

M E M O R A N D U M

To: Members of the Committee on Financial Services  
From: FSC Committee Majority Staff  
Date: May 15, 2014  
Subject: May 20, 2014 Full Committee Hearing on “Examining the Dangers of the FSOC’s Designation Process and its Impact on the U.S. Financial System”

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The Financial Services Committee will hold a hearing entitled “Examining the Dangers of the FSOC’s Designation Process and its Impact on the U.S. Financial System” on May 20, 2014, at 10:00 a.m. in Room 2128 of the Rayburn House Office Building. This hearing will examine the process by which the Financial Stability Oversight Council (FSOC) designates non-bank financial institutions as “Systemically Important Financial Institutions” (SIFIs), focusing on the FSOC’s voting structure and the criteria it uses to make these designations. This hearing will also examine the effect of subjecting bank holding companies with assets of \$50 billion or more to heightened prudential standards.

This will be a one-panel hearing including the following witnesses:

- Paul S. Atkins, Chief Executive Officer, Patomak Global Partners
- F. William McNabb, Chairman and CEO, Vanguard, on behalf of the Investment Company Institute
- Eugene Scalia, Partner, Gibson, Dunn & Crutcher
- Deron Smithy, Treasurer, Regions Bank, on behalf of the Regional Bank Coalition
- Peter J. Wallison, Arthur F. Burns Fellow in Financial Policy Studies, American Enterprise Institute

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111-203) created the FSOC and gave it the authority to designate non-bank financial institutions as SIFIs, which are subject to heightened prudential standards and supervision by the Federal Reserve. The FSOC is chaired by the Treasury Secretary and its voting members are the heads of the federal financial regulatory agencies and an “independent member having insurance expertise.” Under the Dodd-Frank Act, bank holding companies with more than \$50 billion in assets are automatically deemed SIFIs and subject to the Federal Reserve’s heightened prudential supervision.

The FSOC may designate a non-bank financial institution as a SIFI if two-thirds of its voting Members—including its Chairman—find that the firm “could pose a threat to the financial stability of the United States.” In making its decision, the FSOC may consider several factors, including the firm’s leverage, its off-balance sheet exposures, its relationship with other financial institutions,

the firm's size and "interconnectedness," the firm's reliance on short-term funding, and "any other factors the [FSOC] deems appropriate." To date, the FSOC has designated three firms – American International Group (AIG), Prudential Insurance, and GE Capital – as non-bank SIFIs, and other firms are under active review for designation.

Once a firm is designated, it is subject to heightened prudential standards and supervision by the Federal Reserve, in addition to supervision by the firm's primary regulator. These prudential standards may include risk-based capital requirements; leverage limits; liquidity requirements; resolution plan and credit exposure report requirements; concentration limits; a contingent capital requirement; enhanced public disclosures; short-term debt limits; and overall risk management requirements.

The FSOC has repeatedly been criticized for operating with little transparency. The FSOC typically excludes members of the public, the media, Members of Congress, and regulators who are not FSOC Members from its meetings. In addition, the FSOC does not keep detailed minutes of its meetings. Others have complained that the FSOC's designation decisions provide minimal data and little analysis to justify those decisions.

To address some of these concerns, on April 3, 2014, Capital Markets and GSEs Subcommittee Chairman Scott Garrett introduced H.R. 4387, the "FSOC Transparency and Accountability Act." H.R. 4387 amends Section 111 of the Dodd-Frank Act to make the FSOC subject to both the "Government in the Sunshine Act" and the Federal Advisory Committee Act. The bill allows all members of the commissions and boards represented on the FSOC—such as the Securities and Exchange Commission, the Federal Reserve, the Commodity Futures Trading Commission, and the National Credit Union Administration—to attend and participate in the FSOC's meetings. The bill also requires that before the principal of a Commission or Board represented on the FSOC votes as an FSOC member on an issue before the FSOC, the Commission or Board must vote on the issue, and the principal must follow that vote at the FSOC meeting. Finally, the bill permits Members of the Committee on Financial Services and the Committee on Banking, Housing, and Urban Affairs to attend all FSOC meetings, whether or not the meeting is open to the public.

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