Board of Governors of the Federal Reserve System

Regulation HH
Designated Financial Market Utilities

12 CFR 234; as amended effective April 15, 2024

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Section

234.1 Authority, purpose, and scope
234.2 Definitions
234.3 Standards for designated financial market utilities
234.4 Changes to rules, procedures, or operations
234.5 Access to Federal Reserve Bank accounts and services
234.6 Interest on balances

AUTHORITY: 12 U.S.C. 5461 *et seq.*

9–1600

SECTION 234.1—Authority, Purpose, and Scope

(a) *Authority.* This part is issued under the authority of sections 805, 806, and 810 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub. L. 111-203, 124 Stat. 1376; 12 U.S.C. 5464, 5465, and 5469).

(b) *Purpose and scope.* This part establishes risk-management standards governing the operations related to the payment, clearing, and settlement activities of designated financial market utilities. In addition, this part sets out requirements and procedures for a designated financial market utility that proposes to make a change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the designated financial market utility and for which the Board is the Supervisory Agency (as defined below). The risk management standards do not apply, however, to 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), which are governed by the risk-management standards promulgated by the Commodity Futures Trading Commission or the Securities and Exchange Commission, respectively, for which each is the Supervisory Agency. This part also sets out standards, restrictions, and guidelines regarding a Federal Reserve Bank establishing and maintaining an account for, and providing services to, a designated financial market utility. In addition, this part sets forth the terms under which a Reserve Bank may pay a designated financial market utility interest on the designated financial market utility's balances held at the Reserve Bank.

9–1601

SECTION 234.2—Definitions

(a) *Backtest* means the *ex post* comparison of realized outcomes with margin model forecasts to analyze and monitor model performance and overall margin coverage.

(b) *Central counterparty* means an entity that interposes itself between counterparties to contracts traded in one or more financial markets, becoming the buyer to every seller and the seller to every buyer.

(c) *Central securities depository* means an entity that provides securities accounts and central safekeeping services.

(d) *Critical operations* and *critical services* refer to any operations or services that the designated financial market utility identifies under section 234.3(a)(3)(iii)(A).

(e) *Designated financial market utility* means a financial market utility that is currently designated by the Financial Stability Oversight Council under section 804 of the Dodd-Frank Act (12 U.S.C. 5463).

(f) *Financial market utility* has the same meaning as the term is defined in section 803(6) of the Dodd-Frank Act (12 U.S.C. 5462(6)).

(g) *Link* means, for purposes of section 234.3(a)(20), a set of contractual and operational arrangements between two or more central counterparties, central securities deposito-

ries, or securities settlement systems, or between one or more of these financial market utilities and one or more trade repositories, that connect them directly or indirectly, such as for the purposes of participating in settlement, cross margining, or expanding their services to additional instruments and participants.

(h) *Operational risk* means the risk that deficiencies in information systems or internal processes, human errors, management failures, or disruptions from external events will result in the reduction, deterioration, or breakdown of services provided by the designated financial market utility.

(i) *Orderly wind-down* means the actions of a designated financial market utility to effect the permanent cessation, sale, or transfer of one or more of its critical operations or services in a manner that would not increase the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system.

(j) *Recovery* means, for purposes of section 234.3(a)(3) and (15), the actions of a designated financial market utility, consistent with its rules, procedures, and other *ex ante* contractual arrangements, to address any uncovered loss, liquidity shortfall, or capital inadequacy, whether arising from participant default or other causes (such as business, operational, or other structural weaknesses), including actions to replenish any depleted prefunded financial resources and liquidity arrangements, as necessary to maintain the designated financial market utility's viability as a going concern and to continue its provision of critical services.

(k) *Securities settlement system* means an entity that enables securities to be transferred and settled by book entry and allows transfers of securities free of or against payment.

(*l*) *Stress test* means the estimation of credit or liquidity exposures that would result from the realization of potential stress scenarios, such as extreme price changes, multiple defaults, and changes in other valuation inputs and assumptions.

(m) *Supervisory Agency* has the same meaning as the term is defined in section 803(8) of the Dodd-Frank Act (12 U.S.C. 5462(8)).

(n) *Third party* means any entity, other than a participant of a designated financial market utility acting in that capacity, with which a designated financial market utility maintains a business arrangement, by contract or otherwise.

(o) *Trade repository* means an entity that maintains a centralized electronic record of transaction data, such as a swap data repository or a security-based swap data repository.

9–1602

SECTION 234.3—Standards for Designated Financial Market Utilities

(a) A designated financial market utility must implement rules, procedures, or operations designed to ensure that it meets or exceeds the following risk-management standards with respect to its payment, clearing, and settlement activities.

(1) *Legal basis.* The designated financial market utility has a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities in all relevant jurisdictions.

