

FDIC and Private Capital: Moving the Goal Lines

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For the second time since adopting its Final Statement of Policy for Failed Bank Acquisitions (the “Policy Statement”), the FDIC has issued “Questions and Answers” (the “Revised Q&As”) about the Policy Statement that appear to make it more difficult for private investors to avoid the onerous standards and requirements of the Policy Statement.¹ The FDIC will now presume that, if more than two-thirds of the total voting stock of an insured depository institution or its holding company that acquires a failed bank or thrift is held by private investors that each own 5% or less of the voting stock, the private investors are acting in concert as a single investor group. The private investors will be subject to the requirements of the Policy Statement unless they can satisfy the FDIC that the presumption has been rebutted. This position seems to confirm the FDIC’s preference for transactions in which an existing bank holding company owns at least two-thirds of the voting stock of the acquiring depository institution or its holding company or is itself the acquirer (with new private investors limited to no more than one-third of the existing bank holding company’s total equity).

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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