

§ 1850. Acquisition of subsidiary and tying arrangement; Federal Reserve Board proceedings; application for authorization; competitor as party in interest and person aggrieved; judicial review

With respect to any proceeding before the Federal Reserve Board wherein an applicant seeks authority to acquire a subsidiary which is a bank under section 1842 of this title or to engage in an activity otherwise prohibited under chapter 22 of this title, a party who would become a competitor of the applicant or subsidiary thereof by virtue of the applicant's or its subsidiary's acquisition, entry into the business involved, or activity, shall have the right to be a party in interest in the proceeding and, in the event of an adverse order of the Board, shall have the right as an aggrieved party to obtain judicial review thereof as provided in section 1848 of this title or as otherwise provided by law.

(Pub. L. 91-607, title I, § 105, Dec. 31, 1970, 84 Stat. 1766; Pub. L. 106-102, title I, § 102(b)(1), Nov. 12, 1999, 113 Stat. 1341.)

CODIFICATION

Section was enacted as part of the Bank Holding Company Act Amendments of 1970, and not as part of the Bank Holding Company Act of 1956 which comprises this chapter.

AMENDMENTS

1999—Pub. L. 106-102 struck out “, to engage directly or indirectly in a nonbanking activity pursuant to section 1843 of this title,” after “section 1842 of this title”.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106-102, set out as a note under section 24 of this title.

§ 1850a. Securities holding companies

(a) Definitions

In this section—

(1) the term “associated person of a securities holding company” means a person directly or indirectly controlling, controlled by, or under common control with, a securities holding company;

(2) the term “foreign bank” has the same meaning as in section 3101(7) of this title;

(3) the term “insured bank” has the same meaning as in section 1813 of this title;

(4) the term “securities holding company”—

(A) means—

(i) a person (other than a natural person) that owns or controls 1 or more brokers or dealers registered with the Commission; and

(ii) the associated persons of a person described in clause (i); and

(B) does not include a person that is—

(i) a nonbank financial company supervised by the Board under title I;¹

(ii) an insured bank (other than an institution described in subparagraphs² (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))³ or a savings association;

(iii) an affiliate of an insured bank (other than an institution described in subparagraphs² (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))³ or an affiliate of a savings association;

(iv) a foreign bank, foreign company, or company that is described in section 3106(a) of this title;

(v) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.); or

(vi) subject to comprehensive consolidated supervision by a foreign regulator;

(5) the term “supervised securities holding company” means a securities holding company that is supervised by the Board of Governors under this section; and

(6) the terms “affiliate”, “bank”, “bank holding company”, “company”, “control”, “savings association”, and “subsidiary” have the same meanings as in section 2 of the Bank Holding Company Act of 1956 [12 U.S.C. 1841].

(b) Supervision of a securities holding company not having a bank or savings association affiliate

(1) In general

A securities holding company that is required by a foreign regulator or provision of foreign law to be subject to comprehensive consolidated supervision may register with the Board of Governors under paragraph (2) to become a supervised securities holding company. Any securities holding company filing such a registration shall be supervised in accordance with this section, and shall comply with the rules and orders prescribed by the Board of Governors applicable to supervised securities holding companies.

(2) Registration as a supervised securities holding company

(A) Registration

A securities holding company that elects to be subject to comprehensive consolidated supervision shall register by filing with the Board of Governors such information and documents as the Board of Governors, by regulation, may prescribe as necessary or appropriate in furtherance of the purposes of this section.

(B) Effective date

A securities holding company that registers under subparagraph (A) shall be deemed to be a supervised securities holding company, effective on the date that is 45 days after the date of receipt of the registration information and documents under subparagraph (A) by the Board of Governors, or within such shorter period as the Board of Governors, by rule or order, may determine.

(c) Supervision of securities holding companies

(1) Recordkeeping and reporting

(A) Recordkeeping and reporting required

Each supervised securities holding company and each affiliate of a supervised securities holding company shall make and keep

¹ See References in Text note below.

² So in original. Probably should be “subparagraph”.

³ So in original. Another closing parenthesis probably should appear.

for periods determined by the Board of Governors such records, furnish copies of such records, and make such reports, as the Board of Governors determines to be necessary or appropriate to carry out this section, to prevent evasions thereof, and to monitor compliance by the supervised securities holding company or affiliate with applicable provisions of law.

(B) Form and contents

(i) In general

Any record or report required to be made, furnished, or kept under this paragraph shall—

(I) be prepared in such form and according to such specifications (including certification by a registered public accounting firm), as the Board of Governors may require; and

(II) be provided promptly to the Board of Governors at any time, upon request by the Board of Governors.

(ii) Contents

Records and reports required to be made, furnished, or kept under this paragraph may include—

(I) a balance sheet or income statement of the supervised securities holding company or an affiliate of a supervised securities holding company;

(II) an assessment of the consolidated capital and liquidity of the supervised securities holding company;

(III) a report by an independent auditor attesting to the compliance of the supervised securities holding company with the internal risk management and internal control objectives of the supervised securities holding company; and

(IV) a report concerning the extent to which the supervised securities holding company or affiliate has complied with the provisions of this section and any regulations prescribed and orders issued under this section.

