

1 **TITLE VIII—PAYMENT, CLEARING AND**
2 **SETTLEMENT SUPERVISION**

3 **SEC. 801. SHORT TITLE.**

4 This title may be cited as the “Payment, Clearing, and Settlement Supervision Act of
5 2009”.

6 **SEC. 802. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—The Congress finds that—

8 (1) The proper functioning of the financial markets is dependent upon safe and
9 efficient arrangements for the clearing and settlement of payment, securities and other
10 financial transactions.

11 (2) Financial market utilities that conduct or support multilateral payment,
12 clearing, or settlement activities may reduce risks for their participants and the broader
13 financial system, but such utilities may also concentrate and create new risks and thus
14 must be well designed and operated in a safe and sound manner.

15 (3) Payment, clearing and settlement activities conducted by financial institutions
16 also present important risks to the participating financial institutions and to the financial
17 system.

18 (4) Enhancements to the regulation and supervision of systemically important
19 financial market utilities and the conduct of systemically important payment, clearing,
20 and settlement activities by financial institutions are necessary to provide consistency, to
21 promote robust risk management and safety and soundness, to reduce systemic risks, and
22 to support the stability of the broader financial system.

1 (b) PURPOSES.—The purposes of this title are to mitigate systemic risk in the financial
2 system and promote financial stability by—

3 (1) authorizing the Board of Governors of the Federal Reserve System to
4 prescribe uniform standards for the management of risks by systemically important
5 financial market utilities and for the conduct of systemically important payment, clearing
6 and settlement activities by financial institutions;

7 (2) providing the Board of Governors of the Federal Reserve System an enhanced
8 role in the supervision of risk management standards for systemically important financial
9 market utilities;

10 (3) strengthening the liquidity of systemically important financial market utilities;
11 and

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

15 **SEC. 803. DEFINITIONS.**

16 For purposes of this title, the following definitions shall apply:

17 (1) AFFILIATE.—The term “affiliate” means any company that controls, is
18 controlled by, or is under common control with another company.

19 (2) APPROPRIATE FINANCIAL REGULATOR.—The term “appropriate financial
20 regulator” means—

21 (A) the Comptroller of the Currency, with respect to national banks and
22 any Federal branch or Federal agency of a foreign bank, until the functions of the
23 Comptroller of the Currency are transferred to the Director of the National Bank

1 Supervisor, after which time the term means the Director of the National Bank
2 Supervisor with respect to those entities;

3 (B) the Board of Directors of the Corporation, with respect to state-
4 chartered banks insured by the Corporation (other than member banks of the
5 Federal Reserve System) and insured State branches of foreign banks;

6 (C) the Director of the Office of Thrift Supervision, with respect to any
7 savings association and any savings and loan holding company, until the functions
8 of the Director of the Office of Thrift Supervision are transferred to the Director
9 of the National Bank Supervisor, after which time the term means the Director of
10 the National Bank Supervisor with respect to those entities;

11 (D) the Board, with respect to member banks of the Federal Reserve
12 System (other than national banks), branches and agencies of foreign banks (other
13 than Federal branches, Federal agencies, and insured State branches of foreign
14 banks), commercial lending companies owned or controlled by foreign banks,
15 organizations operating under section 25 or 25A of the Federal Reserve Act (12
16 U.S.C. § 601 *et seq.* or § 611 *et seq.*), and bank holding companies and their
17 nonbank subsidiaries (except brokers, dealers, investment companies, and
18 investment advisers registered with the Securities and Exchange Commission, and
19 futures commission merchants, commodity trading advisors, and commodity pool
20 operators registered with the Commodity Futures Trading Commission);

21 (E) the National Credit Union Administration Board, with respect to any
22 insured credit union under the Federal Credit Union Act (12 U.S.C. § 1751 *et*
23 *seq.*);

1 (F) the Securities and Exchange Commission, with respect to—

2 (i) any broker or dealer registered with the Securities and
3 Exchange Commission under the Securities Exchange Act of 1934 (15
4 U.S.C. § 78a *et seq.*);

5 (ii) any investment company registered with the Securities and
6 Exchange Commission under the Investment Company Act of 1940 (15
7 U.S.C. § 80a-1 *et seq.*); and

8 (iii) any investment adviser registered with the Securities and
9 Exchange Commission under the Investment Advisers Act of 1940 (15
10 U.S.C. § 80b-1 *et seq.*);

11 (G) the Commodity Futures Trading Commission, with respect to futures
12 commission merchants, commodity trading advisors, and commodity pool
13 operators registered with the Commodity Futures Trading Commission under the
14 Commodity Exchange Act (7 U.S.C. § 1 *et seq.*);

15 (H) the applicable State insurance authority, with respect to any financial
16 institution engaged in providing insurance under State insurance law; and

17 (I) the Board, with respect to any other financial institution engaged in a
18 designated activity.

19 (3) BOARD.—The term “Board” means the Board of Governors of the Federal
20 Reserve System.

21 (4) CORPORATION.—The term “Corporation” means the Federal Deposit
22 Insurance Corporation.

23 (5) DESIGNATED ACTIVITY.—The term “designated activity” means a payment,

1 clearing, or settlement activity that the Board has designated as systemically important
2 under section 804.

3 (6) DESIGNATED FINANCIAL MARKET UTILITY.—The term “designated financial
4 market utility” means a financial market utility that the Board has designated as
5 systemically important under section 804.

6 (7) FINANCIAL INSTITUTION.—The term “financial institution” means—

7 (A) a depository institution as defined in section 3 of the Federal Deposit
8 Insurance Act (12 U.S.C. § 1813);

9 (B) a branch or agency of a foreign bank (as defined in section 1(b) of the
10 International Banking Act of 1978) (12 U.S.C. § 3101);

11 (C) an organization operating under section 25 or 25A of the Federal
12 Reserve Act (12 U.S.C. § 601 *et seq.* and § 611 *et seq.*);

13 (D) a credit union (as defined in section 101 of the Federal Credit Union
14 Act) (12 U.S.C. § 1752);

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

17 (F) an investment company (as defined in section 3 of the Investment
18 Company Act of 1940) (15 U.S.C. § 80a-3);

19 (G) an insurance company (as defined in section 2 of the Investment
20 Company Act of 1940) (15 U.S.C. § 80a-2);

21 (H) an investment adviser (as defined in section 202 of the Investment
22 Advisers Act of 1940) (15 U.S.C. § 80b-2);

23 (I) a futures commission merchant, commodity trading advisor, or

1 commodity pool operator (as defined in section 1a of the Commodity Exchange
2 Act) (7 U.S.C. § 1a); and

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

6 (8) FINANCIAL MARKET UTILITY.—The term “financial market utility” means any
7 person that manages or operates a multilateral system for the purpose of transferring,
8 clearing, or settling payments, securities, or other financial transactions among financial
9 institutions or between financial institutions and the person.

10 (9) PAYMENT, CLEARING, OR SETTLEMENT ACTIVITY.—The term “payment,
11 clearing, or settlement activity” means an activity carried out by one or more financial
12 institutions to facilitate the completion of financial transactions. Financial transactions
13 include funds transfers, securities contracts, contracts of sale of a commodity for future
14 delivery, forward contracts, repurchase agreements, swap agreements, foreign exchange
15 contracts, financial derivatives contracts, and any similar transaction that the Board
16 determines, by rule or order, to be a financial transaction for purposes of this title. When
17 conducted with respect to financial transactions, payment, clearing, and settlement
18 activities may include the calculation and communication of unsettled obligations
19 between counterparties; the netting of transactions; provision and maintenance of trade,
20 contract, or instrument information; the management of risks and activities associated
21 with continuing obligations; transmittal and storage of payment instructions; the
22 movement of funds; the final settlement of obligations; and other similar functions.

23 (10) PERSON.—The term “person” means any corporation, company, association,

1 firm, partnership, society, joint stock company, or other legal entity other than a natural
2 person.

3 (11) SECRETARY.—The term “Secretary” means the Secretary of the Treasury.

4 (12) STATE.—The term “State” means any State, commonwealth, territory, or
5 possession of the United States, the District of Columbia, the Commonwealth of Puerto
6 Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or
7 the United States Virgin Islands.

8 (13) SUPERVISORY AGENCY.—The term “Supervisory Agency” means the Federal
9 agency that has primary jurisdiction over a designated financial market utility under
10 Federal banking, securities, or commodity futures laws, including—

11 (A) the Securities and Exchange Commission, with respect to a designated
12 financial market utility that is a clearing agency registered with the Securities and
13 Exchange Commission;

14 (B) the Commodity Futures Trading Commission, with respect to a
15 designated financial market utility that is a derivatives clearing organization
16 registered with the Commodity Futures Trading Commission;

17 (C) the Board of Directors of the Corporation, with respect to a designated
18 financial market utility that is an insured State nonmember bank or an insured
19 branch of a foreign bank;

20 (D) the Comptroller of the Currency, with respect to a designated financial
21 market utility that is a national bank or a Federal branch (other than an insured
22 branch) or a Federal agency of a foreign bank, until the functions of the
23 Comptroller of the Currency are transferred to the Director of the National Bank

1 Supervisor, after which time the term means the Director of the National Bank
2 Supervisor with respect to those entities; and

3 (E) the Director of the Office of Thrift Supervision, with respect to a
4 designated financial market utility that is a savings association or a savings and
5 loan holding company, until the functions of the Director of the Office of Thrift
6 Supervision are transferred to the Director of the National Bank Supervisor, after
7 which time the term means the Director of the National Bank Supervisor with
8 respect to those entities.

