

FEDERAL DEPOSIT INSURANCE CORPORATION

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SYSTEMIC RESOLUTION ADVISORY COMMITTEE

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MEETING

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THURSDAY,

APRIL 14, 2016

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The Advisory Committee convened at 9:00 a.m.
in the Federal Deposit Insurance Corporation
Board Room, 550 17th Street, N.W., Room 6010,
Washington, D.C., Martin J. Gruenberg, Chairman,
presiding.

PRESENT:

MARTIN J. GRUENBERG, Chairman

**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 Federal Reserve Board**

**H. RODGIN COHEN, Senior Chairman, Sullivan &
Cromwell, LLP**

**THOMAS J. CURRY, Comptroller of the
Currency**

**WILLIAM H. DONALDSON, Former Chairman, U.S.
Securities and Exchange Commission (SEC)**

**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**

**JOHN S. REED, Former Chairman and CEO of
Citigroup and Former Chairman, Corporation
of Massachusetts Institute of Technology**

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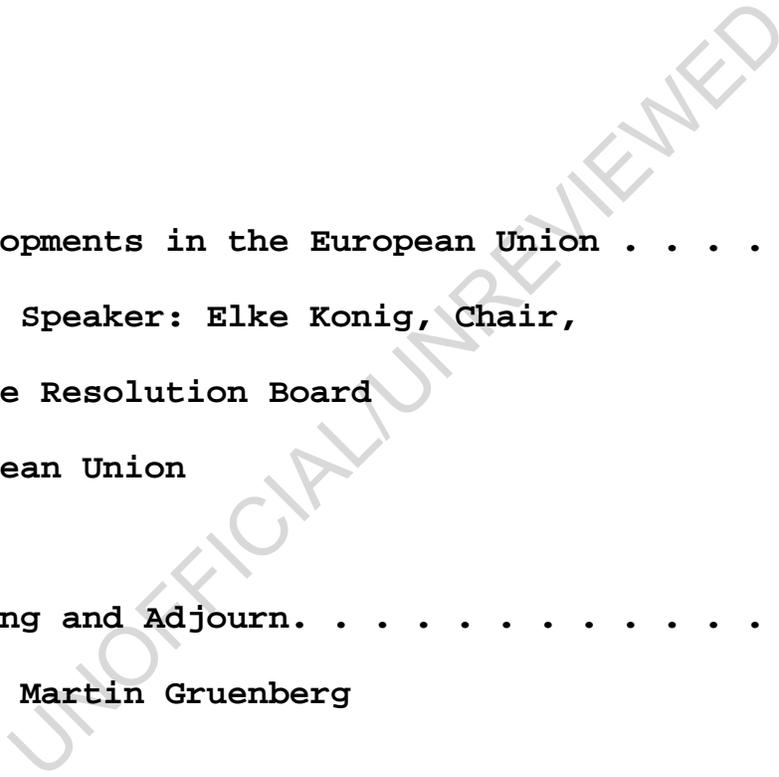
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Martin Gruenberg



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

2 9:06 a.m.

3 CHAIRMAN GRUENBERG: Good morning,
4 everybody. You know, timing is everything.

5 (Laughter.)

6 So, we want to welcome you to this
7 meeting of our Systemic Resolution Advisory
8 Committee. I think we have an exceptionally-
9 interesting program to go through today. I think
10 the work we are doing, the FDIC is doing, in
11 regard to help the living will authority under
12 Title I of Dodd-Frank, as well as the orderly
13 liquidation authority under Title II of Dodd-
14 Frank, is really quite exceptional and moving the
15 ball forward on this broad issue, like the
16 resolution of systemically-important financial
17 institutions.

18 I will keep my remarks very brief and
19 just walk through the agenda for today. First,
20 we are going to have a presentation of the
21 results of the living will review that were just
22 announced yesterday, actually, by the FDIC and

1 Federal Reserve.

2 Then we will walk through both the
3 results of the review and the process by which
4 the outcomes were reached and which we think very
5 important. A particular effort was made, if I
6 may say, and as I hope will become apparent, that
7 we made a real effort in regard to transparency
8 relating to this process, to explain clearly how
9 the results were arrived at and the basis for the
10 results.

11 So, the staff, which has really done,
12 I think, extraordinary work here, will walk you
13 through it and will very much welcome your
14 questions, reactions, and input on the work which
15 has been done.

16 And then, following that, we will have
17 a presentation on the work we have been engaged
18 in relating to the orderly liquidation authority
19 under Title II of the Dodd-Frank Act. We will go
20 over some of the internal operational exercises
21 we have been undertaking to develop increased
22 capability for us to execute our authorities

1 under Title II, discuss some of the important
2 cross-border work we have been doing with the key
3 foreign jurisdictions in regard to resolution
4 planning and outline the further development in
5 our thinking relating to our public resolution
6 authorities, the orderly liquidation authority
7 under Title II.

8 And then, after lunch, we will be very
9 fortunate to have with us Elke Konig who, as you
10 know, is the Chair of the new Single Resolution
11 Board for the European Banking Union. The SRB,
12 as it is called, is a new creation of the
13 European Union. It spent last year in a setup
14 phase in which the FDIC made a particular effort
15 to provide support. We have already developed a
16 very close working relationship with the SRB.
17 They actually opened their doors for business on
18 January 1. And we are really fortunate to have
19 Elke with us here this afternoon to talk about
20 the important work that she and her Board are
21 undertaking.

22 So, I think this will be an

1 interesting and informative day. During the
2 course of it, we will welcome your questions and
3 input on the work that is being done.

4 I am very pleased that Comptroller
5 Curry could be here today to take part in this
6 meeting.

7 And if there are no other comments or
8 questions to open the program, I will turn it
9 over to Art Murton, the Director of our Office of
10 Complex Financial Institutions, to begin the
11 presentations.

12 MR. MURTON: Great. Thank you.

13 So, this first panel is going to focus
14 on the work we just released on the resolution
15 plans. I am joined here by Brent Hoyer, Rick
16 Delfin, and David Wall. These are the people who
17 led that work.

18 What I want to do, before I turn it
19 over to them, is just sort of account how we got
20 to this point, starting with what the
21 requirements are under the Dodd-Frank Act,
22 Section 165(d) of Title I of the Dodd-Frank Act.

1 What that does is require that firms
2 submit plans that show that there could be a
3 rapid and orderly liquidation of the plan under
4 the Bankruptcy Code. This is a joint authority
5 between the Federal Reserve and the FDIC. After
6 receiving the plans, the agencies may determine
7 that the plan is not credible or would not
8 facilitate orderly resolution under the
9 Bankruptcy Code. If both agencies make such a
10 determination, they are required to issue a
11 Notice of Deficiencies to the firm. This
12 indicates what the weaknesses of the plan were,
13 and the firm is given an opportunity to respond
14 to that Notice of Deficiencies.

15 If that response is inadequate, the
16 agencies may, again, jointly determine that
17 further actions are necessary, such as higher
18 requirements for capital and liquidity or
19 restrictions on operations or activities or
20 growth. If that set of measures proves to be
21 inadequate after two years, the final stage is
22 that the agencies could jointly, again, require

1 divestiture of assets or operations.

2 So, that is the framework that the
3 statute laid out. We will talk about our recent
4 findings and where we are with respect to
5 different firms.

6 But I want to go back and just, again,
7 review how we got here. After the law was
8 enacted, the agencies in 2011 issued a joint rule
9 laying out the process and what we were looking
10 for. We asked that in their plans, the first
11 plans, that the firms describe their structure,
12 their operations, their interconnectedness,
13 describe their strategy for resolution, and also
14 required that the plans have a public portion
15 that would be available.

16 The firms submitted their first plans
17 in 2012. And the agencies did not review those
18 plans under the standard. We were taking them in
19 and, basically, forming our view of the next
20 steps.

21 In 2013, in the spring of 2013, the
22 agencies jointly released public guidance to the

1 firms for their next submissions. In that
2 guidance, the meat of that was that the agencies
3 identified five obstacles to orderly resolution
4 under the Bankruptcy Code. Those obstacles were
5 capital and liquidity, global cooperation,
6 counterparty actions, continuity of operations,
7 and the possibility of multiple competing
8 insolvencies.

9 So, the firms were asked in their next
10 plans to address those obstacles. We received
11 those plans in October of 2013. We reviewed
12 them, and in August of 2014, we released the
13 findings. I think it was this Committee last met
14 in December of 2014. So, it was not long after
15 the review was made public.

16 In the review, the findings of the
17 agencies were that the firms tried to overcome
18 those obstacles, largely by relying on what we
19 viewed as unrealistic assumptions, and that they
20 failed to make or even identify the changes that
21 would facilitate an orderly resolution under
22 bankruptcy.

1 And so, the letters to the firms of
2 August of 2014 indicated that the firms had to
3 act on five different action areas, including
4 legal entity rationalization, aligning legal
5 entities with business lines; having a holding
6 company structure that facilitates resolution;
7 thirdly, amending financial contracts to avoid
8 the early termination of these contracts that
9 caused such disruption in 2008, and the ability
10 to continue to shared services that provide
11 support-critical operations. And then, finally,
12 having information systems that would facilitate
13 resolution.

14 So, that is what we asked of the
15 firms, indicated that they needed to make
16 demonstrable progress in their next plans on
17 those fronts, and, also, asked for improvements
18 in their public plans. I think it was generally
19 viewed that the public plans portions up to that
20 point had not been very complete or fulsome.

21 I should also mention that in the
22 fall, later in the fall of 2014, we made a

1 finding on the plan of Wells Fargo, one firm. I
2 should step back a minute and just say that, in
3 August, the FDIC Board made the determination
4 under the statute that the plans were not
5 credible or would not facilitate resolution. Our
6 Board made that finding, but it wasn't a joint
7 finding.

8 In the fall, our Board did not make
9 such a finding for the Wells Fargo plan and
10 indicated that it formed the basis, which it
11 further developed, to provide for orderly
12 resolution.

13 So, we also promised in the letters
14 more engagement with the firms in the process. I
15 think it was fair to say that, up until August
16 2014, the engagement between the agencies and the
17 firms had been less than ideal, and we committed
18 to heightened engagement. I think it is fair to
19 say that that took place. We had multiple
20 meetings with the firms, I would say dozens and
21 dozens in some cases with various firms.

22 We also allowed them to preview their

1 submissions at the end of 2014. In February, we
2 issued staff guidance, further guidance to the
3 firms. So, we think there was much more
4 engagement with them.

5 Then, the plans came in in July of
6 2015. That is what we are about to talk about.
7 But, as I had said, we had asked for a more
8 fulsome public portion of the plans. I think, if
9 you will recall, at the last Committee meeting
10 this Committee discussed that. Dick Herring made
11 a presentation on that. And so, we received
12 those public plans.

13 I think I would like to ask Dick his
14 view of it. I just would mention that we asked
15 the firms to provide more information about their
16 structure, indicate their strategy and the steps
17 that they had taken to improve resolvability,
18 and, also, what they pictured the firm looking
19 like as it exited resolution.

20 MEMBER KOHN: Art, could you say
21 something about how this works with the Federal
22 Reserve? So, are these meetings joint between

1 the Fed and the FDIC?

2 MR. MURTON: In almost all cases they
3 were, yes. I think it is fair to say there has
4 been active involvement and engagement between
5 the agencies on that.

6 MR. HOYER: Yes, maybe just a little
7 more detail on that, and we will get into the
8 review process in a little while.

9 But, to Art's point, after the 2014
10 communication that both Boards voted on, we
11 communicated to all of the firms that we wanted
12 to actively engage at whatever level they wanted
13 to. And so, it was really kind of up to the
14 firms to reach out to us and set that up.

15 The majority of those were joint, so
16 that you could ensure that a common message was
17 sent. Obviously, there are times where we have
18 individual meetings, and so on. But I want to
19 separate the interim process of between 2014 and
20 the July submission. In the July submission we
21 will talk about how the review process worked
22 there, which is collaborative as well.

1 But think of it as a mix, but at all
2 occasions we have continuous weekly, if not more
3 frequent, meetings with our Fed counterparts
4 throughout the entire cycle.

5 MR. MURTON: Yes, yes. Yes. And so,
6 on the public plans, I think two things. I will
7 just make two observations before I turn it over
8 to Dick.

9 I think it showed that the majority of
10 the firms chose a strategy that looks similar to
11 what we call our single-point-of-entry strategy.
12 They attempted this, something like this, under
13 bankruptcy.

14 Also, the public plans indicated that
15 the firms coming out resolution looked
16 significantly different from what entered the
17 bankruptcy proceedings, smaller spinoffs and a
18 much smaller organization.

19 So, with that, I would ask Dick to let
20 us know how we did.

21 (Laughter.)

22 MEMBER HERRING: Everybody has had

1 access to them. I really don't like talking
2 about the public plans, which I have been
3 following with particular interest because I have
4 been curious about what really is going on. This
5 is a window, and I would also add it is a unique
6 window.

7 It is something we don't see about
8 foreign banks. But the U.S. regulators, although
9 I wish they were still little more transparent,
10 by the way, there is nothing we really know about
11 what is going on with living will processes in
12 other countries.

13 The public sections of the living
14 wills that we saw in July last year were
15 dramatically better in some respects. I can give
16 you both a half-full and a half-empty response.
17 But the half-full response is that there was
18 certainly more quantity. Many of the submissions
19 were at least three times as long as they had
20 been before. Now that itself is not a hallmark
21 of improved disclosure, but they really did have
22 qualitatively more substantive, more responsive

1 disclosures.

2 We did have a good sense of the
3 resolution strategy. They were much more clear
4 about structure. They had, I think, a better
5 description of the organizational structure. But
6 -- and here is where I wish for still more -- we
7 really are lacking some details that would enable
8 us to see how particular institutions have
9 progressed over time and how they look relative
10 to each other. The problem is we don't have a
11 standardized quantitative measure.

12 Let me just give you an example of
13 something that I looked up last night, which is a
14 very simple fix that could be made. I am not
15 quite clear why it isn't.

16 But, if you look at JPMorgan Chase --
17 and I am not picking on them; it is just they are
18 top of the list I looked at -- I looked up last
19 night what the Fed and the National Information
20 Center says is their full set of entities. The
21 number of 5,280. If you look at their SEC
22 filing, there are 42 entities. If you look at

1 their living will filing, there are 25 material
2 entities.

3 This raises real questions about well-
4 aligned their legal structure is with their
5 business structure. I suspect that a lot of this
6 is unnecessary. What I would like to see in a
7 future document would be taking the National
8 Information Center data, which are the best
9 public data we have got, and reconciling them to
10 what goes into the living will report.

11 I am sure that a huge number of the
12 5,280 legal entities are simply irrelevant. But
13 it would be very simple to have a reconciliation
14 in which the bank simply listed the entities that
15 would pose no threat to an orderly resolution and
16 why, and perhaps maybe have three or four
17 different categories that they fall into.

18 And if we had the satisfaction that
19 they were adding up, you would have a lot more
20 confidence in the identification method.
21 Moreover, you would be able to tell what was
22 happening over time. Have we actually whittled

1 it down? Are we getting a better integration of
2 legal and business structures?

3 So far, we really can't tell because
4 the definition of material entity is not really
5 standardized, and companies seem to change over
6 time with what they regard as a material entity.
7 Some of the things that we raised questions about
8 on the first-round filings have now shown up as
9 material entities. They weren't before, but we
10 are not quite sure what happened with the
11 transition. We could have a lot more clarity in
12 the process.

13 And I guess one other thing I would
14 mention is that, as I understand it, the agencies
15 did provide guidance for improving the living
16 wills. I think that is very commendable. I am
17 pleased they are doing it. But I think that
18 should be publicly released. I can't imagine it
19 has any proprietary information in it, but it
20 would enhance the transparency of the whole
21 process for us to know what the dialog is like.

22 I really there are enormous gains to

1 be made both by the agencies and the banks in
2 improving the transparency of the process. I do
3 believe a lot of progress has been made, but it
4 is difficult to sort it out in the available
5 data.

6 MR. MURTON: Okay. Thank you.

7 Thanks.

8 I will take a glass half-full right
9 now at this point.

10 (Laughter.)

11 MR. DELFIN: Briefly, as Dick pointed
12 out, we hadn't in the past put out specific
13 guidance, but I think in your binders you will
14 note that part of the public release that the
15 agencies did yesterday included the new guidance
16 that the agencies issued.

17 MR. MURTON: Excellent.

18 MR. DELFIN: Included in that is a
19 description, actually, of the public section and
20 improvements that can be made there, not to cut
21 to the end, but --

22 MR. HOYER: You probably haven't had

1 a chance to read the public section. It is in
2 the back of it. I would like to tell you that it
3 goes as far as you asked, but it specifically
4 does go a little farther on material entities.

5 MR. MURTON: Great.

6 MR. HOYER: So, it will help
7 incrementally get you closer to where you are at.

8 MR. DELFIN: And financial
9 interconnections are also in there, I think.

10 MR. MURTON: Great. Yes.

11 So, before I turn it over to my
12 colleagues, I just should mention that you may
13 have seen the GAO released a report earlier this
14 week on the process that the Fed and the FDIC
15 have been using for the resolution plans. I
16 think, by and large, it was positive on our
17 process and our framework for doing that, and it
18 did have a couple of recommendations that are
19 worth noting.

20 The first was that we be more
21 transparent about our process and our framework.
22 As we just indicated, I think the Boards this

1 week released information about the process and
2 the findings that really sets a new level of
3 transparency for the agencies. I hope you feel
4 the same way about it.

5 They also recommended that we, in a
6 sense, lengthen the cycle for this review
7 process, that an annual cycle is, in a sense, too
8 challenging for both the agencies and the firms.
9 I think we welcome both those recommendations. I
10 think the first was already well in process.

11 MEMBER JOHNSON: I'm sorry, can I ask
12 about that cycle point that you brought up? I
13 mean, one question that has already arisen with
14 regard to this round of reporting on living wills
15 is whether or not they are still current and
16 whether or not they reflect the current situation
17 of these entities. And specifically, there is
18 some commentary, which I don't know if it is
19 right or not, saying that foreign banks, for
20 example, have moved on and are in a different
21 position.

22 If you are going to address the cycle,

1 I think you have to also address the lag between
2 when the reports come out and when your
3 determinations are public.

4 MR. MURTON: I think that is fair. I
5 think we have engagement with the firms
6 throughout the process. So, I think we are aware
7 of changes in the firms as this has happened.

8 MR. HOYER: Yes, it is a great point
9 that you make, Simon, of course, and particularly
10 with the duration of the review process, as
11 everyone is well aware of here.

12 While during the review process the
13 level of engagement with the firms is more
14 focused on the plan they submitted, as you can
15 imagine, at the senior-most level there are
16 continued meetings with the heads of resolution
17 planning for the firms as well as senior staff on
18 continued progress.

19 So, yes, the firms do not, nor would
20 the agencies expect, that they submit their plan
21 on July 1st and they stop. They have a very good
22 idea of, and we were very clear with them, on the

1 project plans that we think are the appropriate
2 plans, and they should continue to close. And
3 they have a very good idea on the areas that they
4 need to continue to develop.

5 So, your point is taken, but by no
6 means do the agencies encourage, nor do the firms
7 stop their process along the way. You will find,
8 and we do greatly expect, that some of the things
9 that were in the July submissions of 2015 have
10 progressed over the last several months.

11 MEMBER ADMATI: Can I ask a question?

12 So, I didn't have a chance to look at the most
13 recent thing. But I was just quoting from the
14 August 5th, 2014, some of the things that you
15 said they needed to improve, like having made
16 unrealistic or inadequately-supported
17 assumptions; for example, bad behavior of
18 customers, counterparties, investors, central
19 clearing facilities, and regulators.

20 So, especially like the
21 counterparties, because the counterparties are
22 usually each other, so what I am wondering about

1 always is the system. These paths are just
2 individual.

3 My question fundamentally is, how are
4 they able to make the assumptions? How are the
5 companies themselves having enough information to
6 answer questions, you know, asking them? So,
7 when they say, "This is impossible to do. We
8 don't know how to pass," I kind of have sympathy
9 with that because I don't know how they can
10 actually pass that. I mean, if I am a teacher, I
11 will give exams. So, it is like, are we
12 admitting that it is really very difficult --

13 MR. HOYER: Yes.

14 MEMBER ADMATI: -- even for them? You
15 know, so you can press all you want, but it is
16 like, do they know enough about their
17 counterparties and their counterparties'
18 counterparties to actually answer that question?

19 You didn't mention here assumptions
20 about other nations' insolvency laws or in
21 subsidiaries or the cross-border issues, which
22 are not even mentioned here, but counterparties

1 sometimes are abroad or the subsidiary is abroad,
2 or whatever.

3 So, my question is, just how are they
4 really able or how are you able to, then, be
5 comfortable with that? Or is it fundamentally
6 kind of too difficult because of
7 interconnectedness?

8 MR. HOYER: Yes, so it is a great
9 question. It is a really broad question. It
10 covers a lot of categories. And we will touch
11 upon many of those components today.

12 But, just to kind of briefly have that
13 conversation now -- and I will use one example.
14 You brought up counterparties. You think about
15 counterparties along multiple lines, whether it
16 be funding, right, whether it will be collateral,
17 et cetera.

18 And so, this process is really meant
19 to leverage off of existing business-as-usual
20 systems when they are making those sorts of
21 assumptions. They understand a great degree the
22 counterparties that they deal with, the clients

1 that they deal with. This is really looking at
2 kind of the array of possibilities.

3 We are looking for, it is an FDIC
4 consideration, that this strategy work under a
5 range of plausible failure scenarios. One thing
6 we know for certain. We will give you the one
7 certainty. We don't know what the next stress
8 will look like. We do not know how it will flow
9 throughout that particular firm.

10 So, we want it to work under a range
11 of plausible failure scenarios and we want it to
12 work under a range of different market
13 conditions. The one thing that all the large
14 firms have is they have a series of stress tests.
15 They have stress tests on capital, one being run
16 right now by the Federal Reserve. They have
17 stress tests on liquidity. They have contingency
18 funding plans.

19 So, the understanding of stresses that
20 have occurred in the past, not that the history
21 is necessarily indicative of what is going to go
22 forward, tweaking those assumptions to

1 understand, well, what is the sensitive to that;
2 what is my break-even point; is it substantially
3 mitigated or am I vulnerable?

4 So, there is, actually, a great deal
5 of knowledge. There is the part about
6 understanding the assumptions and think about it
7 relative to what is the sensitivity. Are you
8 very, very close and very little adjustment could
9 cause failure of your strategy or do you have a
10 pretty good gap there? So, that would be kind of
11 one component I would discuss, and we will get
12 into that a little bit more in detail relative to
13 our framework discussion.

14 And the second thing is absolutely a
15 valid point, is MIS capabilities. Do we have the
16 ability to produce the information, produce the
17 data in firms of this size and of this magnitude?
18 That is something that I would recognize kind of
19 two fronts on that. Obviously, all of the
20 agencies, the OCC, the Federal Reserve, the FDIC,
21 have been pushing MIS capabilities across the
22 firms for quite some time.

1 Secondly, there are systems
2 capabilities checks. The Federal Reserve has
3 SR 14-1 that is specifically around MIS
4 capabilities across the various components. You
5 mentioned one of the components being a
6 counterparty.

7 So, it is a difficult thing. These
8 are complex firms with difficult challenges. And
9 those are all key vulnerabilities to overcome,
10 but there are ways to accomplish it.

11 MR. WALL: I was going to say, one
12 other thing you asked about the cross-border
13 implementations, and that is, indeed, one of the
14 items that we have been particularly strong in
15 requiring the firms to analyze. They need to
16 look at the legal regimes, legal frameworks, in
17 the countries in which they operate. And they
18 need to be in communication with the regulatory
19 supervisory authorities in those jurisdictions
20 that would be implicated in a resolution
21 scenario. So, that has been a focal point for
22 our analysis.

1 MR. MURTON: Yes. So, again, great
2 point.

3 I'm sorry.

4 MEMBER BOWSHER: Yes, I read The
5 Financial Times this morning. Of course, you are
6 the lead article on the front page there. But
7 the thing that jumped out was when they reported
8 that the FDIC went one way on the Goldman Sachs
9 and the Fed went the other, and then, vice versa,
10 for Morgan Stanley. And so, for the laypeople,
11 how do you explain that two agencies have that
12 much difference?

13 MR. MURTON: So, we are going to talk
14 about our framework and our findings.

15 CHAIRMAN GRUENBERG: Take my word, we
16 will get to that.

17 MEMBER BOWSHER: Oh, okay.

18 CHAIRMAN GRUENBERG: I think maybe it
19 will help with that process.

20 MEMBER BOWSHER: Okay.

21 MR. HOYER: Yes, we have received that
22 question a lot.

1 (Laughter.)

2 MR. MURTON: Yes, yes.

3 MEMBER BOWSHER: That's what jumped
4 out at me.

5 MR. MURTON: Yes. So, just a final
6 point on transparency, again, we think it has
7 been much improved. We have released the
8 guidance to the firms. We have released a
9 comprehensive report on our framework and our
10 findings. These are public documents. And the
11 Federal Reserve Board released redacted letters
12 that the agency sent to the firms. So, I think
13 there has been a great deal of transparency on
14 this, and we really look forward to the feedback
15 from the Committee on the work that we have done.

16 If I may, I might just suggest that we
17 try to focus the discussion on the framework and
18 the guidance and avoid delving into firm-specific
19 issues. But that last question was, obviously,
20 one that comes up, and we will address it.

21 With that, let me turn it over to
22 Brent, Rick, and David to continue what is

1 already started.

2 MR. HOYER: All right. Thank you,
3 Art.

4 Good morning, Committee Members.

5 Maybe the first thing we should do, we
6 will go through and introduce and, then, we will
7 just kind of tag-team this next area.

8 So, I am Brent Hoyer. I'm Deputy
9 Director for Risk Management Supervision's
10 Complex Financial Institution's Group.

11 MR. DELFIN: And I am Ricardo Delfin.
12 I'm the Deputy Director for Policy in the Office
13 of Complex Financial Institutions.

14 MR. WALL: And I am David Wall,
15 Assistant General Counsel in the Legal Division
16 for Complex Financial Institutions.

17 I think this is Brent's first time and
18 Rick's first time, but I have been here before.

19 (Laughter.)

20 MR. HOYER: All right. So, following
21 kind of a sequence, I know everyone is anxious to
22 get to the results. We will cover the other "R"

1 word first, the review. But, as we are going
2 through this, please feel free to ask questions,
3 as you have thus far.

4 As Art had mentioned, it is important
5 when you are thinking about the sequence of what
6 has occurred here, this really started with the
7 release of the August 2014 letters. After that
8 point, it was very clear in the letters, it was
9 made very clear to the firms, that the agencies
10 would be willing to engage at whatever level they
11 wanted to engage.

12 We, then, had, as you saw in the -- I
13 refer to it as the public narrative -- the 2015
14 communication where we reemphasized that
15 communication engagement as well. And many of
16 the firms engaged in an extremely material way.
17 We used that particular process, as you would
18 expect, to provide input, direction, to review
19 certain aspects to get comfort level with. That
20 obviously helped in the scoping process, not only
21 within a particular firm, but from a horizontal
22 perspective.

1 MEMBER REED: Is there anybody been at
2 the Board level to talk to?

3 MR. HOYER: At the Board level, for a
4 firm, no. No, it was generally senior staff is
5 the way you can think about this. All of the
6 agencies have quarterly, if not more frequent,
7 meetings with the senior-most executive officers
8 for the banks in the corporate area. They
9 typically in and hit all three. During the peak
10 of the resolution cycle, the heads of resolution
11 planning is really what you can think about, and
12 their core staff, they may be coming in to
13 present on a certain area and they will bring
14 staff with that, but not within, not Board
15 members, no.

16 In discussing the review that we do,
17 I think it is really probably helpful to kind of
18 break it up into two components, if you will.
19 There is the process itself, kind of what we do,
20 and there is the framework that guides the
21 process.

22 I know there have been a lot of

1 documents released in the last 48 hours, and you
2 may or may not have had a chance to read through
3 the GAO report that Art previously mentioned.
4 Our framework and our process, as well as our
5 Federal Reserve counterpart's process, is briefly
6 discussed in there. And so, I will give you kind
7 of a quick overview of that.

8 From a framework standpoint, as I
9 mentioned, supervision. I have been supervision
10 my whole career. So, it probably is no surprise
11 that the framework that I would design for this
12 particular process would be very supervision-
13 like. And so, to the extent that you are
14 familiar with the CAMELS process, this very much
15 mirrors that.

