Robert E. Feldman,
Executive Secretary,
And Systemic Resolution Advisory Committee "SRAC"
Attention: Comments,
Federal Deposit Insurance Corporation,
550 17th Street NW.,
Washington, DC 20429.
Media Contact: Andrew Gray (202) 898-7192 Email: angray@fdic.gov
*Email: Comments@FDIC.gov.*Include ''Single Point of Entry Strategy'' in the subject line of the message.

RE: Single Point of Entry / **77614-76624 Federal Register** / Vol. 78, No. 243 / Wednesday, Dec 18, 2013 / Notices

Guide: Abstract p1; Opening Remarks p2; Preface p2; NPR Comment p10; SRAC Meetings Comment p43; End Comments, Observations related to SRAC meeting discussions and the sector, issues p48; NOTES p51; Appendix p62**.**

Abstract:

This is a comment to contribute to the Public Due Process requested in **FEDERAL DEPOSIT INSURANCE CORPORATION's ("FDIC")** Notice for Proposed Regulation **("NPR")** related to as characterized in the Dodd Frank Act of 2010 "DFA", Resolution of Systemically Important Financial Institutions "SIFIs"**: the Single Point of Entry Strategy** ("SPoE") in the US and abroad while resolving or "unwinding" a SIFI. Whereas I haven't supported maintaining the ability for these largest financial institutions to abuse power, and with that power to grow to their size, and therein to many observers and the easily manipulated public, that ability to abuse power is obscured by their size, and thus Too Big To Fail and punishing these SIFIs distracts from correcting abuse of power. Thus I do not support the FDIC's interest to resolve SIFIs. If ever, this perhaps would be a path, but with significant constraints against foreign buyers/investors and commercial/industrial corporate buyers/investors participating in the later stages.

In general, I have not supported the effort to 'resolve' SIFIs, nor destabilize them. Nor have I supported failing to regulate them effectively in the manner former to regulatory acceptance for *financial innovation.* This de facto regulatory framework of allowing the largest financial institutions (which often also are "ISDA" members - International Swaps and Derivatives Association) to engage in the unsafe and unsound practices and products of writing and trading derivatives and Over-the-counter (OTC) contracts without restraint, has existed since before the Gramm, Leach, Bliley legislation in 1999 and in 2000, the Commodity Futures Modernization Act, enabling OTC contracts and derivatives to trade without any regulatory framework at all in existence at that time and for a number of years after that passage of that law.

Regulatory, Congressional and Executive Branch support of, and deference to (by not regulating/restraining or disciplining for unsafe and unsound banking products and practices) *financial innovation* has disserved the US and our Insured Depository Institutions IDIs of all sizes. Nor has support by the Fed of multilateralism at all served the US and with support for multilateralism, in time also came 'light touch' 'regulation. Moreover, the belief mentioned in this NPR by the FDIC of subjecting a SIFI to "Title II" resolution to achieve the furthering of its mission to promote market discipline and maintain financial stability contradicts all the reasons all along – and among these - that it has allowed the largest favored institutions to merge, and enabled the US retail and larger corporate customers and municipalities to enjoy stable banking relationships.

Furthermore, the FDIC and Fed both in law and representation to the public, identify themselves as regulators and/or supervisors. Neither however has administered nor enforced effective regulatory discipline all along for perhaps a decade against these largest financial institutions. Additionally, the Fed has thwarted or politically co-opted the FDIC from properly administering enforcement against the prolific derivatives and OTC contract writing. As has been their practice in the past to administer full safety and sound examinations on site by examiners, score the banks not only using off-site quarterly financial filings, but also based on what the examiners found in their annual safety and soundness examinations of IDIs of all sizes, and administering enforcement if and when in breach of regulation including operating in safe and sound condition, such more demonstrates their roles as effective regulators, and more maintains the financial stability and promotes market discipline, because supporting, permitting and giving kid glove treatment to financial innovation is neither safe, nor sound, nor promoting market discipline or financial stability. Because this NPR proposes to seize and expropriate stakeholders' means and resources to resolve a SIFI, resolution as proposed has appearances of Marxist Vandalism. ~~~~~~~~~~~~~~~~~

Dear Chairman Gruenberg, Executive Secretary Feldman, et al including SRAC:

Thank you for accepting my comments regarding NPR Single Point of Entry "SPOE"/ **76614 Federal Register** / Vol. 78, No. 243, 18Dec13 http://www.fdic.gov/news/news/press/2013/pr13112.html http://www.fdic.gov/news/board/2013/2013-12-10_notice_dis-b_fr.pdf. Thank you also for extending the deadline for comment to 20 March 14. I appreciate this although ah, while reading through this NPR, it's been interesting to review and deliberate about the nature of legislation, regulation and supervision on this sector over the last 30 years, since before Garn St. Germaine Act (1982) during the era of Paul Volcker while he was Chair of the Board of Governors of the Federal Reserve System and on a mission to end double –digit inflation that had occurred in the US after the 2nd Arab Oil Embargo and President Carter's balanced budget.

As an administrative note, terms such as 'resolving' go undefined in this NPR. For the purposes of any, and all appropriate stakeholders intending to provide comment for the public Due Process, there should be a "Definitions" page or section, which often the FDIC (unless I'm thinking of Congress and legislation) includes. Via links, the history and nature of "Resolutions" from beginning to end also should be outlined and referencing regulation and/ or statute where that already exists for FDIC to use and history of use. There is nothing like that in this NPR, leaving people with NO context to understand resolutions in any form. Perhaps the FDIC is assuming that any question about such subject matter will either have the commenter do their own research and/or only be an expert in these matters embodied in this NPR.

Additionally although many conversations probably have been had discussing last December's Systemic Risk Advisory Council "SRAC's proceedings (11 Dec 12 and 10Dec13), please share these comments also with the SRAC private sector members. While providing comment on the NPR about SPoE and related multilateral dialog, in the later part of this Comment letter, I will comment referencing some of the content in those SRAC meetings. See pages 44,45.

My comments **narrative style** will begin with a Preface for **8 Pages**, then beginning on p. 10, I will track my comments based on the NPR beginning on FR pg76615, SUPPLEMENTAL INFORMATION, BACKGROUND.

Preface:

Additionally while providing comment on this NPR, I am hoping to bridge some recollection gaps that may exist perhaps among some of the SRAC members, as well as FDIC senior staff, and public involved in these processes. I provide this as part of the effort to achieve the better end for those involved with this new policy matter of, if necessary, 'resolving' banks characterized as Too Big to Fail ("2B2F") also known as Systemically Important Financial Institutions "SIFIs" or "C-CAR" (Comprehensive Capital Analysis and Review) banks or "Covered Companies" according to Title I of DFA.

In the US since after the Civil War there have been banks which have enjoyed significant favor ("Teflon") largely because who, or rather which influential American(s) and foreign royal and wealthy families own them in one form or another. Since the Federal Reserve Act was signed into legislation in 1913, the Fed has facilitated the veil of protection that the large financial institutions enjoyed and still enjoy. The Fed operates as a form of pass-interference for these banks' self-interests and those of their very wealthy domestic and foreign owners.

A number of people in Congress however were not impressed with the Fed. As an organization it violated the framework established by the founders who avoided establishing and permitting institutions demonstrating abuse of power, including obstructed oversight on its activities, practices and decisions and outcomes from those. The Fed's backers overtime also after obtaining legislation to anoint the Fed as regulator for 'Bank Holding Companies", also obtained legitimacy to approve and protect its domination as a regulator with regard to bank mergers one could suggest was for concentrations and abuse of power not available under state charters and commerce at that time. Whereas the Fed infrequently denied large banks buying each other and merging in spite of anti-competitiveness, regardless of when it would and had forced divestitures of branches to reduce a banking market concentration of merged parties, the Fed has fostered and facilitated 2B2F **(NOTE 1)**.

In the short and long run presumably our endeavor is to enable the US financial sector to achieve better operating health and true stability, rather than instability, inflate/collapse, etc. I also mention material I observed about FDIC resolutions which one will find among my comments opposing Basel III adoption **(NOTE 2, 3).**

I repeat and urge the importance that regulators and our economy placed on, and regulate for sound commercial banking practices, of operating in a condition of safety and soundness. In the US even what we consider our 2B2F banks, and generally without direct government support, operate for the entire public and private sector economy, not only for small deposit account holders, when all depositors up to $250,000 of their deposits by law are owed deposit insurance protection.

Other ISDA (International Swaps and Derivatives Association) cartel members in the EU, however enjoy government back-stops and in effect in the past could operate in any condition they wanted and do not even have a deposit insurance net because again those governments provide in effect full support to those large financial institutions..

In the US operating in safety and soundness includes engaging in activities generating sufficient high quality earnings realizing to cash, as well as operating cash flow from their activities such as making performing loans and investments producing periodic cash flows. These are high quality earning assets, rather than agency self-dealing the Fed has named *Financial Innovation,* in the form of writing and trading OTC contracts and derivatives (even if with collateral) on the Balance Sheet. Often these items are cash flow parasitic and are a management scheme for inflating the Balance Sheet and I conjecture - originally contrived for that inflate/collapse purpose. Even a Balance Sheet full of derivatives and OTC contracts in a "matched-book" often needs borrowings for liquidity, and investor infusions in a crisis when the financial markets aren't rising or liquid (from Quantitative Easing and/or low interest rates).

When the financial markets are rising and producing higher values for comparable items and trading for which management uses to 'mark-to-market' or shadow price, or 'fair value' their derivatives and OTC contracts on Balance Sheet and when written as a 'matched book' of these contracts off-setting each other, management is able to inflate the Balance Sheet when the Fair value reporting framework is used to value and report these items. Inflating the Balance Sheet is a form of agency self-dealing, rather than safe and sound banking products and practices. Management, financial engineers and derivatives traders of these instruments may argue otherwise, and this comment debates this.

In form and substance what I described above and the associated 'financial crisis' that occurred from light regulation and these unchecked unsafe and unsound banking practices while declaring record breaking earnings in 4Q07, is the ISDA cartel version of Enron, except ISDA banks in Europe enjoy government back stops. Similarly but not quite, the largest US banks which often were founded by ancestors of our 1%, have long histories of powerful relationships with corporate America, the US government, and now have Balance Sheets inflated and snared in these OTC contracts and derivatives. Our SIFIs may not actually have government backstops, however as I'd mentioned, for generations US SIFIs have bathed in a fair amount of government favor. They pulled-off their financial version of Enron while obtaining 'Teflon' treatment from their regulators. Inflating their Balance Sheets with OTC contracts and derivatives to enjoy 'fee' income from trading, and the fair value gain by way of US GAAP's 'erosion into the fair value' reporting framework that applies to these instruments, all are a part of the Enron recipe (**NOTE 4).**

The banks followed the Enron pattern, except they're banks. As members of the Federal Reserve system and the arteries for the economy, ISDA banks have both favor and some 'protection' for their new activities and products legitimized for them by Gramm Leach Bliley of 1999 "GLB" and Commodity Futures Modernization Act of 2000 "CFMA". This regulatory Teflon has increased with SIFIs enjoying lighter treatment including de-minimus examinations. Even with 'Resolution Plans' and potential threat of being forced into bankruptcy, no restoration of Safety and Soundness exams or Dealer Surveillance is proposed in this NPR, by the Regulators at the FDIC and Fed respectively, or by Congress. Given some picture of what SIFIs' true condition may be, and fair valuing of OTC contracts and derivatives instruments on the Balance Sheet and a bad economy however, have been reasons the Fed has been providing Quantitative Easing for liquidity while the ISDA banks have had to both deleverage as well as roll off some of their OTC and derivatives exposures, in order to comply with Basel II and III **(NOTE 4, 5).**

And while characterizing derivatives and OTC contracts as *Financial Innovation*, bank management and the Fed over the past 20 years have been finding the domestic economy more difficult in which to engage in safe and sound banking and products and services, whereby this serves as bank management's excuse to justify those instruments' use. Thus SIFIs have been using OTC contracts and derivatives to attempt to cover for the deteriorated commercial and economic contraction that's been obscured by QE and the *Financial Crisis* but without the regulators restraining these operating activities proliferating these unstable financial engineered products. As a result, the risk increases from the eroding operating condition of the SIFIs, the more bank management resorts to these instruments deviant from safe and sound

banking products and services. And although what had been our business-as-usual economic policy before 'free' trade and de-industrialization, now our economy has become more hostile for writing better quality credits in our domestic banking market **(ALSO NOTE 4, 5)**.

Notwithstanding, OTC contracts and derivatives are said to offset risk encountered in the difficult economic environment. Offset takes on the nature of the ISDA banks writing derivatives and OTC contracts on these eroded exposures, and with counter-parties in the same condition and markets - sharing that 'coverage' of those souring credits. In the past management wrote more careful/credit-worthy loans, and/or securitized the loans, or put them in structured product, or altered the nature of the loan type and exposure in order to keep the business on the books, and/or restructure the loan if went underperforming or nonperforming. Overall anyway, banks had practiced asset/liability management, and had managed their loan portfolios and assets in order to take advantage of interest rate movement.

All of this seems to be a diminished, passé commercial science, now with the dominance of derivatives and OTC contracts that the Fed anointed deference (to these and ISDA) as if it is a silver bullet, while heavy writers of, and Balance Sheet inflators using these instruments have to prop up their Balance Sheets with borrowings and/or at the present time, the Fed's Quantitative Easing. We see this in the Fed's attitude about these former contingent liabilities, with little effort to regulate or restrain the proliferation of these. Notional value at one point had plumed to greater than $780 Trillion according to ISDA website information. Recently according to the OCC Data from the Office of the Comptroller of the Currency shows that the top four U.S. banks — JPMorgan Chase, Citigroup, Goldman Sachs and Bank of America — have more than $210 trillion in notional derivatives exposure, or about one-third of the global total. (13Mar14 American Banker, Mayra Rodriguez Valladares, MRV Assocs "Derivatives Transparency Is Essential to End TBTF" http://tabbforum.com/opinions/derivatives-transparency-is-essential-to-end-tbtf?print_preview=true&single=true.)

Important to remember also about *Financial Innovation*: the fair valuing of these Balance Sheet items in rising markets or higher traded process, produces unrealized non cash gains through the Income Statement or Comprehensive Income. Management may use either one to make representation that it has done a better job, earned more revenue, and thus justified paying itself more, with little to really discipline that the 'financial innovation has done little more than inflate banks, make them more vulnerable to financial market correction, make the financial system interconnected and 'fragile' and line management's pockets with the huge gravy train of all of this which has made SIFIs and ISDA banks appear to be more 'profitable' and more powerful.

In addition to financial and economic dominance, in reality *the goods* Paulson et al, were/are protecting is this: if of many Trillions of dollars in Derivatives and OTC contracts management runs even 1 basis point of the fair value gains of these through their Income Statements, while these ad hoc contracts shadow price (ie mark-to-market) based on the upward moving markets, agency doesn't want anything goring this huge gravy train from the fee income both from trading and writing for clients, as well as those Fair Value gains through Other Comprehensive Income "OCI" or the Income Statement produced from 'shadowing pricing' based on the rising or stable markets. And with the US ISDA banks' ability to abuse power, they were able to obtain the White House as their protector. This sort of abuse of power is **an *elephant in the room*** driver behind the 2B2F.

Rather than repairing to higher ground albeit from an earlier era, Fed and FDIC effective examinations eventually were diminished or eliminated while disciplinary supervision on the SIFIs also has gone the other way. That has aided and abetted management and the derivatives and OTC contracts product line, and thus its economics; trillions of dollars are now tied up in these instruments as assets and their flimsy, cheesy revenue streams. This also gives the ISDA cartel the appearance of revisiting a form of financial feudalism. Consider ad hoc contracts and their nature deviant from an accountable framework in commercial banking and the financial sector which the Fed has permitted as the "Good" cop or *Sheriff-of-Nottingham* enabler, while the FDIC is along in this theater as the *straight-man* or 'Bad' cop or now the executioner to carve up the 'carcass' ie a SIFI in need of 'resolution'. The feudal, agency self-dealing nature of the ISDA cartel's largest members as enterprises, their relatively new ad hoc contracting power, and the calculated and deliberated crippling of the financial system, in effect for ISDA as the "*Gate-keeper*" to insidiously dominate, it also enables them to enjoy 'free-rider' exploitation of the (like feudal lords with fiefs), financial markets directions' and volumes, except for wicked backlash in a severe financial market correction. QE has neutered this, although the economy is in bad condition and the financial markets should be correcting and far lower than they are, except for QE and pump/dump strategies sometimes spurring volatility.

So this threat of resolution could actually be well-played theater by the FDIC with all the verve they can summon, developing an NPR to solicit comment on power it has, but have not used on the largest financial institutions because unless SIFIs had been merged into chums, they've always been too connected and favored to fail and got "**Big**" as a reflection of **that**. Or a SIFI will get blown-up using a tactic that produced Lehman or Bear Stearns or perhaps the Drexel or Bank of New England pattern, into which the media will be given ring-side seats and fed full of information and some disinformation. This perhaps would include media to create a climate of *witch-hunt* before or after a SIFI's plug is pulled, such as what happened to Bear Stearns.

These ISDA cartel gloated in 2007 when their gamed profits were record-breaking, except the gains run through the Income Statement were unrealized, noncash gains. These were not producing operating cash flows like those produced from performing loans, which they weren't writing those either. They had to take charges on their poorly underwritten loans as well as fair value their Balance Sheet items, shadowing pricing the financial markets while in 2008 and 2009 the markets were correcting severely, producing huge losses and needing bail-out from Treasury and liquidity arrangements and capital support by the Fed and FDIC. The FDIC and FASB also changed the capitalization for intangible items in capital calculations, and delayed accounting rules implementation to help many of the ISDA banks survive rather than collapse **(NOTE 5)**.

Where the FDIC disserves itself and defrauds itself and SRAC, and the public however, is to attempt to marshal through this pretended *new* regime of Title I and Title II of DFA while it appears as if it also is no longer really regulating, including examinations of SIFIs as we discern in the NPR under comment here. Both the Fed and the FDIC disserve themselves as mercenaries, again aiding and abetting the ISDA cartel and their puppeteers (the people who because they think they have the 'gold' they also make the 'rules').

***With regard to SPoE for OLA discussed in the NPR, what is appearing is as if it has either walked away from the SIFIs, isn't regulating the SIFIs, and we know that SIFIs are no longer examined in the way they' been in the past, now that they're in the Comprehensive Capital Analysis and Review ("C-CAR") program. *** If the FDIC fails to regulate and enforce against poor products and practices, when it had and has the power to do so, again we get Moral Hazard. Apparently of late of the SIFIs, the FDIC seems to deflect doing its job as a regulator on an on-going basis. Further, if a SIFI ends up on the ropes, the SIFI still doesn't want to end up in court, litigating the FDIC when it's not been properly examined or punished, and now nearly blown-up and at risk for triggering Title II and getting carved up.

The FDIC should have done its regulator job, but like the Fed hadn't been held accountable and enjoyed Teflon during, and while in rampant Moral Hazard. We see the degree of Teflon because after the last financial crisis, neither very many bankers nor very many regulators got booted from their offices and roles. Evidently very politically controlled, the OTS (Office of Thrift Supervision) seemed to be the only casualty when merged into the OCC (Office of the Comptroller of the Currency). In reality this merger happened because with the economy in bad condition, the commercial banks are coveting, and thus have absorbed the annuity characteristic of the mortgage paper of the housing finance industry. Both also are under the Treasury department which now can cut out an administrative cost, while also running pass interference on any serious due diligence on the OTS's and Treasury Department's role in the housing market/finance bubble and collapse. And meanwhile over the past few years, the media and economists make a big deal about mortgage writing and housing finance and construction spurring and driving or at least jump-starting our vast economy. This is disgraceful that what in the past had been such a relatively small sector in comparison to US production, now is considered a 'driver' in the economy - and it cannot be off-shored! Foreign institutions however bought a fair amount of that paper and those securitizations such that the US runs risks if many homeowners default.**(NOTE 6)**

So to repeat: from what I'm reading in the NPR, the FDIC has been and still is hands-off SIFIs, and in that avoiding to regulate, it's not doing its JOB, when its JOB as the deposit insurer is to **Regulate** including On-SITE EXAMINE in their former manner. The FDIC as the insurer, is to regulate and has to regulate, enforcing action at all levels of capital as well as PCA and includes on-site examinations by examiners (**NOTE 4, 5)**. It and the Fed need to regulate rather than hands–off/light touch as protector of *financial innovation* –a multilateral version of Feudalism in banking.

The FDIC is saying in the NPR that it's allowing a SIFI to slowly erode in effect to a point of failure, while it and the other regulators also have been allowing unsafe and unsound banking practices. Granted this has/is happening while the economy too has eroded as a result of flawed federal policies elevating multilateral interests such as deindustrialization and 'free' trade, over the voters' interests and the US financial system's stability and health. In this NPR moreover, the

FDIC is saying what it's going to do on the back-end in the collapse and resolution; this was what in the past it had done all along. And because it's job was to be more 'hands' on in its regulating and is to do as regulator ordinarily, and did on the front end in the examination and enforcement role, such as administer enforcement of PCA including using Memorandum of Understanding "MOUs", Written Agreements, and Cease & Desists ('C&Ds"), including removing management if it had to do that, etc. (**NOTE 5)**

But that's not done now. A SIFI gets hands-off treatment, as if to ignore its antics, ignore unsafe and unsound practices, flawed products like this era's version of CDO2s, etc, and with their C-CAR filings, their Resolution plan filings etc, they have been allowed to operate in the condition that would foster collapse when a crisis occurs **or** either it is blowing itself up or is DEEMED to blow itself up. And finally at that point, the FDIC says in the NPR that it finally will do a job given it in DFA? which actually since before DFA it had had, but hadn't been doing of late, it hasn't doing on the SIFIs, but up to and until (When? It's hard to determine when their regulators stopped examining them for safety and soundness) the SIFIs also had been examined and more aggressively regulated. Then there came the past credit bubble and now C-CAR 'policy' came in and they get less effective regulation with the Fed as the passive but dominant regulator and legislation and DFA.

Moreover, as I'd mentioned earlier with regard to any of this NPR and what the FDIC is proposing in this NPR, the Fed seems to be non-existent and missing in action completely even though the Fed is the BHC 'regulator'. Not even a single person from the Fed is among the names mentioned as …INFORMATION CONTACT. FED IS MISSING IN ACTION FROM EFFECTIVE REGULATION, NOT ONLY IN THE NPR (even though granted, it's the FDIC's NPR), BUT IN THE RESOLUTION PROCESS ACCORDING TO THE FDIC in the NPR. WHAT IT ALSO SEEMS IS THAT THE FED IS MISSING IN ACTION IN THE REGULATORY ADMINISTRATION AND ENFORCEMENT ON A SIFI, EXCEPT FOR C-CAR AND RESOLUTION PLANS, like it doesn't want to spend money and use staff to properly examine a BHC or FHC all of which it regulates or correct me if I'm wrong, the Fed "supervises". In reality, although the Fed is the 'regulator' or 'supervisor' of BHCs and does that for the smaller BHCs, although in the former, thorough way it avoids examining the SIFIs, meanwhile extracting their capital plans, stress tests (C-CAR) and now their DFA Title I Resolution Plans.

Apparently system wide there is break down in the legislation quality, regulating, regulatory framework, and the quality of regulation, and functional, timely enforcement of, and arguably more moral hazard now in the sector and on our SIFIs, our 'National Champions', our TooBigToFails, our largest financial institutions in our financial sector – a breakdown. Only a few of the SRAC would understand this, and perhaps they think effective regulation and timely enforcement that needs to be happening all along is seemingly passé. This also is Moral Hazard and has Moral Hazard discernible in what the NPR is describing and what are represented as the FDIC's *new* powers by way of DFA in Title II. In reality the FDIC in substance already had this resolution power over the depository institution. Whereas the Fed and creditors actually have power over the H/C to force bankruptcy, the subs if in better health are able to remain operating, however this would need coordinating among the financial regulators but has been done in the past (The One Bancorp aka "TONE" discussed later in Preface). In any event, no 'resolving' is done without the FDIC, so there is a hidden agenda here. **(NOTE 9)**

Moreover, the FDIC and the Fed seem to have some sort of political conflicts with each other, as in a turf war about dominance; the Fed has been given/granted the undeserved preeminence as the banking and financial system regulator. In the past it somewhat passively exercised this power without direct language in statute, but with GLB and DFA, its protectors obtain language in federal statute that confirms it as lead regulator over the financial system.

Itself originated in early 20th century multilateralism, contemporaneously the Fed also has been supportive of the multilateral/European regime of Basel Accords **(NOTE 3, 5)**. In thwarting or shunning (usually) FDIC enforced safety and soundness regulation and PCA, the Fed has facilitated putting the largest banking enterprises at risk when accepting or permitting prolific use of instruments of unsafe and unsound banking, conflicts which are abusive to all stakeholders of the US financial system. With a hand in this moral hazard, the ISDA cartel and the banking lobby lobbied for expedience, breaches or favorable largess in financial and banking regulation and the Fed has aided and abetted as the tacit conspirator when accepting SIFI excuses that derivatives and OTC contracts are 'risk-shifting' and thus maintaining safe and sound banking practices and products, when the contrary is the case.

As a result I characterize this as confusion. At the very least we see inconsistency, veiled caprice the FDIC calls "discretion", and another reason why I suggest we're seeing Moral Hazard – because we're seeing in this 'free-rider' /financial innovation pass the Fed gives to the SIFIs/ISDA cartel - a form of contemporary Feudalism in action. Notwithstanding, no SIFI itself should flirt with moral hazard, such as pushing the envelop rather than operating in safety and soundness, whether or not the regulators are doing their jobs and trust the Fed or misunderstand the Fed and FDIC.

Recall moral hazard arose in the past when we saw conflicts existing between regulators, and whether or not under the laws and regulations the regulators are conducting themselves according to rules on which it and the public agreed. The FDIC has had to back down from administering enforcement and administering and enforcing PCA; the Fed avoids enforcing PCA or protects unsafe and unsound banking practices so characterizing those of which in product form as financial innovation. Meanwhile the financial system is increasingly vulnerable from the proliferation of these ad hoc contracts that ISDA large bank cartel are writing and trading, as well as inflating their Balance Sheets with them.

ISDA however is not a government. If a US ISDA cartel member is facilitated to blow itself up, rather than that management ride herd on and keep on top of its franchise by writing virtually no derivatives and OTC contracts, the Germans **(NOTE 7 and Appendix – p62)** and Japanese ISDA banks which don't even think about or consider their TooBigToFail as that, will enjoy their governments' protection. Unless the FDIC and/or the Fed begin again to really regulate, our blown-up bank faces 'resolution' ie, forced break up and bankruptcy including DFA Title II. **Looks like a covert enemy ambush using our own to do the hatchet job.** Not like I'm defending our SIFIs as our National Champions; not by my support are these their present size and enjoying their ability to abuse power **(NOTE 1).**

Whereas the US uses/had used a fairly robust, decent quality regulatory framework, including relatively thorough on-site examinations and ratings (CAMELs: Capital Adequacy+ Asset Quality + Management Quality + Earnings Strength + Liquidity Sufficiency and Quality + Market risk (more recently) also mentioned on p.12) from that, along with scores derived from banks' quarterly financial reports filed with the banking regulators, even SIFIs were required to comply with all of this. Leverage ratios were included in this regulatory score; in federal statute leverage ratios were included in the regulation resulting from FDICIA. As I'd mentioned, this memorialized the FDIC's practice of seizing and resolving distressed or failing banks or thrifts. According to statute this regulatory practice came under PCA, which not only addressed matters of increasing capital erosion, but also at any capital level addressed enforcement against unsafe and unsound banking (and management) practices and products with MOUs, Written Agreements, and Cease & Desists ("C&Ds") **(NOTE 5)**.

The EU and most other European countries had virtually none of this circumspection to this degree, if at all. These giants enjoyed and enjoy (now in Germany but until the war beginning when Germany established the EU the other banks also) *kid glove treatment.* Only when in a serious problem, a bank in those geographies faced nationalization or those governments would merge into another financial institution. And, while condemning Basel as a Trojan Horse for a regulatory framework, except for *Grossbanken* and Germany, Inc (with a highly integrated and industry oriented banking system – (**See NOTES 2,3,7; Appendix: Hartrich, 1980 p.224.)** the current condition of the banks of countries ignorantly having joined the EU and having to comply with Basel Accords, proves my point (for many reasons) rather than disproves it. End this note of this material in this section)

Based on a November 2013 OpEd Dr. Simon Johnson had written for the New York Times related to our banking issues, I emailed him a reminder about familiar territory to him, such as the problems the EU National Champions present to Europe. He is correct in his concern about achieving any complete results with Germany and other sovereigns about breaking up 2B2F of which Deutsche Bank and Allianz and perhaps Commerz Bank are among those National Champions. Again, I have found in research long standing German policy is showing it has a practice of appearing to co-operate when that would cut against its grain, while shrewdly manipulating its peers, counterparts and allies to stay its own course for its own self interests. (**NOTE 7, Appendix)**

If we break up our 2B2F without dealing with what are parts of the abuse of power problem, AND if we continue to allow foreign interests to operate aggressively and to acquire US enterprises, with our 'resolved' banks among them, we trash yet more of our sovereignty and are playing into our adversaries' hands to dominate our economy, its resources, our society. Moreover we didn't need to, nor do we need to help adversaries' dominations by allowing our largest financial institutions to be a part of ISDA, engage in and load their balance sheets with unsafe and unsound banking practices

which more easily will be weakened and on the behalf of hidden interests, the regulators will make an argument to have to resolve a SIFI, when our adversaries NEVER will agree to get rid of 2B2F/National Champions and take apart any of their largest banks, but will support us doing that to ours.

OBSERVING PREVIOUS 'CRISES':

Unlike the Europeans and most other developed economies, the US has a history of resolving depository institutions. Recall mention of allowing The One Bancorp Holding Company in Maine (aka "TONE") in 1989 or 1990 to go bankrupt, while the insured bank and thrifts subs continued to operate independently, not in a bridge bank or sold to buyers in a Purchase and Assumption.

The real estate tax changes from the 1986 Tax Act and that recession also contributed significantly failures of a number of other banks of all sizes including the Bank of New England. After that legislation and the Fed increasing interest rates, in New England like many other Balance Sheets, that of the Bank of New England's became loaded with sour real estate assets (from a fair amount from speculative building) and nonperforming mortgages. The regulators required it to take aggressive charge-offs, some of which was heavy handed for documentation reasons, but **perhaps** also was heavy handed, **knowing** the charges in their impact to Bank of New England's capital would trigger a crisis and was looking to obtain that. **(NOTE 6)**

Later that week institutional depositors electronically withdrew over $1 Billion, triggering the FDIC over the week-end to seize ie, enter its resolution phase and shut down the Holding Company while running the branch franchise. The FDIC established a bridge bank, and stabilizing the status, unwound a large trading book. Then it bid out the franchise to Fleet with Kolhberg Kravis Roberts ("KKR") money capitalizing Fleet to handle the size of the Bank of New England even after unwind of some of the trading books.

Many 'regulatory' mergers (or pre-resolutions or 'forced' combinations) happened after economic crises. For example the Volcker era Fed monetary policy constricted the money supply which spiked interest rates above 20% for government debt. While the Volcker Fed was attempting to mitigate what the oil-shock produced, price levels increases reached double-digits while, the financial system experienced relatively serious calamity. That dramatic Fed policy shift produced both solvency and liquidity problems at many FDIC and FSLIC thrifts with Balance Sheets full of fixed rate mortgages and capped interest payout on their deposits. Each regulator used different strategies to prop-up or 'resolve' failing institutions. For example, although this will no longer work for a TooBigtoFail, as had been their practice while getting TooBigToFail, the FDIC (and with or without the Fed and the Comptroller ("OCC")) would 'shop' the shop to a healthy neighboring bank or thrift to acquire the deposit franchise. Upon finding a bank or thrift that would accept the franchise, the FDIC over the weekend would shut down the failing institution and re-open on Monday under the assuming bank or thrift. If there wasn't one of those friendlies, the FDIC would liquidate it and pay out depositors. This isn't very frequent and usually there was another local bank or thrift willing to take on the franchise and pay the FDIC for the deposits.

