FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 380

RIN 3064–AE05

Restrictions on Sales of Assets of a Covered Financial Company by the Federal Deposit Insurance Corporation

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (''FDIC'') is adopting a final rule (the ''final rule'') to implement a section of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). Under that section, individuals or entities that have, or may have, contributed to the failure of a ''covered financial company'' cannot buy a covered financial company's assets from the FDIC. The final rule establishes a self-certification process that is a prerequisite to the purchase of assets of a covered financial company from the FDIC.

DATES: This final rule is effective July 1, 2014.

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SUPPLEMENTARY INFORMATION:

I. Background

Section 210(r) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5390(r) (''section 210(r)''), prohibits certain sales of assets held by the FDIC in the course of liquidating a covered financial company. The Dodd-Frank Act requires the FDIC to promulgate regulations which, at a minimum, prohibit the sale of an asset of a covered financial company by the FDIC to: (1) Any person who has defaulted, or was a member of a partnership or an officer or director of a corporation that has defaulted, on one or more obligations exceeding $1,000,000 to such covered financial company, has been found to have engaged in fraudulent activity in connection with such obligation, and proposes to purchase any such asset in whole or in part through the use of financing from the FDIC; (2) any person who participated, as an officer or director of such covered financial company or of any affiliate of such company, in a material way in any transaction that resulted in a substantial loss to such covered financial company; or (3) any person who has demonstrated a pattern or practice of defalcation regarding obligations to such covered financial company. Section 210(r) is derived from section 11(p) the Federal Deposit Insurance Act, 12 U.S.C. 1821(p) (''section 11(p)''), which imposes substantially similar restrictions on sales of assets of failed insured depository institutions by the FDIC. Section 210(r) applies only to sales of covered financial company assets by the FDIC, however, and not to sales of failed insured depository institution assets.

Notice of Proposed Rulemaking

On October 30, 2013, the Board of Directors approved a notice of proposed rulemaking entitled ''Restrictions on Sales of Assets of a Covered Financial Company by the Federal Deposit Insurance Corporation'' (the ''proposed rule''), which was published in the **Federal Register** on November 6, 2013, with a 60-day comment period that ended on January 6, 2014. Two comment letters addressing the proposed rule were received by the FDIC. Both were generally supportive of the proposed rule. The contents of the comments and the FDIC's responses thereto, as well as the differences between the text of the proposed rule and the final rule are addressed below.

II. Explanation of the Final Rule

With one exception, the final rule is unchanged from the proposed rule. Language is added to paragraph (f) in the final rule to require that a prospective purchaser certify that a sale of assets of a covered financial company by the FDIC is not structured to circumvent section 210(r) or the final rule.

The final rule is modeled after the FDIC's regulation entitled ''Restrictions on the Sale of Assets by the Federal Deposit Insurance Corporation,'' at 12 CFR part 340 (''part 340''), which implements section 11(p), because section 210(r) and section 11(p) share substantially similar statutory language. Although the final rule is similar to part 340 in many ways, it is distinct because it would apply to sales of *covered financial company* assets by the FDIC and not to sales of *failed insured depository institution* assets.[1]

The final rule addresses the statutory prohibitions contained in section 210(r). It does not address other restrictions on sales of assets. For instance, the final rule does not address purchaser restrictions imposed by 12 CFR part 366 (''Minimum Standards of Integrity and Fitness for an FDIC Contractor'') and 5 CFR part 3201 (''Supplemental Standards of Ethical Conduct for Employees of the Federal Deposit Insurance Corporation''). Further, the final rule is separate and apart from any policy that the FDIC has, or may adopt or amend, regarding collection of amounts owed by obligors to a failed insured depository institution or a covered financial company. The focus of a collection policy is to encourage delinquent obligors to promptly repay or settle obligations, which is outside the scope of section 210(r) and the final rule.

Section-by-Section Analysis

Paragraph (a)(1) of the final rule states its purpose, which is to prohibit individuals or entities who improperly profited or engaged in certain acts of wrongdoing at the expense of a covered financial company or an insured depository institution, or whose actions resulted in serious mismanagement of a covered financial company or an insured depository institution, from buying assets of any covered financial company from the FDIC. Both comments on the proposed rule agreed that the restrictions on sales of assets of a covered financial company by the FDIC should apply to individuals or entities who engaged in wrongdoing with respect to any covered financial company and not just the covered financial company with which those individuals or entities were involved. One of the commenters also agreed that it is appropriate to prohibit individuals or entities that engaged in wrongdoing at the expense of an insured depository institution or seriously mismanaged an insured depository institution from buying assets of a covered financial company from the FDIC.

Paragraph (a)(2) describes the final rule's applicability. Paragraph (a)(2)(i) states that the final rule applies to sales of assets of a covered financial company by the FDIC. The assets of a covered financial company vary in character and composition, and range from personal property to ownership of subsidiary

[1] Prospective purchasers seeking to buy assets of a failed insured depository institution from the FDIC should refer to part 340.

companies and entire operating divisions.

Paragraph (a)(2)(ii) delineates the applicability of the final rule to sales by a bridge financial company. Sales of bridge financial company assets are not expressly subject to the statutory prohibition under section 210(r) because once such assets are transferred to a bridge financial company, they are no longer ''assets of a covered financial company'' that are being sold ''by the [FDIC].'' The statute sets forth the ''minimum'' standards that the regulation shall meet but permits the FDIC to promulgate a more restrictive regulation in its discretion. In general, the FDIC anticipates that a bridge financial company's charter, articles of incorporation or bylaws will require that the bridge financial company obtain approval from the FDIC as receiver before conducting certain significant transactions, such as a sale of a material subsidiary or line of business. Because a bridge financial company would be established by the FDIC to more efficiently resolve a covered financial company, the FDIC believes that the imposition of the restrictions set forth in the final rule on certain sales by a bridge financial company furthers the objective of section 210(r) by prohibiting the same persons restricted from buying covered financial company assets (officers and directors who engaged in fraudulent activity or caused substantial losses to a covered financial company, for example) from buying those assets after those assets have been transferred to a bridge financial company.

Paragraph (a)(2)(iii) clarifies the final rule's applicability to sales of securities backed by a pool of assets (which pool may include assets of a covered financial company) by a trust or other entity. It provides that the restriction applies only to the sale of assets by the FDIC to an underwriter in an initial offering, and not to any other purchaser of the securities because subsequent sales to other purchasers would not be conducted by the FDIC.

Paragraph (a)(2)(iv) clarifies the applicability of section 210(r) and the final rule to certain types of transactions involving marketable securities and other financial instruments by stating that the prohibition does not apply to the sale of a security or a group or index of securities, a commodity, or any ''qualified financial contract'' (as defined in 12 U.S.C. 1821(e)(10)) that customarily is traded through a ''financial intermediary'' (as defined in the final rule) and where the seller cannot control selection of the purchaser and the sale is consummated through that customary practice. For example, if the FDIC as receiver for a covered financial company were to sell publicly-traded stocks or bonds that the covered financial company held, it might well order the covered financial company's broker or custodian to conduct the sale. The broker or custodian would then tender the securities to the market and accept prevailing market terms offered by another broker, a specialist, a central counterparty or a similar financial intermediary who would then sell the security to another purchaser. In this scenario it is not possible for the FDIC as receiver to control selection of the end purchaser at the time of sale. Therefore, the transaction cannot be a sale by the FDIC covered by the statute because the FDIC has no way to select the prospective purchaser or determine whether that purchaser would or would not be prohibited from purchasing the asset. Moreover, a prospective purchaser of such assets will not be able to select the FDIC as the seller and therefore could not determine whether Section 210(r) and the final rule apply to the transaction.

