

**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.

**§ 5384. Orderly liquidation of covered financial companies****(a) Purpose of orderly liquidation authority**

It is the purpose of this subchapter to provide the necessary authority to liquidate failing financial companies that pose a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard. The authority provided in this subchapter shall be exercised in the manner that best fulfills such purpose, so that—

(1) creditors and shareholders will bear the losses of the financial company;

(2) management responsible for the condition of the financial company will not be retained; and

(3) the Corporation and other appropriate agencies will take all steps necessary and appropriate to assure that all parties, including management, directors, and third parties, having responsibility for the condition of the financial company bear losses consistent with their responsibility, including actions for damages, restitution, and recoupment of compensation and other gains not compatible with such responsibility.

**(b) Corporation as receiver**

Upon the appointment of the Corporation under section 5382 of this title, the Corporation shall act as the receiver for the covered financial company, with all of the rights and obligations set forth in this subchapter.

**(c) Consultation**

The Corporation, as receiver—

(1) shall consult with the primary financial regulatory agency or agencies of the covered financial company and its covered subsidiaries for purposes of ensuring an orderly liquidation of the covered financial company;

(2) may consult with, or under subsection (a)(1)(B)(v) or (a)(1)(L) of section 5390 of this title, acquire the services of, any outside experts, as appropriate to inform and aid the Corporation in the orderly liquidation process;

(3) shall consult with the primary financial regulatory agency or agencies of any subsidiaries of the covered financial company that are not covered subsidiaries, and coordinate with such regulators regarding the treatment of such solvent subsidiaries and the separate resolution of any such insolvent subsidiaries under other governmental authority, as appropriate; and

(4) shall consult with the Commission and the Securities Investor Protection Corporation in the case of any covered financial company for which the Corporation has been appointed as receiver that is a broker or dealer registered with the Commission under section 780(b) of title 15 and is a member of the Securities Investor Protection Corporation, for the purpose of determining whether to transfer to

a bridge financial company organized by the Corporation as receiver, without consent of any customer, customer accounts of the covered financial company.

**(d) Funding for orderly liquidation**

Upon its appointment as receiver for a covered financial company, and thereafter as the Corporation may, in its discretion, determine to be necessary or appropriate, the Corporation may make available to the receivership, subject to the conditions set forth in section 5386 of this title and subject to the plan described in section 5390(n)(9) of this title, funds for the orderly liquidation of the covered financial company. All funds provided by the Corporation under this subsection shall have a priority of claims under subparagraph (A) or (B) of section 5390(b)(1) of this title, as applicable, including funds used for—

(1) making loans to, or purchasing any debt obligation of, the covered financial company or any covered subsidiary;

(2) purchasing or guaranteeing against loss the assets of the covered financial company or any covered subsidiary, directly or through an entity established by the Corporation for such purpose;

(3) assuming or guaranteeing the obligations of the covered financial company or any covered subsidiary to 1 or more third parties;

(4) taking a lien on any or all assets of the covered financial company or any covered subsidiary, including a first priority lien on all unencumbered assets of the covered financial company or any covered subsidiary to secure repayment of any transactions conducted under this subsection, except that, if the covered financial company or covered subsidiary is an insurance company or a subsidiary of an insurance company, the Corporation—

(A) shall promptly notify the State insurance authority for the insurance company of the intention to take such lien; and

(B) may only take such lien—

(i) to secure repayment of funds made available to such covered financial company or covered subsidiary; and

(ii) if the Corporation determines, after consultation with the State insurance authority, that such lien will not unduly impede or delay the liquidation or rehabilitation of the insurance company, or the recovery by its policyholders;

(5) selling or transferring all, or any part, of such acquired assets, liabilities, or obligations of the covered financial company or any covered subsidiary; and

(6) making payments pursuant to subsections (b)(4), (d)(4), and (h)(5)(E) of section 5390 of this title.

(Pub. L. 111-203, title II, §204, July 21, 2010, 124 Stat. 1454; Pub. L. 114-113, div. O, title VII, §706(b)(2), Dec. 18, 2015, 129 Stat. 3029.)

