(1), including any such company engaged in activities described in section 1843(k) of this title.

(4) Standards for review

In addition to the standards provided in section 1843(j)(2) of this title, the Board of Governors shall consider the extent to which the proposed acquisition would result in greater or more concentrated risks to global or United States financial stability or the United States economy.

(5) Hart-Scott-Rodino filing requirement

Solely for purposes of section 18a(c)(8) of title 15, the transactions subject to the requirements of paragraph (1) shall be treated as if Board of Governors approval is not required.

(Pub. L. 111–203, title I, § 163, July 21, 2010, 124 Stat. 1422; Pub. L. 115–174, title IV, § 401(c)(1)(E), May 24, 2018, 132 Stat. 1358.)

Editorial Notes

AMENDMENTS

2018—Subsec. (b)(1), (3). Pub. L. 115–174 substituted ''$250,000,000,000'' for ''$50,000,000,000''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Except as otherwise provided, amendment by Pub. L. 115–174 effective 18 months after May 24, 2018, see section 401(d) of Pub. L. 115–174, set out as a note under section 5365 of this title.

CONSTRUCTION OF 2018 AMENDMENT

For construction of amendment by Pub. L. 115–174 as applied to certain foreign banking organizations, see section 401(g) of Pub. L. 115–174, set out as a note under section 5365 of this title.

§ 5364. Prohibition against management interlocks between certain financial companies

A nonbank financial company supervised by the Board of Governors shall be treated as a bank holding company for purposes of the Depository Institutions[1] Management Interlocks Act (12 U.S.C. 3201 et seq.), except that the Board of Governors shall not exercise the authority provided in section 7[2] of that Act (12 U.S.C. 3207) to permit service by a management official of a nonbank financial company supervised by the Board of Governors as a management official of any bank holding company with total consolidated assets equal to or greater than $250,000,000,000, or other nonaffiliated nonbank financial company supervised by the Board of Governors (other than to provide a temporary exemption for interlocks resulting from a merger, acquisition, or consolidation).

(Pub. L. 111–203, title I, § 164, July 21, 2010, 124 Stat. 1423; Pub. L. 115–174, title IV, § 401(c)(1)(F), May 24, 2018, 132 Stat. 1358.)

Editorial Notes

REFERENCES IN TEXT

The Depository Institution Management Interlocks Act, referred to in text, is title II of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3672, which is classified principally to chapter 33 (§ 3201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of this title and Tables.

AMENDMENTS

2018—Pub. L. 115–174 substituted ''$250,000,000,000'' for ''$50,000,000,000''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Except as otherwise provided, amendment by Pub. L. 115–174 effective 18 months after May 24, 2018, see section 401(d) of Pub. L. 115–174, set out as a note under section 5365 of this title.

CONSTRUCTION OF 2018 AMENDMENT

For construction of amendment by Pub. L. 115–174 as applied to certain foreign banking organizations, see section 401(g) of Pub. L. 115–174, set out as a note under section 5365 of this title.

§ 5365. Enhanced supervision and prudential standards for nonbank financial companies supervised by the Board of Governors and certain bank holding companies

(a) In general

(1) Purpose

In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected financial institutions, the Board of Governors shall, on its own or pursuant to recommendations by the Council under section 5325 of this title, establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies with total consolidated assets equal to or greater than $250,000,000,000 that—

(A) are more stringent than the standards and requirements applicable to nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) Tailored application

(A) In general

In prescribing more stringent prudential standards under this section, the Board of Governors shall, on its own or pursuant to a recommendation by the Council in accordance with section 5325 of this title, differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Board of Governors deems appropriate.

(B) Adjustment of threshold for application of certain standards

The Board of Governors may, pursuant to a recommendation by the Council in accordance with section 5325 of this title, establish an asset threshold above the applicable threshold for the application of any standard

[1] So in original. Probably should be ''Institution''.

[2] So in original. There is no section 7 of such Act.

established under subsections (c) through (g).

