



Via e-mail

November 26, 2014

Mr. Patrick Pinschmidt  
Deputy Assistant Secretary  
Executive Director, Financial Stability Oversight Council  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Re: Financial Stability Oversight Council Nonbanks Designation Process Discussion

Dear Mr. Pinschmidt,

Thank you for meeting with the American Council of Life Insurers, the Association of Institutional INVESTORS, the Financial Services Roundtable, and the Asset Management Group of the Securities Industry and Financial Markets Association (the “Associations” or “we”) on November 12, 2014 (the “Meeting”).

We appreciate your interest in improving the Financial Stability Oversight Council’s (the “FSOC” or “Council”) process for evaluating nonbank financial companies under Section 113 of the Dodd-Frank Act and willingness to discuss our recommended improvements with the Council’s Staff and Deputies at the Meeting. As you know, we previously submitted a petition for rulemaking on August 19, 2014, which sets forth our proposed amendments to the Council’s rules governing nonbank financial company designations under Section 113 as well as the rationale for our proposed amendments (the “Petition”). Essentially, this Petition offered a “roadmap” of how FSOC could improve its designation process for nonbank financial companies to achieve the goal of a more stable and secure financial system. This roadmap included concrete recommendations (including proposed rule text) that—if adopted—we believe would result in more transparency, and ensure full engagement with the company and the company’s

primary regulators. We appreciated the opportunity to elaborate on our recommendations at the Meeting, and have attached a copy of the Petition for your reference at Appendix A.

During the Meeting, we were asked to limit our discussion to “process” issues related to three basic categories: the extent and nature of the engagement in Stages 2 and 3; the annual review process; and transparency of the process to the company and the public.

In response, we described the compelling need for the Council to adopt process reforms and explained the rationale for the amendments we proposed in the Petition. We also discussed implementation of our proposed reforms, particularly those related to the Council’s transparency and engagement with the companies under review. We observed that it is in everyone’s best interest, including the Council’s, for the Council to follow a rigorous, transparent process that is based on accurate and complete information. Therefore, companies should be viewed as partners in the process from the beginning. We also provided the Council with specific suggestions for each of the three topics proposed by FSOC that we believe would improve the Council’s transparency and engagement, thereby improving the overall process.

The suggestions we made at the Meeting, described below, are intended to supplement, but not replace or supersede, the recommendations made in the Petition. For your reference, we have also included a chart outlining the suggestions made at the Meeting related to FSOC’s three topic areas, which is attached at Appendix B.

## **TOPIC ONE: ENGAGEMENT WITH COMPANIES IN STAGE 2 AND STAGE 3**

### ***Notice and Rationale***

#### **Stage 2**

The Associations explained that companies should be notified immediately when they advance from Stage 1 to Stage 2. We noted that while we appreciate FSOC’s sensitivity regarding notifying companies while FSOC is still in the preliminary review stages, we believe that this early notification could help FSOC in its review by ensuring: (1) that FSOC is analyzing complete and accurate data; and (2) that FSOC is well-positioned to interpret that data. However, FSOC should retain its practice of not publicly disclosing the status of any company under review until FSOC makes a final designation decision.

In FSOC’s notification to a company regarding its advancement from Stage 1 to Stage 2, we also noted that FSOC should provide the company with: (1) an explanation regarding the rationale behind FSOC’s decision to advance the company to Stage 2, including the specific “thresholds” the company met; and (2) a copy of the data that was collected on the company in Stage 1. This information would help a company understand which issues FSOC plans to consider further, and it would help the Council ensure that it is relying on complete and accurate information. It would also be particularly helpful in situations where a company is advanced based on some other metrics besides the “mechanical” metrics that automatically advance a company to Stage 2, or when a company is advanced simply based on the Council’s decision to advance it.

The Associations also suggested that FSOC should notify a company's primary regulators as soon as a company has entered Stage 2, regardless of whether the regulators are members of the FSOC. This process should be formalized, and the FSOC should provide the regulators with an official notification and written requests for information, to the extent that FSOC solicits information from any regulator. Further, as the company progresses through Stage 2, the primary regulators should be updated regularly on the progress of the review.

Additionally, the Associations advocated for FSOC to notify companies if FSOC decides to conclude the Stage 2 review and not to advance a company to Stage 3, and if FSOC decides to "reactivate" a company in the future for another preliminary Stage 2 review.

### **Stage 3**

The Associations stated that if FSOC decides to advance a company from Stage 2 to Stage 3, FSOC should continue its current process of providing the company with a formal notice. The formal notice, however, should include a detailed explanation to the company regarding the reasons behind FSOC's decision to advance the company to Stage 3, and provide the company with a list of information that FSOC believes it still needs in order to reach a preliminary designation decision.

### ***Ongoing Dialogue***

#### **Stage 2**

At the Meeting, we explained that a dialogue between company representatives and FSOC should start the moment a company enters Stage 2. FSOC should view the company as a resource, with experts on every topic under consideration and with access to relevant documents. Meetings between the parties should also address the substance of the Council's evaluation and the potential consequences of being designated.

As part of this dialogue, the Associations stated that the company should be involved in FSOC's data collection. Prior to submitting information requests to the company's primary regulators, the company should have a conversation with FSOC regarding the requests. The company should also be provided with a copy of the materials that FSOC receives from the primary regulators, and FSOC should provide any additional information collected on a rolling basis to keep the company informed regarding how the review is progressing. The Associations explained that by involving the company throughout this process, FSOC is more likely to receive and properly analyze complete and accurate information.

We also recommended early and active engagement with the company's primary financial regulator once a company is moved into a Stage 2 review. This is especially important if the primary regulator is not a member of the FSOC. In such cases, our recommendation is that there be a substantive, on-going dialogue with the regulator through Stages 2 and 3.

### **Stage 3**

We also noted that an ongoing dialogue is even more important in Stage 3. FSOC staff should be in regular and open communication with a company under review, keeping the company informed as to the Council's progress, specific areas of interest or concern, and next steps. Information and documentation collection should also be shared with the company regularly at this stage, so that the company can quickly respond to any inaccuracies or fill any gaps. Further, the company should have access not only to FSOC staff, but also FSOC principals and deputies outside of the formal hearing process, so that the company is able to ensure that everyone fully understands the company and its businesses.

The Associations added that once FSOC staff has completed its review, the staff should provide a full copy of the file to the company and provide the company with the opportunity to submit a response to FSOC's proposed designation rationale before that rationale is submitted to the Council's principals. The company's response should then be submitted together with FSOC staff materials to FSOC principals before they vote on whether to designate the company. We explained that this would in many ways be similar to standard practice in legal and administrative proceedings, including current practices at other agencies, where market participants and regulators regularly engage with one another during investigations or audits. Allowing such submissions would afford a company an additional measure of due process, as well as improve the transparency, fairness and quality of the designation process.

At the end of the Stage 3 process, if FSOC votes to designate an entity as systemically important, we also explained that FSOC should provide a detailed final assessment of the company's threats to U.S. financial stability and the manner in which the Council expects the designation to mitigate such threats in the Final Determination. This detailed assessment should describe the specific regulations that will apply, the expected impacts on the company and U.S. financial stability, and the economic models and measurements that support those expectations. The description should also be sufficiently detailed for the company to address FSOC's concerns through changes to its structure, business practices, divestitures, or other means prior to the re-evaluation process, if the company so wishes.

### **TOPIC TWO: RE-EVALUATION PROCESS**

At the Meeting, the Associations noted that many of the suggestions relating to Stages 2 and 3 equally apply to the re-evaluation process. It is imperative that FSOC engage in an ongoing, substantive dialogue with the company during this process as well, in order for the process to be transparent and productive.

We also stated that FSOC's re-evaluation standard should be reconsidered. Currently, FSOC uses a "material changes" standard, which does not provide FSOC with the ability to re-evaluate the basis for its original determination. The Council should consider many factors in addition to material changes at the company, including the effectiveness of the designation in reducing systemic risk, the availability of alternative approaches and the changes that will have taken place in the markets in which the company participates and the regulations that apply to them and to the company itself. We noted that it is not necessary for FSOC to undertake a *de novo* review during the re-evaluation process. However, FSOC, particularly during its early days,

should revisit its designations to confirm that they remain appropriate and are producing the intended effects.

Further, the Associations explained that the re-evaluation process would be smoother if FSOC provides additional disclosures in its Final Determinations explaining with more precision the threats that a company presents to U.S. financial stability that the Council hopes to address through designation. This information would help companies more adequately address FSOC's concerns on their own initiative rather than through regulation by the Federal Reserve Board, and would also help the company demonstrate that the concerns have been addressed when FSOC re-evaluates the company's designation.

Should FSOC decide that a designation remains appropriate after the re-evaluation process, the Associations also requested that FSOC provide an explanation to the company that adequately addresses each of the points raised by the company during the re-evaluation process.

### **TOPIC THREE: PUBLIC DISCLOSURE**

As we noted during the Meeting, we appreciate FSOC's sensitivity regarding public disclosures of non-public company information. However, as we explained, disclosures should be considered on a case-by-case basis. Further, FSOC should always clearly explain how the designation addresses and mitigates systemic risk, in accordance with the requirements under the Dodd-Frank Act. FSOC should also provide the public with as much public information as possible regarding its specific concerns and its expectations for how designation will address them, as this information will help other market participants manage their own businesses so as to address issues that FSOC believes create risks.

We also stated that FSOC should provide a periodic disclosure of the number of companies that were evaluated in Stage 2 but not advanced to Stage 3, and evaluated in Stage 3 but not designated.

