

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as a note under section 5301 of this title.

SUBCHAPTER IV—PAYMENT, CLEARING,
AND SETTLEMENT SUPERVISION

§ 5461. Findings and purposes

(a) Findings

Congress finds the following:

(1) The proper functioning of the financial markets is dependent upon safe and efficient arrangements for the clearing and settlement of payment, securities, and other financial transactions.

(2) Financial market utilities that conduct or support multilateral payment, clearing, or settlement activities may reduce risks for their participants and the broader financial system, but such utilities may also concentrate and create new risks and thus must be well designed and operated in a safe and sound manner.

(3) Payment, clearing, and settlement activities conducted by financial institutions also present important risks to the participating financial institutions and to the financial system.

(4) Enhancements to the regulation and supervision of systemically important financial market utilities and the conduct of systemically important payment, clearing, and settlement activities by financial institutions are necessary—

- (A) to provide consistency;
- (B) to promote robust risk management and safety and soundness;
- (C) to reduce systemic risks; and
- (D) to support the stability of the broader financial system.

(b) Purpose

The purpose of this subchapter is to mitigate systemic risk in the financial system and promote financial stability by—

- (1) authorizing the Board of Governors to promote uniform standards for the—
 - (A) management of risks by systemically important financial market utilities; and
 - (B) conduct of systemically important payment, clearing, and settlement activities by financial institutions;
- (2) providing the Board of Governors an enhanced role in the supervision of risk management standards for systemically important financial market utilities;
- (3) strengthening the liquidity of systemically important financial market utilities; and
- (4) providing the Board of Governors an enhanced role in the supervision of risk management standards for systemically important payment, clearing, and settlement activities by financial institutions.

(Pub. L. 111-203, title VIII, § 802, July 21, 2010, 124 Stat. 1802.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 111-203, title VIII, § 814, July 21, 2010, 124 Stat. 1822, provided that: “This title [enacting this subchapter] is effective as of the date of enactment of this Act [July 21, 2010].”

SHORT TITLE

This subchapter known as the “Payment, Clearing, and Settlement Supervision Act of 2010”, see Short Title note set out under section 5301 of this title.

§ 5462. Definitions

In this subchapter, the following definitions shall apply:

(1) Appropriate financial regulator

The term “appropriate financial regulator” means—

(A) the primary financial regulatory agency, as defined in section 5301 of this title;

(B) the National Credit Union Administration, with respect to any insured credit union under the Federal Credit Union Act (12 U.S.C. 1751 et seq.); and

(C) the Board of Governors, with respect to organizations operating under section 25A of the Federal Reserve Act (12 U.S.C. 611), and any other financial institution engaged in a designated activity.

(2) Designated activity

The term “designated activity” means a payment, clearing, or settlement activity that the Council has designated as systemically important under section 5463 of this title.

(3) Designated clearing entity

The term “designated clearing entity” means a designated financial market utility that is a derivatives clearing organization registered under section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) or a clearing agency registered with the Securities and Exchange Commission under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1).

(4) Designated financial market utility

The term “designated financial market utility” means a financial market utility that the Council has designated as systemically important under section 5463 of this title.

(5) Financial institution

(A) In general

The term “financial institution” means—

(i) a depository institution, as defined in section 1813 of this title;

(ii) a branch or agency of a foreign bank, as defined in section 3101 of this title;

(iii) an organization operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601-604a and 611 through 631);

(iv) a credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);¹

(v) a broker or dealer, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(vi) an investment company, as defined in section 80a-3 of title 15;

¹ See References in Text note below.

(vii) an insurance company, as defined in section 80a-2 of title 15;

(viii) an investment adviser, as defined in section 80b-2 of title 15;

(ix) a futures commission merchant, commodity trading advisor, or commodity pool operator, as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); and

(x) any company engaged in activities that are financial in nature or incidental to a financial activity, as described in section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(B) Exclusions

The term “financial institution” does not include designated contract markets, registered futures associations, swap data repositories, and swap execution facilities registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.), or national securities exchanges, national securities associations, alternative trading systems, securities information processors solely with respect to the activities of the entity as a securities information processor, security-based swap data repositories, and swap execution facilities registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), or designated clearing entities, provided that the exclusions in this subparagraph apply only with respect to the activities that require the entity to be so registered.

(6) Financial market utility

(A) Inclusion

The term “financial market utility” means any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person.

(B) Exclusions

The term “financial market utility” does not include—

(i) designated contract markets, registered futures associations, swap data repositories, and swap execution facilities registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.), or national securities exchanges, national securities associations, alternative trading systems, security-based swap data repositories, and swap execution facilities registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), solely by reason of their providing facilities for comparison of data respecting the terms of settlement of securities or futures transactions effected on such exchange or by means of any electronic system operated or controlled by such entities, provided that the exclusions in this clause apply only with respect to the activities that require the entity to be so registered; and

(ii) any broker, dealer, transfer agent, or investment company, or any futures commission merchant, introducing broker, commodity trading advisor, or commodity

pool operator, solely by reason of functions performed by such institution as part of brokerage, dealing, transfer agency, or investment company activities, or solely by reason of acting on behalf of a financial market utility or a participant therein in connection with the furnishing by the financial market utility of services to its participants or the use of services of the financial market utility by its participants, provided that services performed by such institution do not constitute critical risk management or processing functions of the financial market utility.

(7) Payment, clearing, or settlement activity

(A) In general

The term “payment, clearing, or settlement activity” means an activity carried out by 1 or more financial institutions to facilitate the completion of financial transactions, but shall not include any offer or sale of a security under the Securities Act of 1933 (15 U.S.C. 77a et seq.), or any quotation, order entry, negotiation, or other pre-trade activity or execution activity.