(C) Risks to financial stability and safety and soundness

The Board of Governors may by order or rule promulgated pursuant to section 553 of title 5 apply any prudential standard established under this section to any bank holding company or bank holding companies with total consolidated assets equal to or greater than $100,000,000,000 to which the prudential standard does not otherwise apply provided that the Board of Governors—

(i) determines that application of the prudential standard is appropriate—

(I) to prevent or mitigate risks to the financial stability of the United States, as described in paragraph (1); or

(II) to promote the safety and soundness of the bank holding company or bank holding companies; and

(ii) takes into consideration the bank holding company's or bank holding companies' capital structure, riskiness, complexity, financial activities (including financial activities of subsidiaries), size, and any other risk-related factors that the Board of Governors deems appropriate.

(b) Development of prudential standards

(1) In general

(A) Required standards

The Board of Governors shall establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that shall include—

(i) risk-based capital requirements and leverage limits, unless the Board of Governors, in consultation with the Council, determines that such requirements are not appropriate for a company subject to more stringent prudential standards because of the activities of such company (such as investment company activities or assets under management) or structure, in which case, the Board of Governors shall apply other standards that result in similarly stringent risk controls;

(ii) liquidity requirements;

(iii) overall risk management requirements;

(iv) resolution plan requirements; and

(v) concentration limits.

(B) Additional standards authorized

The Board of Governors may establish additional prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that include—

(i) a contingent capital requirement;

(ii) enhanced public disclosures, including credit exposure reports;

(iii) short-term debt limits; and

(iv) such other prudential standards as the Board or Governors, on its own or pursuant to a recommendation made by the Council in accordance with section 5325 of this title, determines are appropriate.

(2) Standards for foreign financial companies

In applying the standards set forth in paragraph (1) to any foreign nonbank financial company supervised by the Board of Governors or foreign-based bank holding company, the Board of Governors shall—

(A) give due regard to the principle of national treatment and equality of competitive opportunity; and

(B) take into account the extent to which the foreign financial company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.

(3) Considerations

In prescribing prudential standards under paragraph (1), the Board of Governors shall—

(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

(i) the factors described in subsections (a) and (b) of section 5323 of this title;

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

(iv) any other risk-related factors that the Board of Governors determines appropriate;

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 5323 of this title would not result in sharp, discontinuous changes in the prudential standards established under paragraph (1) of this subsection;

(C) take into account any recommendations of the Council under section 5325 of this title; and

(D) adapt the required standards as appropriate in light of any predominant line of business of such company, including assets under management or other activities for which particular standards may not be appropriate.

(4) Consultation

Before imposing prudential standards or any other requirements pursuant to this section, including notices of deficiencies in resolution plans and more stringent requirements or divestiture orders resulting from such notices, that are likely to have a significant impact on a functionally regulated subsidiary or depository institution subsidiary of a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors shall consult with each Council member that primarily supervises any such subsidiary with respect to any such standard or requirement.

(5) Report

The Board of Governors shall submit an annual report to Congress regarding the implementation of the prudential standards required pursuant to paragraph (1), including the use of such standards to mitigate risks to the financial stability of the United States.

(c) Contingent capital

(1) In general

Subsequent to submission by the Council of a report to Congress under section 5325(c) of this title, the Board of Governors may issue regulations that require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to maintain a minimum amount of contingent capital that is convertible to equity in times of financial stress.

(2) Factors to consider

In issuing regulations under this subsection, the Board of Governors shall consider—

(A) the results of the study undertaken by the Council, and any recommendations of the Council, under section 5325(c) of this title;

(B) an appropriate transition period for implementation of contingent capital under this subsection;

(C) the factors described in subsection (b)(3)(A);

(D) capital requirements applicable to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof; and

(E) any other factor that the Board of Governors deems appropriate.

(d) Resolution plan and credit exposure reports

(1) Resolution plan

The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation the plan of such company for rapid and orderly resolution in the event of material financial distress or failure, which shall include—

(A) information regarding the manner and extent to which any insured depository institution affiliated with the company is adequately protected from risks arising from the activities of any nonbank subsidiaries of the company;

(B) full descriptions of the ownership structure, assets, liabilities, and contractual obligations of the company;

(C) identification of the cross-guarantees tied to different securities, identification of major counterparties, and a process for determining to whom the collateral of the company is pledged; and

(D) any other information that the Board of Governors and the Corporation jointly require by rule or order.

