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Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Re: Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Insured Depository Institutions

Dear Mr. Feldman:

The Institute of International Bankers appreciates the opportunity to comment on the FDIC's proposed rule that would require certain identified insured depository institutions ("IDIs") that are subsidiaries of large and complex financial parent companies to submit to the FDIC analysis, information, and contingent resolution plans that address and demonstrate the IDI's ability to be separated from its parent structure and wound down or resolved in an orderly fashion.[1] The Institute is an association of internationally headquartered financial institutions with operations in the United States. A number of our member institutions have more than $100 billion in total assets and have IDI subsidiaries with greater than $10 billion in total assets and therefore would be subject to the requirements of the Proposal.

The experience of the recent financial crisis testifies to the challenges presented in connection with the resolution of a large, complex, interconnected financial institution, a task whose difficulty is only magnified by having to deal with potentially conflicting resolution regimes of different countries. The Institute recognizes the importance of providing for as orderly a resolution as possible in these circumstances and believes that preparation of a credible contingency resolution plan can facilitate that process. In addition, by providing management a more thorough and comprehensive understanding of the scope and interdependencies of the institution's operations, such a plan can also

[1] *See* 75 Fed. Reg. 27464 (May 17, 2010) (the "Proposal").

enhance the institution's overall risk management. At the same time, in the case of institutions that operate in multiple jurisdictions, or whose parent companies are headquartered in a foreign jurisdiction, appropriate attention must be given to the cross-border dimensions of such plans.

The FDIC, of course, is responsible for the resolution of an IDI pursuant to the Federal Deposit Insurance Act, but the exercise of those powers in the case of a foreign-owned IDI is unlikely to be undertaken in isolation. Instead, the parent company likely also will be in a distressed condition and may itself be undergoing resolution by its home country authority, and significant affiliates of the IDI likewise may be subject to similar actions by the appropriate authorities in other countries. To minimize the potential conflicts that can result between home country and U.S. law in these circumstances, the FDIC should take appropriate actions to coordinate with these other authorities. While ideally such inter-jurisdictional differences would be resolved on a multi-lateral basis, in the absence of an agreed upon international resolution regime the FDIC should seek to minimize these differences bilaterally.

Regarding the specifics of the Proposal, we believe it should be revised to more explicitly take into account the circumstances of covered IDIs that are foreign-owned:

- Where the parent foreign company of a covered IDI is itself subject to a similar contingent resolution planning requirement, it will have to factor into its plan the relationships it maintains with the IDI, especially where the IDI accounts for a material part of its overall business. The Proposal should be clarified to explain the FDIC's expectations regarding the extent to which the covered IDI may utilize and/or rely upon components of the plan developed by the parent as it relates to the IDI (for example, with regard to funding arrangements and provision of services).

  The Federal Register notice of the Proposal notes that "[s]ome of the required information is likely already to have been developed and/or reported elsewhere, and to the greatest extent possible, the FDIC expects to use such existing information and reports to minimize the regulatory burden on the covered IDIs."[2] We endorse this approach but request clarification that information developed and/or reported "elsewhere" includes information responsive to the Proposal's requirements that is included in a parent company's contingency resolution plan or that is otherwise available from the parent company (in both instances, provided such information is in English).

  We believe this approach would be particularly appropriate with respect to the required information regarding organizational structure and capital structure. As to

[2] Id. at 27467.

the latter, we request confirmation that provision of parent company financial statements prepared in accordance with home country accounting and auditing standards would be sufficient to comply with the requirement that the covered IDI provide "complete financial statements presented along with line-item descriptions of the assets, liabilities, and equity comprising the balance sheets of the parent company as a consolidated entity" (see proposed Section 360.10(c)(4)(iv)).

- For the avoidance of doubt, it also would be helpful to clarify that the information required relating to "cross-border elements" – including, in particular, "detail on the location and amount of foreign deposits and assets" (quoting proposed Section 360.10(c)(4)(viii)) – is limited to information regarding the cross-border activities of the covered IDI and its subsidiaries and does not extend to the parent company or any non-U.S. affiliate.

In addition to these cross-border matters, we believe that the FDIC should give further consideration to the timing of the Proposal. The Proposal calls for submission of the plan within 6 months of the effective date of the rule but does not provide any detail on what the effective date is intended to be. Were the Proposal effective upon its final adoption, we believe 6 months generally would not provide sufficient time to compile the required information and submit a credible plan. With this in mind, we urge the FDIC to be flexible in granting extensions to covered IDIs.

In this regard, it also would be helpful to clarify what the FDIC would consider "failure of an IDI to provide the information required by this regulation" such that it would constitute a regulatory violation potentially triggering enforcement action or even termination of deposit insurance.[3] We understand the Proposal to contemplate that only the most egregious conduct by an IDI would lead to any such action and that the FDIC intends to take a generally accommodating approach in working with IDIs as they develop their plans.

Another concern is the need to coordinate the resolution plans called for by the Proposal with those that are called for by Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Dodd-Frank Act requires the Federal Reserve and the FDIC jointly to prescribe resolution plan requirements for bank holding companies with total consolidated assets equal to or greater than $50 billion. Since the asset threshold for parent companies under the Proposal is $100 billion, it would appear that the bank holding company parent of each covered IDI that is subject to the Proposal would itself be subject to the requirements of Section 165(d). Just as its relationships with its parent company is a central part of a covered IDI's resolution plan, so too the relationship of the bank holding company with the covered IDI will be a central part of its

[3] *See* id. at 27465.

plan under Section 165(d). We appreciate the FDIC's acknowledgement that it "will make every effort to coordinate its work with the separate joint planning process of the FDIC and the Federal Reserve [under the Dodd-Frank Act] to avoid duplication of effort," but we respectfully disagree that the imposition of the FDIC's regulatory requirement on a covered IDI in advance of a similar requirement being imposed at a later date on the covered' IDI's holding company parent "will in no way conflict with the mandate of the FDIC and the FRB under [the Dodd-Frank Act]."[4]

In our view, failing to coordinate the two rulemakings – Section 165(d) requires implementing regulations within 18 months of enactment – will result in needless complication for both the covered IDI and its parent bank holding company that can be readily avoided by conducting them in parallel. We do not contemplate that permitting parallel filing of covered IDI and holding company plans would result in a covered IDI having to provide any information different from what is called for by the Proposal. Rather, the suggested approach would result in merely a timing difference in order to account for whatever additional time might be necessary to complete the rulemaking under Section 165(d).

As a final matter, we urge the FDIC to revise the provisions of proposed Section 360.10((e) to confirm that confidential treatment will be given not only to information that is proprietary in nature or which, if disclosed, could endanger the covered IDI's safety and soundness, but also to information that is not otherwise publicly available, including information the public disclosure of which would be prohibited by applicable non-U.S. law.

We appreciate the FDIC's consideration of our comments. Please contact the undersigned or our General Counsel Richard Coffman (rcoffman@iib.org; 646-213-1149) if we can provide any further assistance.

Very truly yours,

Lawrence R. Uhlick

Lawrence R. Uhlick
Chief Executive Officer

[4] *See* id. at 27466.