The Meeting of the Systemic Resolution Advisory Committee

of the

Federal Deposit Insurance Corporation

Held in the Board Room

Federal Deposit Insurance Corporation Building

Washington, D.C.

Open to Public Observation

April 14, 2016 - 9:05 A.M.

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

The members of the Committee present at the meeting were: Anat R. Admati, George G.C. Parker Professor of Finance and Economics, Graduate School of Business, Stanford University; Charles A. Bowsher, Former Comptroller General of the United States; Michael Bradfield, Former General Counsel, FDIC and Board of Governors of the Federal Reserve System; H. Rodgin Cohen, Senior Chairman, Sullivan & Cromwell, LLP; William H. Donaldson, Former Chairman, U.S. Securities and Exchange Commission; Peter R. Fisher, Senior Fellow, Center for Global Business and Government at the Tuck School of Business at Dartmouth University; Richard J. Herring, Co-Director, The Wharton Financial Institutions Center and Professor of Finance, The Wharton School, University of Pennsylvania; Thomas H. Jackson, Distinguished University Professor and President Emeritus, Simon Graduate School of Business, University of Rochester; Simon Johnson, Ronald A. Kurtz Professor of Entrepreneurship, Massachusetts Institute of Technology, Sloan School of Management; Donald Kohn, Former Vice Chairman, Board of Governors of the Federal Reserve System and Senior Fellow, Economic Studies Program, Brookings Institution; Douglas L. Peterson, President and Chief Executive Officer, McGraw Hill Financial; and John S. Reed, Former Chairman and CEO of Citigroup and Former Chairman, Corporation of Massachusetts Institute of Technology.

Members Michael C. Bodson, President and Chief Executive Officer, The Depository Trust and Clearing Corporation, New York, New York; Janine M. Guillot, Former Chief Operating Investment Officer, CalPERS, Sacramento, California; Gary H. Stern, Chairman of the Board of Directors, National Council on Economic Education, New York, New York; and David J. Wright, Secretary-General, International Organization of Securities Commissions, were absent from the meeting.

Members of the FDIC's Board of Directors present at the meeting were: Martin J. Gruenberg, Chairman, and Thomas J. Curry, Director (Comptroller of the Currency).

FDIC staff who attended the meeting included: Alexandra S. Barrage, Kent R. Bergey, Rebecca Bittle, Pauline E. Calande, Carol Carnes, James A. Caton, Jason C. Cave, Patricia A. Colohan, Kymberly K. Copa, Carolyn D. Curran, Christine M. Davis, Ricardo R. Delfin, Patricia B. Devoti, Doreen R. Eberley, Diane Ellis, Ralph E. Frable, Shannon N. Greco, Lawrence Gross, Barbara Hagenbaugh, Herbert J. Held, Bruce W. Hickey, Brent D. Hoyer, Krista Hughes, Nicholas Kazmerski, Sally Kearney, Rose Kushmeider, Helene Lilly, Alexandria T. Luk, Christopher Lucas, Arthur J. Murton, Richard J. Osterman, Jr., Lori J. Quigley, Barbara A. Ryan, Titus Simmons, R. Penfield Starke, Marc Steckel, Nathan C. Steinwald, Maureen E. Sweeney, F. Angus Tarpley III, Ryan P. Tetrick, David Wall, James C. Watkins, Angela Wu, and Charles Yi.

William A. Rowe, III, Deputy to the Chief of Staff and Liaison to the FDIC, Office of the Comptroller of the Currency, was also present at the meeting.

Chairman Gruenberg opened and presided at the meeting. He began by welcoming the Committee members and noting that the FDIC's work on the "living will" authority under Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), as well as the orderly liquidation authority under Title II of the Dodd-Frank Act, has been quite exceptional in moving forward on this broad issue and the resolution of a systemically important financial institution ("SIFI").

Chairman Gruenberg then provided an overview of the meeting agenda, noting that the morning session would begin with a presentation on the results of the review of the Title I resolution plans announced on April 13, 2016, by the FDIC and Board of Governors of the Federal Reserve System ("Federal

Reserve"), including a discussion of the process by which the outcomes were determined; that the next presentation would focus on the FDIC's work relating to the orderly liquidation authority under Title II of the Dodd-Frank Act, including a discussion of some of the internal operational exercises used to develop increased capability for the FDIC to execute its authorities under Title II and the important cross-border work underway with key foreign jurisdictions on resolution planning; and that the afternoon session would focus on a discussion of developments in the European Union ("EU") toward a single resolution mechanism, with Elke König, Chair of the Single Resolution Board ("SRB"), European Banking Union, as a guest speaker to outline the SRB's recent efforts. Chairman Gruenberg then introduced Arthur J. Murton, Director, Office of Complex Financial Institutions ("OCFI"), to begin the first panel presentation.