(2) Credit exposure report

The Board of Governors may require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

(B) the nature and extent to which other significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(3) Review

The Board of Governors and the Corporation shall review the information provided in accordance with this subsection by each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a).

(4) Notice of deficiencies

If the Board of Governors and the Corporation jointly determine, based on their review under paragraph (3), that the resolution plan of a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) is not credible or would not facilitate an orderly resolution of the company under title 11—

(A) the Board of Governors and the Corporation shall notify the company of the deficiencies in the resolution plan; and

(B) the company shall resubmit the resolution plan within a timeframe determined by the Board of Governors and the Corporation, with revisions demonstrating that the plan is credible and would result in an orderly resolution under title 11, including any proposed changes in business operations and corporate structure to facilitate implementation of the plan.

(5) Failure to resubmit credible plan

(A) In general

If a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) fails to timely resubmit the resolution plan as required under paragraph (4), with such revisions as are required under subparagraph (B), the Board of Governors and the Corporation may jointly impose more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the company, or any subsidiary thereof, until such time as the company resubmits a plan that remedies the deficiencies.

(B) Divestiture

The Board of Governors and the Corporation, in consultation with the Council, may jointly direct a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), by order, to divest certain assets or operations identified by the Board of Governors and the Corporation, to facilitate an orderly resolution of such company under title 11, in the event of the failure of such company, in any case in which—

(i) the Board of Governors and the Corporation have jointly imposed more stringent requirements on the company pursuant to subparagraph (A); and

(ii) the company has failed, within the 2-year period beginning on the date of the imposition of such requirements under subparagraph (A), to resubmit the resolu-

tion plan with such revisions as were required under paragraph (4)(B).

(6) No limiting effect

A resolution plan submitted in accordance with this subsection shall not be binding on a bankruptcy court, a receiver appointed under subchapter II, or any other authority that is authorized or required to resolve the nonbank financial company supervised by the Board, any bank holding company, or any subsidiary or affiliate of the foregoing.

(7) No private right of action

No private right of action may be based on any resolution plan submitted in accordance with this subsection.

(8) Rules

Not later than 18 months after July 21, 2010, the Board of Governors and the Corporation shall jointly issue final rules implementing this subsection.

(e) Concentration limits

(1) Standards

In order to limit the risks that the failure of any individual company could pose to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors, by regulation, shall prescribe standards that limit such risks.

(2) Limitation on credit exposure

The regulations prescribed by the Board of Governors under paragraph (1) shall prohibit each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) from having credit exposure to any unaffiliated company that exceeds 25 percent of the capital stock and surplus (or such lower amount as the Board of Governors may determine by regulation to be necessary to mitigate risks to the financial stability of the United States) of the company.

(3) Credit exposure

For purposes of paragraph (2), ''credit exposure'' to a company means—

(A) all extensions of credit to the company, including loans, deposits, and lines of credit;

(B) all repurchase agreements and reverse repurchase agreements with the company, and all securities borrowing and lending transactions with the company, to the extent that such transactions create credit exposure for the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a);

(C) all guarantees, acceptances, or letters of credit (including endorsement or standby letters of credit) issued on behalf of the company;

(D) all purchases of or investment in securities issued by the company;

(E) counterparty credit exposure to the company in connection with a derivative transaction between the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) and the company; and

(F) any other similar transactions that the Board of Governors, by regulation, determines to be a credit exposure for purposes of this section.

(4) Attribution rule

For purposes of this subsection, any transaction by a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) with any person is a transaction with a company, to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that company.

(5) Rulemaking

The Board of Governors may issue such regulations and orders, including definitions consistent with this section, as may be necessary to administer and carry out this subsection.

