



FEDERAL RESERVE BANK *of* NEW YORK

TBTF: The US Perspective

An Update on Titles I and II of The Dodd-Frank Act

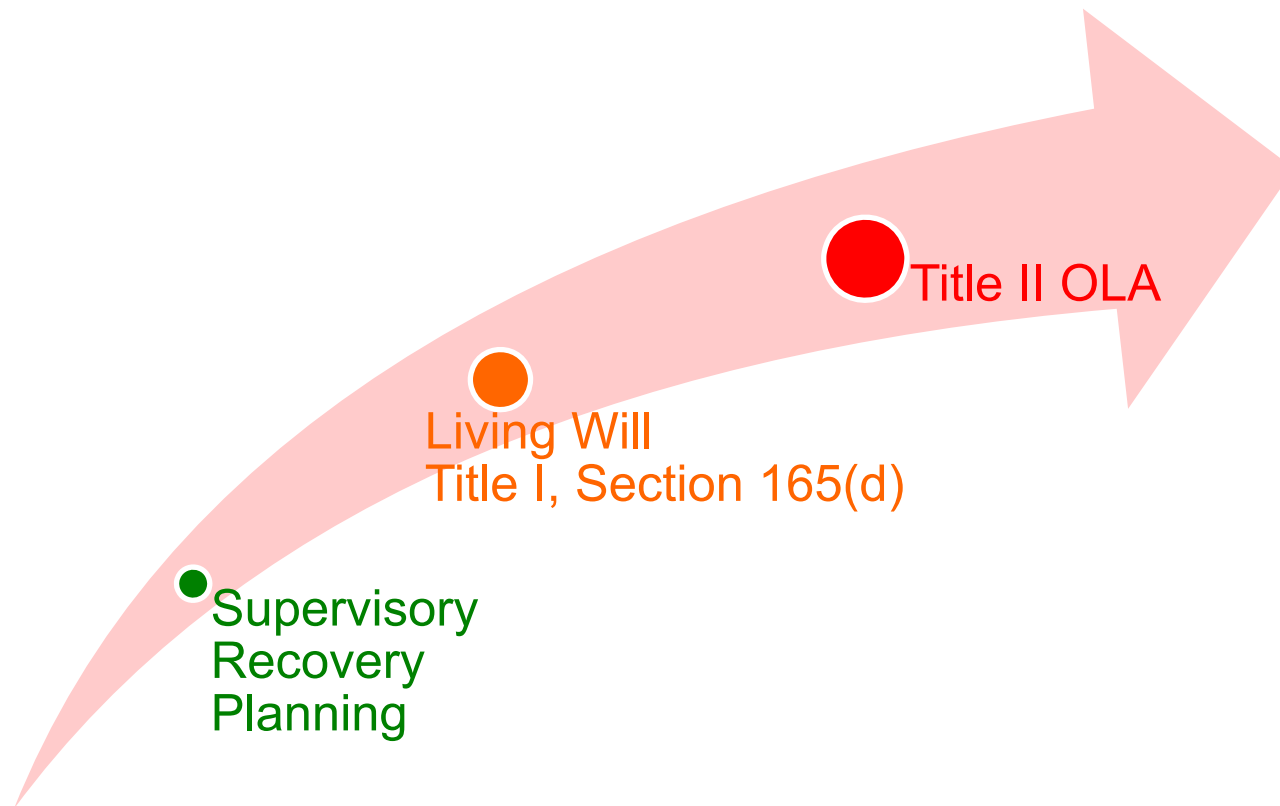
Shawei Wang

September 13, 2012

Any errors are the sole responsibility of the author, and any views expressed are those of the author only, and do not reflect the views of the Federal Reserve Bank of New York or the Federal Reserve System.

