

March 25, 2011

**TO:** Board of Directors

**FROM:** James Wigand  
Director  
Office of Complex Financial Institutions

Bret Edwards  
Acting Director  
Division of Resolutions and Receiverships

Michael Krimminger  
General Counsel

**SUBJECT:** Resolution Plan and Credit Exposure Reports – Notice of Proposed Rulemaking

## **RECOMMENDATION**

The Office of Complex Financial Institutions, the Division of Resolutions and Receiverships, and the Legal Division recommend that the Board of Directors authorize publication of the attached NPR in the *Federal Register* for a 60-day comment period.

## **EXECUTIVE SUMMARY**

Staff recommends that the Board approve publication of the attached Notice of Proposed Rulemaking (“NPR”). This NPR is issued jointly with the Board of Governors of the Federal Reserve System (“FRB”) to implement the requirements in Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). Under the Dodd-Frank Act, the FRB must require each nonbank financial company supervised by the FRB and each bank holding company with assets of \$50 billion or more (“Covered Company”) to report periodically to the FRB, the Financial Stability Oversight Council (the “FSOC”), and the Corporation the company’s resolution plan and a report of significant credit exposures, as described more fully below. Pursuant

to the Dodd-Frank Act, the FRB and the Corporation are required to jointly issue final rules implementing Section 165(d) not later than January 21, 2012.

## **DISCUSSION**

The Dodd-Frank Act creates a comprehensive new regulatory and resolution regime that is designed to protect the United States from the severe economic consequences of financial instability. Title I of the Dodd-Frank Act established the FSOC to identify risks to the financial stability of the United States, to promote market discipline and to respond to emerging threats to the financial stability of the United States. Importantly, Title I of the Dodd-Frank Act also significantly enhances the Corporation's and FRB's ability to conduct advance resolution planning for systemically important financial institutions. As demonstrated by the Corporation's experience in failed bank resolutions, as well as the FRB's and the Corporation's experience in the recent crisis, such advance planning is essential for an efficient resolution of a Covered Company.<sup>1</sup> Critical to advance resolution planning are new prudential supervisory oversight authorities and the resolution plans, or living wills, requirements of section 165(d) of Title I of the Dodd-Frank Act.<sup>2</sup>

Section 165(d) of the Dodd-Frank Act, 12 U.S.C. §5365(d), mandates that the FRB require each Covered Company to report periodically to the FRB, the FSOC, and the Corporation (i) the plan of such Covered Company for rapid and orderly resolution in the event of material financial distress or failure (the "Resolution Plan"), and (ii) the nature and extent of credit exposures of such company to significant bank holding

---

<sup>1</sup> The ability to undertake advance planning for the resolution of any financial institution, from small banks to globally active financial companies, is a precondition for effective crisis management and resolution.

<sup>2</sup> See generally section 165 of Title I of the Dodd-Frank Act, 12 U.S.C. § 5365.

companies and significant nonbank financial companies and the nature and extent of the credit exposures of significant bank holding companies and significant nonbank financial companies to such company (the “Credit Exposure Report”).<sup>3</sup>

The ability to undertake advance planning for the resolution of any financial institution, from small banks through globally active financial companies, is a precondition for effective crisis management and insolvency resolution. Such advance planning has long been a component of resiliency and recovery planning by financial companies. The Dodd-Frank Act now requires that certain financial companies must incorporate resolution planning into their overall planning processes. This will serve as a critical link between the planning that the FDIC performs in its assigned role as potential resolution authority under Title II of the Dodd-Frank Act, and the ongoing planning that designated financial companies must undertake to demonstrate that a rapid and orderly resolution can be achieved under the Bankruptcy Code in the event of material financial distress or failure.

The proposed rule does not focus on the simple disclosure of additional information about the business operations of the financial company. Critically, the proposed rule will require a strategic analysis by the financial company of how it can be resolved under the Bankruptcy Code in a way that does not pose systemic risk to the financial system. As provided in the proposed rule, this strategic analysis requires a number of key analytical elements. The strategic analysis of how the resolution plan can be implemented to achieve a rapid and orderly resolution is the foundation for any

---

<sup>3</sup> This NPR is issued pursuant to Section 165(d)(8) of the Dodd-Frank Act, which requires the FRB and the Corporation to jointly issue final rules implementing Section 165(d) not later than January 21, 2012.

credible plan. The strategic analysis describes the Covered Company's critical thinking detailing how, in practice, it could be resolved under the Bankruptcy Code. As a result, the strategic analysis should include the analytical support for the plan, its key assumptions, and how it would be implemented in different stress scenarios. The credit exposure reports required by the statute will also provide important information critical to advance planning processes by identifying the company's significant credit exposures, its component exposures, and other key information across the entity and its affiliates.

