

**Federal Deposit Insurance Corporation  
Board of Governors of the Federal Reserve System**

**Guidance for 2013  
§165(d) Annual Resolution Plan  
Submissions  
by Foreign-Based Covered Companies that  
Submitted Initial Resolution Plans in 2012**

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## **I. Introduction**

### **A. Resolution Plan Requirement.**

Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. §5365(d)) requires certain financial companies (“Covered Companies”) to report periodically to the Board of Governors of the Federal Reserve System (the “Federal Reserve” or “Board”) and the Federal Deposit Insurance Corporation (the “FDIC”) (together “the Agencies”) the Companies’<sup>1</sup> Plans for Rapid and Orderly Resolution in the event of Material Financial Distress or failure. On November 1, 2011 the Agencies promulgated a joint rule (the “Rule”) implementing the provisions of Section 165(d), 12 C.F.R. Parts 243 and 381.<sup>2</sup> Certain Covered Companies meeting criteria set out in the Rule or separately required by the Agencies filed their initial resolution plans in 2012. These Covered Companies must file an annual resolution plan in 2013 (“Plan”). Within the framework and subject to the requirements of the Rule, this document provides further clarification, guidance and direction for the preparation of a Non-U.S. Covered Company’s Plan.

### **B. Extension of Filing Date.**

Plan submissions for 2013: The submission date for 2013 Plans filed by Covered Companies that filed their initial resolution plans in 2012 has been extended to October 1, 2013, pursuant to Subparts 243.3(c)(2) and 381.3(c)(2). Plans may be filed on an earlier date, but the 2013 Plans will be considered to have been submitted on October 1, 2013, for purposes of Subparts 243.5(a) and 381.5(a) of the Rule.

### **C. Format of 2013 Plan.**

1. **Executive Summary.** The Plan shall contain an executive summary consistent with the Rule, which must include, among other things, a concise description of the key elements of the Covered Company’s strategy for an orderly resolution. In addition, the executive summary should include a discussion of how significant weaknesses in and impediments to the effective and timely execution of the Covered Company’s Plan for a Rapid and Orderly Resolution would be addressed in the Company’s resolution strategy.
2. **Narrative.** The Plan shall include a strategic analysis consistent with the Rule. This analysis should take the form of a concise narrative that enhances the readability and understanding of the Covered Company’s discussion of its strategy for Rapid and Orderly Resolution in bankruptcy or other applicable insolvency regimes (“Narrative”). The Narrative should include a discussion of how significant material weaknesses and impediments identified in a Covered Company’s Plan for a Rapid and Orderly Resolution would be addressed in the Covered Company’s strategic approach. The Narrative also should include a high level discussion of how the Covered Company is addressing or intends to address five key impediments jointly identified by the Agencies during review of the 2012 plan(s) (“Obstacles”) (see Section II.A.) This is not an exhaustive list and does not preclude identification of further impediments. The Attachment to this

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<sup>1</sup> Capitalized terms which are not defined herein have the meaning set forth in the Rule.

<sup>2</sup> 76 Fed. Reg. 67323 (November 1, 2011).

guidance contains additional detail about how the Covered Company should discuss the Obstacles in its Appendices.

3. **Appendices.** The Plan should contain a sufficient level of detail and analysis to substantiate and support the strategy described in the Narrative. Such detail and analysis should be included in appendices that are distinct from and clearly referenced in the related parts of the Narrative (“Appendices”).
4. **Public Section.** The Plan must be divided into a public section and a confidential section consistent with the requirements of the Rule.
5. **Other Informational Requirements.** The Plan must comply with all other informational requirements of the Rule. The Covered Company may incorporate by reference previously submitted information (with appropriate updates to ensure continuing accuracy of such information) as provided in the Rule.

#### **D. Guidance for 2013 Plan.**

Pursuant to the Rule, the Agencies will review each initial and subsequent annual Plan. If, following such a review, the Agencies jointly determine that a Plan is not credible or would not facilitate an orderly resolution of the Covered Company under the Bankruptcy Code, the Board and the FDIC will jointly notify the Covered Company in writing of such determination. Such notice will identify the aspects of the Plan that the Board and the FDIC jointly determined to be deficient and request the resubmission of a Plan that remedies the deficiencies of the Plan.

