

Minutes of the Financial Stability Oversight Council

February 21, 2018

PRESENT:

Steven T. Mnuchin, Secretary of the Treasury and Chairperson of the Financial Stability Oversight Council (Council)
Jerome H. Powell, Chairman, Board of Governors of the Federal Reserve System (Federal Reserve)
Martin J. Gruenberg, Chairperson, Federal Deposit Insurance Corporation (FDIC)
Jay Clayton, Chairman, Securities and Exchange Commission (SEC)
J. Christopher Giancarlo, Chairman, Commodity Futures Trading Commission (CFTC) (by telephone)
J. Michael Mulvaney, Acting Director, Consumer Financial Protection Bureau (CFPB) (by telephone)
Melvin Watt, Director, Federal Housing Finance Agency (FHFA)
Joseph Otting, Comptroller of the Currency, Office of the Comptroller of the Currency (OCC)
J. Mark McWatters, Chairman, National Credit Union Administration (NCUA)
S. Roy Woodall, Independent Member with Insurance Expertise
Ken Phelan, Acting Director, Office of Financial Research (OFR), Department of the Treasury (non-voting member)
Ray Grace, Commissioner, North Carolina Office of the Commissioner of Banks (non-voting member)
Peter Hartt, Director, Insurance Division, New Jersey Department of Banking & Insurance (non-voting member)
Melanie Lubin, Securities Commissioner, Maryland Office of the Attorney General, Securities Division (non-voting member)

GUESTS:

Department of the Treasury (Treasury)

Craig Phillips, Counselor to the Secretary
Brent McIntosh, General Counsel
Brian Callanan, Deputy General Counsel
Bimal Patel, Deputy Assistant Secretary for the Council
Eric Froman, Principal Deputy Assistant General Counsel (Banking and Finance) and Executive Director of the Council
Stephen Ledbetter, Director of Policy, Office of the Financial Stability Oversight Council

Board of Governors of the Federal Reserve System

Andreas Lehnert, Director, Division of Financial Stability

Federal Deposit Insurance Corporation

Jason Cave, Special Advisor to the Chairman for Supervisory Matters

Securities and Exchange Commission

Michael Piwowar, Commissioner
Jaime Klima, Chief Counsel

Commodity Futures Trading Commission

Richard Danker, Special Advisor

Consumer Financial Protection Bureau

Brian Johnson, Senior Advisor to the Acting Director

Federal Housing Finance Agency

Sandra Thompson, Deputy Director, Division of Housing Mission and Goals

Comptroller of the Currency

Grace Dailey, Senior Deputy Comptroller for Bank Supervision Policy and Chief National Bank Examiner

National Credit Union Administration

Ralph Monaco, Chief Economist

Office of the Independent Member with Insurance Expertise

Diane Fraser, Senior Policy Advisor

Federal Reserve Bank of New York

William Dudley, President and Chief Executive Officer

Office of Financial Research

Stacey Schreft, Deputy Director for Research and Analysis

Federal Insurance Office

Steven Seitz, Deputy Director

North Carolina Office of the Commissioner of Banks

Jim Cooper, Senior Vice President for Policy, Conference of State Bank Supervisors

New Jersey Department of Banking & Insurance

Mark Sagat, Assistant Director, Financial Policy and Legislation, National Association of Insurance Commissioners

Maryland Office of the Attorney General, Securities Division

Christopher Staley, Counsel, North American Securities Administrators Association

PRESENTERS:

Council Process for Applications Under Section 117 of the Dodd-Frank Act

- *Bimal Patel, Deputy Assistant Secretary for the Council, Treasury*
- *Eric Froman, Principal Deputy Assistant General Counsel (Banking and Finance) and Executive Director of the Council, Treasury*
- *Stephen Ledbetter, Director of Policy, Office of the Financial Stability Oversight Council, Treasury (available for questions)*

Update on Annual Reevaluation of Nonbank Financial Company Designation

- *Bimal Patel, Deputy Assistant Secretary for the Council, Treasury*
- *Stephen Ledbetter, Director of Policy, Office of the Financial Stability Oversight Council, Treasury*

Executive Session

The Chairperson called the executive session of the meeting of the Council to order at approximately 4:06 P.M.

