

FEDERAL DEPOSIT INSURANCE CORPORATION

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ADVISORY COMMITTEE ON SYSTEMIC RESOLUTION

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MEETING

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THURSDAY,

DECEMBER 6, 2018

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The Advisory Committee convened at 9:00 a.m.
in the Federal Deposit Insurance Corporation
Board Room, 550 17th Street, NW, Room 6010,
Washington, D.C., Jelena McWilliams, Chairman,
presiding.

PRESENT:

JELENA McWILLIAMS, Chairman, FDIC
ANAT R. ADMATI, George G.C. Parker Professor of Finance and Economics, Graduate School of Business, Stanford University
SHEILA C. BAIR, Former Chairman, FDIC
MICHAEL BODSON, President and CEO, Depository Trust & Clearing Corporation
CHARLES A. BOWSHER, Former Comptroller of the United States
SHELLEY C. CHAPMAN, United States Bankruptcy Judge, Southern District of New York
H. RODGIN COHEN, Senior Chairman, Sullivan & Crowell, LLP
PETER R. FISHER, Senior Fellow, Center for Global Business and Government, Tuck School of Business, Dartmouth University
MARTIN J. GRUENBERG, FDIC Board of Directors
RICHARD J. HERRING, Co-Director, The Wharton Financial Institutions Center and Professor of Finance, The Wharton School, University of Pennsylvania
DONALD KOHN, Former Vice Chairman, Board of Governors of the Federal Reserve System and Senior Fellow, Economic Studies Program, Brookings Institution
JOHN S. REED, Former Chairman and CEO of Citigroup and Former Chairman, Corporation of Massachusetts Institution of Technology
GARY STERN, Former CEO and President, Federal Reserve Bank of Minneapolis and Chairman of the Board of Directors, National Council on Economic Education

ALSO PRESENT:

SUSAN BAKER, Deputy Director, Office of Complex
Financial Institutions

ALEXANDRA BARRAGE, Associate Director, Office of
Complex Financial Institutions

RONALD CRAWLEY, Senior Resolution Policy
Specialist, Office of Complex Financial
Institutions

RICARDO DELFIN, Director, Office of Complex
Financial Institutions

ELIZABETH FALLOON, Deputy Director, Office of
Complex Financial Institutions

JOANNE FUNGAROLI, Associate Director, Office of
Complex Financial Institutions

HERBERT HELD, Deputy Director, Office of Complex
Financial Institutions

BRUCE HICKEY, Supervisory Counsel, Legal Division

MICHAEL MORGAN, Corporate Expert, Division of
Risk Management Supervision

ARTHUR MURTON, Senior Advisor to the Chairman,
FDIC

PENFIELD STARKE, Assistant General Counsel, Legal
Division

NATHAN STEINWALD, Section Chief, Office of
Complex Financial Institutions

RYAN TETRICK, Associate Director, Office of
Complex Financial Institutions

DAVID WALL, Assistant General Counsel, Legal
Division

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1 P-R-O-C-E-E-D-I-N-G-S

2 9:01 a.m.

3 CHAIRMAN McWILLIAMS: Good morning,
4 everybody. So I have an opening statement but
5 before I get started I'm just really excited
6 because this has never happened before although I
7 do feel like I'm being watched so.

8 Good morning. I'm pleased to welcome
9 you to the 2018 meeting of the Systemic
10 Resolution Advisory Committee. I look forward to
11 the discussion on the progress the FDIC and G-
12 SIBs have made in navigating the unique
13 challenges associated with resolving the most
14 complex, globally active financial institutions.

15 We always should be direct and
16 specific as to how we define our goals and
17 progress. The fundamental goal of resolution
18 planning should be the same for institutions
19 large or small, enable failure in the least
20 disruptive manner.

21 Resolution planning should work to
22 minimize moral hazard and ensure that market

1 discipline is real for all institutions. And I
2 think it goes without saying that everybody at
3 this table will agree that bailouts are not
4 right.

5 Our presentation this morning will
6 highlight the progress we have made in helping
7 the U.S. G-SIBs implement significant structural
8 and operational improvements that have enhanced
9 their resolvability in bankruptcy.

10 In the afternoon, our presentation
11 will focus on the agencies' work relating to the
12 Orderly Liquidation Authority. We have done a lot
13 of work to increase our operational readiness and
14 look forward to the presentation and the input of
15 the panel.

16 The final presentation of the day will
17 highlight the progress we have made in building
18 effective cross-border coordination with the
19 international community.

20 As both a home authority for United
21 States institutions and as a host authority for
22 foreign firms operating in the United States, we

1 continue to build a strong foundation for
2 cooperation and planning with other resolution
3 authorities around the world, including the Bank
4 of England and the single resolution board.

5 While we will discuss progress made
6 today, SPOE in bankruptcy remains untested, and
7 there is still work to do to ensure that failure
8 is possible so that market discipline exists,
9 taxpayers are protected and insured depositors
10 have confidence they will receive their cash
11 quickly and orderly under any circumstances,
12 which requires continued effort.

13 I would also like to take a moment to
14 welcome two new members of the panel first.
15 Former Chairman Sheila Bair, who formidably led
16 the agency through the most recent financial
17 crisis and has been a leader on this issue. And
18 when I first saw Sheila after I assumed my
19 chairmanship I said I have big shoes to fill.

20 Second, we are joined by The Hon.
21 Shelley Chapman, United States Bankruptcy Judge,
22 Southern District of New York. Judge Chapman is

1 the presiding judge over the Lehman bankruptcy
2 and has been a great leader on developments in
3 bankruptcy planning. We'll just call her the
4 Lehman Judge.

5 I look forward to hearing your
6 thoughts on the progress we have made as well as
7 your recommendations going forward and to
8 everyone here today, thank you for taking the
9 time and welcome to this meeting.

10 MR. DELFIN: Good morning. Welcome. I
11 am Ricardo Delfin, the Director of the Office of
12 Complex Financial Institutions here at the FDIC.
13 I'm joined by my colleagues, Art Murton, the
14 former director of OCFI and Deputy Chairman. And
15 our first panel is Alex Barrage with OCFI, Mike
16 Morgan in our risk management supervision, David
17 Wall in our legal division and Nathan Steinwald.

18 My goal is to sort of tee it up a
19 little bit. The SRAC was formed, as you may
20 remember, in 2011 right after the Dodd-Frank Act
21 was passed in order to assist the FDIC in
22 thinking through the unique challenges associated

1 with the resolution of systemically important
2 financial institutions.

3 Under the Act, Dodd-Frank gave the
4 FDIC two new authorities that are central to this
5 role. The first Section 165(d) is the requirement
6 that large bank holding companies and designated
7 non-banks provide resolution plans or living
8 wills that outline how the firm can fail in an
9 orderly way under the U.S. Bankruptcy Code.

10 The second tool, the Orderly
11 Liquidation Authority, is a backstop resolution
12 regime run by the FDIC for circumstances when
13 failure in bankruptcy could threaten U.S.
14 financial stability.

15 Over the years we've met with this
16 group, and it has been enormously helpful in
17 thinking through some of these challenges.

18 We've talked about the challenges
19 associated with the entry strategies, like SPOE
20 versus MPOE. We've talked about ways to improve
21 the public sections of living wills. We've talked
22 about the challenges associated with cross-border

1 coordination.

2 And over the years, we have changed
3 our strategies because of the input that we've
4 received from you also. We very much look forward
5 to that conversation here today.

6 In terms of structuring our day, we
7 wanted to start where we ended, which was April
8 2016. The Federal Reserve and the FDIC had
9 recently made a decision with respect to the
10 living wills filed by the eight U.S. G-SIBs.

11 And there's been a lot done since
12 April 2016 so sort of put your seatbelts on
13 because there's going to be a lot today.

14 First we'll start there. After lunch
15 we'll go and talk about the readiness efforts
16 that we've taken on our Orderly Liquidation
17 Authority, some of the steps including the recent
18 Treasury Report on orderly liquidation. And
19 finally we'll go to international and the
20 coordination and progress being made overseas.

21 We really hope that today will be open
22 and conversational so please feel free to jump in

1 and ask questions along the way. That's how we'd
2 like to set it all up.

3 And Art and I will be here throughout
4 to answer any of the easy questions and the hard
5 ones. There never seem to be easy questions in
6 this group unfortunately.

7 So unless there are any easy ones, we
8 thought we might start straightaway with Title I.
9 Just to structure it a little bit, recall that
10 under the statute, firms file resolution plans
11 and the FDIC and the Federal Reserve review the
12 plans.

13 If the agencies jointly find that the
14 plans are not credible or would not facilitate
15 orderly resolution in bankruptcy, the agencies
16 are required to identify specific issues called
17 deficiencies that firms need to remediate in
18 order to avoid sanctions.

19 If they do not remedy these
20 deficiencies in a timely way, the agencies can
21 impose sanctions on the firms, such as heightened
22 capital and liquidity. And if after two years of

1 imposing sanctions a firm still hasn't remedied a
2 deficiency, the agencies can take more dramatic
3 action, including divestiture.

4 In addition, just for lingo, there's
5 also smaller issues that we call shortcomings.
6 Shortcomings are issues that don't rise to the
7 level of deficiency for both agencies, but the
8 firms need to remedy in their next resolution
9 plan.

10 With that, I'll hand it over to our
11 first panel.

12 MS. BARRAGE: Great. Thank you very
13 much, Ric. My name is Alexandra Barrage. It's a
14 pleasure to be here. Welcome to all of you.

15 It's been about roughly two and a half
16 years since we had our SRAC meeting. So what we'd
17 like to do is kind of bring you all up to speed,
18 give you a sense of what we've done over the past
19 two and a half years focusing primarily on the
20 U.S. G-SIBs but also on the largest foreign
21 banks, which we'll touch towards the end of our
22 presentation.

1 So basically for the U.S. G-SIBs,
2 there have been three key developments. The first
3 development has to do with the letters, the
4 feedback letters, that our agencies provided to
5 the firms back in April of 2016 when this group
6 last met.

7 In April 2016, the Federal Reserve and
8 the FDIC jointly determined that five of the
9 plans had deficiencies, that is that they were
10 not credible or would not facilitate an orderly
11 resolution in bankruptcy.

12 This was in many ways a unique turning
13 point in the sense that the letters were not only
14 tailored to each firm but they were made public.
15 So it wasn't just a letter to the firms in many
16 ways, it was a letter to the public.

17 And so with that in mind the agencies
18 took the time to very specifically describe the
19 issues, the deficiencies and the shortcomings,
20 but also the remediation, the expectations that
21 the agencies had so that the firms could
22 individually address those deficiencies for their

1 next plan.

2 MR. HERRING: Could I ask a question
3 here?

4 MS. BARRAGE: Sure.

5 MR. HERRING: I've always been a bit
6 curious about whether there might have been two
7 kinds of letters. There was a public one, which I
8 think was a huge advance and showed really quite
9 how serious you were about doing these things
10 very carefully.

11 But there's always been a tradition in
12 bank supervision of keeping some things really
13 quite secret. I didn't know whether there may be
14 two letters involved.

15 MR. DELFIN: It was all public.

16 MR. MURTON: This was it.

17 MR. DELFIN: And there were redacted
18 words in those letters. The Federal Reserve made
19 them public but that was it. Everything was made
20 public in April 2016, the letters -- well, we'll
21 talk about the framework document and the
22 guidance.

1 (Simultaneous speaking.)

2 MR. MURTON: And internally there was
3 a lot of discussion about whether it was wise to
4 be that transparent, and there were some who were
5 very concerned about it.

6 MS. BARRAGE: I would say one of the
7 things that we had in mind knowing that these
8 letters would be public were things like making
9 sure we didn't use too much jargon.

10 We didn't rely on so many acronyms
11 that we in the everyday resolution world
12 understand and speak freely but maybe the public
13 wouldn't understand. So we took measures to try
14 and be as transparent about the issues and the
15 remediation as we could.

16 MR. HERRING: Thank you.

17 MS. ADMATI: I have another question.
18 So I remember looking at those. I haven't looked
19 at them recently to remember the exact phrasing.
20 But I remember things like assumptions about, you
21 know, say Central Bank support that, you know,
22 they would assume something.

1 Now how could they -- you know, so
2 then they wouldn't assume. But, I mean, what can
3 they assume? The Fed is there and so, you know,
4 what's the Fed thinking? How can they know?
5 That's one thing.

6 And the other is I remember in another
7 part of it you were saying that at least about
8 some company, I don't know who, that they didn't
9 even, you know, contemplate, you know, the kind
10 of structures. I mean, it was pretty heavy kind
11 of criticism.

12 MR. DELFIN: I think you are thinking
13 back to the 2014 one. So this has been a real
14 progression. When living wills first came out,
15 firms didn't know what a living will would look
16 like. We didn't know what we were reviewing for.
17 And so it has been, you know, a thought process
18 that has iterated over time.

19 And at each point, we've gotten more
20 specific about what we're looking for and the
21 firms have gotten better at thinking through the
22 unique challenges and obstacles.

1 So in 2014, the FDIC and the Federal
2 Reserve identified the firms plans had relied on
3 unreasonable assumptions and had been conclusory.
4 And so we asked the firms to provide significant
5 more detail for those plans. And those are the
6 plans that Alex is talking about here today.

7 MS. ADMATI: Still, I would just add,
8 how much do the firms know about, you know, the
9 counterparties of the rest of the system?
10 Because what would make it credible to the public
11 or to the investors is that there isn't, like, a
12 systemic, you know, panic and all of that that
13 did happen after Lehman.

14 And so how would sort of bankruptcy
15 and Title I sort of not do that? How can they
16 assure you that that is not happening?

17 MR. DELFIN: Sure. So that's a lot of
18 what we're going to talk about today. In the
19 evolution of the process, originally we started
20 with scenarios, that is imagine what it looks to
21 put you into failure in terms of pick a scenario.
22 And they would really go through, these are the

1 runways. What do you want to see? How bad is it?
2 Thirty day LCR plus XYZ.

3 And over time we learned that whatever
4 scenario the firm picks, it's most certainly not
5 going to be the real one. And so we actually
6 started taking ourselves out of the scenario
7 business and putting ourselves more in the
8 capabilities business, as could the firm identify
9 how much capital and liquidity it had at each
10 particular material entity?

11 Could it identify the frictions
12 associated with transferring funds? Could it
13 identify the steps that counterparties might take
14 in those counterparties' own interest that would
15 undermine the strategy? And then, regardless of
16 the scenario, can these pieces work?

17 So that's been the evolution as we'll
18 see when we get to the guidance. It's really
19 about making sure that you have the tools in
20 place so that whether the scenario comes from
21 here or there that you have a strategy that can
22 work under a reasonable range of circumstances.

1 So that's certainly the goal.

2 MS. ADMATI: I'll ask more later.

3 MR. DELFIN: Sure. Please.

4 MS. BARRAGE: If we were going to
5 generally summarize the deficiencies that our
6 agencies found in April 2016, they ran the gamut,
7 everything from liquidity, operational issues,
8 making sure firms understood how to continue
9 their critical operations, the mapping that the
10 firms did on those issues. Divestiture options,
11 we felt a number of firms could do more in this
12 phase.

13 And so again, the letters were bespoke
14 to the firms, clear about the issues and clear
15 about the expected remediation. So this was
16 April.

17 In October, the firms that received
18 these joint deficiencies were asked to resubmit
19 plans addressing these very same deficiencies.
20 And so after October, or I should say leading up
21 to October, staffs from the Federal Reserve and
22 the FDIC met with the firms to walk through these

1 issues to answer their questions, to clarify
2 anything in the letters.

3 After October, the teams took the
4 plans back. And in December of 2016, after the
5 review was complete, our boards determined that
6 four out of the five firms remediated their
7 deficiencies.

8 The last firm remediated their
9 deficiencies in April of 2016. So by April of
10 2016, those deficiencies from the prior year had
11 all been addressed by these five firms.

12 In 2016, one of the most, you know,
13 prominent important facts I think we'll touch on
14 throughout the presentation today is the fact
15 that six out of the eight U.S. firms have what
16 are called single point of entry resolution
17 strategies. And so we wanted to just plant the
18 seed here because that will come up a number of
19 times in our discussion today.

20 MR. MORGAN: So good morning. I'm Mike
21 Morgan. Nice to be here. I'm not the lawyer in
22 the group and a little bit new to the process but

1 happy to be here.

2 I want to talk to your really briefly
3 about the framework document that Ric mentioned
4 earlier. April 2016 was a big month for the
5 agencies, especially in transparency. So in April
6 2016, jointly with the Federal Reserve, the
7 agencies, we released a document titled
8 Resolution Plan Assessment Framework in Firm
9 Determination.

10 This came out along with the
11 determination letters that Alex was just
12 mentioning. It's public and it's on the websites.
13 I'm just going to quickly go through some of the
14 elements of that framework document.

15 So the document covered the goals and
16 objectives of the resolution that kind of Ric
17 went over earlier but somewhat in layman's terms
18 so that it could be understood, a history and a
19 background of resolution and resolution planning.

20 It recognized the progress by the
21 firms up to that point of April 2016. And it
22 explained in a little bit of detail the review

1 process of the independent decisions made by both
2 agencies but how the agencies were working
3 together in the review process of the plants.

4 It took, in my opinion, two very
5 important steps in transparency as well. It
6 provided some more specificity into what the
7 agencies were looking at for the 2015 plans in
8 the areas of capital liquidity, governance
9 mechanisms and operational capacity and some
10 other areas.

11 And a lot of those, of course, were
12 carried into the guidance that was also published
13 and we're going to speak about in just a moment.

14 And it also explained, you know, what
15 we were talking about in the letters when we were
16 talking about deficiencies which is, of course,
17 the legal term there, the statutory term, but
18 also shortcomings. And Ric explained those
19 earlier in his opening remarks.

20 So just very quickly on the framework
21 document, I think we could probably move into
22 what Alex mentioned earlier, which is the single

1 point of entry concept.

2 MR. DELFIN: Before we switch to SPOE,
3 just on the framework document, we'll talk a lot
4 today about there's the substance. But there's
5 also the process. And the framework document
6 really teed up a turning point in the process of
7 plan review.

8 Do you remember early years plans
9 would come and firms would feel like -- and the
10 world would feel like black box. What does this
11 mean? How does it look? There wasn't a lot of
12 public transparency associated with our findings.
13 There wasn't public transparency about the plans
14 themselves. And the process within the agencies
15 was, let's say, disjointed.

16 FDIC would get a plan. We would review
17 it. The Fed would get a plan. They would review
18 it. We would find things. They would find things.
19 Then we would talk to each other, duke it out in
20 regulatory parlance and it would take a long time
21 to get feedback.

22 And sometimes the feedback differed.

1 We found things. They found different things. And
2 there was confusion about what is it the
3 regulators are looking for?

4 So this framework document is really
5 a pivot point where our process really started to
6 become joint from the beginning. So after this
7 framework document came out, after we sent the
8 firms letters, we started meeting with the firms
9 jointly with the Fed every time.

10 We started review teams that were
11 joint FDIC Fed review teams. We started training
12 our staff in joint Fed FDIC trainings. We started
13 getting assessment memos from our teams that were
14 joint.

15 And it all started with this framework
16 document. It really started setting the stage for
17 a joint review process. It really helped speed it
18 along. Now our feedback is much faster than it
19 was in the early years, largely because the
20 process has evolved. And we'll get to that later,
21 but this framework document really helped set the
22 stage.

1 MS. BARRAGE: Great. And thanks. And
2 the framework also summarized for the public what
3 the letter said. So that was another important
4 component.

5 So six of the firms have put together
6 these SPOE plans. And in thinking about the
7 challenges to resolution, both the firms and the
8 agencies had to grapple with this strategy and
9 think about what the specific obstacles were for
10 resolution generally, both for SPOE and for
11 multiple point of entry.

12 The slide that's here up on the screen
13 is a very simplified schematic of SPOE in
14 bankruptcy. So for those of you who may be
15 unfamiliar with it, we'll just talk about it at a
16 very high level as important context for the
17 remaining discussion.

18 So SPOE is designed to have the parent
19 company recapitalize and provide resources to its
20 material entity subsidiaries or its operating
21 companies prior to the parent company entering
22 bankruptcy, imagining in this stress scenario.

1 So as you'll see on the diagram there,
2 the operating companies at the bottom are
3 recapitalized using the firm's total loss
4 absorbing capacity, or what we call TLAC.

5 The OpCos, or the material entities,
6 are transferred to a new debt free holding
7 company. That's represented by that green box
8 that says NewCo or NewHoldCo. And this NewCo is
9 owned by a trust for the benefit of the creditors
10 of the old holding company, which in SPOE would
11 be the entity that's in bankruptcy.

12 Okay. So at the operating subsidiary
13 level, internal TLAC is held by the parent or by
14 the IHC in some cases. This internal TLAC is put
15 into place in business as usual today. So these
16 firms have pre-positioned resources at their
17 material entities today.

18 Before bankruptcy in this scenario,
19 the internal TLAC gets contributed to the
20 operating subsidiaries. That internal TLAC
21 absorbs the losses of the operating subsidiaries
22 and satisfies, or it's designed to satisfy, the

1 capital needs of those operating subsidiaries or
2 material entities in resolution parlance.

3 At the holding company level, external
4 TLAC, which my colleague David Wall will touch on
5 a little bit later, external TLAC basically
6 consists of external unsecured debt at the
7 holding company level. And the debt and equity
8 are held by third-parties.

9 So this debt is issued at the holding
10 company level. This debt is written off in
11 bankruptcy. And those holders understand what
12 SPOE is because it's all disclosed as part of
13 their external TLAC instruments.

14 And so external TLAC is designed to
15 absorb the entire firm's losses, which get
16 absorbed by the holding company prior to its
17 bankruptcy.

18 MS. BAIR: You say there are internal
19 TLAC arrangements now. Is that someplace? Because
20 we haven't done a rulemaking in the U.S. on
21 internal TLAC, is that right?

22 MR. DELFIN: That's correct.

1 MS. BAIR: This is all done through the
2 living will process?

3 MR. DELFIN: Yes, so --

4 MS. BAIR: Are these legally
5 enforceable?

6 MR. DELFIN: Is that enforceable? Sure.
7 So under the living will process we require that
8 firms -- we'll get to balance and flexibility.
9 But firms need to solve the conversion problem.
10 How do you ensure that your material entities
11 have the capital they need in order to continue
12 functioning so you don't get ring fencing and
13 destroy the world.

14 And so what we did in our Title I
15 guidance, which we'll get to shortly, is we asked
16 the firms to think about the key challenges
17 associated with that. And they can address those
18 challenges in a couple ways.

19 They can pre-position. They could
20 establish an intermediate holding company that
21 holds it. Or they can have contractually binding
22 mechanisms to downstream those funds in a timely

1 way.

2 There are key obstacles associates
3 with each of those. Pre-positioning has the
4 benefit of being there, certain. But it also
5 reduces some flexibility because it's very hard
6 once it's there to ever get it back.

7 And if the loss occurs at a different
8 material entity and you have a surplus in
9 another, the likelihood of whichever jurisdiction
10 letting you move it when you're in crisis seems
11 unlikely. So you get the benefit of pre-
12 positioning, but you get the cost in terms of
13 flexibility.

14 You can have an intermediate holding
15 company. That's positioned. It can move it as
16 needed. That has a benefit. But there are costs
17 associated with creating an intermediate holding
18 company.

19 You could also consider a CBM that
20 would downstream the money when necessary to
21 where it's needed. There were legal obstacles
22 associated with CBMs.

1 Well, first there were legal obstacles
2 of just promising to --

3 MR. KOHN: What's a CBM?

4 MR. DELFIN: I'm sorry. Contractually
5 binding mechanism.

6 MR. KOHN: Okay.

7 MR. DELFIN: So in the early --

8 MR. KOHN: Those guys do that all the
9 time.

10 MR. DELFIN: Sorry.

11 MS. BARRAGE: We try not to.

12 MR. DELFIN: I get in such a -- I get
13 in my game. But in the early days of single point
14 of entry, especially in bankruptcy, there was the
15 promise, we'll downstream it before we fail. So,
16 well, there are some obstacles associated with
17 that promise.

18 One is how do you know when before is?
19 We'll get to that. Another is how are you going
20 to not get sued and lose? That is normally if
21 you're about to file bankruptcy and you transfer
22 a great deal of money from your holding company,

1 you get sued for, say, fraudulent conveyance or
2 preference.

3 As we get through the day, you will
4 find that if you sign a contract in advance,
5 right now, for example, when you are solvent,
6 then that contract is perfected now. And so you
7 don't have a fraudulent conveyance or preference
8 claim at the time.

9 And so through these three different
10 choices, and we allowed the firms to make their
11 own choices as to which they do, it helps
12 mitigate the risks associated with achieving a
13 conversion of the internal TLAC.

14 But you're right that we don't have
15 right now a standard that says you have to put X
16 at this material entity or not. The Title I
17 process is only making sure you overcome the
18 obstacles. The Fed is looking at whether or not
19 to do an internal TLAC rule.

20 MS. BAIR: Yes. Well, they've not done
21 source of strength rules either I don't think.
22 But, you know, I'm just, you know.

1 MS. ADMATI: Just looking at you.

2 MS. BAIR: The bankruptcy judge who is
3 going to have jurisdiction who's going to have
4 jurisdiction over the HoldCo is going to have an
5 obligation to protect creditors of the holding
6 company.

7 And so there are going to be issues
8 about this. And so I would just want to make sure
9 you've got this -- I don't know that you got this
10 locked in. I don't what actually happened in
11 bankruptcy under bankruptcy laws.

12 MR. DELFIN: Right.

13 MS. BAIR: So I just think this is
14 something that -- you know, where some belt and
15 suspenders of the rulemaking might be.

16 MR. COHEN: Absolutely. So for what it
17 is worth, I mean, an awful lot of brain cells
18 have been spent trying to assure this is a
19 legally binding commitment.

20 I think there is another facet of what
21 the agencies have done, which is very helpful.
22 And that is to make the holding company a so-

1 called clean holding company so you would have
2 the most unsympathetic possible plaintiffs if you
3 ever get into litigation.

4 MS. BAIR: Well, luckily we have
5 bankruptcy judge on our panel.

6 MS. ADMATI: Who seems to be chuckling.

7 MS. CHAPMAN: So I like to stay within
8 the confines of what I can and cannot do.

9 MR. COHEN: Well, if she's not worried,
10 I know we're not.

11 MS. BAIR: Yes, but on which side is
12 she now working?

13 MS. CHAPMAN: Well, just to chime in,
14 I think I was in the room when we -- it was prior
15 to 2016 when we spent probably a couple of hours
16 when we were trying to solve for this very issue.
17 Because the minute you talk about this type of
18 transfer, fraudulent conveyance is exactly what
19 comes to mind. So a lot of time was spent around
20 this problem, also bearing in mind the pre-
21 positioning issue that Ric was addressing.

22 So it was definitely solving some

1 simultaneous equations. But I think there's a
2 high degree of confidence in the fact that what
3 we've come up with, you know, short of there
4 being legislation at the Chapter 14 level would
5 be effective. But nothing I say indicates how I
6 may rule if ever called upon which I so wish I
7 hope I won't.

8 MS. BARRAGE: Okay. So SPOE in
9 bankruptcy, in a nutshell, these are bail-in
10 plans, right? These are firms solving these
11 questions using their own resources in failure.
12 And so --

13 MR. DELFIN: And just for any
14 reporters, they're bail-in good, bailout, bad.

15 MS. CHAPMAN: Yes.

16 MR. DELFIN: Bail-in means the market
17 is pricing in the cost of failure, which is much
18 better than taxpayers ever having to be on the
19 hook.

20 MS. BARRAGE: Right. Any questions
21 about SPOE?

22 MS. ADMATI: Well, I mean, you didn't

1 talk about one side of the grain, which is those
2 guarantees. And that's where for the qualified
3 assets and all the repos and derivatives and all
4 of that, I mean, that could be a lot of stuff
5 because there's a lot of it.

6 MR. DELFIN: Right.

7 MS. ADMATI: So the stay and all of
8 that, can you speak to that?

9 MR. DELFIN: Sure. Okay.

10 MS. BARRAGE: I think the concern
11 you're touching on is related to the risk of
12 early termination of these QFC's?

13 MS. ADMATI: That's the one.

14 MS. BARRAGE: Right? And the cross-
15 default provisions that were built into these
16 QFCs, which we used the protocol and the QFC stay
17 rules of our agencies are specifically designed
18 to address.

19 I don't know, David, do you want to
20 touch on that?

21 MR. WALL: We think that the protocol
22 and the U.S. banking agency's rules which have

1 now been put into place and are in the process of
2 being complied with by the firms over the next 18
3 months really solve both of those problems in
4 terms of avoiding cross-defaults and the early
5 termination of contracts at the company level.

6 MS. CHAPMAN: I think it's not clear
7 how, right? So if there's a failure of the
8 guarantor, it's not cross-defaulted to the
9 subsidiary that's the counterparty to the QFC as
10 it was in Lehman.

11 MR. WALL: The QFC counterparties have
12 now agreed to not do their exercise to early
13 termination rights so long as the transfer occurs
14 under certain circumstances that protect them.

15 MS. ADMATI: But some of the concern
16 would be about, you know, closing out, you know,
17 before, in other words moving the runs, the repo
18 runs, et cetera, to earlier kind of ahead of the
19 stay or any of that.

20 MR. DELFIN: Right. So a few things
21 that you can -- if you have a daily repo you can
22 always not do the repo, but that's not the same

1 as a QFC termination.

2 To the degree the QFC has a cross-
3 default, right, those are the issues we're
4 particularly concerned about here. So there's no
5 doubt that in the pre-failure runway as we call
6 it, that counterparties will be running on the
7 firms. So if we assume anything otherwise, we're
8 wrong.

9 But the QFC issue, specifically, is if
10 a firm were to fail, then QFCs have termination
11 rights under the Bankruptcy Code. Under Orderly
12 Liquidation Authority, we have stay authority. So
13 we can transfer those QFCs to our new bridge
14 institution and avoid this problem.

15 Under the FDI Act, we have stay
16 authority. We can transfer QFCs. Under the
17 Bankruptcy Code, there's a challenge.

18 So the way this obstacle has been
19 mitigated is that large G-SIBs around the world
20 have signed on to use the protocol and agreed
21 that they will stay for failures of each other's.

22 That's a vast majority of the market

1 that would stay under the ISDA protocol if those
2 QFCs are put in a financially equivalent position
3 in the new institution.

4 And so what this would do is it allows
5 them to transfer those QFCs if they're in the
6 same position to a new entity that has capital
7 and resources so they don't need to terminate.
8 If, however, if it terminates, if it fails, then
9 they can terminate.

10 (Simultaneous speaking.)

11 MS. ADMATI: Yes. I mean, of course,
12 the incentive is to ameliorate this to somebody
13 else instead of banking system that's not signed
14 so.

15 MR. DELFIN: I think innovations, we
16 talked about that a few years, but we also need
17 approval of the novating party. It would be
18 unlikely that one would approve the novation to
19 gain the system.

20 MR. COHEN: Ric, I'm sorry.

21 MR. DELFIN: Please.

22 MR. COHEN: I'm going to go back to a

1 point you made earlier about pre-positioning and
2 the tension between flexibility and certainty. So
3 internal TLAC is the cousin. And there's no more,
4 I think, pronounced debate today than how much
5 that should be. Now, maybe we can get into that
6 when we get to the international cooperation, but
7 I do think that's a subject we really need to.

8 MR. DELFIN: That is definitely a hot
9 topic right now in the international community is
10 the degree to which one should rely on pre-
11 positioning or other venues for achieving the
12 strategy.

13 MS. BARRAGE: So, again, the idea here
14 is keeping the operating subsidiaries continuing,
15 preserving their going concern value and the
16 holding company as the debtor in bankruptcy.

17 So imagine this is the third key
18 development from 2016. It's about four years
19 after the rule, the resolution plan rule. We're
20 still grappling with so many of the same key
21 questions. What you see on the slide here is a
22 picture of the guidance document that we issued

1 to the U.S. firms in April 2016.

2 In many ways, it's driven at these big
3 questions. And getting firms to address the
4 problems, or I should say the obstacles, thinking
5 through ways firms can do that and very clearly,
6 we think, or maybe not so clearly, setting out
7 the supervisory expectations around their next
8 plan.

