

# ClientAlert

## Financial Markets Developments

Bank Advisory  
Financial Restructuring and Insolvency  
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### Dodd-Frank Wall Street Reform and Consumer Protection Act: Federal Deposit Insurance Corporation Approves Final Rules Regarding Resolution Plans

On September 13, 2011, the Federal Deposit Insurance Corporation (the "FDIC") approved a final rule (the "Final Rules") to be issued jointly by the FDIC and the Board of Governors of the Federal Reserve System (the "Board") intended to implement section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") which requires each non-bank financial company supervised by the Board and each bank holding company with assets of US\$50 billion or more (each, a "Covered Company")<sup>1</sup> to report periodically to the Board, the FDIC and the Financial Stability Oversight Council (the "Council") the plan of such company for rapid and orderly resolution in the event of material financial distress or failure (a "Resolution Plan"). The Final Rules were issued simultaneously with the approval by the FDIC's board of directors of a rule that would require insured depository institutions with US\$50 billion or more in total assets to submit periodic contingency plans to the FDIC in the event of the depository institution failure.

The Resolution Plan requirement is part of the additional regulations and reporting requirements, referred to as prudential standards, imposed under the Dodd-Frank Act on companies that "could pose a threat to the financial stability of the United States."<sup>2</sup> The Resolution Plan requirement is intended to provide regulators the ability to conduct advanced resolution planning for a company by requiring a company to prepare a strategic analysis of how it can be resolved under Title 11 of the US Code (the "Bankruptcy Code") in a way that would not pose systemic risk to the financial system. Additionally, the Resolution Plan is designed to enhance the regulators' understanding of foreign operations in an effort to develop a comprehensive and coordinated resolution strategy for a cross-border firm.

The Final Rules establish requirements regarding the submission and content of a Resolution Plan, along with procedures and standards for review of a Resolution Plan by the Board and the FDIC. Specifically, the Final Rules require Resolution Plans to include information regarding the manner and extent to which any insured depository institution affiliated with the company is adequately protected from risks arising from the activities of any non-bank subsidiaries of the company; full descriptions of the ownership structure, assets, liabilities and contractual obligations of the company; identification of the cross-guarantees tied to different securities; identification of major counterparties; a process for determining to whom the collateral of the company is pledged; and any other information that the FDIC and the Board jointly require by rule or order. Resolution Plans are required



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<sup>1</sup> Dodd-Frank Act § 165(d).

<sup>2</sup> Dodd-Frank Act § 113(a)(1).

to include a strategic analysis by the Covered Company of how it can be resolved under the Bankruptcy Code in a way that would not pose systemic risk to the financial system. In doing so, the company must map its core business lines and critical operations to material legal entities and provide integrated analyses of its corporate structure; credit and other exposures; funding, capital and cash flows; the domestic and foreign jurisdictions in which it operates; and its supporting information systems for core business lines and critical operations.

The Final Rules establish a staggering time-table for filing Resolution Plans based upon the asset size of a Covered Company's US operations. Covered Companies with US\$250 billion or more in non-bank assets are required to submit their Resolution Plans on or before July 1, 2012; Covered Companies with US\$100 billion up to less than US\$250 billion in non-bank assets are required to submit their Resolution Plans on or before July 1, 2013; and Covered Companies that predominately operate through one or more insured depository institutions and do not otherwise meet the foregoing requirements must submit plans on or before December 13, 2013. The Resolution Plans are required to be updated annually. Furthermore, Covered Companies are required to notify regulators within 45 days after a Covered Company experiences a material event that would impact the Resolution Plan.

In addition the Final Rules permit certain Covered Companies to file a more limited, tailored Resolution Plan. Covered Companies who would be permitted to file a tailored Resolution Plan include those with less than US\$100 billion in total non-bank assets that predominately operate through one or more insured depository institutions, *i.e.*, the company's insured depository institution subsidiaries comprise at least 85 percent of its total consolidated assets (or, in the case of a foreign-based Covered Company, the assets of the US depository institution operations, branches, and agencies of which comprise 85 percent or more of the company's US total consolidated assets).

Below is an overview of the key provisions of the Final Rules.