### **NEXT STEPS**

We understand that the Council Staff has been directed to evaluate various proposals and make recommendations concerning possible reforms to the Council's designation process. As we mentioned in the Meeting, the Associations stand ready to assist you in this task, and we would welcome the opportunity to further discuss our recommendations with you, as you work to prepare appropriate recommendations for the Council.

Further, as noted above, the suggestions made at the Meeting and described in this letter are intended to memorialize the discussion at the Meeting and to supplement, but not to replace or supersede, the recommendations made in the Petition. The Petition more fully outlines specific procedural reforms that would: (1) improve the scope and quality of the data and information available to the Council; (2) improve the notice provided to a nonbank financial company being considered for a proposed or final determination; and (3) ensure that primary financial regulatory agencies are afforded a meaningful opportunity to participate in any proposed or final designation. Accordingly, we reiterate our request in our Petition that the Council propose

amendments to, seek public comment on, and ultimately adopt the amendments that we proposed to the Council's rules governing nonbank financial company designations. We also ask that FSOC engage in a formal notice and comment rulemaking process for any new or revised processes that are considered beyond those included in our Petition, allowing us and others to comment on any other changes that you propose.

Thank you for your consideration, and we look forward to working with the Council to achieve essential reforms to the rules governing the Council's designation process. If you have questions or comments, please contact ACLI (Julie Spiezio at 202.624.2194), AII (John Gidman at 617.748.1748), FSR (Felicia Smith at 202.589.2438), or SIFMA AMG (Tim Cameron at 202.313.1389).

Sincerely yours,



Julie A. Spiezio  
Senior Vice President & Deputy General  
Counsel  
American Council of Life Insurers



Felicia Smith  
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Financial Services Roundtable



Timothy Cameron, Esq.  
Managing Director and Head of the  
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Association



John Gidman  
President  
Association of Institutional INVESTORS

cc: Chairman Jacob L. Lew, Secretary of the Treasury  
Martin J. Gruenberg, Chairman of the Federal Deposit Insurance Corporation  
Janet L. Yellen, Chair of the Board of Governors of the Federal Reserve System  
Melvin L. Watt, Director of the Federal Housing Finance Administration  
Timothy G. Massad, Chairman of the Commodity Futures Trading Commission  
Debbie Matz, Chairman of the National Credit Union Administration  
Mary Jo White, Chair of the U.S. Securities and Exchange Commission

Thomas J. Curry, Comptroller of the Currency

Richard Cordray, Director of the Bureau of Consumer Financial Protection

S. Roy Woodall, Jr., Member of the Financial Stability Oversight Council

Richard Berner, Director of the Office of Financial Research of the Department of the Treasury

Michael T. McRaith, Director of the Federal Insurance Office of the Department of the Treasury

John M. Huff, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration

John P. Ducrest, Commissioner of the Louisiana Office of Financial Institutions and Chairman of State Bank Supervisors

David Massey, Deputy Securities Administrator, North Carolina, Department of the Secretary of State, Securities Division

**APPENDIX A:**

**AUGUST 19 PETITION FOR FINANCIAL STABILITY OVERSIGHT  
COUNCIL RULEMAKING REGARDING THE AUTHORITY TO  
REQUIRE SUPERVISION AND REGULATION OF CERTAIN  
NONBANK FINANCIAL COMPANIES**





FINANCIAL  
SERVICES  
ROUNDTABLE



| asset management group

August 19, 2014

Mr. Patrick Pinschmidt  
Executive Director  
Financial Stability Oversight Council  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

RE: Petition for Financial Stability Oversight Council Rulemaking  
Regarding the Authority to Require Supervision and Regulation of  
Certain Nonbank Financial Companies

**Submitted via email to: [patrick.pinschmidt@treasury.gov](mailto:patrick.pinschmidt@treasury.gov)**

Dear Mr. Pinschmidt,

The American Council of Life Insurers,<sup>1</sup> the American Financial Services Association,<sup>2</sup> the Association of Institutional INVESTORS,<sup>3</sup> the Financial Services Roundtable<sup>4</sup>

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<sup>1</sup> The American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association representing approximately 300 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90 percent of industry assets and premiums.

and the Asset Management Group of the Securities Industry and Financial Markets Association<sup>5</sup> (“Petitioners” or “we”) hereby respectfully petition the Financial Stability Oversight Council (“Council”), under the authority of section 553(e) of the Administrative Procedure Act,<sup>6</sup> to propose amendments to, seek public comment on, and ultimately amend, the Council’s existing rules (“Designation Rules”) concerning the designation of systemically important nonbank financial institutions (“SIFIs”) for supervision by the Board of Governors of the Federal Reserve System (“Board of Governors”).<sup>7</sup>

## Introduction and Overview

On April 11, 2012, the Council adopted the Designation Rules,<sup>8</sup> which set forth general standards and procedures to govern the Council’s consideration of nonbank financial companies for proposed and final determinations as SIFIs. Because these standards and procedures are vague and opaque both on their face and as applied, they could operate to prevent the Council from obtaining, reviewing, and relying on complete, accurate and optimal information in making its determinations. The standards and procedures also could deprive nonbank financial companies of fair notice of the information on which the Council is relying and the Council’s reasoning at various stages of the process and therefore would deny such

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<sup>2</sup> The American Financial Services Association (“AFSA”) is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its more than 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers.

<sup>3</sup> The Association of Institutional INVESTORS (“AII”) is an organization of the oldest, largest, and most trusted federally registered institutional investment advisers in the United States. Our clients are primarily institutional investment entities that serve the interests of individual investors through more than 80,000 public and private pension plans, foundations, and registered investment companies. Collectively, our member firms manage ERISA pension, 401(k), mutual fund, and personal investments on behalf of more than 100 million American workers and retirees.

<sup>4</sup> As *advocates for a strong financial future*<sup>TM</sup>, the Financial Services Roundtable (“FSR”) represents the largest integrated financial services companies providing banking, insurance, payment and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America’s economic engine, accounting directly for \$92.7 trillion in managed assets, \$1.2 trillion in revenue, and 2.3 million jobs. Learn more at [FSRoundtable.org](http://FSRoundtable.org).

<sup>5</sup> The Asset Management Group (“AMG”) of the Securities Industry and Financial Markets Association’s members represent U.S. asset management firms whose combined assets under management exceed \$30 trillion. The clients of AMG member firms include, among others, registered investment companies, endowments, state and local government pension funds, private sector Employee Retirement Income Security Act of 1974 pension funds and private funds such as hedge funds and private equity funds.

<sup>6</sup> 5 U.S.C. § 553(e) (providing that “[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule”).

<sup>7</sup> 12 C.F.R. Part 1310.

<sup>8</sup> Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, 77 Fed. Reg. 21637 (Apr. 11, 2012).

companies a reasonable opportunity to evaluate and contest the Council’s preliminary conclusions.

Petitioners believe the Council shares our interest in ensuring a complete and accurate record based on the best available evidence and a process for consideration that is fair and open for all affected parties. In order to promote these common interests, Petitioners submit this petition (“Petition”) to the Council. Specifically, we seek the proposal and adoption of the amendments to the Designation Rules presented in Appendix A hereto (“Proposed Amendments”),<sup>9</sup> which would improve the transparency, validity and cohesion of the Council’s SIFI designation process. In short, these procedural reforms would (1) improve the scope and quality of the data and information available to the Council; (2) improve the notice provided to a nonbank financial company being considered for a proposed or final determination (“Considered Company”); and (3) ensure that primary financial regulatory agencies are afforded a meaningful opportunity to participate in any proposed or final determination.

## **The Proposed Amendments**

### **1. Improving the Accuracy and Quality of Data and Information Available to the Council During a “Stage 2” Review**

Under the Designation Rules, the Council commences its “Stage 2” review of a Considered Company after it determines that the Considered Company meets the metrics in the “Stage 1” test or has evaluated a company based on other firm-specific qualitative or quantitative factors, irrespective of whether such company meets the thresholds in “Stage 1”.<sup>10</sup> The Council then requests and reviews data and information from the Office of Financial Research, member agencies,<sup>11</sup> the Federal Insurance Office and other federal and state financial regulatory agencies, as the Council deems necessary.<sup>12</sup> The Designation Rules, however, do not require the Council (1) to provide the Considered Company with copies of any of the data or information on which the Council relies when deciding to advance a Considered Company to “Stage 2” or evaluating a Considered Company in Stage 3; (2) to provide the Considered Company with an opportunity to review, correct and comment on the data or information collected by the Council; or (3) to request data, information or reports directly from the Considered Company prior to it receiving a written notice of consideration for a proposed determination.

In the absence of procedures that afford meaningful opportunities for the Considered Company to ensure that the Council considers complete and accurate information on the Considered Company, the process contemplated by the Designation Rules would appear to

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<sup>9</sup> A clean version of the Designation Rules, as amended by the Proposed Amendments, is presented in Appendix B hereto.

<sup>10</sup> 77 Fed. Reg. 21642.

<sup>11</sup> Consistent with the Designation Rules, we use “member agencies” to refer to the agencies of the members of the Council.

<sup>12</sup> See 12 C.F.R. § 1310.20.

contravene President Obama's principles for an open and transparent government,<sup>13</sup> as well as the principles of regulatory policy set forth in President Obama's Executive Order 13563.<sup>14</sup> Gathering data and information without adequate validation generally increases the opportunities for error, is inconsistent with sound administrative practices and reduces the likelihood of effective policy outcomes. The Council should have the best, most accurate data and information possible to perform its statutory obligations, and the Designation Rules should provide the means to achieve this objective.