Foreign-Based Covered Companies should read this guidance in light of Subparts 243.4(a)(2) and 381.4(a)(2) of the Rule. The Covered Company’s Plan should: (1) address Critical Operations (as defined in Subparts 243.2(g) and 381.2(g) of the Rule) that are conducted in whole or material part in the United States; and (2) identify, describe in detail, and map to legal entity the interconnections and interdependencies, as required in Subparts 243.4(g) and 381.4(g) of the Rule, among (a) the Covered Company’s U.S. Offices,<sup>3</sup> and (b) Critical Operations (including those that are not conducted in whole or material part in the United States) of the Covered Company and any non-U.S. based affiliate.

#### **E. Permissible Resolution Strategies in 2013 Plan.**

For 2013, Covered Companies that filed an initial resolution plan in 2012 may submit a Plan that is based on:

1. The Bankruptcy<sup>4</sup> or failure of all Material Entities; or
2. A Bankruptcy of the parent holding company or U.S. parent, as may be applicable, and a limited number (if any) of Material Entities; or

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<sup>3</sup> “Offices” means subsidiaries, branches, and agencies.

<sup>4</sup> Bankruptcy encompasses a proceeding under the U.S. Bankruptcy Code as well as a proceeding under another applicable insolvency regime.

3. The Bankruptcy of one or more Material Entities within the Covered Company, and the Covered Company is compartmentalized in a manner that mitigates the risk that such Bankruptcy(ies) would result in other Material Entities entering resolution regimes.

A Covered Company may submit a modified version of its 2012 Plan under this section.

#### **F. New and Updated Information Required.**

The 2013 Plan should describe in the Narrative (i) any newly identified Material Entities;<sup>5</sup> (ii) any material structural, organizational, or business practice changes since 2012 (for example, due to the purchase or sale of a business line) and how these changes affect the resolution; and (iii) any new or newly-identified weaknesses in or impediments to resolution. The Plan should provide an update on the Covered Company's efforts to remediate or otherwise mitigate weaknesses in or impediments to the effective and timely execution of the Covered Company's Plan for Rapid and Orderly Resolution as identified in the Covered Company's 2012 plan. In the event that the Covered Company received a joint written request from the Agencies for additional information in connection with the Agencies' completeness review of the Company's 2012 Plan, the 2013 Plan should contain all such additional information.

1. **Additional Format and Content Guidance.** The Plan's strategic analysis should be presented in a concise Narrative form that discusses the Covered Company's overall resolution strategy under the U.S. Bankruptcy Code and/or other appropriate insolvency regimes. The Narrative should discuss the critical steps of the resolution process and how identified weaknesses or impediments may be addressed.

As mentioned in Section I.C.2 above and more fully described below, the Plan should include in the Narrative a description of the Covered Company's resolution strategy. The Narrative should be supported by Appendices containing the underlying detail and analysis. The following guidelines should be observed:

- a. Identify and describe the Covered Company's Critical Operations.
- b. List all current Material Entities (those covered in the 2012 plan plus any newly designated entities) and their jurisdictions.
- c. Describe how each Critical Operation is supported by relevant Material Entities.
- d. Describe the resolution process for each Material Entity.
- e. Describe the strategy for each Critical Operation through the resolution process so as to minimize any negative impact on financial stability of the failure of one or more Material Entities supporting the Critical Operation.
- f. The assumptions are described in Section II.C below. If additional

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<sup>5</sup> See discussion of the criteria for designating additional Material Entities in Section II.E. below.

assumptions are made by the Covered Company, provide the rationale and supporting analysis for each such assumption.

- g. State what steps the Covered Company is taking or proposes to take to remediate or otherwise mitigate the identified weaknesses and impediments. The remedial or other mitigatory actions should, if they are not already, be included in (a) project plan(s), the details of which should be discussed in the Narrative. Such project plan(s) (both new and updated, if previously described in the 2012 Plan), should include specific information regarding (i) the project budget and approval process, (ii) project coordination and staffing, (iii) major milestones and expected completion dates, and (iv) the impact the successful completion of the project is expected to have on remediating or otherwise mitigating the identified weaknesses in and impediments to the effective and timely execution of the Covered Company's strategies for Rapid and Orderly Resolution.
- h. Explain how the Covered Company's strategies affect Core Business Lines.
- i. Supporting information included in the Appendices should be referenced in the Narrative itself.
- j. Information that was included in the Covered Company's 2012 Plan and continues to be current and applicable may be incorporated by reference into the 2013 Plan.
- k. Information that supports several sections of the Narrative does not need to be repeated in multiple sections, but can be referenced where provided elsewhere.
- l. The 2013 submissions should be in a searchable format, including page numbering.

