

Corporate & Financial Weekly Digest

Posted at 1:01 PM on April 1, 2011 by [Jeffrey M. Werthan](#)

FDIC Board Approves Proposed Rule on "Living Wills" and Credit Exposure Reports for Large Organizations; Announces Remedies for Deficient Living Wills

The Board of Directors of the Federal Deposit Insurance Corporation (FDIC) approved on March 29 a joint Notice of Proposed Rulemaking (NPR) for covered systemic organizations to file and report resolution plans and credit exposure reports as required in Title I, Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Resolution plans, also known as "living wills," would have to be submitted within 180 days of the effective date of a final regulation, and Credit Exposure Reports would have to be filed 30 days after the end of each calendar quarter. The NPR is to be issued jointly with the Board of Governors of the Federal Reserve System. The regulation would apply to organizations that have \$50 billion or more in total consolidated assets.

Under the Dodd-Frank Act, holding companies with assets of \$50 billion or more and other covered non-bank systemically important financial companies supervised by the Federal Reserve (a covered company) must report periodically to detail their resolution plans and report significant credit exposures. The Dodd-Frank Act requires each company covered by the proposed rule to produce a resolution plan, or "living will," that includes 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 nonbank 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 Federal Reserve and the FDIC jointly require by rule or order. The proposed rule would require a strategic analysis by the covered company of how it can be resolved under Title 11 of the U.S. Code (the Bankruptcy Code) in a way that would not pose systemic risk to the financial system.

Companies covered by the proposed regulations would also be required to identify and map their business lines to legal entities and provide integrated analyses of their corporate structure; credit and other exposures; funding, capital and cash flows; domestic and foreign jurisdictions in which they operate; their supporting information systems and other essential services; and other key components of their business operations. On a quarterly basis, covered companies would be required to submit a Credit Exposure Report to outline the nature and extent of credit exposures. Foreign-based companies would submit reports only on their U.S. operations. At a minimum, a

covered company headquartered in the United States would be required to provide information on both its domestic and foreign operations. A foreign-based company would be required to provide information on its U.S. operations and explain how resolution planning for its U.S. operations is integrated into the foreign-based company's overall interconnections and interdependencies.

After the initial resolution plan is submitted, each covered company would be required to submit a new resolution plan no later than 90 days after the end of each calendar year. A covered company would be required to file an updated resolution plan within a time period specified by the Federal Reserve and the FDIC, but no later than 45 days after any event, occurrence, change in conditions or circumstances or change which results in, or could reasonably be foreseen to have, a material effect on the resolution plan of the covered company. Ultimately, if the covered company fails to submit a revised resolution plan or the Federal Reserve and the FDIC jointly determine that a revised resolution plan submitted does not adequately remedy deficiencies identified by the Federal Reserve and the FDIC, then the Federal Reserve and FDIC may jointly subject a covered company or any subsidiary of a covered company to more stringent capital, leverage, or liquidity requirements, or restrictions on growth, activities, or operations. Any such requirements or restrictions shall apply to the covered company or subsidiary, respectively, until the Federal Reserve and the FDIC jointly determine the covered company has submitted a revised resolution plan that adequately remedies the deficiencies identified. In addition, if the covered company fails, within the two-year period beginning on the date on which the determination to impose such requirements or restrictions was made, to submit a revised resolution plan that adequately remedies the deficiencies jointly identified by the Federal Reserve and the FDIC, then the Federal Reserve and FDIC, in consultation with the Financial Stability Oversight Council, may jointly, by order, direct the covered company to divest such assets or operations as the Federal Reserve and FDIC jointly determine necessary to facilitate an orderly resolution of the covered company under the Bankruptcy Code in the event the company were to fail.

The proposed rule requires each covered company to submit to the Federal Reserve and the FDIC a Credit Exposure Report on a quarterly basis. Each Credit Exposure Report is required to set forth the nature and extent of credit exposures of such company to significant bank holding companies and significant nonbank financial companies as well as the credit exposures of significant bank holding companies and significant nonbank financial companies to such company.

The proposed rule will be out for comment 60 days after publication in the *Federal Register*.

[Read more.](#)

Katten Muchin Rosenman LLP
Charlotte Chicago Irving London Los Angeles New York Washington, DC