

FEDERAL HOUSING FINANCE BOARD

OPEN MEETING

Friday, December 20, 2002

Washington, D.C.

The meeting convened at 10:02 a.m.,
at 1777 F Street, N.W., Second Floor Board Room,
Washington, D.C.

MEMBERS PRESENT:

JOHN T. KORSMO, Chairman

J. TIMOTHY O'NEILL, Director

FRANZ S. LEICHTER, Director

JOHN C. WEICHER, Director

ALLAN I. MENDELOWITZ, Director

PARTICIPATING STAFF:

ELAINE I. BAKER, SECRETARY TO THE BOARD

ARNOLD INTRATER, GENERAL COUNSEL

JOSEPH MCKENZIE

THOMAS JOSEPH

STEPHEN M. CROSS

JULIE PALLER

CHARLOTTE REID

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P R O C E E D I N G S

CHAIRMAN KORSMO: I call this meeting to order. Good morning. Thank you all for being here. Before we enter the substantive part of today's agenda, I have several scheduling items I'd like to address very briefly.

First, Director Leichter and Director Mendelowitz have asked for the Board to consider revising the existing delegation of authority under which the Finance Board has operated for the past nine years. Under Finance Board rules when any two members ask for such consideration the Board must take up the issue and of course I'm happy to do so. However, a variety of scheduling difficulties have prevented us from considering the issue at this meeting and I will therefore place it on the agenda for the Board's January meeting. I believe the January date will allow a full discussion of the issue involved in delegation of authority, and so I commit to you today that the question will appear on the schedule next month.

The January Board meeting, incidentally, was originally set for January 8th, but again, because of work schedules including the intervening holidays we will be rescheduling that meeting to the afternoon of January 29th. And I believe we checked with everybody's schedule and that works, if I am not mistaken. As we have a better idea of

schedules and agenda, we will get back to everyone on an exact time for that session. It is a Wednesday, so it should fit in with our normal schedule of operations.

Also as we discussed earlier in the week, I am deferring today's consideration of the proposed regulation to expand and enhance disclosure of consolidated obligations and investments owned by Federal Home Loan Banks. The regulation would bring those disclosures into line with the standards of the Securities Act of 1933. Banks have asked me for the additional time to allow further discussion about the other disclosure issue we have on the table, registration of Bank stock in accordance with the Securities Exchange Act of 1934. Obviously there are strong opinions on '34 Act registration, and I agree that more work is warranted.

Several Banks have stepped forward with a variety of ideas to get at the underlying disclosure issues, and I am certainly willing to listen as I know are my colleagues to any new ideas. The SEC has designed both disclosure laws, the '33 and '34 Acts so they overlap. What's disclosed under one act is generally disclosed under the other, so it makes sense to hold off Board action on the question of debt disclosure until we reach a conclusion on stock registration requirements. But please be assured I

have no intention to allow the status quo to prevail. As I've said many times, I believe very strongly that Federal Home Loan Banks and the Office of Finance should become role models for accountability and disclosure. The taxpayers must have ready access to at least as much information about the System and its debt equities as they do about the companies and their retirement accounts.

And as you know, a '33 Act regulation has been drafted and remains available for action by the Board. In fact, I think we have distributed that reg. so that people have a chance to take a look at what we have been thinking about and what the staff has recommended to the Board.

With those issues out of the way, before we turn to the first item on the agenda, Director Mendelowitz has asked for a minute to make a statement.

DIRECTOR MENDELOWITZ: Thank you, Mr. Chairman. You made an earlier reference to the issue of delegations of authority from the Board to the Chair, and I actually would like to make a few comments this morning about delegations of authorities from the Board of Directors to the staff.

The staff of the Finance Board, operating under delegated authority from the Board of Directors, recently approved a request from the Federal Home Loan Bank of

Chicago to purchase collateralized mortgage obligations as part of the Partnership Finance Program.

My view is that this request was a matter of such significance that it should only have been decided by the Board of Directors. However, final approval was granted under current Finance Board regulations that delegate certain authority to the staff, now interpreted to make no provisions for the Board of Directors to intervene. I consider this circumstance to be inappropriate. The exercise of any authority that the Board of Directors may delegate to the staff should never be viewed as permanent or irrevocable. Therefore, I will bring to a scheduled meeting of the Board of Directors a proposed amendment to the Finance Board's regulations that clarifies the prerogative of members of the Board of Directors to revoke authority on a case-by-case basis that has been delegated to the staff. And I ask my colleagues on the Board to join with me on preparing this clarification so that in future, when matters of this import arise, we can be sure that the deliberations and final determination rests with the Board of Directors.

CHAIRMAN KORSMO: Thank you, Director Mendelowitz. I think you raise a very important question. You and I have discussed it. It's certainly one that

warrants us taking a serious look at, and I think it's one we should address. I suspect that the Board may have strong opinions on this question, given the fact that the current regulation under which we operate was drafted long before--with the possible exception of Mr. O'Neill--long before the rest of us were here.

[Laughter.]

CHAIRMAN KORSMO: It would certainly be appropriate for us to take another look at it and so I'm certainly willing to commit to going through that exercise.

Any other opening comments before we turn to the agenda?

[No response.]

CHAIRMAN KORSMO: Seeing none, if I may, let me ask that we restructure the consideration of the various items before us. If there is no objection, what we will do is take the question of the amendments to the Federal Home Loan Bank of Atlantic Capital Plan first, as is already scheduled. Number 2 on our agenda of course has been deferred. If there is no objection, let's flip flop items 4 and 3 so we can consider that very controversial final rule on the MIRS at issue first before we discuss the resolution that I intend to introduce on the question of a modernized membership structure for the System. Unless

there's some objection, we'll take the agenda in that order.

[No response.]

CHAIRMAN KORSMO: Seeing none, why don't we move to the first item on the agenda, which is consideration of proposed amendments to the Capital Plan of the Federal Home Loan Bank of Atlanta.

Dr. Cross, I believe you and your staff are presenting this item.

DR. CROSS: Mr. Chairman, the Finance Board has received a proposal to amend the approved Atlanta Capital Plan. The analysis of that request has been conducted jointly by staff from the Office of Supervision and the Office of the General Counsel. Julie Paller and Tom Joseph are the principal members of the staff working on this analysis, and Julie Paller will present our recommendations.

MS. PALLER: Good morning, Mr. Chairman and Board Members.

Staff is presenting today for your consideration several amendments to the Federal Home Loan Bank of Atlanta's Capital Structure Plan. The amendments would revise the range for the stock purchase requirement applicable to AMA transactions, remove the test for

sufficiency of required capital, extend the time frame for conversion, and make other technical and conforming changes. Specifically, the proposed amendment will devise the minimum point in the AMA stock purchase requirements from 4 percent to 0 percent. The proposed change is consistent with prior determinations of the Finance Board and will not affect the ability of the Bank to maintain sufficient capital to meet its regulatory requirements.

The proposed amendment also would delete the sufficiency test from the Plan. The sufficiency test was included in the Plan as a result of policy guidance in effect at the time the Plan was originally approved. Since that time no other Bank has been required to include the sufficiency test in its Plan, and in October the Finance Board approved an amendment removing this provision from the only other Plan in which it was contained. Thus, its removal from the Atlanta Bank's Plan is consistent with Finance Board Rules and will not raise any regulatory or safety and soundness concerns.

