BIPARTISAN POLICY CENTER

March 6, 2014

By electronic submission to www.fdic.gov

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Re: FDIC's Notice and Request for Comments on the Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy

FR Docket No. 2013-30057

Dear Mr. Feldman:

The Financial Regulatory Reform Initiative's (FRRI)[1] Failure Resolution Task Force, a creation of the Bipartisan Policy Center (BPC),[2] welcomes the opportunity to comment on the Notice on *The Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy*, published by the Federal Deposit Insurance Corporation (FDIC) in the *Federal Register* on December 18, 2013 (SPOE Notice).[3]

[1] The Financial Regulatory Reform Initiative is a BPC project consisting of five task forces, including the Failure Resolution Task Force. FRRI's goal is to conduct an analysis of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to determine what is and what is not working along and to produce recommendations to improve the system.

[2] Founded in 2007 by former Senate Majority Leaders Howard Baker, Tom Daschle, Bob Dole and George Mitchell, the Bipartisan Policy Center is a non-profit organization that drives principled solutions through rigorous analysis, reasoned negotiations and respectful dialogue. With projects in multiple issue areas, BPC combines politically balanced policymaking with strong, proactive advocacy and outreach.

[3] Federal Deposit Insurance Corporation, Notice and Request for Comments, Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy, 78 Fed. Reg. 76614 (December 18, 2013).

Introduction

In May 2013, BPC published a report of FRRI's Failure Resolution Task Force (task force)[4] entitled *Too Big to Fail: The Path to a Solution* (BPC Report).[5] The BPC Report endorsed the FDIC's SPOE resolution strategy, "whether carried out under the [Orderly Liquidation Authority (OLA) in Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)][6] or the Bankruptcy Code," and concluded that the FDIC's strategy "should succeed in solving a critical part of the too-big-to-fail problem, by allowing any SIFI to fail without resorting to taxpayer-funded bailouts or a collapse of the financial system, if the recommendations contained in [the BPC Report] are implemented."[7]

The BPC Report was subsequently cited by Federal Reserve Board Governor Daniel K. Tarullo as an example of work by "thoughtful commentators" to amend the Bankruptcy Code for application to large financial firms and otherwise develop resolution mechanisms that are capable of resolving large financial firms without

[4] The Failure Resolution Task Force is co-chaired by John F. Bovenzi, Randall D. Guynn and Thomas H. Jackson. John F. Bovenzi is a partner at Oliver Wyman and former Deputy to the Chairman and Chief Operating Officer of the Federal Deposit Insurance Corporation. Randall D. Guynn is Partner and Head of the Financial Institutions Group at Davis Polk & Wardwell LLP. Thomas H. Jackson is Distinguished University Professor at the University of Rochester, one of the leading bankruptcy scholars in the country and the primary author of the Hoover Institution's proposed Chapter 14 of the Bankruptcy Code.

[5] As more fully described in Annex A of the BPC Report, the co-chairs of the Failure Resolution Task Force developed the conclusions contained in the BPC Report with the assistance and input of the members of FRRI and BPC staff based on years of collective experience with bank and other financial institution failures, the major U.S. bankruptcy and resolution laws, preparation of several resolution plans under Title I of the Dodd-Frank Act and extensive discussions with foreign public and private sector experts, including representatives of the Financial Stability Board, the International Monetary Fund and various European and Asian central banks. The process for researching and writing the BPC Report included information-gathering sessions with a range of public and private sector experts, agencies, organizations and individuals. In an effort to maintain as consistent a conversation as possible in its information gathering sessions, the Failure Resolution Taskforce, FRRI and BPC staff used the same background document and set of questions to launch and organize the discussions with each group of persons consulted, while allowing each group the freedom to explore other issues during the course of the information gathering sessions.

[6] Pub. L. No. 111-203, 124 Stat. 1376 (2010). Section, subsection and title numbers refer to corresponding portions of the Act in the form in which it was enacted, as appropriate, unless the context otherwise requires.