(6) Exemptions

This subsection shall not apply to any Federal home loan bank. The Board of Governors may, by regulation or order, exempt transactions, in whole or in part, from the definition of the term ''credit exposure'' for purposes of this subsection, if the Board of Governors finds that the exemption is in the public interest and is consistent with the purpose of this subsection.

(7) Transition period

(A) In general

This subsection and any regulations and orders of the Board of Governors under this subsection shall not be effective until 3 years after July 21, 2010.

(B) Extension authorized

The Board of Governors may extend the period specified in subparagraph (A) for not longer than an additional 2 years.

(f) Enhanced public disclosures

The Board of Governors may prescribe, by regulation, periodic public disclosures by nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

(g) Short-term debt limits

(1) In general

In order to mitigate the risks that an over-accumulation of short-term debt could pose to financial companies and to the stability of the United States financial system, the Board of Governors may, by regulation, prescribe a limit on the amount of short-term debt, including off-balance sheet exposures, that may be accumulated by any bank holding company described in subsection (a) and any nonbank financial company supervised by the Board of Governors.

(2) Basis of limit

Any limit prescribed under paragraph (1) shall be based on the short-term debt of the

company described in paragraph (1) as a percentage of capital stock and surplus of the company or on such other measure as the Board of Governors considers appropriate.

(3) Short-term debt defined

For purposes of this subsection, the term ''short-term debt'' means such liabilities with short-dated maturity that the Board of Governors identifies, by regulation, except that such term does not include insured deposits.

(4) Rulemaking authority

In addition to prescribing regulations under paragraphs (1) and (3), the Board of Governors may prescribe such regulations, including definitions consistent with this subsection, and issue such orders, as may be necessary to carry out this subsection.

(5) Authority to issue exemptions and adjustments

Notwithstanding the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), the Board of Governors may, if it determines such action is necessary to ensure appropriate heightened prudential supervision, with respect to a company described in paragraph (1) that does not control an insured depository institution, issue to such company an exemption from or adjustment to the limit prescribed under paragraph (1).

(h) Risk committee

(1) Nonbank financial companies supervised by the Board of Governors

The Board of Governors shall require each nonbank financial company supervised by the Board of Governors that is a publicly traded company to establish a risk committee, as set forth in paragraph (3), not later than 1 year after the date of receipt of a notice of final determination under section 5323(e)(3) of this title with respect to such nonbank financial company supervised by the Board of Governors.

(2) Certain bank holding companies

(A) Mandatory regulations

The Board of Governors shall issue regulations requiring each bank holding company that is a publicly traded company and that has total consolidated assets of not less than $50,000,000,000 to establish a risk committee, as set forth in paragraph (3).

(B) Permissive regulations

The Board of Governors may require each bank holding company that is a publicly traded company and that has total consolidated assets of less than $50,000,000,000 to establish a risk committee, as set forth in paragraph (3), as determined necessary or appropriate by the Board of Governors to promote sound risk management practices.

(3) Risk committee

A risk committee required by this subsection shall—

(A) be responsible for the oversight of the enterprise-wide risk management practices of the nonbank financial company supervised by the Board of Governors or bank holding company described in subsection (a), as applicable;

(B) include such number of independent directors as the Board of Governors may determine appropriate, based on the nature of operations, size of assets, and other appropriate criteria related to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), as applicable; and

(C) include at least 1 risk management expert having experience in identifying, assessing, and managing risk exposures of large, complex firms.

(4) Rulemaking

The Board of Governors shall issue final rules to carry out this subsection, not later than 1 year after the transfer date, to take effect not later than 15 months after the transfer date.

(i) Stress tests

(1) By the Board of Governors

(A) Annual tests required

The Board of Governors, in coordination with the appropriate primary financial regulatory agencies and the Federal Insurance Office, shall conduct annual analyses in which nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) are subject to evaluation of whether such companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions.

