asset management group

July 27, 2023

Financial Stability Oversight Council
Attn: Eric Froman
1500 Pennsylvania Avenue, NW
Room 2308
Washington, DC 20220
Via Electronic Filing

Re: Authority To Require Supervision and Regulation of Certain Nonbank Financial Companies; RIN 4030-[XXXX] & Analytic Framework for Financial Stability Risk Identification, Assessment, and Response; RIN 4030-[XXXX]

Dear Mr. Froman:

The Asset Management Group of the Securities Industry and Financial Markets Association ("**SIFMA AMG**") [1] appreciates the opportunity to provide comments to the Financial Stability Oversight Council ("**FSOC**") in response to its proposed interpretive guidance ("**Proposed Guidance**")[2] and proposed analytic framework ("**Proposed Analytic Framework**")[3] (together, "**Proposals**") relating to FSOC's authority to require supervision and regulation of certain nonbank financial companies ("**NBFCs**").

Overview

We strongly urge FSOC to retain its current prioritization of an activities-based approach to identifying and addressing systemic risk and to consider entity-based designation only as a last resort, as articulated in its current guidance. As explained in greater detail below, we believe that FSOC's existing guidance continues to be the most effective and efficient mechanism to identify and address potential risks to U.S. financial stability, including with respect to NBFCs and the products and services they offer.

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[1] SIFMA AMG brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms—both independent and broker-dealer affiliated—whose combined assets under management exceed $62 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

[2] Authority To Require Supervision and Regulation of Certain Nonbank Financial Companies, 88 Fed. Reg. 26234 (Apr. 28, 2023), *available at* https://www.govinfo.gov/content/pkg/FR-2023-04-28/pdf/2023-08964.pdf.

[3] Analytic Framework for Financial Stability Risk Identification, Assessment, and Response, 88 Fed. Reg. 26305 (Apr. 28, 2023), *available at* https://www.govinfo.gov/content/pkg/FR-2023-04-28/pdf/2023-08969.pdf.

Our letter is organized in the following manner. Section I provides an Executive Summary of our key points, concerns and recommendations. Section II explains that the "activities-based approach," which FSOC finalized in 2019 ("**2019 Guidance**"),[4] continues to serve as the most effective means for FSOC to identify and address potential risks to U.S. financial stability. Section III discusses several process-related concerns we have regarding the Proposals and provides recommendations concerning safeguards and other elements that would be necessary and appropriate if FSOC, counter to our overarching recommendation, ultimately decides to proceed with adopting the Proposals.

Executive Summary

I. FSOC should not finalize the Proposals, as the "activities-based approach" continues to serve as the most effective means of addressing financial stability risk for NBFCs.

- The activities-based approach that FSOC adopted in 2019 continues to be appropriate and should be continued. It is the most effective means for FSOC to fulfill its mission. As FSOC stated when it proposed the 2019 Guidance, adherence to an activities-based approach reduces the potential for competitive distortions among companies and in markets that could arise from entity-specific regulation and supervision.

- An activities-based approach also best leverages the expertise, skills and experience of the individual financial regulators that are experts in a given domain, as previously recognized by FSOC.

II. Further analysis of the Proposals is necessary, as they raise important procedural concerns, and the Proposed Guidance has failed to articulate a compelling or satisfactory need for changing FSOC's approach.

- FSOC's 2019 Guidance was the culmination of a methodical and rigorous process to examine and improve FSOC's nonbank systemically important financial institution ("**SIFI**") designation approach and process, particularly in light of numerous criticisms that had been raised over the years, including by a U.S. District Court. In its Proposals, FSOC has not provided a data- or an evidence-based rationale for changing the 2019 Guidance, nor has FSOC engaged in a rigorous process to evaluate or examine changing the guidance. We believe that these investigative and observational processes, alongside thorough engagement with market participants, bolster and enhance the effectiveness of the rulemaking process.

- If FSOC believes changes are necessary, especially changes that eliminate important procedural safeguards and protections, then FSOC should conduct a study or engage in a rigorous analysis concerning why any such changes are necessary—and

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[4] Authority To Require Supervision and Regulation of Certain Nonbank Financial Companies, 84 Fed. Reg. 71740 (Dec. 30, 2019), *available at* https://www.govinfo.gov/content/pkg/FR-2019-12-30/pdf/2019-27108.pdf.

ultimately develop a report, similar to the general process that the Treasury Department followed in 2017 when it engaged in a holistic assessment of FSOC's approach and developed recommendations for improvement.

III. Additional safeguards and elements are necessary if, counter to our central recommendation, FSOC ultimately decides to proceed with the Proposals.

- Consistent with the 2019 Guidance, any finalized guidance should include a cost-benefit analysis. FSOC's current requirement to conduct a cost-benefit analysis prior to making a nonbank SIFI designation is necessary and appropriate because it imposes a disciplined, rigorous analytical process that will ultimately lead FSOC to better, more reasoned decisions and better public policy outcomes. Not only is the proposed elimination of the cost-benefit analysis requirement problematic from a policy and optics perspective, but it is inconsistent with legal requirements and judicial precedent.

- Consistent with the 2019 Guidance, any finalized guidance should include a requirement to determine the *likelihood* of a company's material financial distress if and when FSOC considers a designation. FSOC should specify in the Proposed Guidance that it will consider not just the impact of an identifiable risk, but also the likelihood that the risk will be realized. Any amended guidance should furthermore state that FSOC will assess the likelihood of a company's material financial distress, based on its vulnerability to a range of factors, when evaluating the overall impact of a potential FSOC designation for a company under review in Stage 1.

- Consistent with the 2019 Guidance, the Proposed Analytic Framework should require FSOC to consider the extent to which assets are managed rather than owned by the company and the extent to which ownership of assets under management is diffuse. As stated in the 2019 Guidance, this approach is "required by statute" and recognizes the distinct nature of exposure risks when the company is acting as an agent rather than as principal.

- Consistent with the 2019 Guidance, the Proposed Guidance should explicitly acknowledge the availability and importance of a pre-designation "off-ramp" mechanism—*i.e.*, that FSOC's communication to a company under review during Stage 1 regarding the focus of FSOC's analysis may enable the company to act to mitigate any purported risks to financial stability and thereby potentially avoid becoming subject to an FSOC designation.

