The Meeting of the Systemic Resolution Advisory Committee

of the

Federal Deposit Insurance Corporation

Held in the Board Room

Federal Deposit Insurance Corporation Building

Washington, D.C.

Open to Public Observation

January 25, 2012 8:45 A.M.

The meeting of the FDIC Systemic Resolution Advisory Committee ("Committee") was called to order by Martin J. Gruenberg, Acting Chairman, Federal Deposit Insurance Corporation ("Corporation" or "FDIC") Board of Directors.

The members of the Committee present at the meeting were: Anat R. Admati, Professor, Graduate School of Business, Stanford University, Stanford, California; Michael Bradfield, Mercersburg, Pennsylvania; H. Rodgin Cohen, Senior Chairman, Sullivan & Cromwell LLP, New York, New York; William H. Donaldson, Chairman, Donaldson Enterprises, New York, New York; Peter R. Fisher, Senior Managing Director, BlackRock, New York, New York; Janine Guillot, Chief Operating Investment Officer, CalPERS, Sacramento, California; Richard J. Herring, Jacob Safra Professor of International Banking and Professor of Finance, The Wharton School, University of Pennsylvania, Philadelphia, Pennsylvania; Simon Johnson, Ronald A. Kurtz Professor of Entrepreneurship, MIT Sloan School of Management, Cambridge, Massachusetts; Donald Kohn, Senior Fellow, Economic Studies Program, Brookings Institution, Washington, D.C.; John A. Koskinen, Non-Executive Chairman of the Board of Freddie Mac, Washington, D.C.; Jerry Patchan, Hunting Valley, Ohio; John S. Reed, Chairman, Corporation of MIT, New York, New York; Gary H. Stern, Director, The Depository Trust and Clearing Corporation (DTCC), The Dolan Company, and the National Council on Economic Education, New York, New York; and Paul A. Volcker, Chairman, Trustees of the Group of 30, New York, New York.

Members Michael Bodson, Chief Operating Officer, The Depository Trust and Clearing Corporation (DTCC), New York, New York; Charles A. Bowsher, U.S. Comptroller General (Retired) and Chairman and Member of the Research Advisory Council of Glass, Lewis & Company, LLC, Bethesda, Maryland; Raghuram G. Rajan, Eric J. Gleacher Distinguished Service Professor of Finance, Booth School of Business, University of Chicago, Chicago, Illinois; Deven Sharma, President, Standard and Poor's, New York, New York; and David J. Wright, EU Visiting Fellow, St. Antony's College, Oxford, United Kingdom, were absent from the meeting.

Members of the FDIC Board of Directors present at the meeting were: Martin J. Gruenberg, Acting Chairman and Thomas J. Curry, Director (Appointive).

Corporation staff who attended the meeting included: Richard T. Aboussie, James H. Angel, Jr., Steven O. App, M.P. Azevedo, David Barr, Valerie Best, John E. Bowman, Annmarie H. Boyd, Richard A. Brown, Jason C. Cave, Rebecca K. Cole, Kymberly K. Copa, Carolyn D. Curran, Christine M. Davis, Patricia B. Devoti, Bret D. Edwards, Diane L. Ellis, Robert E. Feldman, Ralph E. Frable, Alice C. Goodman, Andrew Gray, Shannon N. Greco, Greg Hernandez, James J. Hone, Craig R. Jarvill, Kenyon T. Kilber, Michael H. Krimminger, Ellen W. Lazar, Alan W. Levy, Susan Lovelace, Christopher Lucas, Rae-Ann Miller, Arthur J. Murton, Gregory H. Muse, Paul Nash, Richard Osterman, Mark E. Pearce, Russell G. Pittman, Stephen A. Quick, Barbara A. Ryan, Jon T. Rymer, John F. Simonson, Christopher Spoth, Marc Steckel, Maureen E. Sweeney, Jesse O. Villarreal, David Wall, James C. Watkins, and James R. Wigand.

Barbara Bouchard, Deputy Associate Director, Federal Reserve Board, Jacob Czarnick, Partner, Perella Weinberg LP, Raj Date, Deputy Director, Consumer Financial Protection Bureau, Amias Gerety, Deputy Assistant Secretary for Financial Stability Oversight Council, Department of the Treasury, Jerome Powell, Visiting Scholar, Bipartisan Policy Center, William A. Rowe, III, Deputy to the Chief of Staff and Liaison to the FDIC, Office of the Comptroller of the Currency, and Charles Taylor, Deputy Comptroller for Capital and Regulatory Policy, Office of the Comptroller of the Currency, were also present at the meeting.