(B) Financial transaction

For the purposes of subparagraph (A), the term “financial transaction” includes—

- (i) funds transfers;
- (ii) securities contracts;
- (iii) contracts of sale of a commodity for future delivery;
- (iv) forward contracts;
- (v) repurchase agreements;
- (vi) swaps;
- (vii) security-based swaps;
- (viii) swap agreements;
- (ix) security-based swap agreements;
- (x) foreign exchange contracts;
- (xi) financial derivatives contracts; and
- (xii) any similar transaction that the Council determines to be a financial transaction for purposes of this subchapter.

(C) Included activities

When conducted with respect to a financial transaction, payment, clearing, and settlement activities may include—

- (i) the calculation and communication of unsettled financial transactions between counterparties;
- (ii) the netting of transactions;
- (iii) provision and maintenance of trade, contract, or instrument information;
- (iv) the management of risks and activities associated with continuing financial transactions;
- (v) transmittal and storage of payment instructions;
- (vi) the movement of funds;
- (vii) the final settlement of financial transactions; and
- (viii) other similar functions that the Council may determine.

(D) Exclusion

Payment, clearing, and settlement activities shall not include public reporting of swap transaction data under section 727 or 763(i) of the Wall Street Transparency and Accountability Act of 2010.

(8) Supervisory Agency**(A) In general**

The term “Supervisory Agency” means the Federal agency that has primary jurisdiction over a designated financial market utility under Federal banking, securities, or commodity futures laws, as follows:

(i) The Securities and Exchange Commission, with respect to a designated financial market utility that is a clearing agency registered with the Securities and Exchange Commission.

(ii) The Commodity Futures Trading Commission, with respect to a designated financial market utility that is a derivatives clearing organization registered with the Commodity Futures Trading Commission.

(iii) The appropriate Federal banking agency, with respect to a designated financial market utility that is an institution described in section 1813(q) of this title.

(iv) The Board of Governors, with respect to a designated financial market utility that is otherwise not subject to the jurisdiction of any agency listed in clauses (i), (ii), and (iii).

(B) Multiple agency jurisdiction

If a designated financial market utility is subject to the jurisdictional supervision of more than 1 agency listed in subparagraph (A), then such agencies should agree on 1 agency to act as the Supervisory Agency, and if such agencies cannot agree on which agency has primary jurisdiction, the Council shall decide which agency is the Supervisory Agency for purposes of this subchapter.

(9) Systemically important and systemic importance

The terms “systemically important” and “systemic importance” mean a situation where the failure of or a disruption to the functioning of a financial market utility or the conduct of a payment, clearing, or settlement activity could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the United States.

(Pub. L. 111–203, title VIII, § 803, July 21, 2010, 124 Stat. 1803.)

Editorial Notes**REFERENCES IN TEXT**

The Federal Credit Union Act, referred to in pars. (1)(B) and (5)(A)(iv), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified principally to chapter 14 (§1751 et seq.) of this title. Section 101 of the Act, classified to section 1752 of this title, does not contain a definition of “credit union”. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

Sections 25 and 25A of the Federal Reserve Act, referred to in pars. (1)(C) and (5)(A)(iii), are classified to subchapters I (§601 et seq.) and II (§611 et seq.), respectively, of chapter 6 of this title.

The Commodity Exchange Act, referred to in pars. (5)(B) and (6)(B)(i), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et

seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Securities Exchange Act of 1934, referred to in pars. (5)(B) and (6)(B)(i), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Securities Act of 1933, referred to in par. (7)(A), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

Sections 727 and 763(i) of the Wall Street Transparency and Accountability Act of 2010, referred to in par. (7)(D), are sections 727 and 763(i) of Pub. L. 111–203, which amended section 2 of Title 7, Agriculture, and section 78m of Title 15, Commerce and Trade, respectively, effective on the later of 360 days after July 21, 2010, or, to the extent it requires a rulemaking, not less than 60 days after publication of the final rule or regulation.

§ 5463. Designation of systemic importance**(a) Designation****(1) Financial stability oversight council**

The Council, on a nondelegable basis and by a vote of not fewer than $\frac{3}{4}$ of members then serving, including an affirmative vote by the Chairperson of the Council, shall designate those financial market utilities or payment, clearing, or settlement activities that the Council determines are, or are likely to become, systemically important.

(2) Considerations

In determining whether a financial market utility or payment, clearing, or settlement activity is, or is likely to become, systemically important, the Council shall take into consideration the following:

(A) The aggregate monetary value of transactions processed by the financial market utility or carried out through the payment, clearing, or settlement activity.

(B) The aggregate exposure of the financial market utility or a financial institution engaged in payment, clearing, or settlement activities to its counterparties.

(C) The relationship, interdependencies, or other interactions of the financial market utility or payment, clearing, or settlement activity with other financial market utilities or payment, clearing, or settlement activities.

(D) The effect that the failure of or a disruption to the financial market utility or payment, clearing, or settlement activity would have on critical markets, financial institutions, or the broader financial system.

(E) Any other factors that the Council deems appropriate.

(b) Rescission of designation**(1) In general**

The Council, on a nondelegable basis and by a vote of not fewer than $\frac{3}{4}$ of members then serving, including an affirmative vote by the Chairperson of the Council, shall rescind a designation of systemic importance for a designated financial market utility or designated

activity if the Council determines that the utility or activity no longer meets the standards for systemic importance.

(2) Effect of rescission

Upon rescission, the financial market utility or financial institutions conducting the activity will no longer be subject to the provisions of this subchapter or any rules or orders prescribed under this subchapter.

(c) Consultation and notice and opportunity for hearing

(1) Consultation

Before making any determination under subsection (a) or (b), the Council shall consult with the relevant Supervisory Agency and the Board of Governors.

(2) Advance notice and opportunity for hearing

(A) In general

Before making any determination under subsection (a) or (b), the Council shall provide the financial market utility or, in the case of a payment, clearing, or settlement activity, financial institutions with advance notice of the proposed determination of the Council.

