Federal Deposit Insurance Corporation

Guidance for Covered Insured Depository Institution Resolution Plan Submissions

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I. Introduction[1]

A. Resolution Plan Requirement

12 C.F.R. Part 360.10, a regulation issued under the Federal Deposit Insurance Act ("FDI Act"), requires each covered insured depository institution ("CIDI")[2] to submit periodically to the Federal Deposit Insurance Corporation (the "FDIC") a plan for the resolution of such institution in the event of its failure ("CIDI Resolution Plan"). The final rule implementing Part 360.10 was published on January 23, 2012 ("IDI Rule"). Within the framework and subject to the requirements of the IDI Rule, this document provides further clarification, guidance and direction for the preparation of forthcoming CIDI Resolution Plans.[3]

B. Failure Scenario

The content of the CIDI Resolution Plan should enable the FDIC, as receiver, to resolve the CIDI in the event of its *insolvency* under the FDI Act. Accordingly, the financial condition of the CIDI, at the point of appointment of the FDIC as receiver, should reflect an insolvency-based ground for receivership under the FDI Act, *e.g.*, the CIDI's assets should be less than its obligations to its creditors. Furthermore, in modeling the failure scenario, CIDIs should specify and reflect a material impairment or loss in one or more Core Business Lines. An unspecified idiosyncratic event is not acceptable. The material loss and its impact on capital should be reflected on the balance sheets provided in the CIDI Resolution Plan.

CIDIs should consider their current structure and operating model, along with historical facts and conditions, in developing their resolution plan strategies and assumptions. For example, the FDIC's historical experience during the most recent financial crisis has been that greater than 99 percent of insured depository institution failures resulted in publicly available, projected losses to the Deposit Insurance Fund ("DIF").

A CIDI may assume a runway period of not more than 30 days prior to the appointment of the FDIC as receiver, justification must be provided as to the length of the runway and its appropriateness given failure scenario assumptions. For example, a 30-day runway may not be appropriate for a CIDI that is heavily reliant on short-term funding because financial recovery actions may cause those creditors

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[1] Capitalized terms which are not defined herein have the meaning set forth in the IDI Rule.

[2] For purposes of this guidance, where the term CIDI is used, the term should be understood to include branches, operating subsidiaries and other entities (and should include any proposed bridge bank), as appropriate.

[3] CIDIs are reminded that the CIDI Resolution Plan is separate from the submission required under Section 165(d) of the Dodd-Frank Act (as defined herein), and each CIDI should therefore submit a stand-alone resolution plan. CIDIs are further reminded that the IDI Rule requires a resolution plan in which the CIDI fails. Therefore, resolution strategies with respect to a CIDI may necessarily differ between a plan submitted by the CIDI's parent company under Section 165(d) of the Dodd-Frank Act and a plan submitted by the CIDI under the IDI Rule.

to run.

If a CIDI includes a runway period, a description of the following, at a minimum, should be included:

1. The actions that could be taken by the CIDI during the runway period, including the sale, liquidation or spin-off of any assets or business lines; however, the CIDI Resolution Plan must not assume that during the period of stress prior to the time of failure the CIDI will be able materially to reduce its size or interconnectedness;
2. Expected difference in access to funding, particularly brokered deposits, during the runway period from the present-day state;
3. The order in which affected Material Entities would be expected to be placed into resolution proceedings and an explanation as to the CIDI's ability to control that sequencing;
4. The actions or arrangements, if any, that would be made prior to the appointment of the FDIC as receiver to ensure that depositors receive access to their insured deposits as required by the IDI Rule, the net present value return from the sale or disposition of the CIDI's assets is maximized, and the amount of any loss realized by creditors in the resolution is minimized.

Also, the CIDI's assumptions during the runway period should be at least as severe as the outflow, inflow, and haircut assumptions contained in the resolution plan submitted under Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), if one is filed by the CIDI's parent company.

