Statement of FDIC Chairman Martin J. Gruenberg
FDIC Board Meeting
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FDIC regulatory capital and liquidity rules currently provide for the netting of derivatives transactions and certain related financial contracts covered by a master netting agreement even if that agreement is subject to stays imposed by U.S. laws governing the resolution of financial institutions. That same treatment is not provided if the stay is imposed pursuant to a foreign law.

The proposed rule that the FDIC Board is considering today would help ensure consistent regulatory capital and liquidity treatment of derivatives transactions and certain related financial contracts covered by foreign laws governing the resolution of financial institutions, if those foreign laws are substantially similar to U.S. law.

The proposed amendment to the definitions in the FDIC's capital and liquidity rules is prompted by the recent establishment by the International Swaps and Derivatives Association (ISDA) of a resolution stay protocol.

The purpose of the ISDA Resolution Stay Protocol (ISDA Protocol) is to mitigate the financial stability risks associated with the early termination of bilateral, over-the-counter derivatives contracts triggered by the failure of a global banking firm.

The voluntary adherence to the ISDA Protocol by some of the largest U.S. banking organizations would contractually subject them to the resolution stay authority of foreign jurisdictions and would have impacted their capital and liquidity requirements as of January 1, 2015, the implementation date of the protocol. The proposed rule under consideration today is intended to provide the same capital and liquidity treatment whether the stay authority is provided under U.S. or foreign law.

In December, the Board of Governors of the Federal Reserve System (Federal Reserve) and the Office of the Comptroller of the Currency (OCC) issued an interim final rule that is substantively identical to the Notice of Proposed Rulemaking that the FDIC is considering today. The Federal Reserve and the OCC acted on an interim final rule because they are the primary federal regulators of the U.S. banking organizations whose capital and liquidity requirements would have been impacted by the January 1, 2015, implementation date of the protocol. Because none of the institutions primarily supervised by the FDIC have initially joined the ISDA Protocol, there was not a similar exigent need for the FDIC to act on an interim final rule. The FDIC is thus considering the NPR before us today.

I support the publication of this proposed rule and look forward to the public comment we will receive.