

## Minutes of the Financial Stability Oversight Council

Held July 18, 2012

### PRESENT:

Timothy F. Geithner, Secretary of the Treasury and Chairperson of the Financial Stability Oversight Council

Ben Bernanke, Chairman, Board of Governors of the Federal Reserve System (Federal Reserve)

Martin J. Gruenberg, Acting Chairperson, Federal Deposit Insurance Corporation (FDIC)

Mary Schapiro, Chairman, Securities and Exchange Commission (SEC)

Gary Gensler, Chairman, Commodity Futures Trading Commission (CFTC)

Richard Cordray, Director, Consumer Financial Protection Bureau (CFPB)

Edward DeMarco, Acting Director, Federal Housing Finance Agency (FHFA)

Debbie Matz, Chairman, National Credit Union Administration (NCUA)

Thomas J. Curry, Comptroller of the Currency, Office of the Comptroller of the Currency (OCC)

Roy Woodall, Independent Member with Insurance Expertise

Michael McRaith, Director, Federal Insurance Office, Department of the Treasury (non-voting member)

John P. Ducrest, Commissioner, Louisiana Office of Financial Institutions (non-voting member)

John Huff, Director, Missouri Department of Insurance, Financial Institutions, and Professional Registration (non-voting member)

David Massey, Deputy Securities Administrator, North Carolina Department of the Secretary of State, Securities Division (non-voting member)

### GUESTS:

#### Department of the Treasury

Neal Wolin, Deputy Secretary

Mary J. Miller, Under Secretary for Domestic Finance

Amias Gerety, Deputy Assistant Secretary for FSOC

Christopher J. Meade, Acting General Counsel

#### Board of Governors of the Federal Reserve System

Daniel K. Tarullo, Governor

#### Federal Deposit Insurance Corporation

Jason Cave, Deputy Director, Division of Complex Financial Institutions

#### Securities and Exchange Commission

Jennifer McHugh, Senior Advisor to the Chairman

#### Commodity Futures Trading Commission

Dan Berkovitz, General Counsel

Consumer Financial Protection Bureau

Raj Date, Deputy Director

Federal Housing Finance Agency

Mario Ugoletti, Special Advisor to the Director

National Credit Union Administration

John Worth, Chief Economist

Office of the Comptroller of the Currency

John Lyons, Senior Deputy Comptroller and Chief National Bank Examiner

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

Federal Insurance Office

A. Thomas Finnell

Louisiana Office of Financial Institutions

Margaret Liu, Senior Vice President and Deputy General Counsel, Conference of State Banking Supervisors

Missouri Department of Insurance, Financial Institutions, and Professional Registration

Mark Sagat, Counsel and Manager, Financial Policy and Legislation, National Association of Insurance Commissioners

North Carolina Department of the Secretary of the State, Securities Division

Joseph Brady, Deputy General Counsel, North American Securities Administrators Association

PRESENTERS:

*Update on Nonbank Financial Company Designations Process*

- *Lance Auer, Deputy Assistant Secretary for Financial Institutions Policy, Treasury*
- *Caroline Frawley, Senior Vice President, Financial Institutions Supervision Group, Federal Reserve Bank of New York*
- *Diana Hancock, Deputy Associate Director, Division of Research and Statistics, Federal Reserve*
- *Hampton Finer, Assistant Vice President, Financial Institutions Supervision Group, Federal Reserve Bank of New York*
- *Laurie Schaffer, Associate General Counsel, Federal Reserve*
- *Diane Fraser, Senior Policy Advisor, Office of the Independent Member*

*Macro-environment Overview: Update on Europe*

- *Lael Brainard, Under Secretary for International Affairs, Treasury*
- *Nellie Liang, Director, Office of Financial Stability Policy and Research, Federal Reserve*

*Final Designations of Certain Financial Market Utilities*

- *Lance Auer, Deputy Assistant Secretary for Financial Institutions Policy, Treasury*
- *Stuart Sperry, Assistant Director of Financial Market Infrastructure Oversight, Federal Reserve*
- *Robert Wasserman, Chief Counsel, Division of Clearing and Risk, CFTC*
- *Peter Curley, Associate Director for Clearance and Settlement, SEC*

*Approval of the Council's 2012 Annual Report*

- *David Marshall, Senior Vice President, Federal Reserve Bank of Chicago*
- *Amias Gerety, Deputy Assistant Secretary for FSOC, Treasury*

*Approval of the Council's Contingent Capital Report*

- *David L. Portilla, Senior Policy Advisor, Treasury*
- *Diana Hancock, Deputy Associate Director, Division of Research and Statistics, Federal Reserve*
- *Margot Schwadron, Senior Risk Expert, OCC*

**Executive Session**

The Chairperson called the executive session of the meeting of the Financial Stability Oversight Council (Council) to order at approximately 1:01 P.M. (EDT).