(2) *Governance.* The designated financial market utility has governance arrangements that—

(i) Are clear, transparent, and documented;

(ii) Promote the safety and efficiency of the designated financial market utility;

(iii) Support the stability of the broader financial system, other relevant public interest considerations such as fostering fair and efficient markets, and the legitimate interests of relevant stakeholders, including the designated financial market utility's owners, participants, and participants' customers; and

(iv) Are designed to ensure—

(A) Lines of responsibility and accountability are clear and direct;

(B) The roles and responsibilities of the board of directors and senior management are clearly specified;

(C) The board of directors consists of suitable individuals having appropriate skills to fulfill its multiple roles;

(D) The board of directors includes a majority of individuals who are not executives, officers, or employees of the designated financial market utility or an affiliate of the designated financial market utility;

(E) The board of directors establishes policies and procedures to identify, address, and manage potential conflicts of interest of board members and to re view its performance and the performance of individual board members on a regular basis;

(F) The board of directors establishes a clear, documented risk-management framework that includes the designated financial market utility's risk-tolerance policy, assigns responsibilities and accountability for risk decisions, and addresses decisionmaking in crises and emergencies;

(G) Senior management has the appropriate experience, skills, and integrity necessary to discharge operational and risk-management responsibilities;

(H) The risk-management function has sufficient authority, resources, and independence from other operations of the designated financial market utility, and has a direct reporting line to and is overseen by a committee of the board of directors;

(I) The internal audit function has sufficient authority, resources, and independence from management, and has a direct reporting line to and is overseen by a committee of the board of directors; and

(J) Major decisions of the board of directors are clearly disclosed to relevant stakeholders, including the designated financial market utility's owners, participants, and participants' customers, and, where there is a broad market impact, the public.

(3) *Framework for the comprehensive management of risks.* The designated financial market utility has a sound risk-management framework for comprehensively managing legal, credit, liquidity, operational, general business, custody, investment, and other risks that arise in or are borne by the designated financial market utility. This framework is subject to periodic review and includes—

(i) Risk-management policies, procedures, and systems that enable the designated financial market utility to identify, measure, monitor, and manage the risks that arise in or are borne by the designated financial market utility, including those posed by other entities as a result of interdependencies;

(ii) Risk-management policies, procedures, and systems that enable the designated financial market utility to identify, measure, monitor, and manage the material risks that it poses to other entities, such as other financial market utilities, trade repositories, settlement banks, liquidity providers, or service providers, as a result of interdependencies; and

(iii) Integrated plans for the designated financial market utility's recovery and orderly wind-down that—

(A) Identify the designated financial market utility's critical operations and services related to payment, clearing, and settlement;

(B) Identify scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern, including uncovered credit losses (as described in paragraph (a)(4)(vi)(A) of this section), uncovered liquidity shortfalls (as described in paragraph (a)(7)(viii)(A) of this section), and general business losses (as described in paragraph (a)(15) of this section);

(C) Identify criteria that could trigger the implementation of the recovery or orderly wind-down plan;

(D) Include rules, procedures, policies, and any other tools the designated financial market utility would use in a recovery or orderly wind-down to address the scenarios identified under paragraph (a)(3)(iii)(B) of this section;

(E) Include procedures to ensure timely implementation of the recovery

and orderly wind-down plans in the scenarios identified under paragraph (a)(3)(iii)(B) of this section;

(F) Include procedures for informing the Board, as soon as practicable, if the designated financial market utility is considering initiating recovery or orderly wind-down; and

(G) Are reviewed the earlier of every two years or after changes to the system or the environment in which the designated financial market utility operates that would significantly affect the viability or execution of the plans.

(4) *Credit risk.* The designated financial market utility effectively measures, monitors, and manages its credit exposures to participants and those arising from its payment, clearing, and settlement processes. In this regard, the designated financial market utility maintains sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. In addition, the designated financial market utility—

(i) If it operates as a central counterparty, maintains additional prefunded financial resources that are sufficient to cover its credit exposure under a wide range of significantly different stress scenarios that includes the default of the participant and its affiliates that would potentially cause the largest aggregate credit exposure to the designated financial market utility in extreme but plausible market conditions;

(ii) If it operates as a central counterparty, may be directed by the Board to maintain additional prefunded financial resources that are sufficient to cover its credit exposure under a wide range of significantly different stress scenarios that includes the default of the two participants and their affiliates that would potentially cause the largest aggregate credit exposure to the designated financial market utility in extreme but plausible market conditions. The Board may consider such a direction if the central counterparty—

(A) Is involved in activities with a more-complex risk profile, such as clearing financial instruments characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults, or

(B) Has been determined by another jurisdiction to be systemically important in that jurisdiction;

(iii) If it operates as a central counterparty, determines the amount and regularly tests the sufficiency of the total financial resources available to meet the requirements of this paragraph by—

(A) On a daily basis, conducting a stress test of its total financial resources using standard and predetermined stress scenarios, parameters, and assumptions;

(B) On at least a monthly basis, and more frequently when the products cleared or markets served experience high volatility or become less liquid, or when the size or concentration of positions held by the central counterparty's participants increases significantly, conducting a comprehensive and thorough analysis of the existing stress scenarios, models, and underlying parameters and assumptions such that the designated financial market utility meets its required level of default protection in light of current and evolving market conditions; and

(C) Having clear procedures to report the results of its stress tests to decisionmakers at the central counterparty and using these results to evaluate the adequacy of and adjust its total financial resources;

(iv) If it operates as a central counterparty, excludes assessments for additional default or guaranty fund contributions (that is, default or guaranty fund contributions that are not prefunded) in its calculation of financial resources available to meet the total financial resource requirement under this paragraph;

(v) At least annually, provides for a validation of the designated financial market utility's risk-management models used to determine the sufficiency of its total financial resources that—

(A) Includes the designated financial

market utility's models used to comply with the collateral provisions under paragraph (a)(5) of this section and models used to determine initial margin under paragraph (a)(6) of this section; and

(B) Is performed by a qualified person who does not perform functions associated with the model (except as part of the annual model validation), does not report to such a person, and does not have a financial interest in whether the model is determined to be valid; and

(vi) Establishes rules and procedures that explicitly—

(A) Address allocation of credit losses the designated financial market utility may face if its collateral and other financial resources are insufficient to cover fully its credit exposures, including the repayment of any funds a designated financial market utility may borrow from liquidity providers; and

(B) Describe the designated financial market utility's process to replenish any financial resources that the designated financial market utility may employ during a stress event, including a participant default.

