

# Dodd-Frank prioritises derivatives in bank bail-in

Taken from "Dodd-Frank's Mass Murder Mandate Is Treason: Crush It!", EIR 31 May 2013

The US legislation, *The Dodd-Frank Wall Street Reform and Consumer Protection Act*, commonly referred to as "Dodd-Frank", codified into US law an international financial agreement, established in April 2009 in London by the G20 nations, to subordinate the banking systems of all member nations to the maintenance of the current international financial system. That international agreement prioritises claims of the international financial institutions, including trillions or quadrillions of dollars in derivatives gambling claims, over the needs of the population of the United States and other nations.

Under Title II of the Dodd-Frank Act, the leveraged gambling debts of the too-big-to-fail banks are put at the front of the bail-out line. Household and business depositors are defined as unsecured creditors, and will lose all but the Federal Deposit Insurance Corporation-insured portion of their deposits.

If a too-big-to-fail bank gets into trouble, the FDIC steps in, in the form of an Orderly Liquidation Authority to oversee the restructuring. In the process, the bank is saved—at the expense of the depositors who will lose all but the FDIC-insured portion of their deposits.

The receiver, the FDIC, determines which values in the bank must be upheld in the interest of "financial stability," and this undoubtedly includes financial derivatives, and other debt instruments, which, if sold off in the course of orderly liquidation, would cause a panic.

Under Title II, Sec. 9 E, it is stated that the FDIC "shall, to the greatest extent practicable, conduct its operations in a manner that ... (iii) mitigates the potential for serious adverse effects to the financial system."

The current financial system, G-SIFIs most emphatically (global systemically important financial institutions), are highly leveraged, hugely undercapitalised, and rely on classes of assets in the form of securities contracts, collateralised debt obligations, derivatives, and other debt instruments, to maintain the appearance of solvency. Uncertainty in the value of a category of such assets triggered by any outstanding event, for example, the announcement of bank resolution, would create an across-the-board devaluation among all holders of those assets, thereby guaranteeing "adverse effects to the financial system."

Moreover, under the US Bankruptcy Reform laws of



US President Barack Obama signs Dodd-Frank into law on 21 July 2010. Photo: Whitehouse.gov

2005, securitised derivatives counterparties are given priority status in the event of bankruptcy. This is highly consequential for G-SIFIs, as it is the case that the majority of the world's derivatives are concentrated in those institutions.

In May 2013, members of the House Financial Services Committee passed H.R. 992, the Swap Regulatory Improvement Act, with only six dissenting votes. The bill further guaranteed that derivatives contracts—pure gambling bets—would be protected even when held by foreign banks operating in the US. The *New York Times* reported on 23 May 2013, that H.R. 992 was written by Citigroup, and was introduced by Members of Congress on the receiving end of major Wall Street contributions.

In a 9 April 2013 column on her blog, "The Web of Debt", author and chairman of the Public Banking Institute, Ellen Brown, agrees: "Under both the Dodd Frank Act and the 2005 Bankruptcy Act, derivative claims have super-priority over all other claims, secured and unsecured, insured and uninsured. In a major derivatives fiasco, derivative claimants could well grab all the collateral, leaving other claimants, public and private, holding the bag."

Brown also cites a book by David Skeel, Professor of Law at the University of Pennsylvania, called "The New Financial Deal: Understanding the Dodd-Frank Act and Its (Unintended) Consequences". He goes as far as to say that the Dodd-Frank policy approach is "corporatism"—a partnership between government and corporations. In 1938 Franklin D. Roosevelt described just such a phenomenon as the proper definition of fascism.