- The Proposed Analytic Framework's definition of "financial stability" is overly broad and could result in FSOC having the power to review all aspects of the economy, including the real economy, which would exceed FSOC's mission. We recommend that FSOC retain the interpretation of "threat to financial stability" as provided in the 2019 Guidance. Otherwise, as currently proposed, the scope of potential threats to financial stability is not clearly defined, nor is it clear that it excludes aspects of the real economy. In the alternative, FSOC could largely retain

the interpretation of "threat to financial stability" in the 2019 Guidance and address its interpretive concerns with a one-word change to the definition.

- Certain of the Proposed Analytic Framework's sample quantitative metrics should be revised to more appropriately measure the vulnerabilities associated with NBFCs. Otherwise, as currently proposed, certain metrics are more applicable to banks than NBFCs, such as the metrics proposed to assess inadequate risk management and leverage. In addition, more specific articulation of the metrics in the Proposed Analytic Framework would help to positively inform NBFC behavior and guide expectations as well as facilitate engagement among NBFCs with FSOC, should they become subject to an initial review (and during regular risk monitoring activities).

- The 60-day advance notice requirement for companies under review in Stage 1 should be lengthened to no less than 90 days to allow companies adequate time to engage with FSOC and provide relevant information to FSOC to assist in its evaluation.

Discussion

I. FSOC should not finalize the Proposals, as the "activities-based approach" continues to serve as the most effective means of addressing financial stability risk.

A. FSOC's mandate is important, and we support it.

FSOC's statutory purpose is to identify risks to U.S. financial stability, promote market discipline and respond to emerging threats to the stability of the U.S. financial system. We fully support this mandate, believe in the important coordinating function that FSOC plays and want to help support FSOC in its efforts to effectively and appropriately fulfill its mandate. To this end, we have been closely engaged on issues relating to NBFCs since the enactment of the Dodd-Frank Act. Our engagement has spanned commenting on the development of previous FSOC guidance, reports and requests for information, as well as serving as an active contributor to FSOC's member organizations in developing their own rules to address risks to U.S. financial stability.[5]

B. FSOC's approach has changed many times. But FSOC landed in the appropriate place when it adopted the activities-based approach.

FSOC's approach to and use of its nonbank SIFI designation authority has been controversial from the outset. Following various criticisms and concerns regarding FSOC's nonbank SIFI designation process and analytic approach, in April 2017, the President directed the Treasury Department to review FSOC's nonbank SIFI designation process and develop

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[5] For example, our advocacy has included written letters to FSOC, the U.S. Securities and Exchange Commission, the Financial Stability Board and the International Organization of Securities Commissions, presenting detailed and substantial reasons supporting our concerns about prudential regulation of asset management firms.

recommendations for improvement. Treasury's review culminated in the Department's publication of a formal report later that year. SIFMA AMG strongly supported this process: a thorough review, which provided stakeholders with transparency and the opportunity to offer comments; then the development and publication of thoughtful and constructive recommendations by Treasury.

In 2019, FSOC took a significant and constructive step to address many of the concerns that had been raised over the years. The 2019 Guidance prioritized an "activities-based approach" to monitoring and addressing systemic risk and made clear that nonbank SIFI designation should be used "only if a potential risk or threat cannot be adequately addressed through an activities-based approach."[6] FSOC stated that the activities-based approach "is consistent with the [FSOC]'s priorities of identifying and addressing potential risks and emerging threats on a system-wide basis, in order to reduce the potential for competitive market distortions that could arise from entity-specific determinations, and allow relevant financial regulatory agencies to address identified potential risks" and that it "will enable the [FSOC] to effectively identify and address the underlying sources of risks to financial stability on a system-wide basis, rather than addressing risks only at a particular nonbank financial company that may be designated."[7]

We strongly urge FSOC to continue its current approach of focusing on an activities-based approach to identifying, assessing and addressing potential risks and threats to U.S. financial stability. Nonbank SIFI designation should be considered only as a last resort. We agree with the following sentiment that FSOC articulated when it proposed the 2019 Guidance: adherence to an activities-based approach reduces the potential for competitive distortions among companies and in markets that could arise from entity-specific regulation and supervision.[8] For the reasons discussed throughout this letter, the specific effects of prudential regulation of the asset management industry would very likely be negative and far-reaching for the industry itself, for investors and consumers and for the broader economy.

Our support for the current activities-based approach is not new. Our perspectives expressed in this letter are consistent with comments we have previously provided.[9] In short, the use of an activities-based approach best positions FSOC to achieve its mission. A focus on

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[6] 84 Fed. Reg. 71740 at 71742.

[7] *Id.*

[8] Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, 84 Fed. Reg. 9028, 9039 (Mar. 13, 2019), *available at* https://home.treasury.gov/system/files/261/Notice%20of%20Proposed%20Interpretive%20Guidance%20and%20Request%20for%20Public%20Comment%20Regarding%20Nonbank%20Financial%20Company%20Determinations.pdf.

[9] *See, e.g.*, Letter from SIFMA AMG to Former Treasury Secretary Mnuchin (Aug. 18, 2017), *available at* https://www.sifma.org/wp-content/uploads/2019/03/SIFMA-AMG-FINAL-PDF14.pdf, and Letter from SIFMA AMG to FSOC (May 13, 2019), *available at* https://www.sifma.org/wp-content/uploads/2019/05/Active_75778944_1_SIFMA-AMG-LETTER-TO-FSOC-MAY-13-2019-FINAL-PDF.pdf.

monitoring new trends, products and activities, as well as other broad industry-wide developments—coupled with active engagement by the expert regulators—is the best and most appropriate way to monitor and respond to risks to U.S. financial stability. Furthermore, an activities-based approach also best leverages the expertise, skills and experience of the individual financial regulators that are expert in a given domain. FSOC correctly recognized these points when it proposed and adopted the 2019 Guidance.[10]

Moreover, the current activities-based framework is the best approach for facilitating a practical path for de-designation by considering the designated entity's efforts to minimize its potential systemic risk and pursue an off-ramp. In establishing the designation process, Congress clearly anticipated that designated companies would be offered frequent opportunities to remove themselves from designation.[11] By contrast, the Proposed Guidance appears to inherently assume the riskiness of certain companies that meet specific identified categories (*i.e.*, certain size or leverage thresholds). This approach is far less flexible and runs contrary to the notion of a clear and viable off-ramp process.

