

appeal right as part of its written notification to the requester denying the fee reduction or waiver request. The requester shall clearly mark its appeal request and any envelope that encloses it with the words "Appeal for Fee Reduction/Waiver."

(g) *Notice of estimated fees; advance payments.* (1) When the Council estimates the fees for processing a request will exceed the limit set by the requester, and that amount is less than \$250, the Council shall notify the requester of the estimated costs, broken down by search, review and duplication fees. The requester must provide an agreement to pay the estimated costs, except that the requester may reformulate the request in an attempt to reduce the estimated fees.

(2) If the requester fails to state a limit and the costs are estimated to exceed \$250, the requester shall be notified of the estimated costs, broken down by search, review and duplication fees, and must pay such amount prior to the processing of the request, or provide satisfactory assurance of full payment if the requester has a history of prompt payment of FOIA fees. Alternatively, the requester may reformulate the request in such a way as to constitute a request for responsive records at a reduced fee.

(3) The Council reserves the right to request advance payment after a request is processed and before records are released.

(4) If a requester previously has failed to pay a fee within thirty (30) calendar days of the date of the billing, the requester shall be required to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Council begins to process a new request or the pending request.

(h) *Form of payment.* Payment may be made by check or money order paid to the Treasurer of the United States.

(i) *Charging interest.* The Council may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by the Council. The Council will follow the provisions

of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(j) *Aggregating requests.* If the Council reasonably determines that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the Council may aggregate those requests and charge accordingly. The Council may presume that multiple requests involving related matters submitted within a thirty (30) calendar day period have been made in order to avoid fees. The Council shall not aggregate multiple requests involving unrelated matters.

## **PART 1310—AUTHORITY TO REQUIRE SUPERVISION AND REGULATION OF CERTAIN NONBANK FINANCIAL COMPANIES**

### **Subpart A—General**

#### Sec.

- 1310.1 Authority and purpose.
- 1310.2 Definitions.
- 1310.3 Amendments.

### **Subpart B—Determinations**

- 1310.10 Council determinations regarding nonbank financial companies.
- 1310.11 Considerations in making proposed and final determinations.
- 1310.12 Anti-evasion provision.

### **Subpart C—Information Collection; Proposed and Final Determinations; Evidentiary Hearings**

- 1310.20 Council information collection; consultation; coordination; confidentiality.
- 1310.21 Proposed and final determinations; notice and opportunity for an evidentiary hearing.
- 1310.22 Emergency exception to § 1310.21.
- 1310.23 Council reevaluation and rescission of determinations.

### **APPENDIX A TO PART 1310—FINANCIAL STABILITY OVERSIGHT COUNCIL GUIDANCE FOR NONBANK FINANCIAL COMPANY DETERMINATIONS**

AUTHORITY: 12 U.S.C. 5321; 12 U.S.C. 5322; 12 U.S.C. 5323.

SOURCE: 77 FR 21651, Apr. 11, 2012, unless otherwise noted.

## Financial Stability Oversight Council

### Subpart A—General

#### § 1310.1 Authority and purpose.

(a) *Authority.* This part is issued by the Council under sections 111, 112 and 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) (12 U.S.C. 5321, 5322, and 5323).

(b) *Purpose.* The principal purposes of this part are to set forth the standards and procedures governing Council determinations under section 113 of the Dodd-Frank Act (12 U.S.C. 5323), including whether material financial distress at a 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 whether a nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with title I of the Dodd-Frank Act.

#### § 1310.2 Definitions.

The terms used in this part have the following meanings—

*Board of Governors.* The term “Board of Governors” means the Board of Governors of the Federal Reserve System.

*Commission.* The term “Commission” means the Securities and Exchange Commission, except in the context of the Commodity Futures Trading Commission.

*Council.* The term “Council” means the Financial Stability Oversight Council.

*Federal Insurance Office.* The term “Federal Insurance Office” means the office established within the Department of the Treasury by section 502(a) of the Dodd-Frank Act (31 U.S.C. 301 (note)).

*Foreign nonbank financial company.* The term “foreign nonbank financial company” means a company (other than a company that is, or is treated in the United States as, a bank holding company) that is—

(1) Incorporated or organized in a country other than the United States; and

(2) “Predominantly engaged in financial activities,” as that term is defined in section 102(a)(6) of the Dodd-Frank

#### § 1310.2

Act (12 U.S.C. 5311(a)(6)) and pursuant to any requirements for determining if a company is predominantly engaged in financial activities as established by regulation of the Board of Governors pursuant to section 102(b) of the Dodd-Frank Act (12 U.S.C. 5311(b)), including through a branch in the United States.

*Hearing date.* The term “hearing date” means the latest of—

(1) The date on which the Council has received all of the written materials timely submitted by a nonbank financial company for a hearing that is conducted without oral testimony pursuant to § 1310.21 or § 1310.22, as applicable;

(2) The final date on which the Council or its representatives convene to hear oral testimony presented by a nonbank financial company pursuant to § 1310.21 or § 1310.22, as applicable; and

(3) The date on which the Council has received all of the written materials timely submitted by a nonbank financial company to supplement any oral testimony and materials presented by the nonbank financial company pursuant to § 1310.21 or § 1310.22, as applicable.

*Member agency.* The term “member agency” means an agency represented by a voting member of the Council under section 111(b)(1) of the Dodd-Frank Act (12 U.S.C. 5321).

*Nonbank financial company.* The term “nonbank financial company” means a U.S. nonbank financial company or a foreign nonbank financial company.

*Office of Financial Research.* The term “Office of Financial Research” means the office established within the Department of the Treasury by section 152 of the Dodd-Frank Act (12 U.S.C. 5342).