(5) *Collateral.* If it requires collateral to manage its or its participants' credit exposure, the designated financial market utility accepts collateral with low credit, liquidity, and market risks and sets and enforces conservative haircuts and concentration limits, in order to ensure the value of the collateral in the event of liquidation and that the collateral can be used in a timely manner. In this regard, the designated financial market utility—

(i) Establishes prudent valuation practices and develops haircuts that are tested regularly and take into account stressed market conditions;

(ii) Establishes haircuts that are calibrated to include relevant periods of stressed market conditions to reduce the need for procyclical adjustments;

(iii) Provides for annual validation of its haircut procedures, as part of its risk-management model validation under paragraph (a)(4)(v) of this section;

(iv) Avoids concentrated holdings of any particular type of asset where the concentration could significantly impair the ability to liquidate such assets quickly without significant adverse price effects;

(v) Uses a collateral management system that is well-designed and operationally flexible such that it, among other things—

(A) Accommodates changes in the ongoing monitoring and management of collateral; and

(B) Allows for the timely valuation of collateral and execution of any collateral or margin calls.

(6) *Margin.* If it operates as a central counterparty, the designated financial market utility covers its credit exposures to its participants for all products by establishing a risk-based margin system that—

(i) Is conceptually and methodologically sound for the risks and particular attributes of each product, portfolio, and markets it serves, as demonstrated by documented and empirical evidence supporting design choices, methods used, variables selected, theoretical bases, key assumptions, and limitations;

(ii) Establishes margin levels commensurate with the risks and particular attributes of each product, portfolio, and market it serves;

(iii) Has a reliable source of timely price data;

(iv) Has procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable;

(v) Marks participant positions to market and collects variation margin at least daily and has the operational capacity to make intraday margin calls and payments, both scheduled and unscheduled, to participants;

(vi) Generates initial margin requirements sufficient to cover potential changes in the value of each participant's position during the interval between the last margin collection and the closeout of positions following a participant default by—

(A) Ensuring that initial margin meets

an established single-tailed confidence level of at least 99 percent with respect to the estimated distribution of future exposure; and

(B) Using a conservative estimate of the time horizons for the effective hedging or closeout of the particular types of products cleared, including in stressed market conditions; and

(vii) Is monitored on an ongoing basis and regularly reviewed, tested, and verified through—

(A) Daily backtests;

(B) Monthly sensitivity analyses, performed more frequently during stressed market conditions or significant fluctuations in participant positions, with this analysis taking into account a wide range of parameters and assumptions that reflect possible market conditions that captures a variety of historical and hypothetical conditions, including the most volatile periods that have been experienced by the markets the designated financial market utility serves; and

(C) Annual model validations of the designated financial market utility's margin models and related parameters and assumptions, as part of its risk-management model validation under paragraph (a)(4)(v) of this section.

(7) *Liquidity risk.* The designated financial market utility effectively measures, monitors, and manages the liquidity risk that arises in or is borne by the designated financial market utility. In this regard, the designated financial market utility—

(i) Has effective operational and analytical tools to identify, measure, and monitor its settlement and funding flows on an ongoing and timely basis, including its use of intraday liquidity;

(ii) Maintains sufficient liquid resources in all relevant currencies to effect same-day and, where applicable, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of significantly different potential stress scenarios that includes the default of the participant and its affiliates that would generate the largest aggregate liquidity obligation for the designated financial market utility in extreme but plausible market conditions;

(iii) Holds, for purposes of meeting the minimum liquid resource requirement under paragraph (a)(7)(ii) of this section—

(A) cash in each relevant currency at the central bank of issue or creditworthy commercial banks;

(B) assets that are readily available and convertible into cash, through committed arrangements without material adverse change conditions, such as collateralized lines of credit, foreign exchange swaps, and repurchase agreements; or

(C) subject to the determination of the Board, highly marketable collateral and investments that are readily available and convertible into cash with prearranged and highly reliable funding arrangements, even in extreme but plausible market conditions;

(iv) Evaluates and confirms, at least annually, whether each provider of the arrangements as described in paragraphs (a)(7)(iii)(B) and (C) of this section has sufficient information to understand and manage that provider's associated liquidity risks, and whether the provider has the capacity to perform;

(v) Maintains and tests its procedures and operational capacity for accessing each type of liquid resource required under this paragraph at least annually;

(vi) Determines the amount and regularly tests the sufficiency of the liquid resources necessary to meet the minimum liquid resource requirement under this paragraph by—

(A) On a daily basis, conducting a stress test of its liquid resources using standard and predetermined stress scenarios, parameters, and assumptions;

(B) On at least a monthly basis, and more frequently when products cleared or markets served experience high volatility or become less liquid, or when the size or concentration of positions held by the designated financial market utility's participants increases significantly, conducting a comprehen-

sive and thorough analysis of the existing stress scenarios, models, and underlying parameters and assumptions such that the designated financial market utility meets its identified liquidity needs and resources in light of current and evolving market conditions; and

(C) Having clear procedures to report the results of its stress tests to decisionmakers at the designated financial market utility and using these results to evaluate the adequacy of and make adjustments to its liquidity risk-management framework;

(vii) At least annually, provides for a validation of its liquidity risk-management model by a qualified person who does not perform functions associated with the model (except as part of the annual model validation), does not report to such a person, and does not have a financial interest in whether the model is determined to be valid; and

(viii) Establishes rules and procedures that explicitly—

(A) Address potential liquidity shortfalls that would not be covered by the designated financial market utility's liquid resources and avoid unwinding, revoking, or delaying the same-day settlement of payment obligations; and

(B) Describe the designated financial market utility's process to replenish any liquid resources that it may employ during a stress event, including a participant default.

