

House Office of Legislative Counsel

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- 1 This redlined draft, generated by CompareRite (TM) - The Instant Redliner, shows the
- 2 differences between -
- 3 original document : C:\TEMP\C\TEMP\HOLCDOCS\SUBCHAPV_001.RTF
- 4 and revised document: C:\TEMP\F\JH\BKCY10\SUBCHAPV_001.RTF
- 5
- 6 CompareRite found 173 change(s) in the text
- 7
- 8 Deletions appear as Overstrike text
- 9 Additions appear as Bold text
- 10

1 Title: To amend title 11 of the United States Code in order to facilitate the resolution of an
2 insolvent financial institution in bankruptcy.

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4
5 Be it enacted by the Senate and House of Representatives of the United States of America in
6 Congress assembled,

7 **SECTION 1. SHORT TITLE.**

8 This Act may be cited as the “Financial Institution Bankruptcy Act of 2014”.

9 **SEC. 2. GENERAL PROVISIONS RELATING TO COVERED**
10 **FINANCIAL CORPORATIONS.**

11 (a) Definition.—Section 101 of title 11, United States Code, is amended by inserting the
12 following after paragraph (9):

13 “(9A) The term ‘covered financial corporation’ means any corporation incorporated or
14 organized under any Federal or State law, other than a stockbroker, a commodity broker, or
15 an entity of the kind specified in paragraph (2) or (3) of section 109(b), that is—

16 “(A) a bank holding company, as defined in section 2(a) of the Bank Holding
17 Company Act of 1956; or

18 “(B) ~~predominantly engaged in activities that the Board of Governors of the Federal~~
19 ~~Reserve System has determined are financial in nature or incidental to such financial~~
20 ~~activity for purposes of section 4(k) of the Bank Holding Company Act of 1956.”; a~~
21 **corporation that exists for the sole purpose of owning the equity securities of its**
22 **subsidiaries, with total consolidated assets of \$50,000,000,000 or greater.”.**

23 (b) Applicability of Chapters.—Section 103 of title 11, United States Code, is amended by
24 adding at the end the following:

25 “(l) Subchapter V of chapter 11 of this title applies only in a case under chapter 11 concerning
26 a covered financial corporation.”.

27 (c) Who May Be a Debtor.—Section 109 of title 11, United States Code, is amended—

28 (1) in subsection (b)—

29 (A) in paragraph (2), by striking “or” at the end;

30 (B) in paragraph (3)(B), by striking the period at the end and inserting “; or”; and

31 (C) by adding at the end the following:

32 “(4) a covered financial corporation.”; and

33 (2) in subsection (d)—

34 (A) by striking “and” before “an uninsured State member bank”;

35 (B) by striking “or” before “a corporation”; and

36 (C) by inserting “, or a covered financial corporation” after “Federal Deposit

1 Insurance Corporation Improvement Act of 1991”.

2 (d) ~~Involuntary Cases.—Section 303~~ **Conversion to Chapter 7.—Section 1112** of title 11, the
3 United States Code, is amended by adding at the end the following:

4 **“(g) Notwithstanding section 109(b), the court may convert a case under subchapter V to**
5 **a case under chapter 7 if—**

6 **“(1) a transfer approved under section 1185 has been consummated;**

7 **“(2) the court has ordered the appointment of a special trustee under section 1186;**
8 **and**

9 **“(3) the court finds, after notice and a hearing, that conversion is in the best interest**
10 **of the creditors and the estate.”.**

11 (e)(1) Section 726(a)(1) of title 11, the United States Code, is amended by inserting after
12 “first,” the following: “in payment of any unpaid fees, costs, and expenses of a special
13 trustee appointed under section 1186, and then”.

14 (2) Section 1129(a) of title 11, the United States Code, is amended by inserting after
15 paragraph (16) the following:

16 **“(17) In a case under subchapter V, all payable fees, costs, and expenses of the**
17 **special trustee have been paid or the plan provides for the payment of all such fees,**
18 **costs, and expenses on the effective date of the plan.**

19 **“(18) In a case under subchapter V, confirmation of the plan is not likely to cause**
20 **serious adverse effects on financial stability in the United States.”.**

21 (f) Section 322(b)(2) of title 11, the United States Code, is amended by striking “The” and
22 inserting “In cases under subchapter V, the United States trustee shall recommend to the
23 court, and in all other cases, the”.~~“(k) Notwithstanding any other provision of this section, an~~
24 ~~involuntary case may be commenced under subchapter V of chapter 11 only in accordance with~~
25 ~~section 1183.”.~~

26 SEC. 3. LIQUIDATION, REORGANIZATION, OR 27 RECAPITALIZATION OF A COVERED FINANCIAL 28 CORPORATION.

29 Chapter 11 of title 11, United States Code, is amended by adding at the end the following:

30 **“SUBCHAPTER V—LIQUIDATION, REORGANIZATION,**
31 **OR RECAPITALIZATION OF A COVERED FINANCIAL**
32 **CORPORATION**

33 **“1181. Inapplicability of other sections**

34 **“Sections 303 and 321(c) and 322(b) do not apply in a case under this subchapter concerning**
35 **a covered financial corporation.**

36 **“1182. Definitions for this subchapter**

1 “In this subchapter, the following definitions shall apply:

2 “(1) The term ‘Board’ means the Board of Governors of the Federal Reserve System.

