

FEDERAL HOUSING FINANCE BOARD

MEETING OF THE BOARD OF DIRECTORS

Wednesday, February 18, 2004  
Washington, D.C.

The Board meeting convened, pursuant to notice, at 10:00 a.m., at 1777 F Street, N.W., Second Floor Board Room, Washington, D.C.

PARTICIPANTS:

BOARD MEMBERS

JOHN T. KORSMO, Chairman

FRANZ S. LEICHTER, Director

JOHN C. WEICHER, Director

ALLAN I. MENDELOWITZ, Director

ALICIA R. CASTANEDA, Director

STAFF

GWEN GROGAN

THOMAS HEARN

STEPHEN CROSS

JOHN HARRY JORGENSON

MARY H. GOTTLIEB

A G E N D A

Strategic Plan 2003 - 2008

Consideration of a strategic plan for the Agency covering the period from 2003 through 2008.

Legal Authority to Require Registration of Federal Home Loan Bank Securities Under the Securities Exchange Act of 1934

Consideration of a resolution directing the Chairman to request that Office of Legal Counsel of the Department of Justice determine whether the Agency has the authority under the Federal Home Loan Bank Act to require each Federal Home Loan Bank to register a class of its equity securities with the Securities and Exchange Commission under the provisions of section 12(g) of the Securities Exchange Act of 1934.

P R O C E E D I N G S

CHAIRMAN KORSMO: I call this meeting of the Federal Housing Finance Board to order. Good morning. The first item on our agenda is adoption of an updated five-year strategic plan for the Federal Housing Finance Board. The plan before us meets the mandates of the Government Performance and Results Act, known in an acronym form as GPRA, which calls for agency five-year strategic plans to be updated every three years. This strategic plan is worthy of note because it embraces the Finance Board's increased emphasis on safety and soundness regulation.

Nearly two years ago the Federal Housing Finance Board embarked on a long-term, disciplined and serious-minded program to improve its oversight of the Federal Home Loan Banks, 12 large and increasingly sophisticated government-sponsored enterprises that play a critical role in the nation's system of housing finance.

The five-year strategic plan before you reflects continued dedication to this program of improvement. The Finance Board's seriousness of purpose appears throughout the strategic plan, which provides a frame work for a further improvement of the Board's regulatory and oversight capabilities.

In its vision statement, the Finance Board affirms its dedication--and I quote, "to the highest professional standards of accountability and independence in order to carry out its responsibilities for Bank supervision and housing finance mission oversight in a way that is second to none."

This vision and accompanying values, independence, accountability, responsiveness, integrity, and excellence will serve the Federal Housing Finance Board well in the face of ongoing, rapid change in the world of finance and regulation of government-sponsored enterprises.

Brought into practice by a dedicated professional staff, this vision and these values will also ensure that the Federal Home Loan Banks remain well regulated.

Among the professional staff are, of course, the people who shepherded this project from beginning to end. The Steering Committee was comprised of our former General Counsel, Arnold Intrater; Director of the Office of Management, Judith Hofmann, and Dr. Stephen Cross, head of the Office of Supervision.

The working group, called so, because they did the work, I imagine, consisted of Gwen Ro--Gwen Grogan, excuse me, Gwen--easy for me to say, Gwen Grogan from Supervision; Director Mendelowitz's Board Assistant, Chuck Jones; Don

Demitros, our Director of Information Technology; Thomas Hearn, of the Office of General Counsel; and Sylvia Martinez, of the Office of Supervision. To all of you my gratitude and I assume that of my colleagues for a job well done.

I see Ms. Grogan and Mr. Hearn are here to make the presentation, so the floor is yours.

MS. GROGAN: Good morning. The Government Performance and Result Act requires federal agencies to prepare a five-year strategic plan. The Finance Board's first strategic plan was approved in September of 1997. In May 2001, the Plan was updated to cover the years 2000 to 2005. The proposed plan before you is for the years 2003 through 2008.

The strategic plan sets out the Finance Board's mission, vision, values, in addition to laying out the strategic goals for the agency. The plan expands on previous strategic plans with an enhanced sense of direction for the Finance Board's supervisory responsibilities.

Affirmation of this focus is articulated in the proposed plan's strategic objectives and the means and strategies developed for carrying out the strategic objectives. The development of the proposed 2003 through

2008 strategic plan, was a collaborative effort, as the Chairman indicated.

When consensus was reached by the working group on the draft, it was presented to the Steering Committee for their consideration and comment. As a preliminary step, other federal agency's strategic plans and relevant guidance disseminated by the Office of Management and Budget were reviewed.

Next, we developed the strategic goals for the agency. We identified three strategic goals that support achievement of the agency's mission, which is: To ensure that the Federal Home Loan Banks are safe and sound so they can serve as a reliable source of liquidity and funding for the nation's housing and community investment needs. The first strategic goal we identified was: The Federal Housing Finance Board's program of Bank supervision fosters safe and sound operations at each of the Federal Home Loan Banks. This is what we refer to as our safety and soundness goal.

The second strategic goal we identified was: The Federal Housing Finance Board ensures that the Federal Home Loan Banks serve the nation's housing finance and community investment needs. This is what we refer to as our mission goal.

Lastly, the working group believed that it was important to have a third strategic goal that addressed getting our job done well. Here, after a fair amount of deliberation, a goal was crafted that reads: "The Federal Housing Finance Board's supervisory, managerial, and legal resources support effective, efficient, and responsive Bank supervision and regulation in housing mission oversight."

While the first two strategic goals are similar to goals in previous strategic plans, the third goal stresses the importance of timely and appropriate supervisory actions through prudent allocation of resources.

Once we established the strategic goals, the working group began to build a framework for achieving these goals through the development of strategic objectives. The strategic objectives were supplemented by means and strategies for carrying out the strategic objectives.

With an approved strategic plan in place, our efforts will be directed at developing a 2004 annual performance plan, which will include annual performance goals, upon which we can measure our success in achieving the strategic goals and objectives set forth in the strategic plan.

In December, Mark Pretzat joined the Finance Board and will be working with me in the Supervisory Program

Development Division of the Office of Supervision. Prior to joining the Finance Board, Mark had a private law practice where many of his clients were financial institutions. Also, Mark worked in the General Counsel's Office for both the OCC and the FDIC.

One of Mark's primary responsibilities will be to coordinate the Finance Board's strategic planning activities, which will include developing the annual performance plans and the annual performance reports.

Last summer, rather than simply rolling forward the previous strategic plan, what we sought to achieve in taking a fresh look at the Finance Board's strategic plan is to have a strategic plan that will serve as a road map for our commitment to enhance the agency's supervisory program for both safety and soundness in housing mission oversight.

Changes continue to be made in a supervisory program, to provide for more risk-focused supervision of the Federal Home Loan Banks and the Office of Finance. Over the last year, the Office of Supervision was further divided into six divisions to allow for more focused attention to specific supervisory activities: Examinations; Regulations and Research; Risk Modeling; Risk Monitoring; Supervisory Program Development; and Community Investment in Affordable Housing.



The Office of General Counsel's activities complement the work being done by the Office of Supervision and enhance the Finance Board's overall supervisory program. We continue to recruit staff; procure additional tools and training; and supplement examiner staff and staff guidance.

The proposed Strategic Plan provides the context for a strong supervisory program that is risk-focused, effective, and efficient.

We are happy to answer any questions.

CHAIRMAN KORSMO: Any questions for either Ms. Grogan or Mr. Hearn about the development of the strategic plan? Any questions, if not, is there a motion, I'm sorry, go ahead.

DIRECTOR MENDELOWITZ: I have a question. Yeah, I'd like to sort of update my understanding of GPRA. When GPRA came out, I was one of those who considered it to be a real contribution to improving the effectiveness of government because it transformed the analytical way of looking at what government did. From looking at the inputs, the labor, the money spent, the things bought, to trying to focus on what actually was being accomplished, the outcomes.

And it's a--I think it's an important discipline to convey to all managers and workers in government that the goal of what they're doing is to achieve a public policy

outcome, not just to spend money or use resources. And in the original incarnation of the strategic plans, the objectives were supposed to be things that could be achieved during the period of the strategic plan was in force. And you were, then, supposed to--when you achieved those objectives, you were supposed to move on to new objectives.

The objectives in our plan appeared to be sort of universal objectives. They were the types of things that we would want to have in force at all times through the life of this agency and the responsibilities that we currently have. So, I wanted to understand, has the interpretation of what was required under GPRA changed?

MS. GROGAN: My understanding is that there is more flexibility than what you've said. We have gone to the Office of Management and Budget and asked for their feedback and have received nothing, so we believe that what is before you does comply with GPRA.

CHAIRMAN KORSMO: Director Weicher?

DIRECTOR WEICHER: Just a comment on that--we, of course have a Strategic Plan at HUD, as well, and to support what Gwen was saying, one of our objectives is--let me see if I can phrase this exactly right, maintain high standards of ethics and accountability. Well, that is not something

that you need to move beyond, but that is something that you need to do and continue doing.

And it seems to me that our plan reflects that our basic responsibilities are spelled out in the plan and they have to be done on a continuing basis. We have to examine the Banks regularly. We have to manage; we have to monitor the AHP and the CIP regularly and it seems to me that's absolutely essential to our plan and it's a good idea to be reminded of it. What we do within that will, perhaps, vary as circumstances vary, but as a regulatory agency, with a well-defined regulatory mission, I don't feel, personally, the need to identify new goals, I think we need to maintain our activities and do our activities well, perhaps to improve on, but those are the goals, those are our objectives I think it's appropriate to have a plan that simply says that.

CHAIRMAN KORSMO: As I've come to understand the process--and Gwen and Tom, please correct me if I'm wrong in this, this is the aspect of this process that I think you're referring to, Dr. Mendelowitz, is the performance plan, saying that we'll--Steve's nodding his head up and down, so, I'm hoping that means I'm right on this. But that's the aspect that deals now, as the process exists today with the

element of the process that Dr. Mendelowitz is concerned.

