

**EMBARGOED FOR DELIVERY**

**Written Statement of Patrick Pinschmidt  
Deputy Assistant Secretary, Financial Stability Oversight Council  
U.S. Department of the Treasury  
Senate Banking Subcommittee on Securities, Insurance, and Investment  
July 22, 2015**

Chairman Crapo, Ranking Member Warner, and members of the Subcommittee, thank you for inviting me here today to discuss the Financial Stability Oversight Council's (Council) process for nonbank financial company designations.

The financial crisis taught us that we need clear accountability for the overall stability of the financial system. Five years ago this month, Congress responded with the Dodd-Frank Wall Street Reform and Consumer Protection Act (Wall Street Reform), which established the Council. The creation of the Council brought together, for the first time, the entire financial regulatory community with a collective responsibility to work together to identify and respond to potential threats to financial stability. This new mission required regulators to break out of their silos to strengthen the stability of the U.S. financial system.

Over the past five years, the Council has demonstrated a sustained commitment to working collaboratively to fulfill its statutory mission in a transparent and accountable manner. We built a new organization and developed strong working relationships among Council members and their staffs to provide a forum for candid conversations; share confidential, market-sensitive information; and ask tough questions that will help make our financial system safer.

Today, the Council convenes regularly to monitor market developments, to consider a wide range of potential risks to financial stability, and, when necessary, to take action to protect the American people against potential threats to the financial system. Our approach from day one has been data-driven and deliberative, while providing the public with considerable information regarding the Council's actions and views. The Council fosters interagency engagement on a daily basis, including through staff-level committees that discuss financial market developments, regulatory policy developments, and emerging risk topics. The Council has published five annual reports that describe its past work and future priorities in great detail; regularly opened its meetings to the public; published minutes of all of its meetings that include a record of every vote the Council has ever taken; and solicited public input both on areas of potential risk and on its procedures for evaluating potential risks.

As Secretary Lew has made clear, Council members recognize that the Council should be open to adapting its procedures when stakeholders raise good ideas. Just since last year, the Council has demonstrated this commitment by enhancing its transparency policy, strengthening its internal governance, adopting supplemental procedures to its nonbank financial company designations process, and soliciting public comment on potential risks from asset management products and activities.

One of the duties Wall Street Reform gave to the Council is to designate a nonbank financial company for enhanced prudential standards and supervision by the Board of Governors of the Federal Reserve System (Federal Reserve), if the Council determines that the company's material financial distress or activities could pose a threat to U.S. financial stability. The Council's nonbank designations address a key weakness brought to light by the financial crisis: that large, complex, and interconnected nonbank financial companies, without appropriate supervision, could contribute to bringing our financial system to a halt.

Since Wall Street Reform was enacted, the Council has designated four nonbank financial companies following a thorough, rigorous, and fact-based process with extensive engagement directly with each company and its regulators. Before considering any company for designation, the Council voluntarily adopted a rule and interpretive guidance in 2012, after soliciting three separate rounds of public comment, to provide as much transparency as possible regarding how the Council would evaluate companies. That guidance explains both the process that the Council follows for designations and the substantive framework for how it assesses risks.

As a result of these efforts, each designated company had extensive opportunities to engage with the Council and its staff during the process and the opportunity to understand and respond to the factors underpinning the Council's analysis before the Council's vote on a final designation. These designated companies are now subject to consolidated supervision by the Federal Reserve, which is currently working to develop enhanced prudential standards for these companies, taking into account their specific businesses, risks, and existing regulation.

Designating a firm is not a decision the Council takes lightly. Before making a final decision about any designation, the Council goes through a lengthy, multi-stage, in-depth analysis, during which it reviews every aspect of a company — including a company's financial statements, business activities, market dynamics, and existing regulation — and works with the company and its regulators to understand how the firm's financial distress could affect the broader financial system. The most recent designation followed a year and a half of engagement with the company. Most of the companies the Council has considered so far have not met the standard for designation. But in four cases, after considerable and thoughtful deliberation, the Council has found that a firm needs to be held to a higher standard to protect the U.S. financial system. Of the four firms the Council has designated, none were designated for a single reason — they are all large, interconnected, and complex firms.

The Council's recent adoption of changes to the nonbank financial company designations process is a prime example of the way the Council should go about supplementing its processes without compromising its fundamental ability to conduct its work. Last year, before making any changes, the Council conducted extensive outreach with a wide range of stakeholders. The Council's Deputies Committee — senior staff who coordinate the Council's activities — hosted a series of meetings in November with more than 20 trade groups, companies, consumer advocates, and public interest organizations. The Council also solicited input from each of the three companies then subject to a designation. The Council discussed the findings from this

outreach and proposed changes during a public meeting in January before subsequently adopting the procedures in February. Having the administrative flexibility for the Council to adapt its own procedures allowed us to respond quickly to stakeholder feedback.

The supplemental procedures address the areas that stakeholders were most interested in and formalize a number of existing Council practices regarding engagement with companies. Under the new procedures, companies will now know early in the process where they stand, and they will have earlier opportunities to engage with and provide input to the Council. For example, the Council will notify a company when it first comes under active review and provide it with the opportunity to meet with staff, review the Council's primary sources of public information regarding the company, and provide information relevant to the Council's review. If a company advances to the next stage of review, staff will meet with the company to explain the evaluation process and the framework for the Council's analysis, as well as any specific issues identified.

Regarding transparency, the changes will provide the public with more information about the process, while still allowing the Council to meet its obligation to protect sensitive, nonpublic company information. First, if a company publicly announces that it is under review by the Council, the Council intends, upon the request of a third party, to confirm the status of the company's review. Second, the Council will continue its recent practice of including more information in its public bases for designations, to provide the public with a deeper understanding of the Council's analysis. Third, the Council has started to publish more information in its annual reports about its designations work, including the numbers of companies in each stage of the review process. And fourth, the Council last month published further details explaining how staff calculate the quantitative thresholds that the Council applies as a screening mechanism to identify companies for consideration.

The Council is also providing companies with a clearer and more robust annual review process. Company representatives are now provided an opportunity to discuss the scope and process for the review, and they can present information regarding any change that may be relevant, including a company restructuring, regulatory developments, market changes, or other factors.

If a company contests its designation in an annual review, the Council will vote and provide the company with a written explanation of any decision not to rescind the designation. In addition, the Council will provide each designated company an opportunity for an oral hearing to contest its designation every five years. These changes open the door to more engagement with the Council following a designation to make sure there is ample opportunity to discuss and address any issues that a company wants to put before the Council.

Altogether, the changes that the Council has made strengthen the Council while also addressing many of the suggestions made by stakeholders.

As Congress contemplates additional changes to the designations process, it is important that such changes do not compromise the Council's fundamental ability to conduct its work. We are

particularly concerned with legislative proposals that would dramatically lengthen an already long and deliberative designation process, impose insurmountable practical hurdles on the Council's work, and prevent the Council from taking action to address potential threats to financial stability that it has identified. Such proposals ignore the lessons of the financial crisis and would impede the Council's ability to fulfill the duties Congress gave it. As the President and Secretary Lew have made clear, we will not support legislation that weakens the important taxpayer, investor, and consumer protections by impeding the ability of regulators to identify and respond to threats to financial stability. U.S. markets and financial institutions are constantly evolving, and we must remain alert and responsive to new challenges in our dynamic system, toward the ultimate goal of maintaining the safety, soundness, and resiliency of our financial system.

\*\*\*\*\*

I thank the Subcommittee for the opportunity to discuss the Council's process for nonbank financial company designations and look forward to answering your questions.

## APPENDIX

1. Financial Stability Oversight Council Supplemental Procedures Relating to Nonbank Financial Company Determinations - February 4, 2015

<http://www.treasury.gov/initiatives/fsoc/designations/Documents/Supplemental%20Procedures%20Related%20to%20Nonbank%20Financial%20Company%20Determinations%20-%20February%202015.pdf>

2. Financial Stability Oversight Council (FSOC) Nonbank Financial Company Designations Frequently Asked Questions

<http://www.treasury.gov/initiatives/fsoc/designations/Documents/Supplemental%20Procedures%20Related%20to%20Nonbank%20Financial%20Company%20Determinations%20-%20February%202015.pdf>

**Financial Stability Oversight Council**  
**Supplemental Procedures**  
**Relating to Nonbank Financial Company Determinations**  
**February 4, 2015**

**Background**

Section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) authorizes the Financial Stability Oversight Council (the Council) to determine that a nonbank financial company shall be supervised by the Board of Governors of the Federal Reserve System and be subject to enhanced prudential standards if the Council determines that material financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company, could pose a threat to the financial stability of the United States.

Over the last several months, as part of the Council's ongoing evaluation of how it conducts its work, the Council has reviewed its practices related to the evaluation of nonbank financial companies under section 113 of the Dodd-Frank Act. This review included engagement with financial companies, trade associations, nonbank financial companies subject to previous Council determinations, public interest groups, and Congressional stakeholders.

Based on this review, the Council has adopted the following procedures that the Council intends to use for determinations in non-emergency situations, to supplement its rule and interpretive guidance regarding nonbank financial company determinations (Rule and Guidance).<sup>1</sup> The Council will continue to work to identify and evaluate additional potential changes to its practices and procedures that would promote active engagement with companies under consideration for a determination and transparency to the public.

The Rule and Guidance provide a detailed description of the analysis that the Council intends to conduct, and the processes and procedures that the Council intends to follow, during its review of nonbank financial companies. In the Rule and Guidance, the Council created a three-stage process for identifying companies for determinations. Each stage of the process involves an analysis based on an increasing amount of information to determine whether a company meets one of the statutory standards for a determination. In the first stage of the process (Stage 1), the Council applies six quantitative thresholds (described in the Rule and Guidance) to a broad group of nonbank financial companies to identify a set of companies that merit further evaluation. In Stage 2, the Council conducts a preliminary analysis of the potential for the companies identified in Stage 1 to pose a threat to U.S. financial stability. Based on the analysis conducted during Stage 2, the Council identifies companies that merit further review in Stage 3, which builds on

---

<sup>1</sup> Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, 12 C.F.R. part 1310 (2013).

the Stage 2 analysis with additional quantitative and qualitative analyses. The Council may make a proposed determination regarding a company based on the results of the analyses conducted during this three-stage review. If the Council makes a proposed determination, the Council provides the company with notice and an explanation of the basis of the proposed determination. The company may request a hearing to contest the proposed determination. After any hearing, the Council may make a final determination regarding the company.

