

# A New Framework for Resolution Plans

## VISUAL MEMORANDUM

October 14, 2019



# Table of Contents

---

Introduction	3
The New Framework	4
Categorization	5
Changes to Content Requirements	6
Filer and Agency Deadlines	7
Key Takeaways	8
Deeper Dives	10
Appendix A: Other FBOs That Are Triennial Reduced Filers	19
Davis Polk Contacts	20

---

# Introduction

---

On October 10, 2019, the Federal Reserve approved a [Final Rule](#) that amends and restates the 165(d) resolution planning rule.

- This Final Rule is largely unchanged from the Federal Reserve's and FDIC's (the **Agencies**) May 2019 [165\(d\) Rule Proposal](#).
- The Final Rule takes effect 60 days after publication in the Federal Register and, among other things:
  - Creates three types of submissions (full, targeted, and reduced plans); and
  - Applies content, submission cycle, and other requirements to firms based on their category in the [Domestic and FBO Tailoring Rules](#) and for certain FBOs, based on their global consolidated assets.
- Since the Final Rule is being jointly adopted by the Agencies, the FDIC is expected to soon approve an identical Final Rule.
- An overview of the Final Rule as well as key takeaways and deeper dives follow.

# The New Framework

Biennial Filers	Triennial Full Filers		Triennial Reduced Filers	Not Subject to Final Rule
Category I	Category II	Category III	Other FBOs	Category IV (unless Other FBO)
<b>Two-year cycle</b> Alternating full and targeted plans	<b>Three-year cycle</b> Alternating full and targeted plans		<b>Three-year cycle</b> Reduced plans	
<b>Next Submission</b> July 1, 2021—targeted July 1, 2023—full	<b>Next Submission</b> July 1, 2021—targeted July 1, 2024—full		<b>Next Submission</b> July 1, 2022—reduced	
Bank of America Bank of New York Mellon Citigroup Goldman Sachs JPMorgan Chase Morgan Stanley State Street Wells Fargo	Barclays Capital One Credit Suisse Deutsche Bank HSBC Mizuho MUFG Northern Trust PNC Financial Royal Bank of Canada Toronto-Dominion UBS U.S. Bancorp		53 FBOs ( <i>see Appendix A</i> )	

– Projected categories above based on Q1 2019 data—actual categories will be based on 4-quarter averages. Categorization for next submission determined as of Oct. 1, 2020.

– For firms with outstanding shortcomings or deficiencies, the Agencies’ expectations regarding remediation and related timelines continue to apply (e.g., the four foreign banking organizations that received firm-specific feedback letters on December 20, 2018 are expected to address their shortcomings and complete project plans by July 1, 2020).

# Categorization

- Asset thresholds not indexed to inflation—thresholds will be periodically reviewed under the tailoring rules and proposed changes will be subject to notice and comment.

	U.S. Firms with—	FBO with—	Final Rule Requirements
Cat. I	U.S. GSIBs		<b>Biennial Filers</b> <ul style="list-style-type: none"> <li>- 2-year cycle</li> <li>- alternating full and targeted plans</li> </ul>
Cat. II	1. ≥\$700b average total consolidated assets; or 2. ≥\$100b average total consolidated assets and ≥\$75b in average cross-jurisdictional activity	1. ≥\$700b average combined U.S. assets; or 2. ≥\$100b average combined U.S. assets and ≥\$75b in average cross-jurisdictional activity	<b>Triennial Full Filers</b> <ul style="list-style-type: none"> <li>- 3-year cycle</li> <li>- alternating full and targeted plans</li> </ul>
Cat. III	1. ≥\$250b and <\$700b average total consolidated assets; or 2. ≥\$100b average total consolidated assets and ≥\$75b in any of average nonbank assets, average wSTWF, or average off-balance sheet exposure	1. ≥\$250b and <\$700b average combined U.S. assets; or 2. ≥\$100b average combined U.S. assets and ≥\$75b in any of average nonbank assets, average wSTWF, or average off-balance sheet exposure	<b>Triennial Full Filers</b> <ul style="list-style-type: none"> <li>- 3-year cycle</li> <li>- alternating full and targeted plans</li> </ul>
Cat. IV	≥\$100b average total consolidated assets and do not meet Cat. I, II, or III standards	≥\$100b average combined U.S. assets and do not meet Cat. II or III standards	<b>None</b> (unless Other FBO)
Other FBO		≥\$250b global consolidated assets that are not subject to Cat. II or III standards	<b>Triennial Reduced Filers</b> <ul style="list-style-type: none"> <li>- 3-year cycle</li> <li>- reduced plans</li> </ul>

