TESTIMONY OF
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CHAIRMAN
FEDERAL DEPOSIT INSURANCE CORPORATION
ON
DAIWA BANK AND
THE SUPERVISION OF FOREIGN BANKS
OPERATING IN THE
UNITED STATES
BEFORE THE
COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
U.S. SENATE
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106 DIRKSEN SENATE OFFICE BUILDING

Mr. Chairman and members of the Committee, I appreciate the opportunity to testify on the role of the Federal Deposit Insurance Corporation (the "FDIC") in supervising a segment of foreign bank operations in the United States, and, in particular, the Daiwa Bank Trust Company ("Daiwa Trust"), the only insured U.S. subsidiary of The Daiwa Bank, Limited ("Daiwa"). The FDIC has evaluated the problems and trading losses of Daiwa Trust in close cooperation with the New York State Banking Department ("NYSBD"), the state chartering authority. In evaluating the implications of a broader range of problems stemming from the larger trading losses first reported at the New York branch of Daiwa, the FDIC has also worked closely with the Federal Reserve Bank of New York and the Board of Governors of the Federal Reserve System ("Federal Reserve"), which has primary supervisory authority, along with the NYSBD, over that branch. The Federal Reserve has umbrella supervisory authority over all foreign banking operations in the United States. Acting together, the Federal Reserve, the NYSBD, and the FDIC concluded that the conduct of Daiwa and Daiwa Trust with respect to the separate losses in each institution stemming from unauthorized bond trading activities and the response, given the continuing safety and soundness concerns, of Daiwa and Daiwa Trust officials to those losses and to internal control deficiencies identified at Daiwa, was highly inappropriate and that the only suitable response to that misconduct was to terminate Daiwa's privilege to conduct banking business in the United States.

The problems at Daiwa's New York branch and Daiwa Trust were of three types: 1) the unauthorized activities of traders, 2) the significant deficiencies in internal controls for monitoring compliance with laws and regulations and risks, and 2) the long-term, conscious effort by senior managers to deceive regulators concerning losses stemming from trading activities. Simple fraud was therefore compounded by collusion, which made the detection of various fraudulent acts more difficult to discover.

On September 18, 1995, Daiwa reported a loss exceeding $1 billion as a result of trading activities conducted at its New York branch from 1983 to September 1995. These losses were not reflected in the books and records of Daiwa or in its financial statements, and their existence was concealed through liquidations of securities held in Daiwa's custody accounts and falsification of its custody records.

Daiwa has indicated that, while its senior management learned about the trading losses at the New York branch on July 24, 1995, the senior management of Daiwa and its New York branch directed that those losses be concealed from U.S. bank regulatory and law enforcement authorities as well as the public for almost two months and also directed the continuation of transactions designed to avoid the disclosure of Daiwa's losses.

In addition, the senior management of the New York branch of Daiwa undertook a series of actions in

1992 and 1993 designed to deceive bank examiners regarding Daiwa's trading activities, including providing written notice to the Federal Reserve that actions had been taken to separate the custody and trading functions at the branch, while continuing to operate without such controls in place.

In early October, 1995, following the commencement of governmental investigations and the issuance of joint cease and desist orders into trading losses incurred by the Daiwa branch in New York, Daiwa reported that Daiwa Trust incurred net losses of approximately $97 million as a result of trading activities, at least some of them unauthorized, during the approximate period of 1984 through 1987. These trading losses: (1) were not reported on its books and records; (2) were not reported on the financial statements of Daiwa Trust; and (3) were concealed from federal and state examiners and regulatory authorities through a series of transactions with off-shore entities. In addition, the senior management of Daiwa and Daiwa Trust participated in the falsification of records and concealment of those trading losses.