The Proposed Guidance further de-emphasizes the off-ramp process by reducing the quality of information FSOC must disclose regarding a final determination. Under the current framework, FSOC must provide a clear explanation of the factors most important to its designation. The Proposed Guidance removes the words "clear" and "most" from FSOC's disclosure requirements, which significantly diminishes the transparency of FSOC's evaluation process and eliminates the availability of critical information to assist a company in pursuing de-designation. In short, the existing activities-based approach provides the most effective and appropriate framework for upholding FSOC's mandate by incentivizing actual behavioral changes that will have a material impact on the nation's financial stability. Making de-designation even more challenging and less transparent will harm the credibility of FSOC's process from both a substantive and political standpoint.

We also supported—and continue to support—many of the other key changes introduced by the 2019 Guidance, particularly the:

- emphasis on leveraging data and expertise of primary regulators and existing regulatory frameworks;
- strict limitation on the use of entity-specific designations;
- elimination of stage 1 of the designation process;
- requirement for FSOC to consider the extent to which assets are managed rather than owned by the company and extent to which ownership of assets under management is diffuse;

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[10] *See* 84 Fed. Reg. 9028 at 9030–31. *See also* 84 Fed. Reg. 71740 at 71742, 71746.

[11] 12 U.S.C. § 5323(d).

- requirement for FSOC to conduct a cost-benefit analysis of any NBFC designation;

- creation of an off-ramp for potentially affected NBFCs prior to any designation by FSOC; and

- requirement to consider the *likelihood* of risks, including the likelihood of a company's material financial distress, if and when FSOC considers a Section 113 designation.

C. Primary Regulators Are Positioned to Best Respond to Any Threats.

The need for such drastic reform to the nonbank SIFI designation process is unnecessary (and counterproductive) in light of the various regulatory enhancements that have already been adopted since implementation of the Dodd-Frank Act. These changes have resulted in improvements to U.S. financial stability. These changes, and other regulatory developments in the past decade, also demonstrate that the primary regulator of the asset management industry—the Securities and Exchange Commission ("**SEC**")—has a highly flexible regulatory toolkit, which includes, among other things: rulemaking, exemptive and interpretive authority; inspection and examination authority; and the ability to collect and analyze industry and firm-specific data and information. These regulatory tools enable the Commission and its staff to craft regulatory responses that are carefully tailored to address the specific nature and characteristics of a given risk or area of regulatory concern.

Indeed, in practice, the SEC has demonstrated that it is more than up to the task of effectively monitoring and appropriately responding to perceived risks and threats in the industry. The SEC and its staff have remained on the forefront of proactively and effectively monitoring trends, dynamics, changes and risks in the asset management industry. Examples of the SEC's ongoing and active efforts to keep abreast of and monitor trends, changes and risks in the asset management industry include: (1) the SEC Division of Investment Management's Analytics Office, which provides the Division and the Commission with practical reviews and actionable analyses of the asset management industry,[12] (2) the SEC's 2019 formation of an Asset

[12] According to the SEC's website, the Division of Investment Management's Analytics Office provides the "Division and Commission with practical reviews and actionable analyses of the asset management industry. The Analytics Office pursues this mission by: (1) monitoring and analyzing the industry data collected by the Commission; (2) conducting ongoing financial analysis of the asset management industry; (3) gathering and analyzing operational information directly from participants in the asset management industry; and (4) otherwise maintaining industry knowledge and technical expertise to provide other analyses that may support the Division's activities." SEC, *Division of Investment Management: Analytics Office*, https://www.sec.gov/division-investment-management-analytics-office#:~:text=The%20Division's%20Analytics%20Office%20provides,of%20the%20asset%20management%20industry (last visited Jun. 14, 2023).

As then-Director of the Division of Investment Management Dalia Blass explained in July 2020: "Changes made after the Financial Crisis have proven critical to [asset management industry outreach and monitoring efforts that took place during the market turbulence of March 2020]. In particular, our Analytics Office has been at the center of these efforts, greatly improving our data handling capabilities and aided by the significant expansions of our structured data on registered funds and private funds. The integration of this market intelligence with our policy tools enabled a swift and well-informed response

Management Advisory Committee,[13] an advisory committee established to make recommendations to the SEC and its staff about the asset management industry and (3) the SEC Division of Investment Management's 2023 launch of an inaugural Conference on Emerging Trends in Asset Management.[14]

In addition to these monitoring efforts, the SEC has routinely used its rulemaking powers to propose and adopt measures intended to respond to or address asset management industry trends and potential emerging risks as well. While the SEC's expansive rulemaking proposals in recent years have often overstepped its statutory authority and failed to include adequate economic analysis, a brief review of a sample of SEC rulemaking initiatives does illustrate that the SEC's rulemaking agenda covers financial stability-related topics, including those rulemakings listed below.

- ***2023 Form PF Updates.*** In May 2023, the SEC adopted certain amendments to Form PF. The amendments were designed to facilitate the SEC's oversight of private fund advisers and investor protection efforts—and to enhance FSOC's ability to monitor and understand systemic risk.[15]

- ***2022 Proposal Concerning Fund Liquidity Risk Management.*** In November 2022, the SEC issued a proposal—developed in response to the severe market stress of March 2020—that would require updates to Investment Company Act of 1940 ("**Investment Company Act**") fund liquidity risk management programs and would require swing pricing for certain funds. This proposal builds upon the SEC's **2016 adoption of the Fund Liquidity Risk Management Rule** (Rule 22e-4 under the Investment Company Act), which, among other things, requires assessment and periodic review of a fund's liquidity risk; classification of the liquidity of a fund's portfolio investments in four categories; periodic review of a fund's "highly liquid" investment minimum; and oversight by a fund's board of the liquidity risk management program.[16]

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that, in my view, represents a leap forward from what was possible in past crises." SEC, *Speech: PLI Investment Management Institute*, https://www.sec.gov/news/speech/blass-speech-pli-investment-management-institute (last visited Jun. 14, 2023).

[13] *See* Press Release, SEC, *SEC Announces the Formation of Asset Management Advisory Committee* (Oct. 9, 2019), https://www.sec.gov/news/press-release/2019-208.

[14] *See* Press Release, SEC, *SEC's Division of Investment Management to Host Inaugural Conference on Emerging Trends in Asset Management* (Apr. 26, 2023), https://www.sec.gov/news/press-release/2023-82.

[15] *See* Form PF; Event Reporting for Large Hedge Fund Advisers and Private Equity Fund Advisers; Requirements for Large Private Equity Fund Adviser Reporting, 88 Fed. Reg. 38146 (Jun. 12, 2023), *available at* https://www.govinfo.gov/content/pkg/FR-2023-06-12/pdf/2023-09775.pdf.

