

April 3, 2022

Acting Comptroller of the Currency Addresses Large Regional Bank Resolvability

Remarks Suggest “Reconcil[iation]” Approval for Large Regional Bank Mergers

SUMMARY

On April 1, 2022, Acting Comptroller of the Currency Michael Hsu spoke at the Wharton Financial Regulation Conference 2022 on “Financial Stability and Large Bank Resolvability” (“Remarks,” available [here](#)). The Remarks focus on the resolvability of large regional banks and suggest that resolvability concerns can be “reconcile[d]” with the competitive benefits of mergers involving large regional banks by imposing new resolvability-related requirements.

BACKGROUND

The Remarks come against the background of a reexamination of bank policy within the Administration and certain bank regulatory agencies. In July 2021, President Biden issued an Executive Order on Promoting Competition in the American Economy (available [here](#)), urging, among other things, a “revitalization of merger oversight under the Bank Merger Act and the Bank Holding Company Act of 1956.” In accord with that directive, the U.S. Department of Justice’s Antitrust Division (the “DOJ”) announced in December 2021 that it was seeking public comment on “whether and how the division should revise the 1995 Bank Merger Competitive Review Guidelines,” which explain the analytical framework that guides the competition review of bank mergers. The public comment period for the DOJ’s RFI closed on February 15, 2022.

On March 25, 2022, the Federal Deposit Insurance Corporation (“FDIC”) requested information on a wide range of issues relating to bank merger transactions (the “FDIC RFI,” available [here](#)). The comment period on the FDIC RFI runs until May 31, 2022. Among other things, the FDIC RFI raised questions pertaining

to “financial stability,” “capital levels,” “attributes of GSIB resolvability, such as a Total Loss-Absorbing Capacity (TLAC) requirement,” and “the bank resolution process”—concerns arising outside the bank merger context as well. Our prior posting on the FDIC RFI is available [here](#).

OVERVIEW OF REMARKS

The Remarks offer a “practitioner’s perspective” on the “financial stability risks posed by large banks” and maintain that, although the “financial system today is substantially more protected from financial instability than before the 2008 financial crisis,” in particular with regard to global systemically important banks (“GSIBs”), there is a regulatory “gap with regards to large regional banks, which have grown in size and complexity and are at risk of becoming the new [too-big-to-fail] firms.” The criteria for defining a “large” regional bank are not expressly defined, although at one point the Remarks mention banks with “total consolidated assets greater than \$500 billion.”

Those concerns echo both the FDIC RFI’s focus on “the increased number, size, and complexity of non-GSIB large banks” and an October 2019 speech by the FDIC’s current Acting Chairman (and then FDIC Board member) Martin Gruenberg (available [here](#)) addressing the complexities that would arise in connection with “the resolution of large, regional banks” with “assets between \$50 billion and \$500 billion.” In his Remarks, Acting Comptroller Hsu, who serves on the FDIC Board of Directors, stated that, if a large non-GSIB bank “were to fail today, the only viable option would be to sell it to one of the G-SIBs.” Although “this would not be a terrible outcome” from a “traditional financial stability perspective” as markets “would continue to function” and “[c]ontagion would be contained,” Mr. Hsu expressed concern that a GSIB “would be forced through a shotgun marriage to be made significantly more systemic” with “minimal due diligence and limited identification of integration challenges.” He emphasized that “large regionals are not nearly as complex or global as the GSIBs, but nonetheless suggested that large regional banks be made subject to three principal elements of GSIB resolution plans: (1) a single point of entry (“SPOE”) resolution strategy, (2) the potential need for a total loss absorbing capital (“TLAC”) requirement of some “minimum amount of long-term debt at the parent,” and (3) operational separability for “each line of business or portfolio” (which would potentially increase the number of buyers in a resolution scenario).

The Remarks note that systematically addressing these concerns would take time as “[m]any of the reforms needed to effectuate those changes on a permanent basis would have to be done by the Federal Reserve and FDIC and would require rulemakings.” The Acting Comptroller did, however, suggest the possibility of addressing these concerns through the merger-review process. Importantly, Mr. Hsu noted that simply blocking bank mergers involving large regional banks could have adverse consequences because “prohibiting such mergers could shield the GSIBs from competition, potentially helping to solidify their dominance in various markets.” Instead, he proposed potentially to “condition approval of a large bank merger on actions and credible commitments to achieving SPOE, TLAC, and separability,” which is an

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approach the OCC is “currently reviewing and contemplating.” Mr. Hsu concluded by inviting feedback on this issue.

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