16 There are five core components. We
17 call them pillars. And those components really
18 capture everything that you could imagine from
19 the statute to the rule, to the letters, any
20 guidance, any communications. So, it is holistic
21 across those particular components.

22 Underneath those components are a

1 series of factors for assessment. And then,
2 underneath that are a series of assessment
3 criteria to guide consistency among the process
4 that we will discuss in just a little while.

5 The one thing that I would say is
6 don't think about this. You know, when you start
7 seeing factors and criteria, people can think,
8 well, it is a checklist. It is absolutely not.
9 These are very, very in-depth types of assessment
10 factors. If I was going to give you one example
11 that we will talk about a little bit later today,
12 I will match it up to something that Rick or I
13 will talk about.

14 If we were in the world of operational
15 readiness, is this strategy something that can be
16 implemented? Something that is near and dear to
17 the FDIC's heart is optionality. As we mentioned
18 before, we don't know what the stress will look
19 like. We don't know how it will flow through the
20 organization.

21 And so, to the extent that we are
22 looking at what sorts of options the firm has for

1 separating business lines, entities, and actually
2 executing sales. So, you can see the assessment
3 criteria, the factors, going through a series of
4 questions of how they identified certain objects
5 of sale. So, that would be kind of a step one.
6 Early you can see a series of questions around
7 that.

8 Step two, how meaningful are they?
9 What does it represent for revenue, for assets,
10 for equity? What does it represent on business
11 lines?

12 Then, you can see it going into the
13 next step of, can they execute on them? There is
14 a difference between identifying an object of
15 sale, knowing how meaningful it is, and then,
16 actually being able to pull the trigger in a
17 timeframe that is relative to your preferred
18 strategy.

19 So, they thought through the processes
20 of the people associated with it, the systems
21 associated with it, the financials, et cetera.
22 You know, is it a particular building; they have

1 got to deal with lease? And then, it moves on
2 into what is the timeline for executing that
3 potential buyer. So, it is a very, very in-depth
4 analytical process that could be tailored to any
5 particular firm, their plan, their particular
6 strategy.

7 That framework has been trained to all
8 the staff that were associated with that review.
9 The Comptroller, I am glad that he is here today.
10 He supplied supporting personnel to the review
11 this year as well, which were greatly welcomed,
12 and they have participated in that training
13 program as well and the framework.

14 The framework is a living document.
15 It is constantly being updated to capture
16 information relative to changes in firms'
17 strategies and things of that nature. And so, it
18 will be retrained every year across the core
19 team.

20 So, from a process standpoint, to
21 facilitate it, the framework is really the
22 guiding document that does the heavy lifting.

1 So, how do we, then, facilitate that particular
2 framework? You can really think about it along
3 two lines. There is a vertical approach and a
4 horizontal approach.

5 And so, from the vertical approach,
6 this is a multidisciplined team. As you can
7 imagine, this is looking at the largest, most
8 complex global firms that we have here in the
9 United States. And so, when we are putting
10 together the teams of individuals to assess these
11 plans, they contain individuals from my unit that
12 are familiar, knowledgeable with large banks, how
13 they operate, how they work, the entities, et
14 cetera. That is supplemented with OCC examiners,
15 as I mentioned before, that bring that type of
16 expertise as well.

17 Within the resolution world of Art's
18 particular area, there is policy, there is
19 international, there is resolution expertise,
20 there is legal expertise. While there is a core
21 team, there is a body of experts behind them
22 where questions are funneled, and so on.

1 So, the vertical teams are responsible
2 for just their firm, applying that particular
3 framework to their firm and really understanding
4 every aspect of that. The vertical teams are
5 responsible -- I kind of think of it as the three
6 "F's": applying the framework, communicating and
7 engaging with the firm, and collaborating with
8 the Federal Reserve counterparts.

9 That way, by the time everything gets
10 done, there should be no surprises as to what
11 issues may exist, maybe not the level of the
12 issue, right? And there should be no disconnect
13 on the fact pattern with our Federal Reserve
14 counterparts. So, everything is a collaborative
15 process from the ground up at that level.

16 The review teams are also
17 supplemented, as you can imagine. In addition --
18 we will talk about the horizontals later -- you
19 can have a vertical slice, which is helpful
20 because you have to go deep. Across the five
21 components, we have groups that we call pillar
22 leads. And so, as they are looking at common

1 strategies, common operating businesses, those
2 pillar leads, those component leads are ensuring
3 consistency of application, consistency of
4 questions.

5 So, if I were to use an example, I
6 know we are not calling out firms here, but let's
7 just say if were in the universal -- I think we
8 are fine here -- if we are in the universal
9 firms, the large wholesale and retail
10 organizations that use a particular strategy.
11 Let's say they used an SP, single-point-of-entry
12 strategy. You can imagine the teams coming
13 together and coordinating across each pillar to
14 ensure X saw this, Y saw this, how did you apply
15 it, and so on.

16 So, the vertical component also has a
17 horizontal component across the pillars.

18 Go ahead.

19 MEMBER JOHNSON: This is very helpful
20 to understand this level of granularity. Are
21 foreign supervisors involved in any, hopefully,
22 seamless fashion in these conversations, the UK

1 or the Europeans or anywhere else?

2 MR. HOYER: Not at this point in the
3 review process, no.

4 MR. DELFIN: We have to break it into
5 component parts. So, we work with foreign
6 regulation on things called CMGs, Crisis
7 Management Groups. We all get together and
8 discuss individual firms and resolution planning
9 strategies.

10 Then, the Title I discussion is
11 actually something that we talk about so that
12 folks are aware. We also make sure they have had
13 access to the plans, if they have the firms. And
14 also, they have the other plans, in addition.
15 So, there is that, but they are not involved in
16 the plan review process.

17 MEMBER JOHNSON: I am glad we are
18 going to hear from the Europeans directly this
19 afternoon. But I think there is a very big set
20 of concerns about their strategy for dealing with
21 failure, which is based, as I understand it,
22 including having been there recently and talked

1 to them about this, on resolution, not
2 bankruptcy. Whereas, what we are talking about
3 and what the living wills is supposed to assure
4 us is that we can have bankruptcy in the United
5 States.

6 I don't think, if we put one of these,
7 my understanding is if we put one of these large
8 entities into bankruptcy here, that is not going
9 to mesh well with what the Europeans are going to
10 do. Title II I think will mesh more easily with
11 resolution. That is fine. But we really focused
12 on the living wills which are about bankruptcy.
13 And then, if their supervisors are not involved
14 or can't be involved in that conversation, it
15 just reinforces my concern.

16 MR. DELFIN: Well, it is different.
17 We should break it into component parts. So,
18 obviously, there are challenges associated with
19 having a bankruptcy that would not exist under a
20 Title II process. And the firms under their
21 plans need to address those obstacles. Some of
22 those obstacles are, obviously, multiple

1 competing insolvencies, as I have pointed out,
2 the risk of ring-fencing.

3 And so, what they need to do in their
4 plans and in their planning process is either
5 ensure that ring-fencing won't take place or
6 provide necessary capital and liquidity to make
7 ring-fencing irrelevant or provide some sense of
8 comfort that, whether it happens or not, their
9 plan will not --

10 MEMBER JOHNSON: I don't think firms
11 can determine that ring-fencing won't take place.
12 That is not their decision. It is not even the
13 decision of the regulator in other jurisdictions.
14 It is a matter of the legal code, right?

15 MR. DELFIN: That's true, but they can
16 address the obstacle or the risk associated with
17 that, associated with capital and liquidity.

18 MR. HOYER: So, a couple of points on
19 that, and we will get into the liquidity aspect,
20 which is fair, before we delve too far into ring-
21 fencing.

22 So, relative to their participation in

1 the review process, your direction question, no,
2 that does not occur. Routine conversations with
3 them. I think it is important to point out,
4 though, that members of various European groups
5 have come over and participated in work sessions
6 here. During that period of time, I personally
7 brief them on our framework in detail, share with
8 them the framework in detail.

9 Also, there have been members of the
10 FDIC that have been on assignment in their
11 particular agencies as well, and there have been
12 presentations made from the standpoint of knowing
13 our framework, being able to even leverage it or
14 use it. At least they understand what we are
15 applying at a very, very detailed level. So,
16 that is one connection point.

17 MR. DELFIN: And there is a lot of
18 information on what Brent just said. Would it
19 help to step back and big-picture it for a
20 second?

21 So, a plan comes in, and what we do is
22 we create, as pointed out, vertical teams and

1 horizontal teams. And they are implementing a
2 tool that we call the framework. And so, the
3 framework is designed to address all the issues
4 and things that you would think about when
5 looking at a plan. Plans have different
6 strategies. They offer it in different
7 jurisdictions. There are different components.
8 And so, the framework is designed to allow the
9 reviewer to really think through each issue.

10 When we say vertical, that is firm-
11 specific. So, there will be a team on X firm,
12 let's say Lehman Brothers. That is the one that
13 I use because it no longer exists.

14 (Laughter.)

15 So, there is a Lehman Brothers team,
16 and they have this framework. That framework
17 allows them to break up the plan into component
18 parts, and each one owns those component parts.
19 Brent mentioned there is a pillar lead. That
20 person knows this part of the plan and can
21 compare that part with every other plan's part,
22 so that we can ensure some consistency across

1 those component parts.

2 Yes, sir?

3 MEMBER FISHER: I just want to ask a
4 different question.

5 MR. DELFIN: Sure.

6 MEMBER FISHER: If you could talk to
7 me, before we get to termination, how do you
8 prioritize the feedback you are given by the
9 firms? Let me give a context. Because, as a
10 Board member of a non-bank SIFI, so not in this
11 process but earlier in the foods chain, I observe
12 through the process of being on the Board that
13 the staff of both the firm and the regulators are
14 driven to the facts, things that can be known.
15 It is a big detective story to find out
16 everything you can drilling down.

17 MR. HOYER: Uh-hum.

18 MEMBER FISHER: Which makes it is less
19 time, it seems to me, for the things that we
20 don't know about how could we simplify the
21 process. That is, there are questions that staff
22 can't answer about what could be done to simplify

1 a big holding company. And that gets squeezed
2 out in deference to the detailed
3 questions/feedback coming from the agencies,
4 which I understand the need for, but it is a very
5 awkward thing, as a Board member -- and I just
6 speak for myself in this capacity -- to see the
7 tide of specific detailed questions, which I
8 understand the need for, drives out time
9 management and what the Board can spend on how do
10 we simplify this function.

11 And it doesn't drive it -- and I just
12 want to be careful -- but the feedback tends to
13 come in laundry-list form, at least as it is
14 presented to a board. And it is very hard to see
15 there is enough time set aside for the hard
16 questions of how do we rationalize and lots of
17 time set aside for the specific details of how
18 the bankruptcy laws are going to interact with
19 some foreign jurisdiction, which the staff are
20 driven to the specificity of that.

21 So, I would just ask you to talk to me
22 a little about how you prioritize the feedback.

1 Or is it really flowing through the senior
2 management and they are spending time on the
3 things where they can make a difference?

4 MR. HOYER: It is a great question.
5 It is like the third area we are going to get to
6 here, but I am going to go ahead and kind of jump
7 ahead just a little bit. We are going to walk
8 through the process, explain how that process
9 rolls up, explain how we coordinate with the
10 Federal Reserve to get to those priority areas.
11 So, I will get into how we manifest the priority,
12 if you will, of the issues.

13 But, relative to the point of the
14 details and how that occurs, I would suggest two
15 particular aspects. So, one, the onsite portion,
16 if you will, of the reviews this year, I think it
17 is laid out in the GAO report, roughly 60 to 75
18 days. The staff is actively engaged with the
19 firms, the heads of resolution planning, their
20 particular areas for those components where they
21 have questions.

22 As you can imagine, as they are

1 engaging those particular firm-level
2 counterparts, when questions are asked, "Do you
3 have this?", "Does this do this?", it becomes
4 pretty obvious as to what is missing and what is
5 needed. And those discussions ensue, as they
6 would in the normal supervisory process.

7 And so, the list starts to grow. It
8 becomes very apparent to the individuals on both
9 sides of the table as to -- because if we find
10 something is missing, something we need to close
11 out, and the firm can't provide it, it is pretty
12 obvious that they are going to need to do that
13 next year.

14 We roll that up to the end of the
15 process and, as we mentioned, following August
16 2014, I will use one example. There was one firm
17 that we engaged 65 times between August 2014 and
18 the July 1st submission. There is active
19 engagement. There are monthly, in some cases
20 weekly, meetings with firms to have very detailed
21 discussion with whatever senior-level executives
22 they want on any particular issue.

1 So, there are sort of two venues, if
2 you will, to escalate, whether it be the detail
3 of a specific item or go beyond what is in the
4 letter, through the review process, as that
5 dialog is taking place every day, and then, after
6 the review process until the next plan
7 submission.

8 Now, as far as how the agencies
9 prioritize what is going to get into the feedback
10 letter, as I go through the rest of the
11 discussion here, I will kind of raise that.

12 Do you want to --

13 MR. DELFIN: Yes, I would just add on
14 I am not from the supervision side. And so, part
15 of this process is not a compliance exercise.
16 What we are trying to engage here is a problem-
17 solving exercise. And so, the firms' engagement
18 with us is the firms come into us with questions
19 about how they would overcome their particular
20 obstacles that are associated with their
21 structure, their strategy, their organization.
22 And so, we try to give them guidance and feedback

1 on that.

2 But in the area you mentioned
3 specifically, which was corporate structure, we
4 will talk about it in a little bit. We call it
5 legal entity rationalization in the guidance.
6 But that is actually fairly indicative of the
7 approach here. Under the Title I process, firms
8 need to have a criteria, their own criteria -- we
9 don't set it; we don't put it on them -- a
10 criteria that is tailored to their structure,
11 their operations, and their firms. And then,
12 they need to implement that criteria in a way
13 that works for them, that works with their
14 strategy, and overcomes the obstacles like the
15 obstacles that Simon addressed.

16 We can look at that criteria, see how
17 they execute it, test it to see if it is actually
18 synched-up. And we did and we provided guidance
19 on it.

20 But we are not going to them with "You
21 must do this," and taking all their Board's time
22 with solving our little problems. It is more

1 helping them on the problem-solving exercise of
2 overcoming all the obstacles that obviously exist
3 and we have pointed out in our previous guidance.

4 MR. HOYER: And for many of the firms,
5 they have been very good about bringing in,
6 really tailoring the individual discussions with
7 the staff that are applicable with executing on
8 it. And so, to Rick's point, using legal entity
9 criteria, some firms would set up a specific
10 meeting just on that to just talk about it and
11 the folks that are dealing with that.

12 Then, of course, it is within the
13 governance process of the individual institution
14 to escalate that through for approval all the way
15 up to its Board.

16 MEMBER JOHNSON: It is amazing, given
17 the late interaction you are describing, that so
18 many of these banks failed this round in living
19 wills on so many dimensions.

20 MR. HOYER: I didn't say every firm
21 engaged 65 times.

22 (Laughter.)

1 MEMBER ADMATI: Before doing the
2 horizontal, can you describe this horizontal?

3 MR. HOYER: Sure. Yes, that was next.
4 Thank you for bringing this back up.

5 MEMBER BRADFIELD: I want to ask an
6 embarrassing question, and I want to give you an
7 opportunity to answer it. What you have
8 presented in public is that, of the eight firms,
9 seven have failed to provide adequate plans and
10 only one is at least on the path. Now it is five
11 years, five-and-a-half years since Dodd-Frank,
12 and you have been in this process for two years.
13 And it seems you are not getting very far.

14 Is this a reflection on the
15 willingness of the banks to participate or are
16 they gaming the system? Is it a reflection on
17 the real possibility of developing living wills?
18 Is it a real reflection on the possibility of
19 making Title I work?

20 MR. HOYER: So, I am going to hit that
21 question real short, and we will go through the
22 review process. When we get into the

1 conclusions, maybe we can reframe how you pose
2 the question relative to how you interpreted
3 conclusions.

4 We will clarify the actual conclusions
5 of the eight firms, and then, we can discuss the
6 fact that, as was released in the public
7 narrative and with what the Federal Reserve
8 released with the letters, it discusses the
9 progress the firms have made, and for certain
10 firms how seriously they have taken it,
11 integrated it into their frameworks.

12 But let us finish the review process.
13 When we get past the review process and we get
14 into the results, we will reframe how you have
15 viewed the outcome. And that way, it is very
16 clear as to what that was.

17 MEMBER COHEN: Sorry for pulling you
18 off, but just a quick recommendation. John
19 started and raised the question about the Board.
20 Peter picked it up. Ultimately, I think all
21 three prudential regulators have direct
22 roundtables which I find most directors believe

1 are highly successful. Recommendation to
2 consider maybe holding a directors roundtable on
3 the resolution plans.

4 MR. HOYER: Yes. No, I think it is a
5 great idea, Rodgin. Some of the firms have
6 engaged the agencies before, where we have
7 routine meetings with outside directors from the
8 supervisory standpoint. And so, there would be
9 absolutely no reason why we wouldn't do it on
10 this front as well.

11 COMPTROLLER CURRY: I think that is a
12 great idea, Rodgin. We actually have sessions
13 for independent directors aside from the
14 interaction that we have during an examination of
15 sort of the ordinary crisis supervision.

16 MEMBER COHEN: That is what I am
17 referring to. The directors come back thinking
18 they have learned a lot.

19 COMPTROLLER CURRY: It makes sense to
20 do so on an interagency basis.

21 MR. HOYER: All right. So, we will
22 pivot back to the review process. We will speed

1 through it. I knew that everybody would be
2 anxious about results. And so, putting review in
3 front was, I would say, tactical, but maybe not.

4 (Laughter.)

5 So, back to horizontal real quickly.
6 We have the horizontal area, as I said, in the
7 engagements that we had with the firms that kind
8 of helped lay out areas that we wanted to engage
9 horizontally across all the firms. That is
10 really laid out, many of those categories are
11 laid out on page 9 of the public narrative,
12 things like legal entity rationalization,
13 governance mechanisms, liquidity, et cetera, et
14 cetera.

15 And so, those horizontal teams were
16 put together, and they were really looking at the
17 range of practice across each of the firms for
18 similarly-situated strategies. That information
19 is coordinated back and forth with the vertical
20 teams. And so, this is really looking at level
21 of granularity, strengths, weaknesses, progress,
22 and so on, from a comparative standpoint. Both

1 the vertical and the horizontals, as you can
2 imagine, have core sets of deliverables that
3 really help kind of finalize or conclude the
4 process that they have there.

5 Moving more quickly into the
6 governance process that we, then, have --

7 MEMBER KOHN: I wondered about the
8 interactions.

9 MR. HOYER: Uh-hum.

10 MEMBER KOHN: If in the horizontal
11 reviews you see some firms seem to have solved
12 problems that others are struggling with --

13 MR. HOYER: Absolutely.

14 MEMBER KOHN: -- I assume that --

15 MR. HOYER: Yes.

16 MEMBER KOHN: -- the vertical guys say
17 to the firm, others firms have -- or "Here are
18 some suggestions about how you" --

19 MR. HOYER: Exactly. No, exactly as
20 you would expect.

21 This is a perfect segue into the
22 governance process. So, the vertical teams and

1 the horizontals are in constant communication as
2 to what is going on and what they are seeing.
3 The pillar leads are guiding those particular
4 discussions within their components.

5 And then, what we had sitting on top
6 of that from a pyramid standpoint is the
7 oversight group. As you can imagine, Art,
8 myself, Rick, David Walls are members of the
9 oversight group.

10 On a routine basis, vertical teams
11 with the horizontal teams with the pillar leads
12 were providing status updates, conversations
13 about any item they saw. So, there are multiple
14 points along the way to ensure, if you will,
15 cross-coordination on issues, application, et
16 cetera, to do that.

17 And this really kind of all culminated
18 into one final discussion where the oversight
19 group met and we spent in some cases half-a-day
20 with each team, with each component there, as far
21 as the vertical teams, the horizontals, and the
22 pillar leads really having a vetting session

1 across all the dynamics of strengths, weaknesses,
2 progress, and so on. We got to really facilitate
3 it.

4 MR. MURTON: We got to sit on that
5 side of the table.

6 MR. HOYER: Yes, yes. We have got to
7 turn around and do that back the other way. We
8 are not looking forward to that.

9 All that information, that is the
10 staff-level framework for assessing, right, the
11 plans and the information within the plans.
12 That, then, rolls up into what we call our
13 assessment framework. That assessment framework
14 is also communicated in the GAO report.

15 The primary objective, of course, that
16 we are trying to achieve here is the statutory
17 standard, right, really determining whether the
18 resolution plan is not credible or would not
19 facilitate an orderly resolution of bankruptcy.

20 This assessment framework really rolls
21 up into three primary components.
22 Straightforward, I think when you think about

1 resolution planning, the first one is strategy.
2 It is really, does the firm provide a strategy
3 that has a credible path towards resolution in
4 bankruptcy? We are looking at those common
5 elements of, did it substantially mitigate
6 systemic risk transmission? Are the assumptions
7 around all of its various component parts
8 reasonable and supported? Are the obstacles that
9 Art mentioned and its key vulnerabilities, have
10 they been addressed, substantially mitigated?

11 As I mentioned before, very, very
12 important to us, is it flexible? Will it work
13 under various failure scenarios, under various
14 market conditions? We do not want a very
15 sequenced kind of plan that I need this entity to
16 fail first. If any other entity fails, it
17 doesn't work. Or I need these funds to be able
18 to move to here. We need it to be flexible. And
19 that is a key component that we are looking for.

20 The second element within our
21 assessment framework is operational readiness,
22 plain and simple. Can they execute on it? And

1 this gets to the components we mentioned before
2 around MIS and other core operational components
3 to execute on it.

4 And the last piece really within that
5 that I would mention are a combination of
6 governance mechanisms. Are all the Board actions
7 there, all the things that they would need to do
8 at the moment that they need to do it? Are there
9 triggers corresponding to those actions -- and I
10 don't want to steal much of what we will talk
11 about later -- to ensure that, to the extent they
12 have a good working knowledge of what is going
13 on, what they need to do, and it will help
14 facilitate from communication strategies to
15 financial execution, and so on?

16 And the last piece within that is the
17 optionality, as I mentioned before, and
18 separability. Do they have identified objects of
19 sale that help promote that particular
20 flexibility?

21 The last, the third and final piece,
22 is governance and responsiveness. This is

1 particular typical for most supervision. You
2 know, have they done what we told them to do?
3 Have they met the statutory requirements? Have
4 they demonstrated progress on all the prior
5 elements? And very, very important to both of
6 the agencies, have they really integrated this
7 into their overall governance structure? Is it
8 part of their day-to-day who they are, and so on?

9 And then, to the point, Peter, that
10 you raised, that information, then, is all rolled
11 up. The oversight group, then, begins the
12 conversation. We are having routine
13 conversations with our Federal Reserve
14 counterparts all along the way from the staff
15 level. So that by the time it works up to this
16 point, the facts, everyone is in command of the
17 facts of what the list of weaknesses are.

18 Everyone is in command of the facts of the
19 progress, the strengths, potential guidance
20 considerations, and so on.

21 That rolls up to the Oversight
22 Committee, where we begin at our level,

1 coordinating with Federal Reserve counterparts at
2 our level, to discuss communication. What do we
3 put into guidance? What do we put into letters?
4 How do we get that out, and so on?

5 So, that kind of flows you through.
6 I kind of expedited it since we had some good
7 questions along the way. But it flows you
8 through the framework that we use, the vertical
9 and horizontal components, the pyramid approach
10 of governance up to the oversight, to the
11 ultimate release of the communication.

12 Yes, any other questions?

13 MEMBER ADMATI: I have one important
14 question about the process actually here. And it
15 is related, again, to what the firms know and
16 what you know, because you see all the other
17 living wills. And also, you are on the other hat
18 of FDIC anyway. In your office you are Title II,
19 actually, and this is Title I.

20 So, when somebody makes an assumption,
21 you might be in a better position to evaluate, I
22 mean you are in a better position to evaluate

1 that assumption. So, my question is, when you
2 say -- and this is picking up on your flexibility
3 thing -- how specific is that exercise? Because
4 when I was looking for, when you said a
5 horizontal, it is not just so consistency across,
6 but interactions between.

7 MR. HOYER: Exactly.

8 MEMBER ADMATI: In other words, one
9 feeds into another because the counterparty is
10 this other person that submitted another living
11 will. So, how much do you do across the living
12 will?

13 Because I go back to the very first
14 meeting of this Committee where Paul Volcker, who
15 is not here today, you were presenting to us --
16 you were not there, Rick, but the people who were
17 there. It was back to Wiggins' day. But you
18 were doing Lehman. Okay? So, that was kind of
19 the first document that was presented to this
20 Committee.

21 And I remember Paul Volcker's first
22 question, and I think it may have been the first

1 question anybody on this Committee has asked,
2 was, so what would you do on day two, three, and
3 four, after you did Lehman in one night? What
4 would happen with Citi, et cetera? Would it also
5 be in your Title II resolution?

6 So now, Title I. Maybe one of them
7 goes to Title I, but, then, the others go to
8 Title II or any of the combinations there, if
9 bankruptcy was ever a possibility, which I think
10 many of us don't believe. But, then, we are back
11 in Title II, which I know is not living wills.

12 Still, in other words, in this FDIC
13 and in your office, there is sort of the various
14 work you do on Title II and you see all of those
15 firms. So, what does, then, the system look like
16 in a scenario? That is sort of where I am
17 interested in, and I understand the legal
18 processes, that you have to give them feedback,
19 et cetera, but you, yourself, have more
20 information than they do in evaluating whether
21 their assumptions, together with everything else
22 that you know about, because when they say

1 assumptions about regulators, it is assumptions
2 about you, about the Fed, about everybody else.
3 You know, is that likely? Is that possible, what
4 they are assuming, et cetera?

5 And so, just to say my other questions
6 that we can defer until later, you keep talking
7 about progress. And so, my question is, you
8 know, is any progress good enough? In other
9 words, when you said in August 2014 they have to
10 make significant progress towards X, Y, Z, now we
11 have another -- are you telling us that they made
12 some progress, any progress, enough progress?
13 And what will it take in five months when you now
14 give them, you know -- so, we can defer that
15 until later. But the word "progress" seems to be
16 so vague that it seems like any kind of progress
17 is good enough, and we can iterate kind of
18 forever on this process. Because it is part of
19 the process, in other words.

20 MR. DELFIN: One way is horizontal.

21 MEMBER ADMATI: Yes.

22 MR. DELFIN: So, the outline, the

1 structure that Brent just described is our
2 internal FDIC approach. If you look at the GAO
3 report, the Fed has its approach, which is also
4 pretty similar and connected.

5 So, at each point in our process we
6 are trying to make sure that on the key issues
7 that are two independent sets of eyes looking at
8 it, verifying it, checking it, and just doing it.
9 Our vertical team looks at it; our horizontal
10 team looks at it, looks at it across firms, and
11 then, presents to our oversight group, and it can
12 be distilled.

13 When they do those presentations, they
14 do them together, so that similarly-situated
15 strategies in firms, if they are leads, not the
16 firms themselves, are hearing the issues and can
17 make sure that, "Oh, we had that same issue" or
18 "No, this firm solved that problem in this way."
19 So now, we can ensure that we have got additional
20 levels of consistency in our own organization,
21 the way we are thinking about these plans.

22 That all rolls up and, then, we match

1 it with the Federal Reserve. We make sure that
2 we agree on the facts, the weaknesses, the
3 issues. That distills down into what we have
4 here, shortcomings and deficiencies. And that
5 lays out, ultimately, into the letter.

6 So, at each point in this process
7 there is a check, a recheck, a distillation, that
8 leads ultimately to the letters that just came
9 out. So, that is step one.

10 Then, you asked about the relationship
11 between Title I and Title II.

12 MR. HOYER: Exactly.

13 MR. DELFIN: So, obviously, these are
14 different paradigms, but they go to address the
15 fundamental issues that were laid out, which is
16 lack of preplanning and ability and authority to
17 address the resolution of a large systemic
18 institution that existed during the financial
19 crisis.

20 And so, Title I is obviously the first
21 step under the statute. Firms needs to show
22 under 165 that that firm can fail in bankruptcy.

1 That is what we are doing here today. That is
2 what we are discussing. There is a backstop
3 under Title II that exists.

4 Obviously, we have tools, the FDIC has
5 tools under Title II that are not available to
6 the firm under Title I, which is why they have
7 these additional obstacles, obstacles like
8 liquidity and working with foreign regulators
9 that are much easier for the FDIC under Title II.
10 The firms need to overcome that in their
11 strategies.

