

formation 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.)

Editorial Notes

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 of Title 15, Commerce and Trade, and enacted, amended, and repealed numerous other sections and notes in the Code.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

(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.

¹ 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 under² 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

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 under¹ 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

²So in original. Probably should be followed by a comma.

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