

Minutes of the Financial Stability Oversight Council

September 22, 2017

PRESENT:

Steven T. Mnuchin, Secretary of the Treasury and Chairperson of the Financial Stability Oversight Council (Council)
Janet Yellen, Chair, 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) (by telephone)
J. Christopher Giancarlo, Chairman, Commodity Futures Trading Commission (CFTC)
Richard Cordray, Director, Consumer Financial Protection Bureau (CFPB)
Melvin Watt, Director, Federal Housing Finance Agency (FHFA)
Keith Noreika, Acting 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
Richard Berner, 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)

GUESTS:

Department of the Treasury (Treasury)

Craig Phillips, Counselor to the Secretary
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
Jacob Loshin, Senior Advisor to the General Counsel

Board of Governors of the Federal Reserve System

Jerome H. Powell, Governor
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

Jaime Klima, Chief Counsel

Commodity Futures Trading Commission

Richard Danker, Special Advisor

Consumer Financial Protection Bureau

Mary McLeod, General Counsel

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 (by telephone)

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:

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*
- *Brian Callanan, Deputy General Counsel, Treasury (available for questions)*

Executive Session

The Chairperson called the executive session of the meeting of the Council to order at approximately 9:05 A.M.

He began by outlining the meeting agenda, which had previously been distributed to the members together with other materials. The agenda for the meeting included the following subjects: (1) consideration of, and a vote on, a resolution approving the minutes of the Council's meeting on July 28, 2017; and (2) an update on the annual reevaluation of the designation of a nonbank financial company. The Chairperson then noted that Congress had passed a bill that would extend the term on the Council of S. Roy Woodall, Independent Member with Insurance Expertise, beyond the following week, and noted that Mr. Woodall provides an important voice on the Council.

1. Resolution Approving the Minutes of the Meeting Held on July 28, 2017

“BE IT RESOLVED, by the Financial Stability Oversight Council (the “Council”), that the minutes attached hereto of the meeting held on July 28, 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. 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, American International Group, Inc. (AIG), that the Council had previously designated under section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Chairman Clayton recused himself from participating in the discussion. The Chairperson then introduced Bimal Patel, Deputy Assistant Secretary for the Council at Treasury.

Mr. Patel gave a presentation on the analysis of AIG. He described the staff's analysis and conclusions 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 began by describing changes at AIG over time, including its reduction in total assets, total debt, and total revenue. He described factors relating to the exposures of customers, counterparties, and other market participants to AIG, noting that capital markets

exposures to AIG have decreased substantially since the time of the Council's designation of the company. He also explained the potential for risks arising from a forced asset liquidation by the company. He described the volume of the company's general account liabilities that are available for immediate withdrawal and explained analyses the Council had conducted to evaluate the range of potential outcomes in the event of a forced asset liquidation by AIG. He noted that these analyses included models for potential outflows from AIG based on historical surrender rates. He stated that these rates of outflows had been compared to the average daily trading volumes in various classes of financial instruments held by AIG to assess potential market impacts arising from an asset liquidation by AIG. He also described AIG's market shares in key business lines, and noted that the company had exited from certain financial markets since the time of the Council's designation. He then described AIG's complexity and resolvability, noting that the company remains highly interconnected and complex, but also noting that, in light of the transmission channel analysis, the potential difficulty to resolve AIG does not lead to a conclusion that the company's material financial distress could pose a threat to U.S. financial stability. Finally, he described certain developments in the regulation and supervision of AIG by state insurance regulators.

Council members then discussed the Council's process for resolving the procedural question whether a recused member is excluded from the vote tally in determining whether the statutory voting threshold is met. The Chairperson noted that the Council had not previously resolved that issue because it had not been necessary to do so in any past vote. The Chairperson stated that a vote regarding the rescission of the designation of AIG should first be held, and that the procedural issue could be addressed afterwards if the vote count made it necessary to do so. Chairman Gruenberg indicated that he believed the Council should consider the procedural question before voting on the rescission of the designation of AIG.

The Chairperson then presented to the Council the following resolution regarding the reevaluation of the Council's designation of AIG.

"WHEREAS, section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "DFA") authorizes the Financial Stability Oversight Council (the "Council") to determine that a nonbank financial company shall be supervised by the Board of Governors of the Federal Reserve System (the "Federal Reserve") and shall be subject to enhanced prudential standards 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; and

WHEREAS, section 113(d) of the DFA requires the Council not less frequently than annually to reevaluate each determination regarding a nonbank financial company under section 113 and rescind any such determination if the Council determines that the nonbank financial company no longer meets the standards for a determination under section 113; and

WHEREAS, the Council issued a final rule and accompanying interpretive guidance (the "Rule and Guidance"), codified at 12 C.F.R. Part 1310, and adopted supplemental procedures on

February 4, 2015, that describe the processes and procedures by which the Council will reevaluate each currently effective determination; and

WHEREAS, on July 8, 2013, the Council made a final determination, in accordance with the DFA and the Rule and Guidance, that American International Group, Inc. (AIG) shall be supervised by the Federal Reserve and shall be subject to enhanced prudential standards under the DFA; and

WHEREAS, in connection with the Council's reevaluation of its determination regarding AIG, the Council provided AIG an opportunity to submit written materials to the Council to contest the Council's determination and to meet with the staffs of the Council members and their agencies; and

WHEREAS, AIG submitted materials to the Council in connection with the Council's reevaluation of its determination regarding AIG; and

WHEREAS, the Council has considered a broad range of information available through existing public and regulatory sources, as well as information submitted to the Council by AIG; and

WHEREAS, based on the reevaluation of the Council's determination regarding AIG, the staffs of the Council members and their agencies recommend that the Council rescind its determination regarding AIG; and

WHEREAS, the members of the Council have considered the issues and the record in connection with the following actions.

