

# Proposed Rules

Federal Register

Vol. 75, No. 244

Tuesday, December 21, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FINANCIAL STABILITY OVERSIGHT COUNCIL

### 12 CFR Chapter XIII

#### Authority To Designate Financial Market Utilities as Systemically Important

**AGENCY:** Financial Stability Oversight Council.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Dodd-Frank Wall Street Reform and Consumer Protection Act (the “DFA”) gives the Financial Stability Oversight Council (the “Council”) the authority to identify and designate as systemically important a financial market utility if the Council determines that the failure, or a disruption to the functioning, of a financial market utility 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. The DFA generally defines a “financial market utility” as any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and that person.<sup>1</sup> The utility-like arrangements used to settle financial transactions, whether involving payments, securities, derivatives, or other similar financial instruments, are critical parts of the financial infrastructure for the economy and are integral to the soundness of the financial system and overall economic performance. The importance of these arrangements has been highlighted by the recent period of market stress. This advance notice of proposed rulemaking (ANPR) invites public comment on the criteria and analytical framework that

should be applied by the Council in designating financial market utilities under the DFA.

**DATES:** Comments must be received by January 20, 2011.

**ADDRESSES:** Interested persons are invited to submit comments regarding this advance notice of proposed rulemaking according to the instructions for “Electronic Submission of Comments” below. All submissions must refer to the document title. The FSOC encourages the early submission of comments.

*Electronic Submission of Comments.* Interested persons must submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the FSOC to make them available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through the method specified above.

*Public Inspection of Public Comments.* All properly submitted comments will be available for inspection and downloading at <http://www.regulations.gov>.

*Additional Instructions.* Please note the number of the question to which you are responding at the top of each response. Though the responses will be screened for obscenities and appropriateness, in general comments received, including attachments and other supporting materials, are part of the public record and are immediately available to the public. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

**FOR FURTHER INFORMATION CONTACT:** Office of Domestic Finance, Treasury, at (202) 622–1703.

**SUPPLEMENTARY INFORMATION:** Sections 112(a)(2)(I) and 804(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “DFA”) give the Financial Stability Oversight Council

(the “Council”) the authority to identify and designate as systemically important a financial market utility if the Council determines that the failure, or a disruption to the functioning, of a financial market utility 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.

#### I. Background

The Council, which was established by section 111 of the DFA, has ten voting members and 5 nonvoting members.<sup>2</sup> It has several duties, including monitoring the financial services marketplace to identify potential threats to the financial stability of the United States and identifying those financial market utilities that should be designated by the Council as systemically important and subject to enhanced examination, supervision, enforcement and reporting standards and requirements.

Financial market utilities exist in a number of markets and provide many benefits, but also concentrate risk. The payment and settlement processes of such systems are also highly interdependent, either directly through operational, contractual or affiliation linkages, or indirectly through liquidity flows or common participants. Problems in the completion of settlement at one system could spill over to other systems or financial institutions in the form of liquidity and credit disruptions.

Through this ANPR the Council is seeking to gather information as it begins to develop the specific criteria and analytical framework by which it

<sup>2</sup> The voting members consist of the Secretary of the Treasury who also is the Chairperson of the Council, the Chairman of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Bureau of Consumer Financial Protection, the Chairman of the Securities and Exchange Commission, the Chairperson of the Federal Deposit Insurance Corporation, the Chairperson of the Commodity Futures Trading Commission, the Director of the Federal Housing Finance Agency, the Chairman of the National Credit Union Administration Board, and an independent member having insurance expertise appointed by the President with the advice and consent of the Senate. The nonvoting members are the Director of the Office of Financial Research; the Director of the Federal Insurance Office; and a State insurance commissioner, a State banking supervisor, and a State securities commissioner (or an officer performing like functions), each designated by a selection process determined by their respective state supervisors or commissioners.

<sup>1</sup> Section 803(6)(B) of the DFA excludes certain entities from the definition of a financial market utility, including designated contract markets and national securities exchanges.

will designate financial market utilities<sup>3</sup> as systemically important<sup>4</sup> under Title VIII of the DFA. This ANPR does not address the designation criteria and analytical framework for payment, clearing, or settlement activities carried out by financial institutions<sup>5</sup>, which the Council is considering separately.

