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U.S. Treasury Report on FSOC Designations; FSB Decides Not to Publish List of Global Systemically Important Insurers for 2017

Treasury Submits Report Examining FSOC Processes for Designating Nonbank Financial Companies and FMUs as Systemically Important; FSB Decides Not to Publish List of G-SIIs for 2017

SUMMARY

Treasury Report on FSOC Designations

On November 17, 2017, the U.S. Department of the Treasury (“*Treasury*”) issued a report (the “*Report*”)¹ recommending a number of changes to the Financial Stability Oversight Council’s (“*FSOC*”) evaluation and designation processes for nonbank financial companies and financial market utilities (“*FMUs*”). The Report was issued pursuant to President Trump’s Memorandum for the Secretary of the Treasury (the “*Presidential Memorandum*”), released April 21, 2017, which directed the Treasury to evaluate and provide recommendations regarding FSOC’s processes for designating systemically important nonbank financial companies (“*SIFIs*”) under Section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“*Dodd-Frank*”) and designating FMUs as systemically important under Section 804 of Dodd-Frank.

The key recommendations are:

- **Prioritizing an Activities-Based Approach:** FSOC should prioritize its efforts to address financial stability risks through a process emphasizing an activities-based or industry-wide approach. The Report proposes a three-step process: (1) FSOC should review potential risks to financial stability from activities and products; (2) if FSOC identifies a potential risk, it should work with relevant primary financial regulators to address the identified risks; and (3) if a company may

pose risk to financial stability, FSOC should consider individual firms for designation only after consultation with relevant primary regulators.

- **Increasing the Analytic Rigor of Designation Analyses:** FSOC should assess the likelihood of a firm's financial distress as part of its analysis. FSOC should also conduct a cost-benefit analysis and should only designate a nonbank financial company if the expected benefits to financial stability outweigh the costs of designation. Additionally, FSOC should develop frameworks for its designation analyses that are more rigorous, clear and comprehensible to firms and the public. FSOC should also consider amending the current \$50 billion threshold under Stage 1 of its SIFI designation process, and combine Stages 1 and 2 to simplify the process.
- **Enhancing Engagement and Transparency:** FSOC should enhance its communication with nonbank financial companies being reviewed for potential designation and undertake deeper engagement with companies' primary financial regulators during the designation process. FSOC should also increase transparency to the public respecting the basis for any designations.
- **Providing a Clear Off-Ramp:** FSOC should articulate to designated SIFIs the key risks that led to the designation, and its annual reevaluations should include a process to enable SIFIs to receive feedback on potential changes the company could make to address FSOC's concerns.
- **FMU Recommendations:** FSOC should improve the analytical rigor, engagement and transparency of the FMU designation process. Relevant supervisory agencies should continue to work collaboratively to develop effective resolution strategies for FMUs. FSOC should consider incorporating cost-benefit analyses into its evaluations of FMUs for designation, and should enhance its engagement with FMUs, and leverage the expertise of the primary regulators, throughout the designation process, and increase transparency to the public regarding the basis for any designations.

FSB List of G-SIIs

In a related development, the Financial Stability Board (the "FSB") announced on November 21, 2017 (the "FSB Statement") that the FSB, in consultation with the International Association of Insurance Supervisors (the "IAIS") and national authorities, has decided not to publish a new list of global systemically important insurers ("G-SIIs") for 2017.² The FSB identified an initial list of G-SIIs in 2013 and, until this year, has updated annually and published each November a list of the identified G-SIIs. As the IAIS is currently in the process of developing an activities-based approach to systemic risk in the insurance sector, the FSB Statement indicates that this activities-based approach, once developed, may have significant implications for the assessment of systemic risk in the insurance sector and for the identification of G-SIIs and the policy measures they are expected to be subject to. Accordingly, the FSB states that it will review the situation in November 2018 based on the progress the IAIS has made in developing an activities-based approach. The FSB Statement also indicates that certain policy measures will continue to apply to firms the FSB identified as G-SIIs in 2016.