12 Now these two things work together
13 because all the progress we can make on Title II,
14 obviously, helps us because those are obstacles
15 that might exist. The progress we can make under
16 Title II helps us if we ever need to do a
17 backstop or if a failure scenario is different
18 than the one that might have been addressed under
19 Title I. So, those two work together, and the
20 Title II team will talk about that. So, I think
21 that is the next part of that.

22 MR. HOYER: Yes, there are kind of two

1 components I would come off of, because it was a
2 long, multifaceted question for like a meta-
3 Senate panel.

4 (Laughter.)

5 The use of the Title I information
6 integrate into Title I. As you can imagine, it
7 is highly connected, right? There are a lot of
8 common issues there.

9 So, as you would expect, all of us are
10 steeped not just in Title I, but in Title II, and
11 they are core aspects that the industry is
12 working through from a Title I standpoint that
13 also has Title II ramifications. So, absolutely,
14 we would be utilizing that.

15 I think the second part of your
16 question that I heard -- and maybe I
17 misinterpreted this -- was that, when we are
18 running our horizontals, absolutely, we are
19 looking for range of practices; absolutely, we
20 are looking for does this help facilitate the
21 strategy.

22 But the one thing that I want to make

1 clear is that we are not looking to make
2 everybody the same. So, I want to make sure that
3 it is relative to their strategy. And I will
4 give you like one specific example in their
5 business operations.

6 So, let's just say that they chose a
7 single point of entry in Title I, bankruptcy, not
8 Title II. And they have multiple aspects they
9 are going to have to deal with. But let's just
10 talk about the financial aspect of downstreaming
11 resources.

12 They can choose whether they want to
13 leave money at the top of the house, and when the
14 parent fails, try to downstream those. They can
15 choose to preposition those funds. They can
16 choose a balanced approach.

17 And so, when we are looking at who did
18 what, how, and what sort of obstacles they needed
19 to mitigate, obviously, a consistency approach
20 across governance mechanisms to capture that,
21 obviously, a consistency approach across
22 financial to capture that.

1 But, if we did have one firm, let's
2 say, that was more prepositioned with some
3 flexibility at the top, it is a different
4 consideration than someone who is completely
5 reliant upon all the money being downstream, has
6 a much bigger obstacle.

7 So, I didn't want it to, when I heard
8 the consistency, yes, absolutely, we look across
9 those big-ticket items to understand how they
10 address that vulnerability, but we are absolutely
11 by no means looking to make everybody the same
12 because they fundamentally operate differently.

13 MR. WALL: I think one other aspect to
14 what you are concerned about, a very good
15 question, a very good issue that we need to
16 address, I think as you were indicating, is the
17 central interconnectedness amongst institutions.
18 And I think you will see -- and I don't frontrun
19 our subsequent discussion -- but I think you will
20 see that there is a renewed emphasis in the
21 guidance that we have put out for the firms about
22 making the plans have what we call optionality to

1 address a range of adverse scenarios, so that
2 firms can't just rely on a very rosy, single,
3 idiosyncratic scenario, but the plans must be
4 able to address states of the system in which
5 there are perhaps other issues going on.

6 And it is a very hard thing to do that
7 because, if you were to assume the full range of
8 possible scenarios, you would have a plan that
9 would take over the world. But I think we have
10 done that. We have recognized that that is an
11 issue and our guidance this year takes that into
12 account.

13 MEMBER JOHNSON: Are they allowed to
14 say or how impressed are you when they say, "We
15 will sell this or that asset."? I mean, do the
16 states work with --

17 MEMBER DONALDSON: We are going to
18 talk about that in detail.

19 MEMBER JOHNSON: All right. All
20 right.

21 MEMBER DONALDSON: In detail.

22 (Laughter.)

1 That is a key question.

2 MEMBER JOHNSON: That was the best
3 terms in the Lehman plan, too, right?

4 MEMBER DONALDSON: There are key
5 issues that we are going to identify. Maybe we
6 can like, because we are running out of time,
7 maybe we will have David talk about the
8 determinations. We might catch a break. And
9 then, we will go into --

10 MEMBER JOHNSON: Of course.

11 MEMBER REED: Do you use governance
12 and management as the same? In other words, are
13 you looking at the managerial structure or the
14 legal governance?

15 MR. DELFIN: I think we break it into
16 component parts.

17 MEMBER REED: I never have seen the
18 word "management".

19 MR. HOYER: You are going to see two
20 words come up. First, I want to back up and say
21 you will see us reference governance. What you
22 think about is overall corporate governance,

1 which is the boards, senior management, et
2 cetera.

3 MEMBER REED: And legal.

4 MR. HOYER: Exactly, everything that
5 you would typically think about within a banking
6 organization, falling under its corporate
7 governance structure. And we want to see
8 resolution planning integrated into that, no
9 different than we want to see risk management or
10 audit.

11 You are also going to see reference to
12 a term which is different around governance
13 mechanisms. So now, what are the mechanisms to
14 facilitate Board actions, triggers, et cetera,
15 which we will talk about a little later?

16 MEMBER BOWSHER: Can I just raise an
17 issue? Referring to the GAO report -- and I
18 heard it a few times -- would it be good if all
19 the members got a copy of it?

20 MR. DELFIN: I think it is in your
21 binder.

22 MEMBER BOWSHER: Oh, it is in the

1 binder?

2 MR. DELFIN: Yes.

3 MEMBER BOWSHER: Oh, good. Okay.

4 MR. DELFIN: And I think pages 19 to
5 21, or so, is a real detailed discussion of the
6 frameworks that the agencies would use and their
7 approaches.

8 MEMBER BOWSHER: Oh, yes. I would
9 like to raise one other issue. I have served,
10 because of my background on audit, as chairman of
11 many audit committees of main boards and a couple
12 of banks, too. I would be very worried at this
13 point because the chairman of the audit committee
14 always gets the opportunity to appear before
15 Congress when the bank really gets in big
16 trouble, along generally with the CEO.

17 And so, have you had much contact with
18 audit committees as you issue these reports?

19 Because it would seem to me the boards now must
20 be concerned that they are not getting on top of
21 this. I mean, the audit committee, I would
22 think, would be one of the focal points.

1 MR. HOYER: Yes, absolutely. I would
2 address that question from two standpoints.

3 So, first off, every institution has
4 its corporate governance process. Relative to
5 how they close out or address a weakness will
6 typically run through an audit review, as you can
7 imagine. Whenever they put together their
8 resolution plan or anything that is going up the
9 senior management chain or out to regulators goes
10 through a corporate governance process, which
11 includes audit.

12 Now, relative to whether it be the
13 interactions that we have during the review
14 process or interactions that we have beyond the
15 review process, it is really, I would say, up to
16 the firms sometimes. When they have come in to
17 meet with me, they absolutely have had members of
18 the audit team there, and sometimes they have
19 not.

20 But the governance process they have
21 for closing out and addressing a weakness, no
22 different than they would with BSA/AML or

1 anything else, runs through audit. And the
2 preparation of the resolution plan does as well.

3 MEMBER KOHN: So, any plan you get has
4 gone to and been approved by the board of
5 directors of the firms submitting?

6 MR. HOYER: That is a requirement of
7 the rule.

8 MEMBER KOHN: So, you may not be
9 interacting directly with the Board --

10 MR. HOYER: They have seen it.

11 MEMBER KOHN: -- but the Board has
12 seen it?

13 MR. HOYER: Yes.

14 MEMBER KOHN: They have debated it?
15 They have spent a lot of time on it?

16 MEMBER REED: Maybe.

17 (Laughter.)

18 MEMBER PETERSON: I heard that some of
19 these plans are stacks this high, 2,000, 3,000
20 pages. How do you reconcile a 3,000-page
21 document, so that it is actually something you
22 can implement; it is actionable?

1 MR. HOYER: Yes, that is a great
2 question. The first thing I would say is that
3 your range is a little short.

4 (Laughter.)

5 But I would say that you can kind of
6 envision anywhere from 1,000 pages to upwards of
7 100,000 pages. But bear in mind that, yes, bear
8 in mind that there are two aspects to think about
9 here.

10 The strategy, when you back up to
11 Title I, what Title I is really about, right, and
12 I know the lawyers will want to say it
13 differently, but it is about mitigating systemic
14 risk transmission, right? How do you wind
15 yourself down or how do you continue operations,
16 one or the other?

17 And so, the critical operations that
18 can result in that are a known set. They can
19 move around, but for most of these large
20 organizations they do not. It always has to be
21 reevaluated from time to time.

22 Material entities, to Dick Herring's

1 point earlier, don't tend to change a lot as to
2 what the substance of the organization is and
3 where the critical operations are. So, there are
4 core foundational elements that don't change
5 year-to-year that you can simply look at, have
6 they changed anything, and move on quickly. And
7 so, can the firms in the production of that.

8 The other thing is the firms, as you
9 would expect, as they are trying to meet a rather
10 large, comprehensive rule, include things such as
11 policies, procedures, things that we have every
12 day at our disposal through normal supervisory
13 and monitoring efforts.

14 And so, what I would characterize is
15 that the core crux of the strategy, the core crux
16 of what gets past the foundational elements that
17 we have been dealing with for several years, can
18 really be condensed down to a much smaller group
19 of pages.

20 MEMBER HERRING: But could I follow up
21 on that, because I think the two points are
22 highly related? If you really expect meaningful

1 oversight by the Board, you can't hand them
2 several thousand pages. There are just too many
3 other things they have to do.

4 MR. HOYER: Right, and so, the firms
5 -- no, it is a great question -- the firms will
6 put together what they will call a narrative
7 section, right? They will have an executive
8 summary, but they will have a narrative. And the
9 narrative really walks you through the quick and
10 dirty of the strategy. They may call it
11 something different plan-to-plan, but it will be
12 like a narrative.

13 That is where I am focused, if I am a
14 Board member, and I would ask questions: if you
15 know what your particular entities are, your
16 critical ops are, and so on, which will be laid
17 out in the narrative. But the narrative tells
18 you the story.

19 MEMBER KOHN: To get to Peter's
20 earlier point, that is the point at which the
21 Board ought to be doing the top-down.

22 MR. HOYER: Uh-hum. That's right. It

1 would be no different than any other supervisory
2 matter that would make its way to a board. What
3 were the issues before? How did we address those
4 issues before we signed off on it?

5 MEMBER FISHER: If I could, I was
6 really trying to make a much simpler point, which
7 is both junior management in the firms and the
8 agencies are complicit in letting things that are
9 easy and fact-based to identify by about things
10 that are difficult and judgmental.

11 And it has happened, and I am looking
12 for you to be a little understanding of the
13 agencies' complicity in that process. By the
14 time it gets up to the Board, the subject is
15 9,000 pages long and a 100-page summary. And the
16 question is, should I go on a diet? Knowing how
17 much fat is in my pinkie and how much fat is in
18 my baby toe doesn't really help us figure out
19 what is the right diet for me.

20 CHAIRMAN GRUENBERG: If I could just
21 ask staff to address what I think, Peter, you are
22 asking. At the staff-level interaction both with

1 the agency and the company, the facts to deal
2 with can become so overwhelming that in a sense
3 you would lose track of the big picture, and at
4 the staff level before it gets to the Board, you
5 don't yet put the pieces together and, from a
6 broader perspective, look at what should the
7 overall picture for the fund be.

8 MEMBER FISHER: And we are all
9 complicit in that. The system is --

10 CHAIRMAN GRUENBERG: And I think if I
11 could just ask maybe staff to respond to it?

12 MEMBER BRADFIELD: Just like the court
13 sets limits on the number of pages, why don't you
14 set limits on the number of pages and say, "Your
15 plan can't be more than 25 pages. You can have
16 all the annexes you want, but your plan has to be
17 25 pages."?

18 MR. WALL: Most of the pages are
19 annexes, yes, or tables, some of which are
20 repeated.

21 MR. DELFIN: And I do think we have
22 tried. Certainly, in our interactions with firms

1 and in our letters, in our guidance, it is to
2 focus on the big issues. There is not a lot of
3 small-time, "Oh, on page 257...", but, rather on
4 the major issues of how you get the capital
5 liquidity where it needs to be, how to make the
6 decisions, and how to structure your operations,
7 I think is how we are trying to approach it.

8 MR. HOYER: Maybe speak indirectly to
9 the Chairman's point and Peter's point in telling
10 Peter at this time we get it. We are not
11 attempting to dodge it. There is a suggestion
12 that was put on the table earlier, which I think
13 is a fantastic suggestion. It is that we do deal
14 in the weeds as well as the high level with the
15 senior officials at the firms that are going to
16 be addressing this. And having that similar
17 conversation for the firms that want to engage
18 the Board, we more than welcome that at our side,
19 so that you can fully understand that. We can do
20 that at any juncture along the way.

21 And then, as it pertains to submission
22 materials, you know, that is a conversation we

1 can definitely engage in as well.

2 CHAIRMAN GRUENBERG: I think as we
3 come to the actual discussion relating to the
4 determinations, it will become pretty apparent
5 that the focus here is on the four strategic
6 issues --

7 MR. HOYER: Yes, that's right.

8 CHAIRMAN GRUENBERG: -- impacting the
9 operations of the firm; that the preoccupation
10 was not, frankly, with details, but with the core
11 obstacles to resolvability for the funds and
12 directing the firms to address in a meaningful
13 way those obstacles. Well, we will come to that.

14 MR. WALL: So, in that vein, talking
15 about what we actually did, I think it would be
16 worthwhile going over briefly in summary what the
17 agencies found and what actions the agencies took
18 over the last couple of days.

19 So, Art already gave you sort of a
20 refresher, briefly went over the legal framework
21 of the statute and what the agencies are
22 obligated to do. As you know, plans that are

1 submitted by firms that are subject to the
2 heightened prudential supervision of the Federal
3 Reserve are required to be reviewed by the
4 Federal Reserve and the FDIC. As a result of
5 that review, the agency, either agency or both
6 agencies, may make a finding that the plan is not
7 credible or would not facilitate an orderly
8 resolution under bankruptcy.

9 With respect to the plans that were
10 submitted for review in July 2015 by the eight
11 largest domestic bank holding companies, the
12 Board and the FDIC, first of all, did review all
13 eight of those plans and, as a result of that
14 review, jointly determined that each of the plans
15 submitted by five firms, Bank of America, Bank of
16 New York Mellon, JPMorgan, State Street, and
17 Wells Fargo, were not credible or would not
18 facilitate an orderly resolution under
19 bankruptcy. In addition, the agencies
20 identified, jointly identified, deficiencies in
21 those plans and issued joint Notices of
22 Deficiency to each of those firms.

1 So now, with respect to two of the
2 firms, the agencies did not make a joint
3 determination. For Goldman Sachs, the FDIC
4 determined that its plan was not credible or
5 would not facilitate an orderly resolution under
6 bankruptcy. And for Morgan Stanley, the Federal
7 Reserve determined that its plan was not credible
8 or would not facilitate an orderly resolution
9 under bankruptcy. But, since there were no joint
10 determinations in those two cases, there was no
11 joint Notice of Deficiencies issued to the firm.

12 Finally, with respect to one firm,
13 Citigroup, neither agency made a determination
14 that the plan was credible or would not
15 facilitate an orderly resolution.

16 In addition, the agencies, with
17 respect to seven of the eight plans, one
18 exception being that of Wells Fargo, the agencies
19 determined that each of those seven plans had
20 specific weaknesses in the plans that, while not
21 rising to the level of deficiencies, constituted
22 specific shortcomings in the plans that the firms

1 would be required to remediate.

2 Finally, as we noted earlier in the
3 discussion, the agencies prepared and have issued
4 a guidance document of general applicability to
5 the firms. The document is intended to assist
6 the firms in further developing their resolution
7 strategies. It describes what the agencies
8 expect from the firms' next full-plan submission,
9 which is due in July of 2017.

10 So, a little bit about the response
11 timing to these determinations. Yesterday the
12 agencies issued joint letters to each firm
13 containing the Notices of Deficiency or
14 identifying shortcomings, or both, as applicable
15 to the particular firm and, in addition, issued
16 the guidance document.

17 In the letters the agencies directed
18 the firms to make the following response: for
19 those firms whose plans were found not credible
20 or would not facilitate an orderly resolution,
21 and therefore, which the agencies issued Notices
22 of Deficiency contained in the letters, the firms

1 are required to submit the revised plans
2 remediating the deficiencies by October 1st of
3 this year, so October 1st, 2016.

4 And I do note that the rule, actually,
5 provides a 90-day return date. So, we are giving
6 firms an extra three months to do their
7 remediation.

8 For each of the firms that received a
9 letter identifying shortcomings, which is just
10 that seven of the eight firms, they must submit
11 to the agencies by October 1st a report of the
12 progress they have made in addressing the
13 shortcomings. So, some of the firms will be
14 submitting a report that just addresses
15 shortcomings, and some will be submitting a
16 report that contains, hopefully, remediated
17 deficiencies as well as progress on --

18 MEMBER JACKSON: A question maybe out
19 of ignorance.

20 MR. HOYER: Sure.

21 MEMBER JACKSON: What is the
22 difference between a deficiency and a

1 shortcoming, given that both need to be
2 addressed? The deficiencies probably are more
3 serious, which is why you are requiring them to
4 be addressed earlier.

5 MR. HOYER: Uh-hum.

6 MEMBER JACKSON: But, since both need
7 to get addressed, can you give me a brief -- I
8 don't need an example, but --

9 MR. HOYER: Sure.

10 MEMBER JACKSON: -- what is a
11 deficiency versus what is a shortcoming?

12 MR. HOYER: Yes, I will take that. I
13 know everyone has had so much time to read all
14 the documents that are out there.

15 (Laughter.)

16 I don't necessarily want to say it is
17 a definition, but at least, if you will, a
18 guiding principle on how we think about
19 deficiencies and shortcomings is in the public
20 narrative. So, you can find that.

21 But, real quickly, the way to think
22 about it is, this is an aspect -- and I am

1 talking about a deficiency -- this is an aspect
2 of the plan that, first and foremost, the
3 agencies jointly agree upon the materiality of
4 that particular aspect; that it will or could
5 undermine the feasibility of the strategy. So,
6 that is kind of the first point, is that it is
7 joint. Secondly, we both feel that it could
8 undermine the feasibility of the strategy.

9 And a third point -- and I know you
10 have talked about this before -- is in the 2014
11 letters we were very clear that we wanted to see
12 demonstrable progress. And so, as we were
13 looking for that progress made from the 2014 and
14 2015 communication, that could also be an aspect
15 that could result in a joint deficiency finding.

16 Contrast that to a shortcoming.

17 Before I go there, I do want to say all
18 weaknesses matter. All weaknesses have to be
19 addressed. And so, when we get to a shortcoming,
20 it could be -- think about the components I just
21 walked through -- it could be that the agencies
22 didn't agree on the materiality of it. It could

1 be that we did agree upon it, but felt that it
2 just really raised questions about the particular
3 strategy, but maybe couldn't necessarily
4 undermine at this particular point or the
5 progress was there.

6 So, that gives you kind of the guiding
7 principle. The word-for-word sort of
8 definitions, you will find those in there.

9 MEMBER BRADFIELD: Do they have
10 different legal consequences?

11 MR. HOYER: Absolutely.

12 MR. WALL: That is a very good point.
13 Coming at it from the legal viewpoint, a
14 deficiency, if not remediated by October 1st,
15 could provide the basis for further joint action
16 by the agencies, if the agencies were jointly to
17 determine that the lack of remediation was
18 sufficient to justify the imposition of further
19 prudential requirements, as provided for in the
20 statute. No guarantee, nothing that says that
21 that has to happen, but that is a possibility
22 with respect to an unremediated deficiency.

1 The shortcomings are required to be
2 addressed by the next plan submission in July.
3 If they are not adequately addressed at that
4 point, they could, then, become deficiencies and
5 be subject to a requirement for remediation. As
6 I said, the deadline for the next full-plan
7 submission is July 1st of 2017.

8 And I think I should mention one last,
9 but really very important item. As we have
10 referred to earlier -- and you have a copy of it
11 in your binder -- the agencies have released to
12 the public a report entitled, "Resolution Plan
13 Assessment Framework and Firm Determinations
14 2016". It is designed to be a descriptive title.
15 I don't know if we succeeded or not.

16 But the point of that document is to
17 lay before the public the resolution planning
18 requirement that we are fulfilling and to provide
19 further information on the agencies' processes
20 for reviewing the plans. And we believe it is a
21 big step forward in promoting the transparency of
22 this process.

1 MEMBER ADMATI: I have a quick
2 question. I just didn't read the documents right
3 or about this one specific piece of it that I
4 just became more aware of recently.

5 In the plan how did they and how did
6 you address central clearing? Because my
7 understanding is, from just reading, actually, a
8 recent article about this, that central clearing,
9 CCPs actually don't have an insolvency plan. Of
10 course, in the scenarios of failure, there would
11 be a CCP member that is defaulting somewhere in
12 there.

13 But the CCPs, I can tell you from
14 knowing some from the CFDC, you know, their risk
15 management and their stress testing is not that
16 transparent, either. But they also don't have an
17 insolvency procedure because they say probably
18 bankruptcy certainly won't work for them, but
19 Title II is also not going to work them. So,
20 what was assumed by the firms and by you about
21 that?

22 MR. DELFIN: Let's think of which lens

1 we are looking through.

2 MEMBER ADMATI: Uh-hum.

3 MR. DELFIN: So, this panel is on
4 Title I. We are looking at the lens, looking at
5 the potential failure in bankruptcy of a USG,
6 say.

7 MEMBER ADMATI: Right.

8 MR. DELFIN: So, if the plan requires
9 that, let's say, material entities continue to
10 operate and function, a key component of their
11 ongoing functioning is access --

12 MEMBER ADMATI: Right.

13 MR. DELFIN: -- through a payment
14 clearance and settlement systems. So, one of the
15 obstacles that they need to overcome in their
16 plan -- and we provide more guidance -- is on
17 ensuring that they can achieve access if their
18 parent were to file bankruptcy. That is the lens
19 through which we are viewing this conversation
20 right here and the living will for those
21 individual firms.

22 In the next panel, they are going to

1 take off their Title I hat and put on their Title
2 II hat and in that panel discuss how we use our
3 authorities under resolution to deal with
4 failures of other potentially systemic entities,
5 including potentially those failures, but those
6 firms are not part of the Title I process.

7 MEMBER ADMATI: But in the Title I
8 they had to make assumptions about CCPs. I mean,
9 you, yourself, said that it was deficient and --

10 MR. DELFIN: Right, they make
11 assumptions, but not about a CCP failure. They
12 make assumptions about a parent bankruptcy of a
13 USG and the ability to give access to a CCP for a
14 subsidiary.

15 MEMBER ADMATI: But in that scenario
16 that they are failing, what if the CCP is
17 failing? I mean, that's my question.

18 MR. DELFIN: Right. So, they are
19 assuming a severely-adverse scenario, right? The
20 world is not in great shape.

21 MEMBER ADMATI: Right.

22 MR. DELFIN: The USG scene is going

1 down.

2 MEMBER ADMATI: Right.

3 MR. DELFIN: But they don't have to
4 assume that every other pillar of the financial
5 economy --

6 MEMBER ADMATI: But they, themselves,
7 would default on the CCP in that case?

8 MR. DELFIN: No.

9 MEMBER ADMATI: They would not?

10 MR. DELFIN: No, no, no.

11 MEMBER ADMATI: But the subsidiary --

12 MR. DELFIN: Therein lies the issue.
13 One of the questions the firm has to overcome is
14 whether it is going to transmit systemic rights.
15 So, they need to solve both their transmission to
16 CCPs and other counterparties as well as their
17 access in order to continue operations.

18 CHAIRMAN GRUENBERG: Let's interrupt
19 for just a minute because we were scheduled to
20 have a break at this time, but the conversation
21 seems to be moving forward. So, if everybody is
22 agreeable, we will just keep going to try to get

1 through the agenda for this panel.

2 MR. HOYER: Yes, if I could just make
3 one additive point, everything obviously Rick
4 said is absolutely correct. And so, you will
5 hear about that, I assume, on the next panel.

6 But, as was provided in the 2014
7 guidance and as you will see conversations in the
8 2015 guidance that is out on the public sites
9 relative to this, the firms have multiple ways.
10 Optionality is a key thing for the FDIC and the
11 Federal Reserve on this front.

12 And so, in addition to determining the
13 potential mitigants from a financial standpoint
14 for continuing to engage a CCP, there is also
15 communication around alternative strategies. And
16 so, those alternative strategies could also -- I
17 mean, while they could be used if they can't
18 engage a CCP for their own purposes -- could also
19 be used if, for example, the CCP itself failed,
20 but that is not the primary purpose.

21 But know that that alternative
22 strategy is being worked through as well as

1 playbooks associated with that, but it would be
2 whether it is the Title I/Title II of the CCP
3 occurring simultaneously to effectuate that
4 transaction.

5 MEMBER PETERSON: Well, one of the
6 areas that markets are most interested in right
7 now relate to TLAC --

8 MR. HOYER: Uh-hum.

9 MEMBER PETERSON: -- and how do you
10 define different sorts of bonds. What are the
11 terms and conditions which would allow you to
12 bail in or to use them as a capital injection, so
13 to speak?

14 Some of the older senior debt which
15 has been issued before by the bank holding
16 companies, there is questions as to whether or
17 not you would be able to use it. There are new
18 rules coming out. At our agency we have been
19 defining our own definition of what we call ALAC,
20 which is basically available capacity.

21 So, I would be interested to know, how
22 are you seeing that in each of these different

1 worlds and what are some of the implications of
2 what we seem to be back to the markets on on
3 TLAC?

4 MR. DELFIN: I think there are two
5 pieces to that. One is actually the Federal
6 Reserve has put out a rule, and the Federal
7 Reserve is going through that rulemaking process
8 and receiving comments and deciding on how they
9 want to define certain components. So, we can't
10 get into their rule.

11 But, obviously, in the Title I
12 process, the parent's ability to file bankruptcy
13 and have some lawsuits over incapacity that they
14 can use to recapitalize the material entities
15 comes from their losses or incapacity, which
16 would be defined or further enumerated by what
17 happens with that long-term debt rule.

18 And so, certainly, to the extent
19 holding companies have sufficient losses or
20 incapacity that they can use to recap the subs,
21 that makes their plans more or less reasonable,
22 depending on the strategy that they use. So, if

1 they used the recap, then that would be a key
2 component.

3 MR. MURTON: I would note there are
4 other things to flag for it.

5 MR. HOYER: We will discuss a little
6 bit more, and it is in the guidance. After the
7 break, we are going to move into sort of those
8 key components, and we will talk about resources.
9 But, relative to what qualifies and what does
10 not, as you know, as a rule-based measure versus
11 getting into the components of that, thinking
12 about we will have, if you will, a defined
13 amount. That is what is available. And we will
14 be thinking about more the obstacles of, where is
15 it, what is it, how do they get it where it needs
16 to be, and what do they need?

17 But it is a great question, but until
18 the rules are finalized, what qualifies will be
19 subject to a --

20 MEMBER JOHNSON: Yes, but I think you
21 are on a slippery slope here if you are deferring
22 to the rule and deferring to some legal issue.

1 This is back to the bigger point made by Anat,
2 right? Which is with the living will, you are
3 looking at living wills individually, but what
4 matters is the system.

5 So, if Bear Stearns had had some TLAC
6 in early 2008, would it have made much difference
7 at all? Maybe no, because the issue was what any
8 bail-in of any trader would do to the system and
9 how that would spread through the system. So,
10 there is a systemwide component to this, right?
11 Who holds that debt? Who is going to get written
12 down? What is the potential contagion?

13 And I am afraid that -- and I
14 understand the living will -- but that matters
15 because you are not supposed to have a big
16 systemic effect.

17 MR. DELFIN: Yes. So, the challenge
18 is to the extent to which they have mitigated
19 that risk. Let's use Lehman as an example. They
20 failed in bankruptcy. If you look at the Valukas
21 Report on Lehman's failure, I think Alvarez and
22 Marcellus made that, roughly, \$75 billion was

1 lost to the market because of their rushed and
2 lack of planned bankruptcy process. That is
3 systemic contagion, just from lack of planning.

4 To that, they didn't have a strategy
5 to mitigate that risk. So, what we would need to
6 do is apply what would happen if Lehman Brothers
7 had done the planning, gone through the living
8 will process, built out a structure, addressed or
9 tried to address the capital liquidity to each of
10 the components we identify today, and then, see
11 to what degree would they have mitigated systemic
12 risk.

13 There was no, is there protocol?

14 There was no long-term debt. There was no
15 capital liquidity position. There were none of
16 these rules.

17 And so, we don't know what the future
18 looks like. I don't want to say the future is
19 bright or not. All I am saying is that, to me,
20 is the more appropriate test, as opposed to what
21 would have happened there.