(2) Use of existing reports

(A) In general

The Board of Governors shall, to the fullest extent possible, accept reports in fulfillment of the requirements of this paragraph that a supervised securities holding company or an affiliate of a supervised securities holding company has been required to provide to another regulatory agency or a self-regulatory organization.

(B) Availability

A supervised securities holding company or an affiliate of a supervised securities holding company shall promptly provide to the Board of Governors, at the request of the Board of Governors, any report described in subparagraph (A), as permitted by law.

(3) Examination authority

(A) Focus of examination authority

The Board of Governors may make examinations of any supervised securities holding company and any affiliate of a supervised se-

curities holding company to carry out this subsection, to prevent evasions thereof, and to monitor compliance by the supervised securities holding company or affiliate with applicable provisions of law.

(B) Deference to other examinations

For purposes of this subparagraph, the Board of Governors shall, to the fullest extent possible, use the reports of examination made by other appropriate Federal or State regulatory authorities with respect to any functionally regulated subsidiary or any institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)).

(d) Capital and risk management

(1) In general

The Board of Governors shall, by regulation or order, prescribe capital adequacy and other risk management standards for supervised securities holding companies that are appropriate to protect the safety and soundness of the supervised securities holding companies and address the risks posed to financial stability by supervised securities holding companies.

(2) Differentiation

In imposing standards under this subsection, the Board of Governors may differentiate among supervised securities holding companies on an individual basis, or by category, taking into consideration the requirements under paragraph (3).

(3) Content

Any standards imposed on a supervised securities holding company under this subsection shall take into account—

(A) the differences among types of business activities carried out by the supervised securities holding company;

(B) the amount and nature of the financial assets of the supervised securities holding company;

(C) the amount and nature of the liabilities of the supervised securities holding company, including the degree of reliance on short-term funding;

(D) the extent and nature of the off-balance sheet exposures of the supervised securities holding company;

(E) the extent and nature of the transactions and relationships of the supervised securities holding company with other financial companies;

(F) the importance of the supervised securities holding company as a source of credit for households, businesses, and State and local governments, and as a source of liquidity for the financial system; and

(G) the nature, scope, and mix of the activities of the supervised securities holding company.

(4) Notice

A capital requirement imposed under this subsection may not take effect earlier than 180 days after the date on which a supervised securities holding company is provided notice of the capital requirement.

(e) Other provisions of law applicable to supervised securities holding companies**(1) Federal Deposit Insurance Act**

Subsections (b), (c) through (s), and (u) of section 1818 of this title shall apply to any supervised securities holding company, and to any subsidiary (other than a bank or an institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))) of a supervised securities holding company, in the same manner as such subsections apply to a bank holding company for which the Board of Governors is the appropriate Federal banking agency. For purposes of applying such subsections to a supervised securities holding company or a subsidiary (other than a bank or an institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))) of a supervised securities holding company, the Board of Governors shall be deemed the appropriate Federal banking agency for the supervised securities holding company or subsidiary.

(2) Bank Holding Company Act of 1956

Except as the Board of Governors may otherwise provide by regulation or order, a supervised securities holding company shall be subject to the provisions of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) in the same manner and to the same extent a bank holding company is subject to such provisions, except that a supervised securities holding company may not, by reason of this paragraph, be deemed to be a bank holding company for purposes of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843).

(Pub. L. 111–203, title VI, § 618, July 21, 2010, 124 Stat. 1616.)

REFERENCES IN TEXT

Title I, referred to in subsec. (a)(4)(B)(i), is title I of Pub. L. 111–203, July 21, 2010, 124 Stat. 1391, known as the Financial Stability Act of 2010, which is classified principally to subchapter I (§5311 et seq.) of chapter 53 of this title. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

Section 25A of the Federal Reserve Act, referred to in subsec. (a)(4)(B)(v), popularly known as the Edge Act, is classified to subchapter II (§611 et seq.) of chapter 6 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 611 of this title and Tables.

The Bank Holding Company Act of 1956, referred to in subsec. (e)(2), is act May 9, 1956, ch. 240, 70 Stat. 133, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

CODIFICATION

Section was enacted as part of the Bank and Savings Association Holding Company and Depository Institution Regulatory Improvements Act of 2010, and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Bank Holding Company Act of 1956 which comprises this chapter.

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.

DEFINITIONS

For definitions of terms used in this section, see section 5301 of this title.

§ 1851. Prohibitions on proprietary trading and certain relationships with hedge funds and private equity funds**(a) In general****(1) Prohibition**

Unless otherwise provided in this section, a banking entity shall not—

(A) engage in proprietary trading; or

(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

(2) Nonbank financial companies supervised by the Board

Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject, by rule, as provided in subsection (b)(2), to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall not be subject to the additional capital and additional quantitative limits except as provided in subsection (d)(3), as if the nonbank financial company supervised by the Board were a banking entity.

(b) Study and rulemaking**(1) Study**

Not later than 6 months after July 21, 2010, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

(A) promote and enhance the safety and soundness of banking entities;

(B) protect taxpayers and consumers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected