May 22, 2023

The Honorable Janet L. Yellen
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies (RIN 4030-[XXXX]) (88 Fed. Reg. 26,234-26,244, April 28, 2023)

Analytic Framework for Financial Stability Risk Identification, Assessment, and Response (RIN 4030-[XXXX]) (88 Fed. Reg. 26,305-26,311, April 28, 2023)

Dear Secretary Yellen:

The undersigned associations are writing in response to the Financial Stability Oversight Council's ("FSOC" or "the Council") proposals to revise existing interpretive guidance on nonbank financial company designations ("Nonbank Guidance") and to adopt an analytic framework the Council would employ to assess potential risks to U.S. financial stability ("Analytic Framework") (together the "Proposals"). We respectfully request that the Council extend the comment period for each proposal for at least an additional 30 days.

While the Nonbank Guidance and Analytic Framework were released by the FSOC as two separate proposals, they are intrinsically interlinked. The 60-day open comment period for the Proposals is not sufficient time for our wide array of members to fully evaluate the impact of the substantial amendments to the Nonbank Guidance and the expansive new risk areas under consideration by the Council in the new Analytic Framework. Moreover, since the Proposals open a wide array of new industries and activities to designation as a systemically important financial institution (SIFI), entities require more than 60 days to assess their potential inclusion, for the first time, in a nonbank review process.

Designation of a nonbank as a SIFI by FSOC poses a material change to how the company is regulated. The designation results in bank-style supervision of a nonbank by the Federal Reserve Board that includes new onerous requirements for supervision, examination, and regulation that impose significant costs. These requirements may conflict with the business model of a company or impair the economics of offering certain products or services. Concerningly, neither the nonbank nor FSOC knows the specific requirements that would be imposed until the Federal Reserve Board establishes them *after* a vote by FSOC.

The Nonbank Guidance represents a significant departure from the 2019 Guidance the FSOC has relied on to address potential financial stability issues for nonbank financial companies. The current approach, which focuses on systemically important activities rather than entities, has been an effective process since it was adopted. Such approach has been effective because it appropriately relies on federal and state regulators to address specific risks to financial stability before FSOC would consider a nonbank financial company for potential designation.

Instead, the Nonbank Guidance would abandon the requirement under the 2019 Guidance to prioritize an activities-based approach to assessing potential risks to U.S. financial stability. In place of the activities-based approach, the FSOC proposes a designation first strategy that includes a two-stage process for designating nonbank financial entities. First, the Council would conduct a preliminary analysis relying on information found in public and regulatory sources. During this first stage, the Council would notify a company that they are under review, but not require that entity to submit relevant information. Stage 2 would occur if the FSOC decides that a company should be considered for designation, during which an in-depth evaluation of the entity would occur and the Council would officially assess additional information collected directly from the company under consideration for designation.

The current activities-based approach takes into account important lessons learned from the 2012 guidance and the 2016 U.S. District Court for the District of Columbia decision to invalidate MetLife's designation as a SIFI.[1] We are highly concerned that the Nonbank Guidance eliminates both the requirement for a cost-benefit analysis before the FSOC designates a company – a requirement that was affirmed by the court in *MetLife* – and the requirement to consider a company's likelihood of material financial distress before designating the company as a SIFI. If the FSOC proceeds in eliminating this latter requirement, it could treat an entity with only a 1% chance of impacting financial stability the same as an entity with a 99% chance. While we support the FSOC's mission of addressing risks to U.S. financial stability, eliminating the provision requiring consideration of the likelihood of financial stress makes clear that the FSOC's intention is to find ways to designate entities as SIFIs. Such an objective contravenes congressional intention that the FSOC tread lightly and in a targeted fashion with respect to nonbank financial institutions and their activities.

The Analytic Framework describes the approach the Council expects to take in identifying, assessing, and responding to potential risks to U.S. financial stability. The Analytic Framework

[1] *Metlife, Inc. v. Fin. Stability Oversight Council*, 177 F. Supp. 3d 219 (D.D.C. 2016).

broadens the pathways for the Council to make designations and opens new industries to designation by broadening the range of asset classes, institutions, and activities the FSOC intends to examine. The FSOC is asking these additional types of institutions to fully assess in a very short period of time the impact of nonbank designation, which includes regulation and supervision by the Federal Reserve Board.

Since the Proposals introduce substantial changes to nonbank examinations and expansive new risk areas under consideration by the Council, we ask the FSOC to extend the comment deadline at least an additional 30 days for each proposal, for a total of 90 days after publication in the Federal Register. Such extension will allow our members a reasonable period of time in which to thoroughly review and comment on the Proposals in a meaningful way. In order for commenters to efficiently plan their comments, we ask that the FSOC announce at its earliest convenience its intent to extend the comment deadline. Thank you for your consideration.

Sincerely,

Alternative Credit Council
Alternative Investment Management Association
American Council of Life Insurers
American Investment Council
American Property Casualty Insurance Association
Asset Management Group of the Securities Industry and Financial Markets Association
Financial Technology Association
Finseca
Investment Company Institute
Loan Syndications and Trading Association
Managed Funds Association
Mortgage Bankers Association
Nareit
National Association of Mutual Insurance Companies
Securities Industry and Financial Markets Association
U.S. Chamber of Commerce

cc: Jerome H. Powell, Chair, Board of Governors of the Federal Reserve System
Michael J. Hsu, Acting Comptroller of the Currency, Office of the Comptroller of the Currency
Rohit Chopra, Director, Bureau of Consumer Financial Protection
Gary Gensler, Chair, Securities and Exchange Commission
Martin Gruenberg, Chairman, Federal Deposit Insurance Corporation
Rostin Behnam, Chairman, Commodity Futures Trading Commission
Sandra L. Thompson, Director, Federal Housing Finance Agency
Todd M. Harper, Chairman, National Credit Union Administration
Thomas E. Workman, Independent Member with Insurance Expertise