3 “(2) The term ‘bridge company’ means a newly-formed corporation **to which property**
4 **of the estate may be transferred under section 1185(a) and** the equity securities of which
5 **are may be transferred trust to a special trustee under section 1185(a) 1186(a).**

6 “(3) The term ‘capital structure debt’ means all unsecured debt of the debtor **for**
7 **borrowed money**, other than a qualified **financial** contract, for which the debtor is the
8 primary obligor.

9 “(4) The term ‘contractual right’ means a contractual right of a kind defined in section
10 555, 556, 559, ~~or~~ 560, **or 561.**

11 “(5) The term ‘qualified financial contract’ means any contract of a kind defined in
12 paragraph (25), (38A), (47), or (53B) of section 101, section 741(7), or paragraph (4), (5),
13 (11), or (13) of section 761.

14 “**(6) the term ‘special trustee’ means the trustee of a trust formed under section**
15 **1186(a)(1).**

16 “1183. Commencement of a case concerning a covered financial 17 corporation

18 “(a) A case under this ~~chapter~~ **subchapter** concerning a covered financial corporation may be
19 commenced by the filing of a petition with the ~~bankruptcy court—~~ **court—**

20 ~~“(1) under section 301; or~~ **“(1) by the debtor under section 301 only if the debtor states**
21 **to the best of its knowledge under penalty of perjury in the petition that—**

22 ~~“(2) section 303 by the Board only if the Board certifies in the petition that it has~~
23 ~~determined that—~~

24 ~~“(A) the covered financial corporation—~~ **“(A) the debtor—**

25 “(i) has incurred losses that will deplete all or substantially all of the capital of
26 the covered financial corporation, and there is no reasonable prospect for the
27 covered financial corporation to avoid such depletion;

28 “(ii) is insolvent;

29 “(iii) is not paying, or is unable to pay, the debts of the covered financial
30 corporation (other than debts subject to a bona fide dispute as to liability or
31 amount) as they become due; or

32 “(iv) is likely to be in a financial condition specified in clause (i), (ii), or (iii)
33 sufficiently soon such that the immediate commencement of a case under this
34 subchapter is necessary to prevent ~~imminent substantial harm to~~ **serious adverse**
35 **effects on** financial stability in the United States; **and**

36 “(B) the commencement of a case under this title and ~~the effect of effecting~~ a
37 transfer under section 1185 is necessary to prevent ~~imminent substantial harm to~~
38 **serious adverse effects on** financial stability in the United States; ~~and or~~

1 ~~“(C) the bankruptcy court determines, after a hearing described in subsection (b), that the~~
2 ~~Board has shown by a preponderance of the evidence that the requirements under~~
3 ~~subparagraphs (A) and (B) have been satisfied.”~~ **(2) by the Board only if the Board states**
4 **to the best of its knowledge under penalty of perjury in the petition that—**

5 ~~“(b)(1) A hearing described in this subsection is a hearing held not later than 12”~~ **(A)**
6 **the covered financial corporation—**

7 **“(i) has incurred losses that will deplete all or substantially all of the**
8 **capital of the covered financial corporation, and there is no reasonable**
9 **prospect for the covered financial corporation to avoid such depletion;**

10 **“(ii) is insolvent;**

11 **“(iii) is not paying, or is unable to pay, the debts of the covered financial**
12 **corporation (other than debts subject to a bona fide dispute as to liability or**
13 **amount) as they become due; or**

14 **“(iv) is likely to be in a financial condition specified in clause (i), (ii), or (iii)**
15 **sufficiently soon such that the immediate commencement of a case under this**
16 **subchapter is necessary to prevent serious adverse effects on financial**
17 **stability in the United States; and**

18 **“(B) the commencement of a case under this title and effecting a transfer under**
19 **section 1185 is necessary to prevent serious adverse effects on financial stability in**
20 **the United States.**

21 **“(b)(1) Unless the debtor consents to an order for relief, the court shall hold a hearing on**
22 **the Board’s petition under subsection (a)(2) as soon as practicable but not later than 16**
23 **hours after the Board files such a petition under subsection (a)(2), with notice only to—**

24 **“(A) the covered financial corporation;**

25 **“(B) the Federal Deposit Insurance Corporation;**

26 **and “(C) the Office of the Comptroller of the Currency of the Department of the**
27 **Treasury; and**

28 ~~“(C) “(D) the Secretary of the Treasury.~~

29 ~~“(2) Only the Board and the entities specified in paragraph (1) and their counsel may attend or~~
30 ~~participate in a hearing described in this subsection. **The Board or the trustee may request that**~~
31 ~~**pleadings, hearings, transcripts, and orders in connection with a hearing described in this**~~
32 ~~**subsection be sealed if their disclosure could create financial instability in the United**~~
33 ~~**States. Transcripts of such hearing shall be sealed until the earlier of —**~~

34 ~~“(A) 3 months after the commencement of a bankruptcy case; and~~

35 ~~“(B) 18 months after the conclusion of the hearing.~~

36 ~~“(3) All pleadings, **hearings**, transcripts, and orders shall be filed under seal during the~~
37 ~~24-hour period beginning when the case is commenced and **may sealed under paragraph (2)**~~
38 ~~**shall** be available to only the ~~bankruptcy court,~~ **the** appellate panel, the covered financial~~
39 ~~corporation, the Federal Deposit Insurance Corporation, **the Office of the Comptroller of the**~~
40 ~~**Currency of the Department of the Treasury,** the Secretary of the Treasury, and the Board.~~

1 Notwithstanding paragraph (2), if the case is dismissed, all court documents, including pleadings,
2 **hearings**, transcripts, and orders, shall be expunged. If the case is not dismissed, the court
3 documents shall be made available to the entities specified in section 1185(b) immediately and
4 shall be sealed with respect to all other entities until the expiration of the 90 day period
5 beginning on the date the case is commenced. **permanently sealed.**

6 ~~“(4) The bankruptcy court shall enter, not later than 14 hours after the filing of the Board’s~~
7 ~~petition under section 303, an order either dismissing the case or ordering relief against the~~
8 ~~covered financial corporation.~~

9 ~~“(c)(1) The covered financial corporation or the Board may file an appeal in the court of~~
10 ~~appeals for review by the appellate panel of a determination made by the bankruptcy court under~~
11 ~~subsection (a)(2)(C) not later than 1 hour after the bankruptcy court makes such determination,~~
12 ~~with notice only to the entities specified in subsection (b)(1) and the Board.~~

13 ~~“(2) The appellate panel specified under section 298(e)(1) of title 28 for the judicial circuit in~~
14 ~~which the case is pending shall hear the appeal under paragraph (1) and review within 12 hours~~
15 ~~of the determination of the bankruptcy court under subsection (a)(2)(B) such determination for~~
16 ~~abuse of discretion. The appellate panel shall enter an order determining the matter that is the~~
17 ~~subject of the appeal not later than 14 hours after the appeal is filed.~~

18 ~~“(3) Notwithstanding sections 158 and 1292 of title 28, the determination of a decision by a~~
19 ~~appellate panel under this section is final and may not be appealed further.~~

20 ~~“(d)(1)“(c)(1) The commencement of a case under subsection (a)(1) constitutes an order for~~
21 ~~relief under this subchapter.~~

22 ~~“(2) In a case commenced under subsection (a)(2), the bankruptcy court shall promptly order~~
23 ~~relief under this subchapter if— **after notice and hearing required under subsection (b) and**~~
24 ~~**not later than 18 hours after the filing of the Board’s petition, the court shall enter—**~~

25 ~~“(A) the bankruptcy court makes a determination under subsection (a)(2)(C)“(A) an~~
26 ~~**order for relief—**~~

27 ~~“(i) if the Board has shown by a preponderance of the evidence at the hearing~~
28 ~~**under this subsection** that the requirements of subsections (a)(2)(A) and (a)(2)(B)~~
29 ~~have been satisfied; and **under subsection (a)(2) have been satisfied, or**~~

30 ~~“(B)(i) the period for appeal under subsection (c)(1) has expired without an appeal~~
31 ~~having been filed; or~~

32 ~~“(ii) the appellate panel affirms the determination of the bankruptcy court under~~
33 ~~subsection (c)(2).~~

34 ~~“(3) Notwithstanding paragraph (2), the bankruptcy court shall order relief~~
35 ~~immediately in a case commenced under subsection (a)(2)“(ii) if the debtor consents to~~
36 ~~the Board’s petition under subsection (a)(2); or~~

37 ~~“(B) an order dismissing the case.~~

38 ~~“(d)(1) The covered financial corporation or the Board may appeal to the court of~~
39 ~~appeals from an order entered by the court under subsection (c)(2) not later than 1 hour~~
40 ~~after the court enters such order, with notice only to the entities specified in subsection~~
41 ~~(b)(1) and the Board. Such order shall be stayed pending such appeal.~~

1 “(2) The appellate panel specified under section 298(c)(1) of title 28 for the judicial
2 circuit in which the case is pending shall hear the appeal under paragraph (1) within 12
3 hours of the filing of the notice of appeal under this subsection. The standard of review
4 shall be abuse of discretion. The appellate panel shall enter an order determining the
5 matter that is the subject of the appeal not later than 14 hours after the notice of appeal is
6 filed.

7 “(3) The court may not, on account of an appeal from an order for relief under section
8 1183(d)(1), delay any proceeding under section 1185, except that the court shall not
9 authorize a transfer under section 1185 before the determination of the appeal.

10 “(e) The members of the board of directors (or body performing similar functions) of a
11 covered financial company shall have no liability to shareholders, creditors or other parties
12 in interest for a good faith filing or consenting in good faith to a petition with respect to a
13 case under this subchapter, or for any reasonable action taken in good faith in
14 contemplation of or in connection with such a petition or a transfer under section 1185 or
15 section 1186, whether prior to or after commencement of the case.

16 “(f) Counsel to the debtor or the Board shall provide, to the greatest extent practicable,
17 sufficient confidential notice to the Office of Court Services of the Administrative Office of
18 the United States Courts regarding the potential commencement of a subchapter V case
19 without disclosing the identity of the potential debtor in order to allow such office to
20 randomly designate and ensure the ready availability of one of the bankruptcy judges
21 designated under section 298(b)(1) of title 28 to be available to preside over such
22 subchapter V case.

23 “1184. Regulators

24 “The Board, the Securities Exchange Commission, the Office of the Comptroller of the
25 Currency of the Department of the Treasury, and the Federal Deposit Insurance Corporation
26 may raise and may appear and be heard on any issue in any case or proceeding under this
27 subchapter.

28 “1185. Special transfer of property of the estate

29 “(a) On request of the trustee or the Board, and after notice and a hearing that shall occur not
30 less than 24 hours after the ~~commencement of the case~~ **order for relief**, the court may order a
31 transfer under this section of property of the estate, **and the assignment of executory contracts,**
32 **unexpired leases, and qualified financial contracts of the debtor**, to a bridge company. **Upon**
33 **the entry of an order approving such a transfer, any property transferred under such**
34 **order shall no longer be property of the estate.** Except as provided under this section, the
35 provisions of ~~section~~ **sections 363 and 365** shall apply to a transfer **and assignment** under this
36 section.

37 “(b) Unless the court orders otherwise, notice of a request for an order under subsection (a)
38 shall consist of electronic or telephonic notice of not less than 24 hours to—

39 “(1) the debtor;

40 “(2) ~~the trustee~~;

41 “(3) the holders of the 20 largest secured claims against the debtor;

1 ~~“(4)“(3)~~ the holders of the 20 largest unsecured claims against the debtor;
2 ~~“(5)“(4)~~ counterparties to any **debt, executory contract, unexpired lease, and** qualified
3 financial contract requested to be transferred under this section;

4 ~~“(6)“(5)~~ the Board;

5 ~~“(7)“(6)~~ the Federal Deposit Insurance Corporation;

6 ~~“(8)“(7)~~ the Secretary of the Treasury **and the Office of the Comptroller of the**
7 **Currency of the Treasury;**

8 ~~“(8)~~ **the Securities and Exchange Commission;**

9 “(9) the United States trustee or bankruptcy administrator; and

10 “(10) each primary financial regulatory agency, as defined in section 2(12) of the
11 Dodd-Frank Wall Street Reform and Consumer Protection Act, with respect to any affiliate
12 ~~that is~~ **the equity securities of which are** proposed to be transferred under this section.

13 “(c) The court may not order a transfer under this section unless the court determines, based
14 upon a preponderance of the evidence, that—

15 “(1) the transfer under this section is necessary to prevent ~~imminent substantial harm to~~
16 **serious adverse effects on** financial stability in the United States;

17 “(2) the proposed transfer does not provide for the assumption of any capital structure
18 debt by the bridge company;

19 ~~and~~“(3) **the proposed transfer does not provide for the transfer of the equity of the**
20 **debtor;**

21 ~~“(3) the Board certifies to the court that the Board has determined~~“(4) **the party**
22 **requesting the transfer under this subsection has demonstrated** that the bridge company
23 ~~provides adequate assurance of future performance of any~~ **is not likely to fail to meet the**
24 **obligations of any debt, executory contract, qualified financial contract, or unexpired**
25 **lease assumed and assigned to the bridge company, and of payment of any debt assumed by**
26 ~~the bridge company, in the transfer under this section.;~~

27 ~~“(d) The~~“(5) **the proposed transfer provides for the transfer to a special trustee all of**
28 **the equity securities in the bridge company and appointment of a special trustee in**
29 **accordance with section 1186;**

30 “(6) **after giving effect to the transfer, adequate provision has been made for the**
31 **fees, costs, and expenses of the estate and special trustee; and**

32 “(7) **the bridge company will have governing documents, and initial directors and**
33 **senior officers, that are in the best interest of creditors and the estate.**

34 “(d) **Immediately before a transfer under the section, the** bridge company that is the
35 recipient of a ~~the transfer under this section~~ shall—

36 “(1) not have any property, executory contracts, unexpired leases, or debts, other than any
37 property acquired or executory contracts, unexpired leases, or debts assumed when acting as
38 a transferee of a transfer under this section; **and**

39 “(2) have equity securities that ~~solely~~ are property of the estate, which may be sold or

1 distributed **in accordance with this title**. ~~solely in accordance with section 1186; and~~

2 ~~“(3) obtain court approval of the governing documents of the bridge company, including~~
3 ~~the initial the directors and senior officers of the corporation.~~

4 “1186. Special trustee

5 ~~“(a) On request of the trustee or the Board, the court may order~~ **A transfer approved under**
6 **section 1185 shall provide for** the trustee to transfer to a trust **special trustee** all of the equity
7 securities in the bridge ~~corporation~~ **company** that is the recipient of a transfer under section 1185
8 to hold in trust for the sole benefit of the estate ~~if—~~ **as well as assets sufficient to satisfy the**
9 **special trustee’s fees, costs, and expenses if—**

10 ~~“(1) the trust is a newly formed entity that shall be”~~ **“(1) the special trustee is the trustee**
11 **of the trust that is newly-**formed at the direction of the trustee ~~court~~ **and shall exist exists**
12 for the sole purpose of holding and administering the **equity** securities of the bridge
13 company in accordance with the trust agreement;

14 ~~and~~ **“(2) the Board is consulted regarding the identity of the proposed special trustee**
15 **and the results of such consultation are disclosed to the court;**

16 ~~“(2)”~~ **“(3) the court approves—**

17 **“(A) the trust agreement governing the trust; and**

18 **“(B) the appointment of a special trustee to administer such trust** ~~(in this subchapter~~
19 ~~referred to as the ‘special trustee’); and~~

20 **“(4) the court determines by a preponderance of the evidence that the transfer of the**
21 **equity securities of the bridge company to the special trustee is in the best interest of**
22 **the creditors and the estate.**

