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broker or dealer, may utilize the services of third parties, including private attorneys, accountants, consultants, advisors, outside experts, and other third party professionals. SIPC shall have an allowed claim for administrative expenses for any amounts paid by SIPC for such services to the extent that such services are available in the private sector, and utilization of such services is practicable, efficient, and cost effective. The term *administrative expenses of SIPC* includes the costs and expenses of such attorneys, accountants, consultants, advisors, outside experts, and other third party professionals, and other expenses that would be allowable to a third party trustee under 15 U.S.C. 78eee(b)(5)(A), including the costs and expenses of SIPC employees that would be allowable pursuant to 15 U.S.C. 78fff(e).

(b) The term *administrative expenses of SIPC* shall not include advances from SIPC to satisfy customer claims for net equity.

### § 380.67 Qualified Financial Contracts.

The rights and obligations of any party to a qualified financial contract to which a covered broker or dealer is a party shall be governed exclusively by 12 U.S.C. 5390, including the limitations and restrictions contained in 12 U.S.C. 5390(c)(10)(B), and any regulations promulgated thereunder.

## PART 381—RESOLUTION PLANS

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AUTHORITY: 12 U.S.C. 5365(d).

SOURCE: 84 FR 59228, Nov. 1, 2019, unless otherwise noted.

### § 381.1 Authority and scope.

(a) *Authority.* This part is issued pursuant to section 165(d)(8) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, 124 Stat. 1376, 1426-1427), as amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act (Pub. L. 115-174, 132 Stat. 1296) (the *Dodd-Frank Act*), 12 U.S.C. 5365(d)(8), which requires the Board of Governors of the Federal Reserve System (Board) and the Federal Deposit Insurance Corporation (Corporation) to jointly issue rules implementing the provisions of section 165(d) of the Dodd-Frank Act.

(b) *Scope.* This part applies to each covered company and establishes rules and requirements regarding the submission and content of a resolution plan, as well as procedures for review by the Board and Corporation of a resolution plan.

### § 381.2 Definitions.

For purposes of this part:

*Bankruptcy Code* means Title 11 of the United States Code.

*Biennial filer* is defined in § 381.4(a)(1).

*Category II banking organization* means a covered company that is a category II banking organization pursuant to § 252.5 of this title.

*Category III banking organization* means a covered company that is a category III banking organization pursuant to § 252.5 of this title.

*Company* means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization, but does not include any organization, the majority of the voting securities of which are owned by the United States.

*Control.* A company controls another company when the first company, directly or indirectly, owns, or holds with power to vote, 25 percent or more of any class of the second company's outstanding voting securities.

*Core business lines* means those business lines of the covered company, including associated operations, services, functions and support, that, in the view of the covered company, upon

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failure would result in a material loss of revenue, profit, or franchise value.

*Core elements* mean the information required to be included in a full resolution plan pursuant to § 381.5(c), (d)(1)(i), (iii), and (iv), (e)(1)(ii), (e)(2), (3), and (5), (f)(1)(v), and (g) regarding capital, liquidity, and the covered company's plan for executing any recapitalization contemplated in its resolution plan, including updated quantitative financial information and analyses important to the execution of the covered company's resolution strategy.

*Council* means the Financial Stability Oversight Council established by section 111 of the Dodd-Frank Act (12 U.S.C. 5321).

*Covered company*—(1) *In general.* A covered company means:

(i) Any nonbank financial company supervised by the Board;

(ii) Any global systemically important BHC;

(iii) Any bank holding company, as that term is defined in section 2 of the Bank Holding Company Act, as amended (12 U.S.C. 1841), and part 225 of this title (the Board's Regulation Y), that has \$250 billion or more in total consolidated assets, as determined based on the average of the company's four most recent Consolidated Financial Statements for Holding Companies as reported on the Federal Reserve's Form FR Y-9C; provided that in the case of a company whose total consolidated assets have increased as the result of a merger, acquisition, combination, or similar transaction, the Board and the Corporation may alternatively consider, in their discretion, to the extent and in the manner the Board and the Corporation jointly consider to be appropriate, one or more of the four most recent Consolidated Financial Statements for Holding Companies as reported on the Federal Reserve's Form FR Y-9C or Capital and Asset Reports for Foreign Banking Organizations as reported on the Federal Reserve's Form FR Y-7Q of the companies that were party to the merger, acquisition, combination or similar transaction;

(iv) Any foreign bank or company that is a bank holding company or is treated as a bank holding company under section 8(a) of the International

Banking Act of 1978 (12 U.S.C. 3106(a)), and that has \$250 billion or more in total consolidated assets, as determined annually based on the foreign bank's or company's most recent annual or, as applicable, quarterly based on the average of the foreign bank's or company's four most recent quarterly Capital and Asset Reports for Foreign Banking Organizations as reported on the Federal Reserve's Form FR Y-7Q; provided that in the case of a company whose total consolidated assets have increased as the result of a merger, acquisition, combination, or similar transaction, the Board and the Corporation may alternatively consider, in their discretion, to the extent and in the manner the Board and the Corporation jointly consider to be appropriate, one or more of the four most recent Consolidated Financial Statements for Holding Companies as reported on the Federal Reserve's Form FR Y-9C or Capital and Asset Reports for Foreign Banking Organizations as reported on the Federal Reserve's Form FR Y-7Q of the companies that were party to the merger, acquisition, combination or similar transaction; and

(v) Any additional covered company as determined pursuant to § 243.13 of this title.

(2) *Cessation of covered company status for nonbank financial companies supervised by the Board and global systemically important BHCs.* Once a covered company meets the requirements described in paragraph (1)(i) or (ii) of this definition of covered company, the company shall remain a covered company until it no longer meets any of the requirements described in paragraph (1) of this definition of covered company.

(3) *Cessation of covered company status for other covered companies.* Once a company meets the requirements described in paragraph (1)(iii) or (iv) of this definition of covered company, the company shall remain a covered company until—

(i) In the case of a covered company described in paragraph (1)(iii) of this definition of covered company or a covered company described in paragraph (1)(iv) of this definition of covered company that files quarterly Capital and

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Asset Reports for Foreign Banking Organizations on the Federal Reserve's Form FR Y-7Q, the company has reported total consolidated assets that are below \$250 billion for each of four consecutive quarters, as determined based on its total consolidated assets as reported on each of its four most recent Consolidated Financial Statements for Holding Companies on the Federal Reserve's Form FR Y-9C or Capital and Asset Reports for Foreign Banking Organizations on the Federal Reserve's Form FR Y-7Q, as applicable; or

(ii) In the case of a covered company described in paragraph (1)(iv) of this definition of covered company that does not file quarterly Capital and Asset Reports for Foreign Banking Organizations on the Federal Reserve's Form FR Y-7Q, the company has reported total consolidated assets that are below \$250 billion for each of two consecutive years, as determined based on its total consolidated assets as reported on each of its two most recent annual Capital and Asset Reports for Foreign Banking Organizations on the Federal Reserve's Form FR Y-7Q, or such earlier time as jointly determined by the Board and the Corporation.