In preparing for a Title II resolution of a Covered Company subject to heightened prudential standards under Title I, the Corporation will have access to the information included in such Covered Company's resolution plan. This will be a vital element in the Corporation's planning. The elements contained in a resolution plan will help the FRB and the Corporation to better understand a Covered Company's business and how that entity may be resolved. The plans will also enhance the regulators' understanding of foreign operations in an effort to develop a comprehensive and coordinated resolution strategy for a cross-border firm.

The proposed rule requires a Covered Company to file with the FRB and the Corporation its initial Resolution Plan within 180 days of the effective date of the regulation, or within 180 days of such later date as the company becomes a Covered Company. Thereafter, a Resolution Plan must be filed no later than 90 days after the end of the Covered Company's calendar year. Updates of the Resolution Plan must be filed within a time period specified by the FRB and the Corporation, but no later than 45 days after any event, occurrence, change in conditions or circumstances or change which

results in, or could reasonably be foreseen to have, a material effect on the Covered Company's Resolution Plan.

Each Resolution Plan will be reviewed by the FRB and the Corporation to determine if it meets the informational, analytical and strategic planning requirements set forth in the proposed regulation. The proposed regulation provides a time frame and process for remediation of a Resolution Plan that is found to be not credible or would not facilitate the orderly resolution of the Covered Company under the Bankruptcy Code.

The proposed rule also requires each Covered Company to file with the FRB and the Corporation a Credit Exposure Report no later than 30 days after the end of each calendar quarter.

The proposed rule is summarized as follows:

Section \_\_\_\_\_.2 of the proposed rule defines certain terms utilized in the proposed rule, including "rapid and orderly resolution," "material financial distress," "core business lines," "critical operations" and "material entities," which are key definitions in the proposed rule.

Section \_\_\_\_\_.3 of the proposed rule requires each Covered Company to submit a Resolution Plan within 180 days of the effective date of the final rule, or within 180 days of such later date as the company becomes a Covered Company. The proposed rule specifies the minimum content of a Resolution Plan. After the initial Resolution Plan is submitted, each Covered Company is required to submit a new Resolution Plan no later than 90 days after the end of each calendar year.

Interim updates are required to be filed within a time period specified by the FRB and the Corporation, but no later than 45 days after any event, occurrence, change in

conditions or circumstances or change which results in, or could reasonably be foreseen to have, a material effect on the Covered Company's Resolution Plan. An update should describe the material event, any material impacts that the event may have on the Resolution Plan and any actions the Covered Company has taken or will take to address such material impacts. Upon request, the FRB and the Corporation may waive a requirement that a Covered Company file an update of a Resolution Plan. The FRB and the Corporation may also require more frequent submissions or updates and may extend the time period that a Covered Company has to submit its Resolution Plan or update.

In order to allow evaluation of the Resolution Plan, each Covered Company must provide the Board and the Corporation such information and access to personnel of the Covered Company as the Board and the Corporation jointly determine during the period for reviewing the Resolution Plan is necessary to assess the credibility of the Resolution Plan and the ability of the Covered Company to implement the Plan. The Agencies will rely to the fullest extent possible on examinations conducted by or on behalf of the appropriate Federal banking agency for the relevant company.

The board of directors of the Covered Company must approve the initial and each annual Resolution Plan filed. A delegee of the board of directors of the Covered Company, rather than the board of directors, may approve updates to a Resolution Plan. In the case of a foreign-based organization, a delegee of the board of the directors of such organization may approve the initial Resolution Plan and any updates to a Resolution Plan.

Subpart \_\_\_\_\_.4 of the proposed rule sets forth the minimum informational content requirements of a Resolution Plan. A Covered Company that is domiciled in the United

States is required to provide information with regard to both its U.S. operations and its foreign operations. A foreign-based Covered Company is required to provide information regarding its U.S. operations, an explanation of how resolution planning for its U.S. operations is integrated into the foreign-based Covered Company's overall resolution planning process and information regarding the interconnections and interdependencies among its U.S. operations and its foreign-based operations.

Each Resolution Plan is required to contain an executive summary, a strategic analysis of the plan's components, a description of the Covered Company's corporate governance structure for resolution planning, information regarding the Covered Company's overall organization structure and related information, information regarding the Covered Company's management information systems, a description of interconnections and interdependencies among the Covered Company and its material entities, and supervisory and regulatory information.

