

Financial Stability Oversight Council

Hearing Procedures for Proceedings Under Title I or Title VIII of the Dodd-Frank

Wall Street Reform and Consumer Protection Act

§ 1 Authority and purpose.

(a) Authority. These hearing procedures are issued by the Financial Stability Oversight Council (“Council”) pursuant to sections 111, 113, 117, 804, and 810 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) (12 U.S.C. §§ 5321, 5323, 5327, 5463, and 5469) and section XXX.11 of the “Rules of Organization of the Financial Stability Oversight Council.”

(b) Purpose; no rights created. These hearing procedures govern hearings to be conducted by the Council in connection with proposed determinations, designations, and emergency waivers or modifications made pursuant to Title I and Title VIII of the Dodd-Frank Act and appeals by entities pursuant to § 117 of the Dodd-Frank Act. The provisions of the Administrative Procedure Act (5 U.S.C. § 551 *et seq.*) governing adjudications required by statute to be determined on the record, the Federal Rules of Evidence (28 U.S.C. Appendix), and the Federal Rules of Civil Procedure (28 U.S.C. Rule 1 *et seq.*), do not apply to the hearings to be conducted by the Council under these hearing procedures. Nothing in these hearing procedures shall entitle a petitioner to discovery or other similar rights.

(c) Short title. These hearing procedures may be cited as “Council Hearing Procedures.”

§ 2 Definitions. The terms used in these hearing procedures have the following meanings:

Chairperson means the Chairperson of the Council.

Council means the Financial Stability Oversight Council.

Hearing Clerk means an individual appointed by the Chairperson to facilitate a written or oral hearing before the Council or its representatives pursuant to section 3 of the Council Hearing Procedures.

Petitioner means the entity that petitions the Council for a hearing, and is—

(1) A nonbank financial company subject to a proposed determination pursuant to § 113(a) or 113(b) of the Dodd-Frank Act and 12 C.F.R. § 1310.21;

(2) An entity whose financial activities are the subject of a proposed determination by the Council under its anti-evasion authority pursuant to § 113(c) of the Dodd-Frank Act and 12 C.F.R. § 1310.12;

(3) An entity that is appealing its treatment as a nonbank financial company supervised by the Board of Governors of the Federal Reserve System pursuant to § 117 of the Dodd-Frank Act;

(4) A financial market utility subject to a proposed designation that seeks to demonstrate that the proposed designation or rescission of designation is not supported by substantial evidence pursuant to § 804(c)(2) of the Dodd-Frank Act and 12 C.F.R. § 1320.12;

(5) An entity that received a notice of waiver or modification from the Council pursuant to § 113(f) of the Dodd-Frank Act and 12 C.F.R. § 1310.22, or a financial market utility that seeks to demonstrate that the basis for a waiver or modification is not supported by substantial evidence pursuant to 12 C.F.R. § 1320.14; or

(6) A financial institution which engages in a payment, clearing, or settlement activity that is the subject of a proposed designation pursuant to § 804(c)(2) of the Dodd-Frank Act and which seeks to demonstrate that the proposed designation or rescission of designation is not supported by substantial evidence.

§ 3 Initial notice; request for hearing; appointment of Hearing Clerk.

(a) Initial notice. In connection with any notice of proposed determination, designation, or notice of waiver or modification, the Council shall specify the manner in which the petitioner may request a hearing to contest the Council's action.

(b) Request for hearing; written request required; justification for oral hearing. A petitioner that receives an initial notice issued by the Council described in subsection (a) of this section may request a written hearing as specified therein. A petitioner appealing its treatment pursuant to § 117 of the Dodd-Frank Act may request a written hearing by submitting a request

to the Chairperson. Any request for a hearing shall be in writing. In addition to requesting a written hearing, a petitioner may request an oral hearing. Any request for an oral hearing shall be included with the petitioner's request for a written hearing and shall specify why the Council should exercise its discretion to grant such a hearing.

(c) Appointment of Hearing Clerk. Upon receipt of a timely written request for a hearing, the Chairperson shall appoint a Hearing Clerk, who shall serve as the central point of contact for the petitioner and shall provide the petitioner with the Hearing Clerk's contact information. The Hearing Clerk is authorized to take ministerial actions and make procedural determinations, as may be necessary or appropriate, to facilitate orderly and timely hearings before the Council or its representatives. These actions and procedural determinations may include limitations on the quantity of written materials the petitioner may submit in a written hearing and, if applicable, the duration of an oral hearing.

§ 4 Written hearing.

(a) Order for written hearing. After receipt of a timely request from the petitioner for a written hearing, the Hearing Clerk shall issue an order fixing the time by which the petitioner shall submit written materials to the Council.

(b) Submission of written materials. No later than the date specified by the Hearing Clerk pursuant to subsection (a) of this section, the petitioner shall submit a written statement setting forth the reasons, legal and factual, for contesting the proposed determination, designation, or emergency waiver or modification by the Council or appealing its treatment pursuant to § 117 of the Dodd-Frank Act, as applicable. The written statement must be in the form of a memorandum. The petitioner also may submit relevant exhibits, such as declarations, affidavits, appendices, charts, graphs, or other appropriate presentation of data, in support of the written statement.

§ 5 Oral hearing.

(a) Council action to grant oral hearing; denial of oral hearing. Upon the affirmative vote of a majority of the voting members then serving, the Council may, at its sole discretion, grant a request for an oral hearing. If the Council denies a request for an oral hearing, the petitioner shall

have a written hearing in accordance with section 4, and shall submit written materials to the Council by the deadline specified in the order contemplated by section 4(a).

(b) Notice and submission of written materials.

(1) Notice. The Council or the Hearing Clerk shall provide written notice to a petitioner of the Council's decision to grant or deny the petitioner's request for an oral hearing. If the Council grants the request, the notice will specify the date, time, and place at which the petitioner shall appear for the oral hearing, if available.

(2) Written materials required. If the Council grants a request for an oral hearing under subsection (a) of this section, the petitioner shall submit written materials in accordance with section 4(b). In addition to the written materials, the petitioner shall submit a list of the individuals who are expected to appear for the petitioner at the oral hearing and a description of the nature of their presentations.

(3) Deadlines.

(i) Written materials prior to an oral hearing. The petitioner shall submit the materials required under paragraph (2) of this subsection not later than 10 days prior to the date of the oral hearing.

(ii) Written materials after an oral hearing. The petitioner may submit supplemental written materials to the Council after an oral hearing. Any such materials shall be submitted not later than 7 days after the date of the oral hearing.

(4) Hearing date. If the petitioner submits supplemental written materials to the Council pursuant to paragraph (3)(ii) of this subsection, the date of the hearing for purposes of § 113 of the Dodd-Frank Act and 12 C.F.R. § 1310.21 or § 1310.22 with respect to a nonbank financial company that is subject to a proposed determination and § 117 of the Dodd-Frank Act with respect to an entity appealing its treatment under § 117 of the Dodd-Frank Act shall be deemed to be the date on which the Council has received all of the written materials timely submitted by the petitioner under paragraph (3)(ii) of this subsection.

(c) Oral hearing conducted by Council or Council representatives.

(1) In general. Upon the affirmative vote of a majority of the voting members then serving, the Council may determine that an oral hearing will be conducted by representatives.

(2) Selection of representatives. Representatives appointed to conduct an oral hearing shall be selected individually by each member of the Council, each of whom may select one representative. A representative conducting an oral hearing pursuant to this paragraph may act in the capacity of a member of the Council with respect to any determinations regarding the conduct of an oral hearing for which the representative has been appointed. Each member of the Council shall be entitled to participate in an oral hearing in lieu of appointing a representative.

(3) Conduct of oral hearing. At an oral hearing, one or more officers, employees, or other representatives (including counsel) of the petitioner may appear for the petitioner to present oral testimony, oral argument, or both. Members of the Council or representatives may ask questions of any individual appearing on behalf of the petitioner. The Chairperson (or the Chairperson's representative) or the Hearing Clerk will preside at the oral hearing.

(d) Transcript. The Hearing Clerk shall arrange for a transcript or other recording of the oral hearing. The petitioner shall be entitled, upon request, to obtain from the Hearing Clerk a copy of the transcript or other recording. Not later than 2 days after the petitioner receives a copy of the transcript or other recording, the petitioner may submit to the Council a signed statement reciting any corrections in form or substance to the transcript or other recording, and the basis for making each of those corrections.

§ 6 Confidentiality.

The Council shall maintain the confidentiality of any information or materials submitted or otherwise obtained in the course of any hearing conducted under these procedures, subject to applicable law and regulations. The Council's rule implementing the Freedom of Information Act, 12 C.F.R. Part 1301, applies to any information submitted in any written or oral hearing.

§ 7 Denial and dismissal of a hearing.

Failure to make a timely request for a hearing will waive the petitioner's right to a hearing. The Council may dismiss any hearing upon the request of the petitioner or if the petitioner fails to timely submit written materials.

§ 8 Substantive standards not affected; variance from procedures; supplemental rules.

(a) Substantive standards. These procedures shall not affect the standards under Title I and Title VIII of the Dodd-Frank Act and 12 C.F.R. Parts 1310 and 1320 for the Council's review of petitions.

(b) Variance. The Council may, for good cause and upon the affirmative vote of a majority of its voting members then serving, modify or set aside any provision of these hearing procedures. The Council shall timely notify the petitioner of any action under this subsection to modify or set aside any provision of these hearing procedures.

(c) Supplemental rules. The Council may adopt supplemental rules governing hearings conducted under these procedures.