

August 23, 2023

MEMORANDUM: The Board of Directors

FROM: James L. McGraw, Acting Director, Complex Institution  
Supervision and Resolution

Maureen E. Sweeney, Director, Division of Resolutions  
and Receiverships

CONCUR: Harrel M. Pettway, General Counsel  
Legal Division

SUBJECT: Conditions to Certain Receivership Delegations of  
Authority and Procedures

Recommendation

That the Board of Directors (“Board”) of the Federal Deposit Insurance Corporation (“FDIC”) approve the following proposed procedures, to be added to failing bank board cases for insured depository institutions (“IDIs”) with assets of \$50 billion or more, that would provide a consultative process with the Board on the least cost resolution transaction with an assuming institution (“AI Resolution Transaction”) for the failing IDI. This process would require the Director, Complex Institution Supervision and Resolution (“CISR”), in the case of any IDI with assets of \$100 billion or more, or the Director, Division of Resolutions and Receiverships (“DRR”), in the case of any IDI with assets of \$50 billion or more but less than \$100 billion, to provide to each Board member information on the marketing process, the potential qualified bidders, the bids received, and the least cost resolution transaction. The Director, CISR or the Director, DRR (as applicable) would also be required to inquire of each Board member as to whether a Board vote should be held on the approval of the proposed AI Resolution

Transaction.<sup>1</sup>

If a majority of the Board indicates that a Board vote should be held, a Board vote on the transaction would be held, and the Director, CISR or the Director, DRR (as applicable) would not approve or proceed with the proposed AI Resolution Transaction absent a Board vote approving it. If a majority of the Board does not indicate that a Board vote on the proposed AI Resolution Transaction should be held, the Director, CISR or the Director, DRR (as applicable) would retain all previously delegated authority to approve or proceed with the proposed AI Resolution Transaction without need for a Board vote approving such AI Resolution Transaction.

### Background

When an IDI is in danger of default and it appears that the FDIC will be appointed as receiver for the IDI once it fails, a failing bank case is presented to the Board. The failing bank board case includes a supervisory history for the IDI, the reasons for the failure, and staff's proposed marketing plans. Typically, staff proposes to market the IDI in a way that is expected to result in a "least cost transaction"<sup>2</sup> with an AI acquiring certain assets and the insured or all of the deposits of the failing IDI.

In order to ensure that the FDIC meets its statutory obligation to make insured deposits available to depositors "as soon as possible"<sup>3</sup> following the failure of an IDI, as part of each failing bank case, the Board delegates certain authority to staff. The failing bank

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<sup>1</sup> While the Board is always within its rights to approve a particular transaction or types of transactions, the process that is being proposed is not intended to apply to transactions to liquidate assets left in the receivership following an AI Resolution Transaction or other transaction conducted at the time that the IDI fails.

<sup>2</sup> 12 U.S.C. 1823(c)(4).

<sup>3</sup> 12 U.S.C. 1821(f).

case requests that the Board invoke the authority under the Board’s resolution bearing seal number 067061, dated September 29, 1999, as amended (commonly referred to as the “Robinson Resolution”), which authorizes, among other things, an AI Resolution Transaction or a payout.<sup>4</sup>

In addition to the Robinson Resolution authority, the failing bank board case may include authority sought by the Director, DRR or the Director of CISR, as applicable, which is not included in the Robinson Resolution, but deemed necessary for the resolution of the IDI. Examples of such additional authority include the authority to charter and operate a bridge depository institution if needed for the resolution of the IDI or to charter and operate a deposit insurance national bank as a payout option. The Board votes on whether to approve the failing bank case in either a meeting closed to the public or by notational vote.

Once the Board approves the use of the Robinson Resolution for a failing IDI, by approval of the failing bank board case, as well as any additional authority set forth in the case, the staff has the necessary delegated authority to resolve the failing IDI through the implementation of an AI Resolution Transaction or a payout or, if the authority has been delegated in the failing bank board case, through formation and transfer of certain assets and liabilities to a bridge depository institution.

Depending upon the size of the IDI and the division of responsibility between DRR and CISR staff, DRR or CISR solicits bids for the failing IDI, performs the least cost analysis of the bids, and selects and awards the winning bid exercising delegated authority granted in the failing bank board case, subject to requests by members of the board for briefings or consultations on

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<sup>4</sup> The Robinson Resolution was initially adopted in 1987.

the process, including the bid approval process.<sup>5</sup> During the financial crisis of 2008-2013, there were 489 IDI failures and, in each instance, the Board authorized the exercise of authority under the Robinson Resolution.<sup>6</sup> More recent failures have been handled similarly.<sup>7</sup>

## Discussion

In light of the FDIC's experience with recent large bank failures and the potential implications and consequences involved in the resolution of large IDIs, there is reason to consider formalizing the process for consulting Board members on such resolutions.

The approval process for a failing bank board case can take place under circumstances that involve a very tight time frame for the resolution of the failing IDI. Institutions that are in danger of default due to liquidity issues require quick action be taken to deal with the failure and minimize losses to the Deposit Insurance Fund.<sup>8</sup> Throughout the development of each of the recent failing bank board cases, staff was available to consult with, and answer questions received from, members of the Board and their staff.

