



THE FINANCIAL SERVICES ROUNDTABLE 



November 18, 2011

*By electronic submission to [www.fdic.gov](http://www.fdic.gov)*

Robert E. Feldman  
Executive Secretary  
Federal Deposit Insurance Corporation  
550 17th Street, NW  
Washington, DC 20429  
Attention: Comments

Re: Resolution Plans Required for Insured Depository Institutions with \$50 Billion or More in Total Assets

RIN 3064-AD59 / FR Docket No. 2011-24262

Ladies and Gentlemen:

The Securities Industry and Financial Markets Association, The Clearing House Association, the American Bankers Association, the Association for Financial Markets in Europe, The Financial Services Roundtable and the Institute of International Bankers (collectively, the “**Associations**”)<sup>1</sup> welcome the opportunity to comment on the FDIC’s interim final rule on resolution plans for insured depository institutions (“**IDIs**”) with \$50 billion or more in total assets (the “**IDI Rule**”).<sup>2</sup>

We would like to take the opportunity to thank the FDIC and the Board of Governors of the Federal Reserve System (the “**Federal Reserve**”) for the cooperative

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<sup>1</sup> A description of the Associations is set forth in the Annex to this letter.

<sup>2</sup> Federal Deposit Insurance Corporation, *Resolution Plans Required for Insured Depository Institutions with \$50 Billion or More in Total Assets*, 76 Fed. Reg. 58379 (Sept. 21, 2011) (to be codified at 12 C.F.R. pt. 360) [*hereinafter* IDI Rule].

and iterative approach to resolution planning adopted in the joint final rule on resolution plans under Section 165(d) of the Dodd-Frank Act (the “**Section 165(d) Rule**”).<sup>3</sup> We appreciate the FDIC and the Federal Reserve’s receptivity to the comments that we and others made in response to the proposed Section 165(d) Rule.<sup>4</sup>

In addition, we appreciate that the FDIC has adopted a similarly iterative approach in the IDI Rule, and that the interim final IDI Rule and the final Section 165(d) Rule are largely harmonized so that institutions subject to both rules will be able to take an integrated approach to resolution planning. We also believe that the FDIC and the Federal Reserve’s approach allows for an alignment in timing and content between the U.S. and non-U.S. requirements, consistent with the recommendations of the Financial Stability Board.<sup>5</sup>

In Part I of this comment letter, we offer some general comments on certain key requirements of the IDI Rule, focusing in particular on the requirement to show a resolution strategy for the IDI and the least cost resolution requirement. In Part II, we offer a few specific suggestions for further strengthening the alignment between the IDI and Section 165(d) Rules and clarifications that we believe would be helpful to include in the final version of the IDI Rule.

## **I. IDI Rule Requirements**

We strongly support the purpose of the IDI resolution plans, which is to enable the FDIC, as receiver, to resolve a failed covered IDI (“**CIDI**”) in a manner that ensures that depositors receive timely access to their insured deposits, maximizes the net present value return from the sale or disposition of its assets, and minimizes the amount of any loss realized by the creditors in the resolution,<sup>6</sup> including any loss to the Deposit

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<sup>3</sup> Board of Governors of the Federal Reserve System and Federal Deposit Insurance Corporation, *Resolution Plans Required*, 76 Fed. Reg. 67323 (Nov. 1, 2011) (to be codified at 12 C.F.R. pts. 243 & 381) [*hereinafter* Section 165(d) Rule].

<sup>4</sup> *See, e.g.*, Joint Trade Association Comment Letter to the FDIC and the Federal Reserve on the Joint Notice of Proposed Rulemaking Implementing Resolution Plan and Credit Exposure Report Requirements of Section 165(d) of the Dodd-Frank Act (June 10, 2011), *available at* <http://www.fdic.gov/regulations/laws/federal/2011/11c08AD77.PDF>.