9 (14) SYSTEMICALLY IMPORTANT AND SYSTEMIC IMPORTANCE.—The terms
10 “systemically important” and “systemic importance” mean a situation where the failure
11 of or a disruption to the functioning of a financial market utility or the conduct of a
12 payment, clearing, or settlement activity could create, or increase, the risk of significant
13 liquidity or credit problems spreading among financial institutions or markets and thereby
14 threaten the stability of the financial system.

15 **SEC. 804. DESIGNATION OF SYSTEMIC IMPORTANCE.**

16 (a) DESIGNATION.—

17 (1) BOARD.—The Board, on a nondelegable basis, shall designate a financial
18 market utility or a payment, clearing, or settlement activity that it determines is, or is
19 likely to become, systemically important.

20 (2) CONSIDERATIONS.—In determining whether a financial market utility or
21 payment, clearing, or settlement activity is, or is likely to become, systemically
22 important, the Board shall take into consideration the following:

23 (A) the aggregate monetary value of transactions processed by the

1 financial market utility or carried out through the payment, clearing, or settlement
2 activity;

3 (B) the relationship, interdependencies, or other interactions of the
4 financial market utility or payment, clearing, or settlement activity with other
5 financial market utilities or payment, clearing, or settlement activities;

6 (C) the effect that the failure of or a disruption to the financial market
7 utility or payment, clearing, or settlement activity would have on critical markets,
8 financial institutions, or the broader financial system;

9 (D) the recommendation, if any, of the Financial Services Oversight
10 Council; and

11 (E) any other factors that the Board deems appropriate.

12 (b) RESCISSION OF DESIGNATION.—The Board, on a nondelegable basis, shall rescind a
13 designation of systemic importance for a designated financial market utility or designated
14 activity if the Board determines that the utility or activity no longer meets the standards for
15 systemic importance. Upon rescission, the financial market utility or financial institutions
16 conducting the activity will no longer be subject to the provisions of this title or rules or orders
17 prescribed by the Board under this title.

18 (c) CONSULTATION AND NOTICE AND OPPORTUNITY FOR HEARING.—

19 (1) FINANCIAL MARKET UTILITY.—Before making any determination under
20 subsection (a) or (b) with regard to a financial market utility, the Board shall consult with
21 the Financial Services Oversight Council and the relevant Supervisory Agency.

22 (2) PAYMENT, CLEARING, OR SETTLEMENT ACTIVITY.—Before making any
23 determination under subsection (a) or (b) with regard to a payment, clearing, or

1 settlement activity, the Board shall consult with the Financial Services Oversight
2 Council.

3 (3) ADVANCE NOTICE AND OPPORTUNITY FOR HEARING.—

4 (A) IN GENERAL.—Before making any determination under subsection (a)
5 or (b) with regard to a financial market utility or a payment, clearing, or
6 settlement activity, the Board shall provide the financial market utility or, in the
7 case of a payment, clearing, or settlement activity, financial institutions with
8 advance notice of the Board’s proposed determination.

9 (B) NOTICE IN FEDERAL REGISTER.—The Board shall provide such advance
10 notice to financial institutions by publishing a notice in the Federal Register.

11 (C) REQUESTS FOR HEARING.—Within 30 days from the date of any notice
12 of the Board’s proposed determination, the financial market utility or, in the case
13 of a payment, clearing, or settlement activity, a financial institution engaged in the
14 designated activity may request in writing an opportunity for a written or oral
15 hearing before the Board to demonstrate that the proposed designation or
16 rescission of designation is not supported by substantial evidence.

17 (D) WRITTEN SUBMISSIONS.—Upon receipt of a timely request, the Board
18 shall fix a time, not more than 30 days after receipt of the request, unless extended
19 at the request of the financial market utility or financial institution, and place at
20 which the financial market utility or financial institution may appear, personally
21 or through counsel, to submit written materials, or, at the sole discretion of the
22 Board, oral testimony or oral argument.

23 (4) EMERGENCY EXCEPTION.—

1 (A) WAIVER OR MODIFICATION BY BOARD VOTE.—The Board may waive
2 or modify the requirements of paragraph (3) if the Board determines, by an
3 affirmative vote of not less than 5 members or, if there are fewer than five
4 members then serving and available, by the unanimous vote of all available
5 members then serving, that the waiver or modification is necessary to prevent or
6 mitigate an immediate threat to the financial system posed by the financial market
7 utility or the payment, clearing, or settlement activity.