23 ~~“(b) The trust agreement governing the trust shall provide—~~

24 ~~“(1) for the payment of the fees, costs and, expenses, and indemnities of the special~~
25 ~~trustee from the assets of the debtor’s estate;~~

26 ~~“(2) that the special trustee provide—~~

27 ~~“(A) periodic~~ **quarterly** reporting to the estate ~~and the bankruptcy, which shall be~~
28 **filed with the court; and**

29 ~~“(B) information about the bridge company as reasonably requested by a party in~~
30 ~~interest to prepare a disclosure statement for a plan providing for distribution of any~~
31 ~~securities of the bridge company if such information is necessary to prepare such~~
32 ~~disclosure statement;~~

33 ~~“(3) that for as long as the equity securities of the bridge company are held by the~~
34 ~~trust, the special trustee provide shall file a notice to with the bankruptcy court in~~
35 ~~connection with—~~

36 ~~“(A) any change in a director or senior officer of the bridge company;~~

37 ~~“(B) any modification to the governing documents of the bridge company; and~~

38 ~~“(C) any material corporate action of the bridge company, including—~~

- 1 “(i) recapitalization;
- 2 “(ii) a ~~liquidity~~ **material** borrowing;
- 3 “(iii) termination of an intercompany debt or guarantee;
- 4 “(iv) a transfer of a substantial portion of the assets of the bridge company; or
- 5 “(v) the issuance or sale of any securities of the bridge company;

6 “(4) that ~~the proceeds of the~~ **any** sale of any equity securities of the bridge company **shall**
7 **not be consummated until the special trustee consults with the Federal Deposit**
8 **Insurance Corporation and the Board regarding such sale and discloses the results of**
9 **such consultation with the court;**

10 **“(5) that, subject to reserves for payments permitted under paragraph (1) provided**
11 **for in the trust agreement, the proceeds of the sale of any equity securities of the**
12 **bridge company** by the special trustee be held in trust for the benefit of or transferred to the
13 estate;

14 ~~and~~“(6) **the process and guidelines for the replacement of the special trustee; and**

15 ~~“(5)“(7)~~“(7) that the property held in trust by the special trustee is subject to distribution in
16 accordance with ~~the plan and~~ subsection (c).

17 “(c)(1) The special trustee shall distribute the assets held in ~~trust~~ **trust**—

18 **“(A) if the court confirms a plan in the case,** in accordance with the plan on the
19 effective date of the plan ~~and, as soon thereafter as practicable, thereafter;~~ **or**

20 **“(B) if the case is converted to a case under chapter 7, as ordered by the court.**

21 **“(2) As soon as practicable after a final distribution under paragraph (1),** the office of the
22 special trustee shall terminate, except as may be necessary to wind up and conclude the business
23 and financial affairs of the trust.

24 “(d) After a transfer **to the special trustee** under **this** section ~~1185~~, the special trustee shall be
25 subject only to applicable nonbankruptcy law, and the actions and conduct of the special trustee
26 shall no longer be subject to approval by the court in the case under this subchapter.

27 “1187. Temporary and supplemental automatic stay; assumed 28 debt

29 “(a)(1) A petition filed under section 1183 operates as a stay, applicable to all entities, of the
30 termination, acceleration, or modification of any debt, **contract**, lease, or agreement of the kind
31 described in paragraph (2), or of any right or obligation under any such debt, contract, lease, or
32 agreement, solely because of—

33 “(A) a default by the debtor under any such debt, contract, lease, or agreement;

34 “(B) a provision in such debt, contract, lease, or agreement, or in applicable
35 nonbankruptcy law, that is conditioned on—

36 “(i) the insolvency or financial condition of the debtor at any time before the closing
37 of the case;

- 1 “(ii) the commencement of a case under this title concerning the debtor;
- 2 “(iii) the appointment of or taking possession by a trustee in a case under this title
- 3 concerning the debtor or by a custodian before the commencement of the case;
- 4 “(iv) a credit rating agency rating, or absence or withdrawal of a credit rating agency
- 5 rating—
- 6 “(I) of the debtor at any time after the commencement of the case;
- 7 “(II) of an affiliate during the ~~48 hours after~~ **period from** the commencement
- 8 of the case ~~;~~ **until 48 hours after such order is entered;**
- 9 ~~“(III) while~~ **“(III) of the bridge company while the trustee or** the special
- 10 trustee is a direct or indirect beneficial holder of more than 50 percent of the
- 11 equity securities of—
- 12 “(aa) the bridge company; or
- 13 “(bb) ~~an~~ **the affiliate, if all of the direct or indirect interests in the**
- 14 **affiliate that are property of the estate are transferred under section**
- 15 **1185; or**
- 16 **“(IV) of an affiliate while the trustee or the special trustee is a direct or**
- 17 **indirect beneficial holder of more than 50 percent of the equity securities**
- 18 **of—**
- 19 **“(aa) the bridge company; or**
- 20 **“(bb) the** affiliate, if all of the direct or indirect interests in the affiliate
- 21 that are property of the estate are transferred under section 1185.
- 22 “(2) A debt, contract, lease, or agreement described in this paragraph is—
- 23 “(A) any debt (other than capital structure debt), executory contract, **or unexpired lease**
- 24 **of the debtor** (other than a qualified financial contract), ~~or unexpired lease of the debtor;~~
- 25 “(B) any agreement under which the debtor issued or is obligated for debt (other than
- 26 capital structure debt);
- 27 “(C) any debt, executory contract, **or unexpired lease of an affiliate** (other than a
- 28 qualified financial contract), ~~or unexpired lease of an affiliate;~~ or
- 29 “(D) any agreement under which an affiliate issued or is obligated for debt.
- 30 “(3) The stay under this subsection terminates—
- 31 “(A) for the benefit of the debtor, upon the earliest of—
- 32 “(i) 48 hours after the commencement of the case;
- 33 “(ii) assumption of the debt, contract, lease, or agreement **by the bridge company**
- 34 under an order authorizing a transfer under section 1185; or
- 35 “(iii) a final order of the court denying the request for a transfer under section 1185;
- 36 and
- 37 “(B) for the benefit of an affiliate, upon the earliest of—