Acting Chairman Gruenberg opened and presided at the meeting. He began by thanking the Committee members for agreeing to serve on the Committee, noting that it is a remarkably distinguished group of individuals, which reflects the importance of the responsibility that the FDIC has under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") for the resolution of systemic financial institutions. He advised that the FDIC has been given three important new responsibilities relating to the resolution of systemic financial companies: Title II of the Dodd-Frank Act ("Title II") provides the FDIC with the authority to place any financial company deemed to be of systemic consequence into a receivership process, including the holding company and its affiliates, which is central to developing a capacity to manage an orderly resolution of a systemic financial company; Title I of the Dodd-Frank Act ("Title I") also requires the systemic financial companies to develop their own resolution plans or so-called "living wills;" and the Dodd-Frank Act explicitly directs the FDIC to coordinate with the foreign supervisors of U.S. systemic financial companies with regard to their foreign operations. Emphasizing that the FDIC has been working diligently to carry out these new responsibilities in the past 18 months since the enactment of the Dodd-Frank Act, Acting Chairman Gruenberg advised that the FDIC has established a new Office of Complex Financial Institutions ("OCFI"), which has responsibility for carrying out these new authorities; that the FDIC has completed the final core rulemaking for implementation of the FDIC's Title II receivership responsibilities; that the FDIC has completed the final rulemaking jointly with the Board of Governors of the Federal Reserve System ("Federal Reserve") for the living wills requirements under Title I; and that the FDIC has actively engaged foreign supervisors, on both a multilateral basis through the Financial Stability Board of the G20 countries and the Basel Committee on Banking Supervision ("Basel Committee") and a bilateral basis with key foreign supervisors, regarding the foreign operations of systemic financial institutions.

Acting Chairman Gruenberg then provided an overview of the meeting agenda, advising that it will focus on reporting to the Committee on the FDIC's three key activities that he described regarding the resolution of systemic financial institutions, with the morning session discussing the approach the FDIC has developed regarding a strategy for the resolution of systemic financial companies under Title II, and the afternoon session focusing on the FDIC's progress regarding implementation of the living wills process, as well as the FDIC's engagements internationally relating to resolution planning. He then turned the discussion over to the members of the first panel: James R. Wigand, Director, OCFI; Michael H. Krimminger, General Counsel;

and John F. Simonson, Deputy Director, Systemic Resolution Planning and Implementation, OCFI.

Mr. Wigand advised that the meeting's first panel would provide a brief overview of the FDIC's legal authorities under Title II for an orderly liquidation of a systemically important financial company. He then turned the discussion over to Mr. Krimminger, who began by emphasizing that the FDIC's resolution authority under the Title II framework provides the tools to end "too big to fail;" that it is important to achieve market discipline in advance of any future crisis; that it is essential that creditors and market participants understand that the Dodd-Frank Act bans taxpayer bailouts; and that there is a credible plan to resolve the largest financial companies. He advised that the panelists would discuss the resolution options that can provide an orderly resolution that preserves value, reduces contagion, and results in creditors and shareholders bearing the losses, which is an important step toward eliminating the past expectation of a "too big to fail" policy.

With regard to the resolution authorities, Mr. Krimminger noted that there are two primary areas of the legal framework that interrelate with each other in the Dodd-Frank Act. He explained that first area, Title I, is a critical component that focuses on reducing the systemic significance or systemic risk posed by financial institutions by providing the Federal Reserve with enhanced supervision authority for bank holding companies over $50 billion in size and enhanced prudential supervision authority for nonbank financial companies designated by the Financial Stability Oversight Council ("FSOC"), including the authority to impose credit limits, as well as additional capital and liquidity requirements. Another very important area for the preparation of Title II resolutions, he continued, is the living wills regulation that the FDIC issued last year jointly with the Federal Reserve pursuant to section 165(d) of the Dodd-Frank Act, which requires the largest financial companies, and those designated by the FSOC, to prepare living wills that would demonstrate how these companies could be resolved in a rapid and orderly fashion under the Bankruptcy Code.

Mr. Krimminger then presented an overview of the Title II orderly resolution authority, noting that there are five primary elements: (1) the applicability and appointment authority under Title II; (2) the authority for immediate and decisive action; (3) the ability to provide continuity through the bridge financial companies and related authorities; (4) the access to liquidity; and (5) the prohibition on taxpayer bailouts. He advised that, with respect to the applicability and appointment process, a Title II resolution is only a fall-back option, and that the key issue is whether a resolution under Title II would help mitigate the systemic risk that might be created by an insolvency under the Bankruptcy Code, which is the primary default option to resolve large financial companies; that a Title II resolution is limited to potentially systemic financial companies; that advance planning is a key element for an effective resolution process; that there is a special process requiring that the Federal Reserve and the FDIC—or, if the company is a broker-dealer, the Securities and Exchange Commission ("SEC")—make a recommendation to the Secretary of the Treasury, who, in consultation with the President, would make the final decision about whether to put an institution into a Title II resolution; and that there is a provision for judicial review of the Secretary of the Treasury's decision. Regarding the authority to take immediate and decisive action, Mr. Krimminger advised that the ability to take control of the financial company, continue its operations, make sales or transfers of assets, deal with liabilities, and resolve claims immediately, is a critical component that will both preserve value and reduce the potential contagion effects caused by the company's failure; that the ability to stay the immediate netting of derivatives contracts—which can result in the termination of the contracts and dumping of collateral supporting those contracts into an illiquid market—is critical to allow a transfer of those contracts over to a bridge or to another third party that can be a credible, viable counterparty; and that creditor protections exist under Title II that are consistent with those that exist under the Bankruptcy Code, including provisions for minimum payments and judicial determination of claims.