*Primary financial regulatory agency.* The term “primary financial regulatory agency” means—

(1) The appropriate Federal banking agency, with respect to institutions described in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), except to the extent that an institution is or the activities of an institution are otherwise described in paragraph (2), (3), (4), or (5) of this definition;

## § 1310.2

## 12 CFR Ch. XIII (1-1-25 Edition)

(2) The Commission, with respect to—

- (i) Any broker or dealer that is registered with the Commission under the Securities Exchange Act of 1934, with respect to the activities of the broker or dealer that require the broker or dealer to be registered under that Act;
- (ii) Any investment company that is registered with the Commission under the Investment Company Act of 1940, with respect to the activities of the investment company that require the investment company to be registered under that Act;
- (iii) Any investment adviser that is registered with the Commission under the Investment Advisers Act of 1940, with respect to the investment advisory activities of such company and activities that are incidental to such advisory activities;
- (iv) Any clearing agency registered with the Commission under the Securities Exchange Act of 1934, with respect to the activities of the clearing agency that require the agency to be registered under such Act;
- (v) Any nationally recognized statistical rating organization registered with the Commission under the Securities Exchange Act of 1934;
- (vi) Any transfer agent registered with the Commission under the Securities Exchange Act of 1934;
- (vii) Any exchange registered as a national securities exchange with the Commission under the Securities Exchange Act of 1934;
- (viii) Any national securities association registered with the Commission under the Securities Exchange Act of 1934;
- (ix) Any securities information processor registered with the Commission under the Securities Exchange Act of 1934;
- (x) The Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934;
- (xi) The Public Company Accounting Oversight Board established under the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 *et seq.*);
- (xii) The Securities Investor Protection Corporation established under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa *et seq.*); and
- (xiii) Any security-based swap execution facility, security-based swap data repository, security-based swap dealer or major security-based swap participant registered with the Commission under the Securities Exchange Act of 1934, with respect to the security-based swap activities of the person that require such person to be registered under such Act;

(3) The Commodity Futures Trading Commission, with respect to—

- (i) Any futures commission merchant registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), with respect to the activities of the futures commission merchant that require the futures commission merchant to be registered under that Act;
- (ii) Any commodity pool operator registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), with respect to the activities of the commodity pool operator that require the commodity pool operator to be registered under that Act, or a commodity pool, as defined in that Act;
- (iii) Any commodity trading advisor or introducing broker registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), with respect to the activities of the commodity trading advisor or introducing broker that require the commodity trading advisor or introducing broker to be registered under that Act;
- (iv) Any derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), with respect to the activities of the derivatives clearing organization that require the derivatives clearing organization to be registered under that Act;
- (v) Any board of trade designated as a contract market by the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);
- (vi) Any futures association registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

## Financial Stability Oversight Council

## § 1310.10

(vii) Any retail foreign exchange dealer registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), with respect to the activities of the retail foreign exchange dealer that require the retail foreign exchange dealer to be registered under that Act;

(viii) Any swap execution facility, swap data repository, swap dealer, or major swap participant registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*) with respect to the swap activities of the person that require such person to be registered under that Act; and

(ix) Any registered entity as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a), with respect to the activities of the registered entity that require the registered entity to be registered under that Act;

(4) The State insurance authority of the State in which an insurance company is domiciled, with respect to the insurance activities and activities that are incidental to such insurance activities of an insurance company that is subject to supervision by the State insurance authority under State insurance law; and

(5) The Federal Housing Finance Agency, with respect to Federal Home Loan Banks or the Federal Home Loan Bank System, and with respect to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

*Prudential standards.* The term “prudential standards” means enhanced supervision and regulatory standards established by the Board of Governors under section 165 of the Dodd-Frank Act (12 U.S.C. 5365).

*Significant companies.* The terms “significant nonbank financial company” and “significant bank holding company” have the meanings ascribed to such terms by regulation of the Board of Governors issued under section 102(a)(7) of the Dodd-Frank Act (12 U.S.C. 5311(a)(7)).

*U.S. nonbank financial company.* The term “U.S. nonbank financial company” means a company (other than a bank holding company; a Farm Credit System institution chartered and subject to the provisions of the Farm

Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); a national securities exchange (or parent thereof), clearing agency (or parent thereof, unless the parent is a bank holding company), security-based swap execution facility, or security-based swap data repository registered with the Commission; a board of trade designated as a contract market by the Commodity Futures Trading Commission (or parent thereof); or a derivatives clearing organization (or parent thereof, unless the parent is a bank holding company), swap execution facility, or swap data repository registered with the Commodity Futures Trading Commission), that is—

(1) Incorporated or organized under the laws of the United States or any State; and

(2) “Predominantly engaged in financial activities,” as that term is defined in section 102(a)(6) of the Dodd-Frank Act (12 U.S.C. 5311(a)(6)), and pursuant to any requirements for determining if a company is predominantly engaged in financial activities as established by regulation of the Board of Governors pursuant to section 102(b) of the Dodd-Frank Act (12 U.S.C. 5311(b)).

### § 1310.3 Amendments.

The Council shall not amend or rescind appendix A to this part without providing the public with notice and an opportunity to comment in accordance with the procedures applicable to legislative rules under 5 U.S.C. 553.

[84 FR 8959, Mar. 13, 2019]

## Subpart B—Determinations

### § 1310.10 Council determinations regarding nonbank financial companies.

(a) *Determinations.* The Council may determine that a nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards, in accordance with title I of the Dodd-Frank Act, 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.

## § 1310.11

(b) *Vote required.* Any proposed or final determination under paragraph (a) of this section shall—

(1) Be made by the Council and shall not be delegated by the Council; and

(2) Require the vote of not fewer than two-thirds of the voting members of the Council then serving, including the affirmative vote of the Chairperson of the Council.

(c) *Back-up examination by the Board of Governors.* (1) If the Council is unable to determine whether the financial activities of a U.S. nonbank financial company, including a U.S. nonbank financial company that is owned by a foreign nonbank financial company, pose a threat to the financial stability of the United States, based on information or reports obtained by the Council under § 1310.20, including discussions with management, and publicly available information, the Council may request the Board of Governors, and the Board of Governors is authorized, to conduct an examination of the U.S. nonbank financial company and its subsidiaries for the sole purpose of determining whether the nonbank financial company should be supervised by the Board of Governors for purposes of title I of the Dodd-Frank Act (12 U.S.C. 5311–5374).

(2) The Council shall review the results of the examination of a nonbank financial company, including its subsidiaries, conducted by the Board of Governors under this paragraph (c) in connection with any proposed or final determination under paragraph (a) of this section with respect to the nonbank financial company.

## § 1310.11 Considerations in making proposed and final determinations.

(a) *Considerations for U.S. nonbank financial companies.* In making a proposed or final determination under § 1310.10(a) with respect to a U.S. nonbank financial company, the Council shall consider—

(1) The extent of the leverage of the U.S. nonbank financial company and its subsidiaries;

(2) The extent and nature of the off-balance-sheet exposures of the U.S. nonbank financial company and its subsidiaries;

## 12 CFR Ch. XIII (1-1-25 Edition)

(3) The extent and nature of the transactions and relationships of the U.S. nonbank financial company and its subsidiaries with other significant nonbank financial companies and significant bank holding companies;

(4) The importance of the U.S. nonbank financial company and its subsidiaries as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(5) The importance of the U.S. nonbank financial company and its subsidiaries as a source of credit for low-income, minority, or underserved communities, and the impact that the failure of such U.S. nonbank financial company would have on the availability of credit in such communities;

(6) The extent to which assets are managed rather than owned by the U.S. nonbank financial company and its subsidiaries, and the extent to which ownership of assets under management is diffuse;

(7) The nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the U.S. nonbank financial company and its subsidiaries;

(8) The degree to which the U.S. nonbank financial company and its subsidiaries are already regulated by 1 or more primary financial regulatory agencies;

(9) The amount and nature of the financial assets of the U.S. nonbank financial company and its subsidiaries;

(10) The amount and types of the liabilities of the U.S. nonbank financial company and its subsidiaries, including the degree of reliance on short-term funding; and

(11) Any other risk-related factor that the Council deems appropriate, either by regulation or on a case-by-case basis.

(b) *Considerations for foreign nonbank financial companies.* In making a proposed or final determination under § 1310.10(a) with respect to a foreign nonbank financial company, the Council shall consider—

(1) The extent of the leverage of the foreign nonbank financial company and its subsidiaries;

## Financial Stability Oversight Council

(2) The extent and nature of the United States related off-balance-sheet exposures of the foreign nonbank financial company and its subsidiaries;

(3) The extent and nature of the transactions and relationships of the foreign nonbank financial company and its subsidiaries with other significant nonbank financial companies and significant bank holding companies;

(4) The importance of the foreign nonbank financial company and its subsidiaries as a source of credit for United States households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(5) The importance of the foreign nonbank financial company and its subsidiaries as a source of credit for low-income, minority, or underserved communities in the United States, and the impact that the failure of such foreign nonbank financial company would have on the availability of credit in such communities;

(6) The extent to which assets are managed rather than owned by the foreign nonbank financial company and its subsidiaries and the extent to which ownership of assets under management is diffuse;

(7) The nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the foreign nonbank financial company and its subsidiaries;

(8) The extent to which the foreign nonbank financial company and its subsidiaries are subject to prudential standards on a consolidated basis in the foreign nonbank financial company's home country that are administered and enforced by a comparable foreign supervisory authority;

(9) The amount and nature of the United States financial assets of the foreign nonbank financial company and its subsidiaries;

(10) The amount and nature of the liabilities of the foreign nonbank financial company and its subsidiaries used to fund activities and operations in the United States, including the degree of reliance on short-term funding; and

(11) Any other risk-related factor that the Council deems appropriate, either by regulation or on a case-by-case basis.

## § 1310.12

### § 1310.12 Anti-evasion provision.

(a) *Determinations.* In order to avoid evasion of title I of the Dodd-Frank Act (12 U.S.C. 5311–5374) or this part, the Council, on its own initiative or at the request of the Board of Governors, may require that the financial activities of a company shall be supervised by the Board of Governors and subject to prudential standards if the Council determines that—

(1) Material financial distress related to, or the nature, scope, size, scale, concentration, interconnectedness, or mix of, the financial activities conducted directly or indirectly by a company incorporated or organized under the laws of the United States or any State or the financial activities in the United States of a company incorporated or organized in a country other than the United States would pose a threat to the financial stability of the United States, based on consideration of the factors in—

(i) § 1310.11(a) if the company is incorporated or organized under the laws of the United States or any State; or

(ii) § 1310.11(b) if the company is incorporated or organized in a country other than the United States; and

(2) The company is organized or operates in such a manner as to evade the application of title I of the Dodd-Frank Act (12 U.S.C. 5311–5374) or this part.

(b) *Vote required.* Any proposed or final determination under paragraph (a) of this section shall—

(1) Be made by the Council and shall not be delegated by the Council; and

(2) Require the vote of not fewer than two-thirds of the voting members of the Council then serving, including the affirmative vote of the Chairperson of the Council.

(c) *Definition of covered financial activities.* For purposes of this section, the term “financial activities”—

(1) Means activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956);

(2) Includes the ownership or control of one or more insured depository institutions; and

(3) Does not include internal financial activities conducted for the company or any affiliate thereof, including

## § 1310.20

## 12 CFR Ch. XIII (1-1-25 Edition)

internal treasury, investment, and employee benefit functions.

(d) *Application of other provisions.* Sections 1310.20(a), 1310.20(b), 1310.20(c), 1310.20(e), 1310.21, 1310.22, and 1310.23, and the definitions referred to therein, shall apply to proposed and final determinations of the Council with respect to the financial activities of a company pursuant to this section in the same manner as such sections apply to proposed and final determinations of the Council with respect to nonbank financial companies.

### Subpart C—Information Collection; Proposed and Final Determinations; Evidentiary Hearings

#### § 1310.20 Council information collection; consultation; coordination; confidentiality.

(a) *Information collection from the Office of Financial Research, member agencies, the Federal Insurance Office, and other Federal and State financial regulatory agencies.* The Council may receive, and may request the submission of, such data or information from the Office of Financial Research, member agencies, the Federal Insurance Office, and (acting through the Office of Financial Research, to the extent the Council determines necessary) other Federal and State financial regulatory agencies as the Council deems necessary to carry out the provisions of title I of the Dodd-Frank Act (12 U.S.C. 5311–5374) or this part.

(b) *Information collection from nonbank financial companies.* (1) The Council may, to the extent the Council determines appropriate, direct the Office of Financial Research to require the submission of periodic and other reports from any nonbank financial company, including a nonbank financial company that is being considered for a proposed or final determination under § 1310.10(a), for the purpose of assessing the extent to which a nonbank financial company poses a threat to the financial stability of the United States.

(2) Before requiring the submission of reports under this paragraph (b) from any nonbank financial company that is regulated by a member agency or any primary financial regulatory agency,

the Council, acting through the Office of Financial Research, shall coordinate with such agency or agencies and shall, whenever possible, rely on information available from the Office of Financial Research or such agency or agencies.

(3) Before requiring the submission of reports under this paragraph (b) from a company that is a foreign nonbank financial company, the Council shall, acting through the Office of Financial Research, to the extent appropriate, consult with the appropriate foreign regulator of such foreign nonbank financial company and, whenever possible, rely on information already being collected by such foreign regulator, with English translation.

(4) The Council may, to the extent the Council determines appropriate, accept the submission of any data, information, and reports voluntarily submitted by any nonbank financial company that is being considered for a proposed or final determination under § 1310.10(a), for the purpose of assessing the extent to which a nonbank financial company poses a threat to the financial stability of the United States.

(c) *Consultation.* The Council shall consult with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company that is being considered for supervision by the Board of Governors under § 1310.10(a) in a timely manner before the Council makes any final determination under § 1310.10(a) with respect to such nonbank financial company.

(d) *International coordination.* In exercising its duties under this part with respect to foreign nonbank financial companies and cross-border activities and markets, the Council, acting through its Chairperson or other authorized designee, shall consult with appropriate foreign regulatory authorities, to the extent appropriate.

(e) *Confidentiality—(1) In general.* The Council shall maintain the confidentiality of any data, information, and reports submitted under this part.

(2) *Retention of privilege.* The submission of any non-publicly available data or information under this part shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of

## Financial Stability Oversight Council

## § 1310.21

any Federal or State court) to which the data or information is otherwise subject.

(3) *Freedom of Information Act.* Section 552 of title 5, United States Code, including the exceptions thereunder, and any regulations thereunder adopted by the Council, shall apply to any data, information, and reports submitted under this part.

### § 1310.21 Proposed and final determinations; notice and opportunity for an evidentiary hearing.

(a) *Written notice of consideration of determination; submission of materials.* Before providing a nonbank financial company written notice of a proposed determination pursuant to paragraph (b) of this section, the Council shall provide the nonbank financial company—

(1) Written notice that the Council is considering whether to make a proposed determination with respect to the nonbank financial company under § 1310.10(a);

(2) An opportunity to submit written materials, within such time as the Council determines to be appropriate (which shall be not less than 30 days after the date of receipt by the nonbank financial company of the notice described in paragraph (a)(1)), to the Council to contest the Council's consideration of the nonbank financial company for a proposed determination, including materials concerning whether, in the nonbank financial company's view, 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

(3) Notice when the Council deems its evidentiary record regarding such nonbank financial company to be complete.

(b) *Notice of proposed determination.* If the Council determines under § 1310.10(a) that a nonbank financial company should be supervised by the Board of Governors and be subject to prudential standards, the Council shall provide to the nonbank financial company written notice of the proposed determination, including an explanation

of the basis of the proposed determination and the date by which an evidentiary hearing may be requested by the nonbank financial company under paragraph (c) of this section.

(c) *Evidentiary hearing.* (1) Not later than 30 days after the date of receipt by a nonbank financial company of the notice of proposed determination under paragraph (b) of this section, the nonbank financial company may request, in writing, an opportunity for a nonpublic, written or oral evidentiary hearing before the Council or its representatives to contest the proposed determination under § 1310.10(a).

(2) Upon receipt by the Council of a timely request under paragraph (c)(1), the Council shall fix a time (not later than 30 days after the date of receipt by the Council of the request) and place at which such nonbank financial company may appear, personally or through counsel, for a nonpublic evidentiary hearing at which the nonbank financial company may submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument) to contest the proposed determination under § 1310.10(a), including materials concerning whether, in the nonbank financial company's view, 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.

(d) *Final determination after evidentiary hearing.* If the nonbank financial company makes a timely request for an evidentiary hearing under paragraph (c) of this section, the Council shall, not later than 60 days after the hearing date—

(1) Determine whether to make a final determination under § 1310.10(a);

(2) Notify the nonbank financial company, in writing, of any final determination of the Council under § 1310.10(a), which notice shall contain a statement of the basis for the decision of the Council; and

(3) If the Council makes a final determination under § 1310.10(a), publicly announce the final determination of the Council.

**§ 1310.22**

(e) *No evidentiary hearing requested.* If a nonbank financial company does not make a timely request for an evidentiary hearing under paragraph (c) of this section or notifies the Council in writing that it is not requesting an evidentiary hearing under paragraph (c) of this section, the Council shall, not later than 10 days after the date by which the nonbank financial company could have requested a hearing under paragraph (c) of this section or 10 days after the date on which the Council receives notice from the nonbank financial company that it is not requesting an evidentiary hearing, as applicable—

(1) Determine whether to make a final determination under § 1310.10(a);

(2) Notify the nonbank financial company, in writing, of any final determination of the Council under § 1310.10(a), which notice shall contain a statement of the basis for the decision of the Council; and

(3) If the Council makes a final determination under § 1310.10(a), publicly announce the final determination of the Council.

(f) *Time period for consideration.* (1) If the Council does not make a proposed determination under § 1310.10(a) with respect to a nonbank financial company within 180 days after the date on which the nonbank financial company receives the notice of completion of the Council's evidentiary record described in paragraph (a)(3) of this section, the nonbank financial company shall not be eligible for a proposed determination under § 1310.10(a) unless the Council issues a subsequent written notice of consideration of determination under paragraph (a) of this section to such nonbank financial company.

(2) This paragraph (f) shall not limit the Council's ability to issue a subsequent written notice of consideration of determination under § 1310.21(a) to any nonbank financial company that, within 180 days after the date on which such nonbank financial company received a notice described in paragraph (a)(3) of this section, does not become subject to a proposed determination under § 1310.10(a).

**12 CFR Ch. XIII (1-1-25 Edition)****§ 1310.22 Emergency exception to § 1310.21.**

(a) *Exception to § 1310.21.* Notwithstanding anything to the contrary in § 1310.21, the Council may waive or modify any or all of the notice and other procedural requirements of § 1310.21 with respect to a nonbank financial company if—

(1) The Council determines that such waiver or modification is necessary or appropriate to prevent or mitigate threats posed by the nonbank financial company to the financial stability of the United States; and

(2) The Council provides written notice of the waiver or modification under this section to the nonbank financial company as soon as practicable, but not later than 24 hours after the waiver or modification is granted. Any such notice shall set forth the manner and form for transmitting a request for an evidentiary hearing under paragraph (c) of this section.

(b) *Consultation.* (1) In making a determination under paragraph (a) of this section with respect to a nonbank financial company, the Council shall consult with the primary financial regulatory agency, if any, for such nonbank financial company, in such time and manner as the Council may deem appropriate.

(2) In making a determination under paragraph (a) of this section with respect to a foreign nonbank financial company, the Council shall consult with the appropriate home country supervisor, if any, of such foreign nonbank financial company, in such time and manner as the Council may deem appropriate.

(c) *Opportunity for evidentiary hearing.* (1) If the Council, pursuant to paragraph (a) of this section, waives or modifies any of the notice or other procedural requirements of § 1310.21 with respect to a nonbank financial company, the nonbank financial company may request, in writing, an opportunity for a nonpublic, written or oral evidentiary hearing before the Council or its representatives to contest such waiver or modification, not later than 10 days after the date of receipt by the

## Financial Stability Oversight Council

## § 1310.23

nonbank financial company of the notice described in paragraph (a)(2) of this section.

(2) Upon receipt of a timely request for an evidentiary hearing under paragraph (c)(1), the Council shall fix a time (not later than 15 days after the date of receipt by the Council of the request) and place at which the nonbank financial company may appear, personally or through counsel, for a nonpublic evidentiary hearing at which the nonbank financial company may submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument) regarding the waiver or modification under this section.

(d) *Notice of final determination.* If the nonbank financial company makes a timely request for an evidentiary hearing under paragraph (c) of this section, the Council shall, not later than 30 days after the hearing date—

(1) Make a final determination regarding the waiver or modification under this § 1310.22;

(2) Notify the nonbank financial company, in writing, of the final determination of the Council regarding the waiver or modification under this § 1310.22, which notice shall contain a statement of the basis for the final decision of the Council; and

(3) If the Council makes a final determination under § 1310.10(a), publicly announce the final determination of the Council.

(e) *Vote required.* Any determination of the Council under paragraph (a)(1) of this section to waive or modify any of the notice or other procedural requirements of § 1310.21 shall—

(1) Be made by the Council and shall not be delegated by the Council; and

(2) Require the vote of not fewer than two-thirds of the voting members of the Council then serving, including the affirmative vote of the Chairperson of the Council.

### § 1310.23 Council reevaluation and rescission of determinations.

(a) *Reevaluation and rescission.* The Council shall, not less frequently than annually—

(1) Reevaluate each currently effective determination made under § 1310.10(a); and

(2) Rescind any such determination, if the Council determines that the nonbank financial company no longer meets the standard under § 1310.10(a), taking into account the considerations in § 1310.11(a) or § 1310.11(b), as applicable.

(b) *Notice of reevaluation; submission of materials.* The Council shall provide written notice to each nonbank financial company subject to a currently effective determination prior to the Council's reevaluation of such determination under paragraph (a) of this section and shall provide such nonbank financial company an opportunity to submit written materials, within such time as the Council determines to be appropriate (which shall be not less than 30 days after the date of receipt by the nonbank financial company of such notice), to the Council to contest the determination, including materials concerning whether, in the nonbank financial company's view, 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.

(c) *Vote required.* Any determination of the Council under paragraph (a)(2) of this section to rescind a determination made with respect to a nonbank financial company shall—

(1) Be made by the Council and shall not be delegated by the Council; and

(2) Require the vote of not fewer than two-thirds of the voting members of the Council then serving, including the affirmative vote of the Chairperson of the Council.

(d) *Notice of rescission.* If the Council rescinds a determination with respect to any nonbank financial company under paragraph (a) of this section, the Council shall notify the nonbank financial company, in writing, of such rescission and publicly announce such rescission.

## Pt. 1310, App. A

### APPENDIX A TO PART 1310—FINANCIAL STABILITY OVERSIGHT COUNCIL GUIDANCE FOR NONBANK FINANCIAL COMPANY DETERMINATIONS

#### I. INTRODUCTION

Section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act)<sup>1</sup> authorizes the Financial Stability Oversight Council (the Council) to determine that a nonbank financial company will be supervised by the Board of Governors of the Federal Reserve System (the Federal Reserve Board) and be subject to prudential standards, in accordance with Title I of the Dodd-Frank Act, if either (1) the Council determines that material financial distress at the nonbank financial company could pose a threat to U.S. financial stability, or (2) the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company could pose a threat to U.S. financial stability. Section 113 of the Dodd-Frank Act lists the considerations that the Council must take into account in making a determination. This guidance supplements the Council's rule regarding nonbank financial company determinations.<sup>2</sup>

Section II of this appendix outlines a two-stage process that the Council generally expects to follow when determining whether to subject a nonbank financial company to Federal Reserve Board supervision and prudential standards.<sup>3</sup> Section III sets forth the process the Council expects to follow in conducting reevaluations of its previous determinations.

#### II. PROCESS FOR NONBANK FINANCIAL COMPANY DETERMINATIONS

Under section 113 of the Dodd-Frank Act, the Council may evaluate a nonbank financial company<sup>4</sup> for an entity-specific deter-

<sup>1</sup>12 U.S.C. 5323.

<sup>2</sup>See 12 CFR part 1310.

<sup>3</sup>The Council may waive or modify this process in its discretion if it determines that emergency circumstances exist, including if necessary or appropriate to prevent or mitigate threats posed by a nonbank financial company to U.S. financial stability in accordance with section 113(f) of the Dodd-Frank Act, 12 U.S.C. 5323(f).

<sup>4</sup>The Council intends to interpret the term “company” to include any corporation, limited liability company, partnership, business trust, association, or similar organization. See Dodd-Frank Act section 102(a)(4), 12 U.S.C. 5311(a)(4). In addition, the Council intends to interpret “nonbank financial company supervised by the Board of Governors” as including any nonbank financial company that acquires, directly or indirectly, a ma-

### 12 CFR Ch. XIII (1-1-25 Edition)

mination. This section describes the process the Council expects to follow in general for those reviews.

#### *a. Overview of the Determination Process*

As described in detail below, the Council expects generally to follow a two-stage process of evaluation and analysis when evaluating a nonbank financial company under section 113 of the Dodd-Frank Act. During the first stage of the process (Stage 1), a nonbank financial company identified for review will be notified as provided below and subject to a preliminary analysis, based on quantitative and qualitative information available to the Council primarily through public and regulatory sources. During Stage 1, the Council will permit, but not require, the company to submit relevant information. The Council will also consult with the company's primary financial regulatory agency<sup>5</sup> or home country supervisor, as appropriate. This approach will enable the Council to fulfill its statutory obligation to rely whenever possible on information available through the Office of Financial Research (the OFR), Council member agencies, or the nonbank financial company's primary financial regulatory agency before requiring the submission of reports from any nonbank financial company.<sup>6</sup>

Following Stage 1, any nonbank financial company that is selected for additional review will receive notice that it is being considered for a proposed determination that the company will be supervised by the Federal Reserve Board and be subject to prudential standards under Title I of the Dodd-

5The Council may request a reevaluation of the determination before the next required annual reevaluation, in an appropriate case. Such an acquirer can use this reevaluation process to seek a rescission of the determination upon consummation of its transaction.

<sup>6</sup>See Dodd-Frank Act section 2(12), 12 U.S.C. 5301(12). In each stage of the Council's process under section 113 of the Dodd-Frank Act, the Council may also consult with, solicit information from, or coordinate with other state or federal financial regulatory agencies that have jurisdiction over the nonbank financial company or its activities.