The Chairperson began by welcoming Jerome H. Powell, Chairman of the Federal Reserve, and Joseph Otting, Comptroller of the Currency, to their first meetings as members of the Council. The Chairperson then outlined the meeting agenda, which had previously been distributed to the members together with other materials. The agenda for the executive session of the meeting included (1) a vote on the minutes of the Council's meeting on December 14, 2017; (2) the Council's process for considering applications under section 117 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act); and (3) an update on the annual reevaluation of the designation of a nonbank financial company.

1. Resolution Approving the Minutes of the Meeting Held on December 14, 2017

BE IT RESOLVED, by the Financial Stability Oversight Council (the "Council"), that the minutes attached hereto of the meeting held on December 14, 2017 of the Council are hereby approved.

The Chairperson asked for a motion to approve the resolution, which was made and seconded. The Council approved the resolution by unanimous vote.

2. Council Process for Applications Under Section 117 of the Dodd-Frank Act

The Chairperson introduced the next agenda item, the Council's process for considering applications under section 117 of the Dodd-Frank Act. Jay Clayton, Chairman of the SEC, did not participate in the discussion, and Michael Piwowar, SEC Commissioner, participated in the discussion. The Chairperson turned to Bimal Patel, Deputy Assistant Secretary for the Council at Treasury, and Eric Froman, Principal Deputy Assistant General Counsel (Banking and Finance) and Executive Director of the Council at Treasury.

Mr. Patel then presented on a potential framework for how the Council could consider appeals that are submitted to it generally under section 117 of the Dodd-Frank Act. Mr. Patel began by describing the application and purpose of section 117. He noted that section 117 applies to any entity (or its successor) that was a bank holding company with assets of at least \$50 billion as of January 1, 2010, and participated in the Capital Purchase Program under the Troubled Asset Relief Program. He stated that under section 117, if such an entity ceases to be a bank holding company, it is automatically treated as if the Council had designated it as a nonbank financial company for Federal Reserve supervision and enhanced prudential standards. He noted that the Federal Reserve is responsible for determining whether an entity is a “successor” under section 117 and that the Federal Reserve has indicated that it will do so on a case-by-case basis in consultation with the Council.

Mr. Patel then described a process staff proposed for the Council to follow in considering applications under section 117. First, he noted that staff proposed that the Council consider an appeal under section 117 from an entity that either (1) has ceased to be a bank holding company or (2) has entered into an agreement for a transaction that would result in the entity ceasing to be a bank holding company. He noted that in the case of an entity that has not yet ceased to be a bank holding company, the Council could consider imposing conditions before granting an appeal. Mr. Patel stated that staff proposed that if an entity notifies the Council that it intends to submit an appeal to the Council, the company would be invited to meet with staff on the Council’s Nonbank Designations Committee before submitting its request to the Council under section 117. Mr. Patel also noted that the Council could, through the OFR, issue a data request to an applicant either before or after it submits its formal request to the Council.

Mr. Patel then described the process for hearings under section 117. He noted that a company can initiate a request under section 117 at any time by submitting a hearing request to the Council. He explained that an applicant may request a written or oral hearing before the Council to appeal its treatment under section 117. He stated that upon receiving a request for a hearing, the Council must then hold a hearing within 30 days and that an applicant has a right to a written hearing. Mr. Patel then stated that staff proposed that the Council amend its existing hearing procedures so that they would apply to hearings under section 117. He noted that the Council’s existing hearing procedures currently apply only to nonbank financial company and financial market utility designations. He said that the hearing procedures describe the processes for requesting a hearing, specifying the hearing date, and conducting hearings. Mr. Patel noted that a written hearing involves a submission of written materials by the applicant to the Council, and that an oral hearing consists of an oral presentation by the applicant to the Council or its representatives at which Council members could ask questions. He stated that oral hearings would be transcribed.

Mr. Patel then described the statutory timeline for applications under section 117. He stated that the Council is required to issue an explanation of the basis for its proposed decision within 60 days after a hearing. He said that the proposed basis would be submitted to Congress, provided to the applicant, and posted online. He said that staff proposed that before the Council issues a proposed decision, the Council would not publicly disclose the name of the applicant unless the applicant publicly discloses its appeal, and that any sensitive, confidential information in the Council’s analysis would be redacted from the public statements. Mr. Patel then stated that the

Council is required to issue an explanation of the basis for its final decision within 60 days after the later of (1) the date the Council submits its proposed decision to Congress or (2) if, within one year after the Council's proposed decision, the Senate Banking or House Financial Services Committee holds a hearing on it, the date of the last such hearing. Mr. Patel stated that to comply with this deadline, staff proposed that the Council issue a final decision within 60 days after its proposed decision unless a Congressional hearing is scheduled by the end of that 60-day period.

