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Legal Update

Federal Reserve Issues Tailoring Proposals for Foreign Banking Organizations and Resolution Planning Requirements

On April 8, 2019, the Board of Governors of the Federal Reserve System ("FRB") issued proposals to tailor (i) the enhanced prudential standards that apply to larger foreign banking organizations ("FBOs") (the "April 2019 Proposal") and (ii) the resolution planning requirements that apply to larger FBOs and larger US bank and holding companies ("BHCs"; collectively, "larger banking organizations") (the "ResPlan Proposal"). These proposals complement and expand upon a proposal to tailor the prudential standards for large US BHCs that FRB issued in October 2018 (the "October 2018 Proposal") and are part of FRB's broader effort to implement the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act ("EGRRCPA").[1]

Certain aspects of FRB's tailoring proposals will require corresponding action by the Office of the Comptroller of the Currency and/or the Federal Deposit Insurance Corporation ("FDIC"), which have occurred or are expected to occur in the near future.[2] Comments on the tailoring proposals are due by June 21, 2019.

This Legal Update (i) describes at a high level the background to FRB's tailoring proposals, (ii) explains FRB's proposed approach to categorizing larger FBOs, (iii) outlines the prudential standards that FRB expects to apply to each category of FBO, (iv) describes how FRB and the FDIC propose to tailor the resolution planning requirements for larger banking organizations and (v) presents our initial takeaway on the proposals.

FRB also is considering some changes to the enhanced prudential standards that are not driven by EGRRCPA tailoring. For example, US branches and agencies of FBOs currently are not subject to standardized liquidity requirements. The April 2019 Proposal requests comment on whether FRB should impose standardized liquidity requirements on US branches and agencies, as well as on two potential approaches for doing so. However, FRB also indicates in the April 2019 Proposal that if it decides to go forward with standardized liquidity requirements for US branches and agencies of FBOs, then it will issue a separate proposal for public comment.

Background

Section 165 of the Dodd-Frank Act required FRB and the other federal banking regulators to establish enhanced prudential standards for larger banking organizations, including with respect to capital, liquidity, resolution planning and single-counterparty credit limits.[3] Since 2011, FRB, with the other federal banking regulators, has implemented a number of rules to establish these standards, often defining a larger banking organization as an FBO or US BHC with more than $50 billion in total consolidated assets on a global basis.[4]

In May 2018, Congress passed the EGRRCPA, which in part amended the Dodd-Frank Act.[5] In particular, the EGRRCPA (i) increased the thresholds for defining what is a larger banking organization and (ii) authorized FRB to tailor the application of the enhanced prudential standards to banking organizations.[6]

In October 2018, FRB issued the October 2018 Proposal as a proposal to tailor the enhanced prudential standards (other than the resolution planning requirements) that apply to larger US BHCs and certain savings and loan holding companies ("SLHCs").[7] The October 2018 Proposal would categorize US BHCs and certain SLHCs with more than $100 billion in total consolidated assets into one of four categories. Each category of larger US BHC/SLHC would be subject to a tailored set of enhanced prudential standards.[8]

Proposed Approach to Categorization

FRB's April 2019 Proposal parallels the October 2018 Proposal in that it would establish a categorization system for applying enhanced prudential standards to FBOs and US intermediate holding companies ("US IHCs") with more than $100 billion in total consolidated assets on a global basis ("Categories"), although FBOs and US IHCs with between $50 billion and $100 billion in total consolidated assets on a global basis would remain subject to certain enhanced prudential standards.[9] As described below, once an FBO or US IHC's global size exceeds certain thresholds ($50 billion, $100 billion, or $250 billion), the application of the Categories would be primarily based on an FBO's or IHC's size and activities in the United States.

CATEGORY I

Under the October 2018 Proposal, Category I refers to US banking organizations that are global systemically important banks ("G-SIB"). The April 2019 Proposal states that FRB will not include Category I in the Categories for FBOs because an FBO cannot be a US G-SIB.

CATEGORY II

Category II would consist of FBOs and US IHCs with (i) $700 billion or more in combined US assets or (ii) $100 billion or more in combined US assets and $75 billion or more in cross-jurisdictional activity.

Combined US assets are measured as the sum of the consolidated assets of each top-tier US subsidiary of an FBO (excluding so-called "2(h)(2) companies") and the total assets of each US branch and US agency of the FBO. Cross-jurisdictional activity would be measured as the sum of the cross-jurisdiction assets and liabilities of an FBO's combined US operations or its US IHC, as applicable, excluding intercompany liabilities and collateralized intercompany claims. The April 2019 Proposal appears to recognize the potential difficulty in valuing intercompany transactions by requesting comment on alternatives that would exclude all transactions with non-US affiliates and/or eliminate intercompany liabilities and collateral from the calculation.

CATEGORY III

Category III would consist of FBOs and US IHCs that are not in Category II but have (i) $250 billion or more in combined US assets or (ii) $100 billion or more in combined US assets and $75 billion or more of US nonbank assets, US weighted short-term wholesale funding ("wSTWF") or US off-balance sheet exposure.

wSTWF would be defined as the weighted amount of funding obtained from wholesale counterparties or retail brokered deposits and sweeps with a remaining maturity of one year or less, including relevant exposures between an FBO's US operations and non-US affiliates.[10] US off-balance sheet exposure would be defined as the difference between the total exposure and on-balance sheet assets of an FBO's combined US operations. The application of FBO Category III requirements could vary based on an FBO's level of wSTWF.

CATEGORY IV

Category IV would consist of FBOs and US IHCs that are not in Categories II or III but have at least $100 billion in combined US assets. The application of FBO Category IV requirements could vary based on an FBO's level of wSTWF.

OTHER FBOS

FBOs and US IHCs with at least $50 billion in global total consolidated assets would not be assigned to one of the Categories but would remain subject to certain prudential standards as described below.

