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Federal Reserve and FDIC Release Proposal to Tailor Resolution Planning Requirements

April 18, 2019

Financial Services

On April 8, 2019, the Board of Governors of the Federal Reserve System (the "Board") approved a notice of proposed rulemaking (the "Resolution Plan Proposal" or the "Proposal"), issued jointly with the Federal Deposit Insurance Corporation (the "FDIC," and together with the Board, the "Agencies"), that would revise the Agencies' jointly issued resolution planning regulation (the "Rule"), which implements section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). The FDIC approved the same Proposal on April 16, 2019. The FDIC also issued a separate advance notice of proposed rulemaking regarding its resolution planning regulation for insured depository institutions with $50 billion or more in total consolidated assets.

The Resolution Plan Proposal covers all banking organizations, both domestic ("DBOs") and foreign ("FBOs") that currently are required to file resolution plans. The Board issued the Resolution Plan Proposal concurrently with two notices of proposed rulemaking that would revise the Board's enhanced prudential standards ("EPS") applicable to FBOs, which followed a Board proposal in November 2018 to tailor the EPS for DBOs. The Resolution Plan Proposal was prompted in part by section 401 of the Economic Growth, Regulatory Reform and Consumer Protection Act ("EGRRCPA"), enacted in May 2018.

The Resolution Plan Proposal would change the Rule in significant ways. Most notably, DBOs with $100 billion or more, but less than $250 billion in total consolidated assets and FBOs with $100 billion or more, but less than $250 billion in total global assets that do not meet certain risk thresholds identified in the Proposal would no longer be required to file resolution plans. For many larger or more complex organizations, the Proposal would reduce the filing frequency and the informational content required to be included in resolution plans. Specifically, the Resolution Plan Proposal would establish a biennial filing cycle for domestic global systemically important banks ("G-SIBs") and a triennial filing cycle for all other filers. The Proposal would change the informational requirements of the resolution plans in order to provide for more focused full resolution plan submissions, including establishing a formal waiver process. Periodic targeted plans would be available for some filers, and reduced resolution plans for others. Comments are due June 21, 2019.

The Resolution Plan Proposal comes two weeks after the Agencies signed off on the 2017 resolution plans of the 14 DBOs with nonbank assets between $100 billion and $250 billion. The

Agencies also recently finalized guidance for the 2019 and subsequent resolution plan submissions of the eight domestic G-SIBs. The Proposal would not affect any of these actions.

Background

Section 165(d) of Dodd-Frank requires bank holding companies with total consolidated assets of $50 billion or more, FBOs with $50 billion or more in total global assets, and nonbank financial companies designated by the Financial Stability Oversight Council for supervision by the Board to submit resolution plans to the Agencies "periodically." In addition to the Rule, the Agencies have issued guidance regarding the frequency and content of resolution plans based on a variety of factors, including the size and complexity of the firm and whether the firms are DBOs or FBOs. The Agencies also have provided firm-specific guidance, including feedback letters that have been made publicly available.

Section 401 of EGRRCPA generally raised the asset size threshold for automatic application of the Board's EPS from $50 billion to $250 billion in total consolidated assets. DBOs with total consolidated assets of less than $100 billion (and FBOs with total global assets of less than $100 billion) were immediately and wholly exempted from EPS, including resolution planning requirements. The statute raised the threshold for automatic application of EPS to $250 billion in total consolidated assets as of November 2019, but left the Board discretion to impose EPS on any firms in the $100 billion to $250 billion asset range to prevent or mitigate risks to financial stability or to promote the safety and soundness of the organization.

Resolution Plan Proposal

Frequency of Resolution Plan Submission

The Proposal aligns with the four categories of firms identified in the Board's October 2018 DBO tailoring proposal and the FBO tailoring proposals released concurrently with the Resolution Plan Proposal. As with the tailoring proposals, assignment to a category would depend in part on whether a banking organization has $75 billion or more in any of four risk thresholds – cross-jurisdictional activity, nonbank assets, weighted short-term wholesale funding ("wSTWF"), or off-balance sheet exposures.

- **Category IV Firms:** DBOs with $100 billion or more in total consolidated assets that do not meet Category I, II, or III standards; FBOs with at least $100 billion or more in combined U.S. assets that do not meet Category II or III standards.
  - DBOs would not be required to file resolution plans.
  - Category IV FBOs with less than $250 billion in total global assets would not be required to file resolution plans.
- **Category III Firms:** DBOs with $250 billion or more in total consolidated assets or $100 billion or more in total consolidated assets and $75 billion or more in nonbank assets, wSTWF, or off-balance sheet exposures and that do not meet the Category I or II standards; FBOs with $250 billion or more in combined U.S. assets or $100 billion or more in combined U.S. assets and $75 billion or more in nonbank assets, wSTWF, or off-balance sheet exposures, generally measured based on combined U.S. operations, and that do not meet the Category II standards.