[7] *Too Big to Fail: The Path to a Solution*, A Report of the Failure Resolution Task Force of the Financial Regulatory Reform Initiative of the Bipartisan Policy Center, p. 2 (May 2013).

taxpayer-funded bailouts or fostering the sort of contagious panic that can destabilize the financial system.[8]

The BPC Report contained four sets of recommendations designed to ensure that systemically important financial institutions (SIFIs) can be resolved without triggering the sort of contagious panics that can destabilize the financial system or resorting to taxpayer-funded bailouts. The first and third sets of Recommendations anticipated the SPOE Notice.

The first set of Recommendations was "designed to help the FDIC carry out" what was then its announced intention "to issue a proposed policy statement to make its SPOE recapitalization strategy more predictable and therefore more viable."[9] Its central recommendation was that the FDIC "should announce a strong presumption in favor of using SPOE recapitalization to resolve all global SIFIs (G-SIFIs)."[10] By making such a strong public commitment to its SPOE strategy, the FDIC would foster public confidence that it will actually use its SPOE recapitalization strategy during a financial emergency. In the absence of such public confidence, the market and foreign regulators might fear the worst – that the FDIC would use Title II of Dodd-Frank to conduct a fire-sale liquidation of the failed SIFI and all of its operating subsidiaries. That fear could foster contagious panics that could destabilize the financial system. The market might then respond by submitting a cascade of withdrawal requests (a "run") and the foreign regulators might also respond by ring-fencing local assets.

The third set of Recommendations was designed to address "proposals by the Federal Reserve to ensure that SIFIs that are presumptively resolvable under a SPOE recapitalization strategy have sufficient loss-absorbing capacity in their capital structure liabilities to make that strategy viable under the sort of severe economic conditions that exist during a financial crisis."[11] Common equity and long-term unsecured debt are the sort of loss-absorbing resources at the parent level that can be used to recapitalize the parent in accordance with this criterion because, unlike short-

---

[8] *Toward a More Effective Resolution Regime: Progress and Challenges*, p 4 and note 3, Remarks by Daniel K. Tarullo, Member of the Board of Governors of the Federal Reserve System at the Federal Reserve Board and Federal Reserve Bank of Richmond Conference, "Planning for the Orderly Resolution of a Global Systemically Important Bank," Washington, D.C. (Oct. 18, 2013).

[9] BPC Report, *supra* note 7, at 5.

[10] *Id*. at 8.

[11] *Id*. at 5.

1225 Eye Street NW, Suite 1000 Washington, DC 20005 (202) 204-2400 WWW.BIPARTISANPOLICY.ORG

term unsecured debt, their holders do not have the legal right or practical ability to run. Intercompany extensions of credit to subsidiaries and other assets at the parent level, as well as long-term unsecured third-party debt, are the sorts of loss-absorbing resources that can be used to recapitalize operating subsidiaries in accordance with this criterion.

Although this comment letter uses the term U.S. global systemically important bank (U.S. G-SIB) rather than the more accurate term U.S. G-SIB ***group*** to describe the principal object of the FDIC's SPOE strategy,[12] the BPC Report explained that SIBs and SIFIs (systemically important financial institutions, including SIBs) are invariably groups of institutions rather than single, stand-alone companies.[13] SIFIs operate as coordinated, single enterprises in life, but are resolved under existing bankruptcy and other resolution laws as separate legal entities in death.[14] In life, the affiliates of a SIFI group are typically required by its parent to cooperate with each other and maximize the going concern value of the group. But in death, the bankruptcy or other resolution authorities of each failed legal entity typically have statutory duties that run solely to the claimants of the legal entity over which it has resolution authority. Rather than cooperate to maximize the going concern value of the failed SIFI group, each of these resolution authorities is typically required to compete with each other in order to maximize the value of the assets available to its particular set of claimants, regardless of the adverse impact of such competition on the overall value of the group or whether it destabilizes the financial system.