OTHER APPROACHES

In the preamble to the April 2019 Proposal, FRB requested comment on whether it should adopt a scoring methodology to assess the risk profile and systemic footprint of an FBO's combined US operations or US IHC and determine the enhanced prudential standards that would apply (instead of the Categories described above). FRB outlined in the preamble how it might apply the G-SIB scoring methodology to FBOs and US IHCs as the scoping criteria for tailoring the enhanced prudential standards and requested comment on this alternative approach.

CHANGES IN CATEGORIES AND INITIAL APPLICATION

The April 2019 Proposal indicates that an FBO or US IHC would determine its Category based on a four-quarter average of each of the thresholds described above and would remain in that Category until it no longer meets a triggering threshold for four consecutive calendar quarters. An FBO/IHC generally would need to comply with a newly applicable requirement as of the first day of the second quarter following the date on which the organization met the criteria for the Category. An FBO and its US IHC could be subject to different Categories, such as if an FBO were in a more stringent Category because of cross-jurisdictional activity in its US branches.

The April 2019 Proposal also provides granular phase-in periods for the initial application of the enhanced prudential standards where they currently do not apply to an organization.

Proposed Application of Prudential Standards

The Categories are intended to serve as a proxy for the risk profile of an FBO's US operations. FBOs and US IHCs in Category II, i.e., those with very large US operations or significant cross-jurisdictional activity, generally would remain subject to the most stringent requirements. FBOs and US IHCs in lower categories or that are uncategorized would be subject to increasingly less stringent requirements, with most requirements dropping out altogether for uncategorized FBOs and US IHCs. As described below, each enhanced prudential standard generally would map to one or more Categories. (See Appendix A for FRB's visual description of the mapping of standards to Categories and expected Categories of existing FBOs.)

CATEGORY II STANDARDS

FBOs and US IHCs in Category II would remain or become subject to the most stringent enhanced prudential standards, akin to what applies to a US G-SIB.[11] Category II FBOs also would continue to be required to establish a US IHC if their US non-branch assets exceeded $50 billion.

The US IHC and US depository institution subsidiaries of a Category II FBO would be subject to the most stringent standardized liquidity, stress testing and capital planning requirements. In a tightening of standards, a US IHC of a Category II FBO (including any subsidiary depository institutions with $10 billion or more in assets) would become subject to the US liquidity coverage ratio ("US LCR") and proposed US net stable funding ratio ("US NSFR"), even if the IHC would not otherwise be subject to those requirements.[12] Furthermore, FRB notes that under the April 2019 Proposal, certain Category II FBOs that currently file the FR 2052a on a monthly basis would be required to file on a daily basis going forward.

The following bullets summarize the Category II standards:

FBO (Combined US Operations including Any US IHC):

- Liquidity risk management requirements, including daily FR 2052a reporting
- Monthly internal liquidity stress testing
- Liquid asset buffer requirements
- US single-counterparty credit limits
- Home-country capital stress testing requirements
- US risk committee, risk management and chief risk officer requirements

US IHC:

- Annual Comprehensive Capital Analysis and Review exercise
- Annual company-run and supervisory stress testing, including FR Y-14 reporting[13]
- Annual capital planning, including assessment by FRB
- Monthly internal liquidity stress testing
- Modified US single-counterparty credit limits
- US capital standards, including the supplementary leverage ratio, countercyclical capital buffer (if applicable) and requirement to recognize most elements of accumulated other comprehensive income in regulatory capital ("AOCI Requirement")[14]
- Daily US LCR and US NSFR requirements[15]

CATEGORY III STANDARDS

FBOs and US IHCs in Category III would remain subject to risk management standards, liquidity requirements, and single-counterparty credit limits. These FBOs also would continue to be required to establish a US IHC if their US non-branch assets exceeded $50 billion.

The US IHC and certain US depository institution subsidiaries of a Category III FBO would continue to be subject to standardized liquidity requirements that vary based on the FBO's level of wSTWF and to stress testing and capital planning requirements that vary based on the IHC's total consolidated assets and risk-based indicators. In a tightening of standards, a US IHC of a Category III FBO (including any subsidiary depository institutions with $10 billion or more in assets) would become subject to reduced versions of the US LCR and US NSFR even if the IHC would not otherwise be subject to those requirements.

The following bullets summarize the Category III standards:

FBO (Combined US Operations including Any US IHC):

- Liquidity risk management requirements, including monthly FR 2052a reporting[16]

- Monthly internal liquidity stress testing
- Liquid asset buffer requirements
- US single-counterparty credit limits
- Home-country capital stress testing requirements
- US risk committee, risk management and chief risk officer requirements

US IHC:

- Annual Comprehensive Capital Analysis and Review exercise
- Annual company-run and supervisory stress testing, including FR Y-14 reporting, but with biennial disclosure of company-run results
- Annual capital planning, including assessment by FRB
- Monthly internal liquidity stress testing
- Modified US single-counterparty credit limits
- US capital standards, including the supplementary leverage ratio and countercyclical capital buffer (if applicable) but not the AOCI Requirement[17]
- Daily US LCR and US NSFR requirements (reduced to 70 percent to 85 percent of the full requirements for US IHCs with less than $75 billion in wSTWF)

CATEGORY IV STANDARDS

FBOs and US IHCs in Category IV would remain subject to risk management standards and liquidity requirements. These FBOs also would continue to be required to establish a US IHC if their US non-branch assets exceeded $50 billion.

The US IHC and certain US depository institution subsidiaries of a Category IV FBO that has $50 billion or more in wSTWF would continue to be subject to standardized liquidity requirements, as well as to stress testing and capital planning requirements that vary based on the IHC's total consolidated assets and risk-based indicators. In a tightening of standards, a US IHC of a Category IV FBO (but not its subsidiary depository institutions) would become subject to reduced versions of the US LCR and US NSFR even if the IHC would not otherwise be subject to those requirements.