FDIC thrifts were offered regulatory capital instruments called "Net Worth Certificates" for solvency purposes. These over time were to be paid off by earnings, or earnings would provide sufficient capital to retire those Net Worth certificates –or when able, would raise capital unless a buyer acquired the thrift and paid the FDIC for the Net Worth Certificates.

That era's Fed policy also contributed at that time to producing a number of (in most cases) chummy wallstreet mergers. Regulators some times however, allowed non-banking financial institutions to fail, such as Drexel in early 1990s. That bankruptcy had a long unwind. Unlike that and the Lehman example, generally again wallstreet tended to be more likely use buddy/chummy deals as in the case of the wallstreet combinations of the 70s, such as White Weld merging with Merrill Lynch and even later with Prudential and Bache, or Shearson Loeb Rhodes with Lehman and American Express.

And in 2008 we later permitted Bank of America to acquire Countrywide AND Merrill Lynch, or JPMorgan Chase to acquire Bear Stearns with a generous government cover for sour assets of Bear Stearns. We permitted Goldman and Morgan Stanley to feed from the Fed as Lender-of-Last-Resort when they were able to obtain BHC 'charters' although prior to Glass Steagall in their prior lives they also had been both bank and investment bank. That model of investment banks and commercial banks in a single structure had existed until Glass/Steagall, although perhaps other vestiges of checks and balances prior to Glass/Steagall had been included after Congress in 1933 passed the Federal Deposit

Insurance Act such as some 'cap' on franchise size. And Bank Holding Company legislation didn't appear until the 1950s, which speaks to the measured, stable dynamics of the sector after Glass Steagall and even after BHC legislation.

Even though until only slightly more than a decade ago these investment banks were partnerships, Corporate personhood has allowed a great deal of gentle treatment to the most powerful American enterprises. These financial and banking corporate 'persons' as a sector are a greater percent of the economy and US commerce, and also enjoy a great deal of power. (**NOTE 6,8**).

We see some examples of the power of wallstreet in this regulatory change: until 1993 the New York Fed also exercised robust oversight on the largest US and foreign broker/dealers operating in the US which sold Treasury securities. Known as "Dealer Surveillance", the New York Fed aggressively monitored this group of enterprises which engage with the Fed in Open Market Operations including buying and selling Treasury securities respectively from and to the public and capital markets. As an example of Moral Hazard, using a contrived Treasury debacle, the President of the NY Fed Gerald Corrigan eliminated Dealer Surveillance; that oversight may have been a careful vestige of pre-Glass/Steagall days when investment banks and commercial banks were one in the same. Elimination of Dealer Surveillance however reduced constraint and strong supervision over the aggressive behavior of these largest Dealers.

Over time we've attempted to avoid flawed regulatory steps that were at that time hinting of potential moral hazard. Although it too has its weaknesses, under PCA we have a strong framework of fairly successful regulation for enforcing safety and soundness, as long as the regulators properly enforce that. Agency at ISDA banks over the past 14 years however has launched into flawed, unregulated products and services deviant from ordinary performing loans, rampantly writing ad hoc contracts legitimized by CFMA and given Balance Sheet access after having been contingent items.

A few of us have experienced 'isolation' and had been marginalized however, when we condemned lurches into what would become future problems which we understood to proceed by way of cause-and-effect.

For example commencing with the "Strong dollar" Fed Monetary policy during the Volcker era, and then the Bush/Clinton - NAFTA phase (North American "Free" Trade Agreement) the US economy and the banking environment from flawed policy were beginning their path of de-industrialization/self-immolation **(NOTE8,9)**. Enron's Senator Phil Gramm, former Goldman Chair and Treasury Secretary Robert Ruben, and then Council of Economic Advisors chair Larry Somers, along with the Fed Chairman Alan Greenspan, obtained the CFMA for trading these contingent contracts. These contracts didn't originally have Balance Sheet access as assets and liabilities. By enabling these contracts to trade, CFMA legislated their legitimacy to asset class status and acceptance as if these were safe and viable banking products and services. Experts such as then CFTC chair Brooksley Born strongly opposed CFMA because there was virtually nothing institutionalized to effectively supervise or serve as oversight for these contingent contracts, Credit Default Swaps ("CDS") and similar ad hoc and lawless contractual arrangements if traded and if including commodities. She opposed enabling these contracts to trade whether or not CFMA was proposed as a legislative move to bless what the Fed was deeming as financial 'innovation' for its ISDA cartel.

Herein again we see Moral Hazard with these unstable instruments even with 'off-setting' or netted contracts with themselves and counter-parties, which are counter-parties' financial sector feudal forms of financial nuclear waste on each other and society. Using these instruments, ISDA banks were inflating their Balance Sheets writing and trading these new assets but virtually without any constraint or regulatory framework. From one quarter to the next if traded or otherwise, with or without inflation, but needing at least flat but preferring upward moving markets, from quarter to quarter these instruments like crops yielded cheesy gains, 'revenues', and 'income'.

Thus, for Alan Greenspan and others like John Mack and other high- salaried SIFI CEOs to say that they didn't know or mischaracterize that they didn't understand what was happening while it was happening, is disingenuous and disgraceful. Or they're indicating they were less than competent in their roles and/or didn't belong in their roles, and were only there out of vain ambition, and society suffered at their hands and for their ambitions.

<u>With Regard to the NPR on SPoE (FR</u> 76615 Federal Register / Vol. 78, No. 243, 18Dec13**)**
This NPR discusses "Resolution" and "resolve" such firms when bankruptcy would have serious adverse effects on financial stability in the United States. After consultation with public and private sector stakeholders, the FDIC has been developing what has become known as the Single Point of Entry (SPOE) strategy to implement its Authority. The purpose of this document is to provide greater detail on the SPOE strategy and to highlight issues that have been identified during the development of this strategy."
(Quoting –for convenience from– "Anatomy of a Bank Failure by Staley Ragalevsky and Sarah Ricardi, Dec 2009 in The Banking Law Journal, a bank 'failure' has adverse consequences on account holders with balances greater than the deposit insurance limits, vendors, officers with open/unfunded comp contracts, borrowers with partially funded lines of credit and % of completion loans, other banks in loan participations with the bank, landlords with lease arrangements with the bank, counter-parties with continuing contract representations or warranties under asset sale agreements, and any counterparty with claims for damages against the failed bank.

Whereas the Fed 'regulates' bank holding companies and insolvency of these holding companies and non-bank subs are governed by the Bankruptcy Code, exempted from the Bankruptcy code are insolvency of banks and thrifts over which the FDIC has had resolution power except now it is in federal statute and includes targeting the largest financial institutions. In the past a bank or thrift of any size, if in distressed condition, wasn't acquired by a stronger, more healthy financial institution, smaller ones were seized after they were pre-bid.. and "insolvency was/are administered by FDIC using a non-judicial, administrative process with (discretion and potential caprice (Ragalevsky and Ricardi 2009)). The largest financial institutions however with very few exceptions were urged to get acquired **(Note A directly at end of NPR comment; Walter, "Closing Troubled Banks")**. Over the decades of this sort of 'consolidation' in the sector, the Fed didn't force divestitures of subsidiaries to prevent larger size while US banking law actually didn't facilitate nationwide commercial banking until perhaps Gramm Leach Bliley or perhaps after Riegle Neal 1995 legislation that allowed nationwide branch banking.

Also with the continued erosion in the quality of fair government for all US stakeholders, and sadly the FDIC has also been among the casualties of this commercial and cultural war, I pondered the nature of the Charter of the Federal Deposit Insurance Corporation. In the US, corporate law is administered at the state level. There is no 'federal' corporate law to my knowledge. Even though the FDIC was established by law, an act of Congress, I am not certain what the true nature of its function is and what constrains or disciplines its functioning, given this crack in the legal system that this corporate charter seems to enjoy. There is a tendency for discretionary forces to co-opt what on the surface may appear as benign, such as providing deposit insurance to protect small account depositors regardless of the location of the IDI. And in part because there is a lack of definition that would describe the repudiation powers in its discretion and the power in that it enjoys – granted this NPR does go into some discussion about the process which among the IDI's exposed parties come out whole versus face damages. These repudiation powers actually can extend to derivatives and OTC contracts.

In a way, I'd support that, but the FDIC can make an issue about that in a stand-off against the Fed and ISDA cartel, rather than destroy a SIFI, because of politics between it and the Fed –although Oz face Fed – has other powers to which it answers, and the FDIC itself didn't go the lengths for itself to thwart the Fed's and its handlers' Inflate/Collapse perpetrations using OTC contracts and derivatives.

Meanwhile the FDIC enjoys power not only under the FDI Act, it also has additional but undefined in this NPR, power under FEDERAL COMMON LAW. This should be defined, cited and link provided – that gives the FDIC special power to limit or defeat affirmative claims and defense assertions, and with the extensive power the FDIC can exercise these without prior notice, hearing or judicial review <Ragalvesky, Ricardi 2009 p892> I see risk for overconfidence and presumption of these regulators, and FDIC or Fed caprice or ad hoc selectivity favoring some unsecured creditors or large depositors over others, or favored unsecured creditors could sneak-sleaze in as FDIC administrative expenses as receiver, or large denomination depositors.

Meanwhile powers greater than the FDIC have the FDIC destroy a very large, very interconnected financial institution because that SIFI was targeted like Bear Stearns or Lehman to be winnowed from the playing field of larger US IDIs and foreign aka "National Champions". Thus because these sorts of frameworks haven't been better defined and referenced with links in this NPR, and perhaps they are hashed out elsewhere in the NPR processes for OLA or Resolution Plans

and one would have to do that spade work, rather than only comment on this NPR for SPoE, I suggest it leaves this NPR insufficient.

Perhaps many other people providing comment already take for granted the concerns I express above, however, whereas I opposed indulging abuse of power and associated increased size of these very large financial institutions aka, SIFIs, ISDA cartel, etc, I also oppose any sort of vandalistic, controlled maniacal albeit gentile hatchet job to rid the US and the World of these abusers of power also known as "TooBigToFail" when the FDIC is guilty in their size and ability to abuse power.

Given the way things have gotten worse and we have DFA and FSOC without repealing flawed legislation such as clauses permitting Credit Default Swaps, and Commodity Futures Modernization Act 2000 permitting Derivatives and OTC contracts to trade without any regulatory framework or oversight because the Fed and other inside powerbrokers deemed that financial engineering as 'Financial Innovation', rather than prohibit it trading at all. DFA won't solve this.

Meanwhile, owned by its member banks the Fed has enjoyed some *Cinderella liberty* when the discipline has been handed out. It also concerns me that when there is accountability for a failure to regulate properly, that the voters and taxpayers are said to be protected from miscreants and incompetents in our commercial environment, however little to nothing has been done about the moral hazard the voters/taxpayers are encountering when neither the FDIC nor the Fed themselves are effectively disciplined, nor are they effectively disciplining and administering effective regulation except in capricious, ad hoc ie 'discretionary' ways.

This gets us to where we are at the present time and why this NPR is issued and how it is that DFA exists and put this new feudal council, FSOC (Federal Securities Oversight Commission) into federal statue. The Europeans and the Vatican must be in stitches about this; FSOC is so up their alley.

Circling back to this NPR, the FDIC provided no "Definitions" page and in "Background" provided no history that would discuss history of other Resolution options and associated legal issues that could arise and are not deliberated here in the public Due Process. For example the FDIC does have a robust history of resolving distressed or 'dead' Insured depository Institutions "IDI" however mentions very little which could be indentified by reference with links in this NPR. Moreover, Prompt Corrective Action "PCA" **(NOTE 5)** means administrative/regulator criticism of management operating activities and decisions at any level of Capital. It also includes taking steps to recapitalize such as Rights Offerings or 'bail-in' strategies such as obtaining capital from instruments that trigger by regulator or eating through capital levels and their associated ratios. That at all isn't discussed or cited , however, as a part of effective strategies to address problems in an IDI of any size with the use of Memorandum of Understanding "MOU", Written Agreement and Cease & Desist "C&D".

After an IDI is seized, and it hasn't been pre-bid, as in most arranged 'resolutions', a bridge bank is set up as in the case of Bank of New England. At that time, this was actually the largest failure of an IDI. Although the NY Times article said this is the costliest 'bailout' in history the FDIC didn't bailout this bank by infusing Open Bank Assistance. Using its 'bridge bank' practice, the FDIC kept open the $21B bank and largest subs, while covering all deposits and unwinding some of the FX contracts and similar exposures, and bidding out the Bank. Eventually Fleet came forward with KKR having provided capital support to Fleet because Fleet's condition also was poor at that point. This NPR discusses none of this, while this had been a bridge bank of a seizure of one of the largest banks in the US and 2nd largest bank in New England.(http://www.nytimes.com/1991/01/07/business/us-is-taking-over-a-group-of-banks-to-head-off-a-run.html?action=click&module=Search®ion=searchResults%230&version=&url=http%3A%2F%2Fquery.nytimes.com%2Fsearch%2Fsitesearch%2F%3Faction%3Dclick%26region%3DMasthead%26pgtype%3DHomepage%26module%3DSearchSubmit%26contentCollection%3DHomepage%26t%3Dqry15%23%2F%2522Bank%2520of%2520New%2520England%2522%2520and%2520FDIC%2520failure&pagewanted=all)

I also oppose the funding for OLA by assessing community banks and thrifts with tariffs. Whereas they often have SIFIs as some sort of correspondent, but punishing all of those smaller than SIFIs, capriciousness that it likes to characterize as discretion, but also shows that disciplining and enforcing punishment would be more affective without having to punish smaller, well run member banks and disrupting the financial system and counter-parties, Unless all of this is being done to make the members smaller than SIFIs sell, merge/consolidate to make it easier for foreign banks to operate in the US. The US has a larger financial system, and more defused than many foreign jurisdictions. Those foreign ISDA banks want more of the US financial system and this sort of shrouded caprice and threats of sudden disruption project a very odd and somewhat disturbing image of the FDIC, more than in the past.

My takeaway also is concern about its enthusiasm to want to foist a resolution onto the private sector. Additionally whereas DFA says that Title II resolution prohibits taxpayer loses, shareholders and creditors also are tax payers and the FDIC is talking here about shutting what is at least an adequately capitalized financial institution except for its netted derivatives exposure which actually then the FDIC and Fed are guilty of allowing these exposures as unsafe and unsound banking services/products. Even if by the Fed characterized as *financial innovation,* there is a limit that banks can write and hold that is beyond safe and sound, even if a matched book which the FDIC and Fed seem to have abstained from constraining. Consider also that these shareholders experienced financial market corrections which would have taken the stock price down; retail, buy-hold long term shareholders tend to not want to sell a stock while the price is in correction and end up riding it sometimes to the bottom. This is 'ugly' while the FDIC is looking for the private sector, made up of institutional and retail investors, to be there for its 'cashout' ie, IPO of the bridge bank.

Meanwhile, when a bank triggers some dangerous level in PCA, it is to exhaust all means and even the FDIC to reach capital levels that consider it adequately capitalized. This includes filing requests for Open Bank Assistance. Conceptually, for the FDIC to attempt to shut an adequately capitalized IDI or fail to discipline it while its capital and financial health are deteriorating, the FDIC is breaking regulation under which it has operated as well as well as the public assuming functions properly when we're seeing it not administered in the case of these largest IDIs.)

"We are seeking comment on this strategy and these issues to assist the FDIC in implementing its OLA responsibilities." (Perhaps if people really knew what had happened in the US financial system after the 1929 stock market crash which happened when our Fed and financial system were encountering a contracted money supply after we lent money to Britain and Germany, and gradually banks failed (and the number of failures seem large however we had 40,000 or 50,000 banks at that point so 400 failures or so a year of small banks and thrifts seemed like a great deal) and the US went into a 'depression' during Hoover's administration. It wasn't until Roosevelt was elected however and in 1933 when the inner circle of power brokers to which the Fed AND the President answer, that Roosevelt in the spring of 1933 had an advisor, and list to close THOUSANDS of banks, many of which were not members of the Federal Reserve System, to remove those non members from the ranks of banks the people had and had used, while consolidating Fed power and economic power into fewer hands. THIS ushered in the GREAT DEPRESSION. Most of the public information is error-riddled, and public experience were the serious economic contract and damage to the wealth of probably 99% of the people but not the very wealth, but most were/are unaware of the purposed destruction - perhaps a form of asymmetric war perpetrated on the US after Europe had been the turf of military war little more than a decade before which barely touched the US and certainly not our continent. Wanting to remind the reader(s) that policy at the federal level (and multilateral policy effectuated in the US starting at our federal level) produces national problems, this gets us to where we are today. Actually the commercial and economic health of the US are still quite bad and potentially more broken to handle a 'resolution' than if left be.

In part because there seems to be this sort of gentile Marxist vandalistic mentality at our regulators as well as some of our financial and economist elites that target our largest financial institutions in some cases which have slowly eroded in health – and the FDIC has had a hand in that slow erosion of those IDIs - people are not going to have any bearing on OLA other than what the FDIC provides in this NPR and from the high profile media/TV reporting about the decade after 9/11. And understand for more than a decade ago, before it was fashionable to mention "Too Big To Fail" -**(NOTE 1)**, I'd challenged this abuse – Too Big To Fail as an abuse of power perpetrated on the US financial system and the voters.) The FDIC has not asked for public comment on solutions for the financial sector or about the potential negative impact and negative- contraction ripple effect on counter-parties as these also often are SIFIs, but generally its high profile chair Sheila Bair has been very public about her support for hiving up the US based ISDA banks. She never during her career anywhere however, opposed <u>any</u> bank merger and during her watch allowed JP Morgan to acquire Washington Mutual, Wells to acquire Wachovia after Wachovia acquired Golden West Financial, stopped Bank of America from acquiring both Countrywide, or Merrill Lynch, and she could have opposed ALL of these mergers by IDIs. Granted these mergers were in distressed times, but the FDIC facilitated that distress along with the Fed. Perhaps I will provide comment on those mergers however, now JPM, Wells and Bank of America all in size are near or greater than $2Trillion in assets. All the acquireds were in poor condition, however the FDIC had to power at the very least o condemn and block the acquisitions or force reduction in size of the acquired enterprises. It too has allowed and fostered Too Big To Fail, but with little aggressive effort to accordingly manage their interaction with the SIFIs except let the Fed lead on supervision on this group.

While it was engaging in 'discretion' during the meltdown, the FDIC had not asked for public comment to attempt to stop melt down… but it had a hand in producing the problems in the financial system and these IDIs. Granted it did ask for public comment on Resolution Plans (when in the 90s I worked on these, the FDIC called these "Business Plans" or "Capital Plans") and also on Orderly Liquidation Authority. Requiring filing of Resolution Plans however by SIFIs or the C-CAR IDIs already alludes to their condition that the FDIC deems them in distress. Only sophisticated, knowledgeable professionals who deal with the financial sector would understand that. Banks however were allowed to reach this condition, but also are able to and especially if they were more effectively regulated, come back from the condition for which the FDIC has them submitting Resolution Plans and now we see this proposal to cut up their activities after forcing them into a failure and 'resolving' them..

Bankruptcy can happen at the Bank Holding company level, but the FDIC in the past had closely regulated and annually examined the IDIs, and disciplined and punished those if those fouled-up. The Resolution of The One Bankorp, aka "TONE" had the BHC be forced into bankruptcy, while the IDI subs operating for years after that, although those eventually 'failed' and were seized. (TONE was a long time LZO client, which had helped Maine Savings go public as TONE, sold it some banks, and advised it in the recap, however it was an aggressive New England real estate lender and developer for residential and vacation properties, while the Tax environment was enabling).

Thus there also is no need to subject the largest institutions to the seizing and OLA upon a resolution, when the Regulators had and have the power to force management to not only raise capital levels, but to divest of subsidiaries that impede or diminish operating quality, in order to achieve safe and sound banking, and shrinking the Balance Sheet. The FDIC however tends to not do this to the largest banks and this gets us to DFA Titles I and II (OLA) Something seems disorderly, unprofessional and again vandalistic about failure to take action on the former, while looking for comment to do the later to a largest IDI… like the FDIC couldn't or wouldn't do its job right on the front end and now they want to render a global financial institution…

More like the 'pie' is shrinking because of flawed multilateral policy. The largest foreign banks also feed from the US as well as global 'pie' and feel cramped. Like Bear Stearns and Lehman were shut to shrink the number of players feeding on the shrinking pie, this too ie 'resolving' as SIFI and OLA and SPoE all fall into we're-going-to-have-to-do-it; which-one- it-will-be-will-be-our-choice-but-we-want-your-thoughts-on-the-front-end-while-we're-going-through-our-targeting-process. But-you-have-your-say-too; we-don't-want-it-to-be-too-sloppy-when-we-sacrifice-the-target. Remember-we have-to-take-out-players-feeding-on-the-shrinking-pie…So-sorry-but-this-is-how-it-is.")

It is disingenuous for the FDIC to say that " The financial crisis that began in late 2007 demonstrated the lack of sufficient resolution planning on the part of market participants. In the absence of adequate and credible resolution plans on the part of global systemically important financial institutions (G– SIFIs), the financial crisis highlighted deficiencies in existing U.S. financial institution resolution regime as well the complexity of the international structures of G–SIFIs.
(Going Concerns don't typically plan for bankruptcy and what their bankruptcy would entail; it sort of is a contradiction in terms unless the FDIC and Fed and OCC were slowly allowing their wards' conditions to deteriorate to this "financial crisis in late 2007" (that quarter after which the largest banks declared record-breaking earnings) and "lack of resolution planning"…What the NPR is saying is sort of disingenuous as I'd not only found and provided in my research for my Basel III opposition comment **(NOTE 2, 3)** in part that the FDIC was thwarted by the Fed from enforcing effective regulation on the books. Additionally since the mid 90s or at least in the public record in 1997 by Board Governor "BOG" Susan Phillips **(NOTE 5, 6- Enron)**, we learn in her speech to Fordham, that the Fed and other bank regulators are engaging in a different form of regulation, supervision and oversight. She calls it "portfolio based approach" or a "portfolio risk-based approach", or a "more 'risk focused' approach" whereby there are no longer examiners pouring over the bank, its operations, 'books' etc.

Whereas perhaps in some of the non SIFI banks FDIC did enforce PCA with MOUs and C&Ds, in the largest banks we see no effective supervision, regulation and oversight especially against *financial innovation*. This enabled the largest banks to inflate their Balance Sheets with instruments that had been contingent contracts that in reality are unsafe and unsound, and made worse when because these could be traded, and there had been some US GAAP accounting for them by way of FAS 133, but no regulatory framework, and now nothing impeded their proliferation, and thus in effect destruction of bank operating and financial quality and also safety and soundness.)

“At that time, the FDIC’s receivership authorities were limited to federally insured banks and thrift institutions. The lack of authority to place a holding company or affiliates of an insured depository institution (IDI) or any other non-bank financial company into an FDIC receivership to avoid systemic consequences limited policymakers’ options, leaving them with the poor choice of bail-outs or disorderly bankruptcy.”
(Although this is partly true, the FDIC has full right along with MOUs with other regulators to access any depository institution however would avoid to exercise the extra steps to discipline other financial institutions **(NOTES 2, 3, 5, 6 FDIC with WAMU and OTS and also other info in MOUs and notes in Basel III comment)**. Additionally the FDIC is expert at bank failure while having for years deferred to Fed on regulating largest banks, which tended to roll up into their chums. The FDIC again hasn’t really protested this consolidation and now wants to have a targeted slaying and dividing up of the spoils of a SIFI it stalked, aka “covered company”. As I’d said, it sounds like gentile Marxist vandalisticness.)

“In the aftermath of the crisis, Congress enacted the Dodd- Frank Act in July 2010. all companies covered under it to prepare resolution plans, or ‘‘living wills,’’ …”
(again keep in mind that in an earlier era, when dealing with a distressed bank or thrift – and the FDIC and/or the Fed would have it write as it was then called a ‘Business’ or a “Capital Plan”, now there seems to be veiled meaning or allusion to conclusion of this –with fewer chairs ie economic and commercial activity for the players in this, now to remove players for which there nor longer are sufficient chairs in order to seat the remaining players - within the FDIC and among the top layers of American Administration and perhaps Congressional Leadership, but they take orders from Power whose influence on regulators and US government is shrouded from the American people and naturally also from virtually all of the world.

With regard to Bear Stearns and Lehman Brothers, both were allowed to inflate their balance sheet with OTC contracts and derivatives which needed borrowings to support those activities and relied on the Fed to accept their paper and/or collateral. Additionally both Bear Stearns and Lehman were active securitizers in the Mortgage securities markets. Producing structured securities using non-conforming mortgages that also were non-performing left them accountable to make whole where or when there were problems with their securities using those sorts of ‘assets’. Commercial banks tended to avoid writing dysfunctional mortgages but owned subsidiaries that would do that, although both the Fed and FDIC had full access to those and prohibiting those activities but avoided taking those steps.)

“to demonstrate how they would be resolved in a rapid and orderly manner under the Bankruptcy Code…”
(whereas before DFA, Resolution of a SIFI wasn’t feasible for all the reasons the regulators didn’t seize among the largest of financial companies, passing DFA hasn’t changed or improved those commercial and economic and system reasons…)

“resolvable under bankruptcy without posing a systemic risk to the U.S. economy…..” (We’re still in this in part because the SIFIs are engaging writing and trading derivatives and OTC contracts, many of which are cash flow parasitic. Until this a little more than this past decade has this activity been considered as the unsafe and ‘banking practices that they are. Rather, the FDIC and the Fed have failed to regulate against these instruments and practices, in addition to the shrinking economy not supporting what products and services used/needed by their customers.

Granted, the FDIC and in some ways the Fed cannot control flawed multilateral policy that’s harming the economy although they could write research and expose it and identify it as problems in the quality of the banking commercial and operating environment, but have not. And because OTC contracts and derivatives – again Fed protected *financial innovation*- also have been designated as and given access to the Balance Sheet. Fair Value has been deemed as that to which FASB is to transition into the US GAAP financial reporting model, SIFI and ISDA bank balance sheets full of these instruments that are ‘Fair-valued” using the financial markets tend to make those Balance Sheets more unstable in financial market corrections. The FDIC and Fed both could comment against, and deter these ingredients that make problems in and for regulating the largest banks. This also gets us to where we are. This also again more argues against what the FDIC is doing, hasn’t been doing properly and what it wants to do in some form of managing a chaos in which it’s facilitated, but described the managing of the ‘next step’ in this NPR.

Even with OLA and SPoE, I see “Resolution” still poses a systemic risk to the US financial system because allowing what facilitates systemic risk such as, and the fair valuing of, ISDA Banks’ Balance Sheets which are full of these instruments, even with ‘matched-book with counterparties, even the amount of assets and liabilities that survive in the

Resolution process, a transfer to a bridge enterprise is a toxic financial moving target. The Fed and FDIC deviating from the past by, of late failing to deter what is part of the systemic risk brings into question what it wants and is looking to achieve in the 'Resolution' process and what Hidden Agenda is driving its verve and relish.)

Title II, therefore, provides a back-up authority to place a SIFI into an FDIC receivership process if no viable private sector alternative is available to prevent the default of the financial company and if a resolution through the bankruptcy process would have serious adverse effects on U.S. financial stability
(I suggest that the FDIC and Fed can require SIFIs to divest of subs and IPO those subs. The capital obtained can support the 'footings' of the SIFI which was the seller.

Notice however the FDIC doesn't allude by link or reference to strategies to save the enterprise, not even like recaps and/or something I'd mentioned above that the Europeans are using known as "Bail-in". Even though this NPR is about SPoE, reference and/or links seem to be omitted to alternative commercial life-lengthening supporting strategies. The NPR also doesn't mention the degree of overlap and OTC contracts and derivatives connectedness of a target SIFI with its counterparties which neither the FDIC nor the Fed constrained because those financial and contractual agreements were and are characterized as financial innovation, even though the only 'innovation' was to use them for Teflon with the Fed and facilitate an 'inflate- and-snare the Balance Sheets" strategy. The Fed and FDIC had/have the power to Cease & Desist this, however have avoided or failed to regulate against or constrain use of these items of unsafe and unsound banking.)

Title II gives the FDIC new OLA that provides the tools necessary to ensure the rapid and orderly resolution of a covered financial company. While the Dodd-Frank Act does not specify how a resolution should be structured, Title II clearly establishes certain policy goals. The FDIC must resolve the covered financial company in a manner that holds owners and management responsible for its failure accountable—in order to minimize moral hazard and promote market discipline—while maintaining the stability of the U.S. financial system. Creditors and shareholders must bear the losses of the financial company in accordance with statutory priorities and without imposing a cost on U.S. taxpayers.
(Now when I saw this sort of petit Bolshevik comment, I said what did the investors and creditors do to deserve this and perhaps they attempted to discipline the SIFI by reduced credit lines, apply higher borrowing costs, and other restraints on counter-party and stakeholder relationships to deter abuse at the SIFI, but the FDIC is punishing those stakeholders? This infers that for investor and creditor stakeholders that it doesn't' bode well with the FDIC if the regulators what investors and creditors to take-it in-the-face…)

In developing a resolution strategy the FDIC considered how it could overcome a number of impediments that must be addressed in any resolution.

Key impediments are:
Multiple Competing Insolvencies: Multiple jurisdictions, with the possibility of different insolvency frameworks, raise the risk of discontinuity of critical operations and uncertain outcomes;
Global Cooperation: The risk that lack of cooperation could lead to ring-fencing of assets or other outcomes that could exacerbate financial instability in the United States and/or loss of franchise value, as well as uncertainty in the markets;(**NOTE 7:** my comments about Germany and its self interests that while smiling at the FDIC, has no interest to deviate from its own plan)
Operations and Interconnectedness: The risk that services provided by an affiliate or third party might be interrupted, or access to payment and clearing capabilities might be lost;
(The Fed and FDIC could deter and discipline against this however both have avoided doing this but fret now about it when they want to allow the erosion of SIFI to the point to blow it up and resolve it)

Counterparty Actions: The risk that counterparty actions might create operational challenges for the company, leading to systemic market disruption or financial instability in the United States;
(The regulators needed to discipline all of this all along, with examinations or using a more full, robust ie, safety and soundness examination process to review all those relationships however that's no longer done in SIFIs, but the FDIC would blow up one and now sort of wring their hands over the resolution and outcomes. And what is contributing more to financial instability is fair value in US GAAP and the instruments on a bank's balance sheet that have to be fair valued. The regulators needed to provide their opinions against the increasing profile of Fair Value in US GAAP and/or harmonization with IFRS which is a Fair Value reporting model.) And

Funding and Liquidity: The risk of insufficient liquidity to maintain critical operations, which may arise from increased margin requirements, termination or inability to roll over short-term borrowings, loss of access to alternative sources of credit.
(This discussion of resolving and SPoE is like "night of the long knives' after the party of *financial innovation* with no effective oversight. Minimizing the party of booze, drugs ie the *financial innovation* which generally is cash-flow parasitic, and urging and regulating them to shrink their balance sheets to increase the percent of performing loans on their books and/or work with more borrowers to increase those operating cash-flow producing assets on their Books, is the strategy however apparently that's no longer what the FDIC is doing with these. In the past, the FDIC and Fed both examined for, and made cash flow statements included in the safety and soundness exam process. Both regulators know sufficient operating earnings produce more operating cash flow enabling banks to avoid borrowings and seeking investors to buy secondaries both which are poor quality sources of cash. Using existing regulation including PCA along with safety and soundness exams would enable it to use C&D and/or force exit of miscreant management without going the length of using OLA and 'resolution'.)

Additionally, the FDIC and the Federal Reserve issued Guidance in 2013 asking SIFIs filing their second Resolution Plans to discuss strategies for overcoming these obstacles in those Plans. Addressing these impediments would facilitate resolution under the bankruptcy process and, if necessary, under a Title II process.

The Single Point of Entry Strategy
To implement its authority under Title II, the FDIC is developing the SPOE strategy. In choosing to focus on the SPOE strategy, the FDIC determined that the strategy would hold shareholders, debt holders and culpable management accountable for the failure of the firm. Importantly, it would also provide stability to financial markets by allowing vital linkages among the critical operating subsidiaries of the firm to remain intact and preserving the continuity of services between the firm and financial markets that are necessary for the uninterrupted operation of the payments and clearing systems, among other functions.
(In the US what had happened with the Bank of New England –which perhaps had Canadian and London offices - and any foreign sub it had versus AIG? In order for the FDIC to reach this point of making assumptions about SPoE, as I've described and commented to this point, I urge they repair to restoration of effective oversight, supervision, and regulation on the front end, so that what would seem to produce a status described to trigger SPoE and Impediments never present themselves.