Is that not correct?

MR. HEARN: I believe so, yes.

CHAIRMAN KORSMO: Dan Dixon can't hear, so we'll speak up. Any other questions of the presenters before I open the floor for a motion? Any other questions? Seeing none, is there a motion to approve--

DIRECTOR MENDELOWITZ: I just--

CHAIRMAN KORSMO: I'm sorry.

DIRECTOR MENDELOWITZ: --wanted to say that the feedback I got on the process was that this was really very well done and I just wanted to convey that back to you that the reputation of your committee under Gwen's leadership and the folks who worked on it was--everybody took it as a serious responsibility, they worked hard and turned out what appears to me to be a good product, so I want to thank you.

CHAIRMAN KORSMO: Is there a motion to approve the Federal Housing Finance Board's strategic plan for 2003/2008?

DIRECTOR WEICHER: So moved.

CHAIRMAN KORSMO: Dr. Weicher. Dr. Weicher has moved adoption--excuse me, approval of the Federal Housing Finance Board's strategic plan of the period of 2003/2008, as required by GPRA. Is there any discussion of the motion?

Any discussion of the motion? Seeing none the Secretary will please call the roll.

MS. GOTTLIEB: On the approval of the Finance Board's Strategic Plan for the period 2003 to 2008, Dr. Leichter, how do you vote?

DIRECTOR LEICHTER: I'm happy to be put in that esteemed category with Dr. Mendelowitz and Weicher--I vote yes.

MS. GOTTLIEB: Director Castaneda?

DIRECTOR CASTANEDA: Yes.

MS. GOTTLIEB: Director Mendelowitz?

DIRECTOR MENDELOWITZ: Yes.

MS. GOTTLIEB: Director Weicher?

DIRECTOR WEICHER: Aye.

MS. GOTTLIEB: Chairman Korsmo?

CHAIRMAN KORSMO: Yes. The plan is adopted. To Gwen and Thomas and all the members of the Committee, thank you very much for your hard work on this. This has been a long and, at times, arduous process, but I think the final work product was worth every minute of it. As Director Mendelowitz mentioned, I think the final result is superb and we are very pleased with the work and we thank you very much for your efforts.

The next Agenda item concerns our proposed regulation mandating that each Federal Home Loan Bank provide the public and investors quarterly and annual reports under the SEC's 34 Act jurisdiction. Before turning to Director Leichter and Director Mendelowitz to present their resolution, it seems appropriate for me to provide a quick public update on where we are in this project.

On January 15th--excuse me, on January 15th, the 120-day comment period closed with somewhere between 20 and 25 comments submitted. Finance Board Staff are in the process of analyzing those comments and, as an initial response to a request from Director Leichter made at the time the proposal was unanimously adopted, our General Counsel's Office has prepared a memorandum summarizing the legal authority underpinning the regulation.

As work proceeds through the balance of this month and into March, I know our staff will finalize a more exhaustive legal memorandum; will present policy research and options; and will also seek additional input from some commenters and from the Board.

Before moving to the resolution, let me ask our General Counsel and our Director of Supervision if they wish to add anything to this quick update of the plans for finalizing the disclosure regulation?

MR. JORGENSEN: Staff is preparing a series of memoranda addressing the issues identified by the staff, by the commenters responding to the request for comment and by other interested parties, including conversations we've had directly with the SEC staff on the process.

We'll be assembling supporting materials which we believe the Board members need to have in order to determine whether they should adopt the proposed rule in final form. This will also aid in bringing Director Castaneda up to speed on what materials were available to the Directors at the time and what they might have had in mind at the time the proposal was put up.

We'll be supplementing that with additional materials and staff analyses. Staff intends on presenting these memoranda and supporting materials and information to the Board and then discussing them with the Board. That process has not been set up yet, but I would hope that we would have a chance to present these materials to you with sufficient lead time that you'd be able to look through them. Staff could then meet in a formal briefing with you to discuss these matters to make sure that we have the major issues addressed and covered; go back and address whatever open issues we have before we bring the final package to the

Board with additional recommendations on actions that you might want to take.

This will ensure that all the members of the Board have sufficient information and analysis available, we believe and that all major issues would have been addressed when the Board considers its final rule. There are quite a few findings you'd have to make in order to adopt the rule and staff wants to make sure we have all of those findings appropriately presented so that you have sufficient evidence in the record to support decisions that you make.

One example that I've had some conversation with the Directors on is the issue of whether the Board has the authority under the Federal Home Loan Bank Act to adopt such a rule. And I prepared a short memorandum of law, last week and distributed it. And spoke with one of the Directors last night on a question of clarification in the memorandum. Consequently, today, I'm distributing, internally, a slightly revised version that does incorporate clarification of that sentence. At least I trust it clarified the sentence, I have not yet gotten feedback.

But I believe the opinion's legally sufficient for the limited purpose for which I prepared it, what's the appropriate authority that we would rely upon to interpret our enabling statute.



I also believe that the Board members should have before them a much more comprehensive opinion that, in addition to discussing the very legal question answered in my short memorandum, sets out the findings the Board must make if it wishes to adopt a final rule in reliance on that opinion.

As I just stated, staff's preparing this and similar memoranda and analyses necessary to make such findings. We will distribute and discuss them with the Board members in the very near future.

CHAIRMAN KORSMO: Thank you Mr. Jorgenson. I see Dr. Cross has taken the table, which I assume means he has something to add.

DR. CROSS: Very briefly, Mr. Chairman, and members of the Board. The General Counsel and I recognize that two critical issues face the Board prior to acting on a final regulation that would require the Banks to register a class of securities with the SEC.

First the question of whether the Board has the legal authority to take such an action?

Second, does the Board have a reason to exercise that authority?

The General Counsel, as he indicated in his remarks, has distributed to the Directors a memorandum

summarizing its--his office's legal opinion affirming the Board's authority to require the Banks to register with the SEC in support of the Board's statutory responsibilities. That memo bears on the issue before the Board today. Beyond the issue before you today, the Office of the General Counsel and the Office of Supervision, are committed to providing a comprehensive record for the Board prior to it considering any final rule.

That legal, financial, and supervisory analysis will be provided to the Board well in advance of any decision by the Board--any decision the Board will have to make on a final registration rule.

So, I just wanted to make it clear that we understand that there's really two parts to this process. And neither the General Counsel, nor I, believe that we have presented to the Board the complete analysis necessary to make a decision on a registration regulation. But we are committed to doing so and doing so well in advance of any action the Board will have to take on the matter.

DIRECTOR MENDELOWITZ: Can I ask for a clarification of what well in advance means?

CHAIRMAN KORSMO: Good question.

DIRECTOR MENDELOWITZ: Being a quantitative type.

DR. CROSS: My answer would be whatever the Board in its collective wisdom requires in order to make a decision. In my mind, that meant more than the week or two weeks that is provided for most matters, whether it's three weeks or four weeks or more, I think depends on the preferences of the Board.

DIRECTOR MENDELOWITZ: So, I mean, basically, if I could interpret what you're saying, because I certainly agree with it. Four weeks in advance of consideration of this issue is an appropriate time interval in which to have the full package for purposes of assessment and evaluation analysis and the ability to sit and discuss the substance of this with the staff?

DR. CROSS: If you're asking what I had in mind, it was, at more than two weeks, four weeks could be an amount of time and I have in mind that you would have a set of documents that could change over that period of time, based on--

DIRECTOR MENDELOWITZ: Discussion?

DR. CROSS: --discussion and interaction, so that it would not necessarily be four weeks from a final product, but an opportunity for the Board to have--to respond to the materials in front of them, and the staff to augment its

analysis in response to any questions or--or questions that the Board might raise.

CHAIRMAN KORSMO: I think everyone recognizes this is probably a larger issue than most with which we deal. And so our ordinary course of action is probably not going to be sufficient or what we've gotten used to over the last two years, at least. Obviously, I can't speak to any time before that. But the reality is this is a very serious issue. I think everyone recognizes it as such. We want to make sure any action we take conforms to the Administrative Procedure Act and puts the Board in a good stead to withstand any challenge to the action.

And, so, while it's difficult, I think, and I don't mean to put words in Steve's mouth, I think what he's trying to say is, it's really up to us how much time is going to be required. His sense is that we're not where we need to be here. At this point, I think that's fairly easy to conclude.

I think we talked about that in anticipation of-- in the--excuse me, in the review session we had, would have been on February 4th, the week advance review in anticipation of the originally scheduled February 11th meeting, with somebody. And I can't recall who raised the question, and I asked the staff at the time--we're still

going through the review process of the comments, much less, being prepared to move ahead beyond that. And I recall that the answer to that was, yes, that process has not been completed. And so we're quite a ways out from where we have to be in terms of timing that we had--again, I didn't mean this to usurp the discussion of the resolution, but I thought it was important--

DIRECTOR MENDELOWITZ: No, it's a good discussion.

CHAIRMAN KORSMO: Yeah I thought it was.

DIRECTOR MENDELOWITZ: I found it helpful. I actually had another question. One of the things that I'm ever mindful of is that as a regulator, we can't just tell people to do things because, you know, we want them to do it. Everything has to be supported by a well-reasoned and transparent analysis which a disinterested observer would find convincing and well put together.

Up till now, we've received comments on the proposed rule which was written very quickly in September, to move the process along. We all supported unanimously, I believe, because we all feel that better disclosure is important, and this was a way of, you know, getting the issue on the table, moving it to the next level; getting comments.

Will the commenters, who commented on that first rule, have an opportunity to evaluate both the legal and substantive analysis that we do in support of any final action so they can look at the underpinnings and the reasoning, so that they can comment on that or see how it changes their opinion maybe?

