

1 **TITLE VIII—PAYMENT, CLEAR-**
2 **ING, AND SETTLEMENT SU-**
3 **PERVISION**

4 **SEC. 801. SHORT TITLE.**

5 This title may be cited as the “Payment, Clearing,
6 and Settlement Supervision Act of 2010”.

7 **SEC. 802. FINDINGS AND PURPOSES.**

8 (a) FINDINGS.—Congress finds the following:

9 (1) The proper functioning of the financial mar-
10 kets is dependent upon safe and efficient arrange-
11 ments for the clearing and settlement of payment,
12 securities, and other financial transactions.

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

20 (3) Payment, clearing, and settlement activities
21 conducted by financial institutions also present im-
22 portant risks to the participating financial institu-
23 tions and to the financial system.

1 (4) Enhancements to the regulation and super-
2 vision of systemically important financial market
3 utilities and the conduct of systemically important
4 payment, clearing, and settlement activities by finan-
5 cial institutions are necessary—

6 (A) to provide consistency;

7 (B) to promote robust risk management
8 and safety and soundness;

9 (C) to reduce systemic risks; and

10 (D) to support the stability of the broader
11 financial system.

12 (b) PURPOSE.—The purpose of this title is to miti-
13 gate systemic risk in the financial system and promote fi-
14 nancial stability by—

15 (1) authorizing the Board of Governors to pro-
16 mote uniform standards for the—

17 (A) management of risks by systemically
18 important financial market utilities; and

19 (B) conduct of systemically important pay-
20 ment, clearing, and settlement activities by fi-
21 nancial institutions;

22 (2) providing the Board of Governors an en-
23 hanced role in the supervision of risk management
24 standards for systemically important financial mar-
25 ket utilities;

1 (3) strengthening the liquidity of systemically
2 important financial market utilities; and

3 (4) providing the Board of Governors an en-
4 hanced role in the supervision of risk management
5 standards for systemically important payment, clear-
6 ing, and settlement activities by financial institu-
7 tions.

8 **SEC. 803. DEFINITIONS.**

9 In this title, the following definitions shall apply:

10 (1) **APPROPRIATE FINANCIAL REGULATOR.**—

11 The term “appropriate financial regulator” means—

12 (A) the primary financial regulatory agen-
13 cy, as defined in section 2 of this Act;

14 (B) the National Credit Union Administra-
15 tion, with respect to any insured credit union
16 under the Federal Credit Union Act (12 U.S.C.
17 1751 et seq.); and

18 (C) the Board of Governors, with respect
19 to organizations operating under section 25A of
20 the Federal Reserve Act (12 U.S.C. 611), and
21 any other financial institution engaged in a des-
22 ignated activity.

23 (2) **DESIGNATED ACTIVITY.**—The term “des-
24 ignated activity” means a payment, clearing, or set-

1 tlement activity that the Council has designated as
2 systemically important under section 804.

3 (3) DESIGNATED CLEARING ENTITY.—The term
4 “designated clearing entity” means a designated fi-
5 nancial market utility that is a derivatives clearing
6 organization registered under section 5b of the Com-
7 modity Exchange Act (7 U.S.C. 7a-1) or a clearing
8 agency registered with the Securities and Exchange
9 Commission under section 17A of the Securities Ex-
10 change Act of 1934 (15 U.S.C. 78q-1).

11 (4) DESIGNATED FINANCIAL MARKET UTIL-
12 ITY.—The term “designated financial market util-
13 ity” means a financial market utility that the Coun-
14 cil has designated as systemically important under
15 section 804.

16 (5) FINANCIAL INSTITUTION.—

17 (A) IN GENERAL.—The term “financial in-
18 stitution” means—

19 (i) a depository institution, as defined
20 in section 3 of the Federal Deposit Insur-
21 ance Act (12 U.S.C. 1813);

22 (ii) a branch or agency of a foreign
23 bank, as defined in section 1(b) of the
24 International Banking Act of 1978 (12
25 U.S.C. 3101);

1 (iii) an organization operating under
2 section 25 or 25A of the Federal Reserve
3 Act (12 U.S.C. 601–604a and 611 through
4 631);

5 (iv) a credit union, as defined in sec-
6 tion 101 of the Federal Credit Union Act
7 (12 U.S.C. 1752);

8 (v) a broker or dealer, as defined in
9 section 3 of the Securities Exchange Act of
10 1934 (15 U.S.C. 78c);

11 (vi) an investment company, as de-
12 fined in section 3 of the Investment Com-
13 pany Act of 1940 (15 U.S.C. 80a–3);

14 (vii) an insurance company, as defined
15 in section 2 of the Investment Company
16 Act of 1940 (15 U.S.C. 80a–2);

17 (viii) an investment adviser, as de-
18 fined in section 202 of the Investment Ad-
19 visers Act of 1940 (15 U.S.C. 80b–2);

20 (ix) a futures commission merchant,
21 commodity trading advisor, or commodity
22 pool operator, as defined in section 1a of
23 the Commodity Exchange Act (7 U.S.C.
24 1a); and

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

6 (B) EXCLUSIONS.—The term “financial in-
7 stitution” does not include designated contract
8 markets, registered futures associations, swap
9 data repositories, and swap execution facilities
10 registered under the Commodity Exchange Act
11 (7 U.S.C. 1 et seq.), or national securities ex-
12 changes, national securities associations, alter-
13 native trading systems, securities information
14 processors solely with respect to the activities of
15 the entity as a securities information processor,
16 security-based swap data repositories, and swap
17 execution facilities registered under the Securi-
18 ties Exchange Act of 1934 (15 U.S.C. 78a et
19 seq.), or designated clearing entities, provided
20 that the exclusions in this subparagraph apply
21 only with respect to the activities that require
22 the entity to be so registered.

23 (6) FINANCIAL MARKET UTILITY.—

24 (A) INCLUSION.—The term “financial
25 market utility” means any person that manages

1 or operates a multilateral system for the pur-
2 pose of transferring, clearing, or settling pay-
3 ments, securities, or other financial transactions
4 among financial institutions or between finan-
5 cial institutions and the person.

6 (B) EXCLUSIONS.—The term “financial
7 market utility” does not include—

8 (i) designated contract markets, reg-
9 istered futures associations, swap data re-
10 positories, and swap execution facilities
11 registered under the Commodity Exchange
12 Act (7 U.S.C. 1 et seq.), or national secu-
13 rities exchanges, national securities asso-
14 ciations, alternative trading systems, secu-
15 rity-based swap data repositories, and
16 swap execution facilities registered under
17 the Securities Exchange Act of 1934 (15
18 U.S.C. 78a et seq.), solely by reason of
19 their providing facilities for comparison of
20 data respecting the terms of settlement of
21 securities or futures transactions effected
22 on such exchange or by means of any elec-
23 tronic system operated or controlled by
24 such entities, provided that the exclusions
25 in this clause apply only with respect to

1 the activities that require the entity to be
2 so registered; and

3 (ii) any broker, dealer, transfer agent,
4 or investment company, or any futures
5 commission merchant, introducing broker,
6 commodity trading advisor, or commodity
7 pool operator, solely by reason of functions
8 performed by such institution as part of
9 brokerage, dealing, transfer agency, or in-
10 vestment company activities, or solely by
11 reason of acting on behalf of a financial
12 market utility or a participant therein in
13 connection with the furnishing by the fi-
14 nancial market utility of services to its
15 participants or the use of services of the fi-
16 nancial market utility by its participants,
17 provided that services performed by such
18 institution do not constitute critical risk
19 management or processing functions of the
20 financial market utility.

