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appeal right as part of its written notification to the requester denying the fee reduction or waiver request. The requester shall clearly mark its appeal request and any envelope that encloses it with the words "Appeal for Fee Reduction/Waiver."

(g) *Notice of estimated fees; advance payments.* (1) When the Council estimates the fees for processing a request will exceed the limit set by the requester, and that amount is less than \$250, the Council shall notify the requester of the estimated costs, broken down by search, review and duplication fees. The requester must provide an agreement to pay the estimated costs, except that the requester may reformulate the request in an attempt to reduce the estimated fees.

(2) If the requester fails to state a limit and the costs are estimated to exceed \$250, the requester shall be notified of the estimated costs, broken down by search, review and duplication fees, and must pay such amount prior to the processing of the request, or provide satisfactory assurance of full payment if the requester has a history of prompt payment of FOIA fees. Alternatively, the requester may reformulate the request in such a way as to constitute a request for responsive records at a reduced fee.

(3) The Council reserves the right to request advance payment after a request is processed and before records are released.

(4) If a requester previously has failed to pay a fee within thirty (30) calendar days of the date of the billing, the requester shall be required to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Council begins to process a new request or the pending request.

(h) *Form of payment.* Payment may be made by check or money order paid to the Treasurer of the United States.

(i) *Charging interest.* The Council may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by the Council. The Council will follow the provisions

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of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(j) *Aggregating requests.* If the Council reasonably determines that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the Council may aggregate those requests and charge accordingly. The Council may presume that multiple requests involving related matters submitted within a thirty (30) calendar day period have been made in order to avoid fees. The Council shall not aggregate multiple requests involving unrelated matters.

PART 1310—AUTHORITY TO REQUIRE SUPERVISION AND REGULATION OF CERTAIN NONBANK FINANCIAL COMPANIES

Subpart A—General

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APPENDIX A TO PART 1310—FINANCIAL STABILITY OVERSIGHT COUNCIL GUIDANCE FOR NONBANK FINANCIAL COMPANY DETERMINATIONS

AUTHORITY: 12 U.S.C. 5321; 12 U.S.C. 5322; 12 U.S.C. 5323.

SOURCE: 77 FR 21651, Apr. 11, 2012, unless otherwise noted.

Subpart A—General

§ 1310.1 Authority and purpose.

(a) *Authority.* This part is issued by the Council under sections 111, 112 and 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) (12 U.S.C. 5321, 5322, and 5323).

(b) *Purpose.* The principal purposes of this part are to set forth the standards and procedures governing Council determinations under section 113 of the Dodd-Frank Act (12 U.S.C. 5323), including whether material financial distress at a 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 whether a nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with title I of the Dodd-Frank Act.

§ 1310.2 Definitions.

The terms used in this part have the following meanings—

Board of Governors. The term “Board of Governors” means the Board of Governors of the Federal Reserve System.

Commission. The term “Commission” means the Securities and Exchange Commission, except in the context of the Commodity Futures Trading Commission.

Council. The term “Council” means the Financial Stability Oversight Council.

Federal Insurance Office. The term “Federal Insurance Office” means the office established within the Department of the Treasury by section 502(a) of the Dodd-Frank Act (31 U.S.C. 301 (note)).

Foreign nonbank financial company. The term “foreign nonbank financial company” means a company (other than a company that is, or is treated in the United States as, a bank holding company) that is—

(1) Incorporated or organized in a country other than the United States; and

(2) “Predominantly engaged in financial activities,” as that term is defined in section 102(a)(6) of the Dodd-Frank

Act (12 U.S.C. 5311(a)(6)) and pursuant to any requirements for determining if a company is predominantly engaged in financial activities as established by regulation of the Board of Governors pursuant to section 102(b) of the Dodd-Frank Act (12 U.S.C. 5311(b)), including through a branch in the United States.

Hearing date. The term “hearing date” means the latest of—

(1) The date on which the Council has received all of the written materials timely submitted by a nonbank financial company for a hearing that is conducted without oral testimony pursuant to § 1310.21 or § 1310.22, as applicable;

(2) The final date on which the Council or its representatives convene to hear oral testimony presented by a nonbank financial company pursuant to § 1310.21 or § 1310.22, as applicable; and

(3) The date on which the Council has received all of the written materials timely submitted by a nonbank financial company to supplement any oral testimony and materials presented by the nonbank financial company pursuant to § 1310.21 or § 1310.22, as applicable.

