August 2, 2019

Via Electronic Mail to fsb@fsb.org

Financial Stability Board
Centralbahnplatz 2
CH-4002 Basel
Switzerland

Re: **Discussion Paper for Public Consultation Regarding Public Disclosures on Resolution Planning and Resolvability**

Ladies and Gentlemen:

The Bank Policy Institute[1] and the Financial Services Forum[2] (together, the **Associations**) appreciate the opportunity to comment on the Financial Stability Board's (**FSB**) discussion paper on Public Disclosures on Resolution Planning and Resolvability (the **Discussion Paper**).[3] The Associations agree with the FSB's observations that public disclosures can strengthen market discipline, provide incentives for firms to remove barriers to resolvability, and clarify expectations regarding how resolution authorities will act during the failure of a firm.

Disclosure has been an important part of the policy discussion around communications with investors of the impact of reforms designed to end too-big-to-fail (**TBTF**) in the United States. This letter describes those disclosures and discusses how they have supported the resolution planning and resolvability efforts of those global systemically important banking organizations headquartered in the U.S. (**U.S. G-SIBs**).[4] A number of post-crisis resolution

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1 The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

2 The Financial Services Forum is an economic policy and advocacy organization whose members are the chief executive officers of the eight largest and most diversified financial institutions headquartered in the United States. Forum member institutions are a leading source of lending and investment in the United States and serve millions of consumers, businesses, investors, and communities throughout the country. The Forum promotes policies that support savings and investment, deep and liquid capital markets, a competitive global marketplace, and a sound financial system.

3 Fin. Stability Bd., Public Disclosures on Resolution Planning and Resolvability, Discussion Paper for Public Consultation (June 3, 2019), https://www.fsb.org/wp-content/uploads/P030619-2.pdf (Discussion Paper).

4 While resolution planning in the United States reaches beyond the U.S. G-SIBs and covers some regional and foreign banking organizations, this letter concentrates solely on disclosures relating to the U.S. G-SIBs.

planning reforms in the United States are aimed at improving the resolvability of large, complex financial institutions so that they can be allowed to fail with their private sector investors suffering losses.

A key difference between U.S. resolution planning over the last few years and that which has taken place in other countries is that, in the United States, banking organizations have been made responsible for developing their own resolution strategies and capabilities. Each U.S. G-SIB makes disclosures on its preferred resolution strategy, which for each of them includes a strategy for imposing losses on investors and information on steps they have taken to ensure that doing so would not threaten financial stability. Further, U.S. resolution authorities have made disclosures that communicate that investors in U.S. G-SIBs should expect to bear losses in the event of a U.S. G-SIB's material financial distress or failure. The Associations agree with the FSB's observation that resolution disclosures should protect the confidentiality of commercially sensitive firm-specific information[5] and should not constrain available options for G-SIBs or resolution authorities in a crisis. Disclosures of sensitive liquidity information, for example, could have pro-cyclical effects in the event of market-wide stress, whereby market reactions may exacerbate a stress event at a G-SIB. The firm-specific disclosures in the United States, described in Section I of this letter, appropriately balance these considerations while providing the market with useful information about how investors would bear the cost of a firm's failure; therefore, we do not believe that incremental firm-specific disclosures are warranted. In addition, disclosures about the progress U.S. resolution authorities and U.S. G-SIBs have made in developing operational readiness capabilities for, and overcoming obstacles to, an orderly resolution[6] reinforce the message that a U.S. G-SIB will be allowed to fail with its investors taking losses.

I. Firm-specific disclosure in the United States

Each U.S. G-SIB makes disclosures designed to create market confidence that it can be resolved in an orderly manner under the U.S. Bankruptcy Code without the need for taxpayer assistance. Each U.S. G-SIB has adopted a single point of entry (**SPOE**) resolution strategy for its resolution plan. Under an SPOE resolution strategy, equity and debt-holders of the top-tier bank holding company (**BHC**) would bear losses while operating subsidiaries would be provided with capital and liquidity support to remain open and operating and to meet their debts as they come due.

Advance disclosure of this resolution strategy is a key element of ensuring its successful future execution. Each U.S. G-SIB makes disclosures about its SPOE strategy designed to ensure that:

- investors in the unsecured long-term debt of its top-tier BHC can make informed decisions regarding the risks they expect to bear in resolution, maximizing the chances that a bail-in will be enforceable on legal and equitable bases; and

- creditors of the U.S. G-SIB's operating subsidiaries will not be incentivized to run, reducing the chances of a disorderly resolution.

These firm-specific disclosures fall into two general categories of disclosure: (A) resolution plan public sections and (B) securities and other capital markets disclosures.

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5 The United States Supreme Court also recently expanded the scope of the exemption from public information requests for competitively sensitive information. *See* Food Mktg. Inst. v. Argus Leader Media, No. 18-481, slip op. (U.S. June 24, 2019).

6 *See* Fin. Stability Bd., *FSB 2018 Resolution Report: "Keeping the pressure up"* Annexes 1–2 (Nov. 15, 2018), https://www.fsb.org/wp-content/uploads/P151118-1.pdf (inventory of the steps the United States has taken in implementing the FSB's resolvability standards).

A. Resolution plan public sections

The U.S. G-SIBs are subject to a resolution planning process under Section 165(d) of Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the **Dodd-Frank Act**) and its implementing regulations,[7] which requires them to submit plans for their rapid and orderly resolution under the U.S. Bankruptcy Code in the event of material financial distress or failure (**Title I plans**).[8]

U.S. G-SIBs must submit with each Title I plan a public section that describes the firm's resolution strategy, including how the strategy provides for continuity, transfer or orderly wind-down of the entity and its operations, and the resulting organization upon completion of the resolution process. By describing the firm's preferred resolution strategy, the public sections therefore describe the presumptive path the firm would expect to take if it needed to be resolved. The public section also provides additional information evidencing the U.S. G-SIB's financial and operational readiness for the successful execution of its resolution strategy.[9]

With the active engagement of the U.S. resolution authorities, U.S. G-SIBs have increasingly used the public sections to disclose substantially more information than is required by the statute, rules and guidance.[10] The 2017 resolution plans, for example, made efforts to demonstrate the firms' ongoing commitment to enhancing their resolvability and communicating to the public why and how their resolution strategies should be expected to be effective. The firms disclosed the changes the firms made to respond to prior agency feedback and how the firms were responding to agency guidance and firm-specific feedback on substantive requirements, such as capital and liquidity management in resolution. U.S. G-SIBs also explained the mechanics of their resolution strategies, including how their secured support agreements work to provide assurance that sufficient capital and liquidity support would be made available to material operating subsidiaries in resolution, while imposing losses on creditors and equity holders of the parent company. The public sections therefore, in practice, provide robust disclosure that is useful for market participants to assess the efficacy of the U.S. G-SIBs' resolution strategies and to calibrate their expectations for any potential resolution. Credit ratings agencies have also used information from the public sections of U.S. G-SIBs' Title I plans to inform their ratings of those banks, thus providing additional information to market participants and promoting market discipline.[11]

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7 Dodd-Frank Wall Street Reform and Consumer Protection Act § 165(d), 12 U.S.C. § 5365(d); 12 C.F.R. §§ 243, 381.

8 There is a separate requirement in the United States for certain insured depository institutions to also file a plan with the FDIC that assumes the failure of the depository institution. That rule is not discussed in this letter.

9 Firms are required or expected to disclose: information on their material entities; the firm's rationale for designating material entities; descriptions of their core business lines; financial information; descriptions of derivatives and hedging activities; lists of memberships in material payment, clearing and settlement systems; descriptions of foreign operations; the identities of material supervisory authorities; the identities of principal officers; descriptions of corporate governance structures and processes related to resolution planning; descriptions of material management information systems; information on their intra-group financial and operational interconnectedness; and information on their total loss-absorbing capacity (TLAC) and liquidity resources. 12 C.F.R. § 243.8(c); Final Guidance for the 2019 [165(d) Resolution Plan Submissions by Domestic Covered Companies that Submitted Resolution Plans in July 2017], 84 Fed. Reg. 1438 (Feb. 4, 2019).

10 One indicator of the increasing disclosure is a comparison of the average page counts of the public sections over time. In 2019, the public sections for the U.S. G-SIBs were, on average, sixty percent longer than in 2015.

11 *See, e.g.*, *Fitch: Resolution Plans to Bring Structural Change to US GSIBs*, REUTERS (Oct. 13, 2016), https://www.reuters.com/article/idUSFit976685.

B. Securities and other capital markets disclosures

The U.S. G-SIBs also make disclosures about their resolution strategies and the risks that those strategies create for investors in securities and other capital markets disclosures.

Securities law disclosures. Since U.S. G-SIBs are publicly traded corporations, they are subject to disclosure requirements under U.S. securities law, which requires periodic reporting of factors a reasonable investor might consider when deciding to invest in those companies. Applying this standard, each of the U.S. G-SIBs describes its resolution plan in its annual report, disclosing, among other things, that investors could suffer losses under an SPOE strategy; that the parent has placed resources into intermediate holding companies or other funding vehicles and is contractually obligated to support subsidiaries in resolution; and that investors should be aware of these risks.[12]

*Total loss-absorbing capacity (**TLAC**) disclosures.* The U.S. G-SIBs are subject to a rule on TLAC (the **TLAC rule**) that supports their SPOE resolution strategies. The TLAC rule requires the U.S. G-SIBs to have sufficient loss-absorbing capacity in the form of high-quality equity capital and unsecured long-term debt to make their SPOE resolution strategies feasible. It also requires the U.S. G-SIBs to publicly disclose a description of the financial consequences to unsecured debtholders of the firm's top-tier BHC entering into a resolution proceeding in the offering documents for all of its eligible unsecured long-term debt and on either the firm's website or in multiple public financial or regulatory reports.[13]

The TLAC rule's disclosure requirements are intended to signal to holders of the unsecured long-term debt of the top-tier BHCs of the U.S. G-SIBs "that they will be allowed to suffer losses in a resolution and generally will absorb losses ahead of the creditors of [the top-tier BHCs'] subsidiaries" and to "encourage potential investors to carefully assess the [top-tier BHCs'] risk profile when making investment decisions," which "should lead to an improvement in the market pricing of the unsecured debt of [top-tier BHCs] . . . providing supervisors and market participants with more accurate market signals about the financial condition and risk profile of the [top-tier BHC]."[14]

Together, the securities law and TLAC disclosures therefore maximize the likelihood that investors in the securities of the U.S. G-SIBs are in a position to provide market discipline.

II. Disclosures by resolution authorities in the United States

Policy disclosures by U.S. authorities communicate to the market both that creditors of U.S. G-SIBs will not benefit from taxpayer funding or extraordinary government assistance and that an SPOE resolution strategy is likely to be used to resolve a U.S. G-SIB. U.S. authorities have also made disclosures about their expectations for the U.S. G-SIBs' Title I plans, including through the public release of firm-specific feedback and credibility assessments on U.S. G-SIBs' resolution plans, providing market participants with both deeper insight into the resolvability standards that U.S. G-SIBs are meeting and confidence in regulators' ability to assess the readiness of firms to execute an SPOE resolution strategy.

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12 *See, e.g.*, Citigroup, Inc., Annual Report (Form 10-K) 51, 87 (Feb. 22, 2019); Bank of America Corp., Annual Report (Form 10-K) 3-4, 8 (Feb. 26, 2019).

13 12 C.F.R. § 252.65.

14 Board of Governors of the Federal Reserve System, 82 Fed. Reg. 8266, at 8303 (Jan. 24, 2017).

A. Preference for a single point of entry resolution

U.S. regulators have expressed—both through feedback on Title I plans and in guidance on how they might use the Orderly Liquidation Authority (**OLA**)—a preference for using an SPOE strategy to resolve a G-SIB. Enacted under Title II of the Dodd-Frank Act, the OLA is a special resolution regime that provides the FDIC with tools to resolve a failing G-SIB. The expressed preference for an SPOE strategy communicates to market participants that senior unsecured creditors should expect to bear losses during the resolution of a G-SIB.

As with the public sections disclosures, ratings agencies consider these types of general disclosures by resolution authorities when assessing the likelihood that a bank is likely to receive sovereign support, rendering its debt less risky.[15]

B. Disclosure of Title I resolution planning guidance

In 2018, U.S. regulators consolidated and made public all applicable guidance on resolution plans for the U.S. G-SIBs. Public availability of guidance and feedback is helpful to market participants in understanding and evaluating the U.S. G-SIBs' operational readiness to execute an SPOE resolution strategy and provides useful context for the public sections that were submitted with the July 1, 2019 Title I submissions.

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Taken together, the robust firm-specific public disclosures by U.S. G-SIBs along with the general disclosures by U.S. resolution authorities could serve as a model for other jurisdictions seeking to eliminate market perception that their large, complex financial institutions would not be allowed to fail.

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[15] *See, e.g.*, FITCH RATINGS, BANK RATING CRITERIA: MASTER CRITERIA, at 49 (2018) ("The adoption of legislation that provides for bank resolution tools that could impose losses on senior creditors, rather than taxpayer bail-outs, is an important signal of the determination of the authorities not to provide sovereign support for banks. In countries that have adopted such legislation, and where the authorities have expressed a clear intention to use it, Fitch will usually take the view that support for banks, even if still possible, can no longer be relied upon. . . . Strong and clear government statements on the intention to bail in creditors of failed banks will also be factored into Fitch's assessment of a sovereign's propensity to support banks.")

The Associations appreciate the opportunity to comment on the Discussion Paper. If you have any questions, please contact John Court by phone at +1 (202) 589-2409 or by email at *john.court@bpi.com* or Kevin Fromer by phone at +1 (202) 457-8765 or by email at *kfromer@fsforum.com*.

Respectfully submitted,

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