21 (7) PAYMENT, CLEARING, OR SETTLEMENT AC-
22 TIVITY.—

23 (A) IN GENERAL.—The term “payment,
24 clearing, or settlement activity” means an activ-
25 ity carried out by 1 or more financial institu-

1 tions to facilitate the completion of financial
2 transactions, but shall not include any offer or
3 sale of a security under the Securities Act of
4 1933 (15 U.S.C. 77a et seq.), or any quotation,
5 order entry, negotiation, or other pre-trade ac-
6 tivity or execution activity.

7 (B) FINANCIAL TRANSACTION.—For the
8 purposes of subparagraph (A), the term “finan-
9 cial transaction” includes—

- 10 (i) funds transfers;
- 11 (ii) securities contracts;
- 12 (iii) contracts of sale of a commodity
13 for future delivery;
- 14 (iv) forward contracts;
- 15 (v) repurchase agreements;
- 16 (vi) swaps;
- 17 (vii) security-based swaps;
- 18 (viii) swap agreements;
- 19 (ix) security-based swap agreements;
- 20 (x) foreign exchange contracts;
- 21 (xi) financial derivatives contracts;
- 22 and
- 23 (xii) any similar transaction that the
24 Council determines to be a financial trans-
25 action for purposes of this title.

1 (C) INCLUDED ACTIVITIES.—When con-
2 ducted with respect to a financial transaction,
3 payment, clearing, and settlement activities may
4 include—

5 (i) the calculation and communication
6 of unsettled financial transactions between
7 counterparties;

8 (ii) the netting of transactions;

9 (iii) provision and maintenance of
10 trade, contract, or instrument information;

11 (iv) the management of risks and ac-
12 tivities associated with continuing financial
13 transactions;

14 (v) transmittal and storage of pay-
15 ment instructions;

16 (vi) the movement of funds;

17 (vii) the final settlement of financial
18 transactions; and

19 (viii) other similar functions that the
20 Council may determine.

21 (D) EXCLUSION.—Payment, clearing, and
22 settlement activities shall not include public re-
23 porting of swap transaction data under section
24 727 or 763(i) of the Wall Street Transparency
25 and Accountability Act of 2010.

1 (8) SUPERVISORY AGENCY.—

2 (A) IN GENERAL.—The term “Supervisory
3 Agency” means the Federal agency that has
4 primary jurisdiction over a designated financial
5 market utility under Federal banking, securi-
6 ties, or commodity futures laws, as follows:

7 (i) The Securities and Exchange Com-
8 mission, with respect to a designated fi-
9 nancial market utility that is a clearing
10 agency registered with the Securities and
11 Exchange Commission.

12 (ii) The Commodity Futures Trading
13 Commission, with respect to a designated
14 financial market utility that is a deriva-
15 tives clearing organization registered with
16 the Commodity Futures Trading Commis-
17 sion.

18 (iii) The appropriate Federal banking
19 agency, with respect to a designated finan-
20 cial market utility that is an institution de-
21 scribed in section 3(q) of the Federal De-
22 posit Insurance Act.

23 (iv) The Board of Governors, with re-
24 spect to a designated financial market util-
25 ity that is otherwise not subject to the ju-

1 jurisdiction of any agency listed in clauses
2 (i), (ii), and (iii).

3 (B) MULTIPLE AGENCY JURISDICTION.—If
4 a designated financial market utility is subject
5 to the jurisdictional supervision of more than 1
6 agency listed in subparagraph (A), then such
7 agencies should agree on 1 agency to act as the
8 Supervisory Agency, and if such agencies can-
9 not agree on which agency has primary jurisdic-
10 tion, the Council shall decide which agency is
11 the Supervisory Agency for purposes of this
12 title.

13 (9) SYSTEMICALLY IMPORTANT AND SYSTEMIC
14 IMPORTANCE.—The terms “systemically important”
15 and “systemic importance” mean a situation where
16 the failure of or a disruption to the functioning of
17 a financial market utility or the conduct of a pay-
18 ment, clearing, or settlement activity could create, or
19 increase, the risk of significant liquidity or credit
20 problems spreading among financial institutions or
21 markets and thereby threaten the stability of the fi-
22 nancial system of the United States.

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

24 (a) DESIGNATION.—

1 (1) FINANCIAL STABILITY OVERSIGHT COUN-
2 CIL.—The Council, on a nondelegable basis and by
3 a vote of not fewer than $\frac{2}{3}$ of members then serving,
4 including an affirmative vote by the Chairperson of
5 the Council, shall designate those financial market
6 utilities or payment, clearing, or settlement activities
7 that the Council determines are, or are likely to be-
8 come, systemically important.

9 (2) CONSIDERATIONS.—In determining whether
10 a financial market utility or payment, clearing, or
11 settlement activity is, or is likely to become, system-
12 ically important, the Council shall take into consid-
13 eration the following:

14 (A) The aggregate monetary value of
15 transactions processed by the financial market
16 utility or carried out through the payment,
17 clearing, or settlement activity.

18 (B) The aggregate exposure of the finan-
19 cial market utility or a financial institution en-
20 gaged in payment, clearing, or settlement activi-
21 ties to its counterparties.

22 (C) The relationship, interdependencies, or
23 other interactions of the financial market utility
24 or payment, clearing, or settlement activity with

1 other financial market utilities or payment,
2 clearing, or settlement activities.

3 (D) The effect that the failure of or a dis-
4 ruption to the financial market utility or pay-
5 ment, clearing, or settlement activity would
6 have on critical markets, financial institutions,
7 or the broader financial system.

8 (E) Any other factors that the Council
9 deems appropriate.

10 (b) RESCISSION OF DESIGNATION.—

11 (1) IN GENERAL.—The Council, on a nondele-
12 gable basis and by a vote of not fewer than $\frac{2}{3}$ of
13 members then serving, including an affirmative vote
14 by the Chairperson of the Council, shall rescind a
15 designation of systemic importance for a designated
16 financial market utility or designated activity if the
17 Council determines that the utility or activity no
18 longer meets the standards for systemic importance.

19 (2) EFFECT OF RESCISSION.—Upon rescission,
20 the financial market utility or financial institutions
21 conducting the activity will no longer be subject to
22 the provisions of this title or any rules or orders pre-
23 scribed by the Council under this title.

24 (c) CONSULTATION AND NOTICE AND OPPORTUNITY
25 FOR HEARING.—

1 (1) CONSULTATION.—Before making any deter-
2 mination under subsection (a) or (b), the Council
3 shall consult with the relevant Supervisory Agency
4 and the Board of Governors.

5 (2) ADVANCE NOTICE AND OPPORTUNITY FOR
6 HEARING.—

7 (A) IN GENERAL.—Before making any de-
8 termination under subsection (a) or (b), the
9 Council shall provide the financial market util-
10 ity or, in the case of a payment, clearing, or
11 settlement activity, financial institutions with
12 advance notice of the proposed determination of
13 the Council.

14 (B) NOTICE IN FEDERAL REGISTER.—The
15 Council shall provide such advance notice to fi-
16 nancial institutions by publishing a notice in
17 the Federal Register.

18 (C) REQUESTS FOR HEARING.—Within 30
19 days from the date of any notice of the pro-
20 posed determination of the Council, the finan-
21 cial market utility or, in the case of a payment,
22 clearing, or settlement activity, a financial insti-
23 tution engaged in the designated activity may
24 request, in writing, an opportunity for a written
25 or oral hearing before the Council to dem-

1 onstrate that the proposed designation or re-
2 scission of designation is not supported by sub-
3 stantial evidence.

4 (D) WRITTEN SUBMISSIONS.—Upon re-
5 ceipt of a timely request, the Council shall fix
6 a time, not more than 30 days after receipt of
7 the request, unless extended at the request of
8 the financial market utility or financial institu-
9 tion, and place at which the financial market
10 utility or financial institution may appear, per-
11 sonally or through counsel, to submit written
12 materials, or, at the sole discretion of the Coun-
13 cil, oral testimony or oral argument.

14 (3) EMERGENCY EXCEPTION.—

15 (A) WAIVER OR MODIFICATION BY VOTE
16 OF THE COUNCIL.—The Council may waive or
17 modify the requirements of paragraph (2) if the
18 Council determines, by an affirmative vote of
19 not less than $\frac{2}{3}$ of all members then serving,
20 including an affirmative vote by the Chair-
21 person of the Council, that the waiver or modi-
22 fication is necessary to prevent or mitigate an
23 immediate threat to the financial system posed
24 by the financial market utility or the payment,
25 clearing, or settlement activity.

1 (B) NOTICE OF WAIVER OR MODIFICA-
2 TION.—The Council shall provide notice of the
3 waiver or modification to the financial market
4 utility concerned or, in the case of a payment,
5 clearing, or settlement activity, to financial in-
6 stitutions, as soon as practicable, which shall be
7 no later than 24 hours after the waiver or
8 modification in the case of a financial market
9 utility and 3 business days in the case of finan-
10 cial institutions. The Council shall provide the
11 notice to financial institutions by posting a no-
12 tice on the website of the Council and by pub-
13 lishing a notice in the Federal Register.

14 (d) NOTIFICATION OF FINAL DETERMINATION.—

15 (1) AFTER HEARING.—Within 60 days of any
16 hearing under subsection (c)(2), the Council shall
17 notify the financial market utility or financial insti-
18 tutions of the final determination of the Council in
19 writing, which shall include findings of fact upon
20 which the determination of the Council is based.

21 (2) WHEN NO HEARING REQUESTED.—If the
22 Council does not receive a timely request for a hear-
23 ing under subsection (c)(2), the Council shall notify
24 the financial market utility or financial institutions
25 of the final determination of the Council in writing

1 not later than 30 days after the expiration of the
2 date by which a financial market utility or a finan-
3 cial institution could have requested a hearing. All
4 notices to financial institutions under this subsection
5 shall be published in the Federal Register.

6 (e) **EXTENSION OF TIME PERIODS.**—The Council
7 may extend the time periods established in subsections (c)
8 and (d) as the Council determines to be necessary or ap-
9 propriate.

10 **SEC. 805. STANDARDS FOR SYSTEMICALLY IMPORTANT FI-**
11 **NANCIAL MARKET UTILITIES AND PAYMENT,**
12 **CLEARING, OR SETTLEMENT ACTIVITIES.**

13 (a) **AUTHORITY TO PRESCRIBE STANDARDS.**—

14 (1) **BOARD OF GOVERNORS.**—Except as pro-
15 vided in paragraph (2), the Board of Governors, by
16 rule or order, and in consultation with the Council
17 and the Supervisory Agencies, shall prescribe risk
18 management standards, taking into consideration
19 relevant international standards and existing pru-
20 dential requirements, governing—

21 (A) the operations related to the payment,
22 clearing, and settlement activities of designated
23 financial market utilities; and

24 (B) the conduct of designated activities by
25 financial institutions.

1 (2) SPECIAL PROCEDURES FOR DESIGNATED
2 CLEARING ENTITIES AND DESIGNATED ACTIVITIES
3 OF CERTAIN FINANCIAL INSTITUTIONS.—

4 (A) CFTC AND COMMISSION.—The Com-
5 modity Futures Trading Commission and the
6 Commission may each prescribe regulations, in
7 consultation with the Council and the Board of
8 Governors, containing risk management stand-
9 ards, taking into consideration relevant inter-
10 national standards and existing prudential re-
11 quirements, for those designated clearing enti-
12 ties and financial institutions engaged in des-
13 ignated activities for which each is the Super-
14 visory Agency or the appropriate financial regu-
15 lator, governing—

16 (i) the operations related to payment,
17 clearing, and settlement activities of such
18 designated clearing entities; and

19 (ii) the conduct of designated activi-
20 ties by such financial institutions.

21 (B) REVIEW AND DETERMINATION.—The
22 Board of Governors may determine that exist-
23 ing prudential requirements of the Commodity
24 Futures Trading Commission, the Commission,
25 or both (including requirements prescribed pur-

1 suant to subparagraph (A)) with respect to des-
2 ignated clearing entities and financial institu-
3 tions engaged in designated activities for which
4 the Commission or the Commodity Futures
5 Trading Commission is the Supervisory Agency
6 or the appropriate financial regulator are insuf-
7 ficient to prevent or mitigate significant liquid-
8 ity, credit, operational, or other risks to the fi-
9 nancial markets or to the financial stability of
10 the United States.

11 (C) WRITTEN DETERMINATION.—Any de-
12 termination by the Board of Governors under
13 subparagraph (B) shall be provided in writing
14 to the Commodity Futures Trading Commission
15 or the Commission, as applicable, and the
16 Council, and shall explain why existing pruden-
17 tial requirements, considered as a whole, are in-
18 sufficient to ensure that the operations and ac-
19 tivities of the designated clearing entities or the
20 activities of financial institutions described in
21 subparagraph (B) will not pose significant li-
22 quidity, credit, operational, or other risks to the
23 financial markets or to the financial stability of
24 the United States. The Board of Governors' de-
25 termination shall contain a detailed analysis

1 supporting its findings and identify the specific
2 prudential requirements that are insufficient.

