

Administration of Donald J. Trump, 2017

Memorandum on the Financial Stability Oversight Council

April 21, 2017

Memorandum for the Secretary of the Treasury

Subject: Financial Stability Oversight Council

The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203 (the "Dodd-Frank Act"), authorizes the Financial Stability Oversight Council (FSOC) to determine that a nonbank financial company's material financial distress—or the nature, scope, size, scale, concentration, interconnectedness, or mix of its activities—could pose a threat to the financial stability of the United States. If the FSOC makes such a determination, the affected nonbank financial company shall be subject to supervision by the Board of Governors of the Federal Reserve System (Federal Reserve Board) and certain prudential standards. The Dodd-Frank Act similarly authorizes the FSOC to designate certain financial market utilities and financial activities as "systemically important," and thus subject to certain risk management standards, among other things. These determinations and designations have serious implications for affected entities, the industries in which they operate, and the economy at large. Therefore, it is important to ensure that these processes for making determinations and designations promote market discipline and reduce systemic risk. It is equally important to ensure that, once notified by FSOC that it is under review, any entity under consideration for a determination or designation decision is afforded due, fair, and appropriately transparent process.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, and to promote certainty in the financial markets, I hereby direct the Secretary of the Treasury (Secretary) to take the following actions:

Section 1. Report on FSOC Processes. The Secretary shall conduct a thorough review of the FSOC determination and designation processes under section 113 (12 U.S.C. 5323) and section 804 (12 U.S.C. 5463) of the Dodd-Frank Act and provide a written report to the President within 180 days of the date of this memorandum. As part of this review, and along with any other considerations that the Secretary deems appropriate, the Secretary shall consider the following:

- (a) whether these processes are sufficiently transparent;
- (b) whether these processes provide entities with adequate due process;
- (c) whether these processes give market participants the expectation that the Federal Government will shield supervised or designated entities from bankruptcy;
- (d) whether evaluation of a nonbank financial company's vulnerability to material financial distress, under 12 CFR 1310 App. A.II.d.1, should assess the likelihood of such distress;
- (e) whether any determination as to whether a nonbank financial company's material financial distress could threaten the financial stability of the United States, under 12 CFR 1310 App. A.II.a, should include specific, quantifiable projections of the damage that could be caused to the United States economy, including a specific quantification of estimated losses that would be likely if the company is not subjected to supervision under section 113;

(f) whether these processes adequately consider the costs of any determination or designation on the regulated entity;

(g) whether entities subject to an FSOC determination under section 113 or designation under section 804 are provided a meaningful opportunity to have their determinations or designations reevaluated in a timely and appropriately transparent manner; and

(h) whether, prior to being subject to an FSOC determination under section 113 or designation under section 804, the entity should be provided with information on how to reduce perceived risk, so as to avoid being subject to such determination or designation.

As part of this review, the Secretary shall include in the required report: the Secretary's conclusions regarding the issues enumerated above; recommendations, as appropriate, on how the FSOC processes for determinations under section 113 and designations under section 804 could be improved; and recommendations for any legislative changes necessary to improve these processes.

Sec. 2. Evaluation and Review of the FSOC. The Secretary shall also evaluate and report to the President on whether the activities of the FSOC related to the determination and designation processes under section 113 and section 804, respectively, are consistent with Executive Order 13772 of February 3, 2017 (Core Principles for Regulating the United States Financial System). In the report, the Secretary should provide, if appropriate, recommendations for legislation or regulations that would ensure that the FSOC and its activities are consistent with the principles set forth in Executive Order 13772.

Sec. 3. Temporary Pause of Determinations and Designations. Pending the completion of this review and submission of the Secretary's recommendations, the Secretary shall, to the extent consistent with law, not vote for any non-emergency proposed determinations under 12 CFR 1310.10(b) or any non-emergency proposed designations under 12 CFR 1320.13(c).

Sec. 4. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

NOTE: An original was not available for verification of the content of this memorandum.

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