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In Depth: Acting Comptroller Hsu Discusses Resolution Plans for Large Regional Banks



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In [remarks](#) made at the Wharton Financial Regulation Conference, Acting Comptroller Hsu hit on a familiar theme of financial stability but raised a new variation by discussing the financial stability impacts that the failure of a large regional bank could cause and large regional banks' resolvability. He noted that the country has made good strides in the resolvability of the eight U.S. Global Systemically Important Banks ("GSIBs"), but commented that a gap may exist for larger regional banks. He also noted that four large regional, non-GSIB banks each hold more than \$500 billion in assets currently.

Acting Comptroller Hsu posed the question of how those large regional banks would be resolved if they were to fail. He noted that a purchase and assumption by one of the eight U.S. GSIBs could be a likely plan given past precedent, and that such a transaction would likely be successful at resolving the immediate failure of the large regional banks and stopping any possible contagion such a failure might have. However, he did not welcome the results of one of the GSIBs getting bigger in a "shotgun marriage" and adding to a GSIB's macro financial stability risk.

He suggested that the large regional banks could do three things we've learned from the GSIBs to become more resolvable, and that these elements could be imposed as conditions required when approving any merger or acquisition applications.

- First, require the regional banks to have a single point of entry ("SPOE") resolution plan.
- Second, as is the case with the GSIBs under the total loss absorbing capital ("TLAC") requirement, require "enough long-term debt at the parent to be 'bailed in' to absorb the kinds of losses that could cause a bank to fail." He went on to note that "[t]his serves as an important buffer, so that if the firm fails, private investors absorb the firm's losses and are 'bailed in' instead of

taxpayers footing the bill for a bailout....”

- Third, Acting Comptroller Hsu noted that the banks need to be separable.

Acting Comptroller Hsu summarized by stating, “If a large regional adopted SPOE, had sufficient TLAC, and was separable, the government would have more options should the regional bank fail. If necessary, we would be able to break the bank up and keep its operations running, while allocating any unexpectedly large losses to private creditors instead of taxpayers. We would not be limited to simply folding it into a GSIB.”

Summary of the Two Prominent Resolution Strategies

Acting Comptroller Hsu’s call for large regional banks to utilize the SPOE resolution strategy currently utilized by the eight U.S. GSIBs makes this an opportune time to refresh our memories and compare the SPOE strategy to its main alternative, the multiple point of entry (“MPOE”) resolution strategy.

Section 165(d) of the Dodd-Frank Act requires the largest bank holding companies (and other nonbank financial companies designated as systemically important) to prepare a plan for a “rapid and orderly resolution in the event of material financial distress or failure.” These so-called living wills or resolution plans are reviewed by the FDIC and the Federal Reserve Board to determine each plan’s credibility and whether it would facilitate an orderly resolution of the company under the Bankruptcy Code rather than the Orderly Liquidation Authority authorized in Title II of the Dodd-Frank Act.

The SPOE strategy focuses on a failing financial institution only at the level of a top-tier holding company, as opposed to the MPOE strategy, which generally requires the initiation of resolution proceedings at the level of the operating subsidiaries. An MPOE approach is generally what has been used when large bank holding companies failed prior to enactment of the Dodd-Frank Act. As Acting Comptroller Hsu noted in his remarks, the Lehman Brothers bankruptcy was an example of an MPOE resolution, with multiple bankruptcy and insolvency proceedings for the various entities.

Although the U.S. regulators have often stated that they are agnostic as to which strategy a GSIB chooses in its 165(d) plans, the regulators have also [stated](#) a clear preference for the SPOE strategy in their own Title II planning. Acting Comptroller Hsu’s remarks suggest that at least the OCC believes the SPOE is the right strategy for large regional banks. Some large regional banks have tended to lean toward the MPOE strategy. This has made sense, given the large amounts of assets that are usually in the insured depository institution and, thus, would likely be resolved as part of a bank receivership or conservatorship by the FDIC under the Federal Deposit Insurance Act. However, Acting Comptroller Hsu has clearly laid down a marker for SPOE for large regional banks.

Conclusion

Notwithstanding Acting Comptroller Hsu’s remarks, there is currently no requirement that large regional banks utilize the SPOE strategy. However, for any large regional bank that may have a merger transaction in its sights, movement to

an SPOE strategy may be the easiest way to garner approval for any merger approvals, at least before the OCC.
