

foreign bank or branch thereof is subject under this chapter, and which is made applicable to non-member insured banks by the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.], whether by cross-reference to the Federal Reserve Act or by a provision in substantially the same terms in the Federal Deposit Insurance Act, the administration, interpretation, and enforcement of such provision, insofar as it relates to any foreign bank or branch thereof as to which the Board is an appropriate Federal banking agency, are vested in the Board, but where the making of any report to the Board or a Federal Reserve bank is required under any such provision, the Federal Deposit Insurance Corporation may require that a duplicate of any such report be sent directly to it. This subsection shall not be construed to impair any power of the Federal Deposit Insurance Corporation to make regular or special examinations or to require special reports.

(Pub. L. 95-369, §13, Sept. 17, 1978, 92 Stat. 624; Pub. L. 102-242, title II, §209, Dec. 19, 1991, 105 Stat. 2297.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in text, see References in Text note set out under section 3101 of this title.

The Federal Deposit Insurance Act, referred to in subsecs. (b)(1) and (c), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, as amended, 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.

The Federal Reserve Act, referred to in subsec. (c), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified principally to chapter 3 (§221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

AMENDMENTS

1991—Subsec. (b). Pub. L. 102-242 inserted heading, designated existing provisions as par. (1) and inserted par. heading, and added pars. (2) to (6).

§ 3109. Cooperation with foreign supervisors

(a) Disclosure of supervisory information to foreign supervisors

Notwithstanding any other provision of law, the Board, Comptroller of the Currency, Federal Deposit Insurance Corporation, and Director of the Office of Thrift Supervision may disclose information obtained in the course of exercising supervisory or examination authority to any foreign bank regulatory or supervisory authority if the Board, Comptroller, Corporation, or Director determines that such disclosure is appropriate and will not prejudice the interests of the United States.

(b) Requirement of confidentiality

Before making any disclosure of any information to a foreign authority, the Board, Comptroller of the Currency, Federal Deposit Insurance Corporation, and Director of the Office of Thrift Supervision shall obtain, to the extent necessary, the agreement of such foreign authority to maintain the confidentiality of such information to the extent possible under applicable law.

(c) Confidential information received from foreign supervisors

(1) In general

Except as provided in paragraph (3), a Federal banking agency may not be compelled to disclose information received from a foreign regulatory or supervisory authority if—

(A) the Federal banking agency determines that the foreign regulatory or supervisory authority has, in good faith, determined and represented in writing to such Federal banking agency that public disclosure of the information would violate the laws applicable to that foreign regulatory or supervisory authority; and

(B) the relevant Federal banking agency obtained such information pursuant to—

(i) such procedures as the Federal banking agency may establish for use in connection with the administration and enforcement of Federal banking laws; or

(ii) a memorandum of understanding or other similar arrangement between the Federal banking agency and the foreign regulatory or supervisory authority.

(2) Treatment under title 5

For purposes of section 552 of title 5, this subsection shall be treated as a statute described in subsection (b)(3)(B) of such section.

(3) Savings provision

No provision of this section shall be construed as—

(A) authorizing any Federal banking agency to withhold any information from any duly authorized committee of the House of Representatives or the Senate; or

(B) preventing any Federal banking agency from complying with an order of a court of the United States in an action commenced by the United States or such agency.

(4) Federal banking agency defined

For purposes of this subsection, the term "Federal banking agency" means the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Director of the Office of Thrift Supervision.

(Pub. L. 95-369, §15, as added Pub. L. 102-242, title II, §206, Dec. 19, 1991, 105 Stat. 2294; amended Pub. L. 109-351, title VII, §709, Oct. 13, 2006, 120 Stat. 1990.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109-351 added subsec. (c).

§ 3110. Penalties

(a) Civil money penalty

(1) In general

Any foreign bank, and any office or subsidiary of a foreign bank, that violates, and any individual who participates in a violation of, any provision of this chapter, or any regulation prescribed or order issued under this chapter, shall forfeit and pay a civil penalty of not more than \$25,000 for each day during which such violation continues.

