

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

**(d) Board of Governors involvement in examinations**

**(1) Board of Governors consultation on examination planning**

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

**(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.

<sup>1</sup> So in original. Probably should be followed by a period.

**(f) Emergency enforcement actions by the Board of Governors**

**(1) Imminent risk of substantial harm**

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

(A) either—

(i) an action engaged in, or contemplated by, a designated financial market utility (including any change proposed by the designated financial market utility to its rules, procedures, or operations that would otherwise be subject to section 5465(e) of this title) poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system of the United States; or

(ii) the condition of a designated financial market utility poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system; and

(B) the imminent risk of substantial harm precludes the Board of Governors' use of the procedures in subsection (e).

**(2) Enforcement authority**

For purposes of taking enforcement action under paragraph (1), a designated financial market utility shall be subject to, and the Board of Governors shall have authority under<sup>2</sup> the provisions of subsections (b) through (n) of section 1818 of this title in the same manner and to the same extent as if the designated financial market utility was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

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

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

**(a) Examination**

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

(1) The nature and scope of the designated activities engaged in by the financial institution.

(2) The financial and operational risks the designated activities engaged in by the financial institution may pose to the safety and soundness of the financial institution.

(3) The financial and operational risks the designated activities engaged in by the financial institution may pose to other financial institutions, critical markets, or the broader financial system.

(4) The resources available to and the capabilities of the financial institution to monitor

<sup>2</sup> So in original. Probably should be followed by a comma.

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

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

**(b) Enforcement**

For purposes of enforcing the provisions of this subchapter, and the rules and orders prescribed under this section, a financial institution subject to the standards prescribed under section 5464(a) of this title for a designated activity shall be subject to, and the appropriate financial regulator shall have authority under<sup>1</sup> the provisions of subsections (b) through (n) of section 1818 of this title in the same manner and to the same extent as if the financial institution was an insured depository institution and the appropriate financial regulator was the appropriate Federal banking agency for such insured depository institution.

**(c) Technical assistance**

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

**(d) Delegation**

**(1) Examination**

**(A) Request to Board of Governors**

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

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

**(B) Examination by Board of Governors**

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

**(2) Enforcement**

**(A) Request to Board of Governors**

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

**(B) Enforcement by Board of Governors**

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

ders prescribed under this subchapter and, if so, the financial institution shall be subject to, and the Board of Governors shall have authority under<sup>1</sup> the provisions of subsections (b) through (n) of section 1818 of this title in the same manner and to the same extent as if the financial institution was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

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

**(1) Examination and enforcement**

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

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

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

**(2) Limitations**

**(A) Examination**

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

- (i) reasonable cause to believe that a financial institution is not in compliance with this subchapter or the rules or orders prescribed under this subchapter with respect to a designated activity;
- (ii) notified, in writing, the appropriate financial regulator and the Council of its belief under clause (i) with supporting documentation included;
- (iii) requested the appropriate financial regulator to conduct a prompt examination of the financial institution;
- (iv) either—

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

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

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

**(B) Enforcement**

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

<sup>1</sup> So in original. Probably should be followed by a comma.

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

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

(iii) either—

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

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

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

### (3) Enforcement provisions

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

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

## § 5468. Requests for information, reports, or records

### (a) Information to assess systemic importance

#### (1) Financial market utilities

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

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

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

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

### (b) Reporting after designation

#### (1) Designated financial market utilities

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

#### (2) Financial institutions subject to standards for designated activities

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

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

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

#### (3) Limitation

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

### (c) Coordination with appropriate Federal Supervisory Agency

#### (1) Advance coordination

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

#### (2) Supervisory reports

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