



Title I — Financial Stability

- The Act establishes an Oversight Council to identify and monitor systemic risks posed by financial firms and financial activities and practices.
- The Act subjects Designated Companies and Large Bank Holding Companies to enhanced prudential supervision and examination by the Federal Reserve Board.
- Prudential standards imposed include increased capital requirements (excluding trust preferred securities from Tier I capital on a scheduled phase-out), limitations on leverage, liquidity requirements, resolution plan, credit exposure reporting, concentration limits and semiannual stress tests.
- Non-mandatory standards include a contingent capital requirement and short-term debt limits.
- Designated Companies can establish an intermediate holding company out of which to conduct non-financial activities.
- The Act subjects a Designated Company's acquisition of bank shares to the BHCA as if the Designated Company were a bank holding company. In addition, Designated Companies and bank holding companies with total consolidated assets of \$50 billion or more generally must notify the Federal Reserve Board before acquiring control of voting shares of certain large financial companies.
- Effective Dates: Federal Reserve Board final regulations regarding the Oversight Council and prudential regulation required within 18 months.

Subtitle A — Financial Stability Oversight Council

The Act establishes an interagency council, the Financial Stability Oversight Council (“Oversight Council”) to identify and monitor systemic risks posed by financial firms and financial activities and practices. Voting members are the Secretary of the U.S. Department of the Treasury (Chairperson) (“Treasury Secretary”), heads of the Board of Governors of the Federal Reserve System (“Federal Reserve Board”), the Office of the Comptroller of the Currency (“OCC”), the Federal Deposit Insurance Corporation (“FDIC”), the Securities and Exchange Commission (“SEC”), the Commodity Futures Trading Commission (“CFTC”), the Federal Housing Finance Agency (“FHFA”), the new Bureau of Consumer Financial Protection (“Consumer Protection Bureau”), the National Credit Union Administration Board (“NCUA”) and an independent member with insurance expertise to be appointed by the President and confirmed by the Senate. Nonvoting members who will serve in an advisory capacity are the heads of the new Office

of Financial Research (“Office”) and the new Federal Insurance Office, a State insurance commissioner, a State banking supervisor and a State securities commissioner (or officer performing like functions).

Oversight Council Authority

- *Designation of Nonbank Financial Companies for Federal Reserve Board Supervision.* By a two-thirds vote of its members that must include the Treasury Secretary, the Oversight Council is charged with designating U.S. nonbank financial companies, and foreign nonbank financial companies, that pose a threat to the financial stability of the United States in the event of their material financial distress, or based on the nature, scope, size, scale, concentration, interconnectedness or mix of activities (each a “Designated Company”).
 - *Effect of Designation.* Designated Companies are required to register with the Federal Reserve Board within 180 days after final determination of designation and will become subject to supervision and prudential standards established by the Federal Reserve Board, along with “large interconnected bank holding companies” (not defined).
 - *U.S. Nonbank Financial Company Definition.* A “U.S. nonbank financial company” is defined as any U.S. company that is “predominantly engaged in financial activities,” but does not include a bank holding company, Farm Credit institution, national securities exchange (or parent thereof), clearing agency (or parent thereof, unless the parent is a bank holding company), security-based swap execution facility (“SB-SEF”), security-based swap data repository registered with the SEC, board of trade designated as a contract market (or a parent thereof), derivatives clearing organization (or a parent thereof, unless the parent is a bank holding company), swap execution facility or swap data repository registered with the CFTC.
 - *Foreign Nonbank Financial Company Definition.* A “foreign nonbank financial company” is defined as any company (other than a company that is, or is treated in the United States as, a bank holding company) organized in a country other than the United States that is “predominantly engaged in financial activities.”
 - A company is “predominantly engaged in financial activities” if 85% or more of its consolidated annual gross revenues are derived from, or 85% or more of its consolidated assets relate to, activities that are financial in nature as defined in Section 4(k) of the Bank Holding Company Act of 1956 (the “BHCA”) or the ownership or control of one or more insured depository institutions.

Criteria for Designation

- The criteria for designation of a U.S. nonbank financial company for prudential regulation by the Federal Reserve Board include:
 - extent of leverage;
 - extent and nature of off-balance-sheet exposures;
 - extent and nature of transactions and relationships with other significant nonbank financial companies and bank holding companies;
 - importance of the company as a source of credit for households, businesses and State and local governments, and as a source of liquidity for the financial system;
 - importance of the company as a source of credit for low-income, minority or underserved communities, and the impact that the failure of such company would have on the availability of credit in such communities;
 - extent to which assets are managed rather than owned and ownership of assets under management is diffuse;
 - nature, scope, size, scale, concentration, interconnectedness and mix of activities;

- degree to which the company is already regulated by one or more primary financial regulatory agencies;
 - amount and nature of financial assets;
 - amount and types of liabilities, including degree of reliance on short-term funding; and
 - any other risk-related factors deemed appropriate by the Oversight Council.
- The criteria are substantially the same for foreign nonbank financial companies, but take into account the amount and nature of the U.S. financial assets of the company, and the extent to which the company is subject to prudential standards on a consolidated basis in the home country of such foreign financial parent administered and enforced by a comparable foreign supervisory authority.