Mr. Patel then described the Council's substantive analysis of applications under section 117. He stated that the Council is statutorily required to consider whether an applicant meets the statutory standards for the designation of a nonbank financial company under section 113 of the Dodd-Frank Act, and whether the applicant meets the statutory definition of "nonbank financial company" in the Dodd-Frank Act. He stated that staff proposed that the framework of the Council's analysis would be similar to that used for the Council's recently completed reevaluation of the designation of American International Group, Inc. Specifically, he stated that staff proposed that the Council's analysis of applicants would be organized around the three transmission channels the Council used in evaluating nonbank financial companies under section 113 of the Dodd-Frank Act (the exposure, asset liquidation, and critical function or service transmission channels), as well as the company's regulatory scrutiny and complexity and resolvability. Mr. Patel noted that for an applicant that is a bank, staff proposed that the Council consider relevant bank-centric metrics (such as data reported by bank holding companies on the Federal Reserve's systemic risk report, Form FR Y-15).

Finally, Mr. Patel noted that if the Council denies an appeal under section 117, the Council is statutorily required to reevaluate its decision at least annually. He stated that staff proposed that for annual reevaluations under section 117, the Council would follow a process similar to its process for annual reevaluations of nonbank designations.

Members of the Council then asked questions and had a discussion, including regarding potential analytic approaches the Council could apply in its analyses and the scope of permissible applicants under section 117. The Council took no formal action on the staff's proposal.

3. Other Business

The Chairperson then noted recent market volatility, and stated that markets had continued to operate in an orderly fashion. Members of the Council and William Dudley, President and Chief Executive Officer of the Federal Reserve Bank of New York, then provided updates on fluctuations in various asset classes (including cryptocurrency futures) and the impacts on financial institutions and markets. It was noted that recent volatility did not appear to have significant macroeconomic implications, and that markets had functioned in an orderly manner. Council members noted that they continue to monitor market developments.

4. Update on Annual Reevaluation of Nonbank Financial Company Designation

The Chairperson then introduced the next agenda item, an update on the annual reevaluation of a nonbank financial company that the Council had previously designated under section 113 of the

Dodd-Frank Act. The Chairperson introduced Bimal Patel, Deputy Assistant Secretary for the Council at Treasury, and Stephen Ledbetter, Director of Policy in the Office of the Financial Stability Oversight Council at Treasury. Chairman Clayton recused himself from participating in the discussion, and Michael Piwovar, SEC Commissioner, participated in the discussion.

Mr. Ledbetter summarized the Council's basis for its original designation of the company and explained the Council's process for annually reevaluating each of its previous designations. He noted that the Council had invited the company to submit information to the Council as a part of the annual reevaluation. He stated that the staff analysis of the company was ongoing and that staff would consult with the company's federal and state regulators. Mr. Ledbetter then provided an overview of the company. He described the company's business, assets, and liabilities. He also described the company's written submission to the Council in connection with the Council's annual reevaluation of the designation.

Mr. Ledbetter then described developments over time at the company with respect to the three transmission channels through which the Council assesses the potential for material financial distress at a nonbank financial company to pose a threat to financial stability. He described factors relating to the exposures of market participants to the company; the potential for forced asset liquidations by the company; and critical functions or services provided by the company. He also described developments related to the company's resolvability and complexity and the existing regulatory scrutiny of the company. Mr. Patel then further described the preliminary staff analysis with respect to the three transmission channels.

Members of the Council then asked questions and had a discussion, including regarding the Council's timing and process for conducting annual reevaluations, the statutory standards for the Council's designations, and the company's existing regulatory scrutiny.

5. Other Business

The Chairperson then noted that Treasury was working to restructure the OFR, and he introduced Ken Phelan, Acting Director of the OFR. Mr. Phelan explained that he and Treasury were working to cut the OFR's expenses and reduce its workforce to create an organization that is leaner and better able to serve the Council. He stated that the OFR's focus should be on serving the needs of the Council. Craig Phillips, Counselor to the Secretary at Treasury, then stated that the OFR is an important body and that Treasury is trying to improve it. The Chairperson then noted that the OFR is a resource for the entire Council and that he wants to ensure that it is a useful organization that serves the Council.

The Chairperson adjourned the meeting at approximately 4:55 P.M.