## **II. Identified Obstacles**

### **A. Identified Obstacles and Identified Proposed Mitigants.**

As a result of their review of the 2012 Plan, the Agencies have identified an initial set of significant Obstacles to Rapid and Orderly Resolution. This list of Obstacles is not exhaustive and does not preclude other Obstacles from being identified by the Agencies in the future, nor does it preclude Covered Companies from identifying and addressing other weaknesses or potential impediments to resolution. Each Obstacle should be discussed in its own section of the Narrative. In the Narrative, the Covered Company should describe the relationship of each Obstacle to the Covered Company's resolution strategy and discuss the actions or steps it has taken or proposes to take to remediate or otherwise mitigate each Obstacle, including a timeline for remedial or other mitigatory actions.

1. **Multiple Competing Insolvencies.** The risk of discontinuity of Critical Operations, systemic consequences and/or uncertainty of outcome, that could be created under certain circumstances by multiple, competing insolvency proceedings under different insolvency frameworks and/or administered in multiple jurisdictions. If the Plan envisions only one or several Material Entities entering an insolvency regime, the Plan must identify what actions need to be taken and/or structural enhancements made prior to the filing to ensure that the material operating and service entities that are not undergoing restructuring continue to have access to the capital, liquidity, services, data and other assets required to continue operations.
2. **Global Cooperation.** The risk that actions (or non-actions) of a Covered Company could incent home and host supervisors or resolution authorities or third parties to take actions (or abstain from actions) that could result in ring-fencing of assets or lead to other outcomes that could exacerbate financial instability in the United States and/or loss of franchise value, as well as uncertainty in the markets.
3. **Operations and Interconnectedness.** The risk that services provided by an affiliate or third party might be interrupted, or financial market utility (“FMU”) access and/or payment and clearing capabilities might be lost; an affiliate or third party might fail to perform service level agreements; the Covered Company might experience interruption or loss of data and IT services; liquidation of a counterparty might negatively impact the Covered Company’s operations; cross-default provisions might be exercised; a counterparty might exercise contract rejection powers or might be excused from the continued provision of rights which are available to a counterparty under applicable law or by contract.
4. **Counterparty Actions.** The risk of counterparty actions, including derivative and repo unwinds, of a volume sufficient to create operational challenges for the Covered Company or its FMUs and/or systemic market disruption or financial instability in the United States.
5. **Funding and Liquidity.** The risk of insufficient liquidity at one or more Material Entities, or in one or more jurisdictions, to maintain Critical Operations, including increased margin requirements, acceleration, termination, inability to roll over short term borrowings, default interest rate obligations, loss of access to alternative sources of credit, and/or additional expenses of restructuring.

In addition to addressing these Obstacles in the Narrative, Covered Companies also should address in the Plan Appendices the issues and further analysis related to the Obstacles as set forth in the Attachment to this guidance.

## **B. General Description of Bankruptcy.**

The Narrative should contain an indicative description of the process the Covered Company would undertake to identify the need to commence a Bankruptcy case and a general description of the steps it could be expected to take to progress through Bankruptcy, including pre-filing actions and decisions, filing, Bankruptcy administration actions and developing an exit strategy. The Narrative should include, at a minimum, the following:

