November 17, 2010

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

Re: Notice of Proposed Rulemaking Implementing Certain Orderly Liquidation Authority Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Mr. Feldman:

The Independent Community Bankers of America[1] (ICBA) welcomes the opportunity to comment on a proposed rule that would implement certain provisions of the FDIC's authority to resolve covered financial companies under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

Title II of the Dodd-Frank Act provides a process for the appointment of the FDIC as receiver of a failing financial company that poses significant risk to the financial stability of the United States (covered financial company). Title II also defines the policy goals of the liquidation proceedings and provides the powers and duties of the FDIC as receiver for a covered financial company.

**ICBA's Position**

**ICBA generally supports the proposed rule and agrees that it would provide clarity and some certainty to the financial industry and will help ensure that the liquidation process under Title II of Dodd-Frank Act is both orderly and transparent.** It is important that the proposal carry out the goals of the Act which is to provide a way of

[1] The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever changing marketplace.

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold $1 trillion in assets, $800 billion in deposits, and $700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.


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liquidating failed financial companies that pose a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard. The FDIC's proposal clarifies the agency's statutory authority under the Dodd-Frank Act and provides an important step towards ensuring that no creditor of a failing covered financial company escapes a financial loss.

Fundamental to an orderly liquidation of a covered financial company is the ability to continue certain key operations, services and transactions. Under the Dodd-Frank Act, the FDIC is granted the authority to charter a bridge financial company to allow it to stabilize the key operations of a covered financial company by continuing valuable systemically important operations. While bridge financial company authority is an important tool for the elimination of "too big to fail" because it provides the FDIC with the authority to prevent a disorderly collapse, while ensuring that bail-outs of failing companies do not occur, overly broad application of this authority can lead creditors to assume they will always be protected. It is therefore important that the FDIC clarify that all unsecured creditors of the failed company should expect that they will incur losses and that the statutory standards for the application of this authority will be rigorously applied.

**We believe the FDIC's proposal overall is a good start towards accomplishing the goal of providing as much transparency as possible in the liquidation of failing systemically risk financial companies.** We presume that the FDIC will engage in further rulemaking about other aspects of Title II of the Dodd-Frank Act including the requirement that shareholders of a failing covered financial company also must bear losses and the mandate that any management and members of the board of directors who are responsible for the failing condition of the covered financial company should be removed.

To minimize the moral hazard associated with liquidating large financial companies while ensuring fairness to creditors, the liquidation rules of Title II of the Dodd-Frank Act attempt to create parity in the treatment of creditors with the Bankruptcy Code and other normally applicable insolvency laws. **We agree that the FDIC's proposal implements the goal of trying to treat creditors as they would be treated under the Bankruptcy Code**. For instance, Section 380.2 clarifies that the authority to make additional payments to certain creditors will never be used to provide additional payments, beyond those appropriate under the defined priority of payments, to shareholders, subordinated debt holders, and bondholders.

To ensure that all unsecured creditors expect to absorb losses along with other creditors, the proposal narrowly defines the circumstances under which creditors can receive any additional payments or credit amounts. Under the proposal, such payments or credit amounts can be provided to a creditor only if the FDIC Board of Directors, by a recorded vote, determines that the payment or credits are necessary to the essential operations of the receivership or bridge financial company, to maximize the value of the assets or returns from sale, or to minimize losses.

**ICBA agrees with the FDIC that extensive pre-planning is essential for the effective use of these orderly liquidation powers and will improve the likelihood that the**


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**assets or operations of a failed financial company can be sold immediately.** It is essential that the largest financial companies submit credible contingent resolution plans that will facilitate a rapid and orderly resolution of the company and will describe how the liquidation process can be accomplished without posing systemic risk to the public and the financial system. **If the company cannot submit a credible plan, the FDIC and the Federal Reserve should exercise their authority under the Dodd-Frank Act to order a divestiture of those assets or operations that might hinder an orderly resolution.**

**Conclusion**

ICBA generally supports the proposed rule and agrees that, once implemented, will provide clarity and transparency to the orderly liquidation of covered financial companies. The FDIC's proposal not only provides further clarity to the FDIC's statutory authority under Title II of Dodd-Frank Act but provides an important step towards ensuring that no creditor of a failing covered financial company escapes a financial loss.

ICBA agrees with the FDIC that extensive pre-planning is essential for the effective use of Dodd-Frank orderly liquidation powers and therefore it is essential that the largest financial companies submit credible contingent resolution plans. If a large financial company cannot submit a credible plan, the FDIC and the Federal Reserve should use their divestiture authority to require the companies to divest assets or operations that might impair an orderly resolution.

ICBA appreciates the opportunity to comment on the FDIC's proposed rule that would implement certain provisions of its authority to resolve covered financial companies under the Dodd-Frank Act. If you have any questions about our letter, please do not hesitate to contact me at 202-659-8111 or Chris.Cole@icba.org.

Sincerely,
/s/ Christopher Cole

Christopher Cole
Senior Vice President and Senior Regulatory Counsel