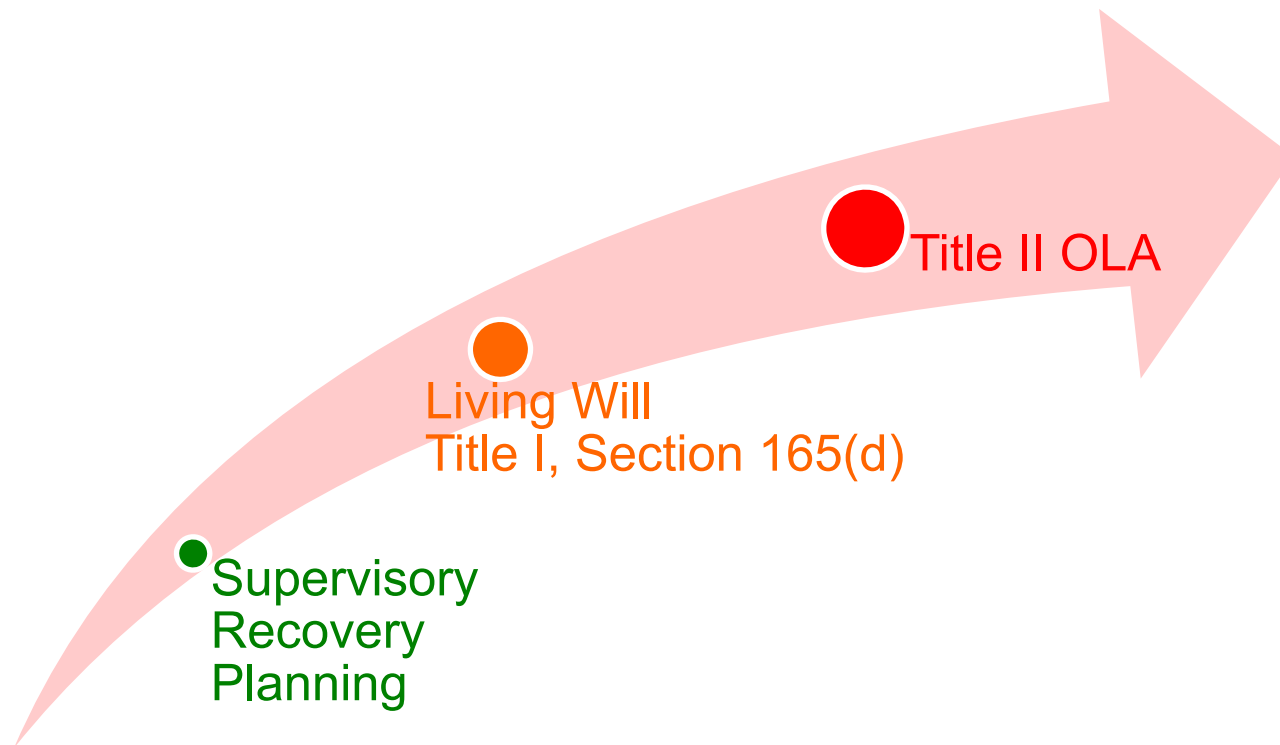
Today's Presentation

- **Title II Orderly Liquidation Authority (OLA) Basics**



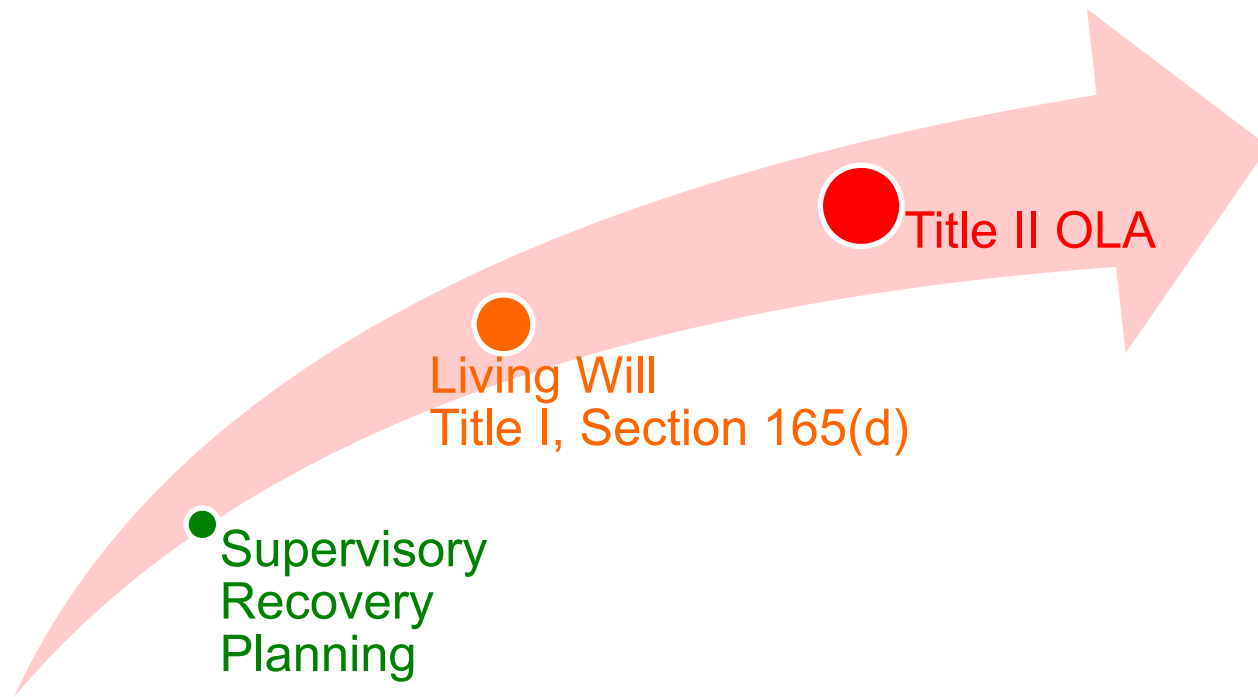
Today's Presentation

- Title II Orderly Liquidation Authority (OLA) Basics
- **Title II Single-Receivership Model**

