



## FDIC SYSTEMIC RESOLUTION ADVISORY COMMITTEE MEETING

### OVERVIEW

For questions please contact [Kwon Park](#) at (202) 547-3035.

Today, the Federal Deposit Insurance Corporation (FDIC) met to provide advice and recommendations on a broad range of issues regarding the resolution of systemically important financial companies (SIFC) pursuant to Dodd-Frank.

Please click [here](#) for the agenda.

### SUMMARY

#### Dodd-Frank Title I: Living Wills Update

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##### Introduction and Background

- Title I of Dodd-Frank requires firms to submit orderly liquidation plans.
- The agencies have identified five obstacles in the bankruptcy code regarding resolution planning: capital and liquidity, global cooperation, counterparty actions, continuity of operations, and possibility of multiple competing insolvencies.
- On December 12, 2014, the agency's found that firms tried to overcome these obstacles by relying on unrealistic assumptions and failed to make or identify changes that would facilitate orderly resolution under bankruptcy.

##### Review Process for 2015

- The FDIC and the Federal Reserve Board (Fed) held many joint meetings with firms leading up to plan submissions in July 2015. There was heightened engagement with firms following the release of the 2014 letters.
- The public portions of living wills contained more quantity than past submissions with more clear descriptions about structure of resolution strategies and organizational structures. However, reports still lack the details to enable regulators to see how a particular institution progresses over time and looks relative to other institutions – there is a lack of standardized quantitative measures.

##### Key Elements in Plan Review

- The review process includes: training, vertical review teams, horizontal review teams, oversight group, and coordination with the Fed.
- Key elements of review include: core components of plans, specific needs of each plan dependent upon specific features of a firm and its strategy, resources (liquidity and capital), governance mechanisms, legal entity rationalization/separability, operations, and derivatives and trading activities.
- The “material entity” definition is not standardized and more clarity is needed.
- Committee members raised concerns regarding information lags during the review process.

## **Joint Determinations**

- The eight largest banking institutions submitted plans in July 2015. The Fed and the FDIC jointly determined that plans by five banks would not facilitate an orderly resolution under bankruptcy. They include: Bank of New York Mellon (BNYM), Citi, Wells Fargo, State Street, and JP Morgan.
- The FDIC determined that plans submitted by Goldman Sachs and Morgan Stanley were not credible and would not facilitate orderly resolution under bankruptcy. This was not a joint determination so no notice of deficiency was issued to these firms.
- Seven of the eight plans (except Wells Fargo) had specific weaknesses that did not rise to the level of deficiency, but that constituted shortcomings firms would be required to remediate.
- The agencies prepared and issued a guidance of general applicability for firms to assist them in further developing their resolution strategies for their next submissions due in July 2017.
- Deficiency letters were sent to all firms on April 13, 2016. These letters direct the firms to respond to their deficiencies or shortcomings by a particular date.

## **Other Issues**

- One member expressed concerns on the lack of insolvency plans at central counterparties (CCPs) and the danger of having its clearing member(s) default. FDIC staff said CCPs would be subject to Dodd-Frank Title II, under a separate process for non-bank systemic institutions.
- To bring clarity to ISDA protocols (i.e. international application), some members and FDIC staff said legislative changes could make this process more certain.

## **Dodd-Frank Title II: Orderly Liquidation Authority**

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### **Enhancing Optionality and Separability**

- Staff stated that they have been unable to solve the international closeout of international derivatives contracts.
- A Federal Register Notice from December 2013 touched upon resolution of systemically important financial institutions (SIFIs). On the single point of entry strategy, the notice said “the restructuring might result in one or more smaller companies that would be able to be resolved under bankruptcy without causing significant adverse effects on the U.S. economy.”
- Optionality: many tools (options) will be provided to firms on how to deal with a crisis. These options include the sale of subsidiaries, sale of assets, IPO of entities, and/or wind down of entities.

### **Operational Planning**

- The FDIC has established a comprehensive operational framework for responding to the threat of a failing SIFI and executing its systemic resolution authorities.
  - The framework is designed to be flexible and responsive to different types of institutions and scenarios – heightened attention when recovery or bankruptcy resolution is more likely and processes adapted to the unique facts and circumstances of any SIFI failure.
  - The FDIC has been conducting an ongoing series of operational exercises to evaluate and test processes.

- These processes build on inter-agency exercises and other work with domestic and foreign authorities.
- The program of operational exercises will continue on a regular basis going forward – it will test alternate scenarios and resolution strategies, and familiarize new personnel with operational processes.
- The systemic resolution phase includes: planning phase, development phase, immediate stabilization phase, orderly liquidation phase, and post-exit phase.

### **Cross-Border Work Programs**

- The FDIC engages with key domestic and foreign counterparts to identify issues and to address obstacles to the successful execution of cross-border SIFI resolution.
  - Bilateral outreach: ongoing dialogue, tabletop exercises with key foreign authorities, and information sharing agreements.
  - Multilateral outreach: work under the auspices of Financial Stability Board (FSB) and the Basel Committee on Banking Supervision.
  - Institution specific engagement: crisis management groups and firm-specific information sharing.

### **Developments in the European Union (EU)**

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#### **Guest Speaker: Elke König, Chair, Single Resolution Board (SRB), EU**

#### ***The Single Resolution Mechanism (SRM)***

- The Single Resolution Board (SRB)
  - Organized by Country.
  - SRB is focused on resolution planning, setting minimum requirement for own funds and eligible liabilities (MREL), removing obstacles, and avoiding the negative consequences of a resolution.
  - SRB also establishes rules and procedures for resolution, establishes a unified resolution regime, and enhances bank resolvability.
  - SRB's stated objectives are to foster a safer banking system, enhance market confidence, reduce the cost of bank failure, and improve financial stability across the EU.
  - SRM allocates specific tasks to the SRB and the National Regulatory Authorities (NRAs).
  - SRBs are directly responsible for large banks, cross-border banking groups, and functioning of the SRM.
  - NRAs are directly responsible for all other banks.
  - SRB closely cooperates with NRAs, the European Central Bank (ECB), the European Commission (EC), and institutions outside the Euro area.
  - Resolution objectives include: continuity of critical functions, financial stability, and the protection of public funds, depositors, and the public.
  - Obstacles to resolution include: interdependencies within the institution, inadequate IT and reporting systems, capital structure, total loss absorption capacity (TLAC)/MREL,

cooperation between authorities, cross-border recognition of resolution measures, and critical support function allocation.

- The Single Resolution Fund (SRF)
  - Within the SRM, national funds will be replaced by the SRF with a targeted level of 1% of deposits to be reached in eight years.