1. A description of the process that the Covered Company would use to determine that recovery is not feasible and that resolution is the appropriate option for the firm, including a description of the specific factors that would be considered by the Board of Directors of the parent company and the Boards of Directors of affected Material Entities voluntarily to place such entity in Bankruptcy. The Covered Company should assume a runway of not more than 30 days prior to entry into Bankruptcy.
2. A description of:
  - a. The actions that could be taken by the Covered Company during the 30-day runway period, including the sale, liquidation or spin-off of any assets or business lines;
  - b. Expected differences in access to funding from the present-day state, both during the 30-day runway period and following entry into resolution proceedings;
  - c. The order in which affected Material Entities would be expected to be placed into resolution and an explanation as to the Covered Company's ability to control that sequencing;
  - d. The effects, both internally to the Covered Company and externally to counterparties and other affected parties, if the Material Entities were to enter resolution in a sequence other than that described in the previous subsection (e.g., increased complexity, cost, or delay, client access to funds, failure occurring in middle of week, etc.);
  - e. The arrangements that would need to be made prior to the Bankruptcy filing in order for the Bankruptcy to proceed in a rapid and orderly fashion as provided in the Rule; and
  - f. The Covered Company's expected means of exit from Bankruptcy. If the expected exit is by means of a Chapter 11 plan of reorganization, the Plan should describe the major terms of the plan of reorganization, including the means of recapitalizing the Covered Company.
3. A high-level description of the following aspects (either in advance or after commencement) of the Bankruptcy process:
  - a. Process for arranging debtor-in-possession financing, consents to use of cash collateral and/or other means of providing liquidity to the Material Entities during the reorganization process (including Material Entities not participating in the Bankruptcy);
  - b. Whether it is necessary to obtain and, if so, the process for obtaining agreements from a sufficient number of financial participants and other financial contract counterparties to forego contractual termination rights both with respect to the Material Entities entering Bankruptcy and the Material Entities not entering Bankruptcy that would be affected by a cross-default

provision, to prevent the Bankruptcy filing from impacting the Covered Company's ability to reorganize and to prevent any systemic consequences;

- c. Whether it is necessary to obtain and, if so, the process for obtaining consents from executory contract counterparties to continue providing critical services, including access to FMUs and MIS systems, where such performance would otherwise be excused by contractual default provisions or applicable law;
- d. Actions expected to be taken during the Bankruptcy administration period, including the sale of any key assets outside of a plan of reorganization and the winding down of certain activities. The foregoing should include an estimate of the time period required to accomplish each major action, whether the actions are to occur concurrently or serially, and an estimate of the anticipated costs; and
- e. The expected treatment of the various classes of creditors and shareholders under the Chapter 11 plan of reorganization, and the ultimate effect of the plan on significant counterparties, and other significant stakeholders.

### **C. Assumptions.**

The Plan should include (or not include, as indicated below) the following assumptions about the condition of the Covered Company and the condition of the markets. The Plan should be based on the current state of the applicable legal and policy frameworks. Pending legislation or regulatory actions may be discussed as additional considerations. Any other assumption made in the Plan should be identified as such, and the Plan should provide supporting justification for it:

1. The Covered Company must submit a Plan that does not rely on the provision of extraordinary support by the United States or any other government to the Covered Company or its subsidiaries to prevent the failure of the Covered Company.<sup>6</sup> In addition, the Covered Company may provide a supplemental analysis that includes the provision of support (extraordinary or otherwise) by its home government, provided that the Covered Company supports the reasonableness of such analysis.
2. The Covered Company should not assume the availability of any unsecured funding immediately prior to filing for Bankruptcy.
3. The resolution strategy being applied under the baseline scenario may be based on an idiosyncratic event or action. If the idiosyncratic assumption is continued for adverse and severely adverse scenarios, the Covered Company should justify continued use of that assumption, consistent with the conditions of the economic scenario.
4. Within the context of the applicable idiosyncratic scenario, markets are functioning and competitors are in a position to take on business. If a Covered

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<sup>6</sup> 12 C.F.R. §§ 243.4(a)(4)(ii) and 381.4(a)(4)(ii).

Company's Plan assumes the sale of assets, the Covered Company should take into account all issues surrounding its ability to sell in market conditions present in the applicable economic condition at the time of sale (i.e., the Covered Company should take into consideration the size and scale of its operations as well as issues of separation and transfer.)

5. The Covered Company must take into account that Material Financial Distress or failure of the Covered Company may occur under the baseline, adverse and severely adverse economic conditions as described in Section II.D., Stress Scenarios.<sup>7</sup>

Material Financial Distress with regard to a Covered Company<sup>8</sup> means that:

- a. The Covered Company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the Company to avoid such depletion;
- b. The assets of the Covered Company are, or are likely to be, less than its obligations to creditors and others; or
- c. The Covered Company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

#### **D. Stress Scenarios.**

The Rule requires that a Plan must “take into account that [such] Material Financial Distress or failure of the Covered Company may occur under the baseline, adverse and severely adverse economic conditions provided to the Covered Company by the Board pursuant to 12 U.S.C. 5365(i)(1)(B).”<sup>9</sup> For purposes of the 2013 Plan, responding to the following questions in the Narrative will address this requirement. (Covered Companies should assume that the scenarios for the fourth quarter of 2012 (4Q12) set forth below reflect the U.S. and international economic environment at the time of the Covered Company's failure. For the 2013 submission, each Covered Company should assume that the global operations are subject to the environment set forth in these scenarios.

