Banking and Finance Law Daily Wrap Up, FINANCIAL STABILITY —Treasury makes recommendations on FSOC's designation processes, (Nov. 17, 2017)

Banking and Finance Law Daily Wrap Up

Click to open document in a browser

By Stephanie K. Mann, J.D.

The Treasury Department has released a report to President Donald Trump regarding the designation processes of the Financial Stability Oversight Council. The memorandum responds to the Presidential Memorandum issued on April 21, 2017 (see *Banking and Finance Law Daily*, April 21, 2017), and makes recommendations on ways to improve FSOC's processes for nonbank financial companies and financial market utility (FMU) designations.

"In our recommendations we identify several ways to improve FSOC's processes for designating nonbanks and financial market utilities," said Secretary Steven T. Mnuchin. "Our recommendations include enhancing FSOC's analytic process, implementing cost-benefit analysis, and increasing transparency."

The report has identified five policy goals that should be achieved by FSOC's designation processes: leveraging the expertise of primary financial regulatory agencies; promoting market discipline; maintaining a level playing field among firms; appropriately tailoring regulations to minimize burdens; and ensuring FSOC's designation analyses are rigorous, clear, and transparent.

Nonbank financial company designations. After an analysis of nonbank financial company designations, Treasury has recommended that FSOC prioritize its efforts to address risks to financial stability through a process that emphasizes an activities-based or industry-wide approach. As stated in the report's fact sheet, recommendations have been made to implement a process for assessing and addressing potential risks to financial stability that includes three steps:

1. reviewing potential risks to financial stability from activities and products;
2. working with relevant regulators to address any identified potential risks to financial stability; and
3. considering company-specific designations only after consultation with relevant regulators.

In order to enhance the analytical process, engagement, and transparency of FSOC's nonbank financial company designation process, Treasury has advised that FSOC should:

- revise its guidance to provide that FSOC will assess the likelihood of a firm's material financial distress as part of analysis;
- revise its guidance to provide that FSOC will conduct a cost-benefit analysis as part of its analyses, and FSOC should only designate a company if the expected benefits to financial stability outweigh the costs of designation;
- enhance its communication with nonbank financial companies under review and their primary financial regulators; and
- provide a clear "off-ramp" to designated nonbank financial companies and adopt a more robust and transparent process for its annual reevaluations.

FMUs. Analysis of FMUs has led Treasury to recommend that FSOC add important enhancements to improve the analytical rigor, engagement, and transparency of the process, and to ensure that the designation process is individualized and appropriately tailored. Additionally, the report has recommended that FSOC continue to study key issues related to FMU operation, designation, and resolution. Finally, Treasury has recommended that the Council consider incorporating cost-benefit analyses into its FMU evaluation process as well.

RegulatoryActivity: BankingFinance DoddFrankAct FedTracker FinancialStability TrumpAdministrationNews