Resolving Large Complex Financial Institutions: The Case for Reorganization

by

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Abstract

The recently enacted provisions of the Dodd-Frank Act for resolving systemically important non-bank financial institutions, like the existing means of resolving large banks on which they were based, are aimed at placing the institution into receivership and then liquidating it. However, receivership is likely to trigger a number of adverse consequences, including conflicts between jurisdictions, increased size of any "bailout" and increased moral hazard. In a financial system where institution size and industry concentration are sources of systemic risk, preserving a competitor avoids enhancing the systemic importance of survivors. The alternative of rehabilitating distressed firms through Chapter 11, with appropriate modifications to recognize the special nature of systemically important financial firms, may mitigate or eliminate these problems, preserve market discipline to a greater degree and minimize costs to third parties.

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Robert R. Bliss and George G. Kaufman

The federal government's responses to the impending bankruptcy of Bear Stearns, Lehman Brothers, and AIG were complicated by the lack of a statutory framework for avoiding the disorderly failure of nonbank financial firms, including affiliates of banks or other insured depository institutions.[1]

Prior to the passage of the Wall Street Reform and Consumer Protection Act, popularly known as the Dodd-Frank Act (DFA), in July 2010, the means of resolving failing financial firms were as follows: banks were resolved under the Federal Deposit Insurance Act (FDIA); insurance companies were resolved by state courts, brokerage firms were resolved under the Securities Insurance Protection Act, and all other financial firms, including holding companies, whose subsidiaries included banks, insurance companies, and/or brokerage firms, were resolved under the U.S. Bankruptcy Code.[2] This statutory structure reflected the history of U.S. political and financial development.[3]

What the government and financial regulators discovered during the 2007-09 financial crisis was not so much that they lacked the authority to deal with failing large non-banks financial institutions as they wished to. This was clear from long-standing statutes. That they might have need of intervening in non-banks in a financial crisis seems to have been insufficiently foreseen. This failure of foresight reflected a historical focus on "banks" rather than financial institutions, and an accompanying focus on traditional banking issues (deposits and deposit insurance, loan credit quality and bank capital, and the payments system) as sources of potential risk to the financial system. Furthermore, while regulators noted risks to the financial system and economy from bank failures, they tended to focused on reducing the probability of and dealing with individual bank failures. The bank resolution regime in the FDIA is primarily

[1] U.S. Treasury (2009). p.76.
[2] This multiplicity of regimes, statutes and jurisdictions, to which must be added the international dimension, is a receipt for confusion, cost and conflict. Bliss (2003 and 2007). DFA has done nothing to reduce the jurisdictional complexity, merely moving the resolution of some firms and parts of firms previously generally resolved under the Bankruptcy Code to a new separate regime, leaving the piecemeal resolution of complex financial firms unaltered.
[3] For a brief history of the development of bankruptcy and bank insolvency regimes in the U.S. see Bliss and Kaufman (2007).

focused on dealing with the assets (loans) and liabilities (deposits) that are typical of small and medium banks, rather than the more complex financial structures and funding sources that are typical of SIFIs.

What the financial crisis revealed was not so much that banks were not special, but rather that there were non-bank financial institutions that also appeared to present systemic risks to the financial system, as well as demonstrating that distressed large complex banks presented problems qualitatively different from small and medium sized domestic banks. The response of the government, regulators, and Congress was to look to enhanced bank resolution procedures as what was needed to avoid future "bail outs" and "disorderly resolution" which were blamed on the lack of statutory powers to seize and dispose of problem institutions which were not banks as and when regulators and the government felt necessary, as is done in bank resolution.

This paper will lay out what the authors see as the salient issues surrounding the distress and failure of systemically important institutions, the strengths and weaknesses of both bankruptcy and bank insolvency regimes, evaluate the Orderly Liquidation Authority (OLA) that is introduced in DFA, and propose an alternative hybrid regime that addresses the objectives of minimizing bailouts, which imposes direct costs to unrelated third parties; disruptions to the financial system; and preserving market discipline by requiring creditors to suffer losses reflecting their contractual terms and the risks they have assumed.

Preliminaries

Bankruptcy and Bank Insolvency

The U.S. Bankruptcy Code, Title 11 of the U.S. Code, explicitly excludes banks, insurance companies and brokerage firms, as well as some other types of debtors that need not concern us here.[4] Banks are resolved under FDIA. Bliss and Kaufman (2007) detail the differences between these two regimes as well as providing some of the historical reasons for why these developed as they did.