1 “(i) ~~the~~ entry of an order authorizing a transfer under section 1185 in which the
2 direct or indirect interests in the affiliate that are property of the estate are not
3 transferred under section 1185;

4 “(ii) a ~~determination~~ **final order** by the court denying the request for a transfer
5 under section 1185; or

6 “(iii) 48 hours after the commencement of the case if the court has not ordered a
7 transfer under section 1185.

8 “(4) Subsections (d), (e), (f), and (g) of section 362 apply to a stay under this subsection.

9 “(b) A debt, executory contract (other than a qualified financial contract), or unexpired lease
10 of the debtor, or an agreement under which the debtor has issued or is obligated for any debt,
11 may be assumed by a bridge company in a transfer under section 1185 notwithstanding any
12 provision in an agreement or in applicable nonbankruptcy law that—

13 “(1) prohibits, restricts, or conditions the assignment of the debt, contract, lease, or
14 agreement; or

15 “(2) terminates or modifies, or permits a party other than the debtor to terminate or
16 modify, the debt, contract, lease, or agreement on account of—

17 “(A) the assignment of the debt, contract, lease, or agreement; or

18 “(B) a change in control of any party to the debt, contract, lease, or agreement.

19 “(c)(1) A debt, contract, lease, or agreement of the kind described in subparagraph (A) or (B)
20 of subsection (a)(2) may not be terminated or modified, and any right or obligation under such
21 debt, contract, lease, or agreement may not be terminated or modified, as to the bridge company
22 solely because of a provision in the debt, contract, lease, or agreement or in applicable
23 nonbankruptcy law—

24 “(A) of the kind described in subsection (a)(1)(B) as applied to the debtor;

25 “(B) that prohibits, restricts, or conditions the assignment of the debt, contract, lease, or
26 agreement; or

27 “(C) that terminates or modifies, or permits a party other than the debtor to terminate or
28 modify, the debt, contract, lease or agreement on account of—

29 “(i) the assignment of the debt, contract, lease, or agreement; or

30 “(ii) a change in control of any party to the debt, contract, lease, or agreement.

31 “(2) If there is a default by the debtor under a provision other than the kind described in
32 paragraph (1) in a debt, contract, lease or agreement of the kind described in subparagraph (A) or
33 (B) of subsection (a)(2), the bridge company may assume such debt, contract, lease, or
34 agreement only if the bridge company—

35 “(A) ~~cures, or provides adequate assurance to the court in connection with a transfer~~
36 ~~under section 1185 that the bridge company will promptly cure,~~ **shall cure** the default;

37 “(B) compensates, or provides adequate assurance ~~to the court~~ in connection with a
38 transfer under section 1185 that the bridge company will promptly compensate, a party
39 other than the debtor to the debt, contract, lease, or agreement, for any actual pecuniary loss

1 to the party resulting from the default; and

2 “(C) provides adequate assurance to the court in connection with a transfer under section
3 1185 of future performance under the debt, contract, lease, or agreement, **as determined by**
4 **the court under section 1185(c)(3).**

5 “1188. Treatment of qualified financial contracts and affiliate
6 contracts

7 “(a) Notwithstanding sections 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 362(o), 555, 556,
8 559, 560, and 561, a petition filed under section 1183 operates as a stay, during the period
9 specified in section 1187(a)(3)(A), applicable to all entities, of the exercise of a contractual
10 right—

11 “(1) to cause the **modification**, liquidation, termination, or acceleration of a qualified
12 financial contract of the debtor or an affiliate;

13 “(2) to offset or net out any termination value, payment amount, or other transfer
14 obligation arising under or in connection with a qualified financial contract of the debtor or
15 an affiliate;

16 “(3) under any security agreement or arrangement or other credit enhancement forming a
17 part of or related to a qualified financial contract of the debtor or an affiliate.

18 “(b)(1) During the period specified in section 1187(a)(3)(A), the trustee or the affiliate shall
19 perform all payment and delivery obligations under a **such** qualified financial contract of the
20 debtor or the affiliate, as the case may be, that become due after the commencement of the case.
21 The stay provided under subsection (a) terminates as to a qualified financial contract of the
22 debtor or an affiliate immediately upon the failure of the trustee or the affiliate, as the case may
23 be, to perform any such obligation during such period.

