

Corporate & Financial Weekly Digest

Posted at 1:12 PM on April 1, 2011 by [Kenneth M. Rosenzweig](#)

Financial Stability Oversight Council Proposes Rules Regarding Designation of Financial Market Utilities as Systemically Important

Co-authored by [Kevin M. Foley](#) and [Joshua A. Penner](#)

The Financial Stability Oversight Council (FSOC) has released proposed rules regarding the criteria under which it will designate certain financial market utilities (FMUs) as "systemically important."

The Dodd-Frank Wall Street Reform and Consumer Protection Act defines an FMU generally as any person that manages or operates a multilateral system for the purposes of transferring, clearing or settling payments, securities, or other financial transactions among financial institutions or between a financial institution and that person.

The Dodd-Frank Act gives the FSOC the ability to designate an FMU as systemically important, and therefore subject to Title VIII of the Dodd-Frank Act. FMUs subject to Title VIII may, upon the determination of the Board of Governors of the Federal Reserve, the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the other members of the FSOC, be subject to heightened risk management standards and additional examinations, enforcement actions and reporting requirements. The Federal Reserve may further determine that systemically important FMUs are eligible to maintain an account with, and receive additional services from, the Federal Reserve.

The proposed rules set out a general framework within which the FSOC will evaluate potential systemically important FMUs. The evaluation will generally be centered around the considerations mandated by the Dodd-Frank Act, including (1) the aggregate monetary value of transactions processed by the FMU; (2) the aggregate exposure of the FMU to its counterparties; (3) the relationships, interdependencies, or other interactions of the FMU with other FMUs; (4) the effect that the failure or disruption of the FMU would have on critical markets, financial institutions or the broader financial system; and (5) any other factors the FSOC deems appropriate. The FSOC indicates in the release accompanying the proposed rules that, while it intends to undertake evaluations in as objective and consistent manner as possible, it recognizes that different factors may warrant different weights with respect to different FMUs, and that evaluations will be made on a case-by-case basis. The FSOC also indicates that it anticipates undertaking evaluations in a two-stage process, and that an FMU will receive prior notice of a

proposed determination that it is systemically important and will have the opportunity to appeal any such determination before it becomes effective.

The FSOC has indicated that it intends to permit FMUs to submit written materials in support of or in opposition to the proposed designation of the FMU as systemically important during the evaluation process. The proposed rules also would permit the FSOC, subject to certain standards of reasonableness, to require any FMU to submit information that the FSOC may require in its evaluation.

The FSOC is requesting comments on all aspects of its proposed rules. The comment period will close on May 27.

A copy of the proposed rules can be found [here](#).

Katten Muchin Rosenman LLP
Charlotte Chicago Irving London Los Angeles New York Washington, DC