The Council's evaluation of nonbank financial companies is supported by the staff-level Nonbank Financial Company Designations Committee (Nonbank Designations Committee). The Nonbank Designations Committee is overseen by the Council's Deputies Committee, which is composed of one representative from the staff of each Council member or member agency.

The procedures described below supplement the Rule and Guidance, and are organized into three categories: engagement during evaluations for potential determinations; engagement during annual reevaluations of determinations; and transparency to the public.

### **Engagement During Evaluations for Potential Determinations**

#### *Engagement with Companies*

- The Council's practice has been to notify a nonbank financial company under evaluation only if the company is advanced to Stage 3. The Council now will notify a nonbank financial company within 30 days after the Deputies Committee instructs the Nonbank Designations Committee to form an analytical team to commence an active review of the company in Stage 2. Prior to approving a company for active review, the Deputies Committee will consider any preliminary information gathered by the Nonbank Designations Committee.
- A company under active review in Stage 2 may submit to the Council any information it deems relevant to the Council's evaluation and may, upon request, meet with analytical team staff. In addition, analytical team staff will, upon request, provide the company with a list of the primary public sources of information being considered during the Stage 2 analysis, so that the company has an opportunity to understand the information the Council may rely upon during Stage 2.
- If the Council votes to not advance a company from Stage 2 to Stage 3, the Council will notify the company in writing of the Council's decision. The notice will clarify that a vote not to advance the company from Stage 2 to Stage 3 at that time does not preclude the Council from notifying the company in the future that it is again under active consideration in Stage 2.
- If the Council votes to advance a company from Stage 2 to Stage 3, the Council's current practice is to provide the company with an opportunity to submit written materials to the Council to contest the Council's consideration of the nonbank financial company for a

proposed determination. In addition, analytical team staff will now meet with the company's representatives at the start of Stage 3 to explain the evaluation process and the framework for the Council's analysis. If the analysis in Stage 2 has identified specific aspects of the company's operations or activities as the primary focus for the evaluation, staff will notify the company of those issues, although the issues will be subject to change based on the ongoing analysis. After this meeting, the Council will provide the company with a request for information that will generally indicate how the requested items relate to the Council's framework for analyzing potential risks described in the Rule and Guidance.

- Consistent with the Council's current practice, during Stage 3, a company may submit to the Council any information it deems relevant to the Council's evaluation and may request meetings with analytical team staff regarding any issue the company deems appropriate.
- The Council's Deputies Committee will grant a request to meet with a company in Stage 3 on a mutually agreed-upon date, subject to receiving the request at least 30 days prior to the proposed meeting, to allow the company to present any information or arguments it deems relevant to the Council's evaluation.
- Pursuant to the Dodd-Frank Act, the Council can, in its sole discretion, determine whether to grant a request for an oral hearing for any company subject to a proposed determination. The Council intends to grant any timely request for an oral hearing from a company subject to a proposed determination, and for any such hearing to be conducted by the Council members.

#### *Engagement with Existing Regulators*

Under the Dodd-Frank Act, the Council must consult with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company that is being considered for a determination before the Council makes any final determination with respect to such company. The Council's practice has generally been to begin the consultation process in Stage 2 with the primary financial regulatory agencies or home country supervisors, as appropriate, and to consult in Stage 3 with such regulators in a timely manner before the Council makes any final determination with respect to the company.

- For any company under active review in Stage 2 that is regulated by a primary financial regulatory agency or home country supervisor, the Council will notify such regulator or supervisor that the company is under active review no later than such time as the company is notified. The Council will seek to begin the consultation process with such regulator or supervisor during Stage 2, before the Council votes on whether to advance the company to Stage 3.



- In addition, if the Council votes to advance a company to Stage 3, the Council will seek to continue its consultation with such regulator or supervisor during Stage 3, before voting on whether to make a proposed determination regarding the company.
- Further, for any company regulated by a primary financial regulatory agency or home country supervisor, promptly after the Council votes to make a proposed or final determination regarding the company, the Council will provide such regulator or supervisor with the nonpublic written explanation of the basis of the Council's proposed or final determination.

### **Engagement During Annual Reevaluations of Determinations**

- The Council reevaluates each of its determinations not less than annually and will rescind a determination if it determines that the company no longer meets the statutory standards for a determination. Before the Council's annual reevaluation of a nonbank financial company subject to a Council determination, the company will be provided an opportunity to meet with staff on the Nonbank Designations Committee to discuss the scope and process for the review and to present information regarding any change that may be relevant to the threat the company could pose to financial stability, including a company restructuring, regulatory developments, market changes, or other factors.
- If a company contests its determination during the Council's annual reevaluation, the Council intends to vote on whether to rescind the determination and provide the company, its primary financial regulatory agency, and the primary financial regulatory agency of its significant subsidiaries with a notice explaining the primary basis for any decision not to rescind the determination. The notice will address the material factors raised by the company in its submissions to the Council contesting the determination during the annual reevaluation.
- The Council will provide each company subject to a determination an opportunity for an oral hearing before the Council once every five years at which the company can contest the determination.

### **Transparency to the Public**

- The Council's practice has been not to publicly announce the name of any nonbank financial company that is under evaluation for a determination prior to a final determination with respect to such company. However, if a company that is under active review in Stage 2 or that has been advanced to Stage 3 publicly announces the status of its review by the Council, the Council now intends, upon the request of a third party, to confirm the status of a company's review.

- When the Council makes a final determination, it provides the company with a detailed statement of the basis for the Council's decision and publicly releases a written explanation of the basis for the final determination. The Council is subject to statutory and regulatory requirements to maintain the confidentiality of certain information submitted to it by a nonbank financial company under review for a potential determination.<sup>2</sup> As a result, the Council's public basis cannot include confidential information that was submitted by a company to the Council in connection with the Council's evaluation of the company. Nevertheless, the Council is committed to continuing to set forth sufficient information in its public bases to provide the public with an understanding of the Council's analysis while protecting sensitive, confidential information submitted by the company to the Council.
- The Council also will publish in its annual reports the numbers of nonbank financial companies that, since the publication of the Council's prior annual report, (1) the Council voted to advance to Stage 3, (2) the Council voted not to advance to Stage 3, (3) became subject to a proposed or final determination, and (4) in the aggregate are subject to a final determination at that time.
- In addition, the Council will in the coming months publish on its website further details explaining how the Stage 1 thresholds are calculated, which may address issues such as how the Council evaluates the use of various accounting standards for purposes of Stage 1; components of the six Stage 1 thresholds; and practices for calculating the thresholds when incomplete data regarding a company are available.

---

<sup>2</sup> See Dodd-Frank Act section 112(d)(5), 12 U.S.C. § 5322(d)(5); 12 C.F.R. part 1310.20(e).

**Financial Stability Oversight Council (FSOC)  
Nonbank Financial Company Designations  
Frequently Asked Questions**

*Last updated on February 4, 2015.*

**1. What is the FSOC and who are its members?**

The FSOC was established in 2010 by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to bring together federal and state financial regulators to look across the financial system to identify risks to financial stability, promote market discipline, and respond to emerging threats to the stability of the U.S. financial system.

By statute, the FSOC is composed of 10 voting members and 5 nonvoting members. The voting members are the Secretary of the Treasury (who serves as the Chairperson of the FSOC), the Chair of the Board of Governors of the Federal Reserve System (Federal Reserve), the Comptroller of the Currency, the Director of the Consumer Financial Protection Bureau, the Chair of the Securities and Exchange Commission, the Chairman of the Federal Deposit Insurance Corporation, the Chairman of the Commodity Futures Trading Commission, the Director of the Federal Housing Finance Agency, the Chairman of the National Credit Union Administration, and an independent member with insurance expertise who is appointed by the President, by and with the advice and consent of the Senate. The five nonvoting members are the Director of the Office of Financial Research, the Director of the Federal Insurance Office, and state insurance, banking, and securities regulators.

The FSOC is supported by several committees composed of staff of each FSOC member and member agency that engage in ongoing discussions regarding financial market developments, potential risks, and the FSOC's activities. An overview of the staff committees is available [here](#).

**2. What tools are available to the FSOC to address company or industry risks?**

The FSOC has a number of tools available to address risks to U.S. financial stability it identifies, including:

- highlighting potential emerging threats in the FSOC's annual reports to Congress;
- making recommendations to existing primary regulators to apply heightened standards and safeguards;
- designating certain nonbank financial companies and financial market utilities for heightened supervision and prudential standards, and

- collecting and facilitating the sharing of information to assess threats to U.S. financial stability.

**3. What is the purpose of the FSOC's authority to designate nonbank financial companies?**

The recent financial crisis demonstrated that financial distress at nonbank financial companies can contribute to a broad seizing up of markets and stress at other institutions. The FSOC's designations are intended to reduce the risk that a company will pose a threat to U.S. financial stability in this way by subjecting each designated company to enhanced prudential standards and consolidated supervision by the Federal Reserve.

Under the Dodd-Frank Act, if the FSOC determines that a nonbank financial company's material financial distress, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company, could pose a threat to U.S. financial stability, the FSOC can designate the company for consolidated supervision by the Federal Reserve and enhanced prudential standards. Factors the FSOC must consider include, among others, the company's leverage, size, interconnectedness, and existing regulatory scrutiny.

**4. How does the FSOC determine if a company could pose a threat to financial stability?**

In the context of nonbank financial company designations, the FSOC considers a "threat to the financial stability of the United States" to exist if a nonbank financial company's material financial distress or activities could be transmitted to, or otherwise affect, other firms or markets, thereby causing a broader impairment of financial intermediation or of financial market functioning. An impairment of financial intermediation and financial market functioning can occur through several channels, including:

- *Exposure.* A nonbank financial company's creditors, counterparties, investors, or other market participants have exposure to the nonbank financial company that is significant enough to materially impair those creditors, counterparties, investors, or other market participants and thereby pose a threat to U.S. financial stability.
- *Asset liquidation.* A nonbank financial company holds assets that, if liquidated quickly, would cause a fall in asset prices and thereby significantly disrupt trading or funding in key markets or cause significant losses or funding problems for other firms with similar holdings.
- *Critical function or service.* A nonbank financial company is no longer able or willing to provide a critical function or service that is relied upon by market participants and for which there are no ready substitutes.

