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Stellungnahme zu dem Entwurf eines Gesetzes zur Abschirmung von Risiken und zur Planung der Sanierung und Abwicklung von Kreditinstituten und Finanzgruppen – Drucksache 17/12601

Sehr geehrte Damen und Herren Abgeordnete,

herzlichen Dank für die Gelegenheit, im Vorfeld der öffentlichen Anhörung zu dem „Entwurf des Gesetzes zur Abschirmung von Risiken und zur Planung der Sanierung und Abwicklung von Kreditinstituten und Finanzgruppen – Drucksache 17/12601“ Stellung nehmen zu können.

Vor den detaillierteren Anmerkungen (Anlage) möchten wir grundsätzlich auf Folgendes hinweisen:

- ***Nationaler vs. Internationaler Ansatz***

Der Ansatz des Gesetzentwurfes, die Thematik des sog. „too big to fail“-Problems von Banken und die Handhabung von in die Krise geratenen systemrelevanten Kreditinstituten auf nationaler Ebene anzugehen, ist in Anbetracht der besonderen Bedeutung einer zeitnahen adäquaten Lösung zwar nachvollziehbar, aber nicht zwingend zielführend. Auf Grund der in der Finanzkrise deutlich zu Tage getretenen internationalen Vernetzung von Finanzinstituten ist zu bedenken, dass die für die Systemrelevanz bezeichnende Vernetzung eines Kreditinstituts in den meisten Fällen nicht isoliert auf nationaler Ebene feststellbar ist, so dass hier erst eine internationale oder zumindest europäische Lösung einen auch national wirksamen Schutz vor insolvenzbedingten Krisenszenarien bewirken kann: Selbst wenn die im Geltungsbereich des vorliegenden Gesetzentwurfs ansässigen Institute die jeweiligen Krisenpräventionsmechanismen installiert haben, besteht die Problematik nahezu

unvermindert fort, wenn systemrelevante Institute im Ausland keine entsprechenden Mechanismen vorhalten Vor diesem Hintergrund möchten wir anregen, die absehbaren Vorschläge der EU-Kommission zur Umsetzung des Liikanen-Reports und die Verabschiedung der aktuell diskutierten europäischen Sanierungs- und Abwicklungsrichtlinie abzuwarten. Gerade für international aufgestellte Banken, wie wir sie vertreten, ist es besonders wichtig, dass substanzielle Regelungen international soweit wie möglich zeitgleich und harmonisiert eingeführt werden. Zudem kann nur im konzertierten Zusammenwirken sowohl mit den EU-Mitglieds- als auch mit Drittstaaten eine grenzüberschreitende Sachverhalte berücksichtigende Insolvenzregelung die Integrität des Finanzsystems effektiv schützen.

- ***Regelungen zur Planung der Sanierung und Abwicklung von Kreditinstituten***

Abgesehen davon, dass unseres Erachtens die europäische Regelung abgewartet werden sollte, möchten wir grundsätzlich darauf hinweisen, dass in Art. 1 des Gesetzentwurfs der bei international tätigen Kreditinstituten häufig anzutreffende Umstand nicht berücksichtigt wird, dass auf Gruppenebene bereits Sanierungs- und Abwicklungspläne verfasst werden und wurden, die auch die deutschen Töchter oder Niederlassungen erfassen. Hier sollten Friktionen und Überschneidungen auf den verschiedenen Konzernebenen und zwischen den jeweils zuständigen Aufsichtsbehörden vermieden werden. Wir erachten es daher als ausreichend, wenn deutsche Institute, die Tochter eines ausländischen Kreditinstituts sind, welches nach den FSB Key Attributes als global systemrelevant eingestuft wird (sog. G-SIFIs) und auf Grund der Vereinbarungen auf FSB-Ebene von den jeweils zuständigen Regulierungsbehörden zur Aufstellung eines Sanierungsplans für die gesamte Gruppe verpflichtet wurde, auf diesen verweisen können, weil sie als Tochtergesellschaft auch Bestandteil dieses Plans sind. Dies erscheint bei einer entsprechenden Kooperation der Aufsichtsbehörden, die sich in den letzten Jahren etabliert hat, verhältnismäßig und in der Sache angemessen, zumal schon heute bei international tätigen Instituten häufig Colleges of Supervisors tätig sind.