The FDIC needs to take these commercial and legal realities into account when developing its plans and strategies for resolving U.S. G-SIBs under Title II

[12] 78 Fed. Reg. at 76615.

[13] BPC Report *supra* note 7at 6-7.

[14] Thus, a different bankruptcy or other resolution law may apply to each affiliate in a SIFI group. For example, the Bankruptcy Code or OLA will apply to a U.S. parent bank holding company. The bank resolution provisions of the Federal Deposit Insurance Act (FDI Act) will apply to any FDIC-insured bank or other insured depository institution subsidiary. The Securities Investor Protection Act (SIPA) takes precedence over bankruptcy law with respect to any U.S. broker-dealer that is a member of the Securities Investor Protection Corporation, *see* 11 U.S.C. §742; 15 U.S.C. §78eee. A state insurance rehabilitation code will apply to any U.S. insurance company subsidiary. Foreign bankruptcy, insolvency or special resolution regimes will apply to any subsidiaries organized under foreign law and, if a U.S. bank subsidiary is placed in an FDIC receivership, may also apply to the foreign branches of that U.S. bank subsidiary. *See generally* 11 U.S.C. §109.

(Title II resolution plans).[15] Such plans and strategies will not be effective solutions to the too-big-to-fail (TBTF) problem unless they can resolve a SIFI group in a manner that does not require taxpayer-funded bailouts **and** does not foster the sort of contagious panic that can destabilize the financial system.

The BPC Report concludes that the FDIC's SPOE resolution strategy appears to take these commercial and legal realities into account by proposing to:

- put only the failed parent company of a SIFI group into a receivership;
- transfer all of the failed parent's assets including its shares in its operating subsidiaries to a newly established bridge financial company;
- cause the bridge financial company to use the failed parent's assets to recapitalize the group's insured bank and other operating subsidiaries, including by forgiving or contributing any intercompany debt to any of its operating subsidiaries that needs to be recapitalized, so that its operating subsidiaries are kept out of bankruptcy or other resolution proceedings and can continue to provide their critical services to the market and preserve the going concern value of the new group headed by the bridge financial company; and
- liquidate the failed parent left behind in receivership as required by Title II of Dodd-Frank by distributing the residual value of the bridge financial company to the failed parent's debt and equity claimants left behind in its receivership in satisfaction of their claims and in accordance with the priority of their claims.

Recently, however, certain members of the FDIC's Systemic Resolution Advisory Committee (SRAC) have expressed concern that the agency's SPOE strategy may be inconsistent with its statutory obligation to liquidate a U.S. G-SIB placed into Title II receivership under Section 214(a) of the Dodd-Frank Act. [16] The task force believes that these concerns are misplaced. A comprehensive reading of Title II makes clear that while the FDIC is obligated to liquidate the covered parent

---

[15] U.S. G-SIBs and other SIFIs must take into account the same commercial and legal realities in developing their resolution plans under Section 165(d) of the Dodd-Frank Act (Title I resolution plans).

[16] SRAC Meeting, Morning Session (Dec. 11, 2013), available at: http://www.vodium.com/MediapodLibrary/index.asp?library=pn100472_fdic_SRAC, at approx. 2:25:30-2:26:37 (comments of Paul Volcker and Simon Johnson).

holding company, that obligation does not extend to its subsidiaries or their assets. The task force also believes that the SPOE strategy is the best way for the FDIC to fulfill its statutory obligation to ensure that all resolutions of covered companies are conducted in an orderly manner[17] that is designed to preserve and promote financial stability.