The FSOC's interpretive guidance, available [here](#), provides additional detail regarding these transmission channels and associated metrics that the FSOC may consider during its evaluation.

**5. How did the FSOC develop its process for reviewing nonbank financial companies for potential designation?**

The FSOC's process for reviewing nonbank financial companies for potential designation is described in its final rule and interpretive guidance, published in 2012 and available [here](#), and in its supplemental procedures, published in 2015 and available [here](#). These documents explain each step of the designations process.

Before adopting its rule and interpretive guidance on nonbank financial company designations, the FSOC voluntarily solicited public comment three times over an 18-month period. This notice and comment process benefited from input from companies and trade organizations representing a broad array of financial sectors, as well as academics and public interest groups. For example, the FSOC considered public comments in developing its three-stage process for review of nonbank financial companies and the sample metrics used in the FSOC's analysis. On February 4, 2015, after several months of engagement with industry and interested parties, the Council adopted supplemental procedures related to the Council's engagement with companies under review and to increase public transparency.

The FSOC has published explanations of its reasons for each of its final designations of nonbank financial companies, available [here](#).

**6. What is the FSOC's process for identifying and reviewing firms for designation?**

The FSOC's interpretive guidance, available [here](#), establishes a three-stage process for the FSOC to identify, evaluate, and communicate with nonbank financial companies under review in non-emergency situations. The FSOC has also published supplemental procedures, available [here](#), regarding its process. In the first stage of the process (Stage 1), the FSOC applies six quantitative thresholds to a broad group of nonbank financial companies to identify a set of companies that merit further evaluation. In Stage 2, the FSOC notifies a company that comes under active review, and reviews existing public and regulatory information and information submitted by the company. If the Council decides to evaluate the company further, it notifies the company and begins Stage 3, a detailed, in-depth analysis that includes a review of confidential information provided by the company.

### *Stage 1*

Stage 1 of the process involves a quarterly review of public and regulatory data to identify nonbank financial companies that meet or exceed at least two of six uniform quantitative thresholds identified and discussed in the FSOC's interpretive guidance [here](#). This initial step helps the FSOC identify nonbank financial companies that might merit further review. This information is gathered from public and regulatory sources by the Office of Financial Research on behalf of staff of Council members and member agencies. The publication of the thresholds was also intended to help a nonbank financial company determine for itself if it meets or exceeds the thresholds. Specifically, a nonbank financial company will be reviewed further if it has at least \$50 billion in total consolidated assets and also meets or exceeds any of these five thresholds, which are described in the guidance:

- \$30 billion in credit default swaps for which the company is the reference entity
- \$3.5 billion in derivative liabilities
- \$20 billion in total debt outstanding
- 15 to 1 leverage ratio
- 10% short-term debt-to-asset ratio

### *Stage 2*

If the FSOC begins an active review of a nonbank financial company in Stage 2, it will notify the company and its primary financial regulatory agency or home country supervisor within 30 days. During active review in Stage 2, the FSOC conducts a preliminary assessment of companies, based primarily on existing public and regulatory information. In addition, a company under active review in Stage 2 may submit to the FSOC any information it deems relevant to the FSOC's evaluation and may, upon request, meet with staff on the analytical team. In addition, staff on the analytical team will, upon request, provide the company with a list of the primary public sources of information being considered during the Stage 2 analysis, so that the company has an opportunity to understand the information the FSOC may rely upon during Stage 2. The FSOC will also consider in Stage 2 information available from the company's primary financial regulatory agency or home country supervisor, as appropriate. Based on this initial evaluation, the FSOC may vote to begin a detailed analysis of the company by advancing the company to Stage 3, or it may decide not to evaluate the company further. If the FSOC votes to not advance a company from Stage 2 to Stage 3, the FSOC will notify the company in writing of the FSOC's decision. The notice will clarify that a vote not to advance the company from Stage 2 to Stage 3 at that time does not preclude the Council from reinitiating active review and notifying the company in the future that it is again under active consideration in Stage 2.

In addition, as stated in the Council's interpretive guidance, because the uniform quantitative thresholds may not capture all types of nonbank financial companies and all of the potential ways in which a nonbank financial company could pose a threat to financial stability, the Council may conduct a Stage 2 analysis of a nonbank financial company based on other firm-specific factors, irrespective of whether such company meets or exceeds the thresholds in Stage 1. A company that comes under active review in Stage 2 in this manner will generally be reviewed under the process described above.

