Statement by Martin J. Gruenberg

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Notice of Proposed Rulemaking: Title I Resolution Plans

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The FDIC Board today is considering a Notice of Proposed Rulemaking that would make extensive changes to the current rule requiring resolution plans for the eight U.S. Global Systemically Important Banks (GSIBs) and other large U.S. and foreign banking organizations under Title I of the Dodd Frank Act. Since I intend to vote against this proposed rulemaking, I would like to take this opportunity to explain the reasons for my vote.

One of the most significant vulnerabilities revealed by the financial crisis of 2008 was the inability to manage the orderly failure of systemically important financial institutions without taxpayer support.

In response, Title I of the Dodd-Frank Act directed each bank holding company with assets of $50 billion or more to report periodically to the Federal Reserve and the FDIC the plan for their rapid and orderly resolution under the Bankruptcy Code in the event of material financial distress or failure.

Since the adoption in November 2011 by the FDIC and the Federal Reserve of the final rule implementing the Dodd-Frank Act resolution plan requirement, the agencies have worked diligently to carry it out. The firms subject to the rule have submitted several rounds of plans that have resulted in significant organizational and operational changes that have substantially enhanced their resolvability, particularly for the eight U.S. GSIBs.

The Economic Growth, Regulatory Relief, and Consumer Protection Act, signed into law last year, made a number of amendments to the Dodd-Frank Act. The changes included raising the asset threshold for resolution plans to $100 billion, and authorizing the Federal Reserve to identify the firms with $100 billion or more but less than $250 billion in total consolidated assets that will continue to have a resolution planning requirement.

The proposed rule before the FDIC Board today would implement the provisions of the new law. However, it would also go beyond the requirements of the new law to weaken significantly, in my view, the resolution plan framework that has been developed in this post-crisis period. There are three changes in the proposed rule that I believe are particularly problematic.

First, the proposed rule would introduce a new company-initiated waiver process that would allow any company subject to the rule (covered company) that had previously submitted a full resolution plan to request a waiver of one or more informational content requirements for its next full plan submission. That waiver request would be deemed approved unless the FDIC and the Federal Reserve jointly deny it. This is a major departure from the process under the current rule.

The current rule authorizes the agencies jointly to waive certain informational content requirements for one or more firms. If the agencies don't agree, the waiver is not granted. In contrast, for company-initiated waiver requests under the proposed rule, joint agency agreement is required to deny a request. In other words, if one agency disagrees, the waiver request is still approved. This effectively eliminates the discipline of joint agency agreement to approve a waiver request.

The proposed rule specifies certain information that is not eligible for a company-initiated waiver including information specified in the statute, information required to be included in the public section of a full resolution plan, and any "core element," a term generally defined as capital, liquidity, and the company's plan for recapitalization. The scope of this term has a certain ambiguity and does not have to be agreed on by the agencies.

The proposed rule would appear to make eligible for waiver, at the discretion of each agency, essential informational requirements of full resolution plans for the eight U.S. GSIBs and the other largest banking organizations. For example, all information relating to management information systems, key assumptions and supporting analysis made concerning economic and financial conditions at time of failure, and how resolution planning is integrated into the corporate governance structure and processes of the covered company could be waivable.

The current rule already provides the agencies with the explicit authority to grant the relief contemplated in the new provision, subject to their joint determination and without a presumption of approval for company-initiated waiver requests. This new proposed provision serves no purpose other than to lower the standard for granting waivers of information essential to the agencies' carrying out their statutory obligation to assess the credibility of these plans. For that reason, it has the potential, by itself, to weaken significantly the resolution plan requirements for the GSIBs and the other large banking organizations to which it would apply.

Second, the proposed rule would extend the submission of plans by the eight U.S. GSIBs from annually to biennially, and the submission of plans by U.S. firms with $250 billion or more in consolidated assets other than the GSIBs, and foreign banking organizations with $250 billion or more in combined U.S. assets, to every three years.

I do not object to moving the GSIB submissions to a two-year cycle because experience has shown that length of time is needed both for the firms to prepare their plans and for the agencies to review them. However, I believe it is extremely unwise to extend the submission of plans by the largest U.S. banking organizations other than the GSIBs, and foreign banking organizations with the largest U.S. operations, to every three years. That would attenuate the review process to an extreme. In my view, it reflects an underappreciation of the very significant resolution challenges and potential for systemic disruption posed by the failure of these firms.

Third, reflecting a similar set of concerns, the proposed rule would remove the resolution plan requirement for U.S. firms with assets between $100 billion and $250 billion, with the exception of one firm, even though the Federal Reserve retains authority under the Economic Growth, Regulatory Relief, and Consumer Protection Act to preserve the requirement for those institutions. I believe the proposed rule is significantly underestimating the challenges and the risks associated with the failure of institutions with assets over $100 billion. In my view, the resolution plans at the parent and insured depository institution level are important tools to address those challenges.

For these reasons, I intend to vote against the Notice of Proposed Rulemaking.