[16] *See* Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting, 87 Fed. Reg. 77172 (Dec. 16, 2022), *available at* https://www.govinfo.gov/content/pkg/FR-2022-12-16/pdf/2022-24376.pdf.

- ***2022 Amendments To Modernize Fund Shareholder Reports.*** In October 2022, the SEC adopted rule and form amendments to require mutual funds and exchange-traded funds to transmit concise and visually engaging shareholder reports and to promote transparent and balanced presentations of fees and expenses in investment company advertisements.[17]

- ***2020 Amendments To Modernize Regulatory Framework for Derivatives Use.*** In October 2020, the SEC voted to adopt new Rule 18f-4 to permit mutual funds (other than money market funds), exchange-traded funds, registered closed-end funds and business development companies to enter into derivatives transactions and certain other transactions, subject to restrictions under Section 18 of the Investment Company Act.[18] In addition, the SEC amended Rule 6c-11 under the Investment Company Act to allow leveraged or inverse exchange-traded funds to operate without an exemptive order. The SEC also adopted new reporting requirements and revisions to various disclosure forms.

While we disagree with certain aspects of these rulemakings, they collectively illustrate two critical points. *First*, Congress has provided the SEC with an appropriately tailored toolkit of rulemaking and other regulatory authorities that enable the agency to swiftly and effectively respond to changes and risks in the asset management industry. *Second*, the SEC has not hesitated to *in fact use* the agency's authorities to make policy changes where needed.

Additionally, and speaking more broadly, it is important to reiterate that the reforms listed above were, appropriately, promulgated by the *primary* financial regulator for asset management firms, the SEC. FSOC should rely on primary regulators to mitigate potential systemic risks for activities and entities under their regulatory jurisdiction. The SEC and Commodity Futures Trading Commission ("**CFTC**")—not FSOC and not the Federal Reserve Board—possess the best information and greatest expertise with respect to the asset management industry. Reliance on the experience and expertise of the primary regulator helps ensure that regulatory responses to an identified risk to financial stability are appropriately tailored in a manner that reflects the unique attributes of affected companies and the details and realities of the regulatory frameworks already in place.

Indeed, Congress recognized the important role of primary regulators in the nonbank SIFI evaluation and designation process and expressly required FSOC to consult with such regulators and consider "the degree to which the company is already regulated by one or more primary financial regulatory agencies."[19] The Proposed Guidance, however, removes primary regulators from the early stages of the process—in particular, through removing the consideration to the extent an entity is already regulated from the Proposed Analytic Framework—and only intends to

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[17] *See* Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, 87 Fed. Reg. 72758 (Nov. 25, 2022), *available at* https://www.govinfo.gov/content/pkg/FR-2022-11-25/pdf/2022-23756.pdf.

[18] *See* Use of Derivatives by Registered Investment Companies and Business Development Companies, 85 Fed. Reg. 83162 (Dec. 21, 2020), *available at* https://www.govinfo.gov/content/pkg/FR-2020-12-21/pdf/2020-24781.pdf.

consult with them in Stage 1 "if appropriate" and in Stage 2 once a specific entity has been singled out for an in-depth evaluation. This proposed approach effectively abandons the strategic reliance on primary regulators to identify and mitigate identified risks as part of this process. FSOC's 2019 Guidance rightly accounts for the need to actively involve primary financial regulators in the analytic framework and through every stage of the process, and their extensive and early interventions noted above have proven very effective in recent years.

There are efficient ways for FSOC to work with a primary regulator as part of the Proposed Analytic Framework and at Stage 1 of the designation process, which may even speed up the decision-making process. Utilizing the expertise of primary regulators at that stage also encourages more staff and principal-level regulator collaboration that is at the core of FSOC's mission.

D. Fundamental Characteristics of the Asset Management Industry Support the Activities-Based Approach

1. The asset management industry and activities are already comprehensively regulated.

Existing requirements and regimes already appropriately and effectively regulate the asset management industry. Asset management firms are already comprehensively regulated and supervised by the SEC and the CFTC via robust regulation of the activities in which asset managers engage. For the reasons discussed throughout this letter, bank-style prudential regulation is not well-suited to appropriately address what, if any, financial stability risk may exist in the asset management industry. Any financial stability concerns with respect to a particular asset manager do not impact the assets of that asset manager's clients, and performance issues with respect to a particular client account or fund remain contained to that account or fund (which are often separate legal entities). Creditors of the investment adviser also do not have access or a claim to client accounts or funds. Notwithstanding, to the extent that there are targeted concerns regarding asset managers or the asset management industry, any such concerns should be addressed by the experts—*the industry's primary regulators, the SEC and the CFTC*—again, not through the imposition of bank-style prudential regulation developed by the Federal Reserve Board in coordination with FSOC.

With decades of experience in fulfilling its statutory mandates, the SEC in particular is in the best position to evaluate, understand and analyze any potential systemic risks of entities within its jurisdiction. As described in Section II.C, regulators have significantly strengthened the regulatory regimes applicable to asset management firms over the past 15 years. These regimes also include comprehensive regulatory, inspection and enforcement programs. In light of these enhancements and their intended benefit to U.S. financial stability, the drastic reforms embodied in the Proposed Guidance are unnecessary and, in fact, would be counterproductive. Moreover, to the extent novel areas of risk surface with respect to various activities, regulators have proven their ability to identify and address these risks through the tools they already possess in their arsenal as well as through additional rulemaking and regulatory action, as described in Section II.C.

2. The asset management industry is highly substitutable.

As discussed in more detail below, if an asset manager leaves the business, its clients' assets will be transitioned to a new manager or managed by the clients themselves. This important feature of the industry—substitutability—is worthy of close focus and ongoing consideration in the context of evaluating FSOC's nonbank SIFI designation authority.

In the asset management industry, it is not unusual for competing firms to be hired and replaced by investor clients. In such cases, the client's assets are unaffected (due to the fact that they are held at a third-party custodian) and thus, there is no resulting systemic threat to U.S. financial stability. Third-party custody arrangements and the ability to redeem managed assets in kind facilitate the substitution of asset managers. For example, with respect to separate accounts, clients may easily switch asset managers in the event of unsatisfactory performance or to pursue different investment strategies simply by removing trading discretion from one manager and granting it to another. In such cases, assets may never move from an existing custody bank and there may be no immediate sales of assets in the market. Similarly, investors in registered funds and private funds may move their assets at any time from one fund to another fund or investment product, including a substitute fund or product sponsored by another asset manager.[20]

The Financial Stability Board ("**FSB**") and International Organization of Securities Commissions ("**IOSCO**") recognized this critical point regarding substitutability in their consultative document entitled *Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemic Financial Institutions* ("**2014 Consultative Document**").[21] In particular, they noted that investment funds are highly substitutable, that asset managers are agents of their clients, that investors provide investment funds with a "shock absorbing" function that differentiates investment funds from banks and that an investment fund's assets are not available to claim by creditors of the investment fund's manager.[22]

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[20] Any potential liquidity risk stresses associated with redemptions are addressed and mitigated by the liquidity risk management standards in place at asset management firms. As a function of acting in a fiduciary capacity for their clients, asset managers already must maintain robust risk management frameworks.

[21] FSB/IOSCO, *Consultative Document – Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions: Proposed High-Level Framework and Specific Methodologies* (Jan. 8, 2014), at 5, *available at* http://www.financialstabilityboard.org/wp-content/uploads/r_140108.pdf. In its second consultative report, FSB/IOSCO makes similar acknowledgements of the safeguards relating to asset managers and pooled vehicles*; see also* FSB/IOSCO, *Consultative Document (2nd) – Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions: Proposed High-Level Framework and Specific Methodologies* (Mar. 4, 2015) at 47, *available at* http://www.financialstabilityboard.org/wp-content/uploads/2nd-Con-Doc-on-NBNI-G-SIFI-methodologies.pdf /.

[22] *See* FSB/IOSCO, *Consultative Document – Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions: Proposed High-Level Framework and Specific Methodologies*, *supra* note 21, at 29–30.

Treasury Secretary Yellen also seemed to recognize the inherent differences between asset management firms and banks and hence, the importance of focusing on regulation of *activities*, rather than the designation of firms in the asset management industry. In a March 24, 2021 exchange with a Senator during a Senate Banking Committee hearing, Secretary Yellen noted that "with respect to asset management, rather than focus on designation of companies, I think it's important to focus on an activity like that and to consider what the appropriate restrictions are."[23] Secretary Yellen continued that "it's not obvious to me that designation . . . is the correct tool" to address the potential risks posed by the industry.[24] Secretary Yellen is correct, and we commend her for making this point.[25]

3. Therefore, an activities-based approach would more clearly evidence that designation of asset management firms is unnecessary and inappropriate while also allowing for tailored oversight and regulation of NBFCs.

The fundamental characteristics of the asset management industry—particularly as compared to the banking industry and other types of financial institutions—are worth highlighting. Asset managers are quite different from banks and other types of financial institutions, namely in that they act *on behalf of* their clients rather than *themselves*. An asset manager acting as an agent for a variety of clients, and whose own balance sheet is largely irrelevant, is significantly different than a bank with a single consolidated balance sheet.

An asset manager with a large amount of assets under management is effectively a collection of many smaller and diverse accounts, each with its own characteristics, objectives and risk profiles. Investment advisers and funds regularly shut down or have assets migrate from manager to manager with little market impact. It is *investors—not the fund or the asset manager*—who ultimately own the assets and bear the investment risk in pooled vehicles. Moreover, it is the clients who set the investment strategy, which the manager simply executes. Taken together, this limits the potential threat to financial stability. If an asset manager leaves the business, its clients' assets are transitioned to a new manager or managed by the clients themselves.

The imposition of macro-prudential banking-style regulation on asset management firms would be inappropriate and would have significant consequences for the economy. It would lead to unpredictable and unfavorable competitive and economic distortions. A wide variety of outcomes is foreseeable, none of which is favorable. For example, on the one hand, it is easy to

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[23] United States Senate Committee on Banking, Housing, and Urban Affairs, Full Committee Hearing, "The Quarterly CARES Act Report to Congress" (Mar. 24, 2021), *available at* https://www.banking.senate.gov/hearings/03/17/2021/the-quarterly-cares-act-report-to-congress.

[24] *Id*.

[25] During the hearing, the Senator's comments appeared to ignore the important distinctions between asset management firms and other types of financial institutions that we have discussed throughout this letter. They also did not acknowledge the important distinctions between assets under management, on the one hand, and on-balance-sheet assets, on the other hand—a distinction that Dodd-Frank requires FSOC to consider. *See* 12 U.S.C. § 5323(a)(2)(F); *infra* Section III.C.

envision a scenario where the designation of an asset management firm as a nonbank SIFI (and the corresponding imposition of prudential regulation) would severely *damage* that firm's competitive posture: the compliance burdens, imposition of new regulatory requirements and the corresponding costs and uncertainties, for instance, could cause clients to move towards other non-designated competitors. But on the other hand, one could also envision a scenario where the designation of an asset management firm would ironically serve as a potential competitive *advantage* for the firm and enable it to *attract more clients*, on the basis of an implicit U.S. government guarantee. Either of these—or other plausible—scenarios would introduce undesirable competitive distortions in the market and economy and are not reflective of FSOC's mandate or core objectives.

II. Further analysis of the Proposals is necessary, as they raise important procedural concerns, and the Proposed Guidance has failed to articulate a compelling or satisfactory need for changing FSOC's approach.

The Proposed Guidance states that the 2019 Guidance created "inappropriate hurdles" to FSOC's ability to use its nonbank SIFI designation authority. As noted, the Proposed Guidance would remove the "last resort" approach to entity designation, remove the cost-benefit analysis requirement for designations and modify the meaning of "threat to the financial stability of the United States" by stating that FSOC would expect to evaluate such threats "with reference to" the Proposed Analytic Framework's description of financial stability.

But while the Proposed Guidance characterizes these protections as "inappropriate hurdles," they are in fact, as we explain below, necessary safeguards that FSOC implemented in direct response to concerns raised both by the courts and by other commenters. Further, the Proposed Guidance does not actually cite any change in circumstances or experience of delay or difficulties in the designation process. The Proposals provide no evidence that FSOC's day-to-day work or the fulfilment of its mission, including with respect to its nonbank SIFI designation authority, has been inappropriately hindered. Moreover, FSOC has not actually identified any changes in the marketplace, the broader economy or the law that necessitate such a significant change or that even introduce questions regarding the rationales that FSOC articulated in 2019 when it adopted the existing guidance.