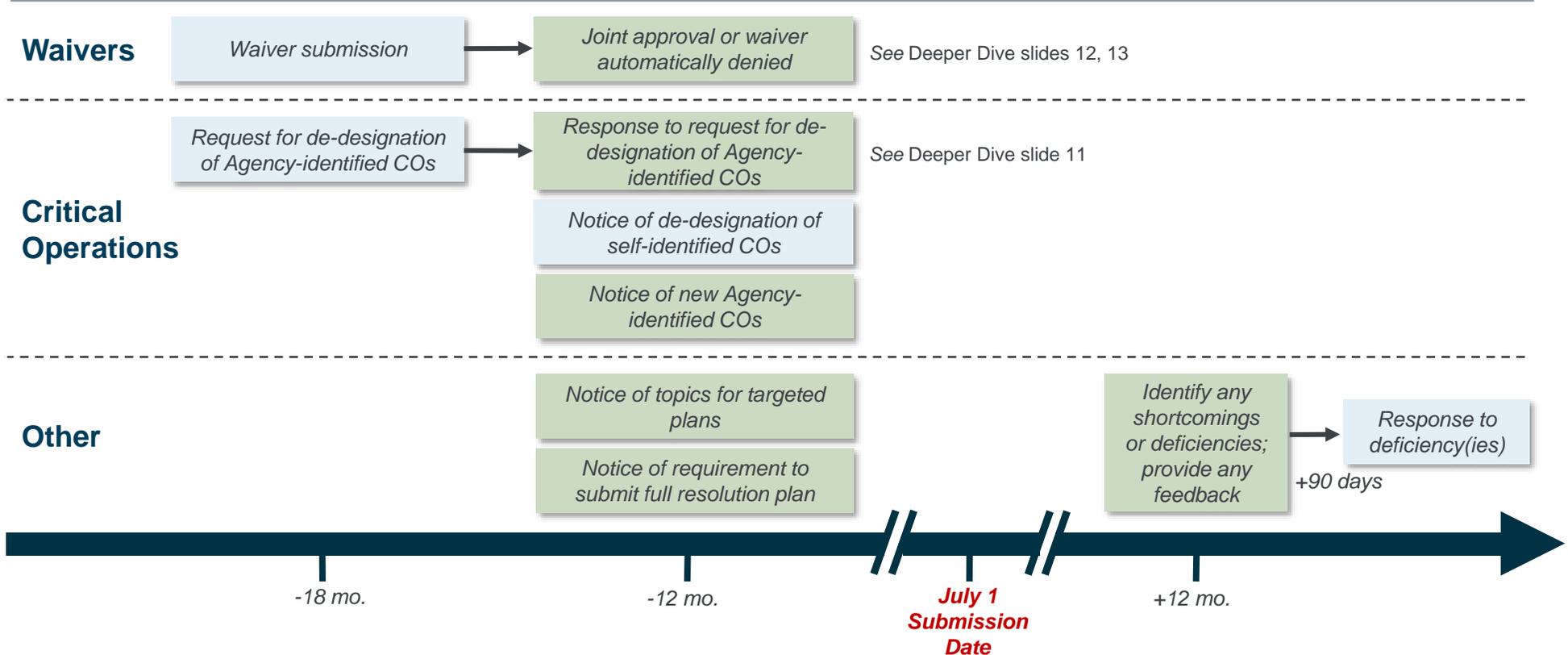
# Changes to Content Requirements

	Full Resolution Plan	Targeted Resolution Plan	Reduced Resolution Plan
Public Section	<p><b>Unchanged from existing rule</b></p>	<p><b>Same requirements as full resolution plan</b> (same as existing rule)</p>	<p><b>Must include:</b></p> <ul style="list-style-type: none"> <li>– Names of material entities</li> <li>– Description of core business lines</li> <li>– Identities of principal officers</li> <li>– Description, at a high level, of the resolution strategy, referencing applicable resolution regimes for material entities</li> </ul>
Confidential Section	<p><b>Largely unchanged from existing rule, except the Executive Summary must now include:</b></p> <ul style="list-style-type: none"> <li>– Description of each material change since the last submission or affirmation that no such material change occurred</li> <li>– Changes to the previous submission resulting from changes in laws or regulations, agency guidance or feedback, and material changes</li> </ul>	<p><b>Must include:</b></p> <ul style="list-style-type: none"> <li>– Core elements of full resolution plan: <ul style="list-style-type: none"> <li>• capital, liquidity, plan for executing any recapitalization, updated quantitative financial information and analyses</li> </ul> </li> <li>– Description of each material change since the last submission or affirmation that no such material change occurred</li> <li>– Changes to the previous submission resulting from changes in laws or regulations, agency guidance or feedback, and material changes</li> <li>– Information responsive to a written targeted information request</li> </ul>	<p><b>Must include:</b></p> <ul style="list-style-type: none"> <li>– Description of each material change since the last submission or affirmation that no such material change occurred</li> <li>– Changes to the previous submission’s strategic analysis resulting from changes in laws or regulations, agency guidance or feedback, and material changes</li> </ul>

# Filer and Agency Deadlines

*Filer deadline*

*Agency deadline*



## Other Timing Considerations

Notice of off-cycle submission requirement	12 months prior to new submission date
Notice of extraordinary event	45 days after occurrence

- Plan submission deadlines have been consolidated on July 1.
- The Final Rule generally extends timeframes to provide at least 12 months advance notice of changes prior to a filing deadline, but requires joint approval by the Agencies of any filer-initiated requests rather than automatic approval by non-objection.

See Deeper Dive slide 18 for deadlines for newly covered companies or currently covered companies transitioning between filer categories.

# Key Takeaways

---

- **Tailored Resolution Plan Requirements.** Consistent with the Economic Growth, Regulatory Relief, and Consumer Protection Act and the Domestic and FBO Tailoring Rules, the Final Rule applies resolution planning requirements to filers based on their asset size and the complexity of their operations.