3 (D) CFTC AND COMMISSION RESPONSE.—

4 The Commodity Futures Trading Commission
5 or the Commission, as applicable, shall within
6 60 days either object to the Board of Gov-
7 ernor’s determination with a detailed analysis
8 as to why existing prudential requirements are
9 sufficient, or submit an explanation to the
10 Council and the Board of Governors describing
11 the actions to be taken in response to the
12 Board of Governor’s determination.

13 (E) AUTHORIZATION.—Upon an affirma-
14 tive vote by not fewer than 2/3 of members then
15 serving on the Council, the Council shall either
16 find that the response submitted under sub-
17 paragraph (D) is sufficient, or require the Com-
18 modity Futures Trading Commission, or the
19 Commission, as applicable, to prescribe such
20 risk management standards as the Council de-
21 termines is necessary to address the specific
22 prudential requirements that are determined to
23 be insufficient.”

1 (b) OBJECTIVES AND PRINCIPLES.—The objectives
2 and principles for the risk management standards pre-
3 scribed under subsection (a) shall be to—

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

9 (c) SCOPE.—The standards prescribed under sub-
10 section (a) may address areas such as—

- 11 (1) risk management policies and procedures;
- 12 (2) margin and collateral requirements;
- 13 (3) participant or counterparty default policies
14 and procedures;
- 15 (4) the ability to complete timely clearing and
16 settlement of financial transactions;
- 17 (5) capital and financial resource requirements
18 for designated financial market utilities; and
- 19 (6) other areas that are necessary to achieve
20 the objectives and principles in subsection (b).

21 (d) LIMITATION ON SCOPE.—Except as provided in
22 subsections (e) and (f) of section 807, nothing in this title
23 shall be construed to permit the Council or the Board of
24 Governors to take any action or exercise any authority
25 granted to the Commodity Futures Trading Commission

1 under section 2(h) of the Commodity Exchange Act or the
2 Securities and Exchange Commission under section 3C(a)
3 of the Securities Exchange Act of 1934, including—

4 (1) the approval of, disapproval of, or stay of
5 the clearing requirement for any group, category,
6 type, or class of swaps that a designated clearing en-
7 tity may accept for clearing;

8 (2) the determination that any group, category,
9 type, or class of swaps shall be subject to the man-
10 datory clearing requirement of section 2(h)(1) of the
11 Commodity Exchange Act or section 3C(a)(1) of the
12 Securities Exchange Act of 1934;

13 (3) the determination that any person is exempt
14 from the mandatory clearing requirement of section
15 2(h)(1) of the Commodity Exchange Act or section
16 3C(a)(1) of the Securities Exchange Act of 1934; or

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

21 (e) THRESHOLD LEVEL.—The standards prescribed
22 under subsection (a) governing the conduct of designated
23 activities by financial institutions shall, where appropriate,
24 establish a threshold as to the level or significance of en-
25 gagement in the activity at which a financial institution

1 will become subject to the standards with respect to that
2 activity.

3 (f) COMPLIANCE REQUIRED.—Designated financial
4 market utilities and financial institutions subject to the
5 standards prescribed under subsection (a) for a designated
6 activity shall conduct their operations in compliance with
7 the applicable risk management standards.

8 **SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MAR-**
9 **KET UTILITIES.**

10 (a) FEDERAL RESERVE ACCOUNT AND SERVICES.—
11 The Board of Governors may authorize a Federal Reserve
12 Bank to establish and maintain an account for a des-
13 ignated financial market utility and provide the services
14 listed in section 11A(b) of the Federal Reserve Act (12
15 U.S.C. 248a(b)) and deposit accounts under the first un-
16 designated paragraph of section 13 of the Federal Reserve
17 Act (12 U.S.C. 342) to the designated financial market
18 utility that the Federal Reserve Bank is authorized under
19 the Federal Reserve Act to provide to a depository institu-
20 tion, subject to any applicable rules, orders, standards, or
21 guidelines prescribed by the Board of Governors.

22 (b) ADVANCES.—The Board of Governors may au-
23 thorize a Federal Reserve bank under section 10B of the
24 Federal Reserve Act (12 U.S.C. 347b) to provide to a des-
25 ignated financial market utility discount and borrowing

1 privileges only in unusual or exigent circumstances, upon
2 the affirmative vote of a majority of the Board of Gov-
3 ernors then serving (or such other number in accordance
4 with the provisions of section 11(r)(2) of the Federal Re-
5 serve Act (12 U.S.C. 248(r)(2)) after consultation with
6 the Secretary, and upon a showing by the designated fi-
7 nancial market utility that it is unable to secure adequate
8 credit accommodations from other banking institutions.
9 All such discounts and borrowing privileges shall be sub-
10 ject to such other limitations, restrictions, and regulations
11 as the Board of Governors may prescribe. Access to dis-
12 count and borrowing privileges under section 10B of the
13 Federal Reserve Act as authorized in this section does not
14 require a designated financial market utility to be or be-
15 come a bank or bank holding company.

16 (c) EARNINGS ON FEDERAL RESERVE BALANCES.—
17 A Federal Reserve Bank may pay earnings on balances
18 maintained by or on behalf of a designated financial mar-
19 ket utility in the same manner and to the same extent
20 as the Federal Reserve Bank may pay earnings to a depos-
21 itory institution under the Federal Reserve Act, subject
22 to any applicable rules, orders, standards, or guidelines
23 prescribed by the Board of Governors.

24 (d) RESERVE REQUIREMENTS.—The Board of Gov-
25 ernors may exempt a designated financial market utility

1 from, or modify any, reserve requirements under section
2 19 of the Federal Reserve Act (12 U.S.C. 461) applicable
3 to a designated financial market utility.

4 (e) CHANGES TO RULES, PROCEDURES, OR OPER-
5 ATIONS.—

6 (1) ADVANCE NOTICE.—

7 (A) ADVANCE NOTICE OF PROPOSED
8 CHANGES REQUIRED.—A designated financial
9 market utility shall provide notice 60 days in
10 advance notice to its Supervisory Agency of any
11 proposed change to its rules, procedures, or op-
12 erations that could, as defined in rules of each
13 Supervisory Agency, materially affect, the na-
14 ture or level of risks presented by the des-
15 ignated financial market utility.

16 (B) TERMS AND STANDARDS PRESCRIBED
17 BY THE SUPERVISORY AGENCIES.—Each Super-
18 visory Agency, in consultation with the Board
19 of Governors, shall prescribe regulations that
20 define and describe the standards for deter-
21 mining when notice is required to be provided
22 under subparagraph (A).

23 (C) CONTENTS OF NOTICE.—The notice of
24 a proposed change shall describe—

1 (i) the nature of the change and ex-
2 pected effects on risks to the designated fi-
3 nancial market utility, its participants, or
4 the market; and

5 (ii) how the designated financial mar-
6 ket utility plans to manage any identified
7 risks.

