



Title VIII — Payment, Clearing and Settlement Supervision

- Broad authority granted to the Federal Reserve Board, SEC and CFTC to set standards for, and oversee risk management by, financial market utilities and payment, clearing and settlement activities of financial institutions designated by the Oversight Council as systemically important.
- Federal Reserve Board must generally act through or in conjunction with the primary supervisory agency having jurisdiction over the entity—*e.g.*, the SEC, CFTC or applicable Federal banking agency. SEC and CFTC have primary authority with respect to entities subject to their jurisdiction.
- Designated financial market utilities (including certain clearinghouses) are required to provide advance notice to supervisory agencies of proposed changes to rules, procedures or operations that could materially affect risk.
- New examination and enforcement authorities are granted to the principal supervisory agencies, as well as authority to prescribe reporting and record-keeping requirements.
- Oversight authority extends to financial institutions other than clearing organizations that provide systemically important services in connection with the clearing, payment and settlement activities and to certain service providers to designated financial market utilities.
- Title VIII will become effective upon enactment. Although relevant regulatory agencies are granted broad rule-making authority, Title VIII specifies no time frame for adopting rules.

New Oversight Authorities

- Title VIII of the Act grants broad new authorities to the Oversight Council, Federal Reserve Board, SEC and CFTC with respect to financial market utilities and payment, clearing and settlement activities conducted by financial institutions. These new authorities will affect not only entities such as clearinghouses that are already subject to extensive Federal government regulation, but also activities conducted by other financial institutions that may otherwise be subject to more limited Federal government oversight.

Designation of Financial Market Utilities and Payment, Clearing or Settlement Activities as Systemically Important

- The Oversight Council, by a two-thirds vote of its members may designate as “systemically important,” or likely to become “systemically important”: (1) any person that manages or operates any multilateral system for the purpose

of transferring, clearing or settling payments, securities or other financial transactions among financial institutions or between financial institutions and such person (a “designated financial market utility”) or (2) any payment, clearing or settlement activity, excluding offers and sales of securities and any quotation, order entry, negotiation and other pre-trade activity (a “designated activity”) conducted by financial institutions.

- A “designated activity” includes any payment, clearing or settlement activity (carried out by one or more financial institutions to facilitate the completion of “financial transactions”) that the Oversight Council has designated as systemically important.
- A “financial transaction” includes funds transfers, securities and futures contracts, forwards, repos, OTC derivatives, foreign exchange contracts and similar transactions. Financial transactions may include calculation and communication of unsettled financial transactions between counterparties, netting of transactions, provision and maintenance of trade, contract or instrument information, the management of risks and activities associated with continuing financial transactions, transmittal and storage of payment instructions, movement of funds, final settlement of financial transactions and other similar functions.
- “Systemic importance” means any situation where the failure of, or a disruption to, the functioning of a financial market utility or the conduct of a payment, clearing or settlement activity could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the United States.
- A “financial institution” includes a variety of depository institutions, financial intermediaries and other companies engaged in financial activities, but excludes regulated securities, futures, swap and SB swap markets, SEC- or CFTC-regulated clearinghouses and certain other regulated entities.

Risk Management Standards

- Title VIII authorizes the Federal Reserve Board, in consultation with the Oversight Council and the other supervisory agencies, to prescribe risk management standards applicable to designated financial market utilities and designated activities of financial institutions except that the initial responsibility for setting standards for SEC- and CFTC-regulated clearinghouses and other financial institutions for which they are otherwise the supervisory agency rests with the applicable supervisory agency. If the Federal Reserve Board determines that prudential requirements of the SEC or CFTC are insufficient, a review process is initiated with the Council as final arbiter.
 - The Act directs the Federal Reserve Board to establish thresholds at which a financial institution’s conduct will be subject to risk management standards pursuant to the authorities granted under Title VIII.
 - The risk management standards prescribed pursuant to Title VIII for designated financial market utilities and designated activities may address such areas as margin and collateral requirements, participant or counterparty default policies and procedures, the ability to complete timely clearing and settlement of financial transactions, and capital and financial resource requirements for designated financial market utilities.