(B) Notice in Federal Register

The Council shall provide such advance notice to financial institutions by publishing a notice in the Federal Register.

(C) Requests for hearing

Within 30 days from the date of any notice of the proposed determination of the Council, the financial market utility or, in the case of a payment, clearing, or settlement activity, a financial institution engaged in the designated activity may request, in writing, an opportunity for a written or oral hearing before the Council to demonstrate that the proposed designation or rescission of designation is not supported by substantial evidence.

(D) Written submissions

Upon receipt of a timely request, the Council shall fix a time, not more than 30 days after receipt of the request, unless extended at the request of the financial market utility or financial institution, and place at which the financial market utility or financial institution may appear, personally or through counsel, to submit written materials, or, at the sole discretion of the Council, oral testimony or oral argument.

(3) Emergency exception

(A) Waiver or modification by vote of the Council

The Council may waive or modify the requirements of paragraph (2) if the Council determines, by an affirmative vote of not fewer than $\frac{2}{3}$ of members then serving, including an affirmative vote by the Chairperson of the Council, that the waiver or modification is necessary to prevent or mitigate an immediate threat to the financial system posed by the financial market utility or the payment, clearing, or settlement activity.

(B) Notice of waiver or modification

The Council shall provide notice of the waiver or modification to the financial market utility concerned or, in the case of a payment, clearing, or settlement activity, to financial institutions, as soon as practicable, which shall be no later than 24 hours after the waiver or modification in the case of a financial market utility and 3 business days in the case of financial institutions. The Council shall provide the notice to financial institutions by posting a notice on the website of the Council and by publishing a notice in the Federal Register.

(d) Notification of final determination

(1) After hearing

Within 60 days of any hearing under subsection (c)(2), the Council shall notify the financial market utility or financial institutions of the final determination of the Council in writing, which shall include findings of fact upon which the determination of the Council is based.

(2) When no hearing requested

If the Council does not receive a timely request for a hearing under subsection (c)(2), the Council shall notify the financial market utility or financial institutions of the final determination of the Council in writing not later than 30 days after the expiration of the date by which a financial market utility or a financial institution could have requested a hearing. All notices to financial institutions under this subsection shall be published in the Federal Register.

(e) Extension of time periods

The Council may extend the time periods established in subsections (c) and (d) as the Council determines to be necessary or appropriate.

(Pub. L. 111-203, title VIII, § 804, July 21, 2010, 124 Stat. 1807.)

§ 5464. Standards for systemically important financial market utilities and payment, clearing, or settlement activities

(a) Authority to prescribe standards

(1) Board of Governors

Except as provided in paragraph (2), the Board of Governors, by rule or order, and in consultation with the Council and the Supervisory Agencies, shall prescribe risk management standards, taking into consideration relevant international standards and existing prudential requirements, governing—

(A) the operations related to the payment, clearing, and settlement activities of designated financial market utilities; and

(B) the conduct of designated activities by financial institutions.

(2) Special procedures for designated clearing entities and designated activities of certain financial institutions

(A) CFTC and Commission

The Commodity Futures Trading Commission and the Commission may each prescribe regulations, in consultation with the Coun-

cil and the Board of Governors, containing risk management standards, taking into consideration relevant international standards and existing prudential requirements, for those designated clearing entities and financial institutions engaged in designated activities for which each is the Supervisory Agency or the appropriate financial regulator, governing—

- (i) the operations related to payment, clearing, and settlement activities of such designated clearing entities; and
- (ii) the conduct of designated activities by such financial institutions.

(B) Review and determination

The Board of Governors may determine that existing prudential requirements of the Commodity Futures Trading Commission, the Commission, or both (including requirements prescribed pursuant to subparagraph (A)) with respect to designated clearing entities and financial institutions engaged in designated activities for which the Commission or the Commodity Futures Trading Commission is the Supervisory Agency or the appropriate financial regulator are insufficient to prevent or mitigate significant liquidity, credit, operational, or other risks to the financial markets or to the financial stability of the United States.

(C) Written determination

Any determination by the Board of Governors under subparagraph (B) shall be provided in writing to the Commodity Futures Trading Commission or the Commission, as applicable, and the Council, and shall explain why existing prudential requirements, considered as a whole, are insufficient to ensure that the operations and activities of the designated clearing entities or the activities of financial institutions described in subparagraph (B) will not pose significant liquidity, credit, operational, or other risks to the financial markets or to the financial stability of the United States. The Board of Governors' determination shall contain a detailed analysis supporting its findings and identify the specific prudential requirements that are insufficient.

(D) CFTC and Commission response

The Commodity Futures Trading Commission or the Commission, as applicable, shall within 60 days either object to the Board of Governors' determination with a detailed analysis as to why existing prudential requirements are sufficient, or submit an explanation to the Council and the Board of Governors describing the actions to be taken in response to the Board of Governors' determination.

(E) Authorization

Upon an affirmative vote by not fewer than 2/3 of members then serving on the Council, the Council shall either find that the response submitted under subparagraph (D) is sufficient, or require the Commodity Futures Trading Commission, or the Commission, as applicable, to prescribe such risk

management standards as the Council determines is necessary to address the specific prudential requirements that are determined to be insufficient.”¹

(b) Objectives and principles

The objectives and principles for the risk management standards prescribed under subsection (a) shall be to—

- (1) promote robust risk management;
- (2) promote safety and soundness;
- (3) reduce systemic risks; and
- (4) support the stability of the broader financial system.

(c) Scope

The standards prescribed under subsection (a) may address areas such as—

- (1) risk management policies and procedures;
- (2) margin and collateral requirements;
- (3) participant or counterparty default policies and procedures;
- (4) the ability to complete timely clearing and settlement of financial transactions;
- (5) capital and financial resource requirements for designated financial market utilities; and
- (6) other areas that are necessary to achieve the objectives and principles in subsection (b).

