Minutes of the Financial Stability Oversight Council

November 3, 2023

PRESENT:

Janet L. Yellen, Secretary of the Treasury and Chairperson of the Financial Stability Oversight Council (Council)
Jerome H. Powell, Chair, Board of Governors of the Federal Reserve System (Federal Reserve)
Martin Gruenberg, Chairman, Federal Deposit Insurance Corporation (FDIC)
Gary Gensler, Chair, Securities and Exchange Commission (SEC)
Rostin Behnam, Chairman, Commodity Futures Trading Commission (CFTC)
Rohit Chopra, Director, Consumer Financial Protection Bureau (CFPB)
Sandra L. Thompson, Director, Federal Housing Finance Agency (FHFA)
Michael J. Hsu, Acting Comptroller of the Currency, Office of the Comptroller of the Currency (OCC)
Todd M. Harper, Chairman, National Credit Union Administration (NCUA)
Thomas E. Workman, Independent Member with Insurance Expertise
James Martin, Acting Director, Office of Financial Research (OFR), Department of the Treasury (non-voting member)
Steven Seitz, Director, Federal Insurance Office (FIO), Department of the Treasury (non-voting member)
Adrienne Harris, Superintendent, New York State Department of Financial Services (non-voting member)
Elizabeth K. Dwyer, Superintendent of Financial Services, Rhode Island Department of Business Regulation (non-voting member) (via videoconference)
Melanie Lubin, Securities Commissioner, Maryland Office of the Attorney General, Securities Division (non-voting member)

GUESTS:

Department of the Treasury (Treasury)
Nellie Liang, Under Secretary for Domestic Finance (via videoconference)
Sandra Lee, Deputy Assistant Secretary for the Council
Laurie Schaffer, Principal Deputy General Counsel
Eric Froman, Assistant General Counsel (Banking and Finance)
Sean Hoskins, Director of Policy, Office of the Financial Stability Oversight Council
Nicholas Steele, Director of Analysis, Office of the Financial Stability Oversight Council

Board of Governors of the Federal Reserve System
Michael Barr, Vice Chair for Supervision
Andreas Lehnert, Director, Division of Financial Stability

Federal Deposit Insurance Corporation
Susan Baker, Corporate Expert, Division of Complex Institution Supervision and Resolution

Securities and Exchange Commission
Amanda Fischer, Chief of Staff

Commodity Futures Trading Commission
David Gillers, Chief of Staff

Consumer Financial Protection Bureau
Gregg Gelzinis, Advisor to the Director

Federal Housing Finance Agency
Naa Awaa Tagoe, Deputy Director, Division of Housing Mission and Goals

Comptroller of the Currency
Jay Gallagher, Senior Deputy Comptroller for Supervision Risk and Analysis

National Credit Union Administration
Andrew Leventis, Chief Economist

Office of the Independent Member with Insurance Expertise
Charles Klingman, Senior Policy Advisor

Federal Reserve Bank of New York
John Williams, President
Richard Crump, Financial Research Advisor, Macrofinance Studies

Office of Financial Research
Sriram Rajan, Associate Director, Research and Analysis Center

Federal Insurance Office
Philip Goodman, Senior Insurance Regulatory Policy Analyst

New York State Department of Financial Services
Karen Lawson, Executive Vice President for Policy and Supervision, Conference of State Bank Supervisors

Rhode Island Department of Business Regulation
Ethan Sonnichsen, Managing Director, National Association of Insurance Commissioners (NAIC) (via videoconference)

Maryland Office of the Attorney General, Securities Division
Vincente Martinez, General Counsel, North American Securities Administrators Association

PRESENTERS:

Commercial Real Estate Market Developments

- *Hein Bogaard, Lead Economic Expert, Supervision Risk Analysis Division, OCC*

- *Robert DiChiara, Regional Manager, Division of Insurance and Research, FDIC*
- *Kelby Souhrada, Senior Lead Expert, Systemic Risk Identification Support, OCC (available for questions)*
- *Filip Zikes, Principal Economist, Division of Financial Stability, Federal Reserve (available for questions)*

Update on Inter-Agency Working Group on Treasury Market Surveillance

- *Joshua Frost, Assistant Secretary for Financial Markets, Treasury*

Update on the 2023 Annual Report

- *Paula Tkac, Executive Vice President and Research Director, Federal Reserve Bank of Atlanta*

Analytic Framework for Financial Stability Risks and Interpretive Guidance on Nonbank Financial Company Determinations

- *Sandra Lee, Deputy Assistant Secretary for the Council, Treasury*

Executive Session

The Chairperson called the executive session of the meeting of the Council to order at approximately 1:00 P.M. The Chairperson began by outlining the meeting agenda, which had previously been distributed to the members together with other materials. The agenda for the executive session included (1) an update on commercial real estate market developments, (2) an update on the work of the Inter-Agency Working Group on Treasury Market Surveillance, (3) an update on the Council's 2023 annual report, and (4) the Council's analytic framework for financial stability risk identification, assessment, and response, and the Council's final interpretive guidance on nonbank financial company determinations.

1. Commercial Real Estate Market Developments

The Chairperson introduced the first agenda item, an update on commercial real estate (CRE) market developments. She introduced Hein Bogaard, Lead Economic Expert in the Supervision Risk Analysis Division at the OCC, and Robert DiChiara, Regional Manager in the Division of Insurance and Research at the FDIC, for the update.