Procedure for Designation

- The Oversight Council must consult with the primary financial regulatory agency for each nonbank financial company or subsidiary of a nonbank financial company being considered for designation. The Act does not require consultation with the Federal Reserve Board.
- With regard to foreign nonbank financial companies (as well as foreign-based bank holding companies and cross-border activities and markets), the Oversight Council must consult with appropriate foreign regulatory authorities, to the extent appropriate.
- The Oversight Council can require reports from any nonbank financial company to assess the extent to which an activity or market in which it participates, or the company itself, poses a threat to financial stability. If the Oversight Council is unable to determine whether financial activities of a nonbank financial company pose a threat to financial stability, it can request the Federal Reserve Board to conduct an examination of any U.S. nonbank financial company for the purpose of determining whether the company should be a Designated Company.
- The Oversight Council must provide notice and opportunity for hearing for a nonbank financial company to contest designation, but procedures can be waived or modified by the Oversight Council when necessary to prevent or mitigate threats to financial stability (with consultation with the appropriate home country supervisor in the case of a foreign nonbank financial company being considered).
- The Act provides for judicial review and rescission of the Oversight Council's designation in the U.S. district court for the district in which the home office of the company is located. Review is subject to an "arbitrary and capricious" standard.
- The Oversight Council is required to review designations at least annually, which can be rescinded by a two-thirds vote.

Other Oversight Council Authority

- *Recommend Prudential Standards.* The Oversight Council can make recommendations to the Federal Reserve Board for stricter prudential standards and reporting and disclosure requirements to be established by the Federal Reserve Board and applied to Designated Companies and large, interconnected bank holding companies.
 - *Recommend Standards or Safeguards For Adoption by Primary Financial Regulatory Agencies for Financial Stability Purposes.* If the Oversight Council determines that a financial activity or practice could create significant liquidity, credit or other problems spreading among bank holding companies and nonbank financial companies or the U.S. financial markets, the Oversight Council can make recommendations to the primary financial regulatory agencies to apply new or heightened standards and safeguards for the financial activity or practice. The Council's recommendations may differentiate among companies on an individual basis or by category. The

primary financial regulatory agency must adopt recommended standards within 90 days or explain its determination not to follow the recommendation.

- *Federal Reserve Board Action to Mitigate Risks to Financial Stability.* If the Federal Reserve Board determines that a Large Bank Holding Company with total consolidated assets of \$50 billion or more (“Large Bank Holding Company”) or a Designated Company poses a grave threat to U.S. financial stability, the Oversight Council can authorize the Federal Reserve Board, by a two-thirds vote of its members, to limit the ability of the company to merge with, acquire or otherwise become affiliated with another company, restrict the company’s ability to offer financial products, require the company to terminate one or more of its activities or impose conditions on conduct of activities. If the foregoing are inadequate to mitigate the threat, the Federal Reserve Board can compel the subject company to transfer assets or off-balance-sheet items to unaffiliated entities.
- *Other Duties.* The Oversight Council’s other duties are, among other things, to monitor the financial services marketplace to identify threats to financial stability; monitor domestic and international financial regulatory proposals and developments, including insurance and accounting issues and advise Congress and make recommendations in these areas, facilitate information sharing and coordination among the member agencies and other Federal and State agencies; recommend to the member agencies supervisory priorities and principles; identify gaps in regulation that could pose risks to financial stability; identify systemically important financial market utilities and payment, clearing and settlement activities; make recommendations to primary financial regulatory agencies to apply new or heightened standards and safeguards for financial activities or practices that could create or increase risks of significant liquidity, credit, or other problems spreading among bank holding companies, nonbank financial companies and U.S. financial markets; and review and, as appropriate, submit comments to the SEC and any standard-setting body regarding existing or proposed accounting standards.

Subtitle B — Office of Financial Research

The Act establishes an Office of Financial Research (the “Office”) within the U.S. Department of the Treasury (“Treasury Department”), to be headed by a director appointed for a six-year term by the President and confirmed by the Senate. The Office will be funded by the Federal Reserve Board for the first two years and self-funded thereafter through assessments on Designated Companies and Large Bank Holding Companies.