Turning to the key element of continuity through a bridge financial company, Mr. Krimminger emphasized that a bridge financial company provides a mechanism for the maintenance and continuity of critical operations to maximize value and mitigate any systemic risks; that it provides additional time for potential buyers or investors to understand how the company is going to operate—essentially providing an extended marketing period; that it is a temporary institution; that it has broad authority to operate the business and transfer assets and liabilities; that it has broad funding options to support continued operation of subsidiaries, including cash from operations producing cash flow, the ability to provide guarantees and assurances, and the Orderly Liquidation Fund, which is a source of funding from the Treasury Department; and that there are very flexible resolution options under the bridge authority, such as a merger of the bridge financial company with another company, a charter conversion in which the bridge financial company is converted into a charter of a recapitalized company, a stock sale of the bridge financial company, or a traditional purchase and assumption transaction involving a sale of assets and assumption of liabilities. He stated that another key element of the Title II orderly resolution authority is the access to liquidity provided by the Orderly Liquidation Fund, since immediate access to liquidity is vital to preserve value and limit systemic contagion; that Title II creates the Orderly Liquidation Fund to carry out the Title II resolutions through a line of credit provided by the U.S. Department of the Treasury; that all of the funding must be repaid by funds from the receivership, claw back of funds from creditors, or assessments against the industry; and that the Orderly Liquidation Authority cannot be used to provide assistance in a way that would prevent the closure or resolution of a financial company. The final key element of Title II, he explained, is that the Dodd-Frank Act expressly prohibits taxpayer bailouts by requiring full repayment of the Orderly Liquidation Fund by the creditors and, if necessary, an assessment on the industry to ensure that taxpayers do not bear the losses for any resolution transaction.

During the panelists' discussion of the FDIC's legal authorities for an orderly liquidation under Title II, Committee members commented on a number of issues, including guarantees and funding to support the continued operation of the bridge financial company and its subsidiaries, repayment of the Orderly Liquidation Fund, and continuity of operations. In response to a question from Ms. Admati regarding who would provide any guarantees to support continued operations, Mr. Krimminger advised that the guarantees could be provided by the FDIC as manager of the Orderly Liquidation Fund that is backed by the assets of the company, noting that, in many cases, there would be guarantees of continued operations of subsidiaries from the holding company level, which would be done by the bridge financial company, backed by the access to the funding provided by the Orderly Liquidation Fund and paid back from the sale of assets. He also noted that there is a limit on the amount available from the Orderly Liquidation Fund—up to 90 percent of the fair value of the assets available for repayment over the course of the resolution—but that guarantees and cash flows of the institution, together with other funding techniques using the bridge financial company, expand the ability to provide funding to the institution. Mr. Krimminger, responding to Mr. Herring's question about whether it was feasible to employ the

backup strategy of an assessment on the industry for repayment of the Orderly Liquidation Fund without causing further distress on the industry, explained that, before there would be an assessment against the industry, all of the capital—the institution's shareholder equity, subordinated debt, and general creditors—would have to be wiped out, which is extremely unlikely, and there would have to be a claw back from creditors. Noting that any assessment against the industry must be conducted within
60 months, Mr. Krimminger added that any assessment could be structured for payment over an extended period of time. Mr. Herring suggested that, because the government has first priority in repayment, there is risk to the creditors associated with the continuity of operations in a Title II resolution. In response, Mr. Krimminger emphasized that the purpose of the Orderly Liquidation Fund is to provide liquidity to preserve liquidity and minimize systemic risk; that one of the challenges in looking at the resolution of any one of these entities, whether or not it would be through a process which more closely resembles a Chapter 11 reorganization under the Bankruptcy Code or a Chapter 7 liquidation, is that, in both instances, given the type of services and operations these companies provide, an immediate cessation of those activities would clearly pose systemic risk; and that, regardless of the ultimate composition or structure of the surviving entity and how those assets are treated, there has to be some continuity of operations and businesses for some period of time.

Mr. Wigand then introduced the next panel discussion on the resolution strategy for a systemically important financial company, advising that the panelists would provide a general resolution transaction overview and outline the structural framework, financial framework, and governance of a resolution. He began the presentation by describing a hypothetical financial company developed by the FDIC staff as a mechanism for challenging the various resolution strategies and approaches for resolving a systemically important financial company under Title II, noting that the hypothetical company is an amalgamation of the issues, resolution challenges, and structures observed in existing financial companies of this size and complexity of systemic financial institutions, with multiple lines of business—primarily banking, capital markets, asset management, and transaction services—and over a thousand subsidiaries operating in numerous countries throughout the world. Emphasizing that any resolution strategy would have to be developed using the specific facts, characteristics of the financial company, and the financial environment at the point in time that a financial company fails, Mr. Wigand briefly outlined a strategy for a Title II resolution with a single receivership at the parent company entry point and a recapitalization. He explained that, following the decision to put the financial company into the Title II resolution process, the FDIC would be appointed receiver for the parent company; a claims process would be started to handle claims that arise from the company's failure; and a purchase and assumption transaction would be used to transfer the assets—primarily investments in subsidiaries and loans to subsidiaries of the parent company—and certain liabilities of the failed company from the receivership to a bridge holding company, which would operate for a period of time. In a single-entry receivership model, he explained, only the parent holding company would be placed into receivership, with its creditors being subject to haircuts; the equity solvent subsidiaries would remain open and continue to operate; and the bridge holding company would serve as a source of strength, as necessary, to recapitalize subsidiaries by downstreaming liquidity to subsidiaries through intra-company advances. He advised that, ultimately, the bridge holding company would be a new, recapitalized company; that this resolution framework parallels the framework of a Chapter 11 reorganization in which a company fails, undergoes a reorganization process with a period of time to sort out claims in which the value of the company is redistributed, and then exits that process as a viable new company.