Mr. Bogaard stated that the presentation was intended as a follow-up to the presentation at the June 2023 Council meeting, in which the Council discussed CRE with a focus on banks with high CRE concentrations. He said that the federal banking agencies had continued to collaborate to analyze potential tail risk scenarios. He stated that CRE capitalization rates had recently risen, but not by as much as the increase in 10-year Treasury yields. He said that while CRE delinquency rates remained stable overall, they were up sharply for office properties, which constitute approximately one-third of CRE lending. He described the distribution of CRE lending sources, which includes banks, insurers, non-agency commercial mortgage-backed securities (CMBS), and real estate investment trusts (REITs).

Mr. Bogaard noted that staff had conducted scenario analyses, which imposed hypothetical losses on mortgages and CMBS holdings, to assess the sensitivity of insurance firms to losses in the CRE sector. He noted that most CMBS holdings of insurers are highly rated and likely would not experience losses in a downturn. He said that while losses overall were manageable in the scenario, some firms would experience more capital impact than others. He noted that larger insurers tend to be more concentrated in CRE than smaller insurers.

Mr. Bogaard stated that equity prices of REITs had been trending down since last year. He noted that while office REITs are not more highly leveraged than other types of CRE, their net income metrics were deteriorating. He also said that CMBS issuance had slowed sharply this year and that spreads on CMBS had widened. He concluded by describing loss rates on CMBS based on various levels of decline in occupancy rates.

Mr. DiChiara stated that the FDIC, Federal, Reserve, and OCC had collaborated to evaluate a CRE tail risk scenario for the banking sector. He described potential capital levels after applying loss scenarios. He noted that the banking agencies had estimated possible effects on bank capital levels based on scenarios involving extreme CRE loss rates. He said that before the application of the tail risk scenarios, nearly all the banks were well capitalized. He said that application of the tail risk scenarios indicated that there would be a greater capital impact on banks with high CRE concentrations. He also noted that there were generally higher CRE concentrations among banks with total assets between $1 billion and $10 billion.

Following the presentation, the Chairperson stated that CRE continued to warrant attention from the Council. She noted that in its June meeting, the Council had discussed how developments in CRE were impacting banks. Noting that CRE challenges arise partly due to changes in interest rates, she said that CRE can function as a transmission channel for risk and deserves ongoing consideration. She said that supervisors should seek to ensure that firms manage risks related to CRE and that the Council should continue to monitor bank and non-bank financial institutions with exposures to the CRE market.

Council members then had a discussion regarding the collaborative efforts of banking agencies to monitor potential CRE risks; the need to examine potential risks comprehensively; and smaller banks' exposures to CRE.

2. Update on Inter-Agency Working Group on Treasury Market Surveillance

The Chairperson then turned to the second agenda item, an update on the work of the Inter-Agency Working Group on Treasury Market Surveillance (IAWG) to strengthen Treasury market resilience. She introduced Joshua Frost, Assistant Secretary for Financial Markets at Treasury, for the update.

Mr. Frost stated that the IAWG, whose members are Treasury, the Federal Reserve, the Federal Reserve Bank of New York, the SEC, and the CFTC, had made important progress across a range of workstreams since he presented to the Council on this topic in December 2022. He said that, among other actions, Council member agencies had issued new rule proposals, finalized rules, and made progress on data, transparency, and analysis. He said that notable volatility had

occurred in the Treasury market during 2023, from sources including the stresses that occurred in March and the recent increases in long-term interest rates. He stated that although the Treasury market had not experienced the kind of stress that occurred in March 2020, the IAWG members had continued to advance efforts to enhance market resilience. He said that this work must remain a top priority, given the importance of the Treasury market for financing the government, implementing monetary policy, and facilitating the functioning of the financial system as a whole.

Mr. Frost stated that during the week of November 6, the IAWG planned to publish a staff report on the progress made since the previous staff report was issued in November 2022. He said that on November 16, the IAWG members would co-host the annual U.S. Treasury Market Conference, which he described as an important venue for the official sector and private sector to discuss the Treasury market.

Mr. Frost stated that Treasury planned to implement a buyback program in 2024 to advance two principal objectives: providing liquidity support and making Treasury's cash-management practices more effective. He said that buybacks can play an important role in helping to make the Treasury market more liquid and resilient, by providing a regular source of demand for less-liquid securities. He said that the buyback program would also help Treasury to better manage its cash balance and reduce the volatility of Treasury bill issuance. He stated that these buybacks were not intended to substantively shift the structure of outstanding debt or to ameliorate periods of acute market stress.

Mr. Frost then highlighted three developments in IAWG members' efforts to improve the resilience of market intermediation. First, he said that the SEC had finalized rules to require certain broker-dealers engaged in proprietary trading of Treasury securities to register with the Financial Industry Regulatory Authority (FINRA). He said that these rules would improve oversight of such firms, and also improve transparency for both the official sector and the public, because once the firms register, their transactions will be included in Trade Reporting and Compliance Engine (TRACE) data. Second, he stated that IAWG staff members had performed an initial analysis on the market structure of the off-the-run Treasuries segment, and hoped to identify potential policy options to improve the resilience of intermediation in this area. He said that this work built on the work he highlighted to the Council in his presentation last December regarding all-to-all trading, where one of the key findings was that all-to-all trading was more prevalent in the on-the-run segment than in the off-the-run segment. Third, he noted that the SEC had proposed expanding the definition of "dealer" to improve the oversight of important liquidity providers in the Treasury market, including principal trading firms.