As part of the failure scenario discussion, CIDIs should provide an at-failure balance sheet as supporting documentation that would demonstrate that the CIDI meets the CIDI Resolution Plan requirement that its failure scenario qualifies as an insolvency under the FDI Act. The failure scenario should describe, in detail, the path-to-failure model used, which should be congruent with the resolution strategies and the least cost analysis presented in the plan.

C. Resolution Strategies

CIDI Resolution Plans must provide a fully developed discussion and analysis of a range of realistic resolution strategies. Each CIDI should include in its discussion and analysis at least one strategy that primarily involves the separation and sale of the CIDI's deposit franchise, core business lines, and/or major assets to multiple acquirers ("Multiple Acquirer Strategy") and one strategy that involves the liquidation of the firm, including a payout of insured deposits ("Liquidation Strategy").

A Multiple Acquirer Strategy may be accomplished through a combination of transactions including, purchase and assumption ("P&A"), initial public offering of securities ("IPO"), and liquidation. The FDIC expects that at least one Multiple Acquirer Strategy will involve the recapitalization of a portion of the CIDI through single or multiple IPO transactions. The IPO transaction(s) should, in aggregate, range from 25 to 50 percent of assets of the CIDI at the time of failure.[4]

Due to the expected timeline required by the complexity of a Multiple Acquirer Strategy, it is expected that CIDIs will include the use of one or more bridge bank(s) as an interim step in developing their Multiple Acquirer Strategy. The use of a bridge bank should include supporting pro forma balance sheets evidencing key transactions taking place during operation of the bridge and at time of exit from the bridge.

A CIDI can demonstrate a selected strategy is both reasonable and least costly to the DIF by presenting a range of realistic potential resolution strategies. The IDI Rule requires CIDIs to demonstrate "how the strategies for the separation of the CIDI and its subsidiaries from its parent company's organization and sale or disposition of deposit franchise, core business lines and major assets can be demonstrated to be the least costly to the Deposit Insurance Fund of all possible methods for resolving the CIDI." In order to demonstrate the costs of each offered strategy, a cost analysis should be completed for each strategy and a comparative analysis across the strategies should be provided. To fully develop the least cost analysis, a Liquidation Strategy should be discussed and analyzed. Additional detail on this requirement is provided in Section D.

As discussed in more detail in Section II.C of this document, CIDI Resolution Plans should include justification for all assumptions used and an explanation regarding the reasonableness of each assumption, in particular, for those assumptions which have a significant impact on the cost of the resolution. For example, a CIDI using a bridge bank in its strategy should justify why it may be least costly to transfer all deposits, including uninsured deposits, to the bridge bank rather than using a strategy in which uninsured depositors are exposed to losses. In all strategies, the CIDI should fail in a manner consistent with the failure scenario guidance provided in Section I.B. of this document.

A fully developed strategy, including the Multiple Acquirer Strategy or any other strategy, would include the following elements, to the extent applicable, in its discussion and analysis.

1. Discuss any potential factors that would impair the success of the strategy, factors to consider include, for example:
    a. Current legal and organizational structure and operational capabilities;
    b. Operational or structural difficulties of separating business lines, challenges to ensuring continuity of services such as IT systems or accounting, and challenges to marketing the identified components to be sold;
    c. Any expected legal challenges by claimants or third parties to

[4] CIDIs may consult with the FDIC if a strategy to recapitalize a materially significant portion of the CIDI through one or more IPOs is not appropriate given the CIDI's size, complexity, business model, or other factors.

recapitalization and any potential legal, regulatory or cross-border issues that would need to be considered by the FDIC, as the receiver of the failed CIDI and as owner of the bridge bank;

   d. The size of the potential acquirer(s) and the portion of the CIDI being acquired, including the balance sheet of the resulting institution(s), the difficulty or likelihood of obtaining regulatory approvals, effects on competition, the concentration limit of Section 622 of the Dodd-Frank Act and applicable deposit caps (CIDIs should be mindful that whole bank acquisitions by a globally systemic bank would likely receive a high level of scrutiny);