Mr. Murton advised that the first panel would focus on the findings with respect to the Title I resolution plans that the FDIC and the Federal Reserve recently released. He then introduced the panel members: Brent D. Hoyer, Deputy Director, Complex Financial Institutions, Division of Risk Management Supervision ("RMS"); Ricardo R. Delfin, Deputy Director, Resolution Policy Branch, OCFI; and David N. Wall, Assistant General Counsel, Complex Financial Institutions Section, Legal Division.

Before turning the discussion over to the panel, Mr. Murton briefly summarized the framework under Section 165(d) of Title I of the Dodd-Frank Act, noting that firms must submit plans for their rapid and orderly resolution under the U.S. Bankruptcy Code; that the FDIC and the Federal Reserve have the joint authority to determine whether a firm's plan was not credible or would not facilitate an orderly resolution under the U.S. Bankruptcy Code; that, if both agencies make such a determination, a Notice of Deficiencies would be issued to the firm indicating the weaknesses of the plan and providing an opportunity for the firm to respond; that, if the firm's response was determined to be inadequate, the agencies may jointly determine that further actions are necessary, such as higher capital and liquidity requirements or restrictions on operations, activities, or growth; and that, if those measures proved to be inadequate after two years, the agencies could jointly impose additional requirements, such as divestiture of assets or operations. He explained that the FDIC and the Federal Reserve issued a joint rule in 2011 concerning the resolution plan requirements; that the firms submitted their first resolution plans in 2012; that the agencies jointly

released public guidance to the firms in 2013, which identified five obstacles to orderly resolution under the U.S. Bankruptcy Code—capital and liquidity, global cooperation, counterparty actions, continuity of operations, and multiple competing insolvencies—to be addressed in the firms' next submissions; and that, in August 2014, the agencies released the findings from their review of the 2013 submissions, which indicated that the firms' attempts to address those obstacles relied on unrealistic assumptions and that the firms failed to make or identify changes that would facilitate an orderly resolution under the U.S. Bankruptcy Code. He noted that letters to the firms in August 2014 highlighted five different action areas in which the firms needed to make demonstrable progress in their next plans, including: (1) legal entity rationalization and alignment of legal entities with business lines; (2) a holding company structure that would facilitate resolution; (3) amendment of financial contracts to avoid early termination; (4) continuation of shared services that provide support-critical operations; and (5) information systems that would facilitate resolution. He also noted that the agencies requested improvements in the information provided in the public portion of the firms' plans; and that it was communicated to all of the firms that the agencies were willing to actively engage with the firms in the resolution plan process.

Noting that the Committee's last meeting included a presentation by Mr. Herring on current research focused on improving the transparency of the resolution plans, Mr. Murton asked Mr. Herring to offer his observations on the public portion of the firms' most recent plans. Mr. Herring noted that the public sections of the resolution plans submitted in July 2015 were dramatically better in some respects; that many of the submissions provided substantially more information, with substantive and responsive disclosures that offered a good sense of the resolution strategy and organizational structure; and that the disclosures were lacking some details that would enable the public to determine how particular institutions have progressed over time and compared relative to each other. Noting that, overall, enormous gains have been made by the agencies and the firms toward improving the transparency of the process, he emphasized that it was still difficult to sort out the available data to determine the firms' progress on the plans in the absence of a standardized quantitative measure; and that some standardized definitions, such as a definition of "material entity," could add clarity in the process. Mr. Murton added that the U.S. Government Accountability Office had recently released a report on the process and framework being used by the

FDIC and the Federal Reserve for the resolution plans; that one recommendation was that the agencies be more transparent about the process and framework; and that another recommendation was a lengthening of the current annual cycle for the review process to provide sufficient time for both the agencies and the firms.