The following bullets summarize the Category IV standards:

FBO (Combined US Operations including Any US IHC):

- Reduced liquidity risk management requirements but still including monthly FR 2052a reporting[18]
- Quarterly internal liquidity stress testing
- Reduced liquid asset buffer requirements
- US single-counterparty credit limits (only if the FBO has $250 billion or more in total consolidated assets on a global basis)
- Home-country capital stress testing requirements
- US risk committee, risk management and chief risk officer requirements

US IHC:

- Biennial Comprehensive Capital Analysis and Review exercise
- Biennial supervisory stress testing, including FR Y-14 reporting
- Reduced annual capital planning, including assessment by FRB[19]
- Quarterly internal liquidity stress testing
- US capital standards, not including the supplementary leverage ratio, countercyclical capital buffer or AOCI Requirement
- Monthly US LCR and US NSFR requirements (reduced to 70 percent to 85 percent of the full requirements) if wSTWF is $50 billion or more[20]

STANDARDS FOR OTHER FBOS

Uncategorized FBOs and US IHCs would continue to be subject to certain enhanced prudential standards—generally those related to US risk management requirements and compliance with home-country requirements. These requirements and applicable thresholds are summarized below.

Uncategorized FBOs with these Assets		Requirements
Total Consolidated Assets on a Global Basis	US Assets	
$250 billion or more	Combined US assets of less than $100 billion	Would continue to be required to comply with US single-counterparty credit limits and home-country liquidity stress testing and capital requirements
$100 billion or more	US non-branch assets of $50 billion or more	Would continue to be required to establish a US IHC, although the IHC most likely would be an uncategorized IHC for purposes of the enhanced prudential standards. Uncategorized IHCs would be required to comply with US capital, risk committee and risk management requirements
$100 billion or more	Combined US assets of $50 billion to $100 billion	Would continue to be required to satisfy US risk committee, chief risk officer and risk management requirements
$100 billion or more	Combined US assets of less than $100 billion	Would continue to be required to comply with home-country capital stress testing requirements
$100 billion or more	Combined US assets of less than $50 billion	Would continue to be required to satisfy US risk committee and risk management requirements
$50 billion to $100 billion	N/A	Would be required to comply with US risk committee requirements

STANDARDIZED LIQUIDITY REQUIREMENTS FOR US BRANCHES AND AGENCIES

US branches and agencies of FBOs currently are not subject to standardized liquidity requirements (i.e., US LCR and US NSFR). The April 2019 Proposal requests comment on whether FRB should impose standardized liquidity requirements on US branches and agencies, as well as on two potential approaches for doing so that are summarized below.

However, FRB also indicated in the April 2019 Proposal that if it decides to go forward with standardized liquidity requirements for US branches and agencies of FBOs, then it will issue a separate proposal.

Standardized liquidity requirements currently apply to larger US BHCs and certain larger US SLHCs, as well as to their subsidiary depository institutions that have $10 billion or more in total consolidated assets. US IHCs and US branches and agencies of FBOs currently are not subject to standardized liquidity requirements but are subject to more-limited liquidity requirements in the form of liquidity risk management, liquidity stress testing and liquid asset buffer requirements.[21] The April 2019 Proposal would apply standardized liquidity requirements to larger US IHCs and certain of their subsidiary depository institutions that have $10 billion or more in total consolidated assets.

FRB notes that during stress conditions, liquidity needs may "manifest in all parts of an organization," including an FBO's US branches and agencies. This "could lead to disruptions in US financial stability in a similar manner to the distress or failure of other large banking organizations or segments of [an FBO]." Additionally, US branches of FBOs "tend to rely on less stable, short-term wholesale funding to a greater extent than [US BHCs] because of their structure and business model," which during the 2008 financial crisis, "resulted in [FBOs] borrowing extensively from the Federal Reserve System in order to continue operations."

To strengthen the overall resilience of FBOs' combined US operations and to ensure "a more level playing field for liquidity regulations" across the US operations of FBOs and US banking organizations, FRB is considering (i) imposing standardized liquidity requirements on US branches and agencies of FBOs that are similar to the US LCR and (ii) whether a standardized liquidity requirement that is similar to the US NSFR would be appropriate for US branches and agencies of FBOs. The two potential approaches that FRB is considering for the LCR-like requirements are:

- Applying liquidity requirements that are similar to the US LCR to the aggregate activities of an FBO's US branches and agencies based on the size and risk profile of the FBO's combined US operations. FRB indicates that this approach may facilitate efficiencies with the FBO's existing compliance activities regarding US LCR requirements and FR 2052a reporting.
- Applying a minimum standardized liquidity requirement to an FBO based on the size of the FBO's US branches and agencies in a manner that is designed to function as a floor to the existing, non-standardized liquidity requirements in the enhanced prudential standards. This would require the FBO to hold an amount of liquid assets of prescribed quality that exceed a prescribed percentage of the total assets of the FBO's US branches and agencies. The prescribed percentage could vary depending on how the liquidity requirement interacts with other regulatory standards, such as federal capital equivalency deposit requirements and state asset maintenance requirements.

FRB states that the first approach would be more sensitive to liquidity risk, while the second would be simpler. FRB does not indicate in the April 2019 Proposal the approaches that it is considering for applying the NSFR-like requirement to US branches and agencies of FBOs.