1. Are the resolution strategies, identified impediments to resolution, and proposed mitigants described in the 2012 Plan reflective of the firm's failure in an economic environment consistent with the 4Q12 Baseline Scenario? If not, how would they change to reflect such an environment?
2. How would the resolution strategies, identified impediments to resolution, and proposed mitigants reflected in the Covered Company's 4Q12 Baseline Scenario change if the economic environment at the time of failure was consistent with: (a) 4Q12 of the Adverse Scenario; and (b) 4Q12 of the Severely Adverse Scenario? Do not assume a one-time trading portfolio shock.

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<sup>7</sup> 12 C.F.R. §§ 243.4(a)(4)(i) and 381.4(a)(4)(i).

<sup>8</sup> 12 C.F.R. §§ 243.2(m) and 381.2(m).

<sup>9</sup> 12 C.F.R. §§ 243.4(a)(4)(i) and 381.4(a)(4)(i).



## **E. Material Entities.**

1. As indicated in Section I.F. above, Covered Companies should reassess their Material Entity designations. Material Entities should encompass those entities, including Offices, that are significant to the activities of a Critical Operation or Core Business Line. If the abrupt disruption or cessation of a Core Business Line might have systemic consequences to the financial stability of the United States, the entities essential to the continuation of such Core Business Line should be considered for Material Entity designation. Material Entities may include the following types of entities:
  - a. Any Office, wherever located, that is significant to the activities of a Critical Operation.
  - b. Any Office, wherever located, whose provision or support of global treasury operations, funding, or liquidity activities (inclusive of intercompany transactions) is significant to the activities of a Critical Operation.
  - c. Any Office, wherever located, that would provide material operational support in Resolution (key personnel, information technology, data centers, real estate or other shared services) to the activities of a Critical Operation.
  - d. Any Office, wherever located, that is engaged in derivatives booking activity that is significant to the activities of a Critical Operation, including those that conduct either the internal hedge side or the client-facing side of a transaction.
  - e. Any Office, wherever located, engaged in asset custody or asset management that are significant to the activities of a Critical Operation.
  - f. Any Office, wherever located, holding licenses or memberships in clearinghouses, exchanges, or other FMUs that are significant to the activities of a Critical Operation.
2. If the 2013 Plan identifies Material Entities that were not included in the 2012 Plan, the strategic analysis should address each newly-identified Material Entity, as well as the other information called for by Subparts 243.4(a) and 381.4(a) of the Rule with respect to such entity.

## **Attachment**

When discussing the Obstacles (see Section II.A. above), the Appendices of the Plan should be in separate attachments from the Narrative section and should address the following:

### **A. Global Cooperation.**

1. Based on the powers and duties of regulatory and resolution authorities under current law and regulation, enumerate, on a jurisdiction-by-jurisdiction basis for each jurisdiction hosting a Material Entity (including a branch):
  - a. The actions the Covered Company would need to take;
  - b. The specific mandatory and discretionary actions or forbearances that regulatory and resolution authorities would need to take;
  - c. Any legal rights and obligations such authorities would need to delay or forgo exercising, for the Covered Company's resolution strategies to be effective; and
  - d. In connection with the foregoing, identify and quantify, among other things, the actions the Covered Company and the authorities would each need to take and/or forbear from taking to avoid the adverse consequences of ring-fencing by host jurisdictions, including the loss of data or services.
2. Describe the consequences for the Covered Company's resolution strategy in each jurisdiction if the specific actions were not taken, delayed, or forgone, as relevant.
3. Explain how the Covered Company would ensure continuity of Critical Operations and data access if the actions described were not taken, delayed or foregone, as relevant.