The Chairperson began by outlining the meeting agenda for the executive session, which had been previously distributed to the members together with the meeting agenda for the open session and copies of the resolutions and other materials. The agenda for the executive session of the meeting included the following subjects: (1) an update on the nonbank financial company designations process; (2) an update on the Council's 2012 annual report; (3) consideration of, and a vote on, a resolution approving the final designations of certain financial market utilities (FMUs); and (4) an update on the CFTC's work on London interbank offered rate (LIBOR) issues and an update on Europe.

1. Update on the Nonbank Financial Company Designations Process

The Chairperson turned to the first agenda item and asked Lance Auer, Deputy Assistant Secretary for Financial Institutions Policy at Treasury, to give the presentation. Caroline Frawley, Senior Vice President, Financial Institutions Supervision Group at the Federal Reserve Bank of New York; Diana Hancock, Deputy Associate Director, Division of Research and Statistics at the Federal Reserve; Hampton Finer, Assistant Vice President, Financial Institutions Supervision Group at the Federal Reserve Bank of New York; Laurie Schaffer, Associate General Counsel at the Federal Reserve; and Diane Fraser, Senior Policy Advisor with the Office of the Independent Member, were also involved in the presentation and discussion. Under the Council's final rule and interpretive guidance regarding nonbank financial company

designations, nonbank financial companies will generally be assessed in a three-stage process. During Stage 1, the Council applies uniform quantitative thresholds to identify those nonbank financial companies that will be subject to further evaluation. During Stage 2, the Council analyzes the nonbank financial companies identified in Stage 1 using a broad range of information available to the Council primarily through existing public and regulatory sources. The presentation involved certain companies that were undergoing a Stage 2 evaluation. The Council discussed the proposed timeline for designations. After the presentation, members of the Council asked questions and had a discussion.

## 2. Update on the Council's 2012 Annual Report

The Chairperson turned to the next agenda item regarding the Council's 2012 annual report and asked Amias Gerety, Deputy Assistant Secretary for FSOC at Treasury, to give the presentation. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) sets forth requirements for the Council's annual report to Congress. A vote on approval of the 2012 annual report would occur during the open session of the meeting. Following the presentation, the members of the Council asked questions and had a discussion.

## 3. FMU Final Designations

The Chairperson then raised the agenda item regarding a vote on the final designations of certain FMUs that had previously been proposed for designation. He called on Lance Auer, Deputy Assistant Secretary for Financial Institutions Policy at Treasury, to give the presentation. Stuart Sperry, Assistant Director of Financial Market Infrastructure Oversight at the Federal Reserve; Robert Wasserman, Chief Counsel, Division of Clearing and Risk at the CFTC; and Peter Curley, Associate Director for Clearance and Settlement at the SEC, were also present. After the presentation, members of the Council asked questions and had a discussion. The Chairperson then presented to the Council the following resolution approving the final designation of an initial set of eight FMUs as systemically important.

*"WHEREAS, section 804 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "DFA") authorizes the Financial Stability Oversight Council (the "Council") to designate financial market utilities that the Council determines are, or are likely to become, systemically important; and*

*WHEREAS, under the relevant provisions of the DFA, in making a determination on whether a financial market utility is, or is likely to become, systemically important, the Council must take into consideration the following: (A) the aggregate monetary value of transactions processed by the financial market utility; (B) the aggregate exposure of the financial market utility to its counterparties; (C) the relationship, interdependencies, or other interactions of the financial market utility with other financial market utilities or payment, clearing, or settlement activities; (D) the effect that the failure of or a disruption to the financial market utility would have on critical markets, financial institutions, or the broader financial system; and (E) any other factors that the Council deems appropriate; and*

*WHEREAS, the Council issued a final rule codified in 12 C.F.R. Part 1320 that describes the criteria and the processes and procedures by which the Council will designate financial market utilities as systemically important under the DFA; and*

*WHEREAS, the staffs of the Council Members and Member Agencies have evaluated an initial set of financial market utilities under stage 2, which consisted of an in-depth review of each financial market utility, in addition to institutional and market specific considerations; and*

*WHEREAS, based on the stage 2 evaluations, the Council unanimously determined to propose the designation of an initial set of financial market utilities and provided each such financial market utility with advance notice of the proposed determination along with proposed findings of fact; and*

*WHEREAS, the Council also provided each such financial market utility an opportunity to request a hearing before the Council to demonstrate that the Council's proposed determination is not supported by substantial evidence; and*

*WHEREAS, none of the financial market utilities requested a hearing before the Council; and*