22 MR. HOYER: Yes, one other -- oh,

1 sorry -- just one other point I wanted to make in
2 case it was assumed that we had deferred to TLAC
3 or the long-term debt rule that is being
4 developed.

5 So, in the assessment of this
6 particular plan, the 2015 plan, the firms had to
7 demonstrate the capability of recap if they chose
8 an SPOE strategy, not based on some future
9 requirement. We didn't pass on capital if that
10 had come out that particular way. They still had
11 to demonstrate at this particular time. As was
12 provided in the 2014 letter and the 2015
13 communication, they had to identify those gaps
14 and demonstrate how those gaps would be closed.

15 Sorry, Rodgin.

16 MEMBER COHEN: I was just going to
17 offer one observation and, then, a
18 recommendation, the observation being that I
19 think, Simon, and picking up with Anat said, is
20 absolutely correct. You are looking at
21 individual institutions, but the issue is
22 systemic.

1 So, the faster that the agencies, I
2 guess the Fed in this case, can move on TLAC and
3 single counterparty credit limit, because TLAC
4 also has a severe limitation on the ability of
5 other financial institutions to hold the bailable
6 debt, and the sooner that gets in, the single
7 counterparty credit limit gets in, the better
8 defenses will be to restrain.

9 The comment is -- and since it has
10 been touched on, I can't resist any longer --
11 that is the issue of the balloon goes up, and now
12 in bankruptcy, which I would suggest is a form,
13 at least in its present incarnation, ill-suited
14 to this. There is the question of,
15 notwithstanding everything that is there, will a
16 bankruptcy court intervene and create a real
17 problem?

18 MR. WALL: Rodgin, I think that is an
19 excellent question. It is one that has consumed
20 a lot of our attention and a lot of the attention
21 of the firms.

22 MEMBER COHEN: And it has, and it will

1 continue, from what I have read in the letters.
2 So, one thought would be to go in, take the
3 source-of-strength language in Dodd-Frank and
4 amend it to make it a preemptive source-of-
5 strength obligation. So, you knock out the
6 possibility of state law here and a bunch of
7 hedge funds going in, buying the debt, and then,
8 holding up the whole process.

9 There are going to be efforts made --
10 the word "flexibility" I heard a lot -- but a
11 legislative solution, as difficult as that might
12 be, would be the most effective here.

13 MEMBER BRADFIELD: Is short-term debt,
14 following on Simon's question, is short-term debt
15 a factor in your consideration of the sufficiency
16 of a living will plan?

17 MR. HOYER: So, I hit it from a couple
18 of angles. We have been discussing capital. We
19 have been discussing TLAC. We have been
20 discussing long-term debt. And in that same
21 vein, from the 2014 and 2015 discussions that are
22 in the public narrative, clean top-tier holding

1 company.

2 Given the implications of short-term
3 debt on the marketplace and systemic disruption,
4 short-term -- again, we will see where the final
5 rule is -- does not qualify for that particular
6 aspect.

7 MEMBER COHEN: But you should take
8 more credit for this because, as a result of what
9 you did in reviewing earlier plans, there is
10 basically no short-term debt left --

11 MR. HOYER: That's correct. Yes.

12 MEMBER COHEN: -- at the G-SIFI.

13 MR. HOYER: Yes. At the parent.

14 MEMBER COHEN: Yes, at the parent
15 level, yes. Correct.

16 MR. HOYER: So, given a single point-
17 of-entry in Title I under bankruptcy, under the
18 assumption the parent company fails, there would
19 be no short-term debt defaulted upon, and
20 therefore, the holders of those would not be
21 affected.

22 MEMBER KOHN: And enough credit at the

1 holding company to keep those operating subs --

2 MR. HOYER: Right.

3 MEMBER KOHN: -- that are itching.

4 That is the key systemic --

5 MR. HOYER: Yes, right.

6 MEMBER KOHN: I mean, it is to access
7 to short-term wholesale funding, and there has to
8 be enough at the top under either Title I or
9 Title II to keep those subs, give them access.
10 That would be the absolute bedrock for this.

11 MR. HOYER: Right. Uh-hum.

12 MEMBER KOHN: But you have to meet
13 that.

14 MEMBER JOHNSON: It is enough of what?
15 It is going to be enough that you can be bailed
16 in without that bail-in creating a significant
17 negative --

18 MEMBER KOHN: Right.

19 MEMBER JOHNSON: -- spillover
20 contagion effect, right? In any market, surely,
21 certainly any derivative market, it would be a
22 major concern.

1 MEMBER HERRING: I get a little
2 concerned with these arguments about we couldn't
3 possibly get bond-holders. I think that was one
4 thing to talk about subordinated debt-holders
5 before this. But, once we have identified bonds
6 that you are buying with the firm understanding
7 they will be bailed-in, I think you are in a very
8 different ball game.

9 I think that is not what worries me as
10 much, although spillovers for sure are of
11 concern. What worries me most in the process,
12 frankly, is the delay in starting, because the
13 longer the delay, the bigger the losses; the
14 bigger the losses, the bigger the potential
15 spillovers.

16 What I have seen very little of in all
17 of these discussions is how prompt resolution or
18 prompt bankruptcy procedures started. That, to
19 me, has been a consistent problem in the whole
20 system over the last --

21 MR. DELFIN: So, we are actually going
22 to segue. We are going to talk about governance

1 mechanisms. There was going to be a breaking
2 point.

3 MR. HOYER: Let's plow through.

4 MR. DELFIN: Do we want to close out
5 discussions on the conclusion aspect first of
6 all?

7 MEMBER ADMATI: I just want to throw
8 in one other question because we keep talking
9 about the holding company, which, again, I worry,
10 sitting in FDIC, you obviously need to worry.
11 Again, it is another hat you wear about the
12 bank's subsidiary.

13 And so, what is the assumption about
14 the bank's subsidiary? Because that is where the
15 short-term debt and that is where the derivatives
16 are still right now. And so, what happens? What
17 is the assumption in this scenario, that the
18 bank's subsidiaries are fine, or what?

19 MR. DELFIN: Why don't we walk through
20 that and walk through the issues and, then, game
21 it out? Maybe that would help.

22 So, at this point we wanted to talk

1 about some of the key issues that the agencies
2 identified in their feedback and in the guidance
3 in the report. These are the big-ticket items,
4 for lack of a better word.

5 To help put those into perspective, I
6 thought maybe we might walk through just the
7 general strategy that a number of firms, although
8 not all, put forth in their plan, which is a
9 single point-of-entry in bankruptcy strategy. If
10 we walk through that strategy, we might be able
11 to piece-in each of these issues and why they
12 matter and what the complexities are associated
13 with them.

14 So, under a simple -- and this is a
15 very simple -- SPOE in bankruptcy approach, you
16 would have some sort of shock or series of
17 shocks, combinations, losses, that puts a G-SIFI
18 on the path of distress. We, when we review
19 these plans, don't care about the shock. All we
20 want to do is see how a failure state and the
21 strategy the firm has set forth would flow
22 through the structure of that firm.

1 We know the future is not anything
2 like the hypothetical scenario they put forth.
3 So, we just assume it. The firm has taken
4 whatever recovery items it can take, but it is
5 now clearly on the path toward bankruptcy filing.

6 Around this point, and it could be
7 just prior to bankruptcy filing when we are
8 downstream sufficient capital liquidity to its
9 material entities, to its key subsidiaries in
10 order to ensure that those entities could
11 continue operating while the parent goes into
12 bankruptcy.

13 When the parent is in bankruptcy,
14 those entities would operate. They would wind-
15 down, they be sold off, or they would re-enter
16 the market at the end of the bankruptcy
17 proceeding.

18 That is the big-picture vision of SPOE
19 in bankruptcy. Now let's put forth those big-
20 picture items that you talked about.

21 So, the obvious No. 1 big-picture item
22 is the financial resources. That is, how do you

1 have enough capital and liquidity to ensure that
2 those material items are going to be able to
3 operate throughout the bankruptcy process. And
4 Brent is going to talk about that in more detail
5 in just a second. That is question No. 1.

6 Question No. 2 is, how do you ensure
7 that the decisions that need to be made are made
8 at the time required? If your plan is based on
9 the downstreaming at an appropriate time or the
10 filing of bankruptcy at an appropriate time
11 before a window closes, then you need to have a
12 system in place, what we call a governance
13 mechanism, for ensuring that those decisions are
14 made when they are supposed to be made.

15 Then, let's say you go into
16 bankruptcy. There is obviously a host of
17 operational and structural challenges associated
18 with filing. And Rodgin pointed out there are
19 legal challenges. How do you overcome the
20 obvious legal challenges that are going to take
21 place? We need to discuss those, and there is
22 guidance on those.

1 There are issues about whether or not
2 shared services can be provided among entities,
3 and there are key questions about the structure
4 of your corporation and whether or not it has
5 built itself toward resolvability and provides
6 real actionable objects of sale to facilitate the
7 sale and transfer of these entities. Because,
8 obviously, there are a number of key things that
9 can go wrong, and having optionality and
10 separability provides a great deal more
11 flexibility to the structure than operating just
12 under a single hypothetical.

13 Lastly is there is a specific
14 challenge associated with winding down a large
15 derivatives book, which the agencies also
16 identified.

17 So, with that, I will turn it over to
18 Brent to talk about the financial issues.

19 MR. HOYER: I am going to expedite the
20 financial issues because we have spent some time
21 talking about capital already. So, I won't
22 revisit a lot of the discussion.

1 The one thing I would say, I know we
2 keep pointing to this, but I want to recognize
3 the fact that it is there. Obviously, since we
4 have spent a great deal of time with our Federal
5 Reserve counterparts writing it, we think it is
6 really good stuff. So, we want to encourage you
7 to read it.

8 But the guidance that we put out, the
9 first eight, nine pages are dedicated to just the
10 financial resources as far as the expectations.
11 And I will briefly hit upon it without going into
12 details.

13 So, we already talked about,
14 obviously, the firm is under severe distress,
15 right? Capital is impaired. Liquidity is
16 strained. There is market uncertainty around it,
17 and so on.

18 And Rick has talked about the elements
19 within a single point-of-entry Title I bankruptcy
20 sort of aspect. And so, the decision points are
21 the same whether it is capital or liquidity. It
22 is sort of the entity location. You know, are

1 you prepositioned? Are you putting the funding
2 at the top of the house or are you balanced?

3 What you will find within the guidance
4 that the agencies have put out on both parts is
5 that we are looking for more of that balanced
6 opportunity, because whether it is capital or
7 liquidity that you will be using, it is that
8 prepositioning, obviously, can avoid certain
9 types of other vulnerabilities that we will talk
10 about later, like fraudulent conveyance. But, if
11 you preposition, you have to get it right every
12 single time because how do you get it back up and
13 over, right? So, having some sort of balance to
14 how you think about your funding is very
15 critical.

16 I think the message there is that you
17 may be able to overcome one obstacle and create
18 another. So, you have to always keep in mind all
19 the particular obstacles.

20 Decision points on entity location,
21 when did they take the actions as far as what
22 Board actions are there associated with the

1 financial aspect and what triggers do they have
2 to actually prompt that to ensure, kind of to
3 Dick's point, that they will take it and that
4 there is sufficient timing, that there is a
5 buffer of flexibility. Obviously, the larger the
6 buffer they go in with, the more successful the
7 outcome could be. If they do need to get the
8 proceeds, again capital or liquidity where they
9 need it, do they have the mechanisms to get it
10 there?

11 So, we have already had a good
12 conversation on TLAC and long-term debt around
13 the capital standpoint, and what the guidance
14 provides, what the expectations are from the
15 agencies, of course, is that the firms have the
16 capability of maintaining a methodology that can
17 size at the material entity level what is needed
18 from a capital standpoint to recapitalize those
19 entities, to get them to a point where the market
20 is confident, counterparties are confident they
21 can make it through kind of that destabilization
22 period after the point of failure.

1 That methodology, of course, is bumped
2 against -- let's just do a forward look, Simon,
3 to kind of the counterpoints you had raised, that
4 whether it is TLAC, whether it is long-term debt,
5 whatever the mechanism would be for the recap, we
6 know what the defined resource is that the firm
7 will have at that point in time, and they have
8 the measurement system to say what they need
9 under multiple plausible failure scenarios, as we
10 have talked about, various different market
11 conditions that could occur.

12 And so, obviously, those two have to
13 be compared. At no point can what you need
14 exceed what you have, right? And that gets to
15 the key of the triggers we will talk about at a
16 certain point and, then, the sensitivity analysis
17 around that we discussed earlier based on a
18 question that Anat raised.

19 This is really making sure that we
20 understand under what particular circumstances
21 does that strategy break. Is it something that
22 it is really going to require something

1 unprecedented beyond any historical levels that
2 we have seen? Or is it something that is very
3 vulnerable within an entity or across the firm?

4 So, that is kind of a real quick,
5 expedited way of you know what you are going to
6 have, the methodology and what you need, under
7 those various market conditions, bumping those
8 up. We will talk about the triggers, the Board
9 playbooks. We will talk about the mechanisms to
10 get it.

11 So, moving on into funding, it very
12 much works the same way, but I would kind of add
13 a little more detail on certain aspects of the
14 methodology, so the same aspect of balanced.
15 While the financial condition is likely in most
16 cases invoked about some sort of uncertainty in
17 the balance sheet and some sort of uncertainty
18 with the capital, ultimately, in our experience
19 it is liquidity that ultimately results in the
20 failure and the distress.

21 And so, ensuring that you have
22 sufficient funding to execute your strategy is

1 key. Ensuring that you have sufficient funding
2 to restabilize and meet those counterparties'
3 needs are key.

4 And so, having that measurement system
5 that can size the outflow through that runway
6 period to that point of non-viability and really
7 at the end measuring what do we need to execute
8 this, and you will find in the guidance this year
9 we have been very prescriptive to the firms on
10 this. We need them to build a size at the
11 material entity level, the minimum operating
12 liquidity for each entity. So, what is its
13 working capital? What is its daily estimates
14 that it needs for any kind of stabilization to
15 continue to survive, operating expenses, inter-
16 affiliate funds flows. We have talked about
17 ring-fencing. The frictions aren't just limited
18 to ring-fencing and external parties, but also
19 internal, across affiliates on moving funds.

20 And so, the minimum operating
21 liquidity need that they would need, in addition
22 to the peak funding requirement for any firm or

1 any entity within the firm, whether it be a
2 broker/dealer, whether it be the bank, at that
3 point of non-viability, as they move into that
4 resolution period, there will be a point in time,
5 day two, day three, day seven, where there is a
6 peak funding need. And they are going to need
7 that minimum operating liquidity plus that peak
8 funding need, providing those daily cashflows, so
9 that they can see what that is.

10 As you can imagine, that calculation
11 on what that need is is moving as the firm
12 changes day to day and does its normal business.
13 The liquidity that they have, the HQLA that they
14 have available is moving as the firm operates day
15 to day. So, having a good measurement system, a
16 very good, robust MIS system to measure that, to
17 understand it, to understand, as I said, with
18 capital, the sensitivities, under what
19 circumstances would this work, would this not
20 work, and bumping that against the HQLA on a very
21 routine basis to know when are we getting within
22 the threshold, back to Dick's point, of making

1 sure we take our actions in a timely manner.
2 Because once we cross that point, based on the
3 calculations, the strategy is no longer going to
4 work.

5 MEMBER KOHN: That is a key difference
6 between Title I and Title II, I guess

7 MR. HOYER: Yes. Yes.

8 MEMBER KOHN: In Title II there is a
9 source of funding. In Title I --

10 MR. HOYER: Absolutely. Couldn't have
11 said it better myself. I always hate to say it,
12 but it is the bottom line: there is lots of
13 vulnerabilities, but the financial vulnerability
14 is key. And it is not only in the capital front,
15 the vulnerabilities there, but the liquidity
16 front there.

17 But, also to that, you can measure it.
18 You can understand what it is. You can
19 understand your sensitivities to it and that it
20 may work under circumstances that we have never
21 yet seen. As we have talked about, maybe we will
22 see that.

1 But, at the end of the day, if you
2 also don't have the mechanisms to actually
3 execute it or the ability to do that, that is a
4 challenge, too.

5 Sorry, Simon.

6 MEMBER JOHNSON: So, isn't every
7 financial collapse that we have ever seen
8 triggered by the liquidity?

9 MR. HOYER: Yes.

10 MEMBER JOHNSON: Just to be a slight
11 more constructive, what if you go back and look
12 at Bear Stearns or Thornburg Mortgage, or any of
13 the other people that were collapsing in the last
14 crisis? Can you look at the extent to which they
15 had liquidity and tell them that they didn't?
16 And then, if there had been a living wills
17 requirement, ask the question, could they have
18 satisfied you a week before they collapsed or a
19 month before they collapsed, based on your
20 criteria? Because, if they could have satisfied
21 you -- and you could do this based on the public
22 records probably -- if they could have satisfied

1 you, then that is a problem.

2 MR. HOYER: Yes. No, it is a very
3 fair question and it is absolutely an exercise
4 that not only from a regulatory standpoint we
5 have thought, but, as you can imagine, from an
6 industry standpoint, as they are going through
7 their own contingency funding plans, their own
8 stress tests, their stress tests are very much
9 keyed off of real examples, historical examples
10 of what has occurred through time, as well as
11 constantly looking at what could be the next
12 potential crisis.

13 But you are absolutely correct, if we
14 took Lehman, if we took Bear, and under this
15 particular example, let's assume that they had a
16 methodology. We will talk in the liquidity
17 world. Let's assume they had a methodology to
18 look across their material entities, and that
19 methodology true did capture. What do we need
20 for today? What do we need for operating
21 expenses? What do we need for working capital?

22 Let's say it was robust. That's X.

1 What is our peak funding, which for them would
2 have been pretty high day one, day two, day
3 three, based on their operations. And they knew
4 we have to take that action with some sort of
5 buffer prior to that.

6 Then, in theory, it would have worked,
7 but you have to have all those components and you
8 have to have a Board that will take those actions
9 at that point. That is a fair question, and it
10 is exercises that have been done.

11 MR. DELFIN: And that is why so much
12 of our guidance is focused on nailing down,
13 because it is critically important.

14 MR. HOYER: I would love to sit here
15 and tell you that I think it is one of the
16 fundamental things that we always point back to,
17 is that the rule reads, the statute reads, it is
18 substantially mitigating the risk. It is no
19 different than the question that was raised with
20 CCPs, access to FMUs, TLAC. Every one of these
21 assumptions we have locked down; it is 100-
22 percent certainty it will work, we are not going

1 to sit here and tell you that. We are looking
2 for the firms to understand those
3 vulnerabilities, deal with those vulnerabilities,
4 and work towards the best-possible outcome to
5 substantially mitigate it under a range of
6 scenarios and a range of market conditions.

7 But, yes, you can look at any
8 particular point and say, if an asteroid hit the
9 earth, would that work? And so, there will
10 always be some level of probability. There is
11 never a 100-percent certainty across any
12 particular aspect.

13 We are looking for really good,
14 comprehensive analysis that provides the best-
15 possible outcome under the greatest extent of
16 circumstances.

17 MEMBER JOHNSON: Has there ever been
18 a self-funded bankruptcy restructuring by a large
19 financial company in the history of the world?

20 MR. DELFIN: Well, I think the point
21 of this process is for firms to overcome the
22 obstacles associated with their potential

1 failure. And Congress has created a process for
2 them to do that and they have set forth rules
3 with a strategy and overcoming these obstacles.
4 We have evaluated that and set forth back to them
5 a guidance.

6 CHAIRMAN GRUENBERG: Never before in
7 our regulatory history in the United States has
8 there been a set of requirements like this. So,
9 in some sense, what we are trying to introduce is
10 a new set of standards and regulatory
11 requirements within our framework to at least
12 permit a possibility of this outcome, combined
13 with a public bankruptcy backstop in the event
14 that the bankruptcy option appears unworkable and
15 the combination of the two is really an entirely
16 new framework within our regime to try to see if
17 we can have a different outcome, whether it is
18 the bankruptcy or the Orderly Liquidation
19 Authority, than we had previously, which was an
20 open institution support for the company.

21 MEMBER JOHNSON: I understand what you
22 are doing, Marty, and I support Title II, as you

1 know. But it also requires a viable, feasible
2 failure under Title I. I think you are trying to
3 change the laws of physics here. Because, as I
4 understand the historical record, firms fail when
5 they run out of liquidity and only when they run
6 out of liquidity. We don't trigger, we don't
7 have corrective interventions ever, right?

8 And they are failing because they are
9 running out of liquidity, and now you are having
10 them produce out of a hat magically the liquidity
11 that is going to finance the restructuring. That
12 is very hard to believe.

13 MR. HOYER: If I could back you up
14 just a bit, the way the sequencing of the stages
15 goes for financial institutions, let's just say
16 we are in business as usual, were today. The
17 eight firms are operating fine. They will
18 encounter a stress period, and those stress
19 periods actually occur quite frequently, and they
20 move in and out of them just fine.

21 There is a recovery period that they
22 can enter into. The OCC recently issued recovery

1 planning guidance. Recovery plans have been
2 provided for the firms for quite some time. The
3 firms have sets of actions that they will take to
4 try to bend that curve.

5 And so, the whole time the agencies
6 from a supervisory standpoint are monitoring the
7 progress of that. There is a point, though,
8 where you start to move into where recovery is no
9 longer successful.

10 At the same time, that firm is
11 measuring this is what we need to execute our
12 resolution plan. They cannot cross that point.
13 So, as they are entering into recovery mode, they
14 are trying to take certain actions. They may be
15 successful on that front. Many firms have been
16 in the past. They may hit that point where they
17 cannot, and this is a way for them to achieve
18 potentially an order resolution. So, versus just
19 saying it can't work, this is a potential
20 mechanism to achieve that.

21 MEMBER COHEN: Brent, in this context,
22 I have thought, maybe incorrectly, that Title I

1 and Title II are not totally "either/or". So, if
2 you filed in bankruptcy and that was not working,
3 that you would have the right, then, to come in
4 under Title II and have --

5 MR. HOYER: That is absolutely correct
6 and an excellent point, Rodgin, yes.

7 MR. MURTON: I don't think the
8 authorities would have the capability to go to
9 Title II. You can't request --

10 MR. HOYER: But, if Title I was not
11 successful, you could then do --

12 MEMBER JACKSON: Rodgin, while I think
13 that is right, and this is one of my hobby
14 horses, I think the problem is the disconnect
15 between Title I, living will, and all the great
16 work that the FDIC has done under Title II.
17 Title I does not ask them to be resolved under
18 the best-possible resolution mechanism that we
19 have available. It asked them to be resolved
20 under the current Bankruptcy Code, which is, to
21 go to Simon's point, a real disconnect I think.
22 And it is too bad that Title I doesn't ask them

1 to be resolved under the best-possible resolution
2 mechanism that we have in place. So, their task,
3 and I think the task of the financial
4 institutions, is made ultimately more difficult
5 by this disconnect in the statute.

6 MEMBER COHEN: Absolutely. That, of
7 course, is why it would be great if the work you
8 are doing to get the Bankruptcy Code --

9 MEMBER JACKSON: The House has been
10 great; get the Senate moving.

11 (Laughter.)

12 MEMBER ADMATI: Again, just to pick up
13 on that, the Bankruptcy Code has not changed yet.
14 And so, the notion these institutions, just
15 looking at the basic facts from the outside, you
16 know, the last time bankruptcy was invoked for a
17 SIF was Lehman, and it didn't work very well.

18 So now, we are asked to really, really
19 believe in miracles because --

20 MR. WALL: I think one of the issues
21 in Lehman is --

22 MR. DELFIN: I mean, I think we are in

1 a vastly different world than we were in Lehman.

2 MR. WALL: Yes.

3 MR. DELFIN: Obviously, Lehman
4 occurred after Bear. The government stepped in.
5 Implicit support began explicit. Counterparties
6 may or may not have had an expectation of future
7 government support, and Lehman was a surprise.

8 MEMBER JACKSON: I think one of the
9 big differences with Lehman is exactly what you
10 guys are talking about up here, which is pre-
11 bankruptcy planning, of which Lehman had nothing.

12 MR. DELFIN: There was no planning.
13 There was no loss of serving capacity. There was
14 no ISDA protocol in place for those qualified
15 financial contracts. There was no Title II early
16 liquidation, and there was no living will.

17 MEMBER JACKSON: The whole living
18 wills process is to ensure that you never have a
19 Lehman enter bankruptcy without --

20 MEMBER JOHNSON: Rick, for the record,
21 Lehman had 11.6 percent Tier 1 capital, and they
22 reported two weeks before they failed. So, this

1 question of, yes, exposed, nobody has enough loss
2 incapacity, but in terms of the regulation
3 requirements and in terms of what they reported
4 -- and they have not been held accountable in the
5 courts, so I think they weren't lying -- they did
6 have a lot of capital by today's measures.

7 MEMBER REED: Look, I think that any
8 institution that goes through this process, No.
9 1, is going to have to plan in ways that
10 traditionally one would not have planned. I
11 can't imagine, listening to it, that you wouldn't
12 also modify your business. In other words, as
13 you confront some of the difficulties here that
14 get called out as you start imagining how you
15 might do some of these things, you are going to
16 say, "You know what? It isn't worth having these
17 businesses that are so dependent on market
18 funding because there is no way I am going to get
19 enough capital down to them," and so forth and so
20 on.

21 It is going to have the effect that I
22 was sitting here telling Tom that, if I were

1 running a bank, my prime mission would be not to
2 be one of your defined systemic banks.

3 (Laughter.)

4 I would get a set of businesses.

5 Because the process of doing through this just
6 makes clear that you are going to have to have an
7 amazing amount of liquidity and capital, and
8 distributed in the right places with the right
9 legal structures and managerial disciplines, and
10 so forth and so on.

11 So, this process is going to have a
12 salutary effect, whether or not it proves that
13 someday somebody is going to be able to go on to
14 bankruptcy easily and there won't be a ripple on
15 the surface of the water.

16 MEMBER JOHNSON: John, I hope you're
17 right. And very soon, we are going to have some
18 data to let us look at that because the systemic
19 risk reports that the Fed puts out, we have the
20 latest out of 2014. We will soon have the end of
21 2015 data. And then, we will be able to look not
22 at exactly the same level of details that these

1 guys can look, but this public data will show us
2 a lot about the structure, the size, the
3 structure, the funding structure of these banks.

4 So, I suggest we all take a look at
5 those numbers when they come out as part of our
6 assessment of whether -- I think John put it very
7 well. If your process is working, you should see
8 the banks changing that profile, changing those
9 lines of business. I haven't seen in any
10 publicly-available information so far. But this
11 data that the Fed puts out is comprehensive and
12 it is clear, and they make them report exactly on
13 these issues in aggregate form.

14 MR. HOYER: So, one thing I would add
15 to that particular point, Simon, what would be
16 helpful, what I would encourage you to do in
17 conjunction with when you are looking at that
18 particular data is to read the expectations and
19 guidance document that the Federal Reserve and
20 the FDIC have put out for the firms.

21 While we have focused on the
22 measurement of what they need, you will also see,

1 to your very point about adequacy and positioning
2 for resolution. And so, there is a nice couple
3 of pages around that particular point on, yes,
4 I'm not going to go into which firms have, which
5 firms haven't, but how firms are working through
6 inter-affiliate frictions, operational frictions,
7 external frictions.

8 Because, to your point, they need to
9 be able to size what they need in order to
10 execute their strategy, but they also need to be
11 able to make it through stress and recovery and
12 into runway. And so, I would encourage you to
13 read that particular point in conjunction.

14 CHAIRMAN GRUENBERG: We have got about
15 20 minutes that we had said we would set aside
16 for this discussion. You have got a pretty full
17 agenda. I would like to get through most of it
18 today, if we can.

19 So, needless to say, this discussion
20 has been exceptionally helpful, but I think if we
21 could take the 20 minutes at least just to lay
22 out the additional issues, so that we can at

1 least be sure they are presented to you, and we
2 will run over a few minutes if there is
3 particular urgency to --

4 MR. HOYER: Yes, and we will try to
5 skip a few. But maybe we will move into
6 governance mechanisms next.

7 CHAIRMAN GRUENBERG: Yes.

8 MR. DELFIN: So, Brent just laid out
9 the key financial issues. One of them is
10 information. Do you know how much you need? And
11 the other is the amount. This is where it needs
12 to be.

13 Another variable is time. But, as you
14 pointed out, Simon, in history firms don't fail
15 with a lot of liquidity. Well, the key question
16 is, if you need X amount of liquidity, how do you
17 ensure that you are going to fail when you have X
18 amount of liquidity? We call that governance
19 mechanism.