Advance Notice of Changes to Rules, Procedures or Operations

- Title VIII requires a designated financial market utility to provide 60 days advance notice to its supervisory agency of any proposed change to its rules, procedures or operations that could materially affect the nature or level of risks presented by the designated financial market utility. If the supervisory agency objects to the change within 60 days, the designated financial market utility may not make the change. The Act also provides the ability for a designated financial market utility to implement rule changes on an accelerated basis in the case of an emergency.

Annual Examinations

- The applicable supervisory agency for a designated financial market utility must conduct annual examinations of the designated financial market utility. Supervisory agencies may examine the provision of services integral to the operation of the designated financial market utility by outside service providers and the compliance of these services with applicable regulations. Additionally, supervisory agencies must consult annually with the Federal Reserve Board and the Federal Reserve Board may participate in examinations of designated financial market utilities, although the supervisory agencies will lead all such examinations.

Enforcement Authority

- The Federal Reserve Board may, after consulting with the Oversight Council and the applicable supervisory agency, recommend that the supervisory agency take enforcement action against a designated financial market utility. If the supervisory agency refuses to act in the manner recommended, the Federal Reserve Board may refer the matter to the Oversight Council for a binding decision on whether enforcement action is warranted, and if the Oversight Council determines that action is warranted, it may require the supervisory agency to take enforcement action. The Federal Reserve Board may also, after consulting with the supervisory agency and upon an affirmative majority vote of the Oversight Council, take emergency enforcement action against a designated financial market utility.

Examination of and Enforcement against Financial Institutions

- Title VIII authorizes the appropriate Federal financial regulator to examine a financial institution that is subject to heightened risk management standards under Title VIII with respect to a designated activity. The Federal Reserve Board may also participate in or conduct such examinations if requested to do so by the appropriate financial regulator. The financial regulators also have enforcement authority with respect to such financial institutions. The Federal Reserve Board may exercise this enforcement authority if requested to do so by the financial regulator.

Backup Authority

- The Federal Reserve Board also has backup examination and enforcement authority with respect to financial institutions subject to heightened risk management standards with respect to a designated activity. After obtaining the approval of the Oversight Council and the supervisory agencies, the Federal Reserve Board may take emergency enforcement action against such a financial institution, if the financial institution's non-compliance poses significant liquidity, credit, operational or other risks to the financial markets or U.S. financial stability.

Information Gathering and Reporting

- The Oversight Council is authorized to require any financial market utility or financial institution to submit information to the Oversight Council for the purpose of making the required systemic importance determinations. The Oversight Council and the Federal Reserve Board may require reporting by designated financial market utilities and financial institutions engaged in designated activities. The Federal Reserve Board may, upon a majority vote of the Oversight Council, impose record-keeping or reporting requirements on SEC- or CFTC-regulated clearinghouses and financial institutions engaged in designated activities.

Consultation with the Federal Reserve Board

- Title VIII requires the SEC and CFTC to consult with the Federal Reserve Board before exercising certain new authorities granted by Title VII with respect to clearing of SB swaps and swaps, as well as other Title VII authorities.

Report on Common Clearing Entity Risk Management Framework

- The Act requires the SEC and CFTC to coordinate with the Federal Reserve Board to jointly develop risk management supervision programs for SEC- and CFTC-regulated clearinghouses. Not later than one year after enactment of the Act, the SEC, CFTC and Federal Reserve Board are required to jointly submit a report to the applicable committees of the House and Senate providing recommendations.

Access to the Discount Window

- Title VIII provides that the Federal Reserve Board may authorize a Federal Reserve Bank to maintain accounts for, and provide certain services to, designated financial market utilities similar to those provided to depository institutions. Despite some political controversy, the Federal Reserve Board, after consultation with the Treasury Secretary, may authorize access to the discount window by, and provide borrowing privileges to, designated financial market utilities, including those that clear swaps or SB swaps, in unusual or exigent circumstances upon a vote of a majority of the Federal Reserve Board then and a showing that the designated financial market utility is unable to secure other sources of credit.

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