OTHER REQUESTS FOR COMMENT AND PROPOSED CHANGES FOR FBOS

The April 2019 Proposal includes a handful of requests for comment and proposed changes that do not fit neatly into FRB's proposed Categories or the application of the enhanced prudential standards to the Categories and that are summarized below:

- Certain FBOs may have difficulty complying with the enhanced prudential standards because of the status of their ownership structures under non-US law (e.g., US BHCs owned by non-US sovereign wealth funds). The April 2019 Proposal would allow such FBOs to request that the enhanced prudential standards be applied to the top-tier US BHC instead of the FBO.
- The existing definition of "highly liquid assets" for purposes of the liquidity provisions of the

enhanced prudential standards is different from the definition of "high-quality liquid assets" ("HQLA") in the US liquidity coverage ratio requirements. The April 2019 Proposal requests comment on whether the definition in the enhanced prudential standards should be modified to align more closely with the definition of HQLA.

- Various aspects of the tailoring would require changes to FRB reporting forms, including the FR Y-7, FR Y-7Q, FR Y-9C, FR Y-14, FR Y-15 and FR 2052a. These changes are mostly technical in nature (other than the FR 2052a reporting frequency discussed above) and are described at length in Sections III and V of the preamble to the April 2019 Proposal.

PROPOSED CHANGES TO OCTOBER 2018 PROPOSAL

While the April 2019 Proposal primarily addresses the application of enhanced prudential standards to non-US banking organizations, it includes two potentially significant amendments to FRB's October 2018 Proposal for tailoring the enhanced prudential standards that apply to US BHCs:

- US BHCs that are in Category III would be required to compute their "method 1" G-SIB score on an annual basis to determine if they are subject to FRB's G-SIB surcharge.
- US BHCs and savings and loan holding companies that are in Category IV (but not their subsidiary depository institutions) would be required to comply with monthly reduced US LCR and US NSFR requirements if their wSTWF is $50 billion or more.[22]

Proposed Tailoring of Resolution Planning Requirements

The structure of Section 165 of the Dodd-Frank Act separates resolution planning from the other enhanced prudential standards by assigning rulemaking authority for resolution planning to FRB and the FDIC ("Resolution Agencies"). The Resolution Agencies finalized resolution planning requirements in 2011 that apply to larger banking organizations (i.e., US BHCs and FBOs with $50 billion or more in total consolidated assets on a global basis).[23] As noted above, the $50 billion threshold was raised by the EGRRCPA.[24] The ResPlan Proposal therefore represents the Resolution Agencies' proposed tailoring of the resolution planning requirements for larger banking organizations.[25]

The ResPlan Proposal, if adopted, would (i) rely on the "Categories" approach from the October 2018 Proposal and April 2019 Proposal and reduce the frequency of submissions, (ii) streamline the content required to be submitted in resolution plans, (iii) revise the ways in which critical operations are identified, (iv) clarify various aspects of the requirements and (v) establish a transition period for phasing in the revised requirements.

RELIANCE ON "CATEGORIES" APPROACH AND REDUCTION IN SUBMISSION FREQUENCY

The ResPlan Proposal would use the Categories established through the October 2018 Proposal and April 2019 Proposal as the starting point for identifying the larger banking organizations that are subject to the resolution planning requirements. (See Appendix B for the Resolution Agencies' visual description of how the Categories would map to resolution planning requirements.) As with the April 2019 Proposal, the ResPlan Proposal also requests comment on whether the G-SIB scoring methodology should be used as the scoping approach to the resolution planning requirements.

Category I banking organizations (i.e., US G-SIBs) would be subject to the most stringent resolution planning requirements.[26] They would be required to submit resolution plans on a biennial basis instead of annually, as required by the current rules. Additionally, they would be authorized to alternate between filing a full resolution plan and a targeted resolution plan (defined below).

Category II and III banking organizations would be subject to stringent but less frequent resolution planning requirements. They would be required to submit resolution plans on a triennial basis, instead of annually, as required by the current rules. Additionally, they would be authorized to alternate between filing a full resolution plan and a targeted resolution plan.

FBOs that are not in Categories II or III but that have $250 billion or more in total consolidated assets on a global basis would be subject to reduced resolution planning requirements. Additionally, they would be authorized to file a reduced resolution plan (defined below) on a triennial basis after filing their initial full resolution plan.

STREAMLINING OF CONTENT REQUIREMENTS

The ResPlan Proposal would establish three types of resolution plans and a waiver process for filers of full resolution plans and would eliminate the tailored resolution plan.

- **Full resolution plans** would continue to be defined as resolution plans that contain the eight components or information requirements listed in the current rules. The ResPlan Proposal would allow larger banking organizations that are required to file full resolution plans to request a waiver of certain information content requirements based on having achieved a "steady state" or on the requirements becoming less material to the organization over time.[27]
- **Targeted resolution plans** would be a new type of resolution plan that is a subset of a full resolution plan. The Resolution Agencies recognize in the preamble to the ResPlan Proposal that resolution plans "develop and solidify over time," and, therefore, "it is appropriate that certain information be refreshed or updated rather than resubmitted in full." A targeted resolution plan would contain:
    i. Core informational elements regarding capital, liquidity, and recapitalization planning;
    ii. A description of material changes since the filing of the last resolution plan;
    iii. A description of changes made to the resolution plan in response to regulatory requirements, guidance or feedback;
    iv. A public section containing the same 11 informational elements currently required; and
    v. A discussion of any "targeted areas of interest" identified by the Resolution Agencies.
- **Reduced resolution plans** would be a new type of resolution plan that codifies prior relief granted by the Resolution Agencies to individual organizations. A reduced resolution plan would contain descriptions of:
    i. Material changes since the filing of the last resolution plan;
    ii. Changes made to the organization's strategic analysis of resolution planning in response to those material changes; and
    iii. Changes made to the resolution plan in response to regulatory requirements, guidance or feedback.

The requirements for the public section of the reduced resolution plan would be streamlined so that an organization would need to provide only "names of material entities, a description of core business lines, the identities of principal officers, and a high-level description of the firm's resolution strategy, referencing the applicable resolution regimes for its material entities."