In addition, the Bank is proposing to extend the time period for grandfathering AMA assets and targeted debt equity investments from March 31st, 2002 to the earlier of either the conversion date or a date determined by the Bank with regard to AMA assets, and to the conversion date for

targeted debt equity investments. Thus, assets acquired prior to the determined date would not be subject to the activity stock purchase requirements. The proposed amendment is similar to provisions adopted in other capital plans.

The Bank also is proposing to make minor revisions in how increases and reductions to the activity-based stock requirement will apply to AMA assets. Increases would be applied prospectively by applying the new percentage to assets acquired under master commitments executed after the effective date of the change as specified in the Notice to Members, and reductions would be applied at the discretion of the Board of Directors either prospectively or retroactively.

Other approved capital plans deal with changes to the AMA requirement in the same manner as being proposed by the Bank.

Lastly, the proposed amendment would extend the time frame for conversion from within 9 to 15 months following Finance Board approval of the Plan to within 9 to 20 months following Finance Board approval of the Plan, or within 12 months following Finance Board approval of the amended Plan, whichever is later. Even with the minor extension, the Bank's time frame for conversion is shorter

than time frames for conversion set forth in other approved capital plans.

Staff finds no unsafe or unsound condition and no apparent impediment to the Bank's operations or capital that would call into question the feasibility of the Bank's Plan, and there's no indication that the Bank will fail to meet the minimum capital requirements. Therefore, we recommend approval of the proposed amendments. We would be happy to answer any questions.

CHAIRMAN KORSMO: Are there any questions from Members of the Board for the staff?

[No response.]

CHAIRMAN KORSMO: Seeing none, the Chair would entertain a motion to approve the proposed amendments to the Capital Plan of the Federal Home Loan Bank of Atlanta.

DIRECTOR O'NEILL: I will so move.

CHAIRMAN KORSMO: The motion has been made. Is there any discussion?

DIRECTOR LEICHTER: Yes.

CHAIRMAN KORSMO: I was already looking your way, Franz. Director Leichter.

DIRECTOR LEICHTER: I'm going to oppose this amendment because of the change in the AMA requirement and the elimination of the capital sufficiency test. I'm not

going to go into discussion at any length because we've had an opportunity to discuss this, but what we've seen here is once we'd reached the dike with the Boston Plan and then the Chicago Plan, we of course then invited all the other Banks to come and to amend their capital Plans or have capital Plans that to my mind jeopardized the cooperative nature of the System because they severed the nexus that has always existed between a member's activity and stock ownership. So it impairs the cooperative nature of the System. Certainly I think it introduces risk into the System. I'm sorry that we've gone along this path, but I can understand why the Atlanta Bank and other Banks are rushing to take the opportunity to bring themselves under these, what I consider, more lax rules that the Board has applied, so for these reasons I'm going to oppose the amendment.

CHAIRMAN KORSMO: Citing my previous comments to the contrary, we'll move ahead and ask if there's any other discussion of the motion. Director Mendelowitz.

DIRECTOR MENDELOWITZ: As Ms. Paller correctly pointed out, these requested amendments are consistent with past amendments of other Plans approved by the Board, and I would like to point out they're also consistent with past amendments that I voted against, and the reasons I

articulated to say at those meetings when I voted against, apply today. What was the term you--citing--

CHAIRMAN KORSMO: Previous comments.

DIRECTOR LEICHTER: Citing previous comments.

CHAIRMAN KORSMO: Is there any other discussion?

Is there any other discussion?

[No response.]

CHAIRMAN KORSMO: Hearing none, I'll ask the secretary to call the question and call the roll please.

MS. BAKER: On the matter before the Board, the Amendment of Federal Home Loan Bank of Atlanta Capital Plan, Director Leichter, how do you vote?

DIRECTOR LEICHTER: No.

MS. BAKER: Director O'Neill?

DIRECTOR O'NEILL: Aye.

MS. BAKER: Director Mendelowitz?

DIRECTOR MENDELOWITZ: No.

MS. BAKER: Director Weicher?

DIRECTOR WEICHER: Aye.

MS. BAKER: Chairman Korsmo?

CHAIRMAN KORSMO: Yes.

The motion is carried. The proposed amendments to the Capital Plan of the Federal Home Loan Bank of Atlanta are approved.

Thank you, Dr. Cross, and Ms. Paller and Mr. Joseph, for helping us get at this question.

Next up is a final rule concerning certain changes in the methodology of the Finance Board's monthly interest rate survey, popularly, I dare say, known as MIRS, if it is indeed popularly known as MIRS. Dr. McKenzie and Charlotte Reid are here to present this. Joe, I have your name first, so I'll call on you.

DR. MCKENZIE: Good morning, Mr. Chairman, and Members of the Board.

We are presenting for consideration of approval a final rule that would amend the portion of the Finance Board's regulations dealing with the operation of the monthly interest rate survey or MIRS.

The Finance Board has the statutory authority and responsibility to conduct MIRS. Substantially identical provisions in the Fannie Mae Charter Act and the Freddie Mac Act allow these two enterprises annually to adjust the maximum size of loan that they can either purchase or guarantee by the October, over October percent change in the average house price as reported in MIRS.

Effective with the January 2003 data we will implement several methodological changes to MIRS. These changes simply reflect developments in the primary mortgage

market since the last major revisions to MIRS, which took place in November of 1991. The principal changes are adopting a waiting methodology based on lender size and lender type instead of the current lender size and region, and secondly, collapsing the Savings and Loan Association and Savings Bank categories into a Survey of Savings Institutions category.

On September 26, 2000 the Finance Board published a notice in the Federal Register and sought comments on MIRS methodological changes. We received five comments and are adopting many of the changes suggested by the commenters. These methodological changes and related changes to the format of the monthly MIRS release may mean that the index rate for a very small number of nonstandard adjustable rate mortgages will no longer be available. In such cases the Federal Home Loan Bank Act specifically requires the Chairman of the Finance Board to designate successor index rates. We have prepared a Federal Register notice for the Chairman's signature to this effect, and it will appear in the same edition of the Federal Register as the final rule.

Because of the MIRS changes, portions of Sections 906.3 and 906.4 of the Finance Board's Rules need to be amended to reflect a new methodology. In particular the

reference to a thousand sampled institutions will be dropped because the sample's actually much smaller. The language in the rule about the MIRS rating methodology will be updated, and portions of the rule dealing with charges for special tabulations of the MIRS data will be deleted because it's obsolete. The Freedom of Information Act governs any charges for MIRS data. Since these are technical and conforming changes to regulations that deal only with the internal operations of the Finance Board that can be adopted in final form without the need for a notice and comment period.

I'll be happy to answer any questions you may have.

CHAIRMAN KORSMO: Are there any questions for Dr. McKenzie or Ms. Reid? Director O'Neill.

DIRECTOR O'NEILL: This is more of a historical question, but how is it that one of the GSEs sets the conforming limits for the other two housing GSEs?

DR. MCKENZIE: The indexing provision was incorporated into the Fannie Mae Charter Act and the Freddie Mac Act by the Housing and Community Development Act of 1980, and the reference then was to the Federal Home Loan Bank Board. In 1989, when the Federal Home Loan Bank Board was abolished, all statutory references to the

Federal Home Loan Bank Board needed to be updated and fixed, and at that time the Finance Board was inserted into those two Acts. So that's the historical reason why it happened, yes.

CHAIRMAN KORSMO: Accidentally, in other words. Director Weicher.

DIRECTOR WEICHER: Just to follow up, then one comment. That's the way it all happens with things that we deal with.

[Laughter.]

