

---

## Systemically Important Financial Market Utilities and Activities: The Financial Stability Oversight Council Calls for Comments

2010-11-29

Title VIII of the Dodd-Frank Act provides the Federal Reserve Board, the SEC, and the CFTC with sweeping new authority to promulgate risk management standards for designated financial market utilities and set standards for the conduct of systemically important payment, clearing, and settlement activities of financial institutions. Financial institutions include, among other market participants, broker-dealers, investment advisers, investment companies, and futures commission merchants.

Last week, the Financial Stability Oversight Council issued an Advance Notice of Proposed Rulemaking inviting public comment on “the criteria and analytical framework that should be applied by the Council in designating financial market utilities” under the Dodd-Frank Act.<sup>1</sup> The ANPR asserts that it “does not address the designation criteria and analytical framework for payment, clearing, or settlement activities carried out by financial institutions,” which it plans to consider separately. Section 804(a)(2) of the Dodd-Frank Act, however, requires that, in designating systemically important utilities, the Council must consider, among other things, the relationship, interdependencies, or other interactions of the financial market utility with other financial market utilities or payment, clearing or settlement activities. Apparently recognizing that the designation of systemically significant utilities will likely require a determination of what constitutes a systemically important activity, the Council poses the following question 8:

Title VIII of the [Dodd-Frank Act] contains distinct provisions with respect to financial market utilities and financial institutions engaged in payment, clearing and settlement activities. What factors should the Council consider in distinguishing between a systemically important financial market utility and a financial institution that is very substantially engaged in a systemically important payment, clearing, or settlement activity?

Broadly speaking, and as noted in our [earlier client alert on Title VIII](#), in determining what payment, clearing and settlement activities are or are likely to become systemically important, the Council must consider, among other factors it deems appropriate: (i) the aggregate monetary value of transactions carried via such activities; (ii) the aggregate exposure of financial institutions engaged

in such activities to their counterparties; (iii) interdependencies of such activities with other financial market utilities or payment, clearing, or settlement activities; and (iv) the effect that a failure or disruption of such activities would have on critical markets, financial institutions, or the broader financial system.

The ANPR provides financial institutions an opportunity to weigh in early on the meaning of “substantially engaged” as well as on the payment, clearing, and settlement activities that should be deemed systemically important. Comments are due within 30 days of publication of the ANPR in the Federal Register. The ANPR has not yet been published.

---

<sup>1</sup> Advance Notice of Proposed Rulemaking Regarding Authority to Designate Financial Market Utilities as Systemically Important, Financial Stability Oversight Council (Nov. 23, 2010), *available at*: <http://www.treasury.gov/FSOC/docs/VIII%20-%20ANPR%20on%20FMU%20Designations%20111910.pdf>.