

June 21, 2019

Via Electronic Mail

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
regs.comments@federalreserve.gov
Docket No. R-1660
RIN No. 7100-AF 47

Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
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comments@FDIC.gov
RIN 3064-AE93

Re: Proposed 165(d) Rule Amendments

Ladies and Gentlemen:

We appreciate the opportunity to comment on the proposed rule issued jointly by the Board of Governors of the Federal Reserve System (“Federal Reserve”) and the Federal Deposit Insurance Corporation (“FDIC”) (collectively, the “Agencies”) that would revise the regulation implementing the resolution planning requirements of section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “165(d) Resolution Plan Proposal”).

We applaud the Agencies’ efforts to review and, consistent with the Economic Growth, Regulatory Relief and Consumer Protection Act, improve the tailoring of the post-crisis frameworks establishing regulatory capital standards, liquidity requirements, and enhanced prudential standards (“EPS”), including resolution plan requirements. We encourage the Agencies to finalize the 165(d) Resolution Plan Proposal expeditiously after considering these and other public comments.

With respect to the 165(d) Resolution Plan Proposal, we recommend the following:

- The Agencies should promptly extend the current December 31, 2019 filing date for certain 165(d) resolution plan filers, consistent with the proposed effective date of the 165(d) Resolution Plan Proposal.
- The Agencies should adopt as proposed the three-year cycle framework for Category III filers, alternating between full and targeted plan submissions. The Agencies should, however, maintain a December 31 filing date for Category III triennial filers. This will allow for the most efficient allocation of resources for both filers and agency staff.
- Because the bank-centric business model and legal entity structure of domestic Category III filers leads to a consistent resolution strategy for both the 165(d) and covered insured depository institution (“CIDI”) resolution plans, the Agencies should harmonize the

informational content requirements and submission cycles for CIDI and 165(d) resolution plans. Harmonization would allow domestic Category III filers to focus their resolution planning efforts on a uniform resolution plan filing process containing information and analysis most applicable to their business model and risk profile while also lowering the burden of review for agency staff.

- The Agencies should modify the proposed waiver process to allow for the automatic waiver from certain informational content requirements for those filers who qualify to file a tailored plan under the current rule. This would continue to allow bank-centric filers to focus their efforts in the 165(d) resolution plan process on nonbank activities in recognition that the overwhelming majority of activities, assets, and liabilities of those banking organizations is housed in their insured depository institutions, and thus, addressed by their CIDI resolution plans.
- As noted in our comment letters in response to the tailoring proposals for domestic¹ and foreign banking organizations² (collectively referred to hereafter as the “Tailoring Proposals”), we support the risk-based threshold approach currently included in the Tailoring Proposals for classifying banking organizations, which we believe provides an appropriate and transparent methodology for these purposes. As discussed further below, we also believe that no additional risk-based indicators are necessary for the Category II boundary, as the existing asset and cross-jurisdictional activity indicators are sufficient to identify when an organization is “large” or “internationally active” and, thus, should be subject to more stringent resolution planning, capital, and liquidity standards. If, however, the Agencies include additional risk-based indicators for the Category II boundary, the threshold for such indicators should be set at no less than \$210 billion. Finally, any dollar-based indicator should be indexed to the growth of the U.S. banking industry.

Our specific comments and recommendations on the 165(d) Resolution Plan Proposal are discussed in detail below.

I. The Agencies Should Promptly Extend the December 31, 2019 Filing Date for Certain Filers

For the reasons discussed in the joint comment letters submitted by the Bank Policy Institute (“BPI”) and the Securities Industry and Financial Markets Association (“SIFMA”), dated May 1, 2019, the Agencies should promptly extend the December 31, 2019 filing date for the 165(d) resolution plans of certain filers, including each of the undersigned. An extension is both the consistent with the proposed effective date of the 165(d) Resolution Plan Proposal and necessary

¹ *Proposed Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements*, 83 Fed. Reg. 66024 (Dec. 21, 2018); *Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies*, 83 Fed. Reg. 61408 (Nov. 29, 2018).