*WHEREAS, based on the stage 2 evaluations, the staffs of the Council Members and Member Agencies recommend that the Council approve the designation of the initial set of financial market utilities; and*

*WHEREAS, under the relevant provisions of the DFA, the Council is required to provide each financial market utility notice of the final determination of the Council.*

*NOW, THEREFORE, BE IT RESOLVED, that the Council hereby determines to designate the following financial market utilities as systemically important: The Clearing House Payments Company, L.L.C. on the basis of its role as operator of the Clearing House Interbank Payments System; CLS Bank International; Chicago Mercantile Exchange, Inc.; The Depository Trust Company; Fixed Income Clearing Corporation; ICE Clear Credit LLC; National Securities Clearing Corporation; and The Options Clearing Corporation.*

*BE IT FURTHER RESOLVED, that the Council hereby approves the attached notice of final determination letters and authorizes the letters to be sent to the eight financial market utilities noted above.*

*BE IT FURTHER RESOLVED, that the Council hereby delegates authority to the Chairperson, or his designee, to make technical, nonsubstantive, or conforming changes to the text of the attached notification letters.”*

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

#### 4. Macro-environment Overview: Update on LIBOR and Europe

The Chairperson then raised the agenda item regarding an update on LIBOR and Europe. He first asked Gary Gensler, Chairman of the CFTC, to give an update on the CFTC's work on LIBOR issues. Chairman Gensler provided an overview of the CFTC's enforcement action against Barclays, which resulted in an order filing and settling charges against the bank and the imposition of a \$200 million civil monetary penalty. He explained that the order states that, during specified time periods, Barclays traders located in New York, London, and Tokyo asked Barclays to submit interest rates that were advantageous to their trading positions. He explained that the order also states that, during specified time periods, Barclays submitted lower LIBOR submissions in order to protect Barclays' reputation and manage negative public perceptions. In addition to the settlement with the CFTC, Barclays also agreed to pay a \$160 million penalty to the Department of Justice, and incurred a 59.5 million pound sterling penalty imposed by the United Kingdom's Financial Services Authority. After the presentation, members of the Council asked questions and had a discussion.

The Chairperson then asked Lael Brainard, Under Secretary for International Affairs at Treasury, and Nellie Liang, Director, Office of Financial Stability Policy and Research at the Federal Reserve, to give an update on Europe. After the presentation, members of the Council asked questions and had a discussion.

The Chairperson adjourned the executive session of the meeting at approximately 2:53 P.M. (EDT).

#### **Open Session**

The Chairperson called the open session of the meeting of the Council to order at approximately 3:00 P.M. (EDT).

The agenda for the open session of meeting included the following subjects: (1) consideration of, and a vote on, a resolution approving the publication and transmittal to Congress of the Council's 2012 annual report; (2) consideration of, and a vote on, a resolution approving the publication and transmittal to Congress of the Council's contingent capital report; and (3) consideration of, and a vote on, a resolution approving the minutes from the Council's meeting on June 11, 2012.

The Chairperson offered opening remarks on the financial crisis and financial reform, noting the two-year anniversary of the enactment of the Dodd-Frank Act. He explained the need for comprehensive financial reform using tougher tools and highlighted some of the reforms made by the CFPB, the SEC, the CFTC, and the FDIC. The Chairperson noted that nine of the largest banks have submitted living wills for orderly liquidation. He added that, despite the complexity of the reforms, 93 percent of the rules required by the Dodd-Frank Act to have been adopted have been finalized or proposed. He also said that during the closed session of the meeting, the Council designated eight FMUs as systemically important.

Before proceeding to the agenda items, the Chairperson provided an opportunity for other Council members to make opening remarks. Gary Gensler, Chairman of the CFTC, noted that the Dodd-Frank Act gave the CFTC and the SEC responsibility over swaps markets, and the two agencies have made significant progress in regulating swaps. This progress includes public reporting of the price and volume of swaps transactions, aggregate spot-month position limits, and having certain swap dealers register provisionally.

The Chairperson then presented three resolutions for consideration by the Council.

1. The Council's 2012 Annual Report

The Chairperson asked David Marshall, Senior Vice President at the Federal Reserve Bank of Chicago, and Amias Gerety, Deputy Assistant Secretary for FSOC at Treasury, to give a presentation on the core provisions of the annual report. Mr. Marshall noted that although the United States now has a stronger financial system than in the five years since the subprime crisis first emerged, significant challenges remain. He then explained several of the key recommendations in the report. The Chairperson noted that the report and its recommendations reflect the views of the Council as a whole.