20 So, governance mechanism is what are
21 the actions that need to be taken in order for
22 you to successfully execute your strategy and

1 what is the degree of confidence that we should
2 feel from those actions. How do you ensure that
3 those actions will be taken?

4 And we look at are there clear
5 triggers for specific actions. There are
6 triggers for informing your Board that you have
7 moved from a bad stress scenario into a potential
8 recovery scenario. Clear scenarios specifically
9 laid out in the guidance for the downstreaming of
10 that capital and liquidity. That is a clear key
11 component of this. And how are you going to know
12 when to pull that trigger?

13 Finally, how are you going to know
14 when to file bankruptcy, so that you are still in
15 the window of when your strategy can function?
16 And do you have as part of that trigger your pre-
17 filing actions? Are you going to know when to
18 start planning your bankruptcy? Are you going to
19 start now or did you start, hopefully, in our
20 process of building out what that filing looks
21 like, what the key legal challenges are going to
22 be, and how you overcome those challenges? That

1 is a lot.

2 So, when we look at the pre-filing
3 error, we have the amounts, the information, and
4 the timing. Then, I will just try to quickly
5 move to the next part, which is you get into
6 bankruptcy. How do you deal with those
7 operational elements? We are going to try to fly
8 over some of them.

9 But one of them is there is going to
10 be a legal challenge associated with that
11 downstreaming. We can expect that counterparties
12 are going to say, "Wait a minute. That's my
13 money; that's not their money, and I'm going to
14 sue you."

15 And so, one question is, how do you
16 overcome those legal obstacles and, say,
17 fraudulent conveyance of preference? The
18 governance mechanism can help with that, too.
19 And I am going to turn that over to David.

20 MEMBER COHEN: Who is going to solve
21 it?

22 (Laughter.)

1 MR. HOYER: The industry is going to
2 solve it.

3 MR. WALL: With help. With help.

4 No, I think that, as Rick indicated,
5 the legal underpinnings of this strategy is key.
6 It is fundamental to our consideration of the
7 success of a strategy to know that the firm has
8 adequately addressed what could be very
9 significant legal challenges to the strategy.

10 And those could occur both pre- and
11 post-filing. One of the things that we are
12 concerned about, in particular, is that the firm
13 set up a structure that enforces the Board's
14 responsibility to make a decision, and makes it
15 very difficult, if not impossible, for a Board to
16 walk away from a precommitment to pull those
17 particular triggers at the time that the firm is
18 entering into stress, material financial
19 distress.

20 The second part of that is, of course,
21 to address what could be potential challenges
22 post-filing to the provision of liquidity, and

1 they could come in the form of fraudulent
2 transfer challenges, breach of fiduciary duty, a
3 number of different other legal theories that
4 would arise both under federal and state law.

5 And we have charged the firms with the
6 responsibility of identifying those issues and
7 figuring out how to overcome them. We have made
8 specific suggestions as to how the firms could
9 approach this. We have suggested that there
10 could be the notion of a contractually-binding
11 mechanism that is put in place prior to filing,
12 and in sufficient time prior to filing to survive
13 some of the time periods that are associated with
14 fraudulent conveyance and other challenges.

15 The other area would be to actually
16 have hard prepositioning in a manner that can't
17 be reversed or at least not easily. Also, part
18 of that strategy might be the creation of an
19 interim holding company that would work to
20 distance the actions of the Board from the
21 provision of liquidity to the subsidiaries. And
22 we are certainly willing to entertain any

1 combination of those three.

2 Part of what we have asked the firms
3 to look at is the creation of perfected security
4 interests and collateral that would survive a
5 bankruptcy filing or a challenge to the potential
6 distribution that would be affected by the shift
7 to a bridge bank.

8 And we have actually, I think, gone
9 into some of the fairly-detailed legal issues
10 that would arise with this, and we have asked the
11 firms, told the firms that they need to address
12 it in specificity and achieve a level of
13 confidence that these mechanisms will work. And
14 that is all spelled out in the guidance.

15 MEMBER COHEN: David, I'm sorry.

16 MR. WALL: Yes?

17 MEMBER COHEN: Just at the risk of
18 repetition, I think the firms are making a major
19 effort to do this. As you know probably better
20 than anybody, this is not the clearest area of
21 the law. I don't think we want to leave to a
22 single bankruptcy judge somewhere the ability to

1 unwind one of these. Again, it would take one
2 sentence to make clear that the source that is
3 that doctrine which is now codified prevails. I
4 really think it is in everybody's interest to get
5 that legislation in.

6 MR. WALL: I certainly don't disagree.
7 I think anyone can sue anybody, can challenge
8 anyone, but to the extent that we can get
9 legislative support along those lines, I think
10 that would definitely make the approach more
11 certain.

12 MEMBER COHEN: Leave that to Congress.

13 (Laughter.)

14 MR. WALL: Right.

15 MEMBER BRADFIELD: Are you satisfied
16 with the responses on the legal framework that
17 the companies have said that they have created to
18 overcome these problems? Are you satisfied with
19 those?

20 MR. WALL: Well, the firms have
21 produced a spectrum of responses in this area,
22 but I think the general answer is no. We have

1 identified specific areas in some of the firms'
2 letter and the guidance asks generally for
3 additional support for the positions that they
4 have taken. So, no, it is an identified
5 weakness, and it is something that the firms need
6 to come back to us on certainly by July of next
7 year.

8 MEMBER KOHN: I think, in practice,
9 the trigger is, in many bank failures the trigger
10 is the failure, right? So, you thought you had
11 access to the discount window; Monday morning you
12 don't. You thought your broker/dealer was the
13 primary dealer; Monday morning it isn't. So, I
14 think that is probably going to be a coordination
15 between the FDIC and the Fed about when to go
16 into bankruptcy or into Title II.

17 MR. WALL: So, I might suggest that
18 that might be the trigger for bankruptcy, but I
19 don't think it should be the trigger for the
20 position they have liquidity. I think the
21 liquidity mechanisms --

22 MEMBER KOHN: Yes.

1 MR. WALL: -- have to trigger prior to
2 that.

3 MEMBER KOHN: I was thinking in
4 practice.

5 MR. WALL: Yes. Well, I think we have
6 talked about some mechanisms for kind of an
7 early-warning system, if you will, you know --

8 MEMBER KOHN: Right.

9 MR. WALL: -- maybe having to do with
10 some assessment of what the overnight rate is or
11 what the portfolio mix looks like in terms of the
12 average return.

13 MEMBER KOHN: Using access to the --

14 MEMBER ADMATI: As long as you don't
15 use negative or capital --

16 (Laughter.)

17 A key guide to what is going on.

18 MR. DELFIN: Today was to keep us
19 moving fast, and I think we are really out of
20 time.

21 MEMBER PETERSON: Just one?

22 MR. DELFIN: Oh, of course.

1 MEMBER PETERSON: In terms of the
2 guidance legal entity rationalization, does this
3 move you into asking international banks to
4 release subsidiaries as to the branches?

5 MR. DELFIN: So, we were just going to
6 talk about it, but you went to the IHC. No?

7 MR. HOYER: So, I will try to keep it
8 quick. I wouldn't say that we are necessarily
9 taking a position. The IHC, obviously, is --

10 MR. DELFIN: It is not the --

11 MR. HOYER: Oh, I'm sorry.

12 International Holding Company world. Sorry.
13 That is the Federal Reserve's regulation, so I
14 don't want to get into that.

15 But, as far as the FDIC's position
16 when we are thinking about resolution standpoint,
17 we are not prescribing one way or the other, but
18 we are asking them, as the firms, the FBOs, are
19 working through the Intermediate Holding Company
20 rule, which has implications on their structure,
21 which has implications on their MIS, management
22 information systems, which has implications on

1 their financials. They are also bearing in mind
2 what Rick is going to walk through relative to
3 legal entity rationalization to ensure that any
4 obstacles created, whether it be a subsidiary or
5 a branch, that they have dealt with that and
6 thought about that and aligned itself
7 accordingly.

8 MR. WALL: With respect to domestic
9 institutions' presence overseas, I think that
10 Brent's right. I mean, we are not prescribing
11 one thing, one way or another, but firms need to
12 take into account the potentiality for ring-
13 fencing and how that is affected by whether you
14 use a branch structure or a subsidiary.

15 MR. DELFIN: So, going to the LER, or
16 the legal entity rationalization and separability
17 -- (laughter) -- that was a great segue. In the
18 guidance we also talk about this element. And
19 the agencies assessed the degree to which the
20 firms have tried to structure their corporate
21 structure in order to improve resolvability.

22 What we called the legal entity

1 criteria is one tool for doing that. So, each
2 firm is different. They have different business
3 lines. They operate in different jurisdictions.
4 But they each need to have a legal entity
5 criteria that, when implemented, best aligns
6 their structure to their strategy and
7 resolvability. And what we want to see is that
8 they are synced-up and that they are working to
9 overcome the obvious obstacles and ensure the
10 actions that need to be taken.

11 Because, as we have probably pointed
12 to four or five times now, but because there are
13 a number of potential vulnerabilities, actionable
14 objects of sale that can produce real optionality
15 for different circumstances is essential. And
16 so, in the guidance we pointed out -- and I will
17 just skip through a few key areas that firms need
18 to work on. It is, again, part of syncing these
19 things up.

20 First, there is the capital and
21 liquidity methodology Brent pointed out. It
22 needs to be synced-up with the government's

1 mechanism, the timing.

2 But the legal entity criteria also
3 needs to be synced-up with the strategy. That
4 is, they need to ensure that you can do that
5 recap. Do you have clean lines of ownership?
6 Are they available? Are you structured to make
7 that happen? Because you can't ignore your
8 structure when you are trying to overcome this
9 obstacle. So, you need to make sure that it
10 facilitates the recap and the finding of those
11 material entities, if that is your strategy.

12 You need to make sure that it
13 facilitates the transfer, sale, wind-down of
14 discrete lines of business. This is the
15 actionable objects of sale and optionality, so
16 that it can work in different circumstances.

17 You need to protect the IDI. That is
18 just set forth. And you need to minimize
19 complexity that might impede resolution because,
20 obviously, simpler, more understandable is
21 better, all else being equal.

22 The criteria should be built into the

1 ongoing process for creating, maintaining, and
2 optimizing the structure and should be part of
3 the firm's decision. They need to be thinking
4 about this as they change, as they grow over
5 time, as they go into new jurisdictions. That is
6 the quick part there.

7 And now, I think we are going to talk
8 about the unique challenge of derivatives. One
9 way to think about derivatives is what we call
10 the first day motion. That is, what do we do day
11 one to deal with qualified financial contracts,
12 so they don't instantly terminate? And then, we
13 have, what do we have days two through end of
14 resolution with the derivatives book?

15 David is going to quickly talk about
16 the first part, and Brent is going to talk
17 about --

18 MR. HOYER: You have two minutes and
19 I have two minutes.

20 (Laughter.)

21 MR. WALL: Well, we need a timer.

22 So, let me just say that I think that

1 we all recognize that the legal issues that are
2 associated with putting in place a resolution
3 mechanism under the Bankruptcy Code are key, are
4 fundamental to the success of the whole plan.

5 One of the things that a firm is going
6 to have to do upon filing for bankruptcy is to
7 file a motion with the bankruptcy court that
8 creates an adequate response to the bankruptcy.

9 In most cases the firms are planning on doing, as
10 we have said, a single point-of-entry approach
11 that envisions the creation of a successor
12 institution. And there are mechanisms which,
13 under the current Bankruptcy Code, may make that
14 possible, but there are issues that need to be
15 addressed in order to ensure that that occurs.

16 As Rick was just saying, one of the
17 key facets that this motion needs to do is to
18 create a structure that triggers the ISDA
19 protocol protections, so that on the first day
20 the protocol protections against immediate
21 closeout and cross-defaults with respect to the
22 institutional subsidiaries do not occur.

1 So, we have asked the firms to focus
2 very strongly on how they would structure that
3 first day motion and how that motion would be
4 positioned, so that it could survive anticipated
5 objections. And those objections could range
6 from due process concerns, whether or not the
7 authority actually exists under the Bankruptcy
8 Code to create the structures that the firms are
9 asking for, the basis for transferring assets
10 from the debtor to the new institution, and other
11 issues associated with the bankruptcy court's
12 ability to retain jurisdiction and enforce the
13 mechanisms that will promote the orderly
14 continuation of the debtor.

15 These are issues of relative first
16 impression, but they are also very key to the
17 success of the plan. And so, we have made this a
18 particular focus of our discussions with the
19 firms, and it is something that we are going to
20 continue to work on with them. But the key
21 takeaway is that the firms are being asked to do
22 more to ensure that their planning for addressing

1 the legal issues is robust and will result in
2 effective resolution.

3 MR. HOYER: All right. So, I will
4 wrap up with what are expecting in this
5 particular space. Again, it is laid out in great
6 detail within the guidance, and there are also
7 tables that we have provided to the institutions
8 for them to complete relative to derivatives.

9 Obviously, it is fair to say this is
10 an area of great complexity. It is still an area
11 that needs some work to be done. We are talking
12 about single point-of-entry Title I bankruptcies.
13 So, these are not broker/dealers. These are not
14 trading entities that are going into a SIPA
15 proceeding. This is about maintaining and
16 continuing.

17 So, the keyword, I think, if anybody
18 walks away with one word we have said today, it
19 is "optionality". When it comes to derivatives,
20 we recognize there is not just one way to be
21 thinking about this. And so, we think about this
22 within a Plan A, Plan B.

1 Plan A is great if you can recap and
2 you can maintain that. So, demonstrate what it
3 would take financially to recap those particular
4 entities. Banks have derivatives.
5 Broker/dealers have derivatives, et cetera. So,
6 all the entities engaged in that.

7 Show us what it would take to
8 fundamentally return those entities either to
9 investment grade or to investment-grade-like,
10 depending on what the entity is, and that that
11 stabilization period would be. So, that is Plan
12 A.

13 Plan B is great if you can recap it,
14 but what if the market doesn't get confident with
15 you or what if you do not have those financial
16 resources? And so, Plan B, we really look at two
17 particular components there.

18 One, we will call it a passive wind-
19 down. Let's assume that, I mean, one of the most
20 challenging aspects within the derivatives
21 portfolio is being able to engage in bilateral
22 trades. And bilateral trades are over-the-

1 counter types of instruments, the more spoke
2 types of instruments.

3 And so, through the passive wind-down,
4 we place the assumption on the firms that you
5 cannot engage in that activity. No one will deal
6 with you anymore. That is why you couldn't
7 regain market confidence. You could not function
8 under Plan A.

9 So, what is your financial need for
10 that? Both capital and liquidity. At the point
11 that you expire your resources, that residual
12 piece that is left, demonstrate to us any
13 systemic transmission associated with that. So,
14 that gets us back to the point of maybe you have
15 to change a little bit about how you do your
16 business.

17 The second component within Plan B is
18 an active wind-down. So, in an active wind-down,
19 you can assume access to the bilateral markets to
20 some extent, and, obviously, at a cost. What is
21 that cost? That is factored into the liquidity
22 and the capital component as well. You provide a

1 pathway on how you can segment, package, and
2 wind-down that particular portfolio, again, to
3 the point of you get it all the way. There will
4 always be some residual or rump left, and looking
5 at that residual or rump no different than we did
6 within the earlier option within Plan B to
7 determine the impact on financial stability.

8 So, we are looking at a variety of
9 options. We want to see flexibility across that
10 because we realize that, in dealing with
11 derivatives, this is not going to be one
12 particular outcome.

13 So, that is a real quick and dirty on
14 derivatives. There is a lot of good detail
15 within the public narrative section.

16 With that, I will maybe turn it back
17 over to Art.

18 MEMBER HERRING: Could I just ask a
19 point of information? You focused on day one.
20 As I understand it, that is all the ISDA protocol
21 gives you to make special provisions. After
22 that, you are back in the normal world. Have I

1 misunderstood what the protocol is?

2 MR. WALL: With the ISDA protocol, it
3 says that you are prevented from doing early
4 termination or exercising the early termination
5 clause as a result of the bankruptcy because --

6 MEMBER HERRING: But it is a limited
7 thing?

8 MR. WALL: Well, there is a limited
9 stay period. But, if you then transfer to a new
10 institution, just as it works under Title II or
11 the Federal Deposit Insurance Act, those stays
12 become permanent, so long as these certain
13 creditor protections/assurances are in place.

14 MEMBER HERRING: Yes, that is what I
15 was interested. What is the day two?

16 MR. WALL: So, day two, if you have
17 satisfied those criteria under the protocol,
18 early termination events cannot occur. Now
19 normal termination and other business as usual
20 would apply, but that is what we are dealing
21 with.

22 MR. HOYER: At this point, you are

1 dealing with maturing trades; you are dealing
2 with any kind of novations or sales and, to the
3 extent that they can reach agreement to terminate
4 and they do have the financial capability to do
5 that within their strategy, absolutely, right.
6 That would be that path of wind-down.

7 MEMBER ADMATI: I have a question that
8 suddenly occurred to me. The bank's subsidiary
9 is bigger than \$50 billion, but it is not
10 considered SIFI. So, in other words, you don't
11 have a living will for the bank, or do you?

12 MR. HOYER: Yes, we do.

13 MEMBER ADMATI: If you do, then is it
14 the Deposit Insurance resolution or is it SIF
15 resolution? Which one?

16 MR. DELFIN: So, this process we are
17 engaging in here is a failure under bankruptcy
18 Title I holding company, right, Section 165(d)?

19 MEMBER ADMATI: Right. But what about
20 the bank?

21 MR. DELFIN: If a bank fails, no
22 matter what, it fails under the FDI.

1 MEMBER ADMATI: Under the FDI?

2 MR. HOYER: Yes.

3 MR. DELFIN: That's correct.

4 MEMBER ADMATI: But it is systemic
5 also. So, in other words, the derivatives and
6 other things make it systemic?

7 MR. DELFIN: They have to provide a
8 plan. They have to provide a separate plan under
9 FDI Act authority dealing with the bank failure.

10 MEMBER ADMATI: Dealing with the bank
11 failure? Still under living will?

12 MR. DELFIN: Correct. The whole code
13 is under the living will.

14 MEMBER ADMATI: Because I know,
15 because I don't work with banks, I understand it.
16 I am just saying that, within the holding
17 company, that is like the most important
18 subsidiary.

19 MR. WALL: And that is why, when we
20 just talked about legal entity rationalization
21 and stabilization, one of the key components is,
22 obviously, the protection of the IDI has been a

1 key component of this from the beginning.

2 MEMBER ADMATI: But who is going to
3 take whom down?

4 MEMBER BRADFIELD: Are you satisfied
5 that the protocol can cover all your needs with
6 respect the derivatives and termination?

7 MR. WALL: I think it goes a long way.
8 It certainly reduces the possibility of systemic
9 contagion to a very large extent. I think that,
10 since the protocol and the rule that will
11 implement it that will be coming out from the
12 Federal Reserve shortly will cover the vast
13 majority of qualified financial contracts -- in
14 fact, it will probably key off of the QFC
15 definition in the statute -- we think that it
16 should address the vast majority of contracts
17 that would be expected to terminate early. There
18 may be other kinds of contracts that don't, but
19 those don't that I am aware of represent the
20 significant risk to the firms.

21 MEMBER JOHNSON: I hope or I suggest
22 that we will go look again at the report produced

1 by the President's Working Group on Capital
2 Markets, the LTCM. Because the conclusion they
3 drew with regards to this point is the exact
4 opposite, right? They made the recommendation
5 that we create a more comprehensive exemption
6 from bankruptcy for derivatives because they
7 believed that what they had then and what we are
8 getting now in the master agreement would
9 actually create more systemic risk because it
10 would create more run risk ahead of the failure.
11 So, when you know that it is going down, you know
12 they are running out of liquidity; you want to
13 close out all those positions.

14 MR. WALL: Simon, I mean, I don't mean
15 to be flippant, but that was then; this is now.
16 I mean, I think it is just clear that thinking
17 has advanced on that. I think if we look at the
18 academic literature, that there have been an
19 increasing number of analysts that have suggested
20 that that is not the case and that we ought to be
21 looking at reducing the exemptions for
22 derivatives portfolios from the automatic stay.

1 So, I think there has been a shift.

2 MR. HOYER: To your point on
3 liquidity, we had the conversation earlier out in
4 front. You are absolutely correct. As we talked
5 about the stages of where a firm enters from BAU,
6 business as usual, to stress to recovery mode,
7 runway, counterparties, it is actually one of the
8 things that all the agencies monitor for are
9 counterparty requests. As counterparty requests
10 -- we call them bid-back requests -- come in, the
11 firms have to decide how many of those do they
12 want to execute on. Obviously, if one-by-one you
13 start coming in and asking to bid-back any kind
14 of debt, any kind of instrument, I can just point
15 to my contractual relationship, but that is going
16 to send a signal.

17 That is captured within the liquidity,
18 within the community funding planning, and so on,
19 normal business-as-usual contingency funding
20 planning, as well as the resolution model from a
21 legal default standpoint, obviously. But, from a
22 liquidity standpoint, those sorts of bid-back

1 requests, once they get past recovery mode, they
2 have to defer to contractual, because at that
3 point they are in wind-down and they are just
4 going to start -- you know, we are hitting the
5 point of non-viability and failure, and they are
6 going to say, "No, no, no," and they are carrying
7 to maturity or if they have the financial
8 capacity. But it a valid point on liquidity.
9 And so, it has to be captured within that model
10 we have talked about.

11 MEMBER BRADFIELD: Yes. So, if we
12 don't have the liquidity, then, in effect, the
13 right to close out the position comes into
14 effect?

15 MR. DELFIN: I think if you don't meet
16 the protection --

17 MR. WALL: I think it is, yes, you
18 have to look at the protocol and see whether you
19 have satisfied them. I can't say that, from a
20 general point of view, if you don't have the
21 liquidity -- you have to have it and it is a
22 little bit more specific than --

1 MR. HOYER: I think it is separating
2 the legal protocol from normal counterparty
3 actions, and that is what Simon was talking
4 about, was normal counterparty actions. And to a
5 certain point, firms will continue to work with
6 their counterparties and they will fund those as
7 much as they can for mark of confidence. "I've
8 got that covered" is the way to think about it.

9 But, at a certain point, once they
10 have passed recovery options and they have hit
11 runway, they are going to look to that provision
12 and they are no longer going to have that
13 funding.

14 MR. HOYER: Yes, just to be clear, I
15 mean, the protocol does not prevent a
16 counterparty from closing out if it does not
17 receive its payments on time.

18 MR. WALL: They are two separate
19 aspects.

20 MEMBER COHEN: If I could, this can't
21 be part of the resolution plan itself, but it
22 will be part of the resolution plan's working, if

1 we ever get to that point. And that is going to
2 be the attitude, to be blunt, of the regulators.

3 Two points of demarcation. One was
4 1987 where the entire brokerage industry was
5 gone. The Feds stepped in and told the banks to
6 keep blending.

7 There have been subsequent times where
8 there has not been that approach. So, there is a
9 responsibility here not just for the
10 institutions, but for the agencies to take the,
11 let's say, systemic interest approach as opposed
12 to just backing off.

13 MEMBER BRADFIELD: In a sense, it
14 would be too late if there isn't illiquidity and,
15 then, you want to do Title II; it is really too
16 late with respect to those derivative
17 transactions, isn't it?

18 MR. HOYER: I want to back up. This
19 goes back to the liquidity methodology we were
20 talking about, that size and minimum operating
21 liquidity need, that size, the peak funding need.
22 And when they are looking at their derivatives

1 wind-down under the passive, we cannot do
2 anything which is very financially punitive, as
3 well as the active wind-down. That particular
4 outcome is calculated within that, too, depending
5 on the strategy.

6 So, they know when they are crossing
7 that line of demarcation. As they are engaging
8 through stress and through recovery up to runway,
9 again, they know how much liquidity they have got
10 and they know what they need to execute. Again,
11 it all has to connect together.

12 CHAIRMAN GRUENBERG: We have run over
13 time. This has been extraordinarily helpful to
14 us. And so, I want to begin by thanking you all.

15 We are sort of operating in real-time
16 here. Ideally, we would have done it sooner and
17 we would have gotten these documents earlier, so
18 you would have had an opportunity to review them
19 before the meeting, but it just wasn't possible
20 in this case.

21 So, what I would suggest and refer you
22 to are tabs 8 and 9 in your binders. Tab 8 is

1 the document that lays out the resolution plan, a
2 system of framework and the basis for firm
3 determinations. So, in a sense, that is a review
4 of what we have done and the basis for it.

5 And then, tab 9 is the guidance we
6 have provided for the next submissions of the
7 plans and the issues that need to be addressed
8 going forward.

9 Both of these documents are public
10 documents. They are on the FDIC's website. They
11 are both less than 25 pages long. So, they are
12 actually relatively-readable and consumable. So,
13 I do recommend them to you.

14 And after reviewing, if you all have
15 any thoughts in regard to them, we will welcome
16 any comments, suggestions, or questions that you
17 might have.

18 And then, let me also thank our staff
19 here. They have really done, I think, a
20 remarkable job, both in the presentation this
21 morning and the work that they have done in
22 review of these plans. I really think this moves

1 the center of gravity on a very tough set of
2 issues. I just want to really acknowledge them
3 for the work that they have done.

4 And then, if it is okay with
5 everybody, we will move on to the next part of
6 our program relating to the Orderly Liquidation
7 Authority and the work on time, too.

8 Thank you.

9 We will take five minutes.

10 (Whereupon, the foregoing matter went
11 off the record at 11:44 a.m. and resumed at 11:55
12 a.m.)

13 CHAIRMAN GRUENBERG: We are now going
14 to continue the discussion in regard to the work
15 we have been doing on the Orderly Liquidation
16 Authority under Title II of Dodd-Frank. And I
17 think what we may do is run this a little long,
18 and we may reduce our lunch hour to 45 minutes in
19 the interest of trying to take advantage of the
20 opportunity to engage with you all.

21 I know Don Kohn had a question he
22 wanted to raise just to conclude.

1 MEMBER KOHN: So, I would like to ask
2 Art to sum up where he thinks the FDIC and the
3 Fed has gotten to on Title I. Do you feel like
4 there has been a lot of progress or almost there
5 or there is a huge gap between where you want to
6 go and where you are? I mean, how has this thing
7 been left at the end of really round one of these
8 things? So, is it your expectation on October
9 1st, 2017 that you will have things that work,
10 maybe not under every circumstance, but under a
11 lot of circumstances?

12 CHAIRMAN GRUENBERG: You can answer my
13 question from the earlier round as well.

14 MR. MURTON: On the progress?

15 CHAIRMAN GRUENBERG: Yes.

16 MR. MURTON: Yes. Okay.

17 Well, I think the answer is we have
18 made a lot of progress. We have made very
19 significant progress on this front, moved the
20 center of gravity, as the Chairman said.

21 In 2008, we didn't have any of this.
22 We didn't have a framework for this. We had

1 given virtually no thought to this. We didn't
2 have the authorities in place. We had not put in
3 place a framework for thinking about it.

4 Since then, we have done significant
5 work. We have identified the obstacles to
6 resolution under bankruptcy. We have worked with
7 the firms on how we would address those
8 obstacles. We have made some tangible changes.
9 The ISDA protocol is an example of something that
10 is terribly significant in terms of resolution
11 under bankruptcy and the systemic implications of
12 that. Another long-term debt rule is in process.
13 That is going to be a really important part of
14 this.

15 And so, it feels to me like the last
16 five years have brought about significant
17 progress in this regard. Are we there yet? I am
18 never going to say we are all the way there.

19 I think a couple of significant dates,
20 looking ahead, are October, when they have to
21 address the deficiencies, but I would also just
22 keep in mind that July of 2017 is when we have

1 asked them to address these issues
2 comprehensively. That will be another important
3 time to take stock of where we are. But I think
4 the progress thus far has been extremely
5 significant.

6 So, with that, let's turn to Title II.
7 And so, I turn to my colleagues Herb Held, Ryan
8 Tetrick, Angus Tarpley, and Pen Starke.

9 I think we will start with Herb, who
10 will give an update on our thinking about how we
11 approach Title II resolution strategy.

12 MR. HELD: Okay. This chart here is
13 pretty familiar to everybody. This was our
14 original thinking back in 2012 how single point-
15 of-entry would work. The first shot at it, it
16 accomplished the major goals that we needed to
17 accomplish: assure financial stability, make
18 sure that the creditors' equity bore the loss,
19 terminate culpable management, and no taxpayer
20 support.