8 (B) NOTICE OF WAIVER OR MODIFICATION.—The Board shall provide
9 notice of the waiver or modification to the financial market utility concerned or,
10 in the case of a payment, clearing, or settlement activity, to financial institutions,
11 as soon as practicable, which shall be no later than 24 hours after the waiver or
12 modification in the case of a financial market utility and three business days in the
13 case of financial institutions. The Board shall provide the notice to financial
14 institutions by posting a notice on the Board website and by publishing a notice in
15 the Federal Register.

16 (d) NOTIFICATION OF FINAL DETERMINATION.—

17 (1) AFTER HEARING.—Within 60 days of any hearing under subsection (c)(3), the
18 Board shall notify the financial market utility or financial institutions of its final
19 determination in writing, which shall include findings of fact upon which the Board’s
20 determination is based.

21 (2) WHEN NO HEARING REQUESTED.—If the Board does not receive a timely
22 request for a hearing under subsection (c)(3), the Board shall notify the financial market
23 utility or financial institutions of its final determination in writing not later than 30 days

1 after the expiration of the date by which a financial market utility or a financial institution
2 could have requested a hearing. All notices to financial institutions under this subsection
3 shall be published in the Federal Register.

4 **SEC. 805. STANDARDS FOR SYSTEMICALLY IMPORTANT FINANCIAL MARKET**
5 **UTILITIES AND PAYMENT, CLEARING, OR SETTLEMENT**
6 **ACTIVITIES.**

7 (a) **AUTHORITY TO PRESCRIBE STANDARDS.**—The Board shall, by rule or order and in
8 consultation with the Financial Services Oversight Council, the Commodity Futures Trading
9 Commission, and the Securities and Exchange Commission, prescribe risk management
10 standards governing the operations of designated financial market utilities and the conduct of
11 designated activities by financial institutions, taking into consideration relevant international
12 standards.

13 (b) **OBJECTIVES AND PRINCIPLES.**—The objectives and principles for the risk management
14 standards prescribed under subsection (a) shall be to—

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

19 (c) **SCOPE.**—The standards prescribed under subsection (a) may address areas such as risk
20 management policies and procedures, margin, collateral, capital, and default policies and
21 procedures, the ability to complete timely clearing and settlement of financial transactions, and
22 other areas that the Board determines are necessary to achieve the objectives and principles in
23 subsection (b).

1 (d) COMPLIANCE REQUIRED.—Designated financial market utilities and financial
2 institutions engaged in designated activities shall conduct their operations in compliance with the
3 applicable risk management standards prescribed by the Board.

4 **SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MARKET UTILITIES.**

5 (a) FEDERAL RESERVE ACCOUNT AND SERVICES.—The Board may authorize a Federal
6 Reserve Bank to establish and maintain an account for a designated financial market utility and
7 provide services to the designated financial market utility that the Federal Reserve Bank is
8 authorized under the Federal Reserve Act to provide to a depository institution, subject to any
9 applicable rules, orders, standards, or guidelines prescribed by the Board.

10 (b) ADVANCES.—The Board may authorize a Federal Reserve Bank to provide to a
11 designated financial market utility the same discount and borrowing privileges as the Federal
12 Reserve Bank may provide to a depository institution under the Federal Reserve Act, subject to
13 any applicable rules, orders, standards, or guidelines prescribed by the Board.

14 (c) EARNINGS ON FEDERAL RESERVE BALANCES.—A Federal Reserve Bank may pay
15 earnings on balances maintained by or on behalf of a designated financial market utility in the
16 same manner and to the same extent as the Federal Reserve Bank may pay earnings to a
17 depository institution under the Federal Reserve Act, subject to any applicable rules, orders,
18 standards, or guidelines prescribed by the Board.

19 (d) RESERVE REQUIREMENTS.—The Board may exempt a designated financial market
20 utility from, or modify any, reserve requirements under section 19 of the Federal Reserve Act
21 (12 U.S.C. § 461) applicable to a designated financial market utility.

22 (e) CHANGES TO RULES, PROCEDURES, OR OPERATIONS.—

23 (1) REFERENCE.—For purposes of paragraphs (2) and (3), all references to the

1 phrase “Supervisory Agency or the Board” mean “Supervisory Agency or, in the absence
2 of a Supervisory Agency, the Board”.

3 (2) ADVANCE NOTICE.—

4 (A) ADVANCE NOTICE OF PROPOSED CHANGES REQUIRED.—A designated
5 financial market utility shall provide 60-days’ advance notice to its Supervisory
6 Agency or the Board of any proposed change to its rules, procedures, or
7 operations that could, as defined by the Board, materially affect the nature or level
8 of risks presented by the designated financial market utility.

9 (B) CONTENTS OF NOTICE.—The notice of a proposed change shall
10 describe the nature of the change and expected effects on risks to the designated
11 financial market utility, its participants, or the market, and how the designated
12 financial market utility plans to manage any identified risks.