<sup>5</sup> *See* Financial Stability Board, *Key Attributes of Effective Resolution Regimes for Financial Institutions* (Oct. 2011), *available at* [http://www.financialstabilityboard.org/publications/r\\_111104cc.pdf](http://www.financialstabilityboard.org/publications/r_111104cc.pdf); Financial Stability Board, *Policy Measures to Address Systemically Important Financial Institutions* (Nov. 4, 2011), *available at* [http://www.financialstabilityboard.org/publications/r\\_111104bb.pdf](http://www.financialstabilityboard.org/publications/r_111104bb.pdf); *see also* Joint Trade Association Comment Letter to the Financial Stability Board on the Consultative Document on Effective Resolution of Systemically Important Financial Institutions at 14–15, *available at* [http://www.financialstabilityboard.org/press/c\\_110909cc.pdf](http://www.financialstabilityboard.org/press/c_110909cc.pdf).

<sup>6</sup> IDI Rule § 360.10(a), (c)(2).

Insurance Fund. The release accompanying the IDI Rule rightfully acknowledges that a resolution plan may consider a variety of strategies for payment of depositors and the sale of core business lines and assets.<sup>7</sup>

***Recognizing a Variety of Potential Resolution Strategies***

We strongly support the FDIC's expectation, noted in the release accompanying the IDI Rule, that resolution plans will differ based on variations among CIDI's core business lines, domestic and foreign operations, capital structure, risk, legal structure, complexity, financial activities, size and other factors.<sup>8</sup> The \$50 billion asset threshold established by the IDI Rule encompasses a wide range of insured depository institutions. We believe that it is critical that the FDIC, as indicated in the release,<sup>9</sup> take into account the real differences in the size, complexity, and operations of CIDI's in reviewing the sufficiency and credibility of resolution plans.

We also appreciate the FDIC's recognition that, in developing resolution plans, CIDI's may consider a variety of potential resolution strategies that may provide for the continuation of depositor access, maximize net present value and minimize loss, including a cash payment of insured deposits, a purchase and assumption transaction with an IDI to assume insured deposits or all deposits, a purchase and assumption transaction with multiple IDI's in which branches are broken up and sold separately in order to maximize franchise value, and the transfer of insured deposits to a bridge institution chartered to assume them as an interim step prior to the purchase of the deposit franchise and assumption of such deposits by one or more IDI's.<sup>10</sup>

We believe that, among the range of strategies for the resolution of a failed CIDI, the FDIC should consider a recapitalization of the CIDI as a credible alternative to traditional resolution methods. We believe that recapitalizations are likely to be more effective during a financial panic than would be a liquidation of financial assets or the sale of a troubled or insolvent bank to a third party pursuant to a traditional purchase and assumption agreement.<sup>11</sup>

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<sup>7</sup> IDI Rule at 58384–85.

<sup>8</sup> IDI Rule at 58383.

<sup>9</sup> *Id.*

<sup>10</sup> IDI Rule at 58384.

<sup>11</sup> See Comment Letter from SIFMA and The Clearing House Association L.L.C. to the FDIC on the FDIC's Second Notice of Proposed Rulemaking under Title II of the Dodd-Frank Act: Recapitalizations as an Effective Way to Resolve Systemically Important Banks and Non-Bank Financial Companies on a Closed Basis Without Taxpayer-Funded Bailouts (May 23, 2011), available at <http://www.fdic.gov/regulations/laws/federal/2011/11c16Ad73.PDF>

### ***Least Cost Resolution Requirement***

The IDI Rule requires that a resolution plan must demonstrate how the firm's resolution strategy is the least costly to the Deposit Insurance Fund of all possible methods of resolving the CIDI.<sup>12</sup> Whether a resolution actually is "least cost" is a determination that only the FDIC can make and that does not have to be made until there is a failure. It depends on a wide variety of assumptions regarding sales price, available alternatives and many other factors. Requiring a CIDI to demonstrate *ex ante* that a resolution strategy would actually be the "least costly" of all possible alternatives at some unknown time in the future sets a standard that would be impossible for firms to meet. Also, this standard would likely dissuade CIDs from considering multiple resolution strategies (choices that could prove very helpful to the FDIC), as only one strategy could be "least cost."