The Germans are going to do what is expedient. **(Appendix)** The British tend to support us however often expect quid pro quo and so will the French. The Japanese in the past have supported us and often it's been to its detriment and this isn't a relationship for the US to presume on going forward after Fukashima- **which needs to serve as the example here for insight**.

Any other country where our largest banks operate could have done that by correspondent relationships, although true often there are American companies and American relationships doing business in those countries. It probably would be smart however if American companies are doing business in foreign countries, to use those banks to facilitate those commercial relationships in those geographies. Moreover, again it concerns me that the FDIC is looking to make investors ie, shareholders and creditors take-it-in-the-face because of this agenda to break apart huge or extremely large IDI to serve other agendas not evident, while also looking for investors and 'lenders' to be there for it when it wants to sell securities and invest in the Bridge 'bank' to help take out the FDIC. The FDIC assumption of what its own discretion will get them also clashes with consistency and history of conduct that investors and creditors use to measure their 'counter-parties' of which the FDIC is.)

Overview
U.S. SIFIs generally are organized under a holding company structure ……In resolving a failed or failing SIFI the FDIC seeks to promote market discipline by imposing losses on the shareholders and creditors of the top-tier holding company and removing culpable senior management without imposing cost on taxpayers.
(this would be done by the FDIC again providing robust and complete safety and soundness exams, interviewing management and the board and mandating the IDI to trim and minimize concentrations to counterparties and use of derivatives and OTC contracts that are not cash flow producing similarly to loans, and/or have no economic substance

other than management using them to generate a fee and off-set that open contract… to enable justifying a netted down exposure for capital to cover.

For smaller IDIs this is what the FDIC and perhaps the fed would do before GLB or in 1997 when "light- touch" oversight was mentioned by Gov. Susan Phillips… like the SIFI is a vampire that the FDIC is putting a stake in its heart to rid the world of this evil parasite, ie, thinking by shutting down a SIFI and making counterparties and stakeholders take it in the face like cutting off some flesh rather than require a pro-active diet change and belt tightening gives 'mission' to the fdic.

That the problems plumed in part because the FDIC and fed avoided regulating in the former manner or deferring to the fed's light touch doesn't get us to a more safe and sound financial system. Granted PROCESS at the FDIC must be established and presumably this is hypothetical. Notwithstanding, what appears to be is that when in 1991 when FDICIA gave the FDIC the authority to close a bank that is 'critically undercapitalized but not insolvent under standard accounting definitions <Ragalevsky, Ricardi 2009 citing 12USC1821c2D,3D>, then the Fed's subsequent efforts to de facto become the dominate regulator and further pollute or at least co-opt the machinations among the bank regulators and their respective relationships with their wards, perhaps there are 'tea-leaves' we need to read here as to why the Fed has permitted Covered Companies to engage in inflate/collapse activity by pluming their Balance Sheets with OTC contracts and derivatives that have to be fair valued based on the financial markets.

Moreover, when those are correcting or in depressed condition, there goes the Balance Sheets including Capital of Covered Companies and/or companies engaging in prolific use and writing of OTC contracts and derivatives. Key to FDICIA giving the FDIC authority to take aggressive steps by seizing an institution not completely insolvent is if the target has NO realistic prospect of returning to a safe and sound condition. Is that what we're dealing with here; that these enterprises have no realistic prospect of returning to safe and sound condition? It is deceitful and fraudulent to allow prolific use of OTC contracts and derivatives and rely on these as if they're acceptable banking product and services, but in reality puts the enterprise at risk for the FDIC targeting it for seizure and resolution, even if the Fed has been so NICE and hands off, light touch.

Further, these politics between the regulators should not be presumed to protect a ward ie, SIFI or Covered Company from eventual seizure and subsequent carving up by the FDIC. Since the FDIC gets the upper hand or can take the upper hand when a Covered Company fails to submit an adequate recapitalization plan or materially fails to implement an acceptable capital restoration plan, the Covered Company is now running a gauntlet that could get a contest with the FDIC and the powerbrokers that control that… and end up in court facing seizure and resolution. No SIFI should let itself near this and test this going along to get one *there*.) …

This would create a more stable financial system over the longer term
(I don't agree given what we've seen so far along these sorts of lines with the FDIC and the Fed's political and policy dysfunction and how that's gotten us to where we are at the present time.).

Additionally, the FDIC seeks to preserve financial stability by maintaining the critical services, operations and funding mechanisms conducted throughout the company's operating subsidiaries. …

76616 … [1] The Dodd-Frank Act defines ''eligible financial companies'' as any bank holding company with total consolidated assets of $50 billion or more and any nonbank financial company supervised by the Board of Governors of the Federal Reserve as a result of its designation by the Financial Stability Oversight Council.

[2] The SEC and the Federal Insurance Office are substituted for the FDIC if the company or its largest subsidiary is a broker/dealer or insurance company, respectively; the FDIC is also consulted in the determination process in these cases.

[3] Subsequent to a determination, the Secretary would notify the board of directors of the covered financial company. If the board of directors does not consent to the appointment of the FDIC as receiver, the Secretary shall petition the court for an order authorizing the Secretary to appoint the FDIC as receiver.

To implement the SPOE strategy the FDIC would be appointed receiver only of the top-tier U.S. holding company, and subsidiaries would remain open and continue operations. The FDIC would organize a bridge financial company, into which it would transfer assets from the receivership estate, primarily the covered financial company's investments in and loans to subsidiaries.
(Did DFA force the Fed to give over supervision to the FDIC? What about the OCC? Again where is the Fed here, which regulates BHCs and FHCs and approves their applications? Although it doesn't have the size of the FDIC, what happened to effective discipline and supervision on the front end to keep these enterprises in proper condition. Did DFA state that the Fed gave over this authority over BHCs to the FDIC? Ah, the FDIC should cite that by link to the US Code. And if these SIFIs get in the condition where this gets us to this NPR where it describes process after seizing an

ongoing concern, why have regulators allowed one of their subjects to get themselves in this condition? If the FDIC isn't doing enforcing discipline at any level of capital and PCA, and DFA is in conflict with/or repeals state law and state regulation and oversight that those regulators had on those charters, whatever holes or otherwise in the regulatory framework, the financial health of these enterprises were allowed to erode. Thus, again we're seeing that regulators didn't do their role that they formerly performed with more hands on, comprehensive effort.

As I'd heard observed recently and as long ago as 1991, the political winds blow that the FDIC gets this mercenary 'spirit' to represent itself as 'on-board'; in this case foreign interests also want the US financial system to destabilize, devolve and dissolve with Basel's degree of dysfunction compared to PCA and the former more careful supervision and regulatory interaction the FDIC had had and administered.)

Losses would be apportioned according to the order of statutory priority among the claims of the former equity holders and unsecured creditors, whose equity, subordinated debt and senior unsecured debt would remain in the receivership. Through a securities-for-claims exchange the claims of creditors in the receivership would be satisfied by issuance of securities representing debt and equity of the new holding company or holding companies (NewCo or NewCos). In this manner, debt in the failed company would be converted into equity that would serve to ensure that the new operations would be well-capitalized.
(NO disrespect to the FDIC however it speaks very glibly and hypocritically about this when it's made creditors and shareholders take losses when seizing an adequately capitalized IDI, rather than all along and at an earlier point to achieve better operating and financial condition, it would enforce discipline at those capital levels with Cease and Desist or at least MOUs. If the capital problems become more significant, even though these are all well, or more than adequately capitalized financial institutions, then requiring the SIFIs to significantly diminish their OTC contracts and derivatives concentrations (even when netted that sort of financial engineering requires capital to balance the Balance Sheet and for capital adequacy). As long as the Fed hasn't prohibited writing and trading OTC contracts and derivatives, these banks are at greater risk for being shut down or destabilization during the next financial market correction, unlike before GLB. The FDIC and Fed know this and unless a SIFI takes control of its own future, it will be among those targets for Resolution on the FDIC carving-plate),

Such action would prevent a disorderly termination of these contracts and a resulting fire sale of assets. Under the Dodd-Frank Act, officers and directors responsible for the failure cannot be retained and would be replaced. The FDIC would appoint a board of directors and would nominate a new chief executive officer and other key managers from the private sector to replace officers who have been removed. This new management team would run the bridge financial company under the FDIC's oversight during the first step of the process.
(Again why wait this long to do what it is supposed to do and it is its role to do to supervise and administer enforcement at higher capital levels of PCA but do its job that it is saying here in this NPR that it isn't going to do until the time of having taken over an extremely large financial institution and disrupting it's business, those it has with counterparties, the stakeholders and the public, when ALL ALONG it could have done discipline with enforcement, forcing divestitures, forcing business line rationalizing, but has not been doing this. Again long before there is 'resolution' if engaging in unsafe and unsound banking practices such as using derivatives and OTC contracts to inflate the Balance Sheet, where is the FDIC and/or other regulators to condemn this and discipline against this? Where is there the caution about regulating against using instruments, even heckling FABS against US GAAP fair valuing these instruments and condemning US GAAP's eroding to fair value as the framework for reporting? Where is the FDIC in the public due process to oppose harmonization of US GAAP with IFRS – a fair value reporting model – or even the folly of adopting IFRS at all? Meanwhile fair valuing the OTC contracts and derivatives, estimating impairment or losses on assets before these are realized or actual, the former model in dealing with non-performing assets, these recent erosions in the quality of US GAAP, where has the FDIC been in condemning all of this… and US GAAP would be the better for restoring the accrual basis accounting with revenues having to realize to cash in the reporting cycle, without contamination from fair value unrealized non cash gains (no operating cash flow impact BUT a goose to the income statement even when inflation can increase from one quarter to the next, the value of an asset) or barter 'gains' (cheesy) from seizing or keeping collateral in repos and similar transactions where collateral has to be posted, or permitting securities fails as a de facto way of lending to counter-parties. The FDIC has not condemned any of this, and disciplined against this. Meanwhile all of this has polluted the financial condition of the IDIs.

If the FDIC took the actions I mentioned here, however, the Investors in, and Creditors of Covered Companies will be benefited greatly by what I urge and have indentified as ways to improve the system, rather than some dramatic action

while there may be another summer/fall of 2008 happening. Or without a 2008, sacrifice of a SIFI, which also itself is dramatic and perhaps if another financial crisis of some sort were to happen, a SIFI would get blown up to get the 'resolution'/taking down a TooBigToFail.

The FDIC wants these investors and creditors to be there, but is also saying it will inflict losses on them and teach them 'market discipline, and that THIS will make a more safe and sound financial sector, but meanwhile has done little at all to make that happen since it stopped doing its job and letting the Fed obstruct it from doing its job. IT IS NOT TOO LATE if capital has eroded, the IDI would be hit with a Cease & Desist to improve capital adequacy and/or obtain something like 'net-worth' certificates which would help support the footings, while over time would pay back these to the regulators or in-turn raise capital and retire these when the conditions improve for that.)

During the resolution process, measures would be taken to address the problems that led to the company's failure. These could include changes in the company's businesses, shrinking those businesses, breaking them into smaller entities, and/or liquidating certain subsidiaries or business lines or closing certain operations. The restructuring of the firm might result in one or more smaller companies that would be able to be resolved under bankruptcy without causing significant adverse effect to the U.S. economy. The FDIC intends to maximize the use of private funding in a systemic resolution and expects the well-capitalized bridge financial company and its subsidiaries to obtain funding from customary sources of liquidity in the private markets. The FDIC, however, realizes that market conditions could be such that private sources of funding might not be immediately available.
(This is true; consider that the markets have been in a bull run probably with Quantitative Easing by the Fed. While the markets are good, the regulators should urge banks to let derivatives role off, divest of subs, ie IPO them which also would help raise capital and gather liquidity. Foreign financial companies would be blocked from buying these divestitures; as many foreign enterprises anyway would buy these are themselves Too Big to Fail, and have their own aggressive self-interests. Meanwhile these foreign financial institutions are disinclined to divest of subs to raise capital, which in the case of Germany have taken longer periods of time to require their own financial institutions to gather more capital).

If private-sector funding cannot be immediately obtained, the Dodd-Frank Act provides for an Orderly Liquidation Fund (OLF) to serve as a back-up source of liquidity support that would only be available on a fully secured basis. If needed at all, the FDIC could facilitate private-sector funding to the bridge financial company and its subsidiaries by providing guarantees backed by its authority to obtain funding through the OLF. Alternatively, funding could be secured directly from the OLF by issuing obligations backed by the assets of the bridge financial company. These obligations would only be issued in limited mounts for a brief transitional period in the initial phase of the resolution process and would be repaid promptly once access to private funding resumed. If any OLF obligations are issued to obtain funding, they would be repaid during the orderly liquidation process. Ultimately OLF borrowings are to be repaid either from recoveries on the assets of the failed firm or, in the unlikely event of a loss on the collateralized borrowings, from assessments against the eligible financial companies.1 The law expressly prohibits taxpayer losses from the use of this Title II authority.

The Appointment of the FDIC as the Title II Receiver
(This should be that the FDIC is appointed as conservator – because the bridge bank is set up to transition the functioning organization to a de novo or existing enterprise. that surfaces other concerns, however if a receiver then there is a liquidation process. if there is a liquidation process, then there were assets that were unsafe and unsound that the FDIC and the main regulator for the enterprise failed to discipline management about being in, and having exposure to assets that put the enterprise into the state of resolution and/or to be liquidated rather than go over to a bridge bank in conservatorship.)

If a SIFI encounters severe financial distress, bankruptcy is the first option
(THIS IS SOMETHING THAT COULD BE FORCED ON IT and the risk is the FDIC and the Fed could trump up enough of a case and create a crisis to get this process moving forward and everyone is made to deal with the fallout of one sort or another).

Under Title I the objective is to have the SIFI produce a credible plan that would demonstrate how resolution under the Bankruptcy Code would not pose a systemic risk to the U.S. economy.

(AGAIN, this assumes that the SIFI is operating in a bankrupted condition. from a stakeholder perspective, because creditors have no advanced opportunity to contest FDIC insolvency or seizure proceedings, then if doing business with a SIFI ie, a covered company, an investor or creditor would want the CAMEL rating – a Catch22 to obtain. If the Covered Company has a CAMELs of 1 or 2, then presumably, the FDIC isn't targeting it for resolution – although this too is subject to question. A number of the SIFIs are indicated to be CAMELs I or II however have to file Resolution Plans and are at risk for some slick, crafted Blitzkrieg to force instability on it like a Bear Stearns or endure its collateral not getting respect to back up its short term obligations like Lehman. If the CAMEL isn't published, then the investor or creditor would want credible, high quality quarterly financial reports to know the condition of the Covered Company.

FOR A COVERED COMPANY TO HAVE TO FILE A RESOLUTION PLAN AND RISK FACING BANKRUPTCY AND TITLE II alternatives, then again, as I'd said, the FDIC defrauded the voters and Stakeholders in SIFIs in not properly disciplining management and the Directors of this enterprise. If obstructed by the Fed and associated domestic and multilateral politics, then the FDIC needed to take internal and executive level steps to get rectified anything thwarting or obstructing its role as regulator and over the Bank/Deposit Insurance Fund, providing deposit insurance for voters' money and keeping safe the sector providing these goods and services. This institutional framework existed to facilitate savings in a politically and economically crippled commercial environment in the US when the FDI ACT was passed and the FDIC was established and should not depart from that and in some ways, has.)

A Title II resolution would only occur if a resolution under the Bankruptcy Code could not be implemented without serious adverse effects on financial stability in the United States. (for this reason all the capital levels identified in Prompt Corrective Action (Refer to my **NOTE 5** that efforts are to be exhausted to infuse capital and recapitalize the IDI so that it doesn't reach this stage, ie Title II)

Before a SIFI can be resolved under Title II, two-thirds of the Federal Reserve Board and the Board of Directors of the FDIC must make recommendations to the Secretary of the Treasury (Secretary) that include a determination that the company is in default or in danger of default, what effect a default would have on U.S. financial stability, and what serious adverse effect proceeding under the Bankruptcy Code would have.2
(The problem may be however an attempted take-down of a SIFI as a test case. Meanwhile, this FSOC group also is very close, cozy and really should include fully experienced and impartial, outside experts. That the "FSOC" which are only a group of Executive Branch people that are little more than direct appointments by the industry, foreign interests, and the US 1% is the organ that DFA has appointed to determine the fate of a financial enterprise should be protested in the courts. The American Bankers' Association and the lobbyists of the SIFIs should be protesting this discretionary group of functionaries.)

With the recommendations and plan submitted by the Federal Reserve and the FDIC, the Secretary in consultation with the President would determine, among other things, whether the SIFI was in default or danger of default and that the failure and its resolution under bankruptcy would have a serious adverse effect on U.S. financial stability. If all conditions are met, a twenty-four hour judicial review process is initiated, if applicable.3 At the end of this period, absent adverse judicial action, the FDIC is appointed receiver, the bridge financial company would be chartered and a new board of directors and chief executive officer appointed.

Organization and Operation of the Bridge Financial Company
Upon its appointment as receiver of the top-tier U.S. holding company of the covered financial company, the FDIC would adopt articles of association and bylaws and issue a charter for the bridge financial company. From a pre- screened pool of eligible candidates, the FDIC would establish the initial board of directors, including appointment of a
76617
4 The FDIC would prepare a mandatory repayment plan after its appointment as receiver of the covered financial company, but in no event later than thirty (30) days after such date. The FDIC would work with the Secretary to finalize the plan and would submit a copy of the plan to Congress. The mandatory repayment plan would describe the anticipated amount of the obligations issued by the FDIC to the Secretary in order to borrow monies from the OLF subject to the maximum obligation limitation as well as the anticipated cost of any guarantees issued by the FDIC.

chairman of the board. At its initial meeting the board of directors would appoint a chief executive officer of the bridge financial company based upon the nomination of candidates that have been vetted and screened by the FDIC. Other experienced senior management, including a chief financial officer and chief risk officer, also would be promptly named. (Again, the FDIC would be appointed as the Conservator?)

In connection with the formation of the bridge financial company, the FDIC would require the company to enter into an initial operating agreement that would require certain actions, including, without limitation: (1) Review of risk management policies and practices of the covered financial company to determine the cause(s) of failure and to develop and implement a plan to mitigate risks identified in that review; (2) preparation and delivery to the FDIC of a business plan for the bridge financial company, including asset disposition strategies that would maximize recoveries and avoid fire sales of assets; (3) completion of a review of pre-failure management practices of all key businesses and operations; (4) preparation of a capital, liquidity and funding plan consistent with the terms of any mandatory repayment plan and the capital and liquidity requirements established by the appropriate federal banking agency or other primary financial regulatory agency; (5) retention of accounting and valuation consultants and professionals acceptable to the FDIC, and completion of audited financial statements and valuation work necessary to execute the securities-for claims exchange; and (6) preparation of a plan for the restructuring of the bridge financial company, including divestiture of certain assets, businesses or subsidiaries that would lead to the emerging company or companies being resolvable under the bankruptcy Code without the risk of serious adverse effects on financial stability in the United States.
(NOTE 11 Posted Transactions List dealing with recaps http://www.**apsoras1**.**wordpress**.com/category/professional-cv-resume... …my experience dealing with the FDIC and its discipline and enforcement that when it examined an IDI regardless of the size, if it was having difficulties or managerial issues regardless of the capital levels, it got hit with an MOU or C&D, and if it had to increase its capital footings, then it divested of subs and/or shrunk its Balance Sheet. All of this was part of the ongoing regulatory process that it seems the FDIC and/or the Fed no longer do for SIFIs ie, Covered Companies. Moreover, while reading through this section about the formation of a 'Bridge Company', in that all along it hasn't done what it describes in (1) through (6) and meanwhile it had been its practice to do this given my experience with the FDIC and the recaps and related transactions with/for distressed banks and thrifts on which I'd worked, and to infer that there was no regulatory framework to discipline the SIFI before it got into this condition or that there wasn't that for other regulators which supervise these IDIs before these get into these conditions and without C&Ds or MOUs or other discipline… and as if it is in complete denial while itemizing this list of chores it will do in "Connection with the formation of the bridge financial company" is astonishing and ah, sort of shocking, I don't know how any of its research is not impaired if attempting to mix SIFIs with smaller IDIs and analyze data of this mixed population, when SIFIs are now getting kid glove treatment and their Balance Sheets are inflated with OTC contracts and derivatives throwing off when fair valued, unrealized non cash gains goosing the Income Statement with that which does not realize to cash in the reporting cycle and is bleeding the enterprise.)

_The initial operating agreement would establish time frames for the completion and implementation of the plans described above. Day-to-day management of the company would continue to be supervised by the officers and directors of the bridge financial company. The FDIC expects that the bridge financial company would retain most of the employees in order to maintain the appropriate skills and expertise to operate the businesses and most employees of subsidiaries and affiliates would be unaffected. As required by the statute, the FDIC would identify and remove management of the covered financial company who were responsible for its failed condition.
(It has always had this power and exercised it with Cease & Desists. As a result, I'm surprised it's not only not done this before this point, but I am wondering if it isn't throwing up against the wall what it can to make it sound like it's All-Business/No-Nonsense FDIC because it's not that anymore and it appears hasn't been that for a fairly long time. The voters have then been disserved by this charade and the FDIC saying 'We'll get it on the back end, or we'll get it the next time, also disserves the voters. And if these banks have been 'regulating' and supervising themselves and the smaller ones are more effectively regulated but probably being tee'd up for eventual targets for acquisition, the private sector doesn't need the FDIC to facilitate that.)

Additionally, the statute requires that compensation be recouped from any current or former senior executive or director substantially responsible for the failure of the company.

The FDIC would retain control over certain high-level key matters of the bridge financial company's governance, including approval rights for any issuance of stock
(Again, this is a BHC which the Fed 'regulates' but at least it's Fed chartered; SPoE means to come in at the top. The IDI is FDIC insured. That means that with deposit insurance according to laws and regulation the FDIC is to examine and supervise and discipline this IDI. If this is a situation reaching the point of SPoE, what the H*LL happened? Where were the regulators all along while this IDI and its parent to disserve the voters/taxpayers to allow this erode to this condition and this adds to the low-simmering crisis in the financial sector and these important commercial arteries of the US economy? This was a regulated bank and even as late the SCMP and C-CAR programs and the with DFA filing

Resolution Plans, this is also a Fed regulated company which even before DFA to get the lowdown on what was really happening had full reach into these companies, with FBI, SEC, and DOJ legal mechanisms but took virtually no steps at all to follow the money. Meanwhile all misrepresentations about not having access and needing 'Resolution Plans" and about what to do in the future for which it and the levers of power behind the Fed that now have with DFA – the Resolution Plan process is some sort of hooey, if only to give the regulators updated business plans to set up a SIFI to get trashed like Lehman or Bear Stearns and then have to be 'resolved'.);
amendments or modifications of the articles or bylaws; capital transactions in excess of established thresholds (what does this mean?) ; asset transfers or sales in excess of established thresholds; merger, consolidation or reorganization of the bridge financial company; any changes in directors of the bridge financial company (with the FDIC retaining the right to remove, at its discretion, any or all directors); any distribution of dividends; any equity based compensation plans; the designation of the valuation experts; and the termination and replacement of the bridge financial company's independent accounting firm. Additional controls may be imposed by the FDIC as appropriate.

Funding the Bridge Financial Company

It is anticipated that funding the bridge financial company would initially be the top priority for its new management. In raising new funds the bridge would have some substantial advantages over its predecessor. The bridge financial company would have a strong balance sheet with assets significantly greater than liabilities since unsecured debt obligations would be left as claims in the receivership while all assets will be transferred. As a result, the FDIC expects the bridge financial company and its subsidiaries to be in a position to borrow from customary sources in the private markets in order to meet liquidity needs. Such funding would be preferred even if the associated fees and interest expenses would be greater than the costs associated with advances obtained through the OLF.

If the customary sources of funding are not immediately available, the FDIC might provide guarantees or temporary secured advances from the OLF to the bridge financial company soon after its formation. Once the customary sources of funding are reestablished and private market funding can be accessed, OLF monies would be repaid. The FDIC expects that OLF monies would only be used for a brief transitional period, in limited amounts with the specific objective of discontinuing their use as soon as possible.

All advances would be fully secured through the pledge of the assets of the bridge financial company and its subsidiaries. If the assets of the bridge financial company, its subsidiaries, and the receivership are insufficient to repay fully the OLF through the proceeds generated by a sale or refinancing of bridge financial company assets, the receiver would impose risk-based assessments on eligible financial companies to ensure that any obligations issued by the FDIC to the Secretary are repaid without loss to the taxpayer.
(What is the FDIC saying that as a "Going Concern "X" assets have value but in the bridge bank these assets are going to need coverage from OLA? Then why shut the SIFI? What is in the Bank that hasn't been properly valued and/or if there is a disruption to the activities that at THIS time, not waiting to erode completely or near trigger PCA levels of dangerously undercapitalized to facilitate the FDIC to determine to resolve ie to shut down a SIFI and start to prepare it for bid, carve it up, etc. Moreover, if the bridge bank is set up as the structure the FDIC uses as part of its Conservatorship, isn't the bank covering its own cost for running such that OLA isn't needed for ordinary banking activity?

Additionally, there are the 'loss-on-assets' models the analysts run usually before anything drastic is done. If there were some notion to shut a SIFI, there probably is some sort of economic/commercial crisis. Granted in older loss-on-assets models, when there is a commercial/economic crisis, except for high quality, performing loans like "A" paper residential mortgages, the assets generally may lose up to 30% of their value. Further, the unearned interest income assumed on the mortgages ended up being confirmed to go to zero, uncollectible. As soon as there is a market correction for at least a quarter, the unrealized non-cash gains evaporate, and become losses run through the Income Statement AND also charges against the Shareholders Equity at some point when charges to Other Comprehensive Income. Where also is the Cost Analysis of indirect and direct shock to exposures in all characters?)

The Dodd-Frank Act capped the amount of OLF funds that can be used in a resolution by the maximum obligation limitation. Upon placement into a Title II resolution this amount would equal 10 percent of the total consolidated assets of the covered financial company based on the most recent financial statements available. If any OLF funds are used beyond the initial thirty (30) day period or in excess of the initial maximum obligation limit, the FDIC must prepare a repayment plan.4 This mandatory repayment plan would provide a schedule for the repayment of all such obligations,

with interest, at the rate set by the Secretary. Such rate would be at a premium over the average interest rates on an index of corporate obligations of comparable maturities. After a preliminary valuation of the assets and preparation of the mandatory repayment plan, the maximum obligation limit would change to 90 percent of the fair value of the total consolidated assets available for repayment.
(This should be footnoted on how the FDIC arrived at this, rather than it sounding like something ad hoc.)

Claims Determination and the Capitalization Process
The FDIC is required by the Dodd- Frank Act to conduct an administrative claims process to determine claims against the covered financial company left in receivership, including the amount and priority of allowed claims. Once a valuation of the bridge financial company's assets and the administrative claims process are completed, creditors' claims would be paid through a securities-for-claims exchange.

Claims Determination The Dodd-Frank Act established a priority of claims that would apply to all claims left in the receivership.
(What a mess! Again, what appears to be is this lack of accountability of the Fed and FDIC. To understand or have some point of comparison commonly used, the Fed had accepted or at least told Lehman what was acceptable collateral but because the Treasury Department wanted to shut LEH, Chase and the Fed didn't accept LEH's collateral. This put LEH into a liquidity crisis when LEH couldn't repo with the Fed. Again, here too we're seeing no accountability and allowing Teflon to the Fed, and the degree of collusion, self-interest going by 'discretion' and whatever other names used for this sort of power broking against a weaker player, also potentially will be by way of the FDIC, other bank regulators such as the Fed and FSOC and the influences of other interests on the US Executive Branch. So the risks of this with the Teflon for the Fed and failure and/or conflicts with existing and arguably better regulation ie, regulator-administrative discipline under PCA enforced at any capital level (not seizing bank with 6% capital but operating in unsafe and unsound conditions, but administering discipline against it such as MOUs and/or C&Ds to address those practices that they need to enforce.)

76618 Federal Register
5 The FDIC has stated that it would not exercise its discretion to treat similarly situated creditors differently in a manner that would result in preferential treatment to holders of long-term senior debt (defined as unsecured debt with a term of longer than one year), subordinated debt, or equity holders. See 12 CFR 380.27.
6 The FDIC would endeavor to determine the majority of claims (as measured by total dollar amount) within a shorter time frame.
7 An expedited process is available to certain secured creditors in which the FDIC's determination must be made within ninety (90) days and any action for a judicial determination must be filed within thirty (30) days.

Following the statutory priority of claims, the administrative expenses of the receiver shall be paid first, any amounts owed to the United States next, then certain limited employee salary and benefit claims, other general or senior unsecured creditor claims, subordinated debt holder claims, wage and benefit claims of senior officers and directors, and finally, shareholder claims. Allowable claims against the receivership would be made pro rata to claimants in each class to the extent that assets in the receivership estate are available following payments to all prior senior classes of claims. Liabilities transferred to the bridge financial company as an on-going institution would be paid in the ordinary course of business.
(There are other opportunity and society costs. There also now are system break down s some in part by failure to properly examine SIFIs in the same way in the past that these had been examined. The regulators cost society for what they're paid, but now in a greater cost for not doing their jobs right because of politics, and allowing the 'financial innovation'. ISDA banks engaging in inflating their Balance Sheets by writing derivatives and OTC contracts –matched book or otherwise - that rely on the financial markets' conditions and have to be fair valued, which also relies on financial markets' condition. Consider this is a Moral Hazard issue as it all facilitates fragility in the financial system that the FDIC and Fed have some power to prevent by properly characterizing 'financial innovation as unsafe and unsound banking.

This is a sort of cheesy, ad hoc regulating by not taking authority over what is called 'financial innovation' when it's a form of inflate/collapse-slow train wreck along with the rigged financial markets, The banks in the past weren't connected to the financial markets in the way they are now, and left at risk to violence in the financial markets that can be manipulated like the 'flash crash' in May 2010. The more ad hoc and in effect moral hazard the US has gone over the last 20 years makes us little different than the fecklessness of the Europeans. Preventing this will help prevent banks' Balance Sheets from collapsing in unexpected ways, that the FDIC and the Fed will not be able to stop nor protect society from that blow back. SPoE and resolution also won't solve that when at the present time, SIFIs are in sort of OK condition and what discipline they would face from the FDIC not constrained or impeded by the Fed, the FDIC should administer and enforce.)

Certain claims of the holding company would be transferred to the bridge financial company to facilitate its operation and to mitigate systemic risk. For instance, obligations of vendors providing essential services would be assumed by the bridge financial company in order to keep day-to-day operations running smoothly.
(This had been its practice for Conservatorship.)

Such an action would be analogous to the ''first-day'' orders in bankruptcy where the bankruptcy court approves payment of pre-petition amounts due to certain vendors whose goods or services are critical to the debtor's operations during the bankruptcy process. The transfer would also likely include secured claims of the holding company because the transfer of fully secured liabilities with the related collateral would not diminish the net value of the assets in the receivership and would avoid any systemic risk effects from the immediate liquidation of the collateral.
(This assumes the laws apply that frames what the security is protected by and that the courts recognize and respect that. Considering the FDIC accordingly in this NPR eventually does its regulation and enforcement at time of collapse and/or after at the bridge bank this speaks poorly of the system, regulators, and risks elsewhere in the system of justice that may also dysfunction for one reason or another.)

The FDIC expects shareholders' equity, subordinated debt and a substantial portion of the unsecured liabilities of the holding company—with the exception of essential vendors' claims— to remain as claims against the receivership.

In general the FDIC is to treat creditors of the receivership within the same class and priority of claim in a similar manner. The Dodd-Frank Act, however, allows the FDIC a limited ability to treat similarly situated creditors differently. Any transfer of liabilities from the receivership to the bridge financial company that has a disparate impact upon similarly situated creditors would only be made if such a transfer would maximize the return to those creditors left in the receivership and if such action is necessary to initiate and continue operations essential to the bridge financial company.

Although the consent of creditors of the receivership is not required in connection with any disparate treatment, all creditors must receive at least the amount that they would have received if the FDIC had not been appointed as receiver and the company had been liquidated under Chapter 7 of the Bankruptcy Code or other applicable insolvency regime.
(The BHC and non IDI subs ARE subject to the Bankruptcy Code - Ragalevsky and Ricardi, 2004 p1 Note 4. This sort of 'resolution' would be a mess; any BHC sub that's a non-IDI could fight all of this in court because of regulator 'abuse' or tyranny. Additionally this process isn't well-spelled out here. Sadly this almost isn't a real debate about what should or should not get resolved under Bankruptcy Code or USC dealing with IDIs because all of this is sort of convoluted)

Further, any transfer of liabilities that involves disparate treatment would require the determination by the Board of directors of the FDIC that it is necessary and lawful, and the identity of creditors that have received additional payments and the amount of any additional payments made to them must be reported to Congress. The FDIC expects that disparate treatment of creditors would occur only in very limited circumstances and has, by regulation, expressly limited its discretion to treat similarly situated creditors differently.5

Similar to the bankruptcy process, for creditors left in the receivership, the FDIC must establish the claims bar date for the filing of claims; this date must not be earlier than ninety (90) days after the publication of the notice of appointment of the FDIC as receiver. With the exception of certain secured creditors whose process might be expedited, the receiver would have up to one hundred eighty (180) days to determine the status of a claim unless that determination period is extended by mutual agreement.6 A claimant can seek a de novo judicial determination of its claim in the event of an adverse determination by the FDIC. Such an action must be brought within sixty (60) days of the notice of disallowance.7 To the extent possible and consistent with the claims process mandated by the Dodd-Frank Act, the FDIC intends to adapt certain claims forms and practices applicable to a Chapter 11 proceeding under the Bankruptcy Code. For example, the proof of claim form would be derived from the standard proof of claim form used in a bankruptcy proceeding. The FDIC also expects to provide information regarding any covered financial company receivership on an FDIC Web site, and would also establish a call center to handle public inquiries.

Capitalization
In reorganization under the bankruptcy laws, creditors' claims are sometimes satisfied through the issuance of securities in the new company. Likewise, the SPOE strategy provides for the payment of creditors' claims in the receivership through the issuance of securities in a securities-for claims exchange. This exchange involves the issuance and

distribution of new debt, equity and, possibly, contingent securities—such as warrants or options—in NewCo (or NewCos) that will succeed the bridge financial company to the receiver. The receiver would then exchange the new debt and equity for the creditors' claims. This would provide value to creditors without resorting to a liquidation of assets. The warrants or options would protect creditors in lower priority classes, who have not received value, against the possibility of an undervaluation, thereby ensuring that the value of the failed company is distributed in accordance with the order of priority.
(How will the value of the new issue for Newco be determined? As a __% of the ownership of the company?)

Prior to the exchange of securities for claims, the FDIC would approve the value of the bridge financial company. The valuation would be performed by independent experts, including investment bankers and accountants, selected by the board of directors of the bridge financial company. Selection of the bridge financial company's independent experts would require the approval of the FDIC, and the FDIC would engage its own experts to review the work of these firms and to provide a fairness opinion.
(If seems if all 'Covered Companies' are at risk for this, a true arm's length valuation needs to be done, nothing conflicted and bona fide independent and that should not be the 'Covered Company's' assurance firm. And many of these assets are hard to value and are based on that the financial markets and related market influenced factors would add to the 'value'. These sorts of instruments are part of the inflate/collapse scenario and need to be disciplined as unsafe and unsound and prohibited. Foreign banks in the US would have to either divest or role off those instruments as regardless of the jurisdiction are part of the inflate/collapse scenario.)

The valuation work would include, among other things, review and testing of models that had been used by the covered financial company before failure as well as establishing values for all assets and business lines.
(There is the "Loss on Assets" model which attempts to predict this vrs what the IDI was valued as a going concern and for the purposes of 'least Cost Solution", what the 'hole ' between the deposits' value vrs what the Asset value is before and after seizure. This 'hole' is difficult to predict and also relies on a healthy economy and few or no other failures in a geographic area or the loss on assets, and thus the hole is greater between cost of deposits and value of assets.)

The valuation would provide a basis for establishing the capital and leverage ratios of the bridge financial company, as well as the amount of losses incurred by both the bridge financial company and the covered financial company in receivership. The valuation would also help to satisfy applicable SEC requirements for the registration or qualified exemption from registration of any securities issued in an exchange, in addition to other applicable reporting and disclosure obligations.
(Why would there be an exemption from registration of securities for satisfying laws and regulation? Aren't we here because what were fairly good and functional laws and regulation were not kept or were repealed? And some foundations and institutional investors need the appropriate legal compliance for securities they purchase. The FDIC would be precluding certain institutional and/or foundations and endowments as investors if the securities were issued having circumvented registration.)

Due to the nature of the types of assets at the bridge financial company and the likelihood of market uncertainty regarding asset values, the valuation

76619

8 The FDIC retains the discretion in appropriate circumstances to make cash payments to creditors with de minimis claims or for whom payment in the form of securities would present an unreasonable hardship.

process necessarily would yield a range of values for the bridge financial company. (For years the FDIC has been resolving smaller IDIs and those practices in effect are these? Like when PCA was memorialized in FDICIA, are they looking to memorialize the 'Resolution' process? There's plenty of law and regulation that in varying degrees the FDIC was thwarted from administering and enforcing. The Fed similarly has a poor track record on complying with law and enforcing regulation, as if it isn't incumbent to enforce law and regulation, although it will lurch and stretch to interpret law and regulation to suit self interests or powerful foreign interests (**NOTE 11**)

The FDIC would work with its consultants and advisors to establish an appropriate valuation within that range. Contingent value rights, such as warrants or options allowing the purchase of equity in NewCo (or NewCos) or other instruments, might be issued to enable claimants in impaired classes to recover value in the event that the approved valuation point underestimates the market value of the company. Such contingent securities would have limited

durations and an option price that would provide a fair recovery in the event that the actual value of the company is other than the approved value. When the claims of creditors have been satisfied through this exchange, and upon compliance with all regulatory requirements, including the ability to meet or exceed regulatory capital requirements, the charter of the bridge financial company would terminate and the company would be converted to one or more state-chartered financial companies.8

(BHC also is a state chartered organization; corporate law in the US is administered at the state level. Any financial organization seeking a BHC charter, even though had filed the application with the Fed, had to incorporate the H/C under state law. Often it was incorporated in the State of the largest or original IDI, however over time would merge or acquire over state lines and sometimes incorporate in states with more lenient corporate law. Moreover, why are they state chartering this organization? What happened to the OCC and the National Bank charter? The Competitive Equality Banking Act 1987- legitimized the bridge bank structure for large banks when taken over, but the nation bank charter was what that law mandated <Ragalevsky, Ricardi, 2009 – p880/The Banking Law Journal, >. Why would the FDIC use a State Bank charter unless it was setting up the newco for an easy target for acquisition? If not by another bank or merger into another bank, or financial company not regulated by the banking laws, or a commercial company violating the long US attempts (since the founders) at the federal level to avoid and prohibit mixing commerce and banking because of abuse and concentrations of power problems. There seems to be if not a hidden agenda, then the FDIC is in a compartmentalized situation to do its 'job' and 'deliver' for a tag team of players we're not realizing are on the field looking for their part in the 'qui bono?' (**NOTE 7, Appendix**)

The bridge financial company would issue audited financial statements as promptly as possible. The audited financial statements of the bridge financial company would be prepared by a qualified independent public accounting firm in accordance with generally accepted accounting principles and applicable SEC requirements. The FDIC has consulted with the SEC regarding the accounting framework that should be applied in a Title II securities-for-claims exchange, and has determined that the ''fresh start model'' is the most appropriate accounting treatment to establish the new basis for financial reporting for the emerging company. The fresh start model requires the determination of a fair value measurement of the assets of the company, which represents the price at which each asset would be transferred between market participants at an established date. This is the accounting framework generally applied to companies emerging from bankruptcy under Chapter 11 of the Bankruptcy Code to determine their reorganization value and establish a new basis for financial reporting. The valuation and auditing processes would establish the value of financial instruments, including subordinated or convertible debt and common equity in NewCo (or NewCos) issued to creditors in satisfaction of their claims.

(This sounds like the undervaluing that the bankers used when demutualizing a thrift and when taking it public, undervaluing the shares at the Initial Public Offering so that the stock price would "pop". In the case of a SIFI put into a bridge, then as a Newco getting re-valued, where push-down accounting could have been used, but the revaluing and perhaps at a time of depressed asset levels, the Newco will be underpriced but priced for a more easy sale to interested parties. These interested parties are of concern.

In any event, also a new assurance firm needs to be appointed. The accountant for the SIFI anyway should have warned it and issued caution letters to it about its flimsy derivatives and OTC contracts exposures. Only because FAS 133 had existed to provide financial reporting to value hedges, these which in time became tradable under Commodity Futures Modernization Act 2000 and addition promulgation of US GAAP for derivatives and OTC contracts are CPA firms 'on-board' with overlooking SIFI or ISDA banks' Balance Sheets inflated with these instruments,)

Figure 1 demonstrates the claims and capitalization process. In this hypothetical example, ABC Universal Holdings Inc. is placed into a Title II receivership following a loss on assets and subsequent liquidity run.

(Sadly and unfortunately this can be contrived. Bear Stearns was put through this; it probably was operating cash flow positive and not relying on borrowings the way Lehman was, although Lehman had begun to have more problems after the financial markets began more aggressive correction in the mid to late summer of 2008 and needed to borrow for cash flow. A market crisis can happen for contrived reasons and for deserved reasons, like a necessary correction because of poor economic conditions. Lenders for short term Borrowings would vanish, even for 'high quality' borrowers. A crisis befalling a SIFI certainly would 'scare' depositors' and like Bank of New England, institutional depositors would electronically pull out their deposits. The smaller depositors would be assured because their deposits are protected however the FDIC would use 'deposit' run as a reason to start aggressive action against a weak SIFI or one that was methodically destroyed in an inflate/collapse scenario or something of a similar nature.).

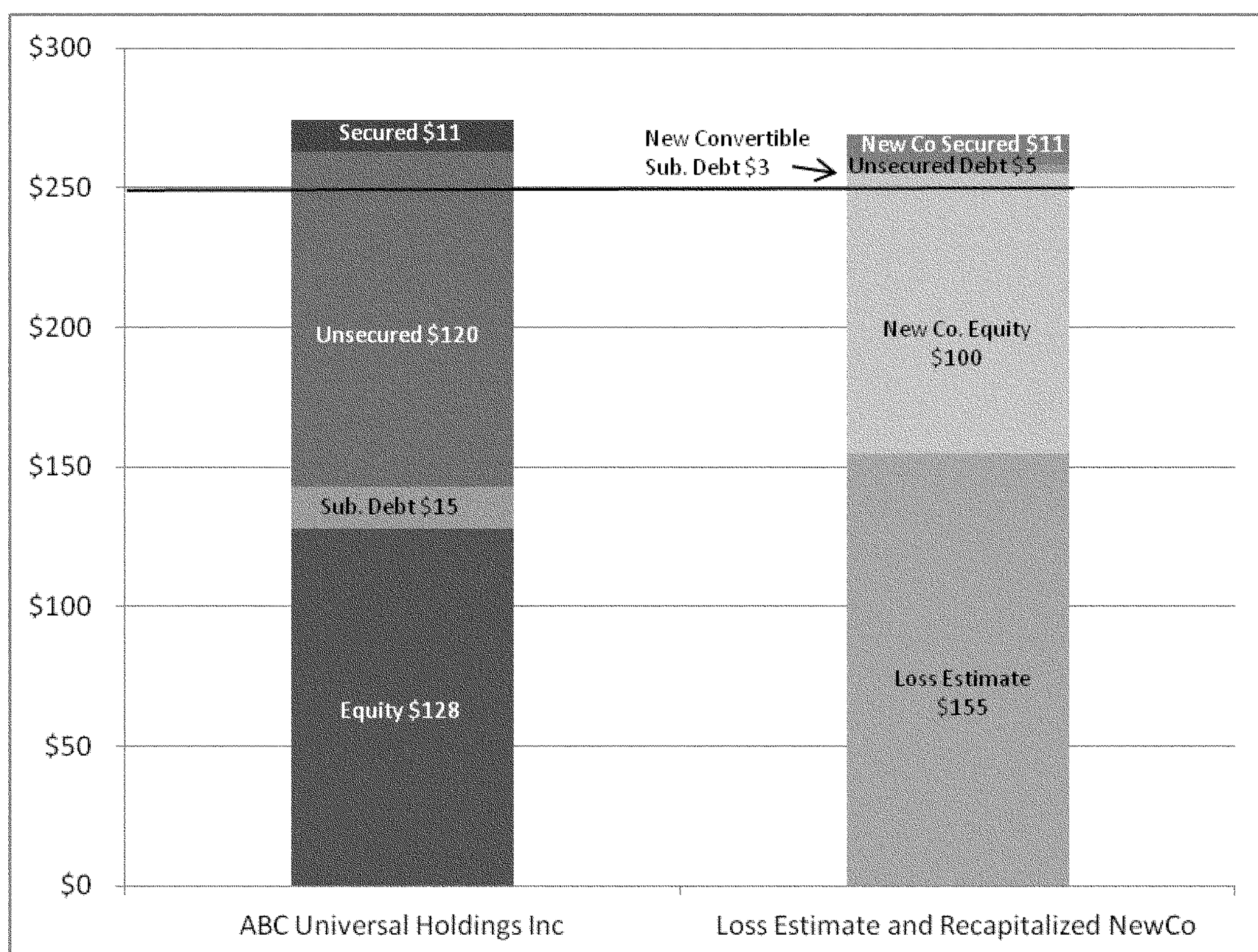
Upon transfer of ABC's remaining assets and certain liabilities into a bridge financial company a valuation is performed and the estimated losses in ABC are calculated to be $140 billion–$155 billion. The company's assets are then written down and losses apportioned to the claims of the shareholders and debt holders of ABC Universal Holdings Inc., which have been left in the receivership, according to the order of priority. In this example, shareholders and subordinated debt holders lose their entire respective claims of $128 billion and $15 billion. Additionally, unsecured debt holders lose $12 billion of their $120 billion in claims against the receivership.

In order to exit the bridge financial company, NewCo must meet or exceed all regulatory capital requirements. To do this, the unsecured creditors are given $100 billion in equity, $3 billion in subordinated debt, and $5 billion in senior unsecured debt of NewCo. Additionally, call options, warrants, or other contingent claims are issued to compensate the unsecured debt holders for their remaining claims ($12 billion). The former subordinated debt holders and equity holders of ABC Universal Holdings Inc. are also issued call options, warrants or other contingent value rights for their claims, which would not have any value until the unsecured claimants had been paid in full.

Figure 1

Claims Waterfall

($B)



Ownership of securities in NewCo (or NewCos) would be subject to any applicable concentration limits and other restrictions or requirements under U.S. banking and securities laws and other applicable restrictions, including for instance, cross-border change-of-control issues. In addition, the FDIC may determine to pay claims in cash or deposit

securities into a trust for prompt liquidation for those portions of certain creditors' claims that would result in the creditors owning more than 4.9 percent of the issued and outstanding common voting securities of NewCo (or NewCos).
(In what also seems like a before-or-after- the- fact form of expropriation for a 'plunder', or a stealing of some owners wealth in one of these, it appears the FDIC wants the power to override former ownership concentrations prior to pulling-the-plug. Any ownership concentration the FDIC wants to alter to less than 5% is hurting an 'owner', a shareholder that has the power to buy securities the FDIC would issue. Because virtually all investors would be ignorant about the potentially true intent of the FDIC with regard to the largest financial institutions, most investors and some long term, institutional investors would ride out market turbulence because they're long-term owners and market corrections don't typically care long term investors, pensioners (although presumably these would be protected in resolution, however pensioners haven't faired well in these and Enron is perfect example, while Lehman employees had other forms of deferred comp, however that too was also destroyed in that take-out. Additionally, what also are these 'applicable concentration limits'? Please provide the link or reference in statute or regulation that would serve to support this observation. At the levels of capital proposed, it could have effectively if enforced discipline at any level of capital.)

Restructuring and the Emergence of NewCo (or NewCos)
The FDIC's goal is to limit the time during which the failed covered financial company is under public control and expects the bridge financial company to be ready to execute its securities-for-claims exchange within six to nine months.
(If the Fed is the Central bank and was the regulator for BHCs which this SIFI had, because we know it had a BHC because the FDIC wants to use SPoE at the highest Bank Holding company, where is the Fed in this newco? Where is the Fed in the supervision or oversight of this because Newco, is also is or will take on the BHC structure. Additionally, are these securities Treasuries? Are these in Newco as if they're 'bail-in'? If like 'bail-in', what is the scenario or assumptions the debtor can defease the debt?)

Execution of this exchange would result in termination of the bridge financial company's charter and establishment of NewCo (or NewCos).

The termination of the bridge financial company would only occur once it is clear that a plan for restructuring, which can be enforced
<But why did this go this far, when the iterative process for the Resolution plan between the filer –the SIFI or 'Covered Company' and the regulators apparently went poorly or there is a 'lynch' mob in FDIC clothing?> , has been approved by the FDIC, and that NewCo (or NewCos) would meet or exceed regulatory capital requirements. This would ensure that NewCo (or NewCos) would not pose systemic risk to the financial system and would lead to NewCo (or NewCos) being resolvable under the Bankruptcy Code
(But what about the derivatives and OTC contracts that are what are unsafe and unsound? and are what contributes to the fragile financial system? Granted the FDIC can't reverse de-industrialization to which George HW Bush agreed with Helmut Kohl in 1988 or 1989 in a G7 or G8 agreement, with 'free' trade used as the mechanism to achieve de-industrialization of the US economy to shrink it and constrain economic growth to parallel the EU's 'managed competition. The FDIC in its research however could have observed this and exposed all of this with the associated intended economic contraction. This also is the operating environment in which SIFIs have had to operate since the late 80s. ISDA and SIFIs with large exposures to derivatives and OTC contracts that the regulators failed to have the covered company reduce or discipline it will be a systemic risk to the economy, even if shrunk. The FDIC knows this and that these instruments are unsafe and unsound and that concentrations of them no question pose a risk to the financial system and thus, to the economy).

This might be accomplished either through reorganizing, restructuring or divesting subsidiaries of the company. (the regulators could have required this before "failure" or in Resolution Plan process… so why were these matters rectified then?)

This process would result in the operations and legal entity structure of the company being more closely aligned and the company might become smaller and less complex. In addition, the restructuring might result in the company being divided into several companies or parts of entities being sold to third parties. This process would be facilitated to the extent the former company's Title I process was effective in mitigating obstacles and addressing impediments to resolvability under the Bankruptcy Code.
(Problem is with all of this is a presumption or assumption that German, the Europeans, or the Japanese will do this to their own *grossbanken*. **(NOTE 7, Appendix)** That's most likely a never. Dr Johnson made a solid observation about

the National Champions and those governments disinclination to cut apart those organs of their wealthy. If we're doing this to our own presuming Germany and other countries are doing that to their own as they are CPs to our ISDA and SIFI banks, while this Marxist 'break-up' bug has hit an inside track with power over the US government and thus the FDIC, but the Germans aren't going to do that to their own, we're assuming we have the power over our own turf? I don't think this is the case. Why before this didn't we apply our regulation like PCA? Why also are we recognizing foreign quasi 'regulation' like Basel, which is a framework more a part of asymmetric commercial war Basel was not what was of our own that work and we failed to enforce. So this NPR is more of "This time it's different…" when it's the same thing but a more petit violent thrown out for public comment to get a cover of what is really intended.)

Before terminating the bridge financial company and turning its operations over to the private sector, the FDIC would require the board of directors and management of the bridge financial company—as part of the initial operating agreement—to formulate a plan and a timeframe for restructuring that would make the company resolvable under the Bankruptcy Code.

The board of directors and management of the company must stipulate that all of its successors would complete all requirements providing for divestiture, restructuring and reorganization of the company. The bridge financial company would also be required to prepare a new living will that meets all requirements, and that might include detailed project plans, with specified timeframes, to make NewCo (or NewCos) resolvable in bankruptcy. 9

Federal Register / 76621

9 While NewCo (or NewCos) would no longer be systemic, it is still likely to fall under the requirement to file a Title I plan due to having assets greater than $50 billion.

(What happened in the prior Resolution Plan Process? Why wasn't the prior or original 'living will' properly regulated while this enterprise wasn't put into a yet more disruptive state to the financial system?)

Finally, the board(s) of directors and management(s) of NewCo (or NewCos) would be expected to enter into an agreement (or agreements) with the company's (or companies') primary financial regulatory agency to continue the plan for restructuring developed as part of the initial operating agreement as a condition for approval of its (their) holding company application(s).

Figure 2 demonstrates the FDIC's anticipated time line for the resolution of a SIFI under Title II authorities. As the figure shows, pre-failure resolution planning will be critical, including the information obtained as a result of the review of the Title I plans. The window between imminent failure and placement into a Title II receivership would be very short and the FDIC anticipates having the bridge financial company ready to be terminated 180– 270 days following its chartering, subject to the conditions described above.
(Things don't always go as they're planned and assumed. And again, what failed in the initial Resolution Plan process that wasn't properly rectified to get to the point of a resolution situation and a 'SPoE', unless there is a Bear Stearns or Lehman or even a Washington Mutual that someone, group more powerful than the FDIC isn't going to give the word pull the plug? Is the Resolution Plan process merely to chose which one will get blown up to disrupt the system and like throwing chum into the water for the circling sharks?

Having said that, I'm not certain that given the degree of hidden agenda and political interference that's happened all along since at least Gramm Leach Bliley and Commodity Futures Modernization Act 2000, where the political insiders including the former Chairman of the Board of Governors of the Federal Reserve System ridiculed and circumvented the experience and authority of the head of another regulatory agency, Brooksley Born chair of the CFTC - against trading OTC contracts and derivatives - Regulator who argued against trading OTC contracts and derivatives. Notwithstanding, Enron's Senator Phil Gramm, then Chair of the Senate Banking Committee, Larry Sommers, President Bill Clinton's chair of the Council of Economic Advisors, Robert Ruben, former Goldman Chair and President Clinton's Treasury Secretary, and Alan Greenspan, the Chairman of the Board of Governors of the Federal Reserve System. Able to trade these instruments without oversight or regulation enabled banks to rampantly engage in this financial engineering the Fed characterized as 'financial innovation', double-speak to effectuate inflate/collapse from banks engaging in unsafe and unsound banking practices.

I support the FDIC enforcing cease & desist against writing and trading these rather than exercising resolution proceedings against a SIFI engaging in these products and 'services'. I wouldn't suggest to IDIs to fear the FDIC, however , in that the 'system' is broken and members of the American Banking Association or ISDA rely on their

lobbyists also is a part of the problem. Where multilateralism such as G7, G8, G20 and Basel, for example ISDA also demonstrates that there are problems when foreign interests have advocates or functionaries here, whether they're lobbyists or former presidents, THOSE sorts of conflicts need to get exposed in order to address the 'fragility' or risk for 'collapse' in the US Financial system. It's not some SIFI getting tee'd up for the FDIC's 'carving-table' for other players to devour.

This also shows that what regulation is administered to the SIFIs, they'll generally comply. Sadly the Regulators are worse about keeping their own rules than when those rules and regs are administered to IDIs. Moreover one should look at the Drexel and Lehman Bankruptcies. Drexel was a large financial sector bankruptcy when it happened. Because most wallstreet firms were partnerships, business wasn't going be done that would harm partner money nor bankrupt the partnership.)

Figure 2

Timeline of a Title II Resolution

Phase	Activity	Pre-failure	Determination, Appointment and Bridge Period										Post Recap
		Ongoing	Day -5	-2	-1	0	30	60	90	120	150	180-270	Ongoing
Resolution Planning	Resolution plan review; Title II planning												
	FDIC valuation												
Determination	FDIC board case / Orderly Liquidation Plan					Failure							
	Joint recommendation to UST Secretary (3 key process)												
	UST Secretary determination (with the President)												
	Judicial review (if applicable)												
Appointment	Receiver appointed; bridge chartered; board/CEO appointed												
Bridge / Receivership	Remove management responsible for failure (immediate/ongoing)											Recapitalization	
	Operating agreement effective												
	Claims class determination												
	Claims bar												
	Valuation / prepare new financials / fairness opinion												
	Recapitalization & business / capital / liquidity plans approved												
	Issue new securities / terminate bridge												
	Agreement to Continue Restructuring Plan/ Approval of NewCo (or NewCos) BHC Application												
Post-Bridge	Restructuring / divestiture complete; resolvable in bankruptcy												

It was a little difficult to figure out this chart. The process of "Resolution Plan" in a way seems a little disingenuous also although with the time frames that trigger with a seizure/failure.

The use of expression 'Resolution Plan' also confirms my earlier suspicion about what 'Resolution' really does mean, that these SIFIs are targeted for seizure and that Resolution Plans are part of the dance to either get life, or be deemed to die.

Now the public would not understand nor be aware of this because the FDIC doesn't want its hand forced with large depositor runs, and large creditors breaking their contracts that also perhaps would cause destabilization and/or performance problems at these largest financial institutions. Moreover, to the tune of tens of billions of dollars, probably hundreds of billions of dollars that these shops made many bad loans, purchased bad loans, structured product using

bad loans, loans that were going to go bad, that were re-hypothecated and used time again in structured product, referenced in some cases, more than 900 times in structured product without ANY discipline from the regulators or management, speaks to great, gross insult to the sector, the professionals who decried these products and services, public servants who condemned these products, services and abuses, but suffered retribution. The public got a dose of tad bits of truth mixed with fodder, some of it spun by regulators and public servants themselves. Then there was the Financial Crisis Inquiry Commission which was kept on a tight leash with a tight budget and a short time frame but with research staff stacked with political hacks, not me.

Reporting
The FDIC recognizes the importance of providing transparent reporting to the public, financial markets, Congress, and the international community. The FDIC intends to execute its resolution strategy in a manner consistent with these objectives.

The FDIC would provide the best available information regarding the financial condition of the bridge financial company to creditors of the covered financial company. The bridge financial company would comply with all disclosure and reporting requirements under applicable securities laws, provided that if all standards cannot be met because audited financial statements are not available with respect to the bridge financial company, the FDIC would work with the SEC to set appropriate disclosure standards. The receiver of the covered financial company would also make appropriate disclosures. **(NOTE 5** enforce the regulatory framework NOW on these rather than blow up a SIFI and decide to enforce 'rules' or what's proposed here in this NPR.)

The FDIC and bridge financial company would provide reports and disclosures containing meaningful and useful information to stakeholders in compliance with applicable standards.

The FDIC anticipates that the bridge financial company would retain the covered financial company's existing financial reporting systems, policies and procedures, unless the FDIC or other regulators of the covered financial company have identified material weaknesses in such systems, policies or procedures. The bridge financial company and its operating companies would be required to satisfy applicable regulatory reporting requirements, including the preparation of

76622 Federal Register / Vol. 78, No. 243 / Wednesday, December 18, 2013 / Notices

10 The FDIC has stated that it would not exercise its discretion to treat similarly situated creditors differently in a manner that would result in preferential treatment to holders of long-term senior debt (defined as unsecured debt with a term of longer than one year), subordinated debt, or equity holders.

consolidated reports of condition and income (call reports). The new board of directors would retain direct oversight over the financial reporting functions of the bridge financial company and would be responsible for engaging an independent accounting firm and overseeing the completion of audited consolidated financial statements of the bridge financial company as promptly as possible.

The FDIC would fully comply with the Dodd-Frank Act requirement that the FDIC, not later than sixty (60) days after its appointment as receiver for a covered financial company, file a report with the Senate and House banking committees. The FDIC's report must provide information on the financial condition of the covered financial company; describe the FDIC's plan for resolving the covered financial company and its actions taken to date; give reasons for using proceeds from the OLF for the receivership; project the costs of the orderly liquidation of the covered financial company; explain which claimants in the receivership have been treated differently from other similarly situated claimants and the amount of any additional payments; and explain any waivers of conflict of interest rules with regard to the FDIC's hiring of private sector persons who are providing services to the receivership of the covered financial company.
(FDIC has a standard pecking order aka "claims priority" and repudiation of claims and contracts. Wouldn't this apply without change? Or is there again, as I've mentioned risk for caprice on claimants or that some claimants lower in the pecking order can get advanced in the queue by some inner track that has power over the FDIC?).

The FDIC anticipates making a public version of its Congressional report available on its Web site and providing necessary updates on at least a quarterly basis. In addition, if requested by Congress, the FDIC and the primary financial regulatory agency of the covered financial company will testify before Congress no later than thirty (30) days after the FDIC files its first report. The FDIC also anticipates that the bridge financial company or NewCo (or NewCos) would provide additional information to the public in connection with any issuance of securities, as previously discussed.

Request for Comment To implement its authority under Title II, the FDIC is developing the SPOE strategy. In developing and refining this strategy to this point, the FDIC has engaged with numerous stakeholders and other interested parties to describe its plans for the use of the SPOE strategy and to seek reaction. During the course of this process, a number of issues have been identified that speak to the question of how a Title II resolution strategy can be most effective in achieving the dual objectives of promoting market discipline and maintaining financial stability. The FDIC seeks public comments on these and other issues.
(At levels above the FDIC, purposed destabilization is deemed to happen in the US at levels, although Congress has had a hand in in passing 'free' trade agreements, which have been to facilitate de-industrialization to which George Bush agreed in 1988 or so with Helmut Kohl at a G"X" meeting. <**NOTE 3, (NOTE 6 p29,30** > Effects of breeching compliance of the Constitution's Article 1 Section 8 were known and understood even at that time, especially eliminating tariffs on goods from asymmetric economies. The FDIC had no power to thwart these flawed policies but its research again as I've said has failed to expose or condemn these flawed policies and their deleterious effects on the US economy and areas/footprint of US IDIs into which these lend, take deposits, engage in their products and services.

I also suppose I shouldn't be shocked that the FDIC assumes it has right or power to promote market discipline and maintain financial stability, when it really has neither of these nor right to claim them. Market discipline or using it as punishment is easily manipulated in part by forces the FDIC failed in the past to discipline, ie NEWS although has no control over this, it does and did have power to issue MOUs and C&Ds against abusive behavior occurring inside IDIs and enterprises that are close financial affiliates under BHCs having large IDIs. Moreover it has no or little power over the abuses of traders or fails to take effective regulator interaction with annual comprehensive safety and soundness examinations

Moreover, utilities tend to not be broken up. A power dam or power plant has to be large to provide power to many residential as well as industrial users. Although I'm not advocating 'TooBigToFail' because it was Rockefeller, Morgan and Rothschild agent Warburg who were key in establishing a central bank to suit their key interests: to provide banking for their large corporations and to control the economy of the United States. There are other interests they had, but those two I mention are not conspiracy theory. Now up to this point large financial institutions were partnerships and made loans which they syndicated, ie took parts of large loans so that they all enjoyed the profits to large borrowers while not having exposure on any single balance sheet. Partnerships tended to engage in only that which its partners felt comfortable, with limits to their exposure to risks of sorts, usually credit or commercial risk.

When our banks began lending and backing different warring factions as far back as the Franco-Prussian War and our government bailing out the US lender which had backed the looser, that's what also contributed to the problems of abuse of power and also *corporate-personhood* which a few years after that the Supreme Court provided for the wealthy and their corporate interests. <"House of Morgan", by Chernow; and "Creature from Jekyl Island", by Griffen>

Given these are deeply entrenched problems in the US and have multilateral connections, and given it's not really in the FDIC's job description to 'promote' market discipline. It's the regulator for protecting the Bank Insurance Fund and regulating for Safety and soundness. There is FDICIA and disciplining against management engaging in abusive conduct practices and at any level of capital, administering discipline and using MOUs and C&Ds at any capital level. So do that JOB. Please do that job, rather than this surreal, mission creep which it is assuming and mentions in this NPR, sounds worse than nails on the black board.)

Disparate Treatment The issue of disparate treatment has been raised regarding the lack of a creditors' committee under a Title II resolution and the fact that creditor approval is not necessary for the FDIC to apply disparate treatment. The FDIC, however, has by regulation, expressly limited its discretion to treat similarly situated creditors differently and the application of such treatment would require the determination by the Board of Directors of the FDIC that it is necessary and lawful.10
(Again I've expressed concern about this and although helpful the FDIC gets into this, I don't really think it's going to be able to handle this for largest financial institutions; nothing personal. They're bright enough but the nature to effectively deal with the problems doesn't exist in the regulators who often are facile to political and 1% interests. It may have been Brooksley Born, it may be me; it isn't anyone looking to curry political favor and fear enemies and fail to do the right job that they are to do according to what had been statute and regulation. It's not a Paul Volcker needed here; it's not a Sheila Bair needed here. It's people that knew the rules and took steps to enforce them and were crucified for that.

