

June 20, 2024

Mr. Brian T. Moynihan  
Chairman of the Board and Chief Executive Officer  
Bank of America Corporation  
Bank of America Corporate Center  
100 North Tryon Street  
Charlotte, North Carolina 28255-0001

Dear Mr. Moynihan,

On or before July 1, 2023, the Board of Governors of the Federal Reserve System (Board) and the Federal Deposit Insurance Corporation (FDIC) (together, the Agencies) received the resolution plan submission (2023 Plan) of Bank of America Corporation (the Covered Company), as required by section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended (Dodd-Frank Act)<sup>1</sup> and the jointly issued implementing regulation as amended (Resolution Plan Rule).<sup>2</sup>

The Agencies have reviewed the 2023 Plan, taking into consideration section 165(d) of the Dodd-Frank Act; the Resolution Plan Rule; the feedback letter that the Agencies provided to the Covered Company on November 22, 2022 (2022 Letter), regarding the Covered Company's 2021 resolution plan submission (2021 Plan); the joint "*Guidance for § 165(d) Resolution Plan Submissions by Domestic Covered Companies applicable to the Eight Largest, Complex U.S. Banking Organizations*";<sup>3</sup> and certain other information available to the Agencies.<sup>4</sup>

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<sup>1</sup> 12 U.S.C. § 5365(d).

<sup>2</sup> 12 CFR Part 243 and 12 CFR Part 381.

<sup>3</sup> 84 *Fed. Reg.* 1438, 1449 (Feb. 4, 2019) (Guidance).

<sup>4</sup> In addition, the staff of the Agencies engaged with the Covered Company during the development of the 2023 Plan and during the Agencies' review of the 2023 Plan to test certain of the Covered Company's capabilities that support the Covered Company's resolution plan and its implementation, seek clarification, pose questions regarding the Covered Company's submission, and discuss progress regarding items mentioned in the 2022 Letter.

In reviewing the 2023 Plan, the Agencies noted further development of the resolution strategy and capabilities described in prior resolution plan submissions, as discussed in section II below. However, the Agencies identified a shortcoming in the Covered Company's 2023 Plan, as discussed in section II below. The Agencies will review the resolution plan due on July 1, 2025 (2025 Plan), to determine if the Covered Company has satisfactorily addressed this shortcoming. If the Agencies jointly decide that this matter is not satisfactorily addressed in the 2025 Plan, the Agencies may jointly determine that the 2025 Plan is not credible or would not facilitate an orderly resolution under Title 11 of the United States Code. In addition, the Agencies have noted areas where the Covered Company should continue to improve its capabilities for a rapid and orderly resolution, as discussed in section III below.

The Resolution Plan Rule requires the Covered Company to submit a targeted resolution plan on or before July 1, 2025. The Agencies expect their review of the 2025 Plan to continue to focus on validation and testing of the firm's resolution capabilities. The Agencies also expect to engage with the Covered Company prior to submission of the 2025 Plan to prepare for the review, including through planning for capabilities assessments and testing.

## **I. Background**

Section 165(d) of the Dodd-Frank Act requires that each bank holding company with \$250 billion or more in total consolidated assets, certain bank holding companies with total consolidated assets of between \$100 billion and \$250 billion, and each designated nonbank financial company report to the Agencies the plan of such company for its rapid and orderly resolution in the event of material financial distress or failure.<sup>5</sup> A firm, such as the Covered

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<sup>5</sup> In addition, section 401(f) of the Economic Growth, Regulatory Relief, and Consumer Protection Act provides that any bank holding company, regardless of asset size, that is identified as a global systemically important bank holding company under 12 CFR § 217.402 shall be

Company, that is a biennial filer under the Resolution Plan Rule is required to file a resolution plan every two years, alternating between full and targeted resolution plans.<sup>6</sup>

Under section 165(d) of the Dodd-Frank Act, the Agencies may jointly determine, based on their review, that a firm's resolution plan is "not credible or would not facilitate an orderly resolution of the company under Title 11" of the United States Code.<sup>7</sup> An orderly resolution for a firm such as the Covered Company means the reorganization or liquidation of the firm under the U.S. 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.<sup>8</sup> Under the Resolution Plan Rule, the Agencies can jointly identify shortcomings or deficiencies in a covered company's resolution plan.<sup>9</sup> The Resolution Plan Rule also provides processes by which shortcomings or deficiencies jointly identified by the Agencies in a resolution plan may be remedied.