Next, Mr. Hoyer provided a brief overview of the resolution plan review framework, noting that it mirrored the CAMELS rating process used for supervisory purposes, with five core components—referred to as "pillars"—supported by a series of factors for assessment and a series of assessment criteria to guide consistency among the review process. He explained that the assessment factors and criteria for the plan review framework established a very in-depth analytical process that could be tailored to any particular firm, as well as its resolution plan strategy; that all of the staff associated with the plan review have participated in a training program on the review framework; and that the review framework was intended to be a living document that would be updated to capture information relative to changes in the firms' strategies. He discussed the review framework, explaining that it operated along two lines: (1) a vertical approach that employed multi-disciplinary teams responsible for assessing the plan of each of the firms by applying the review framework, communicating and engaging with the firm, and collaborating with Federal Reserve staff; and (2) a horizontal approach that employed teams responsible for engaging across all of the firms from a comparative standpoint, identifying similarly-situated strategies, and coordinating that information with the vertical teams. He explained that the vertical and horizontal teams were in constant communication, with the pillar leads guiding those particular discussions within their components to facilitate sharing of information or highlight particular items; and that the vertical and horizontal teams, together with the pillar leads, were routinely providing status updates to the members of an oversight group to ensure cross-coordination on issues and communication with the Federal Reserve staff throughout the review process.

Ms. Admati raised a number of questions regarding the interactions and depth of review of the vertical and horizontal teams across the firms' resolution plans and the relationship between Title I and Title II with respect to the plans. In response, Mr. Delfin described how the review process was structured to ensure that key issues would be independently evaluated by the vertical and horizontal teams across firms and then presented to the oversight group, noting that the

presentations to the oversight group of the teams' findings provided opportunities to identify similarly-situated strategies in firms and to ensure additional levels of consistency in the FDIC's review of the resolution plans; and that the FDIC's findings were matched with the Federal Reserve's findings to ensure that both agencies were in agreement on the facts, weaknesses, and issues in determining the shortcomings and deficiencies enumerated in the letters to each of the firms. He briefly discussed the relationship between Title I and Title II, noting that Title I was the first step that required the firms to show that they can be resolved in bankruptcy; that Title II was a backstop that provided the FDIC with tools for resolution not available under Title I, but which would be available in the event of a failure scenario different than the one that might have been addressed under Title I; and that the Title I information would be integrated into planning a Title II strategy.

Mr. Wall noted that the central interconnectedness among the firms was an important consideration in the resolution plans; and that there was a renewed emphasis in the guidance to the firms to ensure that the plans address a range of adverse scenarios and take into account scenarios where other issues may be occurring within the financial system. Committee members raised a number of questions relating to the agencies interactions with the firms' senior management and the overwhelming size and volume of information in the plans. In response, Chairman Gruenberg noted that the facts that need to be addressed can become so overwhelming that it would be easy to lose track of the bigger picture; and that the preoccupation was not with details, but with addressing the core obstacles to resolvability and directing the firms to address those obstacles in a meaningful way.

Mr. Wall then briefly summarized the agencies' review of the plans submitted in July 2015 by the eight largest domestic bank holding companies. He advised that, as a result of that review, the FDIC and the Federal Reserve jointly determined that each of the plans submitted by five firms—Bank of America, Bank of New York Mellon, JPMorgan Chase, State Street, and Wells Fargo—were not credible or would not facilitate an orderly resolution under bankruptcy; that the agencies jointly identified deficiencies in those plans and issued joint notices of deficiencies to each of those firms; that, with respect to two of the firms, the agencies did not make a joint determination or issue notices of deficiencies, with the FDIC determining that Goldman Sachs' plan was not credible or would

not facilitate an orderly resolution under bankruptcy and the Federal Reserve determining that Morgan Stanley's plan was not credible or would not facilitate an orderly resolution under bankruptcy; and that, with respect to one firm—Citigroup—neither agency made a determination that the plan was not credible or would not facilitate an orderly resolution. Mr. Wall also advised that the agencies determined that seven of the eight plans—with the exception of Wells Fargo—had specific weaknesses in the plans that did not rise to the level of deficiencies, but which constituted specific shortcomings in the plans that the firms would be required to remediate; that the agencies issued a guidance document of general applicability to the firms to assist in further developing their resolution strategies; and that the agencies issued joint letters to each firm containing the notices of deficiencies or identifying shortcomings, or both, as applicable to the particular firm. He explained that the agencies' letters directed the firms whose plans were found not credible or would not facilitate an orderly resolution—and which were issued notices of deficiencies—to submit revised plans remediating the deficiencies by October 1, 2016; and that the firms that received a letter identifying shortcomings must submit a report of the progress they have made in addressing the shortcomings to the agencies by October 1, 2016.

