TITLE II: ORDERLY LIQUIDATION AUTHORITY

- Establishes an orderly liquidation procedure whereby the Federal Deposit Insurance Corporation (FDIC) can unwind failing systemically significant financial companies, with the goal of having shareholders and unsecured creditors bear losses, while management and culpable directors will be removed
- Empowers the Treasury Department, the FDIC and the Federal Reserve to act together based on a joint determination, reviewable in court, to place a company into the orderly liquidation process where its failure or resolution in bankruptcy could have adverse effects on financial stability
- Allows the FDIC to borrow those funds necessary to liquidate a large, interconnected financial company, where it expects those funds will be repaid from the assets of the company in question (and where the government will be first in line for repayment), and
- Establishes that any shortfall from the sale of an entity's assets will be repaid first through the clawback of any payments to creditors that exceed liquidation value, and thereafter through assessments on large financial companies based on a risk assessment determination

Rulemakings

Federal Deposit Insurance Corporation (FDIC)	
No date given	**Bill Section**
FDIC to issue regulations on the application of the revenue test for purposes of the determination of a "financial company."	§201(b)
FDIC to promulgate rules governing the termination of receiverships.	§202(d)(5)
FDIC to establish policies governing the use of funds allocated to it under the Title.	§203(d)
FDIC to issue, jointly with the Securities and Exchange Commission, rules on the orderly disposition of broker/dealers.	§205(h)
FDIC to issue rules and regulations to implement the provisions of the Title.	§209
FDIC to establish pertinent interest rates for payment of post-insolvency claims.	§210(a)(7)(D)
FDIC to establish procedures on the maintenance of documents by the agency.	§210(a)(16)(D)
FDIC to impose recordkeeping requirements and regulations on covered financial companies.	§210(c)(8)(H)
FDIC to set forth the definition of "financial institution" for purposes of the role of qualified financial contracts.	§210(c)(9)(D)
FDIC to establish rules on maximum obligation limitations.	§210(n)(7)
FDIC to establish regulations on the pertinent assessment system based on relevant risk assessments.	§210(o)(6)

FDIC to promulgate regulations on recovering compensation from senior executives in the event of a showing of responsibility for failure of the affected company.	§210(s)(3)
FDIC to establish rules on orders of prohibition against affected senior executives relating to unsafe or unsound practices or breaches of fiduciary duty.	§213(d)

District Court (District of Columbia)	
January 21, 2011 (6 months after enactment)	**Bill Section**
Court to establish rules to ensure the orderly conduct of proceedings relating to the appointment of a receiver for a designated company.	§202(b)

"Primary Financial Regulatory Agency"[4] (PFRA)	
July 21, 2012 (24 months after enactment)	**Bill Section**
PFRAs to jointly prescribe rules on record maintenance pertaining to qualified financial contracts.	§210(c)(8)(H)

[4] "Primary financial regulatory agency" (PFRA) is defined in § 2(11) as an institution's appropriate federal banking agency, the Securities and Exchange Commission, the Commodity Futures Trading Commission, a state insurance authority, the Federal Housing Finance Agency or the Federal Home Loan Bank System, depending on the type of institution.

DLA Piper Lawyers to Contact

To learn more, please contact your DLA Piper lawyer or any of the following lawyers:

Baltimore +1 410 580 3000

Kristin Franceschi

Megan Kraai

Beijing +86 10 6561 1788

Steven Liu

Boston +1 617 406 6000

Jonathan Black

Ron Borod

Adriana Schick

Chicago +1 312 368 4000

Marc Horwitz

Jim Kaplan

David Mendelsohn

Weiying Sarah Wang

Hong Kong +852 2103 0808

Gene Buttrill

Christopher Clarke

Stephen Peepels

Minneapolis +1 612 524 3000

Robert Pratte

New York +1 212 335 4500

Ted Altman

Michael Barz

Peter Darrow

Brandon Douglass

Matthew McDermott

Roger Meltzer

Jeff Steiner

Jay Taylor

Seattle +1 206 839 4800

Andrew Ledbetter

Silicon Valley +1 650 833 2000

Diane Holt Frankle

Tokyo +81 (0)3-4550-2800

Koji Ishikawa

Washington, DC +1 202 799 4000

Tom Boyd

Niki Carelli

Rusty Conner

Rick Coll

Andrew Eskin

Jeffrey Hare

David Krohn

Deborah Meshulam

Michael Reed

Christopher Steelman