#### *a. Considerations in Making a Determination*

Under section 804(a)(2) of the DFA, in making a determination on whether the financial market utility should be designated as systemically important, the Council must consider:

(A) The aggregate monetary value of transactions processed by the financial market utility;

(B) The aggregate exposure of the financial market utility to its counterparties;

(C) The relationship, interdependencies, or other interactions of the financial market utility with other financial market utilities or payment, clearing or settlement activities;

(D) The effect that the failure of or a disruption to the financial market utility would have on critical markets, financial institutions, or the broader financial system; and

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

#### *b. Process for Making a Determination*

Under the provisions of the DFA, the Council generally must provide a financial market utility with advance notice that it proposes to make a determination, and the financial market utility has up to 30 days to request a hearing.<sup>6</sup> The Council must schedule the hearing within 30 days of receipt of the request. After holding a hearing, the Council has up to 60 days to make a final determination. If a financial market utility does not make a timely request for a hearing, the Council must notify the firm of its final determination within 30 days of the expiration of the 30-day period in which a hearing could have been requested. In making a determination, the Council must consult with the relevant supervisory agency for the financial market utility<sup>7</sup> and the Board of Governors of the Federal Reserve System. Once designated, the Council can rescind a designation. The Council is not requesting comment on

these procedural requirements in this ANPR.

## **II. Criteria for Designation**

1. What quantitative and qualitative information should the Council use to measure the factors it is required to consider in Section 804(a)(2) when making determinations under Section 804 of the DFA? How should quantitative and qualitative considerations be incorporated into the determination process?

2. Can the considerations listed in section 804(a)(2) be broken down into easily measured factors that the Council should use to determine whether financial market utilities are systemically important? Are there certain levels of quantitative measures (e.g., for value and exposure) or qualitative characteristics (e.g., registered clearing agencies versus exempt clearing agencies) that should trigger a review for systemic importance by the Council?

3. Which of the considerations listed in section 804(a)(2) are most important for the Council to consider? Should the application of the considerations differ depending on the type of FMU, and if so how?

4. How should the Council measure and assess the aggregate monetary value of transactions processed by financial market utilities?

a. For each type of financial market utility (e.g., central counterparty, funds transfer system), what is the best approach for measuring value (e.g., notional values, margin flows, net versus gross values)?

b. What time horizon/statistics should be used when assessing value (e.g., daily, monthly or annual averages; daily, monthly, or annual peaks?). Should the Council consider historical values, projected future values, or both?

c. Should different measures be applied to different types of financial market utilities based on their activities, products, or markets?

d. What is the best approach for measuring potential aggregate monetary values for start-up financial market utilities?

e. Should certain payment systems that transfer relatively low aggregate values be considered by the Council for designation as systemically important given that the system's failure or disruption could still cause widespread disruption, especially if there is no ready alternative means of making payments? For example, the failure or disruption of a system used extensively to make payments could leave a significant portion of the general public with unexpected overdrafts and/or lack

of liquid funds. If so, what factors should the Council consider in making a determination of systemic importance for such systems?

5. How should the Council measure and assess the aggregate exposure of financial market utilities engaged in payment, clearing, or settlement activities to its counterparties?

a. How should the Council identify the extent to which financial market utilities bear and create risk exposures for themselves and their participants?

b. What measures of exposure should be considered (e.g., liquidity exposures, current and potential future counterparty credit exposures, operational risk, the degree of concentration of exposures across participants)?

c. For each type of financial market utility (e.g., central counterparty, funds transfer system), what is the best approach for measuring current credit exposure or, where relevant, potential future exposures? For liquidity (funding), how might the Council assess the potential liquidity risks that a financial market utility may bear or liquidity risks it may impose on the broader financial system should it fail to settle as expected?

6. How should the Council identify, measure, and assess the effects of relationships, interdependencies, and other interactions of financial market utilities listed as considerations in section 804(a)(2)?

a. What role should models of interdependencies (e.g., correlations; stress tests) play in the Council's determinations?

b. What role should the nature of participants or counterparties play in the Council's determinations (e.g., common participants across utilities, systemic importance of participants)?

c. Should the Council consider the legal, corporate, or contractual relationships of financial market utilities in assessing relationships, interdependencies, and other interactions (e.g., common holding company, joint ventures, cross-margining agreements, service provider relationships)?

d. Should the Council consider whether there are readily available substitutes for the payment, clearing, and settlement services of financial market utilities?

7. How should the Council assess whether failures or disruptions to a financial market utility could potentially threaten the financial system of the United States?

a. What measures, information and thresholds should be used in assessing the effect of a financial market utility

<sup>3</sup> As defined in Section 803(6) of the DFA.

<sup>4</sup> As defined in Section 803(9) of the DFA.

<sup>5</sup> As defined in Section 803(7) of the DFA.

<sup>6</sup> The Council may waive or modify the advance notice and hearing requirements if the Council determines it is necessary to prevent or mitigate an immediate threat to the financial system posed by the FMU. DFA § 804(c)(3).

<sup>7</sup> As defined in Section 803(8) of the DFA.

failure or disruption on critical markets and financial institutions? For example, how might the Council assess potential credit and liquidity effects and spillovers from a financial market utility disruption?

b. What factors should the Council consider when determining whether markets served by financial market utilities are critical? What qualitative or quantitative characteristics might lead the Council to scope in or out particular markets?

8. Title VIII of the DFA 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?

9. What other types of information would be effective in helping the Council determine systemic importance? What additional factors does your organization consider when assessing exposure to, or the interconnectedness of, financial market utilities?

10. What role should international considerations play in designating financial market utilities?

Dated: December 14, 2010.

**Alastair Fitzpayne,**

*Deputy Chief of Staff and Executive Secretary,  
Department of the Treasury.*

#### **Statement of CFTC Chairman Gary Gensler**

I support the advanced notice of proposed rulemaking on the Authority to Designate Financial Market Utilities as Systematically Important. It is an important step in fulfilling the requirements of the Dodd-Frank Act to ensure that there is robust oversight and risk management of financial market utilities including clearinghouses.

Clearinghouses in the futures markets have been around since the late-19th Century and have functioned both in clear skies and during stormy times—through the Great Depression, numerous bank failures, two world wars and the 2008 financial crisis—to lower risk to the American public. By standing between two counterparties, by valuing transactions daily, requiring collateral, and rigorous risk management standards, clearinghouses help ensure that the failure of one entity does not harm its counterparties and reverberate throughout the financial system. Comprehensive and robust regulatory

oversight of clearinghouses, however, is essential to our country's financial stability. This is particularly important since, under the Dodd-Frank Wall Street Reform and Consumer Protection Act, standardized swaps between financial entities must be brought to clearinghouses.

The Commodity Futures Trading Commission (CFTC) has overseen clearinghouses for decades. Currently, it oversees 14 clearinghouses and that number is expected to increase to approximately 20. The Dodd-Frank Act provides for enhanced oversight of these clearinghouses. In close consultation with the Securities and Exchange Commission, the Federal Reserve Board, other financial regulatory agencies, and international regulators, the CFTC is currently working to implement a series of rulemakings on risk management for clearinghouses. These rulemakings will take account of relevant international standards, particular those developed by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions (CPSS-IOSCO). In some instances, these rules also outline specific additional requirements for systemically important clearinghouses.

The Dodd-Frank Act gives the Financial Stability Oversight Council and the Federal Reserve Board important roles in clearinghouse oversight by authorizing the Council to designate certain clearinghouses as systemically important and by permitting the Federal Reserve to recommend heightened prudential standards in certain circumstances.

The advanced notice of proposed rulemaking being considered by this Council today complements the CFTC's rulemaking efforts. It seeks the public's input on how the Council should apply statutory criteria to determine which clearinghouses qualify for designation as systemically important.

At the CFTC, we plan on completing the rulemaking with regard to clearinghouses by the statutory deadline of July 15, 2011. Although the effective dates of these rules will generally be later in 2011, it is my recommendation that we as a Council be in position to identify systemically important clearinghouses by the summer of next year. This will provide clarity to clearinghouses and market participants as to the standards that they will have to uphold when the mandatory clearing of standardized swaps becomes effective.

[FR Doc. 2010-32005 Filed 12-20-10; 8:45 am]

**BILLING CODE 4810-25-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

[Docket No. FAA-2010-1200; Directorate Identifier 2010-NM-136-AD]

RIN 2120-AA64

#### **Airworthiness Directives; Bombardier, Inc. Model BD-100-1A10 (Challenger 300) Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Investigation of a recent high altitude loss of cabin pressurization on a BD-100-1A10 aircraft determined that it was caused by a partial blockage of a safety valve cabin pressure-sensing port, in conjunction with a dormant failure/leakage of the safety valve manometric capsule. The blockage, caused by accumulation of lint/dust on the grid of the port plug, did not allow sufficient airflow through the cabin pressure-sensing port to compensate for the rate of leakage from the manometric capsule, resulting in the opening of the safety valve. It was also determined that failure of the manometric capsule alone would not result in the opening of the safety valve.

\* \* \* \* \*

The unsafe condition is possible loss of cabin pressure caused by the opening of the safety valve. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by February 4, 2011.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey