

The background features a dark blue gradient with a faint grid and several data visualization elements. A line graph with blue and purple points is visible in the upper right, with data points labeled 25.05, 49.55, 55.95, and 39.03. A bar chart with blue bars is partially visible in the upper left. In the lower right, there is a bar chart with orange bars and a line graph with orange points, with data points labeled 32.00, 43.22, SALES 0.003, and 90%.

# Core Concept #6: The U.S. Bank Regulators

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# U.S. Bank Regulatory Agencies: Key Takeaways

- The U.S. regulatory structure for banking is immensely complex
  - Largely a product of U.S. political and economic history
  - Frequently the subject of detailed – and unsuccessful – efforts to rationalize and harmonize the agencies
- Regulatory authority is driven on a legal-entity, not functional, basis
- Overall framework is one in which multiple regulatory agencies often have similar or overlapping authority for the same banking organization
  - For example, various parts of the largest U.S. banks are overseen by Fed (bank holding company), OCC (national bank), FDIC (any insured bank), SEC (broker-dealer and/or asset manager), CFTC (swap dealer) and others.
  - This trend was further entrenched by the Dodd-Frank Act
- Key functions of the bank regulatory agencies:
  - Implement and interpret statutes;
  - Supervise and examine banks; and
  - Enforce laws and regulations.

# U.S. Bank Regulatory Agencies: Overview

- **Primary Federal regulators**
  - Board of Governors of the Federal Reserve System (“Federal Reserve Board”)
  - Office of the Comptroller of the Currency (“OCC”)
  - Federal Deposit Insurance Corporation (“FDIC”)
- **Other key regulators**
  - State banking agencies
  - Securities & Exchange Commission (“SEC”)
  - Commodity Futures Trading Commission (“CFTC”)
  - State insurance regulators
  - Financial Crimes Enforcement Network (“FinCEN”)
  - Consumer Financial Protection Bureau (“CFPB”)
  - National Credit Union Administration (“NCUA”)
  - Financial Stability Oversight Council (“FSOC”)

# U.S. Bank Regulatory Agencies: Federal Reserve Board

- Created in 1913
- Primary Federal regulator for bank holding companies and (since 2012) savings and loan holding companies
  - Provides consolidated regulation and oversight for entire organization, not just the holding company
  - But subject to a general principle of “functional regulation” – general deference to functional regulator of each subsidiary (e.g., SEC oversight of a broker-dealer subsidiary)
- Also serves as Federal regulator for state member banks
  - Supplements state banking agency regulation/supervision and provides uniform “floor” of Federal regulation/supervision
- The Federal Reserve also serves as regulator of any foreign bank operating in the United States
  - Foreign banks typically operate in the U.S. through a branch or subsidiary bank
  - Foreign banks may also engage in a range of other financial activities in the U.S. through subsidiaries; the Federal Reserve has required foreign banks with larger U.S. operations to consolidate all such subsidiaries and activities in an “intermediate holding company” (IHC)
- Federal Reserve Board exercises rulemaking authority but in practice often delegates supervision duties to local Federal Reserve banks

# U.S. Bank Regulatory Agencies: Office of the Comptroller of the Currency

- Created in 1864
- Primary Federal regulator for national banks and Federal savings associations
  - Authority also extends to subsidiaries of national banks/Federal savings associations
- Performs its supervision and examination functions through a combination of its principal office in Washington, D.C. and regional offices throughout the United States

