

# Federal Reserve's Proposed Rule on Controlling Influence: A Step in the Right Direction

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The Federal Reserve has requested comment on a highly anticipated notice of proposed rulemaking to amend its regulatory framework for deciding when a company exercises a controlling influence over another company under the Bank Holding Company Act and the Home Owners' Loan Act.

The proposal is a welcome step in the right direction. It would provide greater transparency, certainty and predictability, and relax some of the limits and restrictions in the Federal Reserve's existing practices and precedents. It is also more consistent with the ordinary meaning of the words "controlling influence," as well as the text and legislative history of the 1970 amendment that added the controlling influence test to the BHC Act. But the proposal stops short of being fully consistent with those legislative standards, which indicate that the standard for a controlling influence determination is supposed to be actual control, not merely potential control.

This memorandum describes the proposal in detail, focusing not only on the proposed framework of rebuttable presumptions and related definitions and technical provisions, but also on how that framework compares to the Federal Reserve's existing practices and precedents and to the congressionally intended standard of actual control.

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

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