Moreover, the IDI Rule already allows the FDIC to obtain sufficient information to make its own determination when necessary as to which resolution methods will be least costly to the Deposit Insurance Fund. The IDI Rule provides that a resolution plan must include a description of the processes that the CIDI has employed for assessing the feasibility of the CIDI's plans, as well as a detailed description of the processes that the CIDI has employed for assessing the impact of any sales, divestitures, restructurings, recapitalizations or other actions on the value, funding, and operations of the CIDI and its core business lines.<sup>13</sup> As a result, we believe that the requirement to demonstrate that the proposed strategy for resolution of the CIDI is the least costly of all possible methods for resolving the CIDI should be removed from the final IDI Rule.

## **II. Further Harmonization Between the IDI and Section 165(d) Rules**

As noted above, we recognize that the FDIC has largely harmonized the requirements under the interim final IDI Rule with the final Section 165(d) Rule. As a result, we have limited our comments on the interim final IDI Rule to those areas that we believe would benefit from further harmonization between the two rules or that require additional clarification.

### ***Data-Production Capabilities***

The IDI Rule would require a CIDI, within a reasonable period of time following the submission of its initial resolution plan, to demonstrate its capability to promptly produce the information and data underlying the plan in a format acceptable to the FDIC.<sup>14</sup> We believe that a CIDI's data-production and systems capabilities would be better monitored as part of the FDIC's ongoing review of an individual CIDI's resolution

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<sup>12</sup> IDI Rule § 360.10(c)(2)(vii).

<sup>13</sup> IDI Rule § 360.10(c)(2)(viii).

<sup>14</sup> IDI Rule § 360.10(d)(2).

plan than through a rule-based requirement. In this regard, the IDI Rule would benefit from greater harmonization with the Section 165(d) Rule, which eliminated a similar data-production requirement in the proposed version of the Section 165(d) Rule in favor of a supervisory approach.<sup>15</sup> It is unclear why the IDI Rule and the Section 165(d) Rule should differ in this regard.

We believe that it is not appropriate to embed a data-production requirement in the IDI Rule because it is not possible to operationalize data production and invest in related systems before understanding what data elements and information-sorting will be required by supervisors. We believe that data capabilities will evolve and improve continuously and that such evolution and improvement should be a supervisory goal, rather than the production of data in a particular format at a particular time in order to satisfy a static regulatory requirement. The IDI Rule provides for the FDIC to have access to such information and personnel as the FDIC determines is necessary to assess both the credibility of a resolution plan and the ability of a CIDI to implement it. That requirement, together with the FDIC's otherwise applicable examination authority under the FDIA, should afford the FDIC a better opportunity to monitor data and systems capabilities than would the IDI Rule's proposed data-production requirement.<sup>16</sup>

#### *Correction of Measurement Date for Nonbank Assets*

In what appears to be an inadvertent technical glitch, the IDI Rule and the Section 165(d) Rule have two different effective dates, January 1, 2012<sup>17</sup> and November

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<sup>15</sup> Under the final Section 165(d) Rule, the Federal Reserve will use its examination authority to review the capabilities of each covered company to collect, maintain and report information and data underlying the covered company's resolution plan and identify any deficiencies, gaps or weaknesses in such capabilities. The Federal Reserve will share information regarding such capabilities with the FDIC. Section 165(d) Rule § \_\_.4(f)(v)(2).

<sup>16</sup> We also question the utility of the IDI Rule's data-production requirement to the FDIC, given the other requirements that are already in place and are being developed. IDIs with at least \$2 billion in deposits and either 250,000 deposit accounts or \$20 billion in total assets are currently covered by FDIC rules designed to allow the deposit and other operations of a large IDI to continue functioning on the day following failure. 12 C.F.R. § 360.9. Those rules require large IDIs to have in place practices and procedures for providing the FDIC, in a standard format and upon the close of any day's business, with required depositor and customer data for all deposit accounts held in domestic and foreign offices and interest-bearing investment accounts connected with sweep and automated credit arrangements. 12 C.F.R. § 360.9(d)(1). In addition, Title II of the Dodd-Frank Act requires the FDIC, the Federal Reserve, the OCC, the SEC, the CFTC and the FHFA to jointly adopt rules requiring that financial companies maintain such records with respect to qualified financial contracts as the agencies determine to be necessary or appropriate in order to assist the FDIC as receiver for a financial company under the Orderly Liquidation Authority. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 210(c)(8)(H), 124 Stat. 1376, 1489 (2010) (codified at 12 U.S.C. § 5390(c)(8)(H)).

