FinReg
Davis Polk Insights on Financial Regulation

Resolution 2.0 – The Future of U.S. Resolution Planning for U.S. G-SIBs Starts to Come into Focus

By Luigi L. De Ghenghi, Randall D. Guynn, Margaret E. Tahyar, Daniel E. Newman & Nuveen Dhingra on December 4, 2018

POSTED IN BANK REGULATION, DODD-FRANK, FDIC, FEDERAL RESERVE, RESOLUTION

The future of resolution planning for U.S. global systemically important banking organizations (**G-SIBs**) has started to come into focus. The FDIC and the Federal Reserve have recently laid out an ambitious agenda designed to put in place Resolution Planning 2.0. This **slide** sets forth our collection of the publicly known elements of that agenda, as drawn from speeches, testimony and the cadence of agency review of resolution plans.

The most recent of these speeches is the **keynote remarks** delivered by FDIC Chairman Jelena McWilliams at the 2018 Annual Conference of The Clearing House (**TCH**) and Bank Policy Institute (**BPI**) in which she signaled that final resolution planning guidance for U.S. G-SIBs would be issued in the "near-term" and put down further signposts to a more-tailored and focused resolution planning framework. Recognizing the significant improvements that U.S. G-SIBs have made towards enhancing their resolvability under the U.S. Bankruptcy Code, McWilliams continued her push for a more transparent and practical approach to financial regulation.[1] Acting on the principle that "it is good government to regularly revisit what is working and what is not working," she announced plans by:

- the FDIC and the Federal Reserve (the **Agencies**) to start the process to amend the resolution planning rule implementing Section 165(d) of the Dodd-Frank Act (the **165(d) Rule**); and
- the FDIC to solicit public comment on future changes to be proposed on the resolution planning rule for insured depository institutions (**IDIs** and the **IDI Rule**).

McWilliams also expressed strong support for Congressional revisions to adapt the U.S. Bankruptcy Code to the failure of large, complex financial institutions.

The Future of 165(d) Plans

McWilliams said that for the G-SIBs' 165(d) Rule resolution plans, "we recognize the progress that has been made, and we are exploring how to make these plans more targeted." McWilliams noted that the Agencies "have identified several key areas in need of further clarity" with respect to SPOE and that "firms should continue work developing, testing, and operationalizing their systems and capabilities." We expect that future 165(d) Rule plans, likely following the July 2019 submission, will be much more targeted towards updating financial models and operational feasibility rather than the information dumps of yore that McWilliams acknowledged imposed undue burdens on both the firms and the Agencies. The recognition of progress made by U.S. G-SIBs and the call for more targeted submissions echoes sentiments articulated by Federal Reserve Vice Chairman Randal K. Quarles earlier this year.[2] It has also been clear for some time that the FDIC and the Federal Reserve support transitioning to a two-year submission cycle for 165(d) Rule resolution plans.

A Place for IDI Plans in an SPOE World

McWilliams also acknowledged arguments being made that for firms that have adopted an SPOE strategy a separate IDI plan should be unnecessary. Nonetheless, she remains unconvinced, stating that "[t]hough I am sympathetic to the argument…SPOE is untested and the challenges to successful execution of an SPOE strategy are notable." McWilliams did, however, indicate the FDIC would listen to arguments on the topic. The FDIC will be soliciting feedback on multiple areas of the IDI rule, including the rule's asset threshold, and tailoring.

McWilliams announced that no IDI plans will be due until the requirements have been revised and finalized. Given that the FDIC would need to release an NPR following the planned advance NPR that McWilliams described in her speech, we believe that a final rule may not be in place until 2020.

Chapter 14 and the Orderly Liquidation Authority

McWilliams emphasized several times that the FDIC's first priority is "taking the steps necessary to facilitate orderly resolution of [U.S. G-SIBs] *in bankruptcy*" and

that she strongly supports efforts in Congress to establish a "tailored, transparent process for large financial firms" to be resolved under the U.S. Bankruptcy Code.[3] She also indicated that the FDIC is considering whether it might implement refinements to the Orderly Liquidation Authority (**OLA**), and in particular, refinements suggested by the Treasury Department in its **February report** to the President on OLA.

*****

The Agencies' willingness, after years of iteration, to revisit and review the effectiveness and efficiency of resolution planning requirements and to do so in a transparent way is deeply commendable and an example of good government.

---

[1] See our **blogpost** earlier this year on McWilliams' "Trust through Transparency" initiative.

[2] Randal K. Quarles, Vice Chairman for Supervision, Federal Reserve, **Getting It Right: Factors for Tailoring Supervision and Regulation of Large Financial Institutions** (July 18, 2018).

[3] Davis Polk partner Donald S. Bernstein has recently testified supporting these efforts. Donald S. Bernstein, Statement before the Committee on the Judiciary, United States Senate, **Big Bank Bankruptcy: 10 Years after Lehman Brothers and The Taxpayer Protection and Responsible Resolution Act** (Nov. 13, 2018).