

February 8, 2013
Meeting of the Resolution Project with
the Bipartisan Policy Center Failure Resolution Working Group
Tabard Inn, Washington, DC

PARTICIPANTS

Darrell Duffie; Simon Gleeson; Richard Herring; Thomas Huertas; Thomas Jackson (by phone); William Kroener; Kenneth Scott; David Skeel; John Taylor; and Emily Warren.

Bipartisan Policy Center members: Martin Baily, Co-Chair, Financial Regulatory Reform Initiative (FRRI), Don Bernstein, Partner, Davis Polk & Wardwell; John Bovenzi, Failure Resolution Working Group, FRRI; Randall “Randy” Guynn, Failure Resolution Working Group, FRRI; Shaun Kern, Policy Analyst, FRRI; Aaron Klein, Director, FRRI; Justin Schardin, Senior Policy Analyst, FRRI; Greg Wilson, Senior Advisor, Failure Resolution Working Group, FRRI

ISSUES DISCUSSED

The meeting began with a brief presentation by the Bipartisan Policy Center’s (BPC) Failure Resolution Working Group (which is part of its Financial Regulatory Reform Initiative). BPC attendees expressed their generally positive sentiments about alignment between the BPC’s and Hoover’s missions to formalize additional predictability throughout the resolution process.

BPC’s initial focus now is on regulatory guidance, particularly as related to single-point-of-entry, (SPOE) either within an orderly liquidation authority or a bankruptcy context. Attendees noted at least three issues related to any SPOE generating a re-capitalized “NewCo”: (1) liquidity, (2) derivatives, and (3) intra-company loans. The group also noted that, in general, any SPOE approach will require contractual pre-wiring in order for there to be enough contingent convertible debt for the strategy to function.

Regarding liquidity, one participant confirmed that though a NewCo would have access to FMUs, it would need to put up collateral. Furthermore, problems could arise in the windows of time during which debt is converted to equity and while the market is valuing the assets and liabilities of the new entity. Derivatives were only discussed briefly. Regarding intra-company loans, various participants mentioned contracting-related solutions and that such options may be aligned with firms’ own incentives. However, some also observed that re-papering seems unlikely to occur without leadership from either regulators, or ISDA, or both.

Finally, attendees discussed political opportunities for policy changes. There is appetite and bipartisan support for regulatory changes, particularly in form of regulatory guidance. Legislative movement will be more challenging. In a wrap-up discussion of these points, attendees observed that Volcker Rule discussions are likely to be particularly important and that a major constituency for reform may be small banks, which will feel Dodd-Frank relatively deeply as its provisions come into force.