13 (C) ADDITIONAL INFORMATION.—The Supervisory Agency or the Board
14 may require a designated financial market utility to provide any information
15 necessary to assess the effect the proposed change would have on the nature or
16 level of risks associated with the designated financial market utility's payment,
17 clearing, or settlement activities and the sufficiency of any proposed risk
18 management techniques.

19 (D) NOTICE OF OBJECTION.—The Supervisory Agency or the Board will
20 notify the designated financial market utility of any objection regarding the
21 proposed change within 60 days from the later of—

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

23 (ii) the date any further information requested for consideration of

1 the notice is received.

2 (E) CHANGE NOT ALLOWED IF OBJECTION.—A designated financial market
3 utility shall not implement a change to which the Board or the Supervisory
4 Agency has an objection.

5 (F) CHANGE ALLOWED IF NO OBJECTION WITHIN 60 DAYS. —A designated
6 financial market utility may implement a change if it has not received an
7 objection to the proposed change within 60 days of the later of—

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

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

12 (G) REVIEW EXTENSION FOR NOVEL OR COMPLEX ISSUES.—The
13 Supervisory Agency or the Board may, during the 60-day review period, extend
14 the review period for an additional 60 days for proposed changes that raise novel
15 or complex issues, subject to the Supervisory Agency or the Board providing the
16 designated financial market utility with prompt written notice of the extension.

17 Any extension under this subparagraph will extend the time periods under
18 subparagraphs (D) and (F).

19 (H) CHANGE ALLOWED EARLIER IF NOTIFIED OF NO OBJECTION.—A
20 designated financial market utility may implement a change in less than 60 days
21 from the date of receipt of the notice of proposed change by the Supervisory
22 Agency or the Board, or the date the Supervisory Agency or the Board receives
23 any further information it requested, if the Supervisory Agency or the Board

1 notifies the designated financial market utility in writing that it does not object to
2 the proposed change and authorizes the designated financial market utility to
3 implement the change on an earlier date, subject to any conditions imposed by the
4 Supervisory Agency or the Board.

5 (3) EMERGENCY CHANGES.—

6 (A) IN GENERAL.—A designated financial market utility may implement a
7 change that would otherwise require advance notice under this subsection if it
8 determines that—

9 (i) an emergency exists; and

10 (ii) immediate implementation of the change is necessary for the
11 designated financial market utility to continue to provide its services in a
12 safe and sound manner.

13 (B) NOTICE REQUIRED WITHIN 24 HOURS.—The designated financial
14 market utility must provide notice of any such emergency change to its
15 Supervisory Agency or the Board, as soon as practicable, which shall be no later
16 than 24 hours after implementation of the change.

17 (C) CONTENTS OF EMERGENCY NOTICE.—In addition to the information
18 required for changes requiring advance notice, the notice of an emergency change
19 must describe—

20 (i) the nature of the emergency; and

21 (ii) the reason the change was necessary for the designated
22 financial market utility to continue to provide its services in a safe and
23 sound manner.

1 (D) MODIFICATION OR RESCISSION OF CHANGE MAY BE REQUIRED.—The
2 Supervisory Agency or the Board may require modification or rescission of the
3 change if it finds that the change is not consistent with the purposes of this Act or
4 any rules, orders, or standards prescribed by the Board hereunder.

5 (4) COPYING THE BOARD.—In the case of a designated financial market utility that
6 has a Supervisory Agency, the Supervisory Agency shall provide the Board concurrently
7 with a complete copy of any notice, request, or other information it issues, submits, or
8 receives under this subsection.

9 (5) CONSULTATION WITH BOARD.—Before taking any action on or completing its
10 review of a change proposed by a designated financial market utility, the Supervisory
11 Agency shall consult with the Board.

12 **SEC. 807. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST**
13 **DESIGNATED FINANCIAL MARKET UTILITIES.**

14 (a) EXAMINATION.—Notwithstanding any other provision of law and subject to
15 subsection (d), the Supervisory Agency shall conduct examinations of a designated financial
16 market utility at least annually in order to inform itself of the following:

17 (1) the nature of the operations of, and the risks borne by, the designated financial
18 market utility;

19 (2) the financial and operational risks presented by the designated financial
20 market utility to financial institutions, critical markets, or the broader financial system;

21 (3) the resources and capabilities of the designated financial market utility to
22 monitor and control such risks;

23 (4) the safety and soundness of the designated financial market utility; and

1 (5) the designated financial market utility’s compliance with this title and the
2 rules and orders prescribed by the Board under this title.