## **II. Results of Agencies' Review of 2023 Plan**

### *Efforts to Improve Resolvability – Collateral Management, Liquidity, Legal Entity Rationalization and Separability*

The 2023 Plan describes actions taken by the Covered Company to improve resolvability, including those discussed below.

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considered a bank holding company with \$250 billion or more in total consolidated assets with respect to the application of standards or requirements under section 165 of the Dodd-Frank Act. 12 U.S.C. § 5365 note.

<sup>6</sup> 12 CFR §§ 243.4(a), 381.4(a).

<sup>7</sup> 12 U.S.C. § 5365(d)(4).

<sup>8</sup> 12 CFR §§ 243.2, 381.2.

<sup>9</sup> 12 CFR §§ 243.8(b), (e) and 381.8(b), (e).

### Collateral Management

The Covered Company has developed collateral management capabilities related to managing, identifying, and valuing collateral, and has demonstrated the ability to respond to changing collateral needs. While these processes were established for business-as-usual purposes, the Covered Company demonstrated the ability to apply them during a capabilities test designed by the Agencies that altered conditions, as might arise during a resolution event.

### Liquidity

The Covered Company has developed short-term cash flow forecasting capabilities for business-as-usual purposes that might also support forecasting cash needs in resolution. The Covered Company demonstrated that those daily business-as-usual processes could be used to meet heightened governance, communication, and reporting needs in resolution.

### Legal Entity Rationalization

The Covered Company has implemented a process to ensure that legal entities are formed and organized and continue to exist in a manner that is rational for business needs and that reflects consideration of resolution-related matters. The Covered Company also maintains a process for evaluating separability options, and has identified aspects of the firm that could be sold, transferred, or wound down and it has incorporated the consideration of operational matters into this analysis.

### Shortcoming regarding derivatives portfolio

The Agencies identified a shortcoming concerning the Covered Company's capabilities to execute part of its resolution strategy concerning its derivatives portfolio. During the review of the 2023 Plan submission, the Agencies made additional requests of the Covered Company related to the modeling of the unwinding of derivatives and trading positions in resolution. The

Agencies requested that the Covered Company simulate its derivatives and trading unwind using scenario inputs that differed from those used in the Covered Company's 2023 Plan in a short time frame (fast run) and then again after having had more time for the Covered Company to validate the information using its governance routines (slow run). The goal of the exercise was to understand whether the firm could produce accurate analyses within a limited amount of time under a different resolution scenario.

The Agencies found the Covered Company's 2023 Plan to have a shortcoming related to the implementation of its derivatives unwind strategy. An assessment of the Covered Company's capability to unwind its derivatives portfolio under conditions that differed from those specified in the 2023 Plan revealed that the firm lacks the capability to use dates outside of the normal business-as-usual production process for spot derivatives and trading positions in estimating resource needs associated with unwinding its derivatives portfolio. This, in turn, raises questions about the firm's ability to implement this aspect of its preferred resolution strategy in an actual resolution event. To remediate this shortcoming, the Covered Company's 2025 Plan should demonstrate, including through reporting in the 2025 Plan on internal validation and testing conducted by the Covered Company, that the Covered Company has developed the capability to quantify the impact of unwinding the derivatives portfolio on its resolution metrics (resolution capital execution need and resolution liquidity execution need) using any business as-of date for spot derivatives and trading data. The Covered Company should develop and submit to the Agencies by September 1, 2024, a description of the key actions needed to remediate this shortcoming and a timeline illustrating the date of their expected completion.

### **III. Additional Feedback**

While the Covered Company has made progress in improving its resolution capabilities, the Agencies expect that the Covered Company will continue to develop its resolution readiness. In reviewing the 2023 Plan, the Agencies identified certain areas for additional focus by the Covered Company to address resolution readiness.