- **Critical Operations Methodology and Reconsideration Process.** Filers must develop and maintain a process and methodology for identifying critical operations (see Deeper Dive slides 10–12 and Filer and Agency Deadlines slide 7).
- **Waivers for Portions of Full Resolution Plans.** Certain information content requirements for full resolution plans may be waived jointly by the Agencies (1) on their own initiative or (2) in response to a firm-initiated waiver request (see Deeper Dive slide 13 and Filer and Agency Deadlines slide 7).
- **Retained Agency Discretion to Vary Requirements.** The Agencies retain their discretion to vary the filing deadline or plan submission type (e.g., require a full instead of targeted or reduced plan) for a particular filer (see Filer and Agency Deadlines slide 7).
- **Incorporation by Reference.** A filer can incorporate by reference information from previously submitted plans (see Deeper Dive slide 14).
- **Existing Guidance Continues to Apply.** Existing general guidance, including its scope and content, is not modified by the Final Rule (see Deeper Dive slide 15).
- **Agency Feedback.** No later than 12 months after submission, the Agencies will jointly send a notification to each filer that identifies any deficiencies or shortcomings (or confirms that none were identified) and provides any feedback on the resolution plan (see Filer and Agency Deadlines slide 7).

# Key Takeaways

---

- **Deficiencies and Shortcomings Formally Defined.** The Final Rule’s definitions for deficiencies and shortcomings are consistent with how the Agencies have used these concepts in firm-specific feedback letters.
- **Material Change Formally Defined.** Material change is defined as an event, occurrence, change in conditions or circumstances, or other change that results in, or could reasonably be foreseen to have a material effect on the resolvability of the filer, the filer’s resolution strategy, or how the filer’s resolution strategy is implemented (see Deeper Dive slide 16).
- **Notice of Extraordinary Events.** The existing notice of material events requirement has been revised to make it clear that it applies only to extraordinary events (see Deeper Dive slide 17).
- **Clarification of Mapping Expectations of FBOs.** For FBOs, mapping must be done for interconnections and interdependencies among their U.S. subsidiaries, branches and agencies; between these U.S. entities and any critical operations and core business lines; and between these U.S. entities and any non-U.S. affiliates.
- **FBO Resolution Action Outside U.S.** FBOs cannot assume that the covered company takes resolution actions outside of the U.S. that would eliminate the need for any U.S. subsidiaries to enter into resolution proceedings.

## Critical Operations Identification

- **Filers' Identification of Critical Operations.**

- Biennial filers and triennial full filers must establish and implement a process designed to identify each of their respective critical operation(s).
  - Triennial reduced filers with any identified critical operations must do the same after July 1, 2022.
  - FBO triennial full filers are exempt from this requirement with respect to plans due on or before July 1, 2021 if the FBO does not have any identified critical operation as of 17 months prior to the submission due date.
- The methodology must identify and assess:
  - the markets and activities in which the covered company participates or has operations;
  - the significance of those markets and activities with respect to the financial stability of the U.S.; and
  - the significance of the covered company as a provider or other participant in those markets and activities.

- **Agencies' Identification of Critical Operations.**

- The Agencies will review the operations of a filer at least once every six years to determine whether to identify any new critical operations or rescind any previously identified critical operations.

## Critical Operations Reconsideration Process

- **Requests for Reconsideration.** A filer may, at any time, request de-designation of an Agencies-identified critical operation.
  - For requests submitted at least 18 months in advance of the filer’s next submission deadline—
    - The Agencies will generally complete their review no later than 12 months before the filer’s next submission deadline.
    - If the Agencies request additional information, they will complete their review no later than the later of:
      - 90 days after submission of all requested information; and
      - 12 months before the next filing deadline.
  - For requests submitted less than 18 months in advance of the filer’s next submission deadline—
    - The Agencies may defer reconsideration until the after the resolution plan submission, in which case the filer must continue to include that critical operation in its plan.
    - If the Agencies defer reconsideration, they will generally complete their review no later than 12 months before the next resolution plan submission date.

## Critical Operations De-Identification and Waivers

- **Notice for De-Identification of a Critical Operation.** A filer must notify and provide an explanation to the Agencies if it decides to remove a self-identified critical operation, so that the Agencies can decide whether to identify the operation as a critical operation instead.
  - Unless otherwise notified by the Agencies, a filer must continue to include a critical operation for which a de-identification notice was provided to the Agencies within 12 months of the filer's next submission deadline.
- **Waiver Request.** If a filer does not currently have any identified critical operations, it can apply for a waiver of the requirement to have a process and methodology for identifying critical operations.
  - The request must contain:
    - a public section which simply explains that the filer is seeking a waiver from this requirement; and
    - a confidential section which provides a rationale for why a waiver would be appropriate, and why having a process and methodology would be unlikely to identify any critical operations.
  - The filer must apply for the waiver at least 18 months in advance of the filing date, or no later than 17 months before a submission due on or before July 1, 2021.
  - A waiver is automatically denied if the Agencies do not jointly approve it at least 12 months in advance of the filing date.
  - If a waiver request is granted, it will remain effective until, but not including, the filer's next full resolution plan submission.

# Waivers for Portions of Full Resolution Plans

---

## Waivers for Portions of Full Resolution Plans

- The Final Rule allows the Agencies to waive certain information content requirements for full resolution plans (1) on their own joint initiative and (2) in response to a firm-initiated waiver request.
- The firm-initiated waiver process is available only to triennial full filers (and triennial reduced filers in certain circumstances), not biennial filers—biennial filers are only eligible for waivers granted by the Agencies on their own initiative.
  - The filer needs to apply for the waiver at least 18 months in advance of the filing date.
  - The Agencies can approve or deny a waiver in whole or in part, and the waiver is automatically denied if the Agencies do not jointly approve it at least 12 months in advance of the filing date.
  - Approved waiver requests are effective for only the full resolution plan that immediately follows the submission of the request.
  - Firm-initiated waivers are not permitted for the most critical informational content, including:
    - the core elements required in a targeted resolution plan;
    - any information specifically required to be included in a resolution plan under the Dodd-Frank Act;
    - information about material changes; and
    - information about deficiencies and shortcomings.
  - Firm-initiated waivers can only be submitted for full resolution plans, and a filer can make only one waiver request per full resolution plan submission.
  - The Agencies' decisions on waivers will be made public, subject to redactions.

# Incorporation by Reference

---

## Incorporation by Reference

- The Final Rule allows a filer to incorporate by reference information from previously submitted resolution plans, provided that the filer:
  - identifies the information it is incorporating and where it can be found in the previous plan, *e.g.*, by identifying the page range or section reference; and
  - certifies that the information remains accurate in all material respects.
- Under the targeted and reduced resolution plans, if a filer does not specifically include a description of any updates to certain information, that information will automatically be deemed to have been incorporated by reference—in such instance, the filer may be deemed to have also made the certification.
- Information included in a resolution plan submitted pursuant to the IDI rule cannot be incorporated by reference.
  - However, the preamble states that as the FDIC works to amend the IDI rule, it will seek to reduce unnecessary duplication between the IDI rule and the Final Rule.

## Existing Guidance Continues to Apply

- The Final Rule clarifies that existing general guidance (*i.e.*, the [2018 FBO Guidance](#) and the [2019 Domestic Guidance](#)), including its scope and content, is not modified by the Final Rule.
  - The preamble explains that since guidance sets forth non-binding expectations as opposed to rule-based requirements, the Agencies do not believe that it is necessary or appropriate to incorporate all general guidance into the Final Rule
  - Similar to the 2019 Domestic Guidance, the Agencies intend to consolidate and request public comment in the near future on all aspects of the 2018 FBO Guidance.
  - The Agencies intend to make any future general resolution planning guidance available for public comment, and will endeavor to finalize such guidance at least 12 months prior to the first submission date for which it would apply.
- The Agencies will continue to provide firm-specific feedback to individual filers without making this feedback available for notice and comment.

## Material Change Formally Defined

- Material change is defined as an event, occurrence, change in conditions or circumstances, or other change that results in, or could reasonably be foreseen to have a material effect on:
  - the resolvability of the filer;
  - the filer's resolution strategy; or
  - how the filer's resolution strategy is implemented.
- This is a higher standard than the standard used in the context of securities laws.
- Full, targeted, and reduced plans all require either a description of material changes since the last submission and changes made to the resolution plan in response or an affirmation that no material changes occurred.
  - Examples of material changes include, among other things:
    - the identification of a new critical operation, core business line, or material entity;
    - significant increases or decreases in the business, operations, or funding of a material entity; and
    - material changes in operational and financial interconnectivity.
- Under the Final Rule, a notice to the Agencies of the occurrence of a material event (as required by the current rule) is no longer required (see Deeper Dive slide 17).

# Extraordinary Events

---

## Notice of Extraordinary Events

- The Final Rule requires an extraordinary event, rather than a material event as required by the current rule, to trigger the notice requirement.
  - Because of the broad definition of “material change” (see Deeper Dive slide 16), the Agencies determined that a notice requirement triggered by the occurrence of a material change between resolution plan submissions was not appropriate.
  - Therefore, the Agencies created the new concept of extraordinary event which limits the notice requirement to more fundamental changes.
- A notice related to an extraordinary event:
  - is required after any material merger, acquisition of assets, or similar transaction or fundamental change to the covered company’s resolution strategy (e.g., changing an SPOE strategy to an MPOE strategy);
  - must be made no later than 45 days after the occurrence of the extraordinary event (unless the event occurs within 90 days of the filer’s next resolution plan submission date); and
  - must describe the event and explain its effect on the resolvability of the firm.

# New Filers and Category Changes

## New Filers

- If a firm becomes a covered company after the effective date of the rule, but at least 12 months before the next filing deadline for its filing group, the firm must file a full resolution plan by the same deadline as its filing group, even if the firm would be a triennial reduced filer.
  - After the first plan, the new filer moves onto the same plan filing schedule and is subject to the same requirements as the rest of its filing group.
- For purposes of determining covered company status for a firm whose assets have grown due to a merger, acquisition, combination, or similar transaction, the Agencies have the discretion to consider assets reflected on one or more of the four most recent reports of the pre-combination entities (as opposed to the standard method—average across one year).

## Category Changes

	New Deadline is Within 12 Months	New Deadline is More Than 12 Months Away
If filing deadline is the <b>same</b> for the filer’s new group as it is for the original group	<ul style="list-style-type: none"> <li>– Filer <b>has the choice</b> of filing either the same type of plan it had to before or switching to the same type of plan as its new group</li> <li>– Due by the same deadline</li> </ul>	<ul style="list-style-type: none"> <li>– Filer <b>must file same</b> type of plan as its new group</li> <li>– Due by the same deadline</li> </ul>
If filing deadline is <b>different</b> for the filer’s new group than for the original group	<ul style="list-style-type: none"> <li>– Filer <b>must file same</b> type of plan as its new group</li> <li>– Due by the new group’s <b>following</b> deadline—can skip a filing</li> </ul>	<ul style="list-style-type: none"> <li>– Filer must file same type of plan as its new group</li> <li>– Due by the new group’s deadline</li> </ul>

## APPENDIX A

# Other FBOs That Are Triennial Reduced Filers

---

- Agricultural Bank of China
- Australia and New Zealand Banking Group
- Banco Bradesco
- Banco De Sabadell
- Banco Do Brasil
- Banco Santander
- Bank of China
- Bank of Communications
- Bank of Montreal
- Bank of Nova Scotia
- Bayerische Landesbank
- BBVA Compass
- BNP Paribas
- BPCE Group
- Caisse Federale de Credit Mutuel
- Canadian Imperial Bank of Commerce
- China Construction Bank Corporation
- China Merchants Bank
- CITIC Group Corporation
- Commerzbank
- Commonwealth Bank of Australia
- Cooperative Rabobank
- Credit Agricole Corporate and Investment Bank
- DNB Bank
- DZ Bank
- Erste Group Bank AG
- Hana Financial Group
- Industrial and Commercial Bank of China
- Industrial Bank of Korea
- Intesa Sanpaolo
- Itau Unibanco
- KB Financial Group
- KBC Bank
- Landesbank Baden-Weurttemberg
- Lloyds Banking Group
- National Agricultural Cooperative Federation
- National Australia Bank
- Nordea Group
- Norinchukin Bank
- Oversea-Chinese Banking Corporation
- Shinhan Bank
- Skandinaviska Enskilda Banken
- Societe Generale
- Standard Chartered Bank
- State Bank of India
- Sumitomo Mitsui Financial Group
- Sumitomo Mitsui Trust Holdings
- Svenska Handelsbanken
- Swedbank
- UniCredit Bank
- United Overseas Bank
- Westpac Banking Corporation
- Woori Bank

# Davis Polk Contacts

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

<b>Donald S. Bernstein</b>	212 450 4092	<a href="mailto:donald.bernstein@davispolk.com">donald.bernstein@davispolk.com</a>
<b>Luigi L. De Ghenghi</b>	212 450 4296	<a href="mailto:luigi.deghenghi@davispolk.com">luigi.deghenghi@davispolk.com</a>
<b>Randall D. Guynn</b>	212 450 4239	<a href="mailto:randall.guynn@davispolk.com">randall.guynn@davispolk.com</a>
<b>Jai R. Massari</b>	202 962 7062	<a href="mailto:jai.massari@davispolk.com">jai.massari@davispolk.com</a>
<b>Gabriel D. Rosenberg</b>	212 450 4537	<a href="mailto:gabriel.rosenberg@davispolk.com">gabriel.rosenberg@davispolk.com</a>
<b>Margaret E. Tahyar</b>	212 450 4379	<a href="mailto:margaret.tahyar@davispolk.com">margaret.tahyar@davispolk.com</a>
<b>Nancy Marchand</b>	212 450 3148	<a href="mailto:nancy.marchand@davispolk.com">nancy.marchand@davispolk.com</a>
<b>Daniel E. Newman</b>	212 450 4992	<a href="mailto:daniel.newman@davispolk.com">daniel.newman@davispolk.com</a>
<b>Karen Pelzer</b>	212 450 4652	<a href="mailto:karen.pelzer@davispolk.com">karen.pelzer@davispolk.com</a>
<b>Sumeet Sanjeev Shroff</b>	212 450 3538	<a href="mailto:sumeet.shroff@davispolk.com">sumeet.shroff@davispolk.com</a>