Mr. Frost then addressed the progress made by IAWG members and other Council member agencies in improving data quality and availability in several areas. First, he said that the OFR had published its findings from the pilot data collection of non-centrally cleared bilateral repurchase agreement (repo) transactions that he highlighted in his previous presentation to the Council. He stated that one of the key findings from the pilot was the prevalence of bilateral repo activity occurring at what appear to be zero haircuts. He said that in January 2023, the OFR proposed a rulemaking for a permanent data collection. He said that a permanent collection should further improve the official sector's ability to monitor this sizable market segment and

assess market practices and associated risks. Next, he noted that the SEC had adopted several amendments to Form PF in May 2023, one requiring reporting by large hedge fund advisors that experience certain potentially significant stress events, and another to gather information from private liquidity funds. He said that the SEC had adopted similar rules for money market mutual funds regarding repo activity, sales, and shareholder information. Finally, he noted that the SEC had recently adopted a rule to require reporting of securities lending activity to FINRA. He said that the SEC rule also requires FINRA to use that data to provide better public transparency about the securities lending market. He stated that given the focus across the official sector on understanding the risks associated with securities financing transactions, money market mutual funds, and hedge funds, these rules collectively would strengthen the information available to the official sector and, in certain areas, to the public.

Mr. Frost then discussed several enhancements related to TRACE. He said that FINRA had taken steps to implement two of the technical enhancements to TRACE data collections for Treasury securities that he discussed in his December 2022 presentation to the Council. He said that in May, the timeframe to report Treasury transactions to TRACE was shortened from end-of-day to one hour. He also noted that on November 6, a FINRA requirement to improve the granularity of timestamps would go into effect. He said that in February 2023, FINRA had improved the public transparency of the TRACE data for Treasury securities. He said that reporting had become more frequent and that additional information on prices and trade counts was added for on-the-run securities. He noted that because these improvements were completed ahead of the bank-related stress in March, the new reports helped the public understand the impact of those events on Treasury markets. He stated that Treasury and FINRA continued to work together to implement transaction-level data reporting for on-the-run nominal coupon Treasury securities, with end-of-day dissemination and appropriate cap sizes. He noted that on November 2, FINRA had filed a rule proposal with the SEC to proceed with this dissemination.

Mr. Frost then addressed recent progress on central clearing and trading venues. He said that the SEC was evaluating comments on its rule proposal to expand central clearing in the Treasury market. He stated that the SEC and CFTC had approved rule changes to improve the operations of an existing cross-margining agreement, with changes expected to take effect in January. He also noted that the SEC continued to consider changes to rules for alternative trading systems (ATSs). He said that the large electronic platforms that host approximately one fifth of the volume in the Treasury market continued to be exempt from the ATS rules, and he noted that the SEC was considering removing that exemption as well as making additional trading venues, such as request-for-quote platforms, subject to the rules.

Addressing fund leverage and liquidity risk, Mr. Frost stated that the Council's Hedge Fund Working Group had been using its risk-monitoring framework to track threats, facilitate communication, and provide updates to the Council. He said that the SEC had adopted rules related to liquidity risk for money market mutual funds designed to reduce the risk of investor runs and increase the liquid resources those funds hold to meet redemptions. He also noted that the Treasury Market Practices Group, which is sponsored by the Federal Reserve Bank of New York, had established a working group to study risk-management practices related to non-centrally cleared bilateral repo, which he anticipated would complement the OFR's data-collection efforts previously discussed.

Mr. Frost stated in conclusion that the IAWG staffs had made significant progress toward the goal of improving Treasury market resilience, although he noted that additional work remained. He said that following the public release of the IAWG staff progress report, these issues would be discussed at the U.S. Treasury Market Conference on November 16.

Following the presentation, the Chairperson said that the IAWG continued to make important contributions to the enhancement of Treasury market resilience. She said that the upcoming publication of a third IAWG staff report indicated that the group continued to focus on making difficult but necessary changes. She stressed the importance of the Treasury market and encouraged continued efforts to enhance its resilience.

Council members then had a discussion regarding agencies' collaboration and rulemaking efforts on Treasury market resilience.

2. Update on the 2023 Annual Report

The Chairperson then introduced the next agenda item, an update on the Council's 2023 annual report. She turned to Paula Tkac, Executive Vice President and Research Director at the Federal Reserve Bank of Atlanta, for the update.

Ms. Tkac stated that member agencies were collaborating in the drafting of the report. She described the proposed structure of the report and certain topics that may be addressed, as well as potential recommendations and the timeline for completing the report.

Council members then had a discussion regarding certain sectors and risks that may be addressed in the report.

3. Analytic Framework for Financial Stability Risks and Interpretive Guidance on Nonbank Financial Company Determinations

The Chairperson then introduced the next agenda item, the Council's analytic framework for financial stability risk identification, assessment, and response, and the Council's interpretive guidance on nonbank financial company determinations. She said that she believed the two documents would create a rigorous and transparent approach for the Council.

Council members then had a discussion regarding the two documents and the Council's approach to monitoring, assessing, and addressing potential risks to financial stability.

The Chairperson adjourned the executive session of the meeting at approximately 1:57 P.M.

Open Session

The Chairperson called the open session of the meeting of the Council to order at approximately 2:04 P.M.

The Chairperson outlined the agenda for the open session, which included (1) a presentation on

the Council's analytic framework for financial stability risk identification, assessment, and response, and the Council's final interpretive guidance on nonbank financial company determinations, followed by a vote on each document, and (2) a vote on the minutes of the Council's meeting on September 22, 2023.

1. Analytic Framework for Financial Stability Risks and Interpretive Guidance on Nonbank Financial Company Determinations

The Chairperson introduced the first agenda item, a presentation and vote on the Council's analytic framework for financial stability risk identification, assessment, and response, and the Council's interpretive guidance on nonbank financial company determinations. The Chairperson began by addressing why she believed it is important for the Council to achieve greater public transparency and analytic rigor and how these two documents would help the Council do so.

