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Statement of the Shadow Financial Regulatory Committee

**Some Concerns about the FDIC and Federal Reserve System
Proposed Rule on
Resolution Planning¹**

May 2, 2011

As required by the Dodd-Frank Act, the FDIC and the Federal Reserve Board of Governors have issued a notice of proposed rulemaking (NPR) to implement the “Living Will” requirements of Section 165(d). This is intended to accomplish the admirable objective of preparing systemically important financial institutions (SIFIs) so that they can be resolved, if necessary, without creating intolerable spillovers to the rest of the financial system or costs to taxpayers. This is the main rationale for Senator Dodd’s claim that “Never again will we face the kind of bailout situation as we did in the fall of 2008 where a \$700 billion check will have to be written.”

The definition of so-called SIFIs is in some respects too broad and in other respects potentially too narrow. It includes all bank holding companies with total assets of above \$50 billion, which surely includes many institutions that would never reasonably be considered systemically significant. It also includes all nonbank companies “predominantly engaged in financial activities” (at least 85% of consolidated revenues or assets), which leaves open the question of whether it would apply to very large financial subsidiaries of giant corporations (e.g., GE Capital Services). This definition may be too narrow to include institutions that may be of systemic importance, but that have not been chosen for enhanced supervision or required to

¹ FDIC and Federal Reserve System Notice of Proposed Rulemaking (NPR) for Resolution Planning and Credit Exposure Reports Required, 76 Fed Reg 22649 (Proposed April 22, 2011).

prepare a resolution plan.

The greatly abbreviated listing in the Appendix of matters that must be covered, under the NPR, gives some idea of the scale and scope of an acceptable resolution plan. The proposal estimates that the burden of preparing the initial report will be an average of 10,000 hours.

The initial submission of a plan is scheduled for some time in 2012 at the earliest, and annually thereafter, with updates whenever any of an enumerated list of possible changes takes place. The Fed and FDIC are supposed to review the plan within 60 days and require more information or reject the plan if there are deficiencies, in which case the institution has 90 days to submit a revised plan. That sets in motion an elaborate series of exchanges between the regulators and the institution in which, if the institution fails to submit a plan acceptable to the regulators within 2 years, the regulators may order divestitures of such assets or operations as they may determine necessary to facilitate an orderly resolution under the bankruptcy code.

From the perspective of achieving the stated goal of avoiding bailout situations, it may be instructive to consider how these requirements would apply to an institution that all would regard as surely significant from a systemic risk point of view: the Citi Group. At this time Citi has roughly \$1.8 trillion dollars in assets, with 2,435 majority-owned subsidiaries, operating in 171 countries and participating in 550 clearing and settlement systems. It is difficult to imagine how a resolution plan could be developed in a mere ten thousand hours. It is impossible to conceive that a resolution plan would be credible and acceptable if it did not mandate a radical restructuring, simplification and scaling-down of Citi's corporate structure. Furthermore, the agencies must be willing to follow through and force implementation. If not, the whole exercise itself may not be credible or worth the enormous expenditure of institutional and agency resources.

Appendix:

A resolution plan must contain a vast amount of information, the main categories of which are listed below with a few selected details for each:

- A strategic analysis including:
 - the range of specific actions to be taken to facilitate a rapid and orderly resolution;
 - funding, liquidity and capital needs of, and resources available to all of the group entities, which must be “mapped” to the group’s critical operations and core business lines, both in the ordinary course of business and in the event of material financial distress or failure of the group;
 - the group’s strategy for ensuring that any U.S. insured depository institution subsidiary will be adequately protected from risks arising from the activities of any nonbank subsidiaries of the group;
 - the actions that will be taken by the group to mitigate any adverse effects of the failure of a material entity, core business line or critical operation on the financial stability of the United States; and
 - a detailed description of the process the group employs for determining the current market values and marketability of the core business lines, critical operations and material asset holding of the group, assessing the feasibility of the group’s plans (including time frames) for executing any sales, divestiture, restructurings, recapitalizations or other similar actions contemplated in the group’s resolution plan and assessing the impact of any sales, divestiture, restructuring, recapitalization or other similar actions on the value, funding and operations of the group, its material entities and critical operations and core business lines.
- Details of corporate governance relating to resolution planning including:
 - how resolution planning is integrated into the corporate governance structure and processes of the group;
 - the group’s policies, procedures and internal controls governing preparation and approval of the group’s resolution plan;
 - the capabilities of the group’s processes and systems to collect, maintain and report the information and other data underlying the resolution plan to senior executive officers and the board of directors of the group; and
 - the relevant risk measures used by the group to report credit risk exposures both internally to its senior management and board of directors and externally investors of the group’s appropriate Federal regulator.
- Details of organizational structure and related information including:
 - a hierarchical list of all material legal entities and related legal, ownership and other information;

- a mapping of the groups critical operations and core business lines, including material asset holdings and liabilities related to such critical operations and core business lines, to material entities;
- an unconsolidated balance sheet for the group and a consolidating schedule for all entities that are subject to consolidation by the group;
- a description of the material components of the liabilities of the group, its material entities, its critical operations and core business lines that, at a minimum separately identifies types and amounts of short-term and long-term liabilities, secured and unsecured liabilities and subordinated liabilities;
- any material off-balance sheet exposures (including guarantees and contractual obligations) of the group and its material entities, including a mapping to its critical operations and core business lines; and
- an analysis of whether the failure of each major counterparty would likely have an adverse impact on or result in the material financial distress or failure of the group.
- Details of management information systems including:
 - a detailed inventory and description of the key management information systems and applications, including systems and applications for risk management, accounting and financial and regulatory reporting, used by the group and its material entities, including a mapping to its critical operations and core business lines and information concerning legal ownership, service level agreements and intellectual property related matters; and
 - a description of the process for the appropriate supervisory or regulatory agencies to access the management information systems and applications identified.
- Details of interconnections and interdependencies among the group and its material entities and among the critical operations and core business lines of the group that, if disrupted would materially affect the funding or operations of the group, its material entities or its critical operations or core business lines including:
 - common or shared personnel, facilities or systems (including information technology platforms, management information systems, risk management systems and accounting and recordkeeping systems);
 - capital, funding or liquidity arrangements;
 - existing or contingent credit exposures;
 - cross-guarantee arrangements, cross-collateral arrangements, cross-default provisions and cross-affiliate netting agreements;
 - risk transfers; and
 - service level agreements.
- Supervisory and regulatory information including:
 - any Federal, state or foreign agency or authority (presumably including Federal banking agencies) with supervisory authority or responsibility for ensuring the safety and soundness of the group, its material entities, critical operations and core business lines;

- any other Federal, state or foreign agency or authority (other than Federal banking agencies) with significant supervisory or regulatory authority over the Group, its material entities, critical operations and core business lines; and
 - any foreign agency or authority responsible for resolving a foreign-based material entity and critical operations or core business lines of the group.
- Contact information including:
 - contact information for a senior management official at the Group responsible for overseeing the resolution plan; and
 - contact information for the material entities, critical operations and core business lines of the group.