(d) Limitation on scope

Except as provided in subsections (e) and (f) of section 5466 of this title, nothing in this subchapter shall be construed to permit the Council or the Board of Governors to take any action or exercise any authority granted to the Commodity Futures Trading Commission under section 2(h) of title 7 or the Securities and Exchange Commission under section 78c-3(a) of title 15, including—

- (1) the approval of, disapproval of, or stay of the clearing requirement for any group, category, type, or class of swaps that a designated clearing entity may accept for clearing;
- (2) the determination that any group, category, type, or class of swaps shall be subject to the mandatory clearing requirement of section 2(h)(1) of title 7 or section 78c-3(a)(1) of title 15;
- (3) the determination that any person is exempt from the mandatory clearing requirement of section 2(h)(1) of title 7 or section 78c-3(a)(1) of title 15; or
- (4) any authority granted to the Commodity Futures Trading Commission or the Securities and Exchange Commission with respect to transaction reporting or trade execution.

(e) Threshold level

The standards prescribed under subsection (a) governing the conduct of designated activities by financial institutions shall, where appropriate, establish a threshold as to the level or significance of engagement in the activity at which a financial institution will become subject to the standards with respect to that activity.

(f) Compliance required

Designated financial market utilities and financial institutions subject to the standards

¹ So in original. The closing quotation marks probably should not appear.

prescribed under subsection (a) for a designated activity shall conduct their operations in compliance with the applicable risk management standards.

(Pub. L. 111–203, title VIII, § 805, July 21, 2010, 124 Stat. 1809.)

§ 5465. Operations of designated financial market utilities

(a) Federal Reserve account and services

The Board of Governors may authorize a Federal Reserve Bank to establish and maintain an account for a designated financial market utility and provide the services listed in section 11A(b) of the Federal Reserve Act (12 U.S.C. 248a(b)) and deposit accounts under the first undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 342) to the designated financial market utility that the Federal Reserve Bank is authorized under the Federal Reserve Act [12 U.S.C. 221 et seq.] to provide to a depository institution, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

(b) Advances

The Board of Governors may authorize a Federal Reserve bank under section 10B of the Federal Reserve Act (12 U.S.C. 347b) to provide to a designated financial market utility discount and borrowing privileges only in unusual or exigent circumstances, upon the affirmative vote of a majority of the Board of Governors then serving (or such other number in accordance with the provisions of section 11(r)(2) of the Federal Reserve Act (12 U.S.C. 248(r)(2))¹ after consultation with the Secretary, and upon a showing by the designated financial market utility that it is unable to secure adequate credit accommodations from other banking institutions. All such discounts and borrowing privileges shall be subject to such other limitations, restrictions, and regulations as the Board of Governors may prescribe. Access to discount and borrowing privileges under section 10B of the Federal Reserve Act as authorized in this section does not require a designated financial market utility to be or become a bank or bank holding company.

(c) Earnings on Federal Reserve balances

A Federal Reserve Bank may pay earnings on balances maintained by or on behalf of a designated financial market utility in the same manner and to the same extent as the Federal Reserve Bank may pay earnings to a depository institution under the Federal Reserve Act [12 U.S.C. 221 et seq.], subject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

(d) Reserve requirements

The Board of Governors may exempt a designated financial market utility from, or modify any, reserve requirements under section 19 of the Federal Reserve Act (12 U.S.C. 461) applicable to a designated financial market utility.

¹ So in original. Another closing parenthesis probably should appear.

(e) Changes to rules, procedures, or operations

(1) Advance notice

(A) Advance notice of proposed changes required

A designated financial market utility shall provide notice 60 days in advance notice² to its Supervisory Agency of any proposed change to its rules, procedures, or operations that could, as defined in rules of each Supervisory Agency, materially affect, the nature or level of risks presented by the designated financial market utility.

(B) Terms and standards prescribed by the Supervisory Agencies

Each Supervisory Agency, in consultation with the Board of Governors, shall prescribe regulations that define and describe the standards for determining when notice is required to be provided under subparagraph (A).

(C) Contents of notice

The notice of a proposed change shall describe—

- (i) the nature of the change and expected effects on risks to the designated financial market utility, its participants, or the market; and
- (ii) how the designated financial market utility plans to manage any identified risks.

(D) Additional information

The Supervisory Agency may require a designated financial market utility to provide any information necessary to assess the effect the proposed change would have on the nature or level of risks associated with the designated financial market utility's payment, clearing, or settlement activities and the sufficiency of any proposed risk management techniques.

(E) Notice of objection

The Supervisory Agency shall notify the designated financial market utility of any objection regarding the proposed change within 60 days from the later of—

- (i) the date that the notice of the proposed change is received; or
- (ii) the date any further information requested for consideration of the notice is received.

(F) Change not allowed if objection

A designated financial market utility shall not implement a change to which the Supervisory Agency has an objection.

(G) Change allowed if no objection within 60 days

A designated financial market utility may implement a change if it has not received an objection to the proposed change within 60 days of the later of—

- (i) the date that the Supervisory Agency receives the notice of proposed change; or
- (ii) the date the Supervisory Agency receives any further information it requests for consideration of the notice.

² So in original. The word “notice” probably should not appear.

(H) Review extension for novel or complex issues

The Supervisory Agency may, during the 60-day review period, extend the review period for an additional 60 days for proposed changes that raise novel or complex issues, subject to the Supervisory Agency providing the designated financial market utility with prompt written notice of the extension. Any extension under this subparagraph will extend the time periods under subparagraphs (E) and (G).

(I) Change allowed earlier if notified of no objection

A designated financial market utility may implement a change in less than 60 days from the date of receipt of the notice of proposed change by the Supervisory Agency, or the date the Supervisory Agency receives any further information it requested, if the Supervisory Agency notifies the designated financial market utility in writing that it does not object to the proposed change and authorizes the designated financial market utility to implement the change on an earlier date, subject to any conditions imposed by the Supervisory Agency.