The Chairperson stated that financial stability is a public good. She said that the U.S. financial system enables people to make payments, build businesses, save, and manage risks. She said that to fulfill our needs, it has evolved to be complex, diverse, and interconnected. She said that Americans rely on it every day and it has succeeded in supporting American families and businesses, enabling wealth creation and economic growth over generations. She said that when it falters, Americans can experience financial crises that can devastate households and businesses for years afterwards. She said that this underscored the need for the Council. She said that Congress created the Council after the 2008 global financial crisis to identify and respond to risks to U.S. financial stability. She stated that to maintain the strength of the financial sector, the U.S. needs a nimble but robust structure to monitor and address the build-up of risks that could threaten the financial system. She said that in the lead-up to the global financial crisis, inadequate oversight led to reckless risk-taking. She said that when large, interconnected financial companies failed in 2007 and 2008, stress spread through the financial system and then to the real economy. She stated that the reforms implemented after that crisis substantially strengthened the financial system, and she noted that the banking system as a whole remains strong. She noted that recent stresses in some financial sectors arising from the onset of the COVID-19 pandemic and the sudden failures of some regional banks underscored the continuing need to remain vigilant to threats to ensure the resilience of the financial system and U.S. economic strength. She said that this is central to the purpose of the Council and that the Council's votes on the documents in the meeting would enhance its ability to fulfill this critical mission.

The Chairperson stated that the Council would first vote on the analytic framework for financial stability risks. She said that the framework would help the public better understand how the Council conducts its work and how it deploys its various statutory tools to respond to risks. She said that the Council was, for the first time, providing a clear explanation of how it monitors, evaluates, and responds to potential risks to U.S. financial stability, regardless of whether they arise from activities, individual firms, or other sources. She said that under the framework, the Council's response to a particular risk to financial stability would depend on the nature of the risk. She stated that risks often emanate from widely conducted activities and can be effectively addressed through action by an existing regulator or interagency coordination. She said that, at other times, risks are instead concentrated in one or more specific nonbank financial companies.

The Chairperson next addressed the Council's interpretive guidance on nonbank financial company determinations. She stated that among the tools Congress gave the Council is the authority to designate a nonbank financial company for Federal Reserve supervision and prudential standards if the company's material financial distress or activities could pose a threat to U.S. financial stability. She said that the guidance to be voted on in the meeting would help ensure that the Council is able to use this authority as needed. She said that the guidance described in detail the procedural steps the Council would expect to undertake in its review of a nonbank financial company for potential designation. She stated that these steps involve rigorous analysis and transparency. She said that the guidance maintained strong procedural protections for companies under review, including significant Council engagement and communication, and provided them with opportunities to be heard. She said that the guidance also affirmed that the Council would engage extensively with a company's primary financial regulator. She said that the guidance eliminated several prerequisites to designation introduced by the interpretive guidance issued by the Council in 2019 that were not contemplated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) and were based on a flawed view of how financial risks develop and spread. She said that designation is only one of the Council's tools, and she noted that the guidance did not prioritize this tool over other approaches to addressing financial stability risks. She stated in conclusion that the Council, in voting to adopt the analytic framework and guidance, would increase the transparency of the Council's work and establish a durable process for the Council's use of its designation authority, strengthening the Council's ability to promote a resilient financial system that supports all Americans. She then introduced Sandra Lee, Deputy Assistant Secretary for the Council at Treasury, for the presentation.

Ms. Lee stated that she would present the analytic framework and the interpretive guidance for the Council's consideration. She noted that the Council issued these proposals in April. She said that after the comment period closed, interagency staff carefully considered the wide range of public comments. She said that the two documents reflected that public input.

Ms. Lee stated that the analytic framework provided a public description of how the Council identifies, assesses, and responds to potential risks to U.S. financial stability, whether they derive from widely conducted activities or from individual firms. She said that the Council had never before issued a framework describing how it broadly approaches risks to financial stability regardless of origin. She said that the framework focused on three components. First, she said that to identify risks, the Council, in consultation with financial regulators, monitors a broad range of financial market developments, entities, and activities. She stated that the framework listed examples of asset classes, sectors, and activities that the Council monitors. Second, she said that the Council works with existing financial regulators to evaluate potential risks and determine if they might warrant additional action. She said that these evaluations would be data-driven and fact-specific. She said that the analytic framework specified eight vulnerabilities that most commonly contribute to financial stability risks and the channels by which the vulnerabilities can increase risks to financial stability. She stated that this type of analysis can be applied regardless of whether the Council is considering risks from activities, particular firms, or other sources. Third, she said that the analytic framework underscored that the Council may undertake a variety of approaches to respond to identified risks. She said that in many cases, the Council works with financial regulators to seek the implementation of actions to reduce

identified financial stability risks. She stated that alternatively, the Council may issue recommendations to regulators or to Congress. She said that in other cases, the Council may use one of its designation authorities. She said that the analytic framework did not prioritize any of the Council's tools over another. She said that instead, the Council's actions depend on the nature of the identified risk.

Ms. Lee stated that, based on public comments, the analytic framework included a number of changes from the April proposal. She said that first, the framework provided additional transparency regarding how the Council interprets the phrase "threat to financial stability." She said that this term had not been defined in the proposal and that some commenters suggested that the public would benefit from a better understanding of the Council's view. She said that the analytic framework therefore built on the description of financial stability that was included in the proposal. She stated that the analytic framework interpreted "threat to financial stability" to mean events or conditions that could substantially impair the financial system's ability to support economic activity. Second, she said that in response to public commenters' requests for additional detail on some of the vulnerabilities and transmission channels that were identified in the proposal, the framework included more information on these factors and more sample metrics that the Council may consider. Third, she said that based on public comments that requested an explanation of the interplay between the listed vulnerabilities and transmission channels, the analytic framework specified vulnerabilities that may be particularly relevant for each transmission channel. She said that finally, some commenters highlighted the importance of the Council's engagement with existing financial regulators. She stated that the Council had a long history of working closely with primary regulators, and that the framework included additional emphasis on the Council's extensive engagement with state and federal financial regulatory agencies.

Ms. Lee then turned to the guidance on nonbank financial company determinations. She stated that the guidance was intended to establish a durable process for the designation of nonbank financial companies, restore the Council's ability to address threats to financial stability that could be posed by specific entities, and provide enhanced transparency to the public and to financial companies. She noted that the Dodd-Frank Act establishes the standard for designations and the list of factors the Council must consider in any designation. She said that the Council's guidance did not alter those statutory requirements. She said that under the Dodd-Frank Act, a nonbank financial company can be designated only if the Council determines that the company's material financial distress or its activities could pose a threat to U.S. financial stability. She said that the guidance described the procedural steps the Council would take in reviewing a nonbank financial company for a potential designation. She stated that the process would involve substantial engagement with companies under review and their existing regulators.

Ms. Lee stated that under the guidance, the Council would expect to follow a two-stage process. She said that in stage 1 of the process, a company identified for review would be subject to preliminary analysis based primarily on information from public and regulatory agencies. She said that the company would be notified and allowed to submit information to the Council at least 60 days before the Council votes on whether to advance the company to stage 2. She said that if the Council determines a company should continue to be reviewed, staff representing the

Council would engage extensively with the company in stage 2. She said that stage 2 involves significant two-way communications with the company under review and its primary financial regulator. She stated that if the Council's preliminary analysis had identified particular risks as a focus for evaluation, the company would be notified of those issues, enabling the company to understand and address the concerns. She said that at the conclusion of stage 2, the Council may make a proposed designation with a two-thirds supermajority vote of Council members. She said that after a proposed designation, the Council would issue a written analysis to the company and the company may request a hearing. She said that after any hearing, the Council may vote to make a final designation, which would require a separate two-thirds supermajority Council vote. She stated that for any designated company, the Council would publish the explanation of the basis for the designation and encourage the company or its regulators to take steps to mitigate the identified risks. She said that the Council would re-evaluate all designations at least annually and rescind a designation if the company no longer meets the statutory standards for designation.

Ms. Lee stated that the new guidance removed three prerequisites to the designation authority that were created by the guidance that the Council adopted in 2019. Specifically, she said the 2019 guidance stated that the Council would defer to existing regulators before considering a company for potential designation, perform a cost-benefit analysis of any designation, and assess a company's likelihood of material financial distress. She said that these steps are not legally required, are not useful or appropriate, and unduly hamper the Council's ability to use its statutory authorities. She stated that by removing these unwarranted hurdles, the revised guidance restored the availability of the Council's designation authority without prioritizing any one of the Council's tools over another. She said that the Council's expectation is that any designation would be based on rigorous, transparent, and data-driven analysis. She said that the framework and guidance would increase public transparency of the Council's work, help to ensure a rigorous process for mitigating risks to the U.S. financial system, and strengthen the Council's ability to identify, assess, and respond to potential risks to U.S. financial stability.

Following the presentation, the Chairperson invited other Council members to comment.

Jerome Powell, Chair of the Federal Reserve, expressed his support for the analytic framework and the interpretive guidance. He said that the documents strike an appropriate balance between the activities-based approach and preserving designation as one of the tools that is available to the Council. He said that the framework and guidance would provide important additional transparency regarding the Council's views on financial stability and the tools that are available to the Council to address financial stability risks.

Gary Gensler, Chair of the SEC, expressed his support for the two documents. He said that history includes a number of examples in which tremors in one corner of the financial system spilled into the broader economy. He said that such events negatively impact American workers, businesses, and families. He said that such risks can emanate from any part of the financial system, including both the banking and nonbank sectors. He discussed the failure in 1998 of the nonbank financial company Long-Term Capital Management, a highly leveraged hedge fund. He noted that the report issued by the President's Working Group on Financial Markets following the failure of the firm highlighted the risk of excessive leverage, along with "the

possibility that problems at one financial institution could be transmitted to other institutions, and potentially pose risks to the financial system."

Chair Gensler then discussed the creation of the Council and its authority to designate nonbank financial companies for Federal Reserve supervision and enhanced prudential standards. He stated that over the past decade, the nonbank sector had continued to grow, and he noted that by some measures, it exceeded the size of the commercial banking sector. He said that the guidance would help to reinvigorate the Council's designation process in a manner consistent with the original intent of Congress. He said that issuing the documents would be an important step for the Council, but not the only necessary step. He stated that Council member agencies still have important roles within their respective authorities to enhance resiliency to the financial system. He discussed SEC rulemakings designed to address risks in money market mutual funds and to shorten the standard settlement cycle for certain securities transactions, and he noted additional work being undertaken by Treasury, the Federal Reserve, and the CFTC to enhance the resiliency of the Treasury market. He also noted proposals by the SEC and CFTC to improve data collection by amending Form PF.

The Chairperson noted that the Council had reestablished its Hedge Fund Working Group and expressed support for the proposals to amend Form PF.

Martin Gruenberg, Chairman of the FDIC, stated that in the aftermath of the 2008 global financial crisis, Congress gave regulators a variety of tools under the Dodd-Frank Act to respond to the potential systemic risks posed by nonbank financial companies. He said that these include the Council's authority to instruct the OFR to collect information on nonbank financial companies; to designate nonbank financial companies for Federal Reserve supervision and enhanced prudential standards; and to designate systemically important financial market utilities and payment, clearing, and settlement activities for additional risk-management standards. He stated that these authorities serve as a basis to begin to address the systemic risk concerns presented by nonbank financial companies, including the lack of transparency, prudential supervision, and controls on the use of leverage. He said that the Council had been consistently focused on the potential systemic risks posed by nonbank financial companies. He noted that the Council had issued a statement in February 2022 on nonbank financial intermediation; announced the reestablishment of its Hedge Fund Working Group; established a new Open-end Fund Working Group; and issued a statement encouraging the SEC's efforts to reform money market mutual funds and strengthen short-term funding markets.

Chairman Gruenberg stated that the Council's 2022 annual report encouraged relevant federal and state regulators to continue coordinating closely to collect data, identify risks, and strengthen oversight of nonbank companies involved in the origination and servicing of residential mortgages. He noted that the Council revived its Nonbank Mortgage Servicing Task Force to consider potential regulatory responses to risks in that sector. He noted that in April 2023, the Council had published the analytic framework for public comment. He stated that the framework described the approach the Council expects to take in identifying, assessing, and responding to certain potential risks to U.S. financial stability. He noted that the Council had also issued the proposed interpretive guidance on nonbank financial company designations. He said that the revised guidance would remove several constraints to Council designation, while

retaining a multi-stage, deliberative process with opportunities for engagement with firms. He noted that the Council had carefully reviewed public comments on the proposals. He expressed his support for the analytic framework and the guidance. He stated that the analytic framework would enhance the transparency of the Council's process for considering financial stability risks, and he said that the interpretive guidance would restore the practical use of the designation authority. He said that these were critical steps to advance the ability of the Council to address risks to U.S. financial stability that could arise from nonbank financial companies. He said that it is important that the Council be willing to utilize all of the tools at its disposal.

Michael Hsu, Acting Comptroller of the Currency, stated that he supported the adoption of the interpretive guidance and the analytic framework. He said that the Dodd-Frank Act provides the Council with a number of important tools for monitoring and mitigating risks to U.S. financial stability. He said that it is important that the Council has a structure in place to use these tools when warranted. He said that the interpretive guidance and the analytic framework help strike the right balance to facilitate this structure. He stated that this approach would restore the options available to the Council under the Dodd-Frank Act and enable the Council to more effectively detect and prevent threats to U.S. financial stability.

Rohit Chopra, Director of the CFPB, noted that financial history is often cyclical. He stated that in the years following the 2008 financial crisis, the memories of regulators and policymakers had faded. He said that the economic and psychological damage inflicted by a financial crisis lingers for many years. He stated that the CFPB still hears from individuals who continue to experience the financial traumas from 15 years ago. He said that Congress directed the Council to "promote market discipline by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies, that the government will shield them from losses in the event of failure." He said that under section 113 of the Dodd-Frank Act, the Council is tasked with designating financial companies that could pose a threat to U.S. financial stability. He stated that designated firms may be required to have higher capital requirements to absorb losses, more cash on hand to mitigate the impact of runs, and file living wills to demonstrate the firm can fail without extraordinary government assistance. He noted that the Council currently has no firms designated under this authority. He said that this had led to a perception among certain market participants that this authority is defunct. He said that the Council's actions in the meeting would begin to change that perception. He said that he supported the goal of promoting market discipline by removing certain obstacles under the previous designation guidance that were not grounded in law. He stated that it would be important for the Council to engage in rigorous analysis of certain sectors of the financial system to identify financial institutions that may meet the criteria outlined in section 113 of the Dodd-Frank Act. He said that he supported the Council launching a durable process to evaluate nonbank financial companies whose material financial distress or activities could pose a threat to U.S. financial stability. He noted that the financial system is inherently fragile and contains risks. He concluded by stating that one of the Council's goals should be that at some point in the future, none of its members have lived through a financial crisis.

Rostin Behnam, Chairman of the CFTC, stated that the Council's designation authority is one of the most critical authorities that Congress created in response to the 2008 financial crisis. He said that he supported the revised interpretive guidance and analytic framework. He said that if

these documents were approved, the Council should use its authority with care and with a clear awareness of its impacts. He said that the authority to designate nonbank financial companies for Federal Reserve supervision and prudential standards fills a regulatory gap. He stated that the Council should be specific in the event it exercises this tool. He said that, consistent with the debate and exchange of ideas on the two documents, the Council should undertake any potential designation based on a thorough analysis and review of available data. He said that Council members should work closely and collaboratively towards any potential designation. He expressed his support for the Council's decision to reinvigorate its Financial Market Utilities and Payment, Clearing, and Settlement Activities Committee. Noting that the Dodd-Frank Act granted the Council the authority to designate financial market utilities as systemically important, he said he supported the use of this authority in appropriate circumstances, given the importance of these entities to the functioning of U.S. financial markets. He stated that he would collaborate with other Council members with the goal of prudently exercising these authorities in connection with nonbank financial companies and financial market utilities.

Sandra Thompson, Director of the FHFA, noted that the Council was established by the Dodd-Frank Act to identify risks to U.S. financial stability, promote market discipline by eliminating expectations that firms are too big to fail, and respond to emerging threats to the stability of the U.S. financial system. She said that Congress empowered the Council with tools to fulfill these purposes. She stated that the interpretive guidance issued by the Council in 2019, however, prioritized one approach and one tool over other options available to the Council, which she said potentially limited the Council's ability to respond to emerging threats to the stability of the U.S. financial system. She said that the interpretive guidance and the analytic framework would make it more likely that the Council can access its available tools to address threats that may arise in the future. She expressed her appreciation for the public input the Council received on the proposals, and she said she was encouraged that the Council took this feedback into consideration to provide further clarity on the interpretation of a "threat to financial stability," further emphasize the Council's engagement with existing regulators, and expand on the transmission channel discussion. She stated that she does not believe that nonbank financial company designations should be a Council goal, but she noted that risks arising in the future may be best addressed through the Council designation authority.

Todd Harper, Chairman of the NCUA, stated that the Council's work this year to reconsider the analytic framework and the nonbank financial company designations process was much needed. He noted that the Dodd-Frank Act gave the Council a range of tools to address potential threats to U.S. financial stability, including the authority to designate a nonbank financial company for Federal Reserve supervision and enhanced prudential standards when circumstances warrant it. He said that the interpretive guidance issued by the Council in 2019 included a number of procedural hurdles that needlessly hampered the Council's ability to consider and use this important tool. He said that the revised interpretive guidance and the analytic framework would provide the Council with a more strategic, effective, and rigorous approach to the designation process, and he said it described in more clear and balanced terms how the Council would undertake a potential designation. He stated that the financial market stresses experienced earlier this year clearly demonstrated that problems in one financial institution can rapidly transmit stresses elsewhere. He said that the Council should be nimble and proactive in anticipating and mitigating those risks. He said that the Council should conduct regular and deliberative reviews

of any entities that could pose a threat to U.S. financial stability. He said that the Council needs to have access to all available tools, including potential designations, to address financial stability risks. He stated that the Council will be best equipped to fulfill its statutory mandate of protecting the financial system from systemic risks if it is prepared to act when needed. He said that given that mandate, he supported the analytic framework and the interpretive guidance.

Thomas Workman, the Council's independent member with insurance expertise, stated that he would support the interpretive guidance and the analytic framework. He said that he also wanted to address the revised approach under which an activities-based approach would not be prioritized over the Council's designation authority; the use of cost-benefit analysis in the designation process; and the importance of the Council continuing to work closely with state insurance regulators. He noted that the Council does not broadly prioritize one type of tool over another. He stated that, instead, the Council examines a risk and designs an appropriate response. He noted that the analytic framework states that "[t]he actions the Council may take depend on the nature of the vulnerability." He said that vulnerabilities, for example, originating from activities that may be widely conducted in a particular sector or market over which a regulator has adequate, existing authority may be addressed through an activity-based or industry-wide response. He stated that in contrast, in cases where the financial system relies on the ongoing financial activities of a small number of entities, such that the impairment of one of the entities could threaten financial stability, or where a particular financial company's material financial distress or activities could pose a threat to U.S. financial stability, an entity-based designation may be appropriate. Regarding cost-benefit analysis, he said that, consistent with the logic of making all the tools available to plainly examine a risk and design a response, conducting a cost-benefit analysis can be an important tool in the analytical process prior to making a determination. He said that cost-benefit analysis is a tool that is well-recognized in federal and state statutory, regulatory, and case law, and is generally understood by the public as a way to make efficient use of government and private resources. He stated that, in light of the significant attention given cost-benefit analysis in the comments received, consideration should be given to having the Council deem the cost of designation to be an appropriate risk-related factor. He said that while it may be difficult to calculate the benefit of a designation in a given case, calculating the cost of a designation could provide valuable information about the cost that would be imposed on the designee. In conclusion, he stated that the insurance sector has a strong, sophisticated state regulatory system. He noted that the revised interpretive guidance preamble states that "[t]he Council appreciates the expertise and experience … of primary financial regulators … . Under the Final Guidance, the Council will maintain its previous commitment to engaging extensively with existing regulators." He stated that he expects the NAIC would continue to engage with the Council in addressing potential risks to financial stability in the U.S. insurance sector.

Elizabeth Dwyer, Superintendent of Financial Services for the Rhode Island Department of Business Regulation, stated that her remarks would be limited to the potential designation of insurance companies. She said that insurance companies are subject to a vigorous and coordinated state-based regulatory system. She noted that a decade ago, her predecessor on the Council had objected to designating certain insurance companies for Federal Reserve supervision and prudential standards, and she said that she had seen no data or supervisory information in the interim that would cause her to disagree. She noted that since that time, state insurance

regulators had undertaken efforts to strengthen and modernize the supervisory framework applicable to insurers. She said that in every area that the Council had identified potential vulnerabilities in the broader financial system, state insurance regulators had responded to ensure those concerns do not take root in the insurance sector. She stated that state insurance regulators also recognized that insurers can be affiliated with other financial enterprises that could pose a threat to U.S. financial stability. She said that, as a result, it is appropriate to ensure that the Council has effective designation guidance to address such threats. She said that designations are a blunt instrument, and she encouraged the Council to leverage the primary regulators that have broad authority and extensive expertise, which she identified as the Council's first and best line of defense against emerging threats to the stability of the U.S. financial system.

Following the discussion, the Chairperson presented to the Council the following resolution approving the analytic framework for financial stability risk identification, assessment, and response:

WHEREAS, the Council's duties under section 112 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) include monitoring the financial services marketplace in order to identify potential threats to U.S. financial stability; monitoring domestic and international financial regulatory proposals and developments, including insurance and accounting issues, and advising Congress and making recommendations in such areas that will enhance the integrity, efficiency, competitiveness, and stability of the U.S. financial markets; facilitating information sharing and coordination among the Council member agencies and other federal and state agencies regarding domestic financial services policy development, rulemaking, examinations, reporting requirements, and enforcement actions; recommending to the member agencies general supervisory priorities and principles reflecting the outcome of discussions among the member agencies; identifying gaps in regulation that could pose risks to the financial stability of the United States; requiring supervision by the Board of Governors of the Federal Reserve System for nonbank financial companies that may pose risks to the financial stability of the United States in the event of their material financial distress or failure, or because of their activities pursuant to section 113 of the Dodd-Frank Act; and making recommendations to primary financial regulatory agencies to apply new or heightened standards and safeguards for financial activities or practices that could create or increase risks of significant liquidity, credit, or other problems spreading among bank holding companies, nonbank financial companies, and United States financial markets; and

WHEREAS, on April 21, 2023, the Council approved a proposed analytic framework (the Proposed Analytic Framework) that described the approach the Council would expect to take in identifying, assessing, and responding to certain potential risks to U.S. financial stability; and

WHEREAS, the staffs of Council members and their agencies have reviewed the public comments received in response to the Proposed Analytic Framework and, following such review, have prepared a final analytic framework (the Analytic Framework); and

WHEREAS, the staffs of the Council members and their agencies recommend that the Council approve and publish the Analytic Framework.

NOW, THEREFORE, BE IT RESOLVED, that the Council hereby approves the Analytic Framework and authorizes the Chairperson, or her designee, to cause the Analytic Framework to be published in the Federal Register, in a form and manner acceptable to the Chairperson, or her designee, and to otherwise make it available to the public as the Chairperson, or her designee, deems appropriate.

BE IT FURTHER RESOLVED, that the Council hereby delegates authority to the Chairperson, or her designee, to make technical, nonsubstantive, or conforming changes to the text of the Analytic Framework 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 her designee, deems necessary or appropriate to fulfill the Council's objectives in connection with its publication.

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

The Chairperson then presented to the Council the following resolution approving the final interpretive guidance regarding nonbank financial company determinations:

WHEREAS, the Council's duties under section 112 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) include monitoring the financial services marketplace in order to identify potential threats to U.S. financial stability; identifying gaps in regulation that could pose risks to the financial stability of the United States; and requiring supervision by the Board of Governors of the Federal Reserve System (the Federal Reserve) for nonbank financial companies that may pose risks to the financial stability of the United States in the event of their material financial distress or failure, or because of their activities, pursuant to section 113 of the Dodd-Frank Act; and

WHEREAS, section 113 of the Dodd-Frank Act authorizes the Council to determine that a nonbank financial company shall be supervised by the Federal Reserve and shall be subject to prudential standards if the Council determines that material financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company, could pose a threat to the financial stability of the United States; and

WHEREAS, on December 4, 2019, the Council approved interpretive guidance (the 2019 Interpretive Guidance) that described the approach the Council intended to take in prioritizing its work to identify and address potential risks to U.S. financial stability and in making determinations regarding nonbank financial companies under section 113 of the Dodd-Frank Act; and

WHEREAS, on April 21, 2023, the Council approved proposed interpretive guidance (the Proposed Guidance) that would replace the 2019 Interpretive Guidance, and that described the process the Council would take in determining whether to subject a nonbank financial company to Federal Reserve supervision and prudential standards under section 113 of the Dodd-Frank Act; and

WHEREAS, the staffs of Council members and their agencies have reviewed the public comments received in response to the Proposed Guidance and, following such review, have prepared final interpretive guidance (the Final Guidance); and

WHEREAS, the staffs of the Council members and their agencies recommend that the Council approve and publish the Final Guidance.

NOW, THEREFORE, BE IT RESOLVED, that the Council hereby approves the Final Guidance, which supersedes and replaces the 2019 Interpretive Guidance, and authorizes the Chairperson, or her designee, to cause the Final Guidance to be published in the Federal Register, in a form and manner acceptable to the Chairperson, or her designee, and to otherwise make it available to the public as the Chairperson, or her designee, deems appropriate.

BE IT FURTHER RESOLVED, that 2019 Interpretive Guidance is hereby rescinded.

BE IT FURTHER RESOLVED, that in accordance with sections 6(i) and 7(a) of the Rules of Organization of the Council, the Council hereby delegates authority to the Deputies Committee to take such actions as may be necessary or appropriate to implement the Final Guidance, except with respect to actions that are nondelegable under the Dodd-Frank Act, the Rules of Organization of the Council, or the Final Guidance; provided, that before the Deputies Committee votes on commencing Stage 1 with respect to a nonbank financial company under the Final Guidance, the Deputies Committee shall provide at least seven days' written notice to the Council, and, consistent with section 3(e) of the Bylaws of the Deputies Committee, such vote shall take effect 24 hours after the approval of such action by the Deputies Committee unless any member of the Council requests full Council review of such action.

BE IT FURTHER RESOLVED, that the Council hereby delegates authority to the Chairperson, or her designee, to make technical, nonsubstantive, or conforming changes to the text of the Final Guidance 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 her designee, deems necessary or appropriate to fulfill the Council's objectives in connection with its publication.

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

2. Resolution Approving the Minutes of the Meeting Held on September 22, 2023

BE IT RESOLVED, by the Financial Stability Oversight Council (Council), that the minutes attached hereto of the meeting held on September 22, 2023 of the Council are hereby approved.

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

The Chairperson adjourned the meeting at approximately 2:49 P.M.