(B) Test parameters and consequences

The Board of Governors—

(i) shall provide for at least 2 different sets of conditions under which the evaluation required by this subsection shall be conducted, including baseline and severely adverse;

(ii) may require the tests described in subparagraph (A) at bank holding companies and nonbank financial companies, in addition to those for which annual tests are required under subparagraph (A);

(iii) may develop and apply such other analytic techniques as are necessary to identify, measure, and monitor risks to the financial stability of the United States;

(iv) shall require the companies described in subparagraph (A) to update their resolution plans required under subsection (d)(1), as the Board of Governors determines appropriate, based on the results of the analyses; and

(v) shall publish a summary of the results of the tests required under subparagraph (A) or clause (ii) of this subparagraph.

(2) By the company

(A) Requirement

A nonbank financial company supervised by the Board of Governors and a bank holding company described in subsection (a) shall conduct periodic stress tests. All other

financial companies that have total consolidated assets of more than $250,000,000,000 and are regulated by a primary Federal financial regulatory agency shall conduct periodic stress tests. The tests required under this subparagraph shall be conducted in accordance with the regulations prescribed under subparagraph (C).

(B) Report

A company required to conduct stress tests under subparagraph (A) shall submit a report to the Board of Governors and to its primary financial regulatory agency at such time, in such form, and containing such information as the primary financial regulatory agency shall require.

(C) Regulations

Each Federal primary financial regulatory agency, in coordination with the Board of Governors and the Federal Insurance Office, shall issue consistent and comparable regulations to implement this paragraph that shall—

(i) define the term ''stress test'' for purposes of this paragraph;

(ii) establish methodologies for the conduct of stress tests required by this paragraph that shall provide for at least 2 different sets of conditions, including baseline and severely adverse;

(iii) establish the form and content of the report required by subparagraph (B); and

(iv) require companies subject to this paragraph to publish a summary of the results of the required stress tests.

(j) Leverage limitation

(1) Requirement

The Board of Governors shall require a bank holding company with total consolidated assets equal to or greater than $250,000,000,000 or a nonbank financial company supervised by the Board of Governors to maintain a debt to equity ratio of no more than 15 to 1, upon a determination by the Council that such company poses a grave threat to the financial stability of the United States and that the imposition of such requirement is necessary to mitigate the risk that such company poses to the financial stability of the United States. Nothing in this paragraph shall apply to a Federal home loan bank.

(2) Considerations

In making a determination under this subsection, the Council shall consider the factors described in subsections (a) and (b) of section 5323 of this title and any other risk-related factors that the Council deems appropriate.

(3) Regulations

The Board of Governors shall promulgate regulations to establish procedures and timelines for complying with the requirements of this subsection.

(k) Inclusion of off-balance-sheet activities in computing capital requirements

(1) In general

In the case of any bank holding company described in subsection (a) or nonbank financial company supervised by the Board of Governors, the computation of capital for purposes of meeting capital requirements shall take into account any off-balance-sheet activities of the company.

(2) Exemptions

If the Board of Governors determines that an exemption from the requirement under paragraph (1) is appropriate, the Board of Governors may exempt a company, or any transaction or transactions engaged in by such company, from the requirements of paragraph (1).

(3) Off-balance-sheet activities defined

For purposes of this subsection, the term ''off-balance-sheet activities'' means an existing liability of a company that is not currently a balance sheet liability, but may become one upon the happening of some future event, including the following transactions, to the extent that they may create a liability:

(A) Direct credit substitutes in which a bank substitutes its own credit for a third party, including standby letters of credit.

(B) Irrevocable letters of credit that guarantee repayment of commercial paper or tax-exempt securities.

(C) Risk participations in bankers' acceptances.

(D) Sale and repurchase agreements.

(E) Asset sales with recourse against the seller.

(F) Interest rate swaps.

(G) Credit swaps.

(H) Commodities contracts.

(I) Forward contracts.

(J) Securities contracts.

(K) Such other activities or transactions as the Board of Governors may, by rule, define.

(Pub. L. 111–203, title I, §165, July 21, 2010, 124 Stat. 1423; Pub. L. 115–174, title IV, §401(a), May 24, 2018, 132 Stat. 1356.)

