Hon. Janet Yellen  
Chairman, Board of Governors of the Federal Reserve System  
20th St. NW and Constitution Ave. NW  
Washington, DC 20551

Hon. Martin Gruenberg  
Chairman, Federal Deposit Insurance Corporation  
550 17th St. NW  
Washington, DC 20429

September 8, 2015

Re: 2015 Resolution Plan Public Disclosures

Dear Chairman Yellen and Chairman Gruenberg:

The Systemic Risk Council (the “Council” or “we”) has been highly supportive of the “living will” process required for large, complex financial institutions in accordance with the requirements of Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). However, we have been critical of the dearth of information contained in the public portions of such plans. In our letter of December 2, 2013 to Chairmen Bernanke and Gruenberg, for example, we stated that “the public portions of living wills have been disappointing,” noting that the disclosures therein “are not comparable, lack crucial data for understanding a [large, complex financial institution’s] business and structure, and are little more than selective, idiosyncratic reiterations of existing public information.”

Today, we are encouraged by the recent release of updated and improved public disclosures for 12 large financial firms by the Board of Governors of the Federal Reserve System (the “Board”) and the Federal Deposit Insurance Corporation (the “FDIC,” and together with the Board, the “agencies”). We are pleased to find that the regulated institutions—responding to the agencies’ guidance—have considerably improved the quality of their public disclosure.

1 The independent, non-partisan Systemic Risk Council (www.systemicriskcouncil.org) was formed by the CFA Institute and the Pew Charitable Trusts to monitor and encourage regulatory reform of U.S. and global capital markets, with a focus on systemic risk. The statements, documents, and recommendations of the private sector, volunteer Council do not necessarily represent the views of its supporting organizations. The Council works collaboratively to seek agreement on each of its recommendations. This letter fairly reflects the consensus views of the Council but does not bind its individual members.


I. Lack of confidence in the ability and willingness of the agencies to resolve large, complex financial institutions under either Title I or II perpetuates belief in “too-big-to-fail.”

“Too-big-to-fail” demonstrates the degree to which perceptions can shape reality. Even seven years after the 2008-9 financial crisis, a widespread belief persists that a favored class of large, complex financial institutions benefits from an implicit government backstop. This belief—arguably a reasonable reaction to federal regulators’ response to events during the crisis—may lead to the muddying of asset allocation decisions and the subsidization of such institutions’ profitability. Ultimately, this belief threatens to expose taxpayers to the risk that government support will be invoked in a future crisis.

Belief in “too-big-to-fail” is abetted by skepticism as to regulators’ willingness and ability to resolve failing institutions in bankruptcy or Title II orderly liquidation without recourse to a taxpayer bailout, as mandated by the Dodd-Frank Act. If the market acts upon its belief that the U.S. government will ultimately ride to the rescue of failing institutions in times of financial distress—notwithstanding regulators’ protestations to the contrary—the subjective belief in “too-big-to-fail” will become objective reality. Artificial funding advantages predicated upon belief can thus instigate a vicious cycle of ever larger and more profitable financial institutions, in turn leading to yet greater funding advantages.

Whether federal regulators—if again confronted with a systemic crisis of the magnitude of 2008-9—would in fact seek to provide a taxpayer-funded “bail-out” in the interest of financial stability is fundamentally unknowable. Unavoidably, regulators seeking to demonstrate that they will not pursue such a policy are forced to prove a negative—indeed, to prove a negative in a hypothetical setting. Congress’s answer to this conundrum in Section 165(d) was to require that living wills be drafted and made public, ex ante, by those parties most likely to benefit from any future bail-out, in order to convince market participants that the resolution of failing institutions can be accomplished in a straightforward manner without recourse to taxpayer resources. The presumption is that regulators will not hesitate to initiate resolution or orderly liquidation if they have a high degree of confidence that such resolution or liquidation can be accomplished without damaging spillover effects to the rest of the economy. Although many provisions of the Dodd-Frank Act are intended to address systemic risk, the unique contribution of the living wills regime—and particularly the public disclosures mandated by the agencies—is to attack directly the perception that the authorities have no choice but to bail out systemically important financial institutions (“SIFIs”) in times of financial distress.