### **B. Operations and Interconnectedness**

#### **1. Payment, Clearing and Settlement Activities.**

Describe the Covered Company's strategies for meeting its payment, clearing, and settlement obligations in the event access to some, or all, services provided by critical FMUs (as defined in 12 U.S.C. § 5462(6)) and/or third party agents is restricted or unavailable in resolution. The discussion should consider the imposition of higher margin and collateral requirements, restrictions on clearing and settlement activity across different product types, and the impact of suspension or termination of the Covered Company's membership across any or all entities. Provide a response for each of the Covered Company's top 20 FMU providers, including U.S. and non-U.S. FMUs, agent banks and exchanges. The response should discuss, at a minimum, the following:

- a. Access to sufficient available liquidity and collateral to meet obligations to the FMU, counterparties and clients;
- b. Operational back-up arrangements (e.g., bilateral) to ensure the continuity of Critical Operations through an orderly wind-down and/or until client accounts can be transferred to another provider;
- c. The ability of impacted clients to transfer business to a third party provider with minimal disruption, and estimate of expected timeframe;

- d. The impact on Material Entities that rely on one or more affiliates or non-affiliated third parties for indirect access to the FMU;
  - e. The degree of reliance of the Covered Company upon an assumption of regulatory coordination and cooperation with FMUs, considering jurisdiction of FMUs and/or third party agents; and
  - f. The instances in which an FMU is required (as opposed to permitted) to take action upon insolvency or prior to insolvency.
2. Interconnectedness and Shared Services.
- a. Identify and discuss mitigation strategies for potential multiple resolution triggers such as parent guarantees, cross-defaults of financial and service contracts, ratings downgrade or withdrawal, loss of FMU memberships, or local regulatory requirements. Identify actions to ensure continuation of third party services. Describe the Covered Company's processes for addressing the disruption of shared internal and external services (e.g., information technology, treasury, finance, human resources and facilities (data/network and operating centers), service level agreements (SLAs), licenses, access to key operational employees etc.) in resolution. The discussion should identify any actions to ensure continuation of such services taking into consideration the following:
    - i. Operational back-up arrangements;
    - ii. Funding and liquidity support; and
    - iii. Restrictions associated with U.S. and non-U.S. laws and regulations (e.g., data protection laws.)
  - b. With respect to information technology, include a discussion of the following:
    - i. Describe MIS applications/systems and tools as well as those proprietary assets that are necessary to operate and maintain Critical Operations during resolution, and explain any challenges that may limit the use of these applications/systems, tools and assets. Identify ownership of intellectual property critical to operate Material Entities through resolution scenarios and discuss any impact on intellectual property rights that may occur upon insolvency and any impact this may have on the functionality of critical MIS systems or other Critical Operations.
    - ii. Describe where the personnel responsible for managing MIS master data described above are employed (by legal entity) and where they reside (globally). Identify key employees. Discuss how the Covered Company plans to retain the personnel necessary to provide such services in a resolution.
    - iii. List the location of the Covered Company's data/network centers and legal entities where the Covered Company's MIS master data and proprietary data assets are managed. Identify the legal ownership of such data.
    - iv. Include detailed process mapping (diagrams) of the Covered

Company's Critical Operations with its top-tier applications/systems, data centers and master data repositories that are required to support its core lines of business and Material Entities.

- c. With respect to material service level agreements, include a discussion of the following:
  - i. Describe the process of how the Covered Company initiates, manages and tracks its SLAs. Describe any operating procedures and controls for negotiating, documenting and terminating SLAs.
  - ii. Provide a summary of services rendered by and received from each Material Entity, including the cost and transfer pricing of each service.
  - iii. Identify any services for which the Covered Company does not have formal written SLAs with inter-affiliate service providers in support of Material Entities.
- d. Identify and describe any projects or actions the Covered Company has undertaken or plans to initiate to maintain and preserve access to the Covered Company's critical shared services and facilities. Alternatives to the present shared services legal structure may include, but need not be limited to: pre-funding, bankruptcy remote entities, subsidiarization, or moving services into an insured depository institution or subsidiary thereof.

