

(C) a covered broker or dealer.

(10) Definitions relating to covered brokers and dealers

The terms “customer”, “customer name securities”, “customer property”, and “net equity” in the context of a covered broker or dealer, have the same meanings as in section 7811 of title 15.

(11) Financial company

The term “financial company” means any company that—

(A) is incorporated or organized under any provision of Federal law or the laws of any State;

(B) is—

(i) a bank holding company, as defined in section 1841(a) of this title;

(ii) a nonbank financial company supervised by the Board of Governors;

(iii) any company that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 1843(k) of this title other than a company described in clause (i) or (ii); or

(iv) any subsidiary of any company described in any of clauses (i) through (iii) that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 1843(k) of this title (other than a subsidiary that is an insured depository institution or an insurance company); and

(C) is not a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 et seq.), a governmental entity, or a regulated entity, as defined under section 4502(20) of this title.

(12) Fund

The term “Fund” means the Orderly Liquidation Fund established under section 5390(n) of this title.

(13) Insurance company

The term “insurance company” means any entity that is—

(A) engaged in the business of insurance;

(B) subject to regulation by a State insurance regulator; and

(C) covered by a State law that is designed to specifically deal with the rehabilitation, liquidation, or insolvency of an insurance company.

(14) Nonbank financial company

The term “nonbank financial company” has the same meaning as in section 5311(a)(4)(C) of this title.

(15) Nonbank financial company supervised by the Board of Governors

The term “nonbank financial company supervised by the Board of Governors” has the same meaning as in section 5311(a)(4)(D) of this title.

(16) SIPC

The term “SIPC” means the Securities Investor Protection Corporation.

(b) Definitional criteria

For purpose of the definition of the term “financial company” under subsection (a)(11), no company shall be deemed to be predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 1843(k) of this title, if the consolidated revenues of such company from such activities constitute less than 85 percent of the total consolidated revenues of such company, as the Corporation, in consultation with the Secretary, shall establish by regulation. In determining whether a company is a financial company under this subchapter, the consolidated revenues derived from the ownership or control of a depository institution shall be included.

(Pub. L. 111-203, title II, § 201, July 21, 2010, 124 Stat. 1442.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this title”, meaning title II of Pub. L. 111-203, July 21, 2010, 124 Stat. 1442, which is classified principally to this subchapter. For complete classification of title II to the Code, see Tables.

The Farm Credit Act of 1971, referred to in subsec. (a)(11)(C), is Pub. L. 92-181, Dec. 10, 1971, 85 Stat. 583, which is classified principally to chapter 23 (\$2001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of this title and Tables.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as a note under section 5301 of this title.

§ 5382. Judicial review

(a) Commencement of orderly liquidation

(1) Petition to District Court

(A) District Court review

(i) Petition to District Court

Subsequent to a determination by the Secretary under section 5383 of this title that a financial company satisfies the criteria in section 5383(b) of this title, the Secretary shall notify the Corporation and the covered financial company. If the board of directors (or body performing similar functions) of the covered financial company acquiesces or consents to the appointment of the Corporation as receiver, the Secretary shall appoint the Corporation as receiver. If the board of directors (or body performing similar functions) of the covered financial company does not acquiesce or consent to the appointment of the Corporation as receiver, the Secretary shall petition the United States District Court for the District of Columbia for an order authorizing the Secretary to appoint the Corporation as receiver.

(ii) Form and content of order

The Secretary shall present all relevant findings and the recommendation made

pursuant to section 5383(a) of this title to the Court. The petition shall be filed under seal.

(iii) Determination

On a strictly confidential basis, and without any prior public disclosure, the Court, after notice to the covered financial company and a hearing in which the covered financial company may oppose the petition, shall determine whether the determination of the Secretary that the covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 5381(a)(11) of this title is arbitrary and capricious.

(iv) Issuance of order

If the Court determines that the determination of the Secretary that the covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 5381(a)(11) of this title—

(I) is not arbitrary and capricious, the Court shall issue an order immediately authorizing the Secretary to appoint the Corporation as receiver of the covered financial company; or

(II) is arbitrary and capricious, the Court shall immediately provide to the Secretary a written statement of each reason supporting its determination, and afford the Secretary an immediate opportunity to amend and refile the petition under clause (i).

(v) Petition granted by operation of law

If the Court does not make a determination within 24 hours of receipt of the petition—

(I) the petition shall be granted by operation of law;

(II) the Secretary shall appoint the Corporation as receiver; and

(III) liquidation under this subchapter shall automatically and without further notice or action be commenced and the Corporation may immediately take all actions authorized under this subchapter.

