

COMMITTEE ON CAPITAL MARKETS REGULATION

May 13, 2026

Financial Stability Oversight Council
Attn: Eric Froman
1500 Pennsylvania Avenue NW
Washington, DC 20220

VIA ELECTRONIC PORTAL

*Re.: Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies
– RIN 4030 – [XXXX]*

Dear Sir:

The Committee on Capital Markets Regulation (the “**Committee**”) appreciates the opportunity to comment on the Financial Stability Oversight Council’s (“**FSOC**”) proposed interpretative guidance (the “**Proposal**”)¹ amending FSOC’s process for the designation of nonbanks as systemically important financial institutions (“**SIFIs**”).²

Founded in 2006, the Committee is dedicated to enhancing the competitiveness of U.S. capital markets and ensuring the stability of the U.S. financial system. Our membership includes forty-five leaders drawn from the finance, investment, business, law, accounting, and academic communities. The Committee is chaired jointly by R. Glenn Hubbard (Emeritus Dean, Columbia Business School) and John L. Thornton (Former Chairman, The Brookings Institution) and is led by Hal S. Scott (Emeritus Nomura Professor of International Financial Systems at Harvard Law School and President of the Program on International Financial Systems). The Committee is an independent and nonpartisan 501(c)(3) research organization, financed by contributions from individuals, foundations, and corporations.

Our letter proceeds in two parts. Part I explains how the Proposal restores two important criteria for nonbank SIFI designation that FSOC first implemented in 2019 and eliminated in 2023. Specifically, FSOC will (1) seek first to address potential systemic risk through generally applicable regulation of the financial activity that creates the potential risk before considering a nonbank SIFI designation, and (2) perform a cost-benefit analysis before recommending any such activities-based regulation or designating a nonbank as a SIFI.

Part II assesses the Proposal’s changes and finds that they will benefit the efficiency and stability of the U.S. financial system. As the Committee has consistently argued, activities-based regulation is more effective at addressing systemic risk than an entity-specific approach. Subjecting individual nonbank firms to enhanced supervision and regulation under a bank-specific framework creates inefficiencies and competitive disadvantages and can shift activities to less regulated sectors. Activities-based regulation can more readily address a systemically risky activity or

¹ FIN. STABILITY OVERSIGHT COUNCIL, *Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies*, 91 Fed. Reg. 15,551 (Mar. 30, 2026), <https://www.govinfo.gov/content/pkg/FR-2026-03-30/pdf/2026-06114.pdf>.

² 12 U.S.C. § 5323.

product involving a large number of market participants.³ Furthermore, a cost-benefit analysis is a necessary component of ensuring that any such measures produce a clear net benefit to financial stability.

Part II also presents two recommendations for additions to the Proposal that are consistent with the Committee’s prior commentary. First, the Proposal should specify that any activities-based regulation adopted in lieu of nonbank SIFI designation should be grounded in empirical evidence demonstrating a link between the regulated activity and systemic risk and showing that the regulation will efficiently mitigate that risk.⁴ Second, the Proposal should specify that FSOC will only consider a nonbank SIFI designation for entities without primary regulators that perform unique and critical functions in the financial system and that do not have adequate substitutes in the event the entity fails.

We recommend that FSOC finalize the Proposal with the additions we specify.

I. Summary of the Proposal

The Dodd-Frank Act authorizes FSOC to designate a nonbank financial company as a systemically important financial institution (“**nonbank SIFI**”) if FSOC determines that either: (1) material financial distress at the nonbank financial company could pose a threat to the financial stability of the United States; or (2) the nature, scope, scale, size, concentration, interconnectedness, or mix of activities of the nonbank financial institution could pose a threat to U.S. financial stability.⁵ Designation as a nonbank SIFI subjects the firm to Federal Reserve supervision and prudential standards that otherwise apply only to banks and bank holding companies. The authority to designate nonbanks as SIFIs is intended to equip FSOC with a tool to address potential threats to U.S. financial stability arising from the nonbank sector. FSOC is authorized to issue interpretative guidance specifying in greater detail the criteria and process for nonbank SIFI designation.