8 (D) ADDITIONAL INFORMATION.—The Su-
9 pervisory Agency may require a designated fi-
10 nancial market utility to provide any informa-
11 tion necessary to assess the effect the proposed
12 change would have on the nature or level of
13 risks associated with the designated financial
14 market utility’s payment, clearing, or settle-
15 ment activities and the sufficiency of any pro-
16 posed risk management techniques.

17 (E) NOTICE OF OBJECTION.—The Super-
18 visory Agency shall notify the designated finan-
19 cial market utility of any objection regarding
20 the proposed change within 60 days from the
21 later of—

22 (i) the date that the notice of the pro-
23 posed change is received; or

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

4 (F) CHANGE NOT ALLOWED IF OBJEC-
5 TION.—A designated financial market utility
6 shall not implement a change to which the Su-
7 pervisory Agency has an objection.

8 (G) CHANGE ALLOWED IF NO OBJECTION
9 WITHIN 60 DAYS.—A designated financial mar-
10 ket utility may implement a change if it has not
11 received an objection to the proposed change
12 within 60 days of the later of—

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

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

19 (H) REVIEW EXTENSION FOR NOVEL OR
20 COMPLEX ISSUES.—The Supervisory Agency
21 may, during the 60-day review period, extend
22 the review period for an additional 60 days for
23 proposed changes that raise novel or complex
24 issues, subject to the Supervisory Agency or the
25 Board of Governors providing the designated fi-

1 nancial market utility with prompt written no-
2 tice of the extension. Any extension under this
3 subparagraph will extend the time periods
4 under subparagraphs (E) and (G).

5 (I) CHANGE ALLOWED EARLIER IF NOTI-
6 FIED OF NO OBJECTION.—A designated finan-
7 cial market utility may implement a change in
8 less than 60 days from the date of receipt of
9 the notice of proposed change by the Super-
10 visory Agency, or the date the Supervisory
11 Agency receives any further information it re-
12 quested, if the Supervisory Agency notifies the
13 designated financial market utility in writing
14 that it does not object to the proposed change
15 and authorizes the designated financial market
16 utility to implement the change on an earlier
17 date, subject to any conditions imposed by the
18 Supervisory Agency.

19 (2) EMERGENCY CHANGES.—

20 (A) IN GENERAL.—A designated financial
21 market utility may implement a change that
22 would otherwise require advance notice under
23 this subsection if it determines that—

24 (i) an emergency exists; and

1 (ii) immediate implementation of the
2 change is necessary for the designated fi-
3 nancial market utility to continue to pro-
4 vide its services in a safe and sound man-
5 ner.

6 (B) NOTICE REQUIRED WITHIN 24
7 HOURS.—The designated financial market util-
8 ity shall provide notice of any such emergency
9 change to its Supervisory Agency, as soon as
10 practicable, which shall be no later than 24
11 hours after implementation of the change.

12 (C) CONTENTS OF EMERGENCY NOTICE.—
13 In addition to the information required for
14 changes requiring advance notice, the notice of
15 an emergency change shall describe—

16 (i) the nature of the emergency; and
17 (ii) the reason the change was nec-
18 essary for the designated financial market
19 utility to continue to provide its services in
20 a safe and sound manner.

21 (D) MODIFICATION OR RESCISSION OF
22 CHANGE MAY BE REQUIRED.—The Supervisory
23 Agency may require modification or rescission
24 of the change if it finds that the change is not
25 consistent with the purposes of this Act or any

1 applicable rules, orders, or standards prescribed
2 under section 805(a).

3 (3) COPYING THE BOARD OF GOVERNORS.—The
4 Supervisory Agency shall provide the Board of Gov-
5 ernors concurrently with a complete copy of any no-
6 tice, request, or other information it issues, submits,
7 or receives under this subsection.

8 (4) CONSULTATION WITH BOARD OF GOV-
9 ERNORS.—Before taking any action on, or com-
10 pleting its review of, a change proposed by a des-
11 ignated financial market utility, the Supervisory
12 Agency shall consult with the Board of Governors.

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

16 (a) EXAMINATION.—Notwithstanding any other pro-
17 vision of law and subject to subsection (d), the Supervisory
18 Agency shall conduct examinations of a designated finan-
19 cial market utility at least once annually in order to deter-
20 mine the following:

21 (1) The nature of the operations of, and the
22 risks borne by, the designated financial market util-
23 ity.

24 (2) The financial and operational risks pre-
25 sented by the designated financial market utility to

1 financial institutions, critical markets, or the broad-
2 er financial system.

3 (3) The resources and capabilities of the des-
4 igned financial market utility to monitor and con-
5 trol such risks.

6 (4) The safety and soundness of the designated
7 financial market utility.

8 (5) The designated financial market utility's
9 compliance with—

10 (A) this title; and

11 (B) the rules and orders prescribed under
12 this title.

13 (b) SERVICE PROVIDERS.—Whenever a service inte-
14 gral to the operation of a designated financial market util-
15 ity is performed for the designated financial market utility
16 by another entity, whether an affiliate or non-affiliate and
17 whether on or off the premises of the designated financial
18 market utility, the Supervisory Agency may examine
19 whether the provision of that service is in compliance with
20 applicable law, rules, orders, and standards to the same
21 extent as if the designated financial market utility were
22 performing the service on its own premises.

23 (c) ENFORCEMENT.—For purposes of enforcing the
24 provisions of this section, a designated financial market
25 utility shall be subject to, and the appropriate Supervisory

1 Agency shall have authority under the provisions of sub-
2 sections (b) through (n) of section 8 of the Federal De-
3 posit Insurance Act (12 U.S.C. 1818) in the same manner
4 and to the same extent as if the designated financial mar-
5 ket utility was an insured depository institution and the
6 Supervisory Agency was the appropriate Federal banking
7 agency for such insured depository institution.

8 (d) BOARD OF GOVERNORS INVOLVEMENT IN EXAMI-
9 NATIONS.—

10 (1) BOARD OF GOVERNORS CONSULTATION ON
11 EXAMINATION PLANNING.—The Supervisory Agency
12 shall consult annually with the Board of Governors
13 regarding the scope and methodology of any exam-
14 ination conducted under subsections (a) and (b).
15 The Supervisory Agency shall lead all examinations
16 conducted under subsections (a) and (b)

17 (2) BOARD OF GOVERNORS PARTICIPATION IN
18 EXAMINATION.—The Board of Governors may, in its
19 discretion, participate in any examination led by a
20 Supervisory Agency and conducted under sub-
21 sections (a) and (b).

22 (e) BOARD OF GOVERNORS ENFORCEMENT REC-
23 OMMENDATIONS.—

24 (1) RECOMMENDATION.—The Board of Gov-
25 ernors may, after consulting with the Council and

1 the Supervisory Agency, at any time recommend to
2 the Supervisory Agency that such agency take en-
3 forcement action against a designated financial mar-
4 ket utility in order to prevent or mitigate significant
5 liquidity, credit, operational, or other risks to the fi-
6 nancial markets or to the financial stability of the
7 United States. Any such recommendation for en-
8 forcement action shall provide a detailed analysis
9 supporting the recommendation of the Board of
10 Governors.