<sup>17</sup> IDI Rule at 58379.

30, 2011,<sup>18</sup> respectively. The timing of the initial resolution-plan submission under each rule is based on a measurement of total nonbank assets as of the effective date of that rule.<sup>19</sup> We believe that the measurement dates for the two rules should be the same to ensure that each individual institution subject to the Section 165(d) Rule and any of its insured depository institution subsidiaries subject to the IDI Rule will have the same initial and subsequent resolution plan submission dates.

As the rules are currently written, changes in total nonbank-asset size during any gap between the effective dates of the two rules could result in an institution's initial Section 165(d) plan being due on a date that differs from the one that applies to the initial plan for its CIDI. We do not believe such a result is intended, and we support the alignment of the timing for plan submissions under the two rules.

We suggest further that the measurement date for nonbanking assets should be the end of a calendar quarter so that it is a date as of which most institutions prepare financial statements. This measurement date need not be linked to the effective date of either rule, so long as it is the same date under both the IDI Rule and the Section 165(d) Rule.

#### *Correction of Rules for New CIDs*

Similarly, there is a discrepancy between the plan-submission dates for, on the one hand, an IDI that becomes subject to the IDI Rule after its effective date and, on the other, a company that becomes subject to the Section 165(d) Rule after its effective date. Under the Section 165(d) Rule, a company that becomes covered by the rule after its effective date must submit its initial plan by July 1 of the year following the date on which the company becomes covered, provided that such July 1 is at least 270 days after the date on which the company becomes covered.<sup>20</sup> By contrast, under the IDI Rule an IDI that becomes covered by that rule after its effective date must submit its initial plan by July 1 of the year following the date on which the IDI becomes covered.<sup>21</sup> There is no proviso under the IDI Rule ensuring that the CIDI have at least 270 days from the date it becomes covered to submit its plan.

This discrepancy in the rule requirements could result in different submission dates for a company subject to the Section 165(d) Rule and its CIDI. Because this result is inconsistent with the intention to have the two rules' requirements work in tandem, we urge the FDIC to correct the discrepancy by adding the proviso to the IDI Rule.

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<sup>18</sup> Section 165(d) Rule at 67323.

<sup>19</sup> IDI Rule § 360.10(c)(1)(i); Section 165(d) Rule § \_\_.3(a)(1).

<sup>20</sup> Section 165(d) Rule § \_\_.3(a)(2).

<sup>21</sup> IDI Rule § 360.10(c)(1)(ii).

We also note an inequitable potential consequence of the IDI Rule's provision on timing for plan submission by new CIDs. Under Section 360.10(c)(1)(ii), an IDI that becomes a CIDI after the IDI Rule's effective date could be required to submit its initial resolution plan earlier than it would have been required to if it had been a CIDI at the time of rule effectiveness and qualified for a December 31, 2013, initial-plan-submission date.<sup>22</sup> To avoid such a result, and to avoid differential treatment of similarly situated IDIs, we suggest that the FDIC use its discretionary authority under the IDI Rule to permit a new CIDI additional time to submit its initial resolution plan in these circumstances.<sup>23</sup>

### *Conforming the Notice of Material Events*

Under both the IDI Rule and the Section 165(d) Rule, CIDs and covered companies are required to file a notice within 45 days of "any event, occurrence, change in conditions or circumstances or other change that results in, or could reasonably be foreseen to have, a material effect on the resolution plan" of the CIDI or covered company.<sup>24</sup> Under the Section 165(d) Rule, such a notice of a material event is not required if the date for submitting the notice is within 90 days of an annual resolution plan submission.<sup>25</sup> Under the IDI Rule, however, such a notice of a material event is not required if the date for submitting the notice is within 45 days of an annual resolution plan submission.<sup>26</sup>

We believe that the two notice requirements should be conformed, as a material event for purposes of the IDI resolution plan is likely to be a material event for purposes of the Section 165(d) resolution plan, and vice versa, and there is no reason why the timing of notices should differ. We therefore suggest that the IDI Rule be modified so that no notice of material event is required in the circumstance where the date for submitting the notice is within 90 days of an annual resolution plan submission.