Editorial Notes

REFERENCES IN TEXT

Subchapter II, referred to in subsec. (d)(6), was in the original ''title II'', meaning title II of Pub. L. 111–203, July 21, 2010, 124 Stat. 1442, which is classified principally to subchapter II (§5381 et seq.) of this chapter. For complete classification of title II to the Code, see Tables.

The Bank Holding Company Act of 1956, referred to in subsec. (g)(5), is act May 9, 1956, ch. 240, 70 Stat. 133, which is classified principally to chapter 17 (§1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

AMENDMENTS

2018—Subsec. (a)(1). Pub. L. 115–174, §401(a)(1)(A), substituted ''$250,000,000,000'' for ''$50,000,000,000'' in introductory provisions.

Subsec. (a)(2)(A). Pub. L. 115–174, §401(a)(1)(B)(i), substituted ''the Board of Governors shall'' for ''the Board of Governors may''.

Subsec. (a)(2)(B). Pub. L. 115–174, §401(a)(1)(B)(ii), substituted ''the applicable threshold'' for ''$50,000,000,000''.

Subsec. (a)(2)(C). Pub. L. 115–174, §401(a)(1)(B)(iii), added subpar. (C).

Subsec. (b)(1)(A)(iv). Pub. L. 115–174, §401(a)(2)(A), struck out ''and credit exposure report'' after ''resolution plan''.

Subsec. (b)(1)(B)(ii). Pub. L. 115–174, § 401(a)(2)(B), inserted '', including credit exposure reports'' before semicolon at end.

Subsec. (d)(2). Pub. L. 115–174, § 401(a)(3), substituted ''The Board of Governors may'' for ''The Board of Governors shall'' in introductory provisions.

Subsec. (h)(2). Pub. L. 115–174, § 401(a)(4), substituted ''$50,000,000,000'' for ''$10,000,000,000'' in two places.

Subsec. (i)(1)(B)(i). Pub. L. 115–174, § 401(a)(5)(A), substituted ''2 different sets'' for ''3 different sets'' and struck out '', adverse,'' after ''baseline''.

Subsec. (i)(2)(A). Pub. L. 115–174, § 401(a)(5)(B)(i), in first sentence, substituted ''periodic'' for ''semiannual'' and, in second sentence, substituted ''$250,000,000,000'' for ''$10,000,000,000'' and ''periodic'' for ''annual''.

Subsec. (i)(2)(C)(ii). Pub. L. 115–174, § 401(a)(5)(B)(ii), substituted ''2 different sets'' for ''3 different sets'' and struck out '', adverse,'' after ''baseline''.

Subsec. (j)(1). Pub. L. 115–174, § 401(a)(6), substituted ''$250,000,000,000'' for ''$50,000,000,000''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–174, title IV, § 401(d), May 24, 2018, 132 Stat. 1358, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 248, 5325, 5326, 5331, 5345, 5363, and 5364 of this title] shall take effect on the date that is 18 months after the date of enactment of this Act [May 24, 2018].

''(2) EXCEPTION.—Notwithstanding paragraph (1), the amendments made by this section shall take effect on the date of enactment of this Act with respect to any bank holding company with total consolidated assets of less than $100,000,000,000.

''(3) ADDITIONAL AUTHORITY.—Before the effective date described in paragraph (1), the Board of Governors of the Federal Reserve System may by order exempt any bank holding company with total consolidated assets of less than $250,000,000,000 from any prudential standard under section 165 of the Financial Stability Act of 2010 (12 U.S.C. 5365).

''(4) RULE OF CONSTRUCTION.—Nothing in this section [amending this section and sections 248, 5325, 5326, 5331, 5345, 5363, and 5364 of this title and enacting provisions set out as notes under this section] shall be construed to prohibit the Board of Governors of the Federal Reserve System from issuing an order or rule making under section 165(a)(2)(C) of the Financial Stability Act of 2010 (12 U.S.C. 5365(a)(2)(C)), as added by this section, before the effective date described in paragraph (1).''

