

**§ 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 pro-

vide 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 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 enti-

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."<sup>1</sup>

**(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;

<sup>1</sup> So in original. The closing quotation marks probably should not appear.