(8) *Settlement finality.* The designated financial market utility provides clear and certain final settlement intraday or in real time as appropriate, and at a minimum, by the end of the value date. The designated financial market utility clearly defines the point at which settlement is final and the point after which unsettled payments, transfer instructions, or other settlement instructions may not be revoked by a participant.

(9) *Money settlements.* The designated financial market utility conducts its money settlements in central bank money where practical and available. If central bank money is not used, the designated financial market utility minimizes and strictly controls the credit and liquidity risks arising from conducting its money settlements in commercial bank money, including settlement on its own books. If it conducts its money settlements at a commercial bank, the designated financial market utility—

(i) Establishes and monitors adherence to criteria based on high standards for its settlement banks that take account of, among other things, their applicable regulatory and supervisory frameworks, creditworthiness, capitalization, access to liquidity, and operational reliability;

(ii) Monitors and manages the concentration of credit and liquidity exposures to its commercial settlement banks; and

(iii) Ensures that its legal agreements with its settlement banks state clearly—

(A) When transfers on the books of individual settlement banks are expected to occur;

(B) That transfers are final when funds are credited to the recipient's account; and

(C) That the funds credited to the recipient are available immediately for retransfer or withdrawal.

(10) *Physical deliveries.* A designated financial market utility that operates as a central counterparty, securities settlement system, or central securities depository clearly states its obligations with respect to the delivery of physical instruments or commodities and identifies, monitors, and manages the risks associated with such physical deliveries.

(11) *Central securities depositories.* A designated financial market utility that operates as a central securities depository has appropriate rules and procedures to help ensure the integrity of securities issues and minimizes and manages the risks associated with the safekeeping and transfer of securities. In this regard, the designated financial market utility maintains securities in an immobilized or dematerialized form for their transfer by book entry.

(12) *Exchange-of-value settlement systems.* If it settles transactions that involve the settlement of two linked obligations, such as a transfer of securities against payment or the exchange of one currency for an

other, the designated financial market utility eliminates principal risk by conditioning the final settlement of one obligation upon the final settlement of the other.

(13) *Participant-default rules and procedures.* The designated financial market utility has effective and clearly defined rules and procedures to manage a participant default that are designed to ensure that the designated financial market utility can take timely action to contain losses and liquidity pressures so that it can continue to meet its obligations. In this regard, the designated financial market utility tests and reviews its default procedures, including any closeout procedures, at least annually or following material changes to these rules and procedures.

(14) *Segregation and portability.* A designated financial market utility that operates as a central counterparty has rules and procedures that enable the segregation and portability of positions of a participant's customers and the collateral provided to the designated financial market utility with respect to those positions.

(15) *General business risk.* The designated financial market utility identifies, monitors, and manages its general business risk, which is the risk of losses that may arise from its administration and operation as a business enterprise (including losses from execution of business strategy, negative cash flows, or unexpected and excessively large operating expenses) that are neither related to participant default nor separately covered by financial resources maintained for credit or liquidity risk. In this regard, in addition to holding financial resources required to manage credit risk (paragraph (a)(4) of this section) and liquidity risk (paragraph (a)(7) of this section), the designated financial market utility—

(i) Maintains liquid net assets funded by equity that are at all times sufficient to ensure a recovery or orderly wind-down of critical operations and services such that it—

(A) Holds unencumbered liquid financial assets, such as cash or highly liquid securities, that are sufficient to cover the greater of—

(*1*) The cost to implement the plans to address general business losses as required under paragraph (a)(3)(iii) of this section and

(*2*) Six months of current operating expenses or as otherwise determined by the Board; and

(B) Holds equity, such as common stock, disclosed reserves, and other retained earnings, that is at all times greater than or equal to the amount of unencumbered liquid financial assets that are required to be held under paragraph (a)(15)(i)(A) of this section; and

(ii) Maintains a viable plan, approved by the board of directors, for raising additional equity should the designated financial market utility's equity fall below the amount required under paragraph (a)(15)(i) of this section, and updates the plan the earlier of every two years or following changes to the designated financial market utility or the environment in which it operates that would significantly affect the viability or execution of the plan.

(16) *Custody and investment risks.* The designated financial market utility—

(i) Safeguards its own and its participants' assets and minimizes the risk of loss on and delay in access to these assets by—

(A) Holding its own and its participants' assets at supervised and regulated entities that have accounting practices, safekeeping procedures, and internal controls that fully protect these assets; and

(B) Evaluating its exposures to its custodian banks, taking into account the full scope of its relationships with each; and

(ii) Invests its own and its participants' assets—

(A) In instruments with minimal credit, market, and liquidity risks, such as investments that are secured by, or are claims on, high-quality obligors and investments that allow for timely liquidation with little, if any, adverse price effect; and

(B) Using an investment strategy that

is consistent with its overall risk-management strategy and fully disclosed to its participants.