DIRECTOR WEICHER: I concluded long ago that the only way to understand the development of housing policy is in historical terms. You can't think of it as an economist. You can't think of it as a lawyer. You have to think of it as a historian.

CHAIRMAN KORSMO: As a piece of history.

DIRECTOR WEICHER: Bumbling along. I think the change from region to size is probably long overdue, as an economist interested in this area. I have, from time to time, dipped into the literature on geographic differences in interest rates, and it seems clear that along about the mid '80s the last of those disappeared, that you could see them diminishing since as far back as people can take that, which is in a serious way, in a quantitative way around

1940. I think some FHA data is useful there. But we got rid of them finally in about 1985, and I think it's long past time that we should have done this. That may sound critical. I don't mean it that way, but it's certainly an appropriate step.

DR. MCKENZIE: The reason why the current methodology has a regional sampling is simply to set up for additional parts of the country. With the changes in the primary mortgage market, where there are so many, small members have been absorbed by those with national presences. One can get a very wide geographic dispersion of loans by sampling very few--

DIRECTOR WEICHER: We can too. We can do that. We have, I believe it's 25,000 lender branches and a very much smaller number of lending institutions. I think well under half of that. We have some lenders with hundreds of branch offices. I'm sure that's right. I think the only reason for a geographic sample is in a sense the political reason, and a small "p", that people think in terms of their local market, and some of them will be concerned if their local market is not reflected. I certainly support this endeavor.

CHAIRMAN KORSMO: Any other questions or comments?

[No response.]

CHAIRMAN KORSMO: Hearing none, is there a motion to approve the final rule?

DIRECTOR WEICHER: So moved.

CHAIRMAN KORSMO: Approval of the final rule has been moved. Is there any discussion on the motion? Any discussion of the motion?

[No response.]

CHAIRMAN KORSMO: Seeing none, the secretary will call the roll on the question of approving the changes in the methodology of the Finance Board's monthly interest rate survey.

MS. BAKER: On the matter before the Board, Director Leichter, how do you vote?

DIRECTOR LEICHTER: Yes.

MS. BAKER: Director O'Neill?

DIRECTOR O'NEILL: Aye.

MS. BAKER: Director Mendelowitz?

DIRECTOR MENDELOWITZ: Yes.

MS. BAKER: Director Weicher?

DIRECTOR WEICHER: Aye.

MS. BAKER: Chairman Korsmo?

CHAIRMAN KORSMO: Yes.

The motion has carried. The final rule is adopted. Thank you, Dr. McKenzie and Ms. Reid. We appreciate your input.

We now turn to the resolution asking the Federal Home Loan Banks to provide information concerning bank membership. When I became Chairman a year ago, four Banks had petitions pending before the Finance Board, asking approval to retain as member institutions, institutions that had merged into other institutions that were members in other districts. I saw a recent news article that characterized these four institutions as a handful, and I suppose in an absolute sense four is indeed a handful, but when the universe is 12, four is perhaps significant.

Anyway, with those petitions, the so-called multidistrict Membership debate began. Not having been present at the inception, I don't know how or why the debate came to focus on competing interpretations of one specific provision in the Federal Home Loan Bank Act. There was, however, and still is, a debate over the Finance Board's statutory authority to address the questions of multidistrict memberships for institutions operating under a unitary thrift charter. Some people read the law, or rather one specific section of the law, to say the Board has no authority to deal with that issue. In fact, that's

the way I read it myself, as I stated in a speech to a meeting of America's Community Bankers last March.

However, at the time I said I would keep my mind open to alternate interpretations.

We have received such an alternate interpretation in the form of an opinion we received from Morrison & Foerster, in which the argument is made that the Finance Board not only has the authority but indeed the affirmative obligation to address district membership questions if by doing so the safety and soundness of the Federal Home Loan Bank System is enhanced or if by failing to do so, the safety and soundness of the Federal Home Loan Bank System is jeopardized.

So today I'm asking that we begin a new conversation to examine how or if to modernize the membership terms of the Federal Home Loan Banks to assure the continued viability and stability of all 12 Banks, while recognizing the many changing patterns of operation among the nearly 8,000 members of the System, including the changes that Director Weicher just referenced in consideration of our previous agenda item. We will conduct this new conversation against the backdrop of the entire Federal Home Loan Bank Act, meaning in the context of the safety and soundness role of this body and the housing

finance mission of the Banks. The question is not now the narrow meaning of "or" in one odd sentence. Instead the question is whether modernized membership is good, bad or indifferent for the safety and soundness of an achievement of the housing finance mission of the System.

When Congress created the System 70 years ago and anticipated Home Loan Banks operating where their members' capital was located, and that meant right in their home districts. Now many member banks do business literally across the nation, and that means their capital is not concentrated in any one region. This very important development requires, I believe, a fresh look at single versus multidistrict memberships, and especially at the impact limiting memberships might have on safety and soundness.

Let me outline briefly the process as I see coming out of today's Board meeting. The questions posed by today's resolution represent a preliminary step to encourage the Banks to think anew about these issues in a new context. With the information the Banks will return, our staff will complete research already under way into modernized membership options. The next step will be for the Finance Board to consider, should our consideration of safety and soundness and housing finance mission questions

warrant it, a proposed regulation for submission to the Banks, Bank members, affordable housing advocates, banking trade groups and the public for comment. No later than the June 2003 meeting I hope to present to the Board for approval again if warranted, a final regulation to modernize membership terms with the full input of all the System's stakeholders. Again, I include the public in that description. As I have stated many times, the Federal Home Loan Bank System has an obligation to the public that provides in its status as a government-sponsored enterprise the process will be open and careful, but it will move with discipline.

I intend to keep faith with the four Banks that submitted petitions for Board action and that at my request withdrew those petitions earlier this year to allow a more free inquiry about multidistrict memberships, free inquiry that would lead to a positive, well-reasoned and lawful conclusion. These four Banks I believe are entitled to have their requests considered either as a consequence of the modernized membership we're making or by adjudication of resubmitted petitions should we choose not to act. They've waited two years already. The time for action, I think, has arrived.

So we begin today. Dr. Cross, I ask you to present the resolution, please.

DR. CROSS: Mr. Chairman, as you indicated earlier this month, the Finance Board received a legal opinion that concluded that the Finance Board may and must exercise broad regulatory and supervised re-authority in order to preserve or enhance the safety, soundness and housing finance mission achievement of the Federal Home Loan Banks.

The proposed resolution before the Board today would request comment by February 7th, 2003, from the Federal Home Loan Banks regarding specific concerns, if any, that they have arising from the ongoing changes in the financial services industry, as well as specific suggestions for appropriate and effective supervisory responses on the part of the Finance Board to those changes.

If approved by the Board the resolution would reflect a desire to obtain additional information in light of the legal opinion that we had received, and also our desire to receive more specific and substantive information and guidance than we have received to date, including, but not limited to the comments received in response to our

October 3rd, 2001 solicitation of comments on multiple Federal Home Loan Bank membership.

Finally, the resolution states that if the Board determines that regulatory action regarding the terms of membership is appropriate, the Finance Board will conduct a public notice and comment process in accordance with the Administrative Procedures Act and will include all relevant comments submitted pursuant to this resolution, as well as the solicitation of comments on October 21st, 2001.

CHAIRMAN KORSMO: Thank you, Dr. Cross.

Are there any questions of Dr. Cross? Director O'Neill?