The proposed amendments would significantly strengthen the Council's "Stage 2" review by providing the Considered Company with copies of the data and information the Council has collected, providing the Considered Company an opportunity to review and, where appropriate, correct the information collected by the Council, and requesting data and information directly from the Considered Company. These measures will improve the quality of data and information that is available to the Council as well as the Council's analysis.

Under the Designation Rules, the Council may begin collecting data and information about a Considered Company as part of the Council's "Stage 2" review without providing the company with notice that such review is underway. Instead, the Designation Rules only require the Council to notify the Considered Company after the Council has completed its "Stage 2" review and concluded that the Considered Company warrants additional scrutiny (we call this a "Written Notice of Consideration"), but the Written Notice of Consideration need not include any explanation of the Council's reasoning or analysis.<sup>15</sup> Under the Designation Rules, the Council is not called upon to set forth its reasoning until later in the process of its deliberations and even then in no particular level of detail.

In order to facilitate a more comprehensive and accurate review in "Stage 2," we ask the Council to consider making the following changes to the Designation Rules:

- Require the Council to provide a notice to the Considered Company that includes the data, information or reports that have been collected and are being used by the

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<sup>13</sup> The President's Memorandum on Transparency and Open Government ("Memorandum") establishes three guiding principles for the heads of executive departments and agencies: (1) government should be transparent; (2) government should be participatory; and (3) government should be collaborative. 74 Fed. Reg. 4685 (Jan. 26, 2009). As explained in the Memorandum, these principles are intended to promote accountability in government, enhance the government's effectiveness, improve the quality of the government's decisions and ensure that Americans are actively engaged in the work of their government. *Id.*

<sup>14</sup> Executive Order 13563 directs federal agencies to base regulation "on the open exchange of information and perspectives," which must include "affected stakeholders in the private sector." EO 13563 § 2(a) (Jan. 18, 2011). "To promote that open exchange, each agency . . . shall endeavor to provide the public with an opportunity to participate in the regulatory process." *Id.* at § 2(b). Even before proposing a regulatory action, a federal agency is directed to "seek the views of those who are likely to be affected," including the regulated entities. *Id.* at § 2(c). Executive Order 13579 subsequently directed "independent regulatory agencies [to] comply with these provisions as well." EO 13579 § 1(c) (July 11, 2011).

<sup>15</sup> See 12 C.F.R. § 1310.21(a).

Council to consider the company and update such disclosure at least every 90 days.

- Confirm that the Council does not prohibit any member of the Council or any official, employee or agent of any member agency or any individual working at the direction of the Council from discussing with a Considered Company or its authorized representative the data, information or reports that have been collected by the Council.
- Require the Council to accept and consider any data, information and reports voluntarily submitted by the Considered Company, which the Council shall distribute to each of its member agencies.
- Require the Council to request data, information or reports from the Considered Company directly, if the Council finds it has not otherwise obtained the data, information and materials needed to fully and thoroughly consider the company as part of the Council's "Stage 2" review.
- Require the Council to notify each Considered Company that data, information or reports are being collected for the purpose of considering the company for a proposed or final determination, and deliver such notice no less than 270 days prior to delivering any Written Notice of Consideration.

**2. Improving Notices and Explanations to Considered Companies and Ensuring a Meaningful Opportunity to Contest the Council's Consideration or Determinations**

Once the Considered Company is provided notice at the end of "Stage 2," the Considered Company still does not have adequate information to provide the Council with pertinent information in "Stage 3." Without a requirement that the Written Notice of Consideration include a reasonably detailed explanation of the Council's decision, a Considered Company may be precluded from exercising in a meaningful way its right to submit relevant factual materials and analysis before the Council has made a proposed determination. The Considered Company has no way to know whether the materials it intends to submit are relevant to the risks the Council believes it has identified. The Council and the Considered Company both would benefit from allowing the Council to focus on relevant submitted material, rather than extraneous materials if the Considered Company guesses incorrectly. Further, the absence of a reasoned explanation effectively permits the Council to deny the Considered Company an opportunity to mitigate, and possibly eliminate, any perceived threat to U.S. financial stability. To address these deficiencies, we ask the Council to consider making the following changes to its Designation Rules:

- Require the Written Notice of Consideration to set forth a factual basis for the Council's consideration and an analysis of each statutory consideration, as it relates to whether the Considered Company poses a threat to the financial stability of the United States.

- Require the Written Notice of Proposed Determination to include (1) a detailed assessment of each of the statutory considerations, as it relates to the Considered Company's ability to pose a threat to the financial stability of the United States; (2) a detailed assessment of the manner in which the prudential standards may mitigate that threat; and (3) information reasonably necessary for the Considered Company to evaluate and contest the preliminary determination.
- Provide a Considered Company with a right to present oral testimony and oral argument at an evidentiary hearing.
- Require that the Council provide the Considered Company with an opportunity to review, and if necessary correct, the Council's evidentiary record, and at least 25 days prior to any evidentiary hearing, provide the Considered Company with notice and copies of any changes to the evidentiary record.
- Require the Written Notice of Final Determination to provide (1) a detailed final assessment of each statutory consideration as it relates to the Considered Company's likelihood to threaten U.S. financial stability; (2) a detailed final assessment of the manner in which the Council believes prudential standards would mitigate that threat; and (3) sufficient explanation to enable a Considered Company that has been designated as a SIFI to modify its operations or structure so that it would remove the identified threat to U.S. financial stability.
- Require the Council to notify a Considered Company when it ceases to be considered for a proposed determination and specify that any subsequent re-consideration could only commence if the Council initiates the designation process anew.
- If, after reevaluation, the Council has determined not to rescind its initial determination, the Council must provide notice of that determination to the designated SIFI, including the Council's detailed assessment for each consideration set forth in §1310.11, and detailed reasons why any actions by the designated SIFI to modify its operations or structure did not remove the threat posed to U.S. financial stability and specifics about the aspects of the designated SIFI's operations and structure that the Council believes continue to pose a threat.

### **3. Ensuring Meaningful Participation by a Considered Company's Primary Financial Regulatory Agency**

Under the Designation Rules, the Council is required to consult with the primary financial regulatory agency for each Considered Company and subsidiary of a Considered Company before the Council makes a final determination that the Considered Company is a

SIFI.<sup>16</sup> Consistent with this requirement and the statutorily required consideration of the degree to which a Considered Company and/or its material subsidiaries are already regulated by one or more primary financial regulatory agencies,<sup>17</sup> we request that the Designation Rules be amended to grant the Considered Company's or its material subsidiaries' primary financial regulatory agency an opportunity to certify that its regulatory regime can adequately address any Council identified threat posed by the Considered Company or material subsidiaries before any proposed or final determination about the Considered Company.

### **Relief Requested**

Petitioners hereby respectfully petition the Council to propose amendments to, seek public comment on, and ultimately amend the Designation Rules as reflected in the Proposed Amendments.

Petitioners appreciate the Council's prompt consideration of the Petition. Petitioners and their members stand ready to work with the Council and its members to achieve the critical reforms presented herein. If you have any further questions or comments, please do not hesitate to contact ACLI (Julie Spiezio at 202.624.2194), AFSA (Bill Himpler at 202.466.8616), AII (John Gidman at 617.748.1748), FSR (Richard Foster at 202.589.2424) or SIMFA AMG (Tim Cameron at 202.313.1389).

Respectfully submitted,



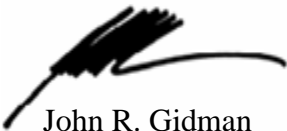
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President  
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Richard Foster  
Vice President & Senior Counsel for  
Regulatory and Legal Affairs  
Financial Services Roundtable

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<sup>16</sup> See 12 C.F.R. § 1310.21(c).

<sup>17</sup> See 12 U.S.C. § 5323

cc: Chairman Jacob L. Lew, Secretary of the Treasury  
Martin J. Gruenberg, Chairman of the Federal Deposit Insurance Corporation  
Janet L. Yellen, Chair of the Board of Governors of the Federal Reserve System  
Melvin L. Watt, Director of the Federal Housing Finance Agency  
Timothy G. Massad, Chairman of the Commodity Futures Trading Commission  
Debbie Matz, Chairman of the National Credit Union Administration  
Mary Jo White, Chair of the U.S. Securities and Exchange Commission  
Thomas J. Curry, Comptroller of the Currency  
Richard Cordray, Director of the Bureau of Consumer Financial Protection  
S. Roy Woodall, Jr., Member of the Financial Stability Oversight Council  
Richard Berner, Director of the Office of Financial Research of the Department of the Treasury  
Michael T. McRaith, Director of the Federal Insurance Office of the Department of the Treasury  
John M. Huff, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration  
John P. Ducrest, Commissioner of the Louisiana Office of Financial Institutions and Chairman of State Bank Supervisors  
David Massey, Deputy Securities Administrator, North Carolina, Department of the Secretary of State, Securities Division



**Appendix A – Proposed Amendments**  
**(New text and ~~deleted text~~)**

§ 1310.20 Council information collection; consultation; coordination; confidentiality.

(a) *Information collection from the Office of Financial Research, member agencies, the Federal Insurance Office, and other Federal and State financial regulatory agencies.* The Council may receive, and may request the submission of, such data or information from the Office of Financial Research, member agencies, the Federal Insurance Office, and (acting through the Office of Financial Research, to the extent the Council determines necessary) other Federal and State financial regulatory agencies as the Council deems necessary to carry out the provisions of title I of the Dodd-Frank Act (12 U.S.C. 5311-5374) or this part.