2. Discuss the necessary actions the CIDI must take to prepare for any transactions and include appropriate timelines for marketing and other necessary actions;
3. Detail the treatment of assets and liabilities and provide details on any assets or liabilities expected to be retained by the receivership;
4. Include a detailed description of the process the CIDI employs to value Core Business Lines (including franchise value) and asset portfolios and key drivers of value for each component;
5. Discuss how continuity of services, including those provided by third-parties, will be maintained to allow for an orderly resolution;
6. With respect to recapitalizations, describe the sources and type of capital to be used in any recapitalization and the processes governing any such recapitalization, as well as the process for determining the amount of capital necessary to effectuate recapitalizations;
7. Provide a list of potential acquirers, including the rationale for why the acquisition is attractive strategically and/or financially for the acquirer; and
8. Describe whether any strategy involving a purchase and assumption of deposit liabilities includes an "All Deposit" or "Insured Deposit Only" transaction and explain rationale for the choice.

A fully developed strategy that utilizes a bridge bank as an interim step should include the following elements in the discussion and analysis:

1. Describe and quantify assets, liabilities and material contracts to be transferred to the bridge, as well as those that are left behind in receivership and include supporting pro forma balance sheets;
2. Discuss whether insured and uninsured deposit liabilities are transferred to the bridge bank; [5]
3. Describe the operational complexities inherent in the CIDI's large specialized business lines[6] that would need to be addressed by the bridge bank management in order to operate the business lines without causing disruption, including any potential legal, regulatory, or cross-border issues;
4. Describe types of liquidity sources and amounts required to operate the bridge and include supporting financial statements;

[5] Include in the discussion major deposit categories as applicable (e.g., brokered deposits).

[6] For example, custody operations, credit card operations, payment processing, securities lending, clearing and settlement activities, and mortgage servicing.

5. Discuss how continuous access to IT, financial market utilities ("FMUs"), and key employees will be ensured from the point of failure until the bridge bank is created;
6. Discuss the impact on deposits and franchise value if the bridge is in operation for an extended period of time.

As previously described, the use of a bridge bank is expected to be part of a fully developed Multiple Acquirer Strategy.

D. Least Cost Analysis

The IDI Rule requires the CIDI to propose reasonable resolution options and demonstrate how one is least costly relative to the cost of liquidation or the cost of other resolution methods. As applicable, CIDIs should utilize consistent assumptions across all options and should demonstrate why assumptions utilized in the analysis are reasonable and appropriate. When preparing a cost analysis for a particular strategy, the following considerations should be taken into account:

1. The estimated cost of liquidation. Liquidation costs generally include, the cost of paying the insured depositors, the cost of the administering the receivership, including for example FDIC-incurred expenses for marketing and valuing the assets, balanced against the proceeds from the sale or disposition of assets over the course of the receivership;
2. The premium expected from the sale of the deposit franchise after a bridge bank has been established versus the expected premium for the deposit franchise in an immediate sale.[7] This calculation is usually based on the failed IDI's core deposits, which consist of demand and savings accounts and time deposits. Consideration should be given to the negative effect a shrinking deposit base could have on the premium paid for deposits. CIDIs should also consider total franchise value and market conditions such as the effect of any sales (e.g., of a Core Business Line or major assets) taking place while the bridge bank is in operation;
3. The estimated market value of business lines, subsidiaries or assets to be sold either from the receivership or the bridge bank during the time period the bridge bank is in operation, including assumptions related to estimates of time and impact on franchise value;
4. The estimated marginal cost of operating the bridge bank for the estimated period of time that it is expected to be in operation. The estimate should be based upon the failed institution's adjusted operating results. As a guideline, CIDIs may review and analyze the failed CIDI's operating statements for at least the previous year to inform what income and expense items would be incurred in the bridge bank that may not be incurred in a liquidation. This would include expenses for operating a branch network, such as employee salaries, bank facilities and the differential cost between the CIDI's ongoing

[7] As with all assumptions in the plan, the deposit premium should be fully justified with analysis, including if applicable, reference to past transactions.

operational costs related to maintaining deposit accounts and the FDIC's cost of funds of paying off depositors in liquidation. In addition, other expenses that may be incurred during the bridge bank period should be accounted for in the estimated cost of operating the bridge bank; and

5. Priority of claims to the receivership. For example, the amount and treatment of uninsured depositors. Passing uninsured deposits to the bridge bank may significantly impact the cost of the resolution. If the uninsured deposits are to be passed to the bridge bank as part of the resolution strategy, CIDIs should provide an explanation as to why this would be least costly to the DIF.