### *Stage 3*

If the FSOC advances the company to Stage 3, the FSOC immediately informs the company that it is in Stage 3. Staff on the analytical team will meet with the company's representatives at the start of Stage 3 to explain the evaluation process and the framework for the FSOC's analysis. If the analysis in Stage 2 has identified specific aspects of the company's operations or activities as the primary focus for the evaluation, staff will notify the company of those issues, although the issues will be subject to change based on the ongoing analysis. After this meeting, the FSOC will provide the company with a request for information that will generally indicate how the requested items relate to the FSOC's framework for analyzing potential risks. The FSOC will also seek to continue its consultation with the company's primary financial regulatory agency or home country supervisor during Stage 3. The Council or staff of Council members or member agencies determine what information to request from the company or a primary financial regulatory agency, and the Office of Financial Research gathers the information on behalf of the Council. During Stage 3, the FSOC also invites the company to submit any other information that the company believes is pertinent.

The Council's Deputies Committee will also grant a request to meet with a company in Stage 3 on a mutually agreed-upon date, subject to receiving the request at least 30 days prior to the proposed meeting, to allow the company to present any information or arguments it deems relevant to the Council's evaluation. Information considered by the FSOC includes details regarding the company's financial activities, legal structure, liabilities, counterparty exposures, resolvability, and existing regulatory oversight. While there is no specified timeline for this process, the Stage 3 analysis has typically lasted between seven and fourteen months.

At the end of Stage 3, the FSOC may vote to make a proposed designation, as described in question 16 below.

**7. Does the FSOC publicly discuss firms that are under review for potential designation or publicly share its analyses supporting its designations?**

If a company that is under active review in Stage 2 or that has been advanced to Stage 3 publicly announces the status of its review by the FSOC, the FSOC intends, upon the request of a third party, to confirm the status of the company's review.

When the FSOC makes a final designation, it provides the company with a detailed statement of the basis for the FSOC's decision and publicly releases a written explanation of the basis for the final designation. The Council is subject to statutory and regulatory requirements to maintain the confidentiality of certain information submitted to it by a nonbank financial company under review for a potential designation. As a result, the FSOC's public basis cannot include confidential information that was submitted by a company or its regulators to the FSOC in connection with the FSOC's evaluation of the company. Nevertheless, the FSOC is committed to continuing to set forth sufficient information in its public bases to provide the public with an understanding of the FSOC's analysis while protecting sensitive, confidential information submitted by companies to the FSOC.

The Council also will publish in its annual reports the numbers of nonbank financial companies that, since the publication of the FSOC's prior annual report, (1) the FSOC voted to advance to Stage 3, (2) the FSOC voted not to advance to Stage 3, (3) became subject to a proposed or final designation, and (4) in the aggregate are subject to a final designation at that time.

**8. Do companies have an opportunity to interact with the FSOC before a designation?**

Yes. If the FSOC begins an active review of a nonbank financial company in Stage 2, it will notify the company and its primary financial regulatory agency or home country supervisor within 30 days. The company may, upon request, meet with staff on the FSOC's analytical team. In addition, staff on the analytical team will, upon request, provide the company with a list of the primary public sources of information being considered during the Stage 2 analysis, so that the company has an opportunity to understand the information the FSOC may rely upon during Stage 2.

If the FSOC advances the company to Stage 3, the FSOC immediately informs the company that it is in Stage 3. Staff on the analytical team will meet with the company's representatives at the start of Stage 3 to explain the evaluation process and the framework for the FSOC's analysis. If the analysis in Stage 2 has identified specific aspects of the company's operations or activities as the primary focus for the evaluation, staff will notify the company of those issues, although the issues will be subject to change based on the ongoing analysis. After this meeting, the FSOC will provide the company with a request for information that will generally indicate how the requested items relate to the



FSOC's framework for analyzing potential risks. During Stage 3, the FSOC also invites the company to submit any other information that the company believes is pertinent. The Council's Deputies Committee will also grant a request to meet with a company in Stage 3, on a mutually agreed-upon date, subject to receiving the request at least 30 days prior to the proposed meeting, to allow the company to present any information or arguments it deems relevant to the Council's evaluation.

The FSOC interacts extensively with each nonbank financial company that advances to Stage 3 during its company-specific analysis. For example, for one of the companies that has been designated, the FSOC spent almost a year and half conducting its analysis after beginning its engagement with the company. The Council considered more than 21,000 pages of materials submitted by the company, and staff of FSOC members and member agencies met with representatives of the company 13 times. The FSOC's evaluation, which considered the company's views and information, culminated in a detailed and lengthy analysis (over 300 pages) that the FSOC shared with the company following the proposed designation and before a vote on a final designation. In addition, any company subject to a proposed designation can request a written or oral hearing before the FSOC to contest the proposed designation. The Council intends to grant any timely request for an oral hearing from a company subject to a proposed designation, and for any such hearing to be conducted by the Council members.

**9. Does the FSOC's review of a particular company imply that it will be designated?**

No. The FSOC's review is company-specific, and the consideration of a particular firm never has a predetermined outcome. There are many possible results of the FSOC's evaluation of a particular company. Depending on its review and the nature of any risks the FSOC identifies, it could decide to designate a firm, to take no action at that time, or to employ one of its other authorities under the Dodd-Frank Act. A number of companies that have been considered in Stage 2 have not been advanced to Stage 3.