Member agency. The term “member agency” means an agency represented by a voting member of the Council under section 111(b)(1) of the Dodd-Frank Act (12 U.S.C. 5321).

Nonbank financial company. The term “nonbank financial company” means a U.S. nonbank financial company or a foreign nonbank financial company.

Office of Financial Research. The term “Office of Financial Research” means the office established within the Department of the Treasury by section 152 of the Dodd-Frank Act (12 U.S.C. 5342).

Primary financial regulatory agency. The term “primary financial regulatory agency” means—

(1) The appropriate Federal banking agency, with respect to institutions described in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), except to the extent that an institution is or the activities of an institution are otherwise described in paragraph (2), (3), (4), or (5) of this definition;

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(2) The Commission, with respect to—

(i) Any broker or dealer that is registered with the Commission under the Securities Exchange Act of 1934, with respect to the activities of the broker or dealer that require the broker or dealer to be registered under that Act;

(ii) Any investment company that is registered with the Commission under the Investment Company Act of 1940, with respect to the activities of the investment company that require the investment company to be registered under that Act;

(iii) Any investment adviser that is registered with the Commission under the Investment Advisers Act of 1940, with respect to the investment advisory activities of such company and activities that are incidental to such advisory activities;

(iv) Any clearing agency registered with the Commission under the Securities Exchange Act of 1934, with respect to the activities of the clearing agency that require the agency to be registered under such Act;

(v) Any nationally recognized statistical rating organization registered with the Commission under the Securities Exchange Act of 1934;

(vi) Any transfer agent registered with the Commission under the Securities Exchange Act of 1934;

(vii) Any exchange registered as a national securities exchange with the Commission under the Securities Exchange Act of 1934;

(viii) Any national securities association registered with the Commission under the Securities Exchange Act of 1934;

(ix) Any securities information processor registered with the Commission under the Securities Exchange Act of 1934;

(x) The Municipal Securities Rule-making Board established under the Securities Exchange Act of 1934;

(xi) The Public Company Accounting Oversight Board established under the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 *et seq.*);

(xii) The Securities Investor Protection Corporation established under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa *et seq.*); and

(xiii) Any security-based swap execution facility, security-based swap data repository, security-based swap dealer or major security-based swap participant registered with the Commission under the Securities Exchange Act of 1934, with respect to the security-based swap activities of the person that require such person to be registered under such Act;

(3) The Commodity Futures Trading Commission, with respect to—

(i) Any futures commission merchant registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), with respect to the activities of the futures commission merchant that require the futures commission merchant to be registered under that Act;

(ii) Any commodity pool operator registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), with respect to the activities of the commodity pool operator that require the commodity pool operator to be registered under that Act, or a commodity pool, as defined in that Act;

(iii) Any commodity trading advisor or introducing broker registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), with respect to the activities of the commodity trading advisor or introducing broker that require the commodity trading advisor or introducing broker to be registered under that Act;

(iv) Any derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), with respect to the activities of the derivatives clearing organization that require the derivatives clearing organization to be registered under that Act;

(v) Any board of trade designated as a contract market by the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(vi) Any futures association registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(vii) Any retail foreign exchange dealer registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), with respect to the activities of the retail foreign exchange dealer that require the retail foreign exchange dealer to be registered under that Act;

(viii) Any swap execution facility, swap data repository, swap dealer, or major swap participant registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*) with respect to the swap activities of the person that require such person to be registered under that Act; and

(ix) Any registered entity as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a), with respect to the activities of the registered entity that require the registered entity to be registered under that Act;

(4) The State insurance authority of the State in which an insurance company is domiciled, with respect to the insurance activities and activities that are incidental to such insurance activities of an insurance company that is subject to supervision by the State insurance authority under State insurance law; and

(5) The Federal Housing Finance Agency, with respect to Federal Home Loan Banks or the Federal Home Loan Bank System, and with respect to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

Prudential standards. The term “prudential standards” means enhanced supervision and regulatory standards established by the Board of Governors under section 165 of the Dodd-Frank Act (12 U.S.C. 5365).

Significant companies. The terms “significant nonbank financial company” and “significant bank holding company” have the meanings ascribed to such terms by regulation of the Board of Governors issued under section 102(a)(7) of the Dodd-Frank Act (12 U.S.C. 5311(a)(7)).