#### 1. When is a Resolution Plan Required to be Submitted?

- **Timing.** Covered Companies are required to submit an initial Resolution Plan to the Board and the FDIC on or before the following dates:
  - (i) July 1, 2012 for Covered Companies that have US\$250 billion or more in total non-bank assets (or, in the case of a Covered Company that is a foreign-based company, in total US non-bank assets)

- (ii) July 1, 2013 for Covered Companies that do not meet the above requirements in item (i) and had US\$100 billion or more in total non-bank assets (or, in the case of a Covered Company that is a foreign-based company, in total US non-bank assets)
- (iii) December 31, 2013 for Covered Companies that do not meet any of the above requirements in items (i) and (ii).<sup>3</sup>

- **Annual Updates.** Covered Companies are required to submit annually a Resolution Plan on the anniversary date of the initial submission.<sup>4</sup>
- **Updated Resolution Plan May be Required after Material Events.** Covered Companies are required to provide notice no later than 45 days after any event, occurrence, change in conditions or circumstances or other change that results in, or could reasonably be foreseen to have, a material effect on the Resolution Plan of the Covered Company *except* when this 45 days period would be within 90 days prior to the date on which the Covered Company is required to file an annual Resolution Plan.<sup>5</sup> The Board and FDIC may jointly require a Covered Company to file an updated plan.<sup>6</sup>
- **More Frequent Submissions or Extensions, Waivers.** The Board and the FDIC can (i) require more frequent reporting of a Resolution Plan; (ii) require submission of an interim report to any Resolution Plan; and/or (iii) extend the deadline to submit a Resolution Plan.<sup>7</sup>

#### 2. Who must approve a Resolution Plan prior to its submission to the Board and the FDIC?

Prior to submission, Resolution Plans must be approved either by the Covered Company's board of directors and noted in the minutes or for non-US based companies only, a delegatee acting under the express authority of the Covered Company's board of directors.<sup>8</sup> The commentary to the Final Rules make clear that this is not intended to be a requirement that the board of directors attest that a Resolution Plan is accurate and the information contained therein is current.

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<sup>3</sup> Final Rule 3(a)(1).

<sup>4</sup> Final Rule 3(b)(1).

<sup>5</sup> Final Rule 3(b)(2) and (3).

<sup>6</sup> *Id.*

<sup>7</sup> Final Rule 3(c) (1) and (2).

<sup>8</sup> Final Rule 3(e).

### 3. What are the required contents of a Resolution Plan?

In preparing its Resolution Plan, a Covered Company is required to take into account that the material financial distress or failure of the Covered Company may occur at a time when financial markets, or other significant companies, are also under stress and that the material financial distress of the Covered Company may be the result of a range of stresses experienced by the Covered Company.<sup>9</sup> Furthermore, the Covered Company's Resolution Plan should not rely on the provision of extraordinary support by the United States or any other government to prevent the failure of the Covered Company.<sup>10</sup>

The Final Rules set forth certain minimum requirements for a Resolution Plan's contents. These same informational requirements are imposed on both US and non-US Covered Companies, subject to certain derivations noted below for non-US Covered Companies. The FDIC and Board can jointly agree to exempt a Covered Company from any of the following Resolution Plan informational requirements summarized below. The Final Rules establish for certain Covered Companies the ability to file a more tailored Resolution Plan as outlined below in response to question #5.

■ **Executive Summary.**<sup>11</sup> The Resolution Plan must include an executive summary that describes:

- The key elements of the Covered Company's strategic plan for "rapid and orderly resolution"
  - (i) **"Rapid and orderly resolution"** for purposes of the Final Rules means a *reorganization or liquidation* of the Covered Company (or, for non-US Covered Companies, the subsidiaries and operations of such foreign company that are domiciled in the United States) under the Bankruptcy Code that can be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk that the failure of the Covered Company would have serious adverse effects on the financial stability of the United States
- Material changes to any previously filed Resolution Plan or update thereto
- Any actions taken since the filing of any previous Resolution Plan to improve the effectiveness of or remediate or otherwise mitigate any material weaknesses or impediments to effective and timely execution of the Resolution Plan

■ **Strategic Analysis.**<sup>12</sup> The Resolution Plan is required to include a strategic analysis describing the Covered Company's plan for "rapid and orderly resolution" in the event of material financial distress or failure of the Covered Company, which is required to include detailed descriptions of the following:

- Key assumptions and supporting analyses underlying the Resolution Plan, including any assumptions made concerning the economic or financial conditions that would be present at the time of the plan's implementation
- Range of specific actions to be taken to facilitate a "rapid and orderly resolution" of the Covered Company, its material entities and its critical operations and core business lines in the event of material financial distress or failure of the Covered Company
  - (i) **Material Entities** for purposes of the Final Rules means a subsidiary or foreign office of the Covered Company that is significant to the activities of a critical operation or core business line<sup>13</sup>
  - (ii) **Critical Operations** for purposes of the Final Rules means operations of the Covered Company, including associated services, functions and support, that in the view of the Covered Company or as jointly directed by the Board and the FDIC, upon a failure of, or discontinuance of such operations, would pose a threat to the financial stability of the United States<sup>14</sup>
  - (iii) **Core Business Lines** for purposes of the Final Rules means business lines of the Covered Company, including associated operations, services, functions and support that, in the view of the Covered Company, upon failure would result in a material loss of revenue, profit or franchise value<sup>15</sup>
  - (iv) **Material financial distress** for purposes of the Final Rules occurs when one of the following conditions exists:
    - The Covered Company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion
    - The assets of the Covered Company are, or are likely to be, less than its obligations to creditors and others

<sup>9</sup> Final Rule 4(a)(4)(i).

<sup>10</sup> Final Rule 4(a)(4)(ii).

<sup>11</sup> Final Rule 4(b).

<sup>12</sup> Final Rule 4(c).

<sup>13</sup> Final Rule 2(l).

<sup>14</sup> Final Rule 2(g).

<sup>15</sup> Final Rule 2(d).

- The Covered Company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business<sup>16</sup>
  - Funding, liquidity and capital needs of, and resources available to, the Covered Company and its material entities, which is required to be mapped to its critical operations and core business lines, in the ordinary course of business and in the event of material financial distress at or failure of the Covered Company
  - Strategy for maintaining operations of, and funding for, the Covered Company and its material entities, which shall be mapped to its critical operations and core business lines
  - Strategy in the event of a failure or discontinuation of a material entity, core business line or critical operation, and the actions that will be taken by the Covered Company to prevent or mitigate any adverse effects of such failure or discontinuation on the financial stability of the United States; **provided however, if any such material entity is subject to an insolvency regime other than the Bankruptcy Code, a Covered Company may exclude that entity from its strategic analysis unless that entity either has US\$50 billion or more in total assets or conducts a critical operation**
  - Strategy for ensuring that any insured depository institution subsidiary of the Covered Company will be adequately protected from risks arising from the activities of any non-bank subsidiaries of the Covered Company (other than those that are subsidiaries of an insured depository institution)
  - Time period(s) to execute each material aspect and step of the Resolution Plan
  - Potential material weaknesses or impediments to effective and timely execution of the plan
  - Actions and steps the Covered Company has taken or proposes to take to remediate or otherwise mitigate the weaknesses or impediments identified, along with a timeline
  - Detailed description of the processes the Covered Company employs for:
    - (i) Determining current market values and marketability of its core business lines, critical operations and material asset holdings of the Covered Company
    - (ii) Assessing the feasibility of the Covered Company's plans (including time frames) for executing any sales, divestitures, restructurings, recapitalizations or other similar actions contemplated in the Covered Company's Resolution Plan
    - (iii) Assessing the impact of any sales, divestitures, restructurings, recapitalizations or other similar actions on the value, funding and operations of the Covered Company, its material entities and critical operations and core business lines
- **Information regarding corporate governance relating to resolution planning.**<sup>17</sup> The Resolution Plan is required to include a detailed description of the following:
    - How resolution planning is integrated into the corporate governance structure and processes of the Covered Company
    - Internal policies, procedures, and internal controls governing preparation and approval of the Covered Company's Resolution Plan
    - Identity and position of the senior management official(s) primarily responsible for overseeing the development, maintenance, implementation, and filing of the Covered Company's Resolution Plan and compliance with the Final Rules
    - Nature, extent and frequency of reporting to senior executive officers and the board of directors of the Covered Company on the development, maintenance and implementation of the Covered Company's Resolution Plan
    - Description of the nature, extent and results of any contingency planning or similar exercise conducted by the Covered Company since the date of the Covered Company's most recently filed Resolution Plan to assess the viability of or improve the Resolution Plan of the Covered Company
    - Identification and description of the relevant risk measures used by the Covered Company to report credit risk exposures both internally to its senior management and board of directors, as well as any relevant risk measures reported externally to investors or to the Covered Company's appropriate Federal regulator.

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<sup>16</sup> Final Rule 2(m).

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<sup>17</sup> Final Rule 4(d).

■ **Organizational structure and related information.**<sup>18</sup>

The Resolution Plan is required to include the following:

- Detailed description of the Covered Company's organizational structure, including:
  - (i) A hierarchical list of all material legal entities, including but not limited to material entities within the Covered Company's organization, that:
    - Identifies the direct holder and the percentage of voting and nonvoting equity of each legal entity and foreign office listed; and the location, jurisdiction of incorporation, licensing, and key management associated with each material legal entity and foreign office identified
  - (ii) A mapping of the Covered Company's critical operations and core business lines, including material asset holdings and liabilities related to such critical operations and core business lines, to material entities
- An unconsolidated balance sheet for the Covered Company and a consolidating schedule for all **material** entities that are subject to consolidation by the Covered Company
- A description of the material components of the liabilities of the Covered Company, its material entities, its critical operations and core business lines that, at a minimum, separately identifies types and amounts of the short-term and long-term liabilities, the secured and unsecured liabilities and subordinated liabilities
- An identification and description of the processes used by the Covered Company to:
  - (i) Determine to whom the Covered Company has pledged collateral
  - (ii) Identify the person or entity that holds such collateral
  - (iii) The jurisdiction in which the collateral is located and, if different, the jurisdiction in which the security interest in the collateral is enforceable against the Covered Company
- A description of any material off-balance sheet exposures (including guarantees and contractual obligations) of the Covered Company and its material entities, including a mapping to its critical operations and core business lines
- A description of the practices of the Covered Company, its material entities and its core business lines related to the booking of trading and derivatives activities

- An identification of material hedges of the Covered Company, its material entities, and its core business lines related to trading and derivative activities, including a mapping to legal entity
- A description of the hedging strategies of the Covered Company
- A description of the process undertaken by the Covered Company to establish exposure limits
- An identification of the major counterparties of the Covered Company and a description of the interconnections, interdependencies and relationships with such major counterparties
- An analysis of whether the failure of each major counterparty would likely have an adverse impact on or result in the material financial distress or failure of the Covered Company
- An identification of each system on which the Covered Company conducts a material number or value amount of trades, including mapping membership in each such system to the Covered Company's material entities and critical operations and core business lines
- An identification of each payment, clearing or settlement system of which the Covered Company, directly or indirectly, is a member and on which the Covered Company conducts a material number or value amount of transactions. Map membership in each such system to the Covered Company's material entities and critical operations and core business lines.

■ **Management information systems.**<sup>19</sup> Each Resolution Plan is required to include:

- A detailed inventory and description of the key management information systems and applications, including systems and applications for risk management, accounting, and financial and regulatory reporting, used by the Covered Company and its material entities, including a mapping to its critical operations and core business lines
- An identification of the legal owner of the systems identified above, service level agreements related thereto and any software and systems licenses or associated intellectual property, including a mapping thereof to the material entities and critical operations and core business lines of the Covered Company that use or rely on such intellectual property

<sup>18</sup> Final Rule 4(e).

<sup>19</sup> Final Rule 4(f).

- An identification of the scope, content and frequency of the key internal reports that senior management of the Covered Company, its material entities, and its critical operations and core business lines use to monitor the financial health, risks and operation of the Covered Company, its material entities, and its critical operations and core business lines
- A description of the process for the appropriate supervisory or regulatory agencies to access the management information systems and applications identified
- A description and analysis of the Covered Company's management information systems to collect, maintain and report, in a timely manner to management of the Covered Company, and to the Board, the information and data underlying the Resolution Plan as well as any deficiencies, gaps or weaknesses in such capabilities

■ **Interconnections and interdependencies.**<sup>20</sup> A Covered Company is also required in its Resolution Plan, to the extent not elsewhere provided, to identify and map to the material entities the interconnections and interdependencies among the Covered Company and its material entities, and among the critical operations and core business lines of the Covered Company that, if disrupted, would materially affect the funding or operations of the Covered Company, its material entities, or its critical operations or core business lines. Such interconnections and interdependencies may include:

- Common or shared personnel, facilities or systems (including information technology platforms, management information systems, risk management systems, and accounting and recordkeeping systems)
- Capital, funding or liquidity arrangements
- Existing or contingent credit exposures
- Cross-guarantee arrangements, cross-collateral arrangements, cross-default provisions and cross-affiliate netting agreements
- Risk transfers
- Service-level agreements

■ **Supervisory and regulatory information.**<sup>21</sup> The Resolution Plan is required to contain:

- Identification (and contact information) for:
  - (i) Federal, state, or foreign agency or authority with supervisory authority or responsibility for ensuring the safety and soundness of the Covered Company, its material entities, critical operations and core business lines
  - (ii) Other Federal, state, or foreign agency or authority (other than a Federal banking agency) with significant supervisory or regulatory authority over the Covered Company, and its material entities and critical operations and core business lines
- Identification (and contact information for) of foreign agency or authority responsible for resolving a foreign-based material entity and critical operations or core business lines of the Covered Company

■ **Contact information.**<sup>22</sup> The Resolution Plan is required to contain:

- Identification of a senior management official at the Covered Company responsible for serving as a point of contact regarding the Resolution Plan of the Covered Company
- Contact information for the material entities and critical operations and core business lines of the Covered Company.

#### **Special Requirements for Foreign-based Covered Companies.**<sup>23</sup>

Foreign-based Covered Companies are required to include all the above information in their Resolution Plan with respect to subsidiaries, branches and agencies, and critical operations and core business lines, as applicable, that are domiciled in the United States or conducted in whole or in material part in the United States. In addition, their Resolution Plans should also:

- Identify, describe in detail, and map to legal entity the interconnectedness and interdependencies among the US subsidiaries, branches and agencies, and critical operations and core business lines of the foreign-based Covered Company and any foreign-based affiliate

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<sup>21</sup> Final Rule 4(h).

<sup>22</sup> Final Rule 4(i).

<sup>23</sup> Final Rule 4(a)(2).

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<sup>20</sup> Final Rule 4(g).

- Provide information regarding how its US-based operations (in whole or in part) are integrated into the Covered Company's overall resolution or other contingency planning process

#### 4. What are the contents of a Tailored Resolution Plan?

- Who may file a Tailored Resolution Plan?
  - Covered Companies that, as of December 31 of the calendar year prior to the date its Resolution Plan is required to be submitted, had less than US\$100 billion in total non-bank assets (or, in the case of a Covered Company that is a foreign-based company, in total US non-bank assets) and the total insured depository institution assets of which comprise 85 percent or more of the Covered Company's total consolidated assets (or, in the case of a Covered Company that is a foreign-based company, the assets of the US insured depository institution operations, branches and agencies of which comprise 85 percent or more of such company's US total consolidated assets).<sup>24</sup> Such Covered Companies must provide the Board and the FDIC notice no later than 270 days prior to the deadline to submit its Resolution Plan, that it intends to file a Tailored Resolution Plan and that it is eligible to do so.<sup>25</sup>
- **Tailored Resolution Plan Requirements.** A Tailored Resolution Plan may be limited to including the following items:<sup>26</sup>
  - Executive Summary (as outlined above)
  - Only with respect to the Covered Company and its non-banking material entities and operations, the following (all as outlined above):
    - (i) Strategic analysis
    - (ii) Corporate governance relating to resolution planning
    - (iii) Organizational structure and related information
    - (iv) Management information systems
    - (v) Supervisory and regulatory information
  - Only with respect to the Covered Company and all of its insured depository institutions (or in the case of a non-US based Covered, the US insured depository institutions,

branches and agencies) and non-bank material entities and operations, the following (all as outlined above):

- (vi) Interconnections and interdependencies
- (vii) Contact information

#### 5. What special conditions exist for keeping confidential information separate from public information?

- Resolution Plans should be divided and segregated into a public section and a private section.
- The Public Section, which will be made available to the public, is required to consist of an executive summary of the Resolution Plan that describes the business of the Covered Company and certain other material necessary to an understanding of the Covered Company.
- Any Covered Company submitting a Resolution Plan can request that the information be kept confidential in accordance with applicable exemptions under the Freedom of Information Act, the Board's Rules Regarding Availability of Information and the FDIC's Disclosure of Information Rules. Information contained in the Confidential Section of the Resolution Plan will be treated as confidential to the extent permitted by law.<sup>27</sup>

#### 6. What is the process for review of Resolution Plans and Deficient Resolution Plans?

##### ■ Review of Resolution Plans.

- The Board and FDIC are required to review a Resolution Plan within 60 days of its receipt. If the Board and the FDIC jointly determine that it is incomplete or additional information is needed, the Board and FDIC will jointly inform the Covered Company of such deficiencies.<sup>28</sup> In reviewing the Resolution Plans, the FDIC and the Board intend to take into account variances among companies in their core business lines, critical operations, foreign operations, capital structure, risk, complexity, financial activities (including the financial activities of their subsidiaries), size and other relevant factors.
- The Covered Company is required to resubmit an informationally complete Resolution Plan or any additional information requested by the Board and the FDIC no later than 30 days after receiving the above notification, or other time jointly determined by the Board and the FDIC.<sup>29</sup>

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<sup>24</sup> Final Rule 4(a)(3)(i)(I).