Perhaps to attempt to prove me wrong or make me eat crow, someone will give the word to target a SIFI and the blow-back of that will get us this mix of ys there was planning but a world's largest financial institution was trashed and now left up to the FDIC which because of politics didn't do its ordinary job description and now this is on its plate without any of the politics eliminated. The POLITICS are a root cause for the financial instability. The One percent and multilateral interests drive the POLITICS. The FDIC thought it got even in the political battle but the voters/stakeholders are the losers. Only those that will benefit in the Qui Bono I mention earlier would be the likely beneficiaries at the expense of many. This also would include pressure on mixing banking with commerce and the power of foreign interests over our own and even in our own borders.)

Further, under the Dodd-Frank Act, each creditor affected by such treatment must receive at least the amount that he/she would have received if the FDIC had not been appointed as receiver and the company had been liquidated under Chapter 7 of the Bankruptcy Code or other applicable insolvency regime. The identity of creditors that have received additional payments and the amount of any additional payments made to them must be reported to Congress. The FDIC expects that disparate treatment of creditors would occur only in very limited circumstances. It is permissible under the statute only if such an action is necessary to continue operations essential to the receivership or the bridge financial company, or to maximize recoveries. For example, such treatment could be used to provide payment for amounts due to certain vendors whose goods or services are critical to the operations of the bridge financial company and in this sense would be analogous to the ''first-day'' orders in bankruptcy where the bankruptcy court approves payment of pre-petition amounts due to certain vendors whose goods or services are critical to the debtor's operations during the bankruptcy process. To the extent that operational contracts and other critical agreements are obligations of subsidiaries of the bridge financial company, they would not be affected by the appointment of the FDIC as receiver of the holding company under the SPOE strategy. The FDIC is interested in commenters' views on whether there should be further limits or other ways to assure creditors of our prospective use of disparate treatment.

Use of the OLF

Another issue is that the existence of the OLF and the FDIC's ability to access it in a resolution might be considered equivalent to a public ''bail-out'' of the company. There are a number of points to be made in this regard.

From the outset, the bridge financial company would be created by transferring sufficient assets from the receivership to ensure that it is well-capitalized. The well-capitalized bridge financial company should be able to fund its ordinary operations through customary private market sources.
(Why should it have to borrow? Shouldn't there be no or virtually no borrowings? If transferring sufficient performing assets into the 'bridge bank' what sort of assets aren't producing enough earnings that generate operating cash flow so that the re-formation doesn't have to rely on borrowings? Meanwhile assets aren't capital however assets greater than liabilities gives net worth.)

The FDIC's explicit objective is to ensure that the bridge financial company can secure private-sector funding as soon as possible after it is established and, if possible, avoid any use of the OLF.

It might be necessary, however, in the initial days following the creation of the bridge financial company for the FDIC to use the OLF to provide limited funding or to guarantee borrowings to the bridge financial company in order to ensure a smooth transition for its establishment. The FDIC expects that OLF guarantees or funding would be used only for a brief transitional period, in limited amounts with the specific objective of discontinuing its use as soon as possible.
(I don't recall if the FDIC held bank other than the Bank of New England in conservatorship for bid if the Bank Insurance Fund or FDIC operating fund was used to stabilize. A number of failures had happened during that time and I'm not certain what resources the BIF had had at that time. What also about the loans and bona fide earning assets? Presumably, this SIFI also had a "*matched-book*". How cash-flow parasitic were these? How close was the CAMELs to the true condition of the enterprise? Apparently not, because it couldn't operate or if worse than 3, there should have been MOUs and/or C&Ds on it. Moreover not only capital levels determine CAMELs ratings; other ratios measure financial and operating health of the IDI and roll up into the CAMELs score. Full Safety and Soundness examinations confirm quality of CAMELs ratings.)

OLF resources can only be used for liquidity purposes, and may not be used to provide capital support to the bridge company.

(Resources then also dedicated to FDIC or OLF funding rather than the FDIC regulating in its former manner vs orderly dismembering a SIFI? Out of FDIC's 'pay-grade' but get rid of de-industrialization and 'free' trade so that the SIFIs have a better economy into which to lend.)

OLF borrowings would be fully secured through the pledge of assets of the bridge financial company and its subsidiaries.
(As a regulatory solution, long before we get to this stage described in this section of the NPR, what is wrong with C&D against management? Changing management? Targeted divestitures although not into foreign hands – perhaps IPO of divestitures, and meanwhile, no disruption to the financial system. Net Worth Certificates? When they did that to FDIC thrifts, that wasn't a bad thing to do. But these are all different in terms of their legal relationship to the enterprise if and in bankruptcy would be treated differently. If the FDIC has to violate the stakeholder/stockholder in a bankruptcy work out and meanwhile these were to have been examined IDIs- stakeholders presume that and regulated these having applied and enforced MOUs and/or C&Ds? Remember – that's not been the case and these have lived under 'light touch'/kid glove treatment and not been effectively regulated, etc. Thus since that hasn't been done, but now because that hasn't been done and we're here and at 'disparate treatment of creditors' and stakeholders – the 'discourse' is sort of irrelevant because the FDIC really should have done its job according to what it had been that we knew it to do, rather than slice up SIFI and say it's doing mission creep of 'promoting market discipline and maintaining financial stability'. This is Fabian/Marxist progressive doublespeak, or black is white and white is black, even though the FDIC doesn't realize this.)

The OLF is to be repaid ahead of other general creditors of the Title II receivership making it likely that it would be repaid out of the sale or refinancing of the receivership's assets. In the unlikely event that these sources are insufficient to repay the borrowings, the receiver has the authority to impose risk-based assessments on eligible financial companies—bank holding companies with $50 billion or more in total assets and nonbank financial companies designated by the Financial Stability Oversight Council—to repay the Treasury. Section 214(c) of the Dodd- Frank Act requires that taxpayers shall bear no losses from the exercise of any authority under Title II.
(Again BHCs are or were Fed turf; perhaps because the FDIC in this NPR seems to have assumed all regulatory power over the existence and lives? Of IDIs and their BHCs? What may be the case? Why then is the Fed still getting the turf power to unevenly regulate the SIFIs? Again since the FDIC seems to be quite aggressive in this NPR, now before it's a crisis and collapse of a SIFI for the FDIC to do its job, do the job it had done in the past; it wasn't perfect but the FDIC from 1991 FDICIA days. Putting together what's been the case of recent times and what this NPR is saying, without any respect for history, rather than getting proper, effective regulatory behavior, we're getting the lurch into vandalism as the flip side to 'light-touch' and allowing that to lead).

The FDIC is interested in commenters' views on the FDIC's efforts to address the liquidity needs of the bridge financial company.

Funding Advantage of SIFIs
SIFIs have a widely perceived funding advantage over their smaller competitors. This perception arises from a market expectation that a SIFI would
76623
receive public support in the event of financial difficulties. This expectation causes unsecured creditors to view their investments at a SIFI as safer than at a smaller financial institution, which is not perceived as benefitting from an expectation of public support. One goal of the SPOE strategy is to undercut this advantage by allowing for the orderly liquidation of the top-tier U.S. holding company of a SIFI with losses imposed on that company's shareholders and unsecured creditors. Such action should result in removal of market expectations of public support.
(It is a presumption that targeting a SIFI and resolving it would remove creditor expectations of 'public support'. Both the FDIC and the Fed have facilitated the problem and neither are handling their unwind very well. Rather than regulate evenly in the way of how it regulates for non SIFIs and in the same manner fully examining for safety and soundness, quitting unsafe and unsound banking practices, developing cash flow statements the Fed examiners do for smaller BHCs, CAMELs reflective of the fully examined IDI, regardless of size, no favor for foreign banks in spite of their power, like getting feudal council FSOC, the FDIC is getting its role as butcher now for institutions from which it had been thwarting from even properly regulating.

Meanwhile an 'entry' at the top means Board of Directors and Senior Management of the consolidated enterprise, Granted the Fed grants this application and the BHC structure exists for the Fed and its powers behind its curtain to have a financial system to suit its political, commercial, and economic interests. These executives however at smaller IDIs even of the Holding companies of the smaller IDIs were interviewed and reviewed for fraud and degree of competence. For the FDIC to not review these executives and to have given a pass to what would deem to put the enterprise into a condition of seizure, and for all the reasons that get seizure other than hidden agendas to seize SIFI for carving up for waiting acquirers and lurking interests, then the FDIC didn't do its job while playing 'friend' instead of taking enforcement action long before this sort of Action of 'resolution'. Making the SIFIs file 'Resolution Plans' while not having evenly and properly regulating these IDIs again shows failure on the part of the FDIC and Fed from having done their jobs properly, these Executives, shareholders and creditors aka, those stakeholders most likely to be hurt in the seizing and resolution process of a SIFI should start a court action against the FDIC and the Fed. Also in that process, the stakeholders should require complete disclosure of all materials of the FDIC and Fed related to their deliberations, notes, memos and emails about the SIFI even before the Resolution plan process which began in January 2012. There is the probability the SIFI is targeted for feeding to 'chums' and insiders and other power-players which coveted the SIFI for fill-in, business line fit, etc and whether or not this sort of information will surface is something the senior execs and directors should confirm. Even of those parties which had contacted them to acquire operating subs also needs to be disclosed in the court process.)

The successful use of the SPOE strategy would allow the subsidiaries of the holding company to remain open and operating. As noted, losses would first be imposed on the holding company's shareholders and unsecured creditors, not on the unsecured creditors of subsidiaries. This is consistent with the longstanding source of strength doctrine which holds the parent company accountable for losses at operating subsidiaries.
(Why hasn't the Fed been disciplining against this so that the SIFI doesn't get near the FDIC's ambition to shut a SIFI and hose investors and unsecured creditors like they were fools to have stuck it out with their bank… As I'd mentioned the FDIC's verge at its new mission believed to now be sounds Marxist and not benign. As the safety and soundness regulator, I don't read political self interest into THAT, whereas this NPR and the 'environment in the US over the past 20 years has been hampered by politics including multilateralism that have de-industrialized the US economy and crippled the US financial system on purpose using Basel, IFRS, ISDA cartel power and self interests.)

This outcome raises issues about whether creditors, including uninsured depositors, of subsidiaries of SIFIs would be inappropriately protected from loss even though this protection comes from the resources of the parent company and not from public support. Creditors and shareholders must bear the losses of the financial company in accordance with statutory priorities, and if there are circumstances under which the losses cannot be fully absorbed by the holding company's shareholders and creditors, then the subsidiaries with the greatest losses would have to be placed into receivership, exposing those subsidiary's creditors, potentially including uninsured depositors, to loss.
(Again disruption of the stakeholders by way of seizing this enterprise for this Marxist tactic on the SIFI rather than eliminating 'kid-glove' treatment, using C&Ds, ridding the IDI of 'financial innovation' or at least no longer giving it a pass and making management role off this 'book' of these instruments –as these are a part of that which is for the purposes of inflate/collapse.

Moral Hazard – and among that is failure to really disciplining management at larger IDIs including the SIFIs - also has those that feed from it and look to advantage themselves with it. That the system is laced with Moral Hazard gets us to where we are and this NPR. The FDIC hasn't really addressed its hand in recent moral hazard by way of the politics with the Fed and multilateralism. It hasn't really taken on the Fed or made noise in the public domain about that turf which the Fed is attempting to control for itself but on behalf of multilateral interests that disserve the US voter/taxpayer and if there is a IDI collapse, will not feel the consequences AND have benefited by moral hazard because they could go buy it and install it in Washington and elsewhere to serve its own gravy train. What this NPR is asking for public opinion on is the front end for those who will benefit from breaking up the SIFIs, but benefited by them being as large as they are; they'll think they win both ways, but breaking up SIFIs without solving the ISDA problem, government back stop for those members, that groups power to operate above the law, the Germans' interest for ISDA and their banks' interests to roll up Europe into its Balance Sheets. These are all factors that the FDIC can't solve but can take their stand publicly and haven't.)

An operating subsidiary that is insolvent and cannot be recapitalized might be closed as a separate receivership. Creditors, including uninsured depositors, of operating subsidiaries therefore, should not expect with certainty that they would be protected from loss in the event of financial difficulties.

The FDIC is interested in commenters' views on the perceived funding advantage of SIFIs and the effect of this perception on non-SIFIs. Specifically, does the potential to use the OLF in a Title II resolution create a funding advantage for a SIFI and its operating companies?
(There would be a great deal of confusion, regardless of how the FDIC 'manages' the message in part because of -ah, FDIC and its handlers' conceit. What was it like in the past? The disruption also is unnecessary if using previous methods of enforcement and regulatory solutions.)

Would any potential funding advantage contribute to consolidation among the banking industry that otherwise would not occur? Additionally, are there other measures and methods that could be used to address any perceived funding advantage?
(Without having to go this length of 'resolution', yes, C&D, and other disciplinary actions that reduce the public perception of FAVOR that these enterprises have enjoyed. There were execs and board directors of smaller IDIs that were issued orders to leave that IDI. So also repudiations that the FDIC forces perhaps can alter an environment in which the SIFI operates long before there ever is a resolution. The FDIC CAN DO THIS; all of this talk about resolving a SIFI means other things and not seriously deteriorated operating performance. Meanwhile the FDIC has operating funds and a budget that it also will use IF or when resolving any financial institution. So if justified that it is recoverable by the buyer if a Purchase & Assumption. A Bridge bank is an intermediary step sometimes in P&A. But if Newco ie, the name of the bridge bank is IPOd, I am not certain what the FDIC used and the source of those funds to stabilize Bank of New England takeover before it was put out for bid.

Again this is subsidized vandalism that's been put into federal statute. There are other federal statutes that the FDIC and the Fed ignored or overrode, and that would take a significant amount of time to come up with all the 'discretion' the Fed and FDIC exercised that over-rode statute.

What about the FDIC - at whose expense offering and incentivizing counterparties to come to the table after its gone and done this to other stakeholders and counterparties? So some get incentivized and what's the source for that while others get hosed? That anyone with funds over $250,000 which needs a bank account that they don't keep that in a set up of their own rather than use an FDIC IDI.)

Capital and Debt Levels at the Holding Company
(How could New Worth Certificates requiring earn-out or paid-back or apportioned to a divesture be a bad thing to infuse capital? Smaller IDIs (FDIC insured savings banks) got this as an FDIC strategy albeit 30 years ago. And if C& D issued to remove someone in management or board most responsible for the problem? The FDIC would do that for a smaller institution or require divestitures, rather than in this 'plan' using resolution and SPoE trashing investors and creditors which again is vandalistic.)

The SPOE strategy is intended to minimize market disruption by isolating the failure and associated losses in a SIFI to the top-tier holding company while maintaining operations at the subsidiary level. In this manner, the resolution would be confined to one legal entity, the holding company, and would not trigger the need for resolution or bankruptcy across the operating subsidiaries, multiple business lines, or various sovereign jurisdictions.

For this resolution strategy to be successful, it is critical that the top-tier holding company maintain a sufficient amount of equity and unsecured debt that would be available to recapitalize (and insulate) the operating subsidiaries and allow termination of the bridge financial company and establishment of NewCo (or NewCos). In a resolution, the holding company's equity and debt would be used to absorb losses, recapitalize the operating subsidiaries, and allow establishment of NewCo (or NewCos).
(I am not certain what the FDIC means here. BHCs are supposed to be the Fed's turf. Not that I'm saying resolution and SPoE should be done or the Fed should be doing this in lieu of the FDIC, however what happened ie where is the Fed that the FDIC is doing this to a BHC?

Why does this look and sound like the FDIC has something up its sleeve? It's like the FDIC wants to pull off a heist and have it be bloodless…. Meanwhile, perhaps this part of the NPR - excuse my observation - but is poorly written and I'm not understanding what this is saying. Or I'm not understanding what it is saying regardless of how it is written because this is sounding like the FDIC can assume to expropriate capital and counter-party/stakeholder means. Or that 'investors' and those providing unsecured debt are paying 'TRIBUTE' - means available for the FDIC to expropriate here from people who were fools to have left themselves and their money in one form or another in this situation?

Prior to seizing a SIFI, the FDIC expects there to be adequate capital in the *shop* so that those means of investors and unsecured creditors will cover for losses inflicted when the FDIC seizes and starts the resolution process on a SIFI it wants to sacrifice? Am I correct in this assessment on what the NPR is saying? If so, doesn't this sound lawless and vandalistic? Or that after seizing the enterprise at the highest holding company level, although it doesn't say OLF is on the line here and used for means to cover for losses that seizing will inflict, so what really is the case here?

Even in PCA, the FDIC can't really justify seizing **above** what at that level of equity is 'critically undercapitalized' aka, 2%. All these SIFIs are fairly well capitalized, however their derivatives exposures, even if a matched book and even if collateralized, because those are often are cash-flow parasitic if seized could wipe out capital because THEN those exposures are at risk for taking down the Balance Sheet.

Perhaps the FDIC knows this, is counting on this and has been playing a waiting game while the Fed has led these banks astray under the ruse of 'financial innovation'. In the manner of federal legislation, proposed regulation and the scale of this matter, and on the capital of people foolish (401k and investment of ignorant people; sophisticated investors will attempt-to catch a falling knife and trade out of these stocks if there is hint of seizure) enough to have put it into a SIFI to be targeted; we're looking at a form of a fifth column situation although the FDIC is saying it's doing this to instill market discipline and make the financial sector/system, safe and stable, neither of which are in the FDIC's job description. More double-speak ploy to play into the blood lust to get recompense for miscreant US banks when both the Fed and FDIC had a hand in their condition and activities.

Meanwhile the Germans would play straight faced, but gloat and do very little to their own national Champions. It's also unlikely any other sovereign would do the same as the US, although perhaps the British would and then expect quid pro quo. This again gets the high level political and commercial war that would have us be 'resolved', possessed to do this to ourselves, although we allowed our financial institutions to inflate. Now this is the collapse? Or part of the collapse in the making to suit a hidden agenda for which the FDIC is an agent?

In effect, who's capital here is on the line when the disruption to this IDI has happened and Counter-parties and contracts have been disrupted? Moreover, the FDIC has made and makes assumptions about the commercial environment and condition of the markets in which they have and their Newco would have to operate?)

The discussion of the appropriate amount of equity and unsecured debt at the holding company that would be needed to successfully implement a SPOE resolution has begun. Regulators are considering minimum unsecured debt requirements in conjunction with minimum capital requirements for SIFIs. In addition, consideration of the appropriate pre-positioning of the proceeds from the holding company's debt issuance is a critical issue for the successful implementation of the SPOE strategy.
(Does this sound like Marxist-Vandal ruminations eyeing the investors' capital and unsecured creditors' wallets ie, those items on the targeted SIFI's Balance Sheet? Again this sound like the FDIC is/has expectation of fools-strangers paying *tribute* to new feudal lord FDIC to presume on the stakeholders means for seizing-expropriating while on the FDIC fief?. It also is looking like 'Risk-Based capital' got these SIFIs to this state where now they're getting resolved. More Marxist vandalism. Again it's proposed and looking for legitimization to expropriate other people's money and cause disruption or perhaps it believes a bloodless heist if done at the very top, rather than having enforced discipline and administrative punishment at earlier points, done MOUs, C&Ds, removals of execs and board that demonstrated problems at the SIFI while significantly limiting or cease and desisting of 'financial innovation'.

Additionally in when it's to become Newco, the FDIC will issue instruments like common stock to those whose money it expropriated to use to cover for losses? Or to the sophisticated trader types who shed this stock when there were hints of 'Resolution'?

Aside from having failed to enforce and regulate against 'financial innovation', a real part of the instability in the financial system and on the SIFIs' Balance Sheets, and from the problem of having abused the time value of money in addition to having abused stakeholders and their investments or lendings, does the FDIC identify these <people> to buy the capital notes or equity of Newco when it goes public? Are these parties to be issued or exchanged some sort of equity instrument for the opportunity cost of the FDIC having expropriated their money to cover for the cost of resolving the seized and now destabilized IDI?

And unless the US breaks policy with G7/8/20 to de-industrialize and thus alter the reasons for the US to do 'free' trade, most likely there will be the continued on-going economic squeeze that will be causing consolidation, so OLF isn't a factor here because some buyer will buy the Newco to roll it up into its own Balance Sheet? What sort of company or its country of origin will that be? Or it's more the Marxist-vandalism proposed in this NPR that gets this SIFI selected for FDIC target and plunder?)

The FDIC is interested in commenters' views on the amount of equity and unsecured debt that would be needed to effectuate a SPOE resolution and establish a NewCo (or NewCos). Additionally, the FDIC seeks comment on what types of debt and what maturity structure would be optimal to effectuate a SPOE resolution. The FDIC notes that there is a long-standing debate over the efficacy of using risk-based capital when determining appropriate and safe capital levels.
(I agree here. I have NEVER supported the use of Basel at all in the US and have opposed it as quasi foreign banking regulation that we never needed and have used to our detriment. In the US we have used and use a Leverage ratio. Even now Basel III uses or is attempting to use a Leverage Ratio however I the Balance Sheet, the Capital and the Ratio itself are contaminated with risk weights and Basel's attempts of punish off the Balance Sheet commercial activity at the Banks. I had opposed the Basel III proposed Leverage Ratio and attempted to meet that comment date, however that comment remains in the works.)

The FDIC is interested in commenters' views whether the leverage ratio would provide a more meaningful measure of capital during a financial crisis where historical models have proven to be less accurate.
(Again, I agree with the US' (FDIC, Fed, OCC, etc) use of a Leverage ratio. Reasons Basel went to the use of Risk weighted ratios was so that those countries in Europe could continue to issue their sovereign debt while being members of the EU. Those sovereign debt issues would enjoy "0%" risk weight under the theme that countries don't' go bankrupt even though many of them are economically shriveled on purpose to get them to bow to Germany's interests to dominate the EU 'footprint' in its commercial and cultural war to dominate Europe. Additionally the Germans would continue to lend to Commercial and Industrial entities whether or not it cared if the US did and would face full capital weights behind C&I loans on the Balance Sheet. The US began collateralizing C&L loans in structured product whereas in the EU, those sorts of in effect Off Balance Sheet securities backed by C&I loans are not permitted. The Germans have had a problem with this, have general contempt for complying with Basel Accords and accordingly delay its recognition for those while its banks are attempting to roll-up Europe and those banks into its Balance Sheet, and all the side and hidden pockets **(NOTE 3, 7, Appendix)**

Treatment of Foreign Operations of the Bridge Financial Company
Differences in laws and practices across sovereign jurisdictions complicate the resolvability of a SIFI. These cross-border differences include settlement practices involving derivative instruments, credit swaps, and payment clearing-and-processing activities. In the critical moment of a financial crisis, foreign authorities might ring-fence a SIFI's operations in their jurisdictions to protect their interests, which could impair the effectiveness of the SPOE strategy.
(Perhaps this is an effective monkey wrench needed to thwart genteel Marxist vandalism proposed here.)

A key challenge for a successful resolution of a SIFI under the SPOE strategy, therefore, will be to avoid or minimize any potential negative effects of ring fencing of the SIFI's foreign operations by foreign supervisors in those jurisdictions.

SIFIs operate in foreign jurisdictions primarily through two forms of organization—subsidiaries or branches of the IDI. Foreign subsidiaries are independent entities, separately chartered or licensed in their respective countries, with their own capital base and funding sources. As long as foreign subsidiaries can demonstrate that they are well-capitalized and self-sustaining, the FDIC would expect them to remain open and operating and able to fund their operations from customary sources of credit through normal borrowing facilities.

(Actually as an experienced Counter-Party Credit Risk Analyst, Counter-Parties had expected these subs to have the 'Parent' support as "Source-of-Strength'.

In any event, again what the FDIC this sounds like presumption and madness. The SIFI's representations are as a going concern. Even the FDIC if the SIFI has reported a CAMEL I or 2 rating, the FDIC similarly represents the SFI as a viable going-concern and not at risk for seizure/resolution.

There are commercial risks to creditors anyway, but given what's happened over the past 15 years since GLB 1999/CMFA 2000 and kid glove treatment to *financial innovation* the FDIC as an uncertainty in this commercial situation presents more than ordinary business risk to creditors, investors and counter-parties. The risk of the FDIC expropriating the funds of a stakeholder in this commercial relationship with a targeted SIFI in the interest to minimize disparate treatment, market abuse, and financial instability should get a pass? By the deceit it seems here, isn't this some form of fraud or constructive fraud perpetrated by the FDIC and the US Government? After all the fraud in the financial system from the nonperforming mortgages written securitized and referenced and re-hypothecated (which the FDIC and Fed knew were happening), the FDIC feels now it's its turn, rather than the FDIC take the appropriate administrative disciplinary steps on these IDIs such as full examinations and if necessary MOUs or C&Ds against unsafe and unsound banking practices? This is NOT a rhetorical question. Safety and soundness regulation would/should be the strategy and while all these stakeholders and commercial relations are engaging in commerce with a going concern that has been represented as enterprise worthy and in good condition in which to engage in commerce. AGAIN IT IS NOT TOO LATE TO EFFECTUATE THIS RATHER THAN KID GLOVE TREATMENT FOR *FINANCIAL INNOVATION*.)

As to the issue of foreign branches, their operations are included in the U.S. IDI's balance sheet, and there would be no reason to expect the operations of the foreign branches to change since the parent IDI remains open and well-capitalized under the SPOE strategy. The FDIC is working with foreign regulators to ensure that a SIFI's operating subsidiaries and foreign branches of the IDI would remain open and operating while a resolution of the parent holding company proceeds.

A multiple point of entry (MPOE) resolution strategy has been suggested as an alternative to the SPOE resolution strategy. To minimize possible disruption to the company and the financial system as a whole, an MPOE resolution involving the cross-border operations of a SIFI would require having those operations housed within subsidiaries that would be sufficiently independent so as to allow for their individual resolution without resulting in knock-on effects. Independent subsidiaries could also arguably facilitate a SPOE strategy by having well-capitalized subsidiaries with strong liquidity that would continue operating while the parent holding company was placed in resolution.
(I don't support this nor an SPoE, because both will produce a crisis, run, etc. Even after the Bank of New England seizure, what a mess and perhaps because it was the FDIC virtually never mentions or references it and it was sold to Fleet – the other largest bank in the New England that could do the acquisition only with KKR money also in the equation.)

A subsidiarization requirement could resolve some problems associated with the need for international coordination. However, it is not clear that such a requirement would resolve all of the issues associated with resolving a SIFI with foreign operations, such as those of interconnectedness or of needing the

76624 Federal Register

11 Sections 23A and 23B restrict the ability of an insured depository institution to fund an affiliate through direct investment, loans, or other covered transactions that might expose the insured depository institution to risk.

cooperation of foreign authorities to maintain certain services or operations.

The FDIC would welcome comments on whether a subsidiarization requirement would facilitate the resolution of a SIFI under the MPOE or SPOE strategies, or under the Bankruptcy Code.
(How are those going to be 'treated' ie, regulated and why more subsidiarization? When the FDIC is talking about piercing the SIFI at the highest level, so why more?)

The FDIC would also welcome comments that address the potential advantages and disadvantages for resolvability of a SIFI of a requirement that SIFIs conduct their foreign operations through subsidiaries and whether a subsidiarization requirement for foreign operations would reduce the likelihood of ring fencing and improve the resolvability of a SIFI.

(**Again, thank God for foreign ring fencing although that perhaps puts branches at risk for seizure by a foreign, and held as collateral towards exposure to a National Champion, which perhaps is what is intended here. The foreign subs already should be able to survive on their own although another problem is it could be nationalized and expropriated to be given over to a National Champion, and that's the way it would go.** Again perhaps this also is a part of the ulterior motive for all of this 'discourse' about this genteel Marxist vandalism, proposed)

Additionally, would a subsidiarization requirement work to limit the spread of contagion across jurisdictions in a financial crisis, and what are the potential costs (financial and operational) of requiring subsidiarization?
(That's hard to say and depends on hidden agendas here and because other sovereigns and in their self interests will act in the behalf of their National Champions and/or the US government will have to put up Treasuries as collateral against problems because other governments will require some sort of collateral against seizure of their National Champions' means, which are counter-parties of US SIFIs, and the FDIC has been humored in its efforts to let its mission creep get it to the belief its increased resume is to include promoting market discipline and maintaining market stability. Sorry, however this new 'mission' I found affected, bizarre and somewhat self-presumed because it's really not set up for that role and could contribute that role by doing its assigned job with full safety and soundness examinations, administering and effectively enforcing the past regulations at any capital level, and that it had had even with 1991 FDICIA.)

The FDIC would also welcome comments on the impact a branch structure might have on a banking organization's ability to withstand adverse economic conditions that do not threaten the viability of the group, for example, by enabling the organization to transfer funds from healthy affiliates to others that suffer losses in a manner that is consistent with 23A and 23B of the Federal Reserve Act.11
(I would have thought this was worked out as parent sub 'cross-guarantee internal transactions' or perhaps the FDIC is sort of fishing for ideas here. If the IDI or the FDIC wrangle Treasuries as collateral in the equation if it were to either seize a SIFI or put the SIFI into a contrived crisis such that collateral has to be posted, perhaps Treasuries would be included in spite of DFA saying that 'resolution' isn't to cost the voters/taxpayers money. The FDIC is talking about seizing means of stakeholders, while here the Treasuries would only serve as collateral to be posted while the SIFIS is working out its issues unless the FDIC is doing an SPoE at the top and other governments are going to act in their own self interests, regardless of what they'd told the FDIC. If there is some sort of market 'crisis' and these can be contrived, if in this crisis the portfolio of derivatives and OT Contracts evaporates, if SIFI Balance Sheet is hit with this the key will be what will that Balance Sheet look like and what will happen to the financial system. There are some banks that if their $330 Billion matched-book OTC and derivatives contracts portfolio evaporates, they are still adequately capitalized. That would be a very difficult SIFI to justify taking down.)

In addition, the FDIC requests comments on the extent to which a branch model might provide flexibility to manage liquidity and credit risks globally and whether funding costs for these institutions might be lower under the branch structure.
(This is hard to say. Again if I didn't read the wrong way, *Capital and Debt Levels at the Holding Company* the FDIC should thank God any counter-party or stakeholder would want to do business with it given the thinly veiled moral hazard characteristic of misrepresentation and expropriation that one discerns in this NPR.)

Cross-Border Cooperation
Cross-border cooperation and coordination with foreign regulatory authorities are a priority for the successful execution of the SPOE strategy. The FDIC continues to work with our foreign counterparts and has made significant progress in the last three years. The FDIC has had extensive engagement with authorities in the United Kingdom and has issued a joint paper with the Bank of England describing our common strategic approach to systemic resolution. Working relationships have also been developed with authorities in other countries, including Switzerland, Germany and Japan.
(These countries have and favor their own National Champions, and don't want us as competitors, meanwhile wanting to buy our SIFIs and will gladly step in and 'help' to take pieces of them.)

The FDIC has established a joint working group on resolution and deposit insurance issues with the European Commission and continues to work with the Financial Stability Board and its Resolution Steering Group.
(which in effect are the Germans and those National Champions **NOTE 7, Appendix**)

An important example of cross-border coordination on resolution issues is a joint letter the FDIC, the Bank of England, Bundesanstalt fu¨r Finanzdienstleistungsaufsicht (BaFin) and the Swiss Financial Market Supervisory Authority (FINMA) sent to the International Swaps and Derivatives Association (ISDA) on November 5,2013.
(Such that 'resolution' doesn't have to occur; how about getting rid of Government back-stops and language of that nature out of ISDA agreements to take away protection for writing and inflating using Derivatives and OTC contracts that ISDA cartel members have been able to abuse because of those 'back-stops'. This would diminish engaging and writing unsafe and unsound instruments ie, OTC contracts and derivatives.)

The letter calls for standardizing ISDA documentation to provide for a short-term suspension of early termination rights and other remedies with respect to derivatives transactions following the commencement of insolvency or, resolution proceedings or exercise of a resolution power with respect to a counterparty or its specified entity, guarantor, or credit support facility.