Under paragraph (a)(2)(v), judicial or trustee's sales of property that secures an obligation to a covered financial company would not be covered under the final rule. Although the FDIC as receiver would have a security interest in the property serving as collateral and therefore the authority to initiate a foreclosure action, the selection of the purchaser and terms of the sale are not within the FDIC's control. Rather, a court or trustee would conduct the sale in accordance with applicable state law and select the purchaser. In this situation, the sale is not a sale by the FDIC. This exception does not affect sales of collateral by the FDIC where the FDIC is in possession of the property and conducts the sale itself, however. Where the FDIC has control over the manner and terms of the sale, it will require the prospective purchaser's certification that the prospective purchaser is not prohibited from purchasing the asset.

Section 210(r) creates an exception from the specified restrictions on sales for sales made pursuant to a settlement agreement with the prospective purchaser. It states that the restrictions do not apply if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement of, one or more claims that have been, or could have been, asserted by the FDIC against the person regardless of the amount of such claims or obligations. The final rule provides in paragraph (a)(2)(vi) that such sales are outside the scope of coverage.

One of the commenters suggested that the proposed rule provide that purchases in connection with a settlement of claims should be subject to the requirement that the settlement be submitted to, and approved by, a court. The FDIC has authority to settle claims involving receivership assets. Where settlements are not in the course of litigation, there is no avenue for judicial approval of the settlement, nor is such a requirement specified in the statute. Further, part 340 does not contain a requirement for judicial approval of settlements and the proposed rule was consistent with that approach. Thus, the FDIC does not believe it is appropriate to require judicial review and approval of settlements involving matters that are not in litigation and does not adopt this suggested change in the final rule.

Paragraph (a)(3) of the final rule makes it clear that the FDIC retains the authority to establish other policies restricting asset sales and expressly contemplates, among other things, the adoption of a policy prohibiting the sale of assets to other prospective purchasers, such as certain employees or contractors that the FDIC engages, or individuals or entities who are in default on obligations to the FDIC. The restrictions of the final rule are, however, limited to sales of assets of a covered financial company.

Paragraph (b) sets forth definitions used in the final rule. Several of these definitions have been adopted from part 340, such as the definitions of ''person,'' ''associated person'' and ''default.'' The term ''financial intermediary,'' which is not found in part 340, has been defined for use in the final rule as well.

Paragraph (c) of the final rule sets forth the operative precept for restricting asset sales. An individual or entity is ineligible to purchase assets from a covered financial company if it or its ''associated person'' has committed an act that meets one or more of the conditions under which the sale would be prohibited. In applying the rule, the first step is to determine whether the ''person'' who is the prospective purchaser is an individual or an entity. The next step is to determine who qualifies as an ''associated person'' (as defined in paragraph (b)(1) of the final rule) of that prospective purchaser. If the prospective purchaser is an individual, then its associated person is (i) that individual's spouse or dependent child or member of his or her household, or (ii) any partnership or limited liability company of which the individual is or was a member, manager or general or limited partner, or (iii) any corporation of which the individual is or was an officer or director. If the prospective purchaser is a partnership or other entity, then its associated person is (i) its managing or general partner or managing member, or (ii) an individual or entity that owns or controls 25% or more (individually or in concert) of the entity.

Under paragraph (c)(1), a person is ineligible to purchase any asset of a covered financial company from the FDIC if, prior to the appointment of the FDIC as receiver for the covered financial company, it or its associated person: (A) Has participated as an officer or director of a covered financial company or an affiliate thereof in a ''material way in a transaction that caused a substantial loss to a covered financial company'' (as defined in paragraph (c)(2) of the final rule and discussed below); (B) has been removed from, or prohibited from participating in the affairs of, an insured depository institution, an insurance company or a financial company pursuant to any final enforcement action by its primary financial regulatory agency; (C) has demonstrated a pattern or practice of defalcation regarding obligations to any financial company; (D) has been convicted of committing or conspiring to commit any offense under 18 U.S.C. 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1341, 1343 or 1344 (having generally to do with financial crimes, fraud and embezzlement) affecting any covered financial company and is in default with respect to one or more obligations owed by that person or its associated person; or (E) would be prohibited from purchasing assets from a failed insured depository institution under 12 U.S.C. 1821(p) and part 340.

