

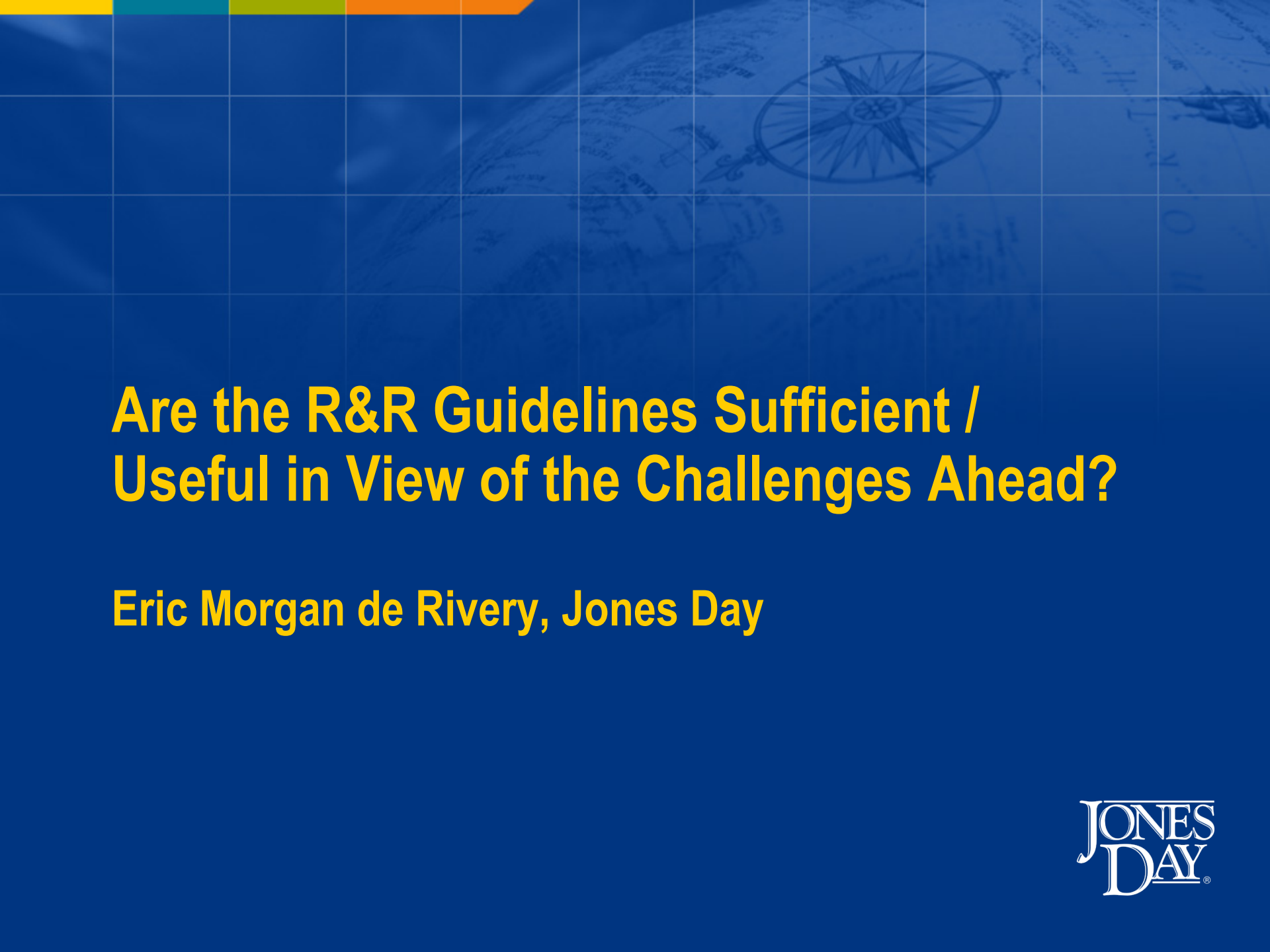


One Firm WorldwideSM



GCLC - Annual meeting

November 9, 2012



Are the R&R Guidelines Sufficient / Useful in View of the Challenges Ahead?

Eric Morgan de Rivery, Jones Day

The Challenges Ahead: War and Peace (1)

Adjustments to the R&R guidelines:
a necessity revealed by the crisis but which
might have pre-existed the crisis

The Challenges Ahead: War and Peace (2)

- The integrated industry fabric and a globalized world have magnified the role of externalities and their consequences down the chain to the consumer
- All regulators and in particular those in the field of competition aim for a less theoretical application of the law and a more pragmatic/empirical analysis
- With the disappearance of the Temporary Community Framework for the Real Economy notwithstanding the continuation of the crisis, the R&R guidelines may have a broader application than initially anticipated

The R&R Guidelines: Useful but not Sufficient (1)

First example: The concept of “firm in difficulty” (FID)

- No specific definition but a variety of qualitative and quantitative indicators
- Two major exceptions: (i) no R&R for newly created firms, and (ii) “*one time last time principle*”
- Maintaining the *status quo* may have a detrimental effect on competitiveness, while broadening the definition might take its toll on public funds

The R&R Guidelines: Useful but not Sufficient (2)

Second example: The distinction between “rescue” and “restructuring”

- The characteristics of each of these concepts have become difficult to distinguish
- The means of addressing either situation have become blurred or appear to be identical
- The ultimate goal pursued appears to be the same: long term viability in accordance with the “*private investor principle*”

Conclusion

- Less theory
- More flexibility and proportionality (e.g.: case of exceptional or unforeseeable circumstances)
- More economics
- Draw the lessons from the crisis and from the Temporary Community Framework for the Real Economy