

MEMO# 31676

March 25, 2019

FSOC Proposal to Reform Nonbank SIFI Designation Process and Related ICI Congressional Testimony

[31676]

March 25, 2019 TO: ICI Members

Investment Company Directors SUBJECTS: Systemic Risk RE: FSOC Proposal to Reform Nonbank SIFI Designation Process and Related ICI Congressional Testimony

Over the past several months, the Financial Stability Oversight Council (FSOC) has been considering how to modify its approach to addressing potential risks to financial stability and reform its process for potential designation of a nonbank financial company as a systemically important financial institution (SIFI). The Council recently issued a proposal[\[1\]](#) to replace its existing interpretive guidance on SIFI designations with new guidance that would:

- Institute a new two-step process whereby the Council will (1) monitor markets and (2) work with primary regulators to address potential risks to financial stability;
- Provide that the Council will consider a nonbank financial company for possible SIFI designation only if the potential risks posed by the company cannot be addressed through activities-based regulation; and
- Require that the Council consider the possible designation of any such company under a more robust process that involves, among other things, greater engagement with the company and its primary regulator.[\[2\]](#)

ICI will consult with members and prepare a comment letter on the proposal. The deadline for comments is May 13.

Shortly after the Council issued its proposal, ICI President and CEO Paul Schott Stevens testified before the Senate Banking Committee on the need to reform FSOC's nonbank SIFI designation process.[\[3\]](#) His testimony included the following key messages:

- SIFI designation is a blunt regulatory tool, and its use should be reserved for extraordinary circumstances.
- The designation of a registered fund or fund manager would be unwarranted and harmful to fund investors.

- Despite some improvements since its initial adoption, the SIFI designation process needs further reform in several key areas: greater engagement with a company being considered for possible designation; a greater role in the process for the company's primary financial regulator; more rigorous analysis of the company and its potential to pose risk to US financial system stability; and greater transparency to the financial markets and market participants.
- ICI's initial analysis of the new FSOC proposal is quite positive. ICI believes that the Council has outlined a sound approach to using its range of authorities to address potential risks to financial stability, from information sharing among regulatory authorities to SIFI designation.
- Nevertheless, ICI continues to believe that Congress should confirm in statute that SIFI designation is intended to be a regulatory "tool of last resort."

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[Attachment](#)

endnotes

[1] FSOC, Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, RIN 4030-ZA00 (March 6, 2019), *available at* <https://home.treasury.gov/system/files/261/Notice-of-Proposed-Interpretive-Guidance.pdf>. A short summary of the proposal is attached to this memorandum. The Council also adopted a rule requiring that any future changes to the guidance be done through a public notice and comment process. FSOC, Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, RIN 4030-AA03 (March 6, 2019), *available at* <https://home.treasury.gov/system/files/261/Final-Rule-Regarding-Notice-and-Comment.pdf>.

[2] The changes proposed by the Council appear to hew closely to recommendations issued by the Treasury Department in late 2017. See Department of the Treasury, Financial Stability Oversight Council Designations (Nov. 2017), *available at* <https://www.treasury.gov/press-center/press-releases/Documents/PM-FSOC-Designations-Memo-11-17.pdf>.

[3] Statement of Paul Schott Stevens, President & CEO, ICI, Before the US Senate Committee on Banking Housing and Urban Affairs, on Financial Stability Oversight Council Nonbank Designations (March 14, 2019), *available at* https://www.ici.org/pdf/19_senfsoc.pdf.

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