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FOR FINANCIAL REFORM
ACCOUNTABILITY * FAIRNESS * SECURITY

Americans for Financial Reform
1629 K St NW, 10th Floor, Washington, DC, 20006
202.466.1885

January 8, 2013

To: Board of Governors of the Federal Reserve Bank and
the Federal Deposit Insurance Corporation

Re: Resolution Plans And Credit Exposure Reports Filed Under Dodd-Frank Section 165(d)

To Whom It May Concern:

The resolution planning process mandated in Section 165(d) of the Dodd-Frank Act is a crucial part of the commitment to end the implicit public guarantee to the nation's largest banks. By requiring resolution plans the process should encourage or, if necessary, require simpler structures for financial companies, structures that are compatible with the possibility of successful resolution (including through a standard bankruptcy). This would minimize the risks of broader financial contagion created by the failure of any one entity and dramatically reduce the pressure for future bailouts. The resolution plans are a crucial tool that regulators must use to make sure that overly complex financial companies are transformed into entities whose failure could be successfully contained.

One important element of the 'living will' process is the public versions of resolution plans that regulators have chosen to require. The decision to require a public disclosure of appropriate elements of the resolution plan was a positive step by regulators, and complements other steps toward increased transparency such as the new disclosures proposed in the Basel rules. By creating an appropriate level of public transparency for the corporate and financial structure of our major banks, the resolution plan disclosures could signal to the public that major banks are indeed no longer "too big to fail." The public plans could also help give stockholders, investors, creditors and counterparties insight that could create market pressures to simplify bank structures and lessen risks before those risks undermine the stability of the financial institutions and the financial system. This transparency and market discipline would be especially helpful as many, including important regulators such as William Dudley of the New York Federal Reserve, have expressed doubts that the regulatory process alone is making adequate progress in creating credible and effective resolution plans.[1]

[1] Johnson, Simon, "Fed's Dudley Signals a Shift Toward Bank Reform", Bloomberg View, November 25, 2012; Miller, Brad, "Regulators: Demand Credible Living Wills Now, Not 'Ultimately'", The American Banker, Bank Think, December 26, 2012.

Unfortunately, the public resolution plans filed by the 11 largest financial institutions fall far short of accomplishing any of these goals. In our view the public plans come nowhere near reaching the standard laid out in your rule implementing the resolution plans: namely "information in the public section of a resolution plan" that is "sufficiently detailed to allow the public to understand the business of the covered company."[2] The public plans contain virtually no new information beyond items already easily available in the firm's public SEC filings. They contain no new and specific information that contributes to any fuller understanding of: (1) the ownership structure, assets, liabilities, and contractual obligations of the company; (2) the manner and extent to which any insured depository institution affiliated with the company is adequately protected from risks arising from the activities of any nonbank subsidiaries of the company; (3) the identification of the cross-guarantees tied to different securities and derivatives transactions, and of the company's major counterparties, and (4) any significant derivatives positions of the covered company.[3] The impression that the public plans are for the most part boilerplate summaries of information already available in public SEC filings can only add to public doubts about the credibility of the resolution process.

We understand that it is necessary and appropriate for your agencies to protect the confidentiality of trade secrets or other legitimately confidential commercial or financial information, which may comprise a significant proportion of the resolution plans. Such elements must remain confidential. We also understand that the confidential supervisory review process is central to the practices of the prudential regulatory agencies.

However, there are many types of information required by the Dodd-Frank Act that are not reasonably viewed as confidential or as protected in supervisory review, and would provide valuable information to stockholders, investors, creditors, and counterparties of the company, as well as other members of the public. For instance, the ownership structure and the incorporation or other formational documents of all of these legal entities are already publicly available at various regulatory sites in the jurisdictions in which the entities were formed. But, because of the extraordinary complexity of global megabanks, it would be very difficult for any member of the public to track down or organize the information. For example, a recent Federal Reserve study estimates that JP Morgan Chase has 3,391 legal entity subsidiaries, 451 of which are international.[4] Only a small number of these entities are listed in the company's public SEC filings.

The resolution plans could provide valuable data to the public concerning the bank's corporate structure by simply including a chart of the financial institution showing its subsidiaries and internal ownership structure, and showing the states or countries of formation. Yet the public

[2] Federal Register Volume 76, Number 211 (Tuesday, November 1, 2011), p. 67332.
[3] Section 165(d) of the Act is codified at 12 U.S.C. § 5365(d).
[4] Avraham, Dafna, Selvaggi, Patricia and Vickery, James, "A Structural View of U.S. Bank Holding Companies," FRBNY Economic Policy Review/July 2012, at p. 71, available at phttp://www.newyorkfed.org/research/epr/12v18n2/1207avra.pdf.

portion of JPMorgan's resolution plan provides almost no helpful information in this regard, listing only 25 material entities and expressly stating the formational jurisdictions of just four of those. Nor is it possible to determine whether specific assets are held by particular subsidiaries, or the total level of assets and liabilities in individual subsidiaries.

