

§ 58-10-635. Supervision, rehabilitation, or liquidation of SPFC.

(a) Except as otherwise provided in this section, the terms and conditions set forth in Article 30 of this Chapter pertaining to supervision, rehabilitation, and liquidation of insurers apply in full to SPFCs or each of the SPFC's protected cells, independently, or both, without causing or otherwise effecting a supervision, rehabilitation, or liquidation of the SPFC or another protected cell.

(b) Notwithstanding the provisions of Article 30 of this Chapter, and without causing or otherwise effecting a rehabilitation or liquidation of an otherwise solvent protected cell of an SPFC and subject to the provisions of subdivision (g)(5) of this section, the Commissioner may apply by petition to the court for an order authorizing the Commissioner to rehabilitate or liquidate an SPFC domiciled in this State on one or more of the following grounds:

- (1) There has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the SPFC intended to be used to pay amounts owed to the counterparty or the holders of SPFC securities.
- (2) The SPFC is insolvent and the holders of a majority in outstanding principal amount of each class of SPFC securities request or consent to rehabilitation or liquidation pursuant to the provisions of this Part.

(c) Notwithstanding the provisions of Article 30 of this Chapter, the Commissioner may apply by petition to the Court for an order authorizing the Commissioner to rehabilitate or liquidate one or more of an SPFC's protected cells independently, without causing or otherwise effecting a rehabilitation or liquidation of the SPFC generally or another of its protected cells on one or more of the following grounds:

- (1) There has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the SPFC attributable to the affected protected cell or cells intended to be used to pay amounts owed to the counterparty or the holders of SPFC securities of the affected protected cell or cells.
- (2) The affected protected cell is insolvent and the holders of a majority in outstanding principal amount of each class of SPFC securities attributable to that particular protected cell request or consent to rehabilitation or liquidation pursuant to the provisions of this Part.

(d) The Court may not grant relief provided by subdivision (b)(1) or (c)(1) of this section, unless after notice and a hearing, the Commissioner, who shall have the burden of proof, establishes by preponderance of the evidence that relief must be granted. The court's order may be made with respect to one or more protected cells by name, rather than the SPFC generally.

(e) Notwithstanding another provision in this Chapter, rules adopted under this Chapter, or another applicable law or regulation, upon any order of rehabilitation or liquidation of a SPFC, or one or more of the SPFC's protected cells, the receiver shall manage the assets and liabilities of the SPFC pursuant to the provisions of this Part. The receiver shall ascertain that the assets linked to one protected cell are not applied to the liabilities linked to another protected cell or to the SPFC generally, unless an asset or liability is linked to more than one protected cell, in which case the receiver shall deal with the asset or liability in accordance with the terms of any relevant governing instrument or contract.

(f) With respect to amounts recoverable under an SPFC contract, the amount recoverable by the receiver must not be reduced or diminished as a result of the entry of an order of rehabilitation or liquidation with respect to the counterparty, notwithstanding another provision in the contracts or other documentation governing the SPFC insurance securitization.

(g) Notwithstanding the provisions of Article 30 of this Chapter or other laws of this State:

- (1) An application or petition, or a temporary restraining order or injunction issued pursuant to the provisions of Article 30 of this Chapter, with respect to a counterparty does not prohibit the transaction of a business by an SPFC, including any payment by an SPFC made pursuant to an SPFC security, or any action or proceeding against an SPFC or its assets.
- (2) The commencement of a summary proceeding or other interim proceeding commenced before a delinquency proceeding with respect to an SPFC, and any order issued by the court does not prohibit the payment by an SPFC made pursuant to an SPFC security, SPFC contract, or the SPFC from taking any action required to make the payment.
- (3) A receiver of a counterparty may not void a nonfraudulent transfer by a counterparty to an SPFC of money or other property made pursuant to an SPFC contract.
- (4) A receiver of an SPFC may not void a nonfraudulent transfer by the SPFC of money or other property made to a counterparty pursuant to an SPFC contract or made to or for the benefit of any holder of an SPFC security on account of the SPFC security.
- (5) The Commissioner may not seek to have an SPFC with protected cells declared insolvent as long as at least one of the SPFC's protected cells remains solvent, and in the case of such an insolvency, the receiver shall handle the SPFC's assets in compliance with subsection (e) of this section and other laws of this State.

(h) Subsection (g) of this section does not prohibit the Commissioner from taking any action permitted under Article 30 of this Chapter with respect only to the rehabilitation of an SPFC with protected cell or cells, provided the Commissioner would have had sufficient grounds to seek to declare the SPFC insolvent, subject to and without otherwise affecting the provisions of subdivision (5) of subsection (g) of this section. In this case, with respect to the solvent protected cell or cells, the Commissioner may not prohibit payments made by the SPFC pursuant to the SPFC security, SPFC contract, or otherwise made under the insurance securitization transaction that are attributable to these protected cell or cells or prohibit the SPFC from taking any action required to make these payments.

(i) With the exception of the fulfillment of the obligations under an SPFC contract, and notwithstanding another provision of this Part or other laws of this State, the assets of an SPFC, including assets held in trust, must not be consolidated with or included in the estate of a counterparty in any delinquency proceeding against the counterparty, pursuant to the provisions of this Part for any purpose including, without limitation, distribution to creditors of the counterparty. (2013-116, s. 1; 2015-99, s. 1.)