9 And so Ric is going to talk a little
10 bit about sort of the genesis of this important
11 document, including those key questions, and then
12 I'll explain a little bit about how the guidance
13 addresses those specific questions.

14 MR. DELFIN: This is where it really
15 gets good. You know, what we've talked about
16 until now has been sort of finishing up the 2015
17 plan review.

18 The firm has filed in July 2015. They
19 found deficiencies. They had to remedy those
20 deficiencies. They did that in October or March.
21 The framework document described the process, how
22 it worked.

1 This document is sort of a watershed
2 in terms of being transparent and clear about
3 what the agency's expectations were for the July
4 2017 plan.

5 The agencies noted there was still
6 substantial work to be done, and they wanted to
7 be very specific about what it is they were
8 looking for.

9 As Alex alluded to, six of the eight
10 firms at that time had been single point of
11 entry. Now eight of the eight firms are single
12 point of entry strategy.

13 Now this guidance worked either way.
14 But I'm going to talk in SPOE terms just because
15 that's now the strategy for all of the U.S.
16 domestics.

17 So if we're in the world where you
18 have a holding company. And as, Rodgin pointed
19 out, now a clean holding company, failing. You
20 would expect the firm would be suffering massive
21 runs in the pre-failure period.

22 The plan is to downstream capital and

1 liquidity to material entity subsidiaries so that
2 they do not fail. If our core goal here is
3 orderly resolution in bankruptcy, that is
4 bankruptcy without systemic risk, that's our
5 test.

6 Where is the systemic risk? And the
7 systemic risk at a firm with a HoldCo is at the
8 material entities. They're engaging in the
9 activities. They are the ones that are offering
10 critical services to the markets. They are the
11 ones that would dump assets on the markets and
12 run the risk of systemic risk.

13 So the core challenge is making sure
14 those material entities do not fail. So how do
15 you do that?

16 So step one, capital. Is there enough
17 loss absorbing capacity at those material
18 entities at that time to ensure that they can be
19 recapitalized so that foreign jurisdictions don't
20 need to shut them down or they don't need to go
21 into insolvency? So capital is dealing with that
22 challenge.

1 Liquidity. Liquidity has always been
2 the seminal challenge in bankruptcy. And in order
3 for a firm to fail in bankruptcy, it needs to
4 solve its own liquidity problems.

5 And so the liquidity section is
6 ensuring that the firm had the capabilities to
7 identify the liquidity available at each material
8 entity and to understand their needs so that the
9 third question, so that they can take action when
10 required.

11 So governance mechanisms, a firm will
12 say, well, we're going to take the following 10
13 steps before we fail to make sure we do it right.
14 Well, we would logically ask, well, how will you
15 ensure that you will take those 10 steps looking
16 forward through time?

17 So the firm has established triggers.
18 Triggers for escalating to their board. Triggers
19 for downstreaming. Triggers for taking key
20 actions so they can achieve the two above in
21 time. So that's GovMec.

22 Then we get to all the operational

1 pieces. How do you know that your collateral is
2 where it's supposed to be? How do you make sure
3 that you have the systems in place and the
4 services in place so that even if someone ring
5 fences or gets in the way, you can still achieve
6 your strategy.

7 And then we get to the structural
8 issues. How are you structured to achieve this
9 goal? Have you gotten clean funding lines? Have
10 you organized yourself in a resolution resilient
11 way?

12 And finally is the seminal challenge
13 of derivatives. How do you make sure that a firm
14 can wind down a derivatives book in a bankruptcy
15 situation, not just the transfer of the QFCs, but
16 what do you do after that?

17 You could assume that SPOE works and
18 that isn't a problem. And we wanted to make sure
19 that we had contingencies in place. And so that's
20 what the derivative section is about.

21 And then finally, you know, we really
22 wanted to go and make sure that these public

1 sections were improved and strengthened. And so
2 we asked the firms to do a better job of
3 describing for the public how this would work
4 because this challenge is, in many respects, a
5 market challenge.

6 If the market believes these firms
7 will be bailed out, then they get funding
8 advantages and it makes it harder for the firm to
9 fail. And so the market needs to understand how
10 these strategies work. The market needs to help
11 us identify obstacles so that the market believes
12 this will work which actually helps it work.

13 So we really wanted to make sure there
14 was a key public transparency component to it.

15 MR. KOHN: So maybe you're going to
16 cover those pieces, so two questions. One is the
17 trigger. What's the enforceability? Can the FDIC
18 or the Fed force them to do what they say they
19 are going to do when the triggers are triggered?

20 MR. DELFIN: Sure.

21 MR. KOHN: And then the second point
22 was are you guys going to say more about

1 liquidity and how that's --

2 MR. DELFIN: Of course, yes.

3 MR. KOHN: Yes, okay.

4 MR. DELFIN: So enforceability, we have
5 two different pieces here. One is the -- we have
6 the Title 1 enforceability. If a firm sets a
7 trigger that we find is based on an unreasonable
8 assumption or expectation, then we can say that
9 the plan has a deficiency and that's an
10 enforceable act in Title I pilots.

11 MR. KOHN: Right.

12 MR. DELFIN: We also supervise these
13 firms. And so to the degree a firm has a trigger,
14 and we will certainly be in the firm if a firm
15 were in runway, we would be looking very closely
16 to these triggers as supervisors.

17 MR. KOHN: And if they didn't do what
18 they said they were going to do, could you then
19 fail the firm right there or send to -- I mean,
20 what's your stick in the closet?

21 MR. DELFIN: So if a firm -- well,
22 let's see, two pieces. One is the core act that

1 needs to take place is the downstreaming of
2 resources.

3 MR. KOHN: Right.

4 MR. DELFIN: And let's say the filing
5 of bankruptcy.

6 MR. KOHN: Right.

7 MR. DELFIN: Those are the key things.
8 If a firm is relying on, say, a contractually
9 binding mechanism in order to downstream, there
10 is a contract between a parent and a material
11 entity sub that is enforceable by the material
12 entity if you have a binding contract. If the
13 resources are in an IHD, it's already separate
14 from the HoldCo. If it's pre-positioned, you
15 don't have an issue.

16 MR. KOHN: So you talked about that for
17 capital, but I wondered about liquidity.

18 MR. DELFIN: Liquidity, too, same
19 thing.

20 MR. KOHN: The same thing, they're
21 binding.

22 MR. DELFIN: Same thing.

1 MR. REED: CBM so --

2 MR. DELFIN: If the firm relies on
3 those. If a firm does not execute its own trigger
4 at the time, I would imagine our supervisory
5 tools and actions would be the key ones we would
6 employ. Luckily, we haven't been there yet to
7 test that assumption, but that's the one which
8 I was thinking.

9 MR. REED: Does the intermediate
10 holding company have a board?

11 MR. DELFIN: Yes.

12 MR. REED: And those, are they external
13 or are they internal?

14 MR. DELFIN: So I think it varies. But
15 there are questions about making sure that there
16 aren't conflicts of interest of overlapping
17 boards when thinking about the downstreaming
18 because you could have.

19 MR. REED: So if you want to transfer
20 substantial assets and for some reason the board
21 says no, you've got a problem.

22 MR. DELFIN: So we think the incentives

1 should be for yes.

2 MR. REED: Of course.

3 MR. DELFIN: So the CBM helps -- well,
4 pre-positioning helps what's already there. CBM
5 helps legally make it there. But the incentives
6 should be for making it there because the value
7 of this firm is dramatically improved by the
8 continuity of its material entity and
9 subsidiaries.

10 That is these things working is where
11 the value is. If you start having failures in
12 material entity subs, you're going to destroy
13 value. So there should be aligned interests of
14 the board in ensuring the strategy works. But
15 it's fair to say what if that doesn't happen and
16 that could be a challenge.

17 MR. REED: And you look at the
18 compensation of those boards?

19 MR. DELFIN: We do.

20 MS. BARRAGE: In fact, our guidance
21 suggests interlocking boards of directors. We've
22 asked firms to address this.

1 MR. STERN: So the operating entity
2 will have the information it needs to pull the
3 trigger?

4 MR. DELFIN: Well, the pulling of the
5 trigger can -- sometimes the trigger is
6 automatic. Sometimes the trigger is by the HoldCo
7 or by the material entity executing. Or it's just
8 there. And then the conversion of the TLAC would
9 be based on whatever the requirements are at the
10 time.

11 So the pulling or pushing of triggers
12 is different based on the choices you make about
13 the allocation of resources.

14 MR. STERN: Are the triggers binary?
15 Did you build in any flexibility in terms of --
16 we can go through every scenario known to mankind
17 and the next failure will have nothing to do with
18 any of them.

19 MR. DELFIN: There's flexibility.

20 MR. STERN: And so you built in --

21 MR. DELFIN: We don't build the
22 triggers. The firms build the triggers.

1 (Simultaneous speaking.)

2 MR. BODSON: I think there is a
3 question of as the supervisor, do you look at
4 them as black and white or do you look at them as
5 it's a series of decisions that may be made. It
6 could go either way depending on the
7 circumstances internally and externally.

8 MR. DELFIN: And so we don't want to
9 build the triggers or choose the actions the
10 firms take, that is we want to make sure they
11 overcome an obstacle.

12 So one obstacle is are the resources
13 where they need to be at the right time? And
14 another obstacle is can you be sued? Can somebody
15 get in the way of stopping it? We review the
16 steps the firms took to mitigate those obstacles.

17 The firms obviously care about
18 flexibility and ensuring that they have choices
19 in that. And we don't want to get in the way of
20 such flexibility.

21 MR. BODSON: How did you deal with
22 conflict between the two boards? If you have, you

1 know, an intermediate board and a parent board,
2 it could get a situation where obviously there
3 could be conflict.

4 MS. BARRAGE: So the firms were asked
5 to address these interlocking board of director
6 real world issues. And they've developed
7 playbooks. Many of them have a set of independent
8 directors, you know, there in the event there is
9 an interlocking issue that would present a
10 conflict.

11 We also ask the firms to talk
12 specifically about fiduciary duties of their
13 directors, both at the holding company level and
14 at the operating subsidiary level.

15 So again here we put the obstacle
16 before the firms. And it's really up to the firms
17 based on their composition, based on their
18 entities how they want to address those issues.
19 But we review those.

20 MS. ADMATI: Can I say something? I
21 think that what's working here behind Don's
22 question and some of the other questions is the

1 fact that the entire firm, within the entire firm
2 and the subsidiaries, there is sort of, in the
3 entire discussion, this issue of systemic risk.

4 Systemic risk creates a potential
5 conflict about losses between, you know, the firm
6 and its subsidiaries and kind of the rest of
7 society in the sense of spreading the losses on
8 the public because we're afraid to let them fade.

9 So that's kind of in the background of
10 all of this. So a fiduciary of the board is
11 obviously to try to get somebody else to bear the
12 risk. And so the question is how do you fight
13 that in actuality? In other words, that's why I
14 think enforcement issues are sort of here, like
15 what would you actually do to make them do that?

16 I remember a story about Continental
17 Illinois and apparently the provoker was the
18 chair of the Fed. And they wanted Continental
19 Illinois to recapitalize under prompt corrective
20 action, and they just didn't.

21 And then they ended up -- that was
22 well before. But I'm just saying that, you know,

1 they were afraid to let Continental Illinois fail
2 and ended up -- the FDIC ended up absorbing a lot
3 of debt. People might remember that. I wasn't
4 interested in these issues. So it's a story I
5 heard later.

6 Just one quick other thing about
7 liquidity. There's some of the funding liquidity,
8 which is, you know, the funding running away. And
9 then there is the market liquidity, which is sort
10 of resources, you know, that you can employ.
11 Neither is saying something about markets so they
12 won't freeze. So things that were liquid became
13 illiquid quickly.

14 So how do you, when the institution
15 says, you know, I'm assuming that I will have
16 these resources of that, you know, are they in a
17 position to promise what they are promising? Or,
18 you know, in other words, aren't there still
19 assumptions is what I'm saying.

20 MR. DELFIN: So if the question is, are
21 there still assumptions? Yes, many. We don't know
22 the firm. We don't know the scenario. We don't

1 know where the risk is.

2 And so what we try to do is, again,
3 build out capabilities for dealing with multiple
4 scenarios, ranges of scenarios, but, yes, there
5 are assumptions.

6 The firm has to put itself in a
7 failure state. It has to assume a pretty
8 Draconian state of the firm and of the world.
9 Whether that is the Draconian state that occurs
10 at the time, I don't know.

11 There are pretty significant
12 limitations on their ability to access funds. And
13 so in many respects we think of them as having to
14 self-fund their resolution in bankruptcy. It's a
15 challenge.

16 MR. COHEN: You know, you can
17 understand the concern that is being expressed.
18 There's this very elaborate mechanism but it
19 depends ultimately on individuals. I do think
20 what has been done is sort of belt, suspenders
21 and maybe something more because there are the
22 elaborate mechanisms.

1 There are also, which we haven't
2 mentioned, liquidated damages if you fail to live
3 up to your contractual obligation, and they are
4 very severe damages in the contracts.

5 But above and beyond everything, I
6 think it's what Ric said more than -- it is
7 almost impossible to conceive of a scenario where
8 you wouldn't downstream. Because if the
9 subsidiaries fail, there is no value left in the
10 holding company. It's the only possibility of the
11 debtholders recovering anything is for those
12 subsidiaries to survive.

13 So there are built-in, I think, a
14 number of, again, support mechanisms to assure
15 this works.

16 MR. HERRING: Far be it for me to ever
17 question Rodgin about the law, but there have
18 been instances of failures of subsidiaries from
19 firms that have withdrawn. You can always argue
20 that it was something country-specific. But it
21 has nothing to do with the health of your firm.

22 And I can remember a case when an

1 insurance subsidiary of a European firm was
2 permitted to fail. They wanted nothing to do with
3 it. They wanted to back out. Yet the parent was
4 in fine shape.

5 So I think we have to be a little bit
6 careful about assuming that the whole life of the
7 holding company depends on all of the material
8 entities. I think there are cases where you can
9 sort of walk away.

10 MR. DELFIN: Yes, on one subsidiary.

11 MR. REED: I think the word is off
12 because I do think you will be attempted to say
13 there is a subsidiary that you would not care
14 about. You know, sort of --

15 MR. HERRING: Now, I hope that's behind
16 the material entity definition because ideally
17 the material entities all ought to be contingent
18 and could not walk away from. But I'm a little
19 bit unclear about exactly what the definition of
20 what material entity is.

21 MR. FISHER: If you could just help me
22 with language as you go forward because I feel

1 we've got two different sets of issues you've put
2 on the table and many more.

3 But there's a vertical issue that
4 we're sort of legislating as best we can to make
5 the holding company a source of strength. There's
6 a whole set of issues you're describing. We're
7 trying to make sure that the day comes when we've
8 got confidence we're not running some ridiculous
9 maturity smashed between the HoldCo and the
10 entities, falling short up here and lending long.

11 And I see all the things that living
12 wills and you're doing about that. But you
13 actually started to talk about the horizontal
14 issues and subsidiaries and whether we have
15 knowledge about whether there's too much
16 liquidity and maturity, volatility mismatch
17 there.

18 And that's where I think we're dragged
19 into the market expectations problem. And your
20 list you ran through up on the slide there was
21 all about, I'm thinking, it was a horizontal
22 issue within the operating subsidiary. Then how

1 do we know?

2 And actually the conversation we all
3 are much more comfortable going back and talking
4 about the vertical issues where we're legislating
5 all of the clever -- we want to make sure the
6 holding company is not a source of weakness but a
7 source of strength. And that I see how the living
8 will process helps us articulate.

9 The complexity you got into when you
10 started touching on the outgoing horizontal
11 issues, that was kind of a black box to me. I
12 mean, we can go through all the lists of
13 derivative contracts and all. But I still want to
14 figure out how do we know -- there's a problem of
15 knowledge that we've got our hands around the
16 scale of maturity mismatch or volatility mismatch
17 or liquidity mismatch taking place at the
18 operating entity.

19 And the living will process is a
20 pretty imperfect way to get at that it strikes me
21 because we're imagining this future state of
22 knowledge.

1 The vertical ones I can see we get
2 through to the living will. But I'm still
3 struggling with how we do it horizontally. I
4 don't know if that's helpful or just distracting.

5 MR. DELFIN: No, it's helpful. It is an
6 imperfect way of getting at the problem. It is
7 not the only tool. We do have supervisory tools
8 that take place and focus significantly on a
9 firm's liquidity and liquidity under stress and
10 those happen in parallel.

11 What we're trying to get at here is,
12 you know, what's the liquidity positioning for
13 each material entity under stress? What are the
14 frictions associated with moving that liquidity
15 and does the firm have the capabilities of
16 recognizing when there's a liquidity need at a
17 material entity so that it can get the resources
18 there in time to execute its strategy?

19 We can't, through this process -- I
20 mean, we could try, but we would probably fail
21 just from too much information, go with daily and
22 every conceivable daily liquidity flow for each

1 of these entities.

2 So we need to make sure the firm can
3 understand the needs and availability of
4 resources at each material entity and that we
5 have the information to -- and they have the
6 information to make the decisions to execute the
7 strategy.

8 That's kind of where we are, I think.
9 But you're right that we don't have maximum
10 information about all of it all the time. I think
11 we're getting better but.

12 MS. BAIR: It's a really good question
13 because that's what we saw during the crisis,
14 right? So the banks had stable liquidity. So we
15 were under a lot of pressure to prove we were
16 moving up. So Nancy asked that centrally insured
17 bank -- you know, deposits were increasing
18 dramatically. Our exposure was increasing
19 dramatically.

20 I don't think you want a repeat of
21 that again. So are you confident that this living
22 will process is going to -- the securities

1 affiliates, you know, the non-making affiliates,
2 will they still have liquidity or to what extent
3 are these firms still going to rely on moving
4 stuff into that nice safe FDIC insured thing
5 that's accumulating deposits in a crisis but
6 increasing the exposure here as well.

7 MR. DELFIN: I think through the living
8 will process, there's been substantial progress
9 on understanding the liquidity position of each
10 of those material entity subsidiaries and
11 addressing the liquidity need, if they need to,
12 through this process.

13 The specific capabilities of each
14 material entity, that's the place where this
15 needs to go.

16 MS. BAIR: Sure.

17 MR. DELFIN: That is right now there's
18 a structure. Let's say it works in theory or,
19 knock on wood, that is -- I think in terms of
20 what are the things that can go wrong.

21 MS. BAIR: Right.

22 MR. DELFIN: So we provide a list of

1 here's everything we think of that can go wrong.
2 And from today maybe we'll add a few more things
3 to that list, and then how do we mitigate that
4 risk?

5 And so I think what we'll see is we've
6 done a lot, and the firm has done a lot to
7 address each of those issues. So you have a nice
8 structure.

9 MS. BAIR: Right.

10 MR. DELFIN: But you need to make sure
11 that the capabilities, that the models and the
12 assumptions underlying the models, are tested and
13 validated over time so that if that date comes
14 you can rely on it.

15 MS. BAIR: Right.

16 MR. DELFIN: Because we don't know the
17 scenarios now ,but you need to be able to have
18 models that can take in the world as it exists on
19 that day to work.

20 MS. ADMATI: I think Sheila was asking
21 specifically whether the FDIC having two hats.
22 You're systemically resolving a holding company,

1 but you also have a subsidiary that's an insured
2 bank. And so the deposit insurance fund suddenly
3 might get a lot on its head.

4 MS. BAIR: Well, I think the -- well,
5 so in this scenario we're not -- this is not
6 Title I. So we're just, you know -- and I think
7 you also need to worry whether you've got an out.
8 And it's your bank that's failing too --

9 MR. DELFIN: Of course.

10 MS. BAIR: -- and how that works. And
11 I wanted to ask you about separability in that
12 regard. But, yes, I mean, I think what I'm
13 hearing you saying is that there's a lot of rigor
14 going into breach of material entity, not just at
15 the HoldCo level, but at the material entity
16 level. How are they going to fund themselves in a
17 distressed situation without relying on insured
18 bank? I guess that's my question. Is that what
19 you're doing?

20 MR. DELFIN: Right.

21 MR. MURTON: That's what this is all
22 about.

1 MS. BARRAGE: That is the crux of this.

2 MS. BAIR: Yes. Okay.

3 (Simultaneous speaking.)

4 MR. MURTON: We're not allowed to rely
5 on the kind of measures that you described in
6 order to solve their broker dealer problem.

7 MS. BAIR: So I just had another more
8 of a question. So one of the criticisms with
9 SPOEs, whether it's bankruptcy or Title II, is
10 that you're just kind of perpetuating, a big,
11 right, a big inefficient complex on a non-
12 transparent entity. And so you're just going take
13 all your TLAC, convert it to equity, re-
14 capitalize and in turn hold the company and prop
15 it up and back it goes.

16 So, I don't know if that's a good --
17 you know, I'd certainly take that over the
18 disruption was had after Lehman. But how do you
19 think about separability? And it seems to me from
20 the standpoint of maximizing value, too, these
21 large entities, especially one that's failed,
22 might be well worth a lot more in individual

1 pieces than just propping it up and, you know,
2 keeping it the way it was with the new capital
3 base through TLAC.

4 So how do you think about separability
5 and does that factor into your thinking?

6 MR. DELFIN: Yes, yes. So a couple
7 things. The first is are you supporting big or
8 not?

9 MS. BAIR: Right.

10 MR. DELFIN: So nothing supports big
11 more than what we did in '08 and '09, right?

12 MS. BAIR: Right. That's for sure.

13 MR. DELFIN: Just protect the creditors
14 so that they have an incentive to lend money to
15 these firms, and they get bigger.

16 MS. BAIR: Right.

17 MR. DELFIN: So through the TLAC, the
18 firms have to actually go to the market, and
19 market actors have to lend to these firms based
20 on the probability of default and the potential
21 losses.

22 MS. BAIR: Right.

1 MR. DELFIN: So now there's a market
2 cost associated there that didn't exist before.
3 So that's a cost for being big that didn't exist
4 along with all the other regulatory costs like
5 the living will process and whatnot. There's that
6 part of it.

7 Now our test in Title I is orderly
8 resolution in bankruptcy --

9 MS. BAIR: Right.

10 MR. DELFIN: -- without systemic risk.
11 If a firm can achieve that, well, that's great,
12 right Taxpayers didn't step in Firm failed. The
13 creditors took losses. We move on. Public
14 interest has been served. That would be a
15 wonderful step forward.

16 We do, however, think about
17 separability because SPOE is untested.

18 MS. BAIR: Mm-hmm.

19 MR. DELFIN: And we want to make sure
20 that firms have what we call objects of sale.
21 That we have separability actions available to us
22 and to them.

1 MS. BAIR: Right.

2 MR. DELFIN: First to avoid failure,
3 which would be our ultimate goal. If a firm has
4 an object of sale that is pre-identified, we
5 require that they have data rooms that actually
6 house the key information so that they can
7 separate these things more quickly.

8 If a firm can do that in recovery and
9 not fail, great. If the firm then fails in SPOE,
10 then there are choices available for the board or
11 for the FDIC if we were in a Title II world to
12 sell off those objects and wind down the firm.

13 So this is where, and we'll get to
14 later, where Title I and Title II kind of come
15 together. But we want to make sure these firms
16 are separable and have separability options
17 because they improve resilience and avoidance of
18 failure and give us choices in resolution if we
19 need them. Does that help?

20 MS. BAIR: It helps, but just what's
21 your comfort level of their ability --

22 MR. DELFIN: Comfort level --

1 MS. BAIR: -- you know, how stable are
2 the major business units of these big --

3 MR. DELFIN: There's been a lot of
4 progress made on objects of sale and
5 separability. In our December findings, we noted
6 the work that the firms have done.

7 CHAIRMAN McWILLIAMS: You know, I
8 thought this was a great job until Sheila started
9 asking questions.

10 (Simultaneous speaking.)

11 MR. COHEN: I think Sheila is really
12 asking two important questions. One, if you wind
13 up in this situation, can the entity survive
14 after the recap? And the second is should it?
15 Should this big institution still survive?

16 And I do think on separability all of
17 the effort has appropriately been on could the
18 company separate itself out? But I don't think
19 much work has been done on whether there would be
20 any buyers for the pieces. And I do think that's
21 something which needs a lot of thought because
22 you've heard a lot of buyers out of 2008 saying

1 never again.

2 MR. DELFIN: And there is a debate that
3 goes on about whether it's worth more in pieces
4 or not. There's definitely a school of thought
5 that says separating it would destroy value, and
6 there's a school of thought that separating it
7 would unlock value.

8 MR. COHEN: And isn't the basic point
9 you want the flexibility to be able to make the
10 decision at that point in time.

11 MS. CHAPMAN: But the proof is in the
12 pudding. And I'll touch on this in my remarks
13 later. The recoveries at the various Lehman
14 subsidiaries, the recoveries for the unsecured
15 creditors, there is a variance.

16 There were some subsidiaries, I think,
17 we went over the counter, affectionately known as
18 latzy comes to mind, where the recoveries exceed
19 100 percent. So it was all a question of the
20 degradation of value that occurred after the
21 filing and after determination of QFCs.

22 So a lot of what you've done to

1 address not only the vertical problem but the
2 horizontal problem and in particular around the
3 issue of flexibility versus pre-positioning, I
4 think, helps ensure that there would be
5 maximization of value after a filing.

6 I think one question, which I'm
7 certainly not qualified to answer, is the value.
8 And the buyers are going to depend on the extent
9 to which there is stress more generally in the
10 markets versus whether the failure is for reasons
11 maybe we can't conjure, mostly focused on one
12 firm.

13 Certainly if there's general stress,
14 you know, you're not going to have people buying.
15 You know, what you're seeking to avoid is the
16 experience of, you know, a Barclay's sale, you
17 know, four days after the filing when people at
18 the time thought, you know, hold on. We shouldn't
19 do that. And I think not many people are in a
20 position to really second guess that at this
21 point.

22 So I don't know if that's responsive,

1 but that's kind of from a bankruptcy perspective.
2 And most importantly is the understanding of
3 everything that's in the closets and the attics
4 of the firms in terms of their operating systems,
5 where they're booking their risk, how they're
6 booking their risk. Who controls their software,
7 their intellectual property?

8 And my understanding of the work
9 that's been done, there's been a lot of cleaning
10 up in that regard that would be value accretive
11 in the event of a failure, and you needed to
12 separate firms and ready them for the subsidiary
13 entities and ready them for sale.

14 MR. BODSON: Can I ask you a question?
15 When I look at this, and you see the term
16 maximization of value, I took a different
17 approach. I thought you were trying to minimize
18 disruption.

19 I mean, to me, it's how you keep the
20 operating companies alive long enough that if you
21 want to wind them down, you wind them. If you
22 want to sell them, you sell them. You figure that

1 out in due course. But the point is to make sure
2 that the system is not disrupted by a Lehman type
3 collapse.

4 So whether or not there's maximization
5 of value, to me that's a secondary issue. It's
6 really how do you save the system, not how you
7 save the firm or the shareholder --

8 MS. BAIR: So the FDIC has got a public
9 policy mandate, but the bankruptcy court doesn't.

10 MS. CHAPMAN: That's the chance you
11 take.

12 MS. BAIR: That's exactly the chance.

13 MR. DELFIN: So I think what the
14 strategy is supposed to do is the strategy is
15 supposed to make sure that there isn't systemic
16 disruption. You know, if the strategy works there
17 isn't systemic disruption. Now in the bankruptcy
18 court at that point, maximization of value is the
19 goal.

20 MR. BODSON: But it's a two step and
21 the first step --

22 MR. DELFIN: Well, the first step is

1 getting from failure on Friday to a --

2 MR. BODSON: Operating --

3 MR. DELFIN: -- stable trust on Monday
4 so that market destruction has been avoided and
5 now the bankruptcy court can do its process, but
6 with a stable entity in trust that doesn't --

7 MR. BODSON: Okay.

8 MR. DELFIN: -- disrupt the markets.

9 But you're right.

10 MR. BODSON: I didn't want to put the
11 horse before the cart.

12 MR. DELFIN: No, yes.

13 MS. BARRAGE: Understood.

14 MR. DELFIN: So financial stability
15 should have been protected first and then you get
16 to the --

17 MS. BARRAGE: Claims.

18 MR. DELFIN: Yes, claims process.

19 MR. STEINWALD: In our calculations
20 that we ask the firms to make, we conclude a
21 consideration of the stabilization period. So
22 it's not just a point of time calculation, but

1 it's an estimate of what it's going to need to
2 take you through a certain period in which you're
3 going to stabilize the operations.

4 MS. BARRAGE: So if we could go back
5 into our 2016 time capsule here because there's
6 quite a bit of stuff.

7 MS. ADMATI: Well, we're still in 2018,
8 right?

9 MS. BARRAGE: We promise. We'll bring
10 you to today. A lot of topics in this guidance
11 and a lot of questions from the firms. So we put
12 out what we call FAQs, frequently asked
13 questions, on the general level for all the
14 firms.

15 In some cases, there were firm
16 specific questions that they had, and they were
17 responded to by the agencies. And so remember
18 this is guidance that's really directed at their
19 2017 submissions.

20 And so I want to talk a little bit
21 more about the guidance itself and some of the
22 questions that have come up in our questions

1 today. How did we deal with or how does the
2 guidance deal with the risk of multiple competing
3 insolvencies, right?

4 This is an obstacle that's time
5 immemorial. We addressed it in 2013. The Lehman
6 case is a prime living example of this risk. So
7 in many ways SPOE is what the industry and what
8 many of you, as addressing this multiple
9 competing insolvencies problem, again, with the
10 model that only the holding company fails and the
11 operating subsidiaries, which, of course, are
12 global, are sustained.

13 One of the biggest questions that
14 we've been grappling with, but I think we've made
15 a lot of progress on, is how could you resolve a
16 systemically important financial institution in
17 bankruptcy? And as a result of a lot of
18 engagement with bankruptcy experts, the guidance
19 actually discusses some of the legal obstacles in
20 detail.

21 So preference in fraudulent transfer
22 risk or what bankruptcy practitioners understand

1 as avoidance action risk. How do you address
2 that?

3 We saw the development of
4 contractually binding mechanisms, secured support
5 agreements where there's definitely a source of
6 strength kind of theme built into those.
7 Guaranteed obligations to save the material
8 entities and stress and all of the mechanics
9 around that.

10 Bankruptcy playbooks were provided. So
11 bankruptcy playbooks describing and incorporating
12 things like draft first day motions.

13 So for any one of these U.S. G-SIBs if
14 there was ever a moment where we had material
15 stress and they would have to fail, the plans
16 that they provided to us actually provide draft
17 documents for what they would file. I mean, down
18 to the caption. I mean, it's descriptive. It's
19 got some placeholders for things. But that's a
20 huge development from even 2012 in the planning.

21 So we've got bankruptcy playbooks. We
22 have playbooks for the boards at the material

1 entity levels. We have firms addressing the real
2 problem, or the real issue of interlocking boards
3 of directors and how would they deal with those
4 issues.

5 We have the issue that has come up, I
6 guess, a couple times today, on early termination
7 of qualified financial contracts. And this focus
8 on cross-defaults and the issues that we had in
9 Lehman were counterparties because they were safe
10 harbored under the Bankruptcy Code. Were able to
11 terminate their contracts notwithstanding the
12 bankruptcy filing of the holding company in
13 Lehman.

14 So, again, these are just some
15 examples of how the guidance directly tried to
16 have firms address these obstacles in specific
17 ways but also in ways that gave the firms the
18 ability to address them based on their operations
19 in their risk framework.

20 MR. KOHN: Can I ask a little --

21 MS. BARRAGE: Sure.

22 MR. KOHN: -- about the international

1 dimensions here. So all these companies are
2 global companies --

3 MS. BARRAGE: Mm-hmm.

4 MR. KOHN: -- in one degree or another.
5 And I understand under Title II the FDIC has been
6 working with the Bank of England and the European
7 authorities, et cetera. What happens in
8 bankruptcy?

9 So, I guess, I'm looking at the judge
10 here. Any understandings between U.S. bankruptcy
11 judges and people in the UK? Why wouldn't this
12 just collapse for a global firm in bankruptcy?

13 MS. CHAPMAN: I can't promise anything,
14 but what happened in Lehman was quite
15 extraordinary, and I think it was unprecedented.
16 There was outreach and -- coordination is
17 probably too strong a word. But there was an
18 attempt to work together in a cooperative
19 fashion.

