



**Federal Deposit Insurance Corporation**

550 17th Street NW, Washington, D.C. 20429-9990

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April 25, 2011

**TO:** The Board of Directors

**FROM:** James R. Wigand  
Director  
Office of Complex Financial Institutions

Roberta K. McInerney  
Deputy General Counsel

**SUBJECT:** Establishment of the FDIC Systemic Resolution Advisory Committee

### **EXECUTIVE SUMMARY**

Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), Pub. L. 111-203 (July 21, 2010), 12 U.S.C. 5301 *et seq.*, provides the FDIC with broad authority to resolve covered financial companies following its appointment as receiver. The FDIC is now undertaking planning and regulatory steps to facilitate the effective resolution of covered financial companies should that ever be necessary. In undertaking these efforts, it is particularly important that the FDIC understands the interests and concerns of, and receives input from, a wide spectrum of market participants, professionals, and other stakeholders about the interaction of these planning and regulatory efforts with the financial market and financial companies. In order to provide the FDIC with a forum to promote dialogue on these issues, the FDIC is seeking the appropriate approvals from the Chairman and the Board of Directors ("Board") to establish a new advisory committee at the FDIC, to be called the FDIC Systemic Resolution Advisory Committee (the "SR Advisory Committee").

The Board previously approved the FDIC Advisory Committees on Community Banking and Economic Inclusion, which have provided valuable forums for discussion of key policy issues. In a similar manner, the proposed SR Advisory Committee would be in the public interest and would be consistent with the FDIC's mission. The SR Advisory Committee will provide advice and recommendations on a broad range of issues regarding the resolution of systemically important financial companies pursuant to the Dodd-Frank Act. The SR Advisory Committee is also intended to facilitate discussion on how the FDIC's systemic resolution authority, and its implementation, may impact regulated entities and other stakeholders potentially affected by the process. The SR Advisory Committee will serve solely in an advisory capacity and will have no final decision-making authority, nor will it have access to or discuss any non-public, confidential or institution-specific information.

Comparable to the administration of the Community Banking Advisory Committee and the Advisory Committee on Economic Inclusion, it is proposed that the Board delegate to the

Chairman all authorities necessary to establish and operate the SR Advisory Committee (and any appropriate subcommittees), including the selection of Committee members, the establishment of administrative and operational procedures, as well as budgetary authority. The SR Advisory Committee would consist of no more than 20 members who would be representative of a broad range of interests. It would operate on a continuing basis, subject to a two-year term and renewal under the Federal Advisory Committee Act, until the Chairman determines that its continuance is no longer in the public interest.

## DISCUSSION

### **The Federal Advisory Committee Act (“FACA”)**

FACA applies to any advisory committee that is established or utilized by a Federal agency and provides “advice or recommendations” to an agency. FACA applies to the FDIC.<sup>1</sup> To establish an advisory committee, the FDIC must comply with FACA as well as the regulations promulgated by General Services Administration (“GSA”), the agency charged by Congress with overseeing the administration of FACA.

FACA sets forth the following requirements that the FDIC must follow to establish an advisory committee:

- Identify as a matter of public record that the committee is in the public interest and is consistent with the FDIC’s mission;
- Consult with GSA on the establishment of the advisory committee by explaining the need for the committee, stating the reasons why the committee is necessary to the FDIC’s performance of its duties imposed by law and how the FDIC plans to attain a fairly balanced membership for the committee;<sup>2</sup>
- Utilize the committee for advisory purposes only;
- File a committee charter with the relevant Congressional committees (*i.e.*, the Senate Committee on Banking, Housing, and Urban Affairs, and the House of Representatives Committee on Financial Services), GSA, and the Library of Congress.
- Establish uniform administrative guidelines and controls for the committee;

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<sup>1</sup> Only the Federal Reserve System and the CIA are exempt from FACA’s requirements.

<sup>2</sup> GSA’s formal concurrence or approval regarding the establishment is not required under FACA. In the absence of GSA’s concurrence or approval, an agency may nevertheless establish an advisory committee upon a determination by the agency head that the advisory committee is in the public interest and necessary to the performance of agency duties imposed by law.

- Comply with applicable recordkeeping, reporting and disclosure requirements (including maintaining all committee documents for public inspection);
- Select a Designated Federal Official to supervise the committee;
- Select committee members who broadly represent affected entities;
- Open the committee's meetings to the public, unless properly closed pursuant to the Government in the Sunshine Act; and
- Terminate the committee after two years, unless its charter is renewed.

