



asset management group

May 15, 2026

Financial Stability Oversight Council
Attn: Eric Froman
1500 Pennsylvania Avenue NW
Washington, DC 20220

Re: *Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies – RIN 4030 – ZA02*

Dear Mr. Froman:

The Asset Management Group of the Securities Industry and Financial Markets Association (“**SIFMA AMG**”)¹ appreciates the opportunity to comment on the Financial Stability Oversight Council’s (“**FSOC**”) proposed interpretative guidance (the “**Proposal**”)² amending FSOC’s process for the designation of certain nonbank financial companies (“**NBFCs**”) as systemically important financial institutions (“**SIFIs**”).³

SIFMA AMG has consistently engaged on this topic over the years, including multiple comment letters submitted to FSOC and others.⁴ We support FSOC’s continuing efforts to

¹ SIFMA AMG brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG’s members represent U.S. and global asset management firms whose combined assets under management exceed \$45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

² Fin. Stability Oversight Council, Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, 91 Fed. Reg. 15551 (Mar. 30, 2026).

³ 12 U.S.C. § 5323.

⁴ See Letter from Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, SIFMA, dated February 25, 2011, available at <https://www.sifma.org/wp-content/uploads/2017/05/sifma-submits-comments-to-fsoc-on-authority-to-require-supervision-and-regulation-of-certain-nonbank-financial-companies.pdf>; Letter from Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, SIFMA, dated December 15, 2011, available at <https://www.sifma.org/wp-content/uploads/2017/05/sifma-submits-comments-to-fsoc-on-the-authority-to-require-supervision-and-regulation-of-certain-nonbank-financial-companies.pdf>; Joint Trades Letter from Timothy Cameron, Esq., Managing Director and Head of SIFMA Asset Management Group and others, dated November 26, 2014, available at <https://www.sifma.org/wp-content/uploads/2017/05/sifma-amg-and-other-associations-writes-letter-to-the-fsoc-regarding-the-nonbank-designation-process.pdf>; Joint Trades Letter from Timothy Cameron, Esq., Managing Director and Head of SIFMA Asset Management Group and others, dated March 25, 2015, available at <https://www.sifma.org/wp-content/uploads/2017/05/sifma-amg-and-iaa-submit-comments-to-fsoc-on-notice-seeking-comment-on-asset-management-products-and-activities.pdf>; Letter from Timothy Cameron, Esq., Managing Director and Head of SIFMA Asset Management Group, dated May 13, 2019, available at https://www.sifma.org/wp-content/uploads/2019/05/Active_75778944_1_SIFMA-AMG-LETTER-TO-FSOC-MAY-13-2019-FINAL-PDF.pdf; Letter from Lindsey Weber Keljo, Esq., Managing Director and Head of SIFMA Asset Management Group, dated

develop the most effective and efficient mechanism to identify and address potential risks to U.S. financial stability, including with respect to NBFCs and the products and services they offer.

Executive Summary

We firmly believe the Proposal is exceptionally well designed to provide clear and effective guidance both to market participants and to their regulating agencies as to appropriately calibrated areas for focus, effective communication of concerns with opportunities for remediation, and recognition that risk is best addressed through regulations tailored to NBFC structure, products and services.

A summary of our views is as follows:

1. We appreciate the return to the “activities-based approach” in the 2019 Guidance (including the merger of both the designation process and analytical methodologies) as the most effective means for FSOC to identify and address potential risks to U.S. financial stability.
2. We support the updated analytic methodologies recognizing ever-developing market structures and practices and the value of fostering innovation in appropriately assessing new risks as they emerge.
3. FSOC should re-evaluate the proposed addition of asset valuation to the list of vulnerabilities for assessment.
4. FSOC is right to require a robust cost-benefit analysis prior to making a determination.
5. It is critically important for FSOC to engage with the applicable primary regulatory agency as to potential risks and the agency’s plans to address the potential risk.
6. FSOC is correct to raise its target for areas of systemic risk by focusing on threats “sufficient to inflict severe damage” to the US economy.