The FDIC's deposit insurance funds will not suffer any loss from the problems at Daiwa Trust. As of September 30, 1995, Daiwa Trust had total assets of $1.1 billion and held approximately $134 million in insured deposits -- only 18.3 percent of its total deposits. Daiwa Trust's $97 million in trading losses, at least some of which were the result of unauthorized trading by Daiwa Trust employees, were absorbed by Daiwa in connection with its transactions to conceal the losses. Daiwa Trust is presently well capitalized, and all present indications are that the value of its assets are more than sufficient to satisfy all its liabilities, including its liabilities to depositors.

In response to the invitation from the Committee, this testimony describes foreign bank organizations that operate in our country and the FDIC's role in supervising them. It discusses the FDIC's recent actions against Daiwa Trust, in cooperation with other bank regulators. It presents a range of supervisory issues raised by the experience with Daiwa and Daiwa Trust. Finally, it discusses the FDIC's continuing response to those issues.

U.S.- BASED FOREIGN BANK OPERATIONS SUPERVISED BY THE FDIC

The Federal Reserve, the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the FDIC, and state bank supervisory authorities have varying degrees of supervisory authority for the United States operations of foreign banking organizations. As Chart 1 and Table 1 summarize, there were 836 separately licensed foreign banking organizations operating in the United States as of June 30, 1995. As of that date, these foreign banking organizations had total assets of about $1.1 trillion, of which 72.8 percent were in 689 uninsured foreign banking organizations supervised by the Federal Reserve, the applicable state licensing authorities, and, to a lesser extent, the OCC.

Of the 836 total foreign banking organizations in the United States, 18 percent are insured. The FDIC has primary federal supervisory responsibility over 12 percent of foreign banking organizations in the Unites States, which include over 68 foreign bank subsidiaries and 35 state-licensed branches. As Chart 2 illustrates, the 103 foreign bank organizations, which the FDIC supervises, had total assets of $109.6 billion as of June 30, 1995, or 10.2 percent of the total foreign banking assets in the United States. The FDIC shares supervisory responsibility for these organizations with the applicable state authorities. In addition, the FDIC has a role in insuring the deposits of the remaining 44 insured foreign banking organizations operating in the United States, 36 banks and thrifts and 8 branches, which had total assets of $182.7 billion, or 17 percent of total foreign banking assets. Of these 44 organizations, the OCC primarily supervises 34, with total assets of $130.2 billion; the Federal Reserve primarily supervises 8, with total assets of $42.1 billion; and the OTS primarily supervises 2 with total assets of $10.4 billion.

As Chart 3 reflects, all FDIC-insured financial institutions in the United States have estimated total insured deposits of $2.6 trillion as of June 30, 1995. Of this amount, an estimated $117 billion, or 4.5% of total insured deposits, are held by insured foreign banking organizations. As such, the direct potential risk to the FDIC insurance funds represented by all foreign bank organizations operating in the United States is not large.

U.S. OPERATIONS OF DAIWA

Daiwa operates two branches in New York City, which are licensed to conduct business under New York state law. These branches do not have federal deposit insurance, and are subject to supervision by the New York State Banking Department under state law and the Federal Reserve under the International Banking Act of 1978, as amended by the Foreign Bank Supervision Enhancement Act of 1991.

Daiwa also operates five other branches, seven agency offices, and 14 representative offices, none of which have federal deposit insurance. Each of these branches, agencies, and offices are licensed to conduct business by the 11 states in which they are located and are supervised by the individual states respectively and the Federal Reserve.

In addition, Daiwa owns a U.S. state-chartered non-member bank, Daiwa Trust, which has deposits insured by the FDIC. The FDIC shares supervisory responsibility over Daiwa Trust with the state chartering authority, the NYSBD. Because of Daiwa Trust's foreign ownership, the Federal Reserve also has examination authority over the bank.

As a result of separate but similar violations that took place in one of Daiwa's New York branches and in Daiwa Trust, the banking agencies issued various orders on November 1, 1995, terminating all operations of Daiwa and Daiwa Trust in the United States. Daiwa and Daiwa Trust have consented to these orders. First, the Federal Reserve, joined by the New York State Banking Department, the California State Banking Department, the Illinois Commissioner of Banks and Trust Companies, the Commonwealth of Massachusetts Division of Banks, the Florida State Controller, and the Georgia Department of Banking and Finance, issued a consent order terminating Daiwa's uninsured branches, agencies, and representative offices nationwide. Second, the New York State Banking Department entered a consent order terminating the operations of Daiwa Trust. The FDIC has joined in this supervisory action by issuing a consent order terminating Daiwa Trust's federal deposit insurance.

The FDIC's decision to terminate Daiwa Trust's insurance was based upon recent information that Daiwa Trust, with the assistance of Daiwa, concealed a pattern of unsafe and unsound banking practices and violations of law over an extended period of time dating back to 1983. Daiwa Trust was legally obligated to report losses from trading activities as well as any unauthorized trading to the New York State Banking Department and the FDIC. Instead, with the participation and planning of senior management in both Daiwa Trust and Daiwa, these losses were concealed and shifted to off-shore entities in the Cayman Islands.

The pattern of conduct evidenced by this concealment, coupled with the fact that Daiwa Trust's parent, Daiwa, again engaged in concealment of significant trading losses from unauthorized trading activities in its New York branch of $1.1 billion, gave the FDIC strong reason to believe that unsafe and unsound conditions would continue. In view of the continuing pattern of misrepresentation to bank regulatory authorities, the failure to comply with applicable regulatory reporting requirements, the severe credibility problems of Daiwa management, and the inability to rely on any assurances from Daiwa Trust that the unsafe and unsound banking practices would be corrected, the FDIC was left with no other course but to terminate Daiwa Trust's deposit insurance.

Under the terms of the New York State Banking Department and FDIC orders, Daiwa Trust has agreed to terminate its operations by February 2, 1996, subject to extension by the regulators, to permit an orderly termination of its banking business. Daiwa Trust may terminate its operations by selling its business, including deposits, to another banking institution, or by liquidating itself and arranging to pay off its liabilities directly. The termination process for Daiwa Trust is being carried out under the supervision of the New York State Banking Department and the FDIC.

ISSUES RAISED BY THE DAIWA EXPERIENCE

From October 1984 to January of 1994, Daiwa Trust was examined ten times; four times independently by the FDIC, five times independently by the New York State Banking Department, and once concurrently by both agencies. Criticisms related to inadequate policies and controls were made at each of these

examinations. These included criticisms on several examinations of management's failure to adhere to an adequate vacation policy, which provides that bank officers and employees be absent from their duties for an uninterrupted two-week period. Such a policy has historically been strongly encouraged, as a primary internal control mechanism to prevent improper activities. Such activities usually require the constant presence of the perpetrator in order to manipulate records and otherwise prevent detection. The failure to adhere to a consistent vacation policy could have led to an initial break-down in checks and balances within Daiwa Trust, thereby facilitating the origination of the improprieties. Although the FDIC has no supervisory authority over Daiwa's New York branch, it appears that the same kinds of internal control deficiencies are relevant to its significant problems.

Further, Daiwa Trust also had annual external audits performed by independent public accountants, including the period from 1983 to 1987, when the trading losses occurred. During the same period, Daiwa Trust maintained an Examining Committee, which was responsible for the review of internal/external audit reports. There is no indication at this time that the improprieties at Daiwa Trust surfaced in those audits.

The FDIC has instituted a comprehensive analysis of all of the facts related to Daiwa Trust's losses between 1983 and 1987 and the responses of Daiwa and Daiwa Trust, as well as of the FDIC's supervision of Daiwa Trust. In addition to analyzing the supervisory records of the FDIC and the NYSBD, interviewing the examiners, and reviewing all other relevant materials, the FDIC and New York State Banking Department are currently conducting examinations of Daiwa Trust. At the direction of the Federal Reserve, the New York State Banking Department, and the FDIC, an outside accounting firm has been retained to perform a comprehensive review of Daiwa's improper activities, including the $1.1 billion in trading losses at Daiwa's New York branch and the $97 million net trading loss at Daiwa Trust and managements' responses to both.

The three bank regulatory agencies have committed to the U.S. Attorney's office that we will conduct our comprehensive examinations pursuant to written protocols in a manner that will not impede its ongoing criminal investigations and prosecutions. We have sought to cooperate fully with the criminal investigations, and as a result, our examinations have been slowed somewhat. These examinations will determine the specific facts surrounding the improprieties, including the action that management took to hide them.

As the FDIC conducts its examination, the key issues are the extent to which Daiwa Trust's problems are the result of: (1) a breakdown in internal controls, (2) fraudulent conduct designed to defeat those controls or (3) both.

Every bank in the United States, whether foreign or domestic, is required to maintain a system of internal controls adequate to the level of risk raised by the institution's activities. A sound system of internal controls includes an organization plan that segregates functional responsibilities appropriately. This separation includes such fundamental controls as limitations regarding levels of authority for making and approving lending, investment, trading activities, segregation of duties, rotation of personnel, effective policies on hiring and training personnel, vacation policies and provisions for the protection of physical assets. It also includes a system of authorizations and recording procedures that assures reasonable control of assets, liabilities, income and expenses -- in other words, an effective recordkeeping system capable of generating a wide variety of internal management reports. Finally, the system must include an effective audit program.

Internal controls aimed specifically at, among other things, protecting institutions from unauthorized trading by their employees would include such things as segregation of duties between traders and personnel performing trade-related accounting and disbursement functions; procedures under which trade confirmations are sent and recorded independently of the trading operation; information on charges and authorizations; and procedures for revaluing trading positions. Internal controls should also include documentation of review and approval of all trading limits, procedures to ensure prompt identification and reporting of trading limit violations, and daily reconciliation of individual dealer positions with bank positions.

Internal control systems are reviewed as a part of the bank examination process. Bank examinations, however, are not designed to identify fraud that is intent on thwarting internal controls and the examination process. Rather, bank examinations are designed to evaluate the overall financial condition of the bank and the adequacy of management. Examinations are conducted to gauge the safety and soundness of an institution, to ascertain the risks it poses to the insurance funds, and to protect depositors. Like a medical examination, a bank examination is a disciplined look for discernible warning signs. The examination is based on the books and records of the bank, statements made to the examiner by institution officials, and information obtained from other reliable sources. Where the warning signs are actively concealed, serious problems are less likely to be uncovered.

Unless examiners find evidence of specific deficiencies, the evaluation of internal controls is done as part of an overall evaluation of the bank's systems. In assessing the adequacy of a system of internal controls, examiners perform a series of examination procedures designed to identify control weaknesses. If deficiencies are identified, more intensive tests are done. Therefore, examiners treat internal controls in the same way they approach the entire examination process -- the scope of various examination activities is expanded in response to the "red flags" they find. If a bank's management is covertly misleading examiners and the bank's systems are evaluated as adequate, fraud may remain undetected, at least for a time.

Examinations are sometimes confused with external audits. External audits are conducted by an independent public accounting firm retained by an institution to verify the numbers used in the institution's financial statements and accounting records. In addition, an audit is designed to provide a more extensive evaluation of a bank's internal controls than typically occurs during a regulatory examination. External audits, for example, may review and directly confirm transactions to determine whether bank employees are complying with the system of internal controls. External audits, therefore, may have a somewhat greater tendency to detect fraudulent activity. It is still possible, however, for bank insiders to conceal deliberately improper transactions. Even a complete and comprehensive audit may not expose effective deceptive practices.

Constraints of time and resources do not permit a complete and comprehensive audit during bank examinations nor would the benefits derived from such audits warrant the increased regulatory burden of imposing such comprehensive reviews on healthy, well-managed institutions. Nevertheless, when examiners determine there is a need, because of a warning signal or otherwise, they expand examinations to include the use of more audit techniques and procedures.

Further, the FDIC encourages every insured depository institution to undergo external audits. Moreover, since 1993, insured institutions with total assets of $500 million or more have been required by regulation to obtain an annual independent audit; to report annually on management's responsibilities for preparing financial statements and maintaining an internal control structure; and to assess and report on the effectiveness of the institution's internal control structure. The institution's independent public accountant is also required to attest to, and to report separately on, management's statement of responsibilities for preparing the institution's annual financial statements, for establishing and maintaining an adequate internal control structure and procedures for financial reporting, and for complying with laws and regulations relating to safety and soundness, as well as management's assessment of the effectiveness of such internal control structure and compliance with such laws and regulations. The audit and report are filed with, and reviewed by, the institution's primary federal regulator, appropriate state bank supervisors, and the FDIC. These audit requirements apply to 4 of the 43 insured U.S. branches of foreign banks, and to 43 of the 104 U.S. institutions which are subsidiaries of foreign banks. As of June 30, 1995, these 47 covered institutions had aggregate total assets of $274.4 billion, and accounted for 93.9% of all insured foreign banking organizations in the United States. These requirements do not apply to the uninsured offices of foreign banks in the United States.

FDIC RESPONSE TO THE ISSUES

Given the Daiwa experience as well as other recent well-publicized trading improprieties, the FDIC is revisiting its examination methodologies, particularly in the trading area for foreign and domestic

institutions over which the FDIC has supervisory responsibility. Specifically, we are looking into whether we should develop examination procedures that require greater use of audit procedures in order to obtain external confirmations of a sampling of trading activity during our examinations of active trading departments. Such an enhancement of examination procedures would require the use of additional resources, would add to examination time and would increase the level of regulatory burden on institutions, so we are weighing this course of action very carefully.

In any event, the FDIC will expand its review of internal and external audit workpapers, particularly in regard to direct confirmations of trading activities. We will tailor our examinations of controls in a bank's trading department to take into account any deficiencies we find during these reviews of workpapers. These reviews assist in examination planning, by potentially streamlining the onsite examination process, and by emphasizing any areas of regulatory concern. Examiners have been previously directed to emphasize the review of auditor work papers for institutions that have exhibited internal control problems, significant derivatives activities, and a history of unusual accounting practices. Going forward, the FDIC will emphasize that such workpaper reviews should also be conducted with regard to insured institutions having substantial exposure to higher risk activities, such as trading activities. Any deficiencies identified during such reviews, coupled with the adequacy of management's actions to redress them, will then largely determine the extent of follow-up audit procedures to be conducted by examiners at the next examination.

Further, we are focusing more on internal controls in our training and guidance of examiners. Had present pre-examination planning activities been in use during the mid-1980s, when Daiwa Trust's losses occurred, more attention would have been given to the trading activities of Daiwa Trust during the examination. In particular, we now review comparative call report information for significant changes between financial reporting periods. There were sizeable increases in holdings of U.S. Treasury bonds between March and June, 1987, in Daiwa Trust when bank management booked the securities that covered previously unbooked positions. Current pre-examination planning techniques might have noted such an increase, triggering expanded attention to the transactions and their consistency with Daiwa Trust's investment policies, asset and liability management policies, and overall business plans.

In particular, we will clarify guidance to our examiners regarding potential auditing procedures to be conducted by examiners to review riskier activities, such as trading. These will include, but not be limited to, the tracing of trades from inception through final processing to determine that appropriate separation of duties are in place; a review of the audit department's procedures for confirming all trading instruments held at other institutions in safekeeping accounts; and ensuring that all traders are operating within established daily and intra-day limits.

As part of an on-going effort to improve supervision at the FDIC, this summer, before learning of Daiwa Trust's problems, we initiated a project to determine the best methodologies and infrastructure for the FDIC's supervision of international banking activities conducted by federally insured institutions.

This project is focused both on the U.S. operations of foreign organizations, primarily U.S. subsidiary banks and insured domestic branches of foreign banks, and the international operations of U.S. banks. We are evaluating the comprehensiveness of the FDIC's international supervisory capabilities, comparing and contrasting these processes with those in place at the Federal Reserve and the OCC. The FDIC project team will soon make recommendations to the Director of the Division of Supervision on whether and to what extent the FDIC should revise its processes and infrastructure to supervise more effectively and cohesively international banking activities by federally insured institutions.