In order to fulfill these criteria, Section 203 of Title II states that a resolution may only be invoked when it serves to "avoid or mitigate" the "adverse effects on financial stability in the United States" that would arise if the covered company were to be resolved under the Bankruptcy Code.[18] In order to avoid or mitigate these effects, the FDIC is, in turn, mandated to conduct the resolution in a manner that "maximizes the net present value return from the sale or disposition of [the covered company's] assets,"[19] "minimizes the amount of any loss,"[20] and otherwise carries out its duties under Title II in a manner that avoids the sort of disorderly liquidations that can destabilize the financial system. It is also mandated to treat claimants in a manner that is consistent with how they would have been treated under Chapter 11 of the Bankruptcy Code.[21]

The SPOE resolution strategy satisfies these criteria while also allowing the FDIC to meet its statutory obligation to liquidate the parent holding company. It promotes order and financial stability by preserving the going concern value of the covered company's operating subsidiaries and keeping them out of bankruptcy proceedings. Likewise, the SPOE strategy helps to avoid contagious market panics by maximizing the value of the failed parent for the benefit of all claimants. Finally, it is consistent with the FDIC's existing responsibilities under the Federal Deposit

---

[17] The requirement that any resolution be "orderly" is made clear by the headings of both Section 204 – "***Orderly*** Liquidation of Covered Financial Companies" – and Section 206 – "Mandatory Terms and Conditions for All ***Orderly*** Liquidation Actions" (Emphasis added). Section 204(a) appears to offer a statutory definition of "orderly" through its requirement that the FDIC "liquidate failing financial companies that pose a significant risk to the financial stability of the United States in a manner that ***mitigates such risk and minimizes moral hazard"*** (Emphasis added).

[18] Dodd-Frank Act, § 203(b)(2) and (5).

[19] Dodd-Frank Act, § 210(a)(9)(E)(i) and (ii).

[20] *Id*.

[21] *See, e.g.*, Dodd-Frank Act, § 209 (requiring the FDIC, "[t]o the extent possible, to harmonize applicable rules and regulations promulgated under [Title II] with the insolvency laws that would otherwise apply to a covered financial company" – i.e., Chapter 11 of the Bankruptcy Code).

Insurance Act to resolve insured depository institutions in a manner that is least costly to the Deposit Insurance Fund.[22]

Discussion

BPC's Failure Resolution Task Force strongly supports the FDIC's goal of issuing a public statement outlining whether and how the FDIC would use its SPOE recapitalization strategy to resolve a SIFI group. Such a public statement is essential to fostering the sort of public confidence necessary to make the SPOE strategy successful – i.e., as a viable alternative to the unattractive choice between a taxpayer-funded bailout and a resolution process that could destabilize the financial system.

Predictability and Certainty

Unfortunately, the task force is concerned that the proposed SPOE Notice, while a step in the right direction, does not contain the sort of strong public commitment to the FDIC's SPOE recapitalization, as recommended by the BPC Report. Unless the final Notice includes such a strong public commitment, the task force is concerned that creditors, counterparties and foreign regulators may not have sufficient confidence in the FDIC's commitment to its SPOE resolution strategy to rely on it during a financial crisis. Instead, they may fear that the FDIC will use its authority under Title II to resolve U.S. G-SIBs in a manner that does not maximize the value of the U.S. G-SIB or does not result in its foreign subsidiaries being recapitalized and kept open and operating. If they do, creditors and counterparties who have the legal right and practical ability to run may run, and foreign regulators may ring-fence local assets rather than rely on and cooperate with the FDIC. As a result, the FDIC's SPOE resolution strategy may not succeed in resolving SIFIs in manner that avoids destabilizing the financial system,[23] which is essential if that strategy is to be a viable solution to the TBTF problem.

The FDIC should include in its final Notice the sort of strong public commitment to using the SPOE strategy to resolve all G-SIFIs, as recommended in the BPC Report.

[22] Federal Deposit Insurance Act, § 13(c)(4)(A).

[23] *See* 78 Fed. Reg. at 76615, 76622 (FDIC has a duty to carry out its SPOE strategy in a manner that maintains financial stability).

Limit on Discretion to Discriminate

Although the FDIC confirmed that it does not plan to discriminate among similarly situated creditors,[24] the task force believes the FDIC should amend the Notice to go even further. The FDIC should flatly state that it will not discriminate among similarly situated creditors at the parent holding company level unless necessary to maximize the recovery of the creditors left behind in the receivership, as permitted under the Bankruptcy Code.[25] The only apparent purpose of preserving any additional discretion would be to preserve the FDIC's option to favor short-term unsecured debt over long-term unsecured debt for financial stability reasons. But because the parent holding companies of SIFI groups have very little short-term unsecured debt and it is important to permit long-term unsecured debt holders to be able to estimate their potential losses in advance with as much certainty as possible, we do not believe there is a compelling reason for preserving this additional discretion at the holding company level.

The SPOE concept envisions that there will be sufficient loss-absorbing capacity at the parent holding company to recapitalize the parent and its operating subsidiaries if any of them fail. However, if a circumstance arises where there is not sufficient loss absorbing capacity to downstream from the parent holding company, then losses will have to be absorbed by creditors at insolvent subsidiaries. Should that become necessary, there may be valid reasons to discriminate among similarly situated creditors at the operating subsidiary level for both value maximization and financial stability purposes. For example, as the FDIC has previously stated, there will be a need to honor commitments to general creditors that will be expected to continue providing services to those operating subsidiaries. Maintaining critical services at those subsidiaries can enhance overall franchise value, which would benefit all creditors. There also may be circumstances where the FDIC needs to give priority to short-term unsecured debt over similarly situated long-term unsecured debt at the operating subsidiary level in order to enhance franchise value and prevent

[24] "In general the FDIC is to treat creditors of the receivership within the same class and priority of claim in a similar manner. The Dodd-Frank Act, however, allows the FDIC a limited ability to treat similarly situated creditors differently. Any transfer of liabilities from the receivership to the bridge financial company that has a disparate impact upon similarly situated creditors would only be made if such a transfer would maximize the return to those creditors left in the receivership and if such action is necessary to initiate and continue operations essential to the bridge financial company." 78. Fed. Reg. at 76618.

[25] For example, bankruptcy courts typically permit debtors in bankruptcy to honor their obligations to critical vendors and to customers under warranty or frequent flyer programs because favoring those creditors over other creditors maximizes the recovery of all creditors and is therefore "in the interests of the estate as a whole." Douglas G. Baird, ELEMENTS OF BANKRUPTCY, pp. 225-26 (5th ed. 2010). This situation, however, is far more likely to exist at the level of an operating subsidiary, as we discuss in the next paragraph.

systemic risk. Any such exceptions to the general rule of treating similarly situated creditors equally should be spelled out as clearly as possible to provide certainty and predictability to the market.

Value Maximization Duty

The FDIC should include a clear statement in its final Notice confirming that the statute requires it to carry out its SPOE resolution strategy in a manner that "maximizes the net present value return from the sale or disposition of [the covered company's] assets" and "minimizes the amount of any loss."[26] In the absence of an accessible public statement to that effect, creditors, counterparties and foreign supervisors may fear that the FDIC will interpret Title II in a manner that allows it to carry out its strategy in a way that destroys value. As a result, creditors and counterparties would be more likely to run and foreign supervisors more likely to ring-fence local assets than if the FDIC made such a clear public statement. That potential outcome would be inconsistent with the FDIC's duty to implement Title II in a manner that avoids destabilizing the financial system,[27] which is essential if its SPOE strategy is to be a viable solution to the TBTF problem.

In particular, the FDIC should eliminate language in its proposed SPOE Notice that suggests a predetermined intention to restructure or break up a recapitalized SIFI group headed by a bridge financial company (or Newco),[28] unless the bridge financial company (or Newco) has been given an opportunity to submit a

---

[26] Dodd-Frank Act, § 210(a)(9)(E)(i) and (ii).

[27] *See supra* note 24.