BACKGROUND

FSOC Designation Authority

Section 113 of Dodd-Frank empowers FSOC, an interagency body chaired by the Secretary of the Treasury (the "Secretary"), to designate certain nonbank financial companies for supervision by the Board of Governors of the Federal Reserve System (the "Federal Reserve") and application of enhanced

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prudential standards.³ A nonbank financial company may be designated by FSOC for enhanced supervision under either of two determination standards: (i) when “material financial distress” at the company “could pose a threat to the financial stability of the United States”, or (ii) when the “nature, scope, size, scale, concentration, interconnectedness or mix of the [company’s] activities” could pose the same threat. To date, FSOC has designated four SIFIs: American International Group, Inc. (“AIG”); General Electric Capital Corporation (“GECC”); Prudential Financial, Inc. (“Prudential”); and MetLife, Inc. (“MetLife”). In June 2016, FSOC voted to rescind the designation of GE Capital Global Holdings, LLC, the successor to GECC. A federal court order rescinded MetLife’s SIFI designation in March 2016, which has been appealed by the FSOC and remains pending.⁴ On September 29, 2017, FSOC voted to rescind the designation of AIG; as a result, Prudential is currently the only designated SIFI.

Section 804 of Dodd-Frank empowers FSOC to also designate certain FMUs and financial activities as “systemically important,” and thus subject to certain risk management standards and other measures. Eight FMUs were designated by FSOC in 2012: The Clearing House Payments Company, L.L.C.; CLS Bank International; Chicago Mercantile Exchange, Inc.; The Depository Trust Company; Fixed Income Clearing Corporation; ICE Clear Credit LLC; National Securities Clearing Corporation; and The Options Clearing Corporation. According to the Report, none of the designated FMUs contested its designation, and the FMUs generally have not expressed opposition to their continued designation.⁵

In addition to its designation authorities, FSOC has the authority under Section 120 of Dodd-Frank to make recommendations to primary financial regulatory agencies for applying new or heightened standards and safeguards for a financial activity or practice conducted by bank holding companies or nonbank financial companies under the jurisdiction of such agencies, if FSOC determines that the activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among financial institutions and U.S. financial markets.

Presidential Memorandum

The Presidential Memorandum directed the Secretary to conduct a thorough review of FSOC’s processes for designating SIFIs and FMUs. The Presidential Memorandum directed the Secretary to consider the following:

- whether the designation processes are sufficiently transparent;
- whether the designation processes provide entities with adequate due process;
- whether the designation processes give market participants the expectation that the federal government will shield supervised or designated entities from bankruptcy;
- whether evaluation of a nonbank financial company’s vulnerability to material financial distress should assess the likelihood of such distress;
- whether any nonbank financial company designations based upon material financial distress of the company should include specific, quantifiable projections of the damage that could be caused

to the U.S. economy, including specific quantification of estimated losses that would be likely if the company is not subjected to enhanced prudential standards under Dodd-Frank;

- whether the designation processes adequately consider the costs of any designation on the regulated entity;
- whether designated companies are provided a meaningful opportunity to have their designations reevaluated in a timely and appropriately transparent manner; and
- whether, prior to being designated, the company should be provided with information on how to reduce perceived risk so as to avoid being subject to a designation.⁶

In addition, the Presidential Memorandum directed the Secretary to evaluate and report whether FSOC's designation activities are consistent with President Trump's Executive Order 13772, released February 3, 2017 (the "*Executive Order*").⁷ The Executive Order established a set of "Core Principles" to guide the regulation of the U.S. financial system and is intended to "identify any laws, treaties, regulations, guidance, reporting and record keeping requirements, and other government policies that promote or inhibit federal regulation of the U.S. financial system in a manner consistent with the Core Principles."⁸ The Executive Order requires Treasury to issue four reports, three of which have already been issued.⁹

G-SII Designations

The FSB and IAIS define G-SIIs as insurers whose distress or disorderly failure, because of their size, complexity and interconnectedness, would cause significant disruption to the global financial system and economic activity. In July 2013, the FSB, in consultation with the IAIS and national authorities, identified an initial list of nine G-SIIs using an assessment methodology developed by the IAIS, and set forth the policy measures that should apply to G-SIIs.¹⁰ G-SII designations are based on an assessment methodology developed by the IAIS which is subject to review and revision every three years. Under the current assessment methodology, the IAIS uses quantitative and qualitative factors to propose a recommended list of G-SIIs to the FSB, and the FSB then determines whether to accept the recommendation. The IAIS updated its G-SII assessment methodology in June 2016.¹¹ The FSB's list of G-SIIs was intended to be updated annually and published by the FSB each November based on new data; the FSB published a list of G-SIIs in November of 2014, 2015 and 2016.¹²

