WELLS FARGO

John David Wright
Chief Regulatory Counsel

Law Department
MAC A0194-274
45 Fremont Street, 27th Fl
San Francisco, CA 94105
415 396-4226
415 975-6941 Fax
johnw@wellsfargo.com

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Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Attention: Comments

Re: Federal Deposit Insurance Corporation, 12 C.F.R. Part 360
Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Insured Depository Institutions
RIN 3064-AD59

Dear Mr. Feldman:

On May 17, 2010, the Federal Deposit Insurance Corporation (the "FDIC") published a notice of proposed rulemaking to amend the FDIC's regulations at 12 C.F.R. §360 to include a new §360.10 (the "Proposed Rule"). The Proposed Rule's announced purpose is to facilitate the FDIC's resolution of certain large insured depository institutions by requiring these institutions to submit a contingent resolution plan and related information and analysis (a "CRP") that addresses and demonstrates the ability of the institution to be separated from its parent holding company structure and resolved in an orderly fashion. The Proposed Rule applies only to insured depository institutions with total assets of over $10 billion that are owned by holding companies with total consolidated assets of over $100 billion (such insured depository institutions referred to as "CIDIs").

Wells Fargo & Company ("Wells Fargo") and its subsidiaries, including Wells Fargo Bank, National Association, appreciate the opportunity to comment on the Proposed Rule and endorse the comments provided to the FDIC by The Clearing House Association, L.L.C., of which Wells Fargo Bank is a member. We are writing separately to emphasize our specific concerns with the FDIC's issuance of the Proposed Rule and specific requirements within the Proposed Rule.

The FDIC should withdraw the Proposed Rule in light of Dodd-Frank requirements for contingent resolution plans

Recent economic events have highlighted the need to establish clear mechanisms to facilitate an orderly resolution of large, systemically important financial institutions. The FDIC has indicated that the Proposed Rule is necessary in order for the FDIC to gain a better understanding of the interrelationships between CIDIs and their holding company structures. Given these interrelationships, Wells Fargo believes that the resolution of a

CIDI can most efficiently be realized through planning procedures covering its holding company structure as a whole rather than resolution planning focused solely on the CIDI.

Although Wells Fargo recognizes the FDIC's need to understand the interrelationships between a large insured depository institution and its holding company structure in order to facilitate an orderly resolution of the institution in the event of its failure, we strongly urge the FDIC to withdraw the Proposed Rule in light of the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). As part of the comprehensive financial regulatory reform effort to be undertaken through Dodd-Frank, the Board of Governors of the Federal System (the "Federal Reserve") and the FDIC will be directed to issue joint rules requiring certain large bank holding companies ("Covered BHCs") to prepare contingent resolution plans, which are required to address the information sought by the FDIC through the Proposed Rule. Section 165(d)(1)(A) of Dodd-Frank expressly requires that the contingent resolution plan include information outlining the extent to which an insured depository institution subsidiary is protected from risks arising out of the holding company's nonbank subsidiary activities.

Rather than acting separately, the FDIC should work jointly with the Federal Reserve, within the regulatory framework mandated by Congress, to issue resolution planning regulations for Covered BHCs that will include planning for their insured depository institution subsidiaries. We are very concerned that separate FDIC and Dodd-Frank rulemaking will result in significant additional costs, duplicated efforts, and excessive burdens on covered institutions. Although the FDIC has stated that it will seek to avoid imposing duplication of efforts by CIDIs and that implementation of the Proposed Rule will in no way conflict with the Federal Reserve-FDIC joint rulemaking, we do not believe that duplicative planning can reasonably be avoided if the Proposed Rule is implemented. Following resolution planning efforts for a CIDI under the Proposed Rule, Covered BHCs will again be required to engage in resolution planning encompassing its CIDIs as part of their Dodd-Frank resolution planning efforts. In addition, any differences in the components of the resolution plan required by the Proposed Rule and by the Federal Reserve-FDIC joint rules will lead to confusion and the possibility of conflicting planning.[1]