DIRECTOR O'NEILL: I just wanted to compliment the Chairman. I was Chairman when the first solicitation of comments went out, and I thought that it was good that we got as much information from as many sources as possible, and obviously, you are continuing that, and this is an issue fraught with peril. So we need as much wisdom as we can get from as many people as we can get. So I just want to congratulate you for continuing a very open process, which I think do all five Board members, extremely well.

CHAIRMAN KORSMO: Any questions of Dr. Cross from any members of the staff? Excuse me. Members of the Board or the staff? Anybody, Joe, do you have any questions?

[Laughter.]

CHAIRMAN KORSMO: Any other questions?

[No response.]

CHAIRMAN KORSMO: If not, the Chair would entertain a motion to approve the resolution as proposed.

DIRECTOR O'NEILL: So moved.

CHAIRMAN KORSMO: We have a motion to approve the resolution. Is there any discussion of the motion? Dr.-- Mr. Leichter? Doctors, misters.

DIRECTOR LEICHTER: Well, I'm always honored to be a doctor, but then I look across the table and I see Commissioner Weicher and Dr. Mendelowitz frown.

[Laughter.]

DIRECTOR MENDELOWITZ: I have a smile.

DIRECTOR LEICHTER: I'm very troubled by this resolution. I think it goes in the wrong direction. I think it makes some assumptions that are not warranted. I think it shortcuts some actions that the Board of Directors needs to take. Before we go into it, I just want to go into a little bit of the history of, particularly, my involvement in this issue because as so often in this town,

I think nobody talks about process. And I'm talking about process. The belief is, well, you're really trying to determine the substantive issue. There clearly is a connection between process and the ultimate issue, because I feel unless you have a proper process, that the end result is not going to be a satisfactory one. And I am concerned about the process here.

I think it's fair to say that I was the one who first urged on the Board a consideration of what we called the multidistrict issue, which is now euphemistically being called modernization of membership, and as we know, in this town we occasionally like to change names to try to put a different spin or focus on things.

But the basic issue is the same, and I raised it and urged the Board to consider it at the time that Washington Mutual purchased United in Texas, and it took some effort to convince the staff and the Board how to address the issue, and there was finally a decision made that we would issue a solicitation of comment. It's fair to say that every week--I started on Monday by saying, "When are we going to get out our solicitation of comment?" Being somewhat new to Washington, I have not yet really adjusted to the regulatory mechanism that exists in this town. I still haven't.

CHAIRMAN KORSMO: That's probably good.

DIRECTOR LEICHTER: But in October we finally did get out the solicitation of comments, a very thoughtful, a very thorough, a very extensive solicitation of comments. And had received very wide responses. There were, I believe, 169 responses, 141 which came in within the allotted time. So there was a lot of interest, a lot of response. A lot of thought went into the responses. Clearly, one of the threshold issues which we all realized was the legal issue, irrespective of what the safety and soundness and the mission aspects of the changes that had occurred in the financial industry that this Board had the authority absent statutory permission, if you will, to change the membership requirements which had governed the Board and the System since its inception in 1932. And there were different opinions that were expressed, and they were set forth in some of the comments.

I then urged on the Board that we get a legal opinion to guide this Board, and I'm grateful that my colleagues on the Board and the Chairman agreed, and we did secure a legal opinion from Morrison & Foerster, and that opinion is now before us.

My first concern about this resolution--it's a very significant one--is that by this resolution, it would

appear that the Board is adopting the Morrison & Foerster legal opinion. Now, it's perfectly appropriate, in fact I think it's necessary for the Board at some time to act and to say, "Yes, we adopt" or "We reject the legal reasoning set forth in Morrison & Foerster." But that has not been done. Now, the Chairman, and perfectly properly, expressed his opinion. He issued a release on December 11th, where he said, and I quote, "Now that we have a full sense of our statutory authority in these matters, the time has come to reframe the debate around this fundamental question."

Then he goes on and he says--now reading from the release--"Korsmo acknowledged that his earlier "plain reading" of one discrete provision of the statute first led him to believe that the law did not clearly address approving multidistrict memberships. But, he said, it now appears clear to him the Federal Home Loan Bank Act gives the Board authority to modify membership terms in support of the System's safety and soundness and its housing-finance mission."

Perfectly appropriate for him to express his view, and it may be the view of other of my colleagues. It may end up being my view, that is something that this Board needs to take action on. We can't however, just by passing the resolution before us, slide into an acceptance of what

is a very fundamental decision, which is, does this Board have the authority to change the membership requirement?

Now, we have not only received the Morrison & Foerster opinion, we've received legal opinion from other eminent counsel stating that this Board does not have the authority. We have further received an opinion from the Treasury Department, and now most recently from Senator Sarbanes, saying, "You do not have the authority to make changes in the membership requirements as has been interpreted and practiced by this System since 1932."

Now, we are an independent Board, and certainly welcome the opinion and particularly--I won't say anxiously but are most interested in the opinion of Treasury and of Capitol Hill. It isn't binding on us. But we certainly need to give those opinions deference and attention. We can't just ignore them in the sense of not directly addressing those opinions, and I think this is what the Board should be doing. We should be deciding whether we will adopt the Morrison & Foerster reasoning, and if then say very respectfully to the Treasury and to Senator Sarbanes and others on the Hill and in the System, "We respectfully disagree with you. We believe that this Board, for the reasons set forth in the Morrison & Foerster opinion, and only if the Board then makes certain necessary

findings that Morrison & Foerster points out needs to be made before any changes can be made in the membership, that we may now proceed with the multidistrict issue, if you will, the modernization of the System.

What Morrison & Foerster said is basically that there's a two-step process that needs to be undertaken by this Board if it wishes to change to modernization. And the question at issue that we need to address is whether the statute under which we act has precisely or directly addressed the issue. In other words, has Congress spoken so clearly and unequivocally on the membership issue that this Board does not have any latitude to make changes in the membership? We might recommend to Congress that changes in the membership are appropriate, but the first issue that we need to address is--and this has to be a finding by the Board--whether Congress has so directly and precisely addressed the issue at hand.

If this Board should determine that there is some ambiguity and that the matter has not been precluded or exempted, if you will, by the statutory language, then and only then you proceed to develop the factual basis and the policy basis that may lead this Board to recommend changes in the membership. But what we're doing--and I emphasize this again--is proceeding without making this finding.

We're in a sense ignoring the other legal opinions and the views of Treasury and Sarbanes. It may be that these will be addressed later on at such time as the Board may come up with a regulation, and I think that's sort of assumed by the resolution that is before us, but I don't think that's appropriate. I think that we owe it to the System with the year and a half or two years we've been debating, "Do you have the authority or don't you have the authority?" And it's a very, very close question. As the Chairman pointed out, his initial reading of the statute led him to believe that we didn't have the authority. Now looking at it, he may have changed his opinion. Opinions have changed back and forth on this question, but it's certainly something that I think the System would like us to make a clear statement, where does the Board stand on this issue? And we're not doing this.

But the nature of this resolution is to imply that we have the authority, and the Chairman, as I just pointed out, in his resolution, stated his belief, perfectly appropriate of him to do so, but it is not the same as action by this Board of Directors, and that's absolutely required, and in fact the Morrison-Foerster opinion states very clearly that the Board has to address

this particular issue. So we're failing to do that, and I think that is a mistake.