**10. Does designation mean that a company is considered "too big to fail"?**

No. A designation means that the FSOC has determined that the company's material financial distress, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company could pose a threat to U.S. financial stability. A designation does not mean that the company is currently experiencing material financial distress. Rather, it means that material financial distress at the company, if it were to occur, could pose a threat to U.S. financial stability. Designated companies are subject to enhanced prudential standards and consolidated supervision by the Federal Reserve intended to reduce the risks the company could pose to financial stability. Additionally, each designated company is required to provide regulators with a resolution plan (or "living will") to demonstrate how the firm could be resolved in a rapid and orderly manner in the event of the firm's financial distress or failure. A designation by the FSOC

does not provide the nonbank financial company with any new access to government liquidity sources or create any authority for the government to bail out the company if it fails. To the contrary, the Dodd-Frank Act seeks to eliminate taxpayer-funded bailouts of failing companies.

**11. If international entities such as the Financial Stability Board (FSB) identify a U.S. firm as systemically important, does that mean that the FSOC will do the same?**

No. While the FSB and the FSOC are both focused on strengthening financial stability, their processes are distinct. Decisions reached in the FSB do not determine decisions made by the FSOC. In fact, the FSOC is under no obligation to even consider a firm identified by the FSB for designation.

The FSB's identification of a firm as a global systemically important financial institution does not have legal effect in the United States or any other country. In the United States, the FSOC is the only entity that can designate nonbank financial companies for enhanced prudential standards and Federal Reserve supervision. FSOC designations can be made only pursuant to a super-majority vote of its 10 voting members based solely on the standards and processes set forth in U.S. federal law, after a robust analysis that reflects extensive interaction with the company.

**12. Are companies aware when they are being considered for designation?**

Yes. First, the quantitative thresholds used in Stage 1 are public; companies should generally be able to determine whether they meet or exceed the thresholds and will be reviewed in Stage 2. Further, a company is notified soon after the FSOC begins an active review of the company in Stage 2. In addition, the FSOC notifies any company that is advanced to Stage 3.

**13. How long does the full designation process take?**

For each of the four nonbank financial companies it has designated, the Council and staff of Council members and member agencies spent at least three months reviewing the firm in Stage 2, and, after notifying the company that it was under review, spent between seven and fourteen months conducting each analysis in Stage 3. After a proposed designation, based on deadlines established in the Dodd-Frank Act, the FSOC's review may continue for up to four additional months, if the company requests a hearing. Thus, the entire process for reviewing a firm that is ultimately designated typically takes over one year.

**14. Before the FSOC makes a final decision to designate a company, does the company know why it may be designated and have an opportunity to rebut those arguments?**

Yes. If the FSOC advances the company to Stage 3, the FSOC immediately informs the company. Staff on the analytical team will meet with the company's representatives at the start of Stage 3 to explain the evaluation process and the framework for the FSOC's analysis. If the analysis in Stage 2 has identified specific aspects of the company's operations or activities as the primary focus for the evaluation, staff will notify the company of those issues, although the issues will be subject to change based on the ongoing analysis. After this meeting, the FSOC will provide the company with a request for information that will generally indicate how the requested items relate to the FSOC's framework for analyzing potential risks. The Council's Deputies Committee will also grant a request to meet with a company in Stage 3, on a mutually agreed-upon date, subject to receiving the request at least 30 days prior to the proposed meeting, to allow the company to present any information or arguments it deems relevant to the Council's evaluation.

If the FSOC makes a proposed designation of a nonbank financial company, it provides the company a detailed, company-specific explanation, setting forth the FSOC's basis for the proposed designation. These company-specific bases can be hundreds of pages in length. Pursuant to the Dodd-Frank Act, any company subject to a proposed designation can request a hearing before the FSOC to contest the proposed designation and submit additional information in support of its position. In addition, before any proposed designation, a company under review has the opportunity to submit arguments and information as to why it should not be designated and has other extensive opportunities to engage with and provide information to staff of FSOC members and member agencies.

Finally, when the FSOC makes a final designation, it provides the company with a detailed statement of the basis for the FSOC's decision.

**15. Is a firm entitled to a hearing? Do FSOC members attend?**

Pursuant to the Dodd-Frank Act, any company subject to a proposed designation can request a hearing before the FSOC to contest the proposed designation. A company has a right to a written hearing, in which it submits information and arguments to the FSOC. In addition, the Council has stated that it intends to grant any timely request for an oral hearing from a company subject to a proposed designation, and for any such hearing to be conducted by the Council members. For the two firms so far that have requested oral hearings, the FSOC granted their requests, and the Council heard directly from the companies' representatives. The FSOC voluntarily published hearing procedures explaining the process for hearings, available [here](#).

**16. How many FSOC members must agree in order to designate a company?**

After a detailed evaluation of a company using the three-stage process described above, the FSOC may make a proposed designation only upon an affirmative super-majority vote of at least two-thirds of its voting members then serving, including an affirmative vote by the Treasury Secretary in his capacity as Chairperson of the FSOC. The FSOC will then hold a second vote on a final designation, which must also be approved by two-thirds of the voting FSOC members then serving, including an affirmative vote by the FSOC Chairperson.