(b) *Information collection from and disclosure to nonbank financial companies.*

(1)(i) The Council may, to the extent the Council determines appropriate, direct the Office of Financial Research to require the submission of periodic and other reports from any nonbank financial company, including a nonbank financial company that is being considered for a proposed or final determination under § 1310.10(a), for the purpose of assessing the extent to which a nonbank financial company poses a threat to the financial stability of the United States.

(ii) Any request for required reports pursuant to this paragraph (b)(1) shall be made in writing and shall disclose that the required reports are being requested for the purpose of assessing whether or the extent to which the nonbank financial company poses a threat to the financial stability of the United States.

(2) Before requiring the submission of reports under this paragraph (b) from any nonbank financial company that is regulated by a member agency or any primary financial regulatory agency, the Council, acting through the Office of Financial Research, shall coordinate with such agency or agencies and shall, whenever possible, rely on information available from the Office of Financial Research or such agency or agencies and shall provide complete unredacted copies of all such information, including any information in draft form, to the nonbank financial company as part of the notice sent by the Council pursuant to paragraph (b)(4)(i) of this section.

(3) Before requiring the submission of reports under this paragraph (b) from a company that is a foreign nonbank financial company, the Council shall, acting through the Office of Financial Research, to the extent appropriate, consult with the appropriate foreign regulator of such foreign nonbank financial company and, whenever possible, rely on information already being collected by such foreign regulator, with English translation.

(4)(i) The Council shall notify a nonbank financial company in a timely manner (which shall not be less than 270 days prior to any notification under § 1310.21(a) of this part) that data, information or reports are being collected pursuant to this section for the purpose of the Council assessing whether or the extent to which a nonbank financial company poses a threat to the financial stability of the United States or considering the nonbank financial company for a proposed or final determination under § 1310.10(a).

(ii) Any notice sent by the Council pursuant to paragraph (b)(4)(i) shall —

(I) Be sent by the Council and shall not be delegated;

~~(4) The Council may, to the extent the Council determines appropriate, accept the submission of~~  
II) Be made in writing and shall, include unredacted copies of the data, information or reports, including any data, information, and or reports voluntarily submitted by any in draft

form, that have been collected and that are being used by the Council to consider the nonbank financial company ~~that is being considered for~~ a proposed or final determination under § 1310.10(a), ~~for the purpose of assessing or assess whether or~~ the extent to which ~~at~~ the nonbank financial company poses a threat to the financial stability of the United States; and

(III) Provide the nonbank financial company with a reasonable amount of time (not less than 180 days) to both review and respond to the data, information or reports that have been collected and that are being used by the Council and to voluntarily submit any data, information or reports that the nonbank financial company believes would be relevant to the Council's consideration, which the Council shall accept and consider.

(iii) The Council shall distribute any data, information or reports that the nonbank financial company has voluntarily submitted under paragraph (b)(ii)(III) to each of the Council's member agencies and shall provide the member agencies a reasonable amount of time to review and comment on such submissions prior to action by the Council under § 1310.10(a).

(5)(i) If within 180 days of sending a notice under paragraph (b)(4) the Council has not obtained through the authority in paragraphs (a) and (b)(1) through (4) the data, information or reports appropriate to fully and reliably consider a nonbank financial company for a proposed or final determination under § 1310.10(a), the Council shall so notify the nonbank financial company and shall provide it a reasonable opportunity to voluntarily submit such data, information or reports, which the Council shall accept and consider.

(ii) Any notice sent by the Council pursuant to paragraph (b)(5)(i) shall —

(I) Be made by the Council and shall not be delegated;

(II) Be made in writing and shall describe the significance of the data, information or reports to the Council's consideration, including the manner in which the Council expects to analyze the data, information or reports; and

(III) Provide the nonbank financial company with a reasonable amount of time to make a voluntary submission.

(6) At least every 90 days after a notice under paragraph (b)(4) of this section is sent to a nonbank financial company, and until a determination regarding whether a notice under § 1310.21(a) of this part will be provided to the nonbank financial company, the Council shall update the disclosure provided pursuant to paragraph (b)(4)(ii)(II) to reflect any additional data, information or reports, and shall provide the nonbank financial company with a reasonable opportunity both to review and respond to the additional data, information or reports, and to make voluntary supplemental submissions, which the Council shall accept and consider.

(7) No member of the Council or any other official, employee or agent of any member agency or any individual working at the direction of the Council is prohibited from discussing with the nonbank financial company, or any authorized representative of such nonbank financial company, the data, information or reports that have been collected under this § 1310.20 with respect to such nonbank financial company.

(c) *Consultation.* The Council shall 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 supervision by the Board of Governors under § 1310.10(a) in a timely manner before the Council makes any proposed or final determination under § 1310.10(a) with respect to such nonbank financial company. Before the Council makes a proposed or final determination, each primary financial regulatory agency for the nonbank financial company and its relevant subsidiaries shall be given the opportunity to certify whether its regulatory regime

can adequately address the threat the Council believes to be posed by such company or its subsidiaries to the financial stability of the United States. For purposes of this section, a primary financial regulatory agency may include state insurance, banking and financial regulators.

(d) *International coordination.* In exercising its duties under this part with respect to foreign nonbank financial companies and cross-border activities and markets, the Council, acting through its Chairperson or other authorized designee, shall consult with appropriate foreign regulatory authorities, to the extent appropriate.

(e) *Confidentiality*—

(1) In general. The Council shall maintain the confidentiality of any data, information, and reports submitted under this part, and disclosure of such information in accordance with the provisions of paragraph (b) of this part shall not constitute a breach of the Council's obligation to maintain the confidentiality of such data, information or reports.

(2) Retention of privilege. The submission of any non-publicly available data or information under this part shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

(3) Freedom of Information Act. Section 552 of title 5, United States Code, including the exceptions thereunder, and any regulations thereunder adopted by the Council, shall apply to any data, information, and reports submitted under this part.

§ 1310.21 Proposed and final determinations; notice and opportunity for an evidentiary hearing.

(a) *Written notice of consideration of determination; submission of materials.* Before providing a nonbank financial company written notice of a proposed determination pursuant to paragraph (b) of this section, the Council shall provide the nonbank financial company —

(1) Written notice that the Council is considering whether to make a proposed determination with respect to the nonbank financial company under § 1310.10(a); which notice shall set forth the factual basis for the Council's consideration including—

(i) The analysis of the data, information and reports on which the Council is relying for each consideration listed in §1310.11, as it relates to the probability that the nonbank financial company will pose a threat to the financial stability of the United States and the magnitude of that threat; and

(ii) Information reasonably necessary for the nonbank financial company to contest the factual basis for the Council's consideration through the submission of materials pursuant to paragraph (a)(2) of this section;

(2) A reasonable amount of time after receipt of the notice as provided in paragraph (a)(1) of this section, and prior to any vote on a proposed determination, to voluntarily submit any data, information or reports that the nonbank financial company believes would be relevant to the Council's consideration (which may include any information the nonbank financial company may have submitted under § 1310.20(b)(4)(ii)(II), including any revisions or supplements), which the Council shall accept and consider;

~~(23)~~ An opportunity to submit written materials, within such time as the Council determines to be appropriate (which shall be not less than ~~30~~60 days after the date of receipt by the nonbank financial company of the notice described in paragraph (a)(1)), to the Council to

contest the Council's consideration of the nonbank financial company for a proposed determination, including materials concerning whether, in the nonbank financial company's view, material financial distress at the nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company, could pose a threat to the financial stability of the United States; ~~and~~

(4) An opportunity, after receipt of the notice as provided in paragraph (a)(1) of this section, and prior to any vote on a proposed determination, for a nonbank financial company to meet in-person with the Council, if so requested by the nonbank financial company. Attendance by the Council at the meeting shall not be delegated; and

~~(35)~~ Notice when the Council deems its evidentiary record regarding such nonbank financial company to be complete, including an update of the disclosure provided pursuant to § 1310.20(b)(4)(ii)(II) to include any additional data, information or reports, and an opportunity (which shall not be less than 30 days after the receipt of notice) for the nonbank financial company to review the complete unredacted evidentiary record and supplement it with any information necessary to correct material inaccuracies or omissions.

(b) Notice of proposed determination; notice that Council has ceased considering for a proposed determination.

~~(b1) Notice of proposed determination.~~ If the Council determines under § 1310.10(a) that a nonbank financial company should be supervised by the Board of Governors and be subject to prudential standards, the Council shall provide ~~to~~ the nonbank financial company with written notice of the proposed determination, ~~including an explanation of the basis of the proposed determination and the date by which an evidentiary hearing may be requested by the nonbank financial company under paragraph (c) of this section.~~

(2) Any written notice provided by the Council pursuant to paragraph (b)(1) of this section shall contain a statement of the facts that provide the basis for the proposed determination and shall include—

(i) Detailed assessment of each consideration listed in §1310.11, as it relates to the probability that the nonbank financial company will pose a threat to the financial stability of the United States, and the magnitude of that threat;

(ii) Detailed assessment of the manner in which prudential standards would mitigate the threat that may be posed by the nonbank financial company; and

(iii) Information reasonably necessary for the nonbank financial company to evaluate and contest the Council's basis for the preliminary determination.

(3) If prior to the expiration of the 180-day time period in paragraph (f) of this section the Council determines that a nonbank financial company that has received a written notice pursuant to this paragraph (b) is no longer being considered for proposed determination, the Council shall promptly provide the nonbank financial company with notice of such. In that event, the nonbank financial company shall not be eligible for a proposed determination under §1310.10(a) unless the Council issues a new written notice of consideration under paragraph (a) of this section and complies with all applicable procedures of this section.