July 27, 2023, available at <https://www.sifma.org/wp-content/uploads/2023/07/SIFMA-AMG-Comment-Letter-on-FSOC-Proposals-7.27.23.pdf>; Letter from Lindsey Weber Keljo, Esq., Managing Director and Head of SIFMA Asset Management Group and others, dated July 14, 2025, available at https://www.sifma.org/wp-content/uploads/2025/07/250714_Joint-Trades-Letter_FSOC-Non-Bank-Guidance_Treasury_Final.pdf, and Letter from Lindsey Weber Keljo, Esq., Managing Director and Head of SIFMA Asset Management Group and others, dated October 30, 2025, available at https://www.sifma.org/wp-content/uploads/2025/10/Coalition-Letter_FSOC-Improvement-Act_House-10.29.25.pdf.

7. It is right for FSOC to identify potential steps an NFBC or primary regulator could take prior to SIFI designation.
8. We support the adoption of the Financial Stability Oversight Stability Act of 2025.

In addressing each of these topics, it is important to convey that evaluating and addressing risk should be conducted objectively, transparently, and consistently both in crafting effective measures to mitigate risk and in providing a clear roadmap for market participants and their regulatory agencies as they engage with the market.

Discussion

A. The “Activities-Based Approach” is the Preferred Approach to Address Risk to Financial Stability:

In 2019, FSOC took a significant and constructive step to address many of the concerns that had been raised over the years. The 2019 Guidance prioritized an “activities-based approach” to monitoring and addressing systemic risk and made clear that nonbank SIFI designation should be used “only if a potential risk or threat cannot be adequately addressed through an activities-based approach.”⁵

FSOC stated that the activities-based approach “is consistent with the [FSOC]’s priorities of identifying and addressing potential risks and emerging threats on a system-wide basis, in order to reduce the potential for competitive market distortions that could arise from entity-specific determinations, and allow relevant financial regulatory agencies to address identified potential risks” and that it “will enable the [FSOC] to effectively identify and address the underlying sources of risks to financial stability on a system-wide basis, rather than addressing risks only at a particular [NBFC] company that may be designated.”⁶

Our support for the activities-based approach is not new. Our perspectives expressed in this letter are consistent with comments we have previously provided.⁷ In short, the use of an activities-based approach best positions FSOC to achieve its statutory mission. A focus on monitoring new trends, products, and activities, as well as other broad industry-wide developments—coupled with active engagement by the expert regulators—is the best and most appropriate way to monitor and respond to risks to U.S. financial stability. Furthermore, an activities-based approach also best leverages the

⁵ 84 Fed. Reg. 71740 at 71742.

⁶ *Id.*

⁷ See, e.g., Letter from SIFMA AMG to Former Treasury Secretary Mnuchin (Aug. 18, 2017), *available at* <https://www.sifma.org/wp-content/uploads/2019/03/SIFMA-AMG-FINAL-PDF14.pdf>, and Letter from SIFMA AMG to FSOC (May 13, 2019), *available at* https://www.sifma.org/wp-content/uploads/2019/05/Active_75778944_1_SIFMA-AMG-LETTER-TO-FSOC-MAY-13-2019-FINAL-PDF.pdf.

expertise, skills and experience of the individual financial regulators that are experts in a given domain. FSOC correctly recognized these points when it proposed and adopted the 2019 Guidance.⁸

Moreover, an activities-based framework is the best approach for facilitating a practical path for de-designation by considering the designated entity's efforts to minimize its potential systemic risk and pursue an off-ramp. In establishing the designation process, Congress clearly anticipated that designated companies would be offered frequent opportunities to remove themselves from designation.⁹

We also supported—and continue to support—many of the other key changes introduced by the 2019 Guidance, particularly the:

- emphasis on leveraging data and expertise of primary regulators and existing regulatory frameworks.
- strict limitation on the use of entity-specific designations.
- elimination of stage 1 of the designation process.
- requirement for FSOC to consider the extent to which assets are managed rather than owned by the company and extent to which ownership of assets under management is diffuse.
- requirement for FSOC to conduct a cost-benefit analysis of any potential NBFC designation.
- creation of an off-ramp for potentially affected NBFCs prior to any designation by FSOC; and
- requirement to consider the *likelihood* of risks, including the likelihood of a company's material financial distress, if and when FSOC considers a Section 113 designation.