Ben Bernanke, Chairman of the Federal Reserve, stated that the Dodd-Frank Act gives the Council a difficult task of being a macro-prudential overseer and that the annual report is a valuable tool because it facilitates collaboration among agencies, helps the Council to prioritize issues, and provides the public a document to which it can react and provide feedback.

The Chairperson then requested a brief update on the challenges surrounding money market funds. Mary Schapiro, Chairman of the SEC, explained that substantial progress had been made regarding suggestions on money market fund reform, and that although she was cognizant of the positive impact of the 2010 money market fund reforms, money market funds remain vulnerable to runs. She noted that the SEC staff has been working, in consultation with other Council agencies, industry, market participants, and investor groups on money market fund reform. The SEC staff and she were considering two different approaches to money market fund reform, and she believed that it was important to publish proposed rules so that they could obtain feedback on possible reforms. Chairman Bernanke then expressed support for these reform efforts and stated that he hoped that the SEC would be able to publish proposed rules for public feedback. Chairman Gensler noted that the Council's annual report included a recommendation supporting the issuance of proposed rules on money market fund reform and that it would be helpful to receive public comments on any such rules.

The Chairperson then presented to the Council the following resolution approving the publication and transmittal to Congress of the Council's 2012 annual report.

*“WHEREAS, the Financial Stability Oversight Council (the “Council”) under the provisions of section 112 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “DFA”) is required to annually report and testify before Congress on: the activities of the Council; significant financial market and regulatory developments, including insurance and accounting*

*regulations and standards, along with an assessment of those developments on the stability of the financial system; potential emerging threats to the financial stability of the United States; all determinations made section 113 or title VIII of the DFA, and the basis for such determinations; all recommendations made under section 119 of the DFA and the result of such recommendations; and recommendations to enhance the integrity, efficiency, competitiveness, and stability of the United States financial markets; to promote market discipline; and to maintain investor confidence.*

*WHEREAS, staff from the Council Agencies prepared the attached 2012 annual report pursuant to section 112 of the DFA, and members of the Council have reviewed and commented on the attached report.*

*NOW THEREFORE, BE IT RESOLVED, that the Council approves the attached report prepared under the provisions of section 112 of the DFA and authorizes the Chairperson, or his designee, to take such action as necessary to formally transmit the attached report to the Congress and to otherwise make it available to the public as the Chairperson deems appropriate; and*

*BE IT FURTHER RESOLVED, that the Council hereby delegates authority to the Chairperson, or his designee, to make technical, nonsubstantive, or conforming changes to the text of the attached report and to take such other actions as they deem necessary or appropriate to prepare the report for release to the Congress and the public.”*

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

## 2. The Council’s Contingent Capital Report

The Chairperson next addressed the agenda item regarding the Council’s “Report to Congress on Study of a Contingent Capital Requirement for Certain Nonbank Financial Companies and Bank Holding Companies.” He called on David Portilla, Senior Policy Advisor at Treasury; Diana Hancock, Deputy Associate Director, Division of Research and Statistics at the Federal Reserve; and Margot Schwadron, Senior Risk Expert at the OCC, to provide an overview of the report and its conclusions. Mr. Portilla and Ms. Hancock highlighted key analysis and recommendations in the report. The Chairperson then presented to the Council the following resolution approving the publication and transmittal to Congress of the Council’s contingent capital report.

*“WHEREAS, the Financial Stability Oversight Council (the “Council”) under the provisions of section 115 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “DFA”) is required to conduct a study of the feasibility, benefits, costs, and structure of a contingent capital requirement for nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies.*

*WHEREAS, the Council under the provisions of section 115 of the DFA is required to issue a report to the Congress regarding the required study.*

*WHEREAS, the staff of the Council, its Members and Member Agencies conducted the study and prepared the attached report pursuant to section 115 of the DFA.*

*NOW THEREFORE, BE IT RESOLVED, that the Council approves the attached report prepared under the provisions of section 115 of the DFA and authorizes the Chairperson, or his designee, to take such action as necessary to formally transmit the attached report to the Congress and to otherwise make it available to the public as the Chairperson deems appropriate; and*

*BE IT FURTHER RESOLVED, that the Council hereby delegates authority to the Chairperson, or his designee, to make technical, nonsubstantive, or conforming changes to the text of the attached report and to take such other actions as they deem necessary or appropriate to prepare the report for release to the Congress and the public.”*

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

3. Resolution Approving the Minutes of the Meeting held on June 11, 2012

*“BE IT RESOLVED, by the Financial Stability Oversight Council (the “Council”), that the minutes attached hereto of the meeting held on June 11, 2012 of the Council are hereby approved.”*

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

The Chairperson asked for a motion to adjourn the meeting, and the Council voted to adjourn. The Chairperson adjourned the meeting at approximately 3:27 P.M. (EDT).