² *Proposed changes to applicability thresholds for regulatory capital requirements for certain U.S. subsidiaries of foreign banking organizations and application of liquidity requirements to foreign banking organizations, certain U.S. depository institution holding companies, and certain depository institution subsidiaries*, 84 Fed. Reg. 24296 (May 24, 2019); *Prudential Standards for Large Foreign Banking Organizations; Revisions to Proposed Prudential Standards for Large Domestic Bank Holding Companies and Savings and Loan Holding Companies*, 84 Fed. Reg. 21988 (May 15, 2019).

to avoid placing organizations in the untenable position of having to prepare a 2019 165(d) resolution plan, which could be rendered moot if the 165(d) Resolution Plan Proposal is made effective, as proposed, no later than November 24, 2019.

II. Proposed Tailoring of Submission Cycles and Informational Content Requirements

We applaud the Agencies' efforts to differentiate the resolution plan filing cycle length and informational content requirements by applying a triennial filing timeline to Category III organizations.

We agree with the Agencies that a three-year cycle is appropriate for Category III filers. The Agencies should, however, maintain a December 31 filing date for Category III triennial filers that traditionally have had a December 31 filing date, rather than requiring all covered companies to file on July 1 of the relevant year. This would avoid significant personnel and resource allocation issues at such Category III firms between resolution plan filings and the Federal Reserve's Comprehensive Capital Analysis and Review exercise and Dodd-Frank Act Stress Tests conducted in the first half of each year. Furthermore, a December 31 filing deadline for these Category III organizations would allow Agency staff to focus their reviews on distinct groups banking organizations at different times, rather than having to review each group at the same time.

The Agencies should also clarify and ensure that different expectations will apply to the different categories of filers, particularly between Category II and Category III institutions. Given that Category II is intended to capture organizations that are "large and internationally active," the resolution planning expectations and evaluation criteria for those organizations should be markedly different from those applicable to large regional banks that have a largely domestic footprint and whose legal structures are relatively simple. These expectations should be made clear in the final rule amendments, so these institutions are not subject to unnecessarily burdensome information requirements that are more appropriately applied to entities with more complex or internationally focused business models.

III. Harmonization of 165(d) and CIDI Resolution Plan Informational Content Requirements and Submission Cycles

The Agencies should harmonize the informational content requirements and submission cycles for CIDI resolution plans and 165(d) resolution plans, allowing filers to focus their resolution planning efforts on a uniform resolution plan filing process containing information and analysis that is most applicable to their business model and risk profile while also lowering the burden of review for agency staff.

Category III regional banks have a consistent and complementary resolution strategy for both 165(d) and CIDI resolution plans and have structures and business models that are bank-centric. Accordingly, our 165(d) resolution plan process is dependent on the information provided in our CIDI resolution plans such that filing plans on different timelines would be inefficient, costly, and duplicative.

Aligning the informational content requirements and submission cycles for the 165(d) and CIDI resolution plans of Category III filers (and allowing these filers to incorporate by reference into their 165(d) resolution plan any information from a simultaneously or previously submitted CIDI resolution plan) would provide the Federal Reserve and FDIC with the material information needed to evaluate the credibility and operational feasibility of the firm's and insured depository institution's resolution strategy, preserve the FDIC's ability to comment on a filer's resolution plan specifically with respect to the insured depository institution, and minimize the burden of information collection, while allowing for the efficient allocation of resources and staff at both the Agencies and filing institutions.

Alignment of these plans makes particular sense for domestic Category III filers, as the vast bulk of our operations are housed within our CIDI subsidiaries, which would be resolved under the Federal Deposit Insurance Act and not Title II of the Dodd-Frank Act. Thus, while the 165(d) resolution plan is still relevant and statutorily required for Category III filers, it is logical for the 165(d) resolution plan to be aligned with the CIDI resolution plan, the latter of which contains the vast majority of information related to the activities, legal structures, and risks of Category III filers.