[28] Here are examples of the type of prejudicial language that should be eliminated from the SPOE Notice:

> "During the resolution process, measures would be taken to address the problems that led to the company's failure. These could include changes in the company's businesses, shrinking those businesses, breaking them into smaller entities, and/or liquidating certain subsidiaries or business lines or closing certain operations. The restructuring of the firm might result in one or more smaller companies that would be able to be resolved under bankruptcy without causing significant adverse effect to the U.S. economy." 78 Fed. Reg. at 76616.

> "In connection with the formation of the bridge financial company, the FDIC would require the company to enter into an initial operating agreement that would require certain actions, including, without limitation . . . preparation of a plan for the restructuring of the bridge financial company, including divestiture of certain assets, businesses or subsidiaries that would lead to the emerging company or companies being resolvable under the Bankruptcy Code without the risk of serious adverse effects on financial stability in the United States." *Id*. at 76617.

credible resolution plan under Section 165(d) of the Dodd-Frank Act and fails to do so within the time frames set forth in the statute. Such predetermined actions are inconsistent with the FDIC's statutory duty to maximize the value of a failed SIFI's assets and minimize its losses in a Title II receivership.

There may be legitimate concerns about the size and resolvability of a U.S. G-SIB or G-SIFI. But these are more appropriately the subject of an appropriate use of Title I of the Dodd-Frank Act. Use of SPOE under Title II is likely to result in the balance sheet of any bridge financial company (or Newco) being substantially smaller than the balance sheet of the former parent company by virtue of implementing the SPOE recapitalization strategy and marking assets to reflect losses.[29] In addition, concerns about size and resolvability need to be balanced against the FDIC's duty to maximize value and minimize losses in a Title II receivership. The appropriate tools for dealing with such concerns are lodged in Title I. If the U.S. G-SIB or G-SIFI is unable to submit a credible resolution plan under Section 165(d) of the Dodd-Frank Act within the time frames permitted in the statute, the FDIC and the Federal Reserve have the joint authority to cause it to be restructured or even broken up.

Credit Bidding

Although the parent companies of most U.S. G-SIBs do not have a material amount of secured debt, the FDIC should confirm in its final Notice that any such secured creditor will have the right to credit bid for any collateral securing its claim, if the FDIC does not transfer its secured claim and related underlying collateral to the bridge financial company, values the collateral at less than the secured claim and the secured creditor disagrees with that valuation, as recommended by the BPC Report.

Relative Priority

The task force understands the FDIC's reference to the possibility of issuing contingent securities – warrants or options – in NewCo (or NewCos) that will succeed the bridge financial company[30] as reflecting a decision to be consistent with the following recommendation in the BPC Report: "The FDIC should conform that, if necessary to facilitate early intervention without creating legitimate claims under any constitutional protections of property rights and to avoid disputes over the residual value of a failed company or a bridge financial company to which all or a

[29] *See* Figures 1-7 in the BPC Report, *supra* note 7, at 24-30 (the balance sheets used in these figures are highly stylized, but they illustrate the fundamental point that the SPOE recapitalization process itself results in a smaller balance sheet).

[30] 78 Fed. Reg. at 76618. *See also id*. at 76619.

portion of the failed company's assets have been transferred, the FDIC may give warrants or other junior securities to junior claimants and otherwise distribute value to stakeholders left behind in a receivership on a relative priority basis, rather than pursuant to an absolute priority rule."[31] The FDIC should confirm in its final Notice to confirm that this is the purpose of these references to issuing contingent securities to junior claimants left behind in the failed company's receivership.