Secondly, what troubles me about this is that this resolution seems to replicate, but in a much less thorough and more general way, the solicitation of comments that we put out in October of the year 2001. What happened to those comments? If you'll look at the resolution before us, it states that only--uses the word "if"--If the Board of Directors subsequently determines that regulatory action requiring the terms of membership is appropriate to address the consequences for the Federal Home Loan Banks of ongoing changes in the financial sector, the Finance Board will conduct a public process, and in connection with that, it will review -- then it uses the word - "relevant" comments submitted pursuant to its October 2001 solicitation.

It seems to me that we had these solicitations or these comments to the solicitation which addressed in a much broader way, and I think a much more forward way than the resolution that we have before us. This resolution just asks that by no later than February 7th, 2003, the Federal Home Loan Banks identify their specific concerns, if any, arising from the ongoing changes in the financial services industry. And our solicitation of comments in

October 2001 stated various points. Let me just read some of it.

"The Finance Board is soliciting comments on the following questions, which relate to how developments in the membership base have affected the Federal Home Loan Bank System, and how permitting a single depository institution to become a member of more than one Federal Home Loan Bank might affect the Federal Home Loan Bank System." And it goes on and it says: "What are the implications for the Federal Home Loan Bank System of increasing consolidation among the membership base of the Federal Home Loan Banks? Specifically, what are the risks to a Federal Home Loan Bank of having a significant portion of its business and capital stock concentrated in a small number of large members?" It goes on.

So it certainly covers everything that is covered by this resolution, but it does it, I think, in a much more focused and much more directed manner, and I can't understand why we are not acting based on the solicitations that we have received. I think in some respect it's a disrespect to all those who answered our solicitation of comments. But even if there was a ground and a basis for what the Chairman calls "a new conversation," why are the questions directed only to the Federal Home Loan Banks?

What happened to the trade associations? What happened to the members? What happened to the public? If this is a new solicitation of comments--and I think arguments might be made for those who support this resolution--are they really looking at it in a different way, different direction? We need a different perspective by the responders. Why only the Banks? Aren't the members interested? Aren't the trade associations interested? If it is a new process, then it ought to be opened up to everybody.

I have no problem in asking people if they want to supplement their comments, asking people if they wish to provide us with additional information, but I can't understand having what seems to be a new discussion or a new approach which still deals with the same issue, no matter what euphemistic finesse you use, we're dealing with the issue of the membership rules. Now, it may be that people will say to us, as they have in some of the comments to the solicitation, "I don't think you ought to change the membership rules. I think you ought to, if there's a problem, deal with it this way," or some say there's no problem at all. But it's clear that the focus is, and has to be, and will continue to be on whether we're going to

change the membership rules, and indeed the agenda item calls it Modernization of Membership.

So the issue is the same by this resolution as it was by the solicitation of comments, and I don't think that we should at this point just disregard the solicitation of comments that say, well, we'll deal with those parts of it that we think are relevant if we come up with a regulatory or supervisory recommendation.

Argument may be made--well, you know, something new has happened. My question is, what is new? Yes, we have the Morrison & Foerster opinion, and as I pointed out, I think it needs to be adopted by the Board. At this moment it has not been. But what did Morrison & Foerster say that put a different perspective on this question? Morrison & Foerster pointed out--and it's a legal opinion. It didn't deal with the substance of the issue. Morrison & Foerster pointed out that if the Board makes the initial determination that Congress did not so specifically and directly address the issue, that there's room for us to step into -- and finding an ambiguity come up with our own interpretation of the statute, and Morrison & Foerster said, one of the things you're going to want to consider as you develop your facts, is safety and soundness and housing mission. It almost seems as if some of my colleagues are

saying, this is a new idea. Well, clearly, safety and soundness and mission of the Finance Board and of the System is not a new idea. It's certainly underlaying the-- and underpinned the solicitation of comments which are based on safety and soundness and mission. That's what we act on.

So I don't understand why we're proceeding in this way and why the Chairman says there's a new discussion.

I want to see this issue resolved. I think it's incumbent on us to resolve it, and I know the Chairman, and I know it's true of my other colleagues, that we do want to resolve this issue, and I'm not suggesting for a moment that anybody here wants to delay this. On the contrary, I think the Chairman has set a very ambitious schedule to try to get this finally resolved. I'm just sorry that we're going down a path which I think inevitably will delay the process, will also create difficulties in the process, that I think if this Board then adopts the Morrison & Foerster approach, then we will find it more difficult to make those findings that are going to be necessary to convince a Court under what everybody agrees will be the applicable law, which is a decision known as Chevron, because I think the way we're proceeding is ignoring, or at least at this point

we're failing to make those final legal findings that are necessary in order for us to proceed.

I think we have the basis in the comments from the solicitation to make staff analysis of, is there a problem? Secondly, to ask factual questions of the Banks or others which relate to the issues that we will need to address whether the changes in the financial system, how they've impacted on the Board, have raised concerns of safety and soundness.

But again, that material is really available to us now. The thing we need to do is to make a determination whether we're going to go down the path that Morrison & Foerster said we would be authorized to do, and let me say that their opinion was not a ringing endorsement or claim that there's no question you people have the authority. It's a very close question, and I think we need to address that.

So for the reasons I've set forth, and I'm sure at too great a length, but I think these are important issues and I want to make my position very clear on it, and hopefully convince my Board members that we ought to proceed in a different way, and I felt it important to set this out. Again, I want to see this issue resolved, but I think we have to do it correctly. And if our process

pursues this particular road, it's the wrong road to do it, and it ignores what I think is our obligation to finally bite the bullet as a Board on do we have the authority or don't we have the authority to make changes in our membership?

Thank you for your patience in listening to me.

CHAIRMAN KORSMO: Thank you, Mr. Leichter. Where to begin?

DIRECTOR LEICHTER: At the beginning.

[Laughter.]

CHAIRMAN KORSMO: I think there's a certain irony in the situation that the criticism that has been consistently laid at my feet literally since I first became Chairman was that I'm moving too fast, I'm moving too fast, I'm moving too fast. In this particular instance, if I understand your comments, and I'll admit I had a tough time following the logic of some of them, but if I understand your comments, in this instance you think I'm moving too slowly. I guess balance is the essence of life.

I do want to take some umbrage at your reference to characterizing the new discussion as one of a modernized membership approach as simply spin. I think as my colleague well knows, it's probably also spin to some extent to make reference to this whole discussion as being

one focused on the question of multidistrict membership given the fact that the System already has multidistrict membership. And in fact, we're all aware there is something like 110 members who have affiliates who are represented in more than one district. In fact, Wells Fargo in one iteration or another belongs to seven districts. World Savings belongs to two. There are, as I say, any number of multidistrict members now, where institutions have the opportunity, if they so desire, to play one Bank against another, and I think that's a safety and soundness issue that needs to be addressed.

With all due respect, I think that as at least as your comments characterize them, I think there's been some misreading of the opinion we've received from Morrison & Foerster, and that's kind of the nature of legal opinions. We can read them any number of ways. I think the same is probably true of some of the previous opinions that were put on the record, and there's a reason they call them an opinion. They have an opinion, only an opinion. They are not dispositive at any rate. We don't have to adopt this opinion. In fact, I'm certainly in no position, I'm not ready to adopt the view expressed in the Morrison & Foerster opinion. I think it's too early to do so, which is why I thought it was important to obtain additional

information that was focused in a caste that the opinion suggested. Again, I see some irony in being criticized in this particular instance for seeking to give what, too much information? I'm not sure.