In the discussion that followed, Committee members offered their comments on a number of issues regarding the agencies' review of the plans and guidance to the firms. In response to Mr. Jackson asking about the difference between deficiencies and shortcomings identified by the agencies in their review, Mr. Hoyer explained that a deficiency was an aspect of the plan that the agencies jointly agree would or could undermine the feasibility of the plan's strategy; and that, in contrast, a shortcoming was a component of the plan that raised questions with respect to the particular strategy, but did not necessarily undermine the strategy at this particular point. Mr. Wall also responded, noting that deficiencies and shortcomings had different legal consequences; that a deficiency, if not remediated by October 1, 2016, could provide the basis for further joint action by the agencies in the event the agencies were jointly to determine that the lack of remediation was sufficient to justify the imposition of further prudential requirements; and that a shortcoming would need to be addressed by the firm in its next plan submission in July 2017, and, if not adequately addressed, a shortcoming could become a deficiency that subjects the firm to a requirement for remediation.

Mr. Peterson commented that one of the areas the markets currently were most interested in was total loss-absorbing capacity ("TLAC"), particularly with regard to the type of bonds or other debt that would qualify for bail-in or use as a capital injection. Mr. Delfin responded by noting that the Federal Reserve was receiving comments on a proposed rule that would require certain institutions to meet a new long-term debt requirement and a TLAC requirement; and that, in the Title I process, the extent to which holding companies have sufficient loss-absorbing capacity that can be used to recapitalize the material entities would be defined or further enumerated by that long-term debt rule. Mr. Hoyer also responded, emphasizing that, if the firm has chosen a "single point of entry" ("SPOE") strategy in its 2015 plan, they had to demonstrate the capability to recapitalize material operating entities without reliance on some future requirement.

Mr. Cohen commented that it would be beneficial for the Federal Reserve to finalize the rulemaking on TLAC and single counterparty credit limits as soon as possible, because TLAC has the potential to place a severe limitation on the ability of other financial institutions to hold the bailable debt. He also observed that, notwithstanding everything in the firm's strategy to add flexibility, a bankruptcy court could intervene and create a real problem; and that one suggestion to avoid this problem would be a legislative solution, such as amending the source-of-strength language in the Dodd-Frank Act to make it a preemptive source-of-strength obligation, which would effectively preempt state law and the possibility of hedge funds buying the debt and holding up the whole process.

Mr. Delfin briefly outlined the scenario of the SPOE strategy that a number of firms, although not all, put forth in their plans—noting that, immediately prior to the firm filing for bankruptcy, the firm would downstream sufficient capital and liquidity to its key subsidiaries in order to ensure that those entities could continue operating while the parent goes into bankruptcy, with the expectation that these entities would end up winding down, being sold, or reentering the market at the end of the bankruptcy proceeding. He briefly discussed some of the key elements of the SPOE in bankruptcy strategy on which the agencies have provided guidance, including: (1) financial resources—sufficient capital and liquidity to ensure that those material entities would be able to operate throughout the bankruptcy process; (2) governance mechanisms—ensuring mechanisms are in place so that decisions would be made when they were supposed to be made; (3) operational—overcoming

operational challenges associated with filing for bankruptcy; (4) legal entity rationalization and separability—implementing a corporate structure that facilitates resolvability and the sale and transfer of entities; and (5) derivatives and trading activities—ability to wind down a large derivatives book.

Mr. Hoyer discussed the agencies' review and guidance on the financial resources element within a SPOE bankruptcy strategy, noting that the guidance was focused on the firm prepositioning capital and liquidity resources to provide flexibility and mitigate impediments to recapitalizing the subsidiaries; that the firm have the capability of maintaining a methodology that provides the material entities with the capital necessary to recapitalize those entities to a point that allows them to operate through the destabilization period; and that sufficient funding be available to meet the minimum operating liquidity and peak funding needs for any firm or entity within the firm—as well as a robust management information system that can size the outflow during the destabilization period—to ensure the firm's strategy could be successfully executed. He emphasized that the agencies' expectations were that the firm understand its vulnerabilities and undertake a comprehensive analysis toward the best possible outcome to substantially mitigate those vulnerabilities under a range of scenarios and market conditions.

Committee members offered their comments on a number of issues regarding the availability of funding and liquidity to execute a SPOE bankruptcy strategy. Mr. Johnson asked if there has ever been a self-funded bankruptcy restructuring by a large financial company. Chairman Gruenberg responded by noting that there never has been a set of requirements like those in Title I in the regulatory history of the United States; that the agencies were attempting to introduce a new set of standards and regulatory requirements within a framework that, at a minimum, would permit the possibility of a bankruptcy outcome for a large financial company, combined with a public bankruptcy backstop in the event that the bankruptcy option became unworkable; and that the combination of these two options was an entirely new framework within the agencies' regulatory regime to attempt a different outcome than the one previously available, which was open institution support for the company.

Next, Mr. Delfin discussed the governance element, noting that this element would be the mechanism for actions that need to be taken in order for the firm to successfully execute its SPOE bankruptcy strategy; that there were clear triggers for

specific actions outlined in the guidance from the agencies, such as triggers for when to inform the firm's board of directors of the need to move from a bad stress scenario into a potential recovery scenario, triggers for downstreaming capital and liquidity, and triggers for initiating actions prior to bankruptcy.

Mr. Wall briefly discussed the operational element, noting that there could be very significant legal challenges to the firm's strategy that occur both pre-filing and post-filing in a bankruptcy scenario; that one particular concern in the agencies' review was whether the firm has a structure that would enforce its board of directors' responsibility to make a decision to pull those particular triggers at the time that the firm was entering into material financial distress; and that another concern that needed to be addressed was potential post-filing challenges to the provision of liquidity, such as fraudulent transfer challenges, breach of fiduciary duty, or other legal theories that would arise both under federal and state laws. He noted that the firms were responsible for identifying these challenges and developing strategies to overcome them; that the agencies have highlighted specific areas for consideration regarding how the firms could approach some of these challenges, for example, by putting a contractually binding mechanism in place prior to filing for bankruptcy and in sufficient time prior to filing to survive the time periods associated with fraudulent conveyance and other challenges, prepositioning liquidity in a manner that could not easily be reversed, and/or creating an interim holding company that would serve to distance the actions of the firm's board of directors from the provision of liquidity to the subsidiaries. Noting that law was unsettled in this area, Mr. Cohen reiterated the concern that a bankruptcy judge could unwind one of these actions to downstream liquidity, noting that a legislative solution establishing a preemptive source of strength obligation would provide clarity to this issue.

Mr. Delfin then discussed the legal entity rationalization and separability element, explaining that the agencies assessed the degree to which the firms have taken adequate steps to simplify or "rationalize" their legal entity structure and applied legal entity criteria that, when implemented, best aligned their corporate structure to the firm's strategy and improved its resolvability. He emphasized that the legal entity criteria needed to be synchronized with the firm's strategy to ensure that its structure facilitates the recapitalization and funding of its material entities, if that was the firm's

strategy; that the corporate structure would facilitate the transfer, sale, or winding down of discrete lines of business and minimize complexity that might impede resolution; and that the legal entity criteria should be built into the ongoing process for creating, maintaining, and optimizing the corporate structure, and become part of the firm's decision making as the firm changes, grows, and moves into new jurisdictions.

Finally, Mr. Wall discussed the unique challenges of the derivatives and trading activities element, noting that the legal issues associated with putting in place a resolution mechanism under the U.S. Bankruptcy Code were fundamental to the success of the firm's plan; that, upon filing for bankruptcy, the firm would need to file a motion with the bankruptcy court that creates an adequate response to the bankruptcy; that, in cases, the firms' plans would be implementation of a SPOE strategy that envisions the creation of a successor institution; and that a key facet of that motion would be the need to create a structure that triggers the International Swaps and Derivatives Association ("ISDA") protocol protections against immediate closeout and cross-defaults with respect to the institutional subsidiaries. He advised that the agencies' have asked the firms to focus on how they would structure that first day motion to ensure that it could survive anticipated objections, which may include due process concerns, challenges to whether or not the authority actually exists under the U.S. Bankruptcy Code to create the new institution, the basis for transferring assets from the debtor to the new institution, and other issues associated with the bankruptcy court's ability to retain jurisdiction and enforce the mechanisms that would promote the orderly continuation of the debtor. Mr. Hoyer briefly outlined the guidance to the firms, noting that the agencies would look for flexibility in dealing with derivatives and trading activities; that one strategy could be a "passive wind-down" which assumes that the firm cannot regain market confidence and would not have access to the bilateral markets; that another strategy could be an "active wind-down" which assumes that the firm would have access to the bilateral markets to some extent to shrink their trading activities; and that the agencies would assess the firm's strategy by focusing on the completeness and sufficiency of the supporting analyses in the context the firm's plan, as well as the impact of its plan on the stability of the financial system.

During the discussion that followed, Mr. Herring asked about the limitations of the special provisions available under the ISDA protocol. Mr. Wall responded by explaining that the

ISDA protocol provides for the stay of certain early termination rights of external counterparties triggered by bankruptcy proceedings; and that, if the criteria under the protocol have been satisfied, early termination events cannot occur, and normal termination and other business as usual provisions would apply on day two after the bankruptcy filing. Mr. Bradfield asked if the agencies were satisfied that the ISDA protocol could cover all of the necessary protections with respect the derivatives and termination process. In response, Mr. Wall stated that the ISDA protocol went a long way toward reducing the possibility of systemic contagion to a very large extent; and that the ISDA protocol and the implementing rule to be issued by the Federal Reserve would address the vast majority of contracts that would be expected to terminate early. Following additional comments from Committee members, Chairman Gruenberg concluded the discussion by noting that the documents summarizing the resolution plan framework and basis for the agencies' determinations on the firm's plans, as well as the guidance provided to the firms and issues to be addressed going forward, currently were available on the FDIC's website; and that, after reviewing those documents, the FDIC would welcome any comments, suggestions, or questions from Committee members.

Chairman Gruenberg thanked the staff for the presentation, noting that they have done a substantial amount of work in reviewing the Title I plans; and that the FDIC's work on Title I has moved the center of gravity on a challenging set of issues. He then announced that the meeting would briefly recess, and, accordingly, at 11:44 a.m., the meeting stood in recess.

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The meeting reconvened at 11:55 a.m. that same day, at which time Mr. Murton introduced the next panel to provide an update on the FDIC's work on the Orderly Liquidation Authority under Title II of the Dodd-Frank Act: Herbert J. Held, Deputy Director, Systemic Resolution Planning and Implementation Branch, OCFI; Ryan Tetrick, Associate Director, Systemic Resolution Planning and Implementation Branch, OCFI; F. Angus Tarpley, III, Associate Director, International Planning Coordination and Outreach, OCFI; and R. Penfield Starke, Assistant General Counsel, Receivership Section, Resolutions and Litigation Branch, Legal Division.

Mr. Held began with a brief summary of the FDIC's 2012 Title II SPOE resolution strategy, noting that it accomplished the major goals of: assuring financial stability; ensuring that

creditors' equity bore the loss; terminating culpable management; and providing no taxpayer support. Under the SPOE strategy, he explained, the company would file for bankruptcy, create a bridge holding company to which virtually all of the assets would be transferred while leaving the liabilities behind, the assets would be valued, and the bridge holding company would exit by doing a debt-for-equity swap in the new company—with the former creditors becoming the owners of the resulting entity. He emphasized that the resulting entity probably would still be systemic; and that the international closeout of derivatives contracts would be problematic. He noted that the FDIC published a *Federal Register* notice in December 2013 that described the SPOE strategy in much more detail; that, by late 2013, the Title II strategy had evolved to provide that the firm that exits bankruptcy could no longer be a systemically important firm; and that the current Title II planning was focused more on optionality by providing multiple options to deal with the crisis, depending on the firm's condition, the state of the economy, and the firm's problems. He explained that each of the firms has a broker/dealer subsidiary that experiences either a complete wind-down or a wind-down to a very much reduced entity; and that, in the FIDC's planning, broker/dealers would wind-down on their own within a very short period of time as the "repo" and security lending books roll off without disruption, based on their maturity. Mr. Tetrick noted that this would be similar to the approach presented by many of the firms in their Title I plans—with a solvent wind-down of their broker/dealer subsidiaries under a SPOE bankruptcy process, except that it would be overseen by the FDIC under Title II. Mr. Held also explained that the firms have presented different strategies in their plans for dealing with the size of the bank subsidiary itself, including: breaking up the bank into three or four different parts; using initial public offerings to return cash and stock to the bridge entity; spinning the whole entity off to the creditors; and selling assets or subsidiaries.

In the discussion that followed, Mr. Johnson questioned whether the disassembling of the firms would result in the loss of economies of scale and have implications for financial stability going forward. In response, Mr. Held noted that disassembling a $2 trillion bank into four, five, or six parts would still result in very large financial institutions that would have economies of scale; that planning for multiple options to deal with the crisis would offer a choice of different tools to deal with the crisis depending on where the problems were focused, how much capital was needed for the

resulting companies to be well-capitalized, what the market appetite was for raising new capital, and how much the companies would have to be reduced to avoid systemic risk. Mr. Fisher commented that, if the resolution process works, there should be less emergency liquidation and selling-off of assets and a longer horizon over which to sell assets slowly in a more considered and transparent process. Mr. Held noted that this would not be an overnight process or fire sale-type transaction; and that it would likely take years to actually arrange the sales, consummate the transactions, and spin off the operating companies. Mr. Fisher also asked how the equity in the future holding company would be priced. In response, Mr. Held advised that the valuation of the company after it has gone into resolution was a key component of the resolution process, because the new company would need to be able to provide financial statements and do write-downs and valuations; and that the value of the company would depend on whether the whole company was going to exit and continue operating, or whether pieces of the company would be spun off.