For purposes of this paper, the salient differences are:

[4] 11 U.S.C. § 109.

Bankruptcy (Chapter 11)[5]

- A judicial process, supervised by a bankruptcy court judge, assisted by a trustee appointed by the court.
    - Initiated either by management or by creditors (requires an event of default) through a petition to the court to begin proceedings.
    - Insolvency is not a cause for creditors to initiate proceedings.
- Filing of bankruptcy petition results in a "stay" which stops actions by creditors to attach security, recover collateral, and other self-help actions.
    - Exceptions to the general stay include, most importantly, certain financial contracts including derivatives and repurchase agreements, which may be terminated if an event of default occurs.[6]
- Management and creditors, divided into "classes" with similar claims, have standing to appear before the court and participate in the proceedings.
- Parties must agree a reorganization plan through a process of negotiation and voting.
    - If they fail to agree the court can "cram down" its own plan.
- The objective of Chapter 11 is to maximize the value of the firm for all creditors through reorganization to preserve going concern value. If this fails the case may be transferred to Chapter 7 liquidation.[7]

Bank resolution

- An administrative receivership (liquidation) process conducted by the FDIC.
    - Initiated when the bank's primary regulators places the bank into receivership.
        - Early intervention and closure under "prompt corrective action" (PCA) are designed to allow closure before the firm becomes insolvent.
        - Regulators may also close a bank based on their judgment that the bank is in danger of failing.
    - The bank's charter is revoked and managers (usually) are fired.

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[5] As large firm bankruptcies invariably are Chapter 11 proceedings, at least initially, this is the relevant part of the bankruptcy code for our purposes.

[6] See Bliss and Kaufman (2006) for details.

[7] Chapter 11 is sometimes used, even if the intention is to liquidate the firm through selling off its parts. This was done with Washington Mutual, Inc (the holding company) and Lehman brothers.

- FDIC assumes all control rights as administrator.

- There is no stay. Instead, the FDIC, may repudiate and contracts deemed burdensome in a "reasonable time".[8]
  - The FDIC may transfer derivatives contracts to another institution, if it does so within one business day.[9]
- Creditors file claims but plan no other role in the receivership (they have no standing).
  - There is limited right of appeal for judicial review.
- The FDIC makes all decisions as to how to dispose of assets.
- The payment of deposits and other creditor claims is governed by the "least cost resolution rule" (LCR). This require the FDIC resolution minimize costs to the DIF. LCR is subject to a "systemic risk exemption" (SRE).[10]
- The FDIC has the power to create a new temporary bridge bank, into which it can transfer some or all of the assets and those contracts it wishes to affirm. The remainder of the original banks assets and creditor claims remain in the receivership. The FDIC then runs the bridge bank.

In the discussion that follows the distinctions that will be most important are 1) between receivership (liquidation) and reorganization; 2) an administrative process with no participation by creditors and a judicial proceeding where creditors represent their own interests.

While in Chapter 11, a firm's ongoing funding needs are met through "debtor in possession" (DIP) financing. DIP funding is made attractive to potential creditors by being given seniority over all pre-filing unsecured claims. A bridge bank's operations are funded through the FDIC's own resources, which include lines of credit with the Treasury.

Sources of Individual Firm System Risk

Under DFA a financial firm is deemed to be systemically important if "the failure of the financial company … would have serious adverse effects on financial stability in the United

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[8] 12 U.S.C. § 1821(e)(1) and (2).
[9] See 12 U.S.C. § 1821(e)(9) and (10). The 1-day rule applies to receiverships, not conservatorships. Conservatorships of failing banks are rarely used. Rights to close-out derivatives under 12 U.S.C. § 1821(e)(8) appear to be preserved.
[10] 12 U.S.C. § 1823(a)(4)(A) and (G)

States."[11] SIFIs are generally very large and complex firms.[12] Two points need to be considered:

1) It is unlikely that all parts of the SIFI are systemically important.
2) Failures of parts of a SIFI can bring down otherwise healthy parts of the firm.

The functions that appeared to have been seen as being directly systemically important were derivatives portfolios, prime brokerage accounts, transaction services, including foreign exchange dealing.

Indirect concerns arose from the potential that default on commercial paper held by money market mutual funds could lead to a collapse of the commercial paper market. Another indirect concern was that fire sale of assets would trigger a distresses elsewhere as firms were forced to write down their own portfolios leading to further liquidations.

In the financial crisis the government used a combination of individual firm rescues (Bear Sterns, AIG, Citigroup, Merrill Lynch, Bank of America) and broader market interventions (Term Loan Facility, Troubled Asset Relief Program, unlimited deposit insurance, etc.) The individual interventions were all preceded by crises that developed rapidly. It was evident from stock prices and credit default swap spreads that all was not well for almost all big banks in 2007 and 2008. Against this uneasy background individual crises in the form of whole sale funding runs, calls for collateral (another form or liquidity squeeze), or runs by prime brokerage customers which would have required returning collateral that had been used for funding.[13]

From these observations we offer two thoughts. Intervention in individual SIFIs, if it is driven by a liquidity crisis, has to be rapid and effective to prevent the contagion that is at the bottom of systemic concerns. Intervention does not necessarily have to deal immediately with the whole of the distressed firm, only the part that would cause the systemic crisis to propagate.

[11] DFA Section 203(b)(2).

[12] One can imagine that some smaller, less complicated financial institutions such as central counter parties or clearing banks may also be systemically important.

[13] Prime brokers frequently "rehypothicated" customer collateral, that is used it for their own purposes, either to obtain funding through repos or to post as collateral against their own position. Returning customer collateral would have required the bank to find new funding or collateral on short notice.

Timing

By adopting a modified the bank resolution regime, the DFA rejects the bankruptcy regime. The major reason used by regulators and the Treasury to reject bankruptcy as a viable means of resolving SIFIs was that bankruptcy took too long and was too costly. A financial institution experiencing a liquidity crisis can collapse in a matter of days or even hours, and bankruptcy typically takes months or years to complete. Bank resolution on the other hand is thought to be rapid; typically a bank is closed on a Friday and reopened the next Monday under new ownership. Both these "facts" require closer scrutiny.

We begin by noting that there are three distinct timeframes involved in the resolution of a SIFI: 1) the initiation of intervention, 2) the stabilization of the situation, and 3) the final disposition of creditors' claims or restructuring.

When we see a bank closed and reopened quickly, we are seeing one part of a complex process. The favored means of resolving banks now used by the FDIC is Purchase and Assumption (P&A) *[insert numbers]*. Except when a bank is liquidated or a bridge bank is formed, the P&A terms are announced at the same time as the legal closure. This means that the resolution process is begun before the bank is formally closed, when the bank is "shopped around" to potential buyers. It also means that, so long as a run does not force the hand of the primary regulator and the FDIC, the closure is usually delayed until a buyer is found. A P&A transaction typically leaves some assets and liabilities in the receivership, the liabilities include uninsured depositors' claims (receivership certificates) and other creditors' claims. The assets include those the purchaser did not wish to assume, typically low quality, and any net proceeds from the P&A transaction. Final resolution of the receivership, as opposed to the P&A, typically takes much longer and can last years. Thus, the rapidity of bank resolution needs to be qualified. It is rapid 1) when there is a ready buyer, and 2) for those creditors whose claims are transferred in the P&A transaction. For the remaining creditors, bank resolution may not be materially faster than bankruptcy.

Bankruptcy can also be expeditious. The U.S. bankruptcy of Lehman Brothers quickly sold the U.S. operations to Barclays forestalling collapse of those business units, much as a bank resolution P&A would have done. The bankruptcies of General Motors and Chrysler were substantially completed in a few weeks by means of pre-packaged restructuring.

Initiation

Where bank resolution is <u>potentially</u> superior to bankruptcy is in the initiation of the process. PCA rules are intended to force closure and resolution prior to insolvency. Judgmental closure—if the bank is thought likely not be able to meet its obligations, or is seen to be being run in an unsafe and unsound manner—also allows for preemptive initiation of the resolution process. Prior to the recent financial crisis the beneficial effects of these early intervention powers appears to have been to encourage those undercapitalized banks that could do so to recapitalize or merge. For the remainder, virtually none were closed with positive net worth. Why this might have been so is beyond the scope of this paper (all the banks concerned were small). Since the beginning of the financial crisis early intervention, both self-help by banks and early intervention by regulators have been hampered by the sheer volume of distressed banks needing to be merged (by management) or sold (by the FDIC). The use of loss sharing agreements in P&A transactions significantly reduced the risks attached to acquiring a distressed bank's assets and arguably increased their returns.[14] As a result, potential acquirers have frequently had a positive incentive to wait for a bank to fail, rather than assist in a pre-closure resolution.