(2) Emergency changes**(A) In general**

A designated financial market utility may implement a change that would otherwise require advance notice under this subsection if it determines that—

- (i) an emergency exists; and
- (ii) immediate implementation of the change is necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

(B) Notice required within 24 hours

The designated financial market utility shall provide notice of any such emergency change to its Supervisory Agency, as soon as practicable, which shall be no later than 24 hours after implementation of the change.

(C) Contents of emergency notice

In addition to the information required for changes requiring advance notice, the notice of an emergency change shall describe—

- (i) the nature of the emergency; and
- (ii) the reason the change was necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

(D) Modification or rescission of change may be required

The Supervisory Agency may require modification or rescission of the change if it finds that the change is not consistent with the purposes of this Act or any applicable rules, orders, or standards prescribed under section 5464(a) of this title.

(3) Copying the Board of Governors

The Supervisory Agency shall provide the Board of Governors concurrently with a complete copy of any notice, request, or other in-

formation it issues, submits, or receives under this subsection.

(4) Consultation with Board of Governors

Before taking any action on, or completing its review of, a change proposed by a designated financial market utility, the Supervisory Agency shall consult with the Board of Governors.

(Pub. L. 111-203, title VIII, § 806, July 21, 2010, 124 Stat. 1811.)

Editorial Notes**REFERENCES IN TEXT**

The Federal Reserve Act, referred to in subsecs. (a) and (c), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, which is classified principally to chapter 3 (§ 221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

This Act, referred to in subsec. (e)(2)(D), is Pub. L. 111-203, July 21, 2010, 124 Stat. 1376, known as the Dodd-Frank Wall Street Reform and Consumer Protection Act, which enacted this chapter and chapters 108 (§ 8201 et seq.) and 109 (§ 8301 et seq.) of Title 15, Commerce and Trade, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

§ 5466. Examination of and enforcement actions against designated financial market utilities**(a) Examination**

Notwithstanding any other provision of law and subject to subsection (d), the Supervisory Agency shall conduct examinations of a designated financial market utility at least once annually in order to determine the following:

- (1) The nature of the operations of, and the risks borne by, the designated financial market utility.
- (2) The financial and operational risks presented by the designated financial market utility to financial institutions, critical markets, or the broader financial system.
- (3) The resources and capabilities of the designated financial market utility to monitor and control such risks.
- (4) The safety and soundness of the designated financial market utility.
- (5) The designated financial market utility's compliance with—

(A) this subchapter; and

(B) the rules and orders prescribed under this subchapter.

(b) Service providers

Whenever a service integral to the operation of a designated financial market utility is performed for the designated financial market utility by another entity, whether an affiliate or non-affiliate and whether on or off the premises of the designated financial market utility, the Supervisory Agency may examine whether the provision of that service is in compliance with applicable law, rules, orders, and standards to the same extent as if the designated financial market utility were performing the service on its own premises.

(c) Enforcement

For purposes of enforcing the provisions of this subchapter, a designated financial market

utility shall be subject to, and the appropriate Supervisory Agency shall have authority under the provisions of subsections (b) through (n) of section 1818 of this title in the same manner and to the same extent as if the designated financial market utility was an insured depository institution and the Supervisory Agency was the appropriate Federal banking agency for such insured depository institution.

(d) Board of Governors involvement in examinations

(1) Board of Governors consultation on examination planning

The Supervisory Agency shall consult annually with the Board of Governors regarding the scope and methodology of any examination conducted under subsections (a) and (b). The Supervisory Agency shall lead all examinations conducted under subsections (a) and (b)¹

(2) Board of Governors participation in examination

The Board of Governors may, in its discretion, participate in any examination led by a Supervisory Agency and conducted under subsections (a) and (b).

(e) Board of Governors enforcement recommendations

(1) Recommendation

The Board of Governors may, after consulting with the Council and the Supervisory Agency, at any time recommend to the Supervisory Agency that such agency take enforcement action against a designated financial market utility in order to prevent or mitigate significant liquidity, credit, operational, or other risks to the financial markets or to the financial stability of the United States. Any such recommendation for enforcement action shall provide a detailed analysis supporting the recommendation of the Board of Governors.

(2) Consideration

The Supervisory Agency shall consider the recommendation of the Board of Governors and submit a response to the Board of Governors within 60 days.

(3) Binding arbitration

If the Supervisory Agency rejects, in whole or in part, the recommendation of the Board of Governors, the Board of Governors may refer the recommendation to the Council for a binding decision on whether an enforcement action is warranted.

(4) Enforcement action

Upon an affirmative vote by a majority of the Council in favor of the Board of Governors' recommendation under paragraph (3), the Council may require the Supervisory Agency to—

- (A) exercise the enforcement authority referenced in subsection (c); and
- (B) take enforcement action against the designated financial market utility.

(f) Emergency enforcement actions by the Board of Governors

(1) Imminent risk of substantial harm

The Board of Governors may, after consulting with the Supervisory Agency and upon an affirmative vote by a majority the Council, take enforcement action against a designated financial market utility if the Board of Governors has reasonable cause to conclude that—

- (A) either—
 - (i) an action engaged in, or contemplated by, a designated financial market utility (including any change proposed by the designated financial market utility to its rules, procedures, or operations that would otherwise be subject to section 5465(e) of this title) poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system of the United States; or
 - (ii) the condition of a designated financial market utility poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system; and
- (B) the imminent risk of substantial harm precludes the Board of Governors' use of the procedures in subsection (e).

