

**Statement of Jeremiah O. Norton on Memorandum and Resolution re: Determination
Regarding 2013 Resolution Plans of Eleven First Wave Covered Companies and
Memorandum and Resolution re: Authorization to Send Letters Jointly with Board of
Governors of the Federal Reserve System in Response to October 2013 Resolution Plan
Submissions of First Wave Covered Companies**

Overview

Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act¹ (Dodd-Frank) contains the primary path to resolvability for large and complex financial institutions. Pursuant to section 165(d) of Dodd-Frank and its implementing regulation, large bank holding companies and foreign banking organizations with branches or agencies in the U.S. must submit resolution plans (or living wills) annually if their consolidated assets are greater than or equal to \$50 billion.² These living wills must report the “plan of such company for rapid and orderly resolution in the event of material financial distress or failure.”³ The plans must include, among other items, a description of the ownership structure, assets, liabilities, and contractual obligations of each company as well as an identification of major counterparties.⁴

The statute requires the Federal Reserve and the FDIC (the Agencies) to review the resolution plans.⁵ In the event that the Agencies jointly determine that a plan is not credible or would not facilitate an orderly bankruptcy process under Title 11 of the U.S. Code, the law

¹ P.L. 111-203 (July 21, 2010).

² 12 U.S.C. § 5365(d)(1); 12 C.F.R. § 381.3. The statute also requires those nonbank financial firms designated as systemically important by the Financial Stability Oversight Council to submit resolution plans.

³ 12 U.S.C. § 5365(d)(1).

⁴ *Id.*

⁵ 12 U.S.C. § 5365(d)(3).

requires the Agencies to notify the company of its plan's deficiencies.⁶ Should such a notification occur, the company must resubmit its plan with revisions demonstrating that it can be resolved in an orderly way in a bankruptcy proceeding. If the firm fails to resubmit a plan that would result in an orderly bankruptcy or is not credible, then the Agencies may impose enhanced supervisory measures, such as capital, leverage, or liquidity constraints and may ultimately order divestitures if the deficiencies remain uncured.⁷

2013 Plan Review

After reviewing the 2013 resolution plan submissions of the firms that constitute the first wave of resolution plan filers,⁸ the FDIC has concluded that the plans do not meet the threshold required under statute that the plans be credible and facilitate an orderly bankruptcy. However, today's vote will not result in a notice of deficiencies that would trigger resubmission requirements and possible enhanced supervisory measures because the issuance of such a notice requires joint action by the Federal Reserve and the FDIC.⁹

2015 Instructions

Separately, the Agencies have agreed to issue new instructions for the first wave of resolution plan filers in advance of their July 1, 2015 submissions. The instructions address issues such as legal structure, financial contracts with early termination rights, shared services, and operational capabilities.

⁶ 12 U.S.C. § 5365(d)(4).

⁷ 12 U.S.C. § 5365(d)(5).

⁸ The first wave of resolution plan filers consists of 11 firms. *See* <http://www.federalreserve.gov/bankinforeg/resolution-plans.htm>; <https://www.fdic.gov/regulations/reform/resplans/>.

⁹ 12 U.S.C. § 5365(d)(4).

Conclusion

I supported the recommendations of the FDIC staff with respect to both the 2013 plan review and the 2015 instructions at today's board meeting. Title I resolution planning is a critical component of financial reform. In many respects, achieving a credible and workable framework for resolving large and complex financial institutions would be the pinnacle accomplishment in the wake of the 2008 financial crisis.