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FDIC Board Meeting Tackles a Meaty Agenda

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In addition to approving the long-term debt proposal ("LTD NPR") we discuss in another article this week, the Federal Deposit Insurance Corporation ("FDIC") Board had a busy day on Tuesday. As we noted last week, when the FDIC provided notice for the board meeting, Tuesday's meeting was a busy one.

In addition to the LTD NPR, the FDIC (together with the Federal Reserve Board ("FRB")) issued proposed guidance on the filing of resolution plans (AKA living wills) required under section 165(d) of the Dodd-Frank Act. The guidance would apply to bank holding companies and foreign banking organizations with more than $250 billion in assets that aren't already subject to the Global Systemically Important Bank ("GSIB") Guidance issued in 2019 (basically Category II and III institutions as defined in the 2019 tailoring rule). The proposed guidance for Category II and III is largely consistent with the GSIB Guidance. Thus much of the proposed guidance does seem to presume a single point of entry ("SPOE") approach to the resolution plans. Nevertheless, the proposed guidance does note that institutions are free to choose their approach and the proposed guidance does give some nods to institutions that have multiple point of entry ("MPOE") plans. Notwithstanding the statement in the proposed guidance that large banking organizations are free to choose between MPOE and SPOE, there does seem to be an unstated preference for SPOE. Comments are due November 30.

The FDIC Board also issued a proposed rule for plans for large insured depository institutions with at least $100 billion in assets ("the IDI Plan Proposal"). As part of the proposal, IDIs between $50 billion and $100 billion in assets would need to file "more limited" informational filings. The IDI plans have some similarities to the 165(d) plans, but often are focused on actions to prevent the failure of the banks rather than to wind it up. Having said that, the proposal would require more information to be reported with the FDIC as the FDIC realized with this spring's failures that more information may have given the FDIC more optionality in resolving those three large banking organizations.

All of the proposals regarding resolvability of large banking organizations would seem to have the effect of weakening the tailor that had occurred in the last few years. Citing such lack of tailoring, Vice Chair Hill and Director McKernan voted against the proposed IDI rule.

The FDIC Board also approved updating its internal governance with regard to sales of failed IDIs with $50 billion or more in assets. This topic was the most interesting issue of the meeting for fans of parliamentary procedure. The issue, as a whole, seems to have come up at Director McKernan's impetus, as he noted that the sale of substantially all of First Republic Bank was an action that did not need FDIC Board approval. To address Director McKernan's question about more Board involvement in sales of assets out of receivership, the procedures that did pass do require more information to be shared by staff with the Board, and gives the Board a mechanism to require a vote of the Board if a majority of the Board asks for it, but do not mandate a Board vote. Director McKernan offered his preferred approach as an amendment in the nature of a substitute to the proposal by staff. Director McKernan's amendment failed in a 3-2 vote. The change to FDIC procedures passed on a 4-1 vote with Director McKernan voting against. Wherever one might land on the competing policy positions, the debate did at least show a well-functioning Board.