Early intervention in a SIFI, be it a bank or non-bank LCFI, is going to be hampered by the paucity of potential buyers. The largest bank closure to date has been Washington Mutual with $70 billion in assets. This is dwarfed by the size of potential SIFI-designated financial institutions ($500 billion to $2 trillion). Nonetheless, the power to do so is there.

Bankruptcy can be preemptively initiated only by the firm's managers. This is frequently done ahead of default for strategic reasons; to force discharge of onerous contracts (typically pension and medical plans), or renegotiation of employment contracts or debt. Involuntary initiation of bankruptcy by creditors requires a positive event of default. Thus, General Motors was able to survive for years with substantial negative net worth.

Waiting for an event of default could be highly detrimental for a SIFI. As we have seen, efforts to avoid default caused by liquidity crises leads to fire sales of assets that further damages

[14] It is too soon to know this for sure and the relevant data are and will be opaque. However, we have observed conservatively run bank holding companies (e.g., BB&T), hedge funds and newly formed private equity groups actively participating in these transactions. This suggests that that view the risk/return trade-offs as favorable, even given the uncertainties—financial, regulatory, and political—plaguing financial markets.

the firm's viability and leads to greater losses for remaining creditors. Markets seeing this begin to withdraw business from the firm leading to its collapse, critically endangering those functions and relations that make the firm systemically important. Contagion, precipitated by one firm's obvious distress, is believed to spread through the markets.

While preemptive and judgmental closure of banks has had practical problems, we still see the concept of PCA and regulator judgment as important tools in SIFI resolution. Both can be incorporated into the bankruptcy code as it applies to SIFIs by giving regulators standing to petition the bankruptcy court to place the firm into Chapter 11. As the creditors may have other views (preferring a market solution) and are the ones who stand to bear the losses, we recommend that at least the major creditors be giving standing to participate in the decision.

Intervention

What is seen as the strength of bank insolvency—the ability to quickly dispose of most of the firm's assets and liabilities—is a two edged sword. FDIAs bank insolvency regime and the Orderly Liquidation Authority under DFA both lack stays.[15] Thus, once the bank (SIFI) is closed and placed into receivership, the FDIC must act immediately to transfer the assets, liabilities, and those operating functions it intends to preserve into another operating entity—either an acquiring firm or a bridge institution. Where the regulators have time to find a buyer or buyers before the closure this is not a problem. However, finding buyers for SIFI's will be difficult due to their size and organizational and international complexity. In the event that there is a liquidity crisis, as we saw with Bear Sterns, Lehman, AIG, Citigroup, Wachovia and IndyMac, the regulators hands will be forced and closure will happen before the ultimate disposition is known. This in turn will force regulators and the FDIC to craft a resolution plan under extreme time pressure. The result will be to move most of the SIFI into a bridge institution leaving only the long term creditors in the receivership. Once the liabilities, including not just debt but customer accounts, derivatives books, collateral positions, etc., are in the bridge institution they become the responsibility of the FDIC and for all practical purposes of the government; that is they become guaranteed. If transferred at par value, as has usually been the case, the absence of stays and the resulting decision making under time pressure will result in the "bailing out" of a large portion, likely a majority, of the firm's counterparties, be they systemically important or not.

[15] The exception is the ability to stay closeout of qualified financial contracts for one day.

Adding stays to the bank insolvency laws (FDIA) and Orderly Liquidation Authority (DFA) will not be suffice to solve this dilemma. The major problem stems from the fact that under these resolution regimes the firm is in liquidation. If a bank, it ceases to be chartered and cannot do business. If a non-bank its counterparties may be prevented from doing business with a firm in liquidation for legal or prudential reasons. Some of its operating entities may lose their legal ability to operate due to the status of their parent. Stays can suspend collection of debts but they cannot force continued rolling over of funding or provision of services. Repos were designed to allow creditors to liquidate collateral and walk away in exactly these situations. Furthermore, U.S. bankruptcy court writ ends at the border. Foreign creditors, jurisdictions, and regulators are not bound by any such stays.

