FDIC
Advisory Committee on
Systemic Resolution

Legal Division
Dodd-Frank Act Title II

Legal Framework Overview

January 25, 2012

Overview:

- Title I – Prudential Oversight and Resolution Plans
- Title II – Orderly Resolution Authority

  5 Key Elements

  - Applicability & Appointment
  - Authority for Immediate and Decisive Action
  - Continuity – Bridge Financial Companies & Related Authorities
  - Access to Liquidity
  - Prohibition on Taxpayer Bailouts

Orderly Resolution Authority:
Applicability & Appointment

- Bankruptcy is Primary Resolution Process
  - Dodd-Frank is only a fall-back option to mitigate systemic consequences
  - Key Issue: Whether Title II will mitigate systemic risk of a Bankruptcy
- Limited to Potentially Systemic Financial Companies
  - Certain BHCs, Designated Financial Companies, or Other Financial Companies (with 85% or more of total consolidated revenues from financial activities)
- Advance Planning is critical
- Special Process to Trigger
  - Treasury Secretary, in consultation with President, after Recommendation by Board of Governors and Designated Regulator (principally FDIC or SEC)
- Judicial Review

Orderly Resolution Authority:
Immediate and Decisive Action

- Immediate authority to operate business, resolve claims, pay creditors, transfer assets & liabilities
- One day stay on derivatives netting – to allow transfers for value
- Statutory priority of distribution provides certainty
- Creditor protections include statutory minimum payment & judicial determination of disputed claims
- Parallels authority under Bankruptcy Code to provide consistency – differences focused on speed of execution, value retention, & mitigation of systemic risks

Orderly Resolution Authority:

Continuity – Bridge Financial Company

- Bridge provides authority to maximize value & mitigate systemic risks by maintaining critical operations
- Temporary FDIC-chartered financial company
- Broad authority to operate business and transfer assets & liabilities
- Broad funding options: cashflow, guarantees & assurances of performance, Orderly Liquidation Fund, and Debtor in Possession Financing
- Flexible resolution options: merger, charter conversion stock sale, or P&A

Orderly Resolution Authority:
Access to Liquidity

- As demonstrated in 2008, immediate liquidity to preserve valuable operations is critical to preserve value and stem systemic consequences
- Title II creates Orderly Liquidation Fund to carry out Title II resolutions
  - All funding must be repaid by receivership, clawback or assessments
- Cannot be used to preserve insolvent financial companies or avoid closure and resolution

Orderly Resolution Authority:
Prohibition on Taxpayer Bail-Outs

- Statutory bar on taxpayer loss – 12 U.S.C. § 5394
- Dodd-Frank expressly:
  - Prohibits taxpayer losses from the exercise of Title II authority
  - Requires unsecured creditors to bear losses under priority system
  - Requires full repayment of OLF from creditors or industry
  - Requires that shareholders receive no payments until all other valid claims are paid
  - Requires FDIC to ensure that senior management and board members responsible for the failure are not retained.