As part of this effort, we will establish a separate unit within the FDIC with expertise in international banking. Such a unit will devote its attention to international banking matters, and will communicate closely with similar units of the Federal Reserve, the OCC, and the state banking departments.

Foreign bank organizations operate in the United States in various organizational forms, both insured and uninsured, across multiple regulatory and geographic boundaries. To enhance and coordinate supervision of foreign banking organizations, the FDIC is participating in the interagency Enhanced

Framework for Supervising the U.S. Operations of Foreign Banking Organizations. The federal and state regulatory authorities formally presented the specifics of this program to the foreign banking community in late 1994, and the interagency program is anticipated to be initiated by early 1996. The program promises to enhance significantly U.S. supervision of foreign banking organizations.

Under the program, the FDIC, the OCC, and the relevant state supervisor for a particular foreign banking organization will provide the Federal Reserve with proposed annual examination schedules for integration with those of the Federal Reserve Banks. Generally, foreign banking organizations with multiple U.S. operations will often have all the operations examined using the same financial statement date. After examination plans are developed, exchanged and coordinated among the examining agencies, the Federal Reserve will prepare a comprehensive examination plan for each foreign banking organization. The Federal Reserve will coordinate the sharing of information through the examinations of all foreign banking organizations with multi-state operations. The Federal Reserve will also conduct an annual "Summary of Condition" assessment of the combined U.S. operations of each foreign banking organization. Such assessment will be furnished to the chief executive officer at the foreign banking organization's head office, and the appropriate Federal and state authorities.

In addition, for each foreign banking organization, supervisory "strength-of-support assessments" will be developed annually through a process involving all U.S. supervisors that have licensing, chartering, or examining authority over a foreign banking organization's U.S. operations. These assessments, which will be for internal agency supervisory purposes, will analyze the ability of the foreign banking organization to meet its U.S. obligations, as well as any factors which raise questions about the ability of the foreign banking organization to maintain adequate internal controls and compliance procedures at its offices.

CONCLUSION

The ability of any bank, including foreign banks, to operate in the United States is a privilege. This privilege carries with it the necessity for accurate records and financial reporting on an institution's operations, activities, and transactions; adequate internal controls for assessing risks and compliance with laws and regulations; as well as the utmost credibility in the institution's management. These necessities were missing in the case of Daiwa. A failure to comply with reporting requirements, inadequate internal controls, a continuing pattern of misrepresentation to regulatory authorities, deliberate concealment of material events, and the potential for the continuation of unsafe and unsound practices left U.S. regulators with no choice but to terminate the operations of Daiwa Bank in this country. Foreign banks must meet the same supervisory and regulatory standards applicable to domestic U.S. banks. The approach we take in examinations today -- had it been in place in the 1980s -- would have made it more likely that we would have found problems at Daiwa Trust closer to the time when they occurred, but fraud is difficult to detect.

The FDIC, along with other federal and state bank supervisory and law enforcement authorities, is continuing to investigate in detail what went wrong at Daiwa and why. The FDIC is evaluating whether its examination procedures applicable to internal and risk controls for trading activities for foreign and domestic institutions over which the FDIC has supervisory responsibility should be enhanced. What we have learned from the Daiwa and Daiwa Trust experience is already being incorporated into revisions to our supervisory and examination processes. In addition, even before Daiwa Trust's problems came to light, the FDIC had instituted a comprehensive review of its supervisory role with respect to foreign banks. Moreover, the FDIC will continue to work on an interagency basis to implement a comprehensive approach to ensuring effective supervision of foreign bank operations in the United States. Finally, the FDIC, which is a member of the Basle Bank Supervisors Committee, will continue to work with the Committee to ensure greater international cooperation and coordination in the supervision of multinational banking organizations.

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