Weiterhin fehlt unseres Erachtens eine gesetzliche Vorgabe, dass der Sanierungsplan der Vertraulichkeit unterfällt. Da Sanierungspläne nicht nur Unternehmensinterna, sondern auch konkrete Belastungsszenarien beinhalten, könnte die Kenntnis dieser Details außenstehenden Dritten nicht nur einen Informationsvorteil verschaffen, sondern im eventuellen Sanierungsfall kontraproduktiv wirken, wenn andere Marktteilnehmer die für den Sanierungsfall vorgesehenen Maßnahmen bekannt sind. Ist beispielsweise die Abspaltung/Veräußerung von Unternehmensteilen als eine mögliche Sanierungsmaßnahme für ein bestimmtes Szenario vorab bekannt, kann der Markt bei Eintritt dieses Szenarios die Handlungsweise des im Sanierungsfall befindlichen Instituts antizipieren und sich entsprechend verhalten. Wie auch in den USA üblich [s. 12 USC § 5365 - Enhanced supervision and prudential standards for nonbank financial companies supervised by the Board of Governors and certain bank holding companies, Part 243.8 (Resolution Plans), als Anlage beigefügt] sollte die Vertraulichkeit explizit geregelt werden.

- ***Abschirmung von Risiken***

Mit dem Gesetzentwurf (Art. 2) sollen zudem Regelungen getroffen werden, um je nach Größe der Bilanz eines Instituts oder des Handels mit Wertpapieren oder anderen

Finanzinstrumenten, diese Geschäfte zu untersagen bzw. deren Verlagerung in eine separate und unabhängige juristische Einheit anzuordnen. Auch wenn diese Planungen grundsätzlich auf den Report der Liikanen-Gruppe zurückgehen, die voraussichtlich die Basis für einen europäischen Rechtsetzungsakt sein werden, möchten wir noch einmal betonen, dass sich das Universalbankensystem sowohl in Deutschland als auch in den Herkunftsländern unserer Mitglieder bewährt hat. Auch wenn das Verständnis und die Aufstellung von Universalbanken schon auf Grund der historischen Entwicklungen und regionalen Anforderungen international divergieren, hat sich die Erweiterung der strategischen Ausrichtung und der Geschäftsmodelle in den Kreditinstituten in der Regel als robuster erwiesen als ein Trennbankensystem. Daher sollte an dem grundsätzlichen Ziel festgehalten werden, das Universalbankensystem zu erhalten und der Schwerpunkt der Regulierung auf die Sanierungs- und Abwicklungsfähigkeit von systemrelevanten Kreditinstituten gelegt werden, wie sie mit Art. 1 des Gesetzentwurfs implementiert werden soll. Dieses Instrumentarium ist unseres Erachtens in seiner Wirkung adäquat und geeignet, Abtrennungen des Handelsbereichs, wie sie künftig nach den in Art. 2 des Gesetzentwurfs vorgesehenen Regeln erfolgen sollen, überflüssig zu machen.

Sollte an den Überlegungen festgehalten werden, möchten wir hervorheben, dass an dem im Regierungsentwurf enthaltenen Ansatz (§ 3 Abs. 2 Satz 2 Nr. 3 KWG-E) festgehalten werden sollte, das Market-Making von Katalog verbotener Geschäfte auszunehmen, da diese nach der EU-Verordnung Nr. 236/2012 entweder an die Stellung von An- und Verkaufskursen zur Liquiditätsversorgung oder an die Ausführung von Kundenaufträgen bzw. der Absicherung der vorgenannten Dienstleistungen anknüpfen.

- ***Strafbarkeit von Geschäftsleitern im Risikomanagement***

Auch wenn unstreitig sein dürfte, dass eine der Ursachen der Finanzkrise Defizite im Bereich des Risikomanagements waren, erscheint die nun beabsichtigte Pönalisierung von Geschäftsleitern im Risikomanagement in dem vorgeschlagenen Wortlaut mit Blick auf Art. 103 Abs. 2 GG zu unbestimmt. Die Regelung steht unseres Erachtens nicht im Einklang mit dem Grundsatz, dass der Adressat einer Norm vorhersehen können muss, welches konkrete Verhalten mit Strafe bedroht ist. Da hierbei jedoch auf den Katalog von § 25c Abs. 3a und Abs. 3 b Satz KWG-E verwiesen wird, der mit Tatbestandsmerkmalen wie „angemessen“, „nachhaltig“ und „konsistent“ recht unbestimmte Rechtsbegriffe enthält, die der Auslegung bedürfen, ist strafbares Verhalten für einen Geschäftsleiter gemessen am hohen Standard des Grundgesetzes aus der hier entscheidenden ex ante-Sicht nicht hinreichend konkret bestimmbar. Die Erfahrungen der Finanzkrise haben gezeigt, dass sich nicht nur betrügerische oder mindestens unredliche Aktivitäten bei der Strukturierung von Finanzprodukte, sondern auch früher als sicher eingestufte Geschäftsmodelle vor dem Hintergrund eines völlig veränderten Marktumfelds sich als schadensträchtig herausgestellt haben. Der Tatbestand sollte daher im Einklang mit dem nulla poena sine lege certa-Grundsatz so präzisiert werden, dass die Ausnahmefälle der Vergangenheit, die bislang nicht strafbewährt waren, zu Recht strafrechtlich verfolgt werden können. Damit wird auch die gebotene Generalprävention erreicht.