In light of recent experience, in recognition of the potential impact of a large bank failure, and in order to ensure consistency, staff recommends development of a more formal consultative process in connection with all IDIs with assets of \$50 billion or more. The Board would continue to invoke the Robinson Resolution through the approval of the failing bank board case, but would require that, once the staff has identified the bid that would result in a least cost AI

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<sup>5</sup> If none of the bids would result in a least cost transaction, the IDI would be resolved with a payout or, if authority to do so has been delegated, through the implementation of a bridge depository institution transaction.

<sup>6</sup> While the Robinson Resolution was invoked in connection with both the Washington Mutual Bank and IndyMac Bank failures, the Board also approved the sales to AIs in those cases.

<sup>7</sup> With respect to the recent failures of Silicon Valley Bank ("SVB") and Signature Bank ("Signature") in March, 2023, the authority delegated in connection with the reliance on the systemic risk exemption required that the Board vote on the approval of the bid selected as the best value bid prior to the awarding of that bid.

<sup>8</sup> 12 U.S.C. 1821(d)(13)(E).

resolution transaction, staff would consult with each member of the Board as to the marketing of the failing IDI to potential bidders, the number and the bids that were submitted, the least cost determination analysis, and the resolution transaction that the Director, CISR or the Director, DRR (as applicable) recommends.<sup>9</sup>

In the course of these consultations, the Director, CISR or the Director, DRR (as applicable) would inquire of each Board member whether a Board vote should be held on the proposed transaction. If a majority of the Board members indicate that a Board vote on the approval of the proposed AI Resolution Transaction should be held, the Director, CISR or the Director, DRR (as applicable) would so advise the Chairperson of the Board, and a Board vote on the approval of the proposed AI Resolution Transaction would be held, either in a Board meeting closed to the public or notationally. If a majority of the Board members indicated that a Board vote on the proposed AI Resolution Transaction should be held, the Director, CISR or the Director, DRR (as applicable) would not proceed with the proposed AI Resolution Transaction absent a Board vote approving such Transaction. If a majority of the Board does not indicate that a Board vote on the proposed AI Resolution Transaction should be held, the Director, CISR or the Director, DRR (as applicable) would retain all previously delegated authority to approve or proceed with the proposed AI Resolution Transaction without need for a Board vote approving such AI Resolution Transaction.

In addition, for every IDI failure, staff will provide each Board member with a summary of the marketing of the failing IDI to potential bidders, the number and the bids that were submitted, the least cost determination analysis, and the resolution transaction entered into, after the AI Resolution Transaction is completed.

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<sup>9</sup> Nothing in this consultative process for large bank resolution transactions is intended to limit or otherwise affect staff availability to consult with, and answer questions received from, members of the Board and their staff.

While a majority of the Board always has the authority to require a vote on any failed bank resolution, the implementation of the proposed consultative process would put into place a process that ensures that each member of the Board has the opportunity, with respect to each failing IDI with assets of \$50 billion or more, to be briefed and consulted on the resolution and indicate whether a Board vote on the recommended AI Resolution Transaction should be held.<sup>10</sup> This consultative process and any necessary Board vote may need to be conducted on an expedited basis consistent with the FDIC's statutory duty to ensure that insured deposits are made available to depositors as soon as possible after the failure of the IDI, as well as to facilitate an orderly resolution.

### Conclusion

The proposed procedures for the handling of failing bank board cases for IDIs with assets of \$50 billion or more would provide a consultative process for members of the Board on any AI Resolution Transaction for the failing IDI. This process would require the Director, CISR or the Director, DRR (as applicable), to brief and consult with Board members on the marketing process, the potential qualified bidders, the bids received, and the AI Resolution Transaction. The Director, CISR or the Director, DRR (as applicable) would also be required to inquire of each Board member as to whether a Board vote should be held on the approval of the proposed AI Resolution Transaction.<sup>11</sup>

If a majority of the Board indicates that a Board vote should be held, a Board vote on the

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<sup>10</sup> FDIC's Bylaws currently allow any two Board members to call a special meeting of the Board (see Art. VI, sec. 6(b)), but the mere calling of a special meeting does not disturb any existing delegation of authority (including the ability of staff to take action under any such delegation).

<sup>11</sup> While the Board is always within its rights to approve a particular transaction or types of transactions, the process that is being proposed is not intended to apply to transactions to liquidate assets left in the receivership following an AI Resolution Transaction or other transaction conducted at the time that the IDI fails.

transaction would be held, and the Director, CISR or the Director, DRR (as applicable) would not approve or proceed with the proposed AI Resolution Transaction absent a Board vote approving it. If there is not a majority of the Board that indicates that a Board vote should be held, a Board vote on the transaction would not be held, and staff would be authorized to proceed with the AI Resolution Transaction. Once approved, these procedures would be included in the failing bank board case for IDIs with assets of \$50 billion or more.

#### Other Information

If you have any questions concerning this case, please contact Harrel Pettway.

#### **ATTACHMENTS**

Attachment 1, Resolution