

# **Regulation HH - Material Changes**

## **Submission Instructions for Designated Financial Market Utilities**

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### **DESIGNATED FMUS FOR WHICH THE BOARD IS THE SUPERVISORY AGENCY**

The Board has 60 days to complete its review from the date it receives an advance notice from a designated FMU for which the Board is the Supervisory Agency. The start date of the review period will reset (i.e., the review period would restart) if the Board requires the designated FMU to submit additional information necessary to assess the proposed change. In such cases, the review period will be suspended from the date the Board requests additional information until the date the Board receives the complete set of information requested. A new 60-day review period will start on the date of receipt. Additionally, the Board may extend the review period to a total of 120 days with respect to proposed changes that raise novel or complex issues.

The timeliness of the Board's review depends, in part, on the timeliness and completeness of information provided by and level of engagement with the designated FMU prior to and following the submission of the advance notice.

The designated FMU may implement a proposed change if (1) the Board notifies the designated FMU that it does not object to the proposed change before the expiration of the review period or (2) if the designated FMU has not received an objection from the Board by the expiration of the review period.

The instructions below provide guidance to designated FMUs for which the Board is the Supervisory Agency regarding the information or materials to be included when filing notices of material change with the Board.

#### **A. Submission Case IDs Generated by Designated FMUs**

Notices of material change and related correspondence and supporting materials should be submitted to the Board's dedicated electronic mailbox (material change mailbox).<sup>1</sup> Each initial filing and subsequent correspondence should be marked with a unique identifier (Case ID) consisting of (1) the initials of the designated FMU, (2) the four-digit year, and (3) the sequential number of the designated FMU's notice of material change for the year. The designated FMU is responsible for generating the Case ID in the following format: **[Designated FMU]-[YYYY]-[XXX]**.<sup>2</sup>

#### **B. Designated FMU Contact(s) for Correspondence from the Board**

The Board may communicate to the designated FMU, regarding advance notices, (1) requests for additional information for consideration of the notice, (2) notification of review period extension for a proposed change that the Board determines raises novel or complex issues, and (3) notice of objection or no objection regarding the proposed change. In addition, the Board will notify the designated FMU if the Board requires modification to or rescission of an emergency change.

The designated FMU should identify the individual(s) who should receive all such correspondence from the Board. This individual(s) should be a member of senior management (e.g., general counsel, chief compliance officer, or other senior executive(s)) who will serve as the designated FMU's central point of contact for all notices of material change and related correspondence. The procedures below also include requirements for additional firm contacts that would be provided on a case-by-case basis.

The designated FMU should submit the following information for each contact to the Board's material change mailbox, with a subject line of "Authorized Recipient(s) of Board correspondence related to Title VIII Material Changes":

- (1) Full name, title
- (2) E-mail address at the designated FMU
- (3) Primary phone number
- (4) Secondary phone number
- (5) Fax number

#### **C. Advance Notice Submissions**

**Initial Filing** – The designated FMU's advance notice submission for each proposed material change should include (1) a cover e-mail and (2) attachments that provide supporting information required for submission.

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<sup>1</sup> The Board will communicate the material change mailbox address to each designated FMU.

<sup>2</sup> The sequential number of the designated FMU's notice of material change (XXX) resets every calendar year. A notice that is initiated in a previous calendar year will carry forward the original Case ID until the notice has been closed out.

The cover e-mail should include –

- (1) In the subject line, “[Case ID] – Initial Filing”
- (2) In the body text, the following information:
  - Brief description of proposed change;
  - Appropriate contact(s) for the specific advance notice – the information should include a name, phone number, and e-mail address for each contact; and
  - When appropriate, a request for confidential treatment for the applicable portion of the submitted materials. The instructions provide submission requirements and information regarding the treatment of confidential information.

The attachments should include the following:

- (1) A detailed description of the nature of the change;
- (2) The expected effects of the proposed change on the risks, including credit, liquidity, operational, and legal risks, borne by the designated FMU, its participants, or the financial system more generally;
- (3) Details on how the designated FMU plans to manage or mitigate the identified risks, including how the proposed change may affect the designated FMU’s compliance with the Board’s risk-management standards in Regulation HH; and
- (4) Any other information that the designated FMU chooses to submit to the Board for consideration in its review of the proposed change, such as internal or independent risk assessments of the proposed change, stress or back tests, simulation results, or other quantitative or qualitative analyses of the proposed change and its anticipated effects.

Upon receipt of the complete advance notice package, Board staff will provide the designated FMU contact information for the Board staff member(s) assigned to coordinate the review of the proposal.

***Amendments*** – If the designated FMU amends its initial filing during the review period, the designated FMU should prepare an amendment for submission to the material change mailbox. The amendment should include (1) a cover e-mail and (2) attachments that provide supporting information on the amendment.

The cover e-mail should include –

- (1) In the subject line, “[Case ID] – Amendment”<sup>3</sup>
- (2) In the body text, the following information:
  - Brief description of the amendment;
  - Appropriate contact(s) for the amendment if it is different than those identified in the initial filing – the information should include a name, phone number, and e-mail address for each contact; and
  - When appropriate, a request for confidential treatment for the applicable portion of the submitted materials. The instructions provide submission requirements and information regarding treatment of confidential information.

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<sup>3</sup> The Case ID remains the same as that assigned to the original notice.

The attachments should include the following:

- (1) A detailed description of the amendment;
- (2) The reason(s) for the amendment;
- (3) The expected effects of the amendment on the risks identified in the initial filing and any additional risks the amendment may pose to risks borne by the designated FMU, its participants, or the financial system more generally;
- (4) Any further details on how the designated FMU plans to manage or mitigate the identified risks and in particular, how the amended proposed change may affect the designated FMU's compliance with the Board's risk management standards in Regulation HH; and
- (5) Any other information that the designated FMU chooses to submit to the Board for consideration in its review of the amendment.

***Withdrawal*** – If the designated FMU elects to withdraw an advance notice that has been submitted for review, it should notify the Board of its withdrawal at the material change mailbox. The designated FMU should submit a cover e-mail that includes –

- (1) In the subject line, “[Case ID] – Withdrawal Request”
- (2) In the body text, the follow information:
  - Statement of request to withdraw from review the proposed change regarding [Description of change];
  - Brief description of the reason for withdrawal;
  - Appropriate contact(s) for the withdrawal if it is different than those identified in the initial or amended filing – the information should include a name, phone number, and e-mail address for each contact; and
  - When appropriate, a request for confidential treatment for the applicable portion of the submitted materials. The instructions provide submission requirements and information regarding treatment of confidential information.

#### **D. Emergency Change Notice Submissions**

If the designated FMU has implemented a material change under the emergency change provisions set forth in Regulation HH § 234.4(b), the designated FMU should submit a notice of emergency change to the material change mailbox within 24 hours of implementing the change. The notice should include (1) a cover e-mail and (2) attachments that provide supporting information required for submission.

The Board expects use of the emergency change procedure to be rare and exceptional and associated with changes that need to be implemented immediately in response to an imminent risk or threat and that are necessary to ensure that the designated FMU can continue to provide its services in a safe and sound manner.

The cover e-mail should include the following:

- (1) In the subject line, “[Case ID] – Emergency Change”
- (2) In the body text, the following information:
  - Brief description of the emergency change;
  - Appropriate contact(s) for the specific emergency change – the information should include a name, phone number, and e-mail address for each contact; and

- When appropriate, a request for confidential treatment for the applicable portion of the submitted materials. The instructions provide submission requirements and information regarding treatment of confidential information.