Acting Chairman Gruenberg then announced that the meeting would briefly recess. Accordingly, at 10:50 a.m., the meeting stood in recess.

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The meeting reconvened at 11:10 a.m. the same day, at which time Mr. Wigand turned the discussion over to Mr. Krimminger to address the structural framework for a Title II resolution of a systemically important financial company. Mr. Krimminger began by explaining that, following the appointment of the FDIC as receiver of the parent holding company and a transfer of the assets and operations to the bridge holding company, there are a number of different options for exiting the resolution process, including a typical purchase and assumption transaction, merger, charter conversion, or stock sale transaction. He briefly described an approach to exit the resolution process that has been much discussed, both internationally and domestically, which is the concept of "bail-in"—through which the debt or creditor claims of the original company are converted into equity of a newly-chartered company—that would require leaving the subordinated debt and equity of the original entity in the receivership; establishing a newly-chartered holding company ("NewCo") to hold a trust consisting of the debt and creditor claims from the original receivership; and then, through a charter conversion of the bridge holding company into NewCo or a purchase and assumption transaction, selling the assets and operations of the bridge holding company to NewCo. He noted that this approach creates a new stand-alone entity that would be fully-capitalized by the assets from the bridge holding company and the conversion of the debt and creditor claims into equity of NewCo; that, if done through a charter conversion or some other type of stock transaction between the bridge holding company and NewCo rather than a purchase and assumption transaction, would not create additional concentration in the marketplace that otherwise could result from selling the bridge holding company to another large financial company; and that NewCo would be a regulated entity, such as a holding company structure regulated by the Federal Reserve, with supervisory agreements determining the conditions under which it would begin to operate.

Next, Mr. Simonson addressed the financial framework and recapitalization of NewCo, emphasizing that, as in the case of a Chapter 11 bankruptcy, valuation is a key component of the process; that the valuation will determine the overall size of the "pie" to be distributed to claimants and identify where the breakpoint is between creditor classes; and that the valuation will inform the FDIC on how to recapitalize NewCo to ensure that it is a well-capitalized entity when it is returned to the private sector. He advised that the valuation is determined on an enterprise basis with the evaluation of key business lines and, in some cases, the evaluation of key asset portfolios within those business lines; and that, through the claims process, it is then determined where each claimant is in the creditor stack and, within each priority class, what the appropriate size of the pie is for the particular claimant. Mr. Simonson then illustrated a hypothetical recapitalization of NewCo in which, after determining a conservative level of capital for NewCo, unsecured creditors would receive a mix of securities—new debt instruments, convertible debt instruments, and equity—in exchange for their claims, and former subordinated debt and equity holders would receive either call options on equity to be distributed to senior classes, or warrants or other subordinate equity interests. Acting Chairman Gruenberg emphasized that that it is critical to integrate the supervisory and recovery planning process for these systemic financial institutions with the resolution planning process, because the two are related for a number of reasons discussed by the panelists. He noted that, for example, for the model that has been described, it really will depend on the level of unsecured debt at the holding company level, which has to be an issue that comes into play in the supervisory and recovery planning elements; and that, in developing this model, the FDIC has been engaged at the most senior levels with all of the other regulatory agencies to discuss this process and establish a common base, both of understanding and strategic approach.

Mr. Simonson then addressed the issue of governance, emphasizing that it is critical to get the governance issues correct, to implement the governance quickly, and to provide clarity regarding the roles, responsibilities, and authorities of each party involved. He advised that, when the systemically important financial institution is placed into receivership, the FDIC will immediately be appointing a new Chief Executive Officer ("CEO"), who would be responsible for the day-to-day operations of the bridge holding company, and a board of directors, who would provide the appropriate oversight and development of a strategy for the bridge holding company. He also advised that, as part of the funding provided through the Orderly Liquidation Fund, the bridge holding company would enter into a credit agreement that would contain certain operating covenants and restrictions to ensure the proper use and repayment of any funds; that, because the systemically important financial institution failed for a reason, there would be a need for a supervisory agreement to take the corrective action over an appropriate period of time, such as divestment or enhanced risk management; and that a trust would be established to hold the securities of the bridge holding company and ensure that the claims process is done appropriately and that the securities of NewCo are distributed to the claimants. He indicated that there may also be a creditors committee, as a mechanism for the key claimants to have some input regarding the claims process and distribution of the securities of NewCo, since it is anticipated that the claimants will ultimately become the new shareholders of NewCo when the bridge holding company is returned to the private sector.