I would call on my colleagues to look again at what exactly the resolution calls for. Director Leichter characterized the resolution as somehow taking as a base assumption, a new assumption, that the Board adopts the view expressed in the Morrison & Foerster. That is certainly not the case. The resolution calls in the action sections for the Board to request comments from the Banks identifying their specific concerns, if any. They may not have any, which is an important thing for us to know, but specific concerns arising from the ongoing changes in the financial services industry comprising the Federal Home Loan Bank System membership and suggesting appropriate supervisory, regulatory response from the Board.

It goes on to say--and again I wonder why we would hang our hats on a limitation to override the comments. If Director Leichter wants to also consider irrelevant comments, I'm all for that, but I don't know that that's necessary.

I'm also interested in the seeming two ways, having it two ways on opinions expressed to us by other

government agencies and indeed Capitol Hill. I should mention that when I requested the source of Treasury's--I think that the letter that Director Leichter refers to, to me as Chairman and to the Board, referenced a legal opinion that had been prepared by the Treasury Department. When I requested a copy of the legal opinion, I was informed by the General Counsel of the Treasury that no such legal opinion existed. But I am interested. Obviously, we're concerned about Treasury's views on this and every other issue, which is why I would suggest my colleagues should probably take a close look at Treasury's opinion on the question of whether or not the Banks should register their stock with the SEC. That's also a Treasury opinion. I'm also interested. I think that my colleague should probably take into account the comments of any number of members of United States Congress on the question of enhanced disclosure as well.

So my point being that while we certainly should take into account the well-articulated comments by Senator Sarbanes and by the Treasury Department and others who have commented on this issue, they, and as Director Leichter so carefully points out, are only their opinions. All I'm trying to accomplish with this resolution is to refocus the discussion on the question of whether or not there are

significant impacts on the safety and soundness and the housing finance mission of the system that grow out of changes in the financial services industry. And have made clear in my opening statement--I think it's also clear in the second resolve clause of this resolution that if and only if we decide there is indeed a circumstance that would require us to move forward because of concerns about safety and soundness, because of concerns about the housing finance mission. If and only if those circumstances are met, we would, as I mentioned in my opening comments, proceed to a regulatory rule-making process that would of course allow all of those groups and individuals that Director Leichter is concerned about, to have an opportunity to reiterate comments they may have made in a previous process, make new comments, but the point being the comment will reflect the discussion as we now see it and are now trying to frame it as a safety and soundness and housing finance mission concern, rather than to continue the debate over whether "is" means "is" or "only" means "only." That's what we're trying to do here. Again, this is a preliminary step. I thought I made that clear, not only in the resolution that I proposed, but also in my earlier comments.

There are any number of things we could talk about in reference to some of the debate, but I think Director Leichter has made his points. I appreciate his points. He has, as always, reflected his thoughtful consideration of issues that are before the Board.

Given the fact that Director Leichter did make reference to the Morrison & Foerster opinion, and I'm certainly not prepared to adopt its conclusions, assuming we read the opinion as containing conclusions rather than opinions, I'm certainly not prepared to adopt them at this point, but I would ask, given the fact that we've raised the discussion, the language of the Morrison & Foerster opinion, if there is no objection, that we include the Morrison and Foerster opinion in the record of this meeting. Is there any objection to doing so?

[No response.]

CHAIRMAN KORSMO: Hearing none, the secretary will please include the language of the Morrison & Foerster opinion in the record of this session. Are there any other comments any director may have on--I take that back. Did we get a motion? I don't recall. I think we have a motion.

BOARD MEMBERS: Yes.

CHAIRMAN KORSMO: Is there any other discussion of the motion? Dr. Weicher?

DIRECTOR WEICHER: I didn't know if you wanted to respond directly.

DIRECTOR LEICHTER: Well, I'll wait. I've taken enough time, but I will make some comments.

DIRECTOR WEICHER: Thank you, Mr. Chairman. As you are probably aware, I am not a lawyer, but--

CHAIRMAN KORSMO: Congratulations.

DIRECTOR WEICHER: I think so too. Still like a lot of the clout.

[Laughter.]

DIRECTOR WEICHER: And I hesitate since there are at least four lawyers within my field of vision, and I'm not sure about some of you guys over there, whether you are or not.

But I am increasingly familiar with the Administrative Procedures Act, and have had dealings with it from time to time in the past. As an aside I might say that since I've been back at HUD I haven't read a rule that's serious economics, and I have read a great deal of law and regulation, and I think when I leave this job, I will read for the bar if there's any state in which I can

still read for the bar and pass it. Thank you. And my son's down there too, in Georgia, so that would be nice.

[Laughter.]

DIRECTOR WEICHER: As you also are probably all aware, we at HUD have issued a proposed rule on reforming the Real Estate Settlement Procedures Act, a piece of legislation which goes back to 1974 and was last amended in 1983, and the last rules under it were issued in 1993, and all of that is a long time ago in the development of the housing finance system of America. And I mention this because we, in issuing a proposed rule we of course solicited comments on our proposed rule. We have received 45,000 comments, and I felt some long when--

CHAIRMAN KORSMO: That's all? There's 840,000 realtors in the country.

DIRECTOR WEICHER: Well, we are hoping that 44,000 plus of them all say the same things, but we know that there are a variety of views that are being expressed in those. But when Dr. McKenzie said we had 5 comments on the MIRS study, I thought, gee. But the procedure is that we review all of those comments that we receive on the proposed rule, and in the preamble to the final rule we discuss those comments. We don't have to discuss each of the 45,000 comments, but we have to address each topic that

is raised in those 45,000 comments. Obviously, we do retain the right to say that this, this and this is not relevant to the particular issues covered in this rule, as we the Board have said on one of those five comments that was raised in response to the MIRS study. I've got both a lawyer and an economist in my line of vision agreeing with me as I'm saying this, and that's comforting.

I do not think we will get 45,000 comments on the proposed rule, but there's no guarantee to we the Board. But I would bet that every comment we received pursuant to the October 2001 solicitation of comments will be slightly revised to respond to whatever proposed rule we adopt if we ever adopt a proposed rule, and they will all become part of the record that we will review, and I presume that the APA applies to the Board in the same way that it applies to a cabinet agency. Got lots of lawyers agreeing with me on this. And we will be busy. Staff will spend time reading comments, summarizing comments, digesting, making recommendations as to how to incorporate those comments in whatever final rule we would choose to adopt. And I know from my other experience, that whatever a proposed rule said, a final rule is sure to say something else unless you literally get no comments, which happens to us about once every three or four years on something.

So I see no harm at all in soliciting further comments before we draft a proposed rule, because I also know that drafting a proposed rule on any serious subject in any direction is not an easy task, and will take a lot of time of our staff. And once we produce that proposed rule--and let us assume for the sake of argument that all five of us agree on every word in that proposed rule--we will discover, when we receive the comments from the individual Banks and the comments from the individual directors at the Banks, and the comments from the individual members of the Banks, and the comments from anyone else who chooses to comment to us, the comments that we may receive from participants in the Affordable Housing Program and on, and we may well receive comments from members of Congress, and we may well receive comments from other Federal agencies, as we have done from time to time. And we will undoubtedly change whatever we thought we were going to do in the proposed rule.

The point of all this is I don't see any problem in the process that is being discussed here, because I know that at the end of the day of receiving responses to this resolution, we will have an extended process in front of us, and we will undoubtedly revisit, we will be forced to revisit, every issue that anyone has raised on this subject

over the 18 months, two years, two-and-a-half years. As I'm looking at Director O'Neill, who I think can probably date the beginning of this issue better than any of the rest of us. We will spend a lot of time, and I have no problem with inviting any group of people or any subgroup of people to respond before we get around to, if we get around to adding a proposed rule, because I know that we will hear from everyone with any concern in this issue from any direction whatsoever, and we will spend time and effort thinking about what they have to say.

