INDEPENDENT COMMUNITY BANKERS of AMERICA®

February 15, 2014

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

Re: Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy

Dear Mr. Feldman:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on the FDIC's Single Point of Entry strategy (SPOE strategy). Title II of the Dodd Frank Wall Street Reform and Consumer Protection Act provides the FDIC with back-up authority to place a systemically important financial institution (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.

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 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. The President and the Treasury Secretary would then make the final determination 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. Following this decision and the end of a judicial review process, the FDIC would be appointed receiver.

To implement its orderly liquidation authority (OLA) authority under Title II, the FDIC is proposing the SPOE strategy as a way to resolve a SIFI. Since most SIFIs are organized under a holding company structure with a top-tier parent and operating subsidiaries that can often comprise of hundreds or even thousands of interconnected entities, the FDIC is

[1] The Independent Community Bankers of America®, the nation's voice for nearly 7,000 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services.

With nearly 5,000 members, representing more than 24,000 locations nationwide and employing more than 300,000 Americans, ICBA members hold more than $1.2 trillion in assets, $1 trillion in deposits, and $750 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

proposing that the resolution take place at the holding company level. This way, the subsidiaries would not be impacted—instead, they would remain open and would continue their operations. The FDIC would organize a bridge financial company, into which it would transfer assets from the receivership estate, primarily the holding company's investments in, and loans to, subsidiaries. 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. The newly formed bridge financial company would continue to provide the holding company functions of the SIFI under resolution.

ICBA's Comments

ICBA generally commends the FDIC for its proposed SPOE strategy. We agree that this type of resolution strategy for SIFIs, as opposed to one that would resolve one or more of the banking subsidiaries, would more likely provide stability to financial markets by allowing vital linkages among the critical operating subsidiaries of the SIFI's holding company to remain intact. ICBA realizes that the subsidiaries of the megabank holding companies are not only interconnected across international borders, but that their functions and core business lines often are not aligned with individual legal entity structures. These integrated structures make it very difficult to conduct an orderly resolution of one part of the company without triggering a costly collapse of the entire company and potentially transmitting adverse effects throughout the financial system.

ICBA also agrees that an SPOE strategy would promote market discipline by imposing losses on the shareholders and creditors of the top-tier holding company and by removing culpable senior management without imposing a substantial cost on taxpayers. Under the Dodd Frank Act, the officers and directors responsible for the failure cannot be retained and must 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. We believe this would be a great improvement over what happened during the previous crisis when most of senior management and the boards of the bailed-out megabanks were allowed to keep their positions. Furthermore, when the large banks were bailed out during the last financial crisis, not enough losses were borne by the creditors, thus undermining market discipline.

However, in order for the SPOE strategy to work, 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 the establishment of a new company. Otherwise, if there are circumstances under which the losses at the holding company level cannot be fully absorbed by the holding company's shareholders and creditors, then one or more of the subsidiaries would have to be placed into receivership, exposing those subsidiary's creditors, potentially including uninsured depositors, to loss. In some cases, an operating subsidiary that is insolvent might have to be closed by the FDIC as a separate receivership.

It is also critical to the success of the SPOE strategy and generally for the success of FDIC's resolution process under Title II that the SIFIs file credible contingent resolution plans or "living wills" to demonstrate how they would be resolved in a rapid and orderly manner under the Bankruptcy Code or other applicable insolvency regime in the event of a material financial distress or failure. If a SIFI 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. The organizational structure of many of the SIFIs needs to be significantly simplified and their subsidiaries made less interconnected if the SPOE strategy has any chance of working.

Ultimately, we will not know if the SPOE strategy really works until we have another financial crisis. **However, significantly higher capital requirements for the SIFIs as well as higher unsecured debt requirements would significantly improve the chances of a successful SPOE strategy.** ICBA strongly supports higher capital requirements for the SIFIs and has endorsed the Terminating Bailouts for Taxpayer Fairness (TBTF) Act (S. 798), introduced by Sens. Sherrod Brown (D-Ohio) and David Vitter (R-La.). This bill would require the largest banks to hold leverage equity capital of not less than 15% of total assets, allowing them to operate more safely, absorb more losses and avoid a government or taxpayer bailout. ICBA also supports higher unsecured debt requirements for the SIFIs and we understand that the banking agencies will be proposing these requirements later in the year.

ICBA also believes that the megabanks operate with a widely perceived funding advantage over community banks, arising from a market expectation that a SIFI would receive public support in the event of financial difficulties. This expectation causes unsecured creditors to view their SIFI investments as safer than at a community bank.

While we realize that one of the goals of the SPOE strategy is to undercut this TBTF advantage by allowing for the orderly liquidation of the top-tier holding company of a SIFI with losses imposed on that company's shareholders and unsecured creditors, unfortunately, the existence of the Orderly Liquidation Fund (OLF) and the FDIC's access to it in a resolution sends a message to creditors that SIFIs will be supported if not "bailed out" under Title II of the Dodd Frank Act. While we realize that the law places restrictions on the FDIC's use of OLF resources, the FDIC should make it clear as part of its SPOE strategy, that it will only use the OLF in emergency situations and only when it is absolutely clear that there are no other private sources of capital available.

Furthermore, the FDIC should issue rules on how it would impose risk-based assessments on bank holding companies with $50 billion or more in total assets in the event that OLF borrowings cannot be paid back out of the sale or refinancing of the receivership's assets. Unfortunately, the existence of the OLF will always provide some assurance to SIFI creditors that they could be supported by the government if the SIFI becomes insolvent.

Even after the banking agencies have implemented all of the enhanced prudential standards for SIFIs under Title I and the orderly liquidation authority of Title II, ICBA believes that the TBTF subsidy will most likely still exist. This subsidy, which by some estimates is worth $83 billion per year, will not completely go away until the SIFIs are downsized and restricted to the core banking activities of making loans and taking deposits. Furthermore, SIFIs should be prohibited from engaging certain non-banking activities such as dealing and market making, brokerage, and proprietary trading. ICBA has endorsed Vice Chairman Tom Hoenig's proposal to restrict the large banks to core banking activities. His proposal would reduce risk among large financial institutions and shadow banks and improve the overall stability of the financial system.

Conclusion

ICBA generally supports the FDIC SPOE strategy for resolving SIFIs as a way to preserve financial stability and promote market discipline in our financial system but recommends significantly higher capital and unsecured debt requirements for the SIFIs to ensure that the strategy would work. The FDIC should also clarify as part of its strategy that OLF resources will be only used in emergency cases when liquidity is needed and no other private capital sources are available. However, the TBTF subsidy will not cease to exist until the large banks are forced to downsize and are restricted to core banking activities.

ICBA appreciates the opportunity to comment on the FDIC's proposed SPOE strategy. If you have any questions or would like additional information, please do not hesitate to contact me by email at Chris.Cole@icba.org or by phone at (202) 659-8111.

Sincerely,

/s/ Christopher Cole

Christopher Cole
Senior Vice President and Senior Regulatory Counsel