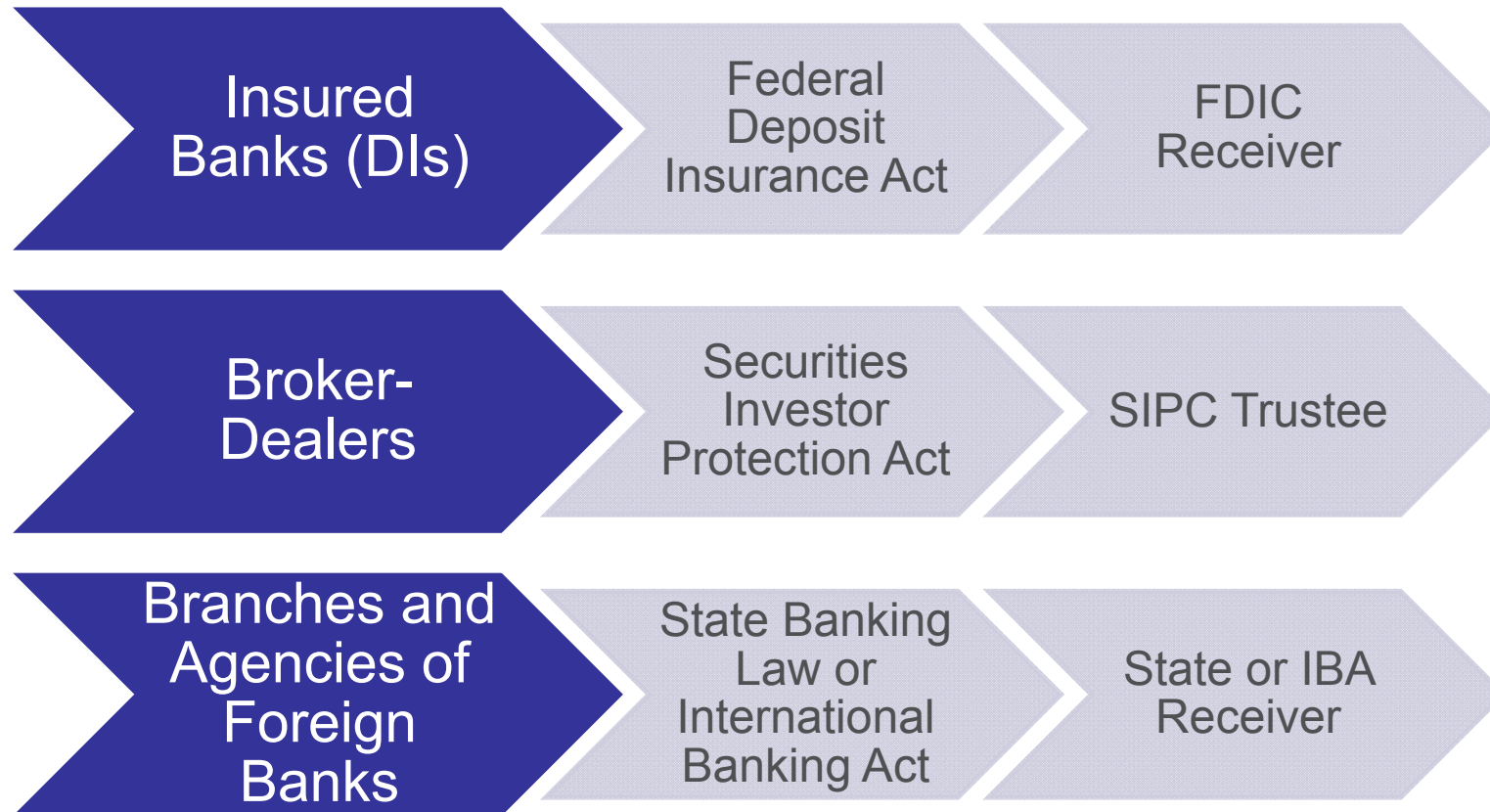


Today's Presentation

- Title II Orderly Liquidation Authority (OLA) Basics
- Title II Single-Receiver Model
- **Title I Enhanced Prudential Standards, focusing on Living Will Update**



U.S. Financial Institution Resolution Regimes



The Bankruptcy Code is still the default resolution regimes for Bank Holding Companies.

Too Big To Fail: The U.S. Perspective

**BEAR
STEARNS**



**Title II
Orderly
Liquidation
Authority
(OLA)**

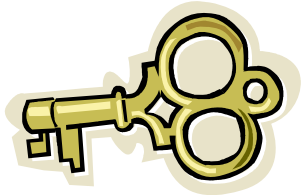


Title II Eligibility: Financial Companies

- “Financial Companies” include bank holding companies, nonbank financial companies supervised by the Board of Governors, companies that are predominantly engaged in financial activities or subsidiaries of those companies that are themselves predominantly engaged in financial activities
 - Must be a US company
 - At least 85% of annual revenues must be derived from financial activity

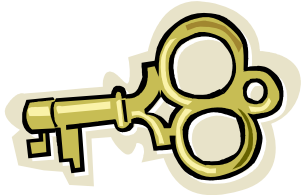


Title II: Triple Key Initiation Process

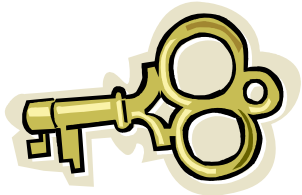


Recommendation by the Federal Reserve Board of Governors

Title II: Triple Key Initiation Process

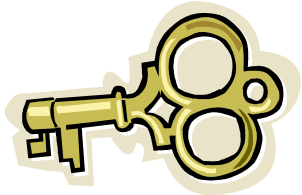


Recommendation by the Federal Reserve Board of Governors

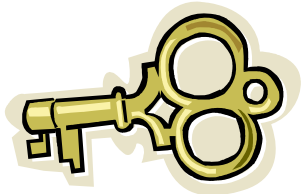


Recommendation by the FDIC
(or SEC or Federal Insurance Office)

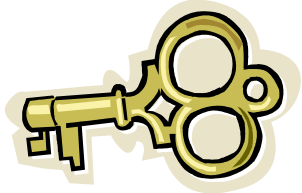
Title II: Triple Key Initiation Process



Recommendation by the Federal Reserve Board of Governors



Recommendation by the FDIC (or SEC or Federal Insurance Office)



Systemic Risk Determination by Treasury Secretary in consultation with President

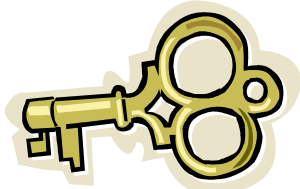
Title II: Triple Key Initiation Process



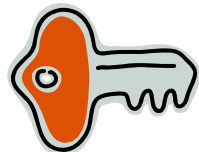
Recommendation by the Federal Reserve Board of Governors



Recommendation by the FDIC (or SEC or Federal Insurance Office)



Systemic Risk Determination by Treasury Secretary in consultation with President



Limited Judicial Review

Title II: Guiding Principles

- Preserve US financial stability
- Maximize value, minimize loss
- Unsecured creditors and shareholders should bear the losses of the financial company
- Directors and senior management responsible for the condition of the company should be replaced

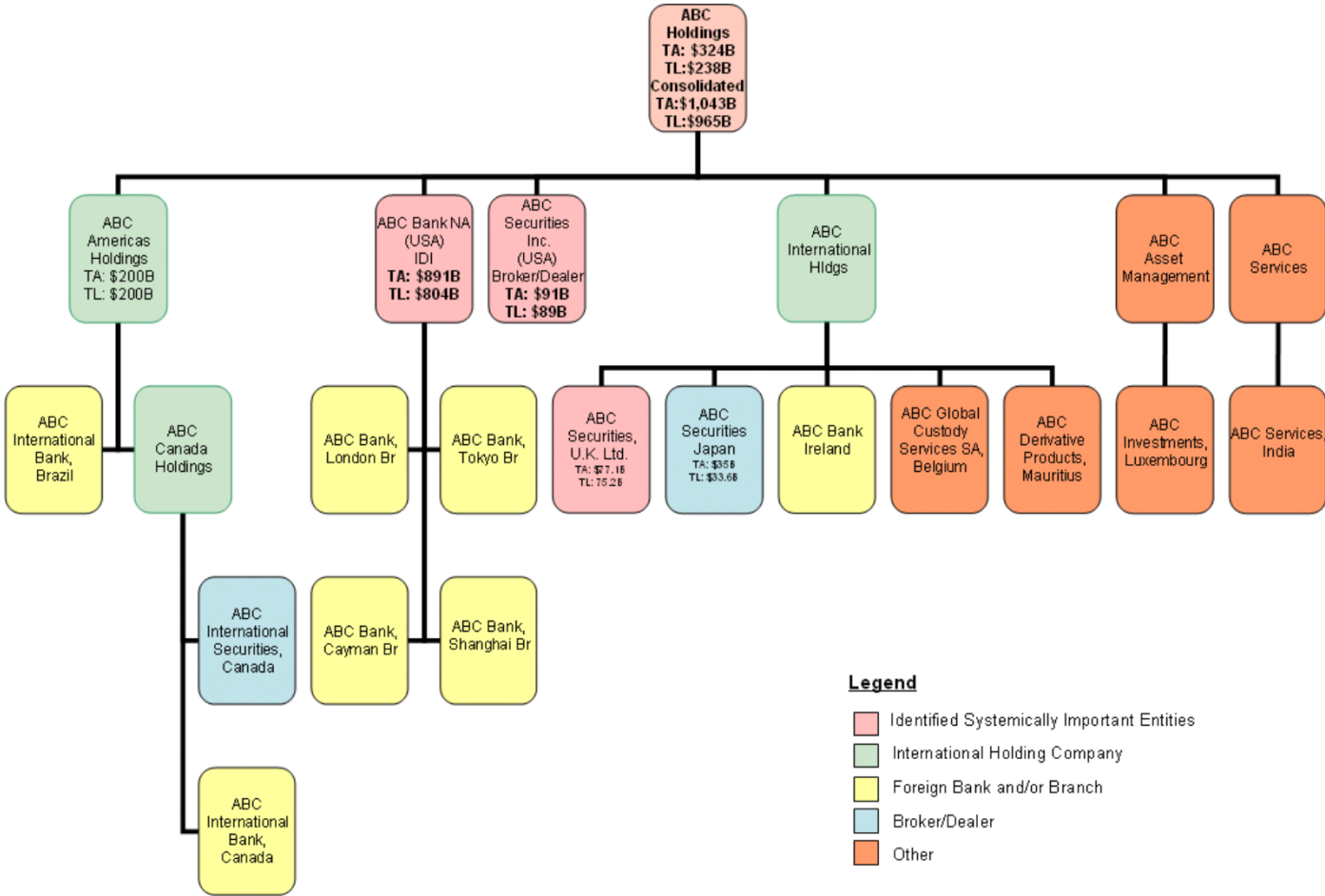
Title II: Broad FDIC Receivership Powers

