



Financial Services Management

Large-BHC Resolution Planning

Cite

FRB, FDIC; Notice of Proposed Rulemaking, Resolution Plans Required

Recommended Distribution:

Resolution Planning, Policy, Legal, Government Relations

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<https://www.federalreserve.gov/aboutthefed/boardmeetings/files/resolution-plans-fr-notice-20190408.pdf>

Impact Assessment

- Living-will BHC requirements would be clarified and in many cases so significantly scaled back as to be far less complex and costly. Even U.S. GSIBs would realize burden relief and higher odds for plan approval.
- FBOs would also get tailored living-will relief in concert with some easing of current requirements related to a parent bank's resolution strategy.
- Waivers of which companies get how much relief will depend on the final "tailoring" framework approved by the FRB.
- Many newly-liberalized requirements could be obtained from either the FRB or FDIC, increasing the likelihood of resolution-plan burden relief for companies that meet at least one agency's demands.

Overview

The FDIC and FRB – which share authority in this area – are proposing significant changes to their resolution-planning rules¹ following changes to EGRRCPA² and their own conclusions about beneficial revisions. The most important of these would change living-will filings as detailed below to make complete filings less frequent, alleviating burden and reflecting delays between plan submission and regulatory feedback which have made it difficult for BHCs to anticipate concerns as they undertake planning while awaiting guidance. The agencies also believe that covered companies have significantly improved their resolvability, making unnecessary the current schedule.

¹ See **LIVINGWILL7**, *Financial Services Management*, October 12, 2011.

² See **SIFI27**, *Financial Services Management*, June 4, 2018.

Impact

The agencies believe that this proposal would reduce the number of BHC filers from 27 to 12 and of FBO filers from 108 to 62. These reductions would be greater still if the FRB were willing to use its statutory authority to grant a complete living-will exemption to BHCs and FBOs with less than \$250 billion. The NPR does not include any such proposal even though filing requirements for companies between \$100 billion and \$250 billion would be considerably eased. The proposal makes it clear that the agencies believe any company, no matter how simple, could pose systemic risk if its assets exceed the \$100 billion threshold. Comments are likely to attempt to counter this and seek still broader living-will relief. Despite the agencies' projections about the number of affected BHCs and FBOs, the underlying tailoring proposal that sets filing groups has many options and alternative calculation methodologies. If, for example, the final rule departs from the agencies' assumptions with regard to the definition of cross-jurisdictional activity, then a significantly larger or smaller number of companies could receive relief. GSIBs would not, however, be eligible for any of this beyond the current proposal based on underlying statutory requirements.

Despite continuing requirements for companies above \$100 billion and the more stringent rules retained for GSIBs in comparison to other large BHCs, the NPR was controversial with those who believe tougher standards are necessary to ensure rigorous resolution planning. Opponents fear the shift from the current annual filing schedule to one that expands over time and reduces in scope based on the extent to which a BHC or FBO is viewed as relatively small and non-complex by the tailoring standards now proposed by the FRB for BHCs³ and for FBOs.⁴ As noted, filers have complained about the sometimes very slow pace of agency feedback and the need to continue to plan even in the absence of recommended changes that might avert problems in subsequent filings. The agencies readily acknowledge in the NPR that they have had difficulty reviewing all of the plans even as they became more familiar with the process after the initial, particularly problematic cycles.

Critics also targeted the new waiver provisions that permit companies to gain significant exemptions from certain filing requirements. Already perturbed by the elongated filing schedule and reduced filings in alternative cycles for all covered companies that are not U.S. GSIBs, the regulators who voted against the NPR were concerned about the ability of companies to achieve a waiver with the consent of only the FDIC or FRB. They questioned the statutory validity of this approach, citing the Dodd-Frank provisions that stipulate joint FRB/FDIC concurrence on living-will rulings,⁵ fearing that large banks and foreign GSIBs could persuade one or the other agency to reduce filing requirements so significantly as to render the filings of little use in a crisis. Supporters countered that waivers would only be granted when appropriate, affording meaningful burden relief to otherwise well-prepared companies.

The NPR is as noted based on the complex and in several cases uncertain tailoring criteria proposed for BHCs and scoping standards for FBOs. As in these cases, this NPR asks for views on whether a simpler scoring methodology could be used for tailoring. This would likely follow the methodology now used to designate U.S. GSIBs.⁶ This scoring methodology might also be used here to tailor the informational-content requirements in living wills which, as discussed below, now

³ See **SIFI31**, *Financial Services Management*, November 14, 2018.

⁴ See **FBO9**, *Financial Services Management*, April 23, 2019.

⁵ See **SYSTEMIC29**, *Financial Services Management*, July 13, 2010.

⁶ See **GSIB7**, *Financial Services Management*, July 23, 2015.

would vary based on tailoring and related criteria. The impact of this approach would clearly be to reduce complexity, but the implications of this shift for individual companies is uncertain since the NPR here, as in the other proposals, does not indicate at what scores which resolution-planning requirements might apply. Comment is sought on this as well as on perhaps an entirely different approach for scaling living-will requirements according to failure-impact projections.

What's Next

The Federal Reserve approved the NPR by a 4-1 vote on April 8.⁷ The FDIC followed suit on April 16, approving it also by a 4-1 vote. Comments are due June 21. The FDIC has also issued an advance notice of proposed rulemaking to match its living-will standards⁸ for insured depository institutions to the construct proposed here for FBOs and BHCs.⁹

The changes described below would take effect the earliest of the first calendar day of the quarter the final-rule is released or November 24, 2019. The NPR includes the resulting filing schedule for BHCs and FBOs under the categories described below. Some companies could receive an extensive delay from current requirements if they are triennial filers which have recently filed a complete resolution plan.

Analysis

A. Covered Companies

1. Framework

As noted, the Board proposes to use the tailoring rules to designate covered BHCs, applying resolution-planning requirements to companies between \$100 billion and \$250 billion if they fall under either Categories II or III. Covered FBOs would be those with total global assets greater than \$100 billion but less than \$250 billion, those with over \$100 billion of combined U.S. assets, and those with more than \$75 billion or more in combined U.S. operations in the tailored risk triggers. Plans would no longer be required from FBOs with total global assets of more than \$100 billion and less than \$250 billion if the firm has combined U.S. assets below \$100 billion or it does not have \$75 billion or more in any of the risk-based indicators measured based on combined U.S. operations.

Filing groups would be:

- biennial filers. These are U.S. GSIBs. Plans would alternate between full and targeted filings with a waiver from full filing possible under procedures described below;

⁷ See *Client Report FBO7*, April 8, 2019.

⁸ See **LIVINGWILL8**, *Financial Services Management*, January 27, 2012.

⁹ See forthcoming FedFin report.

- triennial full filers, i.e., firms subject to Categories II or III. Plans would also alternate over the three-year cycle between full and targeted plans, with waivers possible for full filings; and
- triennial reduced filers. These are FBOs with \$250 billion or more in total global assets that are not subject to Category II or III standards. When a company becomes a triennial reduced filer, it would need to file a full plan or get a waiver. Thereafter, it would file reduced plans every three years; and

The agencies also retain the authority to require a full plan at any time from any covered company regardless of its category.

2. Informational Content

Full plans would generally follow current requirements. The NPR includes extensive detail on what would be required in the new, targeted plans, making clear that these will focus in particular on critical-sector or material changes since filing of the full plan. Public disclosures would be the same for targeted and full plans.

Reduced plans are for FBOs with limited U.S. operations and would continue to focus on information requested by the agencies on a case-by-case basis. Public disclosures would have less content than those required of full and targeted filers.

3. Waivers

The agencies jointly could continue to waive requirements for one or more firms. In addition, firms that have previously filed plans now could apply for a waiver from the full requirements if the request is made at least fifteen months prior to the due date. Waiver requests, including what would be waived, would be made public. The waiver would be automatically granted if the agencies do not jointly deny it nine months prior to the filing deadline. Waivers are not possible for core elements of the full plan's contents (e.g., core elements of a targeted plan, information mandated for public disclosure in a full plan, information germane to a recent material change). The NPR includes a presumption that waivers will be granted.

4. Process

All filings now would be due on July 1 as applicable. The NPR also details how companies would cease to come under resolution-planning requirements when these now apply and how procedures would apply under the new framework.

B. Critical-operations Methodology

Since the first resolution plans were filed, companies have come in some instances to question the methodology the agencies now use to identify critical operations requiring additional attention. They have thus asked the agencies for reconsideration of this requirement which has occurred on a case-by-case basis. The agencies have now decided on a periodic, sector-wide review of what constitutes a critical operation. The approach would remain case-by-case but now would be formalized into a process by which the agencies or a company could request reconsideration. A new definition of critical operations would focus on systemic impact, not necessarily that of failure of the firm on its own; the new approach would also create a requirement for biennial and triennial full filers to identify their own critical operations under a new, standardized

methodology, with each full filing containing a review of how this process was conducted, its results, and resulting resolution plans. A waiver from this process could also be provided. The NPR also includes a new process for agency designation of critical operations and the manner in which a company that has changed its procedures could remove an operation from the “critical” list.

C. Additional Changes

These would:

- clarify that an FBO should not assume that its parent bank takes actions outside the U.S. that eliminate the need for a U.S. company to begin resolution proceedings. This is consistent with prior actions that rely on a parent bank’s single-point-of-entry plan if approved by a home regulator, but that may nonetheless require a U.S. plan;
- eliminate the need for top-tier FBOs that are foreign-government entities to file resolution plans. A formal process to make such exemptions is now created;
- end the current resubmission process;
- clarify when FBOs are considered for resolution-plan coverage. Timing cycles are also clarified for new filers;
- revise FBO “mapping” requirements related to inter-connectedness; and
- lay out the criteria that would lead agencies to deem a resolution plan to be deficient or exhibit shortcomings. These findings are to be made jointly by the agencies.

D. Request for Comment

Views are sought on:

- whether to have a single standard for filings by U.S. BHCs over \$100 billion instead of the tailored approach. Questions are also posed on whether to change aspects of the tailored approach;
- the way in which the tailoring categories affect filing-group designation;
- whether filing cycles should be longer or shorter;
- whether current filing requirements should be revised;
- the waiver process;
- the content of targeted and reduced filings;
- elimination of the current option for “tailored” plans;
- the new critical-operations process; and
- the alternative scoring system that would replace reliance on categories for BHCs and a similar scoping methodology that would do the same for FBOs. The Board seeks comment on the two methods it proposes and on what scores should trigger which resolution-plan requirements. It also asks if companies should be required to calculate their own scores and, if so, how often they should do so. Views are also sought on whether inter-affiliate transactions should figure into the FBO score.