Crapo Statement at Hearing on Financial Stability Oversight Council Nonbank Designations

March 14, 2019

WASHINGTON – U.S. Senator Mike Crapo (R-Idaho), Chairman of the U.S. Senate Committee on Banking, Housing and Urban Affairs, delivered the following remarks at a hearing on the Financial Stability Oversight Council's nonbank designation process.

The text of Chairman Crapo's remarks, as prepared, is below.

"Today, we welcome to the Committee three witnesses to testify on the Financial Stability Oversight Council, or FSOC, nonbank designation process: Douglas Holtz-Eakin, President of the American Action Forum; Mr. Paul Schott Stevens, President and CEO of the Investment Company Institute; and Professor Jeremy Kress, Assistant Professor of Business Law at the University of Michigan's Ross School of Business.

"Each of these witnesses is knowledgeable about FSOC's designation process and policy, drawing from their experiences in industry, government and academia.

"The Dodd-Frank Act established FSOC to identify and respond to potential threats to U.S. financial stability.

"Dodd-Frank authorizes FSOC to subject nonbank financial companies to supervision by the Federal Reserve and prudential standards, if it deems a nonbank to pose such a threat.

"In the years after Dodd-Frank was enacted, FSOC evaluated individual companies for designation as systemically important and ultimately designated four nonbank financial companies: AIG, MetLife, Prudential and GE Capital.

"At the outset, the process for nonbank designation was immeasurable and unclear, which was not only contrary to the long-established principles of our regulatory framework, but also lead to legal uncertainty that undermined the very objective of FSOC.

"Several years ago, I requested a comprehensive study by the GAO on the nonbank designation process.

"The report concluded that FSOC's process lacks transparency and accountability, insufficiently tracks data and does not have a consistent methodology for determinations.

"In recent years, FSOC voted to rescind three of those designations, while another's designation was overturned in court.

"FSOC's decisions have costly implications for designated companies, which inevitably translates into higher costs for consumers and to the overall economy.

"It is important that FSOC's designation process be clear, robust and focused on addressing real underlying risks.

"The process should also take into account how the existing regulatory structure already addresses any potential risks before taking the drastic step of designating an individual company.

“In 2012, FSOC issued interpretive guidance that outlined its designation process, which begins with identifying individual companies over $50 billion in total assets for further scrutiny based on a set of five other quantitative thresholds, and then gradually using more granular and company-specific information along the way.

“In November 2017, Treasury issued a report entitled, ‘Financial Stability Oversight Council Designations,’ which provided recommendations to improve FSOC’s designation process.

“One of Treasury’s key recommendations was for FSOC to prioritize an activities-based approach to designation and work with relevant regulators to address any risks posed prior to considering designating a nonbank financial company.

“Among the other important recommendations made by Treasury for the nonbank designation process were to: only designate a nonbank financial company if the expected benefits to financial stability outweigh the costs of the designation; and provide a clear ‘off-ramp’ for designated nonbank financial companies, including by identifying key risks that led to the designation and enhancing the transparency of FSOC’s annual review process.

“At its meeting on March 6, FSOC proposed to replace its current interpretive guidance on the nonbank designation process with new interpretive guidance that would make several substantive changes.

“Some of those changes include: prioritizing an activities-based approach to designation that would focus on identifying and addressing the underlying sources of risk, and would only contemplate designating individual companies if a risk could not be addressed through an activities-based approach; conducting a cost-benefit analysis prior to designating a nonbank; eliminating the first of its three-stage process that focuses on applying quantitative thresholds to identify individual companies for further evaluation, and the six-category framework used to analyze individual companies; and instituting several procedural changes to improve FSOC’s engagement with companies and regulators, and clarifying ‘off ramp’ opportunities for companies through risk mitigation efforts prior to or after designation.

“After FSOC issued the proposed guidance, Comptroller Otting expressed support for the proposal, saying, ‘The proposal ensures FSOC continues to serve its primary function in a transparent, efficient and effective manner.’

“The proposed guidance is a step in the right direction to improve FSOC’s effectiveness, transparency and analyses.

“Senators Rounds, Jones, Tillis and Sinema have also introduced the Financial Stability Oversight Council Improvement Act, which would require FSOC to first determine that a different action would not address risks posed to financial stability prior to a vote on an initial nonbank designation.

“During this hearing, I look forward to discussing how an activities-based approach will more effectively address potential risks to U.S. financial stability; the appropriate framework for evaluating activities; and additional opportunities for improvements to the process.

“Thank you to each witnesses for joining the Committee this morning.”

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