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

9 (c) ENFORCEMENT.—Except as provided in subsections (e) and (f), a designated financial
10 market utility shall be subject to the provisions of subsections (b) through (n) of section 8 of the
11 Federal Deposit Insurance Act (12 U.S.C. § 1818) in the same manner and to the same extent as
12 if the designated financial market utility were an insured depository institution for which the
13 Supervisory Agency is the appropriate Federal banking agency as defined in section 3 of the
14 Federal Deposit Insurance Act (12 U.S.C. § 1813).

15 (d) BOARD INVOLVEMENT IN EXAMINATIONS.—

16 (1) BOARD CONSULTATION ON EXAMINATION PLANNING.—The Supervisory
17 Agency shall consult with the Board regarding the scope and methodology of any
18 examination conducted under subsections (a) and (b).

19 (2) BOARD PARTICIPATION IN EXAMINATION.—The Board may, in its discretion,
20 participate in any examination led by a Supervisory Agency and conducted under
21 subsections (a) and (b).

22 (e) BOARD ENFORCEMENT RECOMMENDATIONS.—

23 (1) RECOMMENDATION.—The Board may at any time recommend to the

1 Supervisory Agency that it take enforcement action against a designated financial market
2 utility. The recommendation shall provide a detailed analysis supporting the Board's
3 recommendation.

4 (2) CONSIDERATION.—The Supervisory Agency shall consider the Board's
5 recommendation and submit a response to the Board within 30 days.

6 (3) MEDIATION.—If the Supervisory Agency rejects, in whole or in the part, the
7 Board's recommendation, the Board may dispute the matter by referring it to the
8 Financial Services Oversight Council, which shall attempt to resolve the dispute.

9 (4) ENFORCEMENT ACTION.—If the Financial Services Oversight Council is
10 unable to resolve the dispute under paragraph (3) within 30 days from the date of referral,
11 the Board may exercise the enforcement authority referenced in subsection (c) as if it
12 were the Supervisory Agency and take enforcement action against the designated
13 financial market utility.

14 (f) DESIGNATED FINANCIAL MARKET UTILITIES WITHOUT A SUPERVISORY AGENCY.—In
15 the case of a designated financial market utility that is not under the primary jurisdiction of a
16 Supervisory Agency, the Board shall have examination and enforcement authority under
17 subsections (a) through (c) with respect to the designated financial market utility and any service
18 providers in the same manner and to the same extent as if the Board were the Supervisory
19 Agency.

20 (g) EMERGENCY ENFORCEMENT ACTIONS BY THE BOARD.—

21 (1) IMMINENT RISK OF SUBSTANTIAL HARM.—The Board may, after consulting with
22 the Supervisory Agency, take enforcement action against a designated financial market
23 utility if the Board has reasonable cause to believe that—

1 (A) either:

2 (i) an action engaged in, or contemplated by, a designated financial market
3 utility (including any change proposed by the designated financial market utility
4 to its rules, procedures, or operations that would otherwise be subject to section
5 806(e)); or

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

9 (B) the imminent risk of substantial harm precludes the Board’s use of the
10 procedures in subsection (e).

11 (2) ENFORCEMENT AUTHORITY.—The Board is authorized to take action under
12 paragraph (1) against a designated financial market utility as if the designated financial
13 market utility were an insured depository institution for which the Board is the
14 appropriate Federal banking agency as defined in section 3 of the Federal Deposit
15 Insurance Act (12 U.S.C. 1813).

16 (3) PROMPT NOTICE TO SUPERVISORY AGENCY OF ENFORCEMENT ACTION.—Within 24
17 hours of taking an enforcement action under this subsection, the Board shall provide
18 written notice to the designated financial market utility’s Supervisory Agency containing
19 a detailed analysis of the Board’s action, with supporting documentation included.

20 **SEC. 808. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST**
21 **FINANCIAL INSTITUTIONS ENGAGED IN DESIGNATED**
22 **ACTIVITIES.**

23 (a) EXAMINATION.—The appropriate financial regulator is authorized to examine a

1 financial institution engaged in designated activities in order to inform the appropriate financial
2 regulator of the following:

3 (1) the nature and scope of the designated activities engaged in by the financial
4 institution;

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

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

10 (4) the resources available to and the capabilities of the financial institution to
11 monitor and control the risks described in paragraphs (2) and (3); and

12 (5) the financial institution's compliance with this title and the rules and orders
13 prescribed by the Board under this title.

14 (b) ENFORCEMENT.—The appropriate financial regulator shall take such actions that it
15 deems necessary to ensure that a financial institution engaged in designated activities complies
16 with this title and the rules and orders prescribed by the Board under this title.

17 (c) TECHNICAL ASSISTANCE.—The Board shall consult with and provide such technical
18 assistance as may be required by the appropriate financial regulators to ensure that the Board's
19 rules and orders prescribed under this title are interpreted and applied in as consistent and
20 uniform a manner as practicable.