The FDIC welcomes comment on the most important additional steps that can be taken with foreign regulatory authorities to achieve a successful resolution using the SPOE strategy.
(Ah, FDIC interaction with foreign 'regulatory' authorities, when these weren't as mature as the FDIC? It's important that the FDIC had done its prior job all along with the OCC and the various State banking departments, and the Fed cooperating accordingly rather than the multilateral creature Fed, passively dominating the turf. And it and all others have to give a pass to inflate/collapse slickly contrived to put at risk the US financial system and our largest financial institutions, while expecting some true alliance or cooperation from foreign interests, which truly are looking after their own interests.

As I've observed the British may be in our camp, because it doesn't what to 'throw-in' with the Germans, which wants to dominate EU, Europe with the Vatican lurking behind the curtain. The British have no interest in putting its sovereignty at risk and think we're their better bet, however will expect quid pro quo. What will THAT be? Moreover, we're playing a foolish game by allowing the Fed and FDIC to comport themselves in the ways they have over the past more than 10 years and failing to have done their US regulator jobs properly. Now with flawed laws not repealed and flawed regulations and risk for more flawed regulations, ie, deliberating THIS when there shouldn't be these issues if the FDIC and even the Fed returned to their former regulator roles before this hat of marketing SIFIS by seizing them and putting them on the Block for 'friends' and enemies alike, and this new mission-creep to promote market discipline and maintain market stability? As I'd said, AWOL from their former regulator responsibilities does bring concern with their proposal to assume dual objectives of promoting market discipline and maintaining market stability.)

Additional Questions
In addition to the issues highlighted above, comments are solicited on the following:

Securities-for-Claims Exchange. This Notice describes how NewCo (or NewCos) would be capitalized by converting the debt of the top-tier holding company into NewCo (or NewCos) equity.
(Problematic would be any creditors which are investors the FDIC had screwed over. More such as, are there particular creditors or groups of creditors for whom the securities-for-claims exchange strategy would present a particular difficulty or be unreasonably burdensome? (If these are 'juicy' there would be investors; sovereign wealth funds already had made infusions into US financial institutions, although they should be subject to less than 5% ownership and/or cannot cartel and /or conspire to buy or infuse into a SIFI that would change the SIFI's ownership to another country or a National Champion of it.

In another vein, credibility and success here are questionable because of all the lack of responsible regulation. Also having supported the use of Basel in the US and Fed giving 'kid-glove' treatment of *financial innovation* that gets a SIFI to this point of 'resolution', 'disparate treatment', etc.

So this perhaps may be an OK strategy except the FDIC seems to think its in control, but all of this and the last 16 years or so shows it's not in control. And if it and the Fed are controlled by others and a hidden agenda that is abusing stakeholders and society by 'discretion' in a manipulated process, then the FDIC needs to repair to the role of an impartial regulator for safety and soundness. This includes full safety and soundness exams, use of MOUs, C&Ds, Written Agreements with IDIs regardless of size and its contribution to public opposition to flawed domestic and multilateral policy, as well as drawing its line against Fed intrigues.)

Valuation.
This Notice describes how the assets of the bridge financial company would be valued and how uncertainty regarding such valuation could be addressed. Would the issuance to creditors of contingent value securities, such as warrants, be an effective tool to accommodate inevitable uncertainties in valuation? What characteristics—such as, term or option pricing, among others—would be useful in structuring such securities, and what is an appropriate methodology to determine these characteristics?
(I'd have to see this modeled. Could have done Rights Offerings on the front end to have raised capital and not for use against loses when the FDIC wants to seize a SIFI and 'resolve' it under some quiet, on-cat's-paws Marxist vandalism.)

Information.
This Notice recognizes the importance of financial reporting to the resolution process. What information, reports or disclosures by the bridge financial company are most important to claimants, the public, or other stakeholders? What additional information or explanation about the administrative claims process would be useful in addition to the information already provided by regulation or this Notice? (Transparency with regard to which players on the front end were in talks with the FDIC or rather who/what were FDIC conferees regarding specific SIFIs. What had been the nature of the dialogs about the SIFIs targeted without any redacting/without any material redacted from these reports for public consumption. Not only should public funds be 'protected' but the public trust also should be respected with full transparency rather than discretion in this process.

Effectiveness of the SPOE Strategy.
This Notice describes factors that would form the basis of the initial determination as to whether the SPOE strategy would be effective for a particular covered financial company. Are there additional factors that should be considered? Is there an alternative to the SPOE strategy that would, in general, provide better results considering the goals of mitigating systemic risk to the financial system and ensuring that taxpayers would not be called upon to bail out the company?
(OK. This is fair to include this even if at the end. My comment has intended to answer this question even if the FDIC includes it at the end.

Consider this: perhaps where even 10 years ago when I testified before the Federal Reserve Bank of Boston against the Bank of America application to acquire Fleet-BankBoston and I mentioned the problems of 'TooBigtoFail'. Actually again the real problem is the abuse of power and the ability to enjoy corporate person hood under a Supreme Court decision, needs to be addressed. Although that is not on the FDIC's turf, it is something the FDIC can research and expose as a problem of abuse of power.

Additionally the multi lateral problems that get US Congress in DFA to recognize a foreign quasi regulatory framework know as the Basel Accords also needs to get eliminated from US banking. The FDIC has indicated its dislike of Basel, but failed to get it rejected in part because Basel is multilateral and that's the Fed's politics and interests. Further the ISDA cartel abuse and self interests should get the FDIC to require US SIFIs to resign and repeal their signatory status to ISDA. Any other bank that can enjoy ISDA government back stops should not be permitted to be a potential acquirer of a US financial institution, nor should its US presence get protection of any sort by multilateral agreements and the Fed.

The FDIC also needs to stop inconstant handling/supervision and regulation across the US financial sector regardless of the size of the IDI.)

Again, thank you for accepting my comment to this NPR and for this public due process with regard to FDIC actions and attempts to effectively supervise and regulate the US financial sector and serve as the safety and soundness insurer protecting the Deposit Insurance Fund and regulating those IDIs that use it.

Respectfully,
Andrea Psoras
New York, NY
3/21/2014 12:16:37 AM

All comments must now be received on or before March 20, 2014.
http://www.fdic.gov/news/news/press/2014/pr14010.html

http://www.newyorkfed.org/banking/regrept/FRY11_11S_FR2314__2314S_FRY7N_7NS_7Q_%202886b_20140221_ffr.pdf *Federal eRulemaking Portal: http:// www.regulations.gov.* Follow the instructions for submitting comments. *Public Inspection:* All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/*

NOTE A: Walter, John R. Closing Troubled Banks: How the Process works. Richmond Fed, Economic Quarterly. Vol 90/1, Winter, 2004, p63, 65. The monitoring benefit may be limited, however. The FDICIA appears to have increased the likelihood that large banks' uninsured depositors may suffer losses in a failure, and large banks are the greatest recipients of uninsured deposits. Prior to the FDICIA, these depositors were uniformly protected (Benston and Kaufman 1997, 30). However, in the case of several fairly large banks, depositors have suffered losses since the FDICIA. **Yet, FDICIA contains a provision that allows supervisors in some cases to protect all depositors in large banks, a fact which will certainly damp depositors' incentives to monitor large bank health. Further, uninsured deposits make up a fairly small fraction of the total deposits of small banks, so for these banks the significance of depositor monitoring is also limited.** As of the end of the first quarter of 2003, on average, uninsured deposits accounted for only 23 percent of small banks' deposits. Here a small bank is defined as one with assets less than $1 billion.

P65 **9. AID FOR BANKS THAT MIGHT POSE A SYSTEMIC RISK**
Section 141 of the Act requires the FDIC to determine and employ the least costly resolution method. Further, this section of the Act prohibits the FDIC, when acting as receiver for a troubled bank, from protecting uninsured depositors and the bank's other creditors if doing so adds to the expense of resolution. Yet, Section 141 grants an exception to these rules. The Act itself calls this the "systemic risk" exception, and observers typically refer to it as the "too-big-to-fail" exception. The least-cost rule can be bypassed if the FDIC determines that closing the troubled bank without protecting uninsured depositors or creditors would have serious effects on economic conditions or financial stability. In other words, an exception to the rule is allowed if a bank's closure with losses to uninsured depositors might lead to the spread of financial problems widely through the banking system. P66 Only when the FDIC's Board of Directors, the Board of Governors of the Federal Reserve, and the Secretary of the Treasury in consultation with the President agree to the too-big exception is the latter allowed. Any decision to employ the exception must be reviewed by the General Accounting Office. If the exception is granted, the FDIC must recover its losses from a special assessment on insured banks beyond normal deposit insurance premiums. Because of the possibility that the exception might be invoked and all depositors protected, investors in those banks that might be granted the exception have a reduced incentive to monitor and are likely to charge less than completely risk-adjusted interest rates. In response, such banks are likely to engage in an inefficiently high level of risk-taking, wasting financial resources.
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REFFERING TO THE SRAC MEETINGS:
Paul Tucker is typical of the very earnest, very bright, well-spoken public servant for British interests (which actually often are manipulated by Germany's interests), given its difficult position with regard to what's happening in Europe, the UK's largest trade partner. The British need us as an ally and thus it attempts to link its agenda with ours, or co-opt ours to serve its own **(NOTE 7)**.

Although this may not seem to have anything to do with SRAC and last December's meeting, with regard to resolving the SIFIs and the GSIFIs, neither Deutsche Bank ("DB") nor BNP and other foreign SIFIs will subject themselves to this memorialized and legitimized policy to divest pieces of themselves, and subject themselves to some sort of bankruptcy procedure, and dismembered to suit a hidden agenda. And those National Champions will give us problems in their own way and not bother us about our own if we want take apart one of our own SIFIs. Overall however we lose unless we take steps to unwind flawed policies such as multilateralism including deindustrialization that have been a source for many problems.

Actually with regard to the German strategy to dominate Europe using its EU 'free' trade zone, with Deutsche Bank gorging itself with European assets, its Balance Sheet in fact may be bankrupt, except for the relationship that National Champion has with its Sovereign. For this reason as an ISDA cartel member, it uses OTC contracts and derivatives with counterparties and the German government and other sovereigns, to redistribute the problems of these sour assets while attempting to gobble up Europe. OTC contracts and derivatives came about in part for this reason as well as to
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circumvent regulations of other exchanges and oversight, and inflating and snaring their Balance Sheets with each other's bad assets, while as ISDA cartel members enjoying the ability to avoid effective supervision and discipline.

The US has a history of Resolutions vs Europe which has virtually no history of 'resolutions' except for government back stops and nationalization.
The FDIC had a well worn groove for 'resolving' banks and thrifts of most sizes whereas the Europeans had nothing like this except for 'nationalizing' banks. Additionally 'stays' with regard to derivatives and OTC contracts and their unwinding in the case of a crisis, doesn't really again respect the differences in the financial systems and banks in Europe. DB and BNP enjoy government backstops and wouldn't need 'stays'.

If a US bank 'failed' or were in danger of failing, and this is evident by capital erosion and charges through the Income Statement for sour loans, and/or illiquid Balance Sheet of problem assets, perhaps it would need and use stays to thwart a bank run or after collapse. Not that our largest banks and its Federal Reserve System haven't enjoyed a great deal of largess, favor and the ability to cartel and abuse power, enjoy laws and regulations to suit their own self interests, and align or 'harmonize' with foreign interests ie, like multilateralism against the interests of the US economy and the 99% of Americans. Our courts still have the power, however and are expected to enforce corporate law and the US Constitution against commercial conflicts.

Unlike in Europe and although in the US property rights may have changed, these also are protected and state corporate law could litigate the FDIC for illegal seizure if it goes attempting to resolve a SIFI.

Risk of presuming investors are available and interested for high risk exposure to, and associated financial instruments of the financial sector while other pressures are happening in the developed world – still their highest value footprint in 'trade-area'.
This concern which Ms. Guillot of CalPERS mentioned urges efforts to reach out and include the right investors at the table and understand their interests, without considering them able to be trashed in an attempted resolution. Moreover, for the European model to use 'bail-in' capital still assumes there are buyers for those instruments, and buyers interested to assume exposures or more exposures to financial system risk. It would be interesting if those regulators expected those government's pension funds to buy the bail-in instruments. Something like net worth certificates which is like an 'earn-out' without giving over ownership or diluting equity of shareholders, should be considered and analyzed for their use in resolution strategies.

Copy-cat vehicles that serve as a gravy train for few while actually a bill of goods for the many, also could surface, risking again some sort of eventual moral hazard problem.

Only if the US and European economies are healthy, with banks having access to a healthy commercial environment in which to engage in their commercial banking, lending, etc, is there logic in buying these 'bail-in' instruments to take exposure to this sector which is reliant on healthy commercial and economic environment.

Healthy commercial activity and economies will not happen, however, because of the multilateral policies between the US and Germany/EU, now rolled up into G20 Agreements for the US to de-industrialize, and thus remove production from the US economy and off-shore it into asymmetric economies. Meanwhile Germany, Inc. with its silent partner sovereign the 'Holy See', are looking to dominate and absorb the former higher volume of fiscal revenues ie, taxes that had gone to the US government, and Europe, suffocating it in the process by constraining and thwarting competition against its own National Champions such as Deutsche Bank, Daimler, or Volkswagon. As a result, most other EU banks have no healthy environment into which to lend to produce healthy revenues which in turn produce high quality operating cash flows for proper liquidity and capital stability **(NOTE 7, Appendix)**.

In part because of Basel I and also by their own bad health, ISDA cartel and most EU banks are somewhat constrained from lending into commercial and industrial companies. The purpose at the present time of Central banks' "money wheels" in the US and the EU are mainly to keep afloat the balance sheets of banks until a crisis stops liquidity life lines by the central banks. Generally however central banks have to keep the financial markets flush and the Balance Sheets in a stable condition rather than in a 2008 like contraction. Central bank mandate is to make appearance that they have stabilized the financial environment and have under control the financial markets preventing any serious financial market turbulence, except for the May 2010 flash crash proved them wrong.

Open Bank Assistance vs Divesting of sour assets into a work-out or 'bad' bank, vs resolving in Purchase and Assumption.

Bail-in isn't like Open Bank Assistance ("OBA"). Where bail-in is more like capital infusion and whereas the SRAC and FDIC have discussed, the distressed bank still faces risks of wary investors and counter-parties. In the case of the FDIC not providing OBA, however, the FDIC proposes Orderly Liquidation Authority ("OLA") funded with $50B to keep liquidity at hand and for supporting/'resolving' a targeted institution or resolving a shuttered institution, still makes many assumptions and presumptions if all of *this* happens in a Crisis. Although the FDIC is an experienced hand at slogging through crisis, because crisis somewhat regularly has been foisted on it, to address Simon Johnson's concerns, however there still is the MERCENARY CHARACTER implied. There in the NPR for SPoE, the FDIC appears to be avoiding its full, active role as the regulator for the Bank Insurance Fund **(NOTE 5, 9)**.

In the past, other banks have obtained OBA such as Continental Illinois and First City in Houston which FDIC granted twice, separate infusions of OBA. Speaking to Anat Admati's concern, however, if the FDIC infuses those funds for OBA these become at risk for aggrieved parties to litigate. For that reason the FDIC rarely granted approval for applications requesting OBA. The FDIC under the D'Oench Duhme doctrine shuts a bank and thwarts being litigated by angry creditors vrs if it had infused capital that would be wasted by that litigation. When the FDIC shuts a bank, it severs claims of creditors against the bank and from bleeding any capital to be infused into bank. Prof Admati also wanted to see more equity – whereby I suggested to her that the **US uses "Rights Offerings**' strategies –which was suggested in this year's 11Dec13 meeting, which produce more equity capital for existing or new shareholders. There are numerous examples of this and investment bankers will use this, except it puts more shares potentially in the hands of hostile parties, although those protections can be built into the offerings to minimize future conflicts from rights offering participants.

Although there are satisfactory outcomes such as a wind-down of like a Grant Street Bank in a strategy used by PNC, not all outcomes are as successful. Grant Street was an enterprise established to receive divested sour of mostly commercial real estate assets by PNC into which investors used preferred stock for capital and enjoyed proceeds as the improved economy enabled PNC to work out those bad assets.

Additionally, the US Regulatory Framework includes robust history of on-site reasonably thorough examination and off-site monitoring by way of quarterly filings of Reports of Condition and Income, and enforcement, whereas Europe-EU did NOT (NOTE 2,5). We need to avoid likening the US financial system and US laws, regulations with foreign "counter parts". If the bank has or doesn't have a holding company, annually from the states' regulators and the FDIC, or the OCC, and the Fed examiners go on-site to the enterprise. These annual exams are not triggered by what the Quarterly Reports of Condition and Income reveal. Regulatory financial filings provide regulators with important financial reporting for off-site monitoring, whereas on-site examinations are separate from these financial filings. If the financial quarterly reports are showing serious deterioration, this will trigger a **special** on-site examination visit. The onsite examination for smaller enterprises can last at least a week or weeks. The largest institutions however have enjoyed a much lighter hand, and although perhaps had safety and soundness examiner teams on site, after 1997 the Fed allowed derivatives and OTC contract writing and after 2000, without constraint except for Supervisory Capital Assessment Program, then C-CAR.

Examiners perform audits of the Loan and investment portfolios among other things. The operations' reports also are reviewed. In safety and soundness examinations, examiners interview management and the Board, and would attempt to determine if the bank's off-site reports are validated by what they find in their on-site examination. Examiners produce a confidential examination report reviewed by senior regulators at the FDIC and State or OCC and Fed to determine if they will take any enforcement action and to what degree.

Banks are rated with a CAMELs score to indicate its financial health base. Four groups of ratios and an examiner assessment of Management form a composite score also ranking the bank against peer data of the same items and against standards for those ratio classes. These ratio classes are Capital Adequacy, Asset Quality, Management Quality, Earnings Strength, and Liquidity Sources and Sufficiency. Later the FDIC added market risk for the largest banks. EU and /or virtually NO European country does this and if so, not nearly so robust unless recently.

As previously mentioned regulation according to PCA even prior to FDICIA, at any level of capital would impose MOUs and if necessary more punishing enforcement such as C&D if the regulators dislike any activity, service or product in which the bank's management is providing or engaging. If management fails to rectify the reasons for enforcement action, the depository institution is fined and/or sanctioned in other more onerous ways and/or senior management responsible for the problem must resign from the institution. The regulators had this long before DFA and practiced it in their regulation and enforcement practices, unless they decided not to for political reasons.

With or without permitting incompetent or abusive management, when in order to get the institution to fail - sometimes has purposed, calculated regulator neglect to delay enforcing PCA, which can allow capital to erode however, banks in the US generally didn't 'fail' easily. Throughout the time in any event, infrequently is this erosion so swift that it eluded detection by any regulator and/or the accounting firm on the audit which are available to the examiners/regulators which then would require business/capital plans and transactions infusing capital to restore capital adequacy.

Most of Europe had nothing much like this if at all, and/or with teeth.

Financial Reporting of US Financial Companies vrs those abroad.
Meanwhile in the US, IDIs which enjoy access to the publicly traded equity markets, also must be audited by a PCAOB 'regulated' assurance/public accounting firm. Annually accountants review and assure US GAAP compliance of the public financial statements provided by the bank's management and board along with those to the SEC to report the financial and operating condition of the enterprise. In these Reports to the Shareholders, the public accountants provide a letter with an opinion of the quality of the financial reports and in effect also of the condition of the enterprise. If the enterprise is in bad condition and/or the financial statements digress in a material way from US GAAP, the accountant's letter must state this. Also if the health of the enterprise is in question to the degree enough the accountant's letter would express a risk as an *on-going concern*, this can be used to trigger regulator action. Actually the regulators would know before the assurance firm about a more true condition of the enterprise, but if the public accountants are firing the client/enterprise out of fear of contest and litigation by the shareholders, then the regulators can be triggered to additional enforcement actions such as C&Ds to require behavior, product, and/or management changes.

The regulators can subpoena and sue the accounting firm for serious problems found in key SEC reports and the internal reports under Sarbanes-Oxley ("SOX"). SOX however, isn't really enforced at the SIFIs, which seen to be able to have the same public accountant which also provides the SOX audit with little to NO separation. According to SOX, the public accountant providing the assurance of the financial statements to the SEC and the public, are to be different than the equally capable accounting firm providing the audit of the financial reporting systems producing the financial statement reports for public purposes. There has not seemed to be enforcement against SIFIs using the same accounting firm for all its accounting/reporting, audit, and assurance needs.

Meanwhile the public accounting firms rely on management estimates. Increasing erosion is happening in US GAAP away from historical cost accounting with a little FV for the reporting model known as Mixed Attribute with revenues realizing to cash in the reporting cycle. This is happening because FASB is coordinating with International Accounting Standards Board "IASB" promulgating International Financial Reporting Standards "IFRS" to *harmonize* with IFRS. This includes embracing 'fair value' ("FV") basis relying on time from financial reporting period to reporting period to impact, ie inflate or collapse the value of Balance Sheet items, more easily gaming those numbers, and with inflating and/or upward moving markets from QE or a bubble, enjoying the FV gains run through the Income Statement. FV facilitates more agency discretion however and potential collusion with advisors and consultants. FV also risks of conflicts of interests with agency and the public accountant. **(NOTE.10 – Topic 820).**

On the "Valuations" matter - Enforcement Actions issued to management at examined depository institutions can require updated appraisals and asset write-downs/charging off bad loans, sour assets and restructurings of weak credits if there had been those on non-accrual, which sometimes the regulators require aggressive or overly aggressive reserves.
FDIC is expert at "teeing- up" a depository institution as I'd mentioned. From on-site exams and Call Report and related reported data, the FDIC can issue MOUs or C&Ds and require appraisals of assets and management to take more aggressive charge-off of asset values than perhaps are necessary. Granted, without earnings for management to make provisions from Net Interest Income, even with the greater the provisions to handle the charge-offs, this will deplete reserves and eventually capital. Without sufficient capital AND over a long recession or long term weak economy, these

charges eat capital and risk solvency issues, while the enterprise is attempting to maintain liquidity for daily banking needs and the FDIC knows how to advantage itself with this.

Bank of New England demonstrated this. The FDIC and other regulators required the bank to take aggressive charge-offs nearly wiping out the remaining 1% capital. The regulators may have forced Bank of New England to take a larger charge than necessary, and knew the New England economy and its real estate situation were in poor condition. Bank management itself probably would not have taken a charge like that, after having made reserves and attempted to stabilize itself. It is possible that the FDIC knew that, requiring it to make that aggressive charge for the Real estate loans and projects, and the public disclosure of that would cause reaction by depositors. Large depositors took action electronically by withdrawing large amounts from the bank. It was that series of events that the FDIC used to close the bank and set up a bridge bank. On Monday it opened it under a form of conservator -ship, but guaranteeing the deposits to prevent a run while winding down the trading books.

The FDIC cleaned up the bank for bid won by Fleet with a KKR capital infusion. Perhaps one should note what appears to be the aggressiveness of the FDIC willing to tilt a weak franchise into seizure, aka 'resolution' stage, and knowing that diminishing the number of depository institutions occurs by putting franchises in the hands of favored players. This also contributes to fostering TooBigToFail. We see this when years later, Fleet merged with the Bank of Boston. All of these now are rolled up into Bank of America and Sovereign Banc, now owned by Banco Santander (**NOTE 11**).

Europe had little of this sort of professional regulatory practice. 'Resolution' there gets you government backstops and nationalization. Its banks also esteemed as its "National Champions" are appendages of its governments and enjoy government back stops in the event they collapse for any reason. Some of these European National Champions are among the world's largest financial institutions and practice their self interests as members of the ISDA cartel. Whereas they are expected to operate in a safe and sound condition in part due to responsibilities to counter-parties and for that reason there is some robust observation by counter-parties, but encountered little discipline from their governments, unlike the US. Our sector even with deposit insurance and regulation generally operated independently of government partnering/buddying as seen in Europe. (**NOTE 7**)

Regarding FDIC and Fed Reach into nonbank subs of BHCs.
A great deal of the problems with this sector stem from the '*financial innovation*' as a result of what happened during the Credit and Derivatives Bubble: the Fed permitted management to engage in those unsafe and unsound banking products and services which the Fed would not regulate because it has anointed these instruments as *financial innovation* and gave them *carte blanche*. Nor had the Fed allowed the FDIC to discipline and take enforcement measures, or in the politics, the FDIC was a willing partner to inflate/collapse the system. Thus, in reality, it is irrelevant if the FDIC and Fed had full reach into all activities of the enterprise, which was used as a disingenuous excuse to obscure the maniacal writing/trading of derivatives, OTC contracts, and bank regulator political battles over these activities.

Please I am not calling regulators prevaricators, however well before Dodd Frank for a number of years, the FDIC and the Fed have had FULL REACH TO ANY ORGAN OR SUB OF A BHC and/or partner enterprise of a BHC. In my research if the US should adopt Basel III (**NOTE 2,3)**. I found in financial regulators' public documents including their examiner handbooks the ability to obtain full access to any information and material of any nonbank sub in the US.

As I'd mentioned, the FDIC and Fed and other regulators also had/have MOUs with each other for full cooperation long before FSOC and Dodd Frank. These MOUs include also obtaining any and all desired information about any subsidiary of US enterprises anywhere in the world. AIG chose the OTS for a charter/supervisor over the division which wrote CDS. It knew the OTS as an Executive Branch (Treasury) weak regulator, and could enjoy Teflon from the rules that existed to enforce regulation but went lengths to make it more difficult politically to face effective regulatory discipline. But in that AIG could obtain a thrift charter and under that charter have CDS writing as an operating strategy, and that not only that, likewise banks engaged in these operating activities, and their regulators said their charter permitted these activities, but their regulators and supervisors said they didn't have ability to effectively police those activities, at that time was false. Other than such instruments enjoying protection as *financial innovation* these were subject to other regulation not enforced against those instruments nor the subs through which they were written.

The charters permit activities, and where there is some discretion, those regulators had full power to investigate and disciple those activities. But even over OTS thrift charters where the Fed didn't have actual legislative or regulatory jurisdiction, notwithstanding the Fed co-opted turf. And it and a political agenda thwarted effective enforcement of regulation, and abused power of regulator discretion for Moral Hazard purposes. I encountered this first hand with the Banco Santander change-in-control application for Sovereign Bancorp **(NOTE 11)**.

Even under GLB, FHCs (the largest investment banks and largest financial companies which would need access to the deposit insurance system, because they were engaging in commercial and/or retail banking) had to register with the Fed. These would have to present minimum health and capital adequacy compliance for doing business with the Fed, and are among the group of enterprises with the largest Balance Sheets engaging in Open Market operations. FHCs are on the short list the Fed uses for selling Treasury issues directly to the public. Even before our largest Broker Dealers in 2008 became BHCs, FDIC and Fed had full reach into their enterprises before DFA. Broad and deep research shows that the FDIC, Fed and OCC, even the OTS had power they failed to exercise and misrepresented that they didn't have prior to DFA. And in failing to exercise their power and enforce PCA, or ineffectively failing to enforce PCA, aided and abetting these large financial players to pull off their own version of Enron in the financial sector.

End Comment and Observations:

The Fed as a central bank is a part of a multilateral financial framework crafted to facilitate corporate power and global corporate and foreign financial interests. Given this, indeed our Fed is the friend and fan, even *spawned* TooBigtoFail. These exist and have existed because both the Fed and other veiled, powerful interests wanted and want us to have our own versions of National Champions. Even our 'global' corporations prefer this, although those too are part of the same abuse-of-power problems we have with the TooBigToFail. Moreover, if the FDIC was thwarted in the past from enforcing effective regulation in federal statute, or the Fed itself failed to establish or resuscitate a robust regulatory framework for FHCs after Corrigan shut down this in 1993 eliminating 'Dealer Surveillance' – ie, FHCs are the sisters of our largest BHCs, then there is little to enforce accountability or action to 'eliminate' TooBigtoFail in the US. It also is naive to think we'll eliminate it in the EU.

Meanwhile both the UK and the US remain commercial war targets of Germany and rhetoric out of Germany in late 2008 hinted of its contempt for the way the US and the UK engage in banking and commerce (**NOTE 7, note the link to apsoras1.wordpress.com der Spiegel links, Appendix**), although whatever possessed and allowed *maggotry* to operate and control our financial system, and possess us to slam ourselves/our financial system into the wall, does need to be analyzed and remedied.

In part because of flawed legislation, regulation and permitted activities and instruments such as Exchange Traded Notes, now correlation in the financial markets is quite high. As well, significant linking exists by way of interdependence among the ISDA cartel with its largest players having interests conflicted and adverse to those of American society. The interdependence also includes others of among the world's largest financial institutions including Insurance companies, asset managers and pension funds. Only if there were a crisis, which isn't difficult to contrive given all the correlation and purposely crafted interdependence, and unlike before the past decade, now having to fair value Balance Sheet items rather than Balance Sheets comprised mostly of performing loans, would the Fed and FDIC be preparing for the next "new" thing to remediate the financial sector of its financial engineering exposure, ie, to be hiving up a TooBigtoFail and feeding it to a large commercial company or large foreign bank or a BlackRock, creating another TooBigToFail. The pattern has been to permit large, lumbering companies to merge to become yet larger companies. The FDIC had a hand in this.

Whereas Dr Johnson is correct on observing that the European interests dominated by Germany's interests will reject eliminating TooBigtoFail (although in Europe perhaps Germany will be supportive of some resolution strategy because it will want to dominate or absorb those 'resolved' commercial banks) in spite of their seeming appearances of cooperation, when the time is right our Fed will thwart realizing eliminating TooBigtoFail in the US. Like Lehman and Bear Stearns, perhaps one will be given over as a sacrifice, but the Fed exists to enable their tactic to abuse power by also amassing size. With the US having ad hoc government since the Civil War that has become increasingly more dysfunctional and disordered, and that over the last 30 years from the time that Jimmy Carter confirmed Paul Volcker as Chairman of our Board of Governors, our financial system has concentrated assets into fewer banking hands. More than likely this will only get worse. Contrary to what people are hoping with DFA and breaking-up TooBigtoFail, this will not make the system better and more stable nor would the FDIC be able to achieve its new mission creep.

Observations:

1. If we break up our TooBigtoFail without dealing with what are parts of the abuse of power problem and regulator political conflicts with a common focal point in 'financial innovation', multilateral agreements, AND continued ability for foreign interests to acquire US (especially financial) enterprises, with our broken up banks among them, we trash yet more of our sovereignty and are playing into our adversaries' hands

2. We need repeal US signatory status to G20 into which the G7/G8 are rolled up. This helps the US to shed Basel Accords, IFRS and ISDA abuse of power, while also breaking our appeasing of the German/Vatican EU "Free" Trade zone strategy in the midst of attempting to solidify its power as "Holy Roman Empire" (**NOTE 7)**. Repealing US signatory status from G7/8/20 Agreements also helps us avoid subsidizing and appeasing Germany's European domination interests. No question "Agreements" promote the domestic and foreign wealthy interests ahead of the voters' Constitutional interests and safety and soundness of the US financial system**.**

3. Related to 2) for the health and proper function of our own regulatory framework for our financial sector, we need to de-recognize Basel as any regulatory framework for US financial institutions. To achieve this may mean repealing US signatory status of G7/8/20 Agreements. In shedding Basel, however, it helps us to avoid dysfunctional pseudo 'regulation' that not even the Germans recognize after Basel I fit its European slow/train wreck take-over strategy. Nor should we to recognize any flawed, foreign framework over effective US regulatory framework that we failed to enforce.

4. Restore aggressive Dealer surveillance at the NY Fed on the largest IDIs including ISDA cartel financial institutions doing business with the US government, in 1993 eliminated by Gerald Corrigan without public due process. **(See Observation 15:** Moreover, with Title I in DFA, it has while reviewing the Resolution Plans filed by the G-SIFIs and the US SIFIs and other filers, to go into those 'enterprises' and examine if it wanted to for Safely and Soundness. For example the recent Credit Suisse elaborate scheme to provide protection to depositors interested in avoiding the IRS radar screen of scrutiny, examiners would have monitored and more than likely been onto all of that. Although not a safety and soundness matter, Credit Suisse may have violated FATCA with its cheesy and dopey elaborate tax 'shelter' and related schemes.

Senator McCain's concern however about $4 B or so in owed taxes is a drop in the Bucket compared to the may Trillions that US Corporations owe on off-shored profits, and the Trillions for both parties owe starting with and as far back as George HW Bush, because of flawed policies such as 'deindustrialization' and the associated 'free' trade which violate the Constitution's Article 1 Section 8 with regard to the fiscal revenues of duties, tariffs and excise taxes on imported goods and perhaps services. Prevent Fed obstruction of full regulatory effective enforcement of discipline for unsafe and unsound banking practices.

5. Repeal Commodity Futures Modernization Act "CFMA" to eliminate legitimization of derivative and OTC contracts from trading; these then as a management strategy to write, trade and inflate their Balance Sheets and Income Statements, will significantly diminish these items, which have to be Fair Valued and because of that Balance Sheets are vulnerable to moves in the financial markets that last longer than 1 quarter. De-recognize from the Balance Sheet these contracts as assets and restore the former accounting of them. Eliminating the Fair Value of these items eliminates a discretionary item that inflated the Balance Sheets and goosed earnings in the Income statement, and improves the quality of what's on the Financial Statements. It enables Balance Sheets to be more stable, eliminating the ability to trade them diminishes their writing and abuse using these.

6. With regard to risky balance sheets when full of agency self-dealing by way of these ad hoc contracts aka 'derivatives' and OTC contracts, which the Fed characterizes as financial innovation, this all deteriorates and decays quickly during correcting financial markets and sour economic conditions as seen in late 2007 and through 2009. Bona fide buyers evaporate unless significantly incentivized.

7. If banks are ceased and desisted from writing, selling, trading OTC contracts and derivatives, perhaps reverting to the state such as BEFORE the Commodity Futures Modernization Act, they will write vastly less of this sort of item and thus drastically minimize exposing their balance sheets to instruments with Balance Sheet access that they have to Fair value but are no longer able to trade and easily flip for gamed trade 'revenues' and also pretend to enjoy price discovery, when those too were often gamed and bogus.

8. And although not directly related, eliminate the erosion of US GAAP into fair value away from mixed attribute based in Accrual Basis Accounting in which the Revenues have to realize to cash in the reporting cycle. Diminishing the amount of fair value in the financial statements diminishes the amount of agency discretion contaminating the financial reports of the enterprise and making the financial system more vulnerable.

9. Also stop US GAAP harmonization with IFRS and reject adopting IFRS. Unlike Mr. Volcker, I question the quality and robustness of IFRS; experience is showing it as an cozy, insufficient, dysfunctional reporting model AND it also has its framework in 'fair value', which enables agency to enjoy abusive discretion enabling management estimates and fledgling financial markets to serve as discipline with lack of transparency/price discovery at the cost and risk of more measurable and realizable historical cost reporting. Regardless of what regulation will attempt to achieve, these instruments and their use were established to engage in agency abuse and self dealing. When fair value gains flow through earnings (or OCI) to include part of even 1 basis point of the notional value still greater than $600 Trillion of derivatives and OTC contracts, this produces this huge gravy train in management's salaries. Because of this, agency and their captive regulator the Fed, don't want anyone condemning and urging elimination of these instruments in spite of their flaws as unsafe and unsound banking instruments and services.

10. Eliminate fair value accounting of the loan portfolio. Reject accounting that is proposed by FASB to estimate credit impairment before it is realized in the loan portfolio. Realized losses are both measurable and actual, rather than using the proposed estimated credit impairment, agency discretionary estimates and more complex, unnecessary accounting to satisfy affected, anal investors.

11. Rather than Orderly Liquidation Authority/Dodd Frank Act Title II, a powerful Department of Justice and FDIC legal staff to take on the abuse of power of the TooBigtoFails, when it would have come to subpoena-ing for any and all information from a large/largest financial company. If not getting it overturned, be willing to fight in court against the power of corporate personhood, to diminish abuse of power by largest financial institutions.

12. Perhaps separate Fed monetary policy from its supervisor status of BHCs, so that effective regulation of those is not thwarted by foreign and multilateral agendas to which the Fed is a facilitator (**NOTES 5,8)**.

13. Also eliminate power of the largest broker/dealers (now which are BHCs) to inflate (usually with OTC contracts and derivatives) their Balance Sheets because of the "Net Capital Rule" that former Goldman Chairman Paulson obtained from SEC Chairman Bill Donaldson. Prior to the Net Capital Rule, Broker/dealer Investment banks had to maintain their Balance Sheets to be roughly at most 12X their capital.

14. In addition to C-CAR supervision for the SIFIs and foreign banks operating here, restore active, full safety and soundness examinations of banks, thrifts and financial companies of ALL sizes and staff fully and pay sufficiently these examiners. Correlation between CAMEL rating and examinations is much higher than CAMEL ratings of unexamined financial institutions according to FDIC research. This research material now is VERY difficult to find although I had seen it while researching my Basel III comment, or while researching subsequent material for SRAC. (**NOTE 5** on light regulation by Fed and its influence on other banking regulators including Fed quotations by BOG, and FDIC IG on how it has handled Susan Phillips and BIII comment **NOTES 2,3**)

15. Also put a stake in the Beast: remove our banks from ISDA to contribute to breaking up that cartel. **ALSO -** Eliminate government back stops from the ISDA master (netting?) Agreements. Whereas Europe/the Europeans probably the Germans and French were the origin for government backstops for ISDA derivatives and OTC contracts, eliminate this government backstop for US financial institutions and any foreign enterprise dealing in and writing OTC contracts and actually on that banning that activity at all in the US with US companies and abroad at all with any US company. If the Europeans have only themselves to write and trade OTC contracts derivatives and our banks are permitted miniscule exposures to those counterparties, this will diminish foreign interests in those forms of contracts and 'financial innovation'. In reality these instruments circumvent the regulatory framework and are contributing to a lack of safety and soundness in the financial system. (**NOTES 5, 7, 8)**

16. In the US we would prohibit any bank at all, domestic or foreign from trading and buying, OTC contracts **and d**erivatives. We also would prohibit any US financial institution from trading these instruments ANYWHERE else in the World, including Europe and the EU. Those domiciled enterprises would NOT be able to trade those instruments in the

US and no US Bank would be able to trade these or buy them at all anywhere in the world. And if they cannot trade them or buy them, then they CANNOT WRITE them. Eliminate writing and trading of CDS by any US company on any company US, or otherwise. If we stop writing and trading these, we vastly shrink the market for these and the European's outlet for these instruments which tend to thwart an issuer's turn-around attempts, or an issuer's survival attempts in a shrinking economy. Moreover, owners of industrial companies condemn writing, using and trading CDS. http://www.businessinsider.com/lynn-tilton-dark-days-2010-7 Business Insider, 12Jul10, contributed by Lynn Tilton. http://www.huffingtonpost.com/lynn-tilton/the-demystification-of-wa_b_553390.html

17. Also amend Gramm Leach Bliley to remove CDS from existing as well as traded instruments . GLB had legitimized Credit Default Swaps to enjoy 'insurance' contract status, while not falling under insurance regulation and contract standards. Or at least repeal legitimization of credit default swaps, for reasons I mention above rather than resort to a bankruptcy where these were used to destroy capital for those who because of flawed corrupt federal level policies, could buy legitimized access to power of the ownership rights of others.

18. Repealing the Supreme Court decision giving corporations person-hood to stem the abuse of power problem that people fail to understand and mistake as TooBigtoFail. In the short and long run we would benefit ourselves to overturn the 1880s Supreme Court Decision permitting corporations to enjoy corporate person-hood under the 14th Amendment to pare back abuse of power that domestic and foreign corporates have enjoyed including any ISDA bank operating in the US.

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NOTE 1: Held on Wednesday, Jan 14, 2004, at the Federal Reserve Bank of Boston: Unedited Transcript. Vol I, Pgs 1 – 423, line . 0263 beginning 23 http://www.federalreserve.gov/events/publicmeeting/20040114/20040114.htm. Reviewed, opposed merger proposal between Bank of America and Fleet Boston on Concentrations of Power issues. Testified before the Committee at the Federal Reserve Bank of Boston with written statement introduced as support, however not read in entirety at the hearing: Public Hearing Regarding Bank of America Corporation, and FleetBoston Financial Corporation -

NOTE 2: Opposing Basel III adoption: **Comment Letter: Fed, FDIC, OCC, SEC** Public Due Process Comment regarding opposition to Basel III adoption, analysis, in narrative style http://www.federalreserve.gov/SECRS/2012/December/20121206/R-1442/R-1442_113012_110903_367981921547_1.pdf and http://apsoras1.wordpress.com/2014/01/21/opposition-to-basel-iii-comment-to-banking-regulators-for-due-process/ My Basel III Comment letter is publicly available, although when the regulatory agencies posted the document in PDF on the internet, a number of key links embedded in the document were broken. Because the links were destroyed in the document found on-line, this makes it difficult for the reader to reach source documents for the applicable research on which I based my comment. I have the original available on request and also have posted it in Wordpress (http://apsoras1.wordpress.com/2014/01/21/opposition-to-basel-iii-comment-to-banking-regulators-for-due-process/)

NOTE 3: Refer to Note 6 in my Basel III opposition comment. The links (specifically in this Note 6) in the PDF on line are broken.
http://www.federalreserve.gov/SECRS/2012/December/20121206/R-1442/R-1442_113012_110903_367981921547_1.pdf The original from me is available on request. I also have posted here also without broken links REPOST http://apsoras1.wordpress.com/2014/01/21/opposition-to-basel-iii-comment-to-banking-regulators-for-due-process/ With regard to Basel Accords and given 'financial innovation', however, my takeaway based on fairly extensive research exposes Basel Accords and *financial innovation* as slick *Trojan Horse – Inflate/Collapse* strategies on-purpose (rather than inadvertent as if done by ignorant people) against US banking, the US financial system and the US economy. Actually our policies of accepting and instituting multilateralism of the G7/8/ and later G20 Agreements called for deindustrialization using the 'free' trade mechanism, and intended to have done harm to us. My research also has shown that this multilateralism is a commercial war strategy our own were beguiled to agree to, or were traitors to accept and in effect bind us in a form of dissolve**. (Basel III opposition comment Note 6 p29 through and also see Note 8 p32)**

Those multilateral agreements also produced the Basel Accords with heavier capital weights on C&I lending and similar 'punishments' on commercial banking to US industry and production. From the Accords' first introduction in the
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late 1980s now known as Basel I, most US banks enjoyed liberty from having to comply with Basel's flawed construct of 'risk weighting' assets on the Balance Sheet which required capital backing assets which Basel deemed more risky, such as ordinary commercial and industrial loans. Meanwhile Basel seems to have ignored risk in 3rd world debt debacles and deeming sovereign debt in ah, European countries to be without risk, for zero capital allocation backing those loans on the buyer's Balance Sheet. Whereas Basel Accords were never something the US should have adopted nor appeased, Deutsche Bank and the German *Grossbanken*, have used it effectively to suit their self-interests to take over zero risk-based capital weighted debt of EU countries, thus taken them by commercial and fiscal war rather than more violent means.

Whereas US SIFIs also have been encountering Basel II and now Basel III intended for a larger group of insured depository institutions, again this is obstructive to effective regulation's enforcement while the Fed also is facilitating 'financial innovation' that has spurred a great deal of the instability and increased risk in the US financial system.

Further, the profane, international pseudo regulation via the Basel Accords from the Bank for International Settlement's ("BIS") and its Basel Committee for Bank Supervision's ("BCBS"), have been now recognized in the Dodd Frank federal legislation. Worse than unnecessary to recognize flawed, quasi foreign proposals for regulation, actually it again also was a form of a treason on Congress's part to recognize foreign 'actions' - in this case Basel Accords over, or nullify but not repeal what was in US legislation for domestic purposes, including the FDICIA 1991 legislation that memorialized PCA. Still in-force for the US financial system (banks or otherwise), this is an effective regulatory framework as long as we enforce it robustly and discipline at any capital level. In that our Fed, a BIS member was going to support multilateralism and those interests such as pseudo 'regulation' proposed by the BCBS contrary to what was better for the US financial system, the Fed wasn't going to support enforcing existing effective regulation. Thus, a fair amount of our problems come from failing to enforce effective regulation based in existing legislation long before DFA.

Indeed, regulators failed to enforce PCA and other effective regulation, meanwhile passing other flawed legislation such as Gramm Leach Bliley (1999) which repealed the "Glass Steagall" section of the Federal Deposit Insurance Act of 1933. GLB also allowed Credit Default swaps to be considered as insurance, and also to trade but not requiring capital to foot their reported value on the Balance Sheet. The following year, Ruben, Gramm, Sommers, and Greenspan facilitated passing the CFMA over the opposition of experts such as CFTC Chair Brooksly Born and ridiculed her when she was correct for her opposition.

One may recall, this legislation permitted management to plume their writing and trading of non CME type (ie, non-regulated) derivatives and other OTC contracts many of which are cash-flow parasitic. Chair Born opposed these instruments and what was proposed in CFMA, even if characterized as financial innovation of which the Fed was then and is supportive. Some then argued otherwise, however no institutional or structural framework for these ad hoc contracts existed in regulation, supervision, or in safe and sound banking products and services. Whereas some swaps existed for management services to large borrowers and those loan exposures, again prior to 1999 those generally were not traded.

NOTE 4 refer to Enron and pick up this- Enron rode and used the inflated markets' impact on its common stock, which it used as 'collateral' to fund its off-Balance Sheet joint ventures in which their derivatives activity was produced. The knife cuts both ways; with correcting financial markets providing falling trading prices, Enron 'marked-to-market' or 'shadow-priced' its OTC contracts and energy derivatives using the value of its correcting stock price. In 2000 it and the major banks (ISDA) had obtained the legitimization to write and trade these instruments when Enron's Senator, Phil Gramm achieved CFMA legislation. These instruments were cash-flow parasitic however, and Enron need to use the firm's resources including cash to take the write-downs and charge-offs that were necessary to keep its books straight. It didn't do that either; fraud was on its trading books. Because Enron was NOT a bank, it was not subject to effective regulation, nor annual examinations by experienced bank examiners. **Enron also schemed its own bankruptcy, thinking it could save its resources using that strategy, while the financial markets after 9/11 remained in their strong correction.** The financial market's long correction after the end of the dot-com bubble became the match to Enron's *gas* contributing to its collapse in part because in the mark-to-market (fair value), it needed to take charges on the losses that occurred from quarter to quarter while the financial markets were correcting. Enron had used its common stock as collateral for its Specialty Purpose Entities ("SPEs") in which on those Balance Sheets were its energy derivatives. That financial market correction also caused Enron's stock price to

fall along with other financial instruments traded in the markets. The cratered financial markets also kept down Enron's stock price and Enron had to take charges in 2001 going back to 1997.

NOTE 5: In my Basel III opposition comment Refer to Note 2 and 26. Recall that some links in the PDF on line are broken. The original from me is available on request. This grid below presents Prompt Corrective Action framework characteristic in safety and soundness regulation and associated examinations, versus 'portfolio based' or "Risk-focused" examinations which as far back as 1997 at the Governor level of the Board of Governors of the Federal Reserve System were saying were being done at our largest financial institutions (Fordham University School of Law Symposium on Derivatives and Risk Management, Fordham Law Review Vol 66, Issue 3 Article 7 Susan M. Phillips, *Keynote Address: Hon. Susan M. Phillips, Member, Board of Governors of the Federal Reserve System*, 66 Fordham L. Rev. 767 (1997). Available at: http://ir.lawnet.fordham.edu/flr/vol66/iss3/7) . Apparently these ways that examinations have been done are insufficient and the FDIC knew better, which gets us to where we are today. These have not yielded the best picture of these enterprises and then these SIFIs which as members of the ISDA cartel in 1999 and 2000 achieved the very disruptive Gramm Leach Bliley and Commodity Futures Modernization Act. ISDA banks enjoyed hands-off treatment from the Fed, which ran pass interference for these against the FDIC and its role as protector of the Bank Insurance Fund, while largest banks were engaging in this financial engineering that had no regulation nor oversight. This again was the same recipe as Enron which engaged in what it did under the same legislation and as we saw inflated/collapsed itself.
http://www.federalreserve.gov/SECRS/2012/December/20121206/R-1442/R-1442_113012_110903_367981921547_1.pdf and http://apsoras1.wordpress.com/2014/01/21/opposition-to-basel-iii-comment-to-banking-regulators-for-due-process/. Note also that "Undercapitalized" begins are higher capital/leverage ratios that people would realize. Enforcement against unsafe and unsound banking products and practices however happen at any level of capital. "Proposed" is as of 2011, while the original levels weren't much less than Proposed. Part of Note 2 is below.

Table I. (Proposed) PROMPT CORRECTIVE ACTION "PCA" Threshold Requirements*				
PCA Capital Category	**Threshold Ratios**			
	Total Risk-based Capital ratio	**Tier 1 Risk-based Capital ratio**	**Common Equity Tier 1 Risk-based Capital ratio**	**Tier 1 Leverage ratio**
Well capitalized	10%	8%	6.5%	5%
Adequately capitalized	8%	6%	4.5%	4%
Under-capitalized	< 8%	< 6%	< 4.5%	<4%
Significantly under-capitalized	< 6%	< 4%	< 3%	<3%
Critically under-capitalized	**Tangible Equity/Total Assets</= 2%****			

*****Proposed effective date, Jan 1, 2012. This date coincides with the phasing in of the new minimum capital requirements, which would be implemented over a transition period. **Source:** "Table 2" in the FIL-25-2012 of 18 June 2012 released by the FDIC and originated and with purpose and authority derived from *Authority.* This part is issued by the Office of the Comptroller of the Currency (OCC) pursuant to section 38 (section 38) of the Federal Deposit Insurance Act (FDI Act) as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2236 (1991)) (12 U.S.C. 1831o).

Financial Innovation again gets us to an economists' expression – 'free-rider' and apply it to Fair Value "FV" gains, where in this context management using FV of these Balance Sheet items is exploiting or pirating of the time value of money that is yielded by inflation or money supply growth or market movement from one quarter to the next in the financial markets. When the FV gain is run through the Income Statement, management in effect is printing money by legitimized piracy. The instruments are priced or valued according to, or shadowing the financial market prices but the instruments themselves are not performing loans producing interest and principal, which I argue are 'functional' items on banks' Balance Sheets. And this piracy is allowed by FASB, the SEC, the Fed (although the FDIC probably would agree with me). IFRS is just as bad with its fair value financial reporting model. Even though these instruments are dysfunctional to a bank's (ISDA or otherwise) going concern, their cheesy gains in Revenue or Comprehensive Income move-the-needle; agency fights tooth-and-nail to have them and the Fed and Basel are their benefactors in this battle.

This gets us to reasons again – that by way of fair value and trading of these cheesy instruments, that 1 basis point of the hundreds of **Trillions** of dollars - the Fed protects and avoids regulating against, or constraining these instruments while the economy is in bad condition/shrinking as a market and operating environment for safe and sound banking.). With Balance Sheets full of these free-rider-on-the-financial-markets OTC and derivatives contracts, to remedy those Balance Sheets circling the drain in the 2007-2009 severe financial market correction, former Goldman Chairman Henry Paulson at Treasury also covered for them with Treasury Department power (in effect, from the White House) to infuse Open Bank Assistance without the FDIC writing the check, and establishing at least 11 liquidity arrangements at the Fed and the FDIC to service liquidity moving among the ISDA cartel in the US and abroad, and the US financial system. "Large-Scale Asset Purchases Were Effective at Lowering Borrowing Rates" _ April 6, 2011 Press Release The Federal Reserve Bank of New York today released Large-Scale Asset Purchases by the Federal Reserve: Did They Work?, the latest article in its *Economic Policy Review* series from the Research and Statistics Group.

To continue to facilitate Balance Sheet breathing for *Financial Innovation,* the Federal Reserve's large-scale asset purchases (LSAPs) made between late 2008 and March 2010 were effective in lowering longer term private borrowing rates, according to analysis in the report. While the effects of these purchases were especially noticeable in the mortgage market, they appear to be widespread, extending to markets for Treasury securities, corporate bonds and interest rate swaps. These findings suggest that monetary policy can still ease financial conditions when the Fed's traditional policy instrument, the target federal funds rate, is set near its zero lower bound. In this study, authors Joseph Gagnon, Matthew Raskin, Julie Remache and Brian Sack review the Federal Reserve's experience with implementing the LSAPs between late 2008 and March 2010. (and possibly find chart.

NOTE 6 on 1986 TAX ACT and FSLIC

Private sector commerce from non-banking intermediaries ("NBFIs") also would provide mortgages and also engage in housing 'finance' such as structuring/securitizing mortgage paper after buying mortgage paper or originating mortgages.

Mortgage finance and housing construction served to achieve a strategy to goose and keep afloat the economy that was going to be contracting from the 'free' trade agreements used to achieve the deindustrialization. In that the financial system counted on proper conduct, complying with and enforcement of regulation and bona fide commercial interaction, the Fed and other watch dogs, regulators and supervisors had to allow flawed commercial and thwart restraint against anywhere where over the line activities and actions were happening. In the case recently of the 2002 through 2005 credit bubble, which the Fed helped to foster by keeping rates abnormally low for an abnormally long time, financial institutions of all sizes engaged in aggressive mortgage lending and poor to no underwriting standards, and *structured* securitizations (MBS, CMOs, "REMICs", etc) using these nonconforming often non performing loans. The Fed began to raise rates after the long period of low interest rates and very easy credit. Investment banks after 2005 began to cancel lending lines to mortgage bankers and brokers also ending much of the actual mortgage paper available for structured product. Synthetic structured product arose using Credit derivatives and referenced (re-hypothecated) mortgage paper. The robo-signing came here in part when the mortgages were fraudulently removed from their earlier signatory and fraudulently resigned to reuse in structured product in some cases, and perhaps mixed in the synthetic product with referenced paper and CDS referencing tranches of mortgage paper that would be known to go non performing so as to trigger the CDS to pay out the buyers of those deals and individual tranches. These were chummy deals to throw payout to the counterparty buddies on the other side from the deal makers.

No question economic problems would be arising and also would be producing market crises (in 2000-2001, 2007-2009) both reflected but obscured the de-industrialization of the US economy. That deindustrialization made winners out of the mortgage finance and housing construction 'sectors' with low interest rates and banks and other financial intermediaries inclined to lend to support the real estate construction industry. This also 'inflated' what was going on, although the media added more to it than it rated, notwithstanding the degree of overbuilding and the referencing of the paper to be used in structured financial (engineered) product.

Meanwhile as all of the financial shenanigans (en masse aggregation of management's financial and operating decisions that were marginal, flawed and fraudulent) would encounter accountability in terms of public information on all of this perverted financial activity, and the markets were reacting and correcting as insight from experts with deep pockets knowing what they were hearing and that the gains had been had, decided it was time to take those and exit the market.

Moreover, proponents who are either supportive of US economic self-immolation, or ignorant that 'free' trade and characterized as trade 'liberalization' in order to achieve de-industrialization to which GHWB agreed with Helmut Kohl (**see NOTE 7**). Policy makers and economists even those at the Fed used this double-speak to distract the voters from observing what was harming the macro-economic *Wealth Redistribution* environment into which the banks and thrifts have to lend.

In part because the Volcker era's Monetary policy had produced the interest rate spikes that contributed to severe disintermediation, this helped to make the first 'Thrift Crisis'. Moral hazard further rampaged when in 1982 the FSLIC thrift lobby was able to obtain the Garn-St Germaine Act, enabling thrifts to pay any interest necessary to keep deposits, while the ceiling on deposit insurance also was increased. That for which lobbyists lobbied for their own self interests produced the 'unintended consequences' of which nearly every one else quite ignorant would have the wrong take-away. This is hard to explain and yet more difficult to expose other than seeing it with Gramm Leach Bliley, Commodity Futures Modernization Act, Enron, and the Credit bubble.

Resolution schemes often took more the form of regulatory largess to the thrift lobby and wealthy buyers, while FSLIC Thrifts with little oversight and supervision such as examinations aggressively were able to lend, and thus were lending into any sort of (usually) real estate project. Also during this period, the Thrift charter could be owned by any sort of commercial enterprise as long as it maintained the 'Qualified Thrift Lender test", in which the thrift sub would be required to make or have at least 65% of its activities and Balance Sheet in residential mortgages. Under Gramm Leach Bliley however, the parent would have to apply for a Savings & Loan Holding company charter or apply for the Financial Holding company 'charter. Both face constraints on their operating activities and what the parent would be permitted to do through the charter, such as access to cheap funding from the FHLB (Federal Home Loan Bank) and what it did with the thrift.

Where a great deal of wild real estate development and distressed, desperate thrifts lending recklessly in the US had happened, in the case of one type of resolution scheme known as the "Southwest Plan", FSLIC offered to its thrifts in the southwestern part of the US, arrangements such as "yield maintenance" agreements and similar strategies which helped keep their Balance Sheets afloat until buyers appeared or liquidation could be done. Huge distressed thrift franchises eventually were seized by the Government, put into conservatorship or receivership, and eventually bid out with tax breaks to large commercial or banking enterprises. The Government thought little against mixing commerce and banking when it sold FSLIC thrift franchises to commercial and industrial enterprises such as Ford Motor. Ford offered auto, consumer credit and home mortgage productions in its "First Nationwide" branches nation wide.

Meanwhile those which had Reagan in the White House knew, in him they had a facile and gullible dupe for the corporate interests, where those would get favors, while many middle class and upper middle class tax credits were hammered in the 1986 Tax Act, such as the taxpayer ability to write off mortgage interest on their vacation properties and non primary residences. When that Tax Act was passed, it also facilitated a second wave of thrifts into bad condition which had lent into acquisition, development and construction loans for residential properties.

Notwithstanding, Financial Institutions Reform, Recovery and Enforcement Act 1989 "FIRREA" was passed in 1989 establishing the Resolution Trust Corp ("RTC") and the OTS on the grave of the FSLIC (Federal Savings & Loan Insurance Corporation). This law would bring all FSLIC Savings & Loans ("S&L") thrifts (not the FDIC insured savings banks which could obtain BHC 'charters', also nicknamed 'thrifts', but were not FSLIC thrifts even though the Fed to suit its own self interests would de facto interpret the different sets of law and regulation on that separate group of depository institutions) under the OTS. The OTS shut down the newer recent wave of what became failing OTS thrifts and put those into the RTC conservatorship or receivership for later auction to other banks and/or private sector investors.

NOTE 7: The EU and Germany's Interests.
http://apsoras1.wordpress.com/2014/01/21/eu-strategy-for-commercial-and-cultural-asymmetric-war/
As it were, however I'm not looking to throw the UK or ourselves under the bus for the Germans' EU construct it has mostly for itself and National Champions in other core EU countries, and partly with the Vatican, and their interest to dominate Europe using non-military ie, commercial, financial and political means .

Referring to Deutsche Bank, after the military part of WW2 ended, at the beginning of the US occupation of West Germany, we forced the break-up of its *Grossbanken.* These recombined to what they'd been before, which had funded WW2: Deutsche Bank, Dresdner Bank and Commerz Bank. Indeed, our attempts failed to keep down their banks partly responsible for funding WW2. We had failed to break up the concentrations of economic power that those banks had with all of German industry.

In the US, we have our own somewhat similar problems, yet not to the degree we see in Germany. Our largest banks were founded by our most wealthy families which had and have among the world's largest commercial enterprises and still remain connected to the boards of directors and with family trust holdings of large percents of stock in the banks. And then there's the Fed, with each district's board of directors seating Chief Execs of the largest industrial companies and banks in those districts. We haven't eliminated central banking and cross links with corporate interests and corporate personhood that both banks and corporations enjoy to abuse power.

If we break up our TooBigtoFail without dealing with what are parts of the abuse of power problem AND continue to allow foreign interests to acquire US enterprises, with our broken up banks among them, we trash yet more of our sovereignty and are playing into our adversaries' hands.

I gather that Germany's interests here and related adversaries waging commercial and cultural war against US interests in the US have been behind the virtual hysteria among some 'experts', former regulators and politicians in the US to end **TooBigToFail.** I had opposed these banks from merging and inflating to their current size, along the way combining to now dominate the financial system and preoccupy the regulators and experts. Their reaching their size however somewhat supports their reasons referencing global competition and survival. While inflating their Balance Sheets with OTC contracts, derivatives and the assets of Europe, DB, although also HSBC and the Japanese banks all have greater than $2 Trillion of assets. I'm not excusing ours in their 'keeping' up, but Rep Leach told me at least why Gramm Leach Bliley excluding permitting commerce and banking from combining – that foreign commercial enterprises would have attempted to gobble up our largest US banks. Either way, TooBigtoFail banks, or TooBigtoFail *zibatsu* or *Grossbanken* are bad and nothing we need.

Given Germany's modern history, FDIC sanguine comments and beliefs about cooperation from Germany to 'resolve' or achieve break up of TooBigToFail, is playing into its hands as a shrewd strategist for global domination, entertaining our ignorant regulators with these dialogs about disarming its TooBigToFail. We're failing to discern Germany's true interests, and about its enterprises which are protagonists in its commercial war (as Germany's TooBigToFail's are) which it has been waging since before the end of the military part of WW2.

Don't' listen to what they say. Watch what they do and then remember Europe's history. That will reveal the true nature of German interests and right co-operation from the Germans. The balance of the EU –which is a German construct anyway hopefully will break apart so that those countries don't loose their sovereignty to Germany and its silent partner, the Vatican.

I suggest that Germany is little more than a contemporized feudal society, where many endured some trauma however some there, perhaps some of its royals and bankers and/or the Vatican lived without much harm while a great deal was nearly destroyed. This has tended to make it determined to stretch going to great lengths for its self interests against parties it perceives to be obstructing its goals. It perceives the US to be obstructing its goals, or something to co-opt and subjugate in order to obtain its goals. As a result, I suggest also avoiding sanguine assessments of what appears to be EU cooperation and give more ear to Simon Johnson's caution about disinterest of the EU to end "TooBigToFail" when much of its self interests and national interests are connected to its financial 'National Champions" and its silent partners, with only a recent change in the papacy from a German pontiff. Dr Johnson's understanding of Germany's culture and those interests are greater than virtually anyone on the Council, even Mr. Wright also from the UK.

In 1989 neither Margaret Thatcher nor Francois Mitterand were fools when opposing George HW Bush's deal making on the backs and wallets of the US voters and our economy's health to incentivize Germany to re-unite. That the EU exists and the increasing problems over there happening, virtually all have Germany as their author, an expert at inflate/collapse. Germany's reuniting and then the subsequent EU "free" trade framework we have appeased against the wisdom of our allies. Notice Switzerland, the UK and the Scandinavian countries are NOT in the EU, having no interest for Germany to dominate them, while one would have failed to discern German interests to 'dominate'. In 1992/3 at the

convening for Maastricht Agreement/Accord, the invited countries rejected Germany's interests for fiscal union, knowing that to mean Germany's domination over them.

Dr Johnson would understand this obscure but key 'cultural' matter and thus an important, even if silent foundation in EU policy. Where in the short term, Germany gives all impressions of being benign, its actions in the past over the longer term have proven to the contrary and probably will adopt that same characteristic for the future. For this perverse inconsistency in the seeming benign policy of Germany I suggest appearances of benign serve as its camouflage screen hiding its true interests to dominate Europe and if it can, the US using any non military asymmetric war tactics.

Indeed, Dr. Johnson has valid concerns about bona fide cooperation from the EU, in which Germany is the dominant player or would use ancillary players and its chums to eventually surface disinclination to give up TooBigtoFail. It's agents here ignorant however, aggressively would support our attempts to rectify 'TooBigtoFail", so that it can buy our hived up BigFinancials. To this I urge then we need to give more consideration against acquisition of any US financial institution by any foreign or domestic competitor or industrial company as a sponsor for foreign interests.

Germany had acquired Bankers Trust. Deutsche Bank investment and wholesale banking operates aggressively in the US and globally. It is an ISDA bank with little interest even in Basel Accords let alone subjecting itself to "TooBigtoFail". It and Allianz which owns Commerz Bank are among several financial National Champions in Germany.