IV. Retention of Option to Request a Tailored Plan

We request that the Agencies modify the proposed language establishing a waiver process by allowing an automatic waiver, upon request, for certain informational content requirements to those filers who currently qualify to submit tailored resolution plans under the current rule. For bank-centric Category III institutions, the tailored plan request process is a standardized mechanism that allows such filers to focus their efforts in the 165(d) resolution plan process on nonbank activities recognizing that the overwhelming majority of activities, assets, and liabilities of the banking organization is housed in its insured depository institution subsidiary. The proposed waiver process, while a welcome development in the resolution plan process, without modification as we propose, seems to be aimed at idiosyncratic requests for relief from individual content requirements rather than a recognition of the business model and legal entity structure of a category of filers. Indeed, the premise behind the tailored plan in the existing 165(d) resolution plan rule is the recognition by the Agencies of these bank-centric business models.³ The Agencies would still retain discretion to require that any firm file a full resolution plan. Finally, this request is consistent with our recommendation presented above that the informational content of the 165(d) and CIDI resolution plans be harmonized to allow Category III firms to focus their resolution planning efforts on the entity and resolution framework that would be most relevant to their organization in the event of failure.

³ *Resolution Plans Required*, 76 Fed. Reg. 67323, 67330 (“Section 165(d) applies to a number of companies that operate predominately through one or more insured depository institutions. As discussed above, several commenters argued that the rule should make allowances for the significant differences in complexity and structure among the various bank holding companies subject to the rule....In response to these comments, the Board and Corporation have tailored the resolution plan requirement applicable to smaller, less complex bank holding companies and foreign banking organizations in order to focus the content and analysis of such an organization's resolution plan on the nonbanking operations of the organization...”).

V. Proposed Risk-Based Thresholds for the Application of Category II Standards

The 165(d) Resolution Plan Proposal would generally divide filers into four categories based on the same asset and risk-based measures that would apply to U.S. banking organizations under the Tailoring Proposals.⁴ As noted in our comment letters in response to the Tailoring Proposals,⁵ we believe the proposed risk-based threshold approach provides an appropriate and transparent methodology for classifying banking organizations for these purposes. The proposed risk-based measures and thresholds (if indexed) effectively distinguish among banking organizations based on risk and business models and result in more congruent groupings of banking organizations than the current regulatory capital, liquidity, and EPS frameworks.

The 165(d) Resolution Plan Proposal requests comment on whether the Category II boundary should include indicators for weighted short-term wholesale funding (“wSTWF”), nonbank assets, or off-balance sheet exposures, in addition to the originally proposed asset and cross-jurisdictional activity indicators. We do not believe that any additional risk-based indicators are necessary for the Category II boundary. As recognized by the Agencies in the Tailoring Proposals, Category II is largely designed to identify those banking organizations that should be considered “large, internationally active” and, thus, subject to international standards developed by the Basel Committee on Banking Supervision (“Basel Committee”), such as the Advanced Approaches for determining risk-weighted assets and the “Full LCR.”⁶ As such, we believe the current \$700 billion in total consolidated assets or \$75 billion in cross-jurisdictional activity indicators are sufficient, as they identify banking organizations that are “large” or “internationally active” and no additional indicators are necessary for the Category II boundary.

Should the Agencies nevertheless determine that wSTWF, nonbank assets, or off-balance sheet exposures should be included as additional indicators for the Category II boundary, the level for such indicators should be set at no less than \$210 billion to (i) maintain proportional parity between a firm’s asset size and the risk-based indicators for the Category II and Category III boundaries; (ii) avoid potential negative implications for the availability of credit to businesses, consumers, and local governments; and (iii) maintain the overall integrity of the categories of banking organizations proposed by the Agencies.

Under the Tailoring Proposals, a Category IV organization would become a Category III organization once it has either (i) \$250 billion in total consolidated assets or (ii) \$75 billion in

⁴ Under the 165(d) Resolution Plan Proposal, Category IV firms would not be required to file 165(d) resolution plans. The fourth category would instead comprise foreign banking organizations with greater than \$250 billion in global consolidated assets and which are subject to resolution planning pursuant to statute but are not subject to Category II or Category III standards.

⁵ See Letters from Capital One Financial Corporation, The PNC Financial Services Group, Inc., and U.S. Bancorp to the Federal Reserve, FDIC, and Office of the Comptroller of the Currency, dated January 22, 2019 and June 21, 2019.

⁶ Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies, 83 Fed. Reg. 61410 (Nov. 29, 2018) (“Like Category I, [Category II] would include standards that are based on standards developed by the [Basel Committee] and other standards appropriate to very large or internationally active banking organizations.”).

wSTWF, nonbank assets, or off-balance sheet exposures.⁷ Thus, the total consolidated assets threshold for the Category II boundary (\$700 billion) is 2.8 times the total consolidated assets threshold for the Category III boundary (\$250 billion).