- ***Anmerkungen zur Stellungnahme des Bundesrates***

Der Bundesrat hat in seiner Stellungnahme vom 22. März 2013 die Erwartung an die Bundesregierung gerichtet, sicherzustellen, dass für Töchter und Niederlassungen ausländischer Banken keine geringeren Anforderungen als für Institute mit Sitz im Inland gelten. Wie auch die Bundesregierung in ihrer Gegenäußerung vom 10. April 2013 sehen wir auf Basis des aktuell vorliegenden Entwurfs keinen Anlass für diese Forderung seitens des Bundesrats, da Töchter und Niederlassungen ausländischer Banken wie Kreditinstitute deutscher Provenienz durch das KWG reguliert, sowie von der BaFin und der Bundesbank beaufsichtigt werden. Sollte der Bundesrat in seinem Beschluss EWR-Zweigniederlassungen nach § 53b KWG gemeint haben, sei vorsorglich darauf hingewiesen, dass auf Grund der europäischen Vorgaben diese von den Aufsichtsbehörden des jeweiligen Mitgliedstaates des EWR beaufsichtigt werden und die in den Art. 1–3 des Gesetzentwurfs entworfenen Regelungen keine Anwendung finden können. Insofern sei darauf hingewiesen, dass § 53b Abs. 3 Nr. 1 KWG noch redaktionell angepasst werden müsste, indem nur auf § 3 Abs. 1 KWG n.F. verwiesen wird.

- ***Kein harmonisiertes Insolvenzrecht***

Gerade mit Blick auf insolvenzbezogene Fragen kann eine nationalstaatliche Regulierung – auch wenn dies aus nachvollziehbaren Motiven möglicherweise vielleicht auch nur latent angestrebt wird – keine internationalen oder ausländischen Sachverhalte vollständig erfassen und sollte dies – auch um bei Heimatstaaten internationaler Bankengruppen keinen Unmut durch mittelbare Regulierung innerhalb des originären Kompetenzkreises dieser Staaten zu erregen (was auch die Gefahr sich überschneidender Regulierungen birgt) – nicht tun. Gerade weil ein europäisches Insolvenzrecht nicht existiert, sollte im vorliegenden Kontext auf eine Richtlinie gesetzt werden, die klare Anordnungen zu den jeweiligen Zuständigkeiten und anwendbaren nationalen Regelungen trifft.

- ***Weitestmögliche Vermeidung oder Präzisierung unbestimmter Rechtsbegriffe***

Um der Industrie und der Aufsicht die Umsetzung der neuen Vorschriften zu erleichtern, sollte ferner so weit wie möglich auf unbestimmte Rechtsbegriffe verzichtet oder jedenfalls in der Gesetzesbegründung eine klarstellende Erläuterung eingefügt werden. Dies trifft insbesondere auf Begriffe wie „wesentliche Verschlechterung der Finanzlage“ in § 47 Abs. 1 KWG-E und „wesentliche“ und „kritische“ Geschäftsaktivitäten (§ 47 Abs. 1 Satz 4 KWG-E) zu.

Für Rückfragen stehen wir gerne zur Verfügung. Der Linksunterzeichner wird an der öffentlichen Anhörung teilnehmen.

Mit freundlichen Grüßen

Anlagen

Dr. Oliver Wagner

Dr. Martin Schulte

Anlage zur Stellungnahme zu dem Entwurf eines Gesetzes zur Abschirmung von Risiken und zur Planung der Sanierung und Abwicklung von Kreditinstituten und Finanzgruppen

Zu Art. 1:

Petitum 1: ***Keine zusätzliche Prüfung des Sanierungsplans durch den Abschlussprüfer***

Nach § 29 Abs. 1 KWG-E soll der Abschlussprüfer auch prüfen, ob der Sanierungsplan die Voraussetzungen nach § 47 Abs. 1 Satz 2 sowie nach § 47a Abs. 1 bis 3 und Abs. 4 Satz 2 und 4 KWG-E erfüllt. Gegen dieses Prüfungserfordernis spricht jedoch, dass die Erstellung des Sanierungsplans in der Verantwortung der Geschäftsleitung steht und bereits die BaFin den Sanierungsplan des Kreditinstituts prüft und gegebenenfalls Überarbeitungen einfordert (§ 47b Abs. 2 KWG-E). Eine weitere, zudem nachgelagerte Prüfung mit gegebenenfalls von der BaFin abweichenden Einschätzungen erscheint uns daher nicht notwendig. Daher sollte auf die Ergänzung von § 29 Abs. 1 Satz 6 verzichtet werden.