Our analysis applies equally to the existing bankruptcy regime—the focus of Title I’s living wills requirement—and to the new orderly liquidation authority established under Title II of the Dodd-Frank Act. As the FDIC stated in its policy statement on the agency’s “single point of entry” resolution strategy, “although the statute makes clear that bankruptcy is the preferred resolution framework in the event of the failure of a SIFI, Congress recognized that a SIFI might not be resolvable under bankruptcy without posing a systemic risk to the U.S. economy.” The FDIC describes Title II as “a back-up authority to place a 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.” In other words, in the event that use of the standard bankruptcy process were thought to be infeasible with respect to a particular systemic institution, regulators would look to Title II for the mechanisms necessary to resolve the institution.

We believe that the living wills process can contribute materially to shoring up public confidence in Title II. In particular, lingering ambiguity as to how, where, and in what amounts total loss-absorbing capacity will be pre-

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5 For example, regulators have promulgated new prudential requirements to reinforce the balance sheets of large financial institutions, increase their capital reserves proportionally to their systemic profile, and ensure adequate liquidity. Risky proprietary trading has been curtailed by the Volcker Rule, and central clearing of formerly opaque derivatives markets has been instituted for many classes of instruments. Each of these reforms has contributed in its own way to a safer, sounder, and less risky financial system.


7 Id.
positioned within the holding group structure should be addressed in future living wills. Living wills should provide market participants and the public at large with a clear view of at least the following: (i) how precisely losses would be transferred from an operating subsidiary to the group holding company in the event that such losses exceeded the subsidiary’s equity and retained reserves (including subsidiary debt held at the holding company and that can be converted to equity), and (ii) whether and to what extent the group holding company has issued long-term debt that may be written down or “bailed in” during the resolution or bankruptcy process. Ensuring that these fundamental questions as to resolvability are addressed comparably and consistently by all subject institutions not only is critical to achieving Congress’s and the FDIC’s objectives under Titles I and II of the Dodd-Frank Act, it is also consistent with the broader effort of the G-20 nations to come to agreement on minimum total loss-absorbing capacity standards.

II. Recent improvements in the public disclosure of living wills are a major step toward changing public perceptions of “too-big-to-fail.”

The public sections of the living wills reflect the reporting institutions’ responses to the detailed, confidential, and individualized feedback each bank received from the agencies in August 2014, as well as guidance provided by the agencies earlier in 2015, including requirements for (i) a discussion of the strategy for resolving each material entity in a manner that mitigates systemic risk; (ii) a high-level description of what the firm would look like following resolution; and (iii) a description of the steps that each firm is taking to improve its ability to be resolved in an orderly manner in bankruptcy. The agencies’ guidance also required more detailed disclosure on each material entity, such as the type of business conducted, interconnectedness among entities, and a general indication of capital and funding sources.

The recent public disclosures show substantial changes from prior submissions. The most obvious difference is that they are now much longer: in several cases, the 2015 submissions are more than three times longer than the corresponding submissions in July 2014. The disclosures also provide more detail about the way an institution believes that it could be resolved under bankruptcy law without causing harmful spillover effects. In most cases, the institutions emphasize reliance on the “single point of entry” approach developed by the FDIC and the Bank of England. Descriptions of corporate structure and material entities are also more informative, and greater emphasis is placed on the interconnectedness of the various entities within each group. More broadly, by actually describing in some detail the way in which resolution might reasonably be accomplished, these public disclosures add credibility to agency assertions that resolution without bail-out is indeed possible.

We are therefore heartened to see that the regulated institutions have significantly improved the quantity, quality, and comparability of their living will disclosures—thanks in no small part to the agencies’ guidance and commentary on prior years’ submissions. Most importantly, several of the significant gaps between firms’ disclosures that we identified in our 2013 Letter have narrowed.9

III. Public disclosure can be further improved by increasing the ease of comparison among living wills.

As a general principle, disclosures are more informative if they facilitate comparison. This generally requires the use of common definitions and reporting practices. This is important for judging progress in resolution planning across the financial industry as a whole and, equally importantly, for evaluating progress made by individual institutions over time. Currently, the lack of standardized definitions and reporting practices hinders meaningful comparisons. This inadequacy presents a problem both for the reporting institutions and the regulators. External analysts face serious and unnecessary challenges in trying to confirm progress across institutions or for any individual institution over time, and this undermines confidence that progress in developing credible living wills is actually being made.