20 There was a protocol that was
21 fashioned that clarified whether in essence the
22 U.S. case would be the lead case, would be the

1 host case and the UK case, which was the -- you
2 know, there were cases all over the world.

3 MR. KOHN: Right.

4 MS. CHAPMAN: And it was that
5 cooperation and frankly the two judges picking up
6 the phone to each other that really enabled some
7 stability and some order and enabled the firm to
8 emerge in the relatively short period of time it
9 did compared to what I would say is the garden
10 variety mega-multibillion dollar Chapter 11 case.

11 I think more importantly is the
12 communication that's happened between the
13 regulators to get comfortable, to get the foreign
14 regulators comfortable with the idea that there
15 would be some bankruptcy judge in the United
16 States more or less in charge of the global fate
17 of the firm.

18 I would say there's not 100 percent
19 comfort level with that. I've been involved in
20 some of these discussions. These folks have been
21 involved in a lot of these discussions. And we
22 have also talked about the role that the

1 regulators themselves would play on the first
2 day.

3 Alex alluded to the first day motions.
4 That's shorthand for on the first day of a
5 bankruptcy the debtor presents motions that we
6 call the first day motions that are designed to
7 ensure that the firm in bankruptcy can continue
8 to operate.

9 And we've talked a lot about what that
10 would look like, who would appear, who would be
11 heard from. And I think the foreign regulators,
12 their role, have figured into that conversation.
13 I hope that's responsive. I think probably Ric
14 and Alex can do a better job of answering also.

15 MR. DELFIN: I mean, this should be
16 better than the Lehman world because there's an
17 entire structure built around --

18 (Simultaneous speaking.)

19 MR. KOHN: There's not much of a hurdle
20 there.

21 MS. CHAPMAN: There has also been, I
22 will add, that there's been an explosion of

1 developments in international insolvency since
2 2008. There are frequent meetings.

3 Singapore is trying to position itself
4 as the next place to go for global
5 restructurings.

6 There's something now called the
7 Judicial Insolvency Network. There's a memorandum
8 of understanding that's been signed between the
9 Seventh District of New York Bankruptcy Court and
10 Singapore and South Korea.

11 We've hosted -- I've personally hosted
12 judges from six nations, Saudi Arabia, Russia,
13 People's Republic of China, South Korea. So I
14 think since 2008 there's been more of a global
15 conversation around insolvency, and everyone
16 wants to the United States is what I would say.

17 So I think there are protocols that
18 have actually been implemented in bankruptcy
19 cases in both Delaware and the Southern District
20 of New York. So there are lines of communication,
21 I think, that didn't exist in 2008.

22 DIRECTOR GRUENBERG: If I could just

1 make a point. I think there are two core issues
2 relating to the bankruptcy tied to division of
3 authorities. And I'm pretty clear that liquidity
4 and cross-border cooperation are the two core
5 challenges that the bankruptcy process has that
6 Title II is better positioned to address and thus
7 the foundation of the recognition of why you
8 would need a Title II backstop.

9 And indeed the National Bankruptcy
10 Conference wrote one of the strongest letters in
11 support of Title II in recognition that there are
12 inherent limitations in the bankruptcy process
13 that makes the existence of Title II necessary.

14 MR. REED: Can I ask a different
15 question? Do you know to what extent the
16 management of these entities are really familiar
17 with these submissions?

18 MR. DELFIN: Sure. Do you want to talk
19 about the governance process?

20 MS. BAIR: Good question.

21 MR. DELFIN: So they actually have a
22 governance process that has to go up through

1 their board. So the firm's governance process, of
2 course, in submitting a plan is pretty
3 substantial. And the senior-most officials within
4 the firms are well aware of the resolution
5 strategies of the firm.

6 MR. REED: And so you've interacted
7 with them and supports are --

8 DIRECTOR GRUENBERG: If I can comment
9 on that. The experience of five of the eight
10 firms that have been jointly failed by the Fed
11 and the FDIC with the prospect of the statutory
12 consequences available are as a result of
13 failure. My perception was, because I was visited
14 by the CEOs of the firms.

15 MR. REED: They heard, huh?

16 DIRECTOR GRUENBERG: They definitely
17 had heard.

18 MR. REED: Because, you know, when
19 you're in these circumstances, it's the
20 management --

21 DIRECTOR GRUENBERG: Of course.

22 MR. REED: -- that really has to know

1 what they're doing and have thought about it. And
2 if you've hired a bunch of lawyers and
3 consultants to write you're submission --

4 MR. DELFIN: It's not real.

5 MR. REED: -- it's not real. But you're
6 convinced because that ultimately is what counts.

7 MR. DELFIN: Right.

8 MS. BARRAGE: Yes. We meet with these
9 firms -- I'm sorry.

10 MR. WALL: For what it's worth it's a
11 legal matter. The rule does require that the
12 board of directors review and approve the plan.

13 MR. REED: But there are reviews and
14 approvals and reviews and approvals.

15 (Simultaneous speaking.)

16 MR. WALL: There are the governance
17 requirements that we've built into the --

18 MR. DELFIN: But we have pretty senior
19 legal engagements.

20 MS. BARRAGE: We meet with the firms,
21 yes.

22 (Simultaneous speaking.)

1 MS. BARRAGE: And across the board they
2 are conversant in their plans. We meet with the
3 firms directly. We don't meet with their
4 consultants.

5 MR. REED: Yes. Do you --

6 MS. BARRAGE: They ask questions of us,
7 of our staffs.

8 MR. WALL: I should also say that the
9 firms have committed, I think, an extraordinary
10 amount of time and resources into their -- at
11 least most of them into their governance
12 procedures, into their resolution planning
13 processes.

14 So it's a significant cost centric to
15 them. And so I would -- you know, the management
16 has to pay attention to that if only from a
17 budgetary viewpoint.

18 MR. BOWSHER: Do you evaluate the
19 quality and the competence of the audit committee
20 chairman and the risk management chairman and the
21 board and some of those people that are really
22 key for the board doing the right thing?

1 MR. DELFIN: I would just say that, you
2 know, as our public letters point out, the
3 submissions have improved substantially over the
4 last few years with substantial progress on each
5 of these areas. So I think that is a testament
6 that someone is doing the right thing.

7 CHAIRMAN McWILLIAMS: And also in the
8 supervisory side under the CAMELS rating. The M
9 would be the management. So we would have
10 combined the supervisory expectations with what's
11 happening in resolution planning so to make sure
12 that the board is competent and that the heads of
13 each of the committee and assigned persons are
14 adequately prepared for what may come down.

15 MR. FISHER: To answer John's question
16 a different way and some advice to the OCFI
17 staff, as a former director of a non-bank CFI,
18 what was once a non-bank. Another issue for the
19 board is to be able to take the plan and hold it
20 against a treasury function to think about
21 liquidity.

22 And so it's hard. You can read a plan.

1 And the plan can seem very reasonable and well-
2 constructed and you interrogate all the lawyers
3 and the people who thought hard about it. But
4 what you worry about it is laying it against
5 liquidity in the treasury function of the holding
6 company and all of the subsidiaries.

7 That requires just making sure that
8 the CFO and the treasury operation line up, as
9 complicated as it will be -- legal entity,
10 operating entity. And it's very hard though.

11 And that's the nub of it, I think, to
12 John's question, is you can read a plan. The plan
13 looks good and you work hard, but you've got to
14 read the whole thing.

15 But if you're going to hold it up,
16 you're going to turn to the treasury or the
17 assistant treasurer and talk to that person about
18 it. And that's the conversation -- you know,
19 getting the CEO is one indicator, but you really
20 want to care about the deputy treasurer.

21 MS. ADMATI: I think what Peter is
22 bringing up is so now what we're going to discuss

1 now is we're focusing now on, like, eight firms
2 and we forgot, and if so, we also forgot that,
3 you know, some of the failures would not have
4 been designated by now. Lehman would not have
5 been. AIG would not have been, et cetera.

6 So now we're talking about very few
7 firms and fewer by the day that we are talking to
8 the management and doing all of these things. And
9 then it will come from somewhere else.

10 So the question is how -- what happens
11 to a suddenly systemic company? Are we having
12 enough SRAC or monitoring of that? And, you know,
13 when we get to 2019 we were talking about Fed
14 regulators and others doing more to prevent you
15 being in this position. We're talking about the
16 grim situation.

17 MR. DELFIN: Right. So we're in Title
18 I land and under Title I, it applies to bank
19 holding companies designated non-banks. And so,
20 yes, living will is applied to those firms that
21 are excepted to the law.

22 MS. ADMATI: How many submit to living

1 wills now?

2 MR. DELFIN: Well, we work on the
3 largest U.S. G-SIBs plus the four largest FBOs.
4 There are a number of other plan filers. That
5 recently changed. The Crapo legislation change.
6 The filers of U.S. firms that are smaller bank
7 holding companies. So I don't know the exact
8 number now.

9 MS. ADMATI: But that's banking hold
10 companies. That's not insurance company or --

11 MR. DELFIN: FSOC makes designation
12 under the designations.

13 MR. HERRING: Yes. And that's where
14 it's a very different universe than we even
15 thought we had five years ago.

16 CHAIRMAN McWILLIAMS: So I think we
17 should take a break.

18 MR. DELFIN: We are right on time.

19 CHAIRMAN McWILLIAMS: And I would just
20 ask the staff please come back.

21 MS. BARRAGE: We're just getting
22 started.

1 CHAIRMAN McWILLIAMS: It has been a
2 very engaging endeavor. We'll continue after the
3 break. Let's break for 15 minutes.

4 MR. DELFIN: Perfect.

5 CHAIRMAN McWILLIAMS: And then let's
6 reassemble. And I need to ask the security guards
7 to make sure none of these people get on the
8 elevator.

9 (Whereupon, the above-entitled matter
10 went off the record at 10:18 a.m. and resumed at
11 10:34 a.m.)

12 CHAIRMAN McWILLIAMS: All right. So
13 we're going to resume. Marty would like to open
14 up the next session.

15 DIRECTOR GRUENBERG: Well now before
16 the day gets away from us, I wanted to take the
17 opportunity -- I wanted to thank this Committee.

18 And to make clear of what an impact
19 you all have had on our process. I just
20 mentioned to Dick Herring, without a doubt our
21 focus on transparency, which I think has been
22 central to trying to establish greater

1 credibility to the work we've been doing, has
2 directly resulted in his committee making clear
3 how important it's been.

4 And if I may say, Dick in particular
5 contributed in that regard. I just wish you guys
6 were not so hesitant and reluctant --

7 (Laughter.)

8 DIRECTOR GRUENBERG: It is with this
9 committee sort of like pulling teeth.

10 But before the day gets away, I wanted
11 to, if I may acknowledge two, former members of
12 this committee.

13 One, Paul Volcker, who is an original
14 member of this committee. And if I may say,
15 really had a formative impact on our strategic
16 approach to the resolution of systemically
17 important financial institutions.

18 And I also wanted to acknowledge Mike
19 Bradfield. Who you all knew of course, was
20 general counsel for the Fed for a long time under
21 Chairman Volcker.

22 He also served as general counsel at

1 the FDIC. I believe the only person to have held
2 both of those positions.

3 I may say one of the really
4 influential banking lawyers of his time. And
5 sadly since this committee last met, Mike passed
6 away.

7 So I just want to take a moment here
8 to acknowledge both Chairman Volcker and Mike
9 Bradfield's contributions.

10 CHAIRMAN McWILLIAMS: Thank you Marty.
11 All right, you may continue.

12 MR. MORGAN: All right. So, I think
13 I'll pick it up from here. We're going to close
14 out the discussion of the 2016 Guidance.

15 But not before we introduce you to a
16 couple of acronyms, right? And I'll try to
17 define those as we go through here.

18 But we want to spend just a couple of
19 moments on liquidity and capital. We've had some
20 discussion about that.

21 And to explain the concepts. Not
22 getting too deep into the details. Explaining

1 the concepts of what we're talking about and what
2 the Guidance is expecting of the firms or the
3 plans.

4 Which is in a nutshell, and Rick spoke
5 to it earlier, you know, you need to estimate how
6 much capital you need to get into and through
7 resolution. And, you also need to understand
8 where it is.

9 And then you need to have a process
10 for understanding how much liquidity and capital
11 you would need after filing. And so that's --
12 those are the concepts that I'm going to speak
13 about briefly.

14 So, here are the acronyms. We have in
15 liquidity something called RLAP. Resolution
16 Liquidity Adequacy Position. Right?

17 And this is what Rick, and it's -- we
18 have another one in capital as well, RCAP,
19 Resolution Capital Adequacy Position. Similar
20 concepts in that -- but I'll talk more
21 specifically about liquidity.

22 How much liquidity can the firm --

1 does the firm need at the material entity level?
2 Right, so it's measured at the material entity
3 level, to get them into resolution and through
4 resolution.

5 And so the concept is, taking internal
6 liquidity stress tests that the firms, you know,
7 have designed, at the material entity level that
8 they have designated, through a 30-day stress
9 test. It's an internal scenario.

10 And measuring those outflows with some
11 assumptions and some constraints. Treat
12 affiliates like a third party.

13 And don't -- at the end, don't assume
14 that surplus liquidity and one material entity
15 would be easily transferred or transferred to
16 other material entities.

17 That's RLAP, right. So it's about
18 figuring out about how much you need and the
19 position of those within the material entities.
20 Either in it or close to those material entities,
21 readily available to those.

22 RLEN, another acronym, Resolution

1 Liquidity Execution Need. So this is post-
2 bankruptcy.

3 As the -- we are asking the firms,
4 look at each material entity again. And for each
5 material entity, look at minimum operating
6 liquidity that would be needed in a stress
7 situation.

8 That would be your inter-day
9 liquidity, your operating expenses, whatever for
10 that company, plus a peak funding need as the
11 turmoil or the bankruptcy is going on.
12 Especially in the early days.

13 How much liquidity do you need to get
14 to a stabilization period for that material
15 entity. Those are two separate models and two
16 separate numbers.

17 And we have the same concept for
18 capital as well for resolution capital execution
19 need. Right? Same concept post-bankruptcy, how
20 much to make sure that those surviving entities
21 can remain going concerns.

22 The key, and Rick said it earlier, is

1 that we don't know the scenario. And the firm
2 doesn't know the scenario that failure will
3 occur.

4 And it's about capabilities. And a
5 lot of these models, RLEN and RCEN, which is kind
6 of post-filing estimation of what you need, are
7 built on what the firms are already doing in a
8 lot of ways.

9 But we're asking them to do it at the
10 material entity level. Short term cash flow
11 estimation. Right? The models are already
12 developed around stress testing.

13 So, the key for capabilities is
14 getting at the material entity level and
15 understanding that.

16 But also, weaving this into, and it
17 goes to a question or a comment that we had
18 earlier, weaving these concepts of RLEN and RCEN
19 into management reports. And having the treasury
20 functions calculate these on an ongoing basis.

21 And as the firm is moving through
22 stress into recovery, their ability to calculate

1 a number that's so important like RLEN, which is
2 how much you need to get into -- survive through
3 bankruptcy in an orderly way.

4 To be able to calculate that number
5 for management with accuracy and reliability, so
6 that they can have it on a very frequent
7 interval. So that management and boards know,
8 and again it ties into the governance mechanisms
9 that we spoke about earlier.

10 So management and the boards
11 understand, when I get here with some buffer over
12 here, right, I need to start taking some actions.

13 So, those are kind of the liquidity
14 and capital getting just a little bit into the
15 details without, you know, needling it all out.

16 MR. KOHN: So Anat asked -- Anat asked
17 earlier about whether they can assume access to
18 the Federal Reserve. They don't, right? No. So
19 this is their own liquidity.

20 MR. MORGAN: Right.

21 MR. HERRING: And the 30 -- the
22 assumption on 30 days is by the end of 30 days

1 these subs will be recapitalized.

2 They will regain access to the -- the
3 wholesale financial markets, because they'll be
4 so well capitalized, stabilized.

5 MR. DELFIN: Well, no. There's a few
6 that the RAPS, RCAP, RLAP, the RAPS as are
7 consisting, think of those as how much do you
8 have under stress.

9 So, how much do you have with a 30-day
10 stress using an internal liquidity stress test
11 bad world. Where you can't move it back and
12 forth. There are frictions, because there will
13 be.

14 And think of the RENs that liquidity
15 execution needs, that capital execution needs, as
16 the -- how much do you need? This is what I have
17 under stress with friction. Here's what I need.

18 The importance of these two, they're
19 independent of each other.

20 MR. KOHN: Um-hum.

21 MR. DELFIN: Is you need to file when
22 you have what you need.

1 MR. KOHN: Right.

2 MR. DELFIN: That gets you through.

3 The 30 days is just in the determining how much
4 you have. Do you have what you need for 30 days.

5 Does that make sense? Do you --

6 MR. KOHN: But the need is confined to
7 30 days.

8 MR. DELFIN: I'm sorry, in the -- this
9 is the -- we should have been more subtle. But,
10 when we wrote these guides, when we wrote the
11 RAPS, we could have said how much HQLA do you
12 have?

13 But we -- that would have not provided
14 the under stress problem we were trying to get
15 at. So, how much HQLA do you have under at 30-
16 day stress, material entity by material entity
17 where you can't move it back and forth.

18 MR. KOHN: Right.

19 MR. DELFIN: That's a much harder
20 number. That's the RAPS. The RENs are how much
21 do you need to protect your strategy. When you
22 have meets need, is when you file.

1 In terms of stabilization, you -- your
2 need takes it. The market is not going to come
3 back to you day one. Even if you recap.

4 Even if your material entities recap.
5 Even if you leave your long term debt behind.
6 Even if we all believe this is great. Sorry.

7 MR. KOHN: Right.

8 MR. DELFIN: Stabilization is going to
9 be a while along. So you still have to deal with
10 the troth post-filing before stabilization.

11 Firms then need to support the
12 stabilization period. And why there is any
13 return from outside sources.

14 If they can support the return from
15 outside sources, that's fine. But they need to
16 support it and meet with realistic assumptions
17 and based on facts that actually exist. Not
18 fanciful assumptions that they'll just magically
19 get x, y, or z.

20 MR. HERRING: Could I raise an issue
21 with regard to how you measure liquidity?

22 I can understand why you've adopted

1 high quality liquid assets. It is after all,
2 something we have to measure anyhow.

3 But we should bear in mind that that's
4 a politically negotiated amount that has a lot of
5 very dubious assumptions in it about how much you
6 can get out of selling a junk bond. It has a lot
7 of assumptions about what the asset markets will
8 be like when you want to actually get liquidity.

9 And that's very troubling. Because it
10 was set up for -- well, for a very political
11 purpose, basically to help the Europeans meet a
12 liquidity standard.

13 And I'm unhappy about it being used as
14 kind of the absolute gold standard of liquidity.

15 MR. DELFIN: Understood. There are
16 arguments actually for being able to rely on
17 other sources of liquidity. That is if you can
18 take the discount.

19 MR. HERRING: Um-hum.

20 MR. DELFIN: Other things may be
21 available. But, what we try to do in the RAPs,
22 was use a fairly conservative thinking about what

1 available resources would be.

2 But they're not perfect. They're not
3 easy.

4 MR. HERRING: Yeah. No, I just think
5 -- I just think for your purposes you might be
6 able to get at it.

7 MS. BAIR: Yeah. And he's so right.
8 That you're going to be dealing in an economic
9 tumultuous time if this happens.

10 And so whatever those HULAs are, are
11 going to -- probably a lot of the corporate's
12 going to be downgraded to junk. I mean, so you -
13 - you've thought about taking an extra haircut,
14 in gauging the adequacy of liquidity in this kind
15 of post-failure environment.

16 I mean, it seems like, you know, I
17 agree with you completely. But, just you're
18 going to use it because it's there.

19 And the firms are used to it. Just
20 take an additional haircut against it. Or maybe
21 or something like that.

22 MR. DELFIN: Yeah. I didn't think we

1 hardwired it terribly strongly.

2 MS. BAIR: Yeah.

3 MR. DELFIN: But I'll acknowledge
4 that.

5 MR. BODSON: So Ric, did you say you
6 assumed no access to Fed window?

7 CHAIRMAN McWILLIAMS: I think -- no,
8 I mean it -- I'm not saying what happened in
9 2008, if you had a car you could get a loan.

10 But are you talking about like
11 Treasuries? You know, you are -- that's a pretty
12 severe assumption.

13 MS. ADMATI: Well, I don't think that
14 the assumption is no access. The assumption is
15 more correctly, I think for a status of not
16 relying on that access. Right. So, we're not
17 making, you know, it's --

18 MR. DELFIN: Yeah. We're not saying
19 that the Fed will or will not do anything at the
20 time.

21 MR. BODSON: Okay.

22 MR. DELFIN: What we're saying is when

1 the firm writes its plan, it can't rely on as
2 public sources their support.

3 MR. HERRING: I think a strong --

4 MS. ADMATI: Bonds are their friends,
5 will decide.

6 MR. HERRING: It goes back to some
7 initial filings where some firms were planning to
8 rely on the Fed for a year or so.

9 MR. DELFIN: Yeah, yeah. No, I mean
10 --

11 MS. BAIR: That's easy.

12 MR. DELFIN: To say -- but to say no
13 to -- to say no is not as draconian, right.

14 MS. ADMATI: Yeah. And we don't have
15 that vocalized. So we wouldn't, you know, we're
16 just assuming that that's not. Yes.

17 (Simultaneous speaking.)

18 MS. BARRAGE: So to Director
19 Gruenberg's earlier point, one of the things we
20 want to highlight before moving to 2017, is what
21 does the public understand about this Guidance?

22 What does the public understand about

1 these firms? And so in this Guidance, we
2 actually put some specific markers for firms to
3 hit in their public sections then.

4 And my colleague, Nathan Steinwald
5 will walk through those.

6 MR. STEINWALD: Thank you Alex. So,
7 since the living will rule was issued, it
8 contained a portion of requiring the firms to
9 prepare public sections of their plans.

10 And include those with the filings.
11 And since every time we get a plan, we make those
12 public sections available to the public.

13 As Director Gruenberg mentioned, in
14 late 2014 we received a presentation at this
15 Committee from Professor Herring. And he had
16 some constructive suggestions about the then
17 current state of the public sections.

18 So following that meeting, and working
19 with the Federal Reserve, we provided additional
20 guidance to the firms on the public sections.
21 And what they should contain in their 2015
22 filing.

1 And in those 2015 filings we did see
2 more information about the firms, including their
3 material operating entities. What they did, how
4 they engaged with the larger firm as a whole.

5 We saw more information about the
6 strategies. And we saw additional information
7 about what sort of firm they envisioned emerging
8 at the end of the process if they were able to go
9 through their preferred strategy.

10 In the 2017 Guidance, or Guidance for
11 2017 that was issued in April 2016, we also
12 provided a little additional guidance to the
13 firms. And in the 2017 filings we received still
14 further information.

15 So the public plans now also describe
16 the management process that the firms will go
17 through in managing the stress into runway, into
18 resolution. They describe the mechanisms that
19 they built to support it.

20 So they described the contractually
21 binding mechanisms, the calculations that they
22 incorporate into the various triggers and

1 decisions that they'll have to make at a high
2 level.

3 And they describe how they responded
4 to the shortcomings, to the deficiencies, and the
5 individual elements of the Guidance for each of
6 their plans.

7 So we think that overall, over the
8 past three years, the public sections have
9 improved. We think there's some evidence of how
10 they're being used.

11 We see that the rating agencies have
12 now adjusted their methodologies for evaluating
13 the holding companies and the subsidiaries.

14 They've removed some of the systemic
15 uplift that they provide to the holding
16 companies. Because they have come to feel that
17 there's enough support for the idea of the single
18 point of entry strategy.

19 Where you would have a holding company
20 fail, and the operating entities would continue.
21 So there's some difference in how they've been
22 rating those different entities.

1 But, we think that the public sections
2 along with some of the other transparency have
3 improved. Public understanding especially from
4 market participants. But we'd be interested in
5 additional thoughts on how to continue to improve
6 those efforts.

7 MR. HERRING: I would certainly
8 applaud what you've done. And it is orders of
9 magnitude more informative than the first round
10 for sure.

11 It's also longer and more detailed.
12 I'd like to see a little more standardization of
13 reports that's a little easier to make
14 comparisons.

15 But I think the really lamentable
16 thing is that nobody in the rest of the world has
17 followed your lead. There is absolutely no
18 transparency in what would happen anywhere else
19 as far as I can tell.

20 There may be some documents somewhere.
21 But, you know, I think you've led the good fight.
22 I just wish you had more followers.

1 MR. DELFIN: There is some work
2 overseas. So to come to the aid of our foreign
3 friends, in hopes they come to mine one day.

4 The Bank of England has done a pretty
5 good job of providing transparency on its
6 resolution strategy. It's called the Purple
7 Book.

8 It's a nice book that we actually look
9 to in thinking of ways to improve some of the
10 understanding of the strategies.

11 I think what's different though,
12 because we have Title I, we have firm developed
13 plans.

14 MR. HERRING: Yeah.

15 MR. DELFIN: And you're right that
16 other jurisdictions do not have a parallel
17 processes that we have. So, you don't have
18 transparency regarding firm created plans plus
19 their plans.

20 Now I do think other jurisdictions are
21 looking at the progress that we've made under
22 Title I and thinking about that. But, their

1 transparency has been on the other side. But it
2 has been quite good.

3 MR. HERRING: Well, yes and no. You
4 really don't know how much progress they've made
5 in terms of restructuring and rationalizing
6 firms.

7 And you know, it's not helping the
8 market much to have some sense that regulators
9 have thought about it, and they think they know
10 what they're doing.

11 MS. ADMATI: Well, Europe is just at
12 the beginning of the banking unit. And we do
13 have some of these banks in this country,
14 Deutsche Bank or a lot of these European banks.

15 So, and they're, you know, they're not
16 able to do much at all. They don't even have
17 deposit insurance.

18 And then they, you know, they're at
19 the beginning of the resolution. They hardly are
20 able to do it on small banks, you know, the kinds
21 that FDIC does for breakfast, so.

22 MR. HERRING: But one of the good

1 things about requiring larger foreign banking
2 operations to file living wills and have a public
3 section is it really has raised the attention of
4 their loan supervisors and regulators about what,
5 you know, their direct disclosures ought to be.

6 And it's going to be too much for many
7 of them to meet the standards. And as you know,
8 some of them are still struggling.

9 But I think even though people could
10 argue that it maybe once again the U.S. asserting
11 extraterritorial powers, it really is having a
12 balance of a very positive effect.

13 MR. COHEN: You know at the risk of
14 piling on on this issue, I have always thought
15 that 2008 was more a function of contagion than
16 interconnectedness. And contagion in itself is a
17 function of lack of information.

18 So, I think what Dick has been pushing
19 for is very valuable. Now, there are many parts
20 of bank supervision which have to be, should be
21 confidential.

22 This is not, I think, one of them,

1 because of the systemic issues. And to pick up
2 with something Dick said at the very beginning,
3 what's going to be important is if there ever is
4 the need to actually implement one of these
5 plans, that the foot not come off the gas in
6 terms of disclosure.

7 Because for systemic reasons, it's
8 critical that everybody understands what is going
9 on.

10 MS. ADMATI: But the disclosures to
11 the public just on a regular basis as
12 corporations, are poor for the large ones. I
13 mean, we've heard it from many investors, you
14 know, Paul Singer and Kevin Warsh says that, you
15 know, black boxes investors, you know, don't like
16 them.

17 So there's sort of, you know, there's
18 a mutual hate between the banks and the equity
19 investors because of the disclosure being
20 forward. So those are accounting disclosures.

21 You know, and there are footnotes that
22 you can't understand what the risk is. You know,

1 there's what's inside the big banks like Eisinger
2 and Pecnori (phonetic), where would it be just
3 trying to read the disclosures of Wells Fargo
4 back in 2014, '13?

5 MR. DELFIN: Yeah. I haven't been at
6 the SEC in a couple of years.

7 (Laughter.)

8 MS. BARRAGE: We've, you know, been
9 the beneficiaries of a lot of the feedback.
10 We've gotten a prior SRAC.

11 So, it's important to tie that
12 progress back. But also to think about, you
13 know, future developments in this area.

14 So, thank you -- thank you both for
15 your feedback.

16 MR. HERRING: If I may make one
17 suggestion about additional clarity I would like
18 to have. It's interesting to know about why the
19 nonmaterial entities, and apparently some of them
20 really are things you do worry about, are
21 nonmaterial.

22 We don't really know about that

1 sector. There's a huge number of nonfinancial
2 subsidiaries.

3 And you know, I take it on faith that
4 there probably are good reasons that they don't
5 matter. But it would be really nice to have
6 broad categories explaining this is irrelevant
7 because it's a leasing subsidiary and nothing
8 much happens.

9 I don't think that would be -- risk
10 proprietary information. But I think it would
11 help round out the picture and make people feel a
12 little more comfortable that they could match
13 what you're saying with the other data we have,
14 which indicates there's still thousands of
15 subsidiaries out there.

16 MS. BARRAGE: Right. Well, to address
17 your earlier question on the definition, you
18 know, firms -- firms designate their material
19 entities based on whether they support a core
20 business line or a critical operation.

21 So, that's kind of the fork in the
22 analysis. And we've actually done a lot of work

1 with firms directly to understand their thinking
2 on that.

3 MR. HERRING: But isn't their thinking
4 the same? Could we -- could somebody on the
5 outside know, is that material just for you or
6 for everybody?

7 MS. BARRAGE: Um-hum.

8 MR. HERRING: You know, if there's --
9 there's a sense in which it would be nice to have
10 a little more clarity in the definitional lines.
11 So that you aren't surprised if something goes
12 under.

13 MS. BARRAGE: Yeah. That's fair.

14 MR. FISHER: Yeah, Dick's putting a
15 finger on what I was calling the horizontal
16 problem inside a subsidiary. How do we know
17 whether the volatility, liquidity, maturity,
18 mismatch inside that are something we should
19 worry about or not.

20 MS. BARRAGE: Um-hum.

21 MR. FISHER: It's a much harder
22 question to get your hands around, especially

1 outsiders, but you as well, then the sort of
2 vertical problem of the relationship between a
3 holding company and the big subsidiaries.

4 Right, that's sort of a neat
5 epistemological problem.

6 MS. BARRAGE: Yeah.

7 MR. FISHER: The deep question of
8 what's going on down there in the subsidiary is
9 much harder for us to be confident of.

10 MR. KOHN: So the banks themselves or
11 the holding companies decide what's a material
12 entity? So, I can see the potential for
13 disagreement about the goal of financial
14 stability, and what they think maybe immaterial
15 to them, maybe important to the financial system.

16 So do you guys have --

17 MR. DELFIN: So we, as Alex said, we
18 have requirements about a material entity should
19 be X. And the firm describes, what are their
20 material entities.

21 We ask, how did you get to this? Why
22 not that.

1 MR. KOHN: Okay.

2 MR. DELFIN: And then that points out
3 whether there is a basis for making information
4 their self.

5 MR. KOHN: And you evaluate it in
6 terms of your -- the goal, the government's goal
7 of the stability?

8 MR. DELFIN: Um-hum.

9 MR. KOHN: Okay.

10 MR. WALL: And we have the authority
11 to tell them if any entity is material.

12 MR. KOHN: That's what I was trying to
13 get at, yes.

14 MR. HERRING: So, you look at the ones
15 that they've deemed not material, and say, uh,
16 I'm not so sure about that?

17 MR. STEINWALD: So, prior to receiving
18 the 2017 plans, we worked with the firms. We got
19 an assessment of their -- we got a preview of
20 their methodology of how they make these
21 determinations.

22 And then we looked at the actual data.

1 And the data is both financial and operational.
2 So, it's not just transactions or obligations,
3 but service dependencies.

4 So you make sure you're getting all
5 the service entities. You know, it might not
6 make a big mark on the balance sheet, but it
7 could be important for the operations of
8 different components.

9 And then we evaluate it in the context
10 of the whole firm. And with the single point of
11 entry strategy and the need to maintain
12 continuity, it puts a risk on, you know, any
13 entity that fails and is no longer meeting its
14 obligations to the firm or providing the services
15 that it was providing, puts the strategy of
16 continuity at risk.

