 16%. Bank of America and Citigroup grew by 14% and 12% a year, respectively, with Citigroup reaching $1.9 trillion in assets in 2008 (down from $2.2 trillion in 2007) and Bank of America $1.8 trillion. The investment banks also grew significantly from 2000 to 2007, often much faster than commercial banks. Goldman's assets grew from $250 billion in 1999 to $1.1 trillion by 2007, an annual growth rate of 21%. At Lehman, assets rose from $192 billion to $691 billion, or 17%.").

trigger the "material change" provision. These cycles are too long for institutions of this size and level of importance.

III. The waiver provision creates opportunities for abuse.

As Governor Brainard noted in her statement, the waiver proposal is a recipe for abuse. History and experience have taught us that waivers are granted too easily, revoked too infrequently, and can often lead to buildups in problematic behavior. The presumption should not be that a waiver is granted unless an agency objects; the default should require a waiver to be affirmatively granted. I also note that, although institutions are only granted one waiver per cycle, the rule as I read it allows a waiver for multiple cycles, rendering this limitation effectively cosmetic.[8] Nothing in the statute requires that to be the default, unlike the process for the resolution plans as a whole.

IV. The totality of the changes undermines the Resolution Planning process.

A number of other smaller changes to the rule constitute "death by a thousand cuts." They make the resolution planning process more constrained, emphasize legal formalism over substantive progress, and create barriers that regulators must overcome in order to force aggressive and meaningful change. The totality of the changes proposed in the rule constitute the very "kind of low-intensity deregulation, consisting of an accumulation of non-headline-grabbing changes" that former Governor Daniel Tarullo recently raised as a source of concern.[9]

V. Conclusion.

Resolution planning has the potential to provide an impetus for structural change, including greater subsidiarization, as well as an increase in prudential standards like equity funding for riskier business lines or legal entities.[10] Instead, the fact that there is "still some legitimate question among people as to whether if one of them got into significant trouble … there still wouldn't be a view that they are too big to fail" is evidence that the process has fallen short to date.[11] The deregulatory steps taken in this proposal will only take us backwards.

The Board should abandon its proposal and focus on measures that will make banks safer, including greater equity funding and less reliance on complex and opaque financial instruments like derivatives. The banking system, especially the largest banks that would benefit from this

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[8] An institution could, each year, apply for multi-year waivers for each different business line, meaning that it could have multiple waivers in effect in each given year, significantly curtailing the content of the plans in incremental steps over the course of years.
[9] Daniel K. Tarullo, Taking the Stress Out of Stress Testing 3, May 21, 2019.
[10] *See* Emilios Avgouleas Charles Goodhart & Dirk Schoenmaker, *Living Wills as a Catalyst for Action* 3-5, Duisenberg Sch. of Fin. Policy Paper No. 4 (2010), available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1533808.
[11] Ben White, *Why Wall Street Banks May Still be Too Big to Fail*, POLITICO, Sept. 26, 2018 (quoting Daniel K. Tarullo).

proposal, are already enjoying record levels of profit.[12] This is a time when regulators should be working to get ahead of the curve, forcing structural change when the big banks can afford to do it, rather than retreating on the minimal reforms that have taken hold.

Thank you again for considering my/our views on this proposed rule.

Sincerely,

[redacted]

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[12] *See* FDIC, Quarterly Banking Profile, Fourth Quarter 2018 (noting annual net income for the banking industry of $236.7 billion).