

ties and financial institutions engaged in designated activities for which the Commission or the Commodity Futures Trading Commission is the Supervisory Agency or the appropriate financial regulator are insufficient to prevent or mitigate significant liquidity, credit, operational, or other risks to the financial markets or to the financial stability of the United States.

(C) Written determination

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

(D) CFTC and Commission response

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

(E) Authorization

Upon an affirmative vote by not fewer than 2/3 of members then serving on the Council, the Council shall either find that the response submitted under subparagraph (D) is sufficient, or require the Commodity Futures Trading Commission, or the Commission, as applicable, to prescribe such risk management standards as the Council determines is necessary to address the specific prudential requirements that are determined to be insufficient."¹

(b) Objectives and principles

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

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

(c) Scope

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

- (1) risk management policies and procedures;
- (2) margin and collateral requirements;

(3) participant or counterparty default policies and procedures;

(4) the ability to complete timely clearing and settlement of financial transactions;

(5) capital and financial resource requirements for designated financial market utilities; and

(6) other areas that are necessary to achieve the objectives and principles in subsection (b).

(d) Limitation on scope

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

(1) the approval of, disapproval of, or stay of the clearing requirement for any group, category, type, or class of swaps that a designated clearing entity may accept for clearing;

(2) the determination that any group, category, type, or class of swaps shall be subject to the mandatory clearing requirement of section 2(h)(1) of title 7 or section 78c-3(a)(1) of title 15;

(3) the determination that any person is exempt from the mandatory clearing requirement of section 2(h)(1) of title 7 or section 78c-3(a)(1) of title 15; or

(4) any authority granted to the Commodity Futures Trading Commission or the Securities and Exchange Commission with respect to transaction reporting or trade execution.

(e) Threshold level

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

(f) Compliance required

Designated financial market utilities and financial institutions subject to the standards prescribed under subsection (a) for a designated activity shall conduct their operations in compliance with the applicable risk management standards.

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

§ 5465. Operations of designated financial market utilities

(a) Federal Reserve account and services

The Board of Governors may authorize a Federal Reserve Bank to establish and maintain an account for a designated financial market utility and provide the services listed in section 11A(b) of the Federal Reserve Act (12 U.S.C. 248a(b)) and deposit accounts under the first undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 342) to the designated financial market utility that the Federal Re-

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

serve Bank is authorized under the Federal Reserve Act [12 U.S.C. 221 et seq.] to provide to a depository institution, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

(b) Advances

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

(c) Earnings on Federal Reserve balances

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

(d) Reserve requirements

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

(e) Changes to rules, procedures, or operations

(1) Advance notice

(A) Advance notice of proposed changes required

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

(B) Terms and standards prescribed by the Supervisory Agencies

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

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

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

(C) Contents of notice

The notice of a proposed change shall describe—

(i) the nature of the change and expected effects on risks to the designated financial market utility, its participants, or the market; and

(ii) how the designated financial market utility plans to manage any identified risks.

(D) Additional information

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

(E) Notice of objection

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

(i) the date that the notice of the proposed change is received; or

(ii) the date any further information requested for consideration of the notice is received.

(F) Change not allowed if objection

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

(G) Change allowed if no objection within 60 days

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

(i) the date that the Supervisory Agency receives the notice of proposed change; or

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

(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.

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

REFERENCES IN TEXT

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

This Act, referred to in subsec. (e)(2)(D), is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376, known as the Dodd-Frank Wall Street Reform and Consumer Protection Act, which enacted this chapter and chapters 108 (§ 8201 et seq.) and 109 (§ 8301 et seq.) of Title 15, Commerce and

Trade, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

§ 5466. Examination of and enforcement actions against designated financial market utilities

(a) Examination

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

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

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

(b) Service providers

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

(c) Enforcement

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

(d) Board of Governors involvement in examinations

(1) Board of Governors consultation on examination planning

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

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