

# FINANCIAL STABILITY REFORM

## as of July 2011

Management, if not elimination, of systemic risk is perhaps the primary purpose of the Act. The Financial Stability Oversight Council, essentially an interagency group with broad oversight of the risk and the authority to identify systemically important institutions and activities, and the Federal Reserve Board, the primary body for supervising these institutions and activities, have begun their work, but much remains to be done. We do not yet know and cannot even speculate in an informed manner about which nonbank institutions will be supervised by the Federal Reserve or which activities might be deemed systemically important. We can anticipate some of the heightened prudential standards that the Federal Reserve may apply, but there is still significant uncharted territory.

**The Financial Stability Oversight Council, the Federal Reserve Board, and the FDIC have begun to implement their broad authority to supervise systemically risky institutions. Developments so far include:**

### Creation of the Council

- The Council has met six times before the first anniversary of Dodd-Frank.
- Voting members are primarily ex officio heads of the federal financial regulatory agencies, with one independent member with insurance expertise appointed by the President and confirmed by the Senate.
- On June 27, 2011, President Obama nominated S. Roy Woodall, Jr. to serve on the Council as the insurance expert.
- On July 1, 2011, President Obama nominated Thomas J. Curry to serve as Comptroller of the Currency. If confirmed by the Senate, Mr. Curry would become a voting member of the Council in his capacity as Comptroller.
- On July 18, 2011, President Obama nominated Richard Cordray to serve as Director of the Consumer Financial Protection Bureau (Bureau). If confirmed by the Senate, Mr. Cordray would become a voting member of the Council.
- Non-voting members include the director of the Office of Financial Research, the director of the Federal Insurance Office, a state insurance commissioner, a state banking supervisor, and a state securities commissioner. The Treasury Department has not yet named the directors of OFR or FIO. The other non-voting members have been selected by groups of state regulators.
- The Council has established several committees to handle its work, including separate committees for systemic risk, the designation of nonbank financial companies as systemically important, the nature of the heightened prudential standards that will apply to systemically important financial institutions, and review of resolution plans and divestiture orders.

### Office of Financial Research

- The Treasury Department has established and staffed the OFR, but has not appointed a director.
- OFR has proposed a methodology to standardize how parties to financial contracts are identified in data collected for the Council. The proposed rule has not been finalized.

### Systemic Risk Regulation

- Systemic risk regulation extends to nonbank companies that are “predominantly engaged” in financial activities. The FRB has proposed a definition of the term, based on either of two conditions: (i) 85% or more of its gross revenues in either of the previous two calendar years are derived from financial activities; or (ii) 85% or more of its consolidated assets in one of the previous two years are financial assets.
- The Council has proposed criteria for the designation of a nonbank financial company as systemically important. The proposal was roundly criticized as overly general. There have been indications that the Council may undertake a second proposal but no re-proposal has yet been announced.

- The Council and the FRB also have authority to, respectively, identify and regulate financial market utilities that are systemically important. On July 8, 2011, the Council finalized criteria for identifying these utilities. The FRB has proposed risk management and notice requirements.
- On July 18, 2011, the FDIC finalized certain rules for the Orderly Liquidation Authority in Title II of Dodd-Frank.
- Guidelines for the preparation of resolution plans—or “living wills”—were proposed on April 22, 2011. The FRB and FDIC are still developing a final rule, which is expected to be released by the end of August 2011.
- Several provisions of Dodd-Frank either create new supervisory tools for the regulators or confirm existing authority. The Council and the FRB have not yet proposed any rules on these subjects, apart from the resolution plan proposal and capital requirements under the Collins Amendment.
- On June 28, 2011, the FRB, the OCC, and the FDIC issued a final rule implementing in part the Collins Amendment (section 171), which requires that the capital requirements for bank holding companies be as stringent as the current capital requirements at the bank level. The final rule places a floor on the risk-based capital requirements that would apply to those bank holding companies subject to the “advanced approaches” requirements under Basel II.
- The regulators have proposed two sets of systemic risk-type guidance, one for capital plans by large bank holding companies and the other for stress tests for banking organizations with more than \$10 billion in total consolidated assets. Each set of guidelines has a counterpart provision in section 165 of Dodd-Frank, but the guidance does not formally implement these counterpart provisions. The regulators have noted that this guidance will serve as a model for the rules that officially implement these elements of section 165.
- On June 25, 2011, the Group of Governors and the Heads of Supervision—the group that oversees the Basel Committee on Banking Supervision—published proposed regulatory requirements for global systemically important banks. These will have no force of law in the U.S. but likely will inform ongoing U.S. rulemaking.