FS Regulatory Brief

FDIC Insured Depository Institution Resolution Plan Interim Final Rule (Approved by FDIC Board 9/13/11)

Significant Changes from Notice of Proposed Rulemaking

Summary

The Federal Deposit Insurance Corporation (FDIC) Interim Final Rule (IFR) on resolution plans for insured depository institutions (IDIs) contains a number of significant changes from the related Notice of Proposed Rulemaking (NPR) issued by the FDIC on May 17, 2010, before passage of the Dodd-Frank Act ("Dodd-Frank"). These changes include:

- alignment with a concurrently issued FDIC/Federal Reserve Board Final Rule ("Final Rule") requiring the preparation and submission under Dodd-Frank of resolution plans (RPs) by large bank holding companies;
- the re-specification of covered insured depository institutions (CIDIs) required to prepare RPs under the IFR;
- a tiering approach to provide for staged submissions of RPs by CIDIs based on certain nonbank asset thresholds under the FDIC/Federal Reserve Board Final Rule;
- a new RP format intended to allow for the confidential treatment by the FDIC of certain information contained within the RPs; and
- the clarification of key IFR requirements.

The purpose of the IFR clearly focuses on resolution matters and contrasts with the Final Rule, which is concerned with systemic risk matters as well as resolution issues.

Filing requirements

Alignment with the FDIC/Federal Reserve Board SIFI Final Rule

The IFR states that required RPs for CIDIs are intended to complement RPs prepared for "covered companies"[1] under the Final Rule and defines a number of key terms and requirements consistently with the companion rule. The IFR also harmonizes submission deadlines with those in the Final Rule and uses the same thresholds to establish tiers of reporting institutions. The IFR specifically provides that a reporting CIDI may incorporate data and other information from the RP prepared under the Final Rule and uses a common format for the RP (i.e., an executive summary and high-level discussion of RP topics combined with a confidential section that goes into greater detail and specificity).

While certain elements of the IFR are closely aligned with the Final Rule, there are differences between the two issuances that reflect their differing objectives. The IFR seeks to require RPs to be prepared anticipating an FDIC receivership regime (rather than a bankruptcy regime, which is the basis for Final Rule RPs), and seeks

---

[1] Financial or bank holding companies with more than $50 billion in total assets as reported on the FR Y-9C, foreign banks or companies treated as a bank holding company under Section 8(a) of the International Banking Act that have $50 billion in assets or more, and any nonbank financial company that has been designated for Federal Reserve Board supervision by the Financial Stability Oversight Council.

information to allow the FDIC to achieve its core objectives in receivership of
(1) timely payout to insured depositors,
(2) maximization of the net present value of the firm and its constituent business to recover any losses to the FDIC fund, and
(3) a minimization of losses to other creditors. As such, the IFR requests specific and granular information relating to a CIDI's core businesses, significant entities, and those critical services that would allow the CIDI to be sold, operated in receivership, or transferred to a bridge entity.

IDIs required to file an RP

The NPR originally proposed that all IDIs with assets in excess of $10 billion that were owned or controlled by parent companies with more than $100 billion in assets be required to file an IDI-level RP. Based on industry feedback, the IFR now specifies that only those IDIs with assets of $50 billion or more would be CIDIs and thereby required to file an RP. The RPs are to be prepared on a depository institution basis and the requirement only extends to those IDIs exceeding the asset threshold. Thus, in a multi-bank holding company structure, only those IDIs with assets exceeding the threshold would be required to file an RP.

Submission dates

The NPR contemplated that all CIDIs would be required to file an RP within six months of the issuance of the Final Rule. As noted above, the submission deadlines in the IFR have been harmonized with those of the Final Rule, with the effect that most affected institutions have more time to prepare their RPs. The following table presents the deadlines for various tiers of CIDIs:

RP submission due date	
July 1, 2012	CIDIs part of "covered companies" with nonbank assets[2] >$250B
July 1, 2013	CIDIs part of "covered companies" with nonbank assets <$250B and >$100B
Dec. 31, 2013	CIDIs part of "covered companies" with nonbank assets <$100B

A significant change in the IFR is the elimination of the NPR's requirements that RPs be updated after a significant corporate event (e.g., merger, acquisition, and divestiture). In its place, the IFR requires that companies file a notice to the FDIC after such an event has occurred. The company would then reflect the material event in its next annual RP update.

