The Systemic Risk Council

December 2, 2013

The Honorable Ben Bernanke
Chairman, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

The Honorable Martin Gruenberg
Chairman, Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Dear Chairmen:

We[1] are writing to request that the Federal Reserve Board and the Federal Deposit Insurance Corporation take steps to substantially improve the amount and quality of information published in the public sections of "living wills" required by Section 165 of the Dodd-Frank Act. To the extent the Agencies continue to permit meaningful living will information to remain private, we believe accountability requires that the Agencies inform the public of their findings regarding each resolution plan (on a company by company basis), including whether the plan is credible and would "facilitate an orderly resolution of the company under bankruptcy" and what, if any, impediments exist to achieving that goal. Living wills are not only essential tools for enabling the Board and the FDIC to assess the impact of, and plan for, the potential failure of a large, complex financial institution (LCFI), living wills should enhance market discipline as well. They should disclose information to help investors, counterparties and others make more informed market decisions. Not only can these disclosures improve the pricing and allocation of resources across institutions, but they can enable the public to assess the extent of progress being made in ending "too big to fail."

Unfortunately, the public portions of living wills have been disappointing. They are not comparable, lack crucial data for understanding an LCFI's business and structure and are little more than selective, idiosyncratic reiterations of existing public information. This significantly reduces the potential value of these disclosures in helping markets and the public assess these firms and the progress you have made in reducing the complexity of these institutions. There are significant gaps and differences among firms regarding the information they disclose and even the extent to which they disclose the existence of very large legal entities within the organization.[2] This information gap, which was not corrected in the regulatory guidance for the

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

[2] See e.g., *Living Wills and Cross-Border Resolution of Systemically Important Banks*, Jacopo Carmassi & Richard Herring (2013), Journal of Financial Economic Policy, Vol. 5, No. 4, pp. 361 - 387.

second round of living wills, fuels skepticism about the end of too big to fail, perpetuating bad market dynamics and, appropriately, more political pressure.

Living Wills Can Bring More Market Discipline to Large, Complex Financial Institutions

As you know, “too big to fail” is a serious problem that undermines our markets by muddying asset allocation decisions and putting taxpayers at risk for losses while subsidizing large institutions’ profitability. The artificial funding advantages conveyed to LCFIs regarded as too big to fail can also undermine fair competition.

The public section of living wills should be added to other regulatory innovations to help address this problem. Not only can living wills help the Board and the FDIC assess (and improve) firms’ ability to be resolved in a bankruptcy process, but also living wills could provide important new information to help counterparties, investors and the public better understand the risks to (and from) these large institutions. Greater public disclosure could allow interested parties to understand the risks of individual LCFIs, compare the risks of different LCFIs and monitor changes in the riskiness of LCFIs over time. For example, if living will information shows that a firm is becoming easier to resolve through bankruptcy proceedings (e.g., less interconnected and less complex), moral hazard will be reduced and market pricing will better reflect the firm’s underlying economics.

To date regulatory guidance has explicitly limited this useful option by reassuring banks that they need not disclose anything in the public section of living wills that is not already disclosed to the public. Rather than expand the amount of relevant information available to the public, the guidance simply asks for a restatement of some of the information. Worse still, since LCFIs are free to make their own selection of data, the public sections do not even provide a way of facilitating the comparison of publicly disclosed data across banks.

Living Wills Can Help the Public Assess the Progress Being Made on Too Big To Fail

Living wills could also help market participants, policymakers and the public, assess the progress being made on too big to fail – and take appropriate action. As you know, significant skepticism remains about whether too big to fail is, in fact, “over” or if more work still needs to be done. Much of the skepticism derives from a lack of confidence in regulators’ ability and willingness to make LCFIs resolvable in bankruptcy and without a taxpayer bailout, as required by the Dodd-Frank Act. In order to bolster public confidence it is important that market participants understand how an LCFI can be resolved without causing systemic spillover.

With more of this information available, the public would be far better positioned to assess the progress being made – and judge for themselves if LCFIs are getting smaller and simpler and therefore *more resolvable* or larger, more complicated and therefore *less resolvable.* While we hope firms are becoming more resolvable over time – making additional policy action less necessary – the existing living wills simply do not provide enough facts to support that view.

Improving Living Wills Disclosure

While we understand that regulators need access to more information than would the public, and that some information – for example potential buyers of particular subsidiaries – may be proprietary and should not be disclosed to the public, the presumption should be that data will be disclosed unless it has genuine proprietary value. Establishing a standard that the data is already being disclosed somewhere simply sets the bar too low to be helpful. Getting more and better living wills information to the public would be an easy way for regulators to bring more accountability and confidence to their regulatory efforts, and more market discipline to these firms.

In particular we urge you to require that firms provide significantly more information to the public about their organizational structure and cross-organizational risks in a format that can be easily compared across institutions. Firms should be required to provide a group corporate structure chart, map business lines into legal entities and disclose their cross-organizational risks, credit lines and guarantees as well as basic balance sheet and income statement data of all material entities – as well as their interconnections with other large, potentially systemic financial firms, including through derivatives and repo activities. They should also be required to use a common, well-specified definition of material entity and to distinguish operating subsidiaries from transactional subsidiaries. In addition, foreign branches that are systemic in host countries (e.g. based on the share of their liabilities on the host country's total bank liabilities) should be disclosed because in the event of distress they may be treated by the local authority as if they were subsidiaries. It is also crucial to identify entities that provide services to the rest of the group such as IT, risk assessment and management information systems, with an explicit discussion of how such entities could be maintained in a bankruptcy to preserve critically important functions. Such information would significantly improve the public's ability to assess these firms' risks, complexity and resolvability. This information is largely lacking in the existing public disclosures and is not required to be publicly disclosed in the Regulators' implementing rules.

The Dodd-Frank Act Provides the Agencies with Broad Living Wills Authority

Many have noted that too big to fail remains a significant concern. We urge you to use the authority specifically granted to your agencies in the Dodd-Frank Act to ensure that the public, investors and counterparties to these institutions are better informed about these systemic institutions and their risks and honestly assess the credibility of an orderly liquidation, without taxpayer support, in bankruptcy. This approach can also complement improved public company disclosure.[3]

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 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. We urge the agencies to use this authority before it is too late.

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[3] See Letter from the Systemic Risk Council, Mary Jo White, Chair, Securities & Exchange Commission, Dec. 2, 2013. (Attached).

Respectfully submitted,

The Systemic Risk Council
www.systemicriskcouncil.org

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