In light of the foregoing, Wells Fargo urges the FDIC to withdraw the Proposed Rule. As part of the congressionally mandated joint Federal Reserve-FDIC rulemaking, the FDIC can address its informational requirements and avoid the unnecessary duplication of work and potential confusion resulting from multiple resolution planning efforts. Furthermore, as we discuss below, elements of the Proposed Rule request information that is already made available to other financial regulators. By withdrawing the Proposed Rule and working with the Federal Reserve, the FDIC can better assess

[1] In addition to the confusion that will result from multiple resolution planning requirements from US bank and holding company regulators, it is unclear to us how resolution planning under the Proposed Rule will interact with resolution planning that may be imposed by U.S. and foreign regulators of our subsidiary foreign bank, broker-dealers and investment advisors.

what additional information it needs that CIDIs and Covered BHCs do not already provide to their regulators.

If the FDIC proceeds with adopting a final rule, it should revise several general provisions regarding preparation, delivery, confidential treatment and required components of the CRP

In the event the FDIC elects to proceed with its separate rulemaking, Wells Fargo has a number of concerns or comments with respect to specific provisions of the Proposed Rule. Specifically, Wells Fargo urges the FDIC to (1) employ a risk-based approach when requiring resolution planning and information requests rather imposing these requests based solely on an institution's asset size; (2) clearly state that CRPs are confidential supervisory and examination materials not subject to public disclosure; (3) permit holding companies with multiple CIDIs the option of submitting one comprehensive resolution plan covering all of its controlled CIDIs (rather than submitting separate plans for each); (4) remove or revise the Proposed Rule's attestation requirements, and (5) extend the implementation period of the final rule. In addition, Wells Fargo also requests clarification or revisions to some of the required components of the CRP.

The FDIC should employ a risk-based approach in imposing planning and reporting requirements

Preparation of a CRP will be a time-and resource-intensive undertaking. The Proposed Rule uses asset size as a proxy for complexity and risk and imposes its obligations on all CIDIs without regard to differences in risk of failure among CIDIs. Healthy institutions will be required to devote significant resources to resolution planning despite having a lower probability of failure. Wells Fargo believes that the scope and timing of contingent resolution planning and reporting should be based on a risk-based approach, and that the FDIC should not impose the same degree of planning and reporting requirements on well capitalized and well managed CIDIs as it imposes on institutions with a higher risk of failure. The FDIC should invite further comment from the industry to develop a graduated scale of planning that better balances the needs of the FDIC and the burdens imposed on institutions.

CRPs should be exempt from public disclosure

The Proposed Rule provides that confidential treatment can be requested by a CIDI for portions of the CRP that could endanger the safety and soundness of the CIDI if publicly disclosed. Wells Fargo strongly disagrees that this is the appropriate confidentiality standard. The FDIC has indicated that it is promulgating the new regulations to obtain information necessary to carry out its legislative mandates as an insurer and resolver. As such, the FDIC should explicitly state in the final rule that the CRP and related analysis and information are and will be treated as confidential supervisory or examination information that is exempt from public disclosure under 12 C.F.R. § 309.5(g)(8) and subject to the requirements of 12 C.F.R. § 309.6.

Because information required to be provided in the CRP is highly sensitive and nonpublic, Wells Fargo requests a better understanding from the FDIC regarding how the CRP, and its related information and analysis, will be shared, if at all, with foreign regulators. Although confidentiality standards among US regulators and among some foreign regulators may be well understood, some foreign regulators operate under different confidentiality regimes or do not afford confidential treatment to any information. CIDIs should be fully informed as to the proposed uses and recipients of the CRP.

Holding companies controlling multiple CIDIs should have the option of submitting a consolidated CRP

The Proposed Rule requires each CIDI to submit a CRP. Some large holding companies such as Wells Fargo have multiple CIDIs. Risk, compliance, reporting, finance and treasury support services are all managed for the CIDIs on an integrated basis. Rather than requiring that each CIDI separately prepare and submit a CRP, the Proposed Rule should provide holding companies that control multiple CIDIs the option of preparing a single CRP covering all of their controlled CIDIs.