(17) *Operational risk.* The designated financial market utility manages its operational risks by establishing a robust operational risk-management framework that is approved by the board of directors. In this regard, the designated financial market utility—

(i) Identifies the plausible sources of operational risk, both internal and external, and mitigates their impact through the use of appropriate systems, policies, procedures, and controls—including those specific systems, policies, procedures, or controls required pursuant to this paragraph (a)(17)—that are reviewed, audited, and tested periodically and after major changes such that—

(A) The designated financial market utility conducts tests—

(*1*) In accordance with a documented testing framework that addresses, at a minimum, scope, frequency, participation, interdependencies, and reporting; and

(*2*) That assess whether the designated financial market utility's systems, policies, procedures, or controls function as intended;

(B) The designated financial market utility reviews the design, implementation, and testing of affected and similar systems, policies, procedures, and controls, after material operational incidents, including the material operational incidents described in paragraph (a)(17)(vi)(A) of this section, or after changes to the environment in which the designated financial market utility operates that could significantly affect the plausible sources or mitigants of operational risk; and

(C) The designated financial market utility remediates as soon as possible, following established governance processes, deficiencies in systems, policies, procedures, or controls identified in the process of review or testing;

(ii) Identifies, monitors, and manages the risks its operations might pose to other entities such as those referenced in paragraph (a)(3)(ii) of this section;

(iii) Has systems, policies, procedures, and controls that are designed to achieve clearly defined objectives to ensure a high degree of security and operational reliability;

(iv) Has systems that have adequate, scalable capacity to handle increasing stress volumes and achieve the designated financial market utility's service-level objectives;

(v) Has comprehensive physical, information, and cyber security policies, procedures, and controls that enable the designated financial market utility to identify, monitor, and manage potential and evolving vulnerabilities and threats;

(vi) Has a documented framework for incident management that provides for the prompt detection, analysis, and escalation of an incident, appropriate procedures for addressing an incident, and incorporation of lessons learned following an incident. This framework includes a plan for notification and communication of material operational incidents to identified relevant entities that ensures the designated financial market utility—

(A) Immediately notifies the Board, in accordance with the process established by the Board, when the designated financial market utility activates its business continuity plan or has a reasonable basis to conclude that—

(*1*) There is an actual or likely disruption, or material degradation, to any critical operations or services, or to its ability to fulfill its obligations on time; or

(*2*) There is unauthorized entry or a vulnerability that could allow unauthorized entry into the designated financial market utility's computer, network, electronic, technical, automated, or similar systems that affects or has the potential to affect its critical operations or services; and

(B) Establishes criteria and processes providing for timely communication and responsible disclosure of material

operational incidents to the designated financial market utility's participants and other relevant entities, such that—

(*1*) Affected participants are notified immediately of actual disruptions or material degradations to any critical operations or services, or to the designated financial market utility's ability to fulfill its obligations on time; and

(*2*) Participants and other relevant entities, as identified in the designated financial market utility's plan for notification and communication, are notified in a timely manner of material operational incidents described in paragraph (a)(17)(vi)(A) of this section, as appropriate, taking into account the risks and benefits of the disclosure to the designated financial market utility and such participants and other relevant entities;

(vii) Has business continuity management that provides for rapid recovery and timely resumption of critical operations and services and fulfillment of its obligations, including in the event of a wide-scale disruption or a major disruption;

(viii) Has a business continuity plan that—

(A) Incorporates the use of two sites providing for sufficient redundancy supporting critical operations that are located at a sufficient geographical distance from each other to have a distinct risk profile;

(B) Is designed to enable critical systems, including information technology systems, to recover and resume critical operations and services no later than two hours following disruptive events;

(C) Is designed to enable it to complete settlement by the end of the day of the disruption, even in case of extreme circumstances;

(D) Sets out criteria and processes by which the designated financial market utility will reestablish availability for affected participants and other entities following a disruption to the designated financial market utility's critical operations or services;

(E) Provides for testing, pursuant to the requirements under paragraphs (a)(17)(i)(A) and (C) of this section, at least annually, of the designated financial market utility's business continuity arrangements, including the people, processes, and technologies of the sites required under paragraph (a)(17)(viii)(A) of this section, such that—

(*1*) The designated financial market utility can demonstrate that it can run live production at the sites required under paragraph (a)(17)(viii)(A) of this section;

(*2*) The designated financial market utility assesses the capability of its systems and effectiveness of its procedures for data recovery and data reconciliation to meet the recovery and resumption objectives under paragraphs (a)(17)(viii)(B) and (C) of this section, even in case of extreme circumstances, including in the event of data loss or data corruption; and

(*3*) The designated financial market utility can demonstrate that it has geographically dispersed staff who can effectively run the operations and manage the business of the designated financial market utility; and

(F) Is reviewed, pursuant to the requirements under paragraphs (a)(17)(i)(B) and (C) of this section, at least annually, in order to—

(*1*) Incorporate lessons learned from actual and averted disruptions; and

(*2*) Update scenarios and assumptions in order to ensure responsiveness to the evolving risk environment and incorporate new and evolving sources of operational risk; and

(ix) Has systems, policies, procedures, and controls that effectively identify, monitor, and manage risks associated with third-party relationships, and that ensure that, for any service that is performed for the designated financial market utility by a third party, risks are identified, monitored, and managed to the

same extent as if the designated financial market utility were performing the service itself. In this regard, the designated financial market utility—

(A) Regularly conducts risk assessments of third parties;

(B) Establishes information-sharing arrangements, as appropriate, with third parties that provide services material to any of the designated financial market utility's critical operations or services; and

(C) Addresses in its business continuity management and testing, as appropriate, third parties that provide services material to any of the designated financial market utility's critical operations or services.

(18) *Access and participation requirements.* The designated financial market utility has objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access. The designated financial market utility—

(i) Monitors compliance with its participation requirements on an ongoing basis and has the authority to impose more-stringent restrictions or other risk controls on a participant in situations where the designated financial market utility determines the participant poses heightened risk to the designated financial market utility; and

(ii) Has clearly defined and publicly disclosed procedures for facilitating the suspension and orderly exit of a participant that fails to meet the participation requirements.