G-SIIs are to be subject to certain capital and supervisory standards that are currently being developed and are intended to be implemented by national regulators, including: (i) group-wide recovery and resolution planning and regular resolvability assessments; (ii) enhanced group-wide supervision; and (iii) higher loss absorbency ("HLA").

In February 2017, the IAIS announced that it is developing an activities-based approach to systemic risk assessment in the insurance sector, and that it had adopted a systemic risk assessment and policy workplan to develop that approach and revise its assessment methodology. The IAIS intends to release a revised systemic risk assessment methodology for public consultation by year-end 2018, with adoption planned for 2019.

TREASURY RECOMMENDATIONS FOR FSOC DESIGNATION PROCESSES

In conducting its review and developing the recommendations in the Report, Treasury identified five goals that FSOC processes should be designed to achieve: (1) leverage the expertise of primary financial regulatory agencies; (2) promote market discipline; (3) maintain a level playing field among firms; (4) appropriately tailor regulations to minimize burdens; and (5) ensure FSOC's designation analyses are rigorous, clear and transparent.¹³

A. EFFECTS AND EFFICACY OF SIFI DESIGNATIONS

According to the Report, FSOC's authority to designate SIFIs is a "blunt instrument for addressing potential risks to financial stability." The Report suggests that focusing on activities and products will enable FSOC to identify the underlying sources of risk to financial stability, rather than addressing risks only at particular nonbank financial companies. Treasury states that this approach would address some of the potential limitations that could arise from entity-level designations, such as competitive disadvantages and unnecessarily burdensome regulations. Further, this approach would preserve the option to consider designation for companies that are outside the existing regulatory perimeter or that are under the jurisdiction of a regulator that does not have the authority or ability to address risks posed by the company (the Report cites Fannie Mae and Freddie Mac as historical examples).

Treasury recommends that FSOC prioritize its efforts to assess and address potential risks to financial stability by using a three-step process that emphasizes an industry-wide or activities-based approach:

- **Step One:** FSOC should prioritize the identification of particular financial activities or products that could pose risks to U.S. financial stability. When identifying risky activities or products, it should take into account available historical data, research on the behavior of market participants, and potential emerging threats.
- **Step Two:** If FSOC identifies a potential risk to financial stability, FSOC should work with relevant regulators at the federal and state levels to implement actions to mitigate the identified risk, with the goal of having regulators modify existing regulation or supervision of firms or markets under their jurisdiction to mitigate the potential risks. If the primary regulator's actions are insufficient to mitigate the identified financial stability risks, FSOC can make formal recommendations under Section 120 of Dodd-Frank. Under Section 120, the primary regulator would have to implement the recommended standards or, within 90 days after the issuance of the recommendation, explain in writing why the agency has determined not to follow FSOC's recommendation.
- **Step Three:** If, after consultation with primary regulators, it is determined that one or more companies may pose risks to financial stability, FSOC should consider individual firms for designation. The Report recommends that consideration of a company for potential SIFI designation should only occur if consultation with primary regulators is insufficient to mitigate potential risks identified by FSOC.

These recommendations are in line with the approach FSOC has already followed with respect to the asset management industry and money market funds ("MMFs"), where it has focused on reviewing risks posed by particular products and activities, rather than on designating individual firms.¹⁴

B. INCREASING THE ANALYTICAL RIGOR OF SIFI DESIGNATION ANALYSES

The Report makes three sets of recommendations designed to increase the analytical rigor of FSOC's designation analysis. The first set deals with refining the current analyses that FSOC uses, the second suggests adding a cost-benefit analysis, and the third suggests procedural changes in FSOC's designation process. The Report describes the rules and guidance and supplementary procedures that FSOC adopted in respect of its SIFI designation activities (the "*Rules and Guidance*").¹⁵ Under the Rules and Guidance, FSOC identified three transmission channels (the exposure channel, the asset liquidation channel, and the critical function or service channel) through which FSOC would assess firms for potential designation, and set forth a three-stage process for the evaluation and designation of SIFIs.¹⁶