*(c) Evidentiary hearing.*

(1) Not later than 30 days after the date of receipt by a nonbank financial company of the notice of proposed determination under paragraph (b) of this section, the nonbank financial company may request, in writing, ~~an opportunity for~~ a nonpublic, ~~written or oral~~ evidentiary

hearing before the Council ~~or its representatives~~ to contest the proposed determination under §1310.10(a).

(2) Upon receipt by the Council of a timely request under paragraph (c)(1), the Council shall fix a time (not later than 30 days after the date of receipt by the Council of the request) and place at which such nonbank financial company may appear, personally or through counsel, for a nonpublic evidentiary hearing at which the nonbank financial company may submit written materials (~~or, at the sole discretion of the Council, which may include any information the nonbank financial company may have submitted under § 1310.20(b)(4)(ii)(II), including any revisions or supplements~~) and present oral testimony and oral argument to contest the Council's proposed determination under § 1310.10(a), including materials concerning whether and to what extent, in the nonbank financial company's view, material financial distress at the nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company, could pose a threat to the financial stability of the United States and the optimal regulatory response to such threat.

(3) At least 25 days prior to an evidentiary hearing under this subsection, the Council shall provide notice to the nonbank financial company of any changes to the evidentiary record since the notice pursuant to paragraph (a)(3) of this section and such notice shall include complete unredacted copies of any new or revised materials, and an opportunity for the nonbank financial company to supplement the evidentiary record with any information necessary to correct material inaccuracies or omissions, which the Council shall accept and consider.

(d) *Final determination after evidentiary hearing.* If the nonbank financial company makes a timely request for an evidentiary hearing under paragraph (c) of this section, the Council shall, not later than 60 days after the hearing date—

(1) Determine whether to make a final determination under §1310.10(a);

(2) Notify the nonbank financial company, in writing, of any final determination of the Council under §1310.10(a), which notice shall contain a statement of the basis for the decision of the Council; and shall include—

(i) Detailed final assessment of each consideration listed in §1310.11, as it relates to the probability that the nonbank financial company will pose a threat to the financial stability of the United States and the magnitude of that threat;

(ii) Detailed final assessment of the manner in which prudential standards would mitigate the threat to the financial stability of the United States that the Council has determined the nonbank financial company poses; and

(iii) Information necessary for the nonbank financial company to reasonably understand the explanations provided in paragraphs (d)(2)(i) and (ii) of this section, such that the nonbank financial company may modify its operations or structure to reduce or remove the threat to the financial stability of the United States that the nonbank financial company could potentially pose and thereby resolve the factors upon which the Council's final determination was based, such that supervision of the nonbank financial company by the Board of Governors would not be necessary to mitigate it; and

(3) If the Council makes a final determination under §1310.10(a), publicly announce the final determination of the Council.

(e) *No evidentiary hearing requested.* If a nonbank financial company does not make a timely request for an evidentiary hearing under paragraph (c) of this section or notifies the

Council in writing that it is not requesting an evidentiary hearing under paragraph (c) of this section, the Council shall, not later than 10 days after the date by which the nonbank financial company could have requested a hearing under paragraph (c) of this section or 10 days after the date on which the Council receives notice from the nonbank financial company that it is not requesting an evidentiary hearing, as applicable—

(1) Determine whether to make a final determination under §1310.10(a);

(2) Notify the nonbank financial company, in writing, of any final determination of the Council under §1310.10(a), which notice shall contain a statement of the basis for the decision of the Council and shall include the information specified in paragraph (d)(2)(i)-(iii) of this section; and

(3) If the Council makes a final determination under §1310.10(a), publicly announce the final determination of the Council.

(f) *Time period for consideration.*

(1) If the Council does not make a proposed determination under §1310.10(a) with respect to a nonbank financial company within 180 days after the date on which the nonbank financial company receives the notice of completion of the Council's evidentiary record described in paragraph (a)(3) of this section, the nonbank financial company shall not be eligible for a proposed determination under §1310.10(a) unless the Council issues a subsequent written notice of consideration of determination under paragraph (a) of this section to such nonbank financial company.

(2) This paragraph (f) shall not limit the Council's ability to issue a subsequent written notice of consideration of determination under §1310.21(a) to any nonbank financial company that, within 180 days after the date on which such nonbank financial company received a notice described in paragraph (a)(3) of this section, does not become subject to a proposed determination under §1310.10(a).

§ 1310.22 Emergency exception to §§ 1310.20 and 1310.21.

(a) *Exception to §§ 1310.20 and 1310.21.* Notwithstanding anything to the contrary in §§ 1310.20 and 1310.21, the Council may waive or modify any or all of the notice and other procedural requirements of §§ 1310.20 and 1310.21 with respect to a nonbank financial company if—

(1) The Council reasonably determines that—

(i) such waiver or modification is necessary or appropriate to prevent or mitigate ~~threats~~the threat posed by the nonbank financial company to the financial stability of the United States; and

(ii) the threat posed by the nonbank financial company is imminent and no alternative to waiver or modification is available to address the threat; and

(2) The Council provides written notice of the waiver or modification under this section to the nonbank financial company as soon as practicable, but not later than 24 hours after the waiver or modification is granted. Any such notice shall set forth the manner and form for transmitting a request for an evidentiary hearing under paragraph (c) of this section.



(b) *Consultation.* (1) In making a determination under paragraph (a) of this section with respect to a nonbank financial company, the Council shall consult with the primary financial regulatory agency, if any, for such nonbank financial company and each of its material subsidiaries, in such time and manner as the Council may reasonably deem appropriate. For purposes of this section, a primary financial regulatory agency may include state insurance, banking and financial regulators.

(2) In making a determination under paragraph (a) of this section with respect to a foreign nonbank financial company, the Council shall consult with the appropriate home country supervisor, if any, of such foreign nonbank financial company and each of its material subsidiaries, in such time and manner as the Council may reasonably deem appropriate.

(c) *Opportunity for evidentiary hearing.* (1) If the Council, pursuant to paragraph (a) of this section, waives or modifies any of the notice or other procedural requirements of § 1310.20 and 1310.21 with respect to a nonbank financial company, the nonbank financial company may request, in writing, an opportunity for a nonpublic, ~~written or oral~~ evidentiary hearing before the Council ~~or its representatives~~ to contest such waiver or modification, not later than 10 days after the date of receipt by the nonbank financial company of the notice described in paragraph (a)(2) of this section.

(2) Upon receipt of a timely request for an evidentiary hearing under paragraph (c)(1), the Council shall fix a time (not later than 15 days after the date of receipt by the Council of the request) and place at which the nonbank financial company may appear, personally or through counsel, for a nonpublic evidentiary hearing at which the nonbank financial company may submit written materials ~~(or, at the sole discretion of the Council, and present~~ oral testimony and oral argument~~)~~ regarding the waiver or modification under this section.

(d) *Notice of final determination.* (1) If the nonbank financial company makes a timely request for an evidentiary hearing under paragraph (c) of this section with respect to the waiver or modification of any of the notice or other procedural requirements of § 1310.21, the Council shall, not later than 30 days after the hearing date—

(1) Make a final determination regarding the waiver or modification under this § 1310.22;

(2) Notify the nonbank financial company, in writing, of the final determination of the Council regarding the waiver or modification under this § 1310.22, which notice shall contain a complete and detailed statement of the basis for the final decision of the Council; and

(3) If the Council makes a final determination under § 1310.10(a), publicly announce the final determination of the Council.

(2) If the nonbank financial company makes a timely request for an evidentiary hearing under paragraph (c) of this section with respect to the waiver or modification of any of the notice or other procedural requirements of § 1310.20, the Council shall, not later than 30 days after the hearing date take the actions described in (d)(1)(i) and (ii) of this section.

(e) *Vote required.* Any determination of the Council under paragraph (a)(1) of this section to waive or modify any of the notice or other procedural requirements of § 1310.21 shall—

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

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

(f) When an emergency is deemed to exist. For purposes of paragraph (a)(1)(ii) of this section, threats posed by the nonbank financial company shall be deemed to be imminent where the Council reasonably determines—

(1) The nonbank financial company is in immediate danger of failing; and

(2) The failure of the nonbank financial company and its resolution under applicable Federal or State law would have serious adverse effects on the financial stability of the United States.

§1310.23 Council reevaluation and rescission of determinations.

(a) *Reevaluation and rescission.* The Council shall, not less frequently than annually—

(1) Reevaluate each currently effective determination made under §1310.10(a); and

(2) Rescind any such determination, if the Council determines that the nonbank financial company no longer meets the standard under §1310.10(a), taking into account the considerations in §1310.11(a) or §1310.11(b), as applicable.

(b) *Notice of reevaluation; submission of materials.*

(1) The Council shall provide written notice to each nonbank financial company subject to a currently effective determination prior to the Council's reevaluation of such determination under paragraph (a) of this section and shall provide such nonbank financial company an opportunity to submit written materials, within such time as the Council determines to be appropriate (which shall be not less than 30 days after the date of receipt by the nonbank financial company of such notice), to the Council to contest the determination, including materials concerning whether, in the nonbank financial company's view, material financial distress at the nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company, could pose a threat to the financial stability of the United States.