If wSTWF, nonbank assets, and/or off-balance sheet exposure indicators are to be included as part of the Category II boundary, this same multiple (2.8) should be used in adjusting the Category III \$75 billion wSTWF, nonbank assets, and off-balance sheet exposure thresholds for the Category II boundary. This would maintain the relative proportionality of the indicators to total assets constant between the Category III and Category II thresholds. For example, a banking organization with \$700 billion in total consolidated assets and \$210 billion in wSTWF would have the same ratio of wSTWF to total assets (2.8) as a firm with \$250 billion in total consolidated assets and \$75 billion in wSTWF. In other words, the *relative reliance* of the two firms on wSTWF would be the same. Accordingly, we believe any additional indicators included for the Category II boundary should be set at no less than \$210 billion in order to maintain the relative relation between asset size and other risk-based indicators for Category II and Category III organizations.

In addition, setting the threshold for off-balance sheet exposures at the lower end of the proposed range would fundamentally alter the four categories of banking organizations initially proposed by the Agencies in the Tailoring Proposals. Given that our organizations are engaged in traditional lending activities, a Category II threshold for off-balance sheet exposures set at the lower end of the proposed range would significantly increase the likelihood that a regional bank would cross the Category II threshold *even if its business model did not change*. Indeed, the U.S. globally systemically important banks (excluding the specialized custody banks) have an average ratio of off-balance sheet exposures to total assets of approximately 28%, with a significant percentage of these exposures composed of derivative exposures.⁸ We see no reason why a regional bank should be forced into Category II at a lower ratio of off-balance sheet exposures to total assets, especially when the vast majority of regional bank off-balance sheet exposures arise from traditional lending commitments, rather than derivative exposures.

Finally, any risk-based indicators included for Category II should be indexed to the amount of total assets of commercial banks, as published periodically by the Federal Reserve on the H.8 Assets and Liabilities of Commercial Banks in the United States statistical release.⁹ Indexing any additional risk-based indicators to the recommended measure is critical to ensuring that the relative relationship between the thresholds, the share of the banking industry represented by a particular banking organization and the banking industry overall is maintained through time. Absent a dynamic link between the risk-based thresholds and the U.S. banking industry as a whole, over time, the thresholds will capture banking organizations that represent a smaller

⁷ For foreign banking organizations, these thresholds and any other potential risk-based indicator thresholds would be measured at the U.S. intermediate holding company level. *See Proposed changes to applicability thresholds for regulatory capital requirements for certain U.S. subsidiaries of foreign banking organizations and application of liquidity requirements to foreign banking organizations, certain U.S. depository institution holding companies, and certain depository institution subsidiaries*, 84 Fed. Reg. 24302 (May 24, 2019).

⁸ FR Y-15 data as of December 31, 2018.

⁹ Federal Reserve, *Statistical Release H.8 - Assets and Liabilities of Commercial Banks in the United States*, available at <https://www.federalreserve.gov/releases/h8/> (providing weekly aggregate balance sheet for a representative sample of commercial banks).

proportion of, and, therefore, a lesser degree of risk to, the industry and the broader economy. To enhance the transparency and certainty for covered banking organizations under the regulatory framework, any indexing should be codified as part of the Agencies' final rules to ensure that the thresholds are adjusted regularly and automatically.

VI. Other Considerations

We have participated in development of the comment letter jointly submitted by the BPI and SIFMA and support the additional recommendations included in that comment letter.

For example, we support the recommendations included in that letter relating to (i) the advance notice that organizations require with respect to changes to idiosyncratic 165(d) resolution plan submission deadlines and required updates; and (ii) requiring agency feedback on submissions within 12 months of the date the submission was due.

* * *

The undersigned regional banking organizations appreciate the opportunity to comment on the 165(d) Resolution Plan Proposal and respectfully ask for consideration of the recommendations and suggestions in this letter. If you have any questions regarding the content of this letter or would like more information on our recommendations, please do not hesitate to contact any of the individuals listed in Attachment 1 to this letter.

Sincerely,

Capital One Financial Corporation
The PNC Financial Services Group, Inc.
U.S. Bancorp

Attachment 1

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