The final rule establishes parameters to determine whether an individual or entity has participated in a ''material way in a transaction that caused a substantial loss to a covered financial company'' as this concept is used but not defined in the statute. Under paragraph (c)(2), a person has participated in a material way in a transaction that caused a substantial loss to a covered financial company if, in connection with a substantial loss to a covered financial company, that person has been found in a final determination by a court or administrative tribunal, or is alleged in a judicial or administrative action brought by the FDIC or by any component of the government of the United States or of any state: To have violated any law, regulation, or order issued by a federal or state regulatory agency, or breached or defaulted on a written agreement with a federal or state regulatory agency or breached a written agreement with a covered financial company; or to have breached a fiduciary duty owed to a covered financial company.

One commenter suggested that the FDIC should have standards and procedures under which it makes findings that a person, entity, or financial group has engaged in mismanagement or contributed to significant losses of a covered financial company so that it can be readily determined that such person, entity or financial group is ineligible to purchase or acquire assets of covered financial companies. Under the proposed rule, the basis for these determinations was set forth with specificity and varied based upon the cause for ineligibility. For instance, a person has participated in a ''material way in a transaction that caused a substantial loss to a covered financial company'' if found by a court or alleged by a regulatory agency to have violated law or breached an agreement or fiduciary duty in connection with the loss. In addition, the definitions of ''default,'' ''substantial loss,'' and ''pattern or practice of defalcation'' clarify the final rule's scope of coverage. This approach has been used under part 340 since that rule was promulgated in 2000 and has been found to be clear and effective based on practical experience. Therefore, the suggested change is not made in the final rule.

A ''substantial loss,'' defined in paragraph (b), means: (i) An obligation that is delinquent for ninety (90) or more days and on which a balance of more than $50,000 remains outstanding; (ii) a final judgment in excess of $50,000 remains unpaid, regardless of whether it becomes forgiven in whole or in part in a bankruptcy proceeding; (iii) a deficiency balance following a foreclosure or other sale of collateral in excess of $50,000 exists, regardless of whether it becomes forgiven in whole or in part in a bankruptcy proceeding; or (iv) any loss in excess of $50,000 evidenced by an IRS Form 1099–C (Information Reporting for Cancellation of Debt). There is no reprieve for a prospective purchaser who has participated in a material way in a transaction that caused a substantial loss to a covered financial company. Such prospective purchaser is indefinitely prohibited from purchasing assets of any covered financial company from the FDIC notwithstanding the passage of any amount of time. The approach to determine whether a person has participated in a material way in a transaction that has caused a substantial loss to a covered financial company is comparatively similar to the approach under part 340. In the proposed rule, the dollar threshold for a substantial loss was set at $50,000, just as it is in part 340. The FDIC believes that the $50,000 threshold is consistent with Section 210(r) because the statute sets the standards that the FDIC shall, at a minimum, establish by regulation and leaves the interpretation of subjective terms within the FDIC's discretion. This threshold is retained in the final rule.

Under paragraph (c)(3) of the final rule, a person or its associated person has demonstrated a ''pattern or practice of defalcation'' with respect to obligations to a covered financial company if the person or associated person has engaged in more than one transaction that created an obligation on the part of such person or its associated person with intent to cause a loss to a covered financial company or with reckless disregard for whether such transactions would cause a loss and the transactions, in the aggregate, caused a substantial loss to one or more covered financial companies.

Although the statute restricts only the sale of assets of the covered financial company that held the defaulted obligation of the prospective purchaser, the restrictions in the final rule apply regardless of which covered financial company's assets are being sold. The FDIC continues to believe that adopting this more stringent approach is consistent with Section 210(r) because the statute sets only the minimum standards that the FDIC must meet with implementation of the final rule. Moreover, both commenters agreed that the restrictions should apply to individuals or entities who engaged in wrongdoing with respect to *any* covered financial company and one expressed agreement with extension of the restrictions to individuals or entities who engaged in wrongdoing at the expense of an insured depository institution.