CHAIRMAN KORSMO: I think we may want to defer to our General Counsel on that question. I certainly don't want to try to answer it.

MR. JORGENSEN: If the Directors believe that they needed additional information, there are several ways that you can do that. Either ask for additional information, or you can even go through a formal process of re-proposing and requesting additional comment.

But I think it might be premature to think about that until we see what the actual analyses say. And at that point, that's part of the process that the staff had envisioned and hoped the Directors would allow us to do is to go through that iterative process at least once with you and see if there are still open issues in that area or things that we have not addressed that did come up in the comments.

And then, of course, at the far end, part of what the Board would have to do if it adopted a final rule is

explain in its rule, why it's adopting it and lay its evidence out at that point, at least in summary form to allow people who are affected by it a period of time to look at it and decide what to do with it.

And you could handle that with a delayed effective date; you could handle that with putting it in place and seeing what kind of reaction you get from the other side.

DIRECTOR MENDELOWITZ: Basically, given how much critical comments--how many critical comments we received, my view is to move forward on anything that we do with disclosure in a way that brings everybody in the community along with us.

MR. JORGENSON: As I said, I think you'd be able to tell, when we make our presentation, whether there are some of those issues that are still open that you would need additional information on. Right now we just can't tell.

DIRECTOR MENDELOWITZ: Mm-hmm.

CHAIRMAN KORSMO: Dr. Weicher?

DIRECTOR WEICHER: It's my recollection from last week that we received either 20, 21, 22, comments, something in that range?

MR. JORGENSON: Twenty.

DIRECTOR WEICHER: Twenty.

MR. JORGENSEN: The in summary comments, a draft has been prepared. We haven't had a chance to actually integrate it into the--

DIRECTOR WEICHER: I was thinking along a different dimension on this. How long are those comments individually? Twenty doesn't sound to me like a large number of comments.

MR. JORGENSEN: A couple of them are conclusory; a couple of them raise some fairly good issues that we want to address.

DIRECTOR MENDELOWITZ: This is only the first 17.

DIRECTOR WEICHER: Okay, that's not bad--that's not bad at all. I'm sorry, I didn't--

MR. JORGENSEN: Some of them are conclusory. Others provide some nice information for us to take a look at. And we are, in fact, pursuing a couple of the substantive issues that have been raised trying to collect additional information; doing some validation of some of the representations that've been made; some of the evidence that's been sent in.

DIRECTOR WEICHER: I may have not have received, okay, we do have that on the--we have received that, okay. My assistant has received that set of comments. I wanted to



make sure that I did have and do have them to look at as individual comments, as well.

MR. JORGENSON: Mm-hmm.

CHAIRMAN KORSMO: Again, I apologize for, but I thought this was important because it does relate to the resolution that is scheduled to be presented.

Thank you, Harry and Steve, appreciate your--on January 30th, I received a letter from Director Leichter and Director Mendelowitz exercising their prerogative under our delegation of authority to place a resolution on today's agenda. Who will be making the presentation, Director Leichter?

DIRECTOR LEICHTER: Yeah, I don't know that we need a staff presentation, if any of the Directors want it, we could do that, but I think the resolution's very clear. And I will speak to it and I believe that Director Mendelowitz will also address it. And possibly some of you will have questions.

CHAIRMAN KORSMO: Just as a procedural matter, should we maybe place it on the floor?

DIRECTOR LEICHTER: I think that makes good sense.

DIRECTOR MENDELOWITZ: We're ashamed that we need it.

CHAIRMAN KORSMO: There's no shame--why don't we do that--why don't I do that--Director Leichter, you want to make the motion?

DIRECTOR LEICHTER: Yes, I make a motion that the resolution that's been placed on the agenda that's before you, that Director Mendelowitz and I have proposed which provides that the Finance Board will approve it's Chairman asking the Office of Legal Counsel at the Department of Justice for an opinion as to whether the Federal Housing Finance Board has the legal authority to compel registration by the Federal Home Loan Banks under the 1934 Securities Act. And I move that resolution and place it before us for consideration.

CHAIRMAN KORSMO: There's a motion on the floor, is this any discussion?

DIRECTOR LEICHTER: Yes.

CHAIRMAN KORSMO: Director Leichter.

DIRECTOR LEICHTER: Let me present this resolution.

The aim and purpose of this resolution is to clear up an issue that has been raised and that all of us are very much aware of which is our legal authority to compel registration by the Federal Home Loan Banks with the Securities and Exchange Act.

The aim of the resolution is to clarify and dispose of this issue and at the same time, to move this process for enhanced disclosure forward. And what makes this resolution, I think, so desirable more than desirable-- that makes it necessary is that there is a very crucial, legitimate threshold issue as to the authority of the Board to take the action that was contemplated by the proposed resolution that we acted on in September 2003.

This is not a theoretical issue; it's not a minor issue, it goes to the very heart of what we're doing, which is, do we have this authority?

Now, our authority to take this action has been challenged by numerous organizations and people, very respectable, reputable organizations, among them the American Bankers Association; the American Community Bankers; the Financial Services Roundtable; numerous banks, some have presented legal memoranda raising an issue as to our authority.

That issue has to be resolved. And I believe that the only way to resolve it in a fashion and in a way that will gain credibility throughout the system is to have it done by an outside, independent office of counsel. And there exists an office to do that and that's the Office of Legal Counsel in the Department of Justice.

Now, there's precedent for our doing this. This Board did this exact same thing on the issue of multi-district. We decided that it was important to lay this issue to rest and we went to outside counsel to give us a legal opinion because we felt that that legal opinion would have more credibility.

The very same issue is before us: How do we address the legal question in such a way as to gain the sort of credibility which is going to allow us to move forward on the issue of transparency. And I submit that can only be done by outside legal counsel.

Now, in the case of multi-district, we hired an outside counsel. We didn't go to the Office of Legal Counsel; I was, actually, the one who proposed in that instance that we go and get an outside legal counsel. We might well have gone to the Office of Legal Counsel, but we didn't make that request. I think in this instance, it makes more sense, rather than hiring an outside counsel to go to the Office of Legal Counsel.

Let me say at the outset, there's no issue here-- and among any of us--as to transparency and openness. I think all of us are in agreement that we need better transparency and better openness. And that may well be

achieved by having the Federal Home Loan Banks register with the Securities and Exchange Commission.

And let me say, there's a political consensus that I think was built up in favor of doing that--and that's something that obviously will carry a great deal of weight with the Board. Certainly it will carry a great deal of weight with me. And it may well be that we can achieve that registration by the Banks with the SEC in such a way that will gain the support of the system; that will answer the issues and the questions that have been raised and that will move the system towards greater transparency and openness.

But I think that if we have all of these balance--all of these questions--starting with the question of, hey, you guys don't have the authority. Where in the Federal Home Loan Bank Act does it say that you have the right to compel voluntary registration? That's something of an oxymoron by itself. And it's to lay that issue to rest that I think we need outside legal opinion.

Now, let me make it very clear: I have great faith in the ability and the competence of our Office of General Counsel, and I'm very much heartened by my work with Harry Jorgenson and I want to publicly thank him for his cooperation; for his effort to try to deal with this issue;

and I'm also heartened by the comments that he made here today.

The issue is not the competence of the Office of Legal Counsel of the Federal Housing Finance Board. The issue is the credibility and for a number of reasons, an opinion which emanates from this office on this particular issue with all of the heavyweights, if you will, that have already said, you, the Board, doesn't have the authority, that opinion from our own Office of Legal Counsel is just not going to have the credibility and the respect that's going to lay this issue to rest.

Now one of the reasons that I think it's unfortunate and that is because the memorandum that we have, I wouldn't really call it legal opinion on this issue. I think Harry, from the comments that he made today, I think would be in agreement with that--that memorandum came out only after the issue was raised by Director Mendelowitz and me, putting this resolution before the Board.

Frankly, that opinion or an opinion should have been issued a long time ago. We acted in September on a proposed resolution to compel registration. I voted in favor of it because I thought it made good sense to have comments by the Banks and others interested in the system

and all of us wanted to move towards greater transparency and openness.

But at that time, I raised the question, do we have the legal authority? And counsel, at that time, said, yes, we do. And I asked for a legal opinion. We don't have that legal opinion. We have before us now a memorandum that was put out so as to be available to the Board before the proposed resolution that Director Mendelowitz and I have proposed was acted on. And, why I call it a memorandum rather than a legal opinion is that it's essentially a statement of the law. It's essentially, a discussion of what is a leading case. The Chevron case. And it's a perfectly satisfactory discussion.

What it doesn't do and what is needed, eventually--and I think what both Harry Jorgenson and Steve Cross said--will be produced, is a factual memo so that you're then able to have a legal opinion that applies the facts to the law.

In the absence of that, you really don't have anything that this Board can act on. And, certainly that needs to be produced. But even if it's produced, finally, it's not going to resolve the issue in such a way that will gain the support of American Bankers Association, American Community Bankers, so on. Because coming, as it did after

this Board already put out its proposed resolution and for whatever reason that I don't understand delayed for so many months in coming out even with a legal memorandum, certainly that's going to raise suspicions as to whether the internal memorandum that's produced here supports the action by this Board if it decides to move ahead on compelling registration.

I think what we have here is a problem of process, which I--as the Chairman knows--have raised often and it's sort of ironic that, at the same time that we're dealing with the issue of transparency and openness there's a lack of transparency and openness in the action of this Board.

The fact of the matter is and it was well pointed out by the comment of the Atlanta Board, let me just try to--I don't have it front of me--the Atlanta Board said, and I quote, "the proposal" and that's the proposed regulation by the Board, "does not demonstrate that the Finance Board has conducted a meaningful analysis of the business, operational, financial, or legal cause, benefits, disadvantages, uncertainties, and contingencies associated with requiring Federal Home Loan Bank registration with the SEC."

Obviously, that is the essential support for any action that this Board is going to take. And, frankly, it's



something that should have been before us and something that we need to have and something that we still do not have.

And in the absence of that it's impossible to put forth any legal opinion, because as I pointed out, the law clearly has to be applied to the facts. Do the facts support the conclusion that Chevron or the test the Supreme Court says must be applied under Chevron--does the very careful, factual analysis which that test required--is that supported by the factual memorandum as to the reasons for Board action to compel registration?

So that's the key thing, is to get that factual memorandum. What are the advantages? What are the benefits? What are the disadvantages to SEC registration? And then the Board can proceed to make the sort of analysis which would satisfy the Chevron test.

I think that there are issues raised by the coming registration with the SEC which are legitimate and genuine issues. And I think it's appropriate to state at this--for me to at least state at this time, that a comment that was made by the Assistant Secretary of the Treasury, Wayne Abernathy, where he said that the Federal Home Loan Banks are hemming and hawing on this issue that they haven't registered is an unfair statement. And as much respect as I have for Secretary Abernathy, and I think he's one of the

brightest people that we have in the whole financial service sector, I think that was an unfair statement because there are some very tricky issues involved with registration with the SEC. The Federal Home Loan Bank System, unlike Fannie and Freddie, doesn't sell its stock publicly. Stock trades at par; it's a cooperative, there are a lot of accounting issues, very difficult issues that are raised.

And it requires action by this Board by providing the sort of factual analysis that I just referred to to enable the System to work out with the SEC the basis upon which registration might be achieved.

But before any of that can be done, you need to establish that we have the authority to do this. And I say, again, that I believe that can only be done by an outside source. Now, the Office of Legal Counsel of the Justice Department exists for that very purpose. Other financial regulators, at times, have gone to the Office of Legal Counsel, I believe the Federal Reserve has, I believe the Office of the Comptroller of the Currency has. That office exists to dispose of the very legal issue that has been raised by so many of the commentators and that all of us knew was present and had to be disposed of before we address the issue of SEC registration.

So, I would strongly urge that we proceed to make that request to the Office of Legal Counsel. That request will require that the Finance Board present all the evidence and also present whatever the best opinion is of its own Office of Legal Counsel. The Office of Legal Counsel at the Justice Department is not required to act on our request, but we'll find out very promptly whether, they're willing to entertain it. It usually takes three months or so until an opinion from the Office of Legal Counsel is forthcoming. But I think that we have adequate time to do that.

Let me also say that the whole issue may become moot because as, of course, we are all aware, Congress is addressing or is looking, let's say, at the issue of whether there should be a new regulatory frame work for the GSEs including the Federal Home Loan Bank and they can, at that time, dispose of any issue that exists as to SEC registration. They can just say, you register, they can set forth the parameters for that registration--and, frankly, that's the most desirable way of doing it because, in the last analysis, we are the creature of the Congress.

So, I would urge that in order to put this process on a better track, to let the System know and people or organizations interested in the System, that we're proceeding in an orderly way. We are proceeding in an open

way; that we haven't reached a secret resolution here and that we're just going through the motions that we will honestly address legal issues, factual issues that have been raised; try to resolve this; and try to do this in a collaborative way.

There's been an awful lot of conflict about this issue, which has been totally unnecessary. It's been unnecessary because we really proceeded--when I say we, the Board, has--not the Board formally, but there's been a confrontational approach with the Banks that I think has not been helpful.

The issues that need to be resolved require the involvement of the Finance Board. I don't think you can have each of the Banks work out its own arrangements with the SEC, which is pretty much where the situation stands at the present time. There needs to be an overall memorandum of understanding with the SEC if we're going to proceed in this direction and if we decide this is the best way to achieve greater transparency and openness, then it has to be done in a way so that the problems that are raised by the cooperative nature of the System fit into the SEC mold.

And while we've received--and certainly I've heard them--some helpful comments by Mr. Beller of the SEC, all of this needs to be set forth in a memorandum. Now, all of

this is based on the assumption that we will proceed, that the Congress will not clarify some of the issues.

But the first step is, still, do we have that authority and, while I'm perfectly happy with the opinion that'll be forthcoming from our Office of Legal Counsel, I don't think it's going to satisfy a lot of people. I think we're going to have a lawsuit if we proceed this way.

The only way to dispose of this issue in a credible manner is to ask the Office of Legal Counsel. If they come out with an opinion, the Office of Legal Counsel says, yes, the Finance Board the authority to do this. I think it'll dispose of the issue and we will be able to proceed.

Absent that, we will have the continuing conflict, the continuing questioning, the continuing challenge that has characterized the whole process so far. It's unnecessary. It isn't helpful. We have a way to dispose of this issue in a conclusive fashion. And I would urge that we ask the Office of Legal Counsel for their opinion.

CHAIRMAN KORSMO: Is there any other discussion of the motion? Dr. Mendelowitz, this is your co-sponsor, perhaps, you'd like to--

DIRECTOR MENDELOWITZ: Yeah, thank you, Mr. Chairman. I, too, would like to join in the laudatory

comments that Director Leichter had to put on the record regarding the ability and the integrity of our General Counsel and the General Counsel's staff. And I would be very concerned if anyone were to interpret support for this resolution in any way that would be deemed to be critical of either the capability, skills, integrity and commitment of our General Counsel and their staff. And so, I want to get that on the record.

I think that there's a challenge that's been thrown down to us recently. Some critics have looked at the Finance Board and said, notwithstanding all of our statutory powers to effect our regulations--and notwithstanding access to whatever necessary funds we need to fulfill our statutory mandate, we're not as effective a regulator as we should be, because we don't have stature.

Now, stature is not something that could be conferred like knighthood. Stature is only something that can be earned. And the way that a regulatory agency earns respect and stature, I believe, is by following two imperatives? One is, always try to do the right thing; and always try to do the right thing in the right way. It's as simple as that.

And the right way for a regulatory agency to undertake its responsibilities is to make sure that when it

makes decisions and issues regulations, they're grounded as firmly as possible in good legal analysis; good financial analysis; good financial analysis; and we create a record that is transparent and convincing. And in that light, I was very encouraged by the briefing that Steve and Harry gave on the progress they were making on trying to fulfill some of those responsibilities.

Better disclosure is clearly something that's the right thing to do. There is a lot of disagreement on the best way to go about doing it. And the resolution today is about the Finance Board going about trying to do the right thing in the right way.

Because what we have proposed to do in the regulation for consideration put out by the Board in September, because of this is a--because this issue is a very contentious issue; because this is an issue which based on the legal critiques we received is likely to be challenged in court; we really have to make sure that we dot our "i"s, cross our "t"s and do the right thing in the right way to make the most strong, convincing, clear, transparent case for what we want to do.

Up till now, we actually have come up short. There's been a lot of pressure on the Banks to go forth and strike a deal with the SEC. But the Finance Board has not

completed and, in fact, probably undertook far too late in the process the substantive financial and legal analysis necessary to make the case.

I believe that the resolution that we have before us today for consideration is something that everyone on the Board should support. We should support it together as a common effort to make sure that we're doing the right thing.

And I have to tell you there is no downside if we adopt this resolution. And, Mr. Chairman, you request the OLC for an opinion. Our progress forward toward better disclosure will not be slowed. Because it's clear from the briefing of Steve and Harry, that we do have a tremendous amount of work left to be done before we can consider a final regulation.

There's no downside because, if OLC--which I firmly believe and hope they will do--confirms our legal authority, our case going forward will be strengthened and the likelihood of a legal challenge will be reduced. And if there is a legal challenge, the support for our position will be that much stronger.

And in the unlikely event that OLC does not confirm our legal authority, we are definitely ahead of the game there, too. Because, one, we'll avoid making a mistake; and two, we can then return to the issue of better



disclosure and figure out how to make sure that the disclosure of the Home Loan Bank System within our legal authority is the best possible and most timely disclosed.

And so, I urge you all to support this resolution. No downside, only an upside, and we can show the world we can work together to do the right thing in the right way.

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

DIRECTOR CASTANEDA: I have a comment, that I would like to--

CHAIRMAN KORSMO: Director Castaneda.

DIRECTOR CASTANEDA: I joined the Finance Board after the proposed regulation was adopted. So, I have approached this resolution offered by Director Leichter and Director Mendelowitz with great care. I thank them for the time they spent discussing it with me.

I also greatly appreciate the assistance given to me by our General Counsel. After careful consideration, I feel I must oppose the resolution at this time. After all the hard work by the members of this Board and its staff in recent years to build a truly world-class independent, and arm's length Home Loan Bank supervisory capability. I fear that, if passed this resolution could potentially undermine important progress that has been made toward that goal.

It would send precisely the wrong message to the Administration, to Congress and to the Home Loan Banks and their members and despite the very real progress that you have all made to date, the Board still cannot resolve difficult and important matters that come before it.

Quite simply, I am not prepared to send a message by deciding today that the Finance Board Staff is incapable of guiding us through this important rulemaking.

My long experience in banking has convinced me time and again of the importance of waiting until you have all the necessary information before making important decisions. Especially, where, as it appears to be the case here, important information may well ready be close at hand.

In preparing for today's discussion, I reviewed a transcript from the September 2003 meeting at which the proposed regulation was adopted without a dissenting vote. During the meeting, concerns were raised about the Board's authority to mandate that quarterly and annual reports be submitted by each Bank to the jurisdiction of the SEC.

The transcript also includes the General Counsel's oral opinion that the proposed regulation was within the authority of the Federal Home Loan Bank Act.

While the General Counsel's oral statement seems, at least to my admittedly, non-lawyer mind, fairly clear, I

understand that a not unreasonable request was subsequently made to have the General Counsel prepare a written memorandum to that effect. I also understand that such a memorandum was begun by the former General Counsel.

While the final and complete administrative record necessary to act on the proposed regulation may have been delayed--no, doubt compounded by the recent turnover in the General Counsel position--I think the current General Counsel should be given a reasonable opportunity to complete it and to confirm or revisit the staff's September advice.

Accordingly, the present resolution seems to me at this time to be unnecessary.

As a matter of general practice, I think the most prudent policy for the Board before acting on a registration regulation, is to first obtain and understand the advice and counsel of it's own staff before resorting to other means. While exceptions may exist, I see no reason in this case to diverge from this prudential rule.

The staff has already given oral advice to the Board and efforts to prepare a written product are already underway. I see no harm in affording the staff an additional reasonable period to complete their work.

On the other hand, I fear considerable harm would result from failing to do so and proceeding immediately as sought in the proposed resolution.

We're all aware that the Board and the System are under scrutiny. If we're serious about our joint efforts to create a world-class regulator and supervisory capability, we must demonstrate our trust in our staff and our own judgment.

This Board cannot afford to undermine its own authority and credibility. No sensible body would do so. And no supervisory body worth the name should delegate the responsibility to resolve difficult issues arising before it to third parties in the first instance.

So, I respectfully oppose the present resolution. To do otherwise, I fear, would be an unwise practice and unsound policy and set an unhealthful precedent.

CHAIRMAN KORSMO: Is there any other discussion on the resolution? Mr. Weicher.

DIRECTOR WEICHER: Yes, thank you, Mr. Chairman. As you said to begin with, this is a more significant issue--I'm not sure that was your exact term--than those which we typically discuss at Board meetings and I certainly think that's true. And I think it requires our serious attention.

Now, of course, I am not a lawyer and--but, I am a member of this Board. And my own view is that before I am prepared to vote to turn over any part of my decision-making authority to someone outside this Board, I want to be sure in my own mind--I want to be able to make my own judgment, even if it be a judgment on legal matters on which I am not professionally expert.

But I want to make my own judgment. And one of the ways in which I am going to make my own judgment is to read the comments which we have received. Twenty comments doesn't seem to me, like, a lot of hard work, particularly.

My colleagues know that we have been pursuing a rule making under the Real Estate Settlement Procedures Act, in which we received over 400 substantive comments. And, while I did not read all 400 of them, I read, certainly, more than 20. And I think it will be useful to me to look at those comments. Perhaps to discuss them with individual members of the Board. Perhaps to discuss them with General Counsel Jorgenson and his staff. And make my own opinion as to whether I am prepared to vote to turn over my responsibility to the Office of Legal Counsel.

My colleagues have said they have a good deal of respect for the Office of General Counsel. I want to support that. I also want to follow--I certainly have great

respect for the Office of Legal Counsel in the Department of Justice.

It's unusual, to my knowledge, for a regulatory agency to turn to the Office of Legal Counsel on a matter of policy such as this. My understanding is that issues, when they have arisen, have involved such matters as the terms of appointments of members of regulatory bodies and similar issues.

I think we have--I think there are two issues that my colleagues are raising: One is, do we have the legal authority? The other is, what--do we have a record to support our judgment? I think we have--we all heard, except Director Castaneda, who, of course, read the opinion of our former General Counsel as to the question of whether we had the legal authority to proceed or not. We all, certainly, accepted that opinion, at least on a provisional basis and went forward with the proposed rule.

I have read the opinion from General Counsel Jorgenson and found it useful. I think I identified the individual sentence that you added, as well. And I think that is useful information. I intend to supplement it with whatever other information you all provide; whatever other opinions you provide, as well as with the opinions of the 20

commenters who have, if all of them have commented on this--  
on this subject.

I want to remind my colleagues that under the Administrative Procedures Act, the preamble to any final regulation will include a summary of the comments received, organized by topic and will include our judgment on those comments--the relevance of those comments--and a statement of how we have chosen to react to those comments in the context of the rule.

The preamble to a final rule of substance and significance can be very long. I'm not wishing that on our staff but--

CHAIRMAN KORSMO: I think they're getting the message, John.

DIRECTOR WEICHER: I think they--I think, probably, they are aware of that.

I don't find it persuasive to defer action while we wait for Congress to proceed on this matter. I'm only an economist, I'm not a political scientist and, therefore, I don't really want to try to form a professional judgment about how Congress will proceed. I think it's easier to be an amateur lawyer in this respect, frankly.

But I do know this, that the--both the Department of Housing and Urban Development and the Office of Federal

Housing Enterprise Oversight, have not abdicated our responsibilities as regulators of Fannie Mae and Freddie Mac, while awaiting congressional action on regulatory reform. Even as we, as an Administration have proposed legislative changes and even as Congress has begun to consider how it might proceed.

My colleagues may know that we, at the Department of Housing and Urban Development, have the responsibility for establishing the affordable housing goals for Fannie Mae and Freddie Mac under the Federal Housing Enterprise Financial Safety and Soundness Act of 1992. And we have, in fact, submitted a proposed rule to OMB.

We expect that rule making to continue forward unless and until Congress acts in such a way as to negate any--either our authority to remove our authority to do this, or to render it unnecessary.

Similarly, OFHEO, which, of course, has been, since the beginning of the Freddie Mac accounting issues last June, has been criticized vigorously for inadequate exercise of regulatory authority has proceeded to act to learn more about the financial situation of those GSEs and has not simply waited for Congress to act; even though I've heard almost no one say, if anyone, say that OFHEO should remain in position in a future regulatory structure.



We can't do that. We can't wait for Congress to decide whether we should, in the future have this authority or should not in the future have this authority. We are here to do the best job we can on the matters that we have the authority and responsibility to act on.

I see my position in acting as a member of this Board in trying in the first instance to form my own judgment and in the second instance, then, to consider whether I want the further judgment of the Office of Legal Counsel. I don't think this reso--I think this resolution is premature at a minimum. And I, therefore, do not expect to vote for it this morning.

CHAIRMAN KORSMO: Thank you, Commissioner Weicher. Is there any other discussion of the motion? Director Mendelowitz.

DIRECTOR MENDELOWITZ: I just wanted to make sure I understood the positions taken by Commissioner Weicher and Director Castaneda. Basically, you stated that you're going to vote against this resolution because, as a matter of principle, you oppose delegating to another agency the statutory and regulatory authority the Finance Board has. Because if we do that it will undercut our credibility as a regulator. Is that correct? That's what I've heard you both say.

DIRECTOR WEICHER: I have said that before I turn over the regulatory--the authority which I have as a member of this Board and the Office of Legal Counsel requires us to vote that we will accept their decision, whatever it is. Before I choose to do that, I intend to form my own judgment as to the merits of whether we have that authority or not. And then go from there.

If, subsequent to any final rule anyone wishes to sue the Board, that is their prerogative, it is a free country and I certainly would not try to dissuade anyone from doing that.

My judgment is we are here to make our own--my view is we are here to make our own judgment and I want to make my own judgment before I vote to turn over my authority, my responsibility to an outside entity. If my colleagues wish to do otherwise, again, it's a free country and we can, as a Board vote to do that if we wish.

DIRECTOR CASTANEDA: I think that's pretty much what I say, Director Mendelowitz. I would like to see and hear what legal counsel is going to present to us before we go to an outside--to get an outside legal opinion.

CHAIRMAN KORSMO: Director Leichter.

DIRECTOR LEICHTER: Let me just clarify certain things. Director Weicher, we're not turning over any of our

authority or any of our right to make our own judgment by asking for a legal opinion that's going to be rendered by an independent agency. So, I think we ought to be very clear on that. All we're doing is getting a legal opinion.

Now, why are we getting a legal opinion from an outside agency, when we have lawyers in-house? It's done all the time. It's done by the Federal Reserve. It's done by OFHEO. It's done by the Comptroller of the Currency. They're not turning over their authority, they're asking for legal opinion on an issue of statutory construction which can be rendered best and in a most credible fashion by the Office of Legal Counsel.

I didn't hear you object when we went out and got a legal opinion on the issue of multi-district. I don't think anybody said, Commissioner Weicher, you're turning over your authority, you're turning over your judgment to Morrison & Foerster.

CHAIRMAN KORSMO: Director Leichter, let me, I don't mean to interrupt, but I think we're operating under a major misconception here, if I'm--and please, I'm going to ask Harry Jorgenson to correct my misimpression. One of us is--has a--is wrong about what the responsibility and the obligation of the Office of Legal Counsel is. I think it's easy to distinguish us seeking an opinion from Morrison &

Foerster on a particular issue because we're not bound to follow their advice.

Unless I misunderstand, and please correct me if this is not the case, I think we're required to submit a question to the Office of Legal Counsel to agree as a Board to be bound by their view of our authority. Is that not correct?

MR. JORGENSON: That is correct.

CHAIRMAN KORSMO: So it's easy to distinguish between the Morrison & Foerster case where we sought a perspective on an issue that wasn't before the Board, from an attorney whose advice we are in a position to reject if we decide to do so. It's easy to distinguish that situation from the situation of submitting a question to the Office of Legal Counsel for their opinion on our enabling statute. Because in order at the threshold for them to agree to take that question, we have to agree to be bound by their view of the law.

DIRECTOR LEICHTER: Well, let me respond, Mr. Chairman, by saying I think it's a distinction without a difference. Because the fact of the matter is--

CHAIRMAN KORSMO: Well, wait a minute.

DIRECTOR LEICHTER: Can I finish my comment?

CHAIRMAN KORSMO: Please do.

DIRECTOR LEICHTER: Okay, thank you. Because the fact of the matter is that if you go outside and you get a legal opinion, as we did with Morrison & Foerster--first of all, let me emphasize it was not done because of any lack of faith and confidence in our own Office of General Counsel. It was done to try to get the sort of authority for the action that we might take which would gain acceptance throughout the System.