<sup>6</sup>See Dodd-Frank Act section 112(d)(3), 12 U.S.C. 5322(d)(3).

## Financial Stability Oversight Council

## Pt. 1310, App. A

Frank Act (a Proposed Determination) and that the company will be subject to in-depth evaluation during the second stage of review (Stage 2). Stage 2 will also involve the evaluation of additional information collected directly from the nonbank financial company. At the end of Stage 2, the Council may consider whether to make a Proposed Determination with respect to the nonbank financial company. If the Council makes a Proposed Determination, the nonbank financial company may request a hearing in accordance with section 113(e) of the Dodd-Frank Act and § 1310.21(c) of the Council's rule regarding nonbank financial company determinations.<sup>7</sup> After making a Proposed Determination and holding any written or oral hearing if requested, the Council may vote to make a final determination (a Final Determination).

### *b. Stage 1: Preliminary Evaluation of Nonbank Financial Companies*

Stage 1 involves a preliminary analysis of nonbank financial companies to assess the risks they could pose to U.S. financial stability. In light of the preliminary nature of a review in Stage 1, the Council expects that not all companies reviewed in Stage 1 will proceed to Stage 2 or a Final Determination.

#### Identification of Company for Review in Stage 1

The Council may evaluate one or more individual nonbank financial companies for an entity-specific determination under section 113 of the Dodd-Frank Act. The Council's staff-level committees are responsible for monitoring and analyzing financial markets, financial companies, the financial system, and issues related to financial stability. These committees monitor a broad range of asset classes, institutions, and activities, as described in the Council's Analytic Framework for Financial Stability Risk Identification, Assessment, and Response (the Analytic Framework), and as reflected in the Council's annual reports. In assessing potential risks, these committees consider the vulnerabilities, types of metrics, and transmission channels described in the Analytic Framework. These committees, in the course of their duties, will monitor each sector of the financial system at least annually and will report to the Deputies Committee<sup>8</sup> regarding potential risks to U.S. financial stability that they identify. With respect to these monitoring and reporting activities,

<sup>7</sup>See 12 CFR 1310.21(c).

<sup>8</sup>The Council's Deputies Committee is composed of senior officials from each Council member and member agency. See Bylaws of the Deputies Committee of the Financial Stability Oversight Council, available at <https://fsoc.gov>.

the Council's Systemic Risk Committee is responsible for monitoring and reporting on each financial sector, including information on identified firms and activities that may pose risks that merit further review, unless another Council committee or working group provides such updates to the Deputies Committee on a particular sector. The updates to the Deputies Committee will use applicable metrics as described in the Analytic Framework. The Deputies Committee is responsible for directing, coordinating, and overseeing the work of the Systemic Risk Committee and all of the Council's other staff-level committees and working groups in accordance with this guidance. If an identified risk relates to one or more financial companies that may merit review in the context of a potential determination under section 113, the Council may review those companies in Stage 1. Alternatively, the Deputies Committee may direct a staff-level committee or working group to further assess the identified risks, including consideration of whether the risks could be addressed by a designation under section 113 or by use of a different Council authority, such as recommendations to existing regulators. The Deputies Committee may also direct the Council's Nonbank Financial Companies Designations Committee (the Nonbank Designations Committee)<sup>9</sup> to conduct an initial analysis of the companies based on the risk-assessment approach described in the Analytic Framework. The purpose of such an analysis by the Nonbank Designations Committee would be to further inform the determination regarding whether one or more companies should be reviewed in Stage 1, if needed. Following any such analysis by the Nonbank Designations Committee, the Council may review one or more companies in Stage 1. Any Council committee's identification, reporting, direction, analysis, or recommendation described in this paragraph will be made in accordance with such committee's bylaws or charter.

When evaluating the potential risks associated with a nonbank financial company, the Council may consider the company and its subsidiaries separately or together. This approach enables the Council to consider potential risks arising across the entire organization, while retaining the ability to make a determination regarding either the parent or

<sup>9</sup>The Nonbank Designations Committee supports the Council in fulfilling the Council's responsibilities to consider, make, and review Council determinations regarding nonbank financial companies under section 113 of the Dodd-Frank Act. See Charter of the Nonbank Financial Companies Designations Committee of the Financial Stability Oversight Council, available at <https://fsoc.gov>.

any individual nonbank financial company subsidiary (or neither), depending on which entity the Council determines could pose a threat to financial stability.

**Engagement With Company and Regulators in Stage 1**

The Council will provide a notice to any nonbank financial company under review in Stage 1 no later than 60 days before the Council votes on whether to evaluate the company in Stage 2. In Stage 1, the Council will consider available public and regulatory information. In order to reduce the burdens of review on the company, the Council will not require the company to submit information during Stage 1; however, a company under review in Stage 1 may submit to the Council any information relevant to the Council's evaluation and may, upon request, meet with staff of Council members and member agencies who are leading the Council's analysis. The Council may request a page-limited summary of the company's submissions. In addition, staff representing the Council will, upon request, provide the company with a list of the primary public sources of information being considered during the Stage 1 analysis, so that the company has an opportunity to understand the information the Council may rely upon during Stage 1. In addition, during discussions in Stage 1 with the company, the Council intends for representatives of the Council to indicate to the company potential risks that have been identified in the analysis. However, any potential risks identified at this stage are preliminary and may continue to develop until the Council makes a Final Determination. Through this engagement, the Council seeks to provide the company under review an opportunity to understand the focus of the Council's analysis, which may enable the company to act to mitigate any risks to financial stability and thereby potentially avoid becoming subject to a Council determination.

The Council will also consider in Stage 1 information available from relevant existing regulators of the company. Under the Dodd-Frank Act, the Council is required to consult with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company that is being considered for a determination before the Council makes any Final Determination with respect to such company.<sup>10</sup> For any company under review in Stage 1 that is regulated by a primary financial regulatory agency or home country supervisor, the Council will notify the regulator or supervisor that the company is under review no later than the time the com-

pany is notified. The Council will also consult with the primary financial regulatory agency, if any, of each significant subsidiary of the nonbank financial company, to the extent the Council deems appropriate in Stage 1. The Council will actively solicit the regulator's views regarding risks at the company and potential mitigants or aggravating factors. In order to enable the regulator to provide relevant information, the Council will share its preliminary views regarding potential risks at the company, if any and to the extent practicable, and request that the regulator provide information regarding those specific risks, including the extent to which the risks are adequately mitigated by factors such as existing regulation or the company's business practices. During the determination process, the Council will encourage the regulator to address any risks to U.S. financial stability using the regulator's existing authorities; if the Council believes regulators' or the company's actions have adequately addressed the potential risks to U.S. financial stability the Council has identified, the Council may discontinue its consideration of the company for a potential determination under section 113 of the Dodd-Frank Act.