17 So, we evaluate the methodology and
18 then we've looked at the actual data.

19 MR. MORGAN: So, I think that's a good
20 segue from moving from the 2016 Guidance to where
21 we are on this slide, which is the 2017 plan
22 we'll review and the findings.

1 So I'll just cover a little bit of how
2 we got into the review process for the 2017
3 plans. The Guidance, as you remember, was issued
4 in April 2016.

5 And it was for the July 2017 filings.
6 So the Guidance was available, of course, as a
7 reference for the firms.

8 In the interim period between the
9 Guidance being published and the filings, a lot
10 of interaction as we discussed already between
11 the agencies and the firms. A lot of engagement
12 and meetings.

13 We issued frequently asked questions,
14 I think it was in September of the 2016. And met
15 with the firms to kind of explain those FAQs to
16 them.

17 As Nathan said, there were surveys
18 conducted by the joint teams of the Federal
19 Reserve and the FDIC, digging in a little bit
20 deeper into some specific areas. And getting
21 some more information to preview information for
22 us before the plans.

1 And then as the plans were filed, the
2 teams were -- the integrated teams from the FDIC
3 and the Federal Reserve, started the work. We
4 had weekly touch points with the firms through
5 that process of the review.

6 And then, you know, finally kind of
7 fast forward now from July to December, that's
8 when the findings of the December -- of the July
9 2017 plans were released.

10 And the result of that you could read
11 from the letters, is that we noted significant
12 progress that the firms had made in the areas
13 that we were kind of signaling and talking about
14 in the Guidance.

15 We had no deficiencies, fewer
16 shortcomings in the letters as well. But we did
17 flag and identify a couple of areas that need to
18 continue work.

19 And as a matter of fact, I think
20 there's always work that's going to be needed in
21 these areas. So, it's not a stopping point, but
22 just a point to move forward from.

1 And Alex, I think, is going to cover
2 some of those other areas that we identified.

3 MS. BARRAGE: Right. Thank you Mike.
4 So, December 2017, here again, we're drafting
5 letters to each of these firms. Public letters.

6 No deficiencies. So you've taken the
7 Guidance. They've incorporated into their BAU,
8 or business as usual.

9 And many ways the first part of the
10 letters for each of these firms is highlighting
11 the significant developments they've made to make
12 themselves more resolvable in bankruptcy.

13 So, they really range across a number
14 of areas.

15 MR. MORGAN: And those are the only
16 letters. There weren't secret letters.

17 (Laughter.)

18 MS. BARRAGE: Yes. This is the
19 official public letters.

20 MR. MORGAN: Just so you're aware of
21 that.

22 (Laughter.)

1 MS. BARRAGE: So, they've now proved
2 their liquidity and -- excuse me, liquidity and
3 capital forecasting capabilities and resolution.

4 They've developed play books to ensure
5 continuity of access to their payment, clearing
6 and settlement services. They've funded
7 subsidiaries.

8 They've prepositioned a number of
9 their material entities, as we touched on
10 earlier. They've entered into secured support
11 agreements or contractually binding mechanisms to
12 guarantee these applications as a kind of source
13 of strength in resolution concept.

14 They've modified their services
15 contracts to include what we call resolution
16 friendly language. Which basically says, if
17 you're a counter-party on a contract to one of
18 these G-SIBs, as long as you continue to get paid
19 in resolution, you'll continue to provide the
20 services.

21 So, these are in many ways belts and
22 suspenders provisions. But fintech largely

1 incorporated these provisions into their
2 agreements.

3 Separability, and Mike Morgan actually
4 is our resident expert on separability. They
5 have identified objects of sale across all of
6 their organizations.

7 They've set up due diligence virtual
8 data rooms. And Mike, why don't you talk about
9 that.

10 MR. MORGAN: Yeah. So we spoke about
11 that earlier. So I think it's a good point to
12 come back to with a little more information.

13 The Guidance does require firms to
14 identify objects of sale. And that would be
15 whether it's in their preferred strategy or not
16 their preferred strategy. It could be as a
17 contingency for what they want to do.

18 And some of the expectations that are
19 in the Guidance is they have a process that kind
20 of is ongoing for this identification. It's not
21 kind of a one and done. It's a refresh.

22 And then once they're -- and there's

1 governance associated with that. That kind of
2 goes up to the top level, the top levels of the
3 organization for those objects of sale that are
4 selected.

5 And then once they are selected, play
6 books that describe actionability. So not did
7 you just, you know, select it, but have you
8 identified the impediments? Operational,
9 financial, or legal, whatever impediments maybe
10 there for that object of sale. Have you
11 identified them and mitigated them if you can?
12 Right.

13 And a buyer analysis is also a part of
14 that. Now, I would admit that there's more work
15 to be done there.

16 I think we could probably do more work
17 around buyer analysis as well. But, it is part
18 of what we did expect for the firms in
19 separability.

20 MR. HERRING: Are these subjects of
21 sale subsidiaries? Or can they be trademarks or
22 other assets they have on their balance sheet

1 that aren't necessarily legal entities?

2 MR. MORGAN: They can be a
3 combination. We did not specify.

4 So -- and we'd like a range, right.
5 So some firms can give us a range.

6 MR. HERRING: No, I was just curious
7 about the --

8 MR. MORGAN: You know, it can be an
9 equity sale. Right, because it's a discrete
10 entity. Or, you can imagine, you know, it could
11 be portfolios that can be easily scalable as
12 well.

13 MR. HERRING: Okay.

14 MR. FISHER: Could I press you? I
15 mean, it's wonderful to make that process more
16 efficient and to have data rooms set up. And
17 think of all the ways you can make the asset more
18 liquid.

19 In those moments though, if you turn
20 that into pressure of time that speed is good,
21 you're not going to get as much money as you
22 could if you could take longer.

1 So, I just want you to think about
2 removing frictions is good. Insisting on speed
3 is value destruction. Because you get a smaller
4 and smaller buyer base the faster you insist on
5 acting.

6 MR. DELFIN: Well, but we're not
7 requiring the sale.

8 MR. FISHER: No, I know. But, even in
9 your modified plans, you might be implicitly
10 imposing assumption that speed is always good.

11 And their aspects of efficiency is
12 good. And efficiency of identification and ease
13 of severing. And there are lots of frictions
14 that you want to remove.

15 But I don't think you quite want to
16 adopt the assumption that speed is always good.
17 Because you'll define the buyer universe in too
18 small a way.

19 A good sale is going to take place
20 with someone who's not in their obvious buyer
21 universe.

22 MR. BODSON: Which states the obvious.

1 Problems are fast. Solutions are slow.

2 MR. FISHER: Yeah.

3 MR. BODSON: Right. And that's what
4 you see in any wind down situation is they keep
5 on coming at your one after the other.

6 And trying to work your way through
7 the solution, to your point, is always going to
8 take, I think, with all these plans you've got to
9 recalibrate all of them to take that into
10 consideration.

11 Because it's not going to happen the
12 way you expect it to happen.

13 MR. REED: And careful on relying too
14 much on that as a solution to the problem. My
15 experience is when somebody knows you have to
16 sell something, you don't get any money.

17 MR. FISHER: Yeah. That's my point.

18 MR. MORGAN: I think the point, a good
19 point that I didn't make, I should have made up
20 front, is that we're looking at the plans to see
21 if the resolution plan itself relies on the sale.
22 And they do not.

1 So this is about optionality. And if
2 there were a reliance on the sale, it would be
3 factored into the capital and liquidity modeling
4 and forecasting.

5 But these are options, right. This is
6 optionality. But the plan doesn't swing that.

7 MR. REED: And I assume it's global.

8 MS. BARRAGE: Yes.

9 MR. REED: In other words you might
10 sell subsidiaries in Brazil or something.

11 MR. MORGAN: Yes. The -- you could
12 include the entire operation.

13 MR. DELFIN: And just to reiterate,
14 it's the board that's making the actual sale
15 decision if they choose. We just want them to
16 have choices and to eliminate the frictions.

17 But when they sell, how they sell, and
18 if they choose to sale, that's their choice.

19 MS. BAIR: But if the -- if they need
20 to raise the cash and if they don't, you're going
21 to risk a system of disruption of an op sub going
22 down, right?

1 So you've had all this planning, but
2 maybe it's not going to work. So, beggars can't
3 be choosers. And so the thing that's making me
4 uncomfortable in this conversation is I'm going
5 back to the Lehman Brothers days, in the summer
6 when they just couldn't get their price.

7 So, you know, and beggars can't be
8 choosers. And we're talking by definition about
9 a mismanaged firm.

10 MR. MORGAN: Yep.

11 MS. BAIR: Got himself into a
12 difficult situation to begin with.

13 So, my only caveat is, yeah, that
14 shouldn't be the resolution strategy. They
15 should be prepared to be able to do it if that is
16 a necessary step to avoid the system disruption.

17 MR. DELFIN: Right. But Mike's point
18 is that the strategy doesn't rely on it.

19 MS. BAIR: I get it. And I get that's
20 absolutely right.

21 MR. DELFIN: So this is in addition,

22 --

1 MS. BAIR: Right.

2 MR. DELFIN: As optionality.

3 MS. BAIR: But -- yeah, I just don't
4 want --

5 MR. DELFIN: If they can't do it,
6 strategy still is available.

7 MS. BAIR: Right. And with that, you
8 should -- the regulatory shouldn't step in and
9 force sales.

10 MR. DELFIN: Right.

11 MS. BAIR: Because they wouldn't get
12 a good price. That's the only thing I want --

13 MR. DELFIN: Got you. Understood.

14 MS. BAIR: I think is popping up.
15 That's also a bad thing to say though as well.

16 MS. BARRAGE: So again, major
17 enhancements to the plans for the U.S. firms. We
18 want to spend a little bit of time addressing the
19 largest foreign banks.

20 Again, similar joint review process.
21 Same statutory standard. And for that Mike will
22 lead us in that.

1 MR. MORGAN: Right. So, the large
2 FBOs were provided an extension from the 2017
3 plan to be able to file in July of this year,
4 2018.

5 And that was because of the Federal
6 Reserve's Reg YY, and the requirements around
7 that. Including the requirement of a formation
8 of an intermediate holding company.

9 And in addition, the Federal Reserve
10 and the FDIC jointly released Guidance for the --
11 the four large FBOs that we're talking about
12 here.

13 And that was released in April 2017
14 for the 2018 plans. The Guidance is similar in
15 many ways to the domestic guidance.

16 But it's got some important
17 distinctions of course. A fundamental assumption
18 is no foreign parent support.

19 And the scenario is that the U.S.
20 operations experience material financial stress.
21 And the foreign parent was unable or unwilling to
22 provide sufficient financial support for the

1 continuation of U.S. operations. And at least
2 the U.S. IHC files for bankruptcy.

3 In addition, the Guidance included a
4 section on branches. So we wanted the firms to
5 describe for us their branch network in the
6 United States.

7 And how it interacted with the IHC,
8 the legal entities within the United States. And
9 the connectivity and the services that are
10 provided from the branches to the IHC to look at
11 alliance.

12 And then a section on the group plans.
13 Which these are, of course, pieces of a larger
14 group, foreign group.

15 And to try to at least get an
16 understanding at least as the firms know, of how
17 they're fitting into the larger strategy from the
18 foreign parent or the home country.

19 So, the -- we've had a lot of
20 engagement before the July filing period, as we
21 did with the domestics. A lot of touch points
22 along the way.

1 The plans came in in July. Our teams
2 again have been working collectively in an
3 integrated fashion, the FDIC and the Federal
4 Reserve.

5 And we are finalizing our review.

6 MR. HERRING: Will there be public
7 releases of whether it's regarding lease as well?

8 MS. BARRAGE: That's our expectation.

9 MR. REED: You know, one issue, which
10 is, and we're going to go again later today into
11 international, but it's clearly a friction point
12 with the foreign banking community.

13 Is they do not believe they are being
14 fairly treated under Crapo, which was referred to
15 earlier. I don't think that quite yet that's a
16 fair analysis, because they aren't treated at
17 all.

18 I mean, there's just been no
19 resolution. And I think that the absence of a
20 defined approach is worse than any -- almost than
21 any approach could come out.

22 So, I would urge that there be a

1 decision made on how you're going to treat the 50
2 to 250 IHCs. And articulate it as soon as
3 possible.

4 MS. BARRAGE: Thank you. So, I don't
5 think our Title I discussion would truly be
6 complete until we go back in time again, and talk
7 about in many ways the reasons that we do this
8 work. Which is, to avoid another situation like
9 the Lehman bankruptcy case in 2008.

10 For that we have Judge Chapman, one of
11 our newest SRAC members, along with former
12 Chairman Sheila Bair.

13 And I'd like to introduce Judge
14 Chapman as someone who's been intimately engaged
15 on these efforts to address bankruptcy issues,
16 both within her fellow judge community, but also
17 with the agencies.

18 And so, we are infinitely grateful for
19 the contributions of someone who has a very
20 unique perspective on this work. And so with
21 that, I give it Judge Chapman.

22 MS. CHAPMAN: Thank you Alex. Good

1 morning everyone. It's great to be here. And
2 thank you Chairman McWilliams for affording me
3 the opportunity to speak to everybody today.

4 So, as you've heard and by way of
5 background, and most importantly, in order to
6 provide the Committee with context for my
7 remarks, I'm going to talk about Lehman. One of
8 my favorite -- one of my favorite subjects.

9 And I apologize -- am I on now?

10 MS. BARRAGE: I think so. Is she on?
11 Okay.

12 MS. CHAPMAN: All right, is that
13 better? Okay. Very good. So, I have been
14 providing over the liquidation of the Lehman
15 Estates for almost five years now. I looked a
16 lot younger when I started.

17 (Laughter.)

18 MS. CHAPMAN: And I assumed the reins
19 of the case when Judge James Peck retired in
20 January 2014.

21 In addition to handling Lehman, I have
22 a full docket of Chapter 11 cases, large and

1 small. Over the years I've presided over the
2 reorganization of many firms that are familiar to
3 you.

4 Perhaps one of the larger ones that
5 you have heard about is Ambac. I was the
6 presiding Judge in the Ambac case.

7 So Lehman's Chapter 11 cases have
8 often been described with superlatives. And here
9 I love to quote Judge Peck.

10 Judge Peck has called Lehman "the
11 biggest, the most incredibly complex, the most
12 impossibly challenging international bankruptcy
13 that ever was."

14 I think the proceedings now for Puerto
15 Rico are going to be right up there as well in
16 the annals of history.

17 CHAIRMAN McWILLIAMS: Do you have that
18 one too?

19 MS. CHAPMAN: I do not have that one.

20 (Laughter.)

21 MS. CHAPMAN: My very good friend,
22 Laura Taylor Swain was selected by the Chief

1 Justice to preside over that. And it couldn't be
2 in better hands.

3 But as we mark the ten-year
4 anniversary of the collapse of Lehman, I believe
5 it is vitally important to reflect on certain
6 aspects of the Lehman demise that have informed
7 the path forward as we continue to work on
8 resolution planning.

9 So I'm not telling you anything you
10 don't know. But I think it's important to repeat
11 it.

12 The collapse of Lehman Brothers
13 unleashed a financial crisis around the world.
14 Credit markets froze. Global trade all but
15 ceased. Asset values plummeted. And jobs
16 vanished. Lives were ruined. And I've seen that
17 in the last few years.

18 In bankruptcy court during that
19 historic week, the drama of Lehman's sale of the
20 headquarter -- of its headquarters and its
21 broker/dealer business to Barclays unfolded.

22 And again to quote Judge Peck, "there

1 was a sense that if the sale didn't go through,
2 what was already horrible, would just get much
3 worse."

4 There was the pressing question of
5 whether a transaction that massive and
6 complicated could be approved on such short
7 notice. The due process rights of the creditors
8 and all the stakeholders had to be considered and
9 respected.

10 The day before the filing, on
11 September 14, 2008, Lehman was an integrated
12 global enterprise. It was the fourth largest
13 investment bank in the United States.

14 The next day at 1:10 a.m., and yes, I
15 know the exact time, without preparation, it
16 devolved into adverse factions of affiliates and
17 third-parties competing over hundreds of billions
18 of dollars of assets, and a vast universe of
19 undetermined liabilities that ultimately exceeded
20 one trillion dollars.

21 More than one hundred Lehman
22 affiliates became the subject of foreign

1 insolvency proceedings in more than 16
2 jurisdictions.

3 I'd like to say this is Lehman by the
4 numbers. And I think the numbers are very
5 powerful.

6 Lehman counter-parties themselves
7 filed Chapter 11 cases of their own across the
8 United States. Ultimately, after the bar date
9 was established, there were over 67 thousand
10 claims filed against the 23 Lehman Chapter 11
11 debtors, asserting in the aggregate more the 1.2
12 trillion dollars in both direct and guaranteed
13 liability.

14 There were many novel questions of law
15 to be determined. Including, but certainly not
16 limited to, questions related to Lehman's
17 derivatives portfolio. Which was comprised of
18 over 10 thousand contracts and over a million
19 transactions.

20 Perhaps the numbers that say the most
21 about the enormity of Lehman, are the docket
22 numbers. That's the number of entries on the

1 dockets of each of the cases.

2 As of last week, and I checked, we are
3 up to docket number 59,113 in the main LBHI case.
4 Docket number 14,799 in the LBI SIPA case. And
5 thousands more in the more than 300 adversary
6 proceedings that have been filed.

7 So just by way of comparison, in a
8 typical mega, multibillion dollar Chapter 11
9 case, it's hundreds of filings. Maybe a
10 thousand. But nothing, nothing like this.

11 In my opinion, and admittedly I'm
12 biased, the Lehman cases reflect the highest and
13 best use of Chapter 11 in the public interest.

14 Against the back drop of the global
15 financial crisis, the stakes could not have been
16 higher.

17 And yet, through the work of hundreds
18 of talented and dedicated professionals,
19 including some who have, I think, lent invaluable
20 advice to the agency and to this Committee, and
21 guided by the calm but steady hand of the
22 presiding judge, the parties achieved what I

1 consider to be a truly remarkable global
2 consensus that enabled Lehman to emerge from
3 Chapter 11 in just three and a half years.

4 A very long time in terms of the
5 economic health of the world. But for a case of
6 this complexity, suffice to say there are longer
7 stays in Chapter 11 than three and a half years.

8 Specifically, with the help of the
9 court, protocols were developed for the efficient
10 administration of the cases, cooperation with the
11 creditor's committee and its representatives, and
12 to Professor Herring's point transparency for
13 parties in interest, and for the public.

14 The parties took full advantage of the
15 flexibility of the Bankruptcy Code and the
16 Bankruptcy Rules. And what's more, as we've
17 discussed, a cross border protocol was
18 negotiated. Which provided for the orderly and
19 efficient administration of proceedings around
20 the world.

21 Apropos to what we're talking about
22 today, it's important to bear in mind that the

1 filing on September 15, 2008, and what I would
2 say the first three years of the cases, was just
3 the beginning.

4 Among other things as I've mentioned,
5 the Lehman filings have reached a tsunami of
6 claims against the Lehman Estates, as a result of
7 the termination of Lehman facing derivatives.

8 While over 10 thousand counter-parties
9 asserted claims against the Estates that arose
10 from one million derivatives trades, in addition,
11 there were the billions of dollars of mortgaged
12 backed securities claims asserted against the
13 Estate by Fannie Mae and Freddie Mac, and the
14 identification claims that flowed downstream from
15 them.

16 There were complex claims of every
17 imaginable sort. And some you can't even
18 imagine, lodged by former employees, trading
19 partners, customers, everyone who had a
20 relationship with Lehman as of September 15,
21 2008.

22 In addition, the Lehman Plan

1 Administrator has had to initiate hundreds of
2 lawsuits against parties from whom Lehman needed
3 to recover assets or assert damage claims.

4 Here's my favorite number. To date
5 over 124 billion dollars has been distributed to
6 creditors. With more distributions to come.

7 That number I should add, is net of
8 the many billions of dollars of costs and
9 professional fees that have been incurred in the
10 cases.

11 As of now, the level of unsecured
12 creditor recoveries are over twice what was
13 projected as of the time the plan was confirmed
14 in 2011.

15 Generally speaking, unsecured creditor
16 recoveries are now at approximately 40 cents on
17 the dollar. And substantially more than that in
18 the aggregate for holders of claims that also
19 hold guarantees from LBHI.

20 Of particular relevance to the issue
21 of the resolvability of U.S. G-SIBs in
22 bankruptcy, is the use of the SPLE structure

1 along with the ISDA Protocol to help avoid
2 massive claims related to derivatives
3 terminations and the concomitant degradation of
4 value associated with wide-scale terminations
5 such as occurred in the Lehman file.

6 I have to say that resolving the so-
7 called big bank derivatives claims were the
8 biggest challenge I have faced as the Lehman
9 Judge.

10 All of those claims have now been
11 resolved. But the human and economic cost was
12 substantial.

13 During one two-year period of time, I
14 presided over six lengthy trials to fix the
15 amounts of almost 10 billion dollars of
16 derivative claims asserted against Lehman. The
17 longest of those trials, Lehman versus City Bank,
18 lasted 42 days, and it was only half done when
19 thankfully the parties settled.

20 The Lehman case has unquestionably
21 stressed the Chapter 11 bankruptcy process. From
22 a very narrow creditor perspective, the

1 bankruptcy process worked reasonably well.

2 Perhaps most importantly though the
3 myriad causes and effects of the Lehman filing
4 have informed many of the aspects of resolution
5 planning.

6 Here are some salient examples. First
7 and foremost, as we've discussed, Lehman was in a
8 liquidity crisis.

9 Second, the filings resulted in a
10 balkanization of the dozens of Lehman entities
11 around the world.

12 Third, the Lehman filings revealed
13 internal organization and operational structures
14 that were severely lacking.

15 Finally, the Lehman filings revealed
16 that large financial institutions were carrying
17 enormous risks on their books that they did not
18 understand or have the ability to quantify
19 remotely accurately.

20 I believe that the work that the FDIC
21 and the firms have done since 2008 has gone a
22 long way to address each and every one of these

1 issues.

2 It has been my privilege to work with
3 the FDIC staff, sophisticated and dedicated
4 practitioners, and very smart and interested
5 academics to ensure that resolution works from a
6 bankruptcy process perspective.

7 Active engagement with regulators,
8 members of the judiciary, and academic experts
9 have also formed the predicate of significant
10 judicial outreach efforts.

11 Two years ago under the auspices of
12 the Wharton Financial Institution Center, and
13 Professor Herring, a symposium was held at the
14 University of Pennsylvania to discuss and debate
15 the resolution readiness of U.S. G-SIBs, to
16 explore and detail the SPOE strategy and hurdles
17 to its success, and to outline how this all would
18 work under the current Bankruptcy Code, and
19 perhaps under legislation yet to be passed.

20 Building on the success of Wharton
21 Symposium, we have since held day long
22 educational sessions for the bankruptcy judges

1 from the Southern District of New York and the
2 District of Delaware.

3 The judicial session I believe, were
4 particularly valuable exercises. Not only were
5 the judges very engaged and incredibly curious,
6 but they were able to become generally familiar
7 with SPO resolution.

8 And the practitioner and agency
9 participants gained valuable insights into areas
10 of concern raised by the judges around both
11 process and substance.

12 In addition, during this past year,
13 under the auspices of the Federal Judicial
14 Center, we have presented an overview of the SPOE
15 resolution to bankruptcy judges nationwide.

16 And while we all hope that SPO
17 bankruptcy remains untested, our mission has been
18 to ensure that any judge who might face the next
19 Lehman, is prepared to the greatest extent
20 possible, to act swiftly, and have an
21 understanding of the resolution process.

22 To that end, we are now working with

1 the Federal Judicial Center to create a guide to
2 judicial management of the U.S. G-SIB bankruptcy.

3 So as I've said, it's been my pleasure
4 to work with the agency, with the folks that I'm
5 smiling at here today. And to help contribute to
6 the education of the judiciary, something I
7 believe is a critical component of resolution
8 planning.

9 Thank you so much. I'd be happy to
10 answer any questions that you have.

11 CHAIRMAN McWILLIAMS: I like that she
12 delivered all that with a smile.

13 (Laughter.)

14 MR. HERRING: Judge Chapman, is it --
15 would it be unfair to characterize the new guide
16 for judges as sort of a play book for judges?

17 MS. CHAPMAN: Yes. It would be
18 entirely fair to characterize it as a play book
19 for judges.

20 And I think as Alex and Ric have
21 talked about, the firms have gone very far down
22 the road in their play books. Right down, I

1 believe, to the level of thinking about and
2 drafting what their first emotions would look
3 like.

4 No judge can be in the position to
5 make a decision other than based on what's a
6 record before them. But having general
7 familiarity with what may come before them on
8 resolution weekend, is very important.

9 MR. HERRING: So it will not be a deer
10 in the headlight situation for them. That's the
11 plan.

12 MS. CHAPMAN: The hope was -- yes.
13 The hope is to avoid a deer in the headlight
14 situation. But by all means, for all the judges.

15 Now the judges who sit in certain
16 jurisdictions have more familiarity with complex
17 cases than others. But we're talking about a
18 bankruptcy on an entirely different scale.

19 I think the largest concern that we
20 have, and the play book, I think, would help, is
21 the timing pressure. You're talking about an
22 exercise that would occur over resolution

1 weekend.

2 And the concept of having to be ready,
3 thoughtful, with an understanding of what's
4 riding on your decision on that Monday, is very
5 daunting.

6 And that's one of the many drivers of
7 this education process. So that everybody is
8 generally familiar.

9 Just as they are generally familiar
10 with what they need to do in any large filing.
11 For example, most recently the filing of Sears,
12 which required access to tremendous amounts of
13 debtor in possession financing on a very, very
14 short time frame.

15 MS. ADMATI: I have a question.

16 MS. CHAPMAN: Yeah.

17 MS. ADMATI: So actually you're
18 speaking about Lehman, you know, and it brings me
19 back to the very first Sheila led committee
20 meeting. Where we had the hypothetical of what
21 would have happened, and the smooth way in which
22 this process would have dealt with Lehman.

1 And I remember Paul Volker asking,
2 okay, so you're going to resolve Lehman in two
3 days. And what are you going to do with all the
4 others that -- because Lehman was the only
5 bankruptcy, because that's the only one that was
6 allowed into bankruptcy. The rest were not.

7 But, if we don't want to have
8 bailouts, then we may have to have a whole lot of
9 these. And, I should say, much bigger than
10 Lehman. Because JP Morgan Chase has, I believe,
11 a million, at least a million contracts of
12 derivatives open in one snapshot, so.

13 MS. CHAPMAN: I think the numbers that
14 I talked about though were in 2011, in the
15 discouragement stage. And I believe FDIC put out
16 a report at the time indicating that everyone
17 thought the recoveries would be 20 cents.

18 So what you see though, what I've seen
19 in going through all the derivatives cases, is a
20 tremendous degradation of value that occurred as
21 a result of the termination of all the Lehman
22 facing derivatives.

1 And everybody during that week was
2 trading, trying to figure out what their books
3 looked like. Trying to match up their risks.

4 And I hope that as a result of the
5 process that's occurred, they're much better than
6 that. Systems were all over the place.

7 It was my experience that people had
8 no idea what the risk was. What trades were
9 open. What trades were not.

10 And had Lehman been able to be
11 stabilized, had -- I mean, it's all what if, what
12 if. Had those contracts not terminated, there
13 might not have been a bankruptcy matter.

14 MS. ADMATI: Maybe those deficiencies
15 would also --

16 MS. CHAPMAN: What Lehman -- what --
17 even as "good" as these numbers are, it's
18 important to remember, all of the equity like
19 claims, including the deferred compensation and
20 retirements of all of those employees, are gone.

21 And they were -- and I've had to rule
22 that they're gone. Notwithstanding, you know,

1 tearful testimony from a lot of folks.

2 So even if you had managed to
3 stabilize it from a value proposition, that would
4 have -- it would -- value would have never flowed
5 down that far.

6 MS. ADMATI: Well, it's definitely
7 capital, I think they were listed as.

8 MS. CHAPMAN: Yeah.

9 CHAIRMAN McWILLIAMS: Any other
10 questions for Judge Chapman?

11 MR. KOHN: So I guess -- just so I
12 understand a little better. So what happens on
13 that first weekend, and I'm looking at the chart,
14 the flow chart from earlier.

15 MS. CHAPMAN: Right. Right.

16 MR. KOHN: Is the New HoldCo is set
17 up. So you're not dealing with --

18 MS. CHAPMAN: Right.

19 MR. KOHN: Thousands of -- so there's
20 the hold -- the New HoldCo assumes the qualified
21 financial contracts.

22 MS. CHAPMAN: Yes.

1 MR. KOHN: And it guarantees them.

2 MS. CHAPMAN: Yes. Once that order is
3 signed. That's the key.

4 MR. KOHN: Once that order is signed,
5 right.

6 MS. CHAPMAN: Right. Right. So you
7 have everything. There's a standstill over the
8 weekend. The status quo is preserved.

9 MR. KOHN: Right.

10 MS. CHAPMAN: You have the transfer to
11 the -- to the bridge company. You have the
12 elevation or the transfer and assumption of the
13 guarantee liabilities.

14 MR. KOHN: Right.

15 MS. CHAPMAN: And then in conjunction
16 with how the ISDA contracts work, those then are
17 not terminable. You have all of the action, if
18 you will, is then up at newly recapitalized
19 holding company.

20 And then the idea is, things settle
21 down relatively speaking. And then the process,
22 the bankruptcy process plays out at the holding

1 company level.

2 Creditors are all there. And then
3 decisions are made whether or not you're going to
4 sell a material sub. And all that would depend
5 on the facts on the ground at the time.

6 MR. DELFIN: And I think David might
7 join us in a bit. But -- and the creditor issues
8 are also simplified by the clean holding company
9 rule. Which requires that the firm have certain
10 -- minimum amounts of long term debt available.

11 But also minimize the amount of short
12 term creditors that might be there. So the
13 creditor stack is simplified so that if the QFC
14 is transferred -- if you're in a new trust, then
15 the bankruptcy case should be, knock on wood,
16 much simpler.

17 MS. CHAPMAN: Right. But to the point
18 about the importance of there not being pressure
19 to sale or an imperative to sell, you would avoid
20 the fire sale to Barclays on day five.

21 So, that wouldn't happen.

22 MR. KOHN: Because the New HoldCo

1 would be so well capitalized.

2 MS. CHAPMAN: Yeah. There's no debt.

3 MR. KOHN: It's the theory.

4 MS. CHAPMAN: That's the theory.

5 MR. KOHN: It would be able to access
6 the market and re-enter into new derivative
7 contracts. Because of what -- and so I guess to
8 Marty's two points earlier, were on my mind too.

9 So you've already addressed the cross-
10 border issues. There's just more -- it's not
11 solved yet.

12 But there's a lot more cooperation and
13 understanding. And then the record --

14 MS. CHAPMAN: I mean, there's the hope
15 that the balkanization would occur less than it
16 did, yeah, to the file too.

17 MR. KOHN: And the other one was the
18 liquidity issue.

19 MS. CHAPMAN: Right.

20 MR. KOHN: So, basically having 30
21 days of high quality liquid assets should get you
22 to the point where this -- this new institution

1 can access --

2 MS. CHAPMAN: Right.

3 MR. KOHN: The markets. That's the
4 theory.

5 MS. CHAPMAN: Right.

6 MR. WALL: But also, you're preventing
7 the early terminations of the debt.

8 MS. CHAPMAN: Right.

9 MR. WALL: And that would lead to a
10 huge liquidity drain. It did in this case. Or a
11 lack of liquidity.

12 MS. CHAPMAN: Right.

13 MR. WALL: And that actually, I will
14 say, goes to another point. Which is, so the
15 knock on effects, the contagion effects of that
16 kind of -- of those kinds of fire sales.

17 And therefore hopefully immunized or
18 stopped. Because that was part of that. It was
19 part of the Lehman transaction, was that you've
20 got the other funds and others that were severely
21 impacted by the depression of asset prices.

22 MR. KOHN: Right. Now the liquidity

1 draw on AIG was because it was downgraded. So,
2 this new entity will have to have a pretty high -
3 - I don't know what's assumed in the -- about
4 what the rating of the new entity is.

5 But that would be absolutely critical
6 for the amount of liquidity it needed.

7 MR. DELFIN: Right. So remember that
8 the material entities underneath continue to be
9 open and operating. They're funded. They're
10 recapitalized.

