

of ensuring compliance with the provisions of this section, including assessing the ability of the company to serve as a source of strength to its subsidiary intermediate holding company pursuant to paragraph (3) and enforcing such compliance.

(5) Limited parent company enforcement

(A) In general

In addition to any other authority of the Board of Governors, the Board of Governors may enforce compliance with the provisions of this subsection that are applicable to any company described in paragraph (1) that controls an intermediate holding company under section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], and such company shall be subject to such section (solely for such purposes) in the same manner and to the same extent as if such company were a bank holding company.

(B) Application of other Act

Any violation of this subsection by any company that controls an intermediate holding company may also be treated as a violation of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] for purposes of subparagraph (A).

(C) No effect on other authority

No provision of this paragraph shall be construed as limiting any authority of the Board of Governors or any other Federal agency under any other provision of law.

(c) Regulations

The Board of Governors—

(1) shall promulgate regulations to establish the criteria for determining whether to require a nonbank financial company supervised by the Board of Governors to establish an intermediate holding company under subsection (b); and

(2) may promulgate regulations to establish any restrictions or limitations on transactions between an intermediate holding company or a nonbank financial company supervised by the Board of Governors and its affiliates, as necessary to prevent unsafe and unsound practices in connection with transactions between such company, or any subsidiary thereof, and its parent company or affiliates that are not subsidiaries of such company, except that such regulations shall not restrict or limit any transaction in connection with the bona fide acquisition or lease by an unaffiliated person of assets, goods, or services.

(Pub. L. 111-203, title I, §167, July 21, 2010, 124 Stat. 1432.)

Editorial Notes

REFERENCES IN TEXT

This part, referred to in subsec. (a), was in the original “this subtitle”, meaning subtitle C (§§161–176) of title I of Pub. L. 111-203, July 21, 2010, 124 Stat. 1420, which is classified principally to this part. For complete classification of subtitle C to the Code, see Tables.

The Federal Deposit Insurance Act, referred to in subsec. (b)(5)(B), is act Sept. 21, 1950, ch. 967, §2, 64 Stat.

873, which is classified generally to chapter 16 (§1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

§ 5368. Regulations

The Board of Governors shall have authority to issue regulations to implement parts A and C and the amendments made thereunder. Except as otherwise specified in part A or C, not later than 18 months after the effective date of this Act, the Board of Governors shall issue final regulations to implement parts A and C, and the amendments made thereunder.

(Pub. L. 111-203, title I, §168, July 21, 2010, 124 Stat. 1434.)

Editorial Notes

REFERENCES IN TEXT

Part C, referred to in text, was in the original “subtitle C”, meaning subtitle C (§§161–176) of title I of Pub. L. 111-203, July 21, 2010, 124 Stat. 1420, which is classified principally to this part. For complete classification of subtitle C to the Code, see Tables.

The effective date of this Act, referred to in text, is 1 day after July 21, 2010, except as otherwise specifically provided in Pub. L. 111-203, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of this title.

§ 5369. Avoiding duplication

The Board of Governors shall take any action that the Board of Governors deems appropriate to avoid imposing requirements under this part that are duplicative of requirements applicable to bank holding companies and nonbank financial companies under other provisions of law.

(Pub. L. 111-203, title I, §169, July 21, 2010, 124 Stat. 1434.)

Editorial Notes

REFERENCES IN TEXT

This part, referred to in text, was in the original “this subtitle”, meaning subtitle C (§§161–176) of title I of Pub. L. 111-203, July 21, 2010, 124 Stat. 1420, which is classified principally to this part. For complete classification of subtitle C to the Code, see Tables.

§ 5370. Safe harbor

(a) Regulations

The Board of Governors shall promulgate regulations on behalf of, and in consultation with, the Council setting forth the criteria for exempting certain types or classes of U.S. nonbank financial companies or foreign nonbank financial companies from supervision by the Board of Governors.