Based on the preliminary evaluation in Stage 1, the Council, on a nondelegable basis, may vote to commence a more detailed analysis of the company by advancing the company to Stage 2, or it may decide not to evaluate the company further. If the Council votes not to advance a company that has been reviewed in Stage 1 to Stage 2, the Council will notify the company in writing of the Council's decision. The notice will clarify that a decision not to advance the company from Stage 1 to Stage 2 at that time does not preclude the Council from re-initiating review of the company in Stage 1.

*c. Stage 2: In-Depth Evaluation*

Stage 2 involves an in-depth evaluation of a nonbank financial company that the Council has determined merits additional review.

In Stage 2, the Council will review a nonbank financial company using information collected directly from the company, through the OFR, as well as public and regulatory information. The review will focus on whether material financial distress<sup>11</sup> at the nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company, could pose a threat to U.S. financial stability. The Analytic Framework describes the Council's approach to evaluating

<sup>10</sup> Dodd-Frank Act section 113(g), 12 U.S.C. 5323(g).

<sup>11</sup> The Council intends to interpret the term "material financial distress" as a nonbank financial company being in imminent danger of insolvency or defaulting on its financial obligations.

## Financial Stability Oversight Council

potential risks to U.S. financial stability, including in the context of a review under section 113 of the Dodd-Frank Act.

### Engagement With Company and Regulators in Stage 2

A nonbank financial company to be evaluated in Stage 2 will receive a notice (a Notice of Consideration) that the company is under consideration for a Proposed Determination. The Council also will submit to the company a request that the company provide information that the Council deems relevant to the Council's evaluation, and the nonbank financial company will be provided an opportunity to submit written materials to the Council.<sup>12</sup> This information will generally be collected by the OFR.<sup>13</sup> Before requiring the submission of reports from any nonbank financial company that is regulated by a Council member agency or a primary financial regulatory agency, the Council, acting through the OFR, will coordinate with such agencies and will, whenever possible, rely on information available from the OFR or such agencies. Council members and their agencies and staffs will maintain the confidentiality of such information in accordance with applicable law. During Stage 2, the company may also submit any other information that it deems relevant to the Council's evaluation. Information that may be considered by the Council includes details regarding the company's financial activities, legal structure, liabilities, counterparty exposures, resolvability, and existing regulatory oversight. Information requests likely will involve both qualitative and quantitative information. Information relevant to the Council's analysis may include confidential business information such as detailed information regarding financial assets, terms of funding arrangements, counterparty exposure or position data, strategic plans, and interaffiliate transactions.

The Council will make staff representing Council members available to meet with the representatives of any company that enters Stage 2, to explain the evaluation process and the framework for the Council's analysis. In addition, the Council expects that its Deputies Committee will grant a request to meet with a company in Stage 2 to allow the company to present any information or arguments it deems relevant to the Council's evaluation. If the analysis in Stage 1 has identified specific aspects of the company's operations or activities as the primary focus for the evaluation, staff will notify the company of those specific aspects, although the areas of analytic focus may change based on the ongoing analysis.

<sup>12</sup> See 12 CFR 1310.21(a).

<sup>13</sup> See Dodd-Frank Act section 112(d), 12 U.S.C. 5322(d).

## Pt. 1310, App. A

During Stage 2 the Council will also seek to continue its consultation with the company's primary financial regulatory agency or home country supervisor in a timely manner before the Council makes a Proposed or Final Determination with respect to the company. The Council will continue to encourage the regulator during the determination process to address any risks to U.S. financial stability using the regulator's existing authorities; as noted above, if the Council believes regulators' or the company's actions adequately address the potential risks to U.S. financial stability the Council has identified, the Council would expect to discontinue its consideration of the company for a potential determination under section 113 of the Dodd-Frank Act.

Before making a Proposed Determination regarding a nonbank financial company, the Council will notify the company when the Council believes that the evidentiary record regarding the company is complete.<sup>14</sup> The Council will notify any nonbank financial company in Stage 2 if the company ceases to be considered for a determination. Any nonbank financial company that ceases to be considered at any time in the Council's determination process may be considered for a potential determination in the future at the Council's discretion, consistent with the processes described above.

### *d. Proposed and Final Determinations*

#### Proposed Determination

Based on the analysis performed in Stage 2, a nonbank financial company may be considered for a Proposed Determination. A Proposed Determination requires a vote, on a nondelegable basis, of two-thirds of the voting members of the Council then serving, including an affirmative vote by the Chairperson of the Council.<sup>15</sup> Following a Proposed Determination, the Council will issue a written notice of the Proposed Determination to the nonbank financial company, which will include an explanation of the basis of the Proposed Determination.<sup>16</sup> Promptly after the Council votes to make a Proposed Determination regarding a company, the Council will provide the company's primary financial regulatory agency or home country supervisor with the nonpublic written explanation of the basis of the Council's Proposed Determination (subject to appropriate protections for confidential information).

<sup>14</sup> See 12 CFR 1310.21(a)(3).

<sup>15</sup> 12 CFR 1310.10(b).

<sup>16</sup> See Dodd-Frank Act section 113(e)(1), 12 U.S.C. 5323(e)(1).

## Pt. 1310, App. A

### Hearing

A nonbank financial company that is subject to a Proposed Determination may request a nonpublic hearing to contest the Proposed Determination in accordance with section 113(e) of the Dodd-Frank Act and §1310.21(c) of the Council's rule regarding nonbank financial company determinations.<sup>17</sup> If the nonbank financial company requests a hearing in accordance with the procedures set forth in §1310.21(c), the Council will set a time and place for such hearing. The Council has published hearing procedures on its website.<sup>18</sup> In light of the statutory timeframe for conducting a hearing, and the fact that the purpose of the hearing is to benefit the company, if a company requests that the Council waive the statutory deadline for conducting the hearing, the Council may do so in appropriate circumstances.

### Final Determination

After making a Proposed Determination and holding any requested written or oral hearing, the Council, on a nondelegable basis, may, by a vote of not fewer than two-thirds of the voting members of the Council then serving (including an affirmative vote by the Chairperson of the Council), make a Final Determination that the company will be subject to supervision by the Federal Reserve Board and prudential standards. If the Council makes a Final Determination, it will provide the company with a written notice of the Council's Final Determination, including an explanation of the basis for the Council's decision.<sup>19</sup> The Council will also provide the company's primary financial regulatory agency or home country supervisor with the nonpublic written explanation of the basis of the Council's Final Determination (subject to appropriate protections for confidential information). The Council expects that its explanation of the basis for any Final Determination will highlight the key risks that led to the determination and include guidance regarding the factors that were important in the Council's determination. When practicable and consistent with the purposes of the determination process, the Council will provide a nonbank financial company with notice of a Final Determination at least one business day before publicly announcing the determination pursuant to §1310.21(d)(3), §1310.21(e)(3), or §1310.22(d)(3) of the Council's

## 12 CFR Ch. XIII (1-1-25 Edition)

rule.<sup>20</sup> In accordance with the Dodd-Frank Act, a nonbank financial company that is subject to a Final Determination may bring an action in U.S. district court for an order requiring that the determination be rescinded.<sup>21</sup>

The Council does not intend to publicly announce the name of any nonbank financial company that is under evaluation prior to a Final Determination with respect to such company. However, if a company that is under review in Stage 1 or Stage 2 publicly announces the status of its review by the Council, the Council intends, upon the request of a third party, to confirm the status of the company's review. In addition, the Council will publicly release the explanation of the Council's basis for any Final Determination or rescission of a determination, following such an action by the Council. The Council is subject to statutory and regulatory requirements to maintain the confidentiality of certain information submitted to it by a nonbank financial company or its regulators.<sup>22</sup> In light of these confidentiality obligations, such confidential information will be redacted from the materials that the Council makes publicly available, although the Council does not expect to restrict a company's ability to disclose such information.

### III. ANNUAL REEVALUATIONS OF NONBANK FINANCIAL COMPANY DETERMINATIONS

After the Council makes a Final Determination regarding a nonbank financial company, the Council intends to encourage the company or its regulators to take steps to mitigate the potential risks identified in the Council's written explanation of the basis for its Final Determination. Except in cases where new material risks arise over time, if the potential risks identified in writing by the Council at the time of the Final Determination and in subsequent reevaluations have been adequately addressed, generally the Council would expect to rescind its determination regarding the company.

For any nonbank financial company that is subject to a Final Determination, the Council is required to reevaluate the determination at least annually, and to rescind the determination if the Council determines that the company no longer meets the statutory standards for a determination.<sup>23</sup> The Council may also consider a request from a company for a reevaluation before the next

<sup>17</sup> See 12 CFR 1310.21(c).

<sup>18</sup> 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, available at <https://fsoc.gov>.

<sup>19</sup> Dodd-Frank Act section 113(e)(3), 12 U.S.C. 5323(e)(3); see also 12 CFR 1310.21(d)(2) and (e)(2).

<sup>20</sup> See 12 CFR 1310.21(d)(3) and (e)(3) and 1310.22(d)(3).

<sup>21</sup> See Dodd-Frank Act section 113(h), 12 U.S.C. 5323(h).

<sup>22</sup> See Dodd-Frank Act section 112(d)(5), 12 U.S.C. 5322(d)(5); see also 12 CFR 1310.20(e).

<sup>23</sup> Dodd-Frank Act section 113(d), 12 U.S.C. 5323(d).

## Financial Stability Oversight Council

Pt. 1320

required annual reevaluation, in the case of an extraordinary change that materially affects the Council's analysis.

The Council will apply the same standards of review in its annual reevaluations as the standards for an initial determination regarding a nonbank financial company: either material financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or the mix of the company's activities, could pose a threat to U.S. financial stability. If the Council determines that the company does not meet either of those standards, the Council will rescind its determination.

The Council's annual reevaluations will generally assess whether any material changes since the previous reevaluation and since the Final Determination justify a rescission of the determination. The Council expects that its reevaluation process will focus on whether any material changes that have taken effect—including changes at the company, changes in its markets or its regulation, changes in the impact of relevant factors, or otherwise—result in the company no longer meeting the standards for a determination. In light of the frequent reevaluations, the Council's analyses will generally focus on material changes since the Council's previous review, but the ultimate question the Council will seek to assess is whether changes in the aggregate since the Council's Final Determination regarding the company have caused the company to cease meeting either of the statutory standards for a determination.

During the Council's annual reevaluation of a determination regarding a nonbank financial company, the Council will provide the company with an opportunity to meet with representatives of the Council to discuss the scope and process for the review and to present information regarding any change that may be relevant to the threat the company could pose to financial stability. In addition, during an annual reevaluation, the company may submit any written information to the Council the company deems relevant to the Council's analysis. During annual reevaluations, a company is encouraged to submit information regarding any changes related to the company's risk profile that mitigate the potential risks previously identified by the Council. Such changes could include updates regarding company restructurings, regulatory developments, market changes, or other factors. If the company or its regulators have taken steps to address the potential risks previously identified by the Council, the Council will assess whether the risks have been adequately mitigated to merit a rescission of the determination regarding the company. If the company explains in detail and in a timely manner potential changes it could make to its business to address the potential risks previously

identified by the Council, representatives of the Council will endeavor to provide their feedback on the extent to which those changes may address the potential risks.

If a company contests the Council's determination during the Council's annual reevaluation, the Council will vote on whether to rescind the determination and provide the company, its primary financial regulatory agency or home country supervisor, and the primary financial regulatory agency of its significant subsidiaries with a notice explaining the primary basis for any decision not to rescind the determination. If the Council does not rescind the determination, the written notice provided to the company will address the most material factors raised by the company in its submissions to the Council contesting the determination during the annual reevaluation. The written notice from the Council will also explain why the Council did not find that the company no longer met the standard for a determination under section 113 of the Dodd-Frank Act. In general, due to the sensitive, company-specific nature of its analyses in annual reevaluations, the Council generally would not publicly release the written findings that it provides to the company, although the Council does not expect to restrict a company's ability to disclose such information.

Finally, the Council will provide each nonbank financial company subject to a Council determination an opportunity for an oral hearing before the Council once every five years at which the company can contest the determination.

[88 FR 80127, Nov. 17, 2023]

## PART 1320—DESIGNATION OF FINANCIAL MARKET UTILITIES

### Subpart A—General

Sec.

- 1320.1 Authority and purpose.
- 1320.2 Definitions.

### Subpart B—Consultations, Determinations and Hearings

- 1320.10 Factors for consideration in designations.
- 1320.11 Consultation with financial market utility.
- 1320.12 Advance notice of proposed determination
- 1320.13 Council determination regarding systemic importance.
- 1320.14 Emergency exception.
- 1320.15 Notification of final determination regarding systemic importance.
- 1320.16 Extension of time periods.