Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

Statement of CFPB Director Rohit Chopra
Member, FDIC Board of Directors
Regarding the Living Wills Submitted by Certain Large Foreign and Domestic Firms

December 13, 2022

To reduce the risk of bailouts and financial instability, Congress requires that the Board of Directors of the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System determine whether certain financial institutions could be resolved in an orderly fashion under Chapter 11 of the U.S. Bankruptcy Code without creating disruptions to the financial system.

The Boards recently evaluated the very largest U.S.-based global banks,[1] and are now evaluating a set of international banks with smaller U.S. footprints, as well as a set of domestic banks not considered global systemically important financial institutions.[2] I am voting to affirm the credibility of many of the submissions, with some notable exceptions.

Credibility Determinations

I agree that the plans submitted by 55 foreign banks with limited U.S. operations meet the standard set by Congress. I also agree with the determination that the resolution plan of Credit Suisse has two deficiencies: governance and cash flow forecasting.

In addition, I agree that the plan submitted by BNP Paribas did not include a realistic strategy to maintain the operations of its material U.S. repurchase agreement activity. This issue was previously identified in the 2019 feedback letter, but BNP Paribas failed to provide any information in its 2021 plan to correct the weakness.

The agencies will classify the BNP Paribas plan as one containing a "shortcoming." Given the facts, I would have supported a determination that the plan contained a "deficiency."[3] Regardless, it is essential that the firm addresses this issue in a timely fashion.

After reviewing the remainder of the plans, the agencies are also outlining enhanced expectations for the next resolution plan submissions for Barclays, Deutsche Bank, and Credit Suisse, given the complexity of their U.S. operations. For other firms, including U.S. domestic systemically important firms, the agencies will expect more detail on certain resolution strategies and more rigorously test the firms' actual capabilities to execute the plans.

---

[1] *Regarding the Living Wills Submitted by JPMorgan Chase, Wells Fargo, Bank of America, Citigroup, Goldman Sachs, Morgan Stanley, State Street, and Bank of New York Mellon*, November 22, 2022, https://files.consumerfinance.gov/f/documents/cfpb_directors-statement-on-living-wills_2022-11.pdf.

[2] There are 71 firms that fall into this category.

[3] To avoid "grade inflation," it is critical that the agencies utilize the standard grounded in statute to evaluate the credibility of the resolution plans. If a firm's resolution plan fails to meet the standard, it should receive a deficiency determination, even if the weaknesses are less severe than firms with more acute problems.

Regulatory Arbitrage through Branches and Agencies of Foreign Banks

After reviewing this set of resolution plans, it is clear that we should revisit the preferential treatment given to the "branches" and "agencies" of foreign banks. Branches and agencies operate in the U.S., but are legal extensions of the foreign parent company. They are not separately capitalized U.S. subsidiaries and are not organized under the firm's U.S. intermediate holding company.[4]

This structure could pose challenges if they failed and needed to be wound down.[5] Currently, branches and agencies face lighter regulatory requirements than the intermediate holding company itself, including with respect to liquidity safeguards.[6] This invites regulatory arbitrage and foreign banks have indeed shifted hundreds of billions of dollars of assets out of intermediate holding companies and into branches and agencies.[7] The United States should not be providing regulatory loopholes to foreign banks, especially when they pose risks to our financial system.

---

[4] 12 CFR § 252.153.

[5] Branches and agencies can add complexity when the preferred resolution strategy is a single-point-of-entry resolution of the intermediate holding company, as they are not under the intermediate holding company. Liquidation and other strategies could pose problems for the U.S. financial system and pose obstacles to an orderly resolution of the totality of the foreign bank's U.S. operations depending on the size, nature, and interconnectedness of the entity's activities and exposures. For a review of state and federal insolvency laws that apply to branches and agencies, and certain relevant complications, see Steven L. Schwarcz, *The Confused U.S. Framework for Foreign-Bank Insolvency: An Open Research Agenda*, 1 Rev. L. & Econ. 81 (2005), https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1953&context=faculty_scholarship.

[6] Governor Lael Brainard, *Statement on Proposals to Modify Enhanced Prudential Standards for Foreign Banks and to Modify Resolution Plan Requirements for Domestic and Foreign Banks*, April 8, 2019, https://www.federalreserve.gov/newsevents/pressreleases/3B1F641BEB4A485B994EBC38165F0F3B.htm ("While I am encouraged that it would apply the LCR and net stable funding ratio requirements to the intermediate holding companies (IHCs) of foreign banks, today's proposal does not address the important liquidity risks associated with the U.S. branch and agency networks of these firms.").

[7] See, Jeremy C. Kress, *Domesticating Foreign Finance*, 73 Fla. L. Rev. 951 (2021), http://www.floridalawreview.com/2021/domesticating-foreign-finance/ ("Between the third quarter of 2016 and year-end 2019, foreign banks reduced their U.S. IHC assets by $230 billion. By contrast, foreign banks grew their U.S. branches by almost the same amount— $209 billion—over the same period"). See also, Teodora Paligorova and Judit Temesvary, *Foreign banks' asset reallocation in response to the introduction of the Intermediate Holding Company rule of 2016*, FEDS Notes, May 12, 2021, https://doi.org/10.17016/2380-7172.2886 ("We use detailed regulatory data to examine whether FBOs responded to the implementation of the IHC rule, and find consistent evidence that this rule had spurred FBOs to reallocate their assets from their US-regulated non-branch assets toward their less regulated branches in the US.").