- Perform all of the Covered Financial Company's functions
- Set up a Bridge Financial Company
- Transfer Qualified Financial Contracts to a third-party institution or to a Bridge Financial Company

Title II Funding: Orderly Liquidation Fund (OLF)

- Orderly Liquidation Fund (“OLF”): Treasury can initially provide funding equal to 10% of the total consolidated assets of the firm
 - Significant borrowing capacity
- Once fair value of the total consolidated assets determined, Treasury can provide funding equal to 90% of that amount
- Risk-based industry assessments if funds not recouped from disposition of firm assets, receivership proceeds, or senior executive clawbacks
 - By law, the taxpayer may not bear any losses

Hypothetical Holding Company Organizational Chart by Legal Entity



- Legend**
- Identified Systemically Important Entities
 - International Holding Company
 - Foreign Bank and/or Branch
 - Broker/Dealer
 - Other

Remaining Questions

- Valuation
- Adequate “bail-in-able debt”
- Market response
- How to apply to financial companies without a holding company structure

Title I: Enhanced Prudential Standards

- Risk-based capital requirements
- Leverage limits
- Liquidity requirements
- Overall risk management requirements
- Credit exposure report
- Concentration limits
- Resolution plans (“Living Wills”)

U.S. Recovery and Resolution “Plans”