And the fact of the matter is, you go out and you pay, I don't know, \$20,000, \$25,000 and got a good legal opinion. Yes, we could have said, well, we're going to disregard it, but as a practical matter, it is highly unlikely.

Similarly, I'm not--I'm not 100 percent certain that if you go to the Office of Legal Counsel that you're bound to accept their opinion. Because as a practical matter, obviously, nobody's going to go to the Office of Legal Counsel if the Office of Legal Counsel says, you don't have the authority to compel registration and we say, well, thanks, for your opinion, but we're going to go ahead anyhow. Clearly, whatever the Office of Legal Counsel advises us as to our legal authority is going to be binding on us because I think none of us would have the temerity to say, ah, what's the Justice Department, what do they know?

So, again, you're not giving up your authority Commissioner Weicher, you're getting a legal opinion, that's not giving up authority. And I think it would be not only a guide to us, it would--it would buttress whatever action we take by cloaking it with the authority of the Justice Department.

Let me say to you Director Castaneda, the Federal Reserve went to the Office of Legal Counsel. The Office of the Comptroller went to the Office of Legal Counsel. OFHEO went to the Office of Legal Counsel. I don't think anybody said, oh, my God, they're a terrible organization, they can't handle these things themselves. Look at the issue. This is the issue that OFHEO went to the Office of Legal Counsel. It says, Office of Legal Counsel says, "this response to your request for our opinion regarding the applicability of the Trade Secrets Act"--and they give citation--"to the Office of Federal Housing Enterprise Oversight's proposed provision to other federal agencies of certain proprietary information that it receives in carrying out its statutory responsibilities." This was the opinion that the Fed sought. "This response to your request and we clarify an aspect of an opinion previously issued by this office respecting 18 U.S.C. § 215, which prohibits a Bank

examiner from borrowing from any Federal Reserve member bank."

So, there is a precedent for doing that when there are certain complex legal questions where there may be a conflict within federal agencies or within the public at large and you really want to get the imprimatur of the Justice Department.

I suggest to you that this situation fits that mold and that we're not giving up any authority. We need to know whether we have the legal right to do this. That's not something, with all due respect that I, as a lawyer, sitting on the board can make that decision or, frankly, that an economist sitting on the Board can say, oh, yeah, I think I have the legal authority. You need to get the sort of legal opinion that is going to support whatever action you want to take. And this was the main point that I tried to make--and to give us the credibility for any action we're going to take.

Now, if we want to continue to proceed in a confrontational manner, that's fine. Ignore all the comments, don't find a way to respond to them in a way that's going to resolve this in what I think would be an acceptable way. And say, fine, sue me if you want to. Go ahead, sue me. I'd like to avoid that.

I think we have a way to do that and we would not be giving up our authority. We would be acting in a prudent, reasonable manner.

DIRECTOR WEICHER: May I respond.

CHAIRMAN KORSMO: Before we do that, I certainly hope no one sitting in this room has heard anyone suggest it is our intention to ignore the comments. But that notwithstanding, before we get too far afield here, I would, and I don't mean to put you on the spot here, Harry, but you are our General Counsel and I would like some clarification if I will--if you would, as to what the position of the Office of Legal Counsel is on taking these kinds of questions.

MR. JORGENSEN: At the outset, I have found this exchange not only stimulating, but instructive. It's going to certainly help the staff put together a complete record for you--

CHAIRMAN KORSMO: Sure.

MR. JORGENSEN: --when you consider the final record.

I had my staff contact OLC staff to determine what the process would be prior--when we heard about the resolution to see what that ministerial process would be.



Office of Legal Counsel indicated, and my prior experience with that office is from the outside looking in, has--is consistent; that a federal agency in the Executive Branch of government, normally it's a Cabinet Department, will ask for an opinion. And it's normally a conflict-of-laws question. It's usually on a dispute between two cabinets over an interpretation.

The second large group of opinions that's given out by the Office of Legal Counsel is normally generated inside Justice itself or is generated by one of the offices in the White House that is looking at the appointments clause and trying to determine, for example, how vacancies can be filled, whether they can be filled, what the terms and conditions would apply to them.

It's not unheard of for an independent agency in the Executive Branch of government to ask for an opinion. But there are some wrinkles there.

For example, in the Federal Reserve, I believe that opinion was asked for by somebody outside the Federal Reserve because the Federal Reserve is not an Executive Branch--federal agency in the Executive Branch of government. Some of these little independent agencies, in order to get an opinion out of--to get an opinion out of OLC have had to find a friendly large Executive Branch agency

who may have an interest in what they're doing to present the question on their behalf.

Not that the work isn't done in the independent agency, but it's presented on behalf of them by the Cabinet Agency.

DIRECTOR LEICHTER: Let me, just--on the Federal Reserve--it was asked for by the Office of General Counsel of the Board of Governors--

MR. JORGENSEN: May I see it, I'm not familiar with that one at all. I only worked there for 25 years and I--fascinating.

In any event, the type of information that the Office of Legal Counsel likes to see is the opinion of General Counsel and all supporting documentation, including any findings of fact and conclusions of laws and recommendations on why you've interpreted the statute the way you would.

In other words, they pretty much like to see what staff is already putting together for you for your meeting, when you consider whether to adopt the final rule. And in what form you would adopt that final rule if you decide to go forward with it.

So the very material that we would have to put together for the Office of Legal Counsel if you went forward

to ask the question is the kind of material we're already preparing for you. So, at least as far as I'm concerned, it's the question of queuing, do you want us to prepare it for another office or would you rather see what we're preparing and then make a judgment on what you want to do.

They did indicate to us that General Counsel must provide the Office of Legal Counsel with an opinion that explains how the General Counsel believes the issue should be decided and submit any supporting information, including any concurring or dissenting views of other members if it's a collegial body that's doing the requesting.

But, they also indicated that the requesting agency must agree to be bound by the Office of Legal Counsel's opinion. And there was not--we asked them how much play there was in that and they said there isn't any. That's the policy of the Office, we will not opine unless you agree to be bound.

CHAIRMAN KORSMO: Dr. Weicher.

DIRECTOR WEICHER: Am I interrupting you Mr. Jorgenson?

MR. JORGENSEN: No.

DIRECTOR WEICHER: I just wanted to say that I am very far from intending to ignore comments. The opposite, I am intending to read the comments. All of the comments on

this subject, I am not ignoring the comments at all. I want to say, also, that if I led anyone to believe that I treat the thought of a lawsuit cavalierly, I certainly do not intend to leave that impression.

I do want to make the point that on matters of regulatory policy where there are different points of view, it is not uncommon, certainly in my HUD experience, not uncommon to see statements in the comments that we receive indicating that should we decide in a particular way a lawsuit is a likely consequence. It seems to me we have to be prepared for the possibility that we will be sued on anything and that we can't make our decisions--we can't rule options out because one interested party or another offers to sue us.

I intend to do my duty, as I see it, as a Director of this Board. And I see my duty as starting by reading the comments and making my best amateur judgment as to what we should do. And then go from there.

CHAIRMAN KORSMO: Director Mendelowitz.

DIRECTOR MENDELOWITZ: Commissioner Weicher, you always get a bit of a pass because you have a day job and so I don't want to imply that I'm not--that I am in any way criticizing you because you haven't read the comments yet, but because I don't have another day job, I can put down and

do it, that you don't have and do things a little bit earlier than absolutely necessary sometimes.

I have read all the comments and I was concerned because when I read the comments, basically, we face universal opposition from the commenters in what we propose to do.

Notwithstanding the fact that I don't think there's anyone who can make a good argument against better disclosure.

And the comments came in and notwithstanding Director Leichter's request for a legal opinion six months ago, we still didn't have it. And we asked for this legal opinion to move the process forward because there was no legal opinion. Only after--when we put forward the request that this Board consider the resolution to ask OLC for its opinion was there the beginnings of a legal opinion provided to us for our consideration.

And that's not the time line, I think that a responsible regulator interested in earning stature by doing the right thing in the right way should do things. And I just, you know, I think on the merits, I think we don't lose anything by going to OLC.

Mr. Chairman, I listened to the discussions around the table and I have to say that we're at an interesting

impasse. I think two Directors put good and cogent, well thought-out reasons why they don't want to support this resolution at this time. And two Directors put good and cogent reasons why they want to support this resolution at this time. And I think it would be a good thing to improve it.

You haven't expressed your opinions. One of the criticisms that this Board has been subjected to is that the Board seems to decide everything on partisan grounds. And I keep telling people that's not the case. We decide things on the merits.

There's nothing partisan about this issue. This is really an issue about process. This is an issue about what we're all concerned about, whether we're for the resolution or against the resolution, which is trying to do the right thing for the Finance Board and doing it the right way.

And I would just call on you that here's an opportunity for you to put the lie to all those folks who think we only decide things on a partisan grounds.

CHAIRMAN KORSMO: Well, as with most of the questions you pose, Allan, there's always a trick to it underlying it. In this case, I'd be more than happy to break the tie.

Let me say that this question--and I agree with you--the questions that we are confronted with are not partisan, inherently partisan in their nature. They are, however, or they do tend, however, to have a philosophical or an approach perspective to them. And to the extent that the approach that you bring to this Board is different from the approach I bring to this Board or that Director Castaneda brings to this Board is different from the approach Dr. Weicher or Director Leichter brings to this Board. They do tend to break down on those philosophical issues.

And I've raised this point before, that we all come with very different perspectives to this table on the proper role of regulation; of how best to approach resolution of conflicts; and, I think that's healthy, frankly. The suggestion that we've had in the media and elsewhere that every vote here should be five/zero, to me belies the intent of Congress when they made sure that no-- that at no time will this Board have more than three members of the President's party as members. There's a reason that Congress anticipated that. Because they wanted different philosophies, not necessarily Democrat/Republican, but what those partisan differences tend to reflect, in terms of principle.

It's been interesting you've said quite rightly that both of those proposing this resolution and those in opposition to it have argued convincingly. I would suggest that many of the issues that have been raised, while they go to the heart of the question of SEC registration and whether or not we should move forward with a resolution mandating that registration.

While they go to the heart of that question, they're largely irrelevant, if you will, they're certainly not germane to the issue that's raised by this resolution.

You said earlier that we've got nothing to loose that they're not, what was it, very real or very serious downside to this. Well, I would disagree entirely. And, again, it's not based on Republican and Democratic perspectives but it is based on philosophy and principle, I believe. And I'm more than happy to defend what I believe those principles to be and, in fact, because we're in the midst of a formal rulemaking procedure, I, frankly, feel obliged to explain my opposition to this resolution. And I will do so.

I believe there is a very serious downside to that. And I believe it is that adoption of this resolution would needlessly and, perhaps, irreversibly corrode the independence of the Finance Board and the authority--you



mentioned before--and stature of our highly skilled and committed staff.

The letter placing this before us states two reasons for the proposed action. The first is that commenters on the proposed rule requiring SEC registration argue that this Board lacks the authority to promulgate a regulation formally requested by the Boards of Directors of three Federal Home Loan Banks, I will remind you all.

Let's look closely at this reason. Of the 11 Federal Home Loan Banks filing comments on the proposal, only one, the Federal Home Loan Bank of Indianapolis, makes a claim that the Board is exceeding its authority.

The Indianapolis Bank also calls on the Finance Board to seek an advisory opinion from the Office of Legal Counsel. Something, which I think we just heard our General Counsel say is not possible. The Office of Legal Counsel does not provide advisory opinions.

Three Banks, Cincinnati, Chicago, and Topeka, have already begun the voluntary SEC registration process. They and eight other Banks present no formal contest to the Board's legal authority in this area.

If I could have your attention Director Leichter, I notice that we all paid close attention to your comments when you were making them. And, unfortunately while Dr.

Weicher was speaking and Dr. Castan--and Director Castaneda was speaking, you and your Board Assistant were busy having a conversation. I would appreciate the courtesy of listening to my remarks whether you agree with them or not.

The Boards of Directors of three other Banks, Atlanta, San Francisco, and Dallas, actually made formal requests to the Finance Board for a regulation concerning voluntary SEC registration.

So, who is allied with Indianapolis in challenging the validity of the regulation? Director Leichter has pointed that out. That the trade associations filing comments for, the American Bankers Association, America's Community Bankers, the Financial Services Roundtable, and the New Jersey League of Community Bankers argue that the proposed regulation is beyond out authority.

None, to my knowledge, presented a full legal memorandum of the sort that will underpin final action by the Finance Board in this area. If any of these parties seeking to effect this rulemaking has provided additional legal support, not part of the record of public comments, it should be made part of that record.

Has anyone here received such a memorandum?

National Association of Homebuilders, the Independent Community Bankers of America, the West Virginia

Homebuilders and a member of the Boston Bank, filed comments that differ with the industry nay-sayers on the point of Finance Board authority.

To review the breakdown of 22 comments received-- and I think the confusion is, 20/23, one of the 20 comments, actually was three comments represented three commenters. So, there's the difference. Only one Federal Home Loan Bank and four lobby groups argue that the Finance Board lacks authority to require that each Federal Home Loan Bank begin making quarterly and annual disclosures that meet the minimum standard accepted by their peers and competitors.

Eleven of the 12 Home Loan Banks accepted or at least acquiesced in our authority in this area. And let me explain myself.

As I mentioned, three have actually begun the voluntary registration process; three or more affirmatively sought a regulation such as the one proposed in September; all, I repeat, all of the Federal Home Loan Banks are on the public record fully accepting--and this goes to your point, Director Mendelowitz--fully accepting that the Finance Board has statutory authority to require that they collect, report, and disclose to the public the exact same data reported in exactly the same manner and under exactly the

same rules that would be required by '34 Act registration with the SEC.

The only actual legal matter on which there is a credible, but easily resolved debate is the sufficiency of our reasons for determining that SEC registration under section 12(g) of the '34 Act is the better mechanism for reviewing the financial and governance reporting every Bank has agreed to make, compiled under standards in a format that every Bank has agreed to follow.

This question, the sufficiency of the reasoning behind the policy choice to use the existing and globally recognized SEC program, rather than constructing a duplicate program within the Finance Board, is beyond the scope, frankly, of OLC's purview.

The overwhelming majority of banks and trade associations filing comments concede that the Finance Board has authority to require Banks to collect and make public precisely the same data covered by SEC registration under the '34 Act. Most of those commenters encouraged the Board to do just that.

To me, the fact that some commenters questioned the validity of our regulation, is to be expected.

Last September when the proposed rule mandating SEC registration won the vote of all the members of this

Board, the very same argument was already more than a year old. In fact, during a public hearing in this very room in December of 2002, that argument was made directly to the Board.

So, if the self-serving claim that the Federal Home Loan Bank Act does not authorize this Board to establish a disclosure standard for each Federal Home Loan Bank is not new, then what else has changed since September?

Well, the January 30th letter from Directors Leichter and Mendelowitz states a second reason for placing in the hands of the Administration the decision to bring Federal Home Loan Bank transparency to the level adhered to by the Banks' peers and competitors.

That second reason is that attorneys did not finalize a memorandum requested by Director Leichter.

During public debate in September, Director Leichter expressed a concern about the legal basis for the regulation and was unequivocally assured by the General Counsel that the authority behind the action was clear and sound. Allow me to quote the Board's distinguished former General Counsel from the transcript of that meeting. I quote, "I want to reassure all of the Directors, including Director Leichter, the Office of General Counsel would never propose this regulation if it hadn't concluded that, as a

matter of law, you have the authority to propose that regulation."

Director Leichter, sensibly, asked that a memorandum be prepared by our attorneys spelling out the General Counsel's opinion and then, along with all of us, voted in favor of the regulation.

But during the interim since September, the memorandum requested by Director Leichter was not put in final form and circulated. It is beyond debate that Director Leichter and each director should have, indeed, will have, the memorandum requested. But it is also beyond debate that our staff is fully confident that the proposed regulation, adopted unanimously, is legally sound.

So, if the Indianapolis Bank and lobbying group argument that on the record before the proposed regulation was adopted and a regrettable breakdown in communications between OGC and the rest of us has been corrected, then what has changed?

Nothing. Nothing, of course, except the threat of a lawsuit. But an opinion from OLC will not forestall litigation by a Federal Home Loan Bank or lobby group willing to spend the resources necessary to delay, but certainly not defeat better disclosures for the public investors who fuel Federal Home Loan Bank lending and

greater resilience and transparency for the agency debt markets that sustain the Federal Home Loan Banks.

I am at a loss, then, I will confess to understand the motivation. But I see clearly the consequences of adopting this resolution: First, we will surrender the keystone of this agency's considerable authority, the power and duty to enforce and administer the Federal Home Loan Bank Act; the comprehensive statute that provides the legal basis for the Federal Housing Finance Board and the Federal Home Loan Banks.

Directors Leichter and Mendelowitz must know that the Justice's Office of Legal Counsel does not provide advisory opinions on such questions. The Justice Department's opinion, whatever it says will bind us and will forever after undermine the independence and authority of this and future Finance Boards.

Even more corrosive, in my judgment, will be the effect on our day-to-day supervision of the Federal Home Loan Banks. If this resolution were to be adopted, it would provide a license to any Bank to ignore or defy senior staff of the Finance Board. Or even action by the full Board itself, until the Attorney General validates our safety and soundness and mission oversight judgment.

If the Federal Housing Finance Board gives away to the Attorney General its authority, I ask again, how will we reclaim that authority if Banks later complain that capital standards or examination procedures or our retained earnings policy or posture on dividends or our insistence on first-class risk-management for mortgage portfolios are tougher than any one Bank wishes the law allowed.

Second, it will delay, perhaps for a year, and maybe that's the point of this--the establishment of a disclosure standard that gives investors confidence that quarterly and annual reports by Federal Home Loan Banks meet the minimum required and other issuers of debt in public markets and the standard accepted by the Banks' peers and competitors.

The opinion requested by my colleagues is contrary to their assertions, wholly without precedent. Never before has the Finance Board agreed to allow another government agency to define the limits of our core authority under the Federal Home Loan Bank Act. Never before has the Finance Board taken a supervisory action or refrained from acting on advice from attorneys other than our own.

This resolution runs against the practices and procedures of the Office of Legal Counsel, itself, as I think we've heard our General Counsel tell us. In fact, my



colleagues, I guess should be surprised that given my portrayal by some as too close to the Administration should be surprised that I oppose this Administration or, indeed, any administration, having the final say on what our enabling Act requires.

But, we should probably be particularly surprised in this case, because we're going to ask an Administration whether the Finance Board may take an action that furthers a clearly stated Administration policy, that is, the voluntary SEC registration by all government-sponsored enterprises.

We'll all soon receive a memo requested of our attorneys. We've been assured of that on several occasions this morning. There's plenty of time to study our attorneys' memo before the Board considers a final regulation. If my colleagues believe at the time that the final regulation is considered that it oversteps the Federal Home Loan Bank Act, the course of conscience will be to vote, no, rather than today, to eviscerate the authority of our senior staff and of this Board or any successor to our mandate.

I will not agree to that this date. And when the final regulation is before us or nor will agree to dilute the independence and strength needed to stand up to the Banks and to the lobby groups on the transparency issue on

this or any other issue. And so that's why I intend to vote against this resolution.

Is there any other discussion that hasn't been covered? Director Leichter.

DIRECTOR LEICHTER: Mr. Chairman, I'm not going to answer all of the points you sought to make. Let me just say, I think that when you stated that only the Indianapolis Bank challenged the authority of this Board, I think that is not correct. My recollection in reading the comments is there was also a number of other Banks, Des Moines, Atlanta, Topeka. Let me read from the Topeka Bank--the sort of exercise that I was talking to my staff person--I was just asking him to hand me the comment of the Topeka Bank.

CHAIRMAN KORSMO: Apology accepted.

DIRECTOR LEICHTER: Well, it's not an apology, I think it's common practice here with certainly no disrespect to any speaker if we turn to our staff for some material. I'm sorry you took it as a lack of attention. I pay very great attention to what you say, and as you know, as we exchanged letters recently, I look to your comments to see that they're then carried out so that the commitments--

CHAIRMAN KORSMO: Thank you, get to your point.

DIRECTOR LEICHTER: I'm getting to my point and I'll do it in the way that I deem appropriate. So, I think

it's very important to hear what you have to say and to see whether what you say, in fact, fits the facts. And many of your statements, unfortunately, did not. Topeka said, for instance, and I quote, "whether that authority allows the Finance Board to mandate that the Federal Home Loan Banks be forever subject to the jurisdiction of another regulator is a much different question." I think to characterize those who raise the legal issue as to our authority as self-serving, I think is unfair. I think these are legitimate issues. They're issues that all of us knew exists under the law that I raised in September and I made it very clear that it was very important to have a legal memorandum.

The fact of the matter is, that was done in September, now it's February 18 and we still don't have a legal memorandum.

CHAIRMAN KORSMO: Just so we're clear on this. I agree with you completely--

DIRECTOR LEICHTER: Okay, thank you--

CHAIRMAN KORSMO: --Director Leichter, it's inexcusable that we didn't receive the memorandum.

DIRECTOR LEICHTER: Right.

CHAIRMAN KORSMO: And I'm glad that one of the first challenges that Mr. Jorgenson took when he got on the Board was to provide that memorandum.

DIRECTOR LEICHTER: Right and I'm glad we agree that, as much as we respect Arnie Intrater, it's not sufficient for this Board to act solely on the oral assurance of counsel. And that's why what I said in September, and I want to quote the whole statement. Quote, "I think it's important to have a legal memorandum that assures the Directors that we have that authority and I will assume that that will be forthcoming. And I think we will have to look at the comments and then maybe then if an issue does exist as to our authority that we will have to take appropriate action and maybe seek counsel as we are entitled to as to what our legal authority is."

And I just want to end by saying to maintain as you have that by asking the Office of Legal Counsel for it's opinion on what is clearly a threshold complex legal issue that that in some way would undermine our independence, and in some way would impair our regulatory function and make it difficult for the staff to enforce supervisory actions. I think to characterize it as a stretch would be generous.

I think that there's some legitimate arguments for this resolution. And I think there are some arguments against this resolution, but I must say that much of the statement that you made, really, was not in point to this particular resolution.

And I don't think anybody here wants to delay any action or wants to prevent this better disclosure. On the contrary, I think we're all working for it. I think if there's been a delay, it's a problem in getting the documentation. The problem has been that you send out on January 13, 2003, a memorandum and said, staff analysis show that this would be beneficial to the System.

That was on January 13<sup>th</sup>. You said analysis performed by Finance Board staff supports the view that there are achievable ways to fit the current structure and core practices of the System into the SEC model. That analysis maybe has been made, but nobody has seen it. Over a year later, we don't have this. So when the Atlanta Bank and other Banks and I complained about the lack of supporting documents, that's the problem. That there has been the delay is because memoranda are not produced when they should be.

The fact is that we still have no written analysis of the business, operational, financial, or legal cause, benefits, disadvantages, and consequences of requiring FHLB registration with the SEC. And I voted for the resolution in September. I wanted to see the comments. I want us to move ahead. We're not trying to delay, we're trying to do this in a way that gains the support of people. That gains

the support of the Bank, that moves us towards greater transparency and openness, not only in our conduct of business, but in the financial reports. And that can be done if we proceed in a more open and a more orderly fashion and getting an opinion from the Office of Legal Counsel will further the process, not delay it.

CHAIRMAN KORSMO: Is there any other comment, any other discussion on the motion that isn't repetitive?

DIRECTOR MENDELOWITZ: Yeah.

CHAIRMAN KORSMO: Director Mendelowitz.

DIRECTOR MENDELOWITZ: I've been listening to the whole discussion and I'm just struck by an irony that I wonder anyone else has noticed.

The--I recognize mindless consistency is the hobgoblin of small minds. But the proposed regulation that we're talking about getting a legal opinion on, is a regulation in which this regulatory agency is voluntarily ceding it's legal and statutory/regulatory authority over the Home Loan Banks to another agency.

CHAIRMAN KORSMO: That is absolutely mischaracterizing and I don't think we need to--you know, we can debate the motion--we can debate the issue on adopting a resolution, excuse me, a regulation that requires voluntary SEC registration when that item is on the agenda. Today the

agenda item is this resolution about seeking an opinion as to our authority. I understand where you're going with this, Allan, I will tell you, I agree--I disagree entirely--it probably goes to the point, again, that I was trying make earlier that our perspective and our approach and our philosophy and, perhaps, even our principles of regulation mandate that we view things from a different perspective.

There is--well, again, I would be falling into the same trap to debate your characterization of the requiring of voluntary SEC registration as being somehow a delegation of Finance Board's authority. I do not believe that to be true. We could--but, again, that's not the issue on the agenda today. Is there any other comment--

DIRECTOR MENDELOWITZ: Thank you for refuting my comment before I got to make it, but I mean, the reality is we're talking about a proposed regulation which does take a certain regulatory responsibility which we have exercised, we passed regulations about, and we've administered, and we're passing it on to another agency. We are giving up our current statutory/regulatory authority and ceding it to another agency.

And now the most compelling argument that you feel for why we shouldn't ask for a legal opinion is you don't

want to give up our statutory and legal independence and authority and everything that goes along with it.

And I'm just, you know, pointing out that it does sound a little contradictory to claim you don't want to do something because you want to jealously guard our independence and our statutory authority in order so that we can go forward and do something that gives up our independence and statutory--

CHAIRMAN KORSMO: I understand I have made in the past and I will undoubtedly, in the future, make distinctions that neither you nor Director Leichter can perceive as differences, but that's, again, a matter of perspective.

Is there any other discussion of the resolution?

The one other item I would like to make clear is the January 13th, resolution from which you quoted--I meant to say it was my analysis--I know that people have been hanging their hats on this ever since, but, of course, the whole reason we've proceeded as deliberately as we have done--there is a reason why this has gone on for a year. It's because it was my hope, as, indeed, I think it was probably the hope of others on this Board that the 12 Federal Home Loan Banks would take the opportunity of the time provided to have their own questions answered by the



only entity that can answer those questions--the Securities and Exchange Commission.

Some have chosen to exercise--to use that time to exercise that right. Others have chosen not to. I hope the discussion that we all heard today from Mr. Jorgenson and Dr. Cross will make everyone comfortable that we're trying to move forward in a deliberate process that, perhaps, does a better job of meeting the concerns that you raised Director Leichter. In meeting our responsibilities under the Administrative Procedure Act.

We haven't done a good job of it, frankly, although, I will say one of the reasons that some of these discussions have not taken place is because, at the request of some of those who are interested in this issue, we had an extra long comment period, 120-day comment period was extraordinary for an issue before this Board.

And the--our staff is very deliberately and very carefully reviewing those comments so that we do build the record necessary to make an appropriate decision when the time comes to make that decision. That time is not today. We do have a resolution, however that is before us.

And if there's no other discussion. Seeing none, I will ask of the Secretary to please call the roll on the motion.

MS. GOTTLIEB: On the approval of the resolution before the Board, Director Leichter, how do you vote?

DIRECTOR LEICHTER: Yes.

MS. GOTTLIEB: Director Castaneda?

DIRECTOR CASTANEDA: No.

MS. GOTTLIEB: Director Mendelowitz?

DIRECTOR MENDELOWITZ: Yes.

MS. GOTTLIEB: Director Weicher?

DIRECTOR WEICHER: No.

MS. GOTTLIEB: Chairman Korsmo?

CHAIRMAN KORSMO: No. The motion fails.

DIRECTOR MENDELOWITZ: Mr. Chairman?

CHAIRMAN KORSMO: Yes, Director Mendelowitz?

DIRECTOR MENDELOWITZ: I'd like to keep the roll open to see if I can convince one of my colleagues to change their vote.

CHAIRMAN KORSMO: I'll have to ask the parliamentarian on that.

DIRECTOR CASTANEDA: You mean today?

CHAIRMAN KORSMO: I think this was a good discussion that, frankly had to take place for many of the reasons that Director Leichter and Director Mendelowitz cited. I think, to the extent--chastened is probably the wrong word. To the extent that we have made the point and I

don't think I will say candidly it was a point that necessarily needed to be made, but it certainly provided reenforcement and I think I heard both Steve and Harry acknowledge that fact.

We're going to be very careful about building a record that can sustain action by the Finance Board, whatever that action might be. And to the extent that this discussion today contributed to that, I think it was very valuable.

Let me remind my colleagues of our housekeeping session this afternoon at 2:30. I think, unfortunately Commissioner Weicher will not be able to join us, but someone from your staff will be here?

DIRECTOR WEICHER: We will have someone here.

CHAIRMAN KORSMO: Okay, we do have a couple of significant issues that there isn't a resolution to them, but I think they have to be raised so that everyone is aware of our progress in regard to a couple of housekeeping issues that don't go to policy. And so, I'm reminding my colleagues of a meeting this afternoon at 2:30.

With that, this meeting is adjourned, thank you very much.

[Whereupon, at 12:00 p.m., the meeting adjourned.]