To take just a few other examples, based on the data currently in the public plans it is impossible to:

- Understand anything concerning the existence or structure of material cross-collateralizations, cross-defaults or intra-company guarantees within the institution

- Understand whether and the extent to which the institution has re-hypothecated collateral to other financial purposes

- Determine the distribution of assets and liabilities across different international insolvency regimes.

All of these issues are crucial to the public's confidence that the covered companies could be resolved under Dodd Frank and to enabling informed choices by market actors. The non-confidential disclosures that we request will foster confidence in the financial system and help stockholders, investors, creditors, counterparties, and the public to understand the business of the covered company and make rational decisions in the marketplace. While granular detail in some of these areas may legitimately be confidential, there is a great deal of information not provided in the current public plans that is not, and would be useful to analysts and market participants in making objective comparisons between banks. The major banks would be encouraged by such scrutiny to undertake greater efforts to ensure that they are organized to provide sufficient security to their stakeholders in the event of financial stress, and to take appropriate remedial action.

To address these issues, we urge you to require far more extensive and rigorous presentations in the public resolution plans. These presentations should be aimed at promoting the financial stability sought by the Dodd Frank Act and providing the information necessary for market discipline to assist in this effort. Public plans should give present and prospective investors, creditors, depositors, interested parties, and other members of the public the information they need to make informed decisions in the marketplace in advance of any material distress or failure. Such increased disclosures, analysis and transparency will increase confidence in the stability of the covered companies and the financial markets, will contribute to the level of transparency that is essential to the proper functioning of all markets including the financial markets, and that is expressly required by section 165(d) of the Act.

In the attached Appendix, we give more detail on the various areas of these public disclosures that we believe are inadequate.

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Appendix to January 8, 2013 Letter from Americans for Financial Reform

This Appendix is attached to the January 8, 2013 letter from Americans for Financial Reform to the Board of Governors of the Federal Reserve Bank and the Federal Deposit Insurance Corporation regarding the information made public from the first 11 resolution plans submitted by covered companies under the Dodd-Frank Act (the "Public Plans"), and summarizes the information that Americans for Financial Reform submits should be included in those Public Plans.[1] This appendix supplements the arguments of the letter about information that should be required in the Public Plans with a brief description of what large players have and have not included in the plans available now.

1. Adequate Protection of Insured Depository Institutions[2] – The Public Plans fail to, and should be required to, provide specific information regarding the manner and extent to which any insured depository institution affiliated with the covered company is adequately protected from risks arising from the activities of any nonbank subsidiaries of the covered company. The information should include disclosure of any cross-collateralizations among entities within the covered company and the extent of any guarantees, pledges, or other obligations made by the insured depository institution for or in connection with the obligations of its bank and nonbank affiliates, and disclosure of any cross-default provisions and the extent to which any failure of a subsidiary or affiliate to pay or perform would constitute a default, or would trigger the posting of security or other obligations by the insured depository institution.

2. Full Descriptions of the Ownership Structure, Assets, Liabilities, and Contractual Obligations of the Company – The Public Plans do not contain, and should be required to contain, an organization chart showing all of the parent, subsidiary and affiliated entities of the covered company, the jurisdiction in which each such entity is formed, any minority or other interests in any such entity that are owned by a third party, a general description of the activities of the entity, and a general description of the assets, liabilities and contractual obligations of any entity that holds significant assets or has significant actual or potential liabilities or contractual obligations.[3] The covered companies are astonishingly complex --- as an example, Deutsche Bank states at p. 20 of its Plan that it consists of "2,906 active legal entities… with representation across 72 countries," including 279 regulated entities. The New York Federal Reserve Bank in a recent study confirms that this structure is typical. The study indicates, for example, that the following covered companies that have filed Plans have the following numbers of subsidiaries: JPMorgan - 3,391 (451 non-U.S.); Goldman Sachs – 3,115 (1,670 non-U.S.); Morgan Stanley – 2,884 (1,289 non-U.S.); Bank of America – 2,019 (473 non-U.S.); Citi – 1,645

[1] Capitalized terms used in this Appendix and not defined herein have the meanings given to such terms in Americans for Financial Reform's January 8, 2013 letter.
[2] 12 U.S.C. § 5365(d)(1)(A).
[3] 12 U.S.C. § 5365(d)(1)(B).

