

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

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

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

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

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

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

(B) Multiple agency jurisdiction

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

(9) Systemically important and systemic importance

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

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

Editorial Notes

REFERENCES IN TEXT

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

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

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

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

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

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

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

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

The Council, on a nondelegable basis and by a vote of not fewer than $\frac{2}{3}$ of members then serving, including an affirmative vote by the Chairperson of the Council, shall designate those financial market utilities or payment, clearing, or settlement activities that the Council determines are, or are likely to become, systemically important.

(2) Considerations

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

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

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

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

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

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

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

The Council, on a nondelegable basis and by a vote of not fewer than $\frac{2}{3}$ of members then serving, including an affirmative vote by the Chairperson of the Council, shall rescind a designation of systemic importance for a designated financial market utility or designated

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

(2) Effect of rescission

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

(c) Consultation and notice and opportunity for hearing

(1) Consultation

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

(2) Advance notice and opportunity for hearing

(A) In general

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

(B) Notice in Federal Register

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

(C) Requests for hearing

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

(D) Written submissions

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

(3) Emergency exception

(A) Waiver or modification by vote of the Council

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

(B) Notice of waiver or modification

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

(d) Notification of final determination

(1) After hearing

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

(2) When no hearing requested

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

(e) Extension of time periods

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

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

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

(a) Authority to prescribe standards

(1) Board of Governors

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

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

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

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

(A) CFTC and Commission

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