Paragraph (d) of the final rule restricts asset sales when the FDIC provides seller financing, including financing authorized under section 210(h)(9) of the Dodd-Frank Act. It restricts a prospective purchaser from borrowing money or accepting credit from the FDIC in connection with the purchase of covered financial company assets if there has been a default with respect to one or more obligations totaling in excess of $1,000,000 owed by that person or its associated person and the person or its associated person made any fraudulent misrepresentations in connection with such obligation(s).

The FDIC does not intend to imply that it will provide seller financing in connection with any asset sales nor that, if it elects to provide seller financing, it will do so to a person who does not meet other criteria that the FDIC may lawfully impose, such as creditworthiness. The FDIC has no obligation to provide seller financing even if the person is not in any way prohibited from purchasing assets from the FDIC under the restrictions set forth in the final rule.

Paragraph (f) sets forth the requirement that a prospective purchaser certify, before purchasing any asset from the FDIC and under penalty of perjury, that the sale would not be prohibited under the final rule. This requirement creates an effective mechanism to comply with section 210(r) and the final rule. The FDIC will provide the form for the certification and the final rule contemplates that the form may change over time.

One of the commenters suggested that the proposed rule provide that no proxies or indirect purchasers may be used with the objective of ultimately providing ownership, management or control to an individual or entity that would otherwise be prohibited from purchasing assets of a covered financial company and, further, that prospective purchasers certify that they are not acting on behalf of or for the benefit of any individual or entity that would be prohibited from purchasing assets of a covered financial company. The FDIC recognizes the risk that a straw buyer may be used and has included a statement in its form Purchaser Eligibility Certificate requiring a prospective purchaser to certify that neither the identity nor form of the prospective purchaser, nor any aspect of the contemplated transaction, has been created or altered with the intent, in whole or in part, to allow an individual or entity who otherwise would be ineligible to purchase assets from the FDIC to benefit directly or indirectly from the sale. The FDIC agrees that the proposed rule would be strengthened by adding this requirement to the text of the final rule and has done so in paragraph (f).

Certain types of entities are exempt from the self-certification requirement under paragraph (f)(1), unless the Director of the FDIC's Division of Resolutions and Receiverships (or designee) determines that a certification is required. These exempted entities are: (1) State or political subdivisions of a state; (2) federal agencies or instrumentalities such as the Government National Mortgage Association; (3) federally-regulated, government-sponsored enterprises such as the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and (4) bridge financial companies established by the FDIC. Because of the nature of these entities, including their organizational purposes or goals and the fact that they are subject to strict governmental control or oversight, it is reasonable to presume compliance with the final rule without requiring self-certification.

One of the commenters noted that the proposed rule does not specify the actions to be implemented if an improper, prohibited purchase is later found and suggested that the final rule provide that if a person is later found to have engaged in a prohibited purchase, then such purchase or acquisition is voidable. The FDIC has considered this suggestion and found that such a condition could pose significant practical issues with respect to conveyance of title to assets purchased from the FDIC. A conveyance that is potentially voidable could create uncertainty as to whether an acquirer or subsequent purchaser of an asset holds marketable title. Such a cloud on title could adversely affect the value of all assets sold by the FDIC if the market were to apply a discount for the risk that a sale could be voided on this basis. The proposed rule stated that the purchaser's certification is made under penalty of perjury and this is stated in the final rule as well.

III. Regulatory Analysis and Procedure

A. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) (the ''PRA''), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (''OMB'') control number. As indicated by paragraph (f), the FDIC has developed a purchaser eligibility certification form relating to this final rule. The form will be used to establish compliance with the final rule by a prospective purchaser of assets of a covered financial company from the FDIC. The FDIC believes that the certification is a collection of information under the PRA and, consistent with the requirements of 5 CFR 1320.11, the FDIC has submitted the form to OMB for review under section 3507(d) of the PRA.