(708 non-U.S.).[4] The New York Federal Reserve Bank and other commentators have similarly recognized that upon a financial institution's distress or failure, multiple bankruptcy regimes will need to "interact in ways that minimize negative externalities" and that international coordination "is almost certainly going to be necessary" to achieve such outcomes.[5] We submit that any understanding of a covered company or the several scenarios that will play out at a time of material distress or failure of the covered company will inevitably involve names and the formational jurisdictions for each entity within a covered company, and the bankruptcy, insolvency or other resolution law or laws likely to apply to that entity. Moreover, any assessment of whether the insured depository institutions within a covered company are adequately protected requires at a minimum the disclosure of the entities that comprise the covered company, the jurisdictions of formation, and a basic description of each entity's assets, liabilities and obligations, on an entity-by-entity basis.

This information is not privileged, sensitive, or confidential. The formation of a corporation, limited liability company, or similar entity, and virtually all other modern business enterprises, is a public event that requires a public filing. A general description of each significant entity's assets, liabilities and contractual obligations also is not privileged, confidential or sensitive and should not be kept hidden. The Public Plans are disturbingly silent in this regard.

3. Cross-Guarantees and Major Counterparties – The Public Plans do not contain, and should be required to contain, a description the nature and amount and extent of cross-guarantees tied to different securities and obligations to major counterparties, the identities of the other parties to the cross-guarantees, and the identities of major counterparties.[6]

4. Derivatives Positions – Several of the Public Plans generally disclose the covered companies' derivatives positions on a consolidated basis only. Other Public Plans fail to disclose even that much information. We submit that the information provided under each Plan adds little to a material understanding of the covered company, or the risks that those derivatives positions pose to any insured depository institution within the covered company, or the feasibility of a Plan that must provide for the rapid and orderly resolution of a covered company in the event of material financial distress or failure. The Public Plans should be required to include information on a non-consolidated basis regarding the entities within the covered company group that hold any significant derivatives positions, cross-guarantees or other obligations regarding those derivatives positions undertaken by other entities within the covered company, more specificity with respect to the types of derivatives by notional amount, maximum potential liability exposure to counterparties, and current market value, and other information necessary to a basic understanding of the value and risk of the covered company's derivatives positions. This information need not include actual trading data but clearly must go significantly further than current information in the Public Plans to offer any useful information at all to the public regarding the risks and resolution possibilities of the covered companies.

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[4] Avraham, Dafna, Selvaggi, Patricia and Vickery, James, "A Structural View of U.S. Bank Holding Companies," FRBNY Economic Policy Review/July 2012, at p. 71, available at phttp://www.newyorkfed.org/research/epr/12v18n2/1207avra.pdf.

[5] Dudley, William C., "Remarks at the Clearing House's Second Annual Business Meeting and Conference, New York City," November 15, 012, at http://www.newyorkfed.org/newsevents/speeches/2012/dud121115.html.

[6] 12 U.S.C. § 5365(d)(1)(C).

5. Key Issues Regarding Resolution Plans – The Public Plans generally fail to, and should be required to, describe with sufficient specificity the nature of the covered institution's business and whether its business will enable it, once in distress, to prepare for, commence and complete a rapid and orderly resolution under the U.S. Bankruptcy Code, such as:

> (1) the extent that the covered company (A) relies on repos and similar overnight and short-term financing, and other financing and derivatives transactions that may subject the covered company (including its subsidiaries) to material margin call risks prior to the triggering of the resolution Plan, that are not avoidable under 11 U.S.C. §§ 555, 559 and similar provisions of the Bankruptcy Code and Dodd Frank Act § 210(c)(8)(C) and the similar provisions of that Act, and (B) expects that it will have unencumbered assets and/or a legal basis for granting a post-bankruptcy priming lien that will enable it to obtain debtor-in-possession ("DIP") financing upon a U.S. bankruptcy filing;
>
> (2) the extent to which any non-U.S. entities or (though less likely) U.S. entities or their respective assets would or might be subject to insolvency proceedings or administration or other resolution proceedings by a non-U.S. jurisdiction or under foreign law, which entities would or might be subject to foreign jurisdiction and/or law, and which jurisdiction and/or law would apply, whether such foreign law provides for an automatic stay against actions taken against such entities and their assets, whether a cross-border protocol would be required in connection with the resolution of the foreign entities, whether the foreign entity would be entitled to operate during its insolvency proceeding or would be shut down and liquidated, whether pre-insolvency management of the foreign entity would remain in place or would be replaced with an administrator, liquidator, receiver or similar person, and what measures have been taken to ensure the rapid orderly resolution of those foreign entities and that their assets will be available for use as contemplated under the covered company's resolution Plan.