(4) *Multi-tiered holding company.* In a multi-tiered holding company structure, covered company means the top-tier of the multi-tiered holding company unless the Board and the Corporation jointly identify a different holding company to satisfy the requirements that apply to the covered company. In making this determination, the Board and the Corporation shall consider:

(i) The ownership structure of the foreign banking organization, including whether the foreign banking organization is owned or controlled by a foreign government;

(ii) Whether the action would be consistent with the purposes of this part; and

(iii) Any other factors that the Board and the Corporation determine are relevant.

(5) *Asset threshold for bank holding companies and foreign banking organizations.* The Board may, pursuant to a recommendation of the Council, raise any asset threshold specified in para-

graph (1)(iii) or (iv) of this definition of covered company.

(6) *Exclusion.* A bridge financial company chartered pursuant to 12 U.S.C. 5390(h) shall not be deemed to be a covered company hereunder.

*Critical operations* means those operations of the covered company, including associated services, functions and support, the failure or discontinuance of which would pose a threat to the financial stability of the United States.

*Deficiency* is defined in §381.8(b).

*Depository institution* has the same meaning as in section 3(c)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(1)) and includes a state-licensed uninsured branch, agency, or commercial lending subsidiary of a foreign bank.

*Foreign banking organization* means—

(1) A foreign bank, as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)), that:

(i) Operates a branch, agency, or commercial lending company subsidiary in the United States;

(ii) Controls a bank in the United States; or

(iii) Controls an Edge corporation acquired after March 5, 1987; and

(2) Any company of which the foreign bank is a subsidiary.

*Foreign-based covered company* means any covered company that is not incorporated or organized under the laws of the United States.

*Full resolution plan* means a full resolution plan described in §381.5.

*Functionally regulated subsidiary* has the same meaning as in section 5(c)(5) of the Bank Holding Company Act, as amended (12 U.S.C. 1844(c)(5)).

*Global systemically important BHC* means a covered company that is a global systemically important BHC pursuant to §252.5 of this title.

*Identified critical operations* means the critical operations of the covered company identified by the covered company or jointly identified by the Board and the Corporation under §381.3(b)(2).

*Material change* means an event, occurrence, change in conditions or circumstances, or other change that results in, or could reasonably be foreseen to have, a material effect on:

(1) The resolvability of the covered company;

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(2) The covered company's resolution strategy; or

(3) How the covered company's resolution strategy is implemented. Such changes include, but are not limited to:

(i) The identification of a new critical operation or core business line;

(ii) The identification of a new material entity or the de-identification of a material entity;

(iii) Significant increases or decreases in the business, operations, or funding or interconnections of a material entity; or

(iv) Changes in the primary regulatory authorities of a material entity or the covered company on a consolidated basis.

*Material entity* means a subsidiary or foreign office of the covered company that is significant to the activities of an identified critical operation or core business line, or is financially or operationally significant to the resolution of the covered company.

*Material financial distress* with regard to a covered company means that:

(1) 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;

(2) The assets of the covered company are, or are likely to be, less than its obligations to creditors and others; or

(3) 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.

*Nonbank financial company supervised by the Board* means a nonbank financial company or other company that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

*Rapid and orderly resolution* means a reorganization or liquidation of the covered company (or, in the case of a covered company that is incorporated or organized in a jurisdiction other than the United States, the subsidiaries and operations of such foreign company that are domiciled in the United States) under the Bankruptcy Code that can be accomplished within a

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reasonable period of time and in a manner that substantially mitigates the risk that the failure of the covered company would have serious adverse effects on financial stability in the United States.

*Reduced resolution plan* means a reduced resolution plan described in § 381.7.

*Shortcoming* is defined in § 381.8(e).

*Subsidiary* means a company that is controlled by another company, and an indirect subsidiary is a company that is controlled by a subsidiary of a company.

*Targeted resolution plan* means a targeted resolution plan described in § 381.6.

*Triennial full filer* is defined in § 381.4(b)(1).

*Triennial reduced filer* is defined in § 381.4(c)(1).

*United States* means the United States and includes any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

### § 381.3 Critical operations.

(a) *Identification of critical operations by covered companies*—(1) *Process and methodology required.* (i) Each biennial filer and triennial full filer shall establish and implement a process designed to identify each of its critical operations. After July 1, 2022, each triennial reduced filer that has any identified critical operation shall establish and implement a process designed to identify each of its critical operations. The scale of the process must be appropriate to the nature, size, complexity, and scope of the covered company's operations. The covered company must review its process periodically and update it as necessary to ensure its continued effectiveness. The covered company shall describe its process and how it is applied as part of its corporate governance relating to resolution planning under § 381.5(d)(1). The covered company must conduct the process described in this paragraph (a)(1) sufficiently in advance of its next resolution plan submission so that the covered company is prepared to submit the information required under §§ 381.5

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through 381.7 for each identified critical operation.

(ii) The process required under paragraph (a)(1)(i) of this section must include a methodology for evaluating the covered company's participation in activities and markets that may be critical to the financial stability of the United States. The methodology must be designed, taking into account the nature, size, complexity, and scope of the covered company's operations, to identify and assess:

(A) The markets and activities in which the covered company participates or has operations;

(B) The significance of those markets and activities with respect to the financial stability of the United States; and

(C) The significance of the covered company as a provider or other participant in those markets and activities.

(2) *Waiver requests.* A covered company that has previously submitted a resolution plan under this part may request a waiver of the requirement to have a process and methodology under paragraph (a)(1) of this section by submitting a waiver request in accordance with this paragraph (a)(2) if the covered company does not have an identified critical operation as of the date it submits the waiver request.

(i) Each waiver request shall be divided into a public section and a confidential section. A covered company shall segregate and separately identify the public section from the confidential section. A covered company shall include in the confidential section of a waiver request its rationale for why a waiver of the requirement would be appropriate, including an explanation of why the process and methodology are not likely to identify any critical operation given its business model, operations, and organizational structure. A covered company shall describe in the public section of a waiver request that it is seeking to waive the requirement.

(ii) Any waiver request must be made in writing no later than 18 months before the date by which the covered company is required to submit its next resolution plan. Notwithstanding the foregoing, with respect to any resolution plan that a covered company is required to submit on or before July 1,

2021, any waiver request must be made in writing no later than 17 months before that date.

(iii) The Board and Corporation may jointly approve or deny a waiver request in their discretion. Unless the Board and the Corporation have jointly approved a waiver request, the waiver request will be deemed denied on the date that is 12 months before the date by which the covered company is required to submit the resolution plan that immediately follows submission of the waiver request.

(iv) An approved waiver request under this paragraph (a)(2) is effective for the resolution plan submission that immediately follows submission of the waiver request and for any resolution plan submitted thereafter until, but not including, the covered company's next full resolution plan submission.

(3) *Limited exemption.* A foreign-based covered company is exempt from the requirement to have a process and methodology under paragraph (a)(1) of this section in connection with any requirement to submit a resolution plan on or before July 1, 2021 if the foreign-based covered company does not have an identified critical operation as of the date that is 17 months before the date by which the covered company is required to submit the resolution plan.

