

FEDERAL RESERVE SYSTEM

Docket Number OP-1418

Request for Information Relating to Studies Regarding the Resolution of Financial Companies Under the Bankruptcy Code

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice and request for information.

SUMMARY: Section 216 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) requires the Board, in consultation with the Administrative Office of the United States Courts (the “AOUSC”), to conduct a study regarding the resolution of financial companies under Chapter 7 or Chapter 11 of the United States Bankruptcy Code (Title 11, U.S. Code) (the “Bankruptcy Code”).

Section 217 of the Dodd-Frank Act requires the Board, in consultation with the AOUSC, to conduct a study regarding international coordination relating to the resolution of systemic financial companies under the Bankruptcy Code and applicable foreign law.

Section 216 and Section 217 of the Dodd-Frank Act each identifies specific issues that are to be studied under the relevant section. The Board is issuing this request for information through public comment to assist the Board in conducting these studies.

DATES: Comment due date: [Insert 30 days after publication in the Federal Register].

ADDRESSES: You may submit comments, identified by Docket No. OP – 1418, by any of the following methods:

- **Agency Web Site:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at

<http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **E-mail:** regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.
- **Fax:** (202) 452-3819 or (202) 452-3102.
- **Mail:** Address to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

All public comments will be made available on the Board's web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Sophia Allison, Senior Counsel (202/452-3565), or Gillian Burgess, Senior Attorney (202/736-5564), Legal Division; for users of Telecommunications Device for the Deaf (TDD) only, contact (202/263-4869); Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act was enacted on July 21, 2010. Under Section 216 of the Dodd-Frank Act, the Board is required to conduct a study, in consultation with the AOUSC, regarding the resolution of financial companies under Chapter 7 or Chapter 11 of the Bankruptcy Code (the “Section 216 Study”). Section 216 specifies five specific issues that are to be included in the Section 216 Study:

(A) the effectiveness of chapter 7 and chapter 11 of the Bankruptcy Code in facilitating the orderly resolution or reorganization of systemic financial companies;

(B) whether a special financial resolution court or panel of special masters or judges should be established to oversee cases involving financial companies to provide for the resolution of such companies under the Bankruptcy Code, in a manner that minimizes adverse impacts on financial markets without creating moral hazard;

(C) whether amendments to the Bankruptcy Code should be adopted to enhance the ability of the Code to resolve financial companies in a manner that minimizes adverse impacts on financial markets without creating moral hazard;

(D) whether amendments should be made to the Bankruptcy Code, the Federal Deposit Insurance Act, and other insolvency laws to address the manner in which qualified financial contracts of financial companies are treated; and

(E) the implications, challenges, and benefits to creating a new chapter or

subchapter of the Bankruptcy Code to deal with financial companies.

Section 217 of the Dodd-Frank Act requires the Board, in consultation with the AOUSC, to conduct a study regarding international coordination relating to the resolution of systemic financial companies under the Bankruptcy Code and applicable foreign law (the “Section 217 Study”). Section 217 specifies four specific issues that are to be included in the Section 217 Study:

(A) the extent to which international coordination currently exists;

(B) current mechanisms and structures for facilitating international cooperation;

(C) barriers to effective international coordination; and

(D) ways to increase and make more effective international coordination of the resolution of financial companies, so as to minimize the impact on the financial system without creating moral hazard.

II. Solicitation for Comments on the Bankruptcy Studies

To assist the Board in conducting the Section 216 Study and the Section 217 Study, the Board seeks public comment on the following questions:

1. With respect to the Section 216 Study, how should the Board address the following areas, taking into account among other things the enactment of Title II of the Dodd-Frank Act?

(i) the effectiveness of chapter 7 and chapter 11 of the Bankruptcy Code in facilitating the orderly resolution or reorganization of systemic financial companies;

(A) the key factors and considerations that should be taken into account in assessing the “effectiveness” of the Bankruptcy Code in facilitating the orderly resolution or reorganization of systemic financial companies;

(B) the key factors and considerations that should be taken into account in assessing whether the Bankruptcy Code is effective in facilitating the “orderly” resolution or reorganization of systemic financial companies;

(C) the extent to which the effectiveness of the Bankruptcy Code in facilitating the orderly resolution or reorganization of “systemic financial companies” differs from the effectiveness of the Bankruptcy Code in facilitating the orderly resolution or reorganization of non-systemic financial companies;

(ii) whether a special financial resolution court or panel of special masters or judges should be established to oversee cases involving financial companies to provide for the resolution of such companies under the Bankruptcy Code, in a manner that minimizes adverse impacts on financial markets without creating moral hazard;

(A) the “adverse impacts on financial markets” that would be minimized by the establishment of such a court or panel;

(B) how establishing such a court or panel would minimize “moral hazard;”

(C) the key factors and considerations that should be taken into account in assessing whether the establishment of such a court or panel would minimize such adverse impacts without creating such moral hazard;

(iii) whether amendments to the Bankruptcy Code should be adopted to enhance the ability of the Code to resolve financial companies in a manner that minimizes adverse impacts on financial markets without creating moral hazard;

(A) the “adverse impacts on financial markets” that would be minimized by amendments to the Bankruptcy Code;

(B) how such amendments would minimize “moral hazard;”

(C) the specific amendments to the Bankruptcy Code that would minimize such adverse impacts without creating such moral hazard;

(D) the key factors and considerations that should be taken into account in assessing whether such amendments to the Bankruptcy Code would minimize such adverse impacts without creating such moral hazard;

(iv) whether amendments should be made to the Bankruptcy Code, the Federal Deposit Insurance Act, and other insolvency laws to address the manner in which qualified financial contracts of financial companies are treated;

(A) the specific amendments to the Bankruptcy Code, the Federal Deposit Insurance Act, and other insolvency laws that might be made to address the manner in which qualified financial contracts of financial companies are treated;

(B) the key factors and considerations that should be taken into account in assessing whether such amendments to the Bankruptcy Code, the Federal Deposit Insurance Act, and other insolvency laws should be made;

(C) the key factors and considerations that should be taken into

account in assessing the likely outcome of making or not making such amendments;

(v) the implications, challenges, and benefits to creating a new chapter or subchapter of the Bankruptcy Code to deal with financial companies;

(A) the key factors and considerations that should be taken into account in assessing whether a new chapter or subchapter of the Bankruptcy Code should be created to deal with financial companies;

(B) the benefits that might result from the creation of a new chapter or subchapter of the Bankruptcy Code to deal with financial companies;

(C) the extent to which such benefits would not be likely to be obtained without creating such a new chapter or subchapter;

(D) the challenges that might be faced by creating a new chapter or subchapter of the Bankruptcy Code to deal with financial companies; and

(E) the key factors and considerations that should be taken into account in assessing the likely outcome of creating or not creating a new chapter or subchapter of the Bankruptcy Code to deal with financial companies.

2. With respect to the Section 217 Study, how should the Board address the following areas?

(i) the extent to which international coordination currently exists;

(ii) current mechanisms and structures for facilitating international cooperation;

(iii) barriers to effective international coordination; and

(iv) ways to increase and make more effective international coordination of the resolution of financial companies, so as to minimize the impact on the financial system without creating moral hazard.

3. With respect to both the Section 216 Study and the Section 217 Study:

(i) any studies, research, empirical data or other information supporting any comments on any of the foregoing questions, where available; and

(ii) any additional factors or considerations that should be taken into account in either the Section 216 Study or the Section 217 Study.

By order of the Board of Governors of the Federal Reserve System, April 20, 2011.

Jennifer J. Johnson (signed)
Jennifer J. Johnson
Secretary of the Board.