(B) Effect of determination

The determination of the Court under subparagraph (A) shall be final, and shall be subject to appeal only in accordance with paragraph (2). The decision shall not be subject to any stay or injunction pending appeal. Upon conclusion of its proceedings under subparagraph (A), the Court shall provide immediately for the record a written statement of each reason supporting the decision of the Court, and shall provide copies thereof to the Secretary and the covered financial company.

(C) Criminal penalties

A person who recklessly discloses a determination of the Secretary under section 5383(b) of this title or a petition of the Secretary under subparagraph (A), or the pendency of court proceedings as provided for

under subparagraph (A), shall be fined not more than \$250,000, or imprisoned for not more than 5 years, or both.

(2) Appeal of decisions of the District Court

(A) Appeal to Court of Appeals

(i) In general

Subject to clause (ii), the United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction of an appeal of a final decision of the Court filed by the Secretary or a covered financial company, through its board of directors, notwithstanding section 5390(a)(1)(A)(i) of this title, not later than 30 days after the date on which the decision of the Court is rendered or deemed rendered under this subsection.

(ii) Condition of jurisdiction

The Court of Appeals shall have jurisdiction of an appeal by a covered financial company only if the covered financial company did not acquiesce or consent to the appointment of a receiver by the Secretary under paragraph (1)(A).

(iii) Expedition

The Court of Appeals shall consider any appeal under this subparagraph on an expedited basis.

(iv) Scope of review

For an appeal taken under this subparagraph, review shall be limited to whether the determination of the Secretary that a covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 5381(a)(11) of this title is arbitrary and capricious.

(B) Appeal to the Supreme Court

(i) In general

A petition for a writ of certiorari to review a decision of the Court of Appeals under subparagraph (A) may be filed by the Secretary or the covered financial company, through its board of directors, notwithstanding section 5390(a)(1)(A)(i) of this title, with the Supreme Court of the United States, not later than 30 days after the date of the final decision of the Court of Appeals, and the Supreme Court shall have discretionary jurisdiction to review such decision.

(ii) Written statement

In the event of a petition under clause (i), the Court of Appeals shall immediately provide for the record a written statement of each reason for its decision.

(iii) Expedition

The Supreme Court shall consider any petition under this subparagraph on an expedited basis.

(iv) Scope of review

Review by the Supreme Court under this subparagraph shall be limited to whether the determination of the Secretary that the covered financial company is in de-

fault or in danger of default and satisfies the definition of a financial company under section 5381(a)(11) of this title is arbitrary and capricious.

(b) Establishment and transmittal of rules and procedures

(1) In general

Not later than 6 months after July 21, 2010, the Court shall establish such rules and procedures as may be necessary to ensure the orderly conduct of proceedings, including rules and procedures to ensure that the 24-hour deadline is met and that the Secretary shall have an ongoing opportunity to amend and refile petitions under subsection (a)(1).

(2) Publication of rules

The rules and procedures established under paragraph (1), and any modifications of such rules and procedures, shall be recorded and shall be transmitted to—

- (A) the Committee on the Judiciary of the Senate;
- (B) the Committee on Banking, Housing, and Urban Affairs of the Senate;
- (C) the Committee on the Judiciary of the House of Representatives; and
- (D) the Committee on Financial Services of the House of Representatives.

(c) Provisions applicable to financial companies

(1) Bankruptcy Code

Except as provided in this subsection, the provisions of the Bankruptcy Code and rules issued thereunder or otherwise applicable insolvency law, and not the provisions of this subchapter, shall apply to financial companies that are not covered financial companies for which the Corporation has been appointed as receiver.

(2) This subchapter

The provisions of this subchapter shall exclusively apply to and govern all matters relating to covered financial companies for which the Corporation is appointed as receiver, and no provisions of the Bankruptcy Code or the rules issued thereunder shall apply in such cases, except as expressly provided in this subchapter.

(d) Time limit on receivership authority

(1) Baseline period

Any appointment of the Corporation as receiver under this section shall terminate at the end of the 3-year period beginning on the date on which such appointment is made.

(2) Extension of time limit

The time limit established in paragraph (1) may be extended by the Corporation for up to 1 additional year, if the Chairperson of the Corporation determines and certifies in writing to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that continuation of the receivership is necessary—

(A) to—

- (i) maximize the net present value return from the sale or other disposition of

the assets of the covered financial company; or

- (ii) minimize the amount of loss realized upon the sale or other disposition of the assets of the covered financial company; and

(B) to protect the stability of the financial system of the United States.

