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FDIC Releases Final Policy Statement Governing Private Equity Investments in Failed Banks

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In response to a dramatic rise in bank failures, the Federal Deposit Insurance Corporation (FDIC) voted on August 26 to reduce the capital ratio proposed for private equity investors acquiring failed banks.

The FDIC voted to reduce the Tier 1 capital leverage ratio from the 15% Tier 1 ratio originally proposed in July 2009 to a 10% Tier 1 (but only common equity) ratio. It also removed the "source of strength" requirement included in the draft proposal in an effort to make it easier for failing institutions to attract private equity buyers. However, the FDIC retained a number of items included in the draft proposal in order to adequately protect the failed institutions and the Deposit Insurance Fund.

"With the problem bank list up to 416, over 80 bank failures so far this year, and the Deposit Insurance Fund at its lowest ebb in 15 years, it is critical to obtain new funds to recapitalize the banking sector and protect the Insurance Fund," says WilmerHale Regulatory Counsel and former FDIC General Counsel Sara A. Kelsey. "The FDIC's final policy statement seeks to achieve these needs balanced against their concerns about private equity investors. Although I'm not sure we are quite there yet, I am encouraged by the FDIC's willingness to listen and exercise flexibility on a case-by-case basis—as reflected in the Chairman's establishment of expedited procedures so the FDIC board may waive provisions of the statement if it is in the best interests of the Insurance Fund and the statement's goals and objectives can be accomplished by other means.”

To read the full text of a recent WilmerHale Email Alert on this subject, click here.

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