Petitum 2: ***Ausnahmeregelung für Töchter ausländischer G-SIFIs***

Nationale Kreditinstitute, die Tochter eines ausländischen Kreditinstituts sind, welches als G-SIFIs eingestuft wird, sollten auf den Gruppensanierungsplan verweisen können, dessen Bestandteil auch sie stets sind. Dies erscheint bei einer entsprechenden Kooperation der Aufsichtsbehörden verhältnismäßig und in der Sache angemessen, zumal schon heute bei international tätigen Instituten häufig Colleges of Supervisors tätig sind.

Formulierungsvorschlag (ggf. in § 47 oder in eigenem Paragrafen):

> **„Tochtergesellschaften ausländischer Kreditinstitute, welche nach den FSB Key Attributes als global systemrelevant eingestuft werden und einen Gruppensanierungsplan erstellen, sind nicht verpflichtet, einen Sanierungsplan zu erstellen.“**

oder

> **„Gegenüber Tochtergesellschaften ausländischer Kreditinstitute, welche nach den FSB Key Attributes als global systemrelevant eingestuft werden und einen Gruppensanierungsplan erstellen, kann die Bundesanstalt eine Befreiung von der Pflicht zur Aufstellung eines Sanierungsplans erteilen.“**

Dies sollte spiegelbildlich auch bei der Erstellung von Abwicklungsplänen gelten, wenn ein Gruppenabwicklungsplan besteht.

Petitum 3: ***Abschließende Bestimmung der Bestandteile des Sanierungsplans***

Hinsichtlich der Inhalte des Sanierungsplans halten wir die Aufzählung in § 47a für vollständig, so dass auch mit Blick auf die Rechtssicherheit eine präzise Regelung vorzuziehen wäre. Daher schlagen wir folgenden Wortlaut vor:

§ 47a

Erstellung und Gestaltung von Sanierungsplänen

(1)….

(2) Der Sanierungsplan hat ~~insbesondere~~ folgende wesentliche Bestandteile zu enthalten:

1. eine Zusammenfassung der wesentlichen Inhalte des Sanierungsplans einschließlich einer Bewertung der Sanierungsfähigkeit des Kreditinstituts beziehungsweise der Finanzgruppe;

2. …….

*Petitum 4**: Erstreckung der Geheimhaltungspflicht auf die Sanierungspläne***

Aus Sicht der betroffenen Kreditinstitute erstreckt sich das Interesse an der Geheimhaltung auch auf die Sanierungspläne, welche der Aufsicht zur Kenntnis gelangen. Da Sanierungspläne nicht nur Unternehmensinterna, sondern auch konkrete Belastungsszenarien beinhalten, könnte die Kenntnis dieser Details außenstehenden Dritten nicht nur einen wettbewerbsrelevanten Informationsvorteil verschaffen, sondern im eventuellen Sanierungsfall kontraproduktiv wirken, wenn andere Marktteilnehmer zuvor Kenntnis von für den Sanierungsfall vorgesehenen Maßnahmen haben. Ist beispielsweise die Abspaltung/Veräußerung von Unternehmensteilen als eine mögliche Sanierungsmaßnahme für ein bestimmtes Szenario vorab bekannt, kann der Markt bei Eintritt dieses Szenarios die Handlungsweise des im Sanierungsfall befindlichen Instituts antizipieren und sich entsprechend verhalten. Denkbar erscheint auch, dass allein schon durch die Kenntnis des Markts von Szenarien, bei denen ein Institut für sich den Eintritt in die Sanierungsphase annimmt, das Institut als Sanierungsfall erachtet und ihm damit das Vertrauen entzogen wird, was eine Sanierung unmöglich erscheinen ließe.

Wir schlagen daher eine Ergänzung von § 47 KWG-E vor, der sich mit der Erstellung von Sanierungsplänen befasst:

§ 47

Erstellung eines Abwicklungsplans

(1) – (3)

(4) **….. Die Bundesanstalt kann von den betreffenden Kreditinstituten verlangen, dass sie ihre Sanierungspläne häufiger aktualisieren. Sätze 1 bis 3 finden auf das übergeordnete Unternehmen einer potentiell systemgefährdenden Finanzgruppe entsprechende Anwendung. Die betreffenden Kreditinstitute dürfen den Sanierungsplan Dritten nicht zugänglich machen und haben dafür zu sorgen, dass der Sanierungsplan von allen Mitarbeitern des Instituts streng vertraulich behandelt wird.**

*Petitum 5: **Kein eigener Haftungstatbestand für Geschäftsleiter***

Die vorgeschlagene Regelung des § 47f Abs. 4 Nr. 7 KWG-E verweist auf allgemeine zivil- und strafrechtliche Tatbestände, die ohnehin gelten, so dass fraglich ist, ob die Regelung einen eigenen Gegenstand hat. Einen Haftungstatbestand zu begründen, der über die bereits im Gesellschaftsrecht ausdifferenzierte Haftung von Geschäftsleitern hinausgeht, halten wir

für nicht erforderlich um die regulatorischen Zielsetzungen zu erreichen, zumal die vorgeschlagene Regelung einen Fremdkörper im KWG darstellen würde.