**Editorial Notes**

## REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a) and (b), was in the original “this title”, meaning title II of Pub. L. 111-203, July 21, 2010, 124 Stat. 1442, which is classi-

fied principally to this subchapter. For complete classification of title II to the Code, see Tables.

#### AMENDMENTS

2015—Subsec. (d)(4). Pub. L. 114–113 inserted “, except that, if the covered financial company or covered subsidiary is an insurance company or a subsidiary of an insurance company, the Corporation—” and subpars. (A) and (B) before semicolon at end.

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##### EFFECTIVE DATE

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### § 5385. Orderly liquidation of covered brokers and dealers

#### (a) Appointment of SIPC as trustee

##### (1) Appointment

Upon the appointment of the Corporation as receiver for any covered broker or dealer, the Corporation shall appoint, without any need for court approval, the Securities Investor Protection Corporation to act as trustee for the liquidation under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) of the covered broker or dealer.

##### (2) Actions by SIPC

###### (A) Filing

Upon appointment of SIPC under paragraph (1), SIPC shall promptly file with any Federal district court of competent jurisdiction specified in section 78u or 78aa of title 15, an application for a protective decree under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) as to the covered broker or dealer. The Federal district court shall accept and approve the filing, including outside of normal business hours, and shall immediately issue the protective decree as to the covered broker or dealer.

###### (B) Administration by SIPC

Following entry of the protective decree, and except as otherwise provided in this section, the determination of claims and the liquidation of assets retained in the receivership of the covered broker or dealer and not transferred to the bridge financial company shall be administered under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) by SIPC, as trustee for the covered broker or dealer.

###### (C) Definition of filing date

For purposes of the liquidation proceeding, the term “filing date” means the date on which the Corporation is appointed as receiver of the covered broker or dealer.

###### (D) Determination of claims

As trustee for the covered broker or dealer, SIPC shall determine and satisfy, consistent with this subchapter and with the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), all claims against the covered broker or dealer arising on or before the filing date.

#### (b) Powers and duties of SIPC

##### (1) In general

Except as provided in this section, upon its appointment as trustee for the liquidation of a covered broker or dealer, SIPC shall have all of the powers and duties provided by the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), including, without limitation, all rights of action against third parties, and shall conduct such liquidation in accordance with the terms of the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), except that SIPC shall have no powers or duties with respect to assets and liabilities transferred by the Corporation from the covered broker or dealer to any bridge financial company established in accordance with this subchapter.

##### (2) Limitation of powers

The exercise by SIPC of powers and functions as trustee under subsection (a) shall not impair or impede the exercise of the powers and duties of the Corporation with regard to—

(A) any action, except as otherwise provided in this subchapter—

(i) to make funds available under section 5384(d) of this title;

(ii) to organize, establish, operate, or terminate any bridge financial company;

(iii) to transfer assets and liabilities;

(iv) to enforce or repudiate contracts; or

(v) to take any other action relating to such bridge financial company under section 5390 of this title; or

(B) determining claims under subsection (e).

##### (3) Protective decree

SIPC and the Corporation, in consultation with the Commission, shall jointly determine the terms of the protective decree to be filed by SIPC with any court of competent jurisdiction under section 78u or 78aa of title 15, as required by subsection (a).

##### (4) Qualified financial contracts

Notwithstanding any provision of the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) to the contrary (including section 5(b)(2)(C) of that Act (15 U.S.C. 78eee(b)(2)(C))), the rights and obligations of any party to a qualified financial contract (as that term is defined in section 5390(c)(8) of this title) to which a covered broker or dealer for which the Corporation has been appointed receiver is a party shall be governed exclusively by section 5390 of this title, including the limitations and restrictions contained in section 5390(c)(10)(B) of this title.

##### (c) Limitation on court action

Except as otherwise provided in this subchapter, no court may take any action, including any action pursuant to the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) or the Bankruptcy Code, to restrain or affect the exercise of powers or functions of the Corporation as receiver for a covered broker or dealer and any claims against the Corporation as such receiver shall be determined in accord-