21 It was a very simple chart. A company
22 goes into bankruptcy. Create a bridge holding

1 company. Virtually all the assets go over to the
2 bridge. You leave the liabilities behind. You
3 do valuation work. Eventually, you exit the
4 bridge by doing a debt-for-equity swap in the new
5 company. The old creditors become the new owners
6 of new co., and it merrily goes along on its way.

7 In all probability, during the period
8 there will be some organic downsizing, customers
9 would leave, but there was no active management
10 of the new co. to reduce its size. So, the
11 resulting entity probably would still be
12 systemic, and we weren't able to solve the
13 problem of the international closeout of
14 derivatives contracts, since our stay under Dodd-
15 Frank only pertained to the domestic contracts.

16 There we go. Right in December of
17 2013, we published our notice in The Federal
18 Register. And in there, we described in much
19 more detail what our single point-of-entry would
20 be. We did put in there that restructuring might
21 result in one or more smaller companies that
22 would be able to resolve their bankruptcy without

1 causing serious adverse effect to the U.S.
2 economy. So, our thinking was evolving.

3 During the last year, the Chairman
4 made a number of speeches, and here in November,
5 you know, it was getting pretty explicit. We
6 were pretty explicit that the firm that exits
7 bankruptcy can no longer be a systemically-
8 important firm.

9 There we go. I have made it a little
10 more complicated since I added the foreign
11 broker/dealer into it. But you still have the
12 company. The company looks the same because they
13 basically look the same. It enters into the
14 bridge, and all the assets and liabilities -- all
15 the assets transfer to the bridge, leaving the
16 liabilities behind. That part is the same.

17 Now we are looking more at
18 optionality. Our thinking and the firm's
19 thinking are pretty similar, that you want to be
20 able to have a bunch of different tools to deal
21 with the crisis, depending on the shape the firm
22 is in, what the economy is, where the problems

1 are.

2 The first thing is that the
3 broker/dealers, it is hard to imagine that you
4 can hold together a broker/dealer through a
5 bridge period. Every one of the firms that has a
6 broker/dealer experiences either a complete wind-
7 down or a wind-down to a very much reduced
8 entity.

9 So, in our planning, broker/dealers
10 will actually fairly quickly wind-down on their
11 own as the repo books and the security lending
12 books roll off based on their maturity. So,
13 within a very short period of time, that part of
14 their broker/dealers will have gone away without
15 disrupting --

16 MEMBER HERRING: Herb, may I ask a
17 point of information? Aren't they usually
18 subject to a separate process that is overseen by
19 the --

20 MR. HELD: Right, if they go into
21 insolvency within both the single point-of-
22 entry --

1 MEMBER HERRING: So, as long as they
2 stay in Title II, you are in charge of --

3 MR. HELD: As long as they comply with
4 their SEC requirements, the solvency requirements
5 that they have, they won't be put into the SIPI
6 process.

7 So, if the parent in the Title I world
8 has got the capital to put down there, convert
9 that to maintain the solvency of the
10 broker/dealers and we have liquidity through OLA
11 to maintain the liquidity of the broker/dealers,
12 they can go through a solvent wind-down.

13 MEMBER HERRING: But you would oversee
14 that?

15 MR. HELD: It would be the bridge
16 would oversee it, yes.

17 MR. TETRICK: So, this is not unlike
18 what many of the firms have presented in their
19 Title I claims. They have presented a solvent
20 wind-down of their broker/dealer subsidiaries
21 under their single point-of-entry bankruptcy
22 process. This would be similar, but overseen by

1 the FDIC.

2 MEMBER HERRING: I guess the echo in
3 my mind that creates this would be Drexel Burnham
4 where they had a very, very well-capitalized
5 brokerage dealer that turned out not to be
6 viable. Of course, they wouldn't have been
7 overseen by you at that time because you didn't
8 have jurisdiction, but I think that was overseen
9 by SIPI, where even it was thought that they
10 wound it down because, according to the notes,
11 the point you make, that even if it is visibly
12 transparently solvent, you just can't keep it
13 going.

14 MR. HELD: Yes, because the way
15 traditionally the big broker/dealers had huge
16 imbalance on their repo book, especially of the
17 maturities, that over a month they were fine; the
18 book was balanced. On day two, they had \$100
19 billion deficit of cash. So, they fail almost
20 immediately.

21 The books look a lot different today
22 than they did in 2008, but they are still

1 imbalanced. And the need for parent support in
2 Title I or, if that is insufficient, we are in
3 Title II, and then, we can provide the repo
4 counterparty to allow that book to roll off
5 naturally.

6 So, in the plans, also, the firms have
7 come up with different strategies for dealing
8 with the size of the bank itself. Some of them
9 have the idea of you break up your bank into
10 three or four different parts, and you can do
11 IPOs, which will return cash and stock to the
12 bridge. You could spin the whole thing off to
13 the creditors. You can do asset sales to reduce
14 the size. That is also in the plan. Oh, I could
15 sell a newly-created bank. You could take
16 portfolios of loans and sell them or you could do
17 a branch-sale-type action.

18 So, all of these would return cash to
19 the bridge and reduce the size of whatever rump
20 bank is left.

21 Simon?

22 MEMBER JOHNSON: Finish your sentence.

1 MR. HELD: "Left," I guess.

2 (Laughter.)

3 MEMBER JOHNSON: So, these banks or
4 their representatives often claim there are
5 enormous economies of scale and scope in their
6 current operations. I thought under the legal
7 framework which you operate you have to try to
8 recover or come up with a structure that recovers
9 value, right? So, do you see this as destroying
10 value or are those economies of scale and scope
11 somewhat overstated? And that is what you will
12 be showing us here. It is a question. It is a
13 question.

14 MR. MURTON: I think, as was pointed
15 out, the firms themselves in their resolution
16 plans contemplate this transformation taking
17 place as well. And that is, under bankruptcy,
18 consistent with maximizing values. So, I don't
19 think it is inconsistent for us to contemplate
20 this.

21 MEMBER FISHER: I have got a different
22 answer to Simon's question, which is both the

1 rating agencies and the regulators in their
2 stress tests give diversification benefit, a
3 benefit of the doubt that diversified revenue
4 sources lowers your capital involvement. That is
5 embedded in the system. It is not something the
6 firms do off on their own.

7 MEMBER JOHNSON: Right. But, Peter,
8 my point here is that you are creating, I think,
9 a less-diversified structure --

10 MEMBER FISHER: Yes, it is.

11 MEMBER JOHNSON: -- which is fine with
12 me and fits my view of the world. But I am just
13 suggesting it may sit awkwardly with other parts
14 of what we say now, what is playing. And you are
15 just elaborating on that side of the ledger.

16 MEMBER FISHER: But it raises the
17 capital requirement on the other side, which is a
18 complicated pricing issue, if you will --

19 MEMBER JOHNSON: Right.

20 MEMBER FISHER: -- as we move through
21 the stages of resolution.

22 MEMBER JOHNSON: Yes, but let me try

1 to --

2 MEMBER ADMATI: God forbid they would
3 have to stand on their own financially.

4 MEMBER COHEN: Actually, I don't think
5 you do have this dilemma. You are entitled to
6 destroy value if it preserves the system.
7 Without getting into the debate, there is no
8 question, I think, that you can do whatever it
9 takes to make sure the system comes out whole
10 under Title II.

11 MR. STARKE: No, Title II is very
12 clear that preserving financial stability is the
13 priority. In fact, there is a provision
14 regarding the sale of assets that said we should
15 maximize value to the extent practicable. It is
16 not the priority. It is financial stability --

17 MEMBER JOHNSON: Yes, but the
18 question, you saw that on time consistency,
19 right? So, you can say what you want today. The
20 question is, when you get to this moment, what
21 are you actually going to do and what do you
22 believe and what are you persuaded by the

1 industry to do?

2 So, the question of, you know, it is
3 not clear to me why, from a preservation-of-the-
4 system point of view that this structure is
5 better than what you had in 2012, for example,
6 unless you talk us through. For example, the
7 standard Fed thinking is that more profitable
8 banks are more stable, right? That is how you
9 generate capital.

10 So, if you are disassembling them in
11 this way, and if those economies of scale, which
12 personally I think are fictitious, but if you
13 believe them -- and I'm pushing you on this
14 because I want to know what you believe -- if you
15 believe that there is a company that is going to
16 disappear because you are disassembling them,
17 then that has implication for financial stability
18 going forward. Now, if the economies of scale
19 are fictitious, disassembling is no problem at
20 all.

21 (Laughter.)

22 MR. HELD: Of course, you are

1 disassembling a \$2 trillion bank into four or
2 five, six parts. You still have very large
3 financial institutions which have economies of
4 scale. I am sure there are enormous economies of
5 scale that have been shown between a \$400 or \$500
6 billion bank and a trillion dollar bank.

7 MEMBER JOHNSON: That was my question,
8 yes.

9 MR. HELD: And remember, the bank
10 company has failed. And somewhere in there,
11 there is something horribly wrong which is going
12 to have to be excised out of it.

13 And remember, what we are showing here
14 is that you want to set it up so that you have
15 this optionality where you can do a bunch of
16 different things, depending on where the problem
17 is, how much capital you need for the resulting
18 companies to be well-capitalized, what the market
19 appetite is for raising new capital for these
20 companies, and how much you have to reduce them
21 to get rid of the systemic risk.

22 MEMBER JOHNSON: I am fine with that.

1 I mean, as you said very clearly, Herb, this is
2 not the plan you had in 2012. I think this plan
3 is better, and I think we pressed its predecessor
4 on exactly this point. So, I think you get
5 credit, in my view, for having listened or having
6 data based on something, anyway.

7 MEMBER FISHER: I think it is more
8 than an intellectual dilemma, but I will just see
9 about my disagreement. Let's just stipulate this
10 is going to work. We are going to get a better,
11 stable state of the world. Your comparison to
12 '98 is a really important one, Simon, you made.

13 If this works, there should be less
14 sales. There should be less emergency
15 liquidation, a longer horizon over which to
16 figure this out, if resolution, quote, "works".
17 So, you will see less selling-off of assets in a
18 hurried way and more doing it slowly and
19 considered. And then, this judgment process will
20 be more transparent or more of a discernment
21 process. It is very obvious --

22 MEMBER ADMATI: If only this process

1 does what John Reed was going to do, which is
2 convince them to have enough incentives, because,
3 otherwise, I'm not so sure they do have them. In
4 other words, they would like to pass all your
5 different hurdles, but they obviously don't want
6 to get to this point.

7 MR. HELD: I mean, to do this is not
8 an overnight process. In the plans they talk in
9 periods of 18 months, two years. To do one like
10 this, which is pretty complicated, you are
11 talking about years to actually arrange the
12 sales, to consummate the sales, and actually do
13 the splits, and end up with operating companies
14 going off on their own. So, it is not any kind
15 of fire-sale-type transaction.

16 The nice thing about the
17 broker/dealers is that their wind-down is done by
18 returning collateral to the people who you have
19 borrowed from and lent to. So, kind of a natural
20 wind-down without having to sell hardly any
21 assets. They don't have their own assets that
22 are a huge amount. And an asset management

1 company way off on the end where everybody has
2 forgotten about it, those actually were fairly
3 salable, and even during the crisis people were
4 able to sell them. And we don't have like a
5 retail broker/dealer on there, but those also
6 were salable during the crisis. So, they could
7 be sold, and quickly, I think, and value retained
8 for the firm.

9 Any other questions?

10 MR. MURTON: You know, your comment
11 about the relation between future earnings and
12 capital reminded me, I think it was one of John
13 Reed's predecessors who was known for making the
14 argument that you didn't need capital in these
15 firms because they had future earnings capacity,
16 but that didn't work out so well.

17 (Laughter.)

18 It didn't work out so well.

19 MEMBER FISHER: Just a thought
20 experiment. Let's assume the decision is taken;
21 we know we are going in, and the existing equity
22 is wiped out. And that is all we know. We are

1 at stage one.

2 What would you need to know to price
3 options on equity in the future holding company?
4 That is, we assume this is going to work out, and
5 so, we assume we have a little bridge in time.
6 But what would an equity options pricing guy or
7 gal want to know?

8 We know we wiped out the current
9 equity. You didn't need to know how many
10 liabilities were getting shed and how many
11 liabilities were getting converted into future
12 equity. And then, we want to have estimates of
13 the future earning capacity of the place.

14 And all I am imagining is a thought
15 experiment where you say, what is it you would
16 want to know to price that option? That is the
17 moment at which you are stabilizing it to a
18 certain proximation. I mean, there are other
19 things that might come up and you might not know
20 future uncertainties.

21 But if you can't price that option,
22 you are still dealing with a lot of uncertainty.

1 The question is, what are the uncertainties we
2 are living with? Because if it is all going to
3 work out happily ever after, people should want
4 to hold those options. It is just a thought
5 experiment for you to think about.

6 MR. HELD: Right. So, one of the key
7 parts of the resolution process that all of the
8 regulators, both here in the United States and
9 abroad, have been wrestling with is how do you
10 value the company after it has gone into
11 resolution. Because you need to be able to come
12 up with financial statements for the new company
13 and do the write-downs and valuations, because
14 that is going to be a large exercise for the
15 accountants and investment bankers to be able to
16 do that.

17 And what the value of the company is
18 also will depend on is it the whole company that
19 is going to exit and continue on. Is it this
20 idea that we are going to spin off some, sell
21 some? And that has to be part of that valuation.
22 Is this a piece of the company that is held for

1 sale or is this a piece of the company that will
2 be the continuing operations?

3 MEMBER REED: That is going to depend
4 a lot on what caused the problem.

5 MR. HELD: Right.

6 MEMBER REED: Then, you have got new
7 management. People are going to want to know who
8 the new management is. So, all this valuation,
9 but this process is, in fact, how banks generally
10 get restructured today.

11 You have something that caused the
12 difficulty. And then, that sort of gets pushed
13 aside. Think of the Texas banks, and they get
14 sold, and so forth and so on. But the bad thing,
15 if they are sold to something that has
16 management, at least you could evaluate what the
17 buyer might be able to do with that business.
18 But, if you bring in a totally new management
19 team that no one knows anything about, you are
20 going to have to wait a minute.

21 The point is this is a perfectly-
22 viable strategy and probably describes what has

1 happened to bank difficulties in the past which
2 was not under this Title II.

3 MEMBER HERRING: This is one of the
4 virtues of Title II, that it gives you time for
5 the values to be put on --

6 MR. HELD: Well, it gives you time
7 beforehand to plan.

8 MEMBER HERRING: Yes.

9 MR. HELD: So that we know far more
10 about the companies. Their Title I plans mean
11 that they are going to have playbooks for their
12 objective sales on how you would actually go
13 about doing this, and you would have the options
14 and know which ones to pick and choose from,
15 depending on the situation.

16 You know, you wouldn't end up with a
17 thing like the English have where they are taking
18 their banks that they have taken over, and eight
19 years later we are still doing objects of sale
20 and downsizing. Sometime in this next decade
21 maybe they will finish. Or the Japanese that
22 took --

1 MR. MURTON: We have done a lot of
2 that, too, Herb.

3 (Laughter.)

4 MR. HELD: Yes.

5 MEMBER COHEN: Talking about
6 resolution planning, I would like to come back to
7 something John said, which I think is extremely
8 important. And that is the management on day one
9 after this happens. We have had one example of
10 this where it didn't work out so well in
11 Continental Illinois. And that was nobody's
12 fault. The guy who was supposed to take it left
13 at the last, left everybody waiting at the altar.

14 So, hopefully, you have like, to come
15 back to the word optionality, two or three people
16 who are ready to --

17 CHAIRMAN GRUENBERG: So, thank you for
18 that because that is a nice segue into the
19 operational planning exercise in which your
20 future management becomes one of the really key
21 issues.

22 MR. MURTON: Yes, let me turn it over

1 to Ryan then.

2 MR. TETRICK: So, turn to the
3 operational planning segment. I summarize some
4 of the work that we have done to build out our
5 preparedness and capabilities to actually execute
6 our systemic resolution authorities. We call
7 this a systemic resolution framework
8 intentionally.

9 The focus will be on our Title II
10 authorities, but the process that we have
11 developed covers the period from which we start
12 contingency planning through exit from
13 resolution. When we start contingency planning,
14 we won't know what the outcome will be. So, we
15 might start planning at a time when recovery is
16 more likely. That is actually one of the
17 principles that we have arrived at in developing
18 this process, that we want to have an appetite
19 for false-positives to start taking the steps to
20 prepare to enter into resolution, even when it is
21 likely that it won't be necessary.

22 And if it is possible that other paths

1 will -- if the firm is failing it, that there
2 will be other paths to resolve any situation,
3 whether that is a private sector solution,
4 bankruptcy, or depending on the type of
5 institution, you could imagine, I think, and not
6 raise the question about the bank entities. You
7 can imagine just resolving the bank under FDI Act
8 in certain circumstances.

9 So, we have designed a set of
10 processes that is intentionally flexible enough
11 to start down those multiple paths
12 simultaneously. So, we are calling it a systemic
13 resolution framework.

14 The steps I mentioned are that we have
15 identified sort of the core actions that need to
16 happen. We want those to be flexible enough that
17 the facts and circumstances of a particular
18 failure can be kind of modified. We can modify
19 the steps based on the facts and circumstances of
20 a particular failure.

21 If we know that if we design processes
22 and tools that are overly detailed or tailored to

1 a particular path, just like in the Title I
2 planning, we will necessarily need to adjust.
3 So, the real challenge for us is to lay out
4 enough structure and framework ex ante, that we
5 have a plan; we have something we can execute
6 upon, but it is adjustable enough to deal with
7 the different types of institutions that might
8 fail. We could apply it to different types of
9 SIFIs, but also different types of failure
10 scenarios.

11 And then, importantly, when we get
12 into resolution, kind of building on the previous
13 segment, that there are processes that can carry
14 out the resolution during our bridge period in
15 different ways. So, there might be different
16 types of restructuring that are needed, dependent
17 on the type of failure. The path to exiting from
18 resolution may be longer or shorter, depending on
19 both the institution and the circumstances in the
20 market at the time.

21 With that background, I will talk
22 about some of the testing that we have done

1 around this process.

2 Yes?

3 MEMBER HERRING: May I ask a question
4 that has come up in the previous years, which is,
5 there was a capacity constraint on your ability
6 to deal with a number of these. And something
7 that always worries people, I think, is maybe we
8 can deal with one institution, but is it
9 possible, if there are a couple or three in
10 trouble, that we could maybe scale up to manage
11 them?

12 To the extent to which you have
13 thought about it, I mean, surely, there would be
14 no problem just to get this --

15 MR. TETRICK: Sure. It is a
16 significant challenge just to take one.

17 MEMBER HERRING: Yes.

18 MR. TETRICK: I think part of the goal
19 of sort of the explicit objective of a Title II
20 resolution is to try to stop the failures at one.

21 MEMBER HERRING: Sure.

22 MR. TETRICK: But there certainly gets

1 to be a challenge in executing more at once and
2 sequencing that. So, it is something that we
3 have thought about. We started our testing on
4 executing a resolution for one SIFI, and we have
5 built out a process that we are prepared to
6 execute today, if we needed to, and getting to
7 how we would operate multiple resolutions at the
8 same time is something that we are going to layer
9 into our frame going forward.

10 MR. MURTON: I would just say that,
11 through two crises, the FDIC has demonstrated
12 that it can scale up its operations relatively
13 quickly and, then, bring them back down. So, I
14 know this would be different circumstances, but
15 we have responded quickly to heightened demands.

16 MEMBER BRADFIELD: Herb, do you have
17 access to enough liquidity to hand off --

18 MR. MURTON: Well, the liquidity that
19 we have access to is related to the size of the
20 institutions that we are dealing with.

21 MEMBER ADMATI: To be fair, I mean,
22 WaMu was the biggest. So, we are talking about a

1 different order of magnitude here for sure.

2 MR. MURTON: Yes. Well, just to be
3 clear, I mean, WaMu actually took far fewer
4 resources --

5 MEMBER ADMATI: No, I understand,
6 but --

7 MR. MURTON: -- to execute the
8 resolution than did a \$10 million bank in
9 Pittsburgh at the beginning of the crisis.

10 MR. TETRICK: Also, some of the
11 processes that we would need to execute, to take
12 what might be the most resource-intensive
13 process, the communications to the public and
14 counterparties of the firm, we would necessarily
15 rely on the infrastructure of the institution
16 that we are resolving to conduct much of that.

17 So, there are certain processes that
18 it would certainly be a challenge to do more than
19 one of these at once, but the most intensive
20 resource-constraining functions would leverage
21 the structure of the firm.

22 MEMBER JOHNSON: Ryan, I think in

1 addition to the more than one problem, which Paul
2 Volcker always raises when he is here, I think
3 there is the firms of contagion. It occurs to
4 me, given some other discussions which are not
5 the primarily line of fire, but this is rather
6 relevant, you know, what if an insurance company,
7 for example, is affected by either what you do or
8 by other things that are happening at the same
9 time, right?

10 We are thinking of that bank holding
11 company, but your responsibility is to everything
12 that is systemically important, including things
13 that haven't been designated as systemically
14 important, right?

15 You know, I am not saying that any
16 District Court would be impressed by this, even
17 though they should, but just in terms of the
18 general discussion of what is a crisis, what is a
19 systemic crisis, what is going to push the FDIC
20 and our broader official capacity to its limit, I
21 think it is bunch of stuff failing, some of which
22 is anticipated, some of which is not anticipated.

1 I think you can't answer all those
2 questions, and you can't be expected to, but you
3 can show everyone the kinds of things that would
4 be at the limits of your power to deal with.

5 MR. TETRICK: Well, you raised
6 insurance companies, and there we are on a little
7 bit better footing because, at least for the
8 designated insurance companies, we do get Title I
9 plans and that supports our Title II planning for
10 those institutions.

11 For the other types of entities that
12 you mentioned, things that haven't been
13 designated, there is more capacity around how
14 they operate, the types of things that we need to
15 do, and that certainly presents unique challenges
16 for us. That is something that we continue to
17 think about.

18 So, just to talk a little bit about
19 the testing, again, I think we have certainly,
20 for bank holding companies and some other types
21 of institutions, I believe we have established
22 processes that we are ready to execute. To sort

1 of evaluate and test those processes, we have
2 established an ongoing series of what we call
3 operational exercises.

4 The most recent exercise of this sort
5 we held in December, a full-day exercise that
6 included members of the FDIC Board. That is
7 Chairman Gruenberg, Comptroller Curry, and
8 Division Directors from across the FDIC who
9 represent the range of expertise that we needed
10 to carry out the process.

11 It builds on a lot of interagency work
12 that we have done to design this process. We
13 started by evaluating certain processes that
14 really need intensive interagency collaboration
15 in order to execute. So, the appointment process
16 or through keys process, we have worked with the
17 other key-turning agencies to establish some
18 protocols and expectations around how that would
19 be carried out.

20 Activating the Orderly Liquidation
21 Fund with Treasury and the role that the Federal
22 Reserve might have in terms of delivering funds

1 by the wire system, we have worked through the
2 sort of protocols and expectations on how that
3 would work.

4 We have designed a detailed internal
5 process that consists of a series of work
6 streams, I will call them, to carry out different
7 processes that would need to happen
8 simultaneously. So, assessing the condition of
9 the institution, developing our strategy,
10 determining what sort of governance may need to
11 be in place once we get into resolution. And I
12 will talk more about that in a second. And then,
13 actually, once we get into resolution,
14 establishing the bridge and the plan that will be
15 carried out during the bridge period.

16 MEMBER BRADFIELD: Did we learn from
17 the living wills?

18 MR. TETRICK: Immensely, yes. I think
19 there is a lot of learning from the living wills
20 in terms of strategic thinking and options,
21 certainly going back to Herb's segment, the
22 objects of sale that are identified in forms, the

1 types of options that we would have once we get
2 into resolution, what sorts of marketing and due
3 diligence timelines we can expect around those
4 objects of sale, but also just from an
5 operational standpoint, all the firms are
6 required -- again, I will mention communications
7 -- to develop a global communications plan. That
8 is something that we would leverage directly.

9 There are playbooks for continuity of
10 access to FMUs. Again, that is something that we
11 would leverage directly and kind of activate
12 those playbooks with the personnel that are at
13 the firm even in a Title II scenario.

14 So, the Title I process is extremely
15 helpful in forming how we carry out our Title II
16 authorities.

17 MEMBER KOHN: To expand a little bit
18 on the foreign authorities --

19 MR. TETRICK: Sure.

20 MEMBER KOHN: -- I mean Simon raised
21 the issue before under Title I --

22 MR. TETRICK: Yes.

1 MEMBER KOHN: -- the complications of
2 it.

3 MR. TETRICK: So, we have intensive
4 collaboration with foreign authorities. You have
5 a segment on international engagement in a bit
6 where we will go into more of that. But around
7 our Title II authorities now we conduct exercises
8 with foreign authorities. But many of those
9 bilateral relationships have gone through
10 exercises on establishing joint work streams on
11 certain processes to determine what kind of home
12 host coordination might be needed, once you get
13 into resolution.

14 So, we tend to focus on certain
15 processes where there is a clear home host role.
16 For instance, if you think we have talked about
17 TLAC throughout the day, but that is issued out
18 of the holding company downstream to
19 subsidiaries, in some cases downstream to hosted
20 subsidiaries. What are the timing expectations
21 for when that would be converted to stabilize a
22 hosted subsidiary, once you enter into

1 resolution? What are the expectations around
2 sort of expediting authorizations to operate in
3 hosted jurisdictions? There are some regulatory
4 and procedural matters that we think could be
5 expedited with close home host cooperation. So,
6 there is a number of sort of specific technical
7 issues that not only do we address exercises with
8 foreign authorities, but actually have kind of
9 regular, ongoing work streams with key
10 jurisdictions.

11 MEMBER KOHN: But protocols, just
12 understandings about the future of a resolution,
13 either what happens to the subsidiaries, and
14 things like that, is that stuff all written down?
15 Is there something more than just we know these
16 guys and work with you guys?

17 (Laughter.)

18 MR. TETRICK: I think it is fair to
19 say that no jurisdiction is willing to give up
20 options or abilities that it might otherwise have
21 in resolution. But we are able to set some
22 expectations about how we will coordinate, what a

1 host authority will need to see and hear from us,
2 what we will need to demonstrate so that they
3 don't interfere with hosted operations. But you
4 can't sort of relinquish sovereignty.

5 (Laughter.)

6 MEMBER JOHNSON: But you can
7 relinquish sovereignty.

8 MEMBER ADMATI: Well, nobody wants to.

9 MEMBER JOHNSON: And they haven't.

10 MEMBER ADMATI: Right.

11 MEMBER JOHNSON: You can't have
12 binding obligations. So, you can have a treaty
13 or some other form.

14 MR. TETRICK: Practically, it is very
15 difficult to do.

16 MEMBER JOHNSON: Well, it hasn't
17 happened. I think the supervisors and others
18 don't want to do it. It is an interesting
19 question whether it would be any harder than any
20 of our other international obligations.

21 MEMBER COHEN: I must say I echo that.
22 I have for some time. I understand how difficult

1 it is, but we are really talking predominantly
2 about a single treaty, which is the U.S. and the
3 UK. That is 90-something percent of all
4 liabilities of the eight USG sibs outside.
5 Ideally, we get the European Union on with us,
6 but we are talking two treaties.

7 MEMBER ADMATI: To all of that, I
8 mean, we have discussed this here before, and
9 this is a huge problem. I mean, we know from
10 experience that the cross-border has not worked
11 from Continental Illinois through to Lehman and
12 everything else.

13 So now, the Financial Stability Board
14 had this key attribute report, which I have read,
15 which really is a huge wish list of things that
16 have to happen, some of which legally. And it
17 has come up in this panel before as well.

18 So, when it comes to sort of now the
19 SIFIs assumptions in the living wills, now it
20 comes to your assumptions over here and just
21 being honest with where we are, because of the
22 ring-fencing that we can logically anticipate.

1 Are we kind of confronting that?
2 Because in the last crisis, a lot of MOIs were
3 just out the window in the event. So, we just
4 have to realize that, it seems to me, as opposed
5 to just live in hope somehow that some of these
6 things -- because they are not in treaty. So,
7 unless we really come out of here saying there
8 must be a treaty or something to do these things,
9 otherwise, cross-border is a big, huge problem.

10 MR. TETRICK: So, some sort of
11 international arrangement or treaty would, of
12 course, provide more certainty. I am not so sure
13 that we are expecting ring-fencing anymore. It
14 is one of those situations where we are in a very
15 different place than we were pre-crisis. And it
16 is not just the key attributes, but working
17 towards internal TLAC. A bit part of that is
18 where you have material operations, it provides
19 the host authority in-hand resources that they
20 can be assured would otherwise be lost, if we
21 don't support those operations.