11 (2) CONSIDERATION.—The Supervisory Agency
12 shall consider the recommendation of the Board of
13 Governors and submit a response to the Board of
14 Governors within 60 days.

15 (3) BINDING ARBITRATION.—If the Supervisory
16 Agency rejects, in whole or in part, the recommenda-
17 tion of the Board of Governors, the Board of Gov-
18 ernors may refer the recommendation to the Council
19 for a binding decision on whether an enforcement
20 action is warranted.

21 (4) ENFORCEMENT ACTION.—Upon an affirma-
22 tive vote by a majority of the Council in favor of the
23 Board of Governors' recommendation under para-
24 graph (3), the Council may require the Supervisory
25 Agency to—

1 (A) exercise the enforcement authority ref-
2 erenced in subsection (c); and

3 (B) take enforcement action against the
4 designated financial market utility.

5 (f) EMERGENCY ENFORCEMENT ACTIONS BY THE
6 BOARD OF GOVERNORS.—

7 (1) IMMINENT RISK OF SUBSTANTIAL HARM.—

8 The Board of Governors may, after consulting with
9 the Supervisory Agency and upon an affirmative
10 vote by a majority the Council, take enforcement ac-
11 tion against a designated financial market utility if
12 the Board of Governors has reasonable cause to con-
13 clude that—

14 (A) either—

15 (i) an action engaged in, or con-
16 templated by, a designated financial mar-
17 ket utility (including any change proposed
18 by the designated financial market utility
19 to its rules, procedures, or operations that
20 would otherwise be subject to section
21 806(e)) poses an imminent risk of substan-
22 tial harm to financial institutions, critical
23 markets, or the broader financial system of
24 the United States; or

1 (ii) the condition of a designated fi-
2 nancial market utility poses an imminent
3 risk of substantial harm to financial insti-
4 tutions, critical markets, or the broader fi-
5 nancial system; and

6 (B) the imminent risk of substantial harm
7 precludes the Board of Governors' use of the
8 procedures in subsection (e).

9 (2) ENFORCEMENT AUTHORITY.—For purposes
10 of taking enforcement action under paragraph (1), a
11 designated financial market utility shall be subject
12 to, and the Board of Governors shall have authority
13 under the provisions of subsections (b) through (n)
14 of section 8 of the Federal Deposit Insurance Act
15 (12 U.S.C. 1818) in the same manner and to the
16 same extent as if the designated financial market
17 utility was an insured depository institution and the
18 Board of Governors was the appropriate Federal
19 banking agency for such insured depository institu-
20 tion.

1 **SEC. 808. EXAMINATION OF AND ENFORCEMENT ACTIONS**
2 **AGAINST FINANCIAL INSTITUTIONS SUBJECT**
3 **TO STANDARDS FOR DESIGNATED ACTIVI-**
4 **TIES.**

5 (a) EXAMINATION.—The appropriate financial regu-
6 lator is authorized to examine a financial institution sub-
7 ject to the standards prescribed under section 805(a) for
8 a designated activity in order to determine the following:

9 (1) The nature and scope of the designated ac-
10 tivities engaged in by the financial institution.

11 (2) The financial and operational risks the des-
12 igned activities engaged in by the financial institu-
13 tion may pose to the safety and soundness of the fi-
14 nancial institution.

15 (3) The financial and operational risks the des-
16 igned activities engaged in by the financial institu-
17 tion may pose to other financial institutions, critical
18 markets, or the broader financial system.

19 (4) The resources available to and the capabili-
20 ties of the financial institution to monitor and con-
21 trol the risks described in paragraphs (2) and (3).

22 (5) The financial institution's compliance with
23 this title and the rules and orders prescribed under
24 section 805(a).

25 (b) ENFORCEMENT.—For purposes of enforcing the
26 provisions of this section, and the rules and orders pre-

1 scribed by the Board of Governors under this section, a
2 financial institution subject to the standards prescribed
3 under section 805(a) for a designated activity shall be sub-
4 ject to, and the appropriate financial regulator shall have
5 authority under the provisions of subsections (b) through
6 (n) of section 8 of the Federal Deposit Insurance Act (12
7 U.S.C. 1818) in the same manner and to the same extent
8 as if the financial institution was an insured depository
9 institution and the appropriate financial regulator was the
10 appropriate Federal banking agency for such insured de-
11 pository institution.

12 (c) TECHNICAL ASSISTANCE.—The Board of Gov-
13 ernors shall consult with and provide such technical assist-
14 ance as may be required by the appropriate financial regu-
15 lators to ensure that the rules and orders prescribed by
16 the Board of Governors under this title are interpreted
17 and applied in as consistent and uniform a manner as
18 practicable.

19 (d) DELEGATION.—

20 (1) EXAMINATION.—

21 (A) REQUEST TO BOARD OF GOV-
22 ERNORS.—The appropriate financial regulator
23 may request the Board of Governors to conduct
24 or participate in an examination of a financial
25 institution subject to the standards prescribed

1 under section 805(a) for a designated activity
2 in order to assess the compliance of such finan-
3 cial institution with—

4 (i) this title; or

5 (ii) the rules or orders prescribed
6 under this title.

7 (B) EXAMINATION BY BOARD OF GOV-
8 ERNORS.—Upon receipt of an appropriate writ-
9 ten request, the Board of Governors will con-
10 duct the examination under such terms and
11 conditions to which the Board of Governors and
12 the appropriate financial regulator mutually
13 agree.

14 (2) ENFORCEMENT.—

15 (A) REQUEST TO BOARD OF GOV-
16 ERNORS.—The appropriate financial regulator
17 may request the Board of Governors to enforce
18 this title or the rules or orders prescribed under
19 this title against a financial institution that is
20 subject to the standards prescribed under sec-
21 tion 805(a) for a designated activity.

22 (B) ENFORCEMENT BY BOARD OF GOV-
23 ERNORS.—Upon receipt of an appropriate writ-
24 ten request, the Board of Governors shall deter-
25 mine whether an enforcement action is war-

1 ranted, and, if so, it shall enforce compliance
2 with this title or the rules or orders prescribed
3 under this title and, if so, the financial institu-
4 tion shall be subject to, and the Board of Gov-
5 ernors shall have authority under the provisions
6 of subsections (b) through (n) of section 8 of
7 the Federal Deposit Insurance Act (12 U.S.C.
8 1818) in the same manner and to the same ex-
9 tent as if the financial institution was an in-
10 sured depository institution and the Board of
11 Governors was the appropriate Federal banking
12 agency for such insured depository institution.

13 (e) BACK-UP AUTHORITY OF THE BOARD OF GOV-
14 ERNORS.—

15 (1) EXAMINATION AND ENFORCEMENT.—Not-
16 withstanding any other provision of law, the Board
17 of Governors may—

18 (A) conduct an examination of the type de-
19 scribed in subsection (a) of any financial insti-
20 tution that is subject to the standards pre-
21 scribed under section 805(a) for a designated
22 activity; and

23 (B) enforce the provisions of this title or
24 any rules or orders prescribed under this title
25 against any financial institution that is subject

1 to the standards prescribed under section
2 805(a) for a designated activity.