- *Purpose to Support the Oversight Council.* The purpose of the Office is to support the Oversight Council and its member agencies by collecting and providing data and information; standardizing types and formats of data reported and collected by member agencies; performing applied and long-term research; developing risk measurement and monitoring tools; and making results available to financial regulatory agencies. The Office is to be comprised of a Data Center and a Research and Analysis Center.
 - The Data Center is required to prepare and publish, in a publicly accessible format, databases of financial companies and financial instruments and formats and standards for reporting financial transaction and position data to the Office.
 - The Research and Analysis Center is to develop and maintain analytical capabilities and computing resources to do the following: develop and maintain metrics and reporting systems for risks to financial stability; monitor, investigate and report on changes in system-wide risk levels and patterns; conduct, coordinate and sponsor research to support and improve regulation of financial entities and markets; evaluate and report on stress tests or other stability-related evaluations of financial entities overseen by the member agencies; and maintain expertise in such areas as may be necessary to support specific requests for advice and assistance from financial regulators.
- *Can Require Reports and Issue Subpoenas.* The Oversight Council is authorized to require periodic and other reports from financial companies and has rule-making authority to standardize types and formats of data reported and

collected on behalf of the Oversight Council. Rules are to be implemented by member agencies within three years, or the Office can implement them directly with respect to the financial entities under the jurisdiction of the member agency. The Office is empowered to enforce data requests through subpoena authority.

Subtitle C — Additional Federal Reserve Board Oversight of Nonbank Financial Companies and Bank Holding Companies

Supervision and Prudential Standards

- *Prudential Standards and Requirements.* On its own or pursuant to recommendations of the Oversight Council, the Federal Reserve Board is required to establish, by regulation or order, prudential standards applicable to Designated Companies and Large Bank Holding Companies that are more stringent than those applicable to nonbank financial companies and bank holding companies that do not present similar risks to U.S. financial stability.
 - *Tailored Application.* In prescribing standards, the Federal Reserve Board may differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including financial activities of their subsidiaries), size and any other risk-related factors the Federal Reserve Board deems appropriate.
 - *Bank Holding Companies.* The Federal Reserve Board can set higher (but not lower) bank holding company asset thresholds for applying particular standards, pursuant to recommendation by the Oversight Council. Large Bank Holding Companies as of January 1, 2010, and companies that received equity infusions under TARP cannot escape supervision by the Federal Reserve Board by debanking. Even if these companies give up their banks, they will be treated as Designated Companies, subject to the right to appeal such determination.
 - *Safe Harbor.* The Federal Reserve Board, on behalf of and in consultation with the Oversight Council, can establish criteria for exempting certain types or classes of nonbank financial companies from Board supervision.
 - *Prudential Standards.* Prudential standards must include risk-based capital requirements and leverage limits; liquidity requirements; overall risk management requirements; resolution plan requirement (periodic reporting of a plan for the company's rapid and orderly resolution in the event of material financial distress or failure) and credit exposure report requirement (periodic reporting of credit exposure to other significant nonbank financial companies and bank holding companies, and vice versa); and concentration limits.
 - *Exception for Risk-Based Capital and Leverage Limits.* Risk-based capital requirements and leverage limits are not required if the Federal Reserve Board, in consultation with the Oversight Council, determines that such requirements are not appropriate because of the activities (such as investment company activities or assets under management) or structure of the company, in which case the Federal Reserve Board is required to apply other standards that result in similar stringent risk controls.
 - *Resolution Plan.* If the resolution plan is found deficient and the deficiencies are not remedied, the Federal Reserve Board may impose more stringent capital, leverage or liquidity requirements, or restrictions on the growth, activities, or operations of the company or any subsidiary of the company, until the company re-submits a plan that remedies the deficiencies.
 - *Concentration Restrictions.* The Federal Reserve Board is required to prohibit each Designated Company and Large Bank Holding Company from having credit exposure to any unaffiliated company exceeding 25% of capital stock and surplus (or such lower amount as the Federal Reserve Board may determine by

regulation to be necessary to mitigate risks to the financial stability of the United States) of the company. Such regulations will not become effective until three years after enactment and the Federal Reserve Board is authorized to extend the effective date for up to an additional two-year period.

- “Credit exposure” includes extensions of credit, repurchase agreements, reverse repurchase agreements, securities borrowing and lending, guarantees, acceptances or letters of credit issued on behalf of the company, purchases of or investment in securities issued by the company, counterparty credit exposure to the company in connection with a derivative transaction, and any similar transactions that the Federal Reserve Board determines by regulation to be a credit exposure for purposes of the statute, and any transaction in which the proceeds are used for the benefit of, or transferred to, that company.
 - *Foreign Nonbank Financial Companies.* In applying the required standards to foreign nonbank financial companies, the Federal Reserve Board is required to give due regard to principles of national treatment and take into account the extent to which the foreign financial company is subject on a consolidated basis to home country standards comparable to those applied to financial companies in the United States.
- *Additional Standards.* The Federal Reserve Board may, but is not required to, adopt additional prudential standards that may include a contingent capital requirement (maintenance of long-term hybrid debt convertible to equity in times of financial distress), enhanced public disclosures, short-term debt limits and such other standards as the Federal Reserve Board, on its own or pursuant to a recommendation made by the Oversight Council, determines are appropriate. A contingent capital requirement may be adopted only following a mandated Oversight Council study and report to Congress.
- *Short-Term Debt Limits.* The Federal Reserve Board may, by regulation, prescribe a limit on the amount of short-term debt (other than deposit liabilities) that may be accumulated by a Designated Company or Large Bank Holding Company, as a percentage of capital stock and surplus or such other measure as the Federal Reserve Board deems appropriate.
- *Risk Committees for Publicly Traded Companies.* Publicly traded Designated Companies and bank holding companies with consolidated assets of \$10 billion or more must establish a risk committee to oversee enterprise-wide risk management practices. The Federal Reserve Board may require risk committees for bank holding companies with total consolidated assets less than \$10 billion.
- *Stress Tests.* Designated Companies and Large Bank Holding Companies are subject to annual stress tests by the Federal Reserve Board, and their own semiannual stress tests pursuant to regulations to be adopted by each Federal primary financial regulatory agency, to evaluate whether they have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions. All other financial companies with total consolidated assets greater than \$10 billion that are regulated by a primary Federal financial regulatory agency are also required to conduct annual stress tests pursuant to the foregoing regulations.
- *Leverage Limit.* The Federal Reserve Board must require Designated Companies and Large Bank Holding Companies to maintain a debt to equity ratio of no more than 15 to 1, upon a determination that the company poses a grave threat to the financial stability of the United States and that the leverage limit is necessary to mitigate the risk.
- *Inclusion of Off-Balance-Sheet Activities in Computing Capital.* The computation of capital of Designated Companies and Large Bank Holding Companies must take into account off-balance-sheet activities. “Off-balance-sheet activity” 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: direct credit substitutes in which a bank substitutes its own credit for a third party, irrevocable letters of credit, risk participations in bankers’ acceptances, sale and repurchase agreements, asset sales with recourse,

interest rate swaps, credit swaps, commodities contracts, forward contracts, securities contracts and such other activities or transactions as the Federal banking agencies may, by rule, define.

- *Prompt Corrective Action Requirements.* The Federal Reserve Board, in consultation with the Oversight Council and the FDIC, is required to establish by regulation requirements for early remediation of financial distress of Designated Companies and large interconnected bank holding companies designed to avoid insolvency, including requirements that become increasingly stringent as the financial condition of the company declines, such as limitations on capital distributions, acquisitions and growth.
- *Intermediate Holding Company for Non-Financial Activities.* The Federal Reserve Board may require Designated Companies engaged in commercial activities to segregate financial activities in an intermediate holding company within 90 days of designation, and must require a Designated Company engaged in commercial activities to establish an intermediate holding company if necessary in order for the Federal Reserve Board to appropriately supervise the company's financial activities or to ensure that its supervision does not extend to commercial activities. Intermediate holding companies are not required to conform activities to the restrictions of Section 4 of the BHCA.
 - *Internal Financial Activities.* A Designated Company is not required to segregate "internal financial activities," such as treasury, investment and employee benefit functions conducted for the Designated Company or an affiliate and a non-affiliate during the year prior to enactment of the Act, provided two-thirds of the revenue or assets generated from the activities are from or attributable to such Designated Company or an affiliate. Moreover, the non-financial activities of a Designated Company or its affiliates are expressly excluded from the Federal Reserve Board's supervision and prudential standards. However, the Federal Reserve Board may issue regulations prohibiting affiliate transactions between an intermediate holding company (or a Designated Company) and its affiliates.
 - *Enforcement.* A company that directly or indirectly controls an intermediate holding company must serve as a source of strength to the intermediate holding company, and the company and its officers and directors may be required to make reports to the Federal Reserve Board. The Federal Reserve Board may enforce compliance with respect to a company that controls an intermediate holding company under Section 8 of the Federal Deposit Insurance Act ("FDIA") in the same manner and to the same extent as if it were a bank holding company.
 - *Reports, Examinations.* The Federal Reserve Board may require reports from and may examine any Designated Company and any subsidiary of such company regarding its operations or financial condition, systems for monitoring and controlling financial, operating and other risks, the extent to which its activities and operations pose a threat to the safety and soundness of the company or to the financial stability of the United States and compliance with prudential oversight requirements.
- *FDIA Enforcement Provisions.* Designated Companies and their subsidiaries (other than depository institution subsidiaries) are subject to the enforcement provisions of the FDIA to the same extent as if they were bank holding companies. The Federal Reserve Board can recommend that the primary financial regulatory agency for a depository institution subsidiary or functionally regulated subsidiary of a Designated Company initiate a supervisory or enforcement proceeding, and may take the recommended action itself if the primary financial regulatory agency fails to take acceptable action within 60 days of the Federal Reserve Board's recommendation.
 - Designated Companies and Large Bank Holding Companies are subject to special examination under the FDIA for purposes of implementing the FDIC's liquidation authority under the Act.
 - Depository institution holding companies (bank holding companies and savings and loan holding companies) are subject to FDIC back-up enforcement authority if the appropriate Federal banking agency fails to take

