Banking and Finance Law Daily Wrap Up, TOP STORY—FSOC seeks to 'substantially transform' SIFI designation process, (Mar. 7, 2019)

Banking and Finance Law Daily Wrap Up

Click to open document in a browser

By John M. Pachkowski, J.D.

FSOC seeks to substantially transform its procedures to designate nonbank financial companies as SIFIs.

The Financial Stability Oversight Council unanimously voted to seek comments on a proposed interpretive guidance that would replace the Council's existing interpretive guidance designating nonbank financial companies as systemically important financial institutions, or SIFIs, under the Dodd-Frank Act. The proposed interpretive guidance will be open for a 60-day public comment period after it is published in the *Federal Register*.

If approved, the proposed interpretive guidance would "substantially transform the Council's existing procedures" and "enhance the Council's transparency, analytical rigor, and public engagement."

SIFI designations. Under the Dodd-Frank Act, FSOC is authorized to determine that certain nonbank financial companies are to be treated as SIFIs, and be subject to supervision by the Federal Reserve Board and prudential standards.

To implement this authority, the Council issued interpretive guidance, as an appendix to a final rule, in 2012, referred to as the 2012 Final Rule and Interpretive Guidance. The 2012 Final Rule and Interpretive Guidance were supplemented by FSOC in February 2015, known as the 2015 Supplemental Procedures (see *Banking and Finance Law Daily*, Feb. 5, 2015).

In addition, FSOC approved hearing procedures, in 2012, 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 the Dodd-Frank Act. The hearing procedures were amended in 2013, and again in 2018 (see *Banking and Finance Law Daily*, April 5, 2013 and March 16, 2018).

The Council also published staff guidance, in June 2015, with details regarding the methodologies used in Stage 1 thresholds in connection with the Dodd-Frank Act determination process (see *Banking and Finance Law Daily*, June 5, 2015).

Proposed guidance. The proposed interpretive guidance would replace the 2012 Interpretive Guidance, the 2015 Supplemental Procedures, and the 2015 staff guidance regarding the Stage 1 thresholds. The Council's hearing procedures will remain in effect.

Specifically, the proposed interpretive guidance would, among other things:

- prioritize its efforts to identify, assess, and address potential risks to U.S. financial stability through an activities-based approach;
- require FSOC to perform a cost-benefit analysis before designating any nonbank financial company; and
- require the Council to assess the likelihood of a nonbank financial company's material financial distress when evaluating the firm for a potential designation.

Accomplishes its mission. Following the FSOC vote, Treasury Secretary Steven T. Mnuchin stated, "Today's proposal would make significant improvements to how the Council identifies, assesses, and responds to potential risks to U.S. financial stability." He added, "The result of significant collaboration among Council members, these changes will help ensure that the Council accomplishes its mission efficiently and effectively."

Positive changes. Comptroller of the Currency Joseph Otting noted that the proposal activities-based approach would rely on the expertise of the primary regulators to address the identified risks.

Blunt instrument. Finally, David Hirschmann, president and CEO of the Center for Capital Markets Competitiveness issued a statement calling the SIFI designation process a "a blunt instrument that may do more harm than good." He added, "By looking at specific activities rather than just focusing on firms, the FSOC will be better able to identify, monitor, and, when needed, work with the appropriate financial regulators to address specific systemic risks." Hirschmann also called on the Financial Stability Board, International Association of Insurance Supervisors, and International Organization of Securities Commissions "to pursue a similar approach on the global level."

Companies: Center for Capital Markets Competitiveness

MainStory: TopStory BankingFinance DoddFrankAct FedTracker FinancialStability PrudentialRegulation