Title II Orderly Liquidation Authority

December 10, 2012

Agenda

- Update on Title II
  - Operationalizing Title II
  - Inter-Agency Coordination & Events
  - Outreach
- Decision to Implement Title II
- Title I and Title II Relationship

Operationalizing Title II

- At the January 2012 SRAC meeting, the FDIC introduced its "single entry" strategy for the resolution of a U.S. based G-SIFI using the Order Liquidation Authority under Title II of the Dodd Frank Act. Since then the FDIC has been working to operationalize the strategy and enhance FDIC's preparedness.

- 2012 operationalizing activities included:
  - FDIC internal workstreams and use of external consultants focused on Governance, Valuation, Exit Strategy, Accounting and Claims Management.
  - OCFI leading multiple tabletops and simulations with other federal agencies.

- OCFI continues to develop and refine Title II resolution strategies that consider the specific characteristics of each of the five largest U.S. domiciled SIFIs. Summaries of these plans have been shared with domestic and international regulators.

Inter-Agency Coordination Events

- Working with other federal regulators, OCFI led, hosted and facilitated events covering a variety of topics, including:
  - QFC's under Title II
  - Funding and use of the Orderly Liquidation Fund
  - "Three Keys" Process
  - Hedge Funds/Large Counterparties that are not G-SIFI's and Systemic Risk
  - Central Counterparties

Outreach

- Since developing the "single entry" strategy, the FDIC has embarked on a program of outreach and education with key stakeholders.
  - Other government agencies (U.S. Treasury, Federal Reserve Board, Federal Reserve Banks, OCC, SEC and CFTC)
  - Academic Community
  - Industry Groups
  - Fixed Income Investors
  - International Regulators
- In 2012, OCFI participated in over 20 such outreach events.

Comparison of Title II Recommendation and Determination

§ 203(a)(2), Recommendation of FRB and FDIC/SEC/FIO[1]	§ 203(b), Determination by Treasury Secretary
Whether financial company is in default or is in danger of default (Evaluation) (§ 203(a)(2)(A))	Whether financial company is in default or is in danger of default (Determination) (§ 203(b)(1))
Effect that default would have on U.S. financial stability (Description) (§ 203(a)(2)(B)) Why a case under the Bankruptcy Code is inappropriate (Evaluation) (§ 203(a)(2)(F))	Failure of the financial company and its resolution under otherwise applicable Federal / State law would have serious adverse effects on U.S. financial stability (Determination) (§ 203(b)(2))
Effect that default would have on economic conditions or financial stability for low income, minority, or underserved communities (Description) (§ 203(a)(2)(C))	[No corresponding provision]
Nature and the extent of actions to be taken under Title II of the Act regarding the financial company (Recommendation) (§ 203(a)(2)(D))	Any action under § 204 would avoid or mitigate the adverse effects on which a determination was made pursuant to § 203(b)(2), taking into consideration the effectiveness of the action in mitigating potential adverse effects on the financial system, the cost to the general fund of the Treasury, and the potential to increase excessive risk taking on the part of creditors, counterparties, and shareholders in the financial company (Determination) (§ 203(b)(5))
Likelihood of a private sector alternative to prevent the default (Evaluation) (§ 203(a)(2)(E))	Absence of viable private sector alternative to prevent the default (Determination) (§ 203(b)(3))
Effects on creditors, counterparties, and shareholders of the financial company and other market participants (Evaluation) (§ 203(a)(2)(G))	Any effect on the claims of creditors, counterparties, and shareholders of the financial company and other market participants as a result of actions to be taken under Title II is appropriate, given the impact that any action taken would have on U.S. financial stability (Determination) (§ 203(b)(4))
Whether the company is a financial company under § 201 of the Dodd-Frank Act (Evaluation) (§ 203(a)(2)(H))	The company is a financial company under § 201 of the Dodd-Frank Act (Determination) (§ 203(b)(7))
[No corresponding provision]	A Federal regulatory agency has ordered the financial company to convert all of its subject convertible debt instruments (Determination) (§ 203(b)(6))

[1] Where the financial company or the largest domestic subsidiary thereof is a broker or a dealer, the recommendation is made by the FRB and the U.S. Securities and Exchange Commission, in consultation with the FDIC. Where the financial company or the largest domestic subsidiary thereof is an insurance company, the recommendation is made by the FRB and the Director of the Federal Insurance Office, in consultation with the FDIC.

Definition of Default

Evaluation of whether the financial company is in default or in danger of default

A financial company is considered to be in default or in danger of default if:

A. A case has been, or likely will promptly be, commenced with respect to the financial company under the Bankruptcy Code;

B. The financial company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion;

C. The assets of the financial company are, or are likely to be, less than its obligations to creditors and others; or

D. The financial company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

Section 203(c)(4) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("the Act"), 12 U.S.C. §5383(c)(4).

Title I and Title II Relationship

- Under the Dodd-Frank Act, bankruptcy is the first resolution option in the event of a failure of a systemic financial company.
- To make this prospect achievable, Title I of the Act requires that all large systemically important financial companies submit living wills to demonstrate how they would be resolved under the Bankruptcy Code.
- These living wills will enable both the firms and regulators to understand and rationalize the parts of a SIFI's business and operations that could have systemic consequences in bankruptcy and take the necessary steps to address impediments to resolution.
- The objective is to have a credible plan demonstrating how resolution under the Bankruptcy Code and other non-Title II insolvency frameworks would be orderly and not pose systemic risks.