The extent to which the Public Plans filed by the 11 covered companies fail to include the information described in nos. 1 through 4 above is summarized below:

Summary of Information Contained in Public Resolution Plans

Covered Company	Adequate Protection of Insured Depository Institution	Full Description of Ownership Structure, Assets, Liabilities and Contractual Obligations	Cross-Guarantees and Major Counterparties	Derivatives Positions
Bank of America	No Material Information	No Material Information except separate financial statement for FIA (at pp. 13-14)	No Material Information	No Material Information except some information re: types of derivatives on which one of its entities is a counterparty, reported on a consolidated basis only
Barclays	No Material Information	No Material Information	No Material Information	No Material Information
BNY Mellon	States that non-bank entities are "largely self-contained" (p. 4[i]) – no other Material Information	No Material Information except that the bulk of its assets and liabilities are in The Bank of New York Mellon (p. 23)	No Material Information except that the bulk of its assets and liabilities are in The Bank of New York Mellon (p. 23)	No Material Information except (at pp. 15-16) a reasonable description of the types of derivatives, transactions it enters into, but does not include sufficient information re: any cross-guarantees or similar obligations by insured depository institutions or their parent cos. of the obligations of nonbank cos.
Citi	No Material Information	No Material Information	No Material Information	No Material Information except to note (at p. 16) that it uses derivatives to "manage risks" – does not state whether it also trades derivatives for profit or whether its insured depository institution is exposed
Credit Suisse	No Material Information	No Material Information	No Material Information	No Material Information except (at pp. 9-10) that it enters into derivatives contracts and contracts with "embedded" derivatives features for its own account both to hedge and for arbitrage
Deutsche Bank	No Material Information	No Material Information	No Material Information	No Material Information except (at p. 16-17) that it enters into derivatives transactions to "manage the DB Group's exposure to risks" - does not indicate whether it also trades for profit, though it implies that it does so at p. 17
Goldman Sachs	No Material Information	No Material Information other than to list (at p. 6) more than 20 material entities with no mention of their formational or likely insolvency jurisdictions	No Material Information	No Material Information except (at p. 17) that it uses derivatives to hedge and manage risks – says nothing about whether it also buys and sells derivatives for its own account for profit

Summary of Information Contained in Public Resolution Plans

JPMorgan Chase	No Material Information	Minimal Material Information – lists 25 Material entities and formational jurisdictions of only 4 of those (pp. 3-5)	No Material Information	Minimal Material Information – states (at p. 10) its derivatives receivables and payables on a consol. basis, and (at p. 19) the notional amounts of its derivatives positions, by types and total, on a consolidated basis (approx. $71 trillion at CYE 2011)
Morgan Stanley	No Material Information	Minimal Material Information – lists formational jurisdictions of MSBNA and its parent cos. - notes that its other insured depository institution, Morgan Stanley Private Bank, N.A. ("MSBNA"), has assets of approx. $12 billion, below the threshold amount requiring it to formulate a resolution Plan (p. 24)	No Material Information	No Material Information except re: the gross amounts of its derivatives assets and liabilities, on a consol. basis, (pp. 10-11), and that it trades in derivatives (pp. 12-13); further asserts (at p. 27) that its insured depository institution, MSBNA, "primarily" engages in derivatives transactions as a hedge, and that derivatives transactions with affiliates are fully collateralized - does not explain whether it also enters into derivatives transactions for profit, or what it means by "fully collateralized"
State Street	Asserts (at p. 2) that it is a "global custody bank," with limited trading exposure and risk, and that State Street Bank and Trust Company is its insured depository institution (p. 1) – no other Material Information	Minimal Material Information – at pp. 4-6 identifies 11 Material entities, and formational jurisdictions of some of them	No Material Information	No Material Information except (at p. 11) that it assumes positions in the foreign exch. markets using derivatives financial instruments, matching its positions closely to minimize currency and interest rate risk
UBS	Asserts (at p. 17) that UBS Bank USA, located in Utah, is its only U.S. insured depository institution) – No Other Material Information	No Material Information	No Material Information	No Material Information except that it enters into derivatives transactions both for trading and for hedging purposes and information (at pp. 6-14) re: derivatives trading and positions, on a consol. basis - none of the information indicates which entities within UBS are the counterparties or whether the non-trading UBS entities are insulated from the trading entities or from the risks associated with these trades

[i] Citations in this letter to page numbers in connection with a covered company's statements or assertions are to the pages in applicable covered company's filed public Plan.