NOW, THEREFORE, BE IT RESOLVED, that, based on the information, considerations, and analysis set forth in the attached "Notice and Explanation of the Basis for the Financial Stability Oversight Council's Rescission of Its Determination Regarding American International Group, Inc." (the "Basis"), and on a review of the administrative record, the Council hereby determines that AIG no longer meets the standards for a determination under section 113 of the DFA and hereby rescinds its determination, pursuant to section 113 of the DFA, that material financial distress at AIG could pose a threat to the financial stability of the United States and that AIG shall be supervised by the Federal Reserve and shall be subject to prudential standards, in accordance with Title I of the DFA.

BE IT FURTHER RESOLVED, that the Council has considered and hereby approves the Basis and authorizes the Basis to be sent to AIG.

BE IT FURTHER RESOLVED, that the Council hereby authorizes the Basis to be released to the public, with such redactions of confidential, sensitive, or nonpublic information as the Chairperson or his designee deems appropriate.

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 Basis."

The Chairperson asked for a motion approving the resolution, which was made and seconded. A roll-call vote was conducted, during which Council members described their views regarding AIG and the potential risks posed by the company, including risks arising from a potential asset liquidation by AIG; the Council's analyses of historical insurance liability withdrawal rates; the company's decreased size; the company's resolvability and complexity; the company's capital markets activities, including derivatives and securities lending; and recent developments in state insurance regulation. Six Council members voted in favor of the resolution (the Chairperson; Janet Yellen, Chair of the Federal Reserve; J. Christopher Giancarlo, Chairman of the CFTC; Keith Noreika, Acting Comptroller of the Currency; J. Mark McWatters, Chairman of the NCUA; and S. Roy Woodall, Independent Member with Insurance Expertise), and three voted against the resolution (Richard Cordray, Director of the CFPB; Martin J. Gruenberg, Chairperson of the FDIC; and Melvin Watt, Director of the FHFA). Chairman Clayton was recused. Peter Hartt, Director of the Insurance Division of the New Jersey Department of Banking & Insurance, expressed his support for the rescission of the designation.

The Chairperson then invited Council members to comment on the effect of the six-to-three vote with one recusal. Chairman Gruenberg reiterated that he was opposed to proceeding to vote on the rescission of the designation of AIG before considering the procedural question. The Chairperson then stated that it was his responsibility to announce the result of the vote. The Dodd-Frank Act provides that the Council may rescind a designation of a nonbank financial company by a vote of not fewer than two-thirds of the "voting members then serving," including an affirmative vote by the Chairperson. The Chairperson stated that after consulting with Treasury's Office of the General Counsel, he had determined based on their advice that a member recused from voting on a Council matter is not a "voting member then serving" within the meaning of the statute. He stated that the recused member should therefore be excluded from the vote tally, rather than including the recusal and thereby giving it the effect of a "no" vote. He stated that because the vote was six in favor to three opposed, he determined that the motion was approved.

The Chairperson then summarized the advice he was relying on from Treasury's Office of the General Counsel. He stated that he had been advised by counsel that the phrase "voting members then serving" is best read to refer to members able to serve by casting a valid vote on the issue in question. He explained that the word "serve" is commonly used to mean discharging the duties of an office, and that the effect of a recusal is to prevent a recused member from discharging those duties with respect to a specific vote. He stated that a recused Council member is therefore out of service with respect to a vote he is recused from, even though he continues to hold office and serve on other matters. He then explained that counsel had informed him that this reading of the statutory language was supported by judicial interpretation of similar language in a law that sets the standard for appellate judges to vote for rehearing. He stated that counsel had also informed him that this reading was consistent with other provisions of the Dodd-Frank Act, including section 111(c) (which provides that when an agency head is legally "disabled" by recusal, the acting agency head serves in his place as a Council member on the subject of the recusal) and section 111(i) (which uses the word "serve" in connection with the performance of Council duties, not service as the head of an agency). The Chairperson stated that counsel had also informed him that this reading of the statute was consistent with the

common practice of other multimember bodies, including the SEC, the FDIC, the U.S. Supreme Court, and the federal appellate courts. Finally, he stated that counsel had informed him that, even assuming there is more than one reasonable interpretation of the statutory language, this interpretation is more sound because (1) an alternative interpretation would defeat the purpose of recusal by treating a recusal as the equivalent of a “no” vote and would arbitrarily treat vacancies differently from recusals; (2) the alternative interpretation would incentivize parties to engage in strategic behavior to trigger recusals, because a recusal would convert the recused member into an effective “no” vote; and (3) the alternative interpretation could affect the exercise of the resolution authority under Title II of the Dodd-Frank Act, for which Congress used the same “members then serving” language.

The Chairperson then asked for comments. Council members discussed the Chairperson’s determination regarding whether a recused Council member should be included in the vote tally, including how the determination regarding this issue should be made. The Chairperson then called a brief recess.

When the Council reconvened, the Chairperson stated that, based on Council members’ comments, he would defer resolution of the vote-count issue pending further deliberations and a reconvening of the Council. Council members then asked questions and had a discussion, including regarding the need for further interagency deliberations regarding the issue.

The Chairperson adjourned the meeting at approximately 11:00 A.M.