(b) *Joint identification of critical operations by the Board and the Corporation.*

(1) The Board and the Corporation shall, not less frequently than every six years, jointly review the operations of covered companies to determine whether to jointly identify critical operations of any covered company in accordance with paragraph (b)(2) of this section, or to jointly rescind any currently effective joint identification in accordance with paragraph (b)(3) of this section.

(2) If the Board and the Corporation jointly identify a covered company's operation as a critical operation, the Board and the Corporation shall jointly notify the covered company in writing. A covered company is not required to include the information required under §§381.5 through 381.7 for the identified critical operation in any resolution plan that the covered company is required to submit within 12 months after the joint notification unless the

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operation had been identified by the covered company as a critical operation on or before the date the Board and the Corporation jointly notified the covered company.

(3) The Board and the Corporation may jointly rescind a joint identification under paragraph (b)(2) of this section by providing the covered company with joint notice of the rescission. Upon the notification, the covered company is not required to include the information regarding the operation required for identified critical operations under §§ 381.5 through 381.7 in any subsequent resolution plan unless:

- (i) The covered company identifies the operation as a critical operation; or
- (ii) The Board and the Corporation subsequently provide a joint notification under paragraph (b)(2) of this section to the covered company regarding the operation.

(4) A joint notification provided by the Board and the Corporation to a covered company before [effective date of final rule] that identifies any of its operations as a critical operation and not previously jointly rescinded is deemed to be a joint identification under paragraph (b)(2) of this section.

(c) *Request for reconsideration of jointly identified critical operations.* A covered company may request that the Board and the Corporation reconsider a joint identification under paragraph (b)(2) of this section in accordance with this paragraph (c).

(1) *Written request for reconsideration.* The covered company must submit a written request for reconsideration to the Board and the Corporation that includes a clear and complete statement of all arguments and all relevant, material information that the covered company expects to have considered. If a covered company has previously requested reconsideration regarding the operation, the written request must also describe the material differences between the new request and the most recent prior request.

(2) *Timing.* (i) If a covered company submits a request for reconsideration on or before the date that is 18 months before the date by which it is required to submit its next resolution plan, the Board and the Corporation will complete their reconsideration no later

than 12 months before the date by which the covered company is required to submit its next resolution plan. Notwithstanding the foregoing, if the Board and the Corporation jointly find that additional information from the covered company is required to complete their reconsideration, the Board and the Corporation will jointly request in writing the additional information from the covered company. The Board and the Corporation will then complete their reconsideration no later than the later of:

(A) Ninety (90) days after receipt of all additional information from the covered company; and

(B) Twelve (12) months before the date by which the covered company is required to submit its next resolution plan.

(ii) If a covered company submits a request for reconsideration less than 18 months before the date by which it is required to submit its next resolution plan, the Board and the Corporation may, in their discretion, defer reconsideration of the joint identification until after the submission of that resolution plan, with the result that the covered company must include the identified critical operation in that resolution plan and the Board and the Corporation will complete their reconsideration in accordance with paragraph (c)(2)(i) of this section as though the covered company had submitted the request after the date by which the covered company is required to submit that resolution plan.

(3) *Joint communication following reconsideration.* The Board and the Corporation will communicate jointly the results of their reconsideration in writing to the covered company.

(d) *De-identification by covered company of self-identified critical operations.* A covered company may cease to include in its resolution plans the information required under §§ 381.5 through 381.7 regarding an operation previously identified only by the covered company (and not also jointly by the Board and the Corporation) as a critical operation only in accordance with this paragraph (d).

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(1) *Notice of de-identification.* If a covered company ceases to identify an operation as a critical operation, the covered company must notify the Board and the Corporation of its de-identification. The notice must be in writing and include a clear and complete explanation of:

(i) Why the covered company previously identified the operation as a critical operation; and

(ii) Why the covered company no longer identifies the operation as a critical operation.

(2) *Timing.* Notwithstanding a covered company's de-identification, and unless otherwise notified in writing jointly by the Board and the Corporation, a covered company shall include the applicable information required under §§ 381.5 through § 381.7 regarding an operation previously identified by the covered company as a critical operation in any resolution plan the covered company is required to submit during the period ending 12 months after the covered company notifies the Board and the Corporation in accordance with paragraph (d)(1) of this section.

(3) *No effect on joint identifications.* Neither a covered company's de-identification nor notice thereof under paragraph (d)(1) of this section rescinds a joint identification made by the Board and the Corporation under paragraph (b)(2) of this section.

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(a) *Biennial filers—(1) Group members.* Biennial filer means:

(i) Any global systemically important BHC; and

(ii) Any nonbank financial company supervised by the Board that has not been jointly designated a triennial full filer by the Board and Corporation under paragraph (a)(2) of this section or that has been jointly re-designated a biennial filer by the Board and the Corporation under paragraph (a)(2) of this section.

(2) *Nonbank financial companies.* The Board and the Corporation may jointly designate a nonbank financial company supervised by the Board as a triennial full filer in their discretion, taking into account facts and circumstances that each of the Board and

the Corporation in its discretion determines to be relevant. The Board and the Corporation may in their discretion jointly re-designate as a biennial filer a nonbank financial company that the Board and the Corporation had previously designated as a triennial filer, taking into account facts and circumstances that each of the Board and the Corporation in its discretion determines to be relevant.

(3) *Frequency of submission.* Biennial filers shall each submit a resolution plan to the Board and the Corporation every two years.

(4) *Submission date.* Biennial filers shall submit their resolution plans on or before July 1 of each year in which a resolution plan is due.

(5) *Type of resolution plan required to be submitted.* Biennial filers shall alternate submitting a full resolution plan and a targeted resolution plan.

(6) *New covered companies that are biennial filers.* A company that becomes a covered company and a biennial filer after [effective date of final rule] shall submit a full resolution plan on or before the next date by which the other biennial filers are required to submit resolution plans pursuant to paragraph (a)(4) of this section that occurs no earlier than 12 months after the date as of which the company became a covered company. The company's subsequent resolution plans shall be of the type required to be submitted by the other biennial filers.

(b) *Triennial full filers—(1) Group members.* Triennial full filer means:

(i) Any category II banking organization;

(ii) Any category III banking organization; and

(iii) Any nonbank financial company supervised by the Board that is jointly designated a triennial full filer by the Board and Corporation under paragraph (a)(2) of this section.

(2) *Frequency of submission.* Triennial full filers shall each submit a resolution plan to the Board and the Corporation every three years.

(3) *Submission date.* Triennial full filers shall submit their resolution plans on or before July 1 of each year in which a resolution plan is due.

(4) *Type of resolution plan required to be submitted.* Triennial full filers shall

alternate submitting a full resolution plan and a targeted resolution plan.

(5) *New covered companies that are triennial full filers.* A company that becomes a covered company and a triennial full filer after [effective date of final rule] shall submit a full resolution plan on or before the next date by which the other triennial full filers are required to submit resolution plans pursuant to paragraph (b)(3) of this section that occurs no earlier than 12 months after the date as of which the company became a covered company. The company's subsequent resolution plans shall be of the type required to be submitted by the other triennial full filers.

(c) *Triennial reduced filers*—(1) *Group members.* Triennial reduced filer means any covered company that is not a global systemically important BHC, nonbank financial company supervised by the Board, category II banking organization, or category III banking organization.