(2) Enforcement authority

For purposes of taking enforcement action under paragraph (1), a designated financial market utility shall be subject to, and the Board of Governors shall have authority under² the provisions of subsections (b) through (n) of section 1818 of this title in the same manner and to the same extent as if the designated financial market utility was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

(Pub. L. 111-203, title VIII, § 807, July 21, 2010, 124 Stat. 1814.)

§ 5467. Examination of and enforcement actions against financial institutions subject to standards for designated activities

(a) Examination

The appropriate financial regulator is authorized to examine a financial institution subject to the standards prescribed under section 5464(a) of this title for a designated activity in order to determine the following:

- (1) The nature and scope of the designated activities engaged in by the financial institution.
- (2) The financial and operational risks the designated activities engaged in by the financial institution may pose to the safety and soundness of the financial institution.
- (3) The financial and operational risks the designated activities engaged in by the financial institution may pose to other financial institutions, critical markets, or the broader financial system.
- (4) The resources available to and the capabilities of the financial institution to monitor

¹ So in original. Probably should be followed by a period.

² So in original. Probably should be followed by a comma.

and control the risks described in paragraphs (2) and (3).

(5) The financial institution's compliance with this subchapter and the rules and orders prescribed under section 5464(a) of this title.

(b) Enforcement

For purposes of enforcing the provisions of this subchapter, and the rules and orders prescribed under this section, a financial institution subject to the standards prescribed under section 5464(a) of this title for a designated activity shall be subject to, and the appropriate financial regulator shall have authority under¹ the provisions of subsections (b) through (n) of section 1818 of this title in the same manner and to the same extent as if the financial institution was an insured depository institution and the appropriate financial regulator was the appropriate Federal banking agency for such insured depository institution.

(c) Technical assistance

The Board of Governors shall consult with and provide such technical assistance as may be required by the appropriate financial regulators to ensure that the rules and orders prescribed under this subchapter are interpreted and applied in as consistent and uniform a manner as practicable.

(d) Delegation

(1) Examination

(A) Request to Board of Governors

The appropriate financial regulator may request the Board of Governors to conduct or participate in an examination of a financial institution subject to the standards prescribed under section 5464(a) of this title for a designated activity in order to assess the compliance of such financial institution with—

- (i) this subchapter; or
- (ii) the rules or orders prescribed under this subchapter.

(B) Examination by Board of Governors

Upon receipt of an appropriate written request, the Board of Governors will conduct the examination under such terms and conditions to which the Board of Governors and the appropriate financial regulator mutually agree.

(2) Enforcement

(A) Request to Board of Governors

The appropriate financial regulator may request the Board of Governors to enforce this subchapter or the rules or orders prescribed under this subchapter against a financial institution that is subject to the standards prescribed under section 5464(a) of this title for a designated activity.

(B) Enforcement by Board of Governors

Upon receipt of an appropriate written request, the Board of Governors shall determine whether an enforcement action is warranted, and, if so, it shall enforce compliance with this subchapter or the rules or or-

ders prescribed under this subchapter and, if so, the financial institution shall be subject to, and the Board of Governors shall have authority under¹ the provisions of subsections (b) through (n) of section 1818 of this title in the same manner and to the same extent as if the financial institution was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

(e) Back-up authority of the Board of Governors

(1) Examination and enforcement

Notwithstanding any other provision of law, the Board of Governors may—

(A) conduct an examination of the type described in subsection (a) of any financial institution that is subject to the standards prescribed under section 5464(a) of this title for a designated activity; and

(B) enforce the provisions of this subchapter or any rules or orders prescribed under this subchapter against any financial institution that is subject to the standards prescribed under section 5464(a) of this title for a designated activity.

(2) Limitations

(A) Examination

The Board of Governors may exercise the authority described in paragraph (1)(A) only if the Board of Governors has—

(i) reasonable cause to believe that a financial institution is not in compliance with this subchapter or the rules or orders prescribed under this subchapter with respect to a designated activity;

(ii) notified, in writing, the appropriate financial regulator and the Council of its belief under clause (i) with supporting documentation included;

(iii) requested the appropriate financial regulator to conduct a prompt examination of the financial institution;

(iv) either—

(I) not been afforded a reasonable opportunity to participate in an examination of the financial institution by the appropriate financial regulator within 30 days after the date of the Board's notification under clause (ii); or

(II) reasonable cause to believe that the financial institution's noncompliance with this subchapter or the rules or orders prescribed under this subchapter poses a substantial risk to other financial institutions, critical markets, or the broader financial system, subject to the Board of Governors affording the appropriate financial regulator a reasonable opportunity to participate in the examination; and

(v) obtained the approval of the Council upon an affirmative vote by a majority of the Council.

(B) Enforcement

The Board of Governors may exercise the authority described in paragraph (1)(B) only if the Board of Governors has—

¹ So in original. Probably should be followed by a comma.

(i) reasonable cause to believe that a financial institution is not in compliance with this subchapter or the rules or orders prescribed under this subchapter with respect to a designated activity;

(ii) notified, in writing, the appropriate financial regulator and the Council of its belief under clause (i) with supporting documentation included and with a recommendation that the appropriate financial regulator take 1 or more specific enforcement actions against the financial institution;

(iii) either—

(I) not been notified, in writing, by the appropriate financial regulator of the commencement of an enforcement action recommended by the Board of Governors against the financial institution within 60 days from the date of the notification under clause (ii); or

(II) reasonable cause to believe that the financial institution's noncompliance with this subchapter or the rules or orders prescribed under this subchapter poses significant liquidity, credit, operational, or other risks to the financial markets or to the financial stability of the United States, subject to the Board of Governors notifying the appropriate financial regulator of the Board's enforcement action; and

(iv) obtained the approval of the Council upon an affirmative vote by a majority of the Council.

(3) Enforcement provisions

For purposes of taking enforcement action under paragraph (1), the financial institution shall be subject to, and the Board of Governors shall have authority under¹ the provisions of subsections (b) through (n) of section 1818 of this title in the same manner and to the same extent as if the financial institution was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

(Pub. L. 111-203, title VIII, § 808, July 21, 2010, 124 Stat. 1816.)

§ 5468. Requests for information, reports, or records

(a) Information to assess systemic importance

(1) Financial market utilities

The Council is authorized to require any financial market utility to submit such information as the Council may require for the sole purpose of assessing whether that financial market utility is systemically important, but only if the Council has reasonable cause to believe that the financial market utility meets the standards for systemic importance set forth in section 5463 of this title.

(2) Financial institutions engaged in payment, clearing, or settlement activities

The Council is authorized to require any financial institution to submit such information as the Council may require for the sole

purpose of assessing whether any payment, clearing, or settlement activity engaged in or supported by a financial institution is systemically important, but only if the Council has reasonable cause to believe that the activity meets the standards for systemic importance set forth in section 5463 of this title.

(b) Reporting after designation

(1) Designated financial market utilities

The Board of Governors and the Council may each require a designated financial market utility to submit reports or data to the Board of Governors and the Council in such frequency and form as deemed necessary by the Board of Governors or the Council in order to assess the safety and soundness of the utility and the systemic risk that the utility's operations pose to the financial system.

(2) Financial institutions subject to standards for designated activities

The Board of Governors and the Council may each require 1 or more financial institutions subject to the standards prescribed under section 5464(a) of this title for a designated activity to submit, in such frequency and form as deemed necessary by the Board of Governors or the Council, reports and data to the Board of Governors and the Council solely with respect to the conduct of the designated activity and solely to assess whether—

(A) the rules, orders, or standards prescribed under section 5464(a) of this title with respect to the designated activity appropriately address the risks to the financial system presented by such activity; and

(B) the financial institutions are in compliance with this subchapter and the rules and orders prescribed under section 5464(a) of this title with respect to the designated activity.

(3) Limitation

The Board of Governors may, upon an affirmative vote by a majority of the Council, prescribe regulations under this section that impose a recordkeeping or reporting requirement on designated clearing entities or financial institutions engaged in designated activities that are subject to standards that have been prescribed under section 5464(a)(2) of this title.

(c) Coordination with appropriate Federal Supervisory Agency

(1) Advance coordination

Before requesting any material information from, or imposing reporting or recordkeeping requirements on, any financial market utility or any financial institution engaged in a payment, clearing, or settlement activity, the Board of Governors or the Council shall coordinate with the Supervisory Agency for a financial market utility or the appropriate financial regulator for a financial institution to determine if the information is available from or may be obtained by the agency in the form, format, or detail required by the Board of Governors or the Council.

(2) Supervisory reports

Notwithstanding any other provision of law, the Supervisory Agency, the appropriate fi-

financial regulator, and the Board of Governors are authorized to disclose to each other and the Council copies of its examination reports or similar reports regarding any financial market utility or any financial institution engaged in payment, clearing, or settlement activities.

(d) Timing of response from appropriate Federal Supervisory Agency

If the information, report, records, or data requested by the Board of Governors or the Council under subsection (c)(1) are not provided in full by the Supervisory Agency or the appropriate financial regulator in less than 15 days after the date on which the material is requested, the Board of Governors or the Council may request the information or impose record-keeping or reporting requirements directly on such persons as provided in subsections (a) and (b) with notice to the agency.

(e) Sharing of information

(1) Material concerns

Notwithstanding any other provision of law, the Board of Governors, the Council, the appropriate financial regulator, and any Supervisory Agency are authorized to—

(A) promptly notify each other of material concerns about a designated financial market utility or any financial institution engaged in designated activities; and

(B) share appropriate reports, information, or data relating to such concerns.

(2) Other information

Notwithstanding any other provision of law, the Board of Governors, the Council, the appropriate financial regulator, or any Supervisory Agency may, under such terms and conditions as it deems appropriate, provide confidential supervisory information and other information obtained under this subchapter to each other, and to the Secretary, Federal Reserve Banks, State financial institution supervisory agencies, foreign financial supervisors, foreign central banks, and foreign finance ministries, subject to reasonable assurances of confidentiality, provided, however, that no person or entity receiving information pursuant to this section may disseminate such information to entities or persons other than those listed in this paragraph without complying with applicable law, including section 12 of title 7.

(f) Privilege maintained

The Board of Governors, the Council, the appropriate financial regulator, and any Supervisory Agency providing reports or data under this section shall not be deemed to have waived any privilege applicable to those reports or data, or any portion thereof, by providing the reports or data to the other party or by permitting the reports or data, or any copies thereof, to be used by the other party.

(g) Disclosure exemption

Information obtained by the Board of Governors, the Supervisory Agencies, or the Council under this section and any materials prepared by the Board of Governors, the Supervisory

Agencies, or the Council regarding their assessment of the systemic importance of financial market utilities or any payment, clearing, or settlement activities engaged in by financial institutions, and in connection with their supervision of designated financial market utilities and designated activities, shall be confidential supervisory information exempt from disclosure under section 552 of title 5. For purposes of such section 552, this subsection shall be considered a statute described in subsection (b)(3) of such section 552.

(h) Data standards

(1) Requirement

The Board of Governors shall adopt data standards for all information that, through a collection of information, is regularly filed with or submitted to the Board or the Council by any financial market utility or financial institution under subsection (a) or (b).

(2) Consistency

The data standards required under paragraph (1) shall incorporate, and ensure compatibility with (to the extent feasible), all applicable data standards established in the rules promulgated under section 5334 of this title, including, to the extent practicable, by having the characteristics described in clauses (i) through (vi) of subsection (c)(1)(B) of such section 5334.

(Pub. L. 111–203, title VIII, § 809, July 21, 2010, 124 Stat. 1818; Pub. L. 117–263, div. E, title LVIII, § 5861(d), Dec. 23, 2022, 136 Stat. 3435.)

