

**§ 1320.11 Consultation with financial market utility.**

Before providing a financial market utility notice of a proposed determination under § 1320.12, the Council shall provide the financial market utility with—

(a) Written notice that the Council is considering whether to make a proposed determination with respect to the financial market utility under § 1320.13; and

(b) An opportunity to submit written materials to the Council, within such time as the Council determines to be appropriate, concerning—

(1) Whether the financial market utility is systemically important taking into consideration the factors set out in § 1320.10; and

(2) Proposed changes by the financial market utility that could—

(i) Reduce or increase the inherent systemic risk the financial market utility poses and the need for designation under § 1320.13; or

(ii) Reduce or increase the appropriateness of rescission under § 1320.13.

(3) The Council shall consider any written materials timely submitted by the financial market utility under this section before making a proposed determination under section 1320.13.

**§ 1320.12 Advance notice of proposed determination.**

(a) *Notice of proposed determination and opportunity for hearing.* Before making any final determination on designation or rescission under § 1320.13, the Council shall propose a determination and provide the financial market utility with advance notice of the proposed determination, and proposed findings of fact supporting that determination. A proposed determination shall be made by a vote of the Council in the manner described in § 1320.13(c).

(b) *Request for hearing.* Within 30 calendar days from the date of any provision of notice of the proposed determination of the Council, the financial market utility may request, in writing, an opportunity for a written or oral hearing before the Council to demonstrate that the proposed designation or rescission of designation is not supported by substantial evidence.

(c) *Written submissions.* Upon receipt of a timely request, the Council shall fix a time, not more than 30 calendar days after receipt of the request, unless extended by the Council at the request of the financial market utility, and place at which the financial market utility may appear, personally or through counsel, to submit written materials, or, at the sole discretion of the Council, oral testimony and oral argument.

**§ 1320.13 Council determination regarding systemic importance.**

(a) *Designation determination.* The Council shall designate a financial market utility if the Council determines that the financial market utility is, or is likely to become, systemically important.

(b) *Rescission determination.* The Council shall rescind a designation of systemic importance for a designated financial market utility if the Council determines that the financial market utility no longer meets the standards for systemic importance.

(c) *Vote required.* Any determination under paragraph (a) or (b) of this section and any proposed determination under § 1320.12 shall—

(1) Be made by the Council and must not be delegated by the Council; and

(2) Require the vote of not fewer than two-thirds of the members of the Council then serving, including the affirmative vote of the Chairperson of the Council.

(d) *Consultations.* Before making any determination under paragraph (a) or (b) of this section or any proposed determination under § 1320.12, the Council shall consult with the relevant Supervisory Agency and the Board of Governors.

**§ 1320.14 Emergency exception.**

(a) *Emergency exception.* Notwithstanding §§ 1320.11 and 1320.12, the Council may waive or modify any or all of the notice, hearing, and other requirements of §§ 1320.11 and 1320.12 with respect to a financial market utility if—

(1) The Council determines that the waiver or modification is necessary to prevent or mitigate an immediate threat to the financial system posed by the financial market utility; and