11 Part of the dire for the public plans
12 is for the rating agencies to be able to see more
13 and work with the first in order to steer the re-
14 rating, because that is a key part of the
15 stabilization post resolution.

16 MR. KOHN: Yeah.

17 MS. DELFIN: Yeah. Remember also that
18 we're talking about those RENs at the liquidity
19 needs, the capital needs.

20 If that's -- the firm fails with a
21 buffer. So that day one it's not going to the
22 market.

1 MR. KOHN: Right.

2 MR. DELFIN: Day on it's -- so it has
3 time to let its book, you know, come back.
4 Stabilize, work with the credit rating so you can
5 go back to market.

6 That's where that stabilization period
7 is.

8 MR. REED: My experience is you should
9 double.

10 (Laughter.)

11 MR. REED: You always end up biting
12 off more than you thought. And you really do
13 have to have the liquidity.

14 I mean, it can't be some minimal ratio
15 that sounds good until you need it. Because the
16 markets won't provide it.

17 MR. DELFIN: And that is it. There
18 are many challenges.

19 (Laughter.)

20 MR. DELFIN: The biggest challenge is
21 to what degree can you relay on the assumption
22 that the model can really fit? You have comfort

1 in the number.

2 And right now things are good. So the
3 numbers are easy.

4 MR. REED: Sure.

5 MR. DELFIN: It's whether you can get
6 those numbers right at the time. It's a
7 challenge.

8 DIRECTOR GRUENBERG: There's going to
9 be an essential judgement made by the public
10 agencies. The Fed and the FDIC trying to make a
11 judgment -- oh, sorry.

12 MR. MORGAN: It maybe on. There we
13 go.

14 DIRECTOR GRUENBERG: Under the
15 statute, the Fed and the FDIC have to make a
16 judgement, can the bankruptcy process handle this
17 in an orderly way or not.

18 That's really the threshold. And if
19 not, then we utilize Title II and order a public
20 liquidation authority.

21 If you have any, it seems to me, any
22 significant doubts. Because I think it's fair to

1 say, you only get one shot at this game. Right?

2 MR. MORGAN: You only get one shot.

3 DIRECTOR GRUENBERG: And you've got to
4 have a pretty high level of confidence.

5 MR. COHEN: Ric, to be clear though,
6 on the plans, I have not thought that New HoldCo
7 was actually supposed to access the market for
8 quite some time.

9 It's really the market is at the
10 operating system. Yeah.

11 MS. BARRAGE: So, in recognition of
12 the development of these plans, our guidance, we
13 think another important piece of the puzzle and
14 the patchwork here is the regulatory development.

15 So we'll spend a little bit of time
16 talking about external TLAC, the holding company,
17 and the ISDA, QFC tables, and then we'll complete
18 our discussion with next steps.

19 So, David Wall?

20 MR. WALL: Yeah. So I know we're
21 bumping up against their lunch deadline. So I'll
22 try to be pretty brief.

1 Indeed, and then we've talked about
2 sort of the -- what the agencies have done kind
3 of administratively, or you know, internally up
4 to this point.

5 I think it's also important to give a
6 full context of where the regulatory developments
7 have gone over the last couple of years since we
8 -- since the Committee has met.

9 All right, so we're going to focus on
10 two things. One is the development of the TLAC
11 rule under the -- by the Fed. And I know we've
12 discussed some of that already in some degree.

13 And also then talk about what's going
14 forward under the -- with the Banking Agency's
15 rules on QFC termination and stay and transfer
16 rules.

17 So, first of all, as you're no doubt
18 aware, the Board of Governors on December 2016
19 put out its final rule for total loss absorbing
20 capacity for the G-SIBs. The rule also applies
21 to top carry and U.S. intermediate holding
22 companies of FBOs.

1 But, the ones that are required to
2 establish those holding company under Reg YY,
3 we'll talk about those later on when we get into
4 the international area.

5 But so I'm just going to focus on the
6 U.S. banking, U.S. bank holding companies'
7 requirements under the Rule. The objective
8 basically of the Rule is to provide this kind of
9 capacity in order to improve the resiliency of
10 those covered companies.

11 And to avoid the kind of stress that
12 would lead to insolvency. And if they do enter
13 into insolvency or face material financial
14 distress, to improve their resolvability in that
15 event.

16 To this end, the Rule the TLAC Rule
17 imposes certain requirements under liability
18 structures of the covered DHCs. And covering in
19 real the part for our purposes, two areas.

20 One is the requirement to maintain the
21 loss absorbency capacity through the issuance of
22 eligible capital and long term debt instruments,

1 together with a parallel requirement to meet a
2 certain -- to maintain a certain amount of
3 eligible long term debt.

4 And the second aspect is, as we've
5 talked about, alluded to earlier, the clean
6 holding company requirements.

7 And these are generally limit --
8 prohibit bank holding companies from incurring
9 certain types of liabilities and entering into
10 certain arrangements that we think -- or at least
11 the Federal Reserve thought could exacerbate
12 systemic risk in the case of the firm's distress
13 or failure.

14 I want to go over briefly each of
15 those in turn. With regard to the TLAC and LTD,
16 that is total loss absorbing capacity in long
17 term debt. Keep the acronyms a little bit in
18 check here, requirements for the holding
19 companies.

20 The basic requirement, is that covered
21 bank holding companies have to maintain a minimum
22 ratio of TLAC and a minimum ratio of eligible

1 long term debt in addition to certain buffers
2 that are added onto them.

3 And calculations are a little
4 complicated. But they are based off of both risk
5 weighted assets, and leverage assumptions.

6 But, they -- one of the important
7 points to note here is that there are -- this is
8 a parallel structure. You've got the TLAC
9 instruments that the bank holding company has to
10 issue and maintain.

11 You've also got long term debt. Which
12 is a related but separate requirement. And one
13 might ask why did we end up in that situation?

14 Well, you've got -- you have to have
15 a certain mix that includes long term debt. And
16 that was because there was a thought that
17 imposing a separate long term debt requirement
18 helps to ensure that a firm has loss absorbing
19 capacity in excess of the going concern equity
20 capital.

21 Which debt capacity is not the same
22 risk of depletion before the firm enters into

1 resolution or volatility for that matter. And
2 that will go towards enhancing a successful
3 resolution in the event or in the end, I guess.

4 The TLAC is -- what's eligible for
5 TLAC or what counts for TLAC is Tier One capital
6 and the unpaid principal amount of eligible debt
7 securities. There's a haircut for amounts that
8 are due to be paid within one year.

9 Similarly, the eligible instruments
10 for counting as long term debt consists of the
11 unpaid principal amount of eligible debt
12 securities. In this case they are subject to
13 haircuts for amounts due to be paid within the
14 next two years.

15 The -- for both of these requirements
16 the securities that are eligible have to comply
17 with certain criteria that are designed to make
18 sure that they can be easily marketable.

19 First of all they have to be governed
20 by U.S. or Federal law. They are obviously
21 unsecured. To do so otherwise would reduce your
22 loss absorbency considerably because you have to

1 deal with the collateral offset.

2 The securities also have to be what
3 the Fed call plain vanilla. Which I thought was
4 an interesting term. But, has nothing to do with
5 ice cream. It has to do with the fact that they
6 are limited acceleration rights for this debt.

7 So, the debt should be sticky. It
8 doesn't have features that reduce it as a result
9 of credit events that happen at the bank holding
10 company level. And not convertible to equity.
11 That makes sense.

12 And then there has been a whole debate
13 about whether structured notes would qualify for
14 TLAC or LTD. And in the end, the idea was that
15 structured notes are, since they're bespoke or
16 unique and hard to value, they were going to be
17 restricted from eligibility.

18 And there are some ways in which some
19 of them could be possibly counted. But by in
20 large, they're eliminated from the category.

21 And as was mentioned before, the Rule
22 itself actually requires that bank holding

1 companies publicly disclose a description of the
2 financial consequences to holders of the debt if
3 the covered BHC goes into resolution or
4 bankruptcy.

5 And therefore, I think, we're not
6 relying solely on securities log disclosures to
7 make sure that the market is aware of what the
8 consequences would be. And what -- and where
9 these instruments are positioned within the
10 structure.

11 Full compliance with the law is --
12 with the Rule is required by this January 1.
13 That this January will be regarded as not going
14 to be much of an issue for U.S. bank holding
15 companies, because as their current liability
16 structures are set out. They pretty much meet
17 and actually generally exceed the TLAC
18 requirements by a good margin, so.

19 Now, onto the clean holding company
20 requirements. These again, are part of the --
21 are part of an effort to facilitate an efficient
22 and successful resolution.

1 They're designed basically to prevent
2 or eliminate as that Rule comes into effect, bank
3 holding companies which would be subject to the
4 SPOE action, from being party to transactions
5 that could impede that resolution, increase the
6 risk that the resolution would create some kind
7 of contagion and -- destabilize the financial
8 system by their -- by the fact that they create
9 interconnections with other institutions.

10 The -- more specifically, the covered
11 -- the bank holding companies are prohibited from
12 issuing short term debt, creating set off rights
13 against subsidiaries, entering into QFCs other
14 than credit enhancements with third parties,
15 which are, let me just put it simply, are already
16 accounted for by the ISDA Rule.

17 And -- or and also prohibited from
18 accepting or being -- back the shares of upstream
19 guarantees by the -- by their subsidiaries.

20 I think there is a small, 5 percent
21 aggregate amount of non-contingent liabilities
22 that may exist in the system for, you know, sort

1 of prey predators. And those are sort of
2 accepted from the eligible debt requirement rule,
3 even though they will -- would be pari passu with
4 the -- with that long term debt.

5 But, the --

6 MR. HERRING: David, what's the
7 rationale for having trade creditors involved and
8 come in? It's sort of a -- it's purely financial
9 what kind of -- they don't really have the kinds
10 of regular expenses you would expect.

11 MR. WALL: You know, I think it's
12 really a catch all for them. I mean, there are
13 going to be some -- some services that need to be
14 provided by the holding company.

15 So, I think they have a complete --

16 MR. HERRING: So it's going to be like
17 if you have accounting receivable?

18 MR. WALL: Yeah. You know, paper
19 suppliers, utility companies, those sorts of
20 things can be.

21 MR. HERRING: Okay.

22 MR. WALL: But don't -- so they can be

1 accepted from what would otherwise be a short
2 term debt. To the extent that they had those,
3 you know, those short debt arrangements, they can
4 be accepted from the -- from requirements.

5 So, let me stop there and see if
6 there's -- and I know that was a lot in a short
7 amount of time.

8 But, if there's anything, any other
9 questions or thoughts on the TLAC Rule, or the
10 clean holding company requirements?

11 (No response.)

12 MR. WALL: Okay. If not, let me turn
13 it over to my colleague Ron Crawley to talk about
14 where we are with the ISDA and U.S. stay rules.

15 MR. CRAWLEY: Thanks David. In the
16 next few minutes, in a few minutes, I'm going to
17 quickly discuss the recent ISDA U.S. stay
18 Protocol, which was published in response to
19 banking regulations meant to address this
20 disorderly unwind of qualified financial
21 contracts, which are QFCs, due to early
22 termination.

1 We all know this, we've been
2 discussing this this morning. Historically,
3 counter-parties can rely on safe harbors under
4 the U.S. Bankruptcy Code to terminate certain
5 financial contracts upon the insolvency of a
6 financial entity.

7 The term -- these termination rights
8 can have a destabilizing impact, as we know from
9 the Lehman case.

10 The exercise of cross default rights
11 and Lehman matter resulted in a seizure and
12 liquidation of collateral. I also understand
13 there were substantial losses we all know, and
14 significant outflow of liquidity.

15 As an industry led initiative, the
16 international Swaps and Derivatives Association
17 known as ISDA, consulted with consulting the
18 FDIC, the Federal Reserve, and the OCC along with
19 foreign regulators, established in 2015 the
20 Universal Protocol as a way to begin to address
21 these issues, including too big to fail.

22 In 2017, the U.S. Banking Regulators

1 took an even further step to address too big to
2 fair. Specifically, the FDIC, the Federal
3 Reserve, the OCC issued final rules requiring
4 U.S. G-SIBs, their affiliates, and certain
5 foreign G-SIBs to amend their QFCs to include
6 certain provisions designed to limit the ability
7 of counter-parties to close out these contracts
8 in the case of a G-SIB resolution.

9 In particular, I'll be very quick
10 here, in particular, the QFC stay rules require
11 QFCs of certain G-SIB entities to contain
12 provisions requiring or providing for cross
13 border recognition of U.S. special resolution
14 regimes such as Title II and the FDIA, along with
15 stay and transfer provisions leading to cost
16 defaults arising from the entry of an affiliate
17 of a G-SIB entity into certain insolvency
18 proceedings, in particular, the U.S. Bankruptcy
19 Code.

20 For G-SIB entities to comply with the
21 QFC stay rules, all G-SIB counter-parties,
22 including buy side and smaller sell side market

1 participants, are effectively required to either
2 adhere to the Universal Protocol that was
3 established in 2015, or a newly developed U.S.
4 Protocol.

5 There was also -- there is also an
6 opportunity to comply with the Rule by lateral
7 amendments.

8 In 20 -- I'm sorry, in July 2018, just
9 a few months ago, in response to these rules,
10 ISDA published the 2018 U.S. Protocol after
11 consultation with the FDIC, the Federal Reserve,
12 and the OCC.

13 The U.S. Protocol is a tool really to
14 assist market participants adhere to compliance
15 states required by the QFC stay rules. They -- I
16 want to just mention quickly, there are certain
17 tier compliance states which begin on January 1,
18 2019 under the Rule.

19 It is important to note finally that
20 the U.S. Protocol is offered as an option to
21 address buy side firms' concerns of potential
22 over-compliance via the Universal Protocol. And

1 to incentivize buy side firms' compliance with
2 the QFC stay rules.

3 It is important to note that U.S. G-
4 SIBs have adhered to the U.S. Protocol. And by
5 my count last night looking at ISDA's website, it
6 appears that over three thousand market
7 participants, including the U.S. G-SIBs, have
8 adhered to the protocol. Thank you.

9 MS. BARRAGE: Thank you very much Ron.
10 Earlier I promised I'd bring this group to today.
11 So here we are today. Welcome.

12 What's next? For the U.S. firms,
13 remember the Guidance document we had up there?
14 When it was originally issued in 2016, it was
15 issued publically.

16 This year in July, we issued -- we
17 reissued that Guidance with some additional
18 updates on key areas for public comment.

19 We received public comment from the
20 industry and other players in September. Staffs
21 at the FDIC and the Fed have been reviewing the
22 Guidance.

1 A lot of that Guidance, I have to say
2 was pretty helpful. We are very close to
3 reissuing the final Guidance, having considered
4 those comments, along with an accompanying
5 preamble. So that's to come.

6 The U.S. firms will be filing their
7 next resolution plans in July of next year. So,
8 hopefully they'll be able to use this reissued
9 Guidance in that endeavor.

10 For the foreign banks, as Mike Morgan
11 mentioned, staffs are completing their reviews of
12 those plans. And we expect to have feedback
13 letters for those firms in the short term.

14 And finally, in this era of tailoring,
15 resolution planning and the resolution plan rule
16 will be tailored in the future. Our Chairman has
17 been public about those ongoing efforts. And so
18 that's another upcoming feature of resolution.

19 So, with that, I want to thank
20 everyone on the panel today. And the Committee
21 for your very insightful questions. Ric or Art?

22 MR. REED: Can I ask a question? You

1 know, traditionally banks get into trouble or
2 financial institutions, because of asset
3 problems, which then triggers liquidity and so
4 forth.

5 Have you looked at the risk of an Uber
6 moment? You get a non-financial institution that
7 really disrupts the business of the established
8 players?

9 And the question would go across to
10 all institutions. And so the established players
11 lose the revenue, have the expenses, and become
12 unviable economically. Much like owning a taxi
13 company when Uber comes into the market.

14 But there's a substantial, I think,
15 risk in the financial world. And these changes
16 tend to occur quickly.

17 You know, a new product offering comes
18 in. Gets good acceptance, as Uber did. And the
19 established entities are at severe risk.

20 And I wonder, do any of your models,
21 matching that the nature of the problem is
22 revenue disappears, expenses stay?

1 MR. DELFIN: So, our models aren't
2 based on the cause. We don't know what that
3 would be.

4 But we want to make sure the firms
5 have the capabilities and systems in place to,
6 whatever the cause is, adapt to it, and apply
7 their regulations that way.

8 MR. REED: And so it would say it
9 would crash all institutions.

10 MR. DELFIN: Right, so we can't, or we
11 don't, we work with our supervisory and our
12 colleagues at the Federal Reserve on risks more
13 generally.

14 Our focus here is about --

15 MR. REED: If it happens, what do you
16 do?

17 MR. DELFIN: And making sure that if
18 a firm fails, whatever the cost, we can't adjust
19 the cost. It's -- mortgage backed securities. I
20 can't do anything about mortgage backed
21 securities.

22 But, the exaggeration or the increase

1 in risk that flows from fair, really we're the
2 first, fair to Lehman to the rest of the G-SIBs,
3 we can help mitigate that contagion associated
4 with the cost from resolution.

5 That's the -- that's where we play.
6 Is that hoping whatever the risk is, apply. It
7 applies to the system. It applies to the firm.

8 But it's not made worse by contagion
9 and by disorderly resolution. That's where --
10 that's where this work is.

11 So making sure we don't worry about
12 this.

13 MR. REED: You do worry about those.

14 MR. DELFIN: We worry a great -- I
15 worry about everything.

16 (Laughter.)

17 MR. DELFIN: I'm a professional
18 worrier. But the tool --

19 MR. MORGAN: I can testify to that.

20 (Laughter.)

21 MR. DELFIN: But the tool that I'm
22 applying today, is the resolution and process.

1 And having each of these firms take the steps to
2 and get the results of the backup rule. It's a
3 tool that I'm applying here.

4 I worry about every single little
5 something, unfortunately.

6 MS. BAIR: So yes, so Rick used to
7 work for me. So I can attest to the fact that he
8 was -- and that way we were in a partnership
9 because I worry about everything too.

10 You know, I think though, we talked
11 about this a little bit a zillion years ago when
12 I was involved in that.

13 But I think if it's a competitive
14 instruction, where you've got a new fintechs
15 coming in or whatever, so the service is still
16 being provided to the public. It's just by a
17 different competitor.

18 And so really the objective of this is
19 not to prop up the banks or keep them around if
20 they don't need to be around. It's just to make
21 sure whatever those services that are needed for
22 the public continue.

1 So that might -- I think that scenario
2 is a little bit different from, you know, the
3 kind of meltdown we had in 2008. But yeah, the
4 corporate data only knows who, wherever it might
5 come.

6 I just wanted to make a little
7 advertisement for the Systemic Risk Council. We
8 have a couple of our members here. But we --

9 CHAIRMAN McWILLIAMS: We don't like
10 competition.

11 (Laughter.)

12 MS. BAIR: Okay. Sorry about that.
13 So, we filed a comment -- so as you all know the
14 Fed and the OCC have proposed some significant
15 reductions to the largest FDIC insured banks.
16 About 121 billion of capital.

17 But it relates to if they change the
18 enhanced supplementary leverage ratio. So,
19 that's tied to TLAC. So that will reduce TLAC
20 too, I assume if that happens. And I don't know
21 if that happens, and I hope it doesn't happen.

22 The one point -- so, I'll just refer

1 people to the SRC comment letter on that. I
2 think it takes away the well why we think that's
3 a bad idea.

4 But also to underline the point, back
5 to the internal TLAC comment earlier, if the Fed
6 and OCC do that, and gosh, I hope they really
7 don't do that, because that's going to increase
8 the risk of a large FDIC insured bank failing.

9 But if they do, it's going to make it
10 even more important to have -- so you're going to
11 release that capital back up. And then you're
12 going to have to bring it back down if there's a
13 distress situation.

14 So to make sure you have rock solid,
15 legally enforceable commitments to get that
16 capital back into the insured banks. And again,
17 I would -- if you haven't read our SRC letter, I
18 think I sent it to you all on that.

19 I think this is extremely important.
20 And I wanted to make clear that those two issues
21 are related.

22 MS. ADMATI: Can I make another

1 comment? Because I see that the afternoon is on
2 Title II. And this is still a Title I comment.

3 So, we're trying to stop too big to
4 fail here by making fail possible. But, you
5 know, fail is sort of the pound of cure.

6 And so going back to Sheila's comment
7 versus the few ounces of prevention that we have.
8 And obviously, to the extent that it's part of
9 resolution and failure, it's not going to be, you
10 know, pretty to convert and all this other stuff.

11 So, the question I've been asking, and
12 last week Ron (phonetic) asked the same question,
13 why isn't TLAC, TLAC? Why since you have to
14 force them to issue it anyway, why is it not the
15 gold-plated loss absorption that Sheila was
16 mentioning?

17 We're talking not any regulatory
18 capital, but equity capital. So, you know, I
19 told somebody who is not over here from the Vice
20 -- your Vice Chair this year, this year, 2018 at
21 Stanford of saying too big to fail list stays
22 here. And then you don't solve the problems of

1 too much debt with more debt.

2 So, he didn't like TLAC as a solution
3 to resiliency, stability. And I think that
4 there's still a challenge of justifying that.

5 MS. CHAPMAN: Yeah. And I think, you
6 know, to the point you made earlier in that is
7 the question is well, what if this isn't one off?
8 Right? What if the, you know, --

9 (Simultaneous speaking)

10 MS. CHAPMAN: And that leads to the
11 question about, you know, the adequacy of the
12 post crisis reforms put into place.

13 If we feel confident that the system
14 is a lot more resilient now, then there should --
15 there will be a couple of these credit vendors
16 probably will get into economic distress, because
17 there are always a couple who don't manage well.

18 But if we've not done as good a job as
19 we should with post crisis reforms, then you're
20 going to have across the board thing. And you
21 won't have to have bail outs again.

22 Probably the Fed this time. Not

1 taxpayers. And that's not a happy situation for
2 the Fed. But, I think that's -- it's inevitable.

3 You can't take all eight into a Title
4 II or a Title I. It just can't happen.

5 MR. HERRING: I'd like to piggyback on
6 John's comment and I think Anat's really as well.
7 And that is that there may be some entities that
8 are not in our, you know, but that do become
9 systemic --

10 MS. BAIR: Well, that's also great and
11 on and on, right.

12 MR. HERRING: And we have sort of
13 nothing set up to deal with them. In principal
14 FSAC was supposed to be active in this area.

15 But, --

16 MS. BAIR: They don't want to anymore.

17 MR. HERRING: Just based on what I can
18 see of what they're reporting, it's been pretty
19 low level activity. And they're certainly not
20 aggressive in trying to --

21 MS. BAIR: No, because they dropped.
22 They keep dropping.

1 MR. HERRING: Yeah, well they've
2 dropped a number of people that are designated.
3 But, I think it is an important problem, not in
4 protecting the profitability of the banking
5 system, but in trying to make sure that we have
6 tools to deal with systemic risks wherever it
7 ends up in the system.

8 And it -- I mean, I'm worried that we
9 didn't really address that as we got right there.

10 MS. BAIR: Well that's funny. I think
11 that just gets back, you know, where the post
12 crisis reform is adequate.

13 And Title I was meant to address that.
14 And it's -- if there are truly no systemic
15 entities outside of those eight, then it's fine
16 we don't have any Title I designation.

17 But who in this panel is confident
18 that there is truly nobody that's systemic
19 outside of those -- those few --

20 MR. HERRING: Well, I would like to
21 inquire about the mechanism we have for making
22 that decision.

1 MS. BAIR: Yeah.

2 MR. HERRING: I'm not sure that it's
3 actively enforced.

4 MR. DELFIN: Wow. Really. I hope you
5 found that we've made substantial progress on it.

6 MS. BAIR: Yes.

7 MR. DELFIN: A number of these things
8 that were central the previous financial crisis.
9 I do think we've walked through a lot of that
10 today.

11 And that maybe a different --

12 CHAIRMAN McWILLIAMS: Oh good. Lunch
13 people.

14 (Laughter.)

15 (Whereupon, the above-entitled matter
16 went off the record at 12:06 p.m. and resumed at
17 1:30 p.m.)

18 CHAIRMAN McWILLIAMS: Hello, everybody.
19 We're going to make the trains run on time. So
20 it's our Part 2 of today which is appropriately
21 Title II. Given how long we spent on Title I, I
22 anticipate this is going to be another very

1 engaging and deep conversation because now we --
2 if some of the stuff in Title I has not been
3 tested, stuff in Title II definitely has not been
4 tested, so I'm dying to hear what you have to say
5 about it. Without further ado, please.

6 MR. MURTON: Okay, great. Yes, we're
7 going to talk about the Orderly Liquidation
8 Authority which has been mentioned as the back
9 stop that Dodd-Frank provided in the event that
10 bankruptcy would be judged to have unacceptable
11 systemic consequences.

12 Since this Committee met last time,
13 the U.S. Treasury issued a report on Orderly
14 Liquidation Authority and we'll touch on that a
15 little bit. But mainly I think we'll talk about
16 the work that we've done to prepare for the
17 eventuality that we would actually have to do a
18 Title II resolution. So we'll hear about that
19 work and we welcome your reaction to that and
20 feedback in the work that we've done.

21 After that session, we'll go to the
22 international segment of it, and as was mentioned

1 before, global cooperation is key to the success
2 of one of these and we'll talk about the work has
3 been done both bilaterally with the other key
4 jurisdictions and also on a multilateral basis.

5 So with both of these efforts, the
6 Title II and the international, we'd like to find
7 ways to be more transparent about what we've
8 done. You've heard a lot on the Title I front,
9 the progress that we've made in transparency
10 there and we're thinking about ways we can do
11 more of that on the Title II space as well.

12 So with that, let me introduce the
13 panel. Rick and I are joined by Herb Held, Ryan
14 Tetrick, Betsy Falloon, and Pen Starke. And
15 we'll start by turning it over to Herb.

16 MR. HELD: So one of the biggest helps
17 for working on Title II has been the advances
18 that have taken place in Title I. And all the
19 Title I planning has put us in a much stronger
20 position if we are ever called upon to exercise
21 our Title II authority.

22 We hark back to the early years of

1 this Committee. We came here and presented our
2 SPOE strategy and that was SIFI fails, all the
3 assets go to the bridge financial institution,
4 liability is left behind. We do evaluation of
5 the firm at that point, evaluate and we do claims
6 for equity exchange, hopefully exit six to nine
7 months, I think we might have said in the first
8 one, pretty optimistic.

9 One of the members of the Committee at
10 some point -- one who is not here -- said I don't
11 think that's a liquidation. In our next meeting
12 of the Committee, we instituted -- we showed you
13 a different schematic where we put into the
14 bridge and you have optionality on what happens
15 to the various operating entities under the
16 bridge, and an optionality that maybe the broker
17 dealer has wound down, sell off the asset
18 manager, possibly break up the bank.

19 And so after that, the firms all moved
20 to SPOE and they developed optionality within
21 their plans in a much more detailed way which
22 feeds back into our planning, giving us many more

1 options that have been worked out in detail by
2 the firms on possible exit strategies for a
3 bridge financial institution.

4 What will actually happen is really
5 going to be dictated by the economy and the
6 problems in the firm at the time. But it gives
7 our board the option to choose which method works
8 best at that time.

9 We've done a lot of work trying to
10 come up with how you implement a Title II
11 resolution, so there's here's the strategy and
12 you figure out all the steps necessary to
13 implement that strategy. I think we talked about
14 that at our last Advisory Committee, and then how
15 you do each one of those steps, all of the
16 procedures, all of the people involved, all the
17 legal documents. And we've done a lot of testing
18 of that work with our board and inter-agency.

19 And then on transparency, we've done
20 work in the space with other regulators and
21 foreign regulators. We've not done a great deal
22 in outreach other than chairman speeches on what

1 we would do in detail in a resolution.

2 So OLA really builds on our long-
3 standing tradition here at the FDIC and it was
4 really written from the FDI Act. And the bridge
5 financial company is really just our old bridge
6 bank that we've used a number of times blown up
7 to the largest possible size it could be.

8 It gives us tools to implement an
9 orderly resolution for a failing firm in
10 scenarios where the bankruptcy just didn't work
11 out or it doesn't appear it will work out. The
12 statute and the Treasury report that Art
13 mentioned just a minute ago does reiterate that
14 bankruptcy is the first resort in any resolution
15 and that there's a high bar to actually
16 implementing a Title II.

17 One of the key considerations is that
18 failure within bankruptcy would have caused
19 systemic risk to the country. And pretty much
20 everybody on this side of the table and I'm sure
21 our board members would highly prefer a
22 bankruptcy to a Title II.

1 CHAIRMAN McWILLIAMS: Funny that you
2 say that.

3 (Laughter.)

4 MR. HELD: Title II, just because the
5 bankruptcy hasn't worked means that something is
6 really horribly wrong both with the firm and that
7 their plan isn't going to work. So we're handed
8 the worst possible situation to deal with.

9 What we've seen is that the work in
10 Title I, I've always wanted to do a slidometer
11 and that my percentage of scenarios where Title I
12 would work or the opposite end of it is where
13 Title II is necessary. So if you look at that
14 meter and say 2011, we're pretty much at zero on
15 Title I working. The plans really didn't address
16 resolving the firms. And I think that that meter
17 has moved dramatically over.

18 There are still scenarios where Title
19 II is going to be necessary and I think that you
20 never get to 100 percent. It's somewhere less
21 than that. So we need to engineer a plan for a
22 Title II resolution. As the plans become more

1 and more mature and robust, that possibility
2 becomes less.

3 MR. KOHN: What indicators would you
4 be looking at to see whether you should shift
5 from Title I to Title II? What would be the --
6 liquidity would be one?

7 MR. HELD: I think liquidity is the
8 key.

9 MR. KOHN: Yes.

10 MR. HELD: The firms have developed
11 the measures of we need so much liquidity and we
12 need so much liquidity when we go into
13 bankruptcy. If you're far beyond that number, if
14 the firm has not acted, it's an indication that
15 bankruptcy is not going to work. If there are
16 measures that say we need \$100 billion in
17 liquidity to go into bankruptcy and you're at 50
18 --

19 MR. KOHN: I guess the question would
20 be how did that situation arise and would the
21 FDIC and/or the Fed intervene -- when it got to
22 99?

1 MS. ADMATI: Well, it says that the
2 supervision regulation is vague because these are
3 all bank holding companies. They do have access
4 to liquidity supports. So in a scenario where
5 it's really a liquidity problem and not a
6 solvency problem, then so now, you know, we can't
7 have it both ways.

8 If the regulation has failed to
9 prevent insolvency, then we're insolvent. Now we
10 have a hole somewhere.

11 MR. DELFIN: If we go on a time line
12 and we just talked about Title I. We've talked
13 about the models and the methodologies. We've
14 talked about the governance mechanism, the
15 triggers. You would imagine a firm suffered some
16 sort of stress and the first state is obviously
17 bankruptcy, so the firm would have its models.
18 They'd be assessing their liquidity needs. Is
19 there liquidity availability, their capital
20 needs, their capital availability, and their
21 governance triggers?

22 And we don't know the scenarios.

1 Again, that's part of what this is all about.
2 But if for some reason there was a shortfall in
3 the amount of liquidity necessary, that is a
4 place where again policy makers would make
5 choices and one of those choices might be well,
6 what does Title II add that bankruptcy doesn't
7 have? And liquidity would be one of those
8 things.

9 That being said, if the models work,
10 if the liquidity is available, then that's much
11 easier to think about bankruptcy. I think those
12 are the kinds of trade-offs.

13 You also don't know, we get asked
14 sometimes well, what if you're dealing with two
15 or three at the same time? You know, if I were a
16 policy maker and the first one maybe bankruptcy
17 was going pretty well, and then another one comes
18 along or a third, at this point maybe, one thinks
19 about a different choice. I want to give maximum
20 optionality to the folks that would be making
21 those calls at the time and then do what I'm
22 told.

1 (Laughter.)

2 MS. BAIR: What about if the
3 regulators, the foreign regulators are telling
4 you, we're going to ring the fence if it goes
5 into bankruptcy? Would that be a factor? I mean
6 I don't think that should be in the realm of
7 possibility.