Daher schlagen wir folgenden Wortlaut vor:

§ 47f

Erstellung eines Abwicklungsplans

(1) – (3)…..

(4) Der Abwicklungsplan ist nach folgenden Grundsätzen zu erstellen:

1. – 6. ……

~~7. Die Geschäftsleiter des in Abwicklung befindlichen Instituts tragen Verluste in dem Umfang mit, der nach dem Zivil- und Strafrecht ihrer individuellen Verantwortung für den Ausfall des Instituts entspricht.~~

Petitum 6**: *Stärkung des Rechtsschutzes durch Einführung eines Widerspruchsverfahrens***

Gegenüber der Entscheidung der BaFin, ein Kreditinstitut zur Aufstellung eines Sanierungsplans zu verpflichten, sollte ein Vorverfahren statthaft sein, da kein Grund ersichtlich ist, der eine Aussetzung des effektiven Rechtsschutzes rechtfertigen würde. Die Begründung zu § 47j stellt insoweit auf eine schnellere und rechtssichere Umsetzung der von der BaFin ergriffenen Maßnahmen ab, was mit Blick auf die Maßnahmen nach § 47e durchaus plausibel erscheint: Hindernisse die einer Abwicklung entgegenstehen sind selbstverständlich so schnell wie möglich zu beseitigen. Hinsichtlich der Erstellung eines Sanierungsplans ist eine solche Eilbedürftigkeit allerdings nicht erkennbar, so dass die Frage der Systemrelevanz mit der notwendigen Sorgfalt in einem Vorverfahren überprüfbar sein muss. Insbesondere ist es auch ein wichtiger psychologischer Stabilisierungsfaktor, wenn die Feststellung der Systemrelevanz nicht als absolutes Faktum behandelt wird, sondern für den Diskurs offen bleibt. In einem Widerspruchsverfahren haben sowohl die Aufsicht als auch das betroffene Unternehmen die Möglichkeit, neue Erkenntnisse zu sammeln und die eigene Position zu überdenken.

Daher schlagen wir folgenden Wortlaut für § 47j vor:

§ 47j

Rechtsschutz

Die Aufforderung der Bundesanstalt nach § 47a Absatz 3 und Maßnahmen der Bundesanstalt nach § 47e gegen ein Kreditinstitut oder einem Mitglied einer Finanzgruppe können von dem Kreditinstitut beziehungsweise dem jeweiligen Mitglied der entsprechenden Finanzgruppe innerhalb eines Monats nach Bekanntgabe vor dem für den Sitz der Bundesanstalt in Frankfurt am Main zuständigen Oberverwaltungsgericht angefochten werden. ~~Ein Widerspruchsverfahren wird nicht durchgeführt.~~ **Vor Erhebung der Anfechtungsklage sind Rechtmäßigkeit und Zweckmäßigkeit einer Aufforderung nach § 47a Absatz 3 in einem Vorverfahren nachzuprüfen. Gegenüber Maßnahmen der Bundesanstalt nach § 47e wird ein Widerspruchsverfahren nicht durchgeführt.**

Zu Art. 2:

Petitum 7: ***Verbotene Geschäfte und EWR-Niederlassungen - Klarstellung***

EWR-Zweigniederlassungen nach § 53b KWG können auf Grund der fehlenden europarechtlichen Grundlagen nicht den in Art. 2 des Gesetzentwurfs skizzierten Regelungen für die Abtrennung und dem Verbot von Handelsgeschäften unterfallen. Diese Niederlassungen werden auf Grund der europäischen Vorgaben von den Aufsichtsbehörden des jeweiligen Mitgliedstaates des EWR beaufsichtigt, so dass die BaFin insbesondere die § 3 Abs. 2 und 3 enthaltenen Befugnisse nicht ausüben darf. Insofern müsste § 53b Abs. 3 Nr. 1 KWG noch redaktionell angepasst werden, indem nur auf § 3 Abs. 1 KWG n.F. verwiesen wird.

Vorschlag:

§ 53b (3) …..gelten:

1. die §§ 3 **Abs. 1** und 6 Abs. 2,

1a…….

