

[Banking and Finance Law Daily Wrap Up, FINANCIAL STABILITY—FSOC amends hearing procedures under Dodd Frank Act, requests comments, \(Mar. 16, 2018\)](#)

Banking and Finance Law Daily Wrap Up

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The Financial Stability Oversight Council has adopted amended procedures for hearings under Title I or Title VIII of the Dodd-Frank Act. The [resolution](#) adds hearings conducted under section 117 of the Dodd-Frank Act to the scope of the procedures, effective March 13, 2018. The FSOC issued a [notice](#) requesting public comments on the procedures. Written comments on the amendments must be received on or before April 18, 2018.

Section 117 of the Dodd-Frank Act applies to bank holding companies with total consolidated assets equal to or greater than \$50 billion as of Jan. 1, 2010, that received financial assistance under or participated in the Capital Purchase Plan established under the Troubled Asset Relief Program, and to any successor entity to such a bank holding company.

Amendments. The [hearing procedures](#) govern hearings concerning proposed determinations and emergency waivers or modifications made pursuant to Title I and Title VIII of the Dodd-Frank Act, and appeals by entities of their treatment as nonbank financial companies supervised by the Federal Reserve Board under section 117 of the Dodd-Frank Act. Under Section 117(b) such an entity must, if it ceases to be a bank holding company, be treated as a nonbank financial company subject to supervision by the Fed as if the FSOC had made a determination under section 113 of the Dodd-Frank Act with respect to that entity.

Section 117(c) 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 Fed.

FSOC made the following changes to the hearing procedures.

1. The definition of "petitioner" in section 2 was amended to add a reference to entities that are appealing their treatment pursuant to section 117 of the Dodd-Frank Act.
2. Section 3(b) was amended to 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.
3. Section 5(b)(3)(ii) 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 seven days after the date of that hearing.
4. 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 FSOC review of petitions is not affected by the hearing procedures).
5. 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 FSOC has received any supplemental materials that are timely submitted after the oral hearing.
6. The definition of "hearing date" in section 2 was accordingly deleted as unnecessary.

FSOC also made non-substantive or technical changes to update the hearing procedures by deleting the definitions of "hearing" and "oral hearing" in section 2 as unnecessary; and amending Section 5(c)(2) to clarify

that, even when the FSOC 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.

RegulatoryActivity: BankHolding BankingOperations DoddFrankAct FederalReserveSystem FinancialStability