Refining FSOC's Current Analyses

The Report indicates that FSOC's approach under the Rules and Guidance has led to considerable and continuing uncertainty about how FSOC makes its decisions, which factors in the Rules and Guidance it views as most relevant, and how a company can take action to avoid designation. Treasury makes three recommendations:

- ***Exposure Channel – Consideration of Mitigants to Exposures:*** The Report states that FSOC has not adopted any specific standard with regard to how it accounts for mitigants to counterparty or other exposures (e.g., mitigating securities lending exposures by full collateralization with highly liquid, high-quality securities). The Report states that FSOC should develop a framework that takes into account factors that would reduce the losses a nonbank financial company's counterparties and other market participants would experience in the event of the company's material financial distress, and quantifies the losses that each counterparty would suffer in the event of distress.
- ***Asset Liquidation Channel – Identification of Plausible Asset Liquidation Risks:*** FSOC should specifically and quantitatively identify the scope of plausible answers to three framing questions: (1) to what extent does the company have liabilities that are or could become short-term in nature; (2) what assets does the company hold that it could rapidly liquidate to satisfy its obligations if necessary; and (3) could the resulting asset liquidation disrupt financial markets or impair other market participants? According to the Report, FSOC has not adopted uniform thresholds for evaluating these questions, and its company-specific analyses have often focused on aggregate liabilities and total investment portfolios. With respect to potential liquidity strains insurance companies could face in connection with the surrender or withdrawal of insurance products in distressed circumstances, the Report recommends that FSOC base its analyses on historical examples and other relevant models to assess the scope of plausible withdrawals. FSOC's analyses should also highlight the ability of the company and state insurance regulators to reduce the potential risk of asset liquidation by exercising their existing authorities to impose stays on policyholder surrenders and withdrawals. Treasury also recommends that FSOC adopt a consistent approach to analyzing the order in which a company may liquidate its portfolio of investment assets. With respect to the third framing question, FSOC should identify quantitative models it can apply consistently across firms to determine whether a company's rapid liquidation of assets could threaten U.S. financial stability.
- ***Likelihood of Distress – Evaluate Likelihood of Distress as a Threshold Question:*** FSOC should revise its rules and guidance to clearly provide for an assessment of the likelihood of distress of a nonbank financial company as part of its framework for designations. The Report notes that "[s]ound risk regulation requires consideration of not only the impact of an identifiable risk, but also the likelihood that the risk will be realized."

Cost-Benefit Analysis

The Report notes that cost-benefit analysis is a staple of major administrative rulemakings. The Report notes that FSOC has conducted no such analyses, although it has the authority to consider the direct and indirect costs of designation, which the Report suggests may be risk-enhancing in some respects. Treasury recommends that FSOC only designate a company if the expected benefits to financial stability from Federal Reserve supervision and enhanced prudential standards outweigh the costs imposed by designation, and further recommends that the Rules and Guidance be revised to mandate a cost-benefit analysis.

Procedural Changes in FSOC's Designation Framework

In order to strengthen the analytic rigor of FSOC's analyses, Treasury recommends changing the current three-stage designation process under the Rules and Guidance. Specifically, the Stage 1 threshold of \$50 billion total consolidated assets should be amended to match any change in the \$50 billion threshold for bank holding companies under Section 165 of Dodd-Frank. In addition, Stages 1 and 2 should be combined so that FSOC uses a two-stage process for nonbank financial companies (similar to the two-stage process used for FMUs). Under this approach, FSOC would apply the Stage 1 thresholds and subject any company that exceeds the thresholds to active review under Stage 1, after which FSOC could vote to advance the company to Stage 2 for an in-depth review. Any proposed or final designation would occur only after the completion of Stage 2.

