

[Banking and Finance Law Daily Wrap Up, RECEIVERSHIPS—FDIC proposal provides for orderly liquidation of broker-dealers, \(Feb. 18, 2016\)](#)

Banking and Finance Law Daily Wrap Up

[Click to open document in a browser](#)

By [Colleen M. Svelnis, J.D.](#)

The Federal Deposit Insurance Corporation and the Securities and Exchange Commission have issued a joint proposal to provide for the orderly liquidation of large broker-dealers. The notice of proposed rulemaking would implement Section 205 of the Dodd-Frank Act, which provides the authority for the appointment of the FDIC as receiver to conduct the orderly liquidation of systemically important financial companies.

The process by which a broker or dealer may be placed into orderly liquidation under Title II is set forth in section 203 of the Securities Investor Protection Act (SIPA). In the case of a broker or dealer, the Federal Reserve and the SEC are authorized to jointly issue a written recommendation to the Treasury Secretary, in consultation with the FDIC. With the Treasury Secretary's determination, a broker or dealer would be placed into an orderly liquidation proceeding and the FDIC would be appointed as receiver.

According to the FDIC [staff memorandum](#), the orderly liquidation of a systemically important covered broker or dealer under Title II seeks to avoid or mitigate adverse effects on financial stability that would result from the liquidation of the broker or dealer under SIPA while ensuring that customers of a covered broker or dealer have protections comparable to the protections provided to them under SIPA. The [proposed rule](#) would address many of the customer protection features of SIPA that were incorporated by the Dodd-Frank Act into Title II. Under the proposal, the FDIC could use a newly organized bridge broker-dealer for the liquidation, in which the customer accounts, securities, and property would be transferred to that entity. The Securities Investor Protection Corporation (SIPC) would determine claims and distribute assets in a manner consistent with SIPA. The transfer of assets and liabilities to a bridge broker-dealer would enable the receiver to continue the broker-dealer's operations and maximize the value of the assets by avoiding a forced or distressed sale. Continuing the broker-dealer's operations also may help mitigate the impact of the failure on other market participants and minimize systemic risk.

Changes to rule. The proposed rule deviates from the statutory language in some cases to clarify the orderly liquidation process. The proposal includes the following changes:

- clarifying how the relevant provisions of SIPA would be incorporated into a Title II proceeding;
- specifying the purpose and content of the application for a protective decree required by section 205 of the Dodd-Frank Act;
- clarifying the FDIC's powers as receiver with respect to the transfer of assets of a covered broker or dealer to a bridge broker or dealer;
- specifying the roles of the FDIC as receiver and SIPC as trustee with respect to a covered broker or dealer;
- describing the claims process applicable to customers and other creditors of a covered broker or dealer, including the interaction of the determination of customer claims under SIPA with the Title II claims process;
- providing for SIPC's administrative expenses; and
- providing that the treatment of qualified financial contracts of the covered broker or dealer is governed exclusively by section 210 of the Dodd-Frank Act.

A substantially identical proposed rule was also proposed by the Securities and Exchange Commission. The FDIC staff memorandum recommended that the FDIC approve the publication of the proposed rule in the *Federal Register*.

RegulatoryActivity: BankingOperations DoddFrankAct Receiverships