ARTICLE XI—AMENDMENTS

These bylaws may be amended in a manner consistent with regulations of the Board and shall be effective after: (i) approval of the amendment by a majority vote of the authorized board of directors, or by a majority vote of the votes cast by the shareholders of the Subsidiary Holding Company at any legal meeting, and (ii) receipt of any applicable regulatory approval. When a Subsidiary Holding Company fails to meet its quorum requirements, solely due to vacancies on the board, then the affirmative vote of a majority of the sitting board will be required to amend the bylaws.

PART 243—RESOLUTION PLANS

Sec.

AUTHORITY: 12 U.S.C. 5365.

SOURCE: 76 FR 67340, Nov. 1, 2011, unless otherwise noted.

§ 243.1 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 (the *Dodd-Frank Act*) (Pub. L. 111–203, 124 Stat. 1376, 1426–1427), 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.

§ 243.2 Definitions.

For purposes of this part:

(a) *Bankruptcy Code* means Title 11 of the United States Code.

(b) *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.

(c) *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.

(d) *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 failure would result in a material loss of revenue, profit, or franchise value.

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

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

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

(ii) 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 the Board's Regulation Y (12 CFR part 225), that has $50 billion or more in total consolidated assets, as determined based on the average of the company's four most recent Consolidated Financial Statements for Bank Holding Companies as reported on the Federal Reserve's Form FR Y–9C (''FR Y–9C''); and

(iii) 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 $50 billion or more in total consolidated assets, as determined based on the foreign bank's or company's most recent annual or, as applicable, the average of the four most recent quarterly Capital and Asset Reports for Foreign Banking Organizations as reported on the Federal Reserve's Form FR Y–7Q (''FR Y–7Q'').

(2) Once a covered company meets the requirements described in paragraph (f)(1)(ii) or (iii) of this section, the company shall remain a covered company for purposes of this part unless and until the company has less than $45 billion in total consolidated assets, as determined based on the—

(i) Average total consolidated assets as reported on the company's four most recent FR Y–9Cs, in the case of a covered company described in paragraph (f)(1)(ii) of this section; or

(ii) Total consolidated assets as reported on the company's most recent annual FR Y–7Q, or, as applicable, average total consolidated assets as reported on the company's four most recent quarterly FR Y–7Qs, in the case of a covered company described in paragraph (f)(1)(iii) of this section. Nothing in this paragraph (f)(2) shall preclude a company from becoming a covered company pursuant to paragraph (f)(1) of this section.

(3) *Multi-tiered holding company*. In a multi-tiered holding company structure, covered company means the top-tier of the multi-tiered holding company only.

(4) *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 paragraph (f)(1)(ii) or (iii) of this section.

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

(g) *Critical operations* means those operations of the covered company, including associated services, functions and support, the failure or discontinuance of which, in the view of the covered company or as jointly directed by the Board and the Corporation, would pose a threat to the financial stability of the United States.

(h) *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.

(i) *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.

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

(k) *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)).

(l) *Material entity* means a subsidiary or foreign office of the covered company that is significant to the activities of a critical operation or core business line (as defined in this part).

(m) *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.

(n) *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.

(o) *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

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.

(p) *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.

(q) *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.

§ 243.3 Resolution plan required.

(a) *Initial and annual resolution plans required.* (1) Each covered company shall submit its initial resolution plan to the Board and the Corporation on or before the date set forth below (''Initial Submission Date''):

(i) July 1, 2012, with respect to any covered company that, as of the effective date of this part, had $250 billion or more in total nonbank assets (or, in the case of a covered company that is a foreign-based company, in total U.S. nonbank assets);

(ii) July 1, 2013, with respect to any covered company that is not described in paragraph (a)(1)(i) of this section, and that, as of the effective date of this part had $100 billion or more in total nonbank assets (or, in the case of a covered company that is a foreign-based company, in total U.S. nonbank assets); and

(iii) December 31, 2013, with respect to any other covered company that is a covered company as of the effective date of this part but that is not described in paragraph (a)(1)(i) or (ii) of this section.

(2) A company that becomes a covered company after the effective date of this part shall submit its initial resolution plan no later than the next July 1 following the date the company becomes a covered company, provided such date occurs no earlier than 270 days after the date on which the company became a covered company.

(3) After filing its initial resolution plan pursuant to paragraph (a)(1) or (2) of this section, each covered company shall annually submit a resolution plan to the Board and the Corporation on or before each anniversary date of its Initial Submission Date.