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9 2013 Letter, supra n. 3, at 1.
We believe, therefore, that more progress is necessary. In particular, we continue to urge the agencies to create a more uniform approach to the definition of “material legal entity.” In January 2015, the Council released a research paper by Jacopo Carmassi and Richard Herring examining the complexity of the 29 institutions designated as global systemically important banks (“G-SIBs”) by the Financial Stability Board in November 2013. The study found that “the complex structure and opaque connections among G-SIBs impeded oversight by the authorities before the crisis and greatly complicated crisis management.”

The study highlighted public disclosure of living wills as a key contributor to simplifying G-SIB complexity. As Dr. Herring noted at the time of the study’s release, “to enhance market discipline and ensure the credibility of plans to resolve G-SIBs without resort to taxpayer bailouts, greater progress is needed to simplify and rationalize G-SIBs’ organizational structures and improve transparency and market understanding of those structures.”

The study specifically faulted prior iterations of living will disclosure for their vague definition of “material legal entity” and advised that “investors would gain a better understanding of a group’s business and structure if it were required to provide detailed explanations about its decision criteria and an organizational chart including, at a minimum, the type of business, the legal form, the location, total assets, and percentage of ownership for each entity displayed.”

Standardization of the material legal entity definition would enhance the value of the public disclosures. We believe that the definition of material legal entity should be based on consolidating statements with thresholds set as a proportion of consolidated assets or consolidated revenues. Material entities should be defined to include not only operating entities that have consolidated assets or revenues above the set thresholds, but also holding companies that issue public debt. Increased transparency regarding corporate structures and interconnections would facilitate not only resolution planning, but also market discipline and the allocation of credit.

We suggest—consistent with Dr. Carmassi’s and Dr. Herring’s conclusions—that detailed organizational charts and tabular listing of key data points be mandated in the interests of transparency and comparability for public disclosure. The number of subsidiaries that pose no significant obstacle to resolution should not be a matter for conjecture: entities not considered material should be listed and classified in standardized groups. Each standardized group should include an explanation of why such entities would present no obstacle to an orderly resolution. Moreover, it would be useful if each entity in the group were identified by name, location, primary function, and rationale. This kind of information would surely improve the quality of discussion regarding any progress that institutions are making with regard to rationalizing their complex corporate structures, and it would facilitate a more useful analysis of an institution’s plans for a prompt and orderly resolution in bankruptcy.

Finally, while we are cognizant of the fact that the agencies have access to a greater quantity of resolution-related information than is publicly disclosed, we remain of the view that the legal presumption should be for disclosure of all information unless the regulated institution can demonstrate the information’s proprietary or competitive value. Similarly, the agencies’ own general guidance regarding the scope and content of living wills should be made public. Since substantially the same guidance was sent to each of the 12 subject institutions, we presume that no proprietary information appears in this guidance and thus that disclosure would not unduly harm the competitive positions of these institutions.

IV. Conclusion

As we stated in our 2013 Letter, “if these living will disclosures are not sufficient to facilitate an orderly liquidation in bankruptcy, Section 165(d)(5)(B) of the Dodd-Frank Act also makes clear that the agencies may

11 Id., at iii.
13 Carmassi/Herring Paper, supra n. 10, at 71.
direct such companies to face heightened restrictions on the range of permissible activities and even force divestment of assets. This is a very broad grant of authority to help win the fight against ‘too-big-to-fail.’”\textsuperscript{14} We reiterate that position now. The improvements in public disclosure of living wills since 2013 have been encouraging, and we commend the agencies for the progress that has been made. More work, however, remains to be done. Writing and disclosing plans are essential steps in ending too big to fail. It remains to be shown that institutions that have filed living wills can be resolved without significant simplification and restructuring and the willingness of the agencies to make full use of the tools provided to them in Title I of the Dodd-Frank Act. We urge the agencies to continue to exercise this authority as resolutely as required by the job at hand.

Thank you very much for your consideration.

Respectfully submitted,

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Sheila Bair, Chair
On behalf of the Systemic Risk Council
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www.systemicriskcouncil.org
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\textsuperscript{14} \textit{Id.}, at 3.
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