

## How to Get Your Slice of the Dodd-Frank Liquidation Pie

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### Introduction

Under the new insolvency regime created by Title II of the Dodd-Frank Wall Street and Consumer Protection Act (the "Act"), the Federal Deposit Insurance Corporation (the "FDIC" or the "Receiver") may be appointed as receiver of a financial company if the Secretary of Treasury, in consultation with the President, determines that the financial company is in default or danger of default and the failure of the financial company and its resolution under the Bankruptcy Code or other applicable insolvency regime would have serious adverse effects on financial stability in the United States.<sup>1</sup> Title II requires the Receiver to liquidate the failing financial company in a manner that imposes all losses on the company's creditors and shareholders (rather than on taxpayers). Creditors of these financial institutions, who likely are familiar with reorganization and liquidation under the Bankruptcy Code and other applicable insolvency regimes, should be prepared to adapt to a different claims procedure and priority scheme.

To supplement the terms of the Act, the FDIC recently published an interim final rule (the "Interim Final Rule")<sup>2</sup> and a proposed rule (the "Proposed Rule")<sup>3</sup> that, among other issues, address the administrative process for determination of claims and the priority and treatment of those claims under Title II. Although the FDIC is attempting to harmonize the claims procedure of Title II with the Bankruptcy Code and the Federal Deposit Insurance Act (the "FDI Act") to the extent possible, significant differences exist. Creditors should begin familiarizing themselves with the provisions of Title II so that they may easily navigate the procedures for determination of claims, and understand their respective priority in the event that a systemically important financial institution is forced to undergo an orderly liquidation.



This Alert will focus on those provisions of Title II, the Interim Final Rule, and the Proposed Rule that are of interest to creditors of financial companies, including the administrative process for the initial determination of claims, the process of judicial review for disallowed claims, the priority of expenses and unsecured claims, and the treatment of secured claims.

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