

Release of Public Sections of 2018 IDI Plans and Foreign Filers' 2018 165(d) Plans

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Today, the Federal Reserve and FDIC [released](#) the public sections of the 2018 165(d) resolution plans of Barclays, Credit Suisse, Deutsche Bank and UBS, which were due on July 1, 2018. The plans contain strategies for the rapid and orderly resolution of each firm's U.S. operations under the Bankruptcy Code in the event of material financial distress or failure. This year's 165(d) resolution plans are the first submissions of these four foreign filers since July 1, 2015. They are also the first submissions adopting a single-point-of-entry strategy for the U.S. operations conducted out of each foreign filer's U.S. top-tier intermediate holding company.

Separately, the FDIC [released](#) today the public sections of the IDI plans submitted by 41 large insured depository institutions, which were also due on July 1, 2018. These IDI plans are completely different from 165(d) resolution plans. Unlike 165(d) resolution plans, an IDI plan presents a resolution strategy only for the insured depository institution and the filing obligation is on the insured depository institution itself rather than its holding company. Each IDI plan describes how the relevant insured depository institution could be resolved under the Federal Deposit Insurance Act in a way that provides customers timely access to deposits, maximizes returns, and minimizes creditor losses. A bridge bank is assumed and the Bankruptcy Code is not directly involved.

IDI plans are submitted only to the FDIC, while 165(d) resolution plans are submitted to both the Federal Reserve and the FDIC. The reason for this difference is that the obligation to file an IDI plan results from a rule that the FDIC issued acting alone pursuant to its authority under the Federal Deposit Insurance Act (the IDI Rule) and does not involve the Dodd-Frank Act. As a result, the IDI Rule is a separate regulation from the Federal Reserve's and FDIC's regulation implementing Section 165(d) of the Dodd-Frank Act (the 165(d) Rule).

The difference in statutory authority between the IDI Rule and the 165(d) Rule has new importance in light of the Bipartisan Banking Act (the Economic Growth, Regulatory Relief and Consumer Protection Act, EGRRCPA). The Bipartisan Banking Act provides relief from certain enhanced prudential standards under the Dodd-Frank Act, including the resolution planning requirement under Section 165(d), for firms with less than \$100 billion in total consolidated assets. The Bipartisan Banking Act also permits the Federal Reserve to determine which firms with more than \$100 billion but less than \$250 billion in total consolidated assets will be subject to the 165(d) resolution plan requirement moving forward, and the Federal Reserve stated on July 2, 2018 that it will announce further actions at a later date ([here](#)). Because the FDIC implemented the IDI Rule pursuant to its statutory authority under the Federal Deposit Insurance Act, rather than the enhanced prudential standards under the Dodd-Frank Act, the Bipartisan Banking Act's resolution planning relief does not extend to the IDI plan filing requirement. As a result, the press releases issued by the Federal Reserve and the FDIC last week, which extend the date for the filing of 165(d) resolution plans for 14 filers and clarify that resolution plans are no longer required for bank holding companies with less than \$100 billion in assets, **do not apply to the IDI Rule**. It is to be hoped that the FDIC under its new leadership will rethink the \$50 billion threshold for the IDI Rule.