B. Updated Analytical Methodologies Recognize Emerging Trends While Fostering Innovation

In proposing a new list of detailed analytical methodologies, FSOC is appropriately balancing the identification of vulnerabilities while considering potential regulatory impediments to economic growth and innovation which could otherwise impede economic security. SIFMA AMG agrees that economic growth provides the strongest foundation for financial stability and it is wise to consider whether existing regulations are fit for purpose or inadvertently impose undue burdens on economic growth.

The proposed new guidance adds “impediments to economic growth and security” as an explicit factor when identifying potential risks to U.S. financial stability (e.g., regulations that are not “fit for purpose” or inhibit growth could undermine financial stability). We encourage FSOC to look to enumerated factors that are beneficial to economic growth and economic security, e.g. availability and cost of capital for small/mid sized businesses, regulatory burdens that constrain

⁸ See 84 Fed. Reg. 9028 at 9030–31. See also 84 Fed. Reg. 71740 at 71742, 71746.

⁹ 12 U.S.C. § 5323(d).

capital formation and investment, diversification of funding sources, credit risk dispersion, and the role of private markets in financing innovation, infrastructure and job creation.

We applaud FSOC's recognition that risk arises both from market participant activities and from outdated and inappropriate regulatory burdens and its intent to work with agencies to recognize the value of innovation and ensure the regulatory framework is efficient, effective, and forward-looking. In merging the existing designation process with the analytical methodologies, FSOC will be much better positioned to recognize how assessed risk can be met with right-sized regulations to mitigate the risk while fostering growth.

As the Council evaluates the issues with concentrated portfolios, hedging, or other risk-management strategies, we support conducting such an evaluation while also recognizing the value of innovation and economic growth.

We encourage the Council to explicitly recognize the distinct nature of exposure risks when a company is acting as an agent rather than a principal, consistent with the 2019 Guidance. In particular, in the case of a nonbank financial company that manages assets on behalf of customers or other third parties, the third parties' direct financial exposures are often to the issuers of the managed assets—rather than to the nonbank financial company managing those assets.

C. Asset Value Fluctuations are a Normal Market Function and are not Indicative of NBFC Risk.

The new guidance proposes to add “asset valuation” to a formal list of vulnerabilities that FSOC will take into account when evaluating potential financial stability risks (e.g., to determine whether there is a need for an activities-based reform recommendation or firm-specific designation). The “asset valuation” vulnerability factor would consider whether “sharp reductions” in the valuations of particular asset classes could trigger financial stability risk by causing significant losses for financial market participants that hold or are otherwise exposed to those assets.

We believe that while asset value fluctuation is a general market risk to be managed, we do not see it, in and of itself, as a specific risk relevant to any individual NBFC. Instead, the Council's other identified vulnerabilities, including leverage, liquidity, maturity mismatch, and concentration, to name a few, are specific to individual NBFCs and, as such, merit evaluation.

We therefore recommend that FSOC reconsider including asset valuation as a vulnerability to be monitored and instead focus on the entity-specific vulnerabilities within the overall activities-based approach as sufficient tools to monitor the impact on an entity of asset value fluctuation.

D. A Robust Cost-benefit Analysis is an Integral Part of Risk Assessment.

We agree with the Council that a robust cost-benefit analysis is an essential element of thoughtful decision-making. The elimination of such a consideration was a fundamental flaw in the 2023 Guidance as it raised the possibility of costly regulations to eliminate risk with no net benefit to the market and no value placed on innovation and economic growth.

The 2019 Guidance got it right as FSOC would (a) conduct a cost-benefit analysis prior to making any nonbank SIFI designation, and (b) ultimately conclude before making any such designation, that the expected benefits to financial stability from designation would justify any expected costs resulting from designation. The cost-benefit analysis should compare the costs and benefits of potential designation to other available tools and authorities in order to enable FSOC to select the tool that most effectively and efficiently mitigates the risk it has identified.

