

## **Bankruptcy Studies to Be Conducted Under New Financial Reform Law**

Mark G. Douglas

President Barack Obama gave his imprimatur to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 on July 21. Relatively few of the provisions in the new law implicate the Bankruptcy Code. However, among other things, the law does call on the Board of Governors of the Federal Reserve System, in consultation with the Administrative Office of the U.S. Courts (the “Administrative Office”), to conduct two bankruptcy-related studies.

One study deals with the bankruptcy process for financial and nonbank financial institutions under chapters 7 and 11 of the Bankruptcy Code. The other concerns international coordination of the bankruptcy process for nonbank financial institutions under the Bankruptcy Code and applicable foreign law.

### **Financial Companies Resolution Study**

Issues to be studied in connection with the resolution of financial companies include: (i) the utility of chapters 7 and 11 in achieving the orderly resolution or reorganization of systemic financial companies; (ii) whether a special financial resolution court or panel of special masters or judges should be created to oversee cases involving financial companies with a view toward mitigating financial market risk and minimizing “moral hazard”; (iii) whether the Bankruptcy Code should be amended to enhance the ability of the statutory framework to resolve financial companies in a way that mitigates market risk and minimizes moral hazard; (iv) whether the Bankruptcy Code, the Federal Deposit Insurance Act, and other applicable insolvency laws should be amended to address the manner in which companies are treated; and (v) the implications, challenges, and benefits associated with creating a new chapter or subchapter of the Bankruptcy Code to deal with financial companies.

The financial companies resolution study must be completed no later than one year after the date of enactment of the new law, and in each successive year until the fifth year after the date of enactment of the law. The Administrative Office must submit a report summarizing the results of the study to the Committees on Banking, Housing, and Urban Affairs and the Judiciary of the Senate and the Committees on Financial Services and the Judiciary of the House of Representatives.

### **International Coordination Study**

The study on international coordination relating to the bankruptcy process for nonbank financial institutions calls on the Board of Governors of the Federal Reserve System, in consultation with the Administrative Office, to consider several issues. Among these issues are: (i) the extent to which international coordination is currently the norm; (ii) the current framework for facilitating international cooperation; (iii) impediments to effective international coordination; and (iv) ways to enhance more effective international coordination of the resolution of financial companies in a way that mitigates financial-market risk and minimizes moral hazard.

A report summarizing the results of the study on international coordination must be submitted to the Committees on Banking, Housing, and Urban Affairs and the Judiciary of the Senate and the Committees on Financial Services and the Judiciary of the House no later than one year after the date of enactment of the new law.

---

Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203 (2010).