Remarks by Martin J. Gruenberg
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Introduction

It is a pleasure to take part in the Annual Washington Conference of the Institute of International Bankers.

Today I would like to focus my remarks on one of the key challenges we face in the aftermath of the financial crisis of 2008-2009 – developing the capability to manage the orderly resolution of a systemically important financial institution (SIFI) with extensive cross-border operations.

Prior to the crisis, this was an issue that was not the subject of significant international attention. Yet during the course of the crisis it became apparent that all of the major countries lacked this capability. National jurisdictions lacked the basic authorities to manage an orderly resolution of a SIFI, had no plans in place and no operational capability to carry out an orderly resolution even if authorities had existed, and had not developed cross-border relationships with key foreign authorities to facilitate critical international cooperation. As a result, there was no ability to hold these firms accountable to the discipline of the marketplace, by which I mean allowing these firms to fail and ensuring that shareholders were wiped out, unsecured creditors haircut, and culpable management replaced.

In the aftermath of the crisis, I think it is fair to say that this has been a subject of intense international attention by both the Financial Stability Board of the G-20 countries at the multilateral level, as well as at the level of national and regional jurisdictions.

I thought I would use my remarks today to describe the progress we have made in the United States, as well as with some of our key foreign counterpart jurisdictions in this critical area of financial reform.

Progress in the United States

Prior to the crisis, the resolution authorities of the FDIC were limited only to FDIC-insured depository institutions. The FDIC did not have authority to place the holding company or affiliates of an FDIC-insured institution into a public receivership process, nor did it have

authority to place a nonbank financial company whose failure might pose a risk to the financial system into resolution.

Title II of the Dodd-Frank Act provided the FDIC these crucial authorities which are really a threshold for the capability to manage an orderly resolution of a SIFI. Given the highly integrated nature of the largest, most complex and diversified financial companies with extensive cross border operations, authority to place the consolidated entity into a resolution process is critical.

Since the enactment of Dodd-Frank, the FDIC has been actively developing internal resolution plans for our major companies based on the expanded authorities provided by the new law. In July 2011 the FDIC Board approved a final rule implementing the Title II authority.

In addition, Title I of the Dodd-Frank Act requires bank holding companies with total consolidated assets of $50 billion or more, and certain nonbank financial companies that the Financial Stability Oversight Council (FSOC) designates as systemic, to develop, maintain, and periodically submit to the FDIC and the Federal Reserve Board resolution plans that are credible and would enable these entities to be resolved under the Bankruptcy Code. These are the so-called "living wills." In 2011 the FDIC and the Federal Reserve Board jointly issued the basic rulemaking regarding these resolution plans. On July 1, 2012 the first group of living wills, generally involving bank holding companies and foreign banking organizations with $250 billion or more in nonbank assets, was received. Banking organizations with less than $250 billion, but with $100 billion or more in assets will file by July 1 of this year, and all other banking organizations with assets over $50 billion will file by December 31.

The FDIC and the Federal Reserve are currently in the process of reviewing the first round of plans submitted by the largest companies. As I indicated, the Dodd-Frank Act requires that the ultimate result of this process is that these plans be credible and facilitate an orderly resolution of these firms under the Bankruptcy Code.

International Efforts on Resolution

In October 2011 the Financial Stability Board (FSB) of the G-20 countries released the *Key Attributes of Effective Resolution Regimes for Financial Institutions* which set out the core elements that the FSB considers to be necessary for an effective resolution regime. The Key Attributes, as they are known, outline critical resolutions authorities along the lines of those available in the United States under the Federal Deposit Insurance Act and the Dodd-Frank Act.

