

Financial Stability Oversight Council
Hearing Procedures for Proceedings Under Title I or Title VIII of the Dodd-Frank
Wall Street Reform and Consumer Protection Act

§ 1 Authority and purpose.

(a) Authority. These hearing procedures are issued by the Financial Stability Oversight Council (“Council”) under sections 111, 113, 804, and 810 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) (12 U.S.C. §§ 5321, 5323, 5463, and 5469) and section XXX.11 of the “Rules of Organization of the Financial Stability Oversight Council.”

(b) Purpose; no rights created. These hearing procedures govern hearings to be conducted by the Council in connection with proposed determinations, designations, and emergency waivers or modifications made pursuant to Title I and Title VIII of the Dodd-Frank Act. The provisions of the Administrative Procedure Act (5 U.S.C. § 551 et seq.) governing adjudications required by statute to be determined on the record, the Federal Rules of Evidence (28 U.S.C. Appendix), and the Federal Rules of Civil Procedure (28 U.S.C. Rule 1 et seq.), do not apply to the hearings to be conducted by the Council under these hearing procedures. Nothing in these hearing procedures shall entitle a petitioner to discovery or other similar rights.

(c) Short title. These hearing procedures may be cited as “Council Hearing Procedures.”

§ 2 Definitions. The terms used in these hearing procedures have the following meanings:

Chairperson means the Secretary of the Treasury.

Council means the Financial Stability Oversight Council.

Hearing means a written or, at the sole discretion of the Council, an oral hearing conducted pursuant to § 113 of the Dodd-Frank Act and 12 C.F.R. § 1310.21 or § 1310.22 with

respect to a nonbank financial company that is subject to a proposed determination; § 804 of the Dodd-Frank Act and 12 C.F.R. § 1320.12 or § 1320.14 with respect to a financial market utility that is subject to a proposed designation; or § 804 of the Dodd-Frank Act with respect to a financial institution which engages in a payment, clearing, or settlement activity that is the subject of a proposed designation.

Hearing Clerk means an individual appointed by the Chairperson to facilitate a written or oral hearing before the Council or its representatives pursuant to section 3 of the Council Hearing Procedures.

Hearing date means the latest of—

(1) The date on which the Council has received all of the written materials timely submitted, in accordance with section 4, by a petitioner for a hearing that is conducted solely through the submission of written materials;

(2) The final date on which the Council or its representatives convene to conduct an oral hearing; or

(3) In the case of a petitioner that is a nonbank financial company and in accordance with the definition of “hearing date” in 12 C.F.R. § 1310.2, the date on which the Council has received all of the written materials timely submitted by the petitioner to supplement any materials presented by the petitioner during an oral hearing.

Oral hearing means a hearing, granted at the sole discretion of the Council, consisting of oral testimony, oral argument, or both.

Petitioner means the entity that petitions the Council for a hearing, and is—

(1) A nonbank financial company subject to a proposed determination pursuant to 12 C.F.R. § 1310.21;

(2) An entity whose financial activities are the subject of a proposed determination by the Council under its anti-evasion authority, pursuant to 12 C.F.R. § 1310.12;

(3) A financial market utility subject to a proposed designation that seeks to demonstrate that the proposed designation or rescission of designation is not supported by substantial evidence, pursuant to 12 C.F.R. § 1320.12;

(4) An entity that received a notice of waiver or modification from the Council, pursuant to 12 C.F.R. § 1310.22, or a financial market utility that seeks to demonstrate that the basis for the waiver or modification is not supported by substantial evidence, pursuant to § 1320.14; or

(5) A financial institution which engages in a payment, clearing, or settlement activity that is the subject of a proposed designation, pursuant to § 804 of the Dodd-Frank Act, and which seeks to demonstrate that the proposed designation or rescission of designation is not supported by substantial evidence.

§ 3 Initial notice; request for hearing; appointment of Hearing Clerk.

(a) Initial notice. In connection with any notice of proposed determination, designation, or notice of waiver or modification, the Council shall specify the manner in which the petitioner may request a hearing to contest the Council's action.

(b) Request for hearing; written request required; justification for oral hearing. As will be specified in the initial notice issued by the Council, the petitioner may request a written hearing. Any request for a hearing shall be in writing. In addition to requesting a written hearing, the petitioner may request an oral hearing. Any request for an oral hearing shall be included with the petitioner's request for a written hearing and shall specify why the Council should exercise its discretion to grant such a hearing.

(c) Appointment of Hearing Clerk. Upon receipt of a timely written request for a hearing, the Chairperson shall appoint a Hearing Clerk, who shall serve as the central point of contact for the petitioner, and shall provide the petitioner with the Hearing Clerk's contact information. The Hearing Clerk is authorized to take ministerial actions and make procedural determinations, as may be necessary or appropriate, to facilitate orderly and timely hearings before the Council or its representatives. These actions and procedural determinations may include limitations on the quantity of written materials and, if applicable, the duration of an oral hearing.