(4) Notwithstanding anything to the contrary in this paragraph (a), the Board and Corporation may jointly determine that a covered company shall file its initial or annual resolution plan by a date other than as provided in this paragraph (a). The Board and the Corporation shall provide a covered company with written notice of a determination under this paragraph (a)(4) no later than 180 days prior to the date on which the Board and Corporation jointly determined to require the covered company to submit its resolution plan.

(b) *Authority to require interim updates and notice of material events*—(1) *In general.* The Board and the Corporation may jointly require that a covered company file an update to a resolution plan submitted under paragraph (a) of this section, within a reasonable amount of time, as jointly determined by the Board and Corporation. The Board and the Corporation shall make a request pursuant to this paragraph (b)(1) in writing, and shall specify the portions or aspects of the resolution plan the covered company shall update.

(2) *Notice of material events.* Each covered company shall provide the Board and the Corporation with a notice no later than 45 days after 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 covered company. Such notice should describe the event, occurrence or change and explain why the event, occurrence or change may require changes to the resolution plan. The covered company shall address any event, occurrence or change with respect to which it has provided notice pursuant to this paragraph (b)(2) in the following resolution plan submitted by the covered company.

(3) *Exception.* A covered company shall not be required to file a notice under paragraph (b)(2) of this section if the date on which the covered company would be required to submit the notice under paragraph (b)(2) would be within 90 days prior to the date on which the

covered company is required to file an annual resolution plan under paragraph (a) of this section.

(c) *Authority to require more frequent submissions or extend time period.* The Board and Corporation may jointly:

(1) Require that a covered company submit a resolution plan more frequently than required pursuant to paragraph (a) of this section; and

(2) Extend the time period that a covered company has to submit a resolution plan or a notice following material events under paragraphs (a) and (b) of this section.

(d) *Access to information.* In order to allow evaluation of the 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. 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.

(e) *Board of directors approval of resolution plan.* Prior to submission of a resolution plan under paragraph (a) 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.

(f) *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.

§ 243.4 Informational content of a resolution plan.

(a) *In general*—(1) *Domestic covered companies.* Except as otherwise provided in paragraph (a)(3) of this section, the resolution plan of a covered company that is organized or incorporated in the United States shall include the information specified in paragraphs (b) through (i) 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.* Except as otherwise provided in paragraph (a)(3) of the section, the 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 (i) of this section with respect to the subsidiaries, branches and agencies, and 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 critical operations and core business lines of the foreign-based covered company and any foreign-based affiliate; and

(ii) A detailed explanation of how resolution planning for the subsidiaries, branches and agencies, and 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.

(3) *Tailored resolution plan*—(i) *Eligible covered company.*—Paragraph (a)(3)(ii) of this section applies to any covered company that as of December 31 of the calendar year prior to the date its resolution plan is required to be submitted under this part—

(A) Has less than $100 billion in total nonbank assets (or, in the case of a covered company that is a foreign-based company, in total U.S. nonbank assets); and

(B) The total insured depository institution assets of which comprise 85 percent or more of the covered company's total consolidated assets (or, in the case of a covered company that is a foreign-based company, the assets of the U.S. insured depository institution operations, branches, and agencies of which comprise 85 percent or more of such covered company's U.S. total consolidated assets).

(ii) *Tailored resolution plan elements.* A covered company described in paragraph (a)(3)(i) of this section may file a resolution plan that is limited to the following items—

(A) An executive summary, as specified in paragraph (b) of this section;

(B) The information specified in paragraphs (c) through (f) and paragraph (h) of this section, but only with respect to the covered company and its nonbanking material entities and operations;

(C) The information specified in paragraphs (g) and (i) of this section with respect to the covered company and all of its insured depository institutions (or, in the case of a covered company that is a foreign-based company, the U.S. insured depository institutions, branches, and agencies) and nonbank material entities and operations. The interconnections and interdependencies identified pursuant to (g) of this section shall be included in the analysis provided pursuant to paragraph (c) of this section.

(iii) *Notice.* A covered company that meets the requirements of paragraph (a)(3)(i) of this section and that intends to submit a resolution plan pursuant to this paragraph (a)(3), shall provide the Board and Corporation with written notice of such intent and its eligibility under paragraph (a)(3)(i) no later than 270 days prior to the date on which the covered company is required to submit its resolution plan. Within 90 of receiving such notice, the Board and Corporation may jointly determine that the covered company must submit a resolution plan that meets some or all of the requirements as set forth in paragraph (a)(1) or (2) of this section, as applicable.

(4) *Required and prohibited assumptions.* In preparing its plan for rapid and orderly resolution in the event of material financial distress or failure required by this part, a covered company shall:

(i) Take into account that such material financial distress or failure of the covered company may occur under the baseline, adverse and severely adverse economic conditions provided to the covered company by the Board pursuant to 12 U.S.C. 5365(i)(1)(B); provided, however, a covered company may submit its initial resolution plan assuming the baseline conditions only, or, if a baseline scenario is not then available, a reasonable substitute developed by the covered company; and

(ii) 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.