[For definition of ''bank holding company'' as used in section 401(d) of Pub. L. 115–174, set out above, see section 2 of Pub. L. 115–174, set out as a Definitions note below.]

CONSTRUCTION OF 2018 AMENDMENT

Pub. L. 115–174, title IV, § 401(b), May 24, 2018, 132 Stat. 1357, provided that: ''Nothing in subsection (a) [amending this section] shall be construed to limit—

''(1) the authority of the Board of Governors of the Federal Reserve System, in prescribing prudential standards under section 165 of the Financial Stability Act of 2010 (12 U.S.C. 5365) or any other law, to tailor or differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including financial activities of their subsidiaries), size, and any other risk-related factors that the Board of Governors deems appropriate; or

''(2) the supervisory, regulatory, or enforcement authority of an appropriate Federal banking agency to further the safe and sound operation of an institution under the supervision of the appropriate Federal banking agency.''

[For definitions of ''appropriate Federal banking agency'' and ''companies'' as used in section 401(b) of Pub. L. 115–174, set out above, see section 2 of Pub. L. 115–174, set out as a Definitions note below.]

Pub. L. 115–174, title IV, § 401(g), May 24, 2018, 132 Stat. 1359, provided that: ''Nothing in this section [amending this section and sections 248, 5325, 5326, 5331, 5345, 5363, and 5364 of this title and enacting provisions set out as notes under this section] shall be construed to—

''(1) affect the legal effect of the final rule of the Board of Governors of the Federal Reserve System entitled 'Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations' (79 Fed. Reg. 17240 (March 27, 2014)) as applied to foreign banking organizations with total consolidated assets equal to or greater than $100,000,000,000; or

''(2) limit the authority of the Board of Governors of the Federal Reserve System to require the establishment of an intermediate holding company under, implement enhanced prudential standards with respect to, or tailor the regulation of a foreign banking organization with total consolidated assets equal to or greater than $100,000,000,000.''

SUPERVISORY STRESS TEST

Pub. L. 115–174, title IV, § 401(e), May 24, 2018, 132 Stat. 1359, provided that: ''Beginning on the effective date described in subsection (d)(1) [of section 401 of Pub. L. 115–174, set out above], the Board of Governors of the Federal Reserve System shall, on a periodic basis, conduct supervisory stress tests of bank holding companies with total consolidated assets equal to or greater than $100,000,000,000 and total consolidated assets of less than $250,000,000,000 to evaluate whether such bank holding companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions.''

[For definition of ''bank holding companies'' as used in section 401(e) of Pub. L. 115–174, set out above, see section 2 of Pub. L. 115–174, set out as a Definitions note below.]

GLOBAL SYSTEMICALLY IMPORTANT BANK HOLDING COMPANIES

Pub. L. 115–174, title IV, § 401(f), May 24, 2018, 132 Stat. 1359, provided that: ''Any bank holding company, regardless of asset size, that has been identified as a global systemically important BHC under section 217.402 of title 12, Code of Federal Regulations, shall be considered a bank holding company with total consolidated assets equal to or greater than $250,000,000,000 with respect to the application of standards or requirements under—

''(1) this section [amending this section and sections 248, 5325, 5326, 5331, 5345, 5363, and 5364 of this title and enacting provisions set out as notes under this section];

''(2) sections 116(a), 121(a), 155(d), 163(b), 164, and 165 of the Financial Stability Act of 2010 (12 U.S.C. 5326(a), 5331(a), 5345(d), 5363(b), 5364, 5365); and

''(3) paragraph (2)(A) of the second subsection (s) (relating to assessments) of section 11 of the Federal Reserve Act (12 U.S.C. 248(s)(2)[(A)]).''

[For definition of ''bank holding company'' as used in section 401(f) of Pub. L. 115–174, set out above, see section 2 of Pub. L. 115–174, set out as a Definitions note below.]