In their discussion of the Title II resolution strategy and transaction overview, Committee members addressed a number of issues, including the management and governance of the bridge financial company and NewCo, continuity of subsidiary operations, and selection and maintenance of a pool of potential CEOs and board of director candidates. Mr. Herring commented that one significant difference of a Title II resolution from a Chapter 11 reorganization is that management is not retained in a Title II resolution, in response to which Mr. Wigand advised that the Dodd-Frank Act requires that the parties who are culpable for the institution's failure be replaced; Mr. Wigand also suggested that the marketplace also will require replacement of the institution's management, because the new company will not be viewed as viable if the culpable parties are still there. Mr. Johnson strongly disagreed with the suggestion that the marketplace can be relied on to push out culpable individuals, noting that there have been many instances in which the marketplace has allowed management in the financial sector to remain because of their knowledge and expertise—or the lack of any available substitutes—to prevent further loss of value, and that, unless there are substitutes from within or outside of the institution that can replace management that is dismissed, the institution will not be credible. Acting Chairman Gruenberg commented that the expectation is that the senior executives and board of directors will be replaced, and that one of the key challenges in managing an orderly transition is to identify a group of individuals who would be available to come in and assume, at least on a short-term basis, the operations of the new company. Both Mr. Koskinen and Ms. Admati commented on the issue of how culpability is defined, with Ms. Admati suggesting that it will be difficult to determine culpability in some circumstances, such as where a decision to take a risk was made by an individual and may have been a good, rational decision on their part, but had a bad outcome. Mr. Reed noted that, in his experience, senior managers at the center of the big problems typically are aware they will not be retained, and suggested that arrangements would have to be negotiated with more junior individuals to retain them as consultants for a period of time. Noting that, in the case of AIG, there were individuals who had a role in getting the institution into trouble but were retained because they were needed to unwind positions and would not stay unless they were paid a very high level of compensation, Mr. Bradfield suggested that the FDIC will face the same problem and, therefore, should have a policy in place to deal with the crucial issues of bonuses and compensation. Mr. Fisher suggested that considerable attention be given to defining the expectations of the CEO and the timeframe for achieving those expectations before a pool of qualified CEO candidates can be considered, and that it may be helpful to retain an executive search agency to identify potential CEO candidates. Commenting on his experience in dealing with the challenges of putting a CEO and board of directors in place in a timely manner, Mr. Koskinen suggested that clear authorities and delegations for the CEO and the board of directors, together with templates for D&O insurance and compensation, should be developed in advance. In response to Ms. Guillot asking about the role of the FDIC in the process, particularly what the FDIC's relationship with the new CEO and board of directors would be and whether it would have any sort of veto authority on decisions, Mr. Krimminger stated that, in his personal opinion, there would be phases of the process, such as when the bridge financial company is in existence, during which the FDIC would need to have a significant level of control because it is providing the funding, and other phases, such as those that involve NewCo, that would present a different issue; Mr. Simonson emphasized that the Orderly Liquidation Funding agreement covenants and any supervisory agreements would also impose constraints on control. Noting the critical decisions that will arise for the bridge financial company's operations and subsidiaries, Mr. Cohen suggested that any covenants for assistance from the Orderly Liquidation Fund be structured as far in advance as possible.

Noting that the Committee's discussion of the issues has been very helpful, Acting Chairman Gruenberg emphasized that the identification of an interim CEO will be crucial to establish credibility with the markets and the public; and that developing a set of procedures and identifying a pool of individuals who could credibly assume that responsibility are critical elements of the resolution process. Acting Chairman Gruenberg then announced that the meeting would recess for lunch. Accordingly, the meeting stood in recess at 12:08 p.m.

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The meeting reconvened at 1:28 p.m. that same day, with Mr. Wigand introducing David N. Wall, Assistant General Counsel, Complex Financial Institutions Section, Legal Division, and Mr. Simonson to discuss the development of living wills and the resolution planning process that is being undertaken through Title I, as an element of the supervisory framework. Mr. Wall began by providing a brief synopsis of two recent FDIC rulemakings: a rule promulgated jointly with the Federal Reserve Board that implements the requirements established under section 165(d) of the Dodd-Frank Act (the "section 165(d) rule") that a covered company submit a credible and orderly resolution plan to the FDIC, Federal Reserve, and the FSOC, which addresses how the company would implement a rapid and orderly resolution of the company under the Bankruptcy Code; the other is a rule by the FDIC that requires a covered insured depository institution to submit a resolution plan that addresses how the FDIC as receiver could resolve the institution under the Federal Deposit Insurance Act ("FDI Act"). He advised that the companies covered by the joint section 165(d) rule companies are bank holding companies, including foreign banks with U.S. operations, with $50 billion or more in total assets, and nonbank financial companies designated by the FSOC for enhanced supervision by the Federal Reserve; that the resolution plan filing dates are staggered, depending on the size of the institution involved, with the initial plans for the group of the largest companies due on July 1, 2012, the second group's plans due on July 1, 2013, and the rest of the plans due on December 31, 2013; and that, after the initial resolution plan is filed, there is an annual filing requirement depending on the original filing date, but that an earlier filing may be required if there is a material change in the circumstances of the company. With respect to the key components of the resolution plans, Mr. Wall advised that the plans must include a strategic analysis of the covered company's plan for an orderly and rapid resolution, description of the covered company's corporate governance structure for creating the resolution plan, information regarding the overall organizational structure of the company, identification of funding and liquidity requirements, information concerning the company's management information systems, and description of the interconnectedness and interdependencies of the company's various affiliates. He emphasized that the strategic analysis is a critical element of the resolution plan that focuses on identifying core business lines and critical operations, as well as providing the informational content to support the analysis that the franchise value can be maintained and critical operations continued.