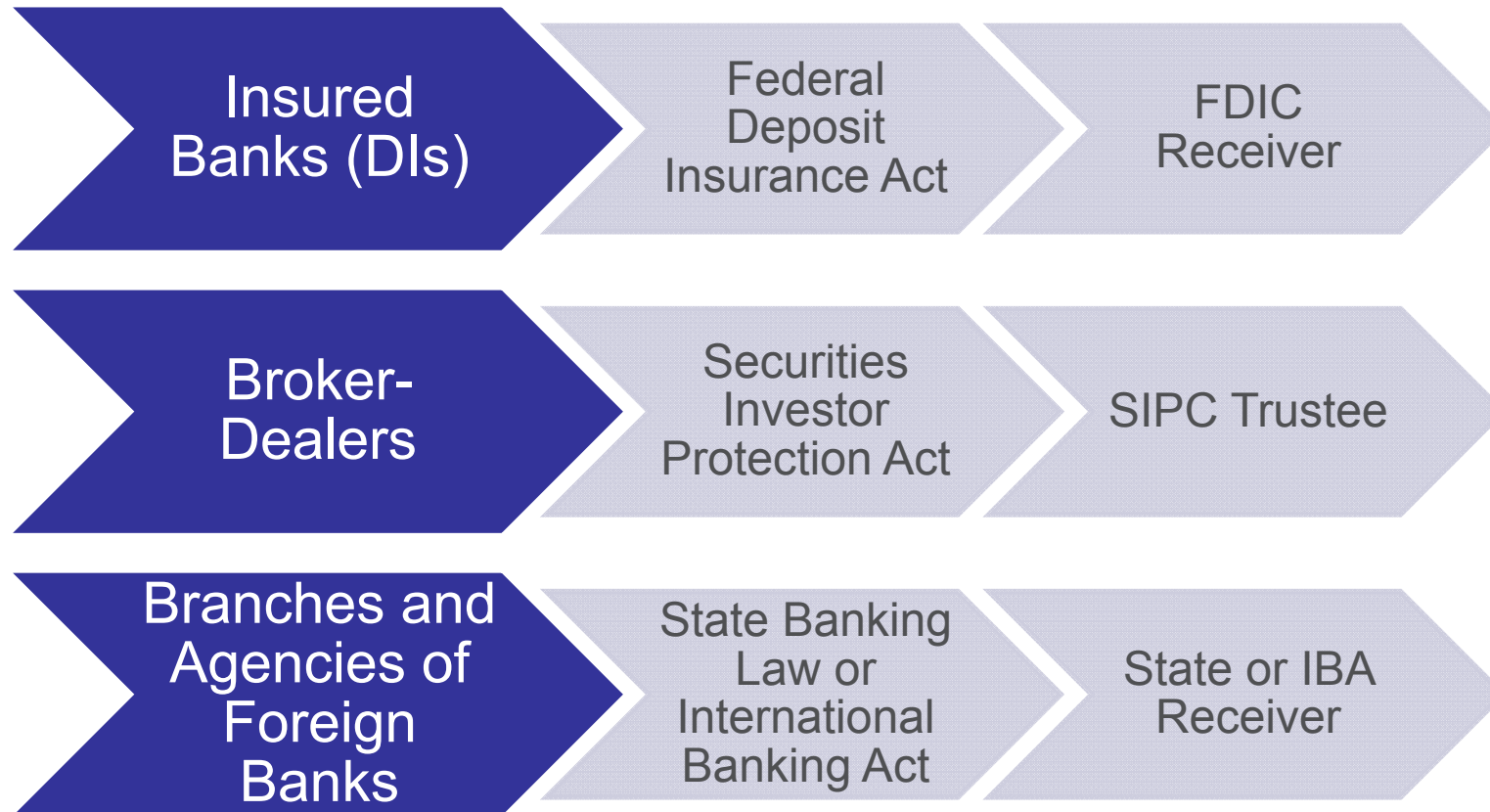
Drafted by the Firm

- Recovery Plan
- ***165(d) Resolution Plan = Living Will***

Drafted by the FDIC

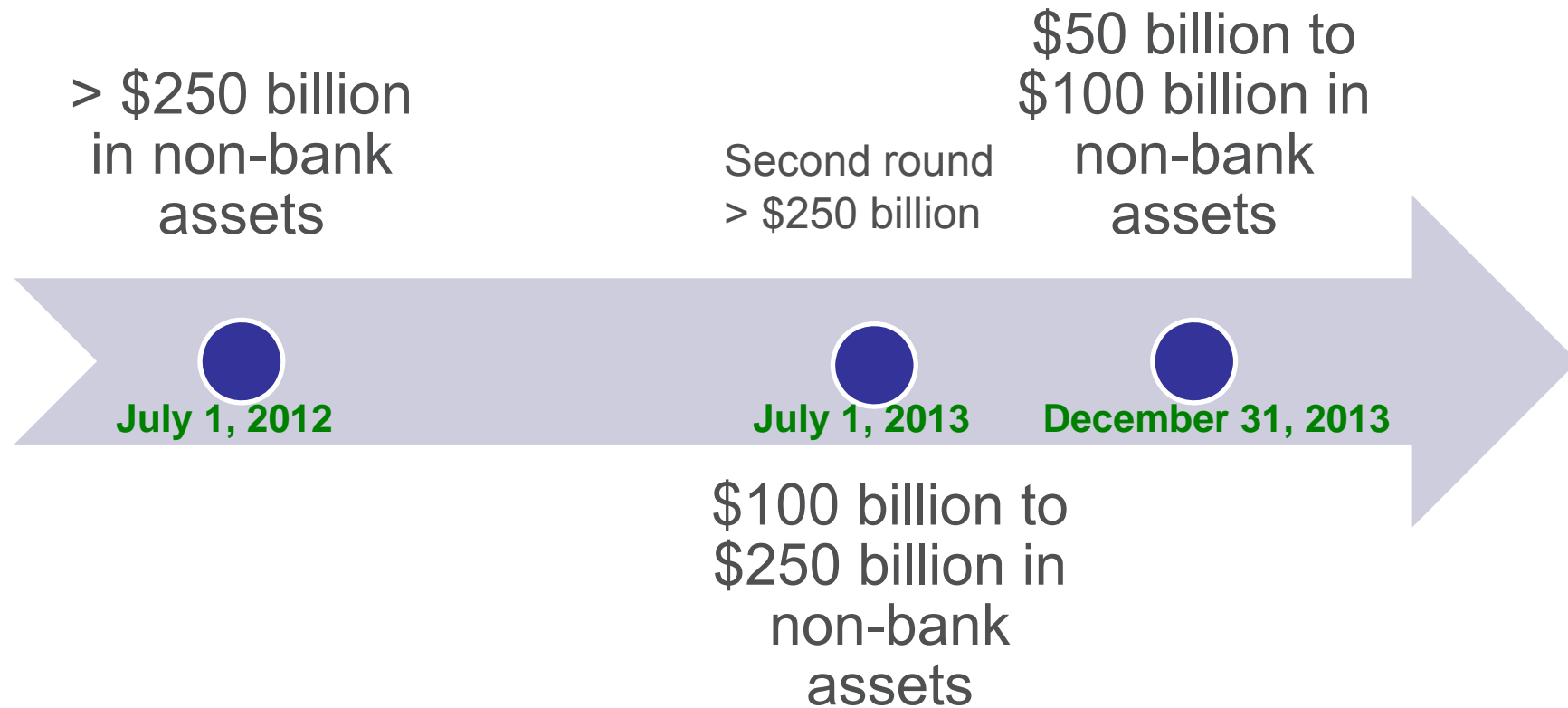
- FDIC Resolution Plan = FSB Resolution Plan