21 (d) DELEGATION.—

22 (1) EXAMINATION.—

23 (A) REQUEST TO BOARD.—The appropriate financial regulator may request

1 the Board to conduct or participate in an examination of a financial institution
2 engaged in designated activities in order to assess the financial institution's
3 compliance with this title or the Board's rules or orders prescribed under this title.

4 (B) EXAMINATION BY BOARD.—Upon receipt of an appropriate written
5 request, the Board will conduct the examination under such terms and conditions
6 to which the Board and the appropriate financial regulator mutually agree.

7 (2) ENFORCEMENT.—

8 (A) REQUEST TO BOARD.—The appropriate financial regulator may request
9 the Board to enforce this title or the rules or orders prescribed by the Board under
10 this title against a financial institution engaged in designated activities.

11 (B) ENFORCEMENT BY BOARD.—Upon receipt of an appropriate written
12 request, the Board shall determine whether an enforcement action is warranted,
13 and, if so, it shall enforce compliance with this title or the rules or orders
14 prescribed by the Board under this title utilizing the authorities referenced in
15 section 807(c), in which case the financial institution will be treated as if it is an
16 insured depository institution for which the Board is the appropriate Federal
17 banking agency as defined in section 3 of the Federal Deposit Insurance Act (12
18 U.S.C. § 1813).

19 (e) BACK-UP AUTHORITY OF THE BOARD.—

20 (1) EXAMINATION AND ENFORCEMENT.—Notwithstanding any other provision of
21 law, the Board may—

22 (A) conduct an examination of any financial institution engaged in a
23 designated activity; and

1 (B) enforce the provisions of this title or any rules or orders prescribed by
2 the Board under this title against any financial institution engaged in a designated
3 activity.

4 (2) LIMITATIONS.—

5 (A) EXAMINATION.—The Board may exercise the authority described in
6 paragraph (1)(A) only if the Board has—

7 (i) reasonable cause to believe that a financial institution is not in
8 compliance with this title or the rules or orders prescribed by the Board
9 under this title with respect to a designated activity;

10 (ii) notified, in writing, the appropriate financial regulator of its
11 belief under clause (i) with supporting documentation included;

12 (iii) requested the appropriate financial regulator to conduct a
13 prompt examination of the financial institution; and

14 (iv) either—

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

19 (II) reasonable cause to believe that the financial
20 institution's noncompliance with this title or the rules or orders
21 prescribed by the Board under this title poses a substantial risk to
22 other financial institutions, critical markets, or the broader
23 financial system, subject to the Board affording the appropriate

1 financial regulator a reasonable opportunity to participate in the
2 examination.

3 (B) ENFORCEMENT.—The Board may exercise the authority described in
4 paragraph (1)(B) only if the Board has—

5 (i) reasonable cause to believe that a financial institution is not in
6 compliance with this title or the rules or orders prescribed by the Board
7 under this title with respect to a designated activity;

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

12 (iii) either—

13 (I) not been notified, in writing, by the appropriate financial
14 regulator of the commencement of an enforcement action
15 recommended by the Board against the financial institution within
16 30 days from the date of the notification under clause (ii); or

17 (II) reasonable cause to believe that the financial
18 institution’s noncompliance with this title or the rules or orders
19 prescribed by the Board under this title poses a substantial risk to
20 other financial institutions, critical markets, or the broader
21 financial system, subject to the Board notifying the appropriate
22 financial regulator of the Board’s enforcement action.

23 (3) ENFORCEMENT PROVISIONS.—A financial institution engaged in designated

1 activities shall be subject to the provisions of subsections (b) through (n) of section 8 of
2 the Federal Deposit Insurance Act (12 U.S.C. § 1818) in the same manner and to the
3 same extent as if the financial institution were an insured depository institution for which
4 the Board is the appropriate Federal banking agency as defined in section 3 of the Federal
5 Deposit Insurance Act (12 U.S.C. § 1813).

6 **SEC. 809. REQUESTS FOR INFORMATION, REPORTS, OR RECORDS.**

7 (a) INFORMATION TO ASSESS SYSTEMIC IMPORTANCE.—

8 (1) FINANCIAL MARKET UTILITIES.—The Board is authorized to require any
9 financial market utility to submit such information as the Board may require for the sole
10 purpose of assessing whether that financial market utility is systemically important, but
11 only if the Board has reasonable cause to believe that the financial market utility meets
12 the standards for systemic importance set out in section 804 of this title.

13 (2) FINANCIAL INSTITUTIONS ENGAGED IN PAYMENT, CLEARING, OR SETTLEMENT
14 ACTIVITIES.—The Board is authorized to require any financial institution to submit such
15 information as the Board may require for the sole purpose of assessing whether any
16 payment, clearing, or settlement activity engaged in or supported by a financial institution
17 is systemically important, but only if the Board has reasonable cause to believe that the
18 activity meets the standards for systemic importance set out in section 804 of this title.