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<sup>22</sup> For example, using the January 1, 2012, date of effectiveness and nonbank-assets measurement date, as the IDI Rule currently specifies, an IDI could become a CIDI as a result of the total asset amount reported in its March 2012 call report and be required to submit an initial resolution plan by July 1, 2013, even if—based on the size of its parent's nonbank assets—it would have qualified for a December 31, 2013 initial-plan-submission date had it been a CIDI prior to the effective date of the IDI Rule.

<sup>23</sup> See IDI Rule § 360.10(c)(1)(iv). A parallel issue arises with respect to new covered companies under the Section 165(d) Rule, and we suggest that the FDIC and the Federal Reserve similarly use their discretion under that rule to avoid any inequitable consequences. See Section 165(d) Rule § \_\_.3(a)(2), (4).

<sup>24</sup> IDI Rule § 360.10(c)(1)(v); Section 165(d) Rule § \_\_.3(b).

<sup>25</sup> Section 165(d) Rule § \_\_.3(b)(3).

<sup>26</sup> IDI Rule § 360.10(c)(1)(v)(B).

In addition, we note that, while both the IDI Rule and the Section 165(d) Rule require a description of the event, occurrence or change that prompt the notice, the IDI Rule requires more detailed information regarding the impact of the material event to be submitted with the notice than is required under the Section 165(d) Rule. The IDI Rule requires a description of any material effects that the event, occurrence or change may have on the IDI resolution plan and a summary of the changes that are required in the IDI resolution plan,<sup>27</sup> whereas the Section 165(d) Rule only requires an explanation why the event, occurrence or change may require changes to the covered company's resolution plan.<sup>28</sup>

We urge the FDIC not to apply the IDI Rule notice requirement to require more detailed information with the notice of material events than would be required under the Section 165(d) Rule, and to revise the IDI Rule, or include language in the final IDI Rule release, to reflect that the notice requirement will be interpreted consistently with the parallel requirement under the Section 165(d) Rule.

***Clarification of Materiality Threshold for Certain Required Informational Elements***

We believe that certain of the IDI Rule's specific informational requirements should be limited by a materiality threshold in order to prevent them from being broader than would be useful to the FDIC and unduly burdensome for CIDs. First, the subsection of the IDI Rule requiring a plan to identify each payment, clearing and settlement system of which a CID is a member<sup>29</sup> should be aligned with the description of that requirement in the release accompanying the rule, which states that only material systems need be identified.<sup>30</sup> We suggest that Section 360.10(c)(2)(xiv) of the IDI Rule be revised to require identification of only material systems, or that the requirement of the IDI Rule be conformed to the similar requirement of the Section 165(d) Rule, which limits the disclosure requirement to systems on which a covered company conducts a material number or value amount of trades or transactions.<sup>31</sup>

Second, we believe that the requirement that a plan identify common or shared personnel, facilities or systems<sup>32</sup> should be qualified so that it only requires identification of "key" common or shared personnel, facilities or systems. The IDI Rule is similarly

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<sup>27</sup> IDI Rule § 360.10(c)(1)(v)(A).

<sup>28</sup> Section 165(d) Rule § \_\_.3(b)(2).

<sup>29</sup> IDI Rule § 360.10(c)(2)(xiv).

<sup>30</sup> IDI Rule at 58385 ("Systems that are immaterial in resolution planning, such as a local check clearing house, do not need to be identified.").

<sup>31</sup> Section 165(d) Rule § \_\_.4(e)(12).

<sup>32</sup> IDI Rule § 360.10(c)(2)(xix).

qualified in other places,<sup>33</sup> and the Section 165(d) Rule limits the scope of the parallel informational requirement.<sup>34</sup> Without such a materiality threshold, the rule would appear to require exhaustive lists of personnel and systems that would be of little practical use to the FDIC.

Finally, we request that the requirement to describe the non-U.S. components of the CIDI's structure and operations<sup>35</sup> be limited to material or key components. In particular, when discussing the nature and extent of the CIDI's cross-border assets, operations, interrelationships and exposures, we believe that it would be more useful to the FDIC in understanding the CIDI's cross-border elements to focus on the assets, operations, interrelationships and exposures that are material to the resolution of the CIDI.

### *Harmonization of Stress Scenarios*

The IDI Rule is inconsistent with the Section 165(d) Rule and internally inconsistent regarding the types of stress scenarios that a resolution plan should consider. Both the IDI and the Section 165(d) Rules require analysis of a CIDI's or a covered company's failure under the baseline, adverse and severely adverse economic conditions developed by the Federal Reserve pursuant to Section 165(i)(1)(B) of the Dodd-Frank Act.<sup>36</sup> The IDI Rule also requires a detailed description of the processes employed for assessing the feasibility of the CIDI's plans for executing any sales, divestitures, restructurings, recapitalizations and similar actions,<sup>37</sup> which is similar to a requirement of the Section 165(d) Rule with respect to covered companies.<sup>38</sup> The IDI Rule differs, however, in specifying that plan feasibility should be assessed "under idiosyncratic and industry-wide stress scenarios."<sup>39</sup>

It is unclear why the IDI Rule modifies this text, which seems clearly to be based on parallel provisions of the Section 165(d) Rule. More significantly, though, the reference to idiosyncratic and industry-wide stress scenarios is inconsistent with the

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<sup>33</sup> See, e.g., *id.* ("Provide 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 CIDI and its subsidiaries." (emphasis added)).

<sup>34</sup> See Section 165(d) Rule § \_\_.3(g)(1) (requiring a plan to identify common or shared personnel, facilities or systems "that, if disrupted, would materially affect the funding or operations of the covered company, its material entities, or its critical operations or core business lines").

<sup>35</sup> IDI Rule § 360.10(c)(2)(xviii).

<sup>36</sup> IDI Rule § 360.10(c)(2); Section 165(d) Rule § \_\_.4(a)(4)(i).

<sup>37</sup> IDI Rule § 360.10(c)(2)(viii)(B).

<sup>38</sup> Section 165(d) Rule § \_\_.4(c)(5)(ii).

<sup>39</sup> IDI Rule § 360.10(c)(2)(viii)(B).

requirement to analyze the CIDI's failure under baseline, adverse and severely adverse economic conditions. The reference may be a mistake,<sup>40</sup> but, in any event, we suggest that the IDI Rule's reference to idiosyncratic and industry-wide stress scenarios be deleted to avoid internal inconsistency and to better harmonize the IDI and Section 165(d) Rules.

#### ***Modification of Corporate Governance Rules Relating to Resolution Planning***

The IDI Rule requires a CIDI's plan to include the "identity and position of *the senior management official* of the CIDI that is primarily responsible for overseeing the development, maintenance, implementation and filing of the resolution plan and for the CIDI's compliance with [the IDI Rule]."<sup>41</sup> We suggest that the rule be modified to make clear that it would be appropriate if a CIDI were to divide these responsibilities among multiple senior management officials or assign them to a committee. The Section 165(d) Rule's formulation of the nearly identical requirement makes clear that these responsibilities need not be vested in one individual by referring to "the senior management official(s)" of the covered company primarily responsible for resolution planning.<sup>42</sup>

#### ***Consultation with Appropriate Federal Banking Agencies and Foreign Authorities***

The IDI Rule makes clear that the FDIC will review a resolution plan "in consultation with the appropriate Federal banking agency for the CIDI and its parent company."<sup>43</sup> We suggest that the IDI Rule also provide that the FDIC will consult with the appropriate federal banking agency for the CIDI and its parent company before determining that a resolution plan is not credible.<sup>44</sup>

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<sup>40</sup> For example, the proposed Section 165(d) rule would have required covered companies to "[t]ake into account that . . . material financial distress or failure of the Covered Company may occur at a time when financial markets, or other significant companies, are also under stress"—in other words, to consider not just idiosyncratic, but also industry-wide stress scenarios. Proposed Section 165(d) Rule § \_\_.4(a)(3)(i). Perhaps Section 360.10(c)(2)(viii)(B) of the IDI Rule was drafted before, but not updated when, the Section 165(d) Rule was modified in favor of the baseline, adverse and severely adverse scenario approach that is in the final Section 165(d) Rule and that the IDI Rule also adopts.