**17. What happens to nonbank financial companies after they are designated by the FSOC?**

Following a final designation, the company is subject to consolidated supervision by the Federal Reserve and enhanced prudential standards, which the Federal Reserve has stated that it intends to tailor, as appropriate, based on the specific business structures, activities, and other factors that may distinguish the designated companies from bank holding companies and foreign banking organizations.

Pursuant to the Dodd-Frank Act, the FSOC annually reevaluates each of its previous designations to consider whether to rescind the designation, as described below.

**18. If a firm divests certain businesses or ceases certain risky activities, can the designation be reversed? How soon after designation?**

The FSOC recognizes that circumstances can change for a company. For each company that has been designated, the FSOC is required by statute to reevaluate the designation annually, and the FSOC's reevaluation process considers whether any material changes at the company justify a rescission of the designation. As explained in its final rule and interpretive guidance, the FSOC may also consider a request from a company for a reevaluation before the next required annual reevaluation in the case of an extraordinary change that materially decreases the threat the nonbank financial company could pose to U.S. financial stability.

As part of each reevaluation, the company is provided an opportunity to meet with FSOC staff to discuss the scope and process for the review and to present information regarding any change that may be relevant to the threat the company could pose to financial stability, including a company restructuring, regulatory developments, market changes, or other factors. If a company contests its designation during the FSOC's annual reevaluation, the FSOC intends to vote on whether to rescind the designation and provide the company, its primary financial regulatory agency, and the primary financial regulatory agency of its significant subsidiaries with a notice explaining the primary basis for any decision not to rescind the designation. The notice will address the material

factors raised by the company in its submissions to the FSOC contesting the designation during the annual reevaluation.

In addition, the FSOC will provide each company subject to a designation an opportunity for an oral hearing before the Council once every five years at which the company can contest the designation.

**19. Are all of the FSOC members involved during the designations process?**

Yes. The FSOC was created to bring together expertise from across the federal and state financial regulatory agencies, and the views of all of the FSOC members are important to evaluate any nonbank financial company. Members with expertise relevant to a particular company often provide important insights, and they work together with other FSOC members to reach decisions regarding designations. All of the voting and non-voting members of the FSOC can participate in the evaluation of all nonbank financial companies. Analytical teams composed of staff of FSOC members and member agencies work closely with each company under review in Stage 3. As part of their work, these teams have numerous meetings with company representatives over a period of many months. These analyses are guided by the FSOC's Deputies Committee and Nonbank Financial Company Designations Committee, both of which include representatives of all the FSOC members. Ultimately, proposed and final designations are made by the voting members of the FSOC.

**20. What standards or metrics does the FSOC use to determine if a company should be designated?**

The Dodd-Frank Act establishes the standards for whether the FSOC may designate a nonbank financial company, and also includes a list of factors that the FSOC must consider in its designations. Under the statute, the FSOC may designate a nonbank financial company only if the FSOC determines that the firm's material financial distress, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company, could pose a threat to U.S. financial stability. Factors the FSOC must consider include, among others, leverage, size, interconnectedness, and existing regulatory scrutiny.

In 2012, after soliciting public comment three separate times, the FSOC published its final rule and interpretive guidance on nonbank designations, available [here](#). The guidance describes how the FSOC intends to apply the statutory standards and considerations and lists examples of the types of metrics that the FSOC would assess as part of its analysis.

In light of the nature, size, and complexity of companies under consideration and as directed by the Dodd-Frank Act, the FSOC conducts its analysis on a company-by-

company basis in order to take into account the potential risks and mitigating factors that are unique to each company. Given the diversity of nonbank financial companies, applying identical analyses to all firms would not be an effective approach.

**21. What role does the primary financial regulator for a firm play during FSOC's analysis?**

As required by the Dodd-Frank Act, the FSOC consults with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company that is being considered for designation, before the FSOC makes any final designation. For any company under active review in Stage 2 that is regulated by a primary financial regulatory agency or home country supervisor, the Council will notify such regulator or supervisor that the company is under active review no later than such time as the company is notified. The Council will seek to begin the consultation process with the regulator or supervisor during Stage 2, before the Council votes on whether to advance the company to Stage 3. In addition, if the Council votes to advance a company to Stage 3, the Council will seek to continue its consultation with the regulator or supervisor during Stage 3, before voting on whether to make a proposed designation regarding the company. For example, for the three insurance companies that the FSOC has designated, the FSOC consulted with multiple state insurance regulators of the companies' insurance subsidiaries. Further, for any company regulated by a primary financial regulatory agency or home country supervisor, the FSOC will provide the regulator or supervisor with the nonpublic written explanation of the basis of the FSOC's proposed or final designation.

**22. Does the FSOC consider a company at the subsidiary or the holding company level?**

When evaluating a particular nonbank financial company for potential designation, the Council considers the company and its subsidiaries. If a nonbank financial company that is a subsidiary of another nonbank financial company meets or exceeds the Stage 1 thresholds described above, the Council may evaluate the parent nonbank financial company and all of its subsidiaries, even if the parent company or another individual subsidiary does not meet or exceed the Stage 1 thresholds. This approach enables the Council to consider potential risks arising across the consolidated organization, while retaining the ability to designate either the parent or an individual nonbank financial company subsidiary (or neither), depending on which entity the Council determines could pose a threat to financial stability.