(3) Second extension of time limit

(A) In general

The time limit under this subsection, as extended under paragraph (2), may be extended for up to 1 additional year, if the Chairperson of the Corporation, with the concurrence of the Secretary, submits the certifications described in paragraph (2).

(B) Additional report required

Not later than 30 days after the date of commencement of the extension under subparagraph (A), the Corporation shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the need for the extension and the specific plan of the Corporation to conclude the receivership before the end of the second extension.

(4) Ongoing litigation

The time limit under this subsection, as extended under paragraph (3), may be further extended solely for the purpose of completing ongoing litigation in which the Corporation as receiver is a party, provided that the appointment of the Corporation as receiver shall terminate not later than 90 days after the date of completion of such litigation, if—

(A) the Council determines that the Corporation used its best efforts to conclude the receivership in accordance with its plan before the end of the time limit described in paragraph (3);

(B) the Council determines that the completion of longer-term responsibilities in the form of ongoing litigation justifies the need for an extension; and

(C) the Corporation submits a report approved by the Council not later than 30 days after the date of the determinations by the Council under subparagraphs (A) and (B) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, describing—

(i) the ongoing litigation justifying the need for an extension; and

(ii) the specific plan of the Corporation to complete the litigation and conclude the receivership.

(5) Regulations

The Corporation may issue regulations governing the termination of receiverships under this subchapter.

(6) No liability

The Corporation and the Deposit Insurance Fund shall not be liable for unresolved claims arising from the receivership after the termination of the receivership.

(e) Study of bankruptcy and orderly liquidation process for financial companies

(1) Study

(A) In general

The Administrative Office of the United States Courts and the Comptroller General of the United States shall each monitor the activities of the Court, and each such Office shall conduct separate studies regarding the bankruptcy and orderly liquidation process for financial companies under the Bankruptcy Code.

(B) Issues to be studied

In conducting the study under subparagraph (A), the Administrative Office of the United States Courts and the Comptroller General of the United States each shall evaluate—

- (i) the effectiveness of chapter 7 or chapter 11 of the Bankruptcy Code in facilitating the orderly liquidation or reorganization of financial companies;
- (ii) ways to maximize the efficiency and effectiveness of the Court; and
- (iii) ways to make the orderly liquidation process under the Bankruptcy Code for financial companies more effective.

(2) Reports

Not later than 1 year after July 21, 2010, in each successive year until the third year, and every fifth year after that date, the Administrative Office of the United States Courts and the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives separate reports summarizing the results of the studies conducted under paragraph (1).

(f) Study of international coordination relating to bankruptcy process for financial companies

(1) Study

(A) In general

The Comptroller General of the United States shall conduct a study regarding international coordination relating to the orderly liquidation of financial companies under the Bankruptcy Code.

(B) Issues to be studied

In conducting the study under subparagraph (A), the Comptroller General of the United States shall evaluate, with respect to the bankruptcy process for financial companies—

- (i) the extent to which international coordination currently exists;
- (ii) current mechanisms and structures for facilitating international cooperation;
- (iii) barriers to effective international coordination; and
- (iv) ways to increase and make more effective international coordination.

(2) Report

Not later than 1 year after July 21, 2010, the Comptroller General of the United States shall

submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives and the Secretary a report summarizing the results of the study conducted under paragraph (1).

(g) Study of prompt corrective action implementation by the appropriate Federal agencies

(1) Study

The Comptroller General of the United States shall conduct a study regarding the implementation of prompt corrective action by the appropriate Federal banking agencies.

(2) Issues to be studied

In conducting the study under paragraph (1), the Comptroller General shall evaluate—

- (A) the effectiveness of implementation of prompt corrective action by the appropriate Federal banking agencies and the resolution of insured depository institutions by the Corporation; and

- (B) ways to make prompt corrective action a more effective tool to resolve the insured depository institutions at the least possible long-term cost to the Deposit Insurance Fund.

(3) Report to Council

Not later than 1 year after July 21, 2010, the Comptroller General shall submit a report to the Council on the results of the study conducted under this subsection.

(4) Council report of action

Not later than 6 months after the date of receipt of the report from the Comptroller General under paragraph (3), the Council shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on actions taken in response to the report, including any recommendations made to the Federal primary financial regulatory agencies under section 5330 of this title.