The cost-benefit analysis requirement also helps to ensure that FSOC actions are consistent with Administrative Procedure Act requirements and thereby increases the reliability of designations in the face of legal challenges, potentially decreasing the chance of legal disputes and related years of legal uncertainty. The need for this requirement is particularly clear in light of the litigation surrounding MetLife Inc.'s ("**MetLife**") designation—and the court's ultimate decision overturning the designation. In its *MetLife* opinion,¹⁰ the U.S. District Court recognized that consideration of the cost of regulation is "essential to reasoned rulemaking."

It is worth focusing on the details of that court decision that overturned FSOC's designation of MetLife, and the fact that it held that FSOC's designation decision was arbitrary and capricious because it failed to consider the costs of designating MetLife. FSOC unsuccessfully contended that it was not required to conduct a cost-benefit analysis as part of its designation of MetLife. FSOC argued that there was no express congressional command, and that the costs to MetLife were not relevant under the statutory standard.

The court examined the list of factors that the statute requires to be considered, including a catch-all factor encompassing "any other risk-related factors" that FSOC "deems appropriate." The court found that the costs of designation were a relevant "risk-related factor" that FSOC was required to consider. The court recognized that consideration of the cost of regulation is "essential to reasoned rulemaking." It also explained that FSOC's approach was at odds with the Supreme Court's ruling in *Michigan v. EPA*,¹¹ which provides that when a statute allows an agency to regulate when "appropriate," the agency must consider the costs of its regulation.

¹⁰ *MetLife, Inc. v. Fin. Stability Oversight Council*, 177 F. Supp. 3rd 219 (D.D.C. 2016).

¹¹ 576 U.S. 743 (2015).

Putting aside important legal requirements and court statements, the cost-benefit analysis requirement imposes a disciplined, rigorous, analytical process that ultimately leads FSOC to better, more reasoned decisions, and better public policy outcomes. A cost-benefit analysis requirement also helps ensure reasoned agency decision-making by requiring FSOC to consider alternatives to designation and to determine that the costs of designation would be justified by the resulting benefits to U.S. financial stability.

E. FSOC Engagement with the Relevant Primary Agency Appropriately Leverages such Agency's Expertise and is Critical Given the Agency's Expertise.

SIFMA AMG agrees with FSOC in confirming that if the Council's analysis identifies a potential risk to U.S. financial stability that merits action, the Council generally would work with the relevant financial regulatory agencies at the federal and state levels to respond to the potential risk. Coordination across agencies and following up on supervisory or regulatory actions are the appropriate steps to ensure the potential risk is adequately addressed.

We agree that primary regulators should take appropriate action, such as modifying their regulation or supervision of companies or markets under their authority, to mitigate potential risks to U.S. financial stability identified by FSOC. The Council would seek to take advantage of primary regulators' expertise and regulatory authorities to address the potential risk identified by the Council.

We support FSOC commencing the process for agencies to act to address a potential risk to U.S. financial stability. It is ideal for FSOC to communicate with the relevant primary agency about identified risks and invite a response to confirm plans to address such risks. In supporting the practice of communication between FSOC and the agencies, we want to emphasize that existing requirements and regimes already appropriately and effectively regulate the asset management industry. Along with regulatory coordination, FSOC could also consider using the FSOC annual report to identify risks and encourage necessary changes and regulatory action by the primary regulatory agencies.

Asset management firms are already comprehensively regulated and supervised by the SEC and the CFTC via robust regulation of the activities in which asset managers engage. We want to emphasize that bank-style prudential regulation is not well-suited to appropriately address what, if any, financial stability risk may exist in the asset management industry. Any financial stability concerns with respect to a particular asset manager do not impact the assets of that asset manager's clients, and performance issues with respect to a particular client account or fund remain contained to that account or fund (which are separate legal entities). Creditors of the investment adviser also do not have access or a claim to client accounts or funds.