### **C. Counterparty Actions**

#### **1. Global Derivatives.**

- a. Identify and develop a plan to mitigate the occurrence of financial contract triggers arising from parent guarantees, cross-defaults, ratings downgrade or withdrawal.
- b. Ensure collateral is identified, in correct amounts, by jurisdiction.
- c. Discuss how the Covered Company's current global booking practices, portfolio hedging practices and risk management processes (including inter-affiliate derivatives, counterparty facing derivatives and cleared derivatives) could expose the Covered Company to vulnerabilities in resolution.
  - i. Describe guarantees from and between Material Entities associated with derivative transactions.
  - ii. Describe how the legal vehicles in which derivatives are booked and managed might be affected by the insolvency of the parent company or any other affiliate.
  - iii. Describe any derivatives relationships that involve affiliate back-to-back trades or split trades. Discuss potential complications, including without limitation loss of netting benefits that could arise if any of the internal counterparties to the derivatives become insolvent or if the parent company becomes insolvent. Indicate when any such relationships or transactions cross borders and discuss potential conflicts among applicable insolvency regimes.
  - iv. Identify and quantify how Covered Company portfolio hedging

strategies could be impacted by the loss of inter-affiliate relationships in resolution, which loss could leave positions un-hedged and create additional risk in insolvency and/or resolution. Discuss current and potential mitigation steps and processes to help reduce this risk.

- d. In the context of insolvency and/or resolution, discuss the potential impact on Material Entities from delays in unwind/settlement of internal and external derivatives contracts. Address both cleared and uncleared derivatives. Highlight any potential delays that are driven by different jurisdictions' treatment of a non-defaulting counterparty's termination rights in an insolvency proceeding. Include a discussion of the potential impact of master netting agreements entered into by Material Entities on a Rapid and Orderly Resolution.
- e. If the resolution plan for a Material Entity involves a bridge bank receivership, discuss how legal rights of counterparties with cross-defaults might affect the transfer of the derivative book to the bridge bank and how the Covered Company plans to address any potential issues.
- f. Describe how the Covered Company would address contractual legal rights of the Covered Company's top ten derivatives counterparties, such as early termination events and cross-defaults in resolution, including the items described in subparagraphs i through iii listed immediately below. Indicate whether any of the Covered Company's relationships with such counterparties are governed by non-ISDA or non-standard ISDA documentation.
  - i. Timing of the designation of early termination dates;
  - ii. The limited reach of stays on termination rights; and
  - iii. The role of credit support providers, such as guarantors.
- g. Detail the most likely close-out scenarios for cleared derivatives entered into by Material Entities upon the insolvency of the Material Entity(ies) that entered into such cleared derivatives, the insolvency of the parent company and the insolvency of an affiliate.

2. Collateral Management.

- a. Describe how the Covered Company would manage collateral processes in resolution at each Material Entity that either pledges or holds third-party collateral, regardless of where the Material Entity is domiciled. The discussion should address and describe the following:
  - i. The ability of the Covered Company quickly to identify and determine its legal rights to all pieces of collateral pledged to, pledged by, or held in custody by any legal entity in the Covered Company after the commencement of resolution proceedings;
  - ii. The ability of the Covered Company readily to identify the amount, level and type of collateral by jurisdiction and the effects of rehypothecation (both of held collateral from counterparties and collateral pledged to counterparties), including the effects of cross-border source and use of collateral, on such ability;

- iii. The rights of counterparties to seize collateral preemptively and post-insolvency;
  - iv. How insolvency proceedings would impact any arrangement involving collateral pledged across borders between a Material Entity and a party in a different jurisdiction;
  - v. How the collateral management policy and the laws and regulations of all relevant Material Entities' jurisdictions of organization and home domicile (if different than jurisdiction of organization) would impact resolution; and
  - vi. The current applications, systems and/or tools that are used in the collateral management process at the Covered Company and how these would be affected by the insolvency of any Material Entity, and whether or how these processes differ for interaffiliate pledging and custodianship.
- b. Describe the valuation processes for underlying transactions and associated collateral that are currently in use by each Material Entity. Please include the following:
- i. Any potential complications to resolution associated with contractual agreements providing for cross-collateralization and/or cross-netting of obligations among Material Entities and other affiliated legal entities;
  - ii. Policies for posting and requiring collateral with respect to over-the-counter derivatives counterparties, including frequency and method of calculating exposure for in-the-money positions and out-of-the-money positions for collateral purposes and how netting is used in such calculations. State whether such policies vary by counterparty type and/or geographic jurisdiction, and state the approximate percentage of each Material Entity's derivatives exposure that is collateralized;
  - iii. Policies for requiring return of collateral that a Material Entity has posted to its counterparties in the event of overcollateralization to such counterparties; and
  - iv. The impact on the Covered Company's valuation processes of the insolvency of a Material Entity, and whether the impact differs depending on whether the applicable process is centralized or outsourced.
  - v. The impact of insolvency on any services and/or technology on which a Material Entity relies to complete the valuation of outstanding derivatives obligations. The Covered Company's response should indicate whether the Material Entity relies on an affiliate, third party or both to provide valuation or technology services with regard to collateral that the Material Entity has collected or expects to receive from counterparties and/or collateral that the Material Entity has posted to counterparties.