U.S. Financial Institution Resolution Regimes



Section 165(d) resolution plans must assume the Bankruptcy Code or the above resolution regimes apply, **not** Title II OLA.

Living Will Submissions



IDI resolution plan due on same date for any IDI with assets of \$50 billion or more.

Plans for Bank of America, Barclays, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, JPMorgan Chase, Morgan Stanley and UBS were received by July 1, 2012

Living Will Terminology

- **Critical Operations** means “those operations of the covered company, including associated services, functions and support, the failure or discontinuance of which, in the view of the covered company or as jointly directed by the Board and the Corporation, would pose a threat to the financial stability of the United States.”
- **Core Business Lines** means “those business lines of the covered company, including associated operations, services, functions and support, that, in the view of the covered company, upon failure would result in a material loss of revenue, profit, or franchise value”.
- **Material entity** means ” a subsidiary or foreign office of the covered company that is significant to the activities of a critical operation or core business line.”



Living Will Assumptions

- All Material Entities have failed (and entered some form of bankruptcy)
- An idiosyncratic scenario that does not affect the global financial markets generally
- No reliance on extraordinary government support
- The baseline economic scenario from the Federal Reserve stress tests

Living Will Contents

- **Strategic analysis**, including
 - Strategy for maintaining operations and funding
 - Strategy for protection of insured depository institution subsidiary
 - Funding, liquidity and capital needs
 - Any weaknesses or impediments to effective and timely execution of the plan

Living Will Contents (con't)

- **Organizational Structure**, including
 - Map of the Critical Operations and Core Business Lines to Material Entities
 - Trading and derivatives booking practices
 - Material on- and off balance sheet exposures
 - Collateral management processes
 - Hedging strategies
 - List of major counterparties
 - Identification of each trading, payment, clearing or settlement system on which the Company conducts a material number or value amount of trades

Living Will Contents (con't)

- **Management information systems (MIS)**
 - Inventory of key MIS used for risk management, accounting and financial and regulatory reporting.
 - A mapping of key MIS to Material entities, Critical Operations and Core Business Lines that rely on such systems.
- **Interconnections and Interdependencies**
 - Shared systems (IT platforms, risk management systems, accounting and recordkeeping systems)
 - Cross-guarantee, cross-collateral, cross-default provisions
 - Service level agreements
- **Supervisory and Regulatory information**
 - Contact information for relevant supervisors

Living Wills: Domestic and Foreign Firms

Domestic Firms

- Identify risks to the US operations of the firm related to its foreign operations
- Differing national laws, regulations, policies
- Mapping to legal entities in foreign jurisdictions

Foreign Firms

- Provide information re: US operations
- Explain how US resolution planning integrated into overall contingency planning
- Interconnections among US operations and foreign-based operations

Living Wills Review

Firm submits Section 165(d) resolution plan

Will resolution plan facilitate a rapid and orderly resolution of the firm under the Bankruptcy Code?

If not, more stringent requirements may be imposed

If after 2 years the plan is unacceptable, Fed and FDIC may order firm to divest assets or operations

Living Wills Review

Firm submits Section 165(d) resolution plan

Will resolution plan facilitate a rapid and orderly resolution of the firm under the Bankruptcy Code?

If not, more stringent requirements may be imposed

If after 2 years the plan is unacceptable, Fed and FDIC may order firm to divest assets or operations

Living Wills Review

Firm submits Section 165(d) resolution plan

Will resolution plan facilitate a rapid and orderly resolution of the firm under the Bankruptcy Code?

If not, more stringent requirements may be imposed

If after 2 years the plan is unacceptable, Fed and FDIC may order firm to divest assets or operations

Living Wills Review

Firm submits Section 165(d) resolution plan

Will resolution plan facilitate a rapid and orderly resolution of the firm under the Bankruptcy Code?