(Pub. L. 111-203, title II, § 202, July 21, 2010, 124 Stat. 1442.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a)(1)(A)(v)(III), (c), and (d)(5), was in the original “this title”, meaning title II of Pub. L. 111-203, July 21, 2010, 124 Stat. 1442, which is classified principally to this subchapter. For complete classification of title II to the Code, see Tables.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as a note under section 5301 of this title.

§ 5383. Systemic risk determination**(a) Written recommendation and determination****(1) Vote required****(A) In general**

On their own initiative, or at the request of the Secretary, the Corporation and the Board of Governors shall consider whether to make a written recommendation described in paragraph (2) with respect to whether the Secretary should appoint the Corporation as receiver for a financial company. Such recommendation shall be made upon a vote of not fewer than $\frac{2}{3}$ of the members of the Board of Governors then serving and $\frac{2}{3}$ of the members of the board of directors of the Corporation then serving.

(B) Cases involving brokers or dealers

In the case of a broker or dealer, or in which the largest United States subsidiary (as measured by total assets as of the end of the previous calendar quarter) of a financial company is a broker or dealer, the Commission and the Board of Governors, at the request of the Secretary, or on their own initiative, shall consider whether to make the written recommendation described in paragraph (2) with respect to the financial company. Subject to the requirements in paragraph (2), such recommendation shall be made upon a vote of not fewer than $\frac{2}{3}$ of the members of the Board of Governors then serving and $\frac{2}{3}$ of the members of the Commission then serving, and in consultation with the Corporation.

(C) Cases involving insurance companies

In the case of an insurance company, or in which the largest United States subsidiary (as measured by total assets as of the end of the previous calendar quarter) of a financial company is an insurance company, the Director of the Federal Insurance Office and the Board of Governors, at the request of the Secretary or on their own initiative, shall consider whether to make the written recommendation described in paragraph (2) with respect to the financial company. Subject to the requirements in paragraph (2), such recommendation shall be made upon a vote of not fewer than $\frac{2}{3}$ of the Board of Governors then serving and the affirmative approval of the Director of the Federal Insurance Office, and in consultation with the Corporation.

(2) Recommendation required

Any written recommendation pursuant to paragraph (1) shall contain—

(A) an evaluation of whether the financial company is in default or in danger of default;

(B) a description of the effect that the default of the financial company would have on financial stability in the United States;

(C) a description of the effect that the default of the financial company would have on economic conditions or financial stability for low income, minority, or underserved communities;

(D) a recommendation regarding the nature and the extent of actions to be taken under this subchapter regarding the financial company;

(E) an evaluation of the likelihood of a private sector alternative to prevent the default of the financial company;

(F) an evaluation of why a case under the Bankruptcy Code is not appropriate for the financial company;

(G) an evaluation of the effects on creditors, counterparties, and shareholders of the financial company and other market participants; and

(H) an evaluation of whether the company satisfies the definition of a financial company under section 5381 of this title.

(b) Determination by the Secretary

Notwithstanding any other provision of Federal or State law, the Secretary shall take action in accordance with section 5382(a)(1)(A) of this title, if, upon the written recommendation under subsection (a), the Secretary (in consultation with the President) determines that—

(1) the financial company is in default or in danger of default;

(2) the failure of the financial company and its resolution under otherwise applicable Federal or State law would have serious adverse effects on financial stability in the United States;

(3) no viable private sector alternative is available to prevent the default of the financial company;

(4) any effect on the claims or interests of creditors, counterparties, and shareholders of the financial company and other market participants as a result of actions to be taken under this subchapter is appropriate, given the impact that any action taken under this subchapter would have on financial stability in the United States;

(5) any action under section 5384 of this title would avoid or mitigate such adverse effects, taking into consideration the effectiveness of the action in mitigating potential adverse effects on the financial system, the cost to the general fund of the Treasury, and the potential to increase excessive risk taking on the part of creditors, counterparties, and shareholders in the financial company;

(6) a Federal regulatory agency has ordered the financial company to convert all of its convertible debt instruments that are subject to the regulatory order; and

(7) the company satisfies the definition of a financial company under section 5381 of this title.

(c) Documentation and review**(1) In general**

The Secretary shall—

(A) document any determination under subsection (b);

(B) retain the documentation for review under paragraph (2); and

(C) notify the covered financial company and the Corporation of such determination.

(2) Report to Congress

Not later than 24 hours after the date of appointment of the Corporation as receiver for a