- c. Describe the Covered Company's policies and procedures for determining the valuation of outstanding obligations under inter-affiliate and third-party derivative contracts upon a close-out event (as specified in the contract), including in the event that one party is exercising its right (as specified in the contract) to initiate close-out. Indicate how such procedures would differ if a Covered Company entity that is party to the contract is insolvent or is otherwise in default.

**D. Funding and Liquidity.**

1. Identify the funding sources and uses, by legal entity and jurisdiction, to allow operating and service entities to maintain Critical Operations and avoid multiple receiverships. Quantify the amount of additional liquidity needed arising from collateral requirements and counterparty and customer actions, both from contractual and contingent/guarantee obligations.
2. Describe the effect on the Covered Company's ability to continue funding Material Entities and Critical Operations if portions of the Covered Company's liquidity become trapped in particular jurisdictions or resolution regimes, including the following:
  - a. The extent to which timing of the insolvency filing might affect (i) the risk of liquidity being trapped in particular jurisdictions or insolvency regimes or (ii) the ability of depositors to retain their rights to sweep or withdraw deposits. Discuss any daily or other periodic transfer of funds across national borders;
  - b. Any potential mitigants by which the Covered Company might lessen the likelihood that regulators in the jurisdiction housing a funding hub might restrict the transfer of liquidity out of that jurisdiction;
  - c. Any potential mitigants by which the Covered Company might lessen the impact of liquidity being trapped in particular jurisdictions or insolvency regimes on the funding of Critical Operations in the Covered Company's global network including the identification of the alternative funding sources that would be required; and
  - d. The ability of the Covered Company's liquidity strategy to avoid or minimize the number of insolvency proceedings.
3. Describe the challenges each Material Entity (including material Offices, wherever located) surviving resolution would face in securing funding sources (including contingent funding). Include a qualitative and quantitative discussion of the following:
  - a. The effect of resolution on existing funding sources due to contractual or non-contractual triggers and/or actions by counterparties to mitigate exposure to the Covered Company;
  - b. The impact of resolution on existing contingent funding sources, both private (liquidity buffer, overnight or intraday lines) and public (Discount Window, Federal Home Loan Bank, foreign central banks);
  - c. The actions required to replace or supplement loss of existing funding sources; and

- d. If the Covered Company's resolution strategy requires the FDIC to make funds available to a Material Entity that is (i) an insured depository institution or (ii) a subsidiary of an insured depository institution, the amount expected to be required and the Material Entity involved. Please provide this amount per Material Entity, in the aggregate per scenario and with and without ring-fencing or other liquidity trapping events.
4. Provide for each overall resolution strategy a liquidity needs schedule over time during resolution, factoring in the analyses developed in subparagraph II.B.3.d and Appendix subparagraph D.1 through 3 above, and specifying the assumptions regarding the following:
  - a. Counterparty and customer responses to resolution (e.g. loss of funding, withdrawal of deposits, etc.);
  - b. Contractual provisions triggered by resolution (e.g. identify the impact of guarantees, QFCs, off balance sheet financing and other contracts that will accelerate due to a resolution credit event); and
  - c. Identification of the sources of funding for all the above identified liquidity needs over time, including adequate liquidity to deal with potential liquidity traps; sources of funding must be consistent with the overall resolution strategy.
5. Discuss the funding requirements in resolution for each Critical Operation, including but not limited to:
  - a. The average annual working capital required to maintain each Critical Operation;
  - b. Days of aggregate working capital on hand at December 31, 2012;
  - c. Expected average intra-day and peak intra-day liquidity needs;
  - d. Actual average intra-day and peak intra-day liquidity during 2012; and
  - e. Funding required to maintain anticipated future levels of activity.
6. Provide detailed inter-affiliate exposures for all Material Entities and branches, including intraday and over time peaks. If this information is not available, provide an explanation.