C. ENHANCING ENGAGEMENT AND TRANSPARENCY IN THE SIFI DESIGNATION PROCESS

The Report argues that robust engagement during the designation process would help ensure that decisions are made based on the best data, that companies become aware of the aspects of their businesses that may pose risks to U.S. financial stability, and that existing regulators could offer their expertise and more fully participate in the process. The Report also argues that public transparency would allow market participants to avoid engaging in activities FSOC views as threatening the financial system, and would allow for public oversight of FSOC decisions. Treasury recommends that:

- FSOC enhance its communication with companies during Stages 2 and 3 and explain to the company the key risks identified in its analysis;
- Congress amend Section 113 of Dodd-Frank to increase the 30-day statutory deadline for a company to request a hearing after a proposed designation to 60 days, and to increase the 60-day deadline for making a final designation after a hearing to 90 days;
- FSOC undertake greater engagement with a company's regulator during the evaluation of a company for potential designation and should actively solicit the regulator's views regarding risks posed by the company and potential mitigants, and encourage the regulator to address any risks to U.S. financial stability using the regulator's existing authorities.
- FSOC publicly release the full explanation of the bases for a company's designation or de-designation, redacted as necessary to protect confidential information.

D. PROVIDING A CLEAR OFF-RAMP FOR DESIGNATED SIFIs

The Report observes that while FSOC is required by statute to annually reevaluate each of its previous designations, there are only minimal formal procedures for any such reevaluation and no clear explanation to designated SIFIs of what steps may be taken that could result in a rescission of their designation. Treasury recommends that FSOC enhance its “off-ramp” for designated SIFIs by:

- highlighting the key risks that led to designation and providing clear guidance on the factors that were the most important in making the designation;
- adopting a more robust and transparent process for annual reevaluations by making it clear how to engage with FSOC and what information companies should submit;
- developing a process for a designated company to discuss with FSOC potential changes it could make to address the risks it could pose to financial stability, and to receive feedback regarding whether those changes may address FSOC’s concerns; and
- making it clear that the standard it applies in its annual reevaluations is the same as for an initial designation, and that if the company no longer meets those standards—as a result of aggregate changes at the company or in the markets since the initial designation or based on changes in FSOC’s own analysis—FSOC should rescind its designation.

E. FMU RECOMMENDATIONS

The Report provides recommendations for enhancing the resilience of FMUs and the rigor of FSOC’s FMU designation analyses, and for enhancing engagement and transparency in the FMU designation process. In particular, Treasury recommends that:

- the Federal Reserve, the Commodities Futures Trade Commission and SEC continue to coordinate the supervision of designated FMUs and continue to work collaboratively to develop effective resolution strategies to ensure the continuity of the critical services provided by the FMUs;
- FSOC consider incorporating cost-benefit analyses into its FMU designation process and only designate an entity as an FMU if the expected benefits, including those to financial stability, outweigh the costs the designation would impose;
- FSOC enhance communications with FMUs during Stage 2 of their evaluation; additionally, FSOC should notify the FMU once it is under Stage 2 evaluation and communicate specific areas of focus identified during the preliminary analysis;
- FSOC leverage the expertise of the primary financial regulatory agencies to inform any consideration of whether to designate an entity as an FMU and to inform strategies for regulating and supervising designated FMUs; and
- FSOC publicly release the explanation for any future FMU designations, redacting information as necessary to protect confidential information.

FSB DECIDES NOT TO PUBLISH LIST OF G-SIIS FOR 2017

The FSB has decided, in consultation with the IAIS and national authorities, not to publish a new list of G-SIIs for 2017. According to the FSB Statement, the policy measures set out in the FSB’s 2016 list of G-SIIs, as updated in February 2017 as regards the HLA standard, will continue to apply to the firms

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designated as G-SIIs in 2016.¹⁷ Those policy measures include enhanced group-wide supervision, including for the group-wide supervisor to have direct powers over holding companies and to oversee the development and implementation of a Systemic Risk Management Plan and a Liquidity Management Plan, and group-wide recovery and resolution planning and regular resolvability assessments. The 2016 G-SII list also stated that HLA requirements would be applied starting from January 2019 for those G-SIIs identified in November 2017. However, the IAIS has since stated that the necessary HLA revisions will occur following the adoption of its revised 2019 systemic risk assessment methodology, with HLA implementation beginning in 2022 for G-SIIs identified in 2020 (if any).¹⁸

