

ing company described in subsection (a) shall conduct semiannual stress tests. All other financial companies that have total consolidated assets of more than \$10,000,000,000 and are regulated by a primary Federal financial regulatory agency shall conduct annual 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 3 different sets of conditions, including baseline, adverse, 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 \$50,000,000,000 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.)

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.

§ 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 su-

pervised 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) to¹ 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 of ensuring compliance with the provisions of this section, including assessing the ability of the company to serve as a source of strength to its subsidiary intermediate holding company pursuant to paragraph (3) and enforcing such compliance.

(5) Limited parent company enforcement

(A) In general

In addition to any other authority of the Board of Governors, the Board of Governors may enforce compliance with the provisions

¹ So in original. The word "to" probably should not appear.