Banking and Finance Law Daily Wrap Up, DODD-FRANK ACT—Four bank's living wills pass muster; problems with fifth resolution plan, (Dec. 14, 2016)

Banking and Finance Law Daily Wrap Up

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The Federal Deposit Insurance Corporation and Federal Reserve Board have notified four systemically important, domestic banking institutions that they have adequately remediated deficiencies in their 2015 resolution plans or living wills.

Under the Dodd-Frank Act, bank holding companies with total consolidated assets of $50 billion or more and nonbank financial companies designated by the Financial Stability Oversight Council as systemically important periodically are required to submit resolution plans, commonly referred to as "living wills," to the FDIC and the Fed. Each plan must describe the company's strategy for rapid and orderly resolution under the U.S. Bankruptcy Code or other applicable insolvency regime in the event of material financial distress or failure of the company. Regulations implementing the requirements of section 165(d) of the Dodd-Frank Act were issued by the FDIC and Fed in November 2011 and are codified at 12 CFR Part 243 and Part 381.

Deficiencies. The four banks—Bank of America, Bank of New York Mellon, JP Morgan Chase, and State Street—were notified in April 2016 that their 2015 living wills were deficient and that corrections were to be remedied by Oct. 1, 2016. A fifth bank, Wells Fargo was also notified of deficiencies. At that time, each of the banks was issued a feedback letter (Bank of America, Bank of New York Mellon, JP Morgan Chase, State Street, and Wells Fargo) detailing the deficiencies in their plans and the actions the firms must take to address them, as required by the Dodd-Frank Act and the agencies' rule. The nature, rather than the number, of deficiencies identified in a firm's plan reflects the extent of the required remediation (see *Banking and Finance Law Daily*, April 13, 2016).

Feedback letters. As part of the determination that the four banks remedied the deficiencies in their living wills, the Fed also released the feedback letters issued to each of the banks. The letters (Bank of America, Bank of New York Mellon, JP Morgan Chase, and State Street) describe the steps the firms have taken to address the deficiencies outlined in the April 2016 letters.

Wells Fargo. The FDIC and Fed jointly determined that Wells Fargo did not adequately remedy two of the firm's three deficiencies, specifically in the categories of "legal entity rationalization" and "shared services." The agencies also jointly determined that the firm did adequately remedy its deficiency in the "governance" category. Given the nature of the deficiencies and Wells Fargo's failure to remedy them, the agencies have jointly determined to impose restrictions on the growth of international and non-bank activities of Wells Fargo and its subsidiaries. In particular, Wells Fargo is prohibited from establishing international bank entities or acquiring any non-bank subsidiary.

The FDIC and Fed have also given Wells Fargo until March 1, 2017 to file a revised submission addressing the remaining deficiencies by March 31, 2017. The agencies provided Wells Fargo a feedback letter discussing the steps the bank has taken to address its deficiencies and those needed to adequately remedy the two remaining deficiencies.

If after reviewing the March submission, the agencies jointly determine that the deficiencies have not been adequately remedied, the agencies will limit the size of the firm's non-bank and broker-dealer assets to levels in place on Sept. 30, 2016. If Wells Fargo has not adequately remedied the deficiencies within two years, the statute provides that the agencies, in consultation with FSOC, may jointly require the firm to divest certain assets or operations to facilitate an orderly resolution of the firm in bankruptcy.

Guidance for 2017 plans. To assist the five banks, as well as Goldman Sachs, Morgan Stanley, and Citigroup, in drafting their 2017 resolution plans, the Fed and FDIC also released guidance that describes the agencies' expectations for these plans. The document highlights specific areas where additional detail should be provided and where certain capabilities or optionality should be developed to demonstrate that each firm has considered fully, and is able to mitigate, obstacles to the successful implementation of their preferred resolution strategies.

Commenting on the agencies' action, Wells Fargo issued a statement noting, "In October 2016, Wells Fargo submitted a response to the Federal Reserve and FDIC regarding certain deficiencies cited in our 2015 Resolution Plan submission. We took feedback from our 2015 submission very seriously and took several steps to address it, including creating a program office dedicated to this effort, committing significant additional resources, and working deliberately to address these concerns." The statement added, "Wells Fargo is committed to strengthening and enhancing its resolution planning processes, and we will continue to work closely with the agencies to better understand their concerns so that we can bring our resolution planning processes in line with their expectations. While we are disappointed with the determination issued by the agencies, we continue to be dedicated to sound resolution planning and preparedness. We believe we will be able to address the concerns raised today in the March 2017 revised submission."

Sen. Sherrod Brown (D-Ohio), the Ranking Member of the Senate Banking Committee, said, "Today's joint determination is a reminder that Wall Street reform is working to rein in the megabanks that crashed our economy and got bailed out by taxpayers. Even one too big to fail bank is too many, and we need watchdogs that will continue to impose tough rules and strong penalties to make banks simpler and safer, not the opposite."

Companies: Bank of America; Bank of New York Mellon; Citigroup; Goldman Sachs, JP Morgan Chase; Morgan Stanley; State Street; Wells Fargo

RegulatoryActivity: BankHolding DoddFrankAct FederalReserveSystem FinancialStability Receiverships