Even if changes to the current guidance are justified, effective rulemaking must involve a deliberative, collaborative and iterative process, so that the public can be assured that regulators and policymakers have engaged in a rigorous, evidence-based review and analysis, which has not been demonstrated.

Indeed, FSOC would need to articulate a much clearer rationale and evidence-based basis for making such a significant change in such a short period of time, particularly because the proposed revisions would sacrifice cognizable procedural protections currently afforded to NBFCs. The rationale for any such changes should include specific details and analysis concerning what necessitates these changes and the work that FSOC has done to analyze the topic. To proceed otherwise raises significant questions concerning whether any such actions would be "arbitrary and capricious." Indeed, the Supreme Court has explained that reasoned

decision-making—at a minimum—demands that an agency acknowledge and explain the reasons for a changed interpretation.[26]

As a general proposition, we believe that it is important for regulators to continue to review, analyze and, where appropriate, change or refine regulatory approaches. Indeed, the market and economy continually evolve and the state of regulation is also regularly changing. Therefore, reviewing and making changes to regulatory approaches is an important function of regulators and policymakers. But any such change must involve a deliberative process, so that the public can be assured that regulators and policymakers have engaged in a rigorous, evidence-based review and analysis.

As noted, prior to FSOC's amendment of its guidance in 2019, the Treasury Department in 2017 conducted an extensive review and analysis and published a report on the topic. SIFMA AMG and its members strongly supported this review and, like other industry participants, appreciated the opportunity to engage in a substantive and productive dialogue prior to the adoption of new guidance.

If FSOC believes changes are necessary, especially to such a significant extent as articulated in the Proposed Guidance, then FSOC should conduct a study and develop a report, similar to the 2017 process. Otherwise, such a lack of transparency and opportunity for public engagement is likely to result in a dearth of industry buy-in and undermine FSOC's ability to uphold its objective mandate. These investigative and observational processes, alongside thorough engagement with market participants, underwrite the integrity and bolster the effectiveness of the rulemaking process. Strict adherence to a deliberative, thoughtful rulemaking process is crucial.

III. Additional safeguards and elements are necessary if, counter to our central recommendation, FSOC ultimately decides to proceed with the Proposals.

A. Consistent with the 2019 Guidance, the requirement to conduct a cost-benefit analysis prior to nonbank SIFI designation is necessary and appropriate.

We strongly urge FSOC to preserve the requirement that it adopted in 2019 that FSOC would (a) conduct a cost-benefit analysis prior to making any nonbank SIFI designation, and (b) ultimately conclude before making any such designation, that the expected benefits to financial stability from designation would justify any expected costs resulting from designation. Such an analysis is particularly critical with respect to potential prudential regulation of the asset management industry, the effects of which, for the reasons discussed above, would very likely be negative and far-reaching not just for the industry itself but for the broader economy. The cost-benefit analysis should compare the costs and benefits of potential designation to other available

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[26] *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *see also Perez v. Mortgage Bankers Ass'n*, 135 S. Ct. 1199, 1209 (2015) (clarifying that the *FCC v. Fox Television Stations* precedent extends to non-legislative rules); *Motor Veh. Mfrs. Ass'n v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 43 (1983) (providing a general standard for arbitrary and capricious analysis).

tools and authorities in order to enable FSOC to select the tool that most effectively and efficiently mitigates the risk it has identified.

The cost-benefit analysis requirement helps ensure that FSOC acts consistent with Administrative Procedure Act requirements and therefore increases the reliability of designations in the face of legal challenges, potentially decreasing the chance of legal challenge and related years of legal uncertainty. This requirement is particularly clear in light of the litigation surrounding MetLife Inc.'s ("**MetLife**") designation—and the court's ultimate decision overturning the designation. In its *MetLife* opinion,[27] the U.S. District Court recognized that consideration of the cost of regulation is "essential to reasoned rulemaking."[28]

It is worth focusing on the details of that court decision that overturned FSOC's designation of MetLife, and the fact that it held that FSOC's designation decision was arbitrary and capricious because it failed to consider the costs of designating MetLife.[29] FSOC unsuccessfully contended that it was not required to conduct a cost-benefit analysis as part of its designation of MetLife. FSOC argued that there was no express congressional command, and that the costs to MetLife were not relevant under the statutory standard. The court examined the list of factors that the statute requires to be considered, including a catch-all factor encompassing "any other risk-related factors" that FSOC "deems appropriate." The court found that the costs of designation were a relevant "risk-related factor" that FSOC was required to consider. The court recognized that consideration of the cost of regulation is "essential to reasoned rulemaking."[30] It also explained that FSOC's approach was at odds with the Supreme Court's ruling in *Michigan v. EPA*,[31] which provides that when a statute allows an agency to regulate when "appropriate," the agency must consider the costs of its regulation.

The Proposed Guidance rejects some of these points and overlooks others. The Proposed Guidance states that FSOC need not conduct any cost-benefit analysis and suggests that *MetLife* was wrongly decided. Among other problems, FSOC's Proposed Guidance overlooks the fact that the *MetLife* decision, in relevant part, relies almost exclusively on settled law—Section 113 of the Dodd-Frank Act—and the U.S. Supreme Court's decision in *Michigan v. EPA*. That Supreme Court decision found that the Environmental Protection Agency ("**EPA**") inappropriately failed to consider billions of dollars in regulatory costs when exercising its authority to regulate power plants.[32] The Supreme Court ultimately invalidated the EPA's rule on the grounds that it misinterpreted the statute in question (the Clean Air Act), even under the deferential *Chevron* standard of review. Quoting the Supreme Court, the *MetLife* opinion highlights that "cost-benefit analysis is a central part of the administrative process," and that,

[27] *MetLife, Inc. v. Fin. Stability Oversight Council*, 177 F.Supp.3d 219, 239-42 (D.D.C. 2016).

[28] *Id*. at 242.

[29] *Id*.

[30] *Id*.

[31] 576 U.S. 743 (2015).

[32] *Id*. at 760.

ultimately, "cost must be balanced against benefit because '[n]o regulation is "appropriate" if it does significantly more harm than good.'"[33]

The removal of the cost-benefit analysis requirement would inappropriately ignore settled law and court interpretations. Nothing has changed to prompt a different reading of the statute now. Any nonbank SIFI designation that fails to include a cost-benefit analysis will be vulnerable to legal challenges, and the delays and expense associated with the protracted nature of these legal challenges would likely obviate any expediency and efficiency that FSOC hoped to gain by removing the cost-benefit analysis requirement in the first place.

Putting aside important legal requirements and court statements, the cost-benefit analysis requirement imposes a disciplined, rigorous analytical process that ultimately leads FSOC to better, more reasoned decisions and better public policy outcomes.[34] A cost-benefit analysis requirement also helps ensure reasoned agency decision-making by requiring FSOC to consider alternatives to designation and to determine that the costs of designation would be justified by the resulting benefits to U.S. financial stability.

B. Consistent with the 2019 Guidance, any finalized guidance should include a requirement to determine the *likelihood* of a company's material financial distress if and when FSOC considers a designation.

We continue to support the 2019 Guidance's requirement to determine the likelihood of a company's material financial distress when FSOC considers a Section 113 designation and urge FSOC to maintain this requirement. As articulated in the 2019 Guidance, FSOC should specify in the Proposed Guidance that it will consider not just the impact of an identifiable risk, but also the likelihood that the risk will be realized and that FSOC will assess the likelihood of a company's material financial distress, based on its vulnerability to a range of factors, when evaluating the overall impact of a FSOC designation for a company under review in Stage 1.

Furthermore, we maintain our recommendation that the likelihood of material financial distress should also be considered prior to new regulation of activities under Section 120 of the Dodd-Frank Act. The likelihood of risk, including the likelihood of a company's material

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[33] *MetLife*, 177 F.Supp.3d at 240 (quoting *Michigan*, 576 U.S. 743 at 752).

[34] As noted, the cost-benefit analysis requirement imposes a disciplined, rigorous analytical process that ultimately leads FSOC to better, more reasoned decisions and better public policy outcomes. In the absence of a cost-benefit requirement, we are concerned that the opposite—*i.e.*, "broad brush" assertions and assumptions, as well as conclusory generalizations—could play a role in FSOC's deliberations regarding potential nonbank SIFI designations. As an example of our concerns in this regard, we note our disagreement with both the substance of, and the simplistic and conclusory approach reflected in, the following statements in the Proposed Guidance: "The benefits of designation are potentially enormous and, in many respects, incalculable, representing the tangible and intangible gains that come from averting a financial crisis and economic catastrophe. The costs of any particular future financial crisis, and thus the benefits of its prevention through designation or other measures, cannot be predicted. Even estimates of the costs of past crises, in terms of reductions in gross domestic product, greater government expenses, increases in unemployment, or other factors, vary widely but can be measured in the trillions of dollars." 88 Fed. Reg. 26234 at 26238.

financial distress, is a key factor that should be considered when FSOC evaluates *any* potential risk, not just when it exercises its designation authority. As we have suggested in the past, FSOC should ensure that any new regulation of activities or entity designations under Sections 112, 113 and 120 of the Dodd-Frank Act include sufficient facts and analysis relating to the reasonable likelihood that financial distress will occur and that it is reasonably likely to impair financial intermediation or financial market functioning that would inflict severe damage on the U.S. economy as a whole.

C. Consistent with the 2019 Guidance, the Proposed Analytic Framework should require FSOC to consider the extent to which assets are managed rather than owned by the company and the extent to which ownership of assets under management is diffuse.

As stated in the 2019 Guidance, this approach is "required by statute." In the 2019 Guidance, FSOC stated:

> The Council's analysis will recognize the distinct nature of exposure risks when the company is acting as an agent rather than as principal. In particular, in the case of a nonbank financial company that manages assets on behalf of customers or other third parties, the third parties' direct financial exposures are often to the issuers of the managed assets, rather than to the nonbank financial company managing those assets.[35] [footnote omitted]

FSOC was exactly right. This statement critically underscored the fact that managed assets differ from balance sheet assets. As discussed above, investment advisers and funds regularly shut down or have assets migrate from manager to manager with little market impact, because it is *investors—not the fund or the asset manager*—who ultimately own the assets and bear the investment risk in pooled vehicles. This limits the potential threat to financial stability. If an asset manager leaves the business, its clients' assets are transitioned to a new manager or managed by the clients themselves. We urge FSOC to incorporate into the Proposed Analytic Framework the statement quoted above from the 2019 Guidance. This distinction is important in order to ensure that the business model of certain market participants, such as asset managers and funds, are properly taken into account when evaluating potential risks to U.S. financial stability.

D. Consistent with the 2019 Guidance, the Proposed Guidance should explicitly acknowledge the availability and importance of a pre-designation "off-ramp" mechanism—*i.e.*, that FSOC's communication to a company under review during Stage 1 regarding the focus of FSOC's analysis may enable the company to act to mitigate any purported risks to financial stability and thereby potentially avoid becoming subject to an FSOC designation.

In its discussion of Stage 1 of the designation process, the 2019 Guidance explained that FSOC will provide a notice to any company under review in Stage 1 no later than 60 days before

[35] 84 Fed. Reg. 71740 at 71764.

the Council votes on whether to evaluate the company in Stage 2.[36] The 2019 Guidance then explained that:

> Through this engagement, the Council will seek to enable the company under review to understand the focus of the Council's analysis, *which may enable the company to act to mitigate any risks to financial stability and thereby potentially avoid becoming subject to a Council determination*.[37] [emphasis added]

Notably, the Proposed Guidance also included a discussion regarding how FSOC would engage with a company under review during Stage 1, and that language is similar to the relevant language in the 2019 Guidance. However, strikingly, the following sentence in the Proposed Guidance does not include the same explicit acknowledgement contained in the 2019 Guidance (identified above) that the Stage 1 engagement may enable the company to act to mitigate any purported risks to financial stability and thereby potentially avoid becoming subject to an FSOC determination. The relevant language in the Proposed Guidance provides that:

> Through this engagement, the Council seeks to provide the company under review an opportunity to understand the focus of the Council's analysis.[38]

A pre-designation off-ramp mechanism is critically important. In short, it provides a company and its primary regulator with relevant information and data—and FSOC's preliminary views—regarding relevant risks and then the opportunity for the company and its primary regulator to consider and then implement available options to eliminate or mitigate any relevant concerns and thereby potentially render designation unnecessary. The 2019 Guidance explained this point very well:

> Another goal of the enhanced engagement in Stage 1 is to enable the company to take actions in response to the Council's concerns, thereby providing a pre-designation "off-ramp," while not burdening a company with the relatively higher costs that may be incurred during a Stage 2 evaluation. By making a company aware of the potential risks the Council has identified during its preliminary review, the Council seeks to give the company more information and tools to mitigate those risks prior to any Council determination. One commenter recommended that the Final Guidance provide greater detail regarding the pre-designation "off-ramp." The Final Guidance has been revised to clarify that the Council will seek to enable a company under review to understand the focus of the Council's analysis, which may enable the company to act to mitigate any threats

[36] *Id*. at 71767.

[37] *Id.*

[38] 88 Fed. Reg. 26234 at 26242.

> to U.S. financial stability and thereby potentially avoid becoming subject to a Council determination. One commenter stated that the Council should undertake early engagement with firms during the designation process. The Council believes that its approach in Stage 1, as described above, addresses this comment.[39]

If adopted, the Proposed Guidance should similarly include an explicit acknowledgement of the availability and importance of a pre-designation "off-ramp" mechanism—*i.e.*, that FSOC's communication to a company under review during Stage 1 regarding the focus of FSOC's analysis may enable the company to act to mitigate any purported risks to financial stability and thereby potentially avoid becoming subject to an FSOC designation.

E. The Proposed Analytic Framework's definition of "financial stability" is overly broad and could result in FSOC having the power to review all aspects of the economy, including the real economy.

We strongly urge FSOC to retain the interpretation of "threat to financial stability" as provided in the 2019 Guidance, meaning "the threat of an impairment of financial intermediation or of financial market functioning that would be sufficient to inflict severe damage on the broader economy."[40] Otherwise, as currently proposed, the scope of potential threats to financial stability is not clearly defined or even clear that it excludes aspects of the real economy. This lack of guardrails could, over time, lead to overreach of FSOC's statutory mandate and of the original congressional intent behind FSOC's authority, with the potential consequences being ill-considered and burdensome designations of NBFCs that do not present systemic threats to U.S. financial stability. In the alternative, FSOC could still address its stated concerns with the 2019 definition of "threat to financial stability,"[41] while also largely retaining the 2019 interpretation. Specifically, FSOC could retain the interpretation provided in the 2019 Guidance but just change the word "would" to "could." The resulting definition would therefore be "the threat of an impairment of financial intermediation or of financial market functioning that could be sufficient to inflict severe damage on the broader economy."

The unintended consequence of the proposed definition of "financial stability" is further exacerbated by the Proposed Analytic Framework's identified vulnerabilities, which FSOC considers to most commonly contribute to financial stability risks. The eight identified vulnerabilities are similarly overly broad and could allow FSOC to expand its review beyond what Congress originally intended. For example, the operational risks and inadequate risk management vulnerabilities are particularly problematic as they could easily capture risks associated with commercial companies and thus would empower FSOC to examine the real

[39] 84 Fed. Reg. 71740 at 71755.

[40] *Id*. at 71763.

[41] *See* 88 Fed. Reg. 26234 at 26236 ("That definition, which requires the FSOC to determine that the economy 'would' be severely damaged, contrasts sharply with the statutory standard under section 113 of the Dodd-Frank Act, which calls on the FSOC to determine whether there 'could' be a threat to financial stability.").

economy, in contravention of FSOC's statutory mandate. The proposed set of vulnerabilities also raises concerns with respect to transparency. The overly broad nature of the identified vulnerabilities will further diminish transparency, and therefore, the credibility of FSOC's evaluation process. In addition, the Proposed Analytic Framework's four transmission channels raise the same concerns, both with respect to resulting in potential overreach of FSOC's mandate and lack of transparency in FSOC's process. The proposed transmission channels could be bolstered by referencing existing regulations, policies and historical data that relate to potential risks to the stability of the U.S. economy.

F. The Proposed Analytic Framework's sample quantitative metrics should be revised to more appropriately measure the vulnerabilities associated with nonbank entities.

We agree with certain of the sample metrics contained in the Proposed Analytic Framework. However, we note that many of the metrics would be more relevant to assessing vulnerabilities associated with banks, rather than nonbank entities such as asset management firms, or are presented such that they are inapplicable or poorly tailored to the asset management industry, such as the metrics proposed to assess leverage. Instead, the metrics should take into account the characteristics of a given sector, including relevant regulatory frameworks. Moreover, more specific and tailored articulation of the metrics in the Proposed Analytic Framework would help to positively inform NBFC behavior and guide expectations as well as facilitate engagement among NBFCs with FSOC, should they become subject to an initial review (and during regular risk monitoring activities).

For example, to assess inadequate risk management, the Proposed Analytic Framework provides that amounts of capital and liquidity may be relevant risk metrics. However, as discussed above, asset managers act in a fiduciary capacity for their clients and thus, already must maintain robust risk management frameworks. In addition, the assets of a fund or separate account belong solely to the fund or separate account (and, indirectly, that fund's or separate account's investors) and never become the property of the asset manager.

The proposed metrics to assess leverage also appear to be designed to measure vulnerabilities based on a bank-centric lens, rather than in a manner applicable to asset managers. The Proposed Analytic Framework states that metrics relevant to assessing leverage may include ratios of assets, risk-weighted assets, debt, derivatives liabilities or exposures and off-balance sheet obligations to equity, which, for the reasons described throughout this letter, are not well-suited to assessing vulnerabilities in the asset management industry. This is also the case with respect to the Proposed Analytic Framework's metrics for assessing interconnections and liquidity risk and maturity mismatch.

G. The 60-day advance notice requirement for companies under review in Stage 1 should be lengthened to no less than 90 days to allow firms adequate time to fully engage in the review process.

The 60-day advance notice requirement for companies under review in Stage 1 should be lengthened to no less than 90 days in order to allow companies adequate time to engage with FSOC and provide relevant information to FSOC to assist in its evaluation. Firms need more than 60 days to provide meaningful feedback and to fully engage in the review process. We

believe 90 days would be more appropriate. A longer advance notice timeline would also ensure that FSOC has sufficient time to review any additional information received during Stage 1 and help to ensure that FSOC's determination as to whether to evaluate a company in Stage 2 is sound and adequately supported by evidence.

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On behalf of SIFMA AMG, we appreciate the opportunity to respond to your proposals and your consideration of our comments and recommendations. If you have any questions or require additional information, please do not hesitate to contact us by calling Lindsey Weber Keljo at (202) 962-7312, lkeljo@sifma.org, or William Thum at (202) 962-7381, bthum@sifma.org.

Sincerely,

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