<sup>25</sup> Final Rule 4(a)(3)(iii).

<sup>26</sup> Final Rule 4(a)(3)(ii).

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<sup>27</sup> Final Rule 8(d).

<sup>28</sup> Final Rule 5(a)(1) and (2).

<sup>29</sup> Final Rule 5(a)(2)(ii).

■ **Deficient Resolution Plans.**

- The Board and FDIC will *jointly* notify a Covered Company if the Resolution Plan submitted is determined not to be credible or would not facilitate an orderly resolution of the Covered Company under the Bankruptcy Code.<sup>30</sup>
- Subject to an extension request, upon receipt of such notice, the Covered Company has up to 90 days, unless otherwise determined by the Board and FDIC, to submit a revised Resolution Plan addressing the deficiencies, including any changes to the Covered Company's business operations and corporate structure that the Covered Company proposes to undertake to facilitate implementation of the revised Resolution Plan (including a timeline for the execution of such planned changes) and include an explanation as to why the revised Resolution Plan is credible and would result in an orderly resolution of the Covered Company under the Bankruptcy Code.<sup>31</sup>

- **Extension of Time.** The FDIC and the Board are authorized, either on their own initiative or upon a written request by a Covered Company that describes the basis and justification for the request, to extend any of the above time periods.

**7. What are the ramifications to a Covered Company for failing to cure deficiencies upon the resubmission of a Resolution Plan?**

If a Covered Company or any subsidiary (i) fails to submit a timely revised Resolution Plan or (ii) if the Board and FDIC jointly determines that a Revised Resolution Plan does not remedy identified deficiencies, *then the Covered Company may be subject to more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the Covered Company or subsidiary* until such time that the Resolution Plan adequately remedies the identified deficiencies.<sup>32</sup>

- **Divestiture Possible.** By joint order, the Board and FDIC, in consultation with the Council, may direct the Covered Company to divest certain assets and operations if:
  - The Covered Company or its subsidiary are subject to more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the Covered Company or subsidiary as noted above, **and**

- The Covered Company fails to resubmit a revised Resolution Plan that remedies the above defects within a two-year period; **and**
- The Board and FDIC jointly determine that the divestiture is necessary to facilitate an orderly resolution of the Company under the Bankruptcy Code in the event that the company fails.<sup>33</sup>

**Consultation Required.** The Board and FDIC are required to consult with each Council member that primarily supervises a regulated subsidiary or a depository institution subsidiary of the Covered Company prior to (i) issuing a notice of deficiency, (ii) determining to impose additional requirements or restrictions, or (iii) issuing a divestiture order if such action is likely to have a significant impact on such entity.<sup>34</sup>

**8. What legal impact will the Resolution Plans have outside the Resolution Planning context?**

- **No Private Right of Action.** The Final Rules are not intended to create a private right of action based upon a Resolution Plan prepared or submitted or any action taken by the Board or FDIC with respect to any Resolution Plan submitted.<sup>35</sup>
- **No Binding Effect.** Resolution Plans will have no binding effect on any of (i) a court or trustee in a proceeding commenced under the Bankruptcy Code; (ii) the FDIC as receiver under Title II of the Dodd-Frank Act; (iii) a Title II bridge financial company established under the Dodd-Frank Act or any other authority that is authorized or required to resolve a Covered Company (including any subsidiary or affiliate thereof) under any other provision of Federal, state or foreign law.<sup>36</sup>

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<sup>33</sup> Final Rule 6(c).

<sup>34</sup> Final Rule 7.

<sup>35</sup> Final Rule 8(b).

<sup>36</sup> Final Rule 8(a).

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<sup>30</sup> Final Rule 5(b).

<sup>31</sup> Final Rule 5(c).

<sup>32</sup> Final Rule 6(a) and (b).