

[Banking and Finance Law Daily Wrap Up, TOP STORY—Prudential Financial designated for enhanced supervision, \(Sept. 20, 2013\)](#)

Banking and Finance Law Daily Wrap Up

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By John M. Pachkowski, J.D.

The Financial Stability Oversight Council (FSOC) has voted to designate Prudential Financial, Inc., as a potential threat to financial stability. The designation subjects Prudential Financial to Federal Reserve Board supervision and enhanced prudential standards. In a [press release](#), FSOC stressed that the designation of Prudential Financial does not constitute that the “company is currently experiencing material financial distress.”

Previously, Prudential Financial received a letter on June 3, 2013, informing it that FSOC had made a proposed designation and providing it with an explanation of the basis for the Council’s proposed designation. Shortly after that notice, Prudential Financial [stated](#) that it would request a hearing to contest the Council’s proposed designation. The Council granted the request and held an oral hearing on July 23, 2013.

According to the [minutes](#) of FSOC’s Sept. 19, 2013, meeting, the vote to designate Prudential Financial was seven to two, with the Acting Director of the Federal Housing Finance Agency and the independent member with insurance expertise opposed, and the Chair of the Securities and Exchange Commission recusing herself from the vote. Also, one voting member and one nonvoting member, representing the insurance industry, issued dissenting opinions to the designation.

Prior FSOC designations. In July 2013, FSOC designated [American International Group, Inc.](#) and [General Electric Capital Corporation](#), Inc. for consolidated supervision and enhanced prudential standards. Under a separate authority, in July 2012 the Council designated [eight systemically important financial market utilities](#) for enhanced risk-management standards.

Council findings. FSOC [designated](#) Prudential Financial on the basis that “material financial distress at Prudential could lead to an impairment of financial intermediation or of financial market functioning that would be sufficiently severe to inflict significant damage on the broader economy.” The FSOC came to this conclusion based on Prudential’s interconnectedness, size, certain characteristics of its liabilities and products, the potential effects of a rapid liquidation of a significant portion of its assets, and potential challenges with resolvability.

Another important step. Commenting on the designation, Treasury Secretary Jacob J. Lew, Chairperson of the Council, [said](#), “The Council has taken another important step to address threats to U.S. financial stability and the broader economy. The Council will continue to use critical new tools it has to monitor and address threats to U.S. financial stability and protect the broader economy from the types of risk that contributed to the financial crisis.”

Dissenting opinions. Edward J. DeMarco, the FHFA Acting Director, issued a statement on his dissenting vote. He noted that greater weight should have been placed on factors that would have mitigated a finding that Prudential Financial proposed a potential threat to the financial stability of the United States.

S. Roy Woodall Jr., the independent Council member with insurance expertise, in his dissent, noted that FSOC’s analysis was “antithetical to a fundamental and seasoned understanding of the business of insurance, the insurance regulatory environment, and the state insurance company resolution and guaranty fund systems.”

Council member, John M. Huff, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, did not “believe that there is a sufficient basis for the Council’s final determination that Prudential’s material financial distress could pose a threat to the financial stability of the United States.” He added, “there appears to be a lack of recognition given to the nature of the insurance business and the authorities and tools available to insurance regulators” and found the rationale for the designation “flawed,

insufficient, and unsupportable” since it inappropriately applied bank-like concepts to insurance products and their regulation.

Following the Council’s vote, Prudential Financial issued a [statement](#) confirming that it was “designated a systemically important financial institution by a final vote.” The statement added that, under the Dodd-Frank Act, it has 30 days to consider its response to the FSOC designation and “[w]e are currently reviewing the rationale for the determination and our options.”

Companies: American International Group, Inc.; General Electric Capital Corporation, Inc.; Prudential Financial, Inc.

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