The ResPlan Proposal also would eliminate the *tailored resolution plan,* which currently is an option for "bank-centric" organizations that would like to focus their resolution plans on nonbank activities. The Resolution Agencies believe that this type of plan is no longer needed given the reduction in filers due to the EGRRCPA and the introduction of the waiver process and the targeted resolution plan.

REVISIONS TO CRITICAL OPERATIONS PROVISIONS

The ResPlan Proposal would establish a more formalized approach for larger banking organizations and the Resolution Agencies to identify critical operations,[28] request reconsideration of prior identifications and rescind prior identifications. This approach would require larger banking organizations in Categories I, II and III to maintain a process for identifying critical operations that incorporates factors established by the Resolution Agencies. Under the ResPlan Proposal, the Resolution Agencies would be required, not less frequently than every six years, to jointly review the operations of covered companies to determine whether to jointly identify critical operations of any covered company or to jointly rescind any currently effective joint identification. It also would establish criteria for reviewing existing operations to identify critical operations, requesting waivers, requesting reconsideration of previously identified operations and notifying the Resolution Agencies of de-identifications.

CLARIFICATIONS

The preamble to the ResPlan Proposal includes nine clarifications that are reflected in the changes to the rule text. They include:

- Assumptions an FBO should make with respect to how resolution actions it takes outside of the United States should be addressed in its resolution plan
- Application of the resolution planning requirements to an FBO where the top-tier entity is a government, sovereign entity or family trust
- Removal of the concept of the Resolution Agencies having a larger banking organization immediately resubmit a resolution plan due to the incompleteness of the original submission
- Assessment of when an FBO becomes subject to the resolution planning requirements
- Timing of new submissions, organizations that change Categories and notices of extraordinary events (which replaces the concept of notices of material events)
- Expectations for mapping of intragroup interconnections and interdependencies by FBOs
- Standard of review that the Resolution Agencies will apply in reviewing resolution plans
- Deletion of "deficiencies" from the management information systems informational element because of confusion with other parts of the rule
- Continued recognition of the ability to incorporate by reference information from an organization's previously submitted resolution plans

TRANSITION PERIOD

The ResPlan Proposal includes a transition period for phasing in the new approach to resolution plan submissions. Attached at Appendix C is the Resolution Agencies' flowchart describing how the transition period would proceed.

Initial Takeaway

Comments on the proposals are due by June 21, 2019, but that date will be contingent on how quickly the OCC and FDIC act on their corresponding pieces of the proposals and the *Federal Register* publishes the official versions.

At over 500 pre-*Federal Register* pages, we expect that the April 2019 Proposal, the ResPlan Proposal and supplemental materials will provide fertile ground for comment. In particular, we expect to see a number of comments around the retention of the US IHC requirement for FBOs with smaller combined US operations and the potential imposition of the US LCR and/or US NSFR on US branches and agencies of FBOs.

Appendix A

Figure B: Proposed Requirements and Estimated Firm Categories

Proposed Capital and Other Requirements for Foreign Banking Organizations (FBOs)*

	Category II	Category III	Category IV	FBOs with \$50b-\$100b U.S. assets
	≥ \$700b U.S. assets or ≥ \$75b in cross-jurisdictional activity	≥ \$250b U.S assets or ≥ \$75b in nonbank assets, wSTWF, or off-balance sheet exposure	Other firms with \$100b to \$250b U.S assets	≥ \$100b global assets and \$50b to \$100b U.S. assets
IHC	**U.S. IHC requirement**	**U.S. IHC requirement**	**U.S. IHC requirement**	**U.S. IHC requirement**
Capital (IHC)	**Stress testing** • CCAR (annual) • Annual company-run stress testing • Annual supervisory stress testing • Annual capital plan submission	**Stress testing** • CCAR (annual) • Company-run stress testing (two-year cycle) • Annual supervisory stress testing • Annual capital plan submission	**Stress testing** • CCAR (two-year cycle) • Supervisory stress testing (two-year cycle) • Annual capital plan submission	
	Risk-based capital • Countercyclical Buffer • No opt-out of AOCI capital impact	**Risk-based capital** • Countercyclical Buffer • Allow opt-out of AOCI capital impact	**Risk-based capital** • Allow opt-out of AOCI capital impact	**Risk-based capital** • Allow opt-out of AOCI capital impact
	Leverage capital • Supplementary leverage ratio	**Leverage capital** • Supplementary leverage ratio	**Leverage capital**	**Leverage capital**
Other (combined U.S. operations)	**Single-counterparty credit limits (SCCL)** • Meet home country SCCL consistent with Basel • IHC-level SCCL	**SCCL** • Meet home country SCCL consistent with Basel • IHC-level SCCL	**SCCL** • Meet home country SCCL consistent with Basel if global assets ≥ \$250b	**SCCL** • Meet home country SCCL consistent with Basel if global assets ≥ \$250b
	Risk management • U.S. risk committee and chief risk officer	**Risk management** • U.S. risk committee and chief risk officer	**Risk management** • U.S. risk committee and chief risk officer	**Risk management** • U.S. risk committee and chief risk officer

* For IHC and capital standards, "U.S. assets" refers to U.S. non-branch assets. For other standards, "U.S. assets" refers to combined U.S. assets, including U.S. subsidiaries, branches, and agencies. FBOs with limited U.S. presence and global assets of \$100 billion or more would be subject to certain minimum standards.

Glossary: wSTWF – weighted short-term wholesale funding; IHC – intermediate holding company; AOCI – accumulated other comprehensive income; CCAR – Comprehensive Capital Analysis and Review.