The FSB states that it “welcomes and encourages the work by the IAIS to develop an activities-based approach to systemic risk in the insurance sector,” and notes that the approach may have significant implications for the identification of G-SIIs and for G-SII policy measures. The FSB plans to review the progress made by the IAIS in developing this approach in November 2018. In the meantime, according to the FSB Statement, the IAIS will continue to collect data for the G-SII identification process and to support the development of the activities-based approach and to allow for further improvements to its G-SII assessment methodology. Although the FSB and IAIS have not identified G-SIIs for 2017, and are in the process of developing an activities-based approach, it remains unclear to what extent the FSB and IAIS will continue to designate G-SIIs going forward, and how G-SII policy measures may change in light of the development of an activities-based approach.

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ENDNOTES

- ¹ U.S. Department of the Treasury, *Financial Stability Oversight Council Designations* (Nov. 17, 2017), <https://www.treasury.gov/press-center/press-releases/Documents/PM-FSOC-Designations-Memo-11-17.pdf>; see also U.S. Department of the Treasury, *Recommendations to ensure that the Financial Stability Oversight Council's (FSOC's) designation processes promote market discipline, address risks to U.S. financial stability as appropriate, and are transparent to firms and the public* (Nov. 17, 2017), https://www.treasury.gov/press-center/press-releases/Documents/FSOC_Designations_PM_factsheet%2011-16-17.pdf.
- ² Financial Stability Board, *Review of the list of global systemically important insurers (G-SIIs)* (Nov. 21, 2017), <http://www.fsb.org/wp-content/uploads/P211117-2.pdf>; Press Release, Financial Stability Board, *FSB statement on identification of global systemically important insurers* (Nov. 21, 2017), <http://www.fsb.org/2017/11/fsb-statement-on-identification-of-global-systemically-important-insurers/>.
- ³ The voting members of FSOC are the Secretary, the Chairman of the Federal Reserve, the Comptroller of the Currency, the Director of the Bureau of Consumer Financial Protection, the Chairman of the Securities and Exchange Commission, the Chairperson of the Federal Deposit Insurance Corporation, the Chairperson of the Commodity Futures Trading Commission, the Director of the Federal Housing Finance Agency, the Chairman of the National Credit Union Administration Board, and an independent member with insurance expertise who is appointed by the President and confirmed by the Senate. There are also several non-voting representatives, including the Federal Insurance Office and state banking and insurance regulators.
- ⁴ For further information, see our Client Memorandum, *D.C. District Court Rescinds FSOC's Designation of MetLife as Systemically Important: Decision Cites "Fundamental Violations of Established Administrative Law," Including a Failure to Consider the Costs of Regulation and Unexplained Deviations From Prior Regulatory Guidance*, dated April 7, 2016, available at https://www.sullcrom.com/siteFiles/Publications/SC_Publication_D.C._District_Court_Rescinds_FSOCs_Designation_of_MetLife_as_Systemically_Important.pdf.
- ⁵ Designated FMUs are granted certain privileges that are not otherwise available to FMUs in exchange for a number of heightened regulatory and supervisory requirements. Under Section 806 of Dodd-Frank, the Federal Reserve may authorize a Federal Reserve Bank to establish and maintain an account for a designated FMU, permitting it to deposit client margin in risk-free accounts, and Federal Reserve Banks may provide discount and borrowing privileges to designated FMUs, subject to certain restrictions. For additional discussion of FMU regulation, see our Client Memorandum, *Financial Market Utilities Regulation: Federal Reserve Issues Final Rules Setting Forth Requirements for a Federal Reserve Bank to Open and Maintain Accounts for, and Provide Financial Services to, Designated Financial Market Utilities*, dated December 12 2013, available at https://www.sullcrom.com/siteFiles/Publications/SC_Publication_Financial_Market_Uilities_Regulation.pdf.
- ⁶ Three of the considerations in the Presidential Memorandum bear similarities to flaws in FSOC's designation process as applied to MetLife that were identified by the federal district court as sufficient to justify rescinding MetLife's designation: (1) failure to assess MetLife's actual vulnerability to financial distress; (2) dependence on unsubstantiated, indefinite assumptions and speculation (e.g., failure to quantify risks and losses or take into account mitigants); and (3) failure to weigh the perceived benefits of designating MetLife against the possible costs. See our Client Memorandum, *supra* note 4.
- ⁷ Exec. Order No. 13772, 82 Fed. Reg. 9965 (Feb. 8, 2017), <https://www.whitehouse.gov/the-press-office/2017/02/03/presidential-executive-order-core-principles-regulating-united-states>.
- ⁸ For further information, see our Client Memorandum, *President Trump Takes Initial Steps Aimed at Reshaping Financial Industry Regulation: Executive Order Requires Fundamental Reassessment of Existing Rules; Labor Department to Reexamine its "Fiduciary Rule,"* dated