### Assurance

Resolution planning entails both the development of resolution strategies and resolution capabilities, whether specific to resolution or adapted from business-as-usual capabilities.<sup>10</sup> Resolution capabilities ensure that a Covered Company can carry out its preferred resolution strategy and effect a rapid and orderly resolution. Accordingly, a key element of resolution planning is confirming the practicability and sufficiency of resolution capabilities through continued self-evaluation and improvement of those resolution capabilities.<sup>11</sup> Assurance is the process of identifying, testing, and reporting on resolution capabilities, and an assurance framework provides the governance, policies, and procedures to complete this work.

The Covered Company has made some efforts to develop and implement capabilities necessary to fully execute its preferred resolution strategy and has performed some testing of those capabilities through simulations and tabletop exercises. However, during the review of the 2023 Plan submission, the Agencies identified areas where the Covered Company's resolution planning assurance efforts would benefit from further development. The Agencies expect the Covered Company to develop an appropriate assurance framework, of which testing is an aspect, that ensures the Covered Company's readiness and capabilities to implement its resolution plan. Components of an effective resolution assurance framework could include the following:

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<sup>10</sup> See, e.g., 12 CFR §§ 243.5(c)(1)(ii), (f)(1)(v) and 381.5(c)(1)(ii), (f)(1)(v).

<sup>11</sup> See, e.g., 12 CFR §§ 243.5(b)(4), (c)(3)-(4), (c)(5)(ii), (d)(2) and 381.5(b)(4), (c)(3)-(4), (c)(5)(ii), (d)(2).

- Identifying key resolution capability needs to ensure that the firm is fully prepared to implement its preferred resolution strategy;
- Analyzing the effectiveness of the firm's current ability to execute those capabilities, including recognizing any limitations and the implications of those limitations for implementing the preferred resolution strategy;
- Confirming the reliability of essential data, systems, and calculations upon which the Covered Company's senior management and board of directors would depend for decision making;
- Fostering independent review and challenge; and
- Aggregating, remediating, and escalating any matters identified that lead to the conclusion that the Covered Company's capabilities may be ineffective or may have impediments to their timely execution.

#### Legal Matters

In reviewing the 2023 Plan, the Agencies noted that certain legal matters and components of the plan related to the execution of the plan were outdated or incomplete. Specifically, the Covered Company had not updated its analysis of regulatory consents and approvals that would be required for implementation of its preferred strategy and instead indicated that the firm would wait to address these issues during the runway, which might unnecessarily increase the potential for delays or difficulties in implementing its preferred strategy.

#### Derivatives Portfolio Segmentation

The Agencies also requested that the Covered Company simulate a derivatives and trading positions portfolio unwind. The Covered Company did not demonstrate the ability to model its derivatives portfolio unwind by counterparty for segmenting the portfolio in resolution.

In the 2025 Plan, the Covered Company should demonstrate the ability to view derivatives positions at a counterparty level within both the portfolio unwind and segmentation capabilities.

#### **IV. Assurance, Testing, and Next Plan Review**

As discussed above and in the 2022 Letter, testing of resolution capabilities by the Covered Company and by the Agencies can, among other things, help inform the firm and its management, as well as the Agencies, about strengths and weaknesses in the Covered Company's resolution preparedness. Accordingly, the Agencies conducted capabilities testing as part of reviewing the Covered Company's 2021 Plan and its 2023 Plan. These testing efforts revealed meaningful information about the Covered Company's capabilities and certain areas on which it should focus its efforts.

Building on this work, the Agencies anticipate conducting additional capabilities testing and validation work during the review of the Covered Company's 2025 Plan. The Agencies expect to engage with the Covered Company during the period preceding submission of the 2025 Plan concerning the scope of review and anticipated areas of focus. The Agencies also anticipate that their review of the 2025 Plan will include evaluating whether the Covered Company has developed an appropriate assurance framework.

#### **V. Targeted Information Request**

Pursuant to sections \_\_.6 and \_\_.11(c)(2) of the Resolution Plan Rule,<sup>12</sup> a targeted resolution plan is a subset of a full resolution plan and must include the following components: the core elements;<sup>13</sup> the Covered Company's response to the Targeted Information Request; a

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<sup>12</sup> 12 CFR §§ 243.6, .11(c)(2) and 381.6, .11(c)(2).