Title of Information Collection: Covered Financial Company Purchaser Eligibility Certification.

Affected Public: Prospective purchasers of covered financial company assets.

Frequency of Response: Event generated.

Estimated Number of Respondents: 20.

Time per Response: 30 minutes.

Total Estimated Annual Burden: 10 hours.

The FDIC has a continuing interest in comments on paperwork burden. Comments are invited on (a) whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601, *et seq.,* requires that each Federal agency either certify that a final rule will not have a significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis of the rule and publish the analysis for comment. The RFA provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The FDIC hereby certifies pursuant to 5 U.S.C. 605(b) that the final rule would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

Under regulations issued by the Small Business Administration (13 CFR 121.201), a ''small entity'' includes those firms in the ''Finance and Insurance'' sector whose size varies from $7 million or less in assets to $175 million or less in assets. The final rule is promulgated under Title II of the Dodd-Frank Act, which establishes a regime for the orderly liquidation of the nation's largest, and most systemic companies. For instance, companies subject to enhanced supervision under the Dodd-Frank Act include bank holding companies with assets in excess of $50,000,000.00. The orderly liquidation of assets of such a large, systemic financial company generally will involve the sale of significant subsidiaries and business lines rather than smaller asset sales, and such sales are unlikely to impact a substantial number of small entities. Accordingly, there will be no significant economic impact on a substantial number of small entities as a result of this final rule.

Moreover, the burden imposed by the final rule is the completion of a certification form described above in the Paperwork Reduction Act section. Completing the certification form does not require the use of professional skills or the preparation of special reports or records and has a minimal economic impact on those individuals and entities that seek to purchase assets from the FDIC. Thus, any impact on small entities will not be substantial.

C. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the final rule will not affect family wellbeing within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

D. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a ''major rule'' within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA'') (Pub. L. 104–121, 110 Stat. 857) which provides for agencies to report rules to Congress and for Congress to review such rules. The reporting requirement is triggered in instances where the FDIC issues a final rule as defined by the APA (5 U.S.C. 551 et seq.). Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by the SBREFA.

E. Plain Language

Section 722 of the Gramm-Leach-Bliley Act of 1999 (Pub. L. 106–102, 113 Stat. 1338, 1471) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the final rule in a simple and straightforward manner.

Text of the Final Rule

Federal Deposit Insurance Corporation

12 CFR Chapter III

List of Subjects in 12 CFR Part 380

Asset disposition, Bank holding companies, Covered financial companies, Financial companies, Holding companies, Insurance companies, Nonbank financial companies.

Authority and Issuance

For the reasons set forth in the Supplementary Information, the Federal Deposit Insurance Corporation amends Part 380 of Chapter III of Title 12, Code of Federal Regulations as follows:

PART 380—ORDERLY LIQUIDATION AUTHORITY

■ 1. Amend the authority for part 380 to read as follows:

Authority: 12 U.S.C. 5389; 12 U.S.C. 5390(s)(3); 12 U.S.C. 5390(b)(1)(C); 12 U.S.C. 5390(a)(7)(D); 12 U.S.C. 5381(b); 12 U.S.C. 5390(r).

■ 2. Part 380 is amended by adding § 380.13 to read as follows:

§ 380.13 Restrictions on sale of assets of a covered financial company by the Federal Deposit Insurance Corporation.

(a) *Purpose and applicability.* (1) *Purpose.* The purpose of this section is to prohibit individuals or entities that profited or engaged in wrongdoing at the expense of a covered financial company or an insured depository institution, or seriously mismanaged a covered financial company or an insured depository institution, from buying assets of a covered financial company from the FDIC.

(2) *Applicability.* (i) The restrictions of this section apply to the sale of assets of a covered financial company by the FDIC as receiver or in its corporate capacity.