24 “(2) **A Any failure by a** counterparty to any qualified financial contract of the debtor ~~that is~~
25 ~~assumed and assigned in a transfer under section 1185 may perform any unperformed or any~~
26 **affiliate to perform any** payment or delivery obligation under ~~the~~ **such** qualified financial
27 contract ~~promptly after the assumption and assignment with the same effect as if the counterparty~~
28 ~~had timely performed such obligations.~~, **including during the pendency of the stay provided**
29 **under subsection (a), shall constitute a breach of such qualified financial contract by the**
30 **counterparty.**

31 “(c) A qualified financial contract between an entity and the debtor may not be assigned to or
32 assumed by the bridge company in a transfer under section 1185 unless—

33 “(1) all qualified financial contracts between the entity and the debtor are assigned to and
34 assumed by the bridge company in the transfer under section 1185;

35 “(2) all claims of the entity against the debtor under any qualified financial contract
36 between the entity and the debtor (other than any claim that, under the terms of the qualified
37 financial contract, is subordinated to the claims of general unsecured creditors) are assigned
38 to and assumed by the bridge company;

39 “(3) all claims of the debtor against the entity under any qualified financial contract
40 between the entity and the debtor are assigned to and assumed by the bridge company; and

1 “(4) all property securing or any other credit enhancement furnished by the debtor for any
2 qualified financial contract described in paragraph (1) or any claim described in paragraph
3 (2) or (3) under any qualified financial contract between the entity and the debtor is
4 assigned to and assumed by the bridge company.

5 ~~“(d) Section 365(b)(1) does not apply to a default under~~ **Notwithstanding any provision of a**
6 **qualified financial contract or of applicable nonbankruptcy law,** a qualified financial
7 contract of the debtor that is assumed ~~and~~ **or** assigned in a transfer under section 1185 **may not**
8 **be accelerated, terminated, or modified, after the entry of the order approving a transfer**
9 **under section 1185, and any right or obligation under the qualified financial contract may**
10 **not be accelerated, terminated, or modified, after the entry of the order approving a**
11 **transfer under section 1185 solely because of a condition described in section 1187(c)(1),**
12 **other than a condition if the default—**

13 ~~“(1) is a breach of a provision of the kind specified in section 1187(a)(1)(B)(iv)(III) or~~
14 **section 1187(b) that occurs after property of the estate no longer includes a direct beneficial**
15 **interest or an indirect beneficial interest through the special trustee, in ; or**

16 ~~“(2) in the case of a breach of a provision of the kind specified in section-~~
17 **1187(a)(1)(B)(iv)(III), occurs while the bridge company is a direct or indirect beneficial holder-**
18 **of more than 50 percent of the equity securities of the affiliate. bridge company.**

19 ~~“(e) Notwithstanding any provision of a qualified financial contract or of applicable-~~
20 **nonbankruptcy law, a qualified financial contract of the debtor that is assumed or assigned in a**
21 **transfer under section 1185 may not be terminated or modified, and any right or obligation under**
22 **the qualified financial contract may not be terminated or modified, at any time solely because of**
23 **a condition described in section 1187(a), after the entry of the order under section 1185 until-**
24 **such time as the special trustee is no longer the direct or indirect beneficial holder of more than-**
25 **50 percent of the equity securities of the bridge company.**

26 ~~“(f)“(e) Notwithstanding any provision of any agreement or in applicable nonbankruptcy law,~~
27 **an agreement of an affiliate (including an executory contract, an unexpired lease, qualified**
28 **financial contract,** or an agreement under which the affiliate issued or is obligated for debt) and
29 any right or obligation under such agreement may not be terminated or modified, solely because
30 of a condition described in section ~~1187(b)~~ **1187(c)(1), other than a condition of the kind**
31 **specified in section 1187(a)(1)(B)(iv)(III) or section 1187(b) that occurs after the bridge**
32 **company is no longer a direct or indirect beneficial holder of more than 50 percent of the**
33 **equity securities of the affiliate, at any time after the commencement of the case if—**

34 “(1) all direct or indirect interests in the affiliate that are property of the estate are
35 transferred under section 1185 to the bridge company within the period specified in
36 subsection (a);

37 “(2) the bridge company assumes—

38 “(A) any guarantee or other credit enhancement issued by the debtor relating to the
39 agreement of the affiliate; and

40 “(B) any right of setoff, netting arrangement, or debt of the debtor that directly arises
41 out of or directly relates to the guarantee or credit enhancement; and

42 “(3) any property of the estate that directly serves as collateral for the guarantee or credit

1 enhancement is transferred to the bridge company.

2 “1189. Licenses, permits, and registrations

3 “(a) Notwithstanding any otherwise applicable nonbankruptcy law, if a request is made under
4 section 1185 for a transfer of property of the estate, any Federal, State, or local license, permit, or
5 registration that the debtor or an affiliate had immediately before the commencement of the case
6 and that is proposed to be transferred under section 1185 may not be terminated or modified at
7 any time after the request solely on account of—

8 “(1) the insolvency or financial condition of the debtor at any time before the closing of
9 the case;

10 “(2) the commencement of a case under this title concerning the debtor; ~~or~~

11

12 “(3) the appointment of or taking possession by a trustee in a case under this title
13 concerning the debtor or by a custodian before the commencement of the case; **or**

14 “(4) **a transfer under section 1185.-**

15

16 “(b) Notwithstanding any otherwise applicable nonbankruptcy law, any Federal, State, or local
17 license, permit, or registration that the debtor had immediately before the commencement of the
18 case that is included in a transfer under section 1185 shall be valid and all rights and obligations
19 thereunder shall vest in the bridge company.