U.S. nonbank financial company. The term “U.S. nonbank financial company” means a company (other than a bank holding company; a Farm Credit System institution chartered and subject to the provisions of the Farm

Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); a national securities exchange (or parent thereof), clearing agency (or parent thereof, unless the parent is a bank holding company), security-based swap execution facility, or security-based swap data repository registered with the Commission; a board of trade designated as a contract market by the Commodity Futures Trading Commission (or parent thereof); or a derivatives clearing organization (or parent thereof, unless the parent is a bank holding company), swap execution facility, or swap data repository registered with the Commodity Futures Trading Commission), that is—

(1) Incorporated or organized under the laws of the United States or any State; and

(2) “Predominantly engaged in financial activities,” as that term is defined in section 102(a)(6) of the Dodd-Frank Act (12 U.S.C. 5311(a)(6)), and pursuant to any requirements for determining if a company is predominantly engaged in financial activities as established by regulation of the Board of Governors pursuant to section 102(b) of the Dodd-Frank Act (12 U.S.C. 5311(b)).

§ 1310.3 Amendments.

The Council shall not amend or rescind appendix A to this part without providing the public with notice and an opportunity to comment in accordance with the procedures applicable to legislative rules under 5 U.S.C. 553.

[84 FR 8959, Mar. 13, 2019]

Subpart B—Determinations

§ 1310.10 Council determinations regarding nonbank financial companies.

(a) *Determinations.* The Council may determine that a nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards, in accordance with title I of the Dodd-Frank Act, if the Council determines that 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.

(b) *Vote required.* Any proposed or final determination under paragraph (a) of this section 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.

(c) *Back-up examination by the Board of Governors.* (1) If the Council is unable to determine whether the financial activities of a U.S. nonbank financial company, including a U.S. nonbank financial company that is owned by a foreign nonbank financial company, pose a threat to the financial stability of the United States, based on information or reports obtained by the Council under §1310.20, including discussions with management, and publicly available information, the Council may request the Board of Governors, and the Board of Governors is authorized, to conduct an examination of the U.S. nonbank financial company and its subsidiaries for the sole purpose of determining whether the nonbank financial company should be supervised by the Board of Governors for purposes of title I of the Dodd-Frank Act (12 U.S.C. 5311–5374).

(2) The Council shall review the results of the examination of a nonbank financial company, including its subsidiaries, conducted by the Board of Governors under this paragraph (c) in connection with any proposed or final determination under paragraph (a) of this section with respect to the nonbank financial company.

§1310.11 Considerations in making proposed and final determinations.

(a) *Considerations for U.S. nonbank financial companies.* In making a proposed or final determination under §1310.10(a) with respect to a U.S. nonbank financial company, the Council shall consider—

(1) The extent of the leverage of the U.S. nonbank financial company and its subsidiaries;

(2) The extent and nature of the off-balance-sheet exposures of the U.S. nonbank financial company and its subsidiaries;

(3) The extent and nature of the transactions and relationships of the U.S. nonbank financial company and its subsidiaries with other significant nonbank financial companies and significant bank holding companies;

(4) The importance of the U.S. nonbank financial company and its subsidiaries as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(5) The importance of the U.S. nonbank financial company and its subsidiaries as a source of credit for low-income, minority, or underserved communities, and the impact that the failure of such U.S. nonbank financial company would have on the availability of credit in such communities;

(6) The extent to which assets are managed rather than owned by the U.S. nonbank financial company and its subsidiaries, and the extent to which ownership of assets under management is diffuse;

(7) The nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the U.S. nonbank financial company and its subsidiaries;

(8) The degree to which the U.S. nonbank financial company and its subsidiaries are already regulated by 1 or more primary financial regulatory agencies;

(9) The amount and nature of the financial assets of the U.S. nonbank financial company and its subsidiaries;

(10) The amount and types of the liabilities of the U.S. nonbank financial company and its subsidiaries, including the degree of reliance on short-term funding; and

(11) Any other risk-related factor that the Council deems appropriate, either by regulation or on a case-by-case basis.

(b) *Considerations for foreign nonbank financial companies.* In making a proposed or final determination under §1310.10(a) with respect to a foreign nonbank financial company, the Council shall consider—

(1) The extent of the leverage of the foreign nonbank financial company and its subsidiaries;

(2) The extent and nature of the United States related off-balance-sheet exposures of the foreign nonbank financial company and its subsidiaries;

(3) The extent and nature of the transactions and relationships of the foreign nonbank financial company and its subsidiaries with other significant nonbank financial companies and significant bank holding companies;

(4) The importance of the foreign nonbank financial company and its subsidiaries as a source of credit for United States households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(5) The importance of the foreign nonbank financial company and its subsidiaries as a source of credit for low-income, minority, or underserved communities in the United States, and the impact that the failure of such foreign nonbank financial company would have on the availability of credit in such communities;

(6) The extent to which assets are managed rather than owned by the foreign nonbank financial company and its subsidiaries and the extent to which ownership of assets under management is diffuse;

(7) The nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the foreign nonbank financial company and its subsidiaries;

(8) The extent to which the foreign nonbank financial company and its subsidiaries are subject to prudential standards on a consolidated basis in the foreign nonbank financial company's home country that are administered and enforced by a comparable foreign supervisory authority;

(9) The amount and nature of the United States financial assets of the foreign nonbank financial company and its subsidiaries;

(10) The amount and nature of the liabilities of the foreign nonbank financial company and its subsidiaries used to fund activities and operations in the United States, including the degree of reliance on short-term funding; and

(11) Any other risk-related factor that the Council deems appropriate, either by regulation or on a case-by-case basis.

§ 1310.12 Anti-evasion provision.

(a) *Determinations.* In order to avoid evasion of title I of the Dodd-Frank Act (12 U.S.C. 5311-5374) or this part, the Council, on its own initiative or at the request of the Board of Governors, may require that the financial activities of a company shall be supervised by the Board of Governors and subject to prudential standards if the Council determines that—

(1) Material financial distress related to, or the nature, scope, size, scale, concentration, interconnectedness, or mix of, the financial activities conducted directly or indirectly by a company incorporated or organized under the laws of the United States or any State or the financial activities in the United States of a company incorporated or organized in a country other than the United States would pose a threat to the financial stability of the United States, based on consideration of the factors in—

(i) § 1310.11(a) if the company is incorporated or organized under the laws of the United States or any State; or

(ii) § 1310.11(b) if the company is incorporated or organized in a country other than the United States; and

(2) The company is organized or operates in such a manner as to evade the application of title I of the Dodd-Frank Act (12 U.S.C. 5311-5374) or this part.

(b) *Vote required.* Any proposed or final determination under paragraph (a) of this section 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.

(c) *Definition of covered financial activities.* For purposes of this section, the term “financial activities”—

(1) Means activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956);

(2) Includes the ownership or control of one or more insured depository institutions; and

(3) Does not include internal financial activities conducted for the company or any affiliate thereof, including

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internal treasury, investment, and employee benefit functions.

(d) *Application of other provisions.* Sections 1310.20(a), 1310.20(b), 1310.20(c), 1310.20(e), 1310.21, 1310.22, and 1310.23, and the definitions referred to therein, shall apply to proposed and final determinations of the Council with respect to the financial activities of a company pursuant to this section in the same manner as such sections apply to proposed and final determinations of the Council with respect to nonbank financial companies.

Subpart C—Information Collection; Proposed and Final Determinations; Evidentiary Hearings

§ 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 nonbank financial companies.* (1) 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.

(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.

(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) The Council may, to the extent the Council determines appropriate, accept the submission of any data, information, and reports voluntarily submitted by any 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.

(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 final determination under § 1310.10(a) with respect to such nonbank financial company.

(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.

(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);

(2) 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 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

(3) Notice when the Council deems its evidentiary record regarding such nonbank financial company to be complete.

(b) *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 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.

(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, oral testimony and oral argument) to contest the proposed determination under § 1310.10(a), 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.

(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

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

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(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

(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).

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§ 1310.22 Emergency exception to § 1310.21.

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

(1) The Council determines that such waiver or modification is necessary or appropriate to prevent or mitigate threats posed by the nonbank financial company to the financial stability of the United States; 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, in such time and manner as the Council may deem appropriate.

(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, in such time and manner as the Council may 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 § 1310.21 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

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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, oral testimony and oral argument) regarding the waiver or modification under this section.

(d) *Notice of final determination.* 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 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 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.

(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.

§ 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.* 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.

(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.