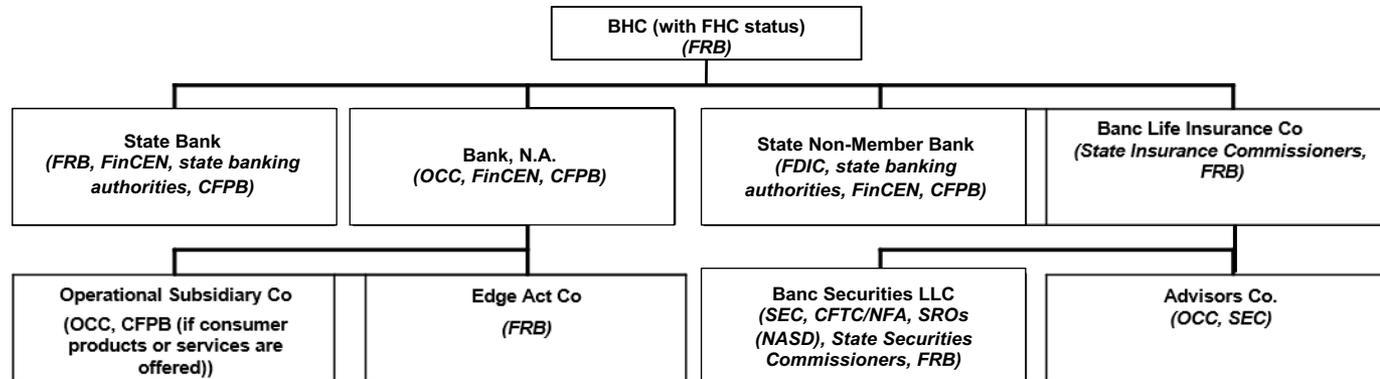
# U.S. Bank Regulatory Agencies: FDIC

- Created in 1933
- Insures the deposits of all Federal and state banks and thrifts pursuant to Federal law
  - Maintains the Deposit Insurance Fund (“DIF”)
- Primary Federal regulator for state non-member banks and state thrifts
  - Supplements state banking agency regulation/supervision and provides uniform “floor” of Federal regulation/supervision
- Because of its interest as deposit insurer, effectively acts as a “secondary” Federal regulator for all IDIs
- Insolvency and receivership powers:
  - By statute, is responsible for closing any failed Insured Depository Institution (IDI)
  - Under Dodd-Frank Act, also has special authority to resolve failed systemically-important financial institutions

# Regulators Use Three Different Forms of Oversight

Regulation	– The rules under which banks are required to operate
Supervision	– The review of a bank's books and records to determine its financial soundness and compliance with law
Enforcement	– The use of legal tools to compel compliance and penalize those responsible for imprudent or improper conduct

# Principal U.S. Agencies & SROs Involved in Supervision/Enforcement\*



## LEGEND:

<u>“CFPB”</u>	Consumer Financial Protection Bureau (assuming that the IDI has greater than \$10 billion in assets)
<u>“CFTC”</u>	Commodity Futures Trading Commission
<u>“FDIC”</u>	Federal Deposit Insurance Corporation
<u>“FRB”</u>	Federal Reserve Board
<u>“FinCEN”</u>	Financial Crimes Enforcement Network
<u>“NASD”</u>	National Association of Securities Dealers
<u>“NFA”</u>	National Futures Association
<u>“OCC”</u>	Office of the Comptroller of the Currency
<u>“SEC”</u>	Securities and Exchange Commission
<u>“SRO”</u>	Self-regulatory Organizations

\* Office of Foreign Assets Control, Department of Justice and U.S. Attorneys, and State Attorneys General do not have supervisory authority but have the authority to bring certain enforcement and/or criminal actions against the bank holding company and its subsidiaries.

# Confidential Supervisory Information (CSI)

- The examination process and examination ratings – as well as informal enforcement actions – are secret.
  - They are exempt from disclosure under Freedom of Information Act (FOIA)
  - The agencies take the position that any exam-related information is government property and thus that its improper disclosure is a conversion of federal property, so a federal crime
- In recent years, agencies have designated a wide set of information as “confidential supervisory information”
  - Requests for information
  - “Industry MRAs”
- Specific CSI rules vary somewhat across agencies

# Confidential Supervisory Information – FRBNY Circular 11002

## Improper Disclosure of Confidential Supervisory Information by Financial Institutions

**To the Chief Executive Officers of All State Member Banks, Branches and Agencies of Foreign Banks, Bank Holding Companies, and Edge Corporations in the Second Federal Reserve District:**

*"It has recently come to my attention that certain financial institutions may be improperly disclosing confidential supervisory information. This letter is intended to ensure that all institutions supervised by the Federal Reserve in the Second Federal Reserve District understand what constitutes confidential supervisory information, and for what purposes an institution may use such information.*

*As you should know, the Board of Governors of the Federal Reserve System has promulgated regulations defining "confidential supervisory information" as:*

*... [R]eports of examination and inspection, confidential operating and condition reports, and any information derived from, relating to, or contained in them. "Confidential supervisory information" may consist of documents prepared by, on behalf of, or for the use of the Board [of Governors, or] a Reserve Bank ..... (12 CFR 261.2(b))*

# Confidential Supervisory Information – FRBNY Circular 11002 (cont.)

*Except to the limited extent otherwise provided by law, reports of examination or inspection -- whether prepared solely by the Federal Reserve or jointly with a Federal or state supervisory agency -- are confidential, as is all information contained in such reports, including an institution's supervisory rating, such as BOPEC, CAMELS or ROCA. Any workpapers that examiners have prepared in the course of an examination are confidential, whether or not these workpapers have been shared with a financial institution. Any evaluation of a loan or other credit, including any evaluation made pursuant to the Shared National Credit Program, is confidential. The first-day letter that the Reserve Bank sends to a financial institution in anticipation of an examination, along with the institution's responses to that letter, are also confidential. Moreover, any non-public enforcement actions, such as memoranda of understanding between the Reserve Bank and an institution, are confidential. Questions as to whether any other material is confidential supervisory information should be addressed to the Reserve Bank before any public disclosure of the information is made.*

...

***Disclosure of confidential supervisory information constitutes a violation of the Board of Governors' regulations, and could lead to formal supervisory action, including the imposition of substantial civil money penalties."***