Orderly Liquidation Fund

The task force believes that the FDIC's discussion of the orderly liquidation fund (OLF) is largely consistent with the recommendation in the BPC Report that the OLF should be used solely to provide fully secured liquidity to the bridge financial company in accordance with Bagehot's traditional safeguards for central bank lender-of-last-resort facilities, and cannot be used to provide capital to them.[32] The bridge may pledge its own assets or repledge the assets of its operating subsidiaries to secure any advances from the OLF. However, the source of any additional capital at the bridge financial company level would be the former parent's long-term unsecured debt or other capital structure liabilities. The holders of such capital structure liabilities would receive equity in the bridge financial company (or the proceeds thereof) in satisfaction of their claims. The source of any additional capital at the operating subsidiary level must be the assets of the former parent that have been transferred to the bridge. The bridge may contribute those assets to any operating subsidiary in need. Alternatively, it may pledge those assets to the OLF, subject to appropriate haircuts, in return for loans in cash, and contribute that cash to the operating subsidiaries as additional capital. The ultimate source and limit on the amount of such capital are the assets of the bridge financial company; the OLF only serves to convert those assets to cash, on a fully secured basis, if necessary for liquidity or other reasons.

Funding Advantages

There is little reason to believe that U.S. G-SIBs would obtain a funding advantage from the prospect of being resolved under Title II, if the FDIC confirms that SPOE is its preferred strategy for resolving U.S. G-SIBs and that it will treat similarly situated creditors equally at the parent level unless different treatment would be permitted under the Bankruptcy Code. While G-SIBs would have access to secured liquidity from the OLF in a Title II proceeding, smaller banking groups

[31] BPC Report, *supra* note 7 at 9.

[32] BPC Report, *supra* note 7 at 9, 46-50, 66-67.

would have access though their bank subsidiaries, which typically account for more than 95 percent of their consolidated assets, to liquidity from the Deposit Insurance Fund in bank resolution proceedings under the Federal Deposit Insurance Act.

Cross-Border Cooperation

The FDIC should continue to take a leadership role in fostering cross-border cooperation with its SPOE strategy, including steps to reinforce the confidence of foreign supervisors that the FDIC will carry out its SPOE strategy in a way that allows those supervisors to meet their obligations to host-country stakeholders. This would include continuing and even expanding the actions described in the Notice,[33] as well as efforts to enter into memoranda of understanding or bilateral or multilateral agreements with key jurisdictions that reinforce the confidence of foreign supervisors in the FDIC's commitment to SPOE and otherwise foster cross-border cooperation.

In order to encourage other jurisdictions to recognize and give effect to proceedings under Title II of Dodd-Frank and otherwise foster cross-border cooperation in resolution proceedings, the FDIC should recommend and support efforts to amend Chapter 15 of the Bankruptcy Code to increase the certainty that U.S. courts would apply the same standards for deciding whether to recognize and give effect to foreign resolution proceedings as are now applied to foreign bankruptcy proceedings, as recommended in the BPC Report.[34]

Chapter 14

The task force believes that the FDIC should also recommend and support efforts to amend the Bankruptcy Code to include a new Chapter 14, provided it would make an SPOE strategy under the Bankruptcy Code more likely to succeed, and therefore reduce the need for Title II.[35] As part of this important bankruptcy reform, the FDIC should recommend to Congress that any such Chapter 14 should include a source of secured liquidity similar to the OLF or the Federal Reserve's discount window, as recommended in the BPC Report.[36] Any such new Chapter 14 should be a supplement to, and not a substitute for, Title II, which needs to remain in place for financial emergencies.

---

[33] 78 Fed. Reg. at 76624.

[34] BPC Report, *supra* note 7 at 14.

[35] *Id*.

[36] *Id*. at 12.

The Failure Resolution task force thanks the FDIC for the opportunity to respond to the FDIC's request for comments on its SPOE Notice.

Sincerely,

Aaron Klein
Director, Financial Regulatory Reform Initiative
on behalf of the Failure Resolution Task Force Members John Bovenzi, Randall D. Guynn, and Thomas H. Jackson

1225 Eye Street NW, Suite 1000 Washington, DC 20005 (202) 204-2400 WWW.BIPARTISANPOLICY.ORG