Noting that insured depository institutions are not subject to the Title II authority, Mr. Wall briefly described the FDIC rule, advising that is complementary to the joint section 165(d) rule and requires a covered insured depository institution to submit annually to the FDIC a resolution plan that would enable the FDIC, as receiver for the institution, to resolve the institution under the FDI Act at the least cost to the institution's creditors. He advised that the filing deadlines for the resolution plans to the FDIC are coordinated with the staggered filing dates for the joint section 165(d) resolution plans, with filings due on July 1, 2012, through December 31, 2013; that the plans should focus on facilitating a resolution that satisfies three primary concerns: providing depositors with access to insured deposits within one day, maximizing the net present value return on the assets of the institution, and minimizing the loss to the creditors, including the Deposit

Insurance Fund; that a set of informational submissions are required to provide the FDIC with information and data necessary for an orderly resolution, as well as a strategic plan that provides an analysis and discussion of any particular impediments or operational complexities that would inhibit an orderly resolution or result in unusual resolution expenses; and that the plans must discuss the institution's interconnectedness with its affiliates. He concluded by noting that the development of both the joint section 165(d) rule and the FDIC rule is expected to be an iterative process, and that they will be dynamic documents that require updating and revision.

Mr. Simonson then provided an update on the process for developing and reviewing the resolution plans or "living wills," explaining that, through the living wills process, the FDIC and the Federal Reserve will be able to collect substantially more information on the structure, operations, complexity, interconnections, and mapping between legal entities and operations than they have been able to collect in the past; and that the living wills process also provides additional tools to assist the FDIC and the Federal Reserve in their efforts to have the systemically important financial institutions operate in a more safe and stable manner. Emphasizing that, ultimately, the goal of the living wills process is for a covered company to have a credible resolution plan, Mr. Simonson advised that the information provided through the Title I process and the living wills will inform the FDIC and assist in refining the Title II planning process; and that the living wills process encourages covered companies to identify and simplify complex legal structures and interconnections.

Committee members addressed a number of issues during the discussion on the development of living wills and the resolution planning process, including the treatment of the U.S. operations of foreign institutions, development of credible plans, public disclosure of information, and evaluation of the living wills. In response to Mr. Volcker asking whether foreign banks with a small operation in the U.S. would be covered under the living wills rule, Mr. Wall advised that they would be covered if they have more than $50 billion in assets; that there are provisions for reduced filing requirements with respect to those institutions whose U.S. operations are smaller; and that the rule's focus for all foreign institutions is generally on the U.S. operations and their interconnectedness with foreign operations, primarily on the institution's impact in the case of failure on U.S. financial stability. Mr. Krimminger elaborated on this point by advising that the living wills requirement for a foreign bank's small operations in the U.S. would be tailored for how that particular operation would be resolved either under the Bankruptcy Code, or under the FDI Act if it is an insured bank, or under other appropriate law, with the focus on how it is integrated into the home country's resolution planning process. Responding to Ms. Admati asking whether the living wills process focuses on resolving all of the institution's operations in bankruptcy, Acting Chairman Gruenberg advised that the idea is to have a comprehensive planning process that applies to the holding company, affiliates, and the insured depository; that the Title I plans apply to the nonbank operations—the holding company and the affiliates—which are not depository institutions subject to the FDI Act resolution authorities but are subject to being placed into the resolution process under Title II; and that, as a complement to the Title I living wills, if there is an insured entity within the holding company structure, the FDIC is requiring a resolution plan for the insured institution that would be folded into the larger plan. Mr. Cohen commented on the potential for creating a "Catch-22" situation, because a systemically important financial institution's living will is supposed to plan for bankruptcy—and it can be penalized if the plan is not credible—but the very largest institutions will really be going through the resolution process because bankruptcy is not credible. In response, Mr. Krimminger advised that companies' plans may not be credible, in part, because of the complexity and interconnections of the companies themselves, which requires the companies to determine how they could become less complex and interconnected to comply with that standard, presenting them with some very difficult choices. Mr. Fisher noted that there is nothing in the statute relevant to living wills that precludes the FDIC and the Federal Reserve from exercising their judgment on the complexity of the legal structure in determining that a living will is not credible, suggesting that the standard on what constitutes an acceptable level of complexity is being changed from what may have been an acceptable complexity, for example, in 2006. Mr. Volcker commented that, for example, by either accepting or rejecting a company's living will, it appears the FDIC and the Federal Reserve could be forcing a company that is operating two business lines in the same legal entity to separate them to simplify the company's business lines, in response to which Mr. Krimminger advised that that is part of the statutory process for the living wills, which specifically provides for the exercise of the Title I authority in several different steps—initially, to determine whether or not it is a credible plan; then, if a company cannot submit a credible plan at a future date, to impose requirements to increase capital or liquidity; and, ultimately, if it cannot develop a credible plan, to force the company to take specific actions or wind up certain operations. Mr. Herring asked if the living wills will have an enhanced level of disclosure regarding an institution's corporate structure, in response to which Mr. Wigand advised that there will be a public component of the plan that is likely to have some additional level of transparency regarding the institution's structural component, and a component with confidential supervisory information that will only be shared with the regulators. Noting that some large institutions can have, for example, more than two thousand operating subsidiaries, Mr. Herring asked how the living wills can be evaluated if there is a resolution plan for each of those subsidiaries. Mr. Wall responded by advising that there is a materiality screening in the living wills requirements; that a single-asset subsidiary of low value is not going to be included in the plan; and that the Federal Reserve, as the supervisory authority over the institutions, will coordinate with the FDIC in determining which subsidiaries are material to the plan. Elaborating on this point, Mr. Simonson reiterated that the filing dates for the resolution plans are staggered to help avoid this issue.

Noting that the first group of resolution plans are due on July 1, 2012, and that the Committee can revisit this subject at its next meeting after those first plans have been filed, Acting Chairman Gruenberg introduced M.P. Azevedo, Deputy Director, International Outreach and Coordination, OCFI, to lead off the meeting's final panel discussion on the FDIC's role in the coordination of an effective international resolution strategy.

Ms. Azevedo began by noting that, with respect to the coordination of an international resolution, the FDIC's mission is to promote public confidence and maintain financial stability during periods of financial stress and crisis by effectively coordinating the cross-border resolution of global systemically important financial institutions with its fellow regulators; to support the execution of an orderly resolution strategy by seeking cooperation of key host country supervisors; to mitigate systemic shocks by limiting precipitous and perhaps unnecessary interventions; and to preserve global franchise value by sustaining as many critical viable operations and core functions as possible. She emphasized that the key to an effective international resolution strategy is to keep it as simple as possible by identifying the key jurisdiction where important functions and critical operations of systemically important financial institutions are located in advance; identifying the legal nature of the entities in those jurisdictions, as well as the types of licenses and authorizations they hold; engaging in purposeful dialogue in advance with applicable local regulators to identify obstacles to orderly resolution and address them potentially through bilateral cooperation and rule changes; and concluding memoranda of understanding with affected jurisdictions covering information sharing and cooperation, both in advance of, and during, a crisis.

Emphasizing the importance of focusing on the global footprint of a systemically important financial institution to identify the jurisdictions that contain its critical activities and operations that would have systemic consequences, Ms. Azevedo then presented the findings of a heat-mapping exercise conducted by the FDIC staff, which identified the jurisdictions in the global footprint of five of the top systemically important financial institutions, as well as the particular legal entities that were material in those jurisdictions. She reported that the FDIC's findings indicate that 13 jurisdictions cover 97 percent of the on- and off-balance sheet assets of the top five systemically important financial institutions that were examined; that over 90 percent of the total reported foreign activity for each of these five entities is located in one to three foreign jurisdictions; that over 80 percent of the total reported foreign activity for each of these entities comes from legal entities operating in the United Kingdom; and that over 85 percent of each of the five entities total reported foreign activity comes from two to four legal entities. She noted that the results of the FDIC's heat-mapping exercise suggest that, while a systemically important financial institution may have thousands of subsidiaries and a large global footprint, an international resolution strategy would actually be dealing with a fairly manageable list of key foreign jurisdictions to prioritize and a small number of legal entities that are very powerful drivers in the operations of the institution's global footprint.

Ms. Azevedo next discussed some of the legal obstacles to a successful single-entry strategy resolution, including change-of-control requirements; ring-fencing and liquidation triggers; lack of a broad-based stay of closing out or netting of derivatives and other qualified financial contracts; potentially divergent insolvency and legal frameworks; and diverse regulatory frameworks. Emphasizing that the coordination among foreign regulators rests largely on their ability to share information, she advised that the FDIC has resolution-oriented memoranda of understanding in place with the Bank of England, the United Kingdom Financial Services Authority, and the China Banking Regulatory Commission to facilitate the exchange of information in resolution planning, and is in the process of pursuing memoranda of understanding with the other significant jurisdictions identified in the FDIC's heat-mapping exercise. She also briefly described a number of initiatives the FDIC is considering for 2012 to support an international resolution strategy, such as the heat-mapping of the memberships of systemically important financial institutions in the financial market utilities, identifying the particular financial market utilities critical to each systemically important financial institution's subsidiaries and operations, evaluating how the appointment of the receiver at the top parent level could affect a systemically important financial institution's membership with critical financial market utilities, identifying each systemically important financial institution's key data centers and profit centers, and conducting tabletop international resolution simulations with key foreign regulators. Concluding her presentation, Ms. Azevedo suggested that the keys to a successful cross-border orderly resolution of a globally-active systemically important financial institution include active advance planning, both with the systemically important financial institution and, independently, with the other foreign regulators; a good understanding of the systemically important financial institution's global footprint; and jurisdictions with harmonized resolution tools.

Mr. Wall then discussed the FDIC's active involvement in multilateral approaches to resolution planning, noting that these efforts started in large part with the establishment by the Basel Committee of its Cross-Border Bank Resolution Group ("CBRG") in 2007. He advised that the mandate of the CBRG—which Mr. Krimminger has co-chaired since its inception—was to analyze existing resolution policies, allocation of responsibilities, and legal frameworks of relevant countries as a foundation to a better understanding of the potential impediments and for identification of areas for possible improvement in cooperation with respect to the resolution of cross-border banks; that the CBRG issued a report in 2008, which included ten recommendations addressing the challenges in a cross-border resolution that focused on three areas: strengthening resolution powers and their cross-border implementation, the need for firm-specific contingency planning, and the need to reduce contagion risk through mechanisms like netting arrangements, collateralization practices, and regulated central counterparties; and that the CBRG conducted a survey in 2010 to identify steps that jurisdictions had taken to implement the recommendations of the 2007 report, which concluded that progress had been made in many jurisdictions, but that further work was needed because many jurisdictions still lacked the legal authority to effect the resolutions as recommended in the report. Mr. Wall indicated that the work in this area has been carried forward, primarily through the auspices of the Financial Stability Board ("FSB"), which has created a number of work streams that address issues inherent in cross-border resolutions; that the FSB issued a report in Fall 2011 that identifies key attributes in 12 general areas that FSB considers appropriate attributes for an effective resolution regime; that these key attributes provide a target for harmonization of resolution regimes across jurisdictions; and that, at the FSB's request, home countries have created "crisis management groups" through which the home country of each systemically important financial institution will bring together the relevant regulatory authorities in various jurisdictions to assess the resolvability of each systemically important financial institution and take steps toward developing a resolution plan.

During the presentation on the FDIC's efforts in the coordination of an international resolution strategy, Committee members made a numbers of comments and suggestions on the FDIC's strategy for supporting a global process, MOUs with foreign regulators, and the role of the FDIC in cross-border initiatives. Noting that the most credible argument against the viability of Title II is the inability to deal with the international element, Mr. Cohen stated that the findings from the FDIC's heat-mapping exercise illustrate that foreign activities are focused on a limited number of countries that are key jurisdictions, suggesting that international cooperation is far more closely within reach than, in his opinion, has been recognized. In response to Mr. Volcker's observation that, except for the United Kingdom and Germany, the FDIC's findings do not show any other European countries as a key jurisdiction for foreign activity, Ms. Azevedo explained that the impact of the passporting rights in the European Union has had a very powerful impact on the number of local licenses required by the systemically important financial institutions to operate in the European Union, which may reflect a harmonious environment that the United Kingdom has created to attract a number of those institutions. Mr. Herring asked if MOUs are really useful in a crisis, since regulators have a tendency to withhold bad news as long as possible because they lose their discretion on how to deal with it once it is disclosed. In response, Mr. Krimminger stated that an MOU is a foundation that provides a basis for regulators to share information and be engaged with each other, and, more importantly, an MOU provides an understanding between regulators, on a truly institution-specific basis, as to the value of working together with regard to an institution.

In bringing the meeting to a close, Acting Chairman Gruenberg, agreeing with Mr. Volcker's comment that the market does not recognize the amount of work that the FDIC has done on the resolution process, stated that today's meeting has offered the first public presentation of the product of the FDIC's work that has been done in the past 18 months since the enactment of the Dodd-Frank Act with regard to Title II planning work, development of the requirements for the Title I plans, and the FDIC's international engagement on resolution issues. He advised that one of the FDIC's priorities going forward is the external communication of the work we have done, because it is an approach that is viable and credible—and one that has had the engagement and involvement of all of the regulatory agencies—and that today's meeting is the start of that communication process. Acting Chairman Gruenberg noted that, in the area of international relationships between regulators, there really has been a sea change since 2008 in terms of international recognition of the importance of these cross-border relationships and the need for cooperation, which is reflected in efforts of the Basel Committee and FSB working groups. He concluded by stating that the FDIC's bilateral engagements that it has had to date have been, in his opinion, exceptionally productive, particularly the relationship that the FDIC has developed with the United Kingdom, which, as discussed in today's meeting, is obviously the most significant foreign jurisdiction; and that the United Kingdom and the U.S. are the most advanced in terms of the statutory authorities that have been put in place to carry out the resolution of systemic companies and have a close collaborative relationship that will be very important for dealing with cross-border issues.

There being no further business, the meeting was adjourned.

[redacted]

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
and Committee Management Officer
FDIC Systemic Resolution Advisory
Committee

Minutes

of

The Meeting of the Systemic Resolution Advisory Committee

of the

Federal Deposit Insurance Corporation

Held in the Board Room

Federal Deposit Insurance Corporation Building

Washington, D.C.

Open to Public Observation

January 25, 2012 - 8:45 A.M.

I hereby certify that, to the best of my knowledge, the attached minutes are accurate and complete.

[redacted]
Martin J. Gruenberg
Acting Chairman
Board of Directors
Federal Deposit Insurance Corporation