In establishing the SR Advisory Committee, the FDIC will adhere to the foregoing requirements under FACA.

### **Establishment of the FDIC Systemic Resolution Advisory Committee**

#### **A. The Purpose of the SR Advisory Committee**

The establishment of the SR Advisory Committee is consistent with the FDIC's statutory authority to resolve covered financial companies ("covered companies") through orderly liquidation under Title II of the Dodd-Frank Act. The SR Advisory Committee will provide advice and recommendations on a broad range of issues regarding the resolution of systemically important financial companies pursuant to the Dodd-Frank Act. Issues to be considered by the Committee include the effects on financial stability and economic conditions from a covered company's failure and how they arise, the effects on markets and stakeholders of a covered company, market understanding of the structures and tools available to the FDIC to facilitate an orderly resolution of a covered company, the application of such tools to nonbank financial entities, international coordination of planning and preparation for the resolution of internationally active covered companies, and harmonization of resolution regimes across international boundaries. The SR Advisory Committee would be utilized to gather information and promote discussion on resolution policy development and a variety of current and emerging issues that could affect the resolution of covered companies. This information will help the FDIC to identify and prioritize issues of concern and develop effective strategies and policies in implementing its systemic resolution authority.

The SR Advisory Committee will have no decision-making role in FDIC policies, procedures or strategies, will have no access to confidential supervisory or other confidential information, and will not have access to or discuss any non-public information regarding specific financial companies.

The SR Advisory Committee's purpose would be solely to provide advice and recommendations to the FDIC. Determination of actions to be taken or policies to be adopted with respect to any matters upon which the SR Advisory Committee provided advice would be made only by the FDIC.

## **B. Delegation of Authority to Operate the SR Advisory Committee**

FACA requires the “agency head” to make a determination, as a matter of formal record, to establish an advisory committee. To be consistent with FACA and the administrative procedures established for the FDIC Advisory Committees on Community Banking and Economic Inclusion, it is proposed that the Chairman be delegated authority by the Board of Directors to formally establish the SR Advisory Committee. It is recommended that the Chairman, or her designee, be delegated authority to take such other actions as may be necessary to properly form and organize the SR Advisory Committee, including the establishment of subcommittees. Such other actions include, among other things, consultation with GSA, filing of the Committee Charter with the appropriate Congressional committees and other required entities, selection of a Designated Federal Official, selection of Committee members, establishment of administrative guidelines and management controls, budgeting authority for establishing and operating the Committee, and other requirements mandated by FACA or rules promulgated under FACA. The SR Advisory Committee would report directly to the FDIC Chairman, or her designee. As noted above, this delegation of authority to establish and operate the SR Advisory Committee would be consistent with the administration of the Community Banking and Economic Inclusion Committees.

The SR Advisory Committee would operate with no more than 20 members on a continuing basis, subject to a two-year term and renewal under FACA, until the Chairman determines that its continuance is no longer in the public interest.

## **C. Administration of the SR Advisory Committee**

It is proposed that the Committee meet at least twice per year, with members drawn from diverse backgrounds and representative of a broad range of interests, perspectives, and expertise. To ensure relevant expertise on the SR Advisory Committee, members of the Committee should include financial market participants and professionals with relevant experience managing large, complex firms, investors, bankruptcy professionals, representatives from the audit, accounting, credit rating, and legal professions, as well as academic and other relevant experts. Because of their diverse interests and knowledge, the members of the SR Advisory Committee would provide valuable information and perspectives that are not generally available through other sources within the FDIC or the Federal government. The SR Advisory Committee would provide a forum for public discussion and debate.

It is proposed that the SR Advisory Committee not be any larger than a group consisting of 20 individuals. It is recommended that Committee members be reimbursed for reasonable expenses relating to travel, meals and accommodations in connection with advisory committee business. There would be no other compensation.

FDIC Executive Secretary Robert Feldman is the agency’s Committee Management Officer who is charged with compliance with FACA for all FDIC advisory committees; therefore, he would be assigned such duties with regard to the SR Advisory Committee. FACA also requires the

appointment for each advisory committee of a Designated Federal Official to oversee and coordinate the committee's operations. With respect to the SR Advisory Committee, the Chairman is proposing to appoint James R. Wigand, Director of the Office of Complex Financial Institutions, as the Designated Federal Official.