If not, more stringent requirements may be imposed

If after 2 years the plan is unacceptable, Fed and FDIC may order firm to divest assets or operations

Living Will Observations

- Business line/Legal entity
- Complex institutions
- Massive undertaking for firms and regulators
- Iterative learning process for firms and regulators
- International/regulatory cooperation issues

Coming Soon.....

- FDIC guidance/rules re:
 - How Title II and single-entry receivership would work
 - Joint FDIC/SEC rule re: broker-dealers in Title II receivership
 - QFC recordkeeping
- Additional Living Will reviews
- Possible designation of nonbank financial company for Federal Reserve supervision by FSOC

Additional Resources

- Paul Calello and Wilson Ervin, *From Bail-out to bail-in*, The Economist (Jan. 30, 2010), p. 95
- The Orderly Liquidation of Lehman Brothers Holdings Inc. under the Dodd-Frank Act, FDIC Quarterly (Apr. 18, 2011)
 - http://www.fdic.gov/bank/analytical/quarterly/2011_vol5_2/lehman.pdf
- SIFMA/Clearing House comment letter to FDIC, dated May 23, 2011, re: Recapitalizations as an Effective Way to Resolve Systemically Important Banks and Non-Bank Financial Companies on a Closed Basis without Taxpayer-Funded Bailouts
 - <http://www.fdic.gov/regulations/laws/federal/2011/11c16Ad73.PDF>
- GAO Report to Congressional Committees, Bank Regulation: Modified Prompt Corrective Action Framework Would Improve Effectiveness, June 2011
 - <http://www.gao.gov/new.items/d11612.pdf>
- Board of Governors of the Federal Reserve System Study on International Coordination Relating to Bankruptcy Process for Nonbank Financial Institutions, July 2011
 - <http://www.federalreserve.gov/publications/other-reports/files/nonbank-financial-study-201107.pdf>
- Board of Governors of the Federal Reserve System Study on the Resolution of Financial Companies under the Bankruptcy Code, July 2011
 - <http://www.federalreserve.gov/publications/other-reports/files/bankruptcy-financial-study-201107.pdf>
- FSOC Report to the Congress on Secured Creditor Haircuts Completed pursuant to Section 215 of the Dodd-Frank Act, July 2011
 - <http://www.treasury.gov/initiatives/Documents/Report%20to%20Congress%20on%20Secured%20Creditor%20Haircuts.pdf>
- GAO Report to Congressional Committees, Bankruptcy: Complex Financial Institutions and International Coordination Pose Challenges, July 2011
 - <http://www.gao.gov/new.items/d11707.pdf>
- The Buttonwood Gathering: What Happens When a Global Bank Fails?
 - <http://buttonwood.economist.com/post/12250736856/what-happens-when-a-global-bank-fails-part-1>
- FDIC/Treasury Proposed Rule re: Calculation of Maximum Obligation Limitation, November 25, 2011
 - <http://www.gpo.gov/fdsys/pkg/FR-2011-11-25/pdf/2011-29993.pdf>
- FSOC Report to the Congress on Prompt Corrective Action Completed pursuant to Section 202(g)(4) of the Dodd-Frank Act, December 2011
 - <http://www.treasury.gov/initiatives/fsoc/Documents/FSOC%20PCA%20Report%20FINAL.PDF>
- January 25, 2012 meeting of the FDIC's Systemic Resolution Advisory Committee
 - http://www.vodium.com/MediapodLibrary/index.asp?library=pn100472_fdic_SRAC

Additional Resources (con't)

- Final Rule of FDIC and Federal Reserve implementing the resolution plan requirement of the Dodd-Frank Act
 - <http://www.gpo.gov/fdsys/pkg/FR-2011-11-01/pdf/2011-27377.pdf>
- Public sections of first-group living wills
 - <http://www.federalreserve.gov/bankinfo/reg/resolution-plans.htm>
 - <http://www.fdic.gov/regulations/reform/resplans/index.html> (includes IDI plans)
- Final Rule of FDIC requiring resolution plans for insured depository institutions with \$50 billion or more in total assets
 - http://www.fdic.gov/regulations/laws/federal/2012/2012-01-23_final-rule.pdf
- FDIC Systemic Resolution Advisory Committee Videos/Webcast/Materials
 - <http://www.fdic.gov/about/srac/index.html>
- FDIC Initiatives under the Dodd-Frank Wall Street Reform and Consumer Protection Act
 - <http://www.fdic.gov/regulations/reform/initiatives.html>
- FDIC Interim Final Rule re: OLA Provisions of DFA, 76 Fed. Reg. 4208, January 25, 2011
 - <http://www.fdic.gov/regulations/laws/federal/2011/11finalJan25.pdf>