(19) *Tiered participation arrangements.* The designated financial market utility identifies, monitors, and manages the material risks arising from arrangements in which firms that are not direct participants in the designated financial market utility rely on the services provided by direct participants to access the designated financial market utility's payment, clearing, or settlement facilities, whether the risks are borne by the designated financial market utility or by its participants as a result of their participation. The designated financial market utility—

(i) Conducts an analysis to determine whether material risks arise from tiered participation arrangements;

(ii) Where material risks are identified, mitigates or manages such risks; and

(iii) Reviews and updates the analysis conducted under paragraph (a)(19)(i) ofthis section the earlier of every two years or following material changes to the system design or operations or the environment in which the designated financial market utility operates if those changes could affect the analysis conducted under paragraph (a)(19)(i) of this section.

(20) *Links.* If it operates as a central counterparty, securities settlement system, or central securities depository and establishes a link with one or more of these types of financial market utilities or trade repositories, the designated financial market utility identifies, monitors, and manages risks related to this link. In this regard, each central counterparty in a link arrangement with another central counterparty covers, at least on a daily basis, its current and potential future exposures to the linked central counterparty and its participants, if any, fully with a high degree of confidence without reducing the central counterparty's ability to fulfill its obligations to its own participants.

(21) *Efficiency and effectiveness.* The designated financial market utility—

(i) Is efficient and effective in meeting the requirements of its participants and the markets it serves, in particular, with regard to its—

(A) Clearing and settlement arrangement;

(B) Risk-management policies, procedures, and systems;

(C) Scope of products cleared and settled; and

(D) Use of technology and communication procedures;

(ii) Has clearly defined goals and objectives that are measurable and achievable, such as minimum service levels, risk-management expectations, and business priorities; and

(iii) Has policies and procedures for the

regular review of its efficiency and effectiveness.

(22) *Communication procedures and standards.* The designated financial market utility uses, or at a minimum accommodates, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, and settlement.

(23) *Disclosure of rules, key procedures, and market data.* The designated financial market utility—

(i) Has clear and comprehensive rules and procedures;

(ii) Publicly discloses all rules and key procedures, including key aspects of its default rules and procedures;

(iii) Provides sufficient information to enable participants to have an accurate understanding of the risks, fees, and other material costs they incur by participating in the designated financial market utility;

(iv) Provides a comprehensive public disclosure of its legal, governance, risk management, and operating framework, that includes—

(A) *Executive summary.* An executive summary of the key points from paragraphs (a)(23)(iv)(B) through (D) of this section;

(B) *Summary of major changes since the last update of the disclosure.* A summary of the major changes since the last update of paragraph (a)(23)(iv)(C), (D), or (E) of this section;

(C) *General background on the designated financial market utility.* A description of—

(*1*) The designated financial market utility's function and the markets it serves,

(*2*) Basic data and performance statistics on its services and operations, such as basic volume and value statistics by product type, average aggregate intraday exposures to its participants, and statistics on the designated financial market utility's operational reliability, and

(*3*) The designated financial market utility's general organization, legal and regulatory framework, and system design and operations;

(D) *Standard-by-standard summary narrative.* A comprehensive narrative disclosure for each applicable standard set forth in this paragraph (a) with sufficient detail and context to enable a reader to understand the designated financial market utility's approach to controlling the risks and addressing the requirements in each standard; and

(E) *List of publicly available resources.* A list of publicly available resources, including those referenced in the disclosure, that may help a reader understand how the designated financial market utility controls its risks and addresses the requirements set forth in this paragraph (a); and

(v) Updates the public disclosure under paragraph (a)(23)(iv) of this section the earlier of every two years or to reflect changes to its system or the environment in which it operates that would significantly change the accuracy of the statements provided under paragraph (a)(23)(iv) of this section.

(b) The Board, by order, may apply heightened risk-management standards to a particular designated financial market utility in accordance with the risks presented by that designated financial market utility. The Board, by order, may waive the application of a standard or standards to a particular designated financial market utility where the risks presented by or the design of that designated financial market utility would make the application of the standard or standards inappropriate.

9–1604

SECTION 234.4—Changes to Rules, Procedures, or Operations

(a) *Advance notice.*

(1) A designated financial market utility shall provide at least 60-days advance notice to the Board of any proposed change to its rules, procedures, or operations that could materially affect the nature or level of

risks presented by the designated financial market utility.

(2) The notice of the 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.

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

(4) A designated financial market utility shall not implement a change to which the Board has an objection.

(5) The Board will notify the designated financial market utility of any objection before the end of 60 days after the later of—

(i) The date the Board receives the notice of proposed change; or

(ii) The date the Board receives any further information it requests for consideration of the notice.

(6) A designated financial market utility may implement a change if it has not received an objection to the proposed change before the end of 60 days after the later of—

(i) The date the Board receives the notice of proposed change; or

(ii) The date the Board receives any further information it requests for consideration of the notice.

(7) With respect to proposed changes that raise novel or complex issues, the Board may, by written notice during the 60-day review period, extend the review period for an additional 60 days. Any extension under this paragraph will extend the time periods under paragraphs (a)(5) and (a)(6) of this section to 120 days.

(8) A designated financial market utility may implement a proposed change before the expiration of the applicable review period if the Board notifies the designated financial market utility in writing that the Board 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 Board.