(2) If a nonbank financial company contests the determination pursuant to paragraph (b)(1) of this section, and the Council decides not to rescind the determination, the Council shall so notify the nonbank financial company, in writing. The notice shall set forth the complete and detailed basis for the Council's decision, shall include the Council's detailed assessment of each consideration in § 1310.11, as it relates to the nonbank financial company's likelihood to pose a threat and the magnitude of that threat to the financial stability of the United States, and the reasons the nonbank financial company's actions to modify its operations or structure (if any) did not adequately remove the threat to the financial stability of the United States that the nonbank financial company may pose, and shall specify the aspects of the nonbank financial company's operations or structure that the Council believes continue to pose a threat, including the Council's complete and detailed assessments of the probability and magnitude of that threat. In addition, the notice shall include an appendix of complete unredacted copies of any data, information or reports, including any data, information or reports in draft form, that have been used by the Council in reaching its decision not to rescind the determination.

(3) The Council shall provide, if requested by a nonbank financial company that was subject to a determination by the Council pursuant to § 1310 prior to [insert date of the adoption



of the Petitioner's amendments], a new evaluation and determination process in accordance with the requirements of § 1310.20(b)(4)-(7), § 1310.20(c), and § 1310.21.

(c) *Vote required.* Any determination of the Council under paragraph (a)(2) of this section to rescind a determination made with respect to a nonbank financial company shall—

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

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

(d) *Notice of rescission.* If the Council rescinds a determination with respect to any nonbank financial company under paragraph (a) of this section, the Council shall notify the nonbank financial company, in writing, of such rescission and publicly announce such rescission.

**Appendix B – Proposed Amendments (Clean)**

§ 1310.20 Council information collection; consultation; coordination; confidentiality

(a) *Information collection from the Office of Financial Research, member agencies, the Federal Insurance Office, and other Federal and State financial regulatory agencies.* The Council may receive, and may request the submission of, such data or information from the Office of Financial Research, member agencies, the Federal Insurance Office, and (acting through the Office of Financial Research, to the extent the Council determines necessary) other Federal and State financial regulatory agencies as the Council deems necessary to carry out the provisions of title I of the Dodd-Frank Act (12 U.S.C. 5311-5374) or this part.

(b) *Information collection from and disclosure to nonbank financial companies.*

(1)(i) The Council may, to the extent the Council determines appropriate, direct the Office of Financial Research to require the submission of periodic and other reports from any nonbank financial company, including a nonbank financial company that is being considered for a proposed or final determination under § 1310.10(a), for the purpose of assessing the extent to which a nonbank financial company poses a threat to the financial stability of the United States.

(ii) Any request for required reports pursuant to this paragraph (b)(1) shall be made in writing and shall disclose that the required reports are being requested for the purpose of assessing whether or the extent to which the nonbank financial company poses a threat to the financial stability of the United States.

(2) Before requiring the submission of reports under this paragraph (b) from any nonbank financial company that is regulated by a member agency or any primary financial regulatory agency, the Council, acting through the Office of Financial Research, shall coordinate with such agency or agencies and shall, whenever possible, rely on information available from the Office of Financial Research or such agency or agencies and shall provide complete unredacted copies of all such information, including any information in draft form, to the nonbank financial company as part of the notice sent by the Council pursuant to paragraph (b)(4)(i) of this section.

(3) Before requiring the submission of reports under this paragraph (b) from a company that is a foreign nonbank financial company, the Council shall, acting through the Office of Financial Research, to the extent appropriate, consult with the appropriate foreign regulator of such foreign nonbank financial company and, whenever possible, rely on information already being collected by such foreign regulator, with English translation.

(4)(i) The Council shall notify a nonbank financial company in a timely manner (which shall not be less than 270 days prior to any notification under § 1310.21(a) of this part) that data, information or reports are being collected pursuant to this section for the purpose of the Council assessing whether or the extent to which a nonbank financial company poses a threat to the financial stability of the United States or considering the nonbank financial company for a proposed or final determination under § 1310.10(a).

(ii) Any notice sent by the Council pursuant to paragraph (b)(4)(i) shall —

(I) Be sent by the Council and shall not be delegated;

(II) Be made in writing and shall, include unredacted copies of the data, information or reports, including any data, information or reports in draft form, that have been collected and that are being used by the Council to consider the nonbank financial company for a proposed or final

determination under § 1310.10(a) or assess whether or the extent to which the nonbank financial company poses a threat to the financial stability of the United States; and

(III) Provide the nonbank financial company with a reasonable amount of time (not less than 180 days) to both review and respond to the data, information or reports that have been collected and that are being used by the Council and to voluntarily submit any data, information or reports that the nonbank financial company believes would be relevant to the Council's consideration, which the Council shall accept and consider.

(iii) The Council shall distribute any data, information or reports that the nonbank financial company has voluntarily submitted under paragraph (b)(ii)(III) to each of the Council's member agencies and shall provide the member agencies a reasonable amount of time to review and comment on such submissions prior to action by the Council under § 1310.10(a).

(5)(i) If within 180 days of sending a notice under paragraph (b)(4) the Council has not obtained through the authority in paragraphs (a) and (b)(1) through (4) the data, information or reports appropriate to fully and reliably consider a nonbank financial company for a proposed or final determination under § 1310.10(a), the Council shall so notify the nonbank financial company and shall provide it a reasonable opportunity to voluntarily submit such data, information or reports, which the Council shall accept and consider.

(ii) Any notice sent by the Council pursuant to paragraph (b)(5)(i) shall —

(I) Be made by the Council and shall not be delegated;

(II) Be made in writing and shall describe the significance of the data, information or reports to the Council's consideration, including the manner in which the Council expects to analyze the data, information or reports; and

(III) Provide the nonbank financial company with a reasonable amount of time to make a voluntary submission.

(6) At least every 90 days after a notice under paragraph (b)(4) of this section is sent to a nonbank financial company, and until a determination regarding whether a notice under § 1310.21(a) of this part will be provided to the nonbank financial company, the Council shall update the disclosure provided pursuant to paragraph (b)(4)(ii)(II) to reflect any additional data, information or reports, and shall provide the nonbank financial company with a reasonable opportunity both to review and respond to the additional data, information or reports, and to make voluntary supplemental submissions, which the Council shall accept and consider.

(7) No member of the Council or any other official, employee or agent of any member agency or any individual working at the direction of the Council is prohibited from discussing with the nonbank financial company, or any authorized representative of such nonbank financial company, the data, information or reports that have been collected under this § 1310.20 with respect to such nonbank financial company.

(c) *Consultation.* The Council shall 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 supervision by the Board of Governors under § 1310.10(a) in a timely manner before the Council makes any proposed or final determination under § 1310.10(a) with respect to such nonbank financial company. Before the Council makes a proposed or final determination, each primary financial regulatory agency for the nonbank financial company and its relevant subsidiaries shall be given the opportunity to certify whether its regulatory regime can adequately address the threat the Council believes to be posed by such company or its

subsidiaries to the financial stability of the United States. For purposes of this section, a primary financial regulatory agency may include state insurance, banking and financial regulators.

(d) *International coordination.* In exercising its duties under this part with respect to foreign nonbank financial companies and cross-border activities and markets, the Council, acting through its Chairperson or other authorized designee, shall consult with appropriate foreign regulatory authorities, to the extent appropriate.

(e) *Confidentiality*—

(1) In general. The Council shall maintain the confidentiality of any data, information, and reports submitted under this part, and disclosure of such information in accordance with the provisions of paragraph (b) of this part shall not constitute a breach of the Council's obligation to maintain the confidentiality of such data, information or reports.

(2) Retention of privilege. The submission of any non-publicly available data or information under this part shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

(3) Freedom of Information Act. Section 552 of title 5, United States Code, including the exceptions thereunder, and any regulations thereunder adopted by the Council, shall apply to any data, information, and reports submitted under this part.

§ 1310.21 Proposed and final determinations; notice and opportunity for an evidentiary hearing.

(a) *Written notice of consideration of determination; submission of materials.* Before providing a nonbank financial company written notice of a proposed determination pursuant to paragraph (b) of this section, the Council shall provide the nonbank financial company —

(1) Written notice that the Council is considering whether to make a proposed determination with respect to the nonbank financial company under § 1310.10(a), which notice shall set forth the factual basis for the Council's consideration including—

(i) The analysis of the data, information and reports on which the Council is relying for each consideration listed in §1310.11, as it relates to the probability that the nonbank financial company will pose a threat to the financial stability of the United States and the magnitude of that threat; and

(ii) Information reasonably necessary for the nonbank financial company to contest the factual basis for the Council's consideration through the submission of materials pursuant to paragraph (a)(2) of this section;

(2) A reasonable amount of time after receipt of the notice as provided in paragraph (a)(1) of this section, and prior to any vote on a proposed determination, to voluntarily submit any data, information or reports that the nonbank financial company believes would be relevant to the Council's consideration (which may include any information the nonbank financial company may have submitted under § 1310.20(b)(4)(ii)(II), including any revisions or supplements), which the Council shall accept and consider;

(3) An opportunity to submit written materials, within such time as the Council determines to be appropriate (which shall be not less than 60 days after the date of receipt by the nonbank financial company of the notice described in paragraph (a)(1)), to the Council to contest the Council's consideration of the nonbank financial company for a proposed determination,

including materials concerning whether, in the nonbank financial company's view, material financial distress at the nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company, could pose a threat to the financial stability of the United States;

(4) An opportunity, after receipt of the notice as provided in paragraph (a)(1) of this section, and prior to any vote on a proposed determination, for a nonbank financial company to meet in-person with the Council, if so requested by the nonbank financial company. Attendance by the Council at the meeting shall not be delegated; and

(5) Notice when the Council deems its evidentiary record regarding such nonbank financial company to be complete, including an update of the disclosure provided pursuant to § 1310.20(b)(4)(ii)(II) to include any additional data, information or reports, and an opportunity (which shall not be less than 30 days after the receipt of notice) for the nonbank financial company to review the complete unredacted evidentiary record and supplement it with any information necessary to correct material inaccuracies or omissions.

