

US

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Living wills

The global financial crisis has brought forth an array of proposals designed to prevent, or at least mitigate, the adverse consequences of future financial failures. One such proposal would require financial institutions to adopt plans that would function quite like an autopilot in the event of severe financial distress. Recovery and resolution plans, or living wills, would set forth the actions to be undertaken by a troubled or failed financial institution. The recovery component would outline actions necessary to preserve the

institution as a going concern, while the resolution component would outline steps to be taken to minimise the systemic disruption associated with the institution's failure.

In the UK, the Financial Services Authority is considering whether to require all banks and investment firms, or just a subset of these, to maintain such plans. In the EU, it is not yet clear whether legislation will require them. In the United States, it is a foregone conclusion that legislation will require large banks

and other systemically important non-banks to prepare and maintain plans. In addition, the US Federal Deposit Insurance Corporation has put forth a proposal for comment that would require certain insured depository institutions to create plans for their efficient liquidation in case of financial distress and the US Federal Reserve is evaluating approaches for establishing contingency plans for the orderly wind up of bank holding companies for which it serves as the principal regulator. These various approaches have much in common. The

plans that result from these initiatives will be based on the experience of bankers and their advisers gained during this financial crisis. Considering that it is unfeasible to predict with any degree of accuracy the sources of weakness that will be at the root of the next crisis, boards and regulators may be better served by having the unfettered ability to make decisions based on the unique facts and circumstances that will undoubtedly present themselves at times of crisis.

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