

Ten key points from the FDIC's resolution plan guidance

On December 17th, the FDIC issued guidance for the 2015 resolution plans of the covered insured depository institutions (CIDIs) of large bank holding companies (BHCs). The guidance (applicable to 36 CIDIs) adds welcome clarification around regulatory expectations, but also raises the bar – in some cases quite significantly – on the nature and depth of required plan content.

In addition to the BHC resolution plans required under Dodd Frank Section 165(d),¹ the FDIC requires a separate CIDI resolution plan for US insured depositories with assets of \$50 billion or more. Most of the largest, most complex BHCs are subject to both rules, requiring them to file a 165(d) resolution plan for the BHC that includes the BHC's core businesses and its most significant subsidiaries (i.e., "material entities"), as well as one or more CIDI plans depending on the number of US bank subsidiaries of the BHC that meet the \$50 billion asset threshold.

- 1. The CIDI must fail:** For BHCs that must submit both a 165(d) plan and one or more CIDI plans (i.e., most CIDI filers), the CIDI resolution strategies under the two plans may be very different – and each needs to be developed, supported, and documented separately. Namely, the FDIC guidance underscores that the CIDI must fail for purposes of the CIDI plan, which is not a requirement for the 165(d) plan.
- 2. Cause of CIDI failure must be a core business loss or impairment:** The guidance requires that the plan reflect a material impairment or loss in one or more of the CIDI's core business lines, and detail the CIDI's path to failure. This provision is fundamentally different than the original 165(d) plan guidance (under which the nature of the event leading to failure need not be specified) and will necessitate considerable strategy adjustments for most CIDIs.
- 3. At least one "multiple acquirer strategy" is required:** For the first time, the FDIC has clarified that it expects to see at least one break-up strategy, wherein various parts of the CIDI are sold to different purchasers, i.e., a multiple acquirer strategy. In addition, the guidance specifies that the plan must also include a liquidation strategy that involves a payout of insured deposits. As relates to any break-up strategy, the guidance underscores that the CIDI plan must discuss the operational challenges of separating the CIDI parts for sale in this manner.
- 4. Greater clarity provided around expectations for "least cost analysis":** The FDIC requires CIDI plans to demonstrate that the selected resolution strategy is the one that is least costly to the FDIC's deposit insurance fund. The guidance provides considerable new detail on the minimum amount of information that should be included in this "least cost analysis."

¹ See PwC's *First take: Resolution plan guidance to largest firms* (August 7, 2014).

Namely, the analysis must include cost and liquidity assessments for each strategy, and must demonstrate that the net present value return from the sale or disposition of the CIDI's assets is maximized under the selected strategy. The guidance also implies that costs should be assessed considering the full duration of the resolution, including the life of the bridge bank, if one is utilized under the selected strategy.

- 5. Deep level of granularity expected:** Throughout, the guidance indicates that a significantly deep level of granularity is preferred. For example, it requires that the plans provide detailed information around the assets and liabilities of the CIDI that would be left behind in a receivership, across all strategies but particularly in a bridge bank strategy.
- 6. Sales strategies must be feasible and supported by considerable acquirer detail:** For strategies that include the sale of any part of the CIDI, the plan must include significant financial analysis to demonstrate the potential acquirers' ability to make the acquisition. This analysis should include the acquirer's pro forma balance sheet and relevant concentrations (specifically deposit concentration), and the likelihood of the acquirer receiving needed regulatory approval for the acquisition.
- 7. Detailed financial and liquidity analysis needed:** The guidance emphasizes the inclusion of detailed financial and liquidity analysis in CIDI resolution plans, both leading up to and including resolution/receivership. For example, if using a bridge bank strategy (as indicated in the public sections of most filers' plans), the CIDI plan must include detailed financial projections, specifically around required operating expenses, and asset and franchise valuation through the duration of the bridge bank's expected existence.
- 8. Key legal issues must be considered:** The plan must include a discussion of the priority of claims on the CIDI receivership (and the associated impact on the potential cost of each resolution strategy), and any expected legal challenges by claimants, particularly to proposed recapitalization strategies.

- 9. CIDI plans must address key resolution obstacles:** Obstacles in five key areas identified by regulators in their April 2013 guidance on 165(d) resolution plans must be explicitly addressed in CIDI plans.² These areas are: multiple competing insolvencies, global cooperation, operations and interconnectedness, counterparty actions, and funding and liquidity. Meeting this requirement should be relatively easy for most Wave 1 and Wave 2 filers, since they may be able to leverage the relevant discussion from their 165(d) plans. Wave 3 filers, however, will likely have more work to do because their BHCs were not previously subject to the earlier guidance on these obstacles.³ Each mitigation strategy to overcome an obstacle that relies upon planned enhancements (such as an employee retention plan, negotiation of transition or service agreements, or continued access to financial market utilities) should be accompanied by a fully developed project plan.
- 10. The CIDI must be insolvent at the start of resolution:** Whereas the FDIC's resolution rule and earlier guidance were unclear with regard to the financial condition of the CIDI at the start of resolution, the new guidance makes it very clear that the CIDI must be insolvent as it goes into receivership, i.e., assets less than creditor obligations. For firms that started their resolution scenarios with their existing year-end balance sheet, this clarification will result in a very different starting balance sheet for the CIDI resolution plan.

² See PwC's *Regulatory Brief, Resolution planning: New guidance, more time, no specificity* (April 2013).

³ See PwC's *Regulatory Brief, Resolution planning: Category 3 debrief* (January 2014).

Additional information

For additional information about PwC's Financial Services Regulatory Practice and how we can help you, please contact:

Dan Ryan

Financial Services Advisory Leader
646 471 8488
daniel.ryan@us.pwc.com

Shyam Venkat

Partner, Financial Services Risk Advisory
646 471 8296
shyam.venkat@us.pwc.com

David Sapin

Partner, Financial Services Regulatory Advisory
646 471 8481
david.sapin@us.pwc.com

Armen Meyer

Director of Regulatory Strategy
646 531 4519
armen.meyer@us.pwc.com

Contributors: Sharon Haas, Sally Neal, and John Simonson.

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