ENDNOTES (CONTINUED)

February 4, 2017, available at https://www.sullcrom.com/siteFiles/Publications/SC_Publication_President_Trump_Takes_Initial_Steps_Aimed_at_Reshaping_Financial_Industry_Regulation.pdf.

- ⁹ The first report, issued on June 12, 2017, addressed depository system regulation, covering banks, savings associations, and credit unions. U.S. Department of the Treasury, *A Financial System That Creates Economic Opportunities: Banks and Credit Unions* (June 12, 2017). For further information, see our Client Memorandum, *Treasury Issues Comprehensive Report on Depository System Regulatory Reforms: Trump Executive Order Required Fundamental Reassessment of Existing Rules; Treasury Submits the First of Four Reports Examining Existing Financial Regulatory Framework*, dated June 14, 2017, available at https://sullcrom.com/siteFiles/Publications/SC_Publication_Treasury_Issues_Comprehensive_Report_on_Depository_System_Regulatory_Reforms.pdf. The second report, which addressed U.S. capital markets regulation, was issued on October 6, 2017. U.S. Department of the Treasury, *A Financial System That Creates Economic Opportunities: Capital Markets* (Oct. 6, 2017). For further information, see our Client Memorandum, *Treasury Issues Comprehensive Report on Capital Markets Reform: Trump Executive Order Required Fundamental Reassessment of Existing Rules; Treasury Submits the Second of Four Reports Examining the Regulatory Framework of U.S. Capital Markets*, dated October 11, 2017, available at https://www.sullcrom.com/siteFiles/Publications/SC_Publication_Treasury_Issues_Comprehensive_Report_on_Capital_Markets_Reform.pdf. The third report, which addressed asset management and insurance industry regulation, was issued on October 26, 2017. U.S. Department of the Treasury, *A Financial System That Creates Economic Opportunities: Asset Management and Insurance* (Oct. 26, 2017). For further information, see our Client Memorandum, *U.S. Treasury Report on Asset Management and Insurance Industry Regulation: Trump Executive Order Required Fundamental Reassessment of Existing Rules; Treasury Submits the Third of Four Reports Examining the Regulatory Framework for Asset Management and Insurance*, dated November 2, 2017, available at <https://www.sullcrom.com/us-treasury-report-on-asset-management-and-insurance-industry-regulation>. The remaining report will address nonbank financial institutions, financial technology, and financial innovation. Treasury intends to also issue a separate report on the Orderly Liquidation Authority established in Title II of Dodd-Frank. See Presidential Memorandum on Orderly Liquidation Authority, Daily Comp. Pres. Doc., 2017 WLNR 15734828 (Apr. 21, 2017), <https://www.whitehouse.gov/the-press-office/2017/04/21/presidential-memorandum-secretary-treasury-0>.
- ¹⁰ See Financial Stability Board, *FSB identifies G-SIIs and the Policy Measures that will Apply to Them* (July 18, 2013), www.fsb.org/publications/r_130718.htm.
- ¹¹ For further information, see our Client Memorandum, *IAIS Issues Updated G-SII Assessment Methodology: IAIS Updates Assessment Methodology for Designation of Global Systemically Important Insurers and Revises Framework for Assessing Systemic Risk From Insurance Product Features*, dated June 28, 2016, available at <https://sullcrom.com/iais-issues-updated-g-sii-assessment-methodology-iais-updates-assessment-methodology>.
- ¹² See, e.g., Press Release, Financial Stability Board, *FSB publishes 2016 G-SII list* (Nov. 21, 2016), <http://www.fsb.org/2016/11/fsb-publishes-2016-g-sii-list/>. The nine G-SIIs identified in 2016 were: Aegon N.V.; Allianz SE; AIG; Aviva plc; Axa S.A.; MetLife; Ping An Insurance (Group) Company of China, Ltd.; Prudential; and Prudential plc.
- ¹³ In addition to evaluating and providing recommendations on FSOC's SIFI and FMU designation processes, the Report contains six appendices, including a list of stakeholders consulted in connection with preparing the Report, descriptions of the legal and procedural framework for SIFI and FMU designations and background on FSOC's prior designation analyses, and examples of how FSOC has addressed potential financial stability risks with respect to money market funds and the asset management industry.