(ii) The restrictions in this section apply to the sale of assets of a bridge financial company if:

(A) The sale is not in the ordinary course of business of the bridge financial company, and

(B) The approval or non-objection of the FDIC is required in connection with the sale according to the charter, articles of association, bylaws or other documents or instruments establishing the governance of the bridge financial company and the authorities of its board of directors and executive officers.

(iii) In the case of a sale of securities backed by a pool of assets that may include assets of a covered financial company by a trust or other entity, this section applies only to the sale of assets by the FDIC to an underwriter in an initial offering, and not to any other purchaser of the securities.

(iv) The restrictions of this section do not apply to a sale of a security or a group or index of securities, a commodity, or any qualified financial contract that customarily is traded through a financial intermediary, as defined in paragraph (b) of this section, where the seller cannot control selection of the purchaser and the sale is consummated through that customary practice.

(v) The restrictions of this section do not apply to a judicial sale or a trustee's sale of property that secures an obligation to the FDIC where the sale is not conducted or controlled by the FDIC.

(vi) The restrictions of this section do not apply to the sale or transfer of an asset if such sale or transfer resolves or settles, or is part of the resolution or settlement of, one (1) or more claims or obligations that have been, or could have been, asserted by the FDIC against the person with whom the FDIC is settling regardless of the amount of such claims or obligations.

(3) The FDIC retains the authority to establish other policies restricting asset sales. Neither 12 U.S.C. 5390(r) nor this section in any way limits the authority of the FDIC to establish policies prohibiting the sale of assets to prospective purchasers who have injured the respective covered financial company, or to other prospective purchasers, such as certain employees or contractors of the FDIC, or individuals who are not in compliance with the terms of any debt or duty owed to the FDIC in any of its capacities. Any such policies may be independent of, in conjunction with, or in addition to the restrictions set forth in this part.

(b) *Definitions.* Many of the terms used in this section are defined in the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5301, *et seq.* Additionally, for the purposes of this section, the following terms are defined:

(1) *Associated person.* An ''associated person'' of an individual or entity means:

(i) With respect to an individual:

(A) The individual's spouse or dependent child or any member of his or her immediate household;

(B) A partnership of which the individual is or was a general or limited partner or a limited liability company of which the individual is or was a member; or

(C) A corporation of which the individual is or was an officer or director;

(ii) With respect to a partnership, a managing or general partner of the partnership or with respect to a limited liability company, a manager; or

(iii) With respect to any entity, an individual or entity who, acting individually or in concert with one or more individuals or entities, owns or controls 25 percent or more of the entity.

(2) *Default.* The term ''default'' means any failure to comply with the terms of an obligation to such an extent that:

(i) A judgment has been rendered in favor of the FDIC or a covered financial company; or

(ii) In the case of a secured obligation, the lien on property securing such obligation has been foreclosed.

(3) *Financial intermediary.* The term ''financial intermediary'' means any broker, dealer, bank, underwriter, exchange, clearing agency registered with the SEC under section 17A of the Securities Exchange Act of 1934, transfer agent (as defined in section 3(a)(25) of the Securities Exchange Act of 1934), central counterparty or any other entity whose role is to facilitate a transaction by, as a riskless intermediary, purchasing a security or qualified financial contract from one counterparty and then selling it to another.

(4) *Obligation.* The term ''obligation'' means any debt or duty to pay money owed to the FDIC or a covered financial company, including any guarantee of any such debt or duty.

(5) *Person.* The term ''person'' means an individual, or an entity with a legally independent existence, including: A trustee; the beneficiary of at least a 25 percent share of the proceeds of a trust; a partnership; a limited liability company; a corporation; an association; or other organization or society.

(6) *Substantial loss.* The term ''substantial loss'' means:

(i) An obligation that is delinquent for ninety (90) or more days and on which there remains an outstanding balance of more than $50,000;

(ii) An unpaid final judgment in excess of $50,000 regardless of whether it becomes forgiven in whole or in part in a bankruptcy proceeding;

(iii) A deficiency balance following a foreclosure of collateral in excess of $50,000, regardless of whether it becomes forgiven in whole or in part in a bankruptcy proceeding; or

(iv) Any loss in excess of $50,000 evidenced by an IRS Form 1099–C (Information Reporting for Cancellation of Debt).

(c) *Restrictions on the sale of assets.* (1) A person may not acquire any assets of a covered financial company from the FDIC if, prior to the appointment of the FDIC as receiver for the covered financial company, the person or its associated person:

(i) Has participated as an officer or director of a covered financial company or of an affiliate of a covered financial company in a material way in one or more transactions that caused a substantial loss to a covered financial company;

(ii) Has been removed from, or prohibited from participating in the affairs of, a financial company pursuant to any final enforcement action by its primary financial regulatory agency;

(iii) Has demonstrated a pattern or practice of defalcation regarding obligations to a covered financial company;

(iv) Has been convicted of committing or conspiring to commit any offense under 18 U.S.C. 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1341, 1343 or 1344 affecting any covered financial company and there has been a default with respect to one or more obligations owed by that person or its associated person; or

(v) Would be prohibited from purchasing the assets of a failed insured depository institution from the FDIC under 12 U.S.C. 1821(p) or its implementing regulation at 12 CFR part 340.

(2) For purposes of paragraph (c)(1) of this section, a person has participated in a ''material way in a transaction that caused a substantial loss to a covered financial company'' if, in connection with a substantial loss to the covered financial company, the person has been found in a final determination by a court or administrative tribunal, or is alleged in a judicial or administrative action brought by a primary financial regulatory agency or by any component of the government of the United States or of any state:

(i) To have violated any law, regulation, or order issued by a federal or state regulatory agency, or breached or defaulted on a written agreement with a federal or state regulatory agency, or breached a written agreement with a covered financial company; or

(ii) To have breached a fiduciary duty owed to a covered financial company.

(3) For purposes of paragraph (c)(1) of this section, a person or its associated person has demonstrated a ''pattern or practice of defalcation'' regarding obligations to a covered financial company if the person or associated person has:

(i) Engaged in more than one transaction that created an obligation on the part of such person or its associated person with intent to cause a loss to any financial company or with reckless disregard for whether such transactions would cause a loss to any such financial company; and

(ii) The transactions, in the aggregate, caused a substantial loss to one or more covered financial companies.

(d) *Restrictions when FDIC provides seller financing.* A person may not borrow money or accept credit from the FDIC in connection with the purchase of any assets from the FDIC or any covered financial company if:

(1) There has been a default with respect to one or more obligations totaling in excess of $1,000,000 owed by that person or its associated person; and

(2) The person or its associated person made any fraudulent misrepresentations in connection with any such obligation(s).

(e) *No obligation to provide seller financing.* The FDIC still has the right to make an independent determination, based upon all relevant facts of a person's financial condition and history, of that person's eligibility to receive any loan or extension of credit from the FDIC, even if the person is not in any way disqualified from purchasing assets from the FDIC under the restrictions set forth in this section.

(f) *Purchaser eligibility certificate required.* (1) Before any person may purchase any asset from the FDIC that person must certify, under penalty of perjury, that none of the restrictions contained in this section applies to the purchase. The person must also certify that neither the identity nor form of the person, nor any aspect of the contemplated transaction, has been created or altered with the intent, in whole or in part, to allow an individual or entity who otherwise would be ineligible to purchase assets from the FDIC to benefit directly or indirectly from the proposed transaction. The FDIC may establish the form of the certification and may change the form from time to time.

(2) Notwithstanding paragraph (f)(1) of this section, and unless the Director of the FDIC's Division of Resolutions and Receiverships, or designee, in his or her discretion so requires, a certification need not be provided by:

(i) A state or political subdivision of a state;

(ii) A federal agency or instrumentality such as the Government National Mortgage Association;

(iii) A federally-regulated, government-sponsored enterprise such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation; or

(iv) A bridge financial company.

Dated at Washington, DC, this 8th day of April, 2014.

By Order of the Board of Directors, Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

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