22 MEMBER ADMATI: Legally?

1 MR. TETRICK: We have resolution
2 authorities with substantial funding capacities
3 that we can ensure obligations are met as they
4 come due. We have worked through CMGs and other
5 fora to develop plans.

6 So, I think we are in a different
7 state. Nobody can guarantee, say with a treaty,
8 that actions wouldn't be -- well, that certain
9 actions are guaranteed or non-actions are
10 guaranteed. But we work very closely with the
11 host authorities, and we are all trying to solve
12 the same problems of note, certainly between us
13 and the UK.

14 The operations that are hosted in each
15 jurisdiction are critical to the SIFIs in the
16 home country. So, we have worked very closely
17 with them to come to some understanding of how
18 that would work.

19 MEMBER COHEN: Could I just go back
20 quickly to one other thing, one other point Simon
21 made? It touched on something that began with
22 Dick. That is a contagion and how difficult that

1 makes everything.

2 There are two types of contagion. One
3 is that there are a lot of problems at a lot of
4 institutions. I have no clue what you are going
5 to do there.

6 But the other is an idiosyncratic
7 event at one institution and the market panics
8 because they can't tell whether it is happening
9 in other institutions. There I would hope part
10 of the operational exercise would be to think
11 through with you and the Fed and the OCC and the
12 foreign regulators what they are willing to say
13 about the health of the remaining institutions.

14 CHAIRMAN GRUENBERG: We are already
15 over time. I am figuring we will sacrifice part
16 of our lunch hour to try to continue the
17 conversation here.

18 If we can, I would like to get through
19 the description of the internal operation of what
20 you have done, just so we could at least put that
21 on the table for everyone. And then, we will
22 conclude with a brief overview of the

1 international work.

2 We also wanted to get to the work on
3 central counterparties that we have been doing,
4 which is quite important and very much helped us
5 here and internationally. But my guess is we may
6 not have enough time for that today, but you do
7 have a slide back in your book, and certainly,
8 any questions or follow-up. Why don't we just
9 try to proceed for another 10 minutes or so and
10 see how far you can go?

11 MR. TETRICK: So, the operational
12 exercises we have been conducting, that is an
13 ongoing program. We expect to have another
14 exercise like we held in December sometime this
15 summer.

16 If you turn to slide 4 in this
17 segment, that begins with an overview of the
18 phases in the process that we have established.
19 There are five phases described here.

20 The first is somewhat out of scope of
21 the direct execution of our Title II authorities.
22 That is the planning phase. We are in the

1 planning phase now. It is peacetime when we are
2 doing advanced resolution planning, both through
3 Title I and Title II. So, I won't spend much
4 time on that.

5 Where our exercises began this
6 December was in this determination phase. We
7 have just provided a summary of some of the
8 things that happened there. It was actually more
9 sort of primary actions or core steps that we
10 have laid out.

11 But it begins with really sort of
12 activating our planning process. That is both
13 internally, getting our sort of executive group
14 established that will project manage the
15 execution of the resolution planning and entering
16 the resolution, if it is needed.

17 But, then, also, establishing a
18 similar group with domestic authorities and
19 activating at probably a very senior level the
20 Crisis Management Group, or at least bilateral
21 engagement with host authorities.

22 And then, at the same time,

1 establishing a targeted list of information that
2 may need to be updated to build out the
3 executable plan relative to a failing
4 institution, delivering that with other
5 supervisory authorities to the institution during
6 this period, not just to assess its condition,
7 but also to determine the actions that we need to
8 take upon entry.

9 Using that to develop our strategy,
10 particularly what the day one actions might be
11 needed to stabilize the institution from a
12 capital and liquidity perspective. So, not just
13 leaving liabilities behind at the holding company
14 level, but conversion of internal debt or
15 internal TLAC at the operating subsidiaries.

16 And then, the point that was raised
17 earlier about the importance of new management.
18 So, I think we view this as a lot of attention
19 has been paid in the cross-border space on
20 capital and liquidity, but we view this as sort
21 of a threshold decision to the effectiveness of
22 this strategy.

1 To your point, having multiple
2 personnel that might be a fit for the institution
3 as we are going through this determination phase,
4 is one of the principles that we have
5 established.

6 Not only that, but I think during the
7 planning phase, establishing relationships with
8 the types of people who have been in this
9 situation or who can connect us to others who
10 might be a good fit.

11 And then, the other thing is
12 establishing what authorities and
13 responsibilities this new management would have
14 upon entering into resolution. So, you know, you
15 think about compensation and other questions, but
16 one of the things that we think is most important
17 is that the person who comes in knows what the
18 FDIC's role is, what powers and limitations they
19 have during this bridge period.

20 In terms of limitations, we would
21 expect to adopt the bylaws of the failing
22 institution, but modify them to lay out certain

1 limitations on what they could and couldn't do.
2 And then, we would also enter into what we are
3 calling an operating agreement, which would set
4 out certain requirements that are needed to be
5 completed to get to exit from resolution.

6 So, they would need to develop a new
7 capital and liquidity plan, meet all the
8 regulatory requirements for exit, and develop the
9 sort of restructuring plan that executes on all
10 the options Herb went through earlier, before you
11 could exit. Some of those actions may take a
12 number of years. So, it would be expected that
13 some of those might need to be incorporated into
14 the valuation of this new company and would be
15 carried out after exit from resolution with some
16 sort of binding agreement that is placed on the
17 firm upon exit.

18 MEMBER PETERSON: Do you have explicit
19 triggers as to when you would intervene? I could
20 see you have this tension between management who
21 say, "We can handle it" versus wanting to
22 intervene earlier to preserve value and

1 stability.

2 MR. TETRICK: Yes, it is a great
3 question. We have looked at, are there ways to
4 develop explicit triggers or quantitative
5 triggers? It is very difficult to do. And I
6 don't think we would want to bind ourselves with
7 a particular sort of quantitative trigger.

8 But we would expect to enter and
9 appoint in terms of the legal authorities at a
10 point when the firm was in danger of default,
11 rather than default, or something before it has
12 exhausted all of its resources.

13 It might be the case that the firm
14 still thinks it can survive. But, importantly,
15 the type of liquidity planning for resolution
16 purposes that is being conducted in the Title I
17 space provides us some guidelines on how to think
18 about when to enter. If they have crossed
19 through that threshold that Brent described
20 earlier where they no longer have enough
21 resources to execute their resolution plan, that
22 is one argument for entering the resolution, but

1 there are no explicit triggers other than meeting
2 the fact that the firm is either in default or
3 danger of default.

4 So, in moving on to the subsequent
5 phases, we have got what we call the immediate
6 stabilization phase. You can think of this as
7 resolution weekend, although we don't know that
8 we will get to pick the date, so it won't
9 necessarily be on a weekend.

10 (Laughter.)

11 But this is the days immediately upon
12 entering the resolution when we are establishing
13 the bridge company and stabilizing the group.
14 And that might be a period of one to two days or
15 a couple of weeks following that. There is no
16 sort of liminal event that calls the end of this
17 phase, but this is the period in which we are
18 taking the actions to stabilize the group. And
19 then, importantly, there are a lot of compressed
20 actions here that need to happen simultaneously.
21 So, communications immediately upon entry, not
22 just to the broad public, but to the personnel

1 and counterparties and customers of the firm, and
2 having a plan to provide all of that
3 communication in a simultaneous, coordinated way
4 is one of the things that we really focus on in
5 this phase.

6 And then, we transition into the
7 orderly liquidation phase, which is the period
8 during which the institution will be operating as
9 a bridge financial company. We would be
10 overseeing all those requirements that I
11 described. That would be laid out in the
12 operating agreement.

13 One of those would be to conduct a new
14 valuation of the firm. The bridge would be
15 responsible for doing one valuation. We would do
16 a simultaneous valuation with an outside advisor
17 to develop a fairness opinion as to the valuation
18 that the firm produced, of course, incorporating
19 all the restructuring actions that would take
20 place during this period.

21 And then, depending on the exit,
22 completing a claims process and a securings for

1 claims exchange to deliver equity and debt in a
2 new company to the claimants of the failed firm
3 or returning cash for parts of the firm that are
4 sold or liquidated during this period.

5 Then, the final phase, we can
6 anticipate there will be ongoing work after we
7 exit from resolution. Most likely, after the
8 bridge is terminated, the receivership entity
9 actually would go on and handle both offensive
10 and defensive litigation that would remain with
11 that entity.

12 There would be completion of the
13 restructuring plan that we laid out during the
14 bridge period. And then, we anticipate some
15 communication upon exit. And then, we have
16 reporting potentially. You know, we would expect
17 both during the bridge period and after, there
18 might be calls for congressional reporting. So,
19 planning for that during this period.

20 CHAIRMAN GRUENBERG: Statutory
21 requirements.

22 MR. TETRICK: Yes, there are certain

1 statutory requirements, as the Chairman noted.

2 And then, there might be some other ad-hoc

3 reporting that would be asked for.

4 MEMBER FISHER: Could I offer an
5 impression, if I could? And you can tell us next
6 we come back in a year or so.

7 (Laughter.)

8 I am still nervous you are trying to
9 hold too many options. The reason I asked the
10 question about the imagined equity option on
11 future equity is not because I am trying to do
12 this in a hurry, but I am wondering whether the
13 debt of the company is going to stabilize as we
14 approach this moment or after you make this
15 announcement or whatever continues to trade down,
16 and whether the market is going to expect it to
17 keep trading down. I think that is going to be
18 an unfortunate judgment on your process.

19 And then, I see that you want to have,
20 the whole process imagines we want to have the
21 benefit of a long time to resolve this. We also
22 want a lot of optionality on the judgment of the

1 agencies in charge that first weekend to see how
2 we are going to work things out.

3 I know we can describe it, but it
4 sounds like we can have the best of both worlds.
5 I am just not sure we can. And I think I
6 mentioned this before perhaps. The difference
7 between banking and insurance, classically
8 defined, in banking we thought of ring-fencing as
9 the problem and resolution takes a weekend. And
10 in insurance, ring-fencing has been the answer
11 and resolution takes a decade.

12 (Laughter.)

13 Right? They are very different
14 beasts.

15 When I look at what you are imagining,
16 it is a kind of a merger of the two. I am still
17 not sure I see how it is going to work out. You
18 are trying to hold a lot of options, and we are
19 hoping to give everyone certainty. And you can
20 say that you are going to do this, but it is
21 still making me nervous.

22 And you don't have to answer now, but

1 maybe over the coming year, the next time; it is
2 something to think about.

3 MR. TETRICK: Sure. So, I think it is
4 something to think about. We have a lot of
5 discussion with others, with foreign authorities,
6 about what is the balance between flexibility and
7 certainty. To some degree, you know, we need a
8 process that can adapt to different scenarios and
9 facts and circumstances. So, there needs to be
10 some flexibility.

11 But I think we can maybe work on the
12 places where we can provide more certainty, and
13 maybe certainty with respect to different types
14 of institutions. Because, right now, what we
15 have established is a framework that I think the
16 steps and the core actions can apply to different
17 types of institutions that we resolve under Title
18 II, but the way in which it would be carried out,
19 we could probably provide more certainty on an
20 institution-by-institution basis or different
21 types of institutions at the very least.

22 I would say, just to jump into the

1 international segment a little bit, one of the
2 things that we have done in Crisis Management
3 Groups in the past year is start talking about
4 what the specific options are and how our process
5 would be carried out on an institution-specific
6 basis with foreign authorities, so that they can
7 understand how that might affect hosted
8 operations and what options are actually in scope
9 for a particular entity.

10 CHAIRMAN GRUENBERG: So, why don't we
11 take five minutes, and then, we will break for
12 lunch?

13 MR. TARPLEY: Five minutes? Great.
14 Okay.

15 (Laughter.)

16 And please don't think that is all it
17 takes to do international work. This is a full-
18 time job for us, as I think we have heard from
19 the discussion today.

20 We kind of think of international in
21 three key ways, bilateral, multilateral, and
22 institution-specific. What does that mean?

1 Bilateral is the work that the Chairman
2 mentioned; for instance, our great involvement
3 with the Single Resolution Board. That also
4 extends to the ECB, the European Central Bank.
5 Our close involvement with the UK, the Banking
6 Union member states such as France and Germany,
7 Switzerland, and Japan. We have regular
8 engagement with them.

9 The multilateral work, that includes
10 our work with the Financial Stability Board, or
11 FSB, which is doing important work on developing
12 guidance for banks, insurance companies, Central
13 Counterparties, or CCPs, or in this case the
14 resolution planning which we are quite involved
15 with. And, of course, Elke Konig wears two hats,
16 is head of the SRB, but also is head of the
17 Resolution Steering Group of the FSB.

18 And then, on the institution-specific
19 side, this has been alluded to just by Ryan just
20 now, but these Crisis Management Groups which
21 play a pivotal role in our communication among
22 home authorities as well as with key host

1 authorities for really drilling down into those
2 resolution actions and starting to build out how
3 we would transpire in terms of implementing the
4 resolution plan, trying to avoid the reflexive
5 ring-fencing actions.

6 Just to give a couple of examples on
7 the bilateral engagement side -- I won't get into
8 all of it -- but earlier this week we had a
9 number of members. Ryan was there in Switzerland
10 to engage in a tabletop exercise hosted by the
11 Swiss authorities. Last month with Germany,
12 again, another tabletop exercise with large
13 involvement among the German authorities and here
14 at the FDIC. With our European counterparts, we
15 have both informal and formal working groups;
16 with the European Commission and the Single
17 Resolution Board, as well as staffs and all
18 levels of engagement.

19 Turning to the UK, the FDIC has really
20 build upon the principal-level exercise held in
21 2014 to continue working closely in building out
22 that work with monthly, if not weekly, calls to

1 engage and implement on cross-border resolution
2 planning.

3 And lastly, with Japan, last year the
4 FDIC hosted a bilateral exercise with Japanese
5 authorities to discuss cross-border resolution
6 issues, including funding and liquidity,
7 continuity of access to FMIs, the ISDA protocol,
8 and other important matters.

9 I am going to hit just one thing on
10 the information-sharing agreements. That is, as
11 was alluded to earlier, we do have a joint
12 process with our colleagues at the Fed for
13 outreach on Title I to make sure that we are
14 being responsive to our colleagues at other
15 agencies, to provide them with feedback and
16 analysis on the plans, to provide them with
17 access where they have a bona fide interest for a
18 particular firm as a home or host authority. And
19 so, we do engage readily with our foreign
20 colleagues on those issues.

21 Again, just to jump into the
22 multilateral outreach, I won't go into each of

1 these issues, but just to hit -- maybe there are
2 two kind of key things we can talk about real
3 quick that the FSB is involved with. One is
4 maintenance of critical functions in resolution.
5 So, a couple of work streams there.

6 The Central Counterparties' work
7 stream, which we are not going to get into,
8 unfortunately, today. But the FDIC is a Co-Chair
9 of the FSB's Cross-Border Crisis Management Group
10 for Financial Market Infrastructures. And that
11 is starting to do some very important work in
12 terms of looking at guidance for an actual
13 Central Counterparty, or CCP, could be resolved
14 if it were to undergo distress or failure.

15 Another related issue looks at
16 continuity of access to financial market
17 infrastructures. So, this is looking at the bank
18 is undergoing distress or failure. How can we
19 maintain those critical services in resolution by
20 having it be able to continue to access those
21 all-important clearing and settlement services?

22 Another issue that Ryan and others

1 here are deeply involved in, we co-chair, the
2 FDIC co-chairs the Bail and Execution Working
3 Group, which is looking at implementing the bail-
4 in execution and looking at all these issues that
5 we have been discussing about valuation issues,
6 registration issues, et cetera; getting into the
7 nitty-gritty of how that works.

8 And then, of course, the internal TLAC
9 Working Group, which is looking at taking the FSB
10 term sheet that was issued late last year and
11 looking at developing guidance, which, of course,
12 dovetails with the federal.

13 And then, on the last issue, Crisis
14 Management Groups, I will turn it over to Ryan,
15 if he has anything to say. All I will say is
16 that we have established Crisis Management Groups
17 for our seven globally-active banks where we have
18 identified key host jurisdictions. That is Bank
19 of America, Bank of New York Mellon, Citigroup,
20 Goldman Sachs, JPMorgan Chase, Morgan Stanley,
21 and State Street. We do have a domestic CMG as
22 well for Wells Fargo. We have CMGs in place for

1 our two insurance companies, AIG and Prudential.
2 We are also looking at the possibility of
3 establishing CMGs for one or more systemic cross-
4 border Central Counterparties, or CCPs.

5 MR. TETRICK: The only thing I will
6 add is that in recent years the firms are
7 participating for a half-day in the CMGs. They
8 will send senior personnel to talk about a range
9 of issues or processes that are relevant to both
10 Title I and Title II resolution plan. So, they
11 will talk about their global funding model or
12 their global communications plan upon entering
13 the resolution and engaged with the suite of host
14 authorities who are in the room. So, that has
15 been an extremely helpful development.

16 CHAIRMAN GRUENBERG: Thank you.

17 Why don't we close this part of the
18 discussion?

19 We will extend the lunch hour to 1:40.
20 We can still maybe eat a little bit fast and,
21 then, we will come back.

22 I see Elke Konig is here, will join us

1 for lunch. And then, we will listen to her
2 presentation afterwards.

3 Thank you.

4 (Whereupon, the foregoing matter went
5 off the at 12:54 p.m. and resumed at 1:53 p.m.)

6 CHAIRMAN GRUENBERG: If I can call the
7 meeting back to order. I want to continue the
8 meeting and introduce our special guest Elke
9 Konig, who's the chair of the Single Resolution
10 Board for the European Banking Union.

11 If I may say Elke is an old friend.
12 We've worked together for a number of years, both
13 in her current capacity and prior to her
14 appointment as chair of the Single Resolution
15 Board she was the president of BaFin, which is
16 the German Federal Financial Supervisory
17 Authority.

18 So she was, if I may say, a well-
19 recognized leader internationally in the area of
20 financial regulation, and while she was president
21 of BaFin, also served as the chair of the
22 Resolution Steering Group of the Financial

1 Stability Board.

2 So that even before becoming chair of
3 the SRB, she had extensive experience and
4 provided very significant leadership in the area
5 of resolution, particularly relating to the
6 resolution of systemic financial institutions.

7 So it was with, frankly great pleasure
8 and satisfaction, when the announcement was made
9 that Elke was going to be the chair of the SRB.

10 I think she was well-known frankly to the leaders
11 of the financial regulatory authorities in all of
12 the major jurisdictions, commanded great
13 confidence, which I think was of great value in
14 the establishment of a new institution such as
15 the SRB. It's a very challenging assignment.

16 I candidly couldn't think of a better
17 person to be asked to take on this really very
18 important role. I will say I believe the FDIC
19 and the SRB have established a very close working
20 relationship, which we value very much and look
21 forward to continuing to develop and deepen as we
22 go forward.

1 If I may just introduce Elke and thank
2 her for taking the time to be with us today.

3 MS. KONIG: Well, I'm a bit speechless
4 now. Thank you, Marty, for your really kind
5 introduction. In Germany you would probably have
6 said my father would have been very proud and my
7 mother might have even believed all of this.

8 (Laughter.)

9 MS. KONIG: Totally politically
10 incorrect. So but with that said, let me try to
11 be mindful of your time, but perhaps also to
12 start with really thanking the FDIC for inviting
13 me here, to give me a chance to explain something
14 which is not always very easy to understand, and
15 that is call it the European -- or rather, Euro
16 area arrangements around bank recovery and
17 resolution.

18 Secondly, and that I checked, and I
19 think my number is correct. At a given point in
20 time, FDIC staff made up more than ten percent of
21 the SRB's entire staff. That was when, at the
22 very early point, you seconded one of your staff

1 members to help us get up and running because --
2 and with that I will stop the initial -- I still
3 feel a bit like chair of a startup because I've
4 moved out of an organization that at least in
5 insurancy provision had more than 100 years of
6 experience, and we had a template for everything.

7 And then when I came to the SRB, we
8 were at that point six board members with six
9 PAs, good to start, and we had in total 20
10 people. You can imagine how many staff we had,
11 and we started near everything from scratch. So
12 by now it's changed, and I will try to give you a
13 bit of an introduction about what is the Single
14 Resolution Board or the single resolution
15 mechanism, what are our objectives in resolution
16 or by far more in the focus on resolution
17 planning -- and I heard a lot of very familiar
18 words here -- and then perhaps touch on some of
19 the obstacles to resolution, which I fear are
20 also familiar, and give you a bit of an outlook
21 on where we are, the Single Resolution Fund, our
22 backstop and our work program.

1 With that, just to see some faces the
2 -- oh, no? Not yet the faces. To start with, we
3 are part of the banking union. The banking union
4 was introduced in 2013 at -- for the European
5 standards, but I think for any standards -- light
6 speed as a consequence and a reaction to what had
7 started as a banking crisis and moved into a
8 sovereign crisis, and then a banking crisis.
9 Kind of a vicious circle.

10 It started out with the single
11 supervisory mechanism, which is now the single
12 supervisor. It's headed under the roof of the
13 ECB in Frankfurt, and they are supervising the
14 largest banks in Europe, which the basic number
15 is 30 billion upwards in total assets, or in any
16 case, the three largest banks in any country
17 because, as you all know, Europe is beautifully
18 diverse, and that means we have also countries
19 where the largest bank has about the size of a
20 mid-size cooperative German institution. So we
21 have quite a spread there.

22 The second leg to the banking union is

1 the single resolution mechanism, where the Single
2 Resolution Board in Brussels is call it the
3 center of this organization. We have been put in
4 place -- while the SSM, the supervisors started
5 end 2014 after quite an extensive asset quality
6 review was done, we started officially January
7 1st last year. Board members, me including, came
8 on board on the 1st of March.

9 And since then, we had been focusing
10 on establishing the institution, really building
11 it from scratch, and at the same time starting to
12 get active in resolution planning, because as of
13 January 1st this year, if a bank in the Euro area
14 that is under our remit -- I'll come to that
15 later on again -- has to go into resolution, it
16 will be asked to decide upon the resolution plan.

17 So we have to be up and running as of
18 now. I always find the question from mainly
19 journalists interesting to say. Do you think
20 you're already up and running? My normal answer
21 is then, well there's no alternative to that. We
22 are responsible, so we have to be. I would hope

1 not too soon nevertheless.

2 The third block here is the one when
3 you follow European press, where you read the
4 most about for the moment, and you read about it
5 under the nice word of EDIS, E-D-I-S, and that is
6 the deposit guarantee scheme. There is a
7 regulation -- there is a directive, there is a
8 clear set of harmonizing deposit guarantee within
9 the Europe and not just within the Eurozone.

10 But there's also start of the
11 discussion whether we don't need -- like we have
12 the single supervisory mechanism, single
13 resolution mechanism -- a harmonized
14 Euro/European or at least Euro area deposit
15 guarantee scheme. There's a draft out that the
16 European Commission prepared and that will -- is
17 for the time being debated between the member
18 states and the headline mutualized deposit
19 guarantee and risk reduction.

20 So what is the other element that
21 needs to be put in place? It's a fairly
22 complicated discussion, now for the time being

1 very much pushed by mainly the Dutch presidency
2 of the European Union. And on top of that clear
3 -- that's why we put it underneath and all the
4 nice acronyms -- a single rule book, which is CRD
5 IV/CRR is the European translation of Basel III,
6 basically the single supervisory rule book.

7 BRRD is Bank Recovery and Resolution
8 Directive is our main toolbox, and DGSD stands
9 for Deposit Guarantee System Directive. So what
10 is the basic structure that we have organized --
11 and I think with that we could move to the next
12 page.

13 Someone seemed to be -- I could try;
14 it works, and we have basically organized us
15 internally in saying let's organize by countries,
16 and why so? And that's probably one thing first
17 of all where I'm always envying the U.S., because
18 you're in a better position than we are there.

19 We have organized ourselves by
20 countries because we have to consider that a lot
21 of underlying law, all kind of insolvency law,
22 all kind of corporate law, is national law.

1 So we are basically all on Roman law,
2 but since the last 1,800 years a lot has changed.
3 So you have to know the legal system within the
4 individual country, and that for us weighted
5 higher than to say shouldn't we somehow make sure
6 that people get exposed to more than one country
7 to see different topics. If you want to resolve
8 a bank, you need to do at least a counterfactual
9 insolvency consideration, and that means you'd
10 rather know the legal rules of this country.

11 So we are basically organized by that,
12 and the board members responsible are Antonio
13 Carrascosa, who was formerly the head of FROB,
14 the Spanish Resolution Authority; Joanne
15 Kellermann, who was formerly with the Dutch
16 Central Bank; and Dominique Laboureix, who was
17 running the French Resolution Authority.

18 Mauro Grande, who was with the ECB, is
19 responsible for cross-cutting issues, and Timo
20 Loyttyniemi, he normally says if you can
21 pronounce his last name you've already done a
22 large step. Timo is the one who is responsible

1 for internal issues but his main job for the time
2 being, he is the one is responsible for the
3 Single Resolution Fund for all kinds of
4 contributions, all of that.

5 So with that, what's our job? When I
6 moved to Brussels, my children got fairly nervous
7 and got the feeling: what is mom doing when she's
8 not resolving a bank? And that, hopefully, she
9 isn't doing it every day. So I said well, I see
10 the SRB by far more focused on resolution
11 planning, on setting up credible resolution
12 plans, on -- with that setting MREL, which is the
13 European equivalent to TLAC, removing the
14 obstacles to resolution that we can see, and try
15 really to make sure that we have a credible plan
16 for the banks under our remit.

17 And with that being forward-looking
18 and hopefully avoiding the one or the other
19 resolution because the consequences are that it's
20 spelled out all in totality, institutions are in
21 a better condition because we've solved a number
22 of problems. So we are not waiting for customers

1 just to organize the funerals.

2 Difference to the U.S.: you've talked
3 about Title I versus Title II. In Europe, we
4 differentiate between recovery plans. Those
5 recovery plans have to have been drawn up by the
6 banks themselves.

7 They get assessed by the single
8 supervisory mechanism, so the supervisors and by
9 us, whether they are credible. Otherwise,
10 there's not more work needed, and these recovery
11 are for us the basis for our resolution planning
12 drafting, but resolution plans are drafted by us,
13 by the authority, and clearly you need input from
14 the banks. You need input from the supervisor,
15 but it is basically our plan and as of now, we
16 would not foresee that resolution plans are
17 public documents.

18 They are a private document, and we're
19 even saying we have worked hard and your staff
20 has very gratefully also supported us on first
21 version of our Resolution Planning Manual. This
22 manual is our private cooking book. It's not

1 published. We share with the national
2 authorities, but it stays within the authorities.

3 It is only a short version that we
4 want to publish over the summer for the industry,
5 but also for the general public to understand how
6 we look at various tools, how we see whether
7 there is public interest in resolution or not.
8 So it is basically --

9 CHAIRMAN GRUENBERG: Elke, can we ask
10 questions along the way or would you want to
11 wait?

12 MS. KONIG: Yes, sure. Sorry. Yeah
13 sure. I think it's easier.

14 CHAIRMAN GRUENBERG: I think so too.
15 So in the U.S., we have this view that the more
16 transparency around this sort of thing brings
17 more certainty, particularly in times of stress
18 and time of fear, and it sounds like you don't
19 share that philosophy in the general terms or
20 even specifically here.

21 MS. KONIG: I wouldn't say that I
22 don't share the philosophy. I have to work with

1 my own legal framework, and for us resolution
2 plans are a very discrete document, where I --
3 where we have been very outspoken as to say what
4 we need to get across is definitely that there by
5 far more transparency about banks' balance sheets
6 when it comes to the liability side. So my
7 version of saying that is what's the pecking
8 order of liabilities banks have?

9 You can see that in the past that
10 people got the feeling buying a bank bond was
11 minimum as safe as having a guaranteed deposit.
12 For me, a very important part is make sure that
13 investors know it's equity that it's
14 subordinated, what counts for MREL, and what is
15 the pecking order of that?

16 Now always please keep in mind I'm
17 coming from Europe, where most of the banks have
18 an operating holding and not have -- don't have a
19 holding company structure. The operating company
20 is the head of this. So transparency on the
21 liability side and with that also predictability,
22 what we will be doing and what investors might

1 also have to face, I think is important.

2 CHAIRMAN GRUENBERG: So I was in
3 Portugal in January, and I was told that people
4 involved in the resolution of BES, for example --
5 and as you know, there's several layers of that,
6 and this was before your organization was
7 operating -- but at least the Bank of Portugal
8 says that they were understanding in interpreting
9 and applying. Yes, right, absolutely.