It is proposed that the SR Advisory Committee use FDIC personnel from various divisions and offices to assist in its administration. Staff support would be particularly drawn from the Office of Complex Financial Institutions, the Division of Resolutions and Receiverships, and the Division of Insurance and Research. The Legal Division would provide legal support for the SR Advisory Committee's operations, such as the preparation of minutes of committee meetings, preparation of *Federal Register* notices regarding meetings, consultation regarding any applicable conflict of interest provisions or standards applied to advisory committee members, and other ministerial duties. The Division of Administration will likely be involved in logistical planning for the SR Advisory Committee meetings. Staff from other divisions also may be tasked to perform certain functions on an as-needed basis. We anticipate that the support FDIC employees would provide to the SR Advisory Committee would be on a collateral-duty basis.

The anticipated cost to establish and operate the SR Advisory Committee, including FDIC staffing and resources, overhead, and reimbursement to Committee members, should not exceed \$300,000 per year.

#### **RECOMMENDATION**

It is recommended that the Board approve the establishment of the SR Advisory Committee as detailed in the attached resolution. The proposed advisory committee will enhance the FDIC's operations and mission to resolve covered financial companies by providing the FDIC with a forum for the exchange of views and public discussion on issues relating to the FDIC's implementation of its systemic resolution authority.



**FEDERAL DEPOSIT INSURANCE CORPORATION**  
**CHARTER OF THE**  
**SYSTEMIC RESOLUTION ADVISORY COMMITTEE**

**Official Designation:** FDIC Systemic Resolution Advisory Committee (“the Committee”).

**Scope and Objectives:** The Committee will provide advice and recommendations on a broad range of issues regarding the resolution of systemically important financial companies (“covered companies”) pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act. Issues to be considered by the Committee include the effects on financial stability and economic conditions from a covered company’s failure and how they arise, the effects on markets and stakeholders of a covered company, market understanding of the structures and tools available to the FDIC to facilitate an orderly resolution of a covered company, the application of such tools to nonbank financial entities, international coordination of planning and preparation for the resolution of internationally active covered companies, and harmonization of resolution regimes across international boundaries.

**Duration:** The Committee will exist for 2 years from the date of the Charter, unless earlier renewed.

**Reporting Relationship:** The Committee reports to the Chairman of the Board of Directors of the FDIC (“Chairman”).

**Support:** The FDIC will provide whatever support is required for the Committee's activities.

**Duties:** The Committee will provide advice and recommendations only. It will have no formal decision-making role, will have no access to confidential supervisory or other confidential information, and will not have access to or discuss any non-public information regarding specific financial companies.

**Membership:** To ensure relevant expertise on the Committee, members of the Committee should include financial market participants and professionals with relevant experience in managing large, complex firms, investors, bankruptcy professionals, representatives from the audit, accounting, credit rating, and legal professions, as well as academic and other relevant experts. Members will serve for a term of 2 years, and the number of members of the Committee will not exceed 20. No Special Government Employees are expected to be on the Committee; the Committee will be composed exclusively of representatives of the above-described groups. Committee members will not receive compensation for their services. Committee members will be reimbursed for

expenses for travel, per diem, and other miscellaneous expenses incurred in the performance of their duties for the Committee, subject to FDIC approval.

**Costs:** The annual operating costs associated with supporting the Committee's functions are estimated to be \$300,000 per year, including staff time. It is estimated that 2 staff-years per year, of FDIC personnel time, will be required to support the Committee on a continuing basis.

**Meetings:** The Committee shall meet at such intervals as are necessary to carry out its functions. It is anticipated that the Committee will meet at least 2 times per year.

**Organization:** The FDIC will establish such operating procedures as required to support the Committee, consistent with the Federal Advisory Committee Act ("FACA"). The Chairman is authorized to create any subcommittees that may be necessary to fulfill the Committee's mission. Consistent with General Services Administration regulations implementing FACA, the Chairman will designate an FDIC employee to serve as the Designated Federal Official for the Committee. The Designated Federal Official will call and adjourn any meeting when he or she determines it to be in the public interest. The Committee Chairperson will be selected from among the members of the Committee by the Chairman.

**Date of Termination:** The Committee will terminate 2 years from the date of charter filing, unless sooner renewed by the Chairman.

**Recordkeeping:** The records of the Committee will be handled in accordance with the FDIC's records disposition schedule. These records will be available for public inspection and copying, subject to the Freedom of Information Act.

**Charter Filing Date:** This charter has been filed with the Chairman of the FDIC, the Senate Committee on Banking, Housing and Urban Affairs, and the House Committee on Financial Services, and furnished to the Library of Congress on \_\_\_\_\_, 2011.

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Dated

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Sheila C. Bair  
Chairman  
**Federal Deposit Insurance Corporation**