And I've said something fairly simple I think in a long period of time, and I apologize for taking so much time.

CHAIRMAN KORSMO: Are there any other comments?
Dr. Mendelowitz?

DIRECTOR MENDELOWITZ: I'm sure everybody is sitting suspensefully, waiting to hear whether I'm going to vote for this or vote against it. So I'll end the suspense. The answer is I do intend to support this resolution. But I do want to take a couple minutes to explain what I believe we're trying to do with this resolution, how we're approaching this issue and why I'm supporting it.

The Finance Board is considering today a resolution to collect information on the concerns about and consequences for the Home Loan Bank System, of the ongoing changes in the financial services industry that makes up the membership base of the Federal Home Loan Banks. This resolution is being considered because it is no doubt that changes in the membership base of the System are having significant impacts on the Federal Home Loan Banks.

For example, some of the readily recognized consequences include imbalances in the distribution of capital in advanced business unrelated to the underlying housing finance business in a Home Loan Bank region; concentrations of risk associated with making very large advances to individual borrowers by individual Home Loan Banks and the system as a whole; the questionable viability of individual Home Loan Banks as large members exit following their acquisition by out-of-district purchasers, and possible distortions in the regional availability of AHP funds.

With such apparent changes going on in the system, it is the responsibility of the Finance Board, as the regulator in the System, to consider these changes in the context of the Board's statutory responsibility to

ensure the safety and soundness of the System and its ability to carry out its housing finance mission.

This resolution is however only the first step in the process. The second step is for the Finance Board to clearly adopt a statement of the problems that require a response. The third step is to consider the full range of possible solutions to the problems, and to clearly identify the costs, benefits and operational difficulties with each alternative. I hear the staff groaning, more work.

I expect that the list of possible solutions will go from one polar extreme, that is, maintaining the status quo, to the other polar extreme which might require legislation to implement, and of course all the points in between.

With the completion of this analysis the Finance Board will have the necessary information with which to make the best decisions and take the most appropriate actions.

One question that's been discussed about this effort that inevitably arises is, what is the relationship between this initiative and the request for comments issued last year on the question of multidistrict membership. Last year's request for comments, while broadly based, was issued in a response to several petitions submitted for the

Finance Board to permit multidistrict membership. And I want to make clear that multidistrict membership is one possible solution. It is not a problem. And the correct way to address the matters before us is identify a problem and find a solution. We shouldn't start out with a solution and then work backwards. The petitions were submitted in the wake of the acquisition of several large members by the largest member of the system. However, these petitions have been withdrawn and the Finance Board is considering this request for information because of the significant changes that are taking place in the membership base of the Home Loan Banks and the implications for the Home Loan Bank System.

It is my view that this initiative should not be viewed as part of a plan to approve multidistrict membership for the Federal Home Loan Banks. As everyone is well aware, there is serious doubt as to whether the Finance Board has legal authority to approve any Home Loan Bank membership that differs materially from the current interpretation of the statute. The Chairman contracted Morrison & Foerster to provide an opinion on the matter, which concluded that there may be a legal argument to support finance action in this area, but the argument would not be without challenge.

In this matter it's important to bear in mind two significant facts that both the Chairman and Director Leichter pointed out. The first is we were provided with some legal opinions, not to mention correspondence from our friends at the Treasury Department and the Senate Banking Committee that reach the opposite conclusion of that reached by Morrison & Foerster. Hence, the opinion is only one of many that need to be considered as we try to address the problems at hand, and as both the Chairman and Director Leichter pointed out, the Finance Board has not approved the Morrison & Foerster opinion, nor adopted it as a position of the Board.

Lastly, while the request for comments is directed to the Home Loan Banks, I know that there are going to be many other interested parties who will volunteer to submit comments on the matter, and I want to assure them that I welcome those comments and look forward to reading them.

Thank you.

CHAIRMAN KORSMO: Thank you, Dr. Mendelowitz. I wish I had made the case as concisely and as thoroughly. I appreciate it.

Are there any other comments? Mr. Leichter?

DIRECTOR LEICHTER: Let me just--based on some of the statements made, make the following comment.

First of all, we have asked the question that is being set forth by this resolution. We've asked that, not just to the Federal Home Loan Banks, but appropriately to the larger universe. Those comments are out there.

Secondly, if as Commissioner Weicher says, that everybody is going to have a chance to comment, to make their new or supplemental comments, then why isn't this resolution addressed to the larger universe? Why is it addressed just to the Federal Home Loan Banks? And while Director Mendelowitz says, well, I'll listen to everybody, that doesn't make it part of the record. It doesn't have the same formality, and to say, well, everybody will have a chance to comment if we come up with a regulatory interpretation, but that means that we will not have the comments of the trade associations, for example, of the Hill, of other people, as we make the determination whether to propose a regulation. They come in late in the process. Why should the Federal Home Loan Banks come in earlier and have, if you will, a influence on us which isn't available to others who have as much interest in the System?

And I point out again this resolution says that the comments and solicitations are only going to be

considered if, if we determine that any regulatory action is necessary. I think that's not right. We issued the solicitation. We have the comments that address the issue that's before us that's being probed by this resolution, and they're entitled to deference, and it moves the process along if we act on them. And to say that we even then consider only those that are relevant, I've never heard of a regulatory process where you say, please submit your comments and we'll consider what we determine is relevant. You may not be influenced or you may not be convinced by some of the comments, but I don't think it's appropriate for us to say, well, we'll make a determination what's relevant without ever saying what's relevant.

The biggest problem is that--and the Chairman has now clarified it--that we have not adopted the Morrison & Foerster legal opinion, although I think there's no question in my mind, and I think anybody who reads it, that the implication of this resolution is that we're following the Morrison & Foerster track.

But if we haven't--and certainly I haven't adopted that; Dr. Mendelowitz made clear that he hadn't either--why are we asking for new comments limited to the Banks at this moment, without telling them what we think are legal authorities? Wouldn't this be more helpful to

the Banks to say, we have decided that we--as an example, hypothetical--we do not have the authority to change the statute, but please tell us if you see a problem and how that problem can be solved with the current membership rules, or if we decide that we do have the authority. So we do have some guidance at the very least for those people who are going to respond. We're not asking by this resolution, give us more legal opinions whether we have the right to do it or not.

And that's why I say that the first thing we ought to do is to bite the bullet, make the determination on Morrison & Foerster, and then proceed in accordance with the steps that need to be taken if we're going to come to the conclusion that we don't have the authority, and that there is a problem, and that there are solutions to the problem, and create the appropriate record. That's really the way to proceed.

And I'm just puzzled why--I discussed this with my colleagues here, and obviously, I have failed to convince them--but it's so evident and clear to me that we're proceeding along the path that is not leading us directly and promptly to where we should go, and that's to finally resolve this issue. I regret this. Let's deal with the threshold issue, which is the issue of the legal

authority. We have all the opinions, we have all the facts that we need to deal with that, and we ought to deal with that right here and now.

Thank you.