(b) *Emergency changes.*

(1) A designated financial market utility may implement a change that would otherwise require advance notice under this section 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.

(2) The designated financial market utility shall provide notice of any such emergency change to the Board as soon as practicable and no later than 24 hours after implementation of the change.

(3) In addition to the information required for changes requiring advance notice in paragraph (a)(2) of this section, 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.

(4) The Board may require modification or rescission of the change if it finds that the change is not consistent with the purposes of the Dodd-Frank Act or any applicable rules, order, or standards prescribed under section 805(a) of the Dodd-Frank Act.

(c) *Materiality.*

(1) The term ''materially affect the nature or level of risks presented'' in paragraph (a)(1) of this section means matters as to which there is a reasonable possibility that the change would materially affect the overall nature or level of risk presented by the designated financial market utility, including risk arising in the performance of payment, clearing, or settlement functions.

(2) A change to rules, procedures, or operations that would materially affect the nature or level of risks presented includes, but is

not limited to, changes that materially affect any one or more of the following:

(i) Participant eligibility or access criteria;

(ii) Product eligibility;

(iii) Risk management;

(iv) Settlement failure or default procedures;

(v) Financial resources;

(vi) Business continuity and disaster recovery plans;

(vii) Daily or intraday settlement procedures;

(viii) The scope of services, including the addition of a new service or discontinuation of an existing service;

(ix) Technical design or operating platform, which results in non-routine changes to the underlying technological framework for payment, clearing, or settlement functions; or

(x) Governance.

(3) A change to rules, procedures, or operations that does not meet the conditions of paragraph (c)(2) of this section and would not materially affect the nature or level of risks presented includes, but is not limited to the following:

(i) A routine technology systems upgrade;

(ii) A change in a fee, price, or other charge for services provided by the designated financial market utility;

(iii) A change related solely to the administration of the designated financial market utility or related to the routine, daily administration, direction, and control of employees; or

(iv) A clerical change and other nonsubstantive revisions to rules, procedures, or other documentation.

9–1605

SECTION 234.5—Access to Federal Reserve Bank Accounts and Services

(a) This section applies to any designated financial market utility for which the Board may authorize a Federal Reserve Bank to open an account or provide services in accordance with section 806(a) of the Dodd-Frank Act. Upon receipt of Board authorization and subject to any limitations, restrictions, or other requirements established by the Board, a Federal Reserve Bank may enter into agreements governing the details of its accounts and services with a designated financial market utility, consistent with this section and any other applicable Board direction. The agreements may include, among other things, provisions regarding documentation to establish the account and receive services, conditions imposed on the account and services, service charges, reporting, accounting for activity in the account, liability and duty of care, and termination.

(b) A Federal Reserve Bank should ensure that its establishment and maintenance of an account for or provision of services to a designated financial market utility does not create undue credit, settlement, or other risk to the Reserve Bank. In order to establish and maintain an account with a Federal Reserve Bank or receive financial services from a Federal Reserve Bank, the designated financial market utility must be in compliance with the Supervisory Agency's regulatory and supervisory requirements regarding financial resources, liquidity, participant default management, and other aspects of risk management, as determined by the Supervisory Agency. In addition, at a minimum, the designated financial market utility must, in the Federal Reserve Bank's judgment—

(1) Be in generally sound financial condition, including maintenance of sufficient working capital and cash flow to permit the designated financial market utility to continue as a going concern and to meet its current and projected operating expenses under a range of scenarios;

(2) Be in compliance with Board orders and policies, Federal Reserve Bank account agreements and, as applicable, operating circulars, and other applicable Federal Reserve requirements regarding the establishment and maintenance of an account at a Federal Reserve Bank and the receipt of financial services from a Federal Reserve Bank; and

(3) Have an ongoing ability, including during periods of market stress or a participant default, to meet all of its obligations under

its agreement for a Federal Reserve Bank account and services, including by maintaining—

(i) Sufficient liquid resources to meet its obligations under the account agreement;

(ii) The operational capacity to ensure that such liquid resources are available to satisfy the account obligations on a timely basis in accordance with the account agreement; and

(iii) Sound money settlement processes designed to adequately monitor its Federal Reserve Bank account on an intraday basis, process money transfers through its account in an orderly manner, and complete final money settlement no later than the value date.

(c) The Board will consult with the Supervisory Agency of a designated financial market utility prior to authorizing a Federal Reserve Bank to open an account, and periodically thereafter, to ascertain the views of the Supervisory Agency regarding the designated financial market utility's compliance with the requirements in paragraph (b) of this section.

(d) In addition to any right that a Reserve Bank has to limit or terminate an account or the use of a service pursuant to its account agreement, the Board may direct the Federal Reserve Bank to impose limits, restrictions, or other conditions on the availability or use of a Federal Reserve Bank account or service by a designated financial market utility, including directing the Reserve Bank to terminate the use of a particular service or to close the account. If the Reserve Bank determines that a designated financial market utility no longer complies with one or more of the minimum conditions in subsection (b), the Reserve Bank will consult with the Board regarding continued maintenance of the account and provision of services.

9–1606

SECTION 234.6—Interest on Balances

(a) A Federal Reserve Bank may pay interest on balances maintained by a designated financial market utility at the Federal Reserve Bank in accordance with this section and under such other terms and conditions as the Board may prescribe.

(b) Interest on balances paid under this section shall be at the rate paid on balances maintained by depository institutions or another rate determined by the Board from time to time, not to exceed the general level of short-term interest rates.

(c) For purposes of this section, ''short-term interest rates'' shall have the same meaning as the meaning provided for that term in section 204.10(b)(3) of this chapter.