The attestation provisions of the Proposed Rule should be removed or revised

The Proposed Rule requires that the Board of Directors of the CIDI, or its designated executive committee, approve the analysis and plan and attest that the plan is accurate and that the information is current. While review and approval of the plan by a CIDI's Board of Directors or designated executive committee may be appropriate, the attestation requirements are unreasonable and unnecessary. As a preliminary matter, it is unclear to us what the FDIC means by requiring an attestation that the plan is accurate. If the reference to the accuracy of the plan is intended to mean that the Board of Directors is certifying that the plan will be effective in ensuring an orderly resolution, Wells Fargo believes that such an attestation is unreasonable and not subject to clear measurement. No planning, no matter how thorough, can account for all events, some of which may be beyond an institution's control. Furthermore, what standards would the FDIC utilize to determine whether a plan was accurate?

With respect to an attestation of the information contained in the plan, Wells Fargo believes that an attestation is not meaningful given the contents of the plan. Boards of Directors and executive management committees of institutions, although ultimately responsible for overseeing that the institution operates in a safe and sound manner, fulfill their obligations by, among other things, establishing policy and strategic direction for the institution and hiring competent management to carry out the day to day operations of the institution. The level of information required in the plan is of an operational nature. In order to attest to the scope of information requested, the Board of Directors would in turn need to rely on a series of internal attestations. As a result, attestation of the factual information in the CRP by the Board of Directors or executive

management committee imposes additional internal compliance attestation procedural burdens but provides the FDIC with little additional value.

The proposed implementation period of 6 months is not sufficient given the scope of required planning and reporting

Under the Proposed Rule, a CIDI is required to submit the CRP to the FDIC within 6 months of the effective date of the final rule. Given the nature and extent of the information required by the Proposed Rule, we do not believe that a 6 month implementation period is sufficient time for the development of a thorough resolution plan. The industry is facing an unprecedented wave of regulatory reform measures, and all financial institutions will face significant resource pressures to review, understand and implement changes or requirements under the new regulatory regime. In light of the foregoing, we recommend an implementation period of at least 18 months.

The scope of several of the required components of the CRP should be limited

In addition to the general comments above, Wells Fargo requests that the FDIC revise the requirements of several of the required components of the CRP.

- Section 360.10(c)(4)(i) – Summary of Analysis of Contingent Resolution Plan: The Proposed Rule requires that CIDIs summarize material impediments to an orderly resolution and provide remedial or mitigating steps that may be undertaken to eliminate or minimize such impediments. The material impediment example provided by the FDIC in the Proposed Rule of an affiliate that provides critical services to the CIDI is helpful, and we request that the FDIC, based on its experience in resolving failed institutions, identify the specific impediments required to be addressed in the CRP.

- Section 360.10(c)(4)(ii) – Organizational Structure: The CRP must include legal and functional structures for the CIDI and its subsidiaries and affiliates. Wells Fargo already provides the Federal Reserve with organizational information on a monthly and annual basis. If Section 360.10(c)(4)(ii) contemplates requiring information beyond that provided to the Federal Reserve in the FR Y-10 and FR Y-6 reports, then the FDIC should specifically identify the information to be provided.

- Section 360.10(c)(4)(iii) – Business Activities, Relationships and Counterparty Exposures: The Proposed Rule requires that a CIDI identify and describe the business activities of the CIDI and its subsidiaries and material inter-relationships among entities in its organizational structure that provide key services and support and assess the ability of each material affiliate's ability to function on a stand-alone basis. Because most, if not all, CIDIs have an extensive number of subsidiaries, many of which serve similar or limited purposes (holding foreclosed properties, community or tax credit investments, etc.), the description of business

activities of the CIDI's subsidiaries should be limited to the CIDI's key operating subsidiaries.

- Section 360.10(c)(4)(iv) – Capital Structure: The CRP must include detailed information on the capital structure of the CIDI and its subsidiaries, parent and key affiliates and include audited 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 as well as each CIDI. CIDIs are also directed to describe financing arrangements for the CIDI and its subsidiaries. Rather than imposing new reporting requirements on CIDIs, the FDIC should first seek to leverage existing reporting. Detailed structural and financial information is already extensively reported by CIDIs and Covered BHCs through call reports, the FR2900, FR2644, FR Y-11, FR2314, FR2886b, FR2502Q, FFIEC 030, etc. The FDIC should revise this Section and explicitly set out the structural information it needs that is not already captured through existing reporting regimes and any requested information should be further limited to the CIDI and its key subsidiaries rather than all CIDI subsidiaries. With respect to the required information on financing arrangements, we believe this information is better obtained through regularly scheduled examinations of CIDIs. We discuss these requirements in more detail below with respect to the requirements of Section 360.10(c)(4)(v).

