

company for which the Corporation was appointed receiver under this subchapter shall appear before Congress, if requested, not later than 30 days after the date on which the Corporation first files the reports required under subparagraph (A).

(4) Default or in danger of default

For purposes of this subchapter, a financial company shall be considered to be in default or in danger of default if, as determined in accordance with subsection (b)—

(A) a case has been, or likely will promptly be, commenced with respect to the financial company under the Bankruptcy Code;

(B) the financial company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion;

(C) the assets of the financial company are, or are likely to be, less than its obligations to creditors and others; or

(D) the financial company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

(5) GAO review

The Comptroller General of the United States shall review and report to Congress on any determination under subsection (b), that results in the appointment of the Corporation as receiver, including—

(A) the basis for the determination;

(B) the purpose for which any action was taken pursuant thereto;

(C) the likely effect of the determination and such action on the incentives and conduct of financial companies and their creditors, counterparties, and shareholders; and

(D) the likely disruptive effect of the determination and such action on the reasonable expectations of creditors, counterparties, and shareholders, taking into account the impact any action under this subchapter would have on financial stability in the United States, including whether the rights of such parties will be disrupted.

(d) Corporation policies and procedures

As soon as is practicable after July 21, 2010, the Corporation shall establish policies and procedures that are acceptable to the Secretary governing the use of funds available to the Corporation to carry out this subchapter, including the terms and conditions for the provision and use of funds under sections 5384(d), 5390(h)(2)(G)(iv), and 5390(h)(9) of this title.

(e) Treatment of insurance companies and insurance company subsidiaries

(1) In general

Notwithstanding subsection (b), if an insurance company is a covered financial company or a subsidiary or affiliate of a covered financial company, the liquidation or rehabilitation of such insurance company, and any subsidiary or affiliate of such company that is not excepted under paragraph (2), shall be conducted as provided under applicable State law.

(2) Exception for subsidiaries and affiliates

The requirement of paragraph (1) shall not apply with respect to any subsidiary or affiliate of an insurance company that is not itself an insurance company.

(3) Backup authority

Notwithstanding paragraph (1), with respect to a covered financial company described in paragraph (1), if, after the end of the 60-day period beginning on the date on which a determination is made under section 5382(a) of this title with respect to such company, the appropriate regulatory agency has not filed the appropriate judicial action in the appropriate State court to place such company into orderly liquidation under the laws and requirements of the State, the Corporation shall have the authority to stand in the place of the appropriate regulatory agency and file the appropriate judicial action in the appropriate State court to place such company into orderly liquidation under the laws and requirements of the State.

(Pub. L. 111-203, title II, §203, July 21, 2010, 124 Stat. 1450.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a) to (d), 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.

§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 78o(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;

(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.)

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

§ 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.