



# Title II vs. Bankruptcy

Stephen J. Lubben

Seton Hall University School of Law, Newark, N.J.  
New York Times, Dealb%k In Debt Columnist

# SPOE in a nutshell

- ◊ A two step process:
  - ◊ Recapitalize the operating companies
  - ◊ File the holding company



# How?

## (Goldman's answer)

After the loss event and significant liquidity outflows, but in advance of making a bankruptcy filing, our parent company would:

- provide certain material entities with additional liquidity, to the extent needed, to support ongoing operations outside of insolvency proceedings;
- extend the maturity of intercompany loans to subsidiaries; and
- re-capitalize certain material entities by contribution of assets or by forgiving intercompany debt.

*Goldman Sachs' Resolution Plan, page 6.*

# Bankruptcy 101

If a company, on the eve of bankruptcy:

- Gives away its assets, *or*
- Sells its assets for less than fair value

the creditors or the bankruptcy trustee can claw back that transaction as a **fraudulent transfer**



# Goldman's Plan

After the loss event and significant liquidity outflows, **but in advance of making a bankruptcy filing**, our parent company would:

- **provide certain material entities with additional liquidity**, to the extent needed, to support ongoing operations outside of insolvency proceedings;
- **extend the maturity** of intercompany loans to subsidiaries; and
- re-capitalize certain material entities by **contribution of assets** or by **forgiving intercompany debt**.