Proposed Liquidity Requirements for Foreign Banking Organizations (FBOs)

	Category II or ≥ $75b in wSTWF	Category III with < $75b in wSTWF	Category IV	FBOs with $50b-$100b U.S. assets and ≥ $250b global assets
Liquidity	**Standardized** • Full daily LCR and NSFR (100%) – **IHC**	**Standardized** • Reduced daily LCR and NSFR (70-85%) – **IHC**	**Standardized** • If wSTWF < $50b: No LCR or NSFR • if wSTWF ≥ $50b: o Reduced monthly LCR and NSFR (70-85%) – **IHC**	
	Reporting • Report FR 2052a daily	**Reporting** • Report FR 2052a monthly	**Reporting** • Report FR 2052a monthly	
	Firm-specific • Liquidity stress tests (monthly) • Liquidity risk management	**Firm-specific** • Liquidity stress tests (monthly) • Liquidity risk management	**Firm-specific** • Liquidity stress tests (quarterly) • Reduced liquidity risk management	**Home country requirements** • Home country liquidity stress test

The Board is also requesting comment on whether it should impose standardized liquidity requirements on the U.S. branch and agency network of an FBO, as well as possible approaches for doing so.

Glossary: wSTWF – weighted short-term wholesale funding; LCR – liquidity coverage ratio rule; NSFR – net stable funding ratio proposed rule.

List of Firms and Projected Categories (based on estimated data)[1]

<table>
<tr><th>Category I</th><th>Category II</th><th>Category III</th><th>Category IV</th><th>Other firms</th></tr>
<tr><td>U.S. GSIBs</td><td>≥ $700b U.S. assets or
≥ $75b in cross-jurisdictional activity</td><td>≥ $250b U.S. assets or
≥ $75b in NBA, wSTWF, or off-balance sheet exposure</td><td>Other firms with $100b to $250b U.S. assets</td><td>$50b to $100b in U.S. assets</td></tr>
<tr><td rowspan="2"></td><td colspan="2">Barclays*
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Deutsche Bank*
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Bank of Nova Scotia
Canadian Imperial
Crédit Agricole
I & C Bank of China
Norinchukin
Rabobank</td></tr>
<tr><td></td><td>HSBC
Royal Bank of Canada
UBS</td></tr>
</table>

While Category II and III standards are not the same, foreign banking organizations do not currently report all of the data for the measure of cross-jurisdictional activity and, accordingly, the Board is providing a range of potential firm categorizations.

[1] Projected categories are based on data for Q3 2018. Actual categories would be based on 4-quarter averages.

* - Identifies firms that would be subject to Category III standards with weighted short-term wholesale funding of $75 billion or more if the agencies measure cross-jurisdictional activity for foreign banking organizations based on minimum estimates (i.e., excluding all transactions with non-U.S. affiliates). Firms subject to Category III standards with weighted short-term wholesale funding of $75 billion or more would be subject to full standardized liquidity requirements.

† - Identifies firms that would be subject to Category IV standards with weighted short-term wholesale funding of $50 billion or more. Firms subject to Category IV standards with weighted short-term wholesale funding of $50 billion or more would be subject to reduced standardized liquidity requirements.

Figure A: Resolution Plan Filing Groups[1]

Biennial Filers	Triennial Full Filers		Triennial Reduced Filers
Category I[2]	Category II[3]	Category III[4]	Other FBOs[5]
Two-year cycle • Alternating full and targeted plans	**Three-year cycle** • Alternating full and targeted plans		**Three-year cycle** • Reduced plans
Bank of America Bank of New York Mellon Citigroup Goldman Sachs JPMorgan Chase Morgan Stanley State Street Wells Fargo	Barclays Capital One Credit Suisse Deutsche Bank HSBC Mizuho MUFG Northern Trust PNC Financial Royal Bank of Canada Toronto-Dominion UBS US Bancorp		53 FBOs *See* accompanying list

[1] Please see the accompanying visual "Proposed Resolution Plan Submission Dates" for a visualization of proposed future submissions. Projected categories are based on point in time data. Actual categories would be based on 4-quarter averages.

[2] Firms subject to Category I standards would be the U.S. GSIBs. Any future Council-designated nonbank would file full and targeted plans on a two-year cycle, unless the agencies jointly determine the firm should file full and targeted plans on a three-year cycle.