3 (2) LIMITATIONS.—

4 (A) EXAMINATION.—The Board of Gov-
5 ernors may exercise the authority described in
6 paragraph (1)(A) only if the Board of Gov-
7 ernors has—

8 (i) reasonable cause to believe that a
9 financial institution is not in compliance
10 with this title or the rules or orders pre-
11 scribed by the Board of Governors under
12 this title with respect to a designated activ-
13 ity;

14 (ii) notified, in writing, the appro-
15 priate financial regulator and the Council
16 of its belief under clause (i) with sup-
17 porting documentation included;

18 (iii) requested the appropriate finan-
19 cial regulator to conduct a prompt exam-
20 ination of the financial institution;

21 (iv) either—

22 (I) not been afforded a reason-
23 able opportunity to participate in an
24 examination of the financial institu-
25 tion by the appropriate financial regu-

1 lator within 30 days after the date of
2 the Board's notification under clause
3 (ii); or

4 (II) reasonable cause to believe
5 that the financial institution's non-
6 compliance with this title or the rules
7 or orders prescribed by the Board of
8 Governors under this title poses a
9 substantial risk to other financial in-
10 stitutions, critical markets, or the
11 broader financial system, subject to
12 the Board of Governors affording the
13 appropriate financial regulator a rea-
14 sonable opportunity to participate in
15 the examination; and

16 (v) obtained the approval of the Coun-
17 cil upon an affirmative vote by a majority
18 of the Council.

19 (B) ENFORCEMENT.—The Board of Gov-
20 ernors may exercise the authority described in
21 paragraph (1)(B) only if the Board of Gov-
22 ernors has—

23 (i) reasonable cause to believe that a
24 financial institution is not in compliance
25 with this title or the rules or orders pre-

1 scribed under this title with respect to a
2 designated activity;

3 (ii) notified, in writing, the appro-
4 priate financial regulator and the Council
5 of its belief under clause (i) with sup-
6 porting documentation included and with a
7 recommendation that the appropriate fi-
8 nancial regulator take 1 or more specific
9 enforcement actions against the financial
10 institution;

11 (iii) either—

12 (I) not been notified, in writing,
13 by the appropriate financial regulator
14 of the commencement of an enforce-
15 ment action recommended by the
16 Board of Governors against the finan-
17 cial institution within 60 days from
18 the date of the notification under
19 clause (ii); or

20 (II) reasonable cause to believe
21 that the financial institution's non-
22 compliance with this title or the rules
23 or orders prescribed under this title
24 poses significant liquidity, credit,
25 operational, or other risks to the fi-

1 nancial markets or to the financial
2 stability of the United States, subject
3 to the Board of Governors notifying
4 the appropriate financial regulator of
5 the Board's enforcement action; and

6 (iv) obtained the approval of the
7 Council upon an affirmative vote by a ma-
8 jority of the Council.

9 (3) ENFORCEMENT PROVISIONS.—For purposes
10 of taking enforcement action under paragraph (1),
11 the financial institution shall be subject to, and the
12 Board of Governors shall have authority under the
13 provisions of subsections (b) through (n) of section
14 8 of the Federal Deposit Insurance Act (12 U.S.C.
15 1818) in the same manner and to the same extent
16 as if the financial institution was an insured deposi-
17 tory institution and the Board of Governors was the
18 appropriate Federal banking agency for such insured
19 depository institution.

20 **SEC. 809. REQUESTS FOR INFORMATION, REPORTS, OR**
21 **RECORDS.**

22 (a) INFORMATION TO ASSESS SYSTEMIC IMPOR-
23 TANCE.—

24 (1) FINANCIAL MARKET UTILITIES.—The Coun-
25 cil is authorized to require any financial market util-

1 ity to submit such information as the Council may
2 require for the sole purpose of assessing whether
3 that financial market utility is systemically impor-
4 tant, but only if the Council has reasonable cause to
5 believe that the financial market utility meets the
6 standards for systemic importance set forth in sec-
7 tion 804.

8 (2) FINANCIAL INSTITUTIONS ENGAGED IN PAY-
9 MENT, CLEARING, OR SETTLEMENT ACTIVITIES.—

10 The Council is authorized to require any financial
11 institution to submit such information as the Coun-
12 cil may require for the sole purpose of assessing
13 whether any payment, clearing, or settlement activ-
14 ity engaged in or supported by a financial institution
15 is systemically important, but only if the Council has
16 reasonable cause to believe that the activity meets
17 the standards for systemic importance set forth in
18 section 804.

19 (b) REPORTING AFTER DESIGNATION.—

20 (1) DESIGNATED FINANCIAL MARKET UTILI-
21 TIES.—The Board of Governors and the Council
22 may each require a designated financial market util-
23 ity to submit reports or data to the Board of Gov-
24 ernors and the Council in such frequency and form
25 as deemed necessary by the Board of Governors or

1 the Council in order to assess the safety and sound-
2 ness of the utility and the systemic risk that the
3 utility's operations pose to the financial system.

4 (2) FINANCIAL INSTITUTIONS SUBJECT TO
5 STANDARDS FOR DESIGNATED ACTIVITIES.—The
6 Board of Governors and the Council may each re-
7 quire 1 or more financial institutions subject to the
8 standards prescribed under section 805(a) for a des-
9 ignated activity to submit, in such frequency and
10 form as deemed necessary by the Board of Gov-
11 ernors or the Council, reports and data to the Board
12 of Governors and the Council solely with respect to
13 the conduct of the designated activity and solely to
14 assess whether—

15 (A) the rules, orders, or standards pre-
16 scribed under section 805(a) with respect to the
17 designated activity appropriately address the
18 risks to the financial system presented by such
19 activity; and

20 (B) the financial institutions are in compli-
21 ance with this title and the rules and orders
22 prescribed under section 805(a) with respect to
23 the designated activity.

24 (3) LIMITATION.—The Board of Governors
25 may, upon an affirmative vote by a majority of the

1 Council, prescribe regulations under this section that
2 impose a recordkeeping or reporting requirement on
3 designated clearing entities or financial institutions
4 engaged in designated activities that are subject to
5 standards that have been prescribed under section
6 805(a)(2).

7 (c) COORDINATION WITH APPROPRIATE FEDERAL
8 SUPERVISORY AGENCY.—

9 (1) ADVANCE COORDINATION.—Before request-
10 ing any material information from, or imposing re-
11 porting or recordkeeping requirements on, any finan-
12 cial market utility or any financial institution en-
13 gaged in a payment, clearing, or settlement activity,
14 the Board of Governors or the Council shall coordi-
15 nate with the Supervisory Agency for a financial
16 market utility or the appropriate financial regulator
17 for a financial institution to determine if the infor-
18 mation is available from or may be obtained by the
19 agency in the form, format, or detail required by the
20 Board of Governors or the Council.

