



## Dodd-Frank’s “Living Will Rule” and the Impact on Financial Firms

Exclusive Interview with  
**Walter J. Mix III, Director, Berkeley Research Group**  
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Transcript by  
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To view the video interview, visit <http://legalminds.tv/nasdaq/Mix-livingwillrule>

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*While the Dodd-Frank Act has had a broad impact on banking, one of the key aspects is the “Living Will Rule,” which seeks to limit the risks of “too big to fail” financial institutions in the United States.*

*In this exclusive LegalMinds/NASDAQ Securities & Capital Market Series interview, Walter Mix III, a former bank regulator and Director of Berkeley Research Group, discusses the rule and it’s impact on financial institutions and the capital markets.*

**LegalMinds:** What are "Living Wills?"

**Walter Mix III:** Living wills are required by the terms of the Dodd-Frank Law, which was recently enacted by the Congress and signed by President Obama. As you may know they are targeted to limit the ability to have too-big-to-fail institutions in the United States. In particular, each covered institution is required to file a self-resolution plan, which is much like a plan for a bank closure. And as

a recovering bank regulator I've been through this process many times over the years.

**LegalMinds:** Can you tell us more about the Resolution Plan banks are required to file?

**Walter Mix III:** The bank is required to show every aspect at a very, very deep level of its banking operations and to create a strategic approach to unwind the institution in the event that it faces insolvency.

Some of the key elements in the resolution plan include looking at the technology platform, looking at all of the critical operations of the bank. These would include the credit area but most importantly all of the counter party relationships and the interdependencies within the bank itself and among other financial institutions.

**LegalMinds:** Who are "covered companies" under the rule?"

**Walter Mix III:** Covered companies include banks with assets of \$50 billion and larger. The largest institutions will be required to file a plan before July 1, 2012. These will include the largest institutions or 37 of the 124 institutions that are covered by the law. The next tranche of institutions between \$250 billion and \$100 billion will be required to file one year later and the remainder will be required to file by the end of 2013.

Non-banks will be covered under a regulation that will be promulgated by the FSOC. That regulation is set to be issued sometime this calendar year. You can expect that this will include the largest, most complex institutions.

**LegalMinds:** How are foreign banks that operate in the U.S. affected?

**Walter Mix III:** Foreign banks that operate in the United States will be affected primarily if they are larger institutions with a lot of global complexity. The smaller institutions will be permitted to file more simple plans or foundational plans with the regulatory bodies. Those institutions will be required to file the plans, that is the smaller ones, later in the cycle.

**LegalMinds:** What are some of the strategic implications of the rule?

**Walter Mix III:** You may have noted that there have been a number of foreign bank acquisitions in the United States in the last few years. For example, some of the Canadian banks have acquired banks in Florida and some of the Chinese banks are poised to enter the United States through acquisition.

We believe that while we will see acquisitions, we will also see some banks that don't want to bear the regulatory burdens here and those institutions will likely divest or potentially will shrink their operations in the United States due to the impact of this and other regulations. I should say, however, that a key part of the regulation permits a tailored plan to be filed and that may create an opportunity for some banks to rethink divestiture.

**LegalMinds:** What kind of impact do you think this will have on the capital markets?

**Walter Mix III:** I think the capital markets will be impacted in much the same way that bank M&A will be impacted. In other words, you can expect to see a highlighting of the different risk areas of an institution and this information will be made available to investors so that they'll be able to make more intelligent decisions about their investments and about acquisitions. So actually there may be some net benefit.

At the end of the day what we're hoping to see is enhanced risk management at the banks, and better corporate governance at the banks. And when the regulators attain this information from the banks and mine all of the information relating to different institutions we expect that we will see better offsite supervision of institutions and hopefully better control over risk in the system.

**LegalMinds:** How should companies prepare for compliance?

**Walter Mix III:** The bank will need to plan for preparation of its resolution plan by including a number of different core competencies both inside the bank and outside of the bank. In many cases I've seen internal task forces created that cover every aspect of the bank reporting to the chief financial officer and/or the general counsel of the institution.

And also in many cases we've seen outside experts that would include bank risk management, strategic planning, bankruptcy issues, technology issues, compliance issues, and a variety of different areas that are material to the bank's key functions.

**LegalMinds:** What are the filing timelines?

**Walter Mix III:** The largest banks have already started working on their living wills as of 2010. The next tier down have recently begun planning their implementation of living wills. The timeline is for 2013 for every bank to be included - that's all 124.

As you may know, there's a sliding scale for implementation starting with the various largest first and then the mid-sized banks will be preparing their plans as of the middle of 2013. The remainder which will probably include banks around \$50 billion in total footings and smaller foreign banks will be required to file their plans by the end of 2013.

**LegalMinds:** What are your thoughts on the regulatory process?

**Walter Mix III:** The regulators did a good job in my view of creating an iterative process whereby the banks will be allowed to file as their initial living will a foundation which will be considered. Once that foundation has been filed and reviewed by the regulators they will provide additional comments so that you'll have a "Panama Canal" type approach to dealing with the living will process. And I think this'll create a useful, workable process going forward for implementation.

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