In 2019, FSOC issued guidance (the “**2019 Guidance**”) that recognized that the nonbank SIFI designation power is a tool of last resort to be used only when other regulatory responses are insufficient or impractical and the benefits of designation exceed its costs. The 2019 Guidance therefore provided that FSOC would first seek to address a potential risk to financial stability

³ See, e.g., COMM. ON CAPITAL MKTS. REG., *Letter to Timothy F. Geithner, Chairman, Fin. Stability Oversight Council* (Nov. 5, 2010), <https://capmksreg.org/wp-content/uploads/2010/11/The-Committee-releases-a-comment-letter-to-the-Financial-Stability-Oversight-Council-regarding-the-designation-of-financial-companies-as-systemically-important.pdf> [hereinafter “2010 Letter to FSOC”]; COMM. ON CAPITAL MKTS. REG., *Roadmap for Regulatory Reform* (May 2017), <https://capmksreg.org/wp-content/uploads/2022/11/Roadmap-for-Regulatory-Reform-1.pdf>; COMM. ON CAPITAL MKTS. REG., *Letter to Eric Froman, Fin. Stability Oversight Council* (Jun. 27, 2023), <https://capmksreg.org/wp-content/uploads/2023/06/CCMR-Comment-Letter-Non-Bank-SIFI-Designation.pdf> [hereinafter “2023 Letter to FSOC”]; COMM. ON CAPITAL MKTS. REG., *Revisiting FSOC’s Power to Designate Nonbank SIFIs* (May 2025), <https://capmksreg.org/wp-content/uploads/2025/05/FSOC-Non-Bank-SIFI-Report-05.12.25-FINAL.pdf> [hereinafter “2025 Report”]. See also COMM. ON CAPITAL MKTS. REG., *Data on Why SIFI Designation Is Not the Answer to Possible Herding Behavior by Asset Managers* (May 17, 2014), <https://capmksreg.org/why-sifi-designation-is-not-the-answer-to-possible-herding-behavior-by-asset-managers/>.

⁴ See COMM. ON CAPITAL MKTS. REG., *Roadmap for Regulatory Reform*, *supra* note 3 at 26; COMM. ON CAPITAL MKTS. REG., *Letter to Mark Schlegel, Fin. Stability Oversight Council* at 3 (Apr. 25, 2019), https://capmksreg.org/wp-content/uploads/2019/04/4_25_19_FSOC-Comment-Letter-Final.pdf [hereinafter “2019 Letter to FSOC”].

⁵ 12 U.S.C. § 5323.

through generally applicable regulation of the activity that creates the potential risk and would only pursue a nonbank SIFI designation if activities-based regulation cannot address this risk (the “**activities-based approach**”).⁶ The 2019 Guidance also committed FSOC to conduct a cost-benefit analysis before recommending activities-based regulation or designating a nonbank financial company as a SIFI, and to evaluate the likelihood that a nonbank would experience material financial distress as part of this process (the “**cost-benefit analysis commitment**”).⁷ In addition, the 2019 Guidance specified that FSOC would consider designating a nonbank as a SIFI “only in rare instances, such as if the products, activities, or practices of a company that pose a potential threat to U.S. financial stability are outside the jurisdiction or authority of financial regulatory agencies.”⁸

In 2023, FSOC replaced the 2019 Guidance with new guidance (the “**2023 Guidance**”). The 2023 Guidance eliminated the activities-based approach and the cost-benefit analysis commitment.⁹

The Proposal rescinds the 2023 Guidance and reinstates the activities-based approach and the cost-benefit analysis commitment from the 2019 Guidance.¹⁰ However, the Proposal does not carry forward the 2019 Guidance’s statement that designation will be considered “only in rare instances.” This omission leaves open the possibility of broader use of the designation authority in cases where FSOC determines that activities-based regulation is insufficient.

II. Analysis of the Proposal

a. The reinstatement of the activities-based approach and cost-benefit analysis commitment promotes the efficiency and stability of the financial system.

The Committee has repeatedly argued that designating individual nonbank entities for enhanced regulation and supervision under a bank-specific framework is unlikely to effectively mitigate systemic risk and that activities-based regulation is the more efficient approach to addressing systemic risk in the nonbank sector.¹¹ Individual designations have adverse market-wide impacts including increasing moral hazard, introducing competitive distortions into the marketplace, and artificially lowering the cost of funds borne by institutions that are branded as systemically

⁶ FIN. STABILITY OVERSIGHT COUNCIL, *Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies*, 84 Fed. Reg. 71,740, 71,761 (Dec. 30, 2019) (codified at 12 C.F.R. Part 1310).

⁷ *Id.* at 71,762, 71,766.

⁸ *Id.* at 71,767.

⁹ FIN. STABILITY OVERSIGHT COUNCIL, *Guidance on Nonbank Financial Company Determinations*, 88 Fed. Reg. 80,110, 80,119-121 (Nov. 17, 2023) (codified at 12 C.F.R. Part 1310).

¹⁰ FIN. STABILITY OVERSIGHT COUNCIL, *supra* note 1, at 15,561-63.

¹¹ COMM. ON CAPITAL MKTS. REG., *Roadmap for Regulatory Reform*, *supra* note 3 at 26; SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS, *Testimony of Hal S. Scott* at 6 (Nov. 9, 2015), <https://financialservices.house.gov/uploadedfiles/hhrg-114-ba09-wstate-hscott-20151119.pdf> (“Regulating systemic risk requires a focus on systemically risky activities and products.”); COMM. ON CAPITAL MKTS. REG., *Letter to Neal S. Wolin, Acting Chairman, Fin. Stability Oversight Council* at 2 (Feb. 15, 2013), <https://capmktreg.org/wp-content/uploads/2013/02/Comment-Letters-to-FSOC-on-the-Designation-of-Non-Bank-Systemically-Important-Financial-Institutions-and-FSOCs-Recommendation-that-the-SEC-Adopt-a-Floating-Net-Asset-Value.pdf> [hereinafter “2013 Letter to FSOC”]; 2019 Letter to FSOC, *supra* note 4, at 3; 2023 Letter to FSOC, *supra* note 3, at 7-8; 2025 Report, *supra* note 3, at 13.

important by implicitly signaling a higher likelihood of government support.¹² Moreover, the Federal Reserve and the regulations it has developed for the banking sector are not well-suited to regulate nonbanking businesses. Imposing a regulatory framework designed for banks on entities ranging from mutual funds to broker-dealers to insurance firms would lead to suboptimal regulatory outcomes, particularly because these entities already have a primary regulator.¹³

Further, there is no principled way to identify individual nonbanks for designation. The statutory criteria for nonbank SIFI designation are so vague that they could apply to any nonbank. In particular, the statutory criteria do not define the factors like scope, size, or scale of an activity or specify the relative weight FSOC should give each factor. Any designation is therefore likely to result in costly and time-consuming litigation.¹⁴

By contrast, an activities-based approach can more readily identify and address a widespread, systemically risky activity or product involving a large number of market participants. Such a broad-based approach has already been adopted with respect to the regulation of, for example, derivatives trading (e.g., central clearing and minimum margin requirements). In addition, the activities, relative size, and importance of individual entities change over time, such that an entity-specific classification can become increasingly irrelevant over time. An activities-based approach is less susceptible to these changes. Activities-based regulation therefore better positions market participants to evaluate the risks and benefits of activities and products than designating a few large nonbank financial companies as sources of systemic risk.

Furthermore, a cost-benefit analysis is both legally required under Dodd-Frank and vital as a matter of policy. If the costs of SIFI designation to the company and its customers outweigh the benefits to market participants in the form of increased financial stability, then SIFI designation serves no valid policy purpose. We discuss the importance of the activities-based approach and importance of cost-benefit analysis more fully in our 2025 report.¹⁵

The Proposal's reinstatement of the activities-based approach and the cost-benefit analysis commitment is therefore essential to ensuring that the nonbank SIFI designation authority does not produce inefficient or counterproductive regulatory outcomes.¹⁶

b. The Proposal should also require evidence for activities-based regulation and reinstate tighter criteria for nonbank SIFI designation.

We present two recommendations for additions to the Proposal, consistent with the Committee's prior views on nonbank SIFI designation.

¹² 2010 Letter to FSOC, *supra* note 3, at 2; 2019 Letter to FSOC, *supra* note 4, at 4; 2025 Report, *supra* note 3, at 11; *see also*, COMM. ON CAPITAL MKTS. REG., *Letter to Lance Auer, Fin. Stability Oversight Council* at 2 (Feb. 22, 2011), <https://capmktreg.org/wp-content/uploads/2011/02/The-Committee-releases-a-comment-letter-to-the-Financial-Stability-Oversight-Council-regarding-its-authority-to-require-supervision-and-regulation-of-certain-nonbank-financial-companies.pdf>.

¹³ 2023 Letter to FSOC, *supra* note 3; 2025 Report, *supra* note 3, at 9.

¹⁴ 2010 Letter to FSOC, *supra* note 3, at 3; 2019 Letter to FSOC, *supra* note 4, at 4; 2025 Report, *supra* note 3, at 8.

¹⁵ COMM. ON CAPITAL MKTS. REG., *Revisiting FSOC's Power to Designate Nonbank SIFIs*, *supra* note 3.

¹⁶ FIN. STABILITY OVERSIGHT COUNCIL, *supra* note 1, at 15,562.

COMMITTEE ON CAPITAL MARKETS REGULATION

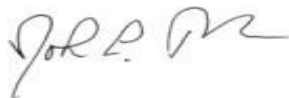
First, the Proposal should specify that any activities-based regulation adopted to address systemic risk in lieu of SIFI designation should be based on empirical evidence of a link between the activity or product and systemic risk and that the risk-mitigating effects of the regulation will outweigh its costs.¹⁷ Requiring such evidence is essential to ensure that these regulations are appropriately supported and justified.

Second, to ensure that designation remains limited to cases where it is necessary, the Proposal should reinstate the 2019 Guidance statement that SIFI designation only applies in “rare instances.” It should also provide more specifically that FSOC will only consider designating a nonbank as a SIFI if: (1) the company is not already regulated by one or more primary regulatory agencies at either the federal or state level; and (2) the entity performs a unique critical function that could not continue in bankruptcy or be transferred to another institution.¹⁸ These guardrails will help to mitigate many of the issues associated with designating firms and to ensure that any designation will have a net benefit to financial stability.

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Thank you for your consideration of the Committee’s position. Should you have any questions or concerns, please do not hesitate to contact the Committee’s President, Professor Hal S. Scott (hscott@capmksreg.org) or its Executive Director, John Gulliver (jgulliver@capmksreg.org) at your convenience.

Respectfully submitted,



John L. Thornton
CO-CHAIR



Hal S. Scott
PRESIDENT



R. Glenn Hubbard
CO-CHAIR

¹⁷ COMM. ON CAPITAL MKTS. REG., *Roadmap for Regulatory Reform*, supra note 3, at 26; 2019 Letter to FSOC, supra note 4, at 3.

¹⁸ See 2025 Report, supra note 3, at 14; 2023 Letter to FSOC, supra note 3, at 6; 2019 Letter to FSOC, supra note 4, at 4-5; 2013 Letter to FSOC, supra note 11, at 1-2.