With decades of experience in fulfilling its statutory mandates, the SEC is in the best position to evaluate, understand, and analyze any potential systemic risks of entities within its authority. In addition, regulators have significantly strengthened the regulatory regimes applicable to asset management firms over the past 15 years.

To cite just one important example, in 2020, SEC Rule 18f-4 was a major update to the regulatory framework for derivative use by registered investment companies. It recognized the important role that derivatives play for many funds in both portfolio strategy and risk management and limited the amount of leverage that a fund may obtain through derivatives, based on the calculation of value-at-risk (“**VaR**”) for the fund as well as for a designated reference portfolio. The rule required a risk governance structure, including VaR limits, model back testing, risk reporting, and a prescriptive program to quickly cure any breaches.

To the extent novel areas of risk surface with respect to various activities, regulators have proven their ability to identify and address these risks through the tools they already possess in their arsenal as well as through additional rulemaking and regulatory action.

F. We support FSOC’s focus on threats “sufficient to inflict severe damage” to the US economy.

Given the clear expertise of the regulating agencies, we fully support FSOC’s proposed focus on an impairment of financial intermediation or of financial market functioning to a degree that would be sufficient to inflict “severe damage on the broader U.S. economy.” The 2023 Guidance established too low a threshold of risk on threats that could “substantially impair” the financial system’s ability to support economic activity as we believe that the regulatory agencies are well placed and best prepared to address such level of risk.

G. It is right for FSOC to identify potential steps an NBFC or primary regulator could take prior to SIFI designation.

SIFI designation should be viewed as a last resort following the complete failure of an NBFC and/or its primary regulator to successfully mitigate identified risks. On that basis, it is appropriate for FSOC to identify steps a NBFC or its primary financial regulatory agency could take to address a potential threat to U.S. financial stability.

And, as noted above, in the event such risk would be sufficient to inflict “severe damage on the broader U.S. economy,” it is not unreasonable to set a deadline of six months to complete the remediation. Indeed, we would expect there to be independent and sufficient motivation for the NBFC and/or its primary regulator to avoid risk at that level and make all efforts to immediately mitigate the risk.

H. We Support a Legislative Solution for Oversight of NBFC Risk.

This represents the fourth round of notice-and-comment rulemaking since 2010 addressing how the Council approaches the exercise of its SIFI designation authority. Even if the Proposal is finalized, the history of prior revisions highlights the possibility that future administrations could again revisit or revise the framework, as occurred in 2023. This experience underscores the value of greater durability and certainty in how the Council exercises this significant authority.

Pending legislation in Congress would offer a more durable framework. The Financial Stability Oversight Improvement Act of 2025 (FSOC Improvement Act) would introduce a focused but meaningful addition to the SIFI designation process by requiring the Council, before voting on a proposed designation, to consider whether a potential threat posed by a nonbank financial company could be addressed through alternative means. These alternatives could include action by the Council using other authorities, action by the company's primary regulator, or action by the company itself. Only if the Council concludes that such alternatives are impracticable or insufficient to address the identified risk would it proceed with a proposed designation. The bill preserves the Council's flexibility, while encouraging a more comprehensive consideration of the full range of tools available to address risks to financial stability.

The FSOC Improvement Act was approved by the House of Representatives by voice vote on February 9, 2026. In light of this bipartisan support, we encourage the Administration to support timely Senate consideration of the legislation and, upon passage, to sign it into law.

Conclusion:

As noted above, SIFMA AMG fully supports the proposed guidance for potential SIFI designation. In our view, the proposed return to the 2019 "activities based" standard, the focus on a heightened level of risk, the inclusion of a cost benefit analysis, the full engagement with the regulatory agencies, the time for the NBFC to adopt changes ahead of designation, and the process for an off-ramp to designation are much needed and well-advised changes to the 2023 Guidance.

Letter to Mr. Froman
May 15, 2026
Page 10

If you have any questions or require additional information, please do not hesitate to contact William Thum at bthum@sifma.org, (202) 962-7381.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Thum', with a long horizontal flourish extending to the right.

William C. Thum
Managing Director and Assistant General Counsel
Asset Management Group
Securities Industry and Financial Markets Association