Mr. Tetrick then summarized the operational planning that the FDIC has undertaken to develop a comprehensive resolution framework and the capabilities to execute its systemic resolution authorities under Title II. He noted that the processes the FDIC has developed would be carried out from the time contingency planning begins through exit from resolution; and that the processes in the systemic resolution framework were designed to be flexible and responsive to different types of institutions and failure scenarios. He briefly described some of the operational exercises the FDIC has designed to evaluate and test the processes in the system resolution framework, noting that the most recent operational exercise was held in December 2015 to evaluate certain processes that rely on interagency collaboration and establish some protocols and expectations with other key-turning agencies on specific actions, such as activating the Orderly Liquidation Fund with the U.S. Department of the Treasury and the delivery of those funds through the Federal Reserve Bank system. He noted that the Title I resolution planning process has been extremely helpful in terms of strategic thinking and development of options in carrying out the Title II authorities. He also noted that the FDIC has had intensive collaboration with foreign authorities focusing on the FDIC's Title II authorities; that operational exercises have been conducted with foreign authorities to build bilateral relationships and establish joint work streams on certain processes to determine what kind of home host coordination might be needed in a resolution; and that the

operational exercises would continue as an ongoing program.

Mr. Tetrick continued with an overview of the five phases in the systemic resolution process. He explained that the first phase was the planning phase, which the FDIC has been conducting with its advanced resolution planning through Title I and Title II. He noted that the second phase was the determination phase, which includes: activation of the resolution management structure internally, domestically, and internationally with host authorities; information requests for institutions and other supervisory authorities to determine actions that may need to be taken in a resolution; development of a resolution strategy, particularly a capital and liquidity analysis; identification of new management; and preparation of an operating agreement and other legal documents to implement the restructuring plan. He explained that the third phase was the immediate stabilization phase following the receivership, which would include: forming the bridge company; stabilizing the group; and establishing communications to the broad public, personnel, counterparties and customers of the firm. He advised that the process would then transition into the fourth phase, the orderly liquidation phase, which would include: operating the institution as a bridge financial company; conducting a new valuation of the firm; obtaining a fairness opinion on the firm's valuation by an outside advisor; exchanging creditors' claims for equity or debt in a new company; and completing liquidation and restructuring actions necessary to exit from resolution. He advised that the final phase was the post-exit phase, which would include: completing the restructuring plan after the exit from resolution; managing ongoing receivership work and litigation; and handling post-exit communications and statutory or other reporting.

Mr. Tarpley concluded the panel presentation with a brief update of the FDIC's international engagement, noting that the FDIC's work was focused on three areas: (1) bilateral outreach, which included involvement with the Single Resolution Board ("SRB"), European Central Bank ("ECB"), the United Kingdom ("U.K."), and the Banking Union member states, such as France, Germany, Switzerland, and Japan; (2) multilateral outreach, which included the FDIC's work with the Financial Stability Board ("FSB") and the SRB; and (3) institution-specific engagement. He provided some examples on the bilateral engagement, noting that the FDIC has engaged in tabletop exercises hosted by Switzerland and Germany, as well as informal and formal working groups with the European Commission and the SRB; that the FDIC has continued to work closely with the U.K.

to engage and implement cross-border resolution planning; and that the FDIC hosted a bilateral exercise with Japanese authorities to discuss cross-border resolution issues, including funding and liquidity, continuity of access to financial market infrastructures, and the ISDA protocol. In the area of multilateral outreach, he noted that the FDIC was a co-chair of the FSB's Cross-Border Crisis Management Group for Financial Market Infrastructures, which was developing guidance on how a Central Counterparty could be resolved if it were to undergo distress or failure; that the FDIC was also working on how to address the related issue of continuity of access to financial market infrastructures; and that the FDIC was very involved as co-chair of the Bail-In Execution Working Group, which was evaluating issues related to implementation of the bail-in resolution, as well as valuation and registration issues. Mr. Tarpley concluded by noting that, with regard to institution-specific engagements, the FDIC has established Crisis Management Groups ("CMGs") for the seven globally-active banks where key host jurisdictions have been identified—Bank of America, Bank of New York Mellon, Citigroup, Goldman Sachs, JPMorgan Chase, Morgan Stanley, and State Street—as well as CMGs for Wells Fargo and two insurance companies.

Chairman Gruenberg announced that the meeting would recess for lunch. Accordingly, at 12:54 p.m., the meeting stood in recess.

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The meeting reconvened at 1:53 p.m. that same day, whereupon Chairman Gruenberg introduced Ms. König, Chair of the SRB, noting that she was a well-recognized leader internationally in the area of financial regulation; that she has extensive leadership experience in the area of resolution, particularly relating to the resolution of systemic financial institutions; and that her experience has been of great value in addressing the very challenging assignment of establishing the SRB.