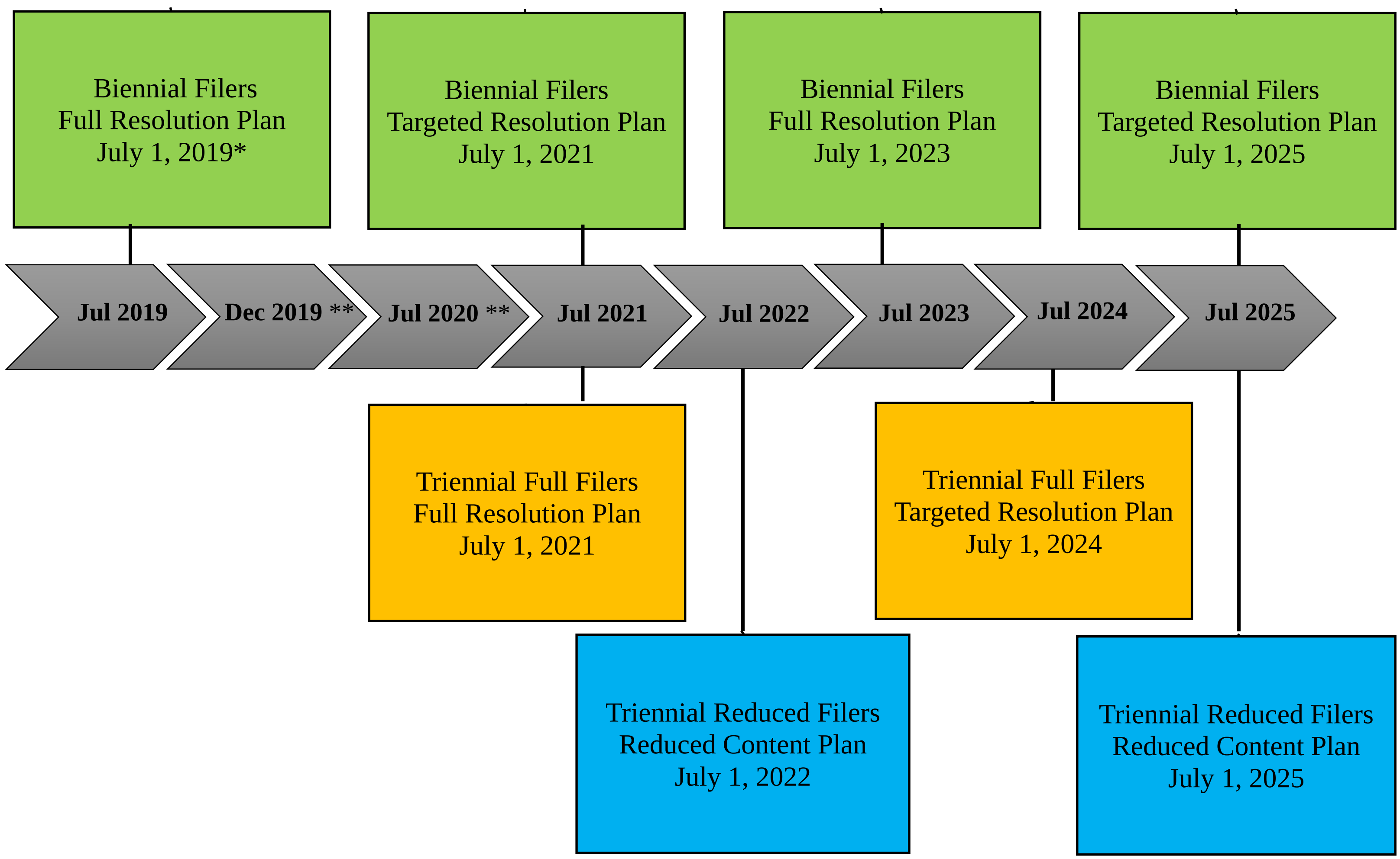
[3] Firms subject to Category II standards would be: (1) U.S. firms with (a) ≥ $700b total consolidated assets; or (b) ≥ $100b total consolidated assets with ≥ $75b in cross-jurisdictional activity and (2) foreign banking organizations (FBOs) with (a) ≥ $700b combined U.S. assets; or (b) ≥ $100b combined U.S. assets with ≥ $75b in cross-jurisdictional activity.

[4] Firms subject to Category III standards would be: (1) U.S. firms with (a) ≥ $250b and < $700b total consolidated assets; or (b) ≥ $100b total consolidated assets with ≥ $75b in nonbank assets, weighted short-term wholesale funding (wSTWF), or off-balance sheet exposure and (2) FBOs with (a) ≥ $250b and < $700b combined U.S. assets; or (b) ≥ $100b combined U.S. assets with ≥ $75b in nonbank assets, wSTWF, or off-balance sheet exposure.

[5] Other FBOs subject to resolution planning pursuant to statute are FBOs with ≥$250b global consolidated assets that are not subject to Category II or Category III standards.

Foreign banking organizations that would be triennial reduced filers		
Agricultural Bank of China	Australia and New Zealand Banking Group	Banco Bradesco
Banco De Sabadell	Banco Do Brasil	Banco Santander
Bank of China	Bank of Communications	Bank of Montreal
Bank of Nova Scotia	Bayerische Landesbank	BBVA Compass
BNP Paribas	BPCE Group	Caisse Federale de Credit Mutuel
Canadian Imperial Bank of Commerce	China Construction Bank Corporation	China Merchants Bank
CITIC Group Corporation	Commerzbank	Commonwealth Bank of Australia
Cooperative Rabobank	Credit Agricole Corporate and Investment Bank	DNB Bank
DZ Bank	Erste Group Bank AG	Hana Financial Group
Industrial and Commercial Bank of China	Industrial Bank of Korea	Intesa Sanpaolo
Itau Unibanco	KB Financial Group	KBC Bank
Landesbank Baden-Weurttemberg	Lloyds Banking Group	National Agricultural Cooperative Federation
National Australia Bank	Nordea Group	Norinchukin Bank
Oversea-Chinese Banking Corporation	Shinhan Bank	Skandinaviska Enskilda Banken
Societe Generale	Standard Chartered Bank	State Bank of India
Sumitomo Mitsui Financial Group	Sumitomo Mitsui Trust Holdings	Svenska Handelsbanken
Swedbank	UniCredit Bank	United Overseas Bank
Westpac Banking Corporation	Woori Bank	

Figure C: Proposed Resolution Plan Submission Dates



* These submissions from the firms ("Biennial Filers" under the proposal) are subject to the requirements of the current Rule.
** In accordance with the agencies' feedback letters dated December 20, 2018 and March 29, 2019, certain firms are to provide updates to their previously-submitted resolution plans.

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[1] Please see our earlier Legal Update on the 2018 legislation: https://www.mayerbrown.com/en/perspectives-events/publications/2018/05/congress-passes-regulatory-reform-for-financial-in.

[2] The FDIC issued its complementary proposals on April 16, 2019. *See* FDIC, *Sunshine Act Meeting Notice* (Apr. 16, 2019), https://www.fdic.gov/news/board/2019/2019-04-16-notice.html. The Comptroller of the Currency is a member of the FDIC's Board of Directors, and his assent to the issuance of an action by the FDIC is generally understood to mean that he will approve a similar action in his capacity as Comptroller.

[3] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 § 165, 124 Stat. 1376, 1423-32 (2010) [*hereinafter* Dodd-Frank Act].

