Session 3:

Crisis Management – the Role of the Resolution Regime

Martin J. Gruenberg*

SOME REMARKS ON THE CRISIS RESOLUTION REGIME FROM THE FDIC PERSPECTIVE

1. INTRODUCTION

The FDIC has been given significant new responsibilities under the Dodd-Frank Act to resolve systemically important financial institutions (SIFIs). Prior to the Dodd-Frank legislation, there was no authority in the United States for the FDIC to place a large non-bank financial institution into public receivership. The FDIC had the authority to place banks into receivership, and has closed over 400 to date since the beginning of the crisis. With the failure of Lehman Brothers, it became apparent that bankruptcy courts are not prepared to handle such failures of large, non-bank institutions. The new legislation provides the FDIC with public authority to place any financial institution into a public resolution process, including those designated as systemic.

2. NEW AUTHORITIES GRANTED TO THE FDIC UNDER THE DODD FRANK ACT

Specific new authorities granted to the FDIC under the Dodd Frank Act include an Orderly Liquidation Authority to resolve bank holding companies and non-bank financial institutions, if necessary, and a requirement for resolution plans that will

* Martin J. Gruenberg is the President of International Association of Deposit Insurers and the Acting Chairman of Federal Deposit Insurance Corporation.

give regulators additional tools with which to manage the failure of large, complex enterprises.

The FDIC has taken a number of steps over the past year to carry out these responsibilities.

First, the FDIC established a new Office of Complex Financial Institutions to carry out three core functions:

- ❖ Monitor risk within and across these large, complex firms from the standpoint of resolution;
- ❖ Conduct resolution planning and the development of strategies to respond to potential crisis situations; and
- ❖ Coordinate with regulators overseas regarding the significant challenges associated with cross-border resolution.

For the past year, this office has been developing its own resolution plans in order to be ready to resolve a failing systemic financial company. These internal FDIC resolution plans – developed pursuant to the Orderly Liquidation Authority, provided under Title II of Dodd-Frank – apply many of the same powers that the FDIC has long used to manage failed-bank receiverships to a failing systemically important financial institution. If the FDIC is appointed as the receiver of such an institution, it will be required to carry out an orderly liquidation in a manner that maximizes the value of the company's assets and ensures that creditors and shareholders appropriately do not bear any losses. The goal is to close the institution without putting the financial system at risk. This internal resolution planning work is the foundation of the FDIC's implementation of its new responsibilities under Dodd-Frank.

In addition, the FDIC has largely completed the related rulemaking necessary to carry out its responsibilities under Dodd-Frank. In July, the FDIC Board approved a final rule implementing the Orderly Liquidation Authority. This rulemaking addressed, among other things, the treatment of similarly situated creditors, protection for employees of covered financial companies that continue to work for the company following failure, and protection for policyholders of insurance companies under the orderly liquidation process.

3. TWO NEW RULES REGARDING RESOLUTION PLANS: "LIVING WILLS"

The FDIC Board also recently adopted two rules regarding resolution plans that systemically important financial institutions themselves will be required to prepare – the so-called "living wills".

The first resolution plan rule, jointly issued with the Federal Reserve, implements the requirements of Section 165(d) of the Dodd-Frank Act. This section

requires bank holding companies with total consolidated assets of $50 billion or more and certain nonbank financial companies that the Financial Stability Oversight Council designates as systemic, to develop, maintain and periodically submit resolution plans to regulators. The plans will detail how the top-tier legal entity in the enterprise – as well as any subsidiary that conducts core business lines or critical operations – would be resolved under the U.S. Bankruptcy Code.

Complementing this joint rulemaking, the FDIC also issued an Interim Final Rule requiring any FDIC-insured depository institution with assets over $50 billion to develop, maintain and periodically submit plans outlining how the FDIC would resolve it through the FDIC's traditional resolution powers under the Federal Deposit Insurance Act.

These two resolution plan rulemakings are designed to work in tandem and complement each other by covering the full range of business lines, legal entities and capital-structure combinations within a large financial firm. Both of these resolution plan requirements will improve efficiencies, risk management and contingency planning at the institutions themselves. They will supplement the FDIC's own resolution planning work with information that would help facilitate an orderly resolution in the event of failure.

4. CONCLUDING REMARKS

We expect that the process of developing these plans – or "living wills" – will be a dialogue between the regulators and the firm. It is not a simple "check-the-box" exercise, and it must take into account each firm's unique characteristics. The planning process must also be iterative, especially for the largest and most complicated firms.

Together, these efforts will ensure comprehensive and coordinated resolution planning for both the insured depository and its holding company and affiliates in the event that an orderly liquidation is required.