Germany's obscured commercial war rhetoric is quite well honed. Only realizing what it is doing and how that sounds helps one understand and discern it's hidden agenda and whereas it may give virtually all appearances of being bona fide, clues and information from inside from well informed, well connected sources would expose where the symbiotic relationship between the German government and its corporate interests and National Champions, especially its banks again will make faux representations about what it will support or have other chums do that instead, rather than put itself under a klieg light. http://www.en.freiheit.org/National-champions-a-waste-of-taxpayers-money/1322c14873i1p/index.html

With all of this in mind, it is important to understand that Deutsche Bank ("DB"), a bank that is a member of the ISDA cartel, will act in its own interests and those of Germany and Germany's plan to dominate Europe. Experts understand the EU is German political construct to obtain eventual domination without use of military force, without having been able to achieve fiscal union at Maastricht.

Our problem is our ignorance and our conceit, and a vulnerability to be co-opted into multilateral interests while also being played for fools. We should respect and remain single-minded about what George Washington said in his Farewell Address and avoid problems of the Old World that have remained the same feudal problems which are looking to mug us and devour us. Whereas many people don't care about such things, they do care when the financial system appears to go into seizures, and it takes extreme measures to achieve some appearance of stability.

NOTE 8: Wallstreet maniacally has supported 'free' trade. Although SIFIs also have facilitated US companies' off-shoring production into countries with asymmetric economies, and enjoying those profits along with those corporates, facilitating and championing ('free trade'!) that de-industrializing policy, slowly has shriveled and self-immolated the US domestic economy. Meanwhile, with G7/8/20's multilateral policy of deindustrialization, aka 'free' trade (a double-speak expression used for tariff elimination against imports from cheap labor countries –for example, NAFTA), many companies off-shored their production when obtaining access to cheap labor countries upon trade 'liberalization', another double-speak expression for eliminating the Constitution's Article 1 Section 8 taxes on imports from those particular countries

The Europeans are finding the same difficult economic condition except for Germany, as Germany has been and is attempting to dominate Europe using its EU "free" trade zone strategy (See NOTE 7 multilateral agreements outline to include policy: basel, ifrs, global 2000/incl Sustainability-pop reduction)

On a macro economic level, repealing US signatory status to G7/8/20 Agreements would enable the US to restore the Constitution's Article 1 Section 8 framework for all imports. Dr. Simon Johnson's "White House Burning" (Johnson: White House Burning: The Founding Fathers, Our National Debt, and Why It Matters to You, Random House, LLC, 2012) helps with insight on this matter related to the macro economy. Consider the founders who observed and

analyzed what were best decisions made in history about government, fiscal revenues and commerce. For this reason they chose the Republic framework and funding the republic's federal government using tariffs on imports to generate fiscal revenues. Rather than hunt around from the wealthy or others in society to directly tax them for fiscal revenues, Hamilton had seen the success of tariffs used by the British and Dutch, rather than the methods used by the French and other societies.

The US Constitution's Article I Section 8 calls for the use of indirect taxation in the form of duties, tariffs and excise taxes to fund, and for the purposes of fiscal revenues to the federal government. These deindustrialization agreements commonly known as 'free' trade agreements, in their ad hoc, capricious, and self-interested nature, especially for an American President, when inaugurated taking the oath of office to uphold the US Constitution, to be negotiating or committing with any head of state without there being a full conference call with all 535 members (House and Senate) is a form of Treason. Flawed policy of these ad hoc and capricious, multilateral agreements to de-industrialize has produced harmful outcomes for virtually ALL voting Americans and our economy including our financial system.

In choosing that form of indirect taxation to generate fiscal revenues, this then spurred domestic production and wealth development more broadly across American society. Deviations from tariffs as our Constitutional framework to generate fiscal revenues, or eliminating tariffs on imports also known as '*free' trade* has been a policy adopted by the Congress and the Executive Branch based on an agreement then President George HW Bush made with Helmut Kohl alleged to incentivize Germany to re-unite. Actually the agreement called for the US to de-industrialize, using 'free' trade as the vehicle to achieve de-industrialization. **(NOTE 3, Basel III comment Note 6)**

Allowing non-tariff'd imports to enter into the US fails to comply with the Constitution's Article 1 Section 8. Some do not like the word treason, however we're using a form of economic treason to self-immolate on behalf of an agreement George HW Bush made with Helmut Kohl, a former president of postwar Germany. As it were, this flawed policy is a true 'Trojan Horse" with few having done the analysis, or if they have, unwilling to condemn its corruption.

Contrary to the interests of the British represented then by Margaret Thatcher, and Mitterand of France, while obscuring these agreements and intentions adversarial to the Constitution, the US economy, commerce, and the American people, our 1% and presumably trusted public servants such as GHW Bush indulged less than benign foreign interests, ie, those of the Germany and its silent partners through Helmut Kohl. Eventually de-industrializing achieved via 'free' trade over time has produced what was intended, to off-shore production into asymmetric economies, many of which have Roman Catholicism as their national religion while eroding the US economy. Meanwhile, this would appease Germany's economic war using the production strategy to export its way to domination, beguile other European countries to join its "free" trade zone using the same currency, to facilitate reunification of Germany and eventually obtain fiscal union and control over countries that Germany had occupied and that the Vatican also wanted to restore dominance.

Except for "national security" and related industrial companies, those in the US enjoying access to government and Defense contracts, which obtain true protection that non defense industries would not obtain when negatively impacted by a 'free 'trade agreement, a fair amount of production has been off-shored into asymmetric economies. Figures show that from 1979 until 2008, roughly 15% of US GDP tied up in production has been off-shored out of the US. This means that the US economy is shriveled from being able to support a healthy commercial environment into which our banks lend. That erosion we're now seeing in the US commercial operating environment where the large banks often have to rely on borrowing for liquidity for their OTC contracts and derivatives, if some are tradable, trade some of these instruments and perhaps generate some trading fees.

Fair valuing these balance sheet accounts means management has to run the unrealized non cash gains either through the income statement or Other Comprehensive Income which still has impact on the stability of the enterprise. In the short run, it only helps management. In the long run however, because of the degree of instability that the OTC contracts and derivatives in what's comprised in the balance sheet without QE and/or sufficient operating cash flows from performing loans, banks' balance sheets would follow the 2008 correcting financial markets vigorously headed downward.

Whether these instruments and this sort of distribution of exposure for weak assets, from exposure to the increasing crippled economy hear and abroad, with a zero sum game of taking money out of the developed world and off-shoring that production into the 'developing' world, gave wider margins for a time (these margin gains from a 'free' trade

agreement play out over a business cycle once management had taken the gains after US labor is shed when obtaining the 'free' trade agreement and off-shoring into that country) to industrial management off-shoring production to cheaper labor regions and the banks which would be enjoying that business spurt from those industrial enterprises. But the US and developed economies' especially in the US the 99% and the people in the advanced societies tend to loose. Imports come in cheap for a time, but overall, the intention of 'free' trade that the OTC contracts and derivatives hide the problems of the punished economy again only line bank management's pockets from inflated balance sheets, but full of toxic financial instruments schemed up to facilitate the German's EU strategy and the US appeasing it by hollowing itself out and self-immolating. Banks had lent to these producers at US cost of living levels as well as those US employees of those producers, the ripple effect commerce in those areas where those producers had had operations and then shuttered those plants.

With 20 years of 'free' trade from various agreements, this then has contributed again to the sour the domestic commercial environment into which the banks lend and provide goods and services, while those loans that were into those areas, those employees, those commercial enterprises are fouled. During deindustrialization of the developed economies, Bank management and management at domestic enterprises attempt to use the OTC contracts and derivatives and CDS (to bet against weakened debt issuers) to pretend they're profitable while somewhat hiding the nonperforming assets and the true state of affairs of the bank's business and domestic management's use of 'financial' innovation likewise to hide the true state of affairs of their sour commercial environments. The Voters complain but are clueless and treated like cattle while the Constitution's Article 1 Section 8 is breached and the economy is fouled.

Indeed, as was intended by the diminishing of domestic production spending, one damages that positive ripple effect of both high and low margin production into the US economy and into that to which the banks would lend. A large employer in a region creates and floats commercial activity in that region into which banks of all sizes lend and engage in safe and sound banking. People buy and sell homes more often based on their employment security, rather than what the government and economists says about competitiveness. Similarly the reason that US higher education and US health care seem 'so high' is because we've not off-shored that. Granted we'll have foreign contract workers employed in our healthcare system, or pay university PhDs and teaching staff less, however these operate in the US at our cost of living. We have utilities, own cars produced by domestic and foreign companies, and the workers employed by those companies.

"Free' Trade removed some blue and as well as white collar employed people and financial sector employment, and an economic contraction followed as was intended. This was/is because part of the Bush/Kohl "G"7/8/20 Agreements including US deindustrialization, also has US policy makers having our commercial decision makers and large corporations to constrain our economy to equal that of the Europeans' or EU's 'managed competition'. This means that the US economy isn't to grow, isn't to produce net new job growth, isn't to enable wealth development except for the top wealth layer of American society and the wealthy foreigns in the US and their corporations.

Thus a rhetoric of slick double-speak has dominated the discourse and brands opponents as far right, or far left and worse, conspiracy theorists. According to some in the main stream media and some think tanks, the only trade there is, is "free" trade, ie, imports coming into the US without tariff from countries into which the US has gone into a 'free' or some other 'normalized' trade agreement. And, "Wallstreet" and the investment management community speak of what's globally 'competitive', they ignorantly or willingly make flawed productivity comparisons between the cost of living and associated wage/salary levels in the developed world, with the cost of living and associated wages in the developing and less developed economies such as the PRC. Or that the economy of the PRC is the second largest in the world without any accountability for the source and veracity of the information used to make such statements.

With regard to comparing US 'productivity' and that of other economies, experts interested at least in working with more truthful data would reject flawed and corrupt data, and spurious correlations. Those targeting the US economy have allowed those frauds to persist, however economists expert on the matter and responsible with this discourse compare avoid fraud in the comparison about productivity and competitiveness between the economies in the developed world vs asymmetric economies in many cases where the people did little more than scratch dirt.

NOTE 9 Although the FDIC and society often have had to muddle through the situations handed to that regulator when Basel Accords and multi-lateral facilitated crises are plumed and cut loose to produce inflate/collapse, huddle-the-masses scenarios which then bring forward the politicians and the apparatus that get us Dodd Frank or during the credit

bubble years failing to enforce, or thwarting enforcement of Prompt Corrective Action. Those who were connected and had the power to pull of Moral Hazard are benefited by the *muddle-through*: the muddling through after Moral Hazards permitted producing inflate/collapse policies often means the FDIC is sponsoring Purchase & Assumption resolutions, selling assets into weak markets with soft prices having to provide tax incentives, tax-breaks and covering to counterparties to incentivize them to assume bad assets. In this the 'wealthy' and well connected are benefited while the former stakeholders and taxpayer takes the hits in direct and indirect ways.

The inflate/collapse policies of late include but are not exclusive to giving a pass to OTC contracts and derivatives because by Fed officers and others which have avoided restraining those contracts proliferation, however those contracts I view as unsafe and unsound banking instruments and practices. Safe and sound banking and use of historical cost accounting were well worn grooves in the US, with oversight facilitated by on-site, full examinations and off-site monitoring of filings of quarterly financials by insured institutions with the regulators and for public consumption through the SEC. We have Moral Hazard with OTC contracts and derivatives which are in regulator permitted (and now legislation permitted) deviations from the well-worn grooves of safe and sound commercial and investment banking.

Permitted but seriously flawed, sleazy products the regulators failed to cease and desist for example of Moral Hazard which the regulators facilitated:

When instruments like Credit Default Swaps ie, CDS are written in structured product/securitized vehicles of bogus mortgages and synthetic instruments –liked referenced mortgage paper, these deals then assume a form of constructive fraud, because these structures were designed to trigger immediately upon issue because of the nonperforming and referenced non- performing paper in the structured vehicles that would trigger CDS payout.

Although usually off Balance Sheet, structured product should have encountered regulatory purview because they're owned by Savings & Loan Holding Companies, "SLHCs", BHCs and FHCs. Gramm Leach Bliley legislation created Financial Holding Company FHCs, over which the Fed had "supervision" and failed to exercise it while thwarting or politically co-opting the FDIC from enforcing discipline for unsafe and unsound banking/commercial practices in banks and their enterprises including PCA at any capital level, and effectively investigating any problem in an organization with a BHC parent. These powers with subpoena power it has and had had even before DFA ever existed according to Fed and FDIC websites.

At the present time a remaining problem for the US is that the Fed de facto was and remains the main financial regulator and had whatever power it decided to exercise even ad hoc because of power that it had and has to interpret law with impunity, while counter-parties fail to hold it accountable. The Fed used this Moral Hazard tactic to fail to take action against fraud in the BHCs' and in the FHCs and their structured product, or purchasing CDS for structured product on fraud. It thwarted the FDIC from taking action against fraud in BHCs and those parents' subs, non performing assets flooded the system while the banks and other financial enterprises with Balance Sheets packed full of cash-flow parasitic OTC contracts and derivatives. Management – remember 2008 - would have to fair value and shadow price these 'Assets' using the correcting markets; the enterprise would need cash-flows not only not produced by those items, but now not available to borrow because of the commercial crisis forming in the financial markets. Failing to do the due diligence when in reality the regulators had the legal power and the supervision proximity to all of this 'business' by way of flawed policy gets Moral Hazard with these regulators closest to these transactions of constructive fraud and then fraudulent conveyance. This facilitated the financial system to where we are today.

In turn management used and has been using these vehicles and other items such as OTC contracts and derivatives known to be unsafe and unsound banking, but deemed to be 'financial innovation' thus receive kid glove treatment by the Fed rather than treated as financial smoke 'n mirrors with characteristics deviant from those known to be safe and sound banking (and investment banking) products and services. With little constraint by supervision or by boards of directors at these ISDA cartel, GSIFIs and SIFIs, agency has been able to plume their writing and trading of these unstable financial instruments now enjoying balance sheet asset status (because management could use updated hedge accounting to value these) AND having to be fair valued. From their labor saves, corporate management as a result can pretend it's profitable while attempting to engage in regions experiencing de-industrialization from 'free' trade purposed to produce economic contraction. I've characterized OTC contracts and derivatives inflating the Balance Sheet as *agency-self- dealing* and abuse in order to line its pockets from the reported revenue numbers and associated profits from the gamed numbers containing unrealized non-cash gains run through the Income Statement or in Comprehensive Income. This as a strategy only exists because of need to appear profitable while flawed multilateral

agreements are policy the US government is using to shrink the economy and hurt domestic markets into which the banks lend.

Again, these unstable instruments, are written to give appearance of stability characterized as 'risk shifting' when in reality, these are unstable instruments, often cash-flow parasitic and often not like performing loans producing operating cash-flows even if traded, and because not like producing operating cash flows but recognized on the Balance Sheet, and thus have to be fair valued, only if the financial markets are stable or rising and flush with liquidity, are the fair values going to produce gains to be recognized either in the Income Statement or in the Comprehensive Income, although these are unrealized, non cash gains and thus bogus, inferior quality income.

Within 5 years of passing the CFMA, the notional value of these contracts exploded to more than $600 Trillion. Whereas management and experts such as monetary economists and risk management 'experts' say the exposure is much smaller, perhaps less than a 10th after hedging contract off-sets, there still isn't enough bank capital to satisfy the true risk. While inflating the Balance Sheet, true risk arises not only arises as they're triggered, but also in their 'nature', ie that many are operating cash-flow parasitic and are not producing sufficient operating cash-flows. This financing environment usually necessitates borrowing to sustain the enterprise but a vanishing source of 'cash-flow' in times of crisis.

Note that Quantitative Easing ("QE") has allowed the financial markets to remain liquid. From increasing amounts of 'free' trade to serve as what enables the G7/8/20 Agreement policy for de-industrializing the US economy, for more than 10 years, the US economy has been in bad condition obscured by credit bubbles and smoke 'n mirrors cooked data from the government. In the major banks, management games Income Statement and Comprehensive Income items using unrealized non cash gains from fair valuing derivatives and OTC. It's like gas fumes in your gas tank – not real, or a pus economy- like a pustule, there appears to be 'growth' however it's diseased. Ordinarily in a weak economy, the markets would be correcting downward, however because users of OTC contracts and derivatives must 'fair value' these balance sheet accounts using either actual traded prices or shadowing prices in the financial markets, without QE, banks' balance sheets would resemble their 2008 correction downward. Henry Paulson and others in positions of responsibility knew this would happen; for that reason in 2006 Paulson left Goldman to go the Treasury to shepherd the world's largest banks' version of Enron's inflate/collapse after obtaining the Net Capital Rule in 2004 from Bill Donaldson while he was Chairman of the SEC.

In 2005, I also contacted the Treasury Department with interest to work as its Director of Financial Institutions' Policy, a role vacant and left vacant at some point in Paulson's Treasury years. I conjecture there was strong disinterest to have around anyone with my knowledge, analytical skills, and understanding serving in a high role while the Enron Inflate/Collapse strategy was purposely produced among our largest financial institutions.

Moreover, ISDA and European members enjoy government backstops which protect them in their abuse using these instruments and strategies, while the Fed also enjoys a great deal of ability to abuse power and interpret the law to suit interests of a hidden agenda (I suggest it's a Deutsche Bank tactic) and in that take the law into their own hands again to serve their masters.

Considering as I'd mentioned that after CFMA legislation, agency had plumed the writing and trading of these instruments to the notional amount at one point of over $780 Trillion. ISDA cartel Balance Sheets then were/are full of these instruments that agency has to fair value, shadowing the financial markets regardless of condition. Agency enjoys discretionary power, rather than reporting using historical cost accounting which has more accountability and less estimation, ie, 'discretion', to value these instruments, while the Fed deems these instruments *financial innovation,* when writing them, trading them and using them, and thus that they exist on Banks' Balance Sheets is part of agency abuse that the Fed has failed to discipline.

In Lehman's case, it engaged in collateralized borrowing with the Fed (a situation over which Hank Paulson and JPMorgan had some final say) to obtain sufficient liquidity to meet the daily cash-flow demands in its enterprise. But the Fed and ISDA cartel and its wizards behind its curtain get their pass, meanwhile holding society and the financial system hostage and extracting tolls byway of implicit subsidies, kid glove treatment and dysfunctional commercial environments around the US, contracting the US economy, while failing to abstain from having a hand deindustrialization and promoting 'free' trade. The Fed has had a hand in hurting employment which would at least

contribute in terms of the wages of employed people in employment if NOT affected by 'free' trade – a better tax base to meet the current and future needs of our society. What would get us to the foul economic condition and languishing banking activity except moral hazard?

The Fed, the foreign central banks, and the ISDA cartel have strongly supported the flawed policies of multilateralism, contrary to the US Constitution Article 1 Section 8. Ironically Basel is a multilateral construct in which the banks had no interest but like facilitating flawed multilateral agreements such as 'free' trade producing de-industrialization of US society, the largest US banks had to accept flawed multilateral agreements ie, the Basel Accords. Among the world's largest foreign banks with adversarial interests to the US, these also enjoy ISDA cartel membership. With the Sovereigns of these ISDA members we'd entered into the G7/8/20 agreements and aggressively altered our policy from very little non-tariff'd imports, to a great deal of 'free' trade to de-industrialize/under the Deindustrialization policy Bush 1 agreed with Germany's Kohl for our economy by off-shoring production into asymmetric economies which recognize Catholicism as their national religions.

These multilateral agreements arise from chummy relations between our President, an elected public servant who is subject to the voters, Congress and the US Constitution, and foreign heads of state with strong self interests contrary to the US. Including deindustrialization achieved by significant deleterious policy changes such as adopting 'free' trade, we get IFRS adoption over US GAAP, Basel Accords to supplant our banking regulatory framework, and other importing of Old World 'policies' which clash and undermine our own. This was intended by craven calculating by our adversaries, and flawed decisions of our elected public servants accepting and embracing the cloaked, hidden agenda of our adversaries among the chummy G7/8/20 and Grossbanken in the ISDA cartel. I discuss this later in greater detail with reference to material in Edwin Hartrich's "The Fourth and Richest Reich".

NOTE 10
Comment Letter (#81): FASB - Project: Fair Value Measurements and Disclosures (Topic 820) Reference Number: 1830 100 Amendments for Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRS
http://www.fasb.org/jsp/FASB/CommentLetter_C/CommentLetterPage&cid=1218220137090&project_id=1830-100
10/09
And **Comment Letter (#440 10-22-10): FASB -** Revenue Recognition (Topic 605): Revenue from Contracts with Customers
http://www.fasb.org/jsp/FASB/CommentLetter_C/CommentLetterPage&cid=1218220137090&project_id=1820-100
Letter #440. 10/2010 in which I mention FV and the time value of money piracy beginning in page 3 paragraph 6 and for 9 more mentions on that matter in the due process comment letter ;
http://bankinnovation.net/2010/12/its-way-overdue-wsj-role-of-auditors-in-crisis-gets-look/
http://seekingalpha.com/instablog/499453-andrea-m-psoras/116493-can-t-pretend-you-can-catch-a-falling-knife-selling-bigfinancials

NOTE 11 The Santander-Sovereign Bancorp application was an example of the Fed taking control over an OTS thrift when there was no language in law or regulation that gave it that authority, which it usurped from the OTS.
http://apsoras1.wordpress.com/2013/05/06/spring06-subsequent-complaintopposition-to-change-in-control-application-of-banco-santander-for-sovereign-bancorp/ I did this research viewing legislation and regulation over the years from before Gramm Leach Bliley (1999) through 2006. I found no direct legislative or regulatory language that gave the Fed power of the OTS thrifts and jurisdiction, except where in the Bank Holding Company Act mentions thrifts in distress, because FDIC insured savings banks also nicknamed 'thrifts' used the BHC charter the Fed approves. The Fed stretched this language to claim jurisdiction over an OTS thrift. FDIC insured savings banks could obtain an OTS thrift holding company charter, however the language the Fed expropriated jurisdiction over Sovereign Bancorp, an OTS thrift with an OTS S&L holding company charter in order to award it to Santander under its Change-in -Control application. A smart judge probably would have ruled on the behalf of Sovereign's shareholders opposing the Santander application on the grounds of lending discrimination among other things. The largest shareholder at that point however stopped his legal battle when awarded a board seat. Three months later the Fed and OTS finalized their rulings although the OTS never made public financial part of the application.
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APPENDIX: Germany from Hartrich's *Fourth And Richest Reich.* (Hartrich, Ediwn. Macmillan Publishing Company, Incorporated, 1980) **AND CONTINUED FROM NOTE 7**
http://www.nytimes.com/1995/03/30/obituaries/edwin-hartrich-82-reporter-and-author.html

http://apsoras1.wordpress.com/2014/01/21/eu-strategy-for-commercial-and-cultural-asymmetric-war/:

It is important to awaken to the passive-aggressive commercial, fiscal and banking efforts the Germans which General Patton called "Hun Bastards" (along with its silent partner, the Holy See) and the National Champions to obtain domination of Europe, as if those many European sovereigns need again to serve as vassal states to the contemporized, spiffed-up, not-your-granddad's-inquisitor, Holy Roman Empire. In part because while in the middle of history happening around them, people tend to fail to discern it, people need to remember the twelve hundred year history of "Holy Roman Empire" with what's now consolidated Germany in the middle of the 'footprint' (http://en.wikipedia.org/wiki/File:HRR.gif note the movement in Europe in the *.gif file). After the Austro-Hungarian Empire collapsed, consolidated Germany became the contemporary agent state for the Vatican's interests in Europe. The Holy See just retired a German pope. It is not coincidental while Germany crafted its European take-over using the EU 'free' trade zone strategy that it would obtain a German pope. Both together were a steamroller difficult to fight and the British, in their long experience with this tag-team, are doing what they can to keep us in its corner. It's also important to remember that no large bank or banking system is independent of politics or that of what the Vatican was and has been doing in Europe and around the world for more that 1500 years.

This material to follow is taken from Edwin Hartrich's ***Fourth And Richest Reich.*** (Macmillan, 1980). This is truly an insightful book on Germany, although most of book addresses its postwar history. Except for where I indicate my own comment, all material here is from that book, Chapter 13, "Seats of Power" pps. 221-237.

In effect, in Germany the banks dominate everything. They're called *Grossbanken.* No one can accomplish anything without them. As it were, it is policy that their banks, their regulators, their policy makers will say ANYTHING TO APPEAR AS IF THEY'RE ON-BOARD WITH US, AS IS THEIR STYLE. It is highly unlikely however, that they ever will accept eliminating and breaking-up TooBigToFail. Actually, we'd subjected those banks to break up after the military part of WW2 was done when we occupied it. It failed because we listened to what they said, rather than understanding what they do and ignoring what they said or believed their feigned actions were what we should accept for purposes of keeping their war machine down. We must avoid mistaking its chumminess as sharing our principles and self-interests.

"One of the pervasive myths of the 20th century is that Ruhr barons, the owners of the great industrial companies of power in prewar times, ruled the German business world and dominated the nation's economy. Outwardly they appeared to be the real power brokers of the German economy. However virtually at the elbow of every (list of Ruhr industrial barons) were their company's bankers. For the big commercial banks (*Grossbanken*) occupied the seats of the economic power in prewar Germany, as they still do in today's *Bundesrepublik.*

Since the beginning of the 20th century, the big commercial banks have functioned as if they were the big legal partners of German heavy industry. In addition to providing for their financial needs, the banks have served industrial firms as advisers and planners of commercial growth and technological development.

Quoting Hartrich quoting Schonfield, (the bankers).. saw themselves as essentially the grand strategists of the nation's industry…

…in no other nation have the banks maintained such a close, almost incestuous, relationship with their clients as that existed in Germany for the past hundred years.

… Their bank cartel of their big banks control about 70% (Hartrich published this book with Macmillan in 1980) of the shares of the largest and most powerful corporations, not by right of ownership but by voting of proxies of thousands of shareholders (ours do something similar). … the German bankers formulate this instrument of holding the proxies of the shareholders as a means to further protect and to supervise their loans and investments in industrial companies.

This same system of banks exercising the proxy votes of the shareholders of big corporations is alive and flourishing today. This financial practice largely results from the fact that the big banks are the only agencies authorized to buy and sell shares on Germany's stock exchanges, except for a few licensed independent brokers (and now foreign banks allowed to do business in Germany). Their banks in effect controlled those exchanges then,(although now we're there by NYSE, but our own problems are where our exchanges as publicly traded enterprises are becoming owned by less

transparent, trading forums of 'financial innovation' which are more unstable sort of instrument and ad hoc financial contract than bonds, stocks and even listed options).

Hartrich quoting Shonfield: "the rule of collaboration among the big three (Allianz or Commerz now owns Dresdner, although Allianz still owns more than 10% of Commerz) is apparently absolute.

And …they're equally diligent in accumulating seats on the boards of directors of German corporations. Apart from directorships reserved by law for representative of the workers, this gave the banks one out of every three seats on these supervisory boards of 318 of west Germany's biggest business enterprises.

(Even during the time of the Kaiserreich…) With industry and commerce, banking and shipping making giant strides, the Germany of Kaiser Wilhelm II was on its way to winning the economic hegemony of the Continent.

The chaotic years after WW1 saw a further concentration of Germany industry, a development masterminded and supervised by the *Grossbanken*. **It was during the Kaiserreich time that War-as-a-commercial-strategy aka Military-Industrial-Complex and *cold-* war and got more traction, although prior to that the Rothschilds did for the Vatican and royals in Europe, and the DuPonts did in the US, and also the Vatican, for religious power and concentration of economic, and secular power.**

Whereas in the US in 1933 we separated our investment banking from commercial banking, Germany NEVER did this. Moreover we attempted to diffuse or thwart abuse of power and concentrations of power, whereas the Germans NEVER did that nor were we successful at breaking theirs in their own footprint. Hartrich quoting General Lucius Clay, "… through interlocking directorates and voting great blocks of stock with great control, … the banks wield unbelievable power through the industrial field. To a considerable degree they had profited under the NAZI regime and they had not hesitated before the war began to acquire Jewish banking and financial enterprises at sacrifice value, or afterwards to extend their holdings into countries occupied by Germany. (I think those ties of late if not already re-established, the Germans are looking for the current financial and fiscal crisis to roll up those banks again into its own balance sheet. **It is important to read how the Germans pulled off being able to reunite their banks after we broke up the *Grossbanken* in that attempt to decentralize Germany's financial and economic power Hartrich, p 229, 232).** After we'd broken-up their cartel at the beginning of the US occupation, those in Germany and its champions who feared our alliance with Russia, and Germany's fear of Russia rather than true reasons for us to fear 'cold-war', along with Germany's seeming vulnerability to internal turbulence that was alleged to fan Bolshevik alliances, this environment spurred our support for *Grossbanken.* We then allowed their re-uniting, but it was their craft creating all of the 'drama' that manipulated our take-away after having manipulated the events and political climate that maneuvered us to give Germany what it wanted. Today it is doing this and presumes that its counterparties aren't slick enough to pick up on its schemes.

Hartrich describes that Kartell (Cartel) Germany used and continues to use as its standard organizational commercial operating strategy. Hartrich doesn't expressly say that they proposed re-uniting and that we agreed to their self-interests, however looking at history and seeing what the Germans had obtained, it appears they produced a situation and waited for it to have its affect on us for us to agree to its terms of size, kartell and integrated network.

Conversely the country was put through difficult and pressured occupation by the Americans. Not that it didn't deserve it, however given the eventual agreement between Bush and Kohl, US policy and condition have eroded to the degree that the Germans knew in Bush they had a partner rather than the Americans having their President. And that our current condition produced by a fair amount from that to which Bush agreed, it's payback/retribution the Germans are enjoying at our expense AND we're appeasing its efforts to dominate Europe in its EU 'free' trade construct.

If we break up our banks, we're playing into Germany's hands. Considering although the military part of WW2 is done, however WW2's commercial and cultural war covertly has waged on for more than 2 generations (Red Hotel memo kept secret for 40 years by the Department of Defense because 'cold-war' made money for the Military –Industrial Complex and its wealthy families such as the Rockefellers, which had investments in Germany, Russia, and the UK), there are other ways to reform our commercial sector problems but not by indulging breaking up TooBigToFail. Germany isn't really interested in having us interfere with its business as usual and cartel-integrated enterprises.

Hartrich, p.230 comments that "they operated on the principle that while the country hovered on the brink of economic collapse, the situation called for innovative financing with a high degree of risk; conservative lending policies and traditional methods of financing would not move the debilitated economy out of the danger zone. .. **I suggest that in its passive aggressive efforts to obtain domination of Europe, and the integrated strategy within its society and economy, it will use any means and endure nearly any sort of seeming instability in order to achieve domination of Europe and over all the sovereigns which have joined its EU 'free' trade zone construct. Germany will say anything to us and give our regulators appearance of co-operating but do anything it wants. They have a tendency to hand us their game plan and get us to acquiesce to it.**

Their culture is "control" and they will be extremely disinclined to break with that. TooBigToFail demonstrate and exercise CONTROL. This is key to that society. So again they want us to break up our own TooBigToFail, and have us self-immolate to suit their interests and make it easier for their global domination and even in the US against us.

Hartrich, p 234: The Allied trust busters obviously did not perceive nor did they comprehend, that the close, long standing and almost sacrosanct relationship between the German bankers and the industrialists was the true basis for the formation of "excessive concentrations of economic power" which the financial institutions possessed before the collapse in 1945. In the early days of the Allied military government, the reformers could have effectively curbed the owners of the big commercial banks by removing the main supporting pillars of that special relationship. The following basic reforms would have achieved the aims of General Clay and the Allied de-concentration program: (and he lists what we should have done)

He also states that the *Grossbanken* are certainly industry –minded and export-minded (because this is how they're waging their war against us, and also had George HW Bush agree for us to de-industrialize to not be a trade competitor with it, and we were going to use and have been using 'free' trade to achieve deindustrialization).

It also has a large union bank: BfG, Bank fur Bemeinwirtschaft, and by 1980 had become the 5th largest bank by combining the co-operative banks that had been formed by Walter Hesselbach, which enjoyed yet more power because in that the unions were its key constituents, if an employer got into trouble, BfG nurtured it to health or sale, obtaining BfG a great deal of favor (Hartrich, p236).

There is not going to be ending TooBigtoFail in Germany, Inc. except perhaps in very small ways. Other than US repealing its signatory status to the "G" Agreements and unwinding from those flawed policies so that we're not appeasing or subsidizing Germany's self interests or laying down for it for it to fiscal bully us into its lair, I don't advocate us wasting our time to make it 'heal' to what we want. Nor will it agree to what the US wants or even accepts on itself what we think we need to do for ourselves rather than address the problems in our own society.