(2) *Frequency of submission.* Triennial reduced filers shall each submit a resolution plan to the Board and the Corporation every three years.

(3) *Submission date.* Triennial reduced filers shall submit their resolution plans on or before July 1 of each year in which a resolution plan is due.

(4) *Type of resolution plan required to be submitted.* Triennial reduced filers shall submit a reduced resolution plan.

(5) *New covered companies that are triennial reduced filers.* A company that becomes a covered company and a triennial reduced filer after December 31, 2019 shall submit a full resolution plan on or before the next date by which the other triennial reduced filers are required to submit resolution plans pursuant to paragraph (c)(3) of this section that occurs no earlier than 12 months after the date as of which the company became a covered company. The company's subsequent resolution plans shall be reduced resolution plans.

(d) *General*—(1) *Changing filing groups.* If a covered company that is a member of a filing group specified in paragraphs (a) through (c) of this section (“original group filer”) becomes a member of a different filing group specified in paragraphs (a) through (c) of this section (“new group filer”), then

the covered company shall submit its next resolution plan as follows:

(i) If the next date by which the original group filers are required to submit their next resolution plans is the same date by which the other new group filers are required to submit their next resolution plans and:

(A) That date is less than 12 months after the date as of which the covered company became a new group filer, the covered company shall submit its next resolution plan on or before that date. The resolution plan may be the type of resolution plan that the original group filers are required to submit on or before that date or the type of resolution plan that the other new group filers are required to submit on or before that date.

(B) That date is 12 months or more after the date as of which the covered company became a new group filer, the covered company shall submit on or before that date the type of resolution plan the other new group filers are required to submit on or before that date.

(ii) If the next date by which the original group filers are required to submit their next resolution plans is different from the date by which the new group filers are required to submit their next resolution plans, the covered company shall submit its next resolution plan on or before the next date by which the other new group filers are required to submit a resolution plan that occurs no earlier than 12 months after the date as of which the covered company became a new group filer. The covered company shall submit the type of resolution plan that the other new group filers are required to submit on or before the date the covered company is required to submit its next resolution plan.

(iii) Notwithstanding paragraph (d)(1)(i) or (ii) of this section, any triennial reduced filer that becomes a biennial filer or a triennial full filer shall submit a full resolution plan on or before the next date by which the other new group filers are required to submit their next resolution plans that occurs no earlier than 12 months after the date as of which the covered company



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became a new group filer. After submitting a full resolution plan, the covered company shall submit, on or before the next date that the other new group filers are required to submit their next resolution plans, the type of resolution plan the other new group filers are required to submit on or before that date.

(2) *Altering submission dates.* Notwithstanding anything to the contrary in this part, the Board and Corporation may jointly determine that a covered company shall submit its resolution plan on or before a date other than as provided in paragraphs (a) through (c) or paragraph (d)(1) of this section. The Board and the Corporation shall provide a covered company with written notice of a determination under this paragraph (d)(2) no later than 12 months before the date by which the covered company is required to submit the resolution plan.

(3) *Authority to require interim updates.* The Board and the Corporation may jointly require that a covered company submit an update to a resolution plan submitted under this part, within a reasonable amount of time, as jointly determined by the Board and Corporation. The Board and the Corporation shall notify the covered company of its requirement to submit an update under this paragraph (d)(3) in writing, and shall specify the portions or aspects of the resolution plan the covered company shall update.

(4) *Notice of extraordinary events—(i) In general.* Each covered company shall provide the Board and the Corporation with a notice no later than 45 days after any material merger, acquisition of assets, or similar transaction or fundamental change to the covered company's resolution strategy. Such notice must describe the event and explain how the event affects the resolvability of the covered company. The covered company shall address any event with respect to which it has provided notice pursuant to this paragraph (d)(4)(i) in the following resolution plan submitted by the covered company.

(ii) *Exception.* A covered company shall not be required to submit a notice under paragraph (d)(4)(i) of this section if the date by which the covered company would be required to submit the

notice under paragraph (d)(4)(i) of this section would be within 90 days before the date by which the covered company is required to submit a resolution plan under this section.

(5) *Authority to require a full resolution plan submission.* Notwithstanding anything to the contrary in this part, the Board and Corporation may jointly require a covered company to submit a full resolution plan instead of a targeted resolution plan or a reduced resolution plan that the covered company is otherwise required to submit under this section. The Board and the Corporation shall provide a covered company with written notice of a determination under this paragraph (d)(5) no later than 12 months before the date by which the covered company is required to submit the full resolution plan. The date on or before which a full resolution plan must be submitted under this paragraph (d)(5) will be the date by which the covered company would otherwise be required to submit its upcoming targeted resolution plan or reduced resolution plan under paragraphs (a) through (c), or (d)(1) or (2) of this section. The requirement to submit a full resolution plan under this paragraph (d)(5) does not alter the type of resolution plan the covered company will subsequently be required to submit under this section.

(6) *Waivers—(i) Authority to waive requirements.* The Board and the Corporation may jointly waive one or more of the resolution plan requirements of § 381.5, § 381.6, or § 381.7 for one or more covered companies for any number of resolution plan submissions. A request pursuant to paragraph (d)(6)(ii) of this section is not required for the Board and Corporation to exercise their authority under this paragraph (d)(6)(i).

(ii) *Waiver requests by covered companies.* In connection with the submission of a full resolution plan, a triennial full filer or triennial reduced filer that has previously submitted a resolution plan under this part may request a waiver of one or more of the informational content requirements of § 381.5 in accordance with this paragraph (d)(6)(ii).

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(A) A requirement to include any of the following information is not eligible for a waiver at the request of a triennial full filer or triennial reduced filer:

(1) Information specified in section 165(d)(1)(A) through (C) of the Dodd-Frank Act (12 U.S.C. 5365(d)(1)(A) through (C));

(2) Any core element;

(3) Information required to be included in the public section of a full resolution plan under §381.11(c)(2);

(4) Information about the remediation of any previously identified deficiency or shortcoming unless the Board and the Corporation have jointly determined that the triennial full filer or triennial reduced filer has satisfactorily remedied the deficiency or addressed the shortcoming before its submission of the waiver request; or

(5) Information about changes to the triennial full filer or triennial reduced filer's last submitted resolution plan resulting from any:

(i) Change in law or regulation;

(ii) Guidance or feedback from the Board and the Corporation; or

(iii) Any material change experienced by the triennial full filer or triennial reduced filer since it submitted that resolution plan.

(B) Each waiver request shall be divided into a public section and a confidential section. A triennial full filer or triennial reduced filer shall segregate and separately identify the public section from the confidential section.

(1) The triennial full filer or triennial reduced filer shall include in the confidential section of a waiver request a clear and complete explanation of why:

(i) Each requirement sought to be waived is not a requirement described in paragraph (d)(6)(ii)(A) of this section;

(ii) The information sought to be waived would not be relevant to the Board's and Corporation's review of the triennial full filer or triennial reduced filer's next full resolution plan; and

(iii) A waiver of each requirement would be appropriate.