Elimination of board of directors attestation requirements

The NPR included a provision that would have required the IDI board of directors to attest that the RP was accurate and the information was current. In response to industry feedback, the board attestation requirement was eliminated in favor of a requirement for IDI board approval of the RP, with such approval documented in the minutes.

---

[2] The term "nonbank assets" as used for this tiering is not defined in the Final Rule, either directly or by reference to a Federal Reserve Board report (such as the FR Y-9C). General regulatory usage would construe the term as assets held by a bank holding company and its nonbanking subsidiaries, excluding any assets held in IDIs and their subsidiaries; however, that interpretation should be confirmed with regulatory sources.

Informational requirements

Compared to the NPR, the IFR contains a much greater degree of specificity for informational requirements with regard to RP content. The IFR specifies that the RP must include the following sections for the CIDI (as applicable):

i. Executive summary
ii. Organizational structure: legal entities; core business lines, and branches
iii. Critical services
iv. Interconnectedness to parent company's organization
v. Strategy to separate from parent company's organization
vi. Strategy for the sale or disposition of deposit franchise, business lines, and assets
vii. Least costly resolution method
viii. Asset valuation and sales
ix. Major counterparties
x. Off-balance-sheet exposures
xi. Collateral pledged
xii. Trading, derivatives, and hedges
xiii. Unconsolidated balance sheet of CIDI; material entity financial statements
xiv. Payment, clearing, and settlement systems
xv. Capital structure; funding sources
xvi. Affiliate funding, transactions, accounts, exposures, and concentrations
xvii. Systemically important functions
xviii. Cross-border elements
xix. Management information systems; software licenses; intellectual property
xx. Corporate governance
xxi. Assessment of the resolution plan
xxii. Any other material factor

The IFR also provides specific detail for the content of each section.

Definitional changes

The IFR generally adopts the key RP definitions that are used in the Final Rule, such as "core business" and "material entity." One significant difference is the use of the term "critical services" to describe those internal service relationships that would be essential to allow the IDI to operate in receivership or in a bridge situation. (The term "critical services" is differentiated in the IFR from the term "critical operations," which the Final Rule uses to identify those activities where a failure or discontinuance would adversely affect the financial stability of the United States.)

The stress scenario requirement for RPs in the IFR is harmonized with Final Rule requirements to allow firms to use the economic stress testing scenarios to be utilized by the Federal Reserve Board for purposes of Dodd-Frank Section 165(i)(1), rather than having to develop their own scenarios. The NPR did not have an explicit stress scenario requirement.

Regulatory RP reviews

Similar to the Final Rule, the IFR seeks to allay industry concerns regarding the acceptability of RPs and convey a desire for more of an iterative process. The preamble to the IFR states that the regulators desire to "work closely with covered companies" in the development of their RPs, "and are dedicating staff for that purpose." The IFR lays out specified FDIC review periods for RPs and IDI responses to FDIC comments. The IFR also lays out a timeline for cure of RPs found to be deficient. Enforcement language surrounding deficient RPs is less prominent than in the NPR.

RP confidentiality

Just as in the Final Rule, and in response to industry concerns, the IFR directly addresses issues pertaining to RP confidentiality. The IFR provides that RPs should be divided into two parts: a public section and a confidential section. The public section would consist of an executive summary that would detail a high-level description of the firm, its core businesses, and its critical operations, and provide a summary of the firm's resolution strategy. The confidential section, which would be protected from FOIA requests by the examination and trade secrets privileges, as applicable, would contains additional granularity on these topics.

Additional information

If you would like additional information about the topic discussed in this FS Regulatory Brief, please contact:

Dan Ryan	646 471 8488	daniel.ryan@us.pwc.com
Kenneth Albertazzi	617 530 6237	kenneth.albertazzi@us.pwc.com
David Albright	703 918 1364	david.albright@us.pwc.com
Michael Malone	617 530 4131	michael.malone@us.pwc.com
Sally Neal	646 471 4034	sally.neal@us.pwc.com
Richard Neiman	646 471 3823	richard.neiman@us.pwc.com
Graham O'Connell	646 471 2547	graham.oconnell@us.pwc.com
David Sapin	646 471 8481	david.sapin@us.pwc.com
Dan Weiss	703 918 1431	dan.weiss@us.pwc.com
Gary Welsh	703 918 1432	gary.welsh@us.pwc.com