8 MR. DELFIN: I think it's safe to say,
9 obviously, would prefer Title II to Title I.

10 MS. BAIR: Right.

11 MR. DELFIN: And so if it gave them
12 the keys, you know which key they choose. They
13 don't get a key.

14 MS. BAIR: Right.

15 MR. DELFIN: So what we've tried to do
16 in Title I is reduce the probability of that
17 happening.

18 MS. BAIR: Yes.

19 MR. DELFIN: And then the impact if it
20 did happen so that we have choices.

21 MS. BAIR: But they did have the keys
22 on that. They could ring the fence in their

1 jurisdiction.

2 MR. DELFIN: They could, but what ring
3 fencing means --

4 MS. BAIR: Yes?

5 MR. DELFIN: Is different. So if the
6 operating company pursuant to Title I has capital
7 and liquidity, yes, they could put it into
8 resolution, but on what basis? It has recap. It
9 has liquidity.

10 MS. BAIR: So that will depend on
11 their perception of the credibility of the Title
12 I process.

13 MR. DELFIN: True.

14 MS. BAIR: Which may be different from
15 yours. So I'm just saying if that's their
16 perception, and you think you can survive Title
17 I, does that push you into Title II? How would
18 you handle that?

19 I mean because a ring fenced bank with
20 a lot of non-U.S. operations, a substantial ring
21 fence could really destroy a lot of value very
22 quickly.

1 MR. DELFIN: Sure. But you would --
2 I would think in incentive terms, the foreign
3 regulator also doesn't want to destroy value.

4 MS. BAIR: Right.

5 MR. DELFIN: And so --

6 MS. BAIR: They want to protect their
7 home --

8 MR. DELFIN: Of course. But if they
9 have in their jurisdiction a material entity with
10 capital and liquidity --

11 MS. BAIR: Right.

12 MR. DELFIN: -- and a functioning
13 resolution regime.

14 MS. BAIR: Right.

15 MR. DELFIN: Would they want to spike
16 it? That is, with a premature ring fence? And
17 then what does ring fencing mean? There's hard
18 ring fencing and soft ring fencing.

19 MS. BAIR: Right.

20 MR. DELFIN: You might reduce the
21 amount of flow back and if our regime isn't
22 reliant on that flow which is what we're trying

1 to build, a regime that doesn't rely on the flow
2 back, then we're in some way protected from that
3 risk. But obviously --

4 MS. BAIR: But they're going to -- if
5 they've got a lot of capital liquidity in their
6 home jurisdiction that gives them an added
7 incentive to ring fence, doesn't it? They may be
8 worried about you trying to pull it back or the
9 Bankruptcy Court trying to pull it back. You
10 don't think that's why they do it in the first
11 place? I think you could argue that both ways.

12 MR. DELFIN: You could. And part of
13 the work we're doing and we'll talk about
14 internationally, is to make sure that all
15 jurisdictions understand single point of entry
16 whether they're in Title I or Title II, whether
17 folks are comforted by the steps that are being
18 taken, the firm's work with foreign jurisdictions
19 on their Title I plans, talk about them with
20 them, to mitigate the likelihood of that
21 happening, can't guarantee it, but that's the way
22 we've tried to approach it is reducing the

1 incentive to doing ring fencing and then reducing
2 the impact were it to happen. But if it did,
3 that's a risk.

4 MR. TETRICK: I think just to connect
5 back to the morning conversation, too, right, one
6 of the assumptions that they have to build into
7 their modeling tools is that they don't have
8 these inter-group inter-affiliate flows,
9 particularly across borders. So in bankruptcy,
10 that sort of soft ring fencing, hopefully,
11 they've built a machine that can deal with that.

12 CHAIRMAN McWILLIAMS: Marty, you have
13 something?

14 DIRECTOR GRUENBERG: I was simply
15 going to say I think it's a fair question to
16 raise. It's something we'd have to deal with. I
17 would assume one, there would be on-going
18 collaboration between the key jurisdictions. And
19 if our agencies, it's a big judgment call to
20 believe that the bankruptcy process can handle
21 the failure in an orderly way, that there's
22 sufficient capital and liquidity to meet the

1 needs with a sufficiently high level of
2 probability. This is not -- I don't view this as
3 something you allow for a close call. You have
4 to have a high degree of confidence to consider
5 this. As we said, you only get one shot. And
6 if, hypothetically, that's where our agencies
7 were with a substantial degree of confidence and
8 we were engaging in consultations with our
9 counterparts that said we think this will work
10 for the following reasons and we think this could
11 go forward with stability for our system and
12 yours, I think that's something, based on my
13 experience, the foreign jurisdictions would take
14 pretty seriously. I don't think they're going to
15 at this stage of the game, reflexively ring fence
16 which is not to say it wouldn't happen or that
17 it's not a consideration. We would have to do a
18 lot of work across border. I think that's the
19 scenario.

20 I don't think they would do it
21 reflexively, but it's fair to say they may also
22 have a higher level of skepticism in regard to

1 bankruptcy as well because it's not the way their
2 systems would work. So it would have to be an
3 on-going engagement to see if we could get to the
4 same place. And the bottom line is we really --
5 given some of the substantial operations in both
6 jurisdictions, we've got to get to the same
7 place. That's got to be done.

8 MR. COHEN: Could I suggest this is a
9 question that it is not in anybody's interest to
10 answer?

11 (Laughter.)

12 And the reason is, it's not against
13 transparency. It's because I don't think anybody
14 can sit here and know all the factors and all the
15 circumstances at the time as to which are going
16 to weigh heavily and which will lead to the
17 conclusion between Title I and Title II. So the
18 more you start to secure the criteria, the more
19 you're going to be boxed in when there may be
20 criteria you have no idea today are going to be
21 relevant.

22 MR. HERRING: I certainly agree with

1 that position, but I think it's also true that
2 the people who are opposed to Title II and there
3 are a number of those, you know, worry about the
4 fact that risk aversion on the part of policy
5 makers which is entirely understandable, will
6 mean that bankruptcy really is never tried, that
7 when you're at the brink, nobody wants to take
8 the step into the unknown if you think you have a
9 fallback position.

10 To me, part of the problem is that we
11 haven't yet figured out how you apply liquidity
12 under bankruptcy. And so there might be a
13 tendency to go to Title II simply because we
14 don't know how to solve the liquidity conundrum
15 in a bankruptcy filing. There's no amount of DIP
16 financing that could possibly do it. And so, we
17 really need to address that under Title I, it
18 strikes me, to make it much less likely that
19 we'll ever go to Title II. Otherwise, it's hard
20 for me to believe that we wouldn't simply because
21 we just don't know. It might happen.

22 MR. COHEN: And I agree. That's a

1 very valid point, but then you can go on the
2 other side, and the Senator said it, there's
3 going to be a lot of politics at this time, and
4 so maybe you have a Treasury Department and
5 administration which just doesn't want to take
6 the blame for this, so they say try bankruptcy.
7 We're not going to do -- to put it -- it's just
8 so hard to figure out.

9 DIRECTOR GRUENBERG: If you're dealing
10 with an institution of this magnitude, I don't
11 think there's anywhere to hide meaning if there's
12 a bad outcome, whether it happens under
13 bankruptcy or Title II, the responsible
14 authorities are going to have some accountability
15 here.

16 I think it becomes a judgment call as
17 to which --

18 MR. COHEN: At the time.

19 DIRECTOR GRUENBERG: Yes.

20 MR. HERRING: That's why some
21 political people will want to remove the option
22 because they think they know exactly how that

1 will play out at the time.

2 MR. HELD: That always creates the
3 third option of if you remove OLA, then you bring
4 back bailout.

5 CHAIRMAN McWILLIAMS: Then they say
6 it's the courage to act.

7 MR. FISHER: The question I brought up
8 before lunch is relevant here which is we've
9 officially made two promises to ourselves
10 collectively. We're never going to bailout
11 again, never taxpayers. And we're never going to
12 run an entity like Lehman with a set of fragile
13 liabilities through bankruptcy. The systemic
14 consequences of doing that are pretty bad.

15 Well, the choice here just described
16 is exactly this problem. The confidence with
17 which you are choosing to let it go through
18 bankruptcy and we'll see, it isn't just the
19 political awkwardness of that. It's the real
20 uncertainty question about whether that's going
21 to work, whether collapsing maturity
22 transformation into a bankruptcy process is

1 something the world is going to let you get away
2 with, I mean the rest of the market or whether
3 you're going to be forced into Title II. That's
4 the substance of the choice, put all politics
5 aside, that has to be made at the moment you're
6 describing.

7 MR. DELFIN: And what we've tried to
8 do and the statute clearly has bankruptcy as the
9 first option and increase the range of scenarios
10 where bankruptcy can work and certainly the
11 Lehman world is radically different now than it
12 was then because of the Title I planning and the
13 work we've done.

14 MR. FISHER: It's still the same
15 threshold. That's the choice. Which path are
16 you going down, one of risking another Lehman
17 chaos by going to bankruptcy or are you going to
18 go to Title II and try to think you can do a
19 better job of preventing that.

20 MR. TETRICK: I definitely don't want
21 to answer the question that nobody should answer
22 --

1 (Laughter.)

2 -- but I do want to bring in another
3 element to the conversation on risk aversion
4 pushing you to Title II. Just acknowledge that
5 the Treasury report, one of the ways that they
6 looked at this was that the presence of Title II
7 could give you more confidence to allow
8 bankruptcy to work, that is knowing that there's
9 a back stop would allow you to try your first
10 option of more circumstances than you otherwise
11 would.

12 MR. DELFIN: So is it envisioned that
13 you'd start with a bankruptcy procedure and three
14 days in you'd say oh, this isn't working --

15 MR. HELD: The law allows that, but
16 pulling a firm out of bankruptcy after the first
17 --

18 MS. CHAPMAN: That's not even a thing.

19 (Laughter.)

20 MR. DELFIN: But no, I think the
21 argument that the National Bankruptcy Conference
22 made was that when you're in runway, certainly

1 right now runway should be different than the
2 Lehman runway because there is TLAC. There is an
3 opportunity to recap. There is these mechanisms
4 in place which should reduce the likelihood of
5 large scale runs, because the material entity
6 should be recapitalized. That's step one.

7 But second is the argument that if OLA
8 is available, if it goes sideways, then that
9 reduces the desire to run further because you
10 know that there is an option necessary. That's
11 not to say try it out by going to one and then
12 pull out with the other, but just existence of
13 that backstop gives one comfort to try SPOE and
14 bankruptcy. That was the argument the Bankruptcy
15 Conference made.

16 MS. BAIR: But you probably have a
17 pretty good sense of whether you couldn't arrange
18 debt financing in Title I before you have to make
19 a decision?

20 MR. DELFIN: So the governance
21 mechanisms are designed to give firms time to
22 make the decision.

1 MS. BAIR: So you could have a market
2 test. If you can get market funding, then
3 bankruptcy would probably work. If you can't,
4 then you're probably going to be stuck with Title
5 II. It's ironic, there's going to be the
6 distressed institutions to deal with in Title II.
7 It's just as simple as that.

8 MR. HERRING: It all comes down to
9 trying to figure out if you can have enough
10 liquidity under bankruptcy and we don't really
11 have a very good answer to that. The Fed claims
12 that it can't do extraordinary funding to this
13 new institution, even though it's pristine by
14 design. You can't really get the orderly
15 liquidation facility unless you've got Title II,
16 so once you commit to bankruptcy, you're kind of
17 stuck.

18 MR. DELFIN: But stuck if the firm has
19 the liquidity --

20 MR. HERRING: Yes, yes, yes. But
21 that's the big uncertainty that I think will make
22 it very difficult.

1 MR. DELFIN: Getting confidence in
2 those numbers I think is the key.

3 MS. BAIR: Which is why John is right,
4 doubly.

5 (Laughter.)

6 MR. STERN: This is a probability game
7 and you want to make the probability darn high
8 that bankruptcy is going to succeed. In some
9 sense, that's what a lot of this is about.

10 MS. ADMATI: Can I say something? So
11 the Senator was telling us about a particular
12 bill that he's championing and I was referring to
13 his testimony which I just read on the way here,
14 so the testimony says for macro and again I'm not
15 a bankruptcy expert, so I'm looking at -- and it
16 says that this bill, this bill called S.1841 is
17 not -- the bill's title to provide for the
18 liquidation is misleading. There's no direct
19 liquidation mechanism. It says this will not
20 establish a robust mechanism for bankruptcy. A
21 robust bankruptcy for too big to fail bank that's
22 viable is not on the policy agenda and he wants

1 to call it -- a more accurate title would be a
2 bill to amend Title 11 to provide a narrow and
3 limited special purpose recapitalization. So
4 it's a two-day recapitalization and it emerges
5 with capital debt that is only the conversion of
6 TLACs to equity and that's all it's doing as
7 opposed to like the whole bankruptcy.

8 CHAIRMAN McWILLIAMS: If I can just
9 ask that we not -- I want to make sure we focus
10 on the existing tools, not prospective or
11 possible tools. The framework we have is you
12 can't pull a company out of bankruptcy. It's not
13 a thing.

14 (Laughter.)

15 And Title II is the law of the land,
16 so let's just work with those and bankruptcy, as
17 we know it, is what it is.

18 MR. STARKE: Well, you can't pull a
19 thing out of bankruptcy. Title II provides that
20 you can pull a thing out of bankruptcy. So
21 factually, maybe that -- right, I understand, but
22 the law says so.

1 (Simultaneous speaking.)

2 MR. HELD: The law provides for it,
3 but it would be such a horrible solution.

4 MS. CHAPMAN: That's my point.

5 CHAIRMAN McWILLIAMS: All right,
6 please proceed.

7 MR. HELD: So OLA provides some clear
8 restrictions on our operations that losses are
9 going to be borne by the shareholders and
10 creditors and now we have TLAC and LTD
11 requirements that require that those be there at
12 the time of resolution. Culpable management is
13 removed and their compensation is clawed back,
14 and that funding is available on a limited and
15 secure basis and the firms would have to pay a
16 premium rate, probably akin to DIP financing.

17 And there's an absolute prohibition
18 against the cost being borne by the taxpayers so
19 that the industry, if all else fails, the
20 industry would have to bear the cost.

21 In the Treasury Report, there was a
22 few things that were mentioned that are within

1 the -- our purview that would not require
2 legislation and we kind of welcome these. One
3 was to finalize the SPOE notice that we issued in
4 2013. Lots has changed since 2013. Firms have
5 changed. Lots of regulations in place. We did
6 get comments back then and we're considering
7 that.

8 Disparate treatment. In 2011, we
9 issued our claims rule and it singled out short-
10 term debt of less than one year at origination as
11 possibly being preferred, really was targeted at
12 commercial paper issued by the firms that was
13 outstanding at that time and was the cause of
14 major problems during the crisis. It doesn't
15 exist anymore in our firms and that's an area
16 where we could work to change our reg.

17 And then the third area was on
18 protecting the OLF to ensure that our advances
19 from the OLF are secured in a short term as
20 possible and that we try to use guarantees to
21 limit the OLF's cash needs and then figuring out
22 what that premium interest rate would be and what

1 the guarantee fee would be.

2 MR. DELFIN: But maybe just to flag
3 overall the Treasury Report looked at bankruptcy
4 and OLA and also suggested that we should improve
5 the range of scenarios where bankruptcy is
6 available. And so they also highlighted some
7 recommendations for Congress to improve
8 bankruptcy. So those sort of work together, I
9 think, with a lot of what we've said today.

10 MS. CHAPMAN: And they were convinced
11 that the way OLF is structured, it would be
12 ultimately repayable. It would not put -- it
13 would be budget neutral. It would not put tax
14 dollars at risk, given robust planning and the
15 SPOE structure, and the implementation of the
16 stay on QFC termination. So all those things
17 combined makes OLF money safe.

18 CHAIRMAN McWILLIAMS: You just made
19 everybody be very silent.

20 (Laughter.)

21 MR. TETRICK: So I'll pick up from
22 here. I won't spend a lot of time on Slide 5,

1 just to again do a little bit of time travel.
2 These are the five sort of core obstacles to
3 resolution planning generally that we put forward
4 to the firms in our 2013 Title I guidance.

5 And I think one of the things we want
6 to emphasize here is that these obstacles we
7 found that they're universal, whether we're
8 thinking about the issues that the firms need to
9 solve in bankruptcy, the things that we need to
10 solve in our Title II planning and in fact, when
11 we're working with foreign regimes, we're all
12 working with a slightly different tool set trying
13 to solve basically the same problems.

14 And on the right hand side, a lot of
15 the things that have been done, we've talked
16 about today in one form or another, either
17 regulatory developments or Title I planning
18 developments that have addressed a lot of these
19 obstacles.

20 I think international engagement,
21 we're going to spend a little bit more time on,
22 including on the next slide, so I'll come back to

1 that, but just to acknowledge that we've made a
2 lot of progress on these sort of core fundamental
3 challenges.

4 And what I want to spend a little bit
5 more time on on the next slide is talking about
6 going into a little bit more depth on the
7 operational planning that we've done to be
8 prepared to execute this authority should we need
9 to do so.

10 So the graphic that you've got here
11 represents the systemic resolution framework that
12 we've developed to exercise this authority. The
13 top two layers are the generic part of the
14 framework that apply to any institution and the
15 bottom layers the firm-specific planning that
16 we've done.

17 And so at the top level we have the
18 framework that we've built. It's designed to be
19 -- we've identified the core steps just in
20 responding to the heightened stress in an
21 institution and then moving through the process
22 to prepare for resolution, getting into

1 resolution through resolution weekend and
2 executing the authority. Those core steps would
3 apply just as a function of using the Title 2
4 authority to any type of firm and in a variety of
5 scenarios.

6 On the right side of the pyramid, some
7 of the things that we've done around that sort of
8 top level framework are exercises at really the
9 principal level to establish how this process
10 would work. So around the time of the SRAC, we
11 were between two internal FDIC operational
12 exercises. We spent a full day with the FDIC
13 Board, division directors across the corporation
14 going through how each of these steps would
15 operate. And the real goal of those two
16 exercises was to establish this operational
17 framework, did we have the right steps? Did we
18 know who was responsible for carrying it out?
19 What the interaction points would be with other
20 authorities, both domestically and abroad.

21 And then, in addition to the internal
22 FDIC work that we've done, we've also held a

1 number of -- a series of principal level inter-
2 agency and cross-border exercises. So we held
3 the first of those in 2012, just domestically.
4 That was really about how the key turning process
5 would work between agencies and how the decision
6 might be made to get into a Title II resolution
7 or evaluating other options and how we expect
8 that interaction to work at the principal level.

9 And then starting in 2014, we held a
10 cross border principal level exercise with
11 authorities in the United Kingdom where we
12 considered a resolution of a systemic firm under
13 our authorities in the U.S., one of their firms
14 under their authorities in the U.K. You know,
15 those exercises are useful because there's some
16 reciprocity. We're thinking about it both, both
17 of us in those jurisdictions from a home and host
18 perspective. And so, everybody knows that they
19 need to potentially give a little bit and get a
20 lot in terms of how the coordination would work.

21 In 2016, we extended that principal-
22 level exercise to include authorities in the

1 European Banking Union and had a similar sort of
2 exercise adding a third G-SIB, hopefully, only
3 doing one at a time in one jurisdiction, not
4 ours.

5 (Laughter.)

6 And then that's led to an on-going
7 work program and we continue to have engagement
8 including at the principal level and expect to
9 conduct another further exercise where we're
10 really exploring the decisions that principals
11 would need to make at the time that they're
12 responding to one of these firm's failing and
13 setting, to the extent we can, some expectations
14 for how we're going to engage what we're going to
15 permit in terms of information flow and what -- I
16 think importantly what the expectations are on
17 the part of host authorities to support a home
18 authority resolution.

19 Moving down a layer on the pyramid are
20 the still generic tools, but supporting the broad
21 framework, all the different sort of staff level
22 operational tools you need to execute this

1 process, so there are a number of legal documents
2 that are specified and the law that we would need
3 to complete either internally or in coordination
4 with other agencies, for instance, to access the
5 order of liquidation fund or just establish a
6 bridge financial company.

7 There's also just sort of staff level
8 procedures. How do we estimate funding needs?
9 How do we coordinate with a firm to deliver
10 communications upon entering to resolution? So
11 going across all those different functional
12 areas, establishing the standing set of documents
13 and the procedures to go with them.

14 Around that layer, we have done
15 exercises in a number of different venues. So
16 just recently, last month, we did an internal
17 staff level FDIC exercise on all, what I call the
18 back office functions of Title II, how do you
19 form a bridge, claims administration, actually
20 going through nuts and bolts in terms of how do
21 you conduct these processes, and looking for
22 gaps, reviewing how they work.

1 Earlier in the year, we conducted an
2 inter-agency staff level exercise on the parts of
3 Title II that would require inter-agency
4 interaction, so the key --

5 MR. REED: Does Treasury determine how
6 much liquidity you can get or do you determine
7 that?

8 MR. TETRICK: So there's two parts to
9 it. So we need to work with Treasury to
10 determine the amount of liquidity that's
11 available. There's statutory limits that are
12 set, so there's a maximum obligation limit that's
13 set in the statute. It's limited by the assets
14 of the firm. So that's straightforward,
15 relatively well defined.

16 We've issued a joint rule with
17 Treasury on how we would come to that number in
18 terms of what the borrowing capacity, at least
19 the borrowing limit would be. But then the
20 access to the order of liquidation fund is really
21 governed by two documents that we need to agree
22 to with Treasury. So there's an order of

1 liquidation plan and a mandatory repayment plan
2 and those, we'd work with Treasury to demonstrate
3 that how the borrowing would be repaid, broadly
4 over what time frame.

5 MR. REED: You'd do the work, but they
6 make the decision.

7 MR. TETRICK: We work together.

8 (Laughter.)

9 MR. REED: Over the weekend.

10 MR. HELD: We work with them now. As
11 Ryan pointed out, we do a number of exercises
12 with Treasury and other agencies in order to make
13 sure that people understand the process and the
14 protocols, but sure over the weekend --

15 MR. REED: When you'd have to decide
16 how much money you had.

17 MR. TETRICK: We all hope that the
18 need for OLF is not there and if it is, it's
19 limited and we want to find ways to --

20 MR. REED: There's got to be enough
21 convince the market that --

22 MR. TETRICK: Absolutely.

1 MR. BODSON: Is there a draw-down
2 schedule? Can you draw it down 100 percent from
3 day one? I thought there was a step in which I
4 thought was contrary to fire sale concerns.

5 MR. HELD: The law says we can have
6 access to ten percent of the assets, consolidated
7 assets of the firm based on their financial
8 statements and then if you go above that, you
9 have to do a valuation and you get up to 90
10 percent of the value of the assets.

11 MR. BODSON: But can you get that 90
12 percent on day one I guess is my question?

13 MR. HELD: Well, you can get ten
14 percent on day one.

15 (Simultaneous speaking.)

16 MR. TETRICK: We can do the higher
17 valuation and the run up to resolution, be
18 prepared to access the higher amount day one.
19 And in fact, just in terms of preparedness, more
20 to thinking about operational readiness, that's
21 what we expect to be ready to do, whether or not
22 we actually need that capacity. Hopefully, we

1 don't need anything near it.

2 And we've talked with Treasury about
3 the scale of funding. They've seen where these
4 numbers might fall out, their ability to deliver
5 that if they needed to and we've worked through
6 the operational processes to actually deliver the
7 funds from Treasury through the Fed's wire system
8 to support a resolution if it were needed.

9 MS. BAIR: Refresh my memory, those
10 even guarantee debt too instead of --

11 MR. DELFIN: That's right.

12 MS. BAIR: Does the cap apply to the
13 amount you guaranteed, too, or is that -- it is.
14 It's the same cap or not? No.

15 MR. DELFIN: In the Treasury report
16 they recommend the use of guarantees and --

17 MS. BAIR: I agree with that. I think
18 that's --

19 MR. DELFIN: And guarantees is sort of
20 a first option.

21 MS. BAIR: But I'm just saying is the
22 amount you can guarantee have the same cap as if

1 you were borrowing directly? Consistent with the
2 90 percent.

3 MR. DELFIN: Right, so the key
4 question is whether it's at expected cost.

5 MS. BAIR: Right.

6 MR. DELFIN: Because it would -- then
7 it's -- you could lever it up. Or how you count
8 it, but guarantees are more complicated because
9 you could be guaranteeing a large amount of
10 money, but have very little potential costs. I
11 think that's one, right?

12 MS. BAIR: Right. Absolutely.

13 MR. DELFIN: So do you do it dollar
14 for dollar or do you expect the cost or do you do
15 some other approach?

16 MS. BAIR: Right.

17 MR. KOHN: So the Fed could fund the
18 bank provided it were well capitalized. So what
19 we're talking about is all the non-bank stuff and
20 the Fed's been constrained under 13.3 from
21 funding that.

22 MR. DELFIN: But one thing if I -- the

1 chairman just gave a speech the other day. The
2 FDIC is kind of the gold standard when it comes
3 to bank failures, bank resolutions. But we've
4 built that up over decades of work. We learned
5 from each crisis, from each bank failure. We get
6 better and better and better.

7 We don't get that trial and error
8 here. So what we try to do is we do readiness
9 exercises so we can try to break our own system
10 and so we do quite a few of them. We do them
11 with our colleagues here in the U.S. We do them
12 internationally. We do them with our staff. We
13 do them sort of regular staff. We do them senior
14 staff. We do as many of these as we can because
15 we don't get the benefit of trial and error like
16 we do in others. And so this whole paradigm is
17 based on those sort of readiness exercises as a
18 means of preparation.

19 MR. REED: Is there room for any
20 stand-still agreement with the funders? You
21 know, during the Latin American debt crisis, and
22 you're only dealing with maybe 30 or 40 entities

1 that were the big lenders, but when there was a
2 crisis and we needed time, we could get a
3 standstill where all of the people agreed they
4 would not withdraw any funding for a period of
5 time. You'd have a date certain and the lenders
6 agreed that they were going to maintain that
7 level of liquidity and particularly on a run in
8 Korea which was very much being managed by
9 Treasury.

10 We got all the banks to have a
11 standstill that allowed the Koreans --

12 MR. DELFIN: And was there a temporary
13 guarantee tied to that?

14 MR. REED: It was just that the
15 government was involved. They trusted that they
16 weren't going to get caught out.

17 MR. DELFIN: An implicit guarantee.

18 MR. REED: Because one of the reasons
19 that people withdraw money is the danger that
20 somebody will and you didn't.

21 MS. BAIR: That's right.

22 MR. DELFIN: And if you could get the

1 major funders because it's in their interest,
2 too.

3 MS. BAIR: Yes.

4 MR. DELFIN: To have a standstill.
5 And we did use that on a couple of occasions
6 during the debt crisis and as I say, it was quite
7 different in the sense that you had 30 or 40
8 major lenders, but they were globally distributed
9 and -- but you did get an effective standstill
10 and runs would stop.

11 The U.S. Government tried to guarantee
12 in the case of Korea and it didn't work because
13 the Japanese banks kept taking the money out.
14 They didn't believe, but we did get a standstill.
15 I don't know if that's any place in your lexicon.

16 MR. HERRING: I think it would be very
17 difficult in this situation. It's sort of like
18 the bond markets where instead of having a small
19 group --

20 MR. REED: No, it's a large --

21 MR. HERRING: -- in which you have
22 influence, they're just huge numbers and your

1 ability to influence them I think is very, very
2 difficult.

3 MR. REED: No, if it's widely
4 distributed across the market, but if, you know,
5 if there are 20 firms that constitute most of
6 your --

7 MR. HERRING: We should be able to
8 convince them it's in their own interest.

9 MS. BAIR: Yes, well, that might be
10 the positive of all this interconnectedness since
11 you have a smaller group of concentrated. And it
12 would be in their interest if they're --

13 MR. COHEN: They just have to believe
14 that it'll hold.

15 MS. BAIR: Right. Because if they
16 don't and if there's a run and it's at least five
17 minutes, they're going to be assessed for the
18 losses, right? So it would be --

19 MR. COHEN: That's with this bank.
20 Don't forget, if you're a broker, the odds are
21 you're going to have institutional money on the
22 other side. It's not going to be your friendly

1 banker down the street. They're not going to
2 have a choice.

3 MR. HERRING: It's very heterogeneous.
4 I'm not sure how --

5 MR. BODSON: So it's very much
6 dependent on who it is. It could be if was banks
7 supporting it, sure, but if it's all
8 institutional money, they've got a fiduciary
9 responsibility. They're going to take their --
10 either sell the collateral, just take the money
11 back and run.

12 MR. COHEN: Whether it will work or
13 not, the one thing is for sure. If you start on
14 the Friday, it will not because we saw that on
15 AIG where there was the effort to get a number of
16 the derivative counter parties to hold, to stand
17 still and that lasted about five minutes.

18 (Laughter.)

19 But it can be done. It takes the
20 planning.

21 MR. TETRICK: Something we can look
22 into. You know, we also do these staff-level

1 exercises. On a cross-border basis, I won't go
2 into too much detail, but we can go a little bit
3 more granular there than we go at principal level
4 and actually test the information sharing
5 protocols, and that's been particularly useful.

6 And then I just want to touch on the
7 bottom layer of our framework which is the
8 institution-specific planning that we do. So you
9 know, obviously, that starts with Title I
10 planning. We build off that to build out firm
11 specific Title II analysis. What are their
12 particular systemic risks that we're solving for
13 if we're put in a position that we need to use
14 Title II.

15 One of the challenges for stabilizing
16 this particular institution, particular
17 operational challenges about how it operates or
18 what business lines it's in, and that gives us
19 information to plug into all the other parts of
20 the generic framework that's sort of pre-built
21 out. And it also gives us a basis on which to
22 engage with foreign authorities on a firm-

1 specific level. So we use that analysis to
2 support conversations, even crisis management
3 groups, and you know, we --

4 MR. DELFIN: And just for the group,
5 every year, we sit down with the host
6 jurisdictions of all the U.S. G-SIBs and we also
7 do it the other way to talk about the progress
8 we've made on resolution planning. And that's
9 the crisis management group.

10 MR. TETRICK: And those conversations
11 are increasingly we're talking about, the firms
12 participate. There's a regulators-only portion
13 of the day, but the firms participate. We're
14 talking about both bankruptcy planning, how they
15 would execute their bankruptcy strategy, what it
16 means for the host jurisdictions that are in the
17 room, and then how the back stop authority would
18 apply if it needed to.

19 And then just to pick up on a point
20 that Peter raised earlier about the importance of
21 the Treasury staff being involved, I think both -
22 - when we're engaging with the firms on Title I

1 planning just vis-a-vis their plan submissions
2 and the CMGs, they're sending their resolution
3 planning staff. They're also sending their
4 treasurer and her or his staff to participate in
5 these conversations, particularly now that we're
6 talking more about the capital and liquidity
7 modeling that was previewed earlier. They're
8 talking about how those mechanisms would deliver
9 resources across the group in resolution. And
10 there's a pretty robust engagement with the
11 Treasury staff.

12 MR. FISHER: That's wonderful. My
13 question really went to John which is for Board
14 of Directors to get that, you can look at the --
15 the Board can look at a CEO and have some
16 confidence he knows what decisions he's got to
17 make. But for a Board to look down into the
18 bowels of the deputy treasurer is really hard.

19 MR. BODSON: If I can make one
20 comment, there's a philosopher, Mike Tyson,
21 remember him?

22 (Laughter.)

1 Everybody's got a plan until you get
2 punched in the nose.

3 I hope in your planning, you don't
4 plan it out well. Assume everything you think is
5 going to go right is going to go wrong and work
6 through all the alternatives because the dumbest
7 idea may be the one that's going to get you through
8 the darkest part of the day.

9 MR. TETRICK: I think that's exactly
10 right, you know I started this with the framework
11 is intended to be flexible, not just for
12 different types of institutions, but different
13 scenarios. And it's also, I think, a good segue
14 to the next slide which is talking about how the
15 firm capabilities support our planning in Title
16 II. And the whole point of firm capabilities is
17 that the firm doesn't know what scenario it's
18 going to encounter and this allows them to adapt
19 different scenarios that they might be faced
20 with.

21 We expect to leverage these
22 capabilities under Title II and it also gives us

1 that same sort of flexibility. So I'm going to
2 touch on some of the -- I think we've said
3 notionally how that Title I supports Title II. I
4 think this is one of the particular ways in which
5 it supports us. So the fact that they have
6 developed governments' mechanisms that map out
7 triggers and actions across the crisis continuum
8 gives us a better line of sight into how the firm
9 is proceeding through its recovery plan,
10 preparing for resolution. We can anticipate what
11 actions they might be taking. It gives us a
12 better basis to talk to host authorities about
13 where we are in that trajectory, so that's been
14 particularly useful for mapping out the
15 sequencing of actions with the firm and with host
16 authorities across that period into resolution.

17 MR. HERRING: Ryan, may I ask a
18 question about the runway period?

19 MR. TETRICK: Yes.

20 MR. HERRING: I understand the concept
21 and I think it's essential, but presumably it's
22 not publicly announced, because if anybody knows

1 you're going on the road, everything is going to
2 happen a whole lot faster when you --

3 MR. TETRICK: That's a great point.
4 There's not a red light that goes on that says
5 you're in runway, everybody run away.

6 (Laughter.)

7 Unless the light is on in Rick's
8 office. But you could imagine there would be
9 reluctance to initiate their planning processes
10 because it would have a signaling effect.

11 MR. HERRING: I was thinking not that
12 you would have a press conference to announce it,
13 but it would be pretty easy to infer about what
14 you're doing.

15 MR. TETRICK: Sure. Sure. I think
16 one thing is they've built these processes into
17 their day-to-day operations so the staff who
18 would be involved, Treasury staff knows the
19 sensitivity about the planning process.

20 We've had our own conversation about
21 when do we start planning as they're concerned
22 about the sensitivity. I think our general

1 predisposition is that we want to have a
2 relatively high tolerance for false positives.
3 We're already thinking, coming in the office
4 every day, thinking about a crisis, so we start
5 planning at a relatively low threshold. We're
6 resolution planning all the time. We think
7 that's useful most of the time, hopefully, all of
8 the time. The result is going to be a recovery,
9 but it is a balance.

10 MR. HERRING: Part of business as
11 usual, but it's likely to be less --

12 MR. TETRICK: Right. I think that
13 there's in the cross-border space, too, there's
14 starting to be more of an acceptance that it's
15 not stress, then runway, then at some point down
16 the line we start talking about resolution.
17 We're setting expectation, particularly through
18 the more focused cross border work, the TPLE
19 work, and related, I'm sorry, the principle level
20 exercise work, that we're going to engage early
21 on as a matter of course and we know that there's
22 going to be false positives along the way and we

1 should get comfortable with that.

2 Moving on to the next couple of points
3 here so the capital and liquidity modeling
4 capabilities that the firms have built out, so
5 Mike Morgan went through earlier today, RCEN and
6 RCAP, RLEN and RLAP. These tools help us assess
7 -- first of all, they put resources in place in
8 advance of a resolution and then they help us
9 assess what those needs might be as you get into
10 resolution.

11 I think the most critical thing to
12 point out about the innovation here is firms
13 already do a lot of stress testing, capital and
14 liquidity planning. What's unique is that these
15 are modeling capabilities that extend that, they
16 really build on the capabilities that they
17 already had for recovery of business as usual
18 purposes and extend that into resolution, what
19 are the assumptions that they make about what
20 happens in resolution.

21 And we know if they say today the
22 number is 55, that's the one number it won't be,

1 but it gives us a basis off of which to consider
2 you have behavioral assumptions about this group
3 of counter parties. Is that happening as we get
4 into the runway, do we expect that it will
5 happen? Did your assumptions about intra-group
6 frictions, were they -- they were conservative
7 for planning purposes, are those real when you
8 get into resolution?

9 MR. HERRING: How frequently will they
10 be required to recalibrate?

11 MR. TETRICK: So part of the
12 governance mechanism is to trigger the frequency
13 of calibration. A number of firms actually
14 already calibrate their metrics regularly on a
15 daily basis. But all of them have triggers as
16 they get closer to their runway that they are
17 calculating their liquidity and capital execution
18 needs daily as they get that.

19 MR. HERRING: Will that information be
20 shared with you?

21 MR. TETRICK: Yes.

22 MR. REED: This presumes that they

1 know what their exposures are.

2 MR. TETRICK: I mean there's a
3 relationship with the reliability of these tools
4 and the supervisory work that goes on and the
5 reliability of their ordinary liquidity
6 monitoring tools. Your modeling can only be as
7 reliable as your existing capabilities are, so
8 that's something that we have supervisory
9 personnel and we work with the Federal Reserve
10 and other supervisors.

11 MR. REED: I gather you think it's
12 much changed from what it was.

13 MR. TETRICK: Yes. I didn't say --
14 you know the Title I playing process gives us a
15 lot of information. When we started doing this
16 process, it was eye opening how much firms could
17 not tell you about themselves, so we thought we
18 didn't have information. There were a lot of
19 things that if we asked we couldn't get an answer
20 or it took a month of working on spreadsheets.
21 They're well beyond that now. I think -- I don't
22 want to overstate it.

1 MR. KOHN: Probably just a stress test
2 process, too.

3 MR. HELD: When we first started
4 planning on Title II, one of the biggest
5 obstacles was how do we get money into the firm
6 by Sunday night, get the yen to Tokyo and the
7 pounds to London and euros to Frankfurt? And it
8 was just assumed that like in the crisis in 2008,
9 it was going to be, oh, there isn't enough money
10 to open for business on Monday or actually Sunday
11 as things go these days.

12 And with these planning tools, it's
13 less likely that you're going to reach zero and
14 have to do the really heroic efforts to get money
15 where it's needed at the right time.

16 Luckily, we start off with kind of the
17 worst case scenario and plan for that. Now it
18 appears that that's less likely. And I think the
19 tools really help us a lot.

20 When we start off, when we ask the
21 questions, and we said, we sent out a lot of
22 questions to the firms and we said I don't know

1 is an acceptable answer at this point. This was
2 before the first plans came in. And there were a
3 lot of I don't knows that are now in the models
4 and answered and a lot of the I don't knows have
5 been eliminated.

6 MR. KOHN: So you have confidence that
7 they know.

8 MR. HELD: Well, there's a lot more
9 confidence than we had in 2011.

10 MR. TETRICK: There's much better
11 information at the acute phase of a crisis. One
12 of the challenges is there can be a lot of
13 demands on that Treasury desk, both from counter
14 parties, authorities around the world, and then
15 synthesizing that information to their existing
16 monitoring tools in modeling in terms of what's
17 happening in terms of counter parties' ruling,
18 different kinds of parties reducing exposure,
19 increased marginal requirements and working that
20 all into the existing modeling framework I think
21 is where the challenge will be. But their
22 current capabilities, I wouldn't want to

1 overstate it, but they're much, much stronger
2 than they were.

3 MS. ADMATI: I have another question.
4 I was worried about disruption in this industry
5 because the biggest banks are so strong that if
6 you have disruptions like, I don't know, peer-to-
7 peer, you know, they sort of swallow them or
8 fintech. So I'm less concerned about Uber type
9 of disruption, but I am concerned about cyber and
10 IT. Is that anywhere in your thinking?

11 MR. TETRICK: So --

12 CHAIRMAN McWILLIAMS: Don't worry,
13 Ryan, three chairmen are looking at you.

14 (Laughter.)

15 MR. TETRICK: I'll say that, you know,
16 there's still a lot of work to do on the easy
17 SIFI resolutions. The cyber SIFI resolution is
18 pretty extraordinary. I think we've started to
19 do some initial work on, you know, if there are
20 cyber scenarios or other operational scenarios,
21 how do our tools apply. It's the very early days
22 on that work.

1 I think there's a lot of work across
2 the regulatory agencies on cyber. Most of that
3 is focused on resiliency, recovery. Resolution
4 is fairly remote, I think for a good reason. But
5 it's something that we know we need to look at.

6 I think it's also worth pointing out,
7 you know, not just for these institutions, for
8 other institutions and how do our authorities
9 apply to this model firm.

10 MS. ADMATI: But let's not go to
11 cyber. I'm talking simple IT because I actually
12 talked to some. A lot of these institutions have
13 had a lot of mergers along the way and I talked
14 to somebody who was actually monitoring one of
15 the settlements in one of the big banks who said
16 that IT is the biggest problem because they can't
17 find information. So this is sort of to your
18 planning issue like they didn't combine computer
19 systems. It was really in that simpler things
20 than big cyber.

21 MR. TETRICK: Capabilities in MIS are
22 essential. So MIS is one of the areas that the

1 Federal Reserve with our participation is focused
2 on, making sure that this group of firms
3 significantly improve. So I think it was in our
4 guidance.

5 CHAIRMAN McWILLIAMS: And also I think
6 the supervisory that will be -- the idiosyncrasy
7 of getting a cyber-attack and being brought down
8 is a little bit different because we look at this
9 on the supervisory side. They get IT exams all
10 the time.

11 MR. BODSON: I've said this a few times
12 today. My first day as CEO was Knight Capital, my
13 first hour as CEO was Knight Capital, right, and
14 the thing that saved the industry from a massive
15 lawsuit that resulted in New York Stock Exchange,
16 New York spotted it, New York turned them off and
17 they capped it about \$450 million.

18 So the point I think you were making
19 before about the second tier firms and them having
20 a -- it doesn't have to be cyber. It can just be
21 a weird glitch, running up a very large tab is
22 something I think I'm more -- I think that's a

1 bigger risk to the financial system than one of
2 the Big Eight collapsing. I just think that
3 that's an untapped area that we dodged a bullet on
4 but -- there's no kill switch for the markets,
5 etcetera, etcetera.

6 So I know it's not directly in your
7 purview, but you should be taking that in your --
8 because it can also just be a settlement system
9 that blows out a few billion dollars and by the
10 way, now how do you get these guys back up on
11 their feet when their settlement systems don't
12 want to work. So those operational technology
13 issues have to be on the agenda at some point.

14 MR. COHEN: Just back on cyber for one
15 moment. I realize or I understand there's a lot
16 of coordination among the bank regulatory
17 agencies. I'm far less confident that there's
18 that level of coordination with the other
19 governmental agencies which have both more
20 information and more knowledge with due respect
21 than you do, DHS, FBI, NSA. And because everybody
22 always talks about this as an existential threat,

1 the more coordination you can have, particularly
2 for these eight.

3 MR. TETRICK: No, that's helpful. The
4 fact that it's a non-financial disruption, brings
5 other authorities into the picture.

6 MS. ADMATI: I think you're going far
7 with the same method. Last week, somebody was
8 like from emergency and she worked on, you know,
9 hurricane or these other types of emergencies and
10 it was bringing that finance kind of emergency
11 planning.

12 CHAIRMAN McWILLIAMS: Ryan, because we
13 are at a break time and since Raj just put the
14 burden on other entities and organizations and
15 agencies other than us, you can either conclude
16 here with this part of the presentation, finish
17 up, and then we'll move on to the break and move
18 on to the next panel.

19 MR. DELFIN: Can I just to wrap this
20 part up? Earlier, we talked about the evolution
21 on our Title I process, the way we started in our
22 silo, the Fed started in its silo and over time we

1 reviewed plans together, we did training together.
2 Our Title I, Title II process has similarly built
3 real synergies.

4 We used to have sort of Title I staff
5 and Title II staff and what we really tried to do
6 in our organization is make sure that folks see
7 the way these work together and the way we can use
8 the capabilities, structural changes from one to
9 buttress our preparing for the other and so this
10 slide here on 7 really does a great job of that.
11 So if that's helpful.

12 MR. TETRICK: Maybe just one more thing
13 on this segment which is that Herb started out, I
14 think we're interested in -- we've done a lot of
15 work in this space, hasn't necessitated as much
16 visibility as the Title I process has, but we're
17 interested in ways to make this work more visible
18 and what market participants and the public may
19 need to see about it.

20 CHAIRMAN McWILLIAMS: Thank you. We'll
21 take a little break. And see you in about 10 or
22 15 minutes. Thank you.

1 (Whereupon, the above-entitled matter
2 went off the record at 2:33 p.m. and resumed at
3 2:50 p.m.)

4 MR. DELFIN: We are joined by today by
5 our third panel. We've got Susan Baker, the
6 Deputy Director; Joanne Fungaroli, Associate
7 Director; Ryan Tetrick, who you've just met; and
8 Bruce Hickey from our legal division.

9 MS. BAKER: All right. Thank you. So
10 now I'm here to answer, help follow-up on all the
11 questions about how we build international
12 cooperation. Since I thought we'd be running out
13 of time by now, I put all the key messages up
14 front just in case we do run out of time.

15 As you know, resolution planning in the
16 U.S. is inherently cross-border, both due to their
17 cross-border activities and all the extent of
18 their operations overseas. And so progress on our
19 work for resolution planning we have to discuss
20 are our work with our foreign authorities and how
21 we work with them. It's just unavoidable.

22 The FDIC has really been leaders, along

1 with our other U.S. colleagues and others, in
2 promoting regular engagement for resolution
3 planning, both domestically, as Ryan explained
4 earlier, but also internationally.

5 Now, our plan in cross-border
6 resolution involves investing the time before the
7 crisis, before the crisis hits so we're ready to
8 go when we need to. And that means our outreach
9 activities are very multifaceted. We have firm
10 level interactions, we have bilateral
11 interactions, and we have multi-lateral
12 engagement, as well. These are formal, informal,
13 regular, ad hoc, all different ways. It's a
14 complicated topic, so we try to get at it every
15 way we can.

16 The purpose here is really to increase
17 the transparency and the mutual understanding of
18 our foreign counterparts about our cross-border
19 resolution plans. In doing this, the idea is,
20 before the crisis comes, to establish
21 communication channels and ways to share
22 information that is safe and well understood, to

1 understand each other's frameworks and standards
2 and the vocabulary, you know, what is MREL, what
3 is TLAC. It's all important to understand and
4 speak each other's languages. And, important, to
5 give the firms an opportunity to plan for the
6 cross-border elements of resolution and to explain
7 their plans to the foreign authorities. So this
8 type of transparency and advanced planning we
9 really do believe will serve as a stabilizing
10 force in times of stress.

11 So what I have been asked to do is to
12 go through all the different ways that we do this,
13 and so let me start here describing these across
14 three general categories. So let's start out with
15 the institution-specific. Ryan touched on this a
16 little bit before. It's the Crisis Management
17 Groups is our primary vehicle for doing that. We
18 have established Crisis Management Groups, along
19 with the our co-chair, for all the U.S. G-SIBs.

20 The foreign participants in these CMGs
21 are the ones that are supervising our
22 revolutionary authorities for the material

1 entities that were material to the firm. I think
2 we're on our eighth round of CMG meetings, and,
3 so, as these have developed, you know, I wasn't
4 here for this but in the beginning there was a lot
5 about explaining our authority, what's Title I,
6 what's Title II. And now we have really moved a
7 lot to deeper subjects, and one of the subjects
8 that's been coming up a lot lately and has been a
9 key topic has been how the bankruptcy planning had
10 worked and familiarizing a lot of our foreign
11 counterparts with how that process would work, and
12 it also is a way to give the firm, as I mentioned,
13 a way to explain what they are doing that will be
14 key to a successful cross-border resolution.

15 MR. HERRING: Susan, I think the FSB,
16 possibly the Basel Committee, had an annual report
17 not too long ago looking at the Crisis Management
18 Groups and sort of trying to kind of, broad brush,
19 describe progress they made. I'd be surprised if
20 the number of Crisis Management Groups that had
21 not completed information sharing agreements, it
22 may happen informally, but the indication was

1 that, even though these were all about sharing
2 information, some countries were reluctant on
3 obligations to share.

4 Has that been a real problem, or is
5 that just looking at some old data?

6 MS. FUNGAROLI: So I think that the
7 primary agency, as a home authority, that would be
8 the one that's working towards completing those
9 arrangements would be the Single Resolution Board,
10 which is a relatively new agency that took its
11 authority in 2016, really got their CMGs up and
12 running in the last year to two years. So that,
13 largely, is the pocket that you noticed in that
14 seventh resolution --

15 MR. HERRING: Yes, they didn't identify
16 who, so that would be it. It's just they were so
17 slow to organize.

18 MS. FUNGAROLI: They're pursuing the
19 arraignments as rapidly and reasonably as possible
20 under the circumstances. So I think that the
21 United States, the U.K., and Switzerland and
22 Japan, who all completed our cooperation

1 agreements largely around the same time in a
2 synchronized way. We had the benefit of early
3 organization of our framework and of our groups.

4 MS. ADMATI: I have a question. I was
5 trying to check quickly that my timing is right so
6 I don't confuse 2014 and '16 again, but there was
7 a document called "Key Attributes," you know, and
8 I remember reading that because just to kind of
9 make a case that, you know, by saying the
10 following, I put the document through a word
11 search for the word "should," meaning it's a wish
12 list of all these little things that have to
13 happen and all the different coordinations that
14 has to happen and I counted, like, hundreds and
15 hundreds. And then there was an annex with a
16 whole bunch of other kind of shoulds that were
17 just kind of in the list of things without the
18 word should.

19 So it was a huge wish list. I remember
20 Mark Carney was there, and I kind of confronted
21 him with that. And he said, "Well, it's Paul
22 Tucker's document."

1 In any case, I was wondering, my
2 question really is how many of these shoulds do we
3 have today?

4 MS. BAKER: Well, all those shoulds are
5 still there. The international standards are not
6 self-executing. We all have to go around and do
7 them in our own natural jurisdictions and
8 according to our own procedures here, you know,
9 the Administrative Procedures Act, that takes
10 time.

11 And we do have robust mechanisms, which
12 I can talk about in a minute, for multilateral
13 review of how well people are doing that. And the
14 answer for the United States is pretty resounding
15 we're doing fine. We have all greens on our
16 traffic light approach.

17 But, yes, the key attributes are one of
18 the, basically it was built on what the FDIC had
19 been doing for years. When people looked around
20 the world and wanted to know who had been doing a
21 good job on resolution, they looked here. And it
22 was the work of our predecessors, and maybe you,

1 Art, you were here working on it, Mike Krimminger,
2 Bill Murden, to help launch that process.

3 So running back to the CMGs just for a
4 minute, we do let the firms present in this topic,
5 so it gives them an opportunity to engage in an
6 efficient manner with all of their key supervisors
7 and resolution authorities. You know, they have
8 been spending a lot of time explaining their plans
9 that they've developed in Title I on pre-
10 positioning of capital and liquidity, explaining
11 their secured support arrangements, and all of
12 those things, wind down plans, communication
13 plans, all the things that they've developed in
14 Title I are of immense interest to the foreign
15 authorities and we do have a lot of time to talk
16 about that. We also have an authorities-only
17 section where we then, they can raise more
18 concerns and questions.

19 We have also used the CMGs to review
20 our Title II planning and how that works together,
21 you know, how our bail-in mechanic would work, how
22 the bridge banks are established, etcetera,

1 etcetera, with a big emphasis on, as Ryan said
2 earlier, the optionality idea. Like, we don't
3 know what the crisis is going to look like, but
4 here are the tools and the capabilities that we
5 have that we will use to make decisions.

6 Just as an aside, before I get off the
7 -- and that's the institution's strategic plans
8 that we talk about with them. Before we get off
9 the firm-specific topic, I'll just flag as an
10 aside that we also participate in the CMGs for a
11 number of foreign banking organizations that have
12 material operations in the United States, and
13 these are really helpful for planning resolution
14 as a host jurisdiction, and it's a complement to
15 what we do in the Title I process where we review
16 their plans in the United States for their IHCs
17 here, and this gives us a window in what their
18 home jurisdiction is thinking about, which is very
19 helpful.

20 As briefly touched on earlier, I will
21 say an important foundation for the work in the
22 CMGs is to have the information sharing

1 arrangements and cooperation agreements. These
2 are firm specific in this context, and so we have
3 those all in place thanks to the hard work of
4 Joanne here and her team. And this gives us pre-
5 established ways to share information that is
6 predictable and we know that it will be treated
7 confidentiality and that's all very important.

8 We also have, it's not up there, but we
9 do this, these are the formal institutions that we
10 have. We also have informal networking all the
11 time with our international counterparts about
12 various firm specific topics, about various firms.
13 We have workshops, for example. Some recent ones
14 had been on international custody operations and
15 on internal TLAC, which I'm sure you guys will
16 want to hear about.

17 Moving on to the bilateral avenues for
18 engagement, we have for a number of years had FDIC
19 engagement at the staff level with the European
20 Commission. The European Commission is the part
21 of the European apparatus that would have to
22 propose new frameworks and propose new rules.

1 They're the ones that drafted the BRRD, which
2 stands for Bank Resolution Recovery Directive.

3 So we talk with them on a regular
4 basis. It's really helpful for them to hear about
5 how we've structured our framework when they're
6 building one from scratch, as we mentioned
7 earlier. So that's been helpful. We also
8 participate in a number of interagency bilateral
9 dialogues that are led generally by Treasury with
10 all of the banking and market supervisors. The
11 longest-standing one is now called the Joint USEU
12 Regulatory Forum, that's with the European
13 Commission; the Single Supervisory Mechanism; and
14 the Single Resolution Board, our counterpart in
15 Europe. I think you guys all heard from Al
16 Kokonig in the last SRAC.

17 The newest addition to the bilateral menu is a
18 bilateral dialogue with the U.K., which started
19 last year and, as you can imagine, was dominated
20 by Brexit topics.

21 So moving on to the multilateral
22 efforts that we talked briefly, Ryan talked a

1 little bit about the trilateral principals-level
2 exercise, which has been a premier multilateral
3 effort that we've been doing with our U.K. and
4 banking union, i.e. Euro, area counterparts. This
5 includes the fiscal supervisory and resolution
6 authorities, so it's really pretty unique. They
7 have met as principals in October 2016 and in
8 April of 2018 and will continue to do so.

9 These exercises have really helped
10 familiarize the heads of agencies with each
11 other's processes for resolution and identifying
12 some key areas and getting buy-in for key areas
13 for cooperation and, importantly, launched a whole
14 lot of staff work for how to talk at a lot of
15 different levels. So we call it the principals-
16 level exercise, but there's a lot that goes on
17 that prepares for that amongst ourselves. And I
18 think that's been, you know, how will we
19 communicate, how will we cooperate, what will we
20 be able to say, and then start to plan actual
21 systems to make that happen.

22 And it's been good that this trilateral

1 has existed in its form. For a while, we had the
2 U.K. and EU were together, and now they're not,
3 but all three of these parties have strong roles
4 as hosts and home. So we have a real balanced
5 approach to solving problems where we have to
6 think about it from the other shoe, and I think
7 that helps us all cooperate quite well together.

8 The other major multilateral venue for
9 cooperation is the Financial Stability Board's
10 resolution steering group. This is the
11 international standard-setting body for
12 resolution, and it's covered a lot of topics over
13 the years. Some recent topics that have come up:
14 funding in resolution, bail-in execution,
15 continuity of access to FMI, as well, in
16 resolution; solvent wind-down of derivatives book.
17 And the FDIC has had leadership roles in a lot of
18 these. Ryan was the co-chair for the bail-in
19 execution group. Rick Delfin also leads a group
20 that covers CCP resolution. Actually, that's my
21 resolution but mainly so far focused on CCPs.

22 And the FSB also undertakes a number of

1 thematic peer reviews. One of them, there have
2 been two going on in the last year. One is on the
3 technical aspects of TLAC implementation, you
4 know, what are your terms looking like versus our
5 terms, who has really issued, where have they
6 issued, what does it look like, and the other one
7 has been on the resolution planning process
8 itself, which is one that Bruce has been on, as
9 well, and he can talk about more later.

10 You know, these have really served to
11 showcase the extensive progress that we've made
12 here and have helped give examples to other
13 jurisdictions about what they may want to adopt,
14 as well.

15 There are two things about the FSB work
16 that I want to flag that are a little new. Well,
17 not new, but rising in their importance. The
18 first is a renewed commitment to transparency and
19 stakeholder engagement. They now regularly
20 provide for public comment periods for documents
21 before they're finalized and do a lot of
22 stakeholder workshops, I think I've seen Rodgin at

1 a number of them, to talk about what's happening
2 and to get feedback on the work. Some recent ones
3 there have been on solvent wind-down, disclosure
4 rules for TLAC instruments, you've had some on CCP
5 resolution issues.

6 So it's a really important thing to
7 start getting more feedback. The FDIC even hosted
8 one of these last September on the margins of the
9 Res G meeting.

10 The other new thing, and this is
11 coming, that the FSB has been doing is focused a
12 lot more on the effects of reform. And I have a
13 whole process now to start thinking more robustly
14 about evaluating the effects of reform. A lot has
15 happened, for example, since the FSB issued its
16 framework for addressing "too big to fail" in
17 2010. So they have commissioned a study of the
18 effects of the reforms that jurisdictions have put
19 in place. It's going to be a review of academic
20 research and market data, as well, to try and
21 evaluate how far we have or haven't come in
22 meeting our objectives in the reforms. This work

1 launches this year, but it won't be completed
2 probably until 2020. And they have built in some
3 opportunities for stakeholder engagement, so I
4 hope to see you all there.

5 And, finally, on the multilateral
6 front, there is the work by the IMF to do
7 evaluations of jurisdictions under what's called
8 the FSAP program, the Financial Sector Assessment
9 Program. Since 2017, all G20 jurisdictions have
10 committed to do a formal review of their
11 implementation of the key attributes with respect
12 to systemic bank resolution. And so this is
13 almost like our audit function. The IMF goes out
14 and looks at how they're doing, and then they do
15 it in an independent way and the results will be
16 published. So it's another way to make sure that
17 we're all holding each other accountable for all
18 of the shoulds out there in the standard.

19 MS. ADMATI: It raised somehow, we had
20 discussed TLAC a lot, but sort of some of these
21 legal issues that often come up, you know, in any
22 kind of debt restructuring. Like, the TLAC, does

1 it matter in which law it's actually issued? And
2 then, you know, you have the subsidiaries in
3 different places in the home and state. Does it
4 matter, you know, that they're always issued in
5 their home country or --

6 MS. BAKER: I don't think the TLAC term
7 sheet says anything prescriptive on the law, but
8 it has been a topic of discussion in the
9 stakeholder outreach, I think in particular
10 because this is the week that the Europeans have
11 finally agreed at a political level to what their
12 TLAC rules will look like. There was a lot of
13 feedback that was aimed at that.

14 MR. TETRICK: In the U.S., our firms
15 issue TLAC in the U.S. and the U.S. law. We're
16 very lucky with a deep debt market and our firms
17 can be funded through the U.S. In other
18 jurisdictions, they will fund in the home
19 jurisdiction and in other host jurisdictions, like
20 the U.S. or where there are significant debt
21 markets where they can raise TLAC. It can make
22 bail-in execution marginally more complicated.

1 They need to solve for bailing in the instruments
2 that are issued under foreign law, but they are
3 working towards that in other jurisdictions.

4 MS. ADMATI: For example, Deutsche Bank
5 had a lot co-codes. I mean, I don't know if you
6 count or not, you know, these securities. Or in
7 Switzerland, they've always liked co-codes. And
8 so --

9 MR. TETRICK: Yes, so those are part of
10 their TLAC structure in most jurisdictions.

11 MS. BAKER: So just to wrap up here,
12 one thing I want to emphasize about these avenues
13 for international engagement is that they are all
14 mutually reinforcing issues that are identified in
15 one group, say, like, in the institution-specific.
16 We'll then take it up to a different level. Is
17 this a bilateral issue that we should talk about
18 with the U.K.? Is it bigger than that? Do we
19 need to talk about it at the multilateral level
20 and try and solve that problem? Some of the
21 problems have come to us or proposed solutions
22 have come up in some of the multilateral context,

1 and we're like, well, why don't we talk about all
2 of those in the CMGs? So they're always mutually
3 reinforcing, and that, I think, is a helpful way
4 of looking at it.

5 So with that litany of meetings and
6 avenues for engagement, I'd like to turn it over
7 to Joanne to focus on the ones that are really,
8 the issues that are really important.

9 MS. FUNGAROLI: Well, you think just
10 getting a group of people together to talk to each
11 other is easy, but actually it can be quite
12 challenging. So I would like to just say that
13 even forming Crisis Management Groups and the
14 other working groups that Susan described have
15 been extremely helpful in building the
16 relationships that we need to have the muscle
17 memory to know who to call and what's appropriate
18 to discuss with them or what needs to be escalated
19 to a more senior level for a consideration.

20 So with that framework, I wanted to
21 just look back at one of the remarks that Judge
22 Chapman made this morning because it summed up the

1 work that we're doing internationally very well,
2 the question of why we have so many venues for our
3 cross-border work. And what she said was we work
4 together in a cooperative manner to define our
5 relationships working with key jurisdictions. You
6 highlighted in your remarks the U.S. and the U.K.,
7 which is the genesis of the U.S. G-SIB resolution
8 planning work in the United States. The U.S. and
9 the U.K. worked very, very closely together and
10 then build a framework from there. So there's a
11 consistency in the thought process that was
12 described earlier that carries through to the work
13 that we're doing in our international cooperation,
14 as well. So thank you for that. You stole our
15 thunder.

16 So the work that we're engaged in is
17 really to try to increase the understanding that
18 foreign host authorities have in our home
19 resolution processes and strategies. Susan
20 identified and talked a little bit about the
21 Crisis Management Groups. The firms have a very
22 central role to play in bringing it all together

1 with the full cohort of global authorities hearing
2 about the home strategy from the firm's
3 perspective. And we also then talk with our
4 foreign hosts regulator to regulator to try to
5 suss out their reflex mechanism, what are their
6 sensitivities, what are their concerns, what are
7 some reasonable ways that we can consider or
8 recommendation or escalate to others to address
9 those concerns?

10 The transparency of resolution plans is
11 extremely helpful. The public sections of the
12 plans serve actually as a really useful tool. It's
13 like the abridged version of the Cliff Notes
14 version of a Title I resolution plan. We can use
15 that to talk to foreign authorities who don't
16 participate in a CMG to familiarize them with the
17 home resolution strategy overall. And then,
18 obviously, when we're working with CMG members, we
19 can go deeper and provide more information than we
20 would otherwise draw out of the Title I public
21 plan sections.

22 But I would just say that those are

1 extremely useful even for CMG members to have as
2 a handy reference guide, for new members who are
3 coming in to get familiar, to just have a big-
4 picture concept of what the home strategy is that
5 the firm has articulated, and to start identifying
6 questions that they may have as a host
7 jurisdiction.

8 Ultimately, our goal is the goal of
9 reducing the likelihood of ring-fencing and
10 pursuing avenues to achieve that through the
11 different venues that Susan described earlier.

12 Our Title I resolution planning process
13 with the firms has been extremely helpful to
14 advance our work. The U.S. emphasis on developing
15 firm capabilities in particular to support
16 resolution preparedness has been well received by
17 our foreign hosts. It gives us something
18 extremely tangible to talk about to use as a
19 reference point in these various discussions.

20 Some of the capabilities that were
21 highlighted throughout the course of the day that
22 you heard about included mapping critical

1 functions to material entities, estimating capital
2 and liquidity sources and uses in a more simple
3 language, and making arrangements for pre-
4 positioning to provide that capital and liquidity
5 to key foreign operations.

6 I think we're going to pause at that
7 last point and talk about that for a minute. Ryan
8 is going to try to tackle internal TLAC and
9 internal liquidity pre-positioning for cross-
10 border resolution for a couple of minutes.

11 MR. TETRICK: Well, I won't solve it.
12 I'll just recognize that the balance between
13 internal TLAC pre-positioning and flexibility, I
14 think it came up earlier in the day, is clearly an
15 area where there's a lot of focus right now and
16 how do you get that right, and it's something that
17 we're looking closely at.

18 The FSB internal TLAC guidelines lay
19 out a range of pre-positioning that should be
20 established material entities. You know, in the
21 U.S., the Federal Reserve has a rule that set that
22 requirement in the U.S. at the high end of the

1 range. I know everybody is looking at whether or
2 not that balance is right here. And as other
3 jurisdictions are putting forward their
4 regulation, they're thinking about what the right
5 calibration is between this 75 and 90 percent that
6 you hear about. So it's 75 or 90 percent of what
7 an entity would need on a standalone basis for
8 external TLAC, they should have that much internal
9 TLAC if they're deemed to be material.

10 One of the things that --

11 MR. HERRING: Ryan, does the country
12 then have the right to up it if they start at 70
13 and say, oh, well, we're worried about this?