(2) The triennial full filer or triennial reduced filer shall include in the public section of a waiver request a list of the

requirements that it is requesting be waived.

(C) A triennial full filer or triennial reduced filer may not make more than one waiver request for any full resolution plan submission and any waiver request must be made in writing no later than 18 months before the date by which the triennial full filer or triennial reduced filer is required to submit the full resolution plan.

(D) The Board and Corporation may jointly approve or deny a waiver request, in whole or in part, in their discretion. Unless the Board and the Corporation have jointly approved a waiver request, the waiver request will be deemed denied on the date that is 12 months before the date by which the triennial full filer or triennial reduced filer is required to submit the full resolution plan to which the waiver request relates.

(E) An approved waiver request under this paragraph (d)(6)(ii) is effective for only the full resolution plan that immediately follows submission of the waiver request.

(e) *Access to information.* In order to allow evaluation of a resolution plan, each covered company must provide the Board and the Corporation such information and access to personnel of the covered company as the Board and the Corporation jointly determine during the period for reviewing the resolution plan is necessary to assess the credibility of the resolution plan and the ability of the covered company to implement the resolution plan. In order to facilitate review of any waiver request by a covered company under §381.3(a)(2) or paragraph (d)(6)(ii) of this section, or any joint identification of a critical operation of a covered company under §381.3(b), each covered company must provide such information and access to personnel of the covered company as the Board and the Corporation jointly determine is necessary to evaluate the waiver request or whether the operation is a critical operation. The Board and the Corporation will rely to the fullest extent possible on examinations conducted by or on behalf of the appropriate Federal banking agency for the relevant company.

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(f) *Board of directors approval of resolution plan.* Before submission of a resolution plan under paragraphs (a) through (c) of this section, the resolution plan of a covered company shall be approved by:

(1) The board of directors of the covered company and noted in the minutes; or

(2) In the case of a foreign-based covered company only, a delegee acting under the express authority of the board of directors of the covered company to approve the resolution plan.

(g) *Resolution plans provided to the Council.* The Board shall make the resolution plans and updates submitted by the covered company pursuant to this section available to the Council upon request.

(h) *Required and prohibited assumptions.* In preparing its resolution plan, a covered company shall:

(1) Take into account that the material financial distress or failure of the covered company may occur under the severely adverse economic conditions provided to the covered company by the Board pursuant to 12 U.S.C. 5365(i)(1)(B);

(2) 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, including any resolution actions taken outside the United States that would eliminate the need for any of a covered company's U.S. subsidiaries to enter into resolution proceedings; and

(3) With respect to foreign banking organizations, not assume that the covered company takes resolution actions outside of the United States that would eliminate the need for any U.S. subsidiaries to enter into resolution proceedings.

(i) *Point of contact.* Each covered company shall identify a senior management official at the covered company responsible for serving as a point of contact regarding the resolution plan of the covered company.

(j) *Incorporation of previously submitted resolution plan information by reference.* Any resolution plan submitted by a covered company may incorporate by reference information from a resolution plan previously submitted by the

covered company to the Board and the Corporation, provided that:

(1) The resolution plan seeking to incorporate information by reference clearly indicates:

(i) The information the covered company is incorporating by reference; and

(ii) Which of the covered company's previously submitted resolution plan(s) originally contained the information the covered company is incorporating by reference and the specific location of the information in the covered company's previously submitted resolution plan; and

(2) The covered company certifies that the information the covered company is incorporating by reference remains accurate in all respects that are material to the covered company's resolution plan.

(k) *Initial resolution plans after effective date.* (1) Notwithstanding anything to the contrary in paragraphs (a) through (c) or (d)(1) of this section, each company that is a covered company as of December 31, 2019 is required to submit its initial resolution plan after December 31, 2019, as provided in this paragraph (k). The submission date and resolution plan type for each subsequent resolution plan will be determined pursuant to paragraphs (a) through (d) of this section.

(i) *Biennial filers.* Each covered company that is a biennial filer on October 1, 2020 and remains a biennial filer as of July 1, 2021, is required to submit a targeted resolution plan pursuant to paragraph (a)(4) of this section on or before July 1, 2021.

(ii) *Triennial full filers.* Each covered company that is a triennial full filer on October 1, 2020 and remains a triennial full filer as of July 1, 2021 is required to submit a targeted resolution plan pursuant to paragraph (b)(3) of this section on or before July 1, 2021.

(iii) *Triennial reduced filers.* Each covered company that is a triennial reduced filer on October 1, 2020 and remains a triennial reduced filer as of July 1, 2022 is required to submit a reduced resolution plan pursuant to paragraph (c)(3) of this section on or before July 1, 2022.

(2) With respect to any company that is a covered company as of December 31, 2019, and changes filings groups

specified in paragraphs (a) through (c) of this section after October 1, 2020 and before the date by which it would be required to submit a resolution plan under paragraph (k)(1) of this section, the requirements for its initial resolution plan after it changes filing groups will be determined pursuant to paragraph (d)(1) of this section.

(3) Notwithstanding anything to the contrary in this paragraph (k), a covered company that has been jointly directed by the Board and the Corporation before December 31, 2019, to submit a resolution plan on or before July 1, 2020 describing changes it has made to its most recent resolution plan submission to address each shortcoming the agencies identified in that resolution plan shall submit a responsive resolution plan on or before July 1, 2020 in addition to any resolution plan that such covered company is otherwise required to submit under this section. The requirement to submit such a resolution plan on or before July 1, 2020 does not alter the timing or type of resolution plan any such covered company is required to submit under this section after July 1, 2020.

**§ 381.5 Informational content of a full resolution plan.**

(a) *In general*—(1) *Domestic covered companies.* A full resolution plan of a covered company that is organized or incorporated in the United States shall include the information specified in paragraphs (b) through (h) of this section with respect to the subsidiaries and operations that are domiciled in the United States as well as the foreign subsidiaries, offices, and operations of the covered company.

(2) *Foreign-based covered companies.* A full resolution plan of a covered company that is organized or incorporated in a jurisdiction other than the United States (other than a bank holding company) or that is a foreign banking organization shall include:

(i) The information specified in paragraphs (b) through (h) of this section with respect to the subsidiaries, branches and agencies, and identified critical operations and core business lines, as applicable, that are domiciled in the United States or conducted in whole or material part in the United

States. With respect to the information specified in paragraph (g) of this section, the resolution plan of a foreign-based covered company shall also identify, describe in detail, and map to legal entity the interconnections and interdependencies among the U.S. subsidiaries, branches, and agencies, and between those entities and:

(A) The identified critical operations and core business lines of the foreign-based covered company; and

(B) Any foreign-based affiliate; and

(ii) A detailed explanation of how resolution planning for the subsidiaries, branches and agencies, and identified critical operations and core business lines of the foreign-based covered company that are domiciled in the United States or conducted in whole or material part in the United States is integrated into the foreign-based covered company's overall resolution or other contingency planning process.