  In addition to the above comments regarding Section 360.10(c)(4)(iv), Wells Fargo also requests that the FDIC clarify whether the language of this Section seeks to impose new audit requirements on CIDIs that are owned by holding companies with annual audited consolidated financial statements. Many CIDIs are not required to have separate audited financial statements and if new audit requirements are contemplated, then the requirement should be clearly stated, and the FDIC should seek more detailed comment from impacted institutions regarding the cost and other burdens such a change would entail.

- Section 360.10(c)(4)(v) – Intra-Group Funding, Transactions, Accounts, Exposures, and Concentrations: The CRP must include a description of intra-group funding relationships, accounts and exposures, including terms, purposes and duration, and identify the nature and extent to which the CIDI's parent or an affiliate serves as a source of funding to the CIDI and the contractual arrangements, location of assets, funds and deposits by which funds can be downstreamed from the parent to the CIDI.

  We are unclear how the requirements of Section 360.10(c)(4)(v) may differ from planning conducted under OCC Bulletin 2010-13 - Final Policy Statement: Interagency Policy Statement on Funding and Liquidity Risk Management. The Office of the Comptroller of the Currency, the Federal Reserve, the FDIC and other agencies jointly issued the bulletin to set out their expectations for funding and liquidity risk management, monitoring and reporting. In order to be in compliance with these guidelines, CIDIs must model and monitor external and

internal borrowing arrangements in a manner that complies with these guidelines. A review of the CIDI's funding and liquidity planning and intra-group relationships can better be achieved through the regulatory examination process rather than imposing additional reporting requirements.

Also with respect to intra-group funding relationships, we note that insured depository institutions already provide quarterly reports on the FR Y-8 to the Federal Reserve covering transactions with affiliates under Sections 23A of the Federal Reserve Act, 12 U.S.C. §371c, and Regulation W, 12 C.F.R. §223.1 et. seq. Rather than imposing additional reporting requirements on CIDI provided funding to affiliates, the FDIC should leverage the information obtained from the FR Y-8. With respect to affiliate provided funding to the CIDI or its subsidiaries, any required reporting should be limited to parent funding of the CIDI and its key subsidiaries, rather than with respect to all CIDI subsidiaries.

- Section 360.10(c)(4)(vi) – Systemically Important Functions: The Proposed Rule requires that the CIDI include a description of any systemically important functions the CIDI and its subsidiaries and affiliates provide, including the nature and extent of involvement in payment systems, custodial or clearing operations, large sweep programs, and capital markets operations in which it plays a dominant role, including a discussion of critical vulnerabilities, estimated exposure and potential losses and why attributes of the businesses could pose a systemic risk to the broader economy. Information regarding our involvement in and operations in these functions is available through our primary regulators. The FDIC should coordinate its information requirements through regular and ongoing examinations conducted by our primary regulators, or through its own examination authority, rather than separately seeking the information through a CRP. We believe that the necessary information could more effectively and efficiently be obtained through a less formalized process than the production of a CRP.

- Section 360.10(c)(4)(viii) – Cross-Border Elements: CIDIs are required to provide information on the CIDI's cross-border interrelationships and exposures, including information on foreign branches, subsidiaries and offices. Wells Fargo requests that the FDIC clarify what information is required in addition to information provided through the FFIEC 031, FR2314, FR2886b, FR2502Q, and FFIEC 030.

- Section 360.10(d) – Implementation Requirements: The Proposed Rule requires that material information elements in the CRP be updated as necessary given the risk profile and structure of the CIDI and provides as an example deposit flows, short-term funding, etc. Deposit flows, funding transactions, etc. change on a daily basis, and the FDIC should provide CIDIs with guidance on materiality thresholds.

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We appreciate the opportunity to respond to the Proposed Rule. If you have any questions, please feel free to contact me at the number provided above or John Stoker in the Wells Fargo Law Department at (704) 374-2215.

Very truly yours,

John D. Wright