In addition to the information required for the initial filing of an advance notice, the attachments should include the following:

- (1) A description of the nature of the emergency;
- (2) A description of the reason the change was necessary for the designated FMU to continue to provide its services in a safe and sound manner; and
- (3) Any other information that the designated FMU chooses to submit to the Board for consideration in its review of the emergency change.

### **E. Other Related Correspondence**

The Board expects all correspondence related to a notice of material change to be submitted to the material change mailbox. Such correspondence includes, but is not limited to, responses to the Board’s request for additional information, inquiries about specific advance notices, and notification of technical corrections to existing filings. Any correspondence should include (1) a cover e-mail and (2) when appropriate, attachments that provide supporting information to the correspondence.

The cover e-mail should include –

- (1) In the subject line, “[Case ID] – [Short descriptor of the inquiry, (e.g., “Status Check” or “Technical Correction”)]”
- (2) In the body text, the following information:
  - Brief description of the purpose of the correspondence;
  - Appropriate contact(s) for the specific correspondence if it is different than those already identified for this Case ID; and
  - When appropriate, a request for confidential treatment, for the applicable portion of the submitted materials. The instructions provide submission requirements and information regarding treatment of confidential information.

### **DESIGNATED FMUS FOR WHICH THE BOARD IS NOT THE SUPERVISORY AGENCY**

Section 806(e) of the Dodd-Frank Act requires each Supervisory Agency to copy the Board on all material change notices and related information submitted by a designated FMU for which it is the Supervisory Agency and to consult with the Board before taking any action on, or completing review of, the proposed change.

In the event a Supervisory Agency has instructed its designated FMUs by rule to copy the Board directly on submissions to that Supervisory Agency, these designated FMUs should copy the Board at the material change mailbox described above on each submission to that Supervisory Agency.<sup>4</sup> Designated FMUs for which the Board is not the Supervisory Agency may also request confidential treatment of the information it submits.

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<sup>4</sup> The Board will communicate the material change mailbox address to each designated FMU.

## **TREATMENT OF CONFIDENTIAL INFORMATION**

### **A. Submission of Confidential Information to the Board**

A designated FMU wishing to submit confidential information to the Board for purposes of the Title VIII material change requirement should contact the Board at the material change mailbox to arrange for a secure document transmission method. The Board is able to receive documents through several different secure methods. Any materials submitted via the secure transmission method should be labeled with the Case ID.<sup>5</sup>

### **B. Designated FMU Requests for Confidential Treatment of Information**

A designated FMU may request confidential treatment of any applicable portion of the notice of material change or any related information submitted (collectively, “notice”). Such request should be made in the cover e-mail of the designated FMU’s submissions to the material change mailbox. Information for which confidential treatment is requested should be—

- (1) Specifically identified, and listed in the cover e-mail, and
- (2) Clearly labeled “CONFIDENTIAL.”

In addition, the designated FMU must provide the legal justification for confidential treatment of the specified information as discussed below.

### **C. Confidentiality**

Once a notice is submitted by a designated FMU, it becomes a record of the Board and may be requested by any member of the public. Board records generally must be disclosed unless they are determined to fall, in whole or in part, within the scope of one or more of the Freedom of Information Act (FOIA) exemptions from disclosure. *See* 5 U.S.C. § 552(b)(1)-(9). The Board’s Rules Regarding Availability of Information can be found at 12 C.F.R. Part 261.

A designated FMU may request confidential treatment of any applicable portion of the notice. The Board will determine whether information submitted as confidential will be so regarded, and will generally advise the designated FMU of any decision to make available to the public information labeled “CONFIDENTIAL.”

For further information on the procedures for requesting confidential treatment and the Board’s procedures for addressing such requests, consult the Board’s Rules Regarding Availability of Information, 12 C.F.R. Part 261, including section 261.14 regarding discretionary release and section 261.15 regarding requests for confidential treatment.

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<sup>5</sup> Designated FMUs for which the Board is not the Supervisory Agency may use the same notice identification number as provided to its Supervisory Agency.