II. Identified Obstacles

A. Identified Obstacles and Identified Proposed Mitigants

As a result of the FDIC's CIDI Resolution Plan review process, the FDIC has identified significant obstacles to an orderly and least costly resolution. This list of obstacles is not exhaustive and does not preclude other obstacles from being identified by the FDIC in the future, nor does it preclude a CIDI from identifying and addressing other weaknesses or potential impediments to resolution. Each obstacle, identified by the FDIC and the CIDI, should be discussed in the CIDI Resolution Plan. The CIDI should describe the relationship of each obstacle to its 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 mitigating actions.

1. **Multiple Competing Insolvencies -** The risk of discontinuity of Critical Services and/or the impairment of franchise value that could occur under certain circumstances by multiple, competing insolvency proceedings under different insolvency frameworks and/or administered in multiple jurisdictions.

2. **Global Cooperation -** The risk that actions (or non-actions) of a CIDI 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 (including data, management information systems ("MIS"), intellectual property ("IP") & information technology ("IT") or lead to other outcomes that could impair franchise value.

3. **Operations and Interconnectedness -** The risk that Critical Services provided by an affiliate, subsidiary or third party may not be immediately available to effectuate the presented resolution strategies, thereby disrupting the continuity of services (whether due in whole or in part to separation from: the parent company, branch networks, Core Business Lines and Critical Services). Examples include, but are not limited to:

   a. Loss of access to data, MIS, and other IT (such as the inability to produce timely and accurate reports detailing insured/uninsured deposit account data);

b. Loss of FMU access and/or payment and clearing capabilities;
c. Loss of key personnel, access to facilities, and/or IP;
d. Failure of affiliates or third parties to perform under service level agreements (SLA) or transition service agreements (TSA);
e. Liquidation of a parent, affiliate, subsidiary or third party negatively impacting the FDIC receivership's or FDIC sponsored bridge bank's operations;
f. Cross-default provisions might be exercised; and
g. A counterparty may exercise contract repudiation rights.

4. **Counterparty Actions -** The risk of counterparty actions resulting in adverse effects on the resolution of the CIDI, including derivative and repo unwinds, of a volume sufficient to create operational challenges for the CIDI or its FMUs and/or which could impair franchise value.

5. **Funding and Liquidity -** The risk of insufficient liquidity at one or more Material Entities, or in one or more jurisdictions, to maintain Critical Services or comply with the IDI Rule objectives, including increased margin requirements, acceleration, termination, inability to roll over short term borrowings including wholesale funding and brokered deposits, default interest rate obligations, loss of access to alternative sources of credit and/or additional expenses of restructuring.

B. Mitigation to Resolution Obstacles

To the extent that the CIDI Resolution Plan relies on future modifications and enhancements of systems and operations to remediate material weaknesses, barriers, and/or obstacles to an orderly and least cost resolution, the plan should include fully-developed project plans with detailed initiation dates, budgets, milestones and target completion dates, for all such modifications and enhancements. For example, the CIDI could provide project plans to (i) create an employee retention program, (ii) negotiate TSAs and SLAs, (iii) ensure continuation of FMUs, and (iv) enhance existing communications strategies (e.g., incorporate a discussion of the CIDI's operational preparations that would serve to facilitate the FDIC's communication strategy with respect to key domestic and foreign stakeholders, including, customers, qualified financial contract counterparties and regulatory authorities, in the event a strategy presented in the CIDI Resolution Plan utilizes a bridge bank).

C. Assumptions

The resolution strategies should avoid unsubstantiated or simplifying assumptions regarding parties or issues that significantly impact or are essential to the orderly resolution of the CIDI. Assumptions which are critical to the orderly resolution of the CIDI should include a well-founded legal, industry, market and/or historical justification.

The CIDI Resolution Plan should include (or not include, as indicated below) the following assumptions about the condition of the CIDI and the financial markets. The CIDI Resolution 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 CIDI Resolution Plan should be identified as such, and the CIDI Resolution Plan should provide supporting justification for it:

1. The resolution strategies proposed should be consistent with the FDIC's statutory and regulatory authority under the FDI Act;
2. The CIDI may not rely on Section 13(c)(4)(G) of the FDI Act (systemic risk exception) for any purpose within the plan, including to justify passing uninsured deposits to the bridge bank;
3. Should the CIDI Resolution Plan determine that there will be no losses to the DIF in any of its strategies, appropriate analysis and justification must accompany the submission;
4. Within the context of the applicable economic scenarios, markets are functioning and competitors may be in a position to take on business. If a CIDI's Resolution Plan assumes the sale of assets, the CIDI 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 CIDI should take into consideration the size and scale of its operations, as well as, issues of separation and transfer); and
5. The CIDI should not assume the availability of any additional unsecured funding immediately prior to failure.

D. Stress Scenarios

The IDI Rule states that, "the resolution plan strategies should take into account that failure of the CIDI may occur under the baseline, adverse and severely adverse economic conditions developed by Board of Governors of the Federal Reserve System pursuant to 12 U.S.C. 5365(i)(1)(B)."

For purposes of the CIDI Resolution Plan, the CIDI should present the resolution strategies, identified impediments to resolution and proposed mitigants consistent with the primary economic scenario presented in the resolution plan submitted under Section 165(d) of the Dodd-Frank Act, if one is filed by the CIDI's parent company.[8] In other words, CIDIs should focus on the economic scenario focused on in the Section 165(d) plan and explain changes to plan assumptions, strategies, obstacles and mitigants under the remaining two environments.

E. Critical Services

As defined in the IDI Rule, Critical Services means "services and operations of the

[8] If the CIDI's parent company does not file a resolution plan under Section 165(d) of the Dodd-Frank Act, the FDIC will inform such CIDI of the appropriate scenario to focus on for its next filing.

CIDI, such as servicing, information technology, support and operations, human resources and personnel that are necessary to continue the day-to-day operations of the CIDI." CIDIs should carefully assess their Critical Services designations. Critical Services should also include services and operations provided to the CIDI by entities other than the CIDI, its subsidiaries or affiliates. Critical services should be mapped to and from Material Entities, Core Business Lines, and key data centers. The CIDI Resolution Plan should include a discussion of potential obstacles to maintaining such Critical Services in resolution, as well as, any proposed mitigants to such challenges.

F. Key Personnel

As described in the IDI Rule, key personnel includes, but is not limited to, individuals "tasked with managing core business lines and deposit activities and the CIDI's branch activities". The CIDI should consider identifying key personnel for resolution and bridge bank operations by position title and function, as well as mapping the position to the CIDI's Critical Services and Core Business Lines (including those involved in trading, booking, liquidity risk management, IT and support services, operations, and asset and liability management functions). Key personnel may include independent contractors in addition to employees.

G. Major Counterparties

As described in the IDI Rule, the CIDI's Resolution Plan should identify the major counterparties of the CIDI. This discussion should include external and affiliated counterparties of the CIDI (including counterparties to derivative and short-term funding transactions).

H. Corporate Governance

As described in the IDI Rule, the CIDI's Resolution Plan must include a detailed description of how resolution planning is integrated into the corporate governance structure and processes of the CIDI. The CIDI Resolution Plan must also include a detailed description of the CIDI's policies, procedures, and internal controls governing preparation and approval of the resolution plan. A senior management official of the CIDI who is primarily responsible and accountable for the development, maintenance, implementation, and filing of the CIDI Resolution Plan and for the CIDI's compliance with the corporate governance section must be identified in the CIDI's Resolution Plan.