20 “1190. Exemption from securities laws ~~and special tax~~ 21 ~~provisions~~

22 “For purposes of section 1145, a security of the bridge company shall be deemed to be a
23 security of a successor to the debtor under a plan if the court approves the disclosure statement
24 for the plan as providing adequate information (as defined in section 1125(a)) about the bridge
25 company and the security.

26 “1191. Inapplicability of certain avoiding powers

27 “~~Except with respect to a capital structure debt, a~~“A transfer made or an obligation incurred by
28 the debtor **to an affiliate prior to or after the commencement of the case**, including any
29 obligation released by the debtor or the estate; to or for the benefit of an affiliate ~~in~~, **in**
30 **contemplation of or in connection with** a transfer under section 1185 is not avoidable under
31 section 544, 547, 548(a)(1)(B), or 549, or under any similar nonbankruptcy ~~law.~~ **law.**

32 “1192. Consideration of Financial Stability

33 “The court may consider the effect that any decision in connection with this subchapter
34 may have on financial stability in the United States.”.

35 SEC. 4. AMENDMENTS TO TITLE 28, UNITED STATES 36 CODE.

1 (a) Amendment to Chapter 13.—Chapter 13 of title 28, United States Code, is amended by
2 adding at the end the following:

3 **“298. Judge for a case under subchapter V of chapter 11 of title**
4 **11**

5 “(a) Notwithstanding section 295, the Chief Justice of the United States shall designate not
6 fewer than 3 judges of the ~~court~~ **courts** of appeals in ~~each circuit~~ **not fewer than 4 circuits** to
7 serve on an appellate panel to be available to hear an appeal under section ~~4403~~ **1183 of title 11**
8 in a case under ~~such~~ **title 11** concerning a covered financial corporation. **Appellate judges may**
9 **request to be considered by the Chief Justice of the United States for such designation.**

10 “(b)(1) Notwithstanding section 295, the Chief Justice of the United States shall designate a
11 ~~panel of~~ not fewer than 10 bankruptcy judges, ~~who have significant experience with cases under~~
12 ~~title 11 in which a financial institution or a company with assets or liabilities exceeding~~
13 ~~\$1,000,000,000 is a debtor,~~ to be available to hear a case under subchapter V of **chapter 11 of**
14 **title 11. Bankruptcy judges may request to be considered by the Chief Justice of the United**
15 **States for such designation. ~~title 11.~~**

16
17 “(2) Notwithstanding section ~~295~~ **155**, a case under subchapter V of **chapter 11** of title 11
18 shall be heard under section 157 by a bankruptcy judge designated under paragraph (1), who
19 shall be assigned to hear such case by the chief judge of the court of appeals for the circuit
20 embracing the district in which the case is pending. **To the greatest extent practicable, the**
21 **parties should obtain the approvals required under section 155.**

22 “(3) If the bankruptcy judge assigned to hear a case under paragraph (2) is not assigned to the
23 district in which the case is pending, the bankruptcy judge shall be temporarily assigned to the
24 district.

25 “(c)(1) **The court of appeals shall have jurisdiction of appeals from all orders for relief**
26 **and orders of dismissal under section 1183 of title 11.**

27 “(2) Notwithstanding section 295, in an appeal under ~~section 158(a)~~ **paragraph (1)** in a case
28 under title 11 concerning a covered financial corporation shall be heard by—

29 “(A) 3 judges selected from the appellate panel designated under subsection (a); or

30 “(B) if the 3 judges of such panel are not immediately available to hear the case, 3 judges
31 ~~from another appellate panel~~ designated under subsection (a) from another circuit and
32 assigned by the Chief Justice of the United States to hear the case;

33 ~~“(2) If~~ **“(3) If any of the judges of** the appellate panel specified in paragraph ~~(1)~~ **(2)** are not
34 assigned to the ~~district~~ **circuit** in which the case ~~appeal~~ **appeal** is pending, the ~~appellate panel judges~~
35 shall be temporarily assigned to the ~~district.~~ **circuit.**

36 ~~“(3)~~ **“(4)** A case under subchapter V of **chapter 11 of title 11**, and all proceedings in the case,
37 shall take place in the district in which the case is pending.

38 “(d) In this section, the term ‘covered financial corporation’ has the meaning given that term
39 in section 101(9A) of title 11.”

1 (b) Amendment to Section 1334.—Section 1334 of title 28, United States Code, is amended
2 by adding at the end the following:

3 “(f) This section does not grant jurisdiction to the district court after a transfer pursuant to an
4 order under section 1185 of title 11 of any proceeding related to a special trustee appointed, or to
5 a bridge company formed, in connection with a case under subchapter V of title 11, and after a
6 transfer pursuant to an order under section 1185 of title 11, the district courts in the district in
7 which a case under title 11 concerning a covered financial corporation (as defined in section 101
8 of title 11) is pending shall not have jurisdiction over the property held in trust by the special
9 trustee, the bridge company, or the property of the bridge company.” **chapter 11 of title 11.”.**

10 (c) Technical and Conforming Amendment.—The table of sections for chapter 13 of title 28,
11 United States Code, is amended by adding at the end the following:

12 “298. Judge for a case under subchapter V of **chapter 11 of title 11.”.**