

MEMO# 26237

June 13, 2012

Regulators Seek Comment on "SIFI" Assessments and Hearing Procedures, Adopt Final Assessment Schedule for Large BHCs

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TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 18-12
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 42-12
SEC RULES COMMITTEE No. 38-12 RE: REGULATORS SEEK COMMENT ON "SIFI" ASSESSMENTS AND HEARING PROCEDURES, ADOPT FINAL ASSESSMENT SCHEDULE FOR LARGE BHCS

The Treasury Department has issued regulations to implement Section 155 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), which directs Treasury to establish a schedule to collect periodic assessments equal to the total expenses of the Office of Financial Research ("OFR"). Treasury has adopted as a final rule ("Final Rule") the provisions applicable to assessments on bank holding companies with total consolidated assets of at least \$50 billion ("large BHCs"), and has issued as an interim final rule ("Interim Final Rule") the provisions applicable to assessments on nonbank financial companies designated as systemically important financial institutions ("SIFIs") by the Financial Stability Oversight Council ("FSOC" or "Council"). [1] Separately, the FSOC has adopted procedures to govern the conduct of any hearing contesting a nonbank financial company's proposed designation as a SIFI ("Council Hearing Procedures" or "Procedures"). [2] These developments are briefly described below.

Treasury and the FSOC have requested comment on the Interim Final Rule and the Council Hearing Procedures, respectively. If there are any issues you would like ICI to consider addressing through the comment process, please contact Rachel Graham at rgraham@ici.org or Frances Stadler at frances@ici.org by June 29 (on the Council Hearing Procedures) or by July 25 (on the Interim Final Rule).

Assessments to Fund OFR / Interim Final Rule

The Final Rule and the Interim Final Rule establish procedures to estimate, bill, and collect,

on a semiannual basis beginning on July 20, 2012, the total budgeted expenses of the OFR, including expenses of the FSOC and certain expenses of the Federal Deposit Insurance Corporation. These expenses will be paid out of the Financial Research Fund ("Fund"), which is managed by the Treasury for this sole purpose. Each semiannual assessment is intended to collect sufficient funds to replenish the Fund to a level generally equivalent to six months in operating expenses and twelve months in capital expenses for OFR and the Council, plus reimbursement of reasonable implementation expenses of the FDIC's orderly liquidation authorities.

The Final Rule and Interim Final Rule generally provide that, following the initial assessment on July 20, 2012:

- Treasury will determine, on May 31 and November 30 of each calendar year ("determination dates"), which individual companies will be assessed during the next assessment period.
- Treasury also will determine the "assessment fee rate" for each assessment period, based on the amount needed to replenish the Fund as described above.
- The assessment payment by an individual company will be determined by multiplying the assessment fee rate by the company's "total assessable assets," generally defined as the average of total consolidated assets for the four quarters preceding the determination date for that assessment period. For large BHCs, total consolidated assets will be as reported on the company's four most recent FR Y-9C filings.
- Collection of assessments from individual companies will typically occur on September 15 (following the May 31 determination date) and March 15 of the next calendar year (following the November 30 determination date).

The Treasury Release explains that the assessment rule for SIFIs "was issued as an Interim Final Rule, reflecting the Treasury's intent to evaluate the assessment schedule for nonbank financial companies as the Council implements its authority to determine companies for enhanced supervision by the [Federal Reserve] Board." Acknowledging that both the Final Rule for large BHCs and the Interim Final Rule rely on total consolidated assets to calculate assessable assets, the Treasury Release states that, "to the extent practicable, the composition of total consolidated assets used to calculate assessable assets" for both large BHCs and SIFIs "should be comparable." Nevertheless, Treasury intends to "evaluate substantive accounting differences between total consolidated assets as reported" by large BHCs and SIFIs and "review the need to make adjustments to its definition of total consolidated assets for nonbank financial companies."

The Treasury Release requests comment on the Interim Final Rule. It asks in particular:

- Whether the methodology for determining the amount of the assessment for nonbank financial companies is appropriate and what alternative methodologies might be more appropriate;
- Whether a single methodology for determining the amount of the assessment for nonbank financial companies is appropriate; and
- If a single methodology is not appropriate, what might be an appropriate framework for differentiating among nonbank financial companies.

Council Hearing Procedures

Pursuant to Section 113 of the Dodd-Frank Act, the FSOC must notify any nonbank financial company that it proposes to designate as a SIFI and provide the company with an explanation of the basis for the proposed determination. The company then has 30 days to request a written or oral hearing before the FSOC to contest the proposed determination. Upon receipt of a timely request, the Council must permit the company (or its counsel) to submit written materials or, at the sole discretion of the Council, oral testimony and oral argument.

The FSOC has adopted the Council Hearing Procedures to govern the conduct of hearings requested under Section 113. The Council Hearing Procedures address, among other things, how a nonbank financial company may request a written or oral hearing, the appointment and responsibilities of a Hearing Clerk, the submission of written materials to the Council (alone or in connection with an oral hearing), and the procedures for an oral hearing (if granted). In particular, the Council Hearing Procedures specify that:

- The provisions of the Administrative Procedure Act governing adjudications required to be determined on the record, the Federal Rules of Evidence, and the Federal Rules of Civil Procedure do not apply to hearings conducted under these Procedures.
- The petitioning nonbank financial company is not entitled to discovery or similar rights.
- The Council may determine, upon an affirmative vote of a majority of its voting members then serving, that an oral hearing (if granted) will be conducted by representatives, to be selected by each individual Council member. Under the Procedures, each representative may act in the capacity of a Council member with respect to any determination regarding the conduct of the oral hearing.
- The Council will maintain the confidentiality of any information or materials submitted in the course of a hearing under the Procedures, subject to applicable laws and regulations. The Council's rule implementing the Freedom of Information Act applies to any information submitted in any such hearing.
- For good cause and upon an affirmative vote of a majority of its voting members then serving, the Council may modify or set aside any provisions of the Procedures. The Council will give timely notice of any such action to the petitioning nonbank financial company.

The FSOC seeks comment on all aspects of the Council Hearing Procedures.

Rachel H. Graham
Senior Associate Counsel

endnotes

[\[1\]](#) Department of the Treasury, Assessment of Fees on Large Bank Holding Companies and Nonbank Financial Companies Supervised by the Federal Reserve Board to Cover the

Expenses of the Financial Research Fund, 77 Fed. Reg. 29884 (May 21, 2012) (“Treasury Release”), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-05-21/pdf/2012-12047.pdf>.

[2] Financial Stability Oversight Council, Hearing Procedures; Notice of Availability; Request for Comments, 77 Fed. Reg. 31855 (May 30, 2012), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-05-30/pdf/2012-12963.pdf>. The Council Hearing Procedures, which also apply to any hearing by the Council in connection with the proposed designation of a “financial market utility” under Title VIII of the Dodd-Frank Act, are available at <http://www.treasury.gov/initiatives/fsoc/Documents/FSOC%20hearing%20procedures.pdf>.

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