19 (b) REPORTING AFTER DESIGNATION.—

20 (1) DESIGNATED FINANCIAL MARKET UTILITIES.—The Board may require a
21 designated financial market utility to submit reports or data to the Board in such
22 frequency and form as deemed necessary by the Board in order to assess the safety and
23 soundness of the utility and the systemic risk that the utility's operations pose to the

1 financial system.

2 (2) FINANCIAL INSTITUTIONS ENGAGED IN DESIGNATED ACTIVITIES—The Board
3 may require 1 or more financial institutions engaged in a designated activity to submit, in
4 such frequency and form as deemed necessary by the Board, reports and data to the
5 Board solely with respect to the conduct of the designated activity and solely to assess
6 whether—

7 (A) the rules, orders, or standards prescribed by the Board with respect to
8 the designated activity appropriately address the risks to the financial system
9 presented by such activity; and

10 (B) the financial institutions are in compliance with this title and the rules
11 and orders prescribed by the Board under this title with respect to the designated
12 activity.

13 (c) COORDINATION WITH APPROPRIATE FEDERAL SUPERVISORY AGENCY.—

14 (1) ADVANCE COORDINATION.—Before directly requesting any material
15 information from, or imposing reporting or recordkeeping requirements on, any financial
16 market utility or any financial institution engaged in a payment, clearing, or settlement
17 activity, the Board shall coordinate with the Supervisory Agency for a financial market
18 utility or the appropriate financial regulator for a financial institution to determine if the
19 information is available from or may be obtained by the agency in the form, format, or
20 detail required by the Board.

21 (2) SUPERVISORY REPORTS.—Notwithstanding any other provision of law, the
22 Supervisory Agency, the appropriate financial regulator, and the Board are authorized to
23 disclose to each other a copy of any examination report or similar report regarding any

1 financial market utility or any financial institution engaged in payment, clearing, or
2 settlement activities.

3 (d) TIMING OF RESPONSE FROM APPROPRIATE FEDERAL SUPERVISORY AGENCY.—If the
4 information, report, records, or data requested by the Board under subsection (c)(1) are not
5 provided in full by the Supervisory Agency or the appropriate financial regulator in less than 15
6 days after the date on which the material is requested, the Board may request the information or
7 impose recordkeeping or reporting requirements directly on such persons as provided in
8 subsections (a) and (b) with notice to the agency.

9 (e) SHARING OF INFORMATION.—

10 (1) MATERIAL CONCERNS.—Notwithstanding any other provision of law, the
11 Board, the appropriate financial regulator, and any Supervisory Agency are authorized to
12 promptly notify each other of material concerns about a designated financial market
13 utility or any financial institution engaged in designated activities, and share appropriate
14 reports, information or data relating to such concerns.

15 (2) OTHER.—Notwithstanding any other provision of law, the Board may, under
16 such terms and conditions it deems appropriate, provide confidential supervisory
17 information and other information obtained under this title to other persons it deems
18 appropriate, including the Secretary, State financial institution supervisory agencies,
19 foreign financial supervisors, foreign central banks, and foreign finance ministries,
20 subject to reasonable assurances of confidentiality.

21 (f) PRIVILEGE MAINTAINED.—The Board, the appropriate financial regulator, and any
22 Supervisory Agency providing reports or data under this section shall not be deemed to have
23 waived any privilege applicable to those reports or data, or any portion thereof, by providing the

1 reports or data to the other party or by permitting the reports or data, or any copies thereof, to be
2 used by the other party.

3 (g) DISCLOSURE EXEMPTION.—Information obtained by the Board under this section and
4 any materials prepared by the Board regarding its assessment of the systemic importance of
5 financial market utilities or any payment, clearing, or settlement activities engaged in by
6 financial institutions, and in connection with its supervision of designated financial market
7 utilities and designated activities, shall be confidential supervisory information exempt from
8 disclosure under section 552 of title 5, United States Code. For purposes of section 552 of title
9 5, this subsection shall be considered a statute described in subsection (b)(3) of section 552.

10 **SEC. 810. RULEMAKING.**

11 The Board is authorized to prescribe such rules and issue such orders as may be
12 necessary to administer and carry out the purposes of this title and prevent evasions thereof.

13 **SEC. 811. OTHER AUTHORITY.**

14 Unless otherwise provided by its terms, this title does not divest any appropriate financial
15 regulator, any Supervisory Agency, or other Federal or State agency, of any authority derived
16 from any other applicable law.

17 **SEC. 812. EFFECTIVE DATE.**

18 This title is effective as of the date of enactment.