Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

Statement of CFPB Director Rohit Chopra
Member, FDIC Board of Directors
Regarding the Living Wills Submitted by JPMorgan Chase, Wells Fargo, Bank of America, Citigroup, Goldman Sachs, Morgan Stanley, State Street, and Bank of New York Mellon

November 22, 2022

Bailouts of large, dominant, or politically connected firms are a sign of cronyism, not capitalism. In the last crisis, the government took a number of extraordinary steps, including providing bailouts from the public, to prevent the failure of very large financial institutions from inflicting even more catastrophic damage on the economy.

In 2010, Congress sought to eliminate this reliance on public bailouts when large, complex financial institutions are on the brink of failure. Congress established a clear preference for how these massive institutions should be wound down: Chapter 11 of the U.S. Bankruptcy Code.

Specifically, the law requires that the Board of Directors of the Federal Deposit Insurance Corporation (FDIC) and the Board of Governors of the Federal Reserve System evaluate whether the largest financial firms have credible plans in place to be restructured in a bankruptcy proceeding without disrupting the financial system.[1] If they do not, they can be subjected to heightened requirements to reduce the likelihood of their failure or to make it more likely that they will be able to be wound down in a rapid and orderly manner.

In 2021, JPMorgan Chase, Wells Fargo, Bank of America, Citigroup, Goldman Sachs, Morgan Stanley, State Street, and Bank of New York Mellon did not submit full resolution plans. Instead, they submitted partial plans, pursuant to a legal exemption put into place in 2019.[2] These Wall Street institutions are truly systemically important to the global economy and our financial system, with a combined $18 trillion in financial exposures, $124 trillion in client assets under custody, over 12,000 subsidiaries, and on average operate in 50 countries.[3]

Based on the analysis of these partial plans, it is clear that Citigroup's plan is not at all credible,[4] particularly in light of the enforcement actions two years ago by the Federal Reserve Board of

[1] 12 USC §5365.
[2] Resolution Plans Required, 84 Fed. Reg. 59,194 (November 1, 2019), available at https://www.federalregister.gov/documents/2019/11/01/2019-23967/resolution-plans-required.
[3] Data on financial exposures, assets under custody, and foreign jurisdictions are cited from the Federal Reserve's most recent FR Y-15 Systemic Risk Reports (as of June 30, 2022). The subsidiary count can be found under the "Organizational Hierarchy" tab within the National Information Center's Large Holding Company list, https://www.ffiec.gov/npw/Institution/TopHoldings.
[4] The Federal Reserve Board and the FDIC Board have decided to jointly determine that this weakness is a "shortcoming." However, I would have supported classifying Citigroup as having a "deficiency," which would expedite the availability of tools available to regulators to reduce bailout risk. Citigroup has material issues estimating its capital and liquidity needs in the ordinary course of business. It is not reasonable to expect that the firm could reliably and accurately estimate its capital and liquidity needs while experiencing material financial distress prior to and after filing for bankruptcy, as outlined in its resolution plan.

Governors and the Office of the Comptroller of the Currency.[5] I will vote in favor of issuing the feedback letters, because I agree with certain identified areas for improvement, but I do not believe that Citigroup is the only institution without a credible plan. It is highly unlikely that any of these institutions, as currently constituted, could be resolved in a rapid and orderly manner under the bankruptcy code.

First, I question whether there are adequate safeguards to ensure the board members at these institutions will file for bankruptcy at the appropriate time. Second, I do not believe they would be able to obtain adequate financing for an orderly court-supervised bankruptcy due to their size, complexity, and the magnitude of their short-term financing needs.[6] Nor is it wise to alternatively assume that the unprecedented strategy of self-financing the bankruptcy would be successful. Finally, these firms are so large and deeply interconnected with our economy that they could inflict severe costs on businesses and households as they spiral toward failure, even before they file for bankruptcy. Regulators may ultimately step in, again, to bail them out and limit the damage.[7]

The partial and full plans submitted this past cycle and in previous cycles will certainly be helpful if the Secretary of the Treasury opts to address a failing systemically important financial institution outside of the bankruptcy process through a resolution supervised by the FDIC.[8] I also agree that these partial plans help to address some previously identified problems.

However, our job is not to make a determination as to whether the plans are helpful to facilitate a resolution by the FDIC.[9] The law requires us to judge if the plans will work in a court-supervised bankruptcy proceeding. As of now, this seems like a fairy tale.

Ending "too big to fail" continues to be a goal, but it is not yet a reality.[10] Next year, these global systemically important financial institutions will submit complete plans, which will be more robust than the partial plans submitted last year. It is critical that we evaluate those plans using the appropriate legal standard and with sufficient rigor.

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[5] Press Release, Federal Reserve, Federal Reserve announces enforcement action against Citigroup Inc. that requires the firm to correct several longstanding deficiencies (October 7, 2020), https://www.federalreserve.gov/newsevents/pressreleases/enforcement20201007a.htm; Press Release, Office of the Comptroller of the Currency, OCC Assesses $400 Million Civil Penalty Against Citibank (October 7, 2020), https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-132.html.

[6] These firms have very large short-term funding needs, including one firm with more than $650 billion in uninsured runnable liabilities. See, JPMorgan Chase FR Y-15. The largest private debtor-in-possession financing, which is typically necessary to keep a bankrupt firm open and operating, was just shy of $12 billion. See, Reuters Staff, "Energy Future Holdings and largest debtor-in-possession loans," (April 29, 2014), available at https://www.reuters.com/article/us-efh-bankruptcy-loans-idUSBREA3S0P320140429.

[7] In the 2008 financial crisis, very few systemic firms failed due to a variety of government bailout programs. The economy still experienced a severe recession, however, as material distress in the financial sector inflicted severe harm on businesses and households. A significant portion of the external costs imposed by a large financial firm's failure occurs pre-failure.

[8] Under 12 USC §5383, the Secretary of the Treasury, after consulting with the President, and upon recommendation of two-thirds of the Board of Directors of the FDIC and two-thirds of the Board of Governors of the Federal Reserve System, may appoint the FDIC as receiver of a systemically important financial institution.

[9] A Title II Orderly Liquidation Authority resolution would address certain obstacles posed by a Chapter 11 bankruptcy proceeding for these firms, but not all of them. The current size, complexity, interconnectedness, and cross-jurisdictional activity of these firms could create challenges to a successful Title II resolution as well.

[10] FDIC Vice Chair Tom Hoenig's 2016 assessment still rings true today. FDIC Board Meeting Statement of Vice Chairman Thomas M. Hoenig regarding 2015 Title I plans submitted by the eight domestic GSIBs, April 13, 2016, available at https://archive.fdic.gov/view/fdic/4204.