Bankruptcy does have the stay, but the major advantage is that in Chapter 11, the firm continues without a change in its legal status and the purpose is to restructure the firm as a going concern rather than to liquidate it. We have seen time and again firms in Chapter 11 continuing to do business with no interruption of their services. As long as the counter parties, except those creditors and employees who contracts are going to be restructured, feel assured that the firm will continue operations and they will not be adversely effected, there is no cause for them to run.

There are two caveats to this sanguine outlook. First there is the problem of financing during restructuring. Debtor in possession (DIP) financing was created to deal with this problem. Lenders who provide DIP (that is post-bankruptcy-initiation) financing are granted seniority over all other unsecured creditors. This usually suffices to attract the needed operating funds. However, financial firms rely on short term funding to a greater extent than most other corporations. Furthermore, SIFI failures are apt to occur at times of market stress when other firms are hoarding liquidity as we saw during the beginnings of the financial crisis. Thus, private DIP financing may be difficult to obtain. However, the government can also provide DIP financing. This is in principle no different than the pre-bankruptcy senior, secured loans provided to AIG. Unless the regulators have serious misjudged or there is little unsecured debt to be subordinated to the DIP loans these loans would be relatively safe.

The second problem is that some counter parties, such as derivatives counter parties, or customers with accounts and posted collateral at risk may adapt a “better safe than sorry” approach and move their business elsewhere. For a SIFI both of these are apt to lead to problems as derivatives and prime brokerage relations are two of the areas that are apt to be systemically important. The solution to both involves a de jure or de facto change in priority.

Derivatives can be handled by simply marking the positions to market as of the time of filing, but not closing the positions. Then subsequent changes from these "reset" values are given senior status or guaranteed by regulators. Post-insolvency gains would be netted against pre-insolvency losses (if these remain unpaid) in the final accounting. However, pre-insolvency credits would be netted against post-insolvency losses or added to post-insolvency gains only to the extent of general creditor recovery values.[16] This will help to preserve market discipline on the part of derivatives counter parties while reducing their incentives to close out their positions. Marking to market needs to be done in any case to determine closeout values if the positions are closed under existing carve outs from stays. The difference being that the positions would stay open and the court rather than the solvent counter party (in the first instance) would make the determination of applicable values.

The second issue is prime broker customer accounts and customer collateral. These have proven to be major problems, particularly in the case of Lehman, the one SIFI failure, but also in earlier smaller failures such as Refco in 2005. These problems point to a critical need for restructuring the handling of collateral and customer accounts. These are changes that can be addressed by markets with suitable encouragement by regulators, as was done by the New York Fed prior to the crisis to solve back office problems in the credit default swap market. Differences in relevant laws across jurisdictions also need to be considered and addressed. Once the risks to customers are reduced their accounts can be guaranteed by the government, as of the date of bankruptcy, at less potential cost than is now the case.

For both derivatives and prime broker customer accounts we have suggested a role for the government in providing assurances to systemically important counterparties (that is, counter parties in systemically important functions). We contrast this with the blanket implicit guarantees that would apply to all creditors and counter parties rolled into a bridge institution. By selectively

[16] This abstracts from the issue of collateral that the solvent counterparties may hold. Stays on liquidating collateral, though preferably only in the case of SIFIs where collateral liquidations would be likely to have adverse consequences (most collateral is held by other SIFIs), would have to be imposed to forestall both fire sale declines in value with concomitant mark-to-market adverse effects on other firms and to reduce incentives to closeout collateralized in-the-money positions.

applying government guarantees or loans to those parts of the firm that are seen as vital to the financial system and not to others, the government can limit both its exposure s and the distortion of incentives that a firm-wide TBTF approach would have. Furthermore, this selective intervention has a precedent in the handling of AIG's credit default swap portfolio.

Disposition

Once the situation is stabilized, either by stays or transfers to a bridge institution, there is time to act with due deliberation, excepting perhaps to restore some liquidity to transaction accounts, broadly defined. This can be done by the court applying the concept of advanced dividends based on estimated recovery value embedded in the FDIA. This is currently allowed under the Bankruptcy Code. A bridge bank allows for an orderly and carefully considered disposition of assets and liabilities that have been transferred into the bridge bank. The problem lies in the haste with which the decisions as to what to transfer into the bridge bank and on what terms has to be made. They have also been made by the government with imperfect information and without the input from creditors and counter parties.[17] Because under FDIA and DFA Orderly Resolution, the resolution authority must affirm or deny all contracts immediately *[find exact language and cite]*, it is not possible to wait until valuations and restructuring options are clear before deciding what haircuts to give various creditors. *[Is the FDIC power to arbitrarily give haircuts under DFA connected with the receivership, the transfer into the bridge or creditors' claims in the bridge? Research and clarify]*