DEFINITIONS

Pub. L. 115–174, § 2, May 24, 2018, 132 Stat. 1297, provided that: ''In this Act [see Short Title of 2018 Amendment note set out under section 1601 of Title 15, Commerce and Trade]:

''(1) APPROPRIATE FEDERAL BANKING AGENCY; COMPANY; DEPOSITORY INSTITUTION; DEPOSITORY INSTITUTION HOLDING COMPANY.—The terms 'appropriate Federal banking agency', 'company', 'depository institution', and 'depository institution holding company' have the meanings given those terms in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

''(2) BANK HOLDING COMPANY.—The term 'bank holding company' has the meaning given the term in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).''

§ 5366. Early remediation requirements

(a) In general

The Board of Governors, in consultation with the Council and the Corporation, shall prescribe regulations establishing requirements to provide for the early remediation of financial distress of a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 5365(a) of this title, except that nothing in this subsection authorizes the provision of financial assistance from the Federal Government.

(b) Purpose of the early remediation requirements

The purpose of the early remediation requirements under subsection (a) shall be to establish a series of specific remedial actions to be taken by a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 5365(a) of this title that is experiencing increasing financial distress, in order to minimize the probability that the company will become insolvent and the potential harm of such insolvency to the financial stability of the United States.

(c) Remediation requirements

The regulations prescribed by the Board of Governors under subsection (a) shall—

(1) define measures of the financial condition of the company, including regulatory capital, liquidity measures, and other forward-looking indicators; and

(2) establish requirements that increase in stringency as the financial condition of the company declines, including—

(A) requirements in the initial stages of financial decline, including limits on capital distributions, acquisitions, and asset growth; and

(B) requirements at later stages of financial decline, including a capital restoration plan and capital-raising requirements, limits on transactions with affiliates, management changes, and asset sales.

(Pub. L. 111–203, title I, §166, July 21, 2010, 124 Stat. 1432.)

§ 5367. Affiliations

(a) Affiliations

Nothing in this part shall be construed to require a nonbank financial company supervised by the Board of Governors, or a company that controls a nonbank financial company supervised by the Board of Governors, to conform the activities thereof to the requirements of section 1843 of this title.

(b) Requirement

(1) In general

(A) Board authority

If a nonbank financial company supervised by the Board of Governors conducts activities other than those that are determined to be financial in nature or incidental thereto under section 1843(k) of this title, the Board of Governors may require such company to establish and conduct all or a portion of such activities that are determined to be financial in nature or incidental thereto in or through an intermediate holding company established pursuant to regulation of the Board of Governors, not later than 90 days (or such longer period as the Board of Governors may deem appropriate) after the date on which the nonbank financial company supervised by the Board of Governors is notified of the determination of the Board of Governors under this section.

(B) Necessary actions

Notwithstanding subparagraph (A), the Board of Governors shall require a nonbank financial company supervised by the Board of Governors to establish an intermediate holding company if the Board of Governors makes a determination that the establishment of such intermediate holding company is necessary to—

(i) appropriately supervise activities that are determined to be financial in nature or incidental thereto; or

(ii) to[1] ensure that supervision by the Board of Governors does not extend to the commercial activities of such nonbank financial company.

(2) Internal financial activities

For purposes of this subsection, activities that are determined to be financial in nature or incidental thereto under section 1843(k) of this title, as described in paragraph (1), shall not include internal financial activities, including internal treasury, investment, and employee benefit functions. With respect to any internal financial activity engaged in for the company or an affiliate and a non-affiliate of such company during the year prior to July 21, 2010, such company (or an affiliate that is not an intermediate holding company or subsidiary of an intermediate holding company) may continue to engage in such activity, as long as not less than 2/3 of the assets or 2/3 of the revenues generated from the activity are from or attributable to such company or an affiliate, subject to review by the Board of Governors, to determine whether engaging in such activity presents undue risk to such company or to the financial stability of the United States.

(3) Source of strength

A company that directly or indirectly controls an intermediate holding company established under this section shall serve as a source of strength to its subsidiary intermediate holding company.

(4) Parent company reports

The Board of Governors may, from time to time, require reports under oath from a company that controls an intermediate holding company, and from the appropriate officers or directors of such company, solely for purposes

[1] So in original. The word ''to'' probably should not appear.