In order to monitor compliance by member jurisdictions with international standards promulgated by the FSB, including the Key Attributes, the FSB has established a regular program of country and thematic peer reviews of its member jurisdictions. The FDIC is currently leading the first peer review to evaluate FSB jurisdictions' existing resolution regimes and any planned changes to those regimes using the Key Attributes as a benchmark. This review will compare national resolution regimes across both individual Key Attributes and across different financial sectors. It will provide recommendations for future work by the FSB and its members in support of an effective and credible resolution regime for SIFIs. We expect the final report of the peer review to be released this spring.

In addition to its multilateral work with the FSB, the FDIC has been actively engaging on a bilateral basis with its key counterpart jurisdictions. Section 210 of the Dodd-Frank Act expressly requires the FDIC to "coordinate, to the maximum extent feasible" with appropriate foreign regulatory authorities in the event of the resolution of a systemic financial company with cross-border operations.

As part of our bilateral efforts, the FDIC and the Bank of England, in conjunction with the prudential regulators in our jurisdictions, have been working to develop contingency plans for the failure of Global SIFIs (G-SIFIs) that have operations in both the U.S. and the U.K. Of the 28 G-SIFIs designated by the Financial Stability Board, 4 are headquartered in the U.K, and another 8 are headquartered in the U.S. Moreover, around two-thirds of the reported foreign activities of the 8 U.S. SIFIs emanates from the U.K.[1] The magnitude of these financial relationships makes the U.S. – U.K. bilateral relationship by far the most important with regard to global financial stability. As a result, our two countries have a strong mutual interest in ensuring that, if such an institution should fail, it can be resolved at no cost to taxpayers and without placing the financial system at risk.

As this working relationship has developed, we have discovered a significant commonality in our thinking on the basic approach to a SIFI resolution. The approach involves taking control of the failing institution at the parent company level, imposing losses on shareholders and creditors, as well as replacing culpable management at that level, while allowing solvent subsidiaries, domestic and foreign, to remain open and operating thereby minimizing disruption to the wider financial system. In December, the FDIC and the Bank of England released a joint paper outlining our work together that can be accessed on the FDIC's website.

In addition, the FDIC has also launched an extensive bilateral dialogue on both resolution and deposit insurance with the European Commission.

Last year, the EC published a draft Recovery and Resolution Directive to establish a framework for dealing with failed and failing financial institutions which is expected to be finalized this spring. The overall authorities outlined in this document has a number of parallels to the SIFI resolution authorities provided here in the U.S. under the Dodd-Frank Act.

European authorities have also called for the establishment of a European resolution agency, expected to be proposed this year, that would have broad legal powers and work closely with national authorities.

These recent developments signaled an opportunity for the FDIC to engage our counterparts in the European Union with the goal of better coordinating our resolution planning as well as share experience on deposit guaranty schemes. As a result, the EC and the FDIC have agreed to establish a joint working group made up of senior officials from our respective agencies that would meet twice a year, once in Washington and once in Brussels, to discuss issues of mutual interest relating to resolution and deposit insurance.

The first meeting of the joint working group took place in Washington last month.

Among the topics discussed at that meeting were:

- the EC's proposed directive on bank recovery and resolution;
- deposit guarantee regimes;
- the FDIC's work on planning for SIFI resolutions; and
- future initiatives that might be undertaken related to cross-border cooperation.

The next meeting of the Working Group will take place in Brussels later this year. We will also be exchanging detailees twice a year as a way to develop better understanding of our respective organizations.

Let me say that as Europe moves toward greater fiscal consolidation and the establishment of a single bank regulator, there is a strong logic for the European Community to develop a European wide approach to both cross border resolution and deposit insurance. In that regard, the FDIC may have useful and relevant experience to share. We very much look forward to our ongoing engagement with the EC.

Conclusion

Let me say in conclusion that we understand that there is a great deal more work to do in terms of developing effective cross border relationships with our key foreign counterparts in order to manage an orderly resolution of a globally active SIFI. I do believe that the initiatives I have outlined today represent meaningful steps in that direction. We are very committed to pursuing these efforts. The stakes for both international financial stability and market accountability for these global financial institutions are very high.