

AGENCY: Financial Stability Oversight Council.

ACTION: Notice of availability.

SUMMARY: The Financial Stability Oversight Council (Council) has adopted amendments to its procedures for hearings conducted by the Council under Title I and Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).¹ The amendments were adopted primarily in order to add hearings conducted under section 117 of the Dodd-Frank Act to the scope of the procedures.

DATES: The amendments to the hearing procedures were effective on March 13, 2018. Written comments on the amendments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Eric A. Froman, Executive Director, Financial Stability Oversight Council, U.S. Treasury Department, (202) 622-1942; Stephen T. Milligan, Attorney-Advisor, U.S. Treasury Department, (202) 622-4051.

ADDRESSES:

Interested persons are invited to submit comments on the procedures according to the instructions below. All submissions must refer to the document title.

Electronic submission of comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Council to make them available to the public. Comments submitted electronically through the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the

¹ P.L. 111-203 (Jul. 21, 2010).

public. Commenters should follow the instructions provided on that site to submit comments electronically.

Mail. Send comments to Financial Stability Oversight Council, 1500 Pennsylvania Avenue NW, Washington, D.C. 20220.

Public inspection of comments. All properly submitted comments will be available for inspection and downloading at <http://www.regulations.gov>.

Additional instructions. In general, comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

SUPPLEMENTARY INFORMATION:

Background

On May 22, 2012, the Council approved hearing procedures relating to the conduct of hearings before the Council in connection with proposed determinations regarding nonbank financial companies and financial market utilities and related emergency waivers or modifications under sections 113 and 804 of the Dodd-Frank Act.² At the time, the Council sought public comment on all aspects of the hearing procedures, in order to further consider whether any provision should be modified. On April 4, 2013, the Council approved certain amendments to the hearing procedures to expand their scope to include hearings for financial institutions engaged in payment, clearing, or settlement activities that are the subject of a proposed designation by the Council under Title VIII of the Dodd-Frank Act.³

Amendments to Hearing Procedures

² 12 U.S.C. 5323, 5463; 77 FR 31,855 (May 30, 2012).

³ 78 FR 22,546 (April 16, 2013).

On March 13, 2018, the Council adopted amendments to the hearing procedures, primarily to add hearings conducted under section 117 of the Dodd-Frank Act to the scope of the procedures. The Council has posted the amended hearing procedures on its website at <https://www.treasury.gov/initiatives/fsoc/designations/Pages/Hearing-Procedures.aspx> and on <http://www.regulations.gov>. Although the amendments were effective when adopted, the Council is requesting comments on the procedures and may make further amendments to reflect any comments received.

Section 117 of the Dodd-Frank Act applies to an entity that was a bank holding company having total consolidated assets equal to or greater than \$50 billion as of January 1, 2010, that received financial assistance under or participated in the Capital Purchase Plan established under the Troubled Asset Relief Program authorized by the Emergency Economic Stabilization Act of 2008, and to any successor entity (as defined by the Board of Governors of the Federal Reserve System (Board of Governors) in consultation with the Council) to such a bank holding company.⁴ Section 117(b) of the Dodd-Frank Act provides that such an entity shall, if it ceases to be a bank holding company, be treated as a nonbank financial company subject to supervision by the Board of Governors as if the Council had made a determination under section 113 of the Dodd-Frank Act with respect to that entity.⁵ Section 117(c) of the Dodd-Frank Act provides that an entity may request, in writing, an opportunity for a written or oral hearing before the Council to appeal its treatment as a nonbank financial company supervised by the Board of Governors.⁶

The Council amended the hearing procedures to add hearings conducted under section 117 of the Dodd-Frank Act to the scope of the procedures. Specifically, the Council amended the definition of “petitioner” in section 2 of the hearing procedures to add a reference to entities that are appealing their treatment pursuant to section 117 of the Dodd-Frank Act. Section 3(b) of the hearing procedures was amended to

⁴ 12 U.S.C. 5327.

⁵ 12 U.S.C. 5327(b).

⁶ 12 U.S.C. 5327(c).

provide that a petitioner that is appealing its treatment pursuant to section 117 may request a hearing by submitting a written request to the Chairperson of the Council. Section 5(b)(3)(ii) of the hearing procedures was amended to provide that any petitioner, including a petitioner appealing its treatment pursuant to section 117 of the Dodd-Frank Act, may submit additional written materials to supplement any materials presented during an oral hearing not later than 7 days after the date of that hearing. A new paragraph (4) was added to section 5(b) to provide that, in cases where an oral hearing is held under section 113 or 117 of the Dodd-Frank Act, the date of the hearing shall be deemed to be the date on which the Council has received any supplemental materials that are timely submitted after the oral hearing. The definition of “hearing date” in section 2 was accordingly deleted as unnecessary.

To reflect the addition of hearings conducted under section 117 of the Dodd-Frank Act to the scope of the procedures, conforming changes were made to sections 1(a) and (b) (regarding the authority for and scope of the procedures); section 4(b) (regarding the submission of written materials); section 7 (regarding the denial and dismissal of a hearing); and section 8(a) (providing that the substantive standards for Council review of petitions is not affected by the hearing procedures).

Finally, the Council made certain non-substantive or technical changes to update the hearing procedures. Specifically, the definitions of “hearing” and “oral hearing” in section 2 were deleted as unnecessary. Section 5(c)(2) was amended to clarify that, even when the Council determines to conduct an oral hearing through representatives, each member of the Council is entitled to participate in the oral hearing in lieu of appointing a representative. The former section 5(d)(1), providing that if the Council grants a request for an oral hearing, the hearing shall be conducted through both the submission of written materials and an oral hearing, was omitted from the hearing procedures as redundant with other provisions in the procedures. The former section 5(d)(2), providing for the conduct of an oral hearing, was redesignated as section 5(c)(3) and amended to add, consistent with the Council’s past practice, that the Chairperson of the Council, his representative, or the Hearing Clerk (as defined in the procedures) will preside at an oral hearing. Section 5(e), regarding transcripts of oral hearings, was redesignated as section 5(d) and

amended to remove the reference to the petitioner's right to "inspect" a transcript or other recording of the oral argument, leaving the reference to the petitioner's right to receive a copy of the transcript or other recording and to submit corrections.

Dated: March 13, 2018

Eric A. Froman

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Financial Stability Oversight Council