When the bankruptcy court assumes effective control of a firm it does not assume responsibility for any of the firm's contracts. The trustee has the power to disavow onerous executory contracts (e.g., leases) but failure to disavow does not imply payment in full later. The purpose of the stay is to allow for an orderly determination of how best to resolve to the firm, how to maximize the value of assets or preserve the going concern value of the firm for the collective benefit of all creditors, according to legal priority or voluntary negotiation. Not having to immediately affirm or disavow, buys time for the collection of information. Nonetheless, the court faces the same informational challenges that the FDIC would. Neither is omniscient.

[17] The FDIC will hire investment bankers (competitor SIFIs?) and other advisors to help. But this may not be of much use. In the resolution of NextBank, which was placed into a bridge bank, the FDIC was told by the financial advisor it hired *[name]* that it would take 18 months to prepare a valuation to be used as the basis for a sale, due to the state of the firm's books. *[cite IG report]*

The second advantage of bankruptcy over FDIC bank resolution is that the decisions are made with the input of various creditor groups, as well as buy specialists appointed by the court and assisting a financially disinterested and presumably politically independent trustee. The availability of time and the factoring in of multiple perspectives, both disinterested and those protecting their own interests, is more likely to approach an optimal resolution given the circumstance, than a rushed decision by a single agent operating alone who has neither a direct financial interest nor is necessarily immune to political consideration.

Agency, Incentives and Structures

To be added.

The International Problem

To be added

Conclusions

The resolution regime legislated in Title II of DFA grants great and some might say arbitrary power to regulators to seize financial institutions that they deem to be systemically important and to the FDIC to liquidate the firm after it is seized. The government and regulators assert that this would eliminate TBTF, lead to orderly resolutions of SIFIs, and restore market discipline. Government and regulators believed the FDIA bank insolvency regime provided the appropriate model for what to do.

We have argued that it is not clear that resolutions conducted under ORA will be orderly. Constraining the solution to be liquidation will trigger adverse responses from other jurisdictions. Making decisions under time pressure and in a crisis are likely to lead to the FDIC assuming greater financial burdens than may be necessary under a different resolution regime. In the event this regime may prove so risky and potentially costly that regulators will be forced back on providing open firm assistance as they did during the recent financial crisis.

We next argued that there is nonetheless a role for the government and some aspects of FDIA insolvency regime in the resolution of SIFIs that are not present in Chapter 11. It is likely that during a financial crisis only the government will be able and willing to provide the DIP financing needed to keep a SIFI going while it is being restructured. With suitable statory modifications the government could have the ability to subrogate the claims of systemically important counter parties by paying them in whole or part, thus mitigating the uncertainties that lead to contagion. Finally, PCA in both its preventative and early initiation aspects provides a model for how to bring the government's oversight role to bear on the functioning of SIFIs.

Our proposal is to adapt Chapter 11, by adding standing for regulators through modifications to the grounds for filing a bankruptcy petition, with a concomitant clarification of the powers and obligations of the Federal Reserve to act pre-emptively to avoid insolvency, based on PCA. Once a SIFI is placed in modified Chapter 11, the Federal Reserve and Treasury would have standing through the subrogation of claims they believe to be systemically important and that they assume, and through the provision of DIP financing if private financing cannot be had. Creditor would have the same rights they have under Chapter 11.

Keeping the resolution of SIFIs under a bankruptcy framework, rather than an administrative process, will reduce preserve legal rights, mitigate agency problems, make more certain the enforceability of contracts, reduce costs to direct and indirect creditors, and preserve market discipline. The key is to make only the minimally necessary changes to a bankruptcy process that has evolved over time and has been tested on firms both large and small, rather than throw out bankruptcy altogether and substitute a regime that has been designed for and applied primarily for small-to-medium size simple domestic banks.

Finally, we note that all of the problems that we have discussed apply as much to bank SIFIs as they do to non-bank SIFIs. It is therefore worth considering whether or not bank SIFIs might be best moved out of the bank resolution regime, for which they are as unsuited as non-bank SIFIs and moved into the modified Chapter 11 process that we have proposed.

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