Payment, Clearing, and Settlement Supervision Act

12 U.S.C. 5461 *et seq*.; 124 Stat. 1802; Pub. L. 111-203, Dodd-Frank Wall Street Reform and Consumer Protection Act, Title VIII (July 21, 2010)

Section

801 Short title
802 Finding and purposes
803 Definitions
804 Designation of systemic importance
805 Standards for systemically important financial market utilities and payment, clearing, or settlement activities
806 Operations of designated financial market utilities
807 Examination of and enforcement actions against designated financial market utilities
808 Examination of and enforcement actions against financial institutions subject to standards for designated activities
809 Requests for information, reports, or records
810 Rulemaking
811 Other authority
812 Consultation
813 Common framework for designated clearing entity risk management
814 Effective date

9–1625

SECTION 801—Short Title

This title may be cited as the ''Payment, Clearing, and Settlement Supervision Act of 2010''.

[12 USC 5461 note.]

9–1626

SECTION 802—Finding 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 title 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.

[12 USC 5461.]

9–1627

SECTION 803—Definitions

In this title, 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 2 of this Act;

(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 804.

(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 804.

(5) *Financial institution.*

(A) *In general.* The term ''financial institution'' means—

(i) a depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(ii) a branch or agency of a foreign bank, as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101);

(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);

(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 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3);

(vii) an insurance company, as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a-2);

(viii) an investment adviser, as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2);

(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 title.

(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 3(q) of the Federal Deposit Insurance Act.

(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 title.

(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.

[12 USC 5462.]

9–1628

SECTION 804—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 ⅔ 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 ⅔ of members then serving, including an affirmative vote by the Chairper-

son 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 title or any rules or orders prescribed under this title.

(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 ⅔ 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.

[12 USC 5463.]

9–1629

SECTION 805—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 Council 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 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.''*

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

[12 USC 5464.]

9–1630

SECTION 806—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 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 sec-

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

tion 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))[†] 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, 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.

(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 notice[‡] 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—

[†] So in original. Another closing parenthesis probably should appear.

[‡] So in original. The word ''notice'' probably should not appear.

(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.

(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 information 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.

[12 USC 5465.]

9–1631

SECTION 807—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 title; and

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

(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 title, 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 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) 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)[§]

(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 mar-

[§] So in original. Probably should be followed by a period.

ket utility (including any change proposed by the designated financial market utility to its rules, procedures, or operations that would otherwise be subject to section 806(e)) 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 under** the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) 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.

[12 USC 5466.]

9–1632

SECTION 808—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 805(a) 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 and control the risks described in paragraphs (2) and (3).

(5) The financial institution's compliance with this title and the rules and orders prescribed under section 805(a).

(b) *Enforcement.* For purposes of enforcing the provisions of this title, and the rules and orders prescribed under this section, a financial institution subject to the standards prescribed under section 805(a) for a designated activity shall be subject to, and the appropriate financial regulator shall have authority under†† the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) 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 title 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 805(a) for a designated activity in order to assess the compliance of such financial institution with—

(i) this title; or

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

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

(ii) the rules or orders prescribed under this title.

(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 title or the rules or orders prescribed under this title against a financial institution that is subject to the standards prescribed under section 805(a) 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 title or the rules or orders prescribed under this title and, if so, the financial institution shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) 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 805(a) for a designated activity; and

(B) enforce the provisions of this title or any rules or orders prescribed under this title against any financial institution that is subject to the standards prescribed under section 805(a) 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 title or the rules or orders prescribed under this title 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 title or the rules or orders prescribed under this title 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—

(i) reasonable cause to believe that a financial institution is not in compliance with this title or the rules or orders prescribed under this title 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 title or the rules or orders prescribed under this title 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 under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) 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.

[12 USC 5467.]

9–1633

SECTION 809—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 804.

(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 804.

(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 805(a) 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 805(a) 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 com-

pliance with this title and the rules and orders prescribed under section 805(a) 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 805(a)(2).

(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 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 recordkeeping 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 title 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 8 of the Commodity Exchange Act (7 U.S.C. 12).

(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 institu-

tions, 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, United States Code. For purposes of such section 552, this subsection shall be considered a statute described in subsection (b)(3) of such section 552.

[12 USC 5468.]

9–1634

SECTION 810—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.

[12 USC 5469.]

9–1635

SECTION 811—Other Authority

Unless otherwise provided by its terms, this title 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 805 shall supersede any less stringent requirements established under other authority to the extent of any conflict.

[12 USC 5470.]

9–1636

SECTION 812—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 the Commodity Exchange Act, 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) 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.

(b) *SEC.* The Commission shall consult with the Board of Governors—

(1) prior to exercising its authorities under sections 3C(a)(2)(C), 3C(a)(3)(A), 3C(a)(3)(C), 3C(a)(4)(A), and 3C(a)(4)(B) of the Securities Exchange Act of 1934, 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 19(b)(2) of the Securities Exchange Act of 1934; and

(3) prior to exercising its rulemaking authorities under section 13(n) of the Securities Exchange Act of 1934, as added by section 763(i) of the Wall Street Transparency and Accountability Act of 2010.

[12 USC 5471.]

9–1637

SECTION 813—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 the date of enactment of this Act, 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 Ag-

riculture of the House of Representatives recommendations[‡‡] 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.

[12 USC 5472.]

[‡‡] So in original. Probably should be preceded by "with".

9–1638

SECTION 814—Effective Date

This title is effective as of the date of enactment of this Act.

[12 USC 5461 note.]