(b) *Executive summary.* Each 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) Material changes to the covered company's resolution plan from the company's most recently filed resolution plan (including any notices following a material event or updates to the resolution plan).

(3) 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 resolution plan shall include a strategic analysis describing the covered company's 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 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 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 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 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 a 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, 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, critical operations and core business lines.

(d) *Corporate governance relating to resolution planning.* Each 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 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 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 critical operations and core business lines, including material asset holdings and liabilities related to such 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, 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 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 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, critical operations and core business lines.

(f) *Management information systems.* (1) Each 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, 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, critical operations and core business lines use to monitor the financial health, risks, and operation of the covered company, its material entities, critical operations and core business lines; and

(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 deficiencies, gaps or weaknesses in such capabilities, and a description of the actions the covered company intends to take to promptly address such deficiencies, 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 elsewhere provided, identify and map to the material entities the interconnections and interdependencies among the covered company and its material entities, and among the 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 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 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, critical operations and core business lines; and

(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 critical operations and core business lines.

(2) Identify any foreign agency or authority responsible for resolving a foreign-based material entity and 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.

(i) *Contact information.* Each resolution plan 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, and include contact information (including phone number, email address, and physical address) for a senior management official of the material entities of the covered company.

(j) *Inclusion of previously submitted resolution plan informational elements by reference.* An annual submission of or update to a resolution plan submitted by a covered company may include by reference informational elements (but not strategic analysis or executive summary elements) from a resolution plan previously submitted by the covered company to the Board and the Corporation, provided that:

(1) The resolution plan seeking to include informational elements by reference clearly indicates:

(i) The informational element the covered company is including by reference; and

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

(2) The covered company certifies that the information the covered company is including by reference remains accurate.

(k) *Exemptions.* The Board and the Corporation may jointly exempt a covered company from one or more of the requirements of this section.

§ 243.5 Review of resolution plans; resubmission of deficient resolution plans.

(a) *Acceptance of submission and review.* (1) The Board and Corporation shall review a resolution plan submitted under section this subpart within 60 days.

(2) If the Board and Corporation jointly determine within the time described in paragraph (a)(1) of this section that a resolution plan is informationally incomplete or that substantial additional information is necessary to facilitate review of the resolution plan:

(i) The Board and Corporation shall jointly inform the covered company in writing of the area(s) in which the resolution plan is informationally incomplete or with respect to which additional information is required; and

(ii) The covered company shall resubmit an informationally complete resolution plan or such additional information as jointly requested to facilitate review of the resolution plan no later than 30 days after receiving the notice described in paragraph (a)(2)(i) of this section, or such other time period as the Board and Corporation may jointly determine.

(b) *Joint determination regarding deficient resolution plans.* If the Board and Corporation jointly determine that the resolution plan of a covered company submitted under § 243.3(a) 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 shall identify the aspects of the resolution plan that the Board and Corporation jointly determined to be deficient.

(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.

§ 243.6 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:

(1) The covered company fails to submit a revised resolution plan under § 243.5(c) within the required time period; or

(2) The Board and the Corporation jointly determine that a revised resolution plan submitted under § 243.5(c) does not adequately remedy the deficiencies jointly identified by the Board and the Corporation under § 243.5(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 § 243.5(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 § 243.5(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.

§ 243.7 Consultation.

Prior to issuing any notice of deficiencies under § 243.5(b), determining to impose requirements or restrictions under § 243.6(a), or issuing a divestiture order pursuant to § 243.6(c) with respect 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.

§ 243.8 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.* Each 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. The public section 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:

(1) The names of material entities;

(2) A description of core business lines;

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

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

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

(6) A description of foreign operations;

(7) The identities of material supervisory authorities;

(8) The identities of the principal officers;

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

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

(11) 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 core business lines.

(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)) and the Board's Rules Regarding Availability of Information (12 CFR part 261), and the Corporation's Disclosure of Information Rules (12 CFR part 309).

(2) Any covered company submitting a resolution plan or related materials pursuant to this part that desires confidential treatment of the information under 5 U.S.C. 552(b)(4), the Board's Rules Regarding Availability of Information (12 CFR part 261), and the Corporation's Disclosure of Information Rules (12 CFR part 309) 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 FDI Act, 12 U.S.C. 1828(x).

§ 243.9 Enforcement.

The Board and Corporation may jointly enforce an order jointly issued by the Board and Corporation under § 243.6(a) or 243.6(c) of this part. 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 250—MISCELLANEOUS INTERPRETATIONS

INTERPRETATIONS

Sec.