

The Financial Stability Oversight Council approved the attached resolution by notational vote on March 13, 2018, with nine members voting in favor of the resolution and none opposed. The Chairman of the Securities and Exchange Commission abstained from the resolution.

RESOLUTION APPROVING ADOPTION OF
AMENDED COUNCIL HEARING PROCEDURES

WHEREAS, section 111(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) provides that the Financial Stability Oversight Council (the “Council”) shall adopt such rules as may be necessary for the conduct of the business of the Council; and

WHEREAS, on May 22, 2012, the Council approved the adoption of hearing procedures that apply in proceedings conducted under section 113 or section 804 of the Dodd-Frank Act and the issuance of a notice of availability of such procedures and request for comments that was published in the Federal Register on May 30, 2012; and

WHEREAS, on April 4, 2013, in response to the public comments received on the initial hearing procedures, the Council approved the adoption of amended hearing procedures and the issuance of a notice of availability of such procedures that was published in the Federal Register on April 16, 2013; and

WHEREAS, section 117 of the Dodd-Frank Act provides that any entity may request an opportunity for a written or oral hearing before the Council to appeal its treatment as a nonbank financial company supervised by the Board of Governors of the Federal Reserve System; and

WHEREAS, the staffs of the Council members and their agencies have prepared (1) the attached further amended hearing procedures (the “Council Hearing Procedures”), which would add hearings conducted under section 117 of the Dodd-Frank Act to the scope of the hearing

procedures and make certain additional changes, and (2) the attached notice of availability of such procedures and request for comments (the “Notice”) to be published in the Federal Register; and

WHEREAS, the staffs of the Council members and their agencies recommend that the Council approve the adoption of the Council Hearing Procedures and the issuance of the Notice for publication in the Federal Register.

NOW, THEREFORE, BE IT RESOLVED, that the Council hereby approves the adoption of the Council Hearing Procedures and the issuance of the Notice, and authorizes the Chairperson, or his designee, to cause the Council Hearing Procedures to be published on the Council’s website and to cause the Notice to be published in the Federal Register, in a form and manner acceptable to the Chairperson, or his designee, and to otherwise make them available to the public 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 Notice to ensure that it can be published in the Federal Register, and to take such other actions and issue such other documents incident and related to the foregoing as the Chairperson, or his designee, deems necessary or appropriate to fulfill the Council’s objectives in connection with its publication.

Financial Stability Oversight Council

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

Wall Street Reform and Consumer Protection Act

§ 1 Authority and purpose.

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

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

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

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

Chairperson means the Chairperson of the Council.

Council means the Financial Stability Oversight Council.

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 4 Written hearing.

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

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

§ 5 Oral hearing.

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

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

(b) Notice and submission of written materials.

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

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

(3) Deadlines.

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

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

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

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

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

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

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

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

§ 6 Confidentiality.

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

§ 7 Denial and dismissal of a hearing.

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

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

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

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

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

AGENCY: Financial Stability Oversight Council.

ACTION: Notice of availability.

SUMMARY: The Financial Stability Oversight Council (Council) has adopted amendments to its procedures for hearings conducted by the Council under Title I and Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).¹ The amendments were adopted primarily in order to add hearings conducted under section 117 of the Dodd-Frank Act to the scope of the procedures.

DATES: The amendments to the hearing procedures were effective on March 13, 2018. Written comments on the amendments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Eric A. Froman, Executive Director, Financial Stability Oversight Council, U.S. Treasury Department, (202) 622-1942; Stephen T. Milligan, Attorney-Advisor, U.S. Treasury Department, (202) 622-4051.

ADDRESSES:

Interested persons are invited to submit comments on the procedures according to the instructions below.

All submissions must refer to the document title.

Electronic submission of comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Council to make them available to the public. Comments submitted electronically through the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the

¹ P.L. 111-203 (Jul. 21, 2010).

public. Commenters should follow the instructions provided on that site to submit comments electronically.

Mail. Send comments to Financial Stability Oversight Council, 1500 Pennsylvania Avenue NW, Washington, D.C. 20220.

Public inspection of comments. All properly submitted comments will be available for inspection and downloading at <http://www.regulations.gov>.

Additional instructions. In general, comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

SUPPLEMENTARY INFORMATION:

Background

On May 22, 2012, the Council approved hearing procedures relating to the conduct of hearings before the Council in connection with proposed determinations regarding nonbank financial companies and financial market utilities and related emergency waivers or modifications under sections 113 and 804 of the Dodd-Frank Act.² At the time, the Council sought public comment on all aspects of the hearing procedures, in order to further consider whether any provision should be modified. On April 4, 2013, the Council approved certain amendments to the hearing procedures to expand their scope to include hearings for financial institutions engaged in payment, clearing, or settlement activities that are the subject of a proposed designation by the Council under Title VIII of the Dodd-Frank Act.³

Amendments to Hearing Procedures

² 12 U.S.C. 5323, 5463; 77 FR 31,855 (May 30, 2012).

³ 78 FR 22,546 (April 16, 2013).

On March 13, 2018, the Council adopted amendments to the hearing procedures, primarily to add hearings conducted under section 117 of the Dodd-Frank Act to the scope of the procedures. The Council has posted the amended hearing procedures on its website at <https://www.treasury.gov/initiatives/fsoc/designations/Pages/Hearing-Procedures.aspx> and on <http://www.regulations.gov>. Although the amendments were effective when adopted, the Council is requesting comments on the procedures and may make further amendments to reflect any comments received.

Section 117 of the Dodd-Frank Act applies to an entity that was a bank holding company having total consolidated assets equal to or greater than \$50 billion as of January 1, 2010, that received financial assistance under or participated in the Capital Purchase Plan established under the Troubled Asset Relief Program authorized by the Emergency Economic Stabilization Act of 2008, and to any successor entity (as defined by the Board of Governors of the Federal Reserve System (Board of Governors) in consultation with the Council) to such a bank holding company.⁴ Section 117(b) of the Dodd-Frank Act provides that such an entity shall, if it ceases to be a bank holding company, be treated as a nonbank financial company subject to supervision by the Board of Governors as if the Council had made a determination under section 113 of the Dodd-Frank Act with respect to that entity.⁵ Section 117(c) of the Dodd-Frank Act provides that an entity may request, in writing, an opportunity for a written or oral hearing before the Council to appeal its treatment as a nonbank financial company supervised by the Board of Governors.⁶

The Council amended the hearing procedures to add hearings conducted under section 117 of the Dodd-Frank Act to the scope of the procedures. Specifically, the Council amended the definition of “petitioner” in section 2 of the hearing procedures to add a reference to entities that are appealing their treatment pursuant to section 117 of the Dodd-Frank Act. Section 3(b) of the hearing procedures was amended to

⁴ 12 U.S.C. 5327.

⁵ 12 U.S.C. 5327(b).

⁶ 12 U.S.C. 5327(c).

provide that a petitioner that is appealing its treatment pursuant to section 117 may request a hearing by submitting a written request to the Chairperson of the Council. Section 5(b)(3)(ii) of the hearing procedures was amended to provide that any petitioner, including a petitioner appealing its treatment pursuant to section 117 of the Dodd-Frank Act, may submit additional written materials to supplement any materials presented during an oral hearing not later than 7 days after the date of that hearing. A new paragraph (4) was added to section 5(b) to provide that, in cases where an oral hearing is held under section 113 or 117 of the Dodd-Frank Act, the date of the hearing shall be deemed to be the date on which the Council has received any supplemental materials that are timely submitted after the oral hearing. The definition of “hearing date” in section 2 was accordingly deleted as unnecessary.

To reflect the addition of hearings conducted under section 117 of the Dodd-Frank Act to the scope of the procedures, conforming changes were made to sections 1(a) and (b) (regarding the authority for and scope of the procedures); section 4(b) (regarding the submission of written materials); section 7 (regarding the denial and dismissal of a hearing); and section 8(a) (providing that the substantive standards for Council review of petitions is not affected by the hearing procedures).

Finally, the Council made certain non-substantive or technical changes to update the hearing procedures. Specifically, the definitions of “hearing” and “oral hearing” in section 2 were deleted as unnecessary. Section 5(c)(2) was amended to clarify that, even when the Council determines to conduct an oral hearing through representatives, each member of the Council is entitled to participate in the oral hearing in lieu of appointing a representative. The former section 5(d)(1), providing that if the Council grants a request for an oral hearing, the hearing shall be conducted through both the submission of written materials and an oral hearing, was omitted from the hearing procedures as redundant with other provisions in the procedures. The former section 5(d)(2), providing for the conduct of an oral hearing, was redesignated as section 5(c)(3) and amended to add, consistent with the Council’s past practice, that the Chairperson of the Council, his representative, or the Hearing Clerk (as defined in the procedures) will preside at an oral hearing. Section 5(e), regarding transcripts of oral hearings, was redesignated as section 5(d) and

amended to remove the reference to the petitioner’s right to “inspect” a transcript or other recording of the oral argument, leaving the reference to the petitioner’s right to receive a copy of the transcript or other recording and to submit corrections.

Dated: March 13, 2018

Eric A. Froman

Executive Director,

Financial Stability Oversight Council