*(b) Notice of proposed determination; notice that Council has ceased considering for a proposed determination.*

(1) If the Council determines under § 1310.10(a) that a nonbank financial company should be supervised by the Board of Governors and be subject to prudential standards, the Council shall provide the nonbank financial company with written notice of the proposed determination.

(2) Any written notice provided by the Council pursuant to paragraph (b)(1) of this section shall contain a statement of the facts that provide the basis for the proposed determination and shall include—

(i) Detailed assessment of each consideration listed in §1310.11, as it relates to the probability that the nonbank financial company will pose a threat to the financial stability of the United States, and the magnitude of that threat;

(ii) Detailed assessment of the manner in which prudential standards would mitigate the threat that may be posed by the nonbank financial company; and

(iii) Information reasonably necessary for the nonbank financial company to evaluate and contest the Council's basis for the preliminary determination.

(3) If prior to the expiration of the 180-day time period in paragraph (f) of this section the Council determines that a nonbank financial company that has received a written notice pursuant to this paragraph (b) is no longer being considered for proposed determination, the Council shall promptly provide the nonbank financial company with notice of such. In that event, the nonbank financial company shall not be eligible for a proposed determination under §1310.10(a) unless the Council issues a new written notice of consideration under paragraph (a) of this section and complies with all applicable procedures of this section.

*(c) Evidentiary hearing.*

(1) Not later than 30 days after the date of receipt by a nonbank financial company of the notice of proposed determination under paragraph (b) of this section, the nonbank financial company may request, in writing, a nonpublic, evidentiary hearing before the Council to contest the proposed determination under §1310.10(a).

(2) Upon receipt by the Council of a timely request under paragraph (c)(1), the Council shall fix a time (not later than 30 days after the date of receipt by the Council of the request) and

place at which such nonbank financial company may appear, personally or through counsel, for a nonpublic evidentiary hearing at which the nonbank financial company may submit written materials (which may include any information the nonbank financial company may have submitted under § 1310.20(b)(4)(ii)(II), including any revisions or supplements) and present oral testimony and oral argument to contest the Council's proposed determination under § 1310.10(a), including materials concerning whether and to what extent, in the nonbank financial company's view, material financial distress at the nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company, could pose a threat to the financial stability of the United States and the optimal regulatory response to such threat.

(3) At least 25 days prior to an evidentiary hearing under this subsection, the Council shall provide notice to the nonbank financial company of any changes to the evidentiary record since the notice pursuant to paragraph (a)(3) of this section and such notice shall include complete unredacted copies of any new or revised materials, and an opportunity for the nonbank financial company to supplement the evidentiary record with any information necessary to correct material inaccuracies or omissions, which the Council shall accept and consider.

(d) *Final determination after evidentiary hearing.* If the nonbank financial company makes a timely request for an evidentiary hearing under paragraph (c) of this section, the Council shall, not later than 60 days after the hearing date—

(1) Determine whether to make a final determination under §1310.10(a);

(2) Notify the nonbank financial company, in writing, of any final determination of the Council under §1310.10(a), which notice shall contain a statement of the basis for the decision of the Council and shall include—

(i) Detailed final assessment of each consideration listed in §1310.11, as it relates to the probability that the nonbank financial company will pose a threat to the financial stability of the United States and the magnitude of that threat;

(ii) Detailed final assessment of the manner in which prudential standards would mitigate the threat to the financial stability of the United States that the Council has determined the nonbank financial company poses; and

(iii) Information necessary for the nonbank financial company to reasonably understand the explanations provided in paragraphs (d)(2)(i) and (ii) of this section, such that the nonbank financial company may modify its operations or structure to reduce or remove the threat to the financial stability of the United States that the nonbank financial company could potentially pose and thereby resolve the factors upon which the Council's final determination was based, such that supervision of the nonbank financial company by the Board of Governors would not be necessary to mitigate it; and

(3) If the Council makes a final determination under §1310.10(a), publicly announce the final determination of the Council.

(e) *No evidentiary hearing requested.* If a nonbank financial company does not make a timely request for an evidentiary hearing under paragraph (c) of this section or notifies the Council in writing that it is not requesting an evidentiary hearing under paragraph (c) of this section, the Council shall, not later than 10 days after the date by which the nonbank financial company could have requested a hearing under paragraph (c) of this section or 10 days after the

date on which the Council receives notice from the nonbank financial company that it is not requesting an evidentiary hearing, as applicable—

- (1) Determine whether to make a final determination under §1310.10(a);
- (2) Notify the nonbank financial company, in writing, of any final determination of the Council under §1310.10(a), which notice shall contain a statement of the basis for the decision of the Council and shall include the information specified in paragraph (d)(2)(i)-(iii) of this section; and
- (3) If the Council makes a final determination under §1310.10(a), publicly announce the final determination of the Council.

*(f) Time period for consideration.*

(1) If the Council does not make a proposed determination under §1310.10(a) with respect to a nonbank financial company within 180 days after the date on which the nonbank financial company receives the notice of completion of the Council's evidentiary record described in paragraph (a)(3) of this section, the nonbank financial company shall not be eligible for a proposed determination under §1310.10(a) unless the Council issues a subsequent written notice of consideration of determination under paragraph (a) of this section to such nonbank financial company.

(2) This paragraph (f) shall not limit the Council's ability to issue a subsequent written notice of consideration of determination under §1310.21(a) to any nonbank financial company that, within 180 days after the date on which such nonbank financial company received a notice described in paragraph (a)(3) of this section, does not become subject to a proposed determination under §1310.10(a).

§ 1310.22 Emergency exception to §§ 1310.20 and 1310.21.

(a) *Exception to §§ 1310.20 and 1310.21.* Notwithstanding anything to the contrary in §§ 1310.20 and 1310.21, the Council may waive or modify any or all of the notice and other procedural requirements of §§ 1310.20 and 1310.21 with respect to a nonbank financial company if—

- (1) The Council reasonably determines that—
  - (i) such waiver or modification is necessary or appropriate to prevent or mitigate the threat posed by the nonbank financial company to the financial stability of the United States; and
  - (ii) the threat posed by the nonbank financial company is imminent and no alternative to waiver or modification is available to address the threat; and
- (2) The Council provides written notice of the waiver or modification under this section to the nonbank financial company as soon as practicable, but not later than 24 hours after the waiver or modification is granted. Any such notice shall set forth the manner and form for transmitting a request for an evidentiary hearing under paragraph (c) of this section.

(b) *Consultation.* (1) In making a determination under paragraph (a) of this section with respect to a nonbank financial company, the Council shall consult with the primary financial regulatory agency, if any, for such nonbank financial company and each of its material subsidiaries, in such time and manner as the Council may reasonably deem appropriate. For

purposes of this section, a primary financial regulatory agency may include state insurance, banking and financial regulators.

(2) In making a determination under paragraph (a) of this section with respect to a foreign nonbank financial company, the Council shall consult with the appropriate home country supervisor, if any, of such foreign nonbank financial company and each of its material subsidiaries, in such time and manner as the Council may reasonably deem appropriate.

(c) *Opportunity for evidentiary hearing.* (1) If the Council, pursuant to paragraph (a) of this section, waives or modifies any of the notice or other procedural requirements of §§ 1310.20 and 1310.21 with respect to a nonbank financial company, the nonbank financial company may request, in writing, an opportunity for a nonpublic, evidentiary hearing before the Council to contest such waiver or modification, not later than 10 days after the date of receipt by the nonbank financial company of the notice described in paragraph (a)(2) of this section.

(2) Upon receipt of a timely request for an evidentiary hearing under paragraph (c)(1), the Council shall fix a time (not later than 15 days after the date of receipt by the Council of the request) and place at which the nonbank financial company may appear, personally or through counsel, for a nonpublic evidentiary hearing at which the nonbank financial company may submit written materials and present oral testimony and oral argument regarding the waiver or modification under this section.

(d) *Notice of final determination.* (1) If the nonbank financial company makes a timely request for an evidentiary hearing under paragraph (c) of this section with respect to the waiver or modification of any of the notice or other procedural requirements of § 1310.21, the Council shall, not later than 30 days after the hearing date—

- (i) Make a final determination regarding the waiver or modification under this § 1310.22;
- (ii) Notify the nonbank financial company, in writing, of the final determination of the Council regarding the waiver or modification under this § 1310.22, which notice shall contain a complete and detailed statement of the basis for the final decision of the Council; and
- (iii) If the Council makes a final determination under § 1310.10(a), publicly announce the final determination of the Council.

(2) If the nonbank financial company makes a timely request for an evidentiary hearing under paragraph (c) of this section with respect to the waiver or modification of any of the notice or other procedural requirements of § 1310.20, the Council shall, not later than 30 days after the hearing date take the actions described in (d)(1)(i) and (ii) of this section.

(e) *Vote required.* Any determination of the Council under paragraph (a)(1) of this section to waive or modify any of the notice or other procedural requirements of § 1310.21 shall—

- (1) Be made by the Council and shall not be delegated by the Council; and
- (2) Require the vote of not fewer than two-thirds of the voting members of the Council then serving, including the affirmative vote of the Chairperson of the Council.

(f) *When an emergency is deemed to exist.* For purposes of paragraph (a)(1)(ii) of this section, threats posed by the nonbank financial company shall be deemed to be imminent where the Council reasonably determines—



- (1) The nonbank financial company is in immediate danger of failing; and
- (2) The failure of the nonbank financial company and its resolution under applicable Federal or State law would have serious adverse effects on the financial stability of the United States.