14 MR. TETRICK: The company or the host
15 authority? So --

16 MR. HERRING: Host authority.

17 MR. TETRICK: Host authority. So, yes,
18 but I guess the way that this is done is, you
19 know, we set out the requirements through
20 regulation, so the upping the regulatory
21 requirement, we'd have to go through whatever
22 regulatory process you need in that jurisdiction.

1 MR. HERRING: What other countries
2 necessarily have to do that?

3 MR. TETRICK: A host could always say
4 we're concerned about this subsidiary, we want to
5 hold more capital or liquidity if using their
6 ordinary supervisory tools. So there's the
7 prospect for that, I suppose.

8 MS. FUNGAROLI: We'll just pause maybe
9 on one key foreign host of U.S. G-SIBs in response
10 to your question or to elaborate on the answer to
11 your question, which is the U.K. So the U.K., the
12 Bank of England in June of this year adopted a
13 policy statement on MREL, which is European speak
14 for we'll just call it TLAC. It's a simplifying
15 translation, if there's an easy way to translate
16 the terms.

17 The Bank of England's policy covers
18 both its requirements as a home authority for its
19 firms and it actually said that for its firms, on
20 an outbound basis that are operating in
21 jurisdictions that don't have a rule, unlike the
22 United States, which does as a host, it will

1 assess it and work with the firms to determine the
2 appropriate level.

3 As a host jurisdiction, the U.K. also
4 addressed the pre-positioning requirement in its
5 policy. It set the range as 75 to 90 percent. It
6 gave itself the flexibility to make the
7 determination based on a couple of factors, but
8 two stood out to us for purposes of today's
9 discussion. One is the confidence that the Bank
10 of England has and the credibility of the group
11 resolution strategy overall, and the second is the
12 availability of the resources that are uncommitted
13 within the group that could be readily deployed to
14 support the subsidiary and its jurisdiction.

15 MR. HERRING: I guess what concerns me
16 about that is, if it should change, then it's sort
17 of reflecting they have concerns about the
18 adequacy of resources or the availability. And
19 that's basically one of those signals you really
20 probably rather not have if you're getting into a
21 run-with period.

22 MR. FISHER: I want to ask an even

1 harder question than Dick's and ask you to humor
2 me for a moment. I'm very worried that this is --
3 I understand why we want to pursue this, but I'm
4 afraid it doesn't get to a stable equilibrium as
5 the work you're doing in this area.

6 Now, I understand cooperation is good
7 and we all should understand one another, but
8 humor me for a moment. Here in the United States,
9 bank resolution takes a weekend and ring-fencing
10 is a problem. Insurance resolution takes years
11 and years and ring-fencing is the answer. Very
12 different models. I understand how each of those
13 models are stable, but when you merge them a
14 little bit I don't think you have a stable
15 equilibrium in game theory terms. Now, that's
16 both an international problem in general but
17 particular given our, what I'll call the Title I -
18 Title II moment that we're going to be going
19 through. So, first, Title II is a hedge. Title
20 II is a hedge on whether we're in my bank world of
21 resolution takes a weekend and ring-fencing is a
22 problem or in the insurance world of resolution

1 takes years and years and ring-fencing is the
2 answer.

3 Now, a lot of the good work you all and
4 other countries are doing are going down the path
5 of making sure everyone is comfortable enough with
6 the subsidiaries that you think are not going to
7 rush and ring-fence. I don't think that's a
8 stable equilibrium, particularly in light of our
9 Title I - Title II moment. We're going to come to
10 a -- cooperation across borders is good. We
11 should all understand what each other is doing.
12 I'm not saying that's bad. That's terrific. But
13 at that moment that we're having our Hamlet moment
14 or we're going down Title I - Title II, what's the
15 rest of the world doing? Well, the rest of the
16 world is, more or less, in an insurance world,
17 resolution takes years and years and ring-fencing
18 is the answer. That's just a mental bias they've
19 got, not just in the insurance world.

20 Now, there's some jurisdictions where
21 that's not the case, but I just think you've got
22 to think hard about whether, and you've got the

1 nice long quote from Vice Chairman Quarles, who I
2 admire. But it's describing, the more work you do
3 to make people comfortable that the subs are well
4 set up, that also makes it more likely they want
5 to ring-fence.

6 I know you're going to disagree, but
7 that's because you're coming from a world in which
8 resolution takes a weekend and ring-fencing is a
9 problem, and most of the world sees it the other
10 way. Now, you could disagree with me on that
11 actual observation about the rest of the world,
12 but I want you to think hard about whether it's
13 actually a stable place to be to be halfway
14 between these two models, and that's what Title II
15 is.

16 MR. DELFIN: Maybe I'll take a quick
17 stab. But, you know, our goal is mitigation of
18 systemic risk, and so if we started our earlier
19 premise that systemic risk is housed in material
20 entity subsidiaries, then what we want to do is
21 make sure that they can continue operating and
22 providing the services that the market requires of

1 them, and the type of ring-fencing can affect
2 whether they can achieve that goal.

3 So if each host jurisdiction has
4 sufficient resources and maybe soft ring-fences
5 that says, hey, I'm going to keep a little more
6 here, but services can continue to be provided,
7 the home jurisdiction and the other material
8 entities have sufficient resources to function,
9 although there's frictions, the friction of each
10 host being a little more protective than they
11 otherwise would have been, that need not destroy
12 the strategy. It's an unfortunate outcome, and
13 our Title I process is based on frictions
14 occurring. That is that jurisdictions are not
15 going to just allow the free flow of funds.

16 So we assume some degree of friction,
17 but there is a tipping point where if you have
18 hard ring-fencing, if resources are stuck in a
19 jurisdiction and it undermines the ability of the
20 other jurisdiction to function, you start having
21 real problems. That's what we're trying to avoid.

22 So the small stuff within the band of

1 everyone is having a little bit of self-interest
2 and protecting themselves. But the hard, sorry,
3 I'm protecting myself and shutting off the rest of
4 the world, that's a problem.

5 MR. FISHER: The insurance world here
6 in the United States is premised on we'll let
7 things flow across but the regulatory will decide.
8 Things will flow out of subsidiaries back and
9 forth to holding companies, but the regulatory
10 decides.

11 Your soft world is what are the
12 regulators deciding then, and I'm just suggesting
13 you may have made a distinction that I don't think
14 is a difference. That is, I'm calling that ring-
15 fencing. The regulator is deciding, and I just --

16
17 MR. DELFIN: But if it doesn't
18 undermine the strategy, why is it -- so if the
19 regulator decides to let it go or decides to allow
20 the service to be provided and it doesn't undercut
21 the strategy --

22 MR. FISHER: Well, if I look at your

1 slide up there, imagine instead of the arrow
2 saying reduced likelihood of ring-fencing we
3 insert learning how to live with ring-fencing.
4 And I just think that's the world you're going to
5 be in, especially once you think hard about the
6 rest of the world is holding its breath while
7 we're making the Title I - Title II decision. And
8 they're not going to sit still there.

9 MR. DELFIN: Yes. One thing we, and
10 I'm asking because of the parlance, when this
11 started there was ring-fencing, you know. It was
12 almost like a wall, a fortress. But pre-
13 positioning, some say, is a form of ex-ante ring-
14 fencing, but services can continue to be provided,
15 flows or funds continue to occur, but there's some
16 amount of money that's held in jurisdiction.

17 And so do you distinguish between the
18 idea of hard ring-fencing, fortress-like walls
19 versus soft ring-fencing that each jurisdiction is
20 going to have some self-interest to protect itself
21 but they're also not going to unnecessarily
22 complicate the resolution strategy? Because I

1 think we're built on that second idea, that
2 everyone will have self-interest but they also
3 don't want to undermine the group. I don't know.

4 MR. FISHER: When you describe that
5 second, you're describing from in the insurance
6 world the whole world over, not just the west.
7 That is, things flow but regulators decide, and
8 there's a lot of inertia and timing is hard. When
9 you say hard ring-fencing, I think you're
10 expressing an American-centric view that ring-
11 fencing is bad and that we can see what happens
12 with extreme ring-fencing, extreme lack of
13 cooperation. And I'm suggesting think about a
14 world where everyone is holding their breath
15 waiting for the U.S. to decide Title I or Title II
16 and worrying which path we go down and what the
17 consequences are, and their tendency is going to
18 be to be a little more ring-fence-y at that
19 moment.

20 MR. DELFIN: Agreed.

21 MR. FISHER: And I'm suggesting
22 learning to live with ring-fencing is a more

1 profound ambition than trying to pretend it's not
2 going to happen.

3 MR. DELFIN: So that's the last part
4 I'm just going to push back slightly on, which is
5 in our Title I process we distinctly assume that
6 there are frictions associated with the flow of
7 funds from material entity to material entity. So
8 we're not trying to be naive about ring-fencing
9 not occurring. It's just the degree of friction
10 that --

11 MS. BAIR: One thing that's new, and I
12 agree with you, but one thing that's new, at least
13 as we're talking about a Title II resolution, is
14 the ability of the FDIC to provide funding support
15 at that level and world commitments to the foreign
16 regulators to not cut their whatever operations
17 and keep liquidity, you know, the liquidity will
18 flow both ways, right?

19 So that's something new the FDIC has.
20 That's a new conversation they can have with
21 foreign regulators that they didn't have before.
22 Now, whether it works or not, I don't know. But

1 I kind of think that we'll have soft, not hard,
2 ring-fencing, at least in a Title II. I think
3 it's harder on Title I. And, again, if you have
4 really strong backers in financing, maybe you
5 don't have a problem there, too. But with Title
6 II, at least, the FDIC can say that now and they
7 weren't able to before.

8 MS. BAKER: And to the extent that this
9 is, as you mentioned earlier, kind of a classic
10 prisoner's dilemma, right? And everyone thinks if
11 I move first, I'll be better off. But when
12 everybody moves, everyone is worse off.

13 You know, the classic solution to a
14 prisoner's dilemma is information and trust. And
15 so that is what we do in all this litany of
16 meetings is we try to build that information, we
17 try to build the muscle memory, what will we talk
18 about, commit to what we'll talk about, build the
19 systems to make that happen.

20 MR. COHEN: Well, could I go just for
21 a moment? I would add a third, if I could, which
22 is capacity. And this is what I think is -- well,

1 let me start with a premise, and we'll push this
2 a second time. If the U.S. is at 90 percent,
3 there is no chance the rest of the world won't go
4 to 90 percent. So it's really up to us. If we go
5 to 75, the rest of the world may or may not
6 follow. But if we're at 90, you can be sure
7 everybody will follow.

8 So I look at this and I worry that
9 we're looking at this through the wrong end of the
10 telescope, and the right end of the telescope is
11 the capacity of the parent to provide assistance
12 if there is a problem. If you've already used 90
13 percent, there is far less capacity to solve the
14 problem. You look at the individual subsidiary,
15 75 to 90 percent is of a fraction, whatever that
16 fraction may be of the whole. But when you're
17 looking at the totality and what is left, it's 75
18 to 90 percent of the entirety and it's a much
19 bigger number. And if you constrain the ability,
20 to me, flexibility should be the watch word, and
21 I can't imagine, frankly, a country saying, well,
22 at 75 percent I wouldn't ring-fence but at, 75

1 percent I must and at 90 I won't, that's not going
2 to happen because the loss will be too big and
3 people will know there's no capacity to help out.

4 So I just couldn't argue more strongly
5 than I can now for really taking the leadership
6 role and going at 75. And I actually share
7 Peter's view inherently. I would go to 50 if I
8 thought that had the slightest chance.

9 DIRECTOR GRUENBERG: I would say we
10 have not yet executed a resolution of the G-SIB.
11 No country in the world has. And so we're all
12 talking hypothetical at this point, so you've got
13 to qualify it. And until we actually do it and
14 see what that experience is like and what actually
15 happens in the circumstance, you know, you can't
16 speak with confidence.

17 What I will say is that I do believe
18 the whole international arrangement here in regard
19 to these global financial terms has changed
20 significantly over the past ten years, that the
21 major jurisdictions that are the home and host of
22 these major firms have spent a lot of time over

1 these last several years passing laws, developing
2 capabilities, and talking to each other about what
3 we would do together if one of these firms in
4 which we have mutual responsibilities gets in a
5 difficulty.

6 And the whole premise of every
7 discussion, every collaborative effort is how do
8 we avoid closing borders and the disruption that
9 everyone understands that would cause the
10 financial system. And I can only tell you that
11 the premise of every conversation we've had, just
12 one little indication of it is, and Rodgin alluded
13 to this, if the home jurisdiction can demonstrate
14 the capability of meeting the obligations of the
15 firm domestically and internationally, it is not
16 in the interest of the host jurisdictions to screw
17 around with that. The optimal outcome for
18 everybody is to keep the institutions functioning
19 and the borders open, at least that is the premise
20 of all of the work and that is at least my
21 perception of where people's self-interest is.

22 Now, the second there is significant

1 doubt in the foreign jurisdiction, including our
2 own, about the capability of the home jurisdiction
3 to meet the obligations, then you're dealing with
4 a different circumstance. And the whole premise
5 of our efforts, and it's fundamentally a handful
6 of jurisdictions that we're talking about in terms
7 of being home and host to these truly global firms
8 and for us it's fundamentally the U.K. and the
9 Europeans. In terms of U.S. operations, that's
10 really, you know, the ball game. And I think
11 there would be every effort, which is not to say
12 we haven't done it yet, and I understand the
13 skepticism and I think that's fair until we
14 actually do it. But I do think the operating
15 premise will be how do we make this process work
16 and how do we avoid ring-fencing is going to be
17 the threshold premise of the responsible
18 authorities and we'll see if we can actually
19 execute it.

20 And I can tell you we had one
21 circumstances in which there was, without getting
22 specific, there was a potential enforcement action

1 in the United States against a foreign firm that
2 had the potential of, it was uncertain what the
3 market reaction might be. And there was extensive
4 interactions leading up to that among the key
5 jurisdictions as to what we would do, and it was
6 quite clear that, as long as the home jurisdiction
7 of the firm was prepared to meet the obligations
8 of the firm in the foreign jurisdictions,
9 including our own, there was no interest. In
10 fact, the self-interest was to not intervene, and
11 we got those representations from the home
12 jurisdiction and that was our operating premise as
13 this thing -- at first, there was no market
14 reaction and never had to be tested. But do I
15 believe that the home jurisdiction would have met
16 the obligations if it had been tested? Let me
17 just say I would be surprised if they didn't, and
18 they certainly understood there would be
19 consequences if that didn't happen.

20 So, you know, that's the operating
21 premise. It's a set of relationships and
22 capabilities in each of these major jurisdictions

1 that did not exist ten years ago. Ten years ago
2 there were no discussions around this subject.
3 There were no authorities around this subject.
4 There was no strategic thinking around this
5 subject and there was no planning around this
6 subject.

7 Now, I don't know if it will be
8 different if and when this occurs. I would not
9 operate off the premise that ring-fencing is going
10 to be inevitable. It may play out that way.
11 We'll have to see it. It certainly has been the
12 object of all of our efforts to avoid that outcome
13 because, at the end of the day, if that is the
14 outcome, most people understand that's a lose-lose
15 situation for everybody involved.

16 MR. KOHN: But, Peter, what part of
17 your point that I took it was deep skepticism that
18 Title I will work, especially -- so what you said,
19 Marty, is as long as they have confidence that the
20 home country can execute this, but if you have
21 these people sitting there debating should I do
22 bankruptcy, should I do Title II, and you don't

1 think, you're the host country and you don't think
2 bankruptcy is going to work certainly before any
3 reform by Senator Toomey, and even then the
4 liquidity issue is still kind of up in the air.
5 I don't think we've had a really good answer to
6 that here. Then you might be, then your point
7 would be you don't have confidence that the thing
8 is going to work, that the politics will push the
9 U.S. into Title I. We keep saying that's our
10 preference, but you have deep doubts it's going to
11 work and your obligation is to grab what you can
12 get.

13 MR. FISHER: Yes. And that's
14 certainly, that's the fine point of what I call
15 the Title I - Title II moment we're proposing on
16 the rest of the world. And I'm happy to know
17 Marty's confidence in what's happened over the
18 last ten years, but I still, I hear you saying
19 you've developed the capacity to make de facto
20 ring-fencing work with other countries you trust.
21 I don't hear you saying we're not going to be
22 carefully monitoring flows in and out of each of

1 our jurisdictions at all. We're going to just let
2 laissez faire take hold here.

3 And so that is actually more like ring-
4 fencing in the insurance world. And I want you to
5 see linguistically you're using the term ring-
6 fencing bad, what we want to do good, and I think
7 you're also describing a world you've invented
8 through ten years of discussions that's much more
9 subtle and complicated. And in the game theory
10 moment, the Title I - Title II moment is going to
11 lay on top of that.

12 MR. COHEN: Okay. So just to pick up
13 very quickly on that, I think you make a critical
14 point here with your Hamlet reference. It didn't
15 work out so well for him, so, you know, it's
16 really critical here that that decision be made
17 immediately.

18 DIRECTOR GRUENBERG: Let me just say
19 again it's contrary to all of my experience. I
20 don't see us having a Hamlet moment here, to be
21 candid about it. Given we don't know what the
22 circumstances --

1 MR. FISHER: Our present company not
2 included. We're referring to people outside this
3 room.

4 DIRECTOR GRUENBERG: You know, we're
5 dealing with one of these global firms. We're
6 going to assess the risks and make a judgment, and
7 I don't see us going back and forth for weeks and
8 trying to, agonizing over that call. You don't
9 know how sudden it's going to move. But assuming
10 there's some planning opportunity, some line of
11 sight into the problems as they're developing, I
12 think it's going to become pretty apparent to the
13 responsible authorities of our government what
14 we're going to have to do one way or the other,
15 what the nature of the firm is, and I think we're
16 going to be communicating that to our counterparts
17 and we're going to be working very hard to get on
18 the same page if, indeed, that's where we're
19 heading on this thing to bring this together and
20 that everybody knows what we're going to do, when
21 we're going to do it, and execute it. And then
22 the question is, you know, can we execute it

1 successfully because even if you do all of that,
2 the operational changes here, even if everything
3 is good, you know, particularly until we do it the
4 first time, the risks are significant.

5 But I don't see, I see a different set
6 of, I don't see a Hamlet issue and I don't
7 necessarily see the other foreign authorities
8 going back on all of the work we've done over
9 these last several years. What I do see is, boy,
10 this is a big challenge to carry out, and the
11 ability of our authorities and the foreign
12 authorities to work together and execute this in
13 a way so that it happens in an orderly matter
14 without undue disruption, that is the thing that
15 I would worry the most about from where at least
16 I've sat. You know, you may be right, but I
17 worry, for what it's worth, less about that than
18 I do as can we pull this off from an operational
19 standpoint.

20 MS. ADMATI: So when you're referring
21 to ten years ago, I mean, I think the benchmark
22 there is that there was tier 2 capital. I mean,

1 the words keep changing, so it was called tier 2
2 capital or trust preferred or something else that
3 was counted as losses and it wasn't. And there
4 were, I understand, some memorandum of
5 understanding about things, so I'm sure it was
6 different because, in the end, nobody observed
7 losses. In other words, the creditors were paid
8 in full, even in institutions that were bailed
9 out.

10 So that's the starting point of now
11 it's going to be different. But my worries that
12 you've been working with all these other
13 regulators and it's really about the legal
14 authority and about the political people that will
15 have a tendency to ring-fence because of their
16 constituents. So when there are all these
17 understandings and these relationships, we work
18 out for all of us and exactly how. So worrying is
19 good, right?

20 MR. TETRICK: I think, going back to
21 where this conversation started on internal TLAC,
22 part of the goal there is to give hosts confidence

1 so that they don't need to do further undue ring-
2 fencing.

3 And picking up on Rodgin's point about
4 the importance of flexibility, you know, we can't
5 answer the question in this forum what's the right
6 level, but, you know, from a home authority
7 perspective, you can understand why having some
8 flexible tool to meet needs where they might
9 arise. We don't know where it's going to be most
10 acute. It's helpful to have some degree of
11 flexibility.

12 I think one thing just to acknowledge
13 that's a factor in that conversation is if you
14 have lower pre-positioning in a bigger pool of
15 contributable resources, part of that discussion
16 that's been around is how do we know that pool is
17 going to be there, is it visible to host
18 authorities, and what are the controls around it?
19 And I'll just say that the work that we've done on
20 the capital positioning framework in Title I is
21 pretty helpful in that regard in that it defines
22 what that pool of resources is. I don't think

1 anybody else has that. And it gives hosts some
2 understanding of how it might be used over the
3 course of the runway.

4 MR. COHEN: This is why the point,
5 Susan's earlier point, you need the confidence and
6 the cooperation or else it doesn't make a lot of
7 difference. So I think all three have to work
8 together.

9 MS. BAKER: And the fact also that our
10 firms have already done this pre-positioning, even
11 in countries where there hasn't been a rule
12 requiring them to, is doing a lot of work for us,
13 as well, in terms of building trust. And the fact
14 in the CMGs they talk about that, how they
15 calculated what they're doing, what are the
16 numbers in the various material legal entities,
17 and what would be the plan if they did go into
18 bankruptcy to make sure that that is distributed
19 out.

20 So, I mean, I think that the foreign
21 authorities would know, at least for those
22 material entities, what they would be getting.

1 MS. CHAPMAN: Can I just chime in?
2 Because this is a point that's come up when we've
3 had engagement with foreign regulators in the U.K.
4 and in various international conferences. And
5 when they hear what status would be afforded to
6 the regulators in a U.S. Chapter 11/Chapter 14 of
7 U.S. G-SIB, first they're surprised, then they're
8 relieved, then they're happy because, once they
9 hear that the regulators would be parties in
10 interest, that their views would actually form
11 part of the evidentiary record, that just because
12 now this bankruptcy judge that they've never heard
13 of before is going to very much involve the
14 regulators, it raises their comfort level and it
15 makes them much more enthusiastic and willing to
16 engage and less afraid of the process.

17 And I think the point that Ryan made
18 about flexibility around pre-positioning, which
19 picks up something that Rick started the day with,
20 is also very critical.

21 The other thing that happened when
22 Lehman filed that that is absolutely avoided is

1 there's a filing and you can't operate your
2 trading system because the intellectual property
3 is in Hong Kong and you don't have a way of
4 getting at it.

5 So just operationally and structurally,
6 there's been a huge, huge step forward and maybe
7 a Pollyanna view of the world I could see a
8 situation in which in a regular Chapter 11 in the
9 United States we will have non-debtor foreign
10 entities and there will be funding that's
11 provided. And, you know, we always are nervous
12 about money leaving the debtor group, but you can
13 track it, you can make mechanisms, you know, for
14 bringing it back and forth and trying to maintain
15 business as usual. Whether that would be possible
16 in the world of a G-SIB filing, you know, no one
17 knows, but, at least theoretically, it is possible
18 if things work remotely the way they're supposed
19 to work.

20 MR. HERRING: I'll circle back to an
21 issue that came up this morning. Is the
22 intermediate holding company, if it has proper

1 governance around it, a partial solution to this?
2 The question is, you know, if a country can be
3 satisfied that means are available and will be
4 used when necessary and don't have to be right
5 here in the bank that I control, then it seems to
6 me that you do get a lot more flexibility.

7 Is it possible to have a transparent
8 governance mechanism so they realize it's going to
9 be automatic or at least very, very reliable that
10 whatever they have locally can be augmented, if
11 necessary, from the intermediate holding company?

12 MR. DELFIN: It can be. I think
13 there's tradeoffs. We started this process from
14 a Title I legal impediments perspective, so, you
15 know, we were thinking if a firm was doing this
16 and the assumption was they were downstream, let's
17 say at the last minute, and there were clearly
18 legal challenges associated with that, and so if
19 you look at our guidance this falls in our legal
20 obstacles bucket because that's the way we first
21 came to the thought. And it was only considered
22 the following mitigants to that legal obstacle.

1 You could have an IHC, you could have pre-
2 positioning, you could consider binding mechanisms
3 or support agreements. That's the way we came to
4 it.

5 Over time, you can see how an IHC could
6 provide some degree of flexibility because it
7 could be a pool that could move in to whichever
8 material entity might need it.

9 MR. HERRING: Yes, I was thinking about
10 that.

11 MR. DELFIN: So there is some
12 flexibility in there. It's more flexible than if
13 you pre-positioned with each of them.

14 MR. HERRING: But on the other hand,
15 the host countries would have to be satisfied that
16 not only is it there but it will be used.

17 MR. DELFIN: Exactly.

18 MR. COHEN: And it goes back to the
19 independent directors at the IHC. So it actually
20 has a really, you know, I agree, that's exactly
21 the origin of the IHC, but I think it has the
22 benefits that it's referring to.

1 MS. BAKER: Everybody is thinking about
2 flexibility versus certainty, including our
3 colleagues at the Fed. Just to wrap up quickly on
4 things because everyone needs to end up with a
5 next steps slide, it goes without saying that we
6 will continue to be having our firm-specific
7 meetings and our bilateral dialogues. And I
8 didn't put them up there. I thought I'd focus on
9 a few things you might not be as aware of. The
10 multilateral efforts continue. The FSB just put
11 out its seventh annual report of the G20 on
12 progress towards resolution and adhering to the
13 key attributes we're all bringing, but it is a way
14 to continue to keep the pressure up.

15 As I mentioned earlier, the FSB is also
16 launching this multi-year effort to evaluate the
17 effects of reform and looking at their framework
18 for adjusting "too big to fail." We also will be,
19 we've been undertaking reviews of the technical
20 implementation of the TLAC standard. That is
21 coming out, and the resolution planning process
22 itself, Bruce has been on that. And maybe you

1 could talk just very briefly about that and how we
2 are using that as sort of a vehicle for
3 transparency.

4 MR. HICKEY: Sure. You know, the FSB
5 members have been undertaking this peer review.
6 They do peer reviews periodically. They've done
7 there. This is a third one on resolution issues.
8 The first one was chaired by former Chairman
9 Gruenberg. This one is on resolution planning.
10 They basically want to get a sense across the 25
11 FSB jurisdictions where are they in terms of
12 actually having frameworks for resolution
13 planning.

14 And we wanted to highlight this as a
15 good example because it shows a lot of what our
16 priorities are in undertaking this kind of
17 multilateral engagement. I mean, the gist of it
18 is they just want to issue a report, having done
19 extensive survey through questions and bilateral
20 conversations with all 25 jurisdictions as to what
21 are you actually doing about resolution planning.

22 No surprise, you know, I don't want to

1 preview too much what's going on, but, you know,
2 certain jurisdictions that are home to the large
3 institutions are doing very well. There's still
4 a lot of work to do on other jurisdictions.

5 But the thing we wanted to highlight
6 what's so impressive, we think, about this type of
7 work and the opportunities that it affords us is
8 the fact that, principally, what this does is
9 produce a report and it's a factual report. It's
10 not about listing a bunch of prescriptive guidance
11 but sort of saying to the world, here, transparent
12 fashion, here is what all the FSB jurisdictions
13 are doing.

14 The review is undertaken by -- it's a
15 peer review. It's undertaken by representatives
16 from agencies that are represented in the FSB.
17 And what you have is instead of you should do this
18 and not be doing this, we're just saying here's
19 the continuum of options that you have as
20 policymakers in thinking about resolution
21 planning.

22 Secondly, what I'll say is that we've

1 built into the process, as is true throughout many
2 FSB efforts, engagement with the industry. Just
3 last month, we had a workshop with banks, with law
4 firms, and with consultants, in which we asked
5 them to take a look at some of the issues that we
6 were trying to cover and to get their perspective.
7 Certainly, from a U.S. perspective given that the
8 firms are the subject of all this resolution
9 planning work, it was important to hear from them.
10 And I think this accomplishes two things: one is
11 it results in work that is far more well developed
12 in terms of its overall perspective and then,
13 finally, getting back to the transparency issue,
14 it is a way of communicating tangibly to firms and
15 to the public sector, to the public, the fact that
16 regulators are, in fact, working together on some
17 hard issues. I mean, I'm sympathetic to the idea
18 that we've heard this in various other settings
19 that they kind of have to take it on faith that
20 there's a lot of work being done cooperatively
21 amongst regulators and that we are making
22 progress. But as Susan mentioned earlier, in

1 context like the CMGs where we bring the firms in
2 and they see all of us sitting around the table
3 and we barrage them with questions for half a day
4 and in things like workshops that are associated
5 with various FSB work, firms get to see that, in
6 fact, regulators are working together and trying
7 to advance the ball.

8 MS. BAKER: And just to wrap up, I'll
9 quote my chairman who said on the topic of
10 international cooperation there is no magic
11 bullet, we have to just keep talking. So with
12 that, I took your talking point.

13 CHAIRMAN MCWILLIAMS: Thank you. Well,
14 that brings us to the conclusion of the
15 Committee's meeting today and, first and foremost,
16 thank you to the staff who have not only worked
17 hard to prepare for this Committee meeting, and
18 I'll quote Ric Delfin who said, "I just need to
19 survive Thursday." To everybody else on staff at
20 the FDIC who not only sat bravely here briefing
21 the three chairmen, current and former, and a
22 former vice chairman of the Federal Reserve and

1 the Lehman judge --

2 (Laughter.)

3 CHAIRMAN MCWILLIAMS: -- but was taking
4 questions and being barraged by some of the
5 smartest people in the world on these topics. So
6 thank you all. I know how much work went into
7 this and you did an excellent job.

8 I have a couple of minutes for my
9 closing remarks, but, truly, I am the beneficiary
10 of the hard work done with the FDIC, and under the
11 19th chairman, Sheila Bair, and under the 20th
12 chairman, Marty Gruenberg, so I think it's only
13 appropriate that the 21st chairman yield some time
14 to the 19th and the 20th and allow you to do some
15 closing remarks for today. And thank you again to
16 the staff.

17 MS. BAIR: Do it in numerical order?

18 (Laughter.)

19 MS. BAIR: Thank you, Madam Chairman.
20 And I appreciate the opportunity to be on this
21 advisory committee. I appreciate your invitation.
22 I've been a little rusty on this, so, hopefully,

1 my questions and comments have been helpful. And
2 you've been tolerant to have two former chairs and
3 a lot of other smart people pontificate, but
4 you're going to be the decision-maker and you
5 wisely held your cards close because, right, there
6 are no answers to these questions and you can't be
7 too definitive about it because if you are then
8 you're going to end up having probably to do
9 something else.

10 So I think it's amazingly helpful. I
11 served on this committee, actually. I had one
12 meeting before I stepped down as chair, but I'm
13 glad Marty continued it, I'm glad you're
14 continuing it. And I will turn my phone off. So
15 it's been helpful, and I look forward to future
16 meetings. Thank you.

17 DIRECTOR GRUENBERG: I should say, for
18 me, the underlying theme here is continuity, and
19 Sheila did establish this committee, I continued
20 it, and I think we're both very grateful that the
21 new chairman is continuing this committee and the
22 commitment of this agency to this important work.

1 And it's been over two years since this committee
2 met, so I hope the presentation today, if nothing
3 else, persuades you that we just haven't been
4 sitting around.

5 (Laughter.)

6 DIRECTOR GRUENBERG: We have been doing
7 a little bit of work here and paying some
8 attention to this issue. I think the staff who's
9 briefed you here today really demonstrate an
10 extraordinary level of engagement and expertise.
11 There's, at least in my experience, no group
12 anywhere else at any other institution more deeply
13 engaged or more expert in this challenging,
14 really, new area of financial regulation, and
15 we're fortunate to have them.

16 And I would close on the point of
17 continuity that it did strike me that most of you,
18 frankly, have been members of this advisory
19 committee from its inception. And given the
20 nature of this, which is really, I think it's one
21 of the reasons we've been able to attract such an
22 exceptionally distinguished group is this is sort

1 of interesting stuff and it's important, so it
2 continues to engage our attention and yours, and
3 we've been the great beneficiary of your
4 participation. You give us a hard time, but
5 that's why we have you.

6 (Laughter.)

7 DIRECTOR GRUENBERG: I can go around
8 the table. So thank you, thank you all.

9 CHAIRMAN MCWILLIAMS: This Committee
10 meeting is adjourned. Thank you, everybody.

11 (Whereupon, the above-entitled matter
12 went off the record at 3:55 p.m.)

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This is to certify that the foregoing transcript

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Before: FDIC

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Place: Washington, DC

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