(b) Considerations

In developing the criteria under subsection (a), the Board of Governors shall take into account the factors for consideration described in subsections (a) and (b) of section 5323 of this title in determining whether a U.S. nonbank financial company or foreign nonbank financial company shall be supervised by the Board of Governors.

(c) Rule of construction

Nothing in this section shall be construed to require supervision by the Board of Governors of

a U.S. nonbank financial company or foreign nonbank financial company, if such company does not meet the criteria for exemption established under subsection (a).

(d) Revisions

(1) In general

The Board of Governors shall, in consultation with the Council, review the regulations promulgated under subsection (a), not less frequently than every 5 years, and based upon the review, the Board of Governors may revise such regulations on behalf of, and in consultation with, the Council to update as necessary the criteria set forth in such regulations.

(2) Transition period

No revisions under paragraph (1) shall take effect before the end of the 2-year period after the date of publication of such revisions in final form.

(e) Report

The Chairman of the Board of Governors and the Chairperson of the Council shall submit a joint report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives not later than 30 days after the date of the issuance in final form of regulations under subsection (a), or any subsequent revision to such regulations under subsection (d), as applicable. Such report shall include, at a minimum, the rationale for exemption and empirical evidence to support the criteria for exemption.

(Pub. L. 111-203, title I, §170, July 21, 2010, 124 Stat. 1435.)

§ 5371. Leverage and risk-based capital requirements

(a) Definitions

For purposes of this section, the following definitions shall apply:

(1) Generally applicable leverage capital requirements

The term “generally applicable leverage capital requirements” means—

(A) the minimum ratios of tier 1 capital to average total assets, as established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 1831o of this title, regardless of total consolidated asset size or foreign financial exposure; and

(B) includes the regulatory capital components in the numerator of that capital requirement, average total assets in the denominator of that capital requirement, and the required ratio of the numerator to the denominator.

(2) Generally applicable risk-based capital requirements

The term “generally applicable risk-based capital requirements” means—

(A) the risk-based capital requirements, as established by the appropriate Federal banking agencies to apply to insured depository

institutions under the prompt corrective action regulations implementing section 1831o of this title, regardless of total consolidated asset size or foreign financial exposure; and

(B) includes the regulatory capital components in the numerator of those capital requirements, the risk-weighted assets in the denominator of those capital requirements, and the required ratio of the numerator to the denominator.

(3) Definition of depository institution holding company

The term “depository institution holding company” means a bank holding company or a savings and loan holding company (as those terms are defined in section 1813 of this title) that is organized in the United States, including any bank or savings and loan holding company that is owned or controlled by a foreign organization, but does not include the foreign organization.

(4) Business of insurance

The term “business of insurance” has the same meaning as in section 5481(3) of this title.

(5) Person regulated by a State insurance regulator

The term “person regulated by a State insurance regulator” has the same meaning as in section 5481(22) of this title.

(6) Regulated foreign subsidiary and regulated foreign affiliate

The terms “regulated foreign subsidiary” and “regulated foreign affiliate” mean a person engaged in the business of insurance in a foreign country that is regulated by a foreign insurance regulatory authority that is a member of the International Association of Insurance Supervisors or other comparable foreign insurance regulatory authority as determined by the Board of Governors following consultation with the State insurance regulators, including the lead State insurance commissioner (or similar State official) of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners, where the person, or its principal United States insurance affiliate, has its principal place of business or is domiciled, but only to the extent that—

(A) such person acts in its capacity as a regulated insurance entity; and

(B) the Board of Governors does not determine that the capital requirements in a specific foreign jurisdiction are inadequate.

(7) Capacity as a regulated insurance entity

The term “capacity as a regulated insurance entity”—

(A) includes any action or activity undertaken by a person regulated by a State insurance regulator or a regulated foreign subsidiary or regulated foreign affiliate of such person, as those actions relate to the provision of insurance, or other activities necessary to engage in the business of insurance; and