  - DBOs and FBOs would be required to file resolution plans every three years, alternating between full and targeted plans.
  - First full plan would be due July 1, 2021; first targeted plan would be due July 1, 2024.
- **Category II Firms:** DBOs with $700 billion or more in total consolidated assets or $100 billion or more in total consolidated assets and cross-jurisdictional activity of $75 billion or more and that are not U.S. G-SIBs; FBOs with $700 billion or more in combined U.S. assets or $100 billion or more in combined U.S. assets and cross-jurisdictional activity of $75 billion or more, measured based on combined U.S. operations.
  - DBOs and FBOs would be required to file resolution plans every three years, alternating between full and targeted plans.
  - First full plan would be due July 1, 2021; first targeted plan would be due July 1, 2024.
- **Category I Firms:** U.S. G-SIBs.
  - U.S. G-SIBs would be required to file resolution plans every two years, alternating between full and targeted plans.
  - First full plan would be due July 1, 2019; first targeted plan would be due July 1, 2021.

In addition, pursuant to the Dodd-Frank requirement that FBOs with $250 billion or more in total global assets be subject to resolution planning requirements (regardless of the amount of combined U.S. assets), such firms that do not meet Category II or III standards would be required to file a reduced plan every three years. For such FBOs, the first reduced plan would be due July 1, 2022, and the second reduced plan would be due July 1, 2025.

Content of Resolution Plan Submission

The Proposal would establish three types of resolution plans that would require varying types of information:

- **Full Plans:** Would include information currently required to be included in resolution plan submissions.
  - Individual firms may request a waiver of certain informational requirements in the full plan according to new procedures outlined in the Resolution Plan Proposal. Waivers would be automatically granted nine months prior to the filing date if the Agencies do not jointly deny the waiver prior to that date.
- **Targeted Plans:** Would include the same core information that is required for a full plan regarding capital, liquidity, and the firm's plan for executing any recapitalization contemplated in its resolution plan; any material change to the firm since the previous plan; and changes to the firm's plan resulting from any such material change, change in law or regulation, or guidance or feedback from the Agencies.
  - Each targeted plan would discuss targeted areas of interest identified by the Agencies for an individual firm or group of firms.
- **Reduced Plans:** Would only include any material change to the firm since the previous plan and changes to the firm's strategic analysis resulting from any such material change, change in law or regulation, or guidance or feedback from the Agencies.

The Proposal also would eliminate the provision in the Rule that allows a firm to request a "tailored plan." The Agencies would retain the ability to move filing dates and to require: (i) interim updates between filings; (ii) more frequent filings; and (iii) a full plan from any firm.

Critical Operations

The Rule currently requires that a resolution plan address any "critical operations" identified either by the firm or by the Agencies at their joint discretion. In 2012, the Agencies established a methodology for their joint identifications of critical operations for both DBOs and FBOs. The Agencies' original critical operations identifications from 2012 have remained largely unchanged. The Proposal would create a new process for firms and the Agencies to identify and periodically review critical operations, and for the Agencies to rescind their prior critical operations identifications. In addition, the Proposal would specify a process for a firm to request reconsideration of operations previously identified by the Agencies as critical, and would require that firms notify the Agencies if the firm ceases to identify a previously self-identified critical operation as critical.

Clarifications to the Rule

The Proposal would make a number of changes to the Rule in order to codify prior guidance and clarify certain requirements. The Proposal would, among other things:

- Clarify that FBOs should not assume that the firm will take resolution actions outside of the United States that would eliminate the need for any U.S. subsidiaries to enter into resolution proceedings.
- Eliminate the requirements that the Agencies review a resolution plan within 60 days and that they jointly inform the firm if the plan is informationally incomplete or additional information is required.
- Require firms to provide the Agencies with notice of certain extraordinary events, such as a material merger or a fundamental change to a firm's resolution strategy (e.g., a change from single point of entry to multiple point of entry), that occur between plan submissions.
- Clarify expectations regarding the mapping of intragroup interconnections and interdependencies by FBOs.
- Define a "deficiency" as an aspect of a firm's resolution plan that the Agencies jointly determine presents a weakness that individually or in conjunction with other aspects could undermine the feasibility of the firm's plan.
- Define "shortcoming" as a weakness or gap that raises questions about the feasibility of a firm's plan, but does not rise to the level of a deficiency for both Agencies.

The Resolution Plan Proposal, like the DBO tailoring proposal and the FBO tailoring proposals, presents alternative scoping and tailoring criteria for public comment, which generally would involve using the Board's G-SIB scoring methodology.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Financial Services practice:

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