action recommended by the FDIC, and the FDIC determines that the conduct or threatened conduct of the holding company poses a risk to the Deposit Insurance Fund.

- *Acquisitions.* Designated Company acquisitions of bank shares are made subject to Section 3 of the BHCA as if such companies were bank holding companies. In addition, Designated Companies and large interconnected bank holding companies must provide written notice to the Federal Reserve Board prior to acquisition of direct or indirect control of any voting shares of a company engaged in financial activities that has total consolidated assets of \$10 billion or more, except for acquisitions of shares in connection with underwriting, dealing in or making a market in securities, or acquisitions subject to an exemption under BHCA Section 4(c). In addition to other factors, the Federal Reserve Board is required to consider the extent to which an acquisition will result in greater or more concentrated risks to global or U.S. financial stability or the U.S. economy.
- *Management Interlocks.* Designated Companies are made subject to the prohibition against management interlocks as if they were bank holding companies. The Federal Reserve Board cannot exercise its rule-making authority to exempt service by a management official of a Designated Company as a management official of a Large Bank Holding Company, or other nonaffiliated Designated Companies.
- *Leverage and Risk-Based Capital Requirements.* Under the so-called “Collins Amendment,” the Federal banking agencies must adopt minimum leverage and risk-based capital requirements on a consolidated basis for all insured depository institutions, depository institution holding companies and Designated Companies. The minimum requirements cannot be less than minimum ratios established under the prompt corrective action regulations for depository institutions, regardless of size, in effect as of the date of enactment. The intent is to require large banks and bank holding companies, as well as Designated Companies, to meet, at a minimum, the same capital standards imposed on small banks. Small bank holding companies (with consolidated assets under \$500 million), companies that issued debt or equity securities to the United States under TARP and any Federal home loan bank are excepted.
 - The provision phases in a requirement that depository institution holding companies and Designated Companies exclude trust preferred securities from their Tier I capital components. Capital ratios for leverage purposes are measured by average total assets, thereby eliminating any incentive to engage in so-called “Repo 105” transactions.
 - The provision grandfathers existing trust preferred securities that were issued before May 19, 2010 for all depository institution holding companies with less than \$15 billion in total consolidated assets and mutual holding companies.
 - Holding companies (including bank holding company subsidiaries of foreign banking organizations) with more than \$15 billion or more in total assets have five years to comply with the provision, and beginning on January 1, 2013, have a three-year period to phase out their trust preferred securities. Thrift holding companies are also subject to the three-year phase-out of their trust preferred securities, but have five years to comply with the minimum leverage and risk-based capital requirements.
 - Depository institution holding companies and Designated Companies are not required to deduct their investments in financial subsidiaries from regulatory capital, unless required by the Federal Reserve Board or their primary financial regulatory agency.
 - In addition, subject to the recommendations of the Oversight Council, the Federal banking agencies must develop capital regulations that address the risks posed by certain types of activities, including risks that arise from a significant volume of transactions involving derivatives, securitized products, financial guarantees and repurchase agreements.

- *Foreign Bank Offices.* In considering applications by foreign banks to establish a branch, agency or commercial lending company in the United States, the Federal Reserve Board can consider, for a foreign bank that presents a risk to the stability of the U.S. financial system, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. Failure of the home country to adopt or make progress towards adopting such a system of financial regulation is also grounds for termination of a foreign bank's U.S. offices.

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