<sup>13</sup> "Core elements" means the information required to be included in a full resolution plan, pursuant to § \_\_.5(c); (d)(1)(i), (iii), and (iv); (e)(1)(ii); (e)(2), (3), and (5); (f)(1)(v) and (g), regarding capital, liquidity, and the Covered Company's plan for executing any recapitalization contemplated in its resolution plan, including updated quantitative financial information and



description of each material change experienced by the Covered Company since its previously submitted resolution plan (or affirmation that no such material change has occurred) and changes the Covered Company has made to its resolution plan in response; and a description of changes to the Covered Company's previously submitted resolution plan resulting from changes in law or regulation, or guidance or feedback from the Agencies; and a public section. The Agencies have jointly identified the following targeted information required to be included in the 2025 Plan pursuant to section \_\_.6(c) of the Resolution Plan Rule.<sup>14</sup>

### **Item One**

The Agencies have previously expressed the importance of developing strategies to maintain funding for material entities and critical operations through a range of resolution scenarios.<sup>15</sup> The firm should provide information that describes how it could support and preserve critical operations through a range of alternative resolution scenarios when financial resources (capital and liquidity) are significantly lower than the execution needs after the Covered Company files for bankruptcy. The information should include contingency resource allocation, both quantitative and qualitative, and management decision making at the material entities that house critical operations in whole or in part, and strategies to support them. These contingency strategies may focus on the reduction of resources needed by the critical operations or sourcing of additional contingency financial resources to support them.<sup>16</sup>

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analyses important to the execution of the Covered Company's resolution strategy. 12 CFR §§ 243.2, 381.2.

<sup>14</sup> 12 CFR §§ 243.6(c), 381.6(c).

<sup>15</sup> Guidance at 1452, 1453.

<sup>16</sup> An approach for contingency strategies may include contingency actions and contingency arrangements described in the Guidance to facilitate continuity of payment, clearing, and settlement activities and related critical operations, but is only an example and should cover all optionality available to support Critical Operations.

Contingency actions, options, and strategies to support critical options could include, but are not limited to, the following:

- Adjustment to the timing of the wind-down of non-critical firm activities to support Critical Operations
- Orderly reduction in critical operation activity
- Separability options
- Negotiation with counterparties
- Throttling of payments

Information provided should detail changes from daily business-as-usual processes for heightened governance, communication, and reporting in resolution, and be supported by the firm's management information systems.

## **Item Two**

The Covered Company has significant operations outside the United States, and the Agencies have previously articulated their expectations about how resolution plans should consider the actions of foreign authorities in a resolution scenario.<sup>17</sup> To augment the Agencies' understanding of this topic, the Covered Company should include in its 2025 Plan certain information about approvals, actions, forbearance, and recognition (each a Necessary Action) that may be necessary for the firm to carry out its preferred resolution strategy. Specifically, for any jurisdiction in which the firm has (a) one or more material entities or (b) a branch of a material entity that is significant to the activities of an identified critical operation or core business line, or is financially or operationally significant to the resolution of the covered company, the Covered Company should describe how (e.g., through engagement with relevant

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<sup>17</sup> Guidance at 1454.

authorities or local counsel in the particular jurisdiction) the firm has determined (1) the specific Necessary Actions that would be required to support the resolution strategy, (2) the process to obtain each Necessary Action and when that process should be initiated, and (3) any obstacles to obtaining each Necessary Action.

## **VI. Conclusion**

The resolvability of firms will change as markets and firms' activities, risk profiles, and structures change. In addition to the ongoing resolvability work noted in sections II and III above, the Agencies expect the Covered Company to continue to address the resolution consequences of these changes and its day-to-day management decisions to fulfill its obligation to enable the rapid and orderly resolution of the Covered Company in bankruptcy.

If you have any questions about the information communicated in this letter, please contact the Agencies.

Sincerely,

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Ann E. Misback  
Secretary of the Board  
Board of Governors of the Federal Reserve  
System

Sincerely,

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Debra A. Decker  
Executive Secretary  
Federal Deposit Insurance Corporation