[4] Please see our earlier Legal Update on the implementation of the enhanced prudential standards: https://www.mayerbrown.com/en/perspectives-events/publications/2014/03/federal-reserve-issues-final-regulation-implementi. Certain enhanced prudential standards, such as company-run stress testing and risk committee requirements, have been applied to banking organizations with $10 billion or more in total consolidated assets on a global basis. *See* 12 C.F.R. pt. 252.

[5] The Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. No. 115-174, (2018), *available at* https://www.congress.gov/bill/115th-congress/senate-bill/2155 [*hereinafter* EGRRCPA].

[6] EGRRCPA § 401.

[7] *Federal Reserve Board invites public comment on framework that would more closely match regulations for large banking organizations with their risk profiles* (Oct. 31, 2018), https://www.federalreserve.gov/newsevents/pressreleases/bcreg20181031a.htm.

[8] *See* FRB, *Chart of Proposed Requirements for US Banking Organizations* (Oct. 31, 2018).

[9] US BHCs would be required to determine their Category with respect to total consolidated assets on a global basis. While US IHCs primarily contain an FBO's US-based assets, US IHCs may control non-US-based assets and generally are treated as US BHCs under the April 2019 Proposal.

[10] *See* 12 C.F.R. § 217.406 for the calculations used to adjust (i.e., "weight") an organization's amount of short-term wholesale funding.

[11] Some have speculated that Category II was developed to apply G-SIB-like standards to certain FBOs, as only one US BHC would be a Category II organization under the October 2018 Proposal.

[12] It appears that this change is primarily intended to apply standardized liquidity requirements to certain US IHCs that do not control a bank for purposes of the Bank Holding Company Act of 1956, as amended.

[13] The April 2019 Proposal would eliminate the mid-cycle company-run stress testing requirement for Category II US IHCs and eliminate FR Y-14 reporting for US IHCs with less than $100 billion in total consolidated assets. It also would continue to impose company-run stress testing requirements on non-US savings and loan holding companies with more than $250 billion in total consolidated assets on a global basis, as if they were FBOs.

[14] Consistent with the US regulators current approach to capital requirements, a US IHC and its subsidiary depository institutions would not be required to calculate risk-based capital requirements using the advanced approaches, but the proposed requirements related to mortgage servicing assets, deferred tax assets arising from temporary differences, investments in unconsolidated financial institutions, minority interests and the standardized approach for counterparty credit risk for derivatives exposures would apply to Category II US IHCs and their subsidiary depository institutions as if they were advanced approaches organizations. However, the capital requirements generally would apply to a subsidiary depository institution in the same manner that they apply to the parent US IHC (regardless of Category).

[15] The US LCR and US NSFR would apply to a subsidiary depository institution with $10 billion or more in assets in the same manner that they apply to the parent US IHC.

[16] The FR 2052a would be required on a daily basis if the combined US operations of the FBO had $75 billion or more in weighted short-term wholesale funding.

[17] The proposed requirements related to mortgage servicing assets, deferred tax assets arising from temporary differences, investments in unconsolidated financial institutions and minority interests would apply to Category III and IV US IHCs and their subsidiary depository institutions as if they were non-advanced approaches organizations. Category III and IV US IHCs and their subsidiary depository institutions that are not advanced approaches organizations could elect to use the standardized approach for counterparty credit risk for derivatives exposures, once finalized.

[18] The FR 2052a would be required on a daily basis if the combined US operations of the FBO had $75 billion or more in weighted short-term wholesale funding.

[19] In April 2018, FRB proposed stress buffer requirements that would modify the capital planning requirements. In the preamble to the April 2019 Proposal, FRB states that it intends to propose that the stress buffer requirements for Category IV FBOs be calculated in a manner that aligns to the prospered two-year supervisory stress testing cycle.

[20] Unlike Categories II and III, subsidiary depository institutions would not be subject to US LCR or US NSFR requirements even if the US IHC had $50 billion or more in weighted short-term wholesale funding.

[21] *See, e.g.,* 12 C.F.R. §§ 252.156, 252.157.

[22] This modification to the October 2018 Proposal is intended to conform it to the April 2019 Proposal and would not currently affect any US BHCs.

[23] 76 Fed. Reg. 67,323 (Nov. 1, 2011).

[24] EGRRCPA § 401.

[25] The FDIC has implemented a separate resolution planning requirement for certain US insured depository institutions. 12 C.F.R. § 360.10. That requirement is not addressed in the ResPlan Proposal but is addressed in a separate advanced notice of proposed rulemaking ("ANPR") issued solely by the FDIC on April 16, 2019. FDIC, *supra*. note 2. That ANPR applies only to insured depository institutions and suggests that the FDIC is considering creating "groups" of institutions that are conceptually similar to the "categories" of larger banking organizations in the ResPlan Proposal.

[26] Resolution planning requirements also apply to any designated nonbank financial companies. Currently there are no such companies. The ResPlan proposal indicates that if a nonbank financial company were to be designated in the future, it would be treated as a Category I banking organization unless the Resolution Agencies indicated otherwise.

[27] The Resolution Agencies also would be able to waive certain informational content requirements on their own initiative. Note that a request for a waiver would be deemed approved unless both Resolution Agencies jointly deny it. *See Statement by Martin J. Gruenberg Member, FDIC Board of Directors, Notice of Proposed Rulemaking: Title I Resolution Plans* (Apr. 16, 2019), https://www.fdic.gov/news/news/speeches/spapr1619.html.

[28] "Critical operations" is currently defined as "those operations of the covered company, including associated services, functions and support, the failure or discontinuance of which, in the view of the covered company or as jointly directed by the Board and the Corporation, would pose a threat to the financial stability of the United States." 12 C.F.R. §§ 243.2(g), 381.2(g).