Ms. König began by advising that the European Banking Union has three components: (1) the Single Supervisory Mechanism, which was now the single supervisory authority supervising the largest banks in Europe, as well as cross-border banking groups; (2) the Single Resolution Mechanism, which has the SRB at the center of this organization focused on resolution planning; and (3) the Deposit Guarantee System—referred to as the European Deposit Insurance Scheme ("EDIS") —which was focused on

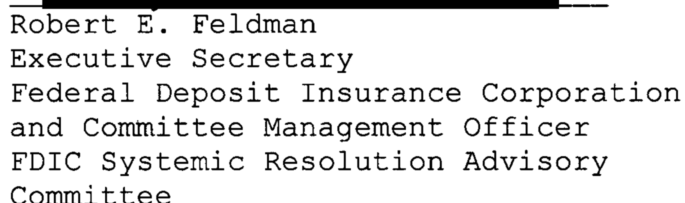
establishing a harmonized deposit guarantee scheme within Europe, or at least the Eurozone. She briefly discussed the SRB's objectives, noting that it was focused on: resolution planning; setting a minimum requirement of own funds and eligible liabilities ("MREL")—the European equivalent to TLAC; and removing the obstacles to resolution. Noting that the SRB was responsible for the largest banks and cross-border banking groups within the Eurozone, she explained that the SRB closely cooperates with the National Resolution Authorities ("NRAs"), which were directly responsible for supervising all of the other banks; that cooperation with the NRAs was an important source of information; and that the NRAs would use the SRB's resolution planning manual in resolving smaller banks. She advised that the resolution objectives would be to safeguard critical functions and guarantee financial stability of the member state or the EU as a whole; and that, for the more complex institutions, the objectives focused on protection of public funds, depositors, and client funds and assets. She briefly discussed some of the issues being addressed by the SRB, including defining what constitutes a "critical function," understanding a bank's liability structure, identifying where critical support functions were allocated, determining whether there would be sufficient bail-in debt, and setting MREL requirements.

Ms. König continued, explaining that the Bank Recovery and Resolution Directive ("BRRD") in Europe established a legal requirement of eight percent of bail-in of total liability as a minimum criterion for access to the Single Resolution Fund ("SRF"); that Europe now has a legal requirement called MREL and an international commitment called TLAC; and that the EU Commission has begun to discuss how to implement TLAC within the European legislation. In response to Mr. Johnson asking if the eight percent bail-in requirement could be waived in the event of a potential contagion situation, Ms. König explained that the BRRD contained rules for exceptional circumstances, but that the SRB has assumed in its resolution planning that the bank would have the required eight percent and could be resolved without access to the SRF. She briefly discussed the framework for the Deposit Guarantee System, noting that the fund would be built up over a period of eight years to a total of approximately one percent of covered deposits in the EU area; and that it would begin with national components—since the EU was made up of independent member states—and gradually become a European fund. Ms. König concluded with a brief outline of the SRB's work program for 2016, noting that it included continuing development of resolution planning and preparedness, fostering cooperation

with national authorities, and funding and financing for the SRF.

In bringing the meeting to a close, Chairman Gruenberg thanked Ms. König for providing the Committee an opportunity to discuss the important and challenging work of the SRB. He also thanked the Committee members, noting that their contributions were exceptionally valuable to the FDIC. He concluded by commenting that, compared to the challenges that confronted the FDIC in 2008—when these institutions were getting into difficulty and there were few options to deal with the failure of these firms—it was a transformed situation in which the FDIC's work has shifted the center of gravity in this important area.

There being no further business, the meeting was adjourned at 2:50 p.m.



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

April 14, 2016

Minutes

of

The Meeting of the Systemic Resolution Advisory Committee

of the

Federal Deposit Insurance Corporation

Held in the Board Room

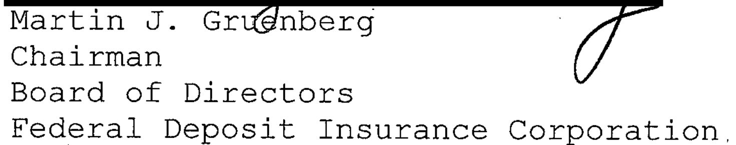
Federal Deposit Insurance Corporation Building

Washington, D.C.

Open to Public Observation

April 14, 2016 - 9:05 A.M.

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



Martin J. Gruenberg
Chairman
Board of Directors
Federal Deposit Insurance Corporation