(2) Assessment procedures

Any penalty imposed under paragraph (1) may be assessed and collected by the Board or

the Comptroller of the Currency in the manner provided in subparagraphs (E), (F), (G), (H), and (I) of section 1818(i)(2) of this title for penalties imposed (under such section), and any such assessments shall be subject to the provisions of such section.

(3) Hearing procedure

Section 1818(h) of this title shall apply to any proceeding under this section.

(4) Disbursement

All penalties collected under authority of this section shall be deposited into the Treasury.

(5) "Violate" defined

For purposes of this section, the term "violate" includes taking any action (alone or with others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(6) Regulations

The Board and the Comptroller of the Currency shall each prescribe regulations establishing such procedures as may be necessary to carry out this section.

(b) Notice under this section after separation from service

The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to a foreign bank, or any office or subsidiary of a foreign bank (including a separation caused by the termination of a location in the United States), shall not affect the jurisdiction or authority of the Board or the Comptroller of the Currency to issue any notice or to proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be an institution-affiliated party with respect to such foreign bank or such office or subsidiary of a foreign bank (whether such date occurs on, before, or after December 19, 1991).

(c) Penalty for failure to make reports

(1) First tier

Any foreign bank, or any office or subsidiary of a foreign bank, that—

(A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such error—

(i) fails to make, submit, or publish such reports or information as may be required under this chapter or under regulations prescribed by the Board or the Comptroller of the Currency under this chapter, within the period of time specified by the agency; or

(ii) submits or publishes any false or misleading report or information; or

(B) inadvertently transmits or publishes any report that is minimally late,

shall be subject to a penalty of not more than \$2,000 for each day during which such failure continues or such false or misleading information is not corrected. The foreign bank, or the

office or subsidiary of a foreign bank, shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late.

(2) Second tier

Any foreign bank, or any office or subsidiary of a foreign bank, that—

(A) fails to make, submit, or publish such reports or information as may be required under this chapter or under regulations prescribed by the Board or the Comptroller of the Currency pursuant to this chapter, within the time period specified by such agency; or

(B) submits or publishes any false or misleading report or information,

in a manner not described in paragraph (1) shall be subject to a penalty of not more than \$20,000 for each day during which such failure continues or such false or misleading information is not corrected.

(3) Third tier

Notwithstanding paragraph (2), if any company knowingly or with reckless disregard for the accuracy of any information or report described in paragraph (2) submits or publishes any false or misleading report or information, the Board or the Comptroller of the Currency may, in the Board's or Comptroller's discretion, assess a penalty of not more than \$1,000,000 or 1 percent of total assets of such foreign bank, or such office or subsidiary of a foreign bank, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

(4) Assessment of penalties

Any penalty imposed under paragraph (1), (2), or (3) shall be assessed and collected by the Board or the Comptroller of the Currency in the manner provided in subsection (a)(2) of this section (for penalties imposed under such subsection) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

(5) Hearing procedure

Section 1818(h) of this title shall apply to any proceeding under this subsection.

(Pub. L. 95-369, §16, as added Pub. L. 102-242, title II, §208, Dec. 19, 1991, 105 Stat. 2295.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (a)(1) and (c)(1)(A)(i), (2)(A), see References in Text note set out under section 3101 of this title.

§ 3111. Criminal penalty

Whoever, with the intent to deceive, to gain financially, or to cause financial gain or loss to any person, knowingly violates any provision of this chapter or any regulation or order issued by the appropriate Federal banking agency under this chapter shall be imprisoned not more than 5 years or fined not more than \$1,000,000 for each day during which a violation continues, or both.

(Pub. L. 95-369, §17, as added Pub. L. 102-242, title II, §213, Dec. 19, 1991, 105 Stat. 2303.)