ENDNOTES (CONTINUED)

- 14 Appendix C to the Report describes FSOC's review of MMFs and the asset management industry and the initiatives and reforms that have resulted from that process. For further information, see our Client Memorandum, *Asset Management and Financial Stability: Financial Stability Oversight Council Publishes Statement on Asset Management; Focuses on Liquidity, Leverage; Creates "Interagency Working Group" on Hedge Fund Leverage*, dated April 25, 2016, available at https://www.sullcrom.com/siteFiles/Publications/SC_Publication_Asset_Management_and_Financial_Stability_04_25_2016.pdf.
- 15 12 C.F.R. § 1310.
- 16 The Rules and Guidance also grouped the 10 statutory considerations set forth in Section 113 of Dodd-Frank into six categories. Of these six categories, three seek to assess the potential impact of a nonbank financial company's financial distress on the broader economy and three seek to assess the vulnerability of a nonbank financial company to financial distress.
- 17 The nine G-SIIs identified in 2016 were: Aegon N.V.; Allianz SE; AIG; Aviva plc; Axa S.A.; MetLife; Ping An Insurance (Group) Company of China, Ltd.; Prudential; and Prudential plc.
- 18 See Press Release, International Association of Insurance Supervisors, *IAIS Announces Systemic Risk Assessment and Policy Workplan* (Feb. 28, 2017), <https://www.iaisweb.org/file/65229/iais-press-release-systemic-risk-assessment-workplan>. According to this press release, HLA requirements will be based on the International Capital Standard (ICS) Version 2.0 that the IAIS is in the process of developing. On November 2, 2017, the IAIS further announced that the implementation of ICS Version 2.0 will be further delayed. See International Association of Insurance Supervisors, *IAIS Announces Unified Path to Convergence on ICS Version 2.0* (Nov. 2, 2017), <https://www.iaisweb.org/page/news/press-releases/file/69798/2-november-2017-iais-press-release-iais-announces-unified-path-to-convergence-on-ics-version-20>.

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CONTACTS

New York

Whitney A. Chatterjee	+1-212-558-4883	chatterjee@sullcrom.com
Robert G. DeLaMater	+1-212-558-4788	delamaterr@sullcrom.com
C. Andrew Gerlach	+1-212-558-4789	gerlacha@sullcrom.com
Roderick M. Gilman Jr.	+1-212-558-3277	gilmanr@sullcrom.com
Stephen M. Kotran	+1-212-558-4963	kotrans@sullcrom.com
Marion Leydier	+1-212-558-7925	leydierm@sullcrom.com
Robert W. Reeder III	+1-212-558-3755	reederr@sullcrom.com
William D. Torchiana	+1-212-558-4056	torchianaw@sullcrom.com

Washington

Samuel R. Woodall III	+1-202-956-7584	woodalls@sullcrom.com
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London

Ben Perry	+44-20-7959-8477	perryb@sullcrom.com
-----------	------------------	--

Paris

William D. Torchiana	+33-1-7304-5890	torchianaw@sullcrom.com
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Tokyo

Keiji Hatano	+81-3-3213-6171	hatanok@sullcrom.com
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Hong Kong

Garth W. Bray	+852-2826-8691	brayg@sullcrom.com
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