§ 4 Written hearing.

(a) Order for written hearing. After receipt of a timely request from the petitioner for a written hearing, the Hearing Clerk shall issue an order specifying the date by which the petitioner shall submit written materials to the Council.

(b) Submission of written materials. The petitioner shall timely submit a written statement setting forth the reasons, legal and factual, for contesting the proposed determination, designation, or emergency waiver or modification by the Council. The written statement must be in the form of a memorandum. The petitioner also may submit relevant exhibits, such as declarations, affidavits, appendices, charts, graphs, or other appropriate presentation of data, in support of the written statement.

§ 5 Oral hearing.

(a) Council action to grant oral hearing; denial of oral hearing. Upon the affirmative vote of a majority of the voting members then serving, the Council may, at its sole discretion, grant a request for an oral hearing. If the Council denies a request for an oral hearing, the petitioner shall have a written hearing in accordance with section 4, and shall submit written

materials to the Council by the deadline specified in the order contemplated by section 4(a).

(b) Notice; written material required; deadline.

(1) Notice. The Council or the Hearing Clerk shall provide written notice to a petitioner of the Council's decision to grant or deny the petitioner's request for an oral hearing. If the Council grants the request, the notice will specify the date, time, and place at which the petitioner shall appear.

(2) Written materials required. If the Council grants a request for an oral hearing under subsection (a) of this section, the petitioner shall submit written materials in accordance with section 4(b). In addition to the written materials, the petitioner shall submit a list of the individuals who are expected to appear for the petitioner at the oral hearing and a description of the nature of their presentations.

(3) Deadlines.

(i) Written materials prior to an oral hearing. The petitioner shall submit the materials required under paragraph (2) of this subsection not later than 10 days prior to the date of the oral hearing.

(ii) Written materials after an oral hearing. A petitioner that is a nonbank financial company that submits written materials, pursuant to 12 C.F.R. § 1310.21 or § 1310.22, to supplement any materials presented during an oral hearing shall submit those written materials not later than 7 days after the date of that hearing.

(c) Oral hearing conducted by Council or Council representatives.

(1) In general. Upon the affirmative vote of a majority of the voting members then serving, the Council may determine that an oral hearing will be conducted by representatives.

(2) Selection of representatives. Representatives appointed to conduct an oral hearing shall be selected individually by each member of the Council, each of whom may select one representative. A representative conducting an oral hearing pursuant to this paragraph may act in the capacity of a member of the Council with respect to any determinations regarding the conduct of an oral hearing for which the representative has been appointed.

(d)(1) Oral hearing in addition to submission of written materials. If the Council grants a request under subsection (a) of this section, the hearing shall be conducted through both—

- (i) The submission of written materials; and
- (ii) An oral hearing before the Council or its representatives.

(2) Conduct of oral hearing. One or more individual officers, employees, or other representatives (including counsel) of the petitioner may appear for the petitioner to present oral testimony, oral argument, or both. Members of the Council or representatives may ask questions of any individual appearing on behalf of the petitioner.

(e) Transcript. The Hearing Clerk shall arrange for a transcript or other recording of the oral hearing. The petitioner shall be entitled, upon request, to inspect the transcript or recording of the oral hearing at a date, time, and location designated by the Hearing Clerk, or to obtain from the Hearing Clerk a copy of the transcript or other recording. Not later than 2 days after being notified that the transcript or other recording is available for review, the petitioner may submit to the Council a signed statement reciting any corrections in form or substance to the transcript or recording, and the basis for making each of those corrections.

§ 6 Confidentiality. The Council shall maintain the confidentiality of any information or materials submitted or otherwise obtained in the course of any hearing conducted under these procedures, subject to applicable law and regulations. The Council's rule implementing the Freedom of Information Act, 12 C.F.R. Part 1301, applies to any information submitted in any written or oral hearing.

§ 7 Denial and dismissal of a hearing. Failure to make a timely request for a hearing will waive the petitioner's right to a hearing pursuant to section 113(e)(4) or section 804(d)(2) of the Dodd-Frank Act. The Council may dismiss a hearing upon the request of the petitioner or if the petitioner fails to timely submit written materials.

§ 8 Substantive standards not affected; variance from procedures; supplemental rules.

(a) Substantive standards. These procedures shall not affect the standards for the Council's review of petitions contesting proposed determinations, designations, and emergency waivers or modifications under Title I and Title VIII of the Dodd-Frank Act and 12 C.F.R. Parts 1310 and 1320.

(b) Variance. The Council may, for good cause and upon the affirmative vote of a majority of its voting members then serving, modify or set aside any provision of these hearing procedures. The Council shall timely notify the petitioner of any action under this subsection to modify or set aside any provision of these hearing procedures.

(c) Supplemental rules. The Council may adopt supplemental rules governing hearings conducted under these procedures.