10 MS. KONIG: I've always tried to stay
11 out of a case that was not our case.

12 CHAIRMAN GRUENBERG: Yes. No, no, I'm
13 not asking you --

14 MS. KONIG: But I also understand
15 people that say 18 months after the resolution is
16 a long time.

17 CHAIRMAN GRUENBERG: I think but the
18 only point I was going to make, not to ask you to
19 judge at all, but the level of uncertainty in
20 Portugal about the pecking order is quite
21 substantial today, 18 months after, because they
22 don't know what the rules are and the rule book

1 is not transparent.

2 MS. KONIG: We are now jumping into a
3 very detailed topic. As I said in the beginning
4 in Europe, insolvency law is not harmonized.
5 That also entails that though the principles are
6 fairly aligned. That also entails that when we
7 talk about bail-in of writing off liability that
8 the rules in the various member states are
9 different.

10 And clearly when you talk about senior
11 debt, you talk in most cases about a class where
12 you come to pari passu all, you know, creditor
13 worthiness issues because there are certain
14 liabilities you don't want to bail in or you
15 can't bail in.

16 So this is a problem we are addressing
17 internally in Europe or with the Commission in
18 saying from a Single Resolution Board or
19 resolution mechanism perspective, there is a huge
20 interest to make sure that we harmonize
21 unrealistic -- not the entire insolvency law, but
22 that we focus on trying to come to a European

1 uniform set of rules on creditor hierarchy, so
2 that there's more transparency.

3 What we have for the moment is a
4 German version of that. Germany has basically
5 juniorized part of senior debt. France does
6 something similar, but it will only yield the
7 same result in about ten years' time, because
8 they don't do it retroactively. Italy did
9 something slightly different.

10 So life is beautiful and unfortunately
11 a bit less harmonized, but I'm not seeing -- I
12 think there is an interest. There is appetite.
13 It's a question of how far it -- how fast it
14 goes, or as someone from the Commission said when
15 I said this is a low-hanging fruit. He said
16 that's all relative.

17 MEMBER ADMATI: Can I ask a question?

18 MS. KONIG: It is relative, but
19 clearly for us to -- now to deviate a bit from
20 the presentation -- for us it is utmost important
21 that we have, on the one hand, the deposit
22 guarantee directive implemented and really fit

1 for purpose in the member states. And on the
2 other hand have a solid foundation in insolvency
3 law because clearly bank resolution, bank
4 insolvency supported by the deposit guarantee
5 fund have to work together.

6 Otherwise, bank resolution becomes
7 kind of a default option because the other ones
8 are just not really functioning and that can't
9 be. And that could get me a bit back to what I
10 actually wanted to address here, and that is
11 which banks are we really responsible for?

12 Like for the supervisory side, the
13 Single Resolution Board in Brussels is actually
14 responsible for the large banks, which is defined
15 not G6 only, it is the 100 -- roughly 120 banks
16 that are under the ECBC provision. Plus any bank
17 that is cross-border within the Eurozone.

18 That can be a fairly small bank,
19 because just an Austrian bank has a small
20 operation in Germany. So I'm normally saying
21 those are definitely on average by far smaller.
22 But we are also, similar to the ECB, the ones

1 that have to guarantee the functioning of the
2 entire mechanism, and by that have to set the
3 standards.

4 So our Resolution Planning Manual is
5 also the manual that the national authorities in
6 principle have to use for their own work. If
7 national resolution authorities for a smaller
8 bank want to resolve the bank and potentially
9 even at some point want to use the Single
10 Resolution Fund -- which I think is hard to
11 imagine -- then it would be something which
12 always would need our approval. We are the
13 guardian of that fund.

14 So what is therefore for us key, and
15 I was -- as I listened into part of the final
16 debate is clearly -- we need first of all a very
17 good cooperation with the national authorities,
18 because clearly we have to work together there.

19 We need also good cooperation with the
20 supervisor, being the ECB. They are the source
21 of a lot of information for us, and it doesn't
22 always come natural to them to share information.

1 It's always a "we need to get that working," but
2 I think we have a good cooperation now. The
3 European Commission, clearly because they would
4 be kind of the regulator, and -- and that is even
5 more important, institutions outside the Euro
6 area.

7 And when I'm saying outside the Euro
8 area in European jargon, that normally means out
9 in the sense of EU members not part of the Euro
10 area. So mainly Bank of England, our partner,
11 but also really outside Europe and there, as I
12 said already, we have a good cooperation with you
13 but also with the Fed and others, and we have to
14 build on that because the largest banks are
15 international by nature. It doesn't help that we
16 have a good framework now for Europe.

17 What we have by the way for Europe is
18 within Europe, we have basically solved the
19 cross-border issues because we have stay orders
20 and we have mutual recognition of resolution
21 decision. But unfortunately, it's a bit of a
22 reflection to the discussion you had beforehand

1 that's Europe entirely.

2 So what are the resolution objectives
3 and I think not 100 percent of Europe would agree
4 with me putting the two first ones in bold, but
5 they are the most important ones. When you look
6 into the regulation, the regulation says that
7 resolution is in the public interest and can be
8 executed to safeguard critical functions and to
9 guarantee financial stability of the member state
10 or the union as a whole.

11 So there is quite a hurdle to get into
12 resolution because the normal solution would
13 always be, like everywhere, if a bank gets into a
14 problem and you don't find a private solution,
15 well then insolvency is the logical consequence
16 -- and by the way the reason why you need a good
17 DGS because it's mainly then deposit-taking
18 institutions. Resolution only comes into play
19 when the objectives here are met.

20 So for the bigger, more complex
21 institution, protection of public funds,
22 depositors and client funds and assets is also

1 mentioned, and I could now spend a long time on
2 why it is secondary in order here, because there
3 are other mechanisms that would also take care of
4 that.

5 What's -- just to give you a bit of
6 colorful picture -- I've asked my people how do
7 we define critical functions? That was the end
8 of the story. No, I think we are working on the
9 international field. We are internally now very
10 much working out how do we want to define
11 critical functions? Is deposit-taking in itself
12 a critical function? Payment system, is it a
13 substitutable critical function?

14 So that's a lot of work that we have
15 just started, and we'll definitely have to expand
16 on over the coming year. Well, as those -- and
17 I'm sure you know this for the entire resolution
18 planning process -- it is, I said, an ongoing
19 process where the starting point for us is
20 normally the bank's structure, the bank data that
21 we get to a large extent from the ECB, but we
22 have just started in March a huge exercise in

1 asking for bank's liability data because
2 supervisory data is mainly asset-focused data.

3 So to set MREL, we need a clear
4 understanding of the bank's liability structures
5 and perhaps also to give credit, the positive
6 part here is it's a giant exercise also for the
7 banks, but I have not heard anyone putting into
8 question that it needs to be done. So it is
9 ongoing, and we will most likely this year really
10 focus on setting MREL. So minimum required
11 eligible liabilities, the European TLAC version,
12 and to assess obstacles to resolution.

13 When talking to banks, I'm always
14 saying just the fact that we have a fairly
15 cumbersome process before we have finally an
16 agreed-upon resolution plan, doesn't mean that
17 the banks shouldn't get started because -- and
18 that would be the next slide -- what are we
19 seeing?

20 There are some obstacles to resolution
21 that, probably behind closed doors, each and
22 every banker would already agree to.

1 Interdependencies within the institution,
2 partially antiquated or inadequate IT and
3 reporting systems.

4 So a lot of the information we need
5 for this liability -- liability information will
6 probably come out of more than one system and
7 will be put together on Excel spreadsheets and
8 not come as the push of a button out of a
9 machine, though it's needed information. There's
10 never been the time to work on that.

11 There is clearly the question in some
12 of those institutions -- I'm not saying anything
13 that you don't know -- that critical support
14 functions seem to be everywhere except where you
15 think they would logically be. So that we have
16 the idea of can you really make sure that if
17 something happens, you can isolate a support
18 function and transfer it. So there's a lot of
19 structure work to be done.

20 Capital structure in general. So the
21 question, do you have really sufficient bail-in-
22 able capital and debt? Do you have it issued out

1 of institutions or entities that you can be sure
2 that you can bail it in? That's --- one small
3 word for that is special purpose vehicles, and
4 I've always said there's hundreds of good reasons
5 to use them, but you then need to make sure can
6 you -- if need be, really get hold of it, or do
7 you find out it's basically a rich organization.
8 Just the part where you need money, it's
9 difficult to get to.

10 And that will be a huge debate when we
11 set really MREL for those institutions, and then
12 I've put a bit of line in between because I'm
13 always trying to be fair, and there are also
14 issues we need to deal with; the cooperation
15 between the authorities, cross-border recognition
16 -- and you've talked about that beforehand -- are
17 clearly topics where we need to do our homework
18 and a bit like what I heard earlier here, I think
19 we've gone a long way.

20 Do we have legal systems in place?

21 No. Even if we have an MOU, an MOU is an
22 intention, but I think we've all gone one major

1 step. We all know it's not a zero sum game. You
2 understand that it is better for the entire
3 system if you cooperate and not try to ring fence
4 and then see, well, I've got my part; lets the
5 others see how they get -- so I think this is a
6 long list and we don't have the time to get into
7 it.

8 I will try to confuse you with one
9 slide entirely; we shall see. This one is the
10 easier one. The second one is a bit complicated.
11 Europe had already introduced the BRRD while on
12 the international level we were heavily
13 negotiating TLAC.

14 CHAIRMAN GRUENBERG: Elke, if you
15 might just explain the --

16 MS. KONIG: Huh?

17 CHAIRMAN GRUENBERG: You might explain
18 BRRD just a bit.

19 MS. KONIG: Yes. BRRD is the Bank
20 Recovery and Resolution Directive. So our legal
21 framework, which includes for us, inter alia, the
22 minimum requirements for eligible liabilities and

1 in addition for the banking union, when the SRM
2 was put in place and when the fund was created,
3 politicians decided that there needs to be a
4 safeguard to protect the fund.

5 The fund is funded by the industry,
6 but it is money that we could handle, and
7 therefore they require that before you can use
8 the fund, you have to bail in de minimis eight
9 percent total liability based on a prudent
10 valuation form. So first prior losses and then
11 eight percent.

12 And to define these minimum required
13 eligible liabilities is our job, and is something
14 which, in its basic thinking, is actually the
15 same as TLAC. It just comes more from this idea
16 how much liabilities do you need to have to
17 really unwind an institution -- always
18 considering that the fund is the last resort --
19 compared to the -- I've always said TLAC thinking
20 of how can you make sure that on Monday morning
21 you have clarity and can stabilize the
22 institution.

1 Basically you want to achieve the
2 same. Unfortunately now in Europe we are in a
3 situation that we have a legal requirement called
4 MREL and an international commitment called TLAC.
5 They are two sides of the same coin. The
6 Commission has just started to come -- to discuss
7 a proposal how to implement TLAC within European
8 legislation.

9 In the UK, you've seen the -- some of
10 you have definitely seen the consultative paper
11 the UK has brought out on how to implement it --
12 and we used a third way to go because within the
13 SRB, and our more diverse universe, we've said in
14 January, let's set out a guidance on where are we
15 moving.

16 I am firmly convinced that you can
17 really match or can cover both requirements, TLAC
18 requirements and MREL requirements within one set
19 of -- in one go. We have only so far said one
20 thing is pretty clear for the banks under our
21 remit -- so the 120-ish largest banks. It's
22 highly likely that if something goes totally

1 wrong that resolution is the avenue to go.

2 To go that avenue, we would always
3 require that we keep all options up, and that
4 includes that we need to make sure that we have
5 the famous eight percent bail-in-able capital
6 unless the fund is just not available. The fund
7 is only available after.

8 MEMBER JOHNSON: Is there any systemic
9 exception to that? So if you felt or somebody
10 else felt that the situation was bad enough and
11 the contagion was spreading fast enough, can you
12 waive the bail-in requirement?

13 MS. KONIG: Yes. The BRRD contains
14 rules for exceptional circumstances, but our
15 working for the time being is to say we are
16 sunshine and we have to do a plan. So we are
17 assuming that the bank has eight percent -- has
18 to have the famous eight percent, and it needs to
19 be resolvable basically without access to the fund.

20 If the unthinkable happens and we come
21 to a very difficult situation and it's systemic,
22 and you're not talking about idiosyncratic crisis

1 -- dream up whatever, then the BRRD would give us
2 some leeway, but it's really exceptional clauses.

3 MEMBER JOHNSON: Who would provide the
4 liquidity? If you had the eight percent, you
5 write that out who then provides --

6 MS. KONIG: You're by far too fast for
7 me. So I have not mentioned -- because I thought
8 it's not good to start with what doesn't work --
9 we don't have a solution yet for who provides
10 liquidity.

11 Now, we have a formal solution for
12 that. Formally or by formal solution, the fund
13 can be used for capital providing or for
14 liquidity providing.

15 Now let's be realistic. The fund --
16 and I think we have a slide to that too -- the
17 fund has in the -- will ultimately have the size
18 of one percent of covered deposits, which is
19 somewhere between 50-ish and probably at that
20 time, then in the 70 billion. That fund, to be
21 used for liquidity, doesn't get you very far.

22 So that we are -- I'm always saying

1 let's assume the fund is the last resort for
2 capital, and we still have to undergo the entire
3 debate mainly with the central bank, to say if
4 need be, who would be the one providing
5 liquidity?

6 That for the time being is for some
7 kind of a religious war, but for me, I would
8 always say -- I'm fairly simple there. If the
9 bank on Friday goes into resolution and we
10 recapitalize it with bail-in or even with the
11 need -- use of the fund, then at least the bank
12 on Monday seems to me better capitalized than on
13 Friday, and a solvent -- basically solvent
14 institution.

15 That institution will be unfortunately
16 not able to go to the market, and just
17 realistically I don't see how they can easily go
18 to the market. So that we need kind of a
19 liquidity line, and that's something that we
20 still need to sort out.

21 I know that our British friends are
22 also still a bit dancing around this topic. I

1 hope that the paper that the FSB is now
2 finalizing gives us a trigger to say let's now
3 not -- let's now think about how do we find a
4 solution there because clearly the fund, to my
5 understanding, would be the most inefficient way
6 if --

7 MEMBER ADMATI: Can I ask a question?

8 MS. KONIG: Sorry, yes.

9 MEMBER ADMATI: You probably -- I need
10 to ask this question because you're sort of
11 glossing over the deposit part. So I wonder sort
12 of where deposits fit, because of the lack -- so
13 I mean it's very -- it was very strange to me to
14 realize that you had an up and going resolution
15 plan but you sort of -- you know, the starting
16 point usually of banking is deposits, and your
17 deposits are -- you know, all your banks have
18 deposits.

19 Now the religious war seems to be on
20 the deposit insurance amazingly right now,
21 because you know, it's essentially saying it's a
22 trading problem, which means that's kind of the

1 end of that. So what's the plan?

2 I mean obviously that's not in the
3 eight percent of your -- because you can't bail
4 in deposits, and the question also is how much
5 deposits? What is -- are you assuming -- you
6 don't even have FDIC. So it's like, is the
7 100,000 -- what is it? In other words, what's
8 the treatment of deposits in all of this?

9 MS. KONIG: It's always -- trying to
10 get all this into a short presentation will never
11 work probably.

12 When I look at our European universe,
13 I would say most of the banks are deposit-taking,
14 also most of these banks. I would nevertheless
15 somehow slice the universe in the sense that out
16 of roughly 4,000 banks, probably 3,500 are not
17 systemic. They are, even within their member
18 state, not systemic.

19 For those banks therefore, if they get
20 into trouble -- now forget all the various
21 different solutions -- basically you would go
22 into insolvency and the deposit guarantee scheme

1 would make sure that depositors --

2 MEMBER ADMATI: It's up and running.

3 You mean the EU?

4 MS. KONIG: No, no. I'm talking about
5 national deposit guarantees.

6 MEMBER ADMATI: National, national.

7 MS. KONIG: We have national deposit
8 guarantee.

9 MEMBER JOHNSON: Every country has --

10 MEMBER ADMATI: The governments, yes.

11 MS. KONIG: Each and every country has
12 a national system. They are not all exactly the
13 same, and we are pushing hard and saying some of
14 them are just mere paybox systems, which I think
15 is inefficient because we all look at what the
16 FDIC does -- which I think is a by far more
17 efficient process in safeguarding depositors in
18 transferring the business. So that is an area to
19 be discussed.

20 The second part, and that's what you
21 see a lot of about in the press right now is that
22 the Commission has started to say well national

1 deposit guarantee schemes are potentially as good
2 as the sovereign in the end might be. Now it's a
3 far reach to immediately jump to that conclusion,
4 but therefore the idea shouldn't we have -- and
5 that's what they call EDIS.

6 Insurance came behind where the Euro
7 area then gradually takes over, and after a
8 number of years you come to a European deposit
9 insurance system. For me, the national system,
10 if it's fit for purpose, all this -- it's not so
11 much important whether it's a European system or
12 whether it's a fit for purpose national system.
13 You just need a good system. So that could cover
14 basically for most of the smaller banks.

15 For the larger banks, if you're just
16 very bold, you would say well, if we assume that
17 we have sufficient capital and sufficient MREL in
18 place, then we should in nine out of ten cases be
19 able to resolve the bank without eating into
20 depositors, because they are at the very end of
21 the waterfall. 100,000 is secured and those
22 above are still protected compared to normal,

1 regular creditors, but if need be, then the
2 deposit guarantee scheme naturally steps in and
3 becomes the preferred creditor in unwinding this.

4 This is all -- this is a bit the
5 reason why I'm saying always there is a triangle
6 of our resolution directive and our functioning.
7 Solid functioning of the deposit guarantee
8 scheme, which by the way they plan to give to us
9 if it becomes a European scheme, but I've always
10 said I'm not moving on that side before it's not
11 there.

12 I think it would make sense, but
13 that's something else, and to make sure that we
14 then have a harmonized system of insolvency rules
15 for these institutions. That together could make
16 a system.

17 Now just a very short word to the
18 Single Resolution Fund. The fund has to be built
19 up since January 1st this year, or we said if you
20 want to see a calculation for a fund that's
21 complicated, come to visit us.

22 It's not complicated because the

1 Commission dreamt up a complicated system. This
2 is member states. Each and every one wanted to
3 make sure that it's risk-sensitive, that this is
4 considered, that that is considered. So we have
5 a fairly complicated system.

6 Over a period of eight years, we will
7 build up a fund that has roughly one percent of
8 covered deposits in -- or has one percent of
9 covered deposits in the Euro area as its basis.
10 It starts with national compartments. Keep in
11 mind we are independent member states, and it
12 starts with national compartments and it will
13 gradually be a European fund.

14 It's important to know that the use of
15 the fund, if we use it for a resolution decision,
16 will always entail Commission procedure on state
17 aid. That's difficult for the banks to swallow.
18 It's their money. The banks have to pay it into
19 the fund. So it's private money that goes into
20 the fund, but as we are a public authority that
21 can -- that is the only one that can decide upon
22 this money, it is still a state aid procedure

1 under DG Comp.

2 Which makes then the process of how to
3 come to a resolution decision over a weekend one
4 step more challenging, because we need the
5 approval of the Competition Directorate of the
6 Commission before we can proceed, but at that
7 point, I'm always taking Chair Gruenberg's
8 comment, if you need to come to a decision,
9 people will hopefully get fast, because a weekend
10 has an end. So but --

11 MEMBER JOHNSON: Well but in Europe,
12 you've had some mixed experiences with that.

13 MS. KONIG: True, we have some mixed
14 experiences, but I think the major challenge here
15 is -- and I'm very hopeful that cooperation with
16 DG Comp will not be -- the Competition
17 Directorate -- will not be a major issue.

18 In the past, they were de facto the
19 resolution authority, not -- no one else, and we
20 need to come to -- I've talked about it
21 beforehand. We have done a dry run or table
22 exercise for the European institutions that all

1 need to work together to come to a conclusion. I
2 was a bit flat out in the evening, but it worked
3 well and I think we all understand where our role
4 within this is.

5 But nevertheless, our work program --
6 that's perhaps just for your reading pleasure --
7 for 2016 is all about being ready and improving
8 things there and resolution planning, and clearly
9 I think we should not underestimate the work that
10 goes into the Single Resolution Fund in
11 collecting, building up all this system.

12 Always please keep in mind we are, for
13 the time being, entirely an organization with
14 roughly 150 people building up to 300 next year,
15 and working together with national authorities
16 that partially are very young too. So there is
17 still a lot of work to be done, but I think when
18 we compare it with Europe in 2008, when we look
19 at what happened on the supervisory side, what
20 happened in capital requirements, all of that --
21 and this side -- I'm on the other side, fairly
22 confident that we are in a by far better shape

1 than we've been before and can react to crisis.
2 So hopefully it doesn't come.

3 MEMBER KOHN: Now in the next few
4 years before the Resolution Fund builds up, it's
5 still a national -- you haven't broken that link
6 between the bank and the sovereign.

7 MS. KONIG: No, sure. We have in
8 place -- and that was the agreement with the
9 member states and it's always difficult to get
10 other people's money.

11 They have in place credit lines with
12 the member states for their compartments. Not
13 with -- we are still negotiating with some
14 because they need parliamentary approval and
15 things like that. So the basic idea for the time
16 being until the fund is built up is that if
17 something happens, the member state needs to
18 provide a credit line, which we have to repay
19 with future contributions to the fund.

20 What they want to discuss once this is
21 settled is a permanent backstop to the fund. Now
22 we can borrow from the market. I don't find that

1 the most efficient way to go forward -- and
2 everyone in Europe knows that I don't think it's
3 the most efficient way. The alternative is to
4 get a backstop from an organization like the ESM,
5 so that we get a European backstop.

6 But again, also that backstop will
7 have to be construed that's clear political will
8 in a way, that we can and will have to repay any
9 public money out of future contributions of the
10 banks. Basically, there should be no public
11 money involved.

12 MEMBER BRADFIELD: How big will the
13 fund eventually become? What's your target?

14 MS. KONIG: When you look -- when you
15 listen to people, they will always immediately
16 tell you 55 billion. That was the number that
17 the Commission calculated as being one percent of
18 covered deposits in 2024.

19 Now our now numbers, with even a bit
20 of growth also in Europe, is -- I would say it is
21 more than 55 billion most likely, but basically
22 it is one percent of the covered deposits and

1 covered deposits are all deposits up to 100,000
2 Euro.

3 One of the challenges is we have to
4 build up a fund to reach a number that we can't
5 precisely calculate for now. I had a hard time
6 to explain it to some people how we tried to
7 move.

8 MEMBER ADMATI: I have a question on
9 that. So why is your benchmark deposits because
10 the liabilities that you're actually dealing with
11 are actually in other kinds of liabilities, not
12 in deposits? You're not in a deposit insurance
13 fund, so --

14 MS. KONIG: I can't give you an
15 answer. It was the political compromise and it's
16 part of the parcel that someone felt obviously
17 sounded right. No -- I think there is no large
18 logic behind -- because otherwise I agree with
19 you.

20 Deposit guarantee fund you would build
21 as a percentage of deposits, not this. The only
22 area where there was a bit of calculation, though

1 in the end it was probably also pick a number,
2 was on the eight percent bail-in before. That
3 was a bit done backwards calculating and saying
4 so what were the amounts at risk and that needed
5 to be used in most recent failures?

6 And they wanted to pick a number that
7 was substantially high enough to only use the
8 fund in rare cases, but again, this is not rocket
9 science. It's in the end political compromise.
10 I will leave it there.

11 CHAIRMAN GRUENBERG: Anyone else? I
12 think they're going to let you off the hook here.

13 (Laughter.)

14 CHAIRMAN GRUENBERG: I spoke too soon.
15 I spoke too soon. We're almost out of time.

16 MEMBER JOHNSON: I understand. So one
17 question that comes up in the discussion of the
18 Bank of England is a point that was raised this
19 morning, which is if the U.S. is proceeding under
20 Title I to a bankruptcy of a G-SIFI -- which is
21 by law what we're supposed to do and it's also
22 what these people work on very hard -- how would

1 that be viewed in the Euro area?

2 I think the view from the Bank of
3 England from what -- I mean not from the simple
4 view but a very well-informed view from the Bank
5 of England is they would not be comfortable with
6 a bankruptcy of the UK counterpart. They would
7 much prefer resolution, and they would be
8 extremely tempted and maybe even forced by their
9 statutes to initiate a resolution process.

10 Now in Europe, how would you -- Euro
11 area, how would you view that?

12 MS. KONIG: Basically the same. I
13 think I find an exercise like Title I helpful to
14 understand and to see how resolvable and how far
15 can you get?

16 But the basic -- we have the same
17 basic legal system as the Bank of England, which
18 would say for a bank under -- and now we're
19 talking G6 resolution is probably considered the
20 more efficient and the better option, and then
21 you have to go for resolution of this bank.

22 I would have a hard time to foresee

1 that insolvency -- normally insolvency procedure
2 is really the most efficient way forward, but
3 again, that doesn't say that Title I exercise
4 doesn't make perfect sense. The question is just
5 for us, we are fund enough -- and more fighting
6 the other way around, where we get the feeling
7 for smaller banks.

8 I'm always saying resolution is a very
9 tricky word. I can have a New Year's resolution,
10 and resolution is not for everyone. Resolution
11 only comes into play if we think it provides a
12 better result than insolvency, because it helps
13 me to keep together critical functions and it
14 helps me to preserve financial stability.

15 We are rather under pressure that if
16 you have a small bank somewhere on an island and
17 you get the question -- the answer, the bank is
18 so systemic for the island. Yes, even my home
19 country has a number of very small islands. I'm
20 not sure whether I would consider those banks
21 systemic for the country. That's why I said it
22 has to be country or union as a whole.

1 MEMBER JOHNSON: Those are all very
2 important points. I think the concern of this
3 committee has for some time been about whether a
4 global systemically important institution --
5 subject to the jurisdiction of the FDIC in this
6 matter -- whether they can present a credible
7 living will or a plan to go bankrupt for this
8 reason, that it would trigger consequences and
9 actions by different regulators, different groups
10 of supervisors, different resolution mechanisms,
11 all of whom are following their own rules, but
12 that would actually make -- maybe we could say at
13 least that should be reflected in the living
14 wills, the G-SIFIs filed in the United States.

15 MS. KONIG: I would stay out of
16 probably answering that question, but I would
17 disagree with saying that if something goes
18 wrong, we all follow our own rules.

19 I hope that with the CMGs in place and
20 with the understanding that the sum of the parts
21 will probably not get you anywhere, that we
22 follow a very clear understanding, be it a single

1 point or be it a multiple point of entry, or what
2 I would assume in most cases, a combination of
3 multiple single points of entry within a group.

4 So that I would hope for a more
5 concerted action. That's at least what we are
6 all striving for.

7 CHAIRMAN GRUENBERG: I know Elke has
8 another engagement, so I want to be respectful of
9 her time.

10 MS. KONIG: Yeah, but I have to be
11 there.

12 CHAIRMAN GRUENBERG: First, let me
13 thank you, Elke, for a wonderful presentation and
14 really a great opportunity for all of us to hear
15 directly the work she's doing, which I think is
16 exceptional and -- exceptionally important and
17 exceptionally challenging as well. I look
18 forward to our continued mutual cooperation
19 together.

20 I want to thank all of you. These
21 meetings are always extremely helpful to us.
22 Nobody would ever accuse this committee of being

1 a cheerleader, and that's sort of the way we want
2 it, and we really appreciate the contributions
3 that you make.

4 As you do review the materials that
5 we've shared with you, if you have any thoughts
6 or questions, I really do invite your input on
7 them. They're exceptionally valuable to us.

8 And I'll conclude by saying, when I
9 think -- I was chatting with Don about what we
10 were dealing with in 2008, when these
11 institutions were getting into difficulty, and
12 essentially the utter lack of options to deal
13 with the failure of these firms.

14 When I think about where we were then
15 and where we are now, while we still have
16 significant work to do, I do think it's a
17 transformed situation and very much in our
18 interest that we have shifted the center of
19 gravity in this important area.

20 So I want to thank all of you for your
21 contributions to that, and I look forward to our
22 continuing work with you as well. Thank you.

1 MS. KONIG: And if there are any
2 questions to my presentation, feel free to call.

3 CHAIRMAN GRUENBERG: Thank you.

4 (Whereupon, the above-entitled matter
5 was adjourned at 2:50 p.m.)
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This is to certify that the foregoing transcript

In the matter of: Meeting of the Systemic
Resolution Advisory Committee

Before: FDIC

Date: 04-14-16

Place: Washington, DC

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