(b) *Executive summary.* Each full resolution plan of a covered company shall include an executive summary describing:

(1) The key elements of the covered company's strategic plan for rapid and orderly resolution in the event of material financial distress at or failure of the covered company;

(2) A description of each material change experienced by the covered company since the filing of the covered company's previously submitted resolution plan (or affirmation that no such material change has occurred);

(3) Changes to the covered company's previously submitted resolution plan resulting from any:

(i) Change in law or regulation;

(ii) Guidance or feedback from the Board and the Corporation; or

(iii) Material change described pursuant to paragraph (b)(2) of this section; and

(4) Any actions taken by the covered company since filing of the previous resolution plan to improve the effectiveness of the covered company's resolution plan or remediate or otherwise mitigate any material weaknesses or impediments to effective and timely execution of the resolution plan.

(c) *Strategic analysis.* Each full resolution plan shall include a strategic analysis describing the covered company's

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plan for rapid and orderly resolution in the event of material financial distress or failure of the covered company. Such analysis shall:

(1) Include detailed descriptions of the:

(i) Key assumptions and supporting analysis underlying the covered company's resolution plan, including any assumptions made concerning the economic or financial conditions that would be present at the time the covered company sought to implement such plan;

(ii) Range of specific actions to be taken by the covered company to facilitate a rapid and orderly resolution of the covered company, its material entities, and its identified critical operations and core business lines in the event of material financial distress or failure of the covered company;

(iii) Funding, liquidity and capital needs of, and resources available to, the covered company and its material entities, which shall be mapped to its identified critical operations and core business lines, in the ordinary course of business and in the event of material financial distress at or failure of the covered company;

(iv) Covered company's strategy for maintaining operations of, and funding for, the covered company and its material entities, which shall be mapped to its identified critical operations and core business lines;

(v) Covered company's strategy in the event of a failure or discontinuation of a material entity, core business line or identified critical operation, and the actions that will be taken by the covered company to prevent or mitigate any adverse effects of such failure or discontinuation on the financial stability of the United States; provided, however, if any such material entity is subject to an insolvency regime other than the Bankruptcy Code, a covered company may exclude that entity from its strategic analysis unless that entity either has \$50 billion or more in total assets or conducts an identified critical operation; and

(vi) Covered company's strategy for ensuring that any insured depository institution subsidiary of the covered company will be adequately protected from risks arising from the activities

of any nonbank subsidiaries of the covered company (other than those that are subsidiaries of an insured depository institution);

(2) Identify the time period(s) the covered company expects would be needed for the covered company to successfully execute each material aspect and step of the covered company's plan;

(3) Identify and describe any potential material weaknesses or impediments to effective and timely execution of the covered company's plan;

(4) Discuss the actions and steps the covered company has taken or proposes to take to remediate or otherwise mitigate the weaknesses or impediments identified by the covered company, including a timeline for the remedial or other mitigatory action; and

(5) Provide a detailed description of the processes the covered company employs for:

(i) Determining the current market values and marketability of the core business lines, identified critical operations, and material asset holdings of the covered company;

(ii) Assessing the feasibility of the covered company's plans (including timeframes) for executing any sales, divestitures, restructurings, recapitalizations, or other similar actions contemplated in the covered company's resolution plan; and

(iii) Assessing the impact of any sales, divestitures, restructurings, recapitalizations, or other similar actions on the value, funding, and operations of the covered company, its material entities, identified critical operations and core business lines.

(d) *Corporate governance relating to resolution planning.* Each full resolution plan shall:

(1) Include a detailed description of:

(i) How resolution planning is integrated into the corporate governance structure and processes of the covered company;

(ii) The covered company's policies, procedures, and internal controls governing preparation and approval of the covered company's resolution plan;

(iii) The identity and position of the senior management official(s) of the

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covered company that is primarily responsible for overseeing the development, maintenance, implementation, and filing of the covered company's resolution plan and for the covered company's compliance with this part; and

(iv) The nature, extent, and frequency of reporting to senior executive officers and the board of directors of the covered company regarding the development, maintenance, and implementation of the covered company's resolution plan;

(2) Describe the nature, extent, and results of any contingency planning or similar exercise conducted by the covered company since the date of the covered company's most recently filed resolution plan to assess the viability of or improve the resolution plan of the covered company; and

(3) Identify and describe the relevant risk measures used by the covered company to report credit risk exposures both internally to its senior management and board of directors, as well as any relevant risk measures reported externally to investors or to the covered company's appropriate Federal regulator.

(e) *Organizational structure and related information.* Each full resolution plan shall:

(1) Provide a detailed description of the covered company's organizational structure, including:

(i) A hierarchical list of all material entities within the covered company's organization (including legal entities that directly or indirectly hold such material entities) that:

(A) Identifies the direct holder and the percentage of voting and nonvoting equity of each legal entity and foreign office listed; and

(B) The location, jurisdiction of incorporation, licensing, and key management associated with each material legal entity and foreign office identified;

(ii) A mapping of the covered company's identified critical operations and core business lines, including material asset holdings and liabilities related to such identified critical operations and core business lines, to material entities;

(2) Provide an unconsolidated balance sheet for the covered company and a consolidating schedule for all material entities that are subject to consolidation by the covered company;

(3) Include a description of the material components of the liabilities of the covered company, its material entities, identified critical operations and core business lines that, at a minimum, separately identifies types and amounts of the short-term and long-term liabilities, the secured and unsecured liabilities, and subordinated liabilities;

(4) Identify and describe the processes used by the covered company to:

(i) Determine to whom the covered company has pledged collateral;

(ii) Identify the person or entity that holds such collateral; and

(iii) Identify the jurisdiction in which the collateral is located, and, if different, the jurisdiction in which the security interest in the collateral is enforceable against the covered company;

(5) Describe any material off-balance sheet exposures (including guarantees and contractual obligations) of the covered company and its material entities, including a mapping to its identified critical operations and core business lines;

(6) Describe the practices of the covered company, its material entities and its core business lines related to the booking of trading and derivatives activities;

(7) Identify material hedges of the covered company, its material entities, and its core business lines related to trading and derivative activities, including a mapping to legal entity;

(8) Describe the hedging strategies of the covered company;

(9) Describe the process undertaken by the covered company to establish exposure limits;

(10) Identify the major counterparties of the covered company and describe the interconnections, interdependencies and relationships with such major counterparties;

(11) Analyze whether the failure of each major counterparty would likely have an adverse impact on or result in the material financial distress or failure of the covered company; and

(12) Identify each trading, payment, clearing, or settlement system of

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which the covered company, directly or indirectly, is a member and on which the covered company conducts a material number or value amount of trades or transactions. Map membership in each such system to the covered company's material entities, identified critical operations and core business lines.

(f) *Management information systems.* (1) Each full resolution plan shall include:

(i) A detailed inventory and description of the key management information systems and applications, including systems and applications for risk management, accounting, and financial and regulatory reporting, used by the covered company and its material entities. The description of each system or application provided shall identify the legal owner or licensor, the use or function of the system or application, service level agreements related thereto, any software and system licenses, and any intellectual property associated therewith;

(ii) A mapping of the key management information systems and applications to the material entities, identified critical operations and core business lines of the covered company that use or rely on such systems and applications;

(iii) An identification of the scope, content, and frequency of the key internal reports that senior management of the covered company, its material entities, identified critical operations and core business lines use to monitor the financial health, risks, and operation of the covered company, its material entities, identified critical operations and core business lines;

(iv) A description of the process for the appropriate supervisory or regulatory agencies to access the management information systems and applications identified in paragraph (f) of this section; and

(v) A description and analysis of:

(A) The capabilities of the covered company's management information systems to collect, maintain, and report, in a timely manner to management of the covered company, and to the Board, the information and data underlying the resolution plan; and

(B) Any gaps or weaknesses in such capabilities, and a description of the

actions the covered company intends to take to promptly address such gaps, or weaknesses, and the time frame for implementing such actions.

(2) The Board will use its examination authority to review the demonstrated capabilities of each covered company to satisfy the requirements of paragraph (f)(1)(v) of this section. The Board will share with the Corporation information regarding the capabilities of the covered company to collect, maintain, and report in a timely manner information and data underlying the resolution plan.

(g) *Interconnections and interdependencies.* To the extent not provided elsewhere in this part, each full resolution plan shall identify and map to the material entities the interconnections and interdependencies among the covered company and its material entities, and among the identified critical operations and core business lines of the covered company that, if disrupted, would materially affect the funding or operations of the covered company, its material entities, or its identified critical operations or core business lines. Such interconnections and interdependencies may include:

(1) Common or shared personnel, facilities, or systems (including information technology platforms, management information systems, risk management systems, and accounting and recordkeeping systems);

(2) Capital, funding, or liquidity arrangements;

(3) Existing or contingent credit exposures;

(4) Cross-guarantee arrangements, cross-collateral arrangements, cross-default provisions, and cross-affiliate netting agreements;

(5) Risk transfers; and

(6) Service level agreements.

(h) *Supervisory and regulatory information.* Each full resolution plan shall:

(1) Identify any:

(i) Federal, state, or foreign agency or authority (other than a Federal banking agency) with supervisory authority or responsibility for ensuring the safety and soundness of the covered company, its material entities, identified critical operations and core business lines; and

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(ii) Other Federal, state, or foreign agency or authority (other than a Federal banking agency) with significant supervisory or regulatory authority over the covered company, and its material entities and identified critical operations and core business lines.

(2) Identify any foreign agency or authority responsible for resolving a foreign-based material entity and identified critical operations or core business lines of the covered company; and

(3) Include contact information for each agency identified in paragraphs (h)(1) and (2) of this section.

### § 381.6 Informational content of a targeted resolution plan.

(a) *In general.* A targeted resolution plan is a subset of a full resolution plan and shall include core elements of a full resolution plan and information concerning key areas of focus as set forth in this section.

(b) *Targeted resolution plan content.* Each targeted resolution plan of a covered company shall include:

(1) The core elements;

(2) Such targeted information as the Board and Corporation may jointly identify pursuant to paragraph (c) of this section;

(3) A description of each material change experienced by the covered company since the filing of the covered company's previously submitted resolution plan (or affirmation that no such material change has occurred); and

(4) A description of changes to the covered company's previously submitted resolution plan resulting from any:

(i) Change in law or regulation;

(ii) Guidance or feedback from the Board and the Corporation; or

(iii) Material change described pursuant to paragraph (b)(3) of this section.

(c) *Targeted information requests.* No less than 12 months before the date by which a covered company is required to submit a targeted resolution plan, the Board and Corporation may jointly identify in writing resolution-related key areas of focus, questions, and issues that must also be addressed in the covered company's targeted resolution plan.

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(d) *Deemed incorporation by reference.* If a covered company does not include in its targeted resolution plan a description of changes to any information set forth in section 165(d)(1)(A), (B), or (C) of the Dodd-Frank Act (12 U.S.C. 5365(d)(1)(A), (B), or (C)) since its previously submitted resolution plan, such information from its previously submitted resolution plan are incorporated by reference into its targeted resolution plan.

### § 381.7 Informational content of a reduced resolution plan.

(a) *Reduced resolution plan content.* Each reduced resolution plan of a covered company shall include:

(1) A description of each material change experienced by the covered company since the filing of the covered company's previously submitted resolution plan (or affirmation that no such material change has occurred); and

(2) A description of changes to the strategic analysis that was presented in the covered company's previously submitted resolution plan resulting from any:

(i) Change in law or regulation;

(ii) Guidance or feedback from the Board and the Corporation; or

(iii) Material change described pursuant to paragraph (a)(1) of this section.

(b) *Deemed incorporation by reference.* If a covered company does not include in its reduced resolution plan a description of changes to any information set forth in section 165(d)(1)(A), (B), or (C) of the Dodd-Frank Act (12 U.S.C. 5365(d)(1)(A), (B), or (C)) since its previously submitted resolution plan, such information from its previously submitted resolution plan are incorporated by reference into its reduced resolution plan.

### § 381.8 Review of resolution plans; re-submission of deficient resolution plans.

(a) *Review of resolution plans.* The Board and Corporation will seek to coordinate their activities concerning the review of resolution plans, including planning for, reviewing, and assessing the resolution plans, as well as such activities that occur during the



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periods between resolution plan submissions.

(b) *Joint determination regarding deficient resolution plans.* If the Board and Corporation jointly determine that the resolution plan of a covered company submitted under § 381.4 is not credible or would not facilitate an orderly resolution of the covered company under the Bankruptcy Code, the Board and Corporation shall jointly notify the covered company in writing of such determination. Any joint notice provided under this paragraph (b) shall be provided pursuant to paragraph (f) of this section and shall identify the deficiencies identified by the Board and Corporation in the resolution plan. A deficiency is an aspect of a covered company's resolution plan that the Board and Corporation jointly determine presents a weakness that individually or in conjunction with other aspects could undermine the feasibility of the covered company's resolution plan.

(c) *Resubmission of a resolution plan.* Within 90 days of receiving a notice of deficiencies issued pursuant to paragraph (b) of this section, or such shorter or longer period as the Board and Corporation may jointly determine, a covered company shall submit a revised resolution plan to the Board and Corporation that addresses the deficiencies jointly identified by the Board and Corporation, and that discusses in detail:

(1) The revisions made by the covered company to address the deficiencies jointly identified by the Board and the Corporation;

(2) Any changes to the covered company's business operations and corporate structure that the covered company proposes to undertake to facilitate implementation of the revised resolution plan (including a timeline for the execution of such planned changes); and

(3) Why the covered company believes that the revised resolution plan is credible and would result in an orderly resolution of the covered company under the Bankruptcy Code.

(d) *Extensions of time.* Upon their own initiative or a written request by a covered company, the Board and Corporation may jointly extend any time

period under this section. Each extension request shall be supported by a written statement of the covered company describing the basis and justification for the request.

(e) *Joint determination regarding shortcomings in resolution plans.* The Board and Corporation may also jointly identify one or more shortcomings in a covered company's resolution plan. A shortcoming is a weakness or gap that raises questions about the feasibility of a covered company's resolution plan, but does not rise to the level of a deficiency for both the Board and Corporation. If a shortcoming is not satisfactorily explained or addressed before or in the submission of the covered company's next resolution plan, it may be found to be a deficiency in the covered company's next resolution plan. The Board and the Corporation may identify an aspect of a covered company's resolution plan as a deficiency even if such aspect was not identified as a shortcoming in an earlier resolution plan submission.

(f) *Feedback.* Following their review of a resolution plan, the Board and the Corporation will jointly send a notification to each covered company that identifies any deficiencies or shortcomings in the covered company's resolution plan (or confirms that no deficiencies or shortcomings were identified) and provides any feedback on the resolution plan. The Board and the Corporation will jointly send the notification no later than 12 months after the later of the date on which the covered company submitted the resolution plan and the date by which the covered company was required to submit the resolution plan, unless the Board and the Corporation jointly determine in their discretion that extenuating circumstances exist that require delay.

### **§ 381.9 Failure to cure deficiencies on resubmission of a resolution plan.**

(a) *In general.* The Board and Corporation may jointly determine that a covered company or any subsidiary of a covered company shall be subject to more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the covered company or the subsidiary if:

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(1) The covered company fails to submit a revised resolution plan under § 381.8(c) within the required time period; or

(2) The Board and the Corporation jointly determine that a revised resolution plan submitted under § 381.8(c) does not adequately remedy the deficiencies jointly identified by the Board and the Corporation under § 381.8(b).

(b) *Duration of requirements or restrictions.* Any requirements or restrictions imposed on a covered company or a subsidiary thereof pursuant to paragraph (a) of this section shall cease to apply to the covered company or subsidiary, respectively, on the date that the Board and the Corporation jointly determine the covered company has submitted a revised resolution plan that adequately remedies the deficiencies jointly identified by the Board and the Corporation under § 381.8(b).

(c) *Divestiture.* The Board and Corporation, in consultation with the Council, may jointly, by order, direct the covered company to divest such assets or operations as are jointly identified by the Board and Corporation if:

(1) The Board and Corporation have jointly determined that the covered company or a subsidiary thereof shall be subject to requirements or restrictions pursuant to paragraph (a) of this section; and

(2) The covered company has failed, within the 2-year period beginning on the date on which the determination to impose such requirements or restrictions under paragraph (a) of this section was made, to submit a revised resolution plan that adequately remedies the deficiencies jointly identified by the Board and the Corporation under § 381.8(b); and

(3) The Board and Corporation jointly determine that the divestiture of such assets or operations is necessary to facilitate an orderly resolution of the covered company under the Bankruptcy Code in the event the company was to fail.

### § 381.10 Consultation.

Before issuing any notice of deficiencies under § 381.8(b), determining to impose requirements or restrictions under § 381.9(a), or issuing a divestiture order pursuant to § 381.9(c) with respect

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to a covered company that is likely to have a significant impact on a functionally regulated subsidiary or a depository institution subsidiary of the covered company, the Board—

(a) Shall consult with each Council member that primarily supervises any such subsidiary; and

(b) May consult with any other Federal, state, or foreign supervisor as the Board considers appropriate.

### § 381.11 No limiting effect or private right of action; confidentiality of resolution plans.

(a) *No limiting effect on bankruptcy or other resolution proceedings.* A resolution plan submitted pursuant to this part shall not have any binding effect on:

(1) A court or trustee in a proceeding commenced under the Bankruptcy Code;

(2) A receiver appointed under title II of the Dodd-Frank Act (12 U.S.C. 5381 *et seq.*);

(3) A bridge financial company chartered pursuant to 12 U.S.C. 5390(h); or

(4) Any other authority that is authorized or required to resolve a covered company (including any subsidiary or affiliate thereof) under any other provision of Federal, state, or foreign law.

(b) *No private right of action.* Nothing in this part creates or is intended to create a private right of action based on a resolution plan prepared or submitted under this part or based on any action taken by the Board or the Corporation with respect to any resolution plan submitted under this part.

(c) *Form of resolution plans—(1) Generally.* Each full, targeted, and reduced resolution plan of a covered company shall be divided into a public section and a confidential section. Each covered company shall segregate and separately identify the public section from the confidential section.

(2) *Public section of full and targeted resolution plans.* The public section of a full or targeted resolution plan shall consist of an executive summary of the resolution plan that describes the business of the covered company and includes, to the extent material to an understanding of the covered company:

(i) The names of material entities;

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(ii) A description of core business lines;

(iii) Consolidated or segment financial information regarding assets, liabilities, capital and major funding sources;

(iv) A description of derivative activities and hedging activities;

(v) A list of memberships in material payment, clearing and settlement systems;

(vi) A description of foreign operations;

(vii) The identities of material supervisory authorities;

(viii) The identities of the principal officers;

(ix) A description of the corporate governance structure and processes related to resolution planning;

(x) A description of material management information systems; and

(xi) A description, at a high level, of the covered company's resolution strategy, covering such items as the range of potential purchasers of the covered company, its material entities, and its core business lines.

(3) *Public section of reduced resolution plans.* The public section of a reduced resolution plan shall consist of an executive summary of the resolution plan that describes the business of the covered company and includes, to the extent material to an understanding of the covered company:

(i) The names of material entities;

(ii) A description of core business lines;

(iii) The identities of the principal officers; and

(iv) A description, at a high level, of the covered company's resolution strategy, referencing the applicable resolution regimes for its material entities.

(d) *Confidential treatment of resolution plans.* (1) The confidentiality of resolution plans and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)), 12 CFR part 261 (the Board's Rules Regarding Availability of Information), and 12 CFR part 309 (the Corporation's Disclosure of Information rules).

(2) Any covered company submitting a resolution plan or related materials pursuant to this part that desires con-

fidential treatment of the information under 5 U.S.C. 552(b)(4), 12 CFR part 261 (the Board's Rules Regarding Availability of Information), and 12 CFR part 309 (the Corporation's Disclosure of Information rules) may file a request for confidential treatment in accordance with those rules.

(3) To the extent permitted by law, information comprising the Confidential Section of a resolution plan will be treated as confidential.

(4) To the extent permitted by law, the submission of any nonpublic data or information under this part shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or state law (including the rules of any Federal or state court) to which the data or information is otherwise subject. Privileges that apply to resolution plans and related materials are protected pursuant to section 18(x) of the Federal Deposit Insurance Act (12 U.S.C. 1828(x)).

### § 381.12 Enforcement.

The Board and Corporation may jointly enforce an order jointly issued by the Board and Corporation under § 381.9(a) or (c). The Board, in consultation with the Corporation, may take any action to address any violation of this part by a covered company under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

## PART 382—RESTRICTIONS ON QUALIFIED FINANCIAL CONTRACTS

Sec.

382.1 Definitions.

382.2 Applicability.

382.3 U.S. Special resolution regimes.

382.4 Insolvency proceedings.

382.5 Approval of enhanced creditor protection conditions.

382.6 [Reserved]

382.7 Exclusion of certain QFCs.

AUTHORITY: 12 U.S.C. 1816, 1818, 1819, 1820(g), 1828, 1828(m), 1831n, 1831o, 1831p-1, 1831(u), 1831w.

SOURCE: 82 FR 50262, Oct. 30, 2017, unless otherwise noted.

### § 382.1 Definitions.

*Affiliate* has the same meaning as in section 12 U.S.C. 1813(w).