§1310.23 Council reevaluation and rescission of determinations.

- (a) *Reevaluation and rescission.* The Council shall, not less frequently than annually—
  - (1) Reevaluate each currently effective determination made under §1310.10(a); and
  - (2) Rescind any such determination, if the Council determines that the nonbank financial company no longer meets the standard under §1310.10(a), taking into account the considerations in §1310.11(a) or §1310.11(b), as applicable.

- (b) *Notice of reevaluation; submission of materials.*

- (1) The Council shall provide written notice to each nonbank financial company subject to a currently effective determination prior to the Council's reevaluation of such determination under paragraph (a) of this section and shall provide such nonbank financial company an opportunity to submit written materials, within such time as the Council determines to be appropriate (which shall be not less than 30 days after the date of receipt by the nonbank financial company of such notice), to the Council to contest the determination, including materials concerning whether, in the nonbank financial company's view, material financial distress at the nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company, could pose a threat to the financial stability of the United States.

- (2) If a nonbank financial company contests the determination pursuant to paragraph (b)(1) of this section, and the Council decides not to rescind the determination, the Council shall so notify the nonbank financial company, in writing. The notice shall set forth the complete and detailed basis for the Council's decision, shall include the Council's detailed assessment of each consideration in § 1310.11, as it relates to the nonbank financial company's likelihood to pose a threat and the magnitude of that threat to the financial stability of the United States, and the reasons the nonbank financial company's actions to modify its operations or structure (if any) did not adequately remove the threat to the financial stability of the United States that the nonbank financial company may pose, and shall specify the aspects of the nonbank financial company's operations or structure that the Council believes continue to pose a threat, including the Council's complete and detailed assessments of the probability and magnitude of that threat. In addition, the notice shall include an appendix of complete unredacted copies of any data, information or reports, including any data, information or reports in draft form, that have been used by the Council in reaching its decision not to rescind the determination.

- (3) The Council shall provide, if requested by a nonbank financial company that was subject to a determination by the Council pursuant to § 1310 prior to [insert date of the adoption of the Petitioner's amendments], a new evaluation and determination process in accordance with the requirements of § 1310.20(b)(4)-(7), § 1310.20(c), and § 1310.21.

- (c) *Vote required.* Any determination of the Council under paragraph (a)(2) of this section to rescind a determination made with respect to a nonbank financial company shall—

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

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

(d) *Notice of rescission.* If the Council rescinds a determination with respect to any nonbank financial company under paragraph (a) of this section, the Council shall notify the nonbank financial company, in writing, of such rescission and publicly announce such rescission.

## **APPENDIX B:**

### **BRIEF OVERVIEW OF FSOC PROCESS CHANGES DISCUSSED ON NOVEMBER 12 WITH MEMBERS OF THE ASSOCIATIONS**

## APPENDIX B:

### BRIEF OVERVIEW OF FSOC PROCESS CHANGES DISCUSSED WITH MEMBERS OF THE ASSOCIATIONS

STAGE	ASSOCIATION RECOMMENDATIONS
<b>Topic 1: FSOC's Designation Process Improvements in Stages 2 and 3</b>	
<b>Stage 2</b>	<p data-bbox="321 394 570 426">Notice and Rationale</p> <ul style="list-style-type: none"> <li data-bbox="370 426 1398 462">- Notice that a company has advanced to Stage 2 and is under a “preliminary review”</li> <li data-bbox="370 462 1425 562">- An explanation of the rationale behind the FSOC’s decision to advance a company to Stage 2, including providing the specific triggers that caused the FSOC to advance the company</li> <li data-bbox="370 562 1175 598">- Provide the company with a copy of the data collected in Stage 1</li> <li data-bbox="370 598 1393 663">- Retain practice of not disclosing to the public the status of a company under review until FSOC has made a final designation decision</li> <li data-bbox="370 663 1373 728">- Work with the SEC to provide companies with confirmation that disclosure is not required while company is under a “preliminary review” by FSOC</li> </ul> <p data-bbox="321 764 639 795">Involving the Right Parties</p> <ul style="list-style-type: none"> <li data-bbox="370 795 1365 861">- Requiring that the FSOC engage a company’s primary regulator once a company enters Stage 2</li> <li data-bbox="370 861 1385 961">- Access to the FSOC’s principals and deputies, outside of a formal hearing process, and/or additional discretion for the FSOC staff to speak with representatives of companies under review</li> </ul> <p data-bbox="321 997 542 1029">Ongoing Dialogue</p> <ul style="list-style-type: none"> <li data-bbox="370 1029 1422 1094">- Dialogue and meetings between the company’s representatives and the FSOC starting the moment a company enters Stage 2</li> <li data-bbox="370 1094 1333 1159">- Meetings should address substance of designation process, as well as potential consequences of designation</li> <li data-bbox="370 1159 1430 1299">- Prior to sending an information request to the company’s primary regulator, FSOC consults with the company to explain what information is proposed to be collected and why that information is being sought, and seeks the company's views on relevant information for the request</li> <li data-bbox="370 1299 1073 1335">- Give company a copy of the actual information requests</li> <li data-bbox="370 1335 1143 1371">- Access to the information that is collected from the regulators</li> <li data-bbox="370 1371 1430 1436">- Access to other documents that have been collected by the regulators, such as research reports, and an explanation as to how the regulators are using the documents</li> <li data-bbox="370 1436 1390 1501">- A rolling disclosure schedule to provide information and documents on an ongoing basis to the company related to the FSOC’s review</li> <li data-bbox="370 1501 1419 1566">- The ability to supplement the information gathered by the FSOC in Stage 2 to correct any inaccuracies or fill any information gaps</li> <li data-bbox="370 1566 1373 1667">- FSOC should consider how other regulators, such as the IRS and SEC, currently engage with companies inside and outside of the examination process, as some of these processes have proven to work well</li> </ul> <p data-bbox="321 1703 667 1734">Clarity Regarding Next Steps</p> <ul style="list-style-type: none"> <li data-bbox="370 1734 1360 1835">- Notification when FSOC decides not to advance a company to Stage 3, and also notification if a company has been “reactivated” in the future for another Stage 2 review</li> </ul>

<b>Stage 3</b>	<p>Notice</p> <ul style="list-style-type: none"> <li>- When a company is advanced from Stage 2 to Stage 3, in addition to the formal notice, an explanation to the company regarding the reasons behind FSOC's decision to advance the company to Stage 3 and what information is still needed by the FSOC in order to reach a preliminary decision</li> </ul> <p>Ongoing Dialogue</p> <ul style="list-style-type: none"> <li>- An ongoing dialogue with the FSOC during Stage 3, so that the FSOC can keep the company informed as to how the process is proceeding and what risks the FSOC is considering</li> <li>- Access to the FSOC's principals and deputies outside of a formal hearing process and/or additional discretion for the FSOC staff to speak with representatives of companies under review</li> <li>- A rolling disclosure schedule to provide information and documents on an ongoing basis to the company related to the FSOC's review</li> <li>- The ability to review, and if necessary correct, the FSOC's evidentiary record prior to any evidentiary hearing</li> <li>- A presentation to the company of the FSOC's proposed designation rationale, and an opportunity for the company to submit a response to the FSOC's proposed designation rationale to make the case for why the company should not be designated (similar to a Wells Submission in SEC practice) before FSOC staff sends the company's file to the principals for a final vote</li> <li>- The company's response to the FSOC's proposed designation rationale should also be provided to the FSOC principals before they vote</li> <li>- An understanding that the FSOC may ask companies or trade associations for white paper submissions on issues where they may have questions, whether legal or factual, rather than solely relying upon the work of academics</li> </ul> <p>Final Designations</p> <ul style="list-style-type: none"> <li>- The Written Notice of Final Determination should provide a detailed final assessment of the company's risks and how the FSOC's tools mitigate such risks</li> <li>- The disclosure should provide the company with the ability to address the FSOC's concerns through divestiture or other means prior to the re-evaluation process, if the company wishes</li> </ul>
<b>Topic 2: Re-Evaluation Process</b>	
<b>After Stage 3</b>	<p>FSOC Standard</p> <ul style="list-style-type: none"> <li>- The FSOC's "material changes" standard may not be appropriate, as it does not provide the FSOC with the ability to reevaluate the basis for its original determination</li> </ul> <p>Dialogue and Rationale</p> <ul style="list-style-type: none"> <li>- Additional disclosures that allow the company to clearly address the specific concerns or issues that caused the FSOC to designate the company as a SIFI</li> <li>- Sufficient responses to the points made by the company, which clearly explain how a SIFI designation is still necessary</li> <li>- Access to the FSOC's principals and deputies and/or additional discretion for the FSOC staff to speak with representatives of companies being re-evaluated</li> </ul>

Topic 3: Public Disclosure	
After Stage 3	<p>Ongoing Dialogue</p> <ul style="list-style-type: none"> <li>- The FSOC and the designated company should negotiate the specifics about the public disclosure at the end of the SIFI designation process, and be done on a case by case basis</li> </ul> <p>Rationale and Guidance</p> <ul style="list-style-type: none"> <li>- FSOC should clearly explain how it meets its requirements under the Dodd-Frank Act by determining that a company exhibits specific risks that are mitigated through the designation process</li> <li>- The disclosure should provide other companies with guidance on risks and mitigants for systemic risk purposes (guidance should not disclose specific information on the designated company)</li> </ul> <p>Transparency</p> <ul style="list-style-type: none"> <li>- Periodic disclosure of the number of companies that were evaluated in a Stage 2 review that were not advanced to Stage 3, and evaluated in Stage 3 and not designated</li> </ul>