<sup>41</sup> IDI Rule § 360.10(c)(2)(xx)(C) (emphasis added).

<sup>42</sup> Section 165(d) Rule § \_\_.4(d)(1)(iii).

<sup>43</sup> IDI Rule § 360.10(c)(4)(v).

<sup>44</sup> Specifically, IDI Rule § 360.10(c)(4)(v) should be modified to read, in relevant part (new language underlined): "If the FDIC, in consultation with the appropriate Federal banking agency for the CIDI and its parent company, determines that the resolution plan of a CIDI submitted is not credible, the FDIC shall notify the CIDI in writing of such determination."

Similarly, we believe that the final IDI Rule should also provide, as the Section 165(d) Rule does,<sup>45</sup> that the FDIC may—before issuing any notice of deficiencies, imposing any requirements or restrictions, or taking any other similar remedial action—consult with the appropriate foreign supervisors, including the relevant home-country supervisor for the foreign-based parent of the CIDI.

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The Associations thank the FDIC for the opportunity to comment on the IDI Rule. If you have any questions, please do not hesitate to e-mail or call the undersigned.

Sincerely,



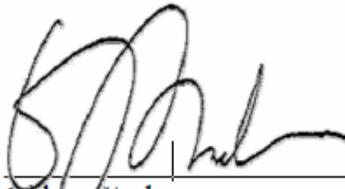
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<sup>45</sup> Section 165(d) Rule § \_\_.7(b).

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*SIFMA Systemic Risk Committee*

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## Annex

### *Securities Industry and Financial Markets Association*

SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit [www.sifma.org](http://www.sifma.org).

### *The Clearing House Association*

Established in 1853, The Clearing House is the oldest banking association and payments company in the United States. It is owned by the world's largest commercial banks, which collectively employ over 2 million people and hold more than half of all U.S. deposits. The Clearing House Association L.L.C. is a nonpartisan advocacy organization representing—through regulatory comment letters, amicus briefs and white papers—the interests of its owner banks on a variety of systemically important banking issues. Its affiliate, The Clearing House Payments Company L.L.C., provides payment, clearing, and settlement services to its member banks and other financial institutions, clearing almost \$2 trillion daily and representing nearly half of the automated-clearing-house, funds-transfer, and check-image payments made in the U.S. *See* The Clearing House's web page at [www.theclearinghouse.org](http://www.theclearinghouse.org).

### *American Bankers Association*

The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than \$165 million in assets. Learn more at [www.aba.com](http://www.aba.com).

### *Association for Financial Markets in Europe*

AFME (Association for Financial Markets in Europe) advocates stable, competitive and sustainable European financial markets that support economic growth and benefit society. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME participates in a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association through the GFMA (Global Financial Markets Association). For more information please visit the AFME website, [www.afme.eu](http://www.afme.eu).

*The Financial Services Roundtable*

The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for \$92.7 trillion in managed assets, \$1.2 trillion in revenue, and 2.3 million jobs.

*Institute of International Bankers*

The Institute of International Bankers (IIB) is the only national association devoted exclusively to representing and advancing the interests of the international banking community in the United States. Its membership is comprised of internationally headquartered banking and financial institutions from 38 countries around the world.

The IIB's mission is to help resolve the many special legislative, regulatory, tax and compliance issues confronting internationally headquartered institutions that engage in banking, securities and other financial activities in the United States. Through its advocacy efforts the IIB seeks results that are consistent with the U.S. policy of national treatment and appropriately limit the extraterritorial application of U.S. laws to the global operations of its member institutions.