21 (2) SUPERVISORY REPORTS.—Notwithstanding
22 any other provision of law, the Supervisory Agency,
23 the appropriate financial regulator, and the Board of
24 Governors are authorized to disclose to each other
25 and the Council copies of its examination reports or

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

4 (d) TIMING OF RESPONSE FROM APPROPRIATE FED-
5 ERAL SUPERVISORY AGENCY.—If the information, report,
6 records, or data requested by the Board of Governors or
7 the Council under subsection (c)(1) are not provided in
8 full by the Supervisory Agency or the appropriate financial
9 regulator in less than 15 days after the date on which
10 the material is requested, the Board of Governors or the
11 Council may request the information or impose record-
12 keeping or reporting requirements directly on such per-
13 sons as provided in subsections (a) and (b) with notice
14 to the agency.

15 (e) SHARING OF INFORMATION.—

16 (1) MATERIAL CONCERNS.—Notwithstanding
17 any other provision of law, the Board of Governors,
18 the Council, the appropriate financial regulator, and
19 any Supervisory Agency are authorized to—

20 (A) promptly notify each other of material
21 concerns about a designated financial market
22 utility or any financial institution engaged in
23 designated activities; and

24 (B) share appropriate reports, information,
25 or data relating to such concerns.

1 (2) OTHER INFORMATION.—Notwithstanding
2 any other provision of law, the Board of Governors,
3 the Council, the appropriate financial regulator, or
4 any Supervisory Agency may, under such terms and
5 conditions as it deems appropriate, provide confiden-
6 tial supervisory information and other information
7 obtained under this title to each other, and to the
8 Secretary, Federal Reserve Banks, State financial
9 institution supervisory agencies, foreign financial su-
10 pervisors, foreign central banks, and foreign finance
11 ministries, subject to reasonable assurances of con-
12 fidentiality, provided, however, that no person or en-
13 tity receiving information pursuant to this section
14 may disseminate such information to entities or per-
15 sons other than those listed in this paragraph with-
16 out complying with applicable law, including section
17 8 of the Commodity Exchange Act (7 U.S.C. 12).

18 (f) PRIVILEGE MAINTAINED.—The Board of Gov-
19 ernors, the Council, the appropriate financial regulator,
20 and any Supervisory Agency providing reports or data
21 under this section shall not be deemed to have waived any
22 privilege applicable to those reports or data, or any portion
23 thereof, by providing the reports or data to the other party
24 or by permitting the reports or data, or any copies thereof,
25 to be used by the other party.

1 (g) DISCLOSURE EXEMPTION.—Information obtained
2 by the Board of Governors, the Supervisory Agencies, or
3 the Council under this section and any materials prepared
4 by the Board of Governors, the Supervisory Agencies, or
5 the Council regarding their assessment of the systemic im-
6 portance of financial market utilities or any payment,
7 clearing, or settlement activities engaged in by financial
8 institutions, and in connection with their supervision of
9 designated financial market utilities and designated activi-
10 ties, shall be confidential supervisory information exempt
11 from disclosure under section 552 of title 5, United States
12 Code. For purposes of such section 552, this subsection
13 shall be considered a statute described in subsection (b)(3)
14 of such section 552.

15 **SEC. 810. RULEMAKING.**

16 The Board of Governors, the Supervisory Agencies,
17 and the Council are authorized to prescribe such rules and
18 issue such orders as may be necessary to administer and
19 carry out their respective authorities and duties granted
20 under this title and prevent evasions thereof.

21 **SEC. 811. OTHER AUTHORITY.**

22 Unless otherwise provided by its terms, this title does
23 not divest any appropriate financial regulator, any Super-
24 visory Agency, or any other Federal or State agency, of
25 any authority derived from any other applicable law, ex-

1 cept that any standards prescribed by the Board of Gov-
2 ernors under section 805 shall supersede any less strin-
3 gent requirements established under other authority to the
4 extent of any conflict.

5 **SEC. 812. CONSULTATION.**

6 (a) CFTC.—The Commodity Futures Trading Com-
7 mission shall consult with the Board of Governors—

8 (1) prior to exercising its authorities under sec-
9 tions 2(h)(2)(C), 2(h)(3)(A), 2(h)(3)(C), 2(h)(4)(A),
10 and 2(h)(4)(B) of the Commodity Exchange Act, as
11 amended by the Wall Street Transparency and Ac-
12 countability Act of 2010;

13 (2) with respect to any rule or rule amendment
14 of a derivatives clearing organization for which a
15 stay of certification has been issued under section
16 745(b)(3) of the Wall Street Transparency and Ac-
17 countability Act of 2010; and

18 (3) prior to exercising its rulemaking authori-
19 ties under section 728 of the Wall Street Trans-
20 parency and Accountability Act of 2010.

21 (b) SEC.—The Commission shall consult with the
22 Board of Governors—

23 (1) prior to exercising its authorities under sec-
24 tions 3C(a)(2)(C), 3C(a)(3)(A), 3C(a)(3)(C),
25 3C(a)(4)(A), and 3C(a)(4)(B) of the Securities Ex-

1 change Act of 1934, as amended by the Wall Street
2 Transparency and Accountability Act of 2010;

3 (2) with respect to any proposed rule change of
4 a clearing agency for which an extension of the time
5 for review has been designated under section
6 19(b)(2) of the Securities Exchange Act of 1934;
7 and

8 (3) prior to exercising its rulemaking authori-
9 ties under section 13(n) of the Securities Exchange
10 Act of 1934, as added by section 763(i) of the Wall
11 Street Transparency and Accountability Act of
12 2010.

13 **SEC. 813. COMMON FRAMEWORK FOR DESIGNATED CLEAR-**
14 **ING ENTITY RISK MANAGEMENT.**

15 The Commodity Futures Trading Commission and
16 the Commission shall coordinate with the Board of Gov-
17 ernors to jointly develop risk management supervision pro-
18 grams for designated clearing entities. Not later than 1
19 year after the date of enactment of this Act, the Com-
20 modity Futures Trading Commission, the Commission,
21 and the Board of Governors shall submit a joint report
22 to the Committee on Banking, Housing, and Urban Af-
23 fairs and the Committee on Agriculture, Nutrition, and
24 Forestry of the Senate, and the Committee on Financial

1 Services and the Committee on Agriculture of the House
2 of Representatives recommendations for—

3 (1) improving consistency in the designated
4 clearing entity oversight programs of the Commis-
5 sion and the Commodity Futures Trading Commis-
6 sion;

7 (2) promoting robust risk management by des-
8 ignated clearing entities;

9 (3) promoting robust risk management over-
10 sight by regulators of designated clearing entities;
11 and

12 (4) improving regulators' ability to monitor the
13 potential effects of designated clearing entity risk
14 management on the stability of the financial system
15 of the United States.

16 **SEC. 814. EFFECTIVE DATE.**

17 This title is effective as of the date of enactment of
18 this Act.