CHAIRMAN KORSMO: Thank you, Director Leichter. While it may be evident and clear to you, I'm hopeful that it is not evident and clear to a majority of the Board. That's why I'm asking for this resolution, so that actually the question--given the fact that in my mind the question of our authority may indeed turn on the existence of safety and soundness of housing finance mission issues which is precisely why we're addressing proposals to address these questions to the Banks. And I'm certain that the members of the Banks and the organizations that are dependent upon the Banks will not be reluctant to make their views to the banks known in this regard, so that it can be improved, in their responses to this request for information.

Are there any other comments on the resolution?

Dr. Weicher.

DIRECTOR WEICHER: Thank you, Mr. Chairman. Just one final thought in response to Director Leichter's comments about limiting it to the 12 Banks.

Again, drawing on the RESPA experience, in the process of writing a proposed rule on RESPA, we have met

with representatives of I think every industry group and many consumer groups who are concerned about RESPA. And we have met with them, many of them repeatedly, to the point where the General Counsel and I used to joke about meeting someone--the Secretary needed to hire an FHA Commissioner or General Counsel so that we could give our full time to RESPA because we were devoting our full time to RESPA anyway.

And I think again, we may choose to say we only want to hear from 12 entities formally. As far as I know, nothing stops any other entity from coming in and buttonholing us individually, and to some extent collectively, and telling us what they think about this, and before we get to publishing a proposed rule--you know, always assuming we get there--certainly during the process, from now to whenever that might happen, I would anticipate hearing in print and verbally from many, many entities and many, many contacts about the subject of modernization.

And I would also think that we will hear many, many opinions about the legality of any proposed rule that we might care to adopt saying anything that we might care to adopt from every conceivable position I've heard. So I'm not at all worried about any restriction of comment, and I'm sure that none of us can really expect that there

will be any restriction of comment from interested entities, and I certainly intend to vote for the resolution. And I certainly, as you have said and Director Mendelowitz has said, certainly not in the process of this adopting--or expressing really an opinion on a legal opinion. I just think it's useful to go forward.

CHAIRMAN KORSMO: Are there any other comments?

DIRECTOR LEICHTER: Yes. Mr. Chairman, you said something I think needs to be clarified. You said that going out and getting these--what you at one time called new discussion views--that may deal with safety and soundness, and that may impact on the legal issue of whether we adopt the Morrison & Foerster opinion. That unfortunately is incorrect.

The threshold issue--and Morrison & Foerster makes it very clear. They said in their memo--and this is a quote from the Supreme Court in the Chevron case, which has been the legal foundation on which any action's going to have to be taken. I'm quoting now from the Supreme Court in Chevron. "If the intent of Congress is clear, that is the end of the matter, for the Court as well as the agency must give effect to the unambiguously expressed intent of Congress."

So we need to make that threshold decision, and if we make the threshold decision--and I say if we make the threshold decision in line with the views of Treasury and Senator Sarbanes and others, that Congress has expressly spoken on the issue, the fact that there are safety and soundness issues does not give us authority to act. At that point our obligation would be to go to Congress and say, there's really some safety and soundness issues here, and you need to change the act.

So the issue is that the threshold issue needs to be determined by this Board. And to go out and just ask the Federal Home Loan Banks, well, give us some more opinions on this, is--I mean to use an expression, I really--I don't think the intent of the Board is to duck this issue, but I think that is the--it certainly is not the intent I know, but that is the effect.

CHAIRMAN KORSMO: So don't say it.

DIRECTOR LEICHTER: Well, I'm saying--I'm saying that is--the effect is that we're avoiding--let me use a more neutral and not as colloquial a term, and I made it clear that I know that's not the intent of this Board, so I mean let's address this issue.

CHAIRMAN KORSMO: Thank you, Dr. Leichter. I suggest you may want to read further into the Chevron

opinion to where it deals with the situation where the intent of Congress is not clear.

Is there any other discussion about the motion?
Is there any other discussion for the motion?

[No response.]

CHAIRMAN KORSMO: Hearing, seeing none, I would ask the secretary to please call the roll on the question of adoption of the resolution.

MS. BAKER: On the matter before the Board, Director Leichter?

DIRECTOR LEICHTER: No.

MS. BAKER: Director O'Neill?

DIRECTOR O'NEILL: Aye.

MS. BAKER: Director Mendelowitz?

DIRECTOR MENDELOWITZ: Yes.

MS. BAKER: Director Weicher?

DIRECTOR WEICHER: Aye.

Chairman Korsmo?

CHAIRMAN KORSMO: Yes.

The resolution is carried, and we will request comments from the Banks regarding the concerns over and the consequences of ongoing changes in the financial services industry.

Is there any other business to come before the Board, before I do have a couple of parting comments, if my Board colleagues would indulge me?

[No response.]

CHAIRMAN KORSMO: Seeing none, I thought that it would be appropriate on the occasion of the last meeting of the Committee of the year to take a brief opportunity to look back at what the Board has accomplished in the past 12 months.

I note that tomorrow will mark the one-year anniversary of my serving as Chairman of the Federal Housing Finance Board. Every day I stop and reflect, as I'm sure all of you do, on what a profound honor it is to be appointed to this job by President Bush, a man whose leadership I believe embodies the best of our country. He's leading the United States, I believe, in the right direction, toward freedom, prosperity and a compassionate America, while guiding us toward victory in a war against international terrorism.

Of course, it's also a great and remarkable honor--and again I know my colleagues share this honor--to serve the people of the United States, to work to protect their interests as best we can.

I think we've taken great strides in the Agency this year toward achieving that goal, the goal of protecting the public, and I thank my colleagues for your support in this effort. We have refocused the Agency on safety and soundness, adding resources, personnel, experience and leadership to our critical supervisory function.

The results I think are unequivocally positive, a better more thorough examination process, including the new approach of horizontal examinations across the System. We're holding ourselves to a higher regulatory standard in order to hold the Federal Home Loan Banks to a higher standard. In doing so, this Agency is strengthening the Banks' ability to perform their housing finance mission, as well as their goals in affordable housing.

The Board adopted new standards of conduct that have formed the arms-length relationship between the Board and our staff and the Federal Home Loan Banks, a bright red line, if you will, of separation that I believe is essential to maintaining our proper regulatory role.

I certainly wouldn't want any of us to overlook another accomplishment, that is, the completion and approval of the 12 Risk-Based Capital Plans. We've met a very aggressive schedule for acting on the Plans, including

the most significant phase of implementing the Gramm-Leach-Bliley Act. And as I did yesterday, once again I thank the staff and the Board for their good work in this effort.

As I look to the year ahead, I expect another productive and challenging 12 months. The discussion of modernized memberships we began here today requires a System-wide review of a number of important issues, and I think the discussion today was helpful in that regard. No doubt we will continue to face spirited debate, principled disagreement, and as Dr. Weicher suggests, just some plain old hard work. And speaking of spirited debate today I can also disclose that we will continue to work on disclosure. Without impeding our discussions from earlier today, I want to reiterate that the driving force behind my efforts to make the Federal Home Loan Bank System a role model for disclosure is protection of the public, the taxpayers who have a very real, very large investment in the performance of this government-sponsored enterprise.

Finally, our emphasis on safety and soundness will continue every day. Dr. Cross and his team are bringing more examiners on board, and we will strive to improve the examination and supervisory process, its thoroughness and effectiveness.

With that I will say again thank you all for your good work. Thank you particularly to my colleagues on the Board. I appreciate the challenge every day, Franz. And I think, frankly, without these debates, the public would be less well served by the members of this Board.

Thank you all. I wish you all a safe and happy holiday. And with that, the meeting is adjourned. Thank you.

[Whereupon, at 11:37 a.m., the meeting was adjourned.]