

(4) providing the Board of Governors an enhanced role in the supervision of risk management standards for systemically important payment, clearing, and settlement activities by financial institutions.

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

EFFECTIVE DATE

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

SHORT TITLE

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

§ 5462. Definitions

In this subchapter, the following definitions shall apply:

(1) Appropriate financial regulator

The term “appropriate financial regulator” means—

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

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

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

(2) Designated activity

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

(3) Designated clearing entity

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

(4) Designated financial market utility

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

(5) Financial institution

(A) In general

The term “financial institution” means—

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

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

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

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

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

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

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

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

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

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

(B) Exclusions

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

(6) Financial market utility

(A) Inclusion

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

(B) Exclusions

The term “financial market utility” does not include—

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

¹ See References in Text note below.

(ii) any broker, dealer, transfer agent, or investment company, or any futures commission merchant, introducing broker, commodity trading advisor, or commodity pool operator, solely by reason of functions performed by such institution as part of brokerage, dealing, transfer agency, or investment company activities, or solely by reason of acting on behalf of a financial market utility or a participant therein in connection with the furnishing by the financial market utility of services to its participants or the use of services of the financial market utility by its participants, provided that services performed by such institution do not constitute critical risk management or processing functions of the financial market utility.

(7) Payment, clearing, or settlement activity

(A) In general

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

(B) Financial transaction

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

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

(C) Included activities

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

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

(D) Exclusion

Payment, clearing, and settlement activities shall not include public reporting of

swap transaction data under section 727 or 763(i) of the Wall Street Transparency and Accountability Act of 2010.

(8) Supervisory Agency

(A) In general

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

- (i) The Securities and Exchange Commission, with respect to a designated financial market utility that is a clearing agency registered with the Securities and Exchange Commission.
- (ii) The Commodity Futures Trading Commission, with respect to a designated financial market utility that is a derivatives clearing organization registered with the Commodity Futures Trading Commission.
- (iii) The appropriate Federal banking agency, with respect to a designated financial market utility that is an institution described in section 1813(q) of this title.
- (iv) The Board of Governors, with respect to a designated financial market utility that is otherwise not subject to the jurisdiction of any agency listed in clauses (i), (ii), and (iii).

(B) Multiple agency jurisdiction

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

(9) Systemically important and systemic importance

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

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

REFERENCES IN TEXT

The Federal Credit Union Act, referred to in par. (1)(B), 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.