Editorial Notes

AMENDMENTS

2022—Subsec. (h). Pub. L. 117–263 added subsec. (h).

Statutory Notes and Related Subsidiaries

RULE OF CONSTRUCTION REGARDING NO NEW DISCLOSURE REQUIREMENTS

Amendment by Pub. L. 117–263 not to be construed to require certain additional information to be collected or disclosed, see section 5864 of Pub. L. 117–263, set out as a note under section 253 of this title.

§ 5469. Rulemaking

The Board of Governors, the Supervisory Agencies, and the Council are authorized to prescribe such rules and issue such orders as may be necessary to administer and carry out their respective authorities and duties granted under this subchapter and prevent evasions thereof.

(Pub. L. 111–203, title VIII, § 810, July 21, 2010, 124 Stat. 1820.)

§ 5470. Other authority

Unless otherwise provided by its terms, this subchapter does not divest any appropriate financial regulator, any Supervisory Agency, or any other Federal or State agency, of any authority derived from any other applicable law, except that any standards prescribed by the Board of Governors under section 5464 of this title shall supersede any less stringent requirements established under other authority to the extent of any conflict.

(Pub. L. 111-203, title VIII, § 811, July 21, 2010, 124 Stat. 1821.)

§ 5471. Consultation

(a) CFTC

The Commodity Futures Trading Commission shall consult with the Board of Governors—

(1) prior to exercising its authorities under sections 2(h)(2)(C), 2(h)(3)(A), 2(h)(3)(C), 2(h)(4)(A), and 2(h)(4)(B) of title 7, as amended by the Wall Street Transparency and Accountability Act of 2010;

(2) with respect to any rule or rule amendment of a derivatives clearing organization for which a stay of certification has been issued under section 745(b)(3)¹ of the Wall Street Transparency and Accountability Act of 2010; and

(3) prior to exercising its rulemaking authorities under section 728 of the Wall Street Transparency and Accountability Act of 2010 [7 U.S.C. 24a].

(b) SEC

The Commission shall consult with the Board of Governors—

(1) prior to exercising its authorities under sections 78c-3(a)(2)(C), 78c-3(a)(3)(A), 78c-3(a)(3)(C), 78c-3(a)(4)(A), and 78c-3(a)(4)(B) of title 15, as amended by the Wall Street Transparency and Accountability Act of 2010;

(2) with respect to any proposed rule change of a clearing agency for which an extension of the time for review has been designated under section 78s(b)(2) of title 15; and

(3) prior to exercising its rulemaking authorities under section 78m(n) of title 15, as added by section 763(i) of the Wall Street Transparency and Accountability Act of 2010.

(Pub. L. 111-203, title VIII, § 812, July 21, 2010, 124 Stat. 1821.)

Editorial Notes

REFERENCES IN TEXT

The Wall Street Transparency and Accountability Act of 2010, referred to in subsecs. (a) and (b), is title VII of Pub. L. 111-203, July 21, 2010, 124 Stat. 1641. Section 728 of the Act amended the act of Sept. 21, 1922, ch. 369, to add a new section 21 which is classified to section 24a of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of Title 15, Commerce and Trade, and Tables.

Section 745(b)(3) of the Wall Street Transparency and Accountability Act of 2010, referred to in subsec. (a)(2), probably means section 5c(c)(3) of the Commodity Exchange Act, which is classified to section 7a-2(c)(3) of Title 7, Agriculture. Section 745(b) of the Wall Street Transparency and Accountability Act of 2010, which is section 745(b) of Pub. L. 111-203, added subsec. (c) of section 7a-2 of Title 7 and struck out former subsec. (c) of that section. Section 7a-2(c)(3) of Title 7 relates to stays of the certification for rules. Section 745(b) of Pub. L. 111-203 does not contain a par. (3).

§ 5472. Common framework for designated clearing entity risk management

The Commodity Futures Trading Commission and the Commission shall coordinate with the

Board of Governors to jointly develop risk management supervision programs for designated clearing entities. Not later than 1 year after July 21, 2010, the Commodity Futures Trading Commission, the Commission, and the Board of Governors shall submit a joint report to the Committee on Banking, Housing, and Urban Affairs and the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Financial Services and the Committee on Agriculture of the House of Representatives recommendations¹ for—

(1) improving consistency in the designated clearing entity oversight programs of the Commission and the Commodity Futures Trading Commission;

(2) promoting robust risk management by designated clearing entities;

(3) promoting robust risk management oversight by regulators of designated clearing entities; and

(4) improving regulators' ability to monitor the potential effects of designated clearing entity risk management on the stability of the financial system of the United States.

(Pub. L. 111-203, title VIII, § 813, July 21, 2010, 124 Stat. 1821.)

SUBCHAPTER V—BUREAU OF CONSUMER FINANCIAL PROTECTION

§ 5481. Definitions

Except as otherwise provided in this title,¹ for purposes of this title,¹ the following definitions shall apply:

(1) Affiliate

The term “affiliate” means any person that controls, is controlled by, or is under common control with another person.

(2) Bureau

The term “Bureau” means the Bureau of Consumer Financial Protection.

(3) Business of insurance

The term “business of insurance” means the writing of insurance or the reinsuring of risks by an insurer, including all acts necessary to such writing or reinsuring and the activities relating to the writing of insurance or the reinsuring of risks conducted by persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons.

(4) Consumer

The term “consumer” means an individual or an agent, trustee, or representative acting on behalf of an individual.

(5) Consumer financial product or service

The term “consumer financial product or service” means any financial product or service that is described in one or more categories under—

(A) paragraph (15) and is offered or provided for use by consumers primarily for personal, family, or household purposes; or

¹ See References in Text note below.

¹ So in original. Probably should be preceded by “with”.

¹ See References in Text note below.