The proposed rule requires the Covered Company to identify and map its business lines to legal entities; provide integrated analyses of its corporate structure; credit and other exposures; funding, capital and cash flows; domestic and foreign jurisdictions in which it operates; supporting information systems and other essential services; and other key components of its business operations, all as part of the plan for its rapid and orderly resolution. The Covered Company's strategic analysis should demonstrate how such resources would be utilized to facilitate an orderly resolution in an environment of material financial distress. The proposed rule also requires the Covered Company to provide and map its strategy for maintaining and funding for critical operations and core business lines to its material entities. The Covered Company should also provide its

strategy in the event of a failure or discontinuation of a material entity, core business line or critical operation, and the actions that will be taken by the Covered Company to prevent or mitigate any adverse effects of such failure or discontinuation on the financial stability of the United States.

The Resolution Plan is required to include information regarding the material assets, liabilities, derivatives, hedges, capital and funding sources of the Covered Company. An analysis of whether the bankruptcy of a major counterparty would likely have an adverse impact on and result in the material financial distress or failure of the Covered Company should also be included. Trading, payment, clearing and settlement systems utilized by the Covered Company should be identified. Trading, payment, clearing and settlement systems that would be immaterial in resolution planning, such as a local check clearing house, do not need to be identified.

For a Covered Company with foreign operations, the proposed rule requires that the plan identify the extent of the risks related to those operations and the Covered Company's strategy for addressing such risks. A Covered Company is required to provide its strategy for ensuring that any insured depository institution subsidiary will be adequately protected from risks arising from the activities of any nonbank subsidiaries of the Covered Company (other than those that are subsidiaries of an insured depository institution).

The proposed rule requires the Resolution Plan to include a description of the Covered Company's processes and systems to collect, maintain, and report the information and other data underlying the Resolution Plan. The plan should identify any deficiencies in such processes and systems and discuss plans to remedy such deficiencies.



The Covered Company should, within a reasonable period of time after the effective date of the rule as determined by the FRB and the Corporation, be able to demonstrate its capability to [promptly] produce, in a format acceptable to the FRB and the Corporation, the data underlying the key aspects of the Resolution Plan.

Subpart \_\_\_\_\_.5 of the proposed rule requires each Covered Company to submit to the FRB and the Corporation a Credit Exposure Report on a quarterly basis. Each Credit Exposure Report is required to set forth the nature and extent of credit exposures of such company to significant bank holding companies and significant nonbank financial companies as well as the credit exposures of significant bank holding companies and significant nonbank financial companies to such company.

A Credit Exposure Report submitted by a Covered Company that is a company incorporated or organized in a country other than the United States (other than a bank holding company) or that is a foreign banking organization is required to include only information with respect to its subsidiaries and operations that are domiciled in the United States.

Subpart \_\_\_\_\_.6 of the proposed rule sets forth procedures regarding the review of Resolution Plans. When a Resolution Plan is submitted, it will be reviewed initially to determine whether it appears to satisfy the minimum informational requirements of the rule and to be informationally complete. Within 60 calendar days of receiving a Resolution Plan, the FRB and the Corporation will determine whether the Resolution Plan should be accepted for further review. If the FRB and the Corporation determine that a Resolution Plan is informationally incomplete or that substantial additional information is necessary to permit further review, the FRB and the Corporation will

inform the Covered Company in writing of the area(s) in which the Resolution Plan is informationally incomplete or with respect to which additional information is required. The Covered Company is required to resubmit an informationally complete Resolution Plan or such additional information as jointly requested to facilitate review of the Resolution Plan no later than 30 days after receiving such notice or such other time period as the FRB and Corporation may jointly determine.

After a Resolution Plan is accepted for review, the FRB and Corporation will review the plan for its compliance with the requirements of the proposed rule. If, following such review, the FRB and the Corporation jointly determine that the Resolution Plan of a Covered Company submitted is not credible or would not facilitate an orderly resolution of the Covered Company under the Bankruptcy Code, the FRB and Corporation will jointly notify the Covered Company in writing of such determination. Such notice will identify the aspects of the Resolution Plan that the FRB and Corporation jointly determined to be deficient and request the resubmission of a Resolution Plan that remedies the deficiencies of the Resolution Plan.

Within 90 days of receiving such notice of deficiencies, or such shorter or longer period as the FRB and Corporation may jointly determine, a Covered Company is required to submit a revised Resolution Plan to the FRB and Corporation that addresses the deficiencies jointly identified by the FRB and Corporation. The revised Resolution Plan must discuss in detail: (i) the revisions made by the Covered Company to address the deficiencies jointly identified by the FRB and the Corporation; (ii) any changes to the Covered Company's business operations and corporate structure that the Covered Company proposes to undertake to facilitate implementation of the revised Resolution

Plan (including a timeline for the execution of such planned changes); and (iii) why the Covered Company believes that the revised Resolution Plan is credible and would result in an orderly resolution of the Covered Company under the Bankruptcy Code.

Upon a written request by a Covered Company, the FRB and Corporation may jointly extend the time to resubmit a revised Resolution Plan. Any extension request must be supported by a written statement of the company describing the basis and justification for the request.

Subpart \_\_\_\_\_.7 of the proposed rule provides that, if the Covered Company fails to submit a revised Resolution Plan or the FRB and the Corporation jointly determine that a revised Resolution Plan submitted does not adequately remedy the deficiencies identified by the FRB and the Corporation, then a Covered Company or any subsidiary of a Covered Company may be subjected to more stringent capital, leverage, or liquidity requirements, or restrictions on growth, activities, or operations. Any such requirements or restrictions shall apply to the Covered Company or subsidiary, respectively, until the FRB and the Corporation jointly determine the Covered Company has submitted a revised Resolution Plan that adequately remedies the deficiencies cited therein. In addition, if the Covered Company fails, within the 2-year period beginning on the date on which the determination to impose such requirements or restrictions was made, to submit a revised Resolution Plan that adequately remedies the deficiencies jointly identified by the FRB and the Corporation, then the FRB and Corporation, in consultation with the FSOC, may jointly, by order, direct the Covered Company to divest such assets or operations as the FRB and Corporation jointly determine necessary to facilitate an orderly

resolution of the Covered Company under the Bankruptcy Code in the event the company were to fail.

Subpart \_\_\_\_\_.8 of the proposed rule provides that, prior to issuing any notice of deficiencies, determining to impose requirements or restrictions on a Covered Company, or issuing a divestiture order with respect to a Covered Company that is likely to have a significant impact on a functionally regulated subsidiary or a depository institution subsidiary of the Covered Company, the FRB shall consult with each FSOC member that primarily supervises any such subsidiary and may consult with any other Federal, state, or foreign supervisor as the FRB considers appropriate.

Subpart \_\_\_\_\_.9 of the proposed rule provides that a Resolution Plan submitted shall not have any binding effect on: (i) a court or trustee in a proceeding commenced under the Bankruptcy Code; (ii) a receiver appointed under Title II of the Dodd-Frank Act; (iii) a bridge financial company chartered in connection with a Title II receivership; or (iv) any other authority that is authorized or required to resolve a Covered Company (including any subsidiary or affiliate thereof) under any other provision of Federal, state, or foreign law.

The proposed rule further provides that nothing in the rule creates or is intended to create a private right of action based on a Resolution Plan prepared or submitted under this subpart or based on any action taken by the FRB or the Corporation with respect to any Resolution Plan submitted under this subpart.

In addition, the proposed rule provides that any Covered Company submitting a Resolution Plan or Credit Exposure Report that desires confidential treatment of the

information submitted must file a request for confidential treatment in the manner set forth in the proposed rule.

Subpart \_\_\_\_\_.10 of the proposed rule provides that the FRB and the Corporation may jointly enforce orders issued pursuant to subpart \_\_\_\_\_.7. The FRB, in consultation with the Corporation, may take other enforcement actions related to this subpart against a Covered Company under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

## **CONCLUSION**

Section 165(d) of the Dodd-Frank Act mandates that the FRB require each Covered Company to periodically submit to the FRB, the FSOC, and the Corporation a Resolution Plan and a Credit Exposure Report. Section 165(d)(8) of the Dodd-Frank Act requires the FRB and the Corporation to jointly issue final rules implementing Section 165(d) not later than January 21, 2012. This NPR is issued jointly with the FRB to implement the requirements in Section 165(d) of the Dodd-Frank Act. Thus, Staff recommends that the Board approve publication of the attached Notice of Proposed Rulemaking.

### Staff Contacts

Office of Complex Financial Institutions: Joseph Fellerman (202) 898-6591

Legal: Richard Aboussie (703) 562-2452, David Wall (703) 562-2440, Mark Thompson (703) 562-2529, Lauren Anderson (202) 898-6678, Mark Flanigan (202) 898-7426