September 2011

FDIC Adopts Final Rule Requiring "Living Wills" For Financial Institutions; Rule Requires Financial Institutions To Describe How They Will Be Liquidated

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On September 13, 2011, the Federal Deposit Insurance Corporation approved a final rule requiring certain financial institutions to prepare a plan for their dismantling in the event of material financial distress or failure.

The rule is mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**"), which requires, among other things, that each covered company periodically submit to the Board of Governors of the Federal Reserve System, the Financial Stability Oversight Council, and the FDIC a resolution plan for the rapid and orderly resolution of the company under the Bankruptcy Code in the event of material financial distress or failure. This requirement applies to all nonbank financial companies subjected to supervision by the Federal Reserve Board under Title I of the Dodd-Frank Act and all bank holding companies with assets of $50 billion or more, including foreign bank holding companies with U.S. financial operations.

Resolution plans must provide the FDIC with essential information concerning the financial institution's structure, operations, business practices, financial responsibilities and risk exposures. The goal of the resolution plans is to describe how the FDIC, as receiver, will be able to wind-up the financial institution under the Federal Deposit Insurance Act in a way that provides depositors with access to their deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of its assets and minimizes the amount of any loss to be realized by the institution's creditors.

Implementation of the rule will be staggered among financial institutions, according to size. The first filing group, consisting of financial institutions with $250 billion or more in total nonbank assets (or in the case of a parent company that is a foreign-based company, such company's total U.S. nonbank assets), must file their initial resolution plans on July 1, 2012. The second filing group, consisting of financial institutions with $100 billion or more in total nonbank assets (or, in the case of a parent company that is a foreign-based company, such company's total U.S. nonbank assets), must file their initial resolution plans on or before July 1, 2013. The third filing group, consisting of all other covered financial institutions, must file their initial Resolution Plans on or before December 31, 2013.

Issues of compliance, deadlines, contents of the resolution plans and confidentiality of the information contained in the resolution plans will be of great concern to covered financial institutions as they work to comply with the new rule.

Please contact either of the attorneys listed with questions related to this Alert.

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