



May 14, 2026

VIA ELECTRONIC SUBMISSION

Financial Stability Oversight Council
Attn: Eric Froman
Office of the General Counsel, Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Re: Proposed Interpretive Guidance on Nonbank Financial Company Oversight (RIN 4030-[XXXX])

Dear Mr. Froman:

On behalf of our members, the American Investment Council (“AIC”) is pleased to submit the following comments on the Financial Stability Oversight Council’s (“FSOC” or the “Council”) proposed interpretive guidance on nonbank financial company oversight (the “Proposed Guidance”).¹

AIC is an advocacy, communications and research organization established to advance access to capital, job creation, retirement security, innovation, and economic growth by promoting responsible long-term investment. AIC’s members are the world’s leading private equity and private credit firms, united by their commitment to growing and strengthening the businesses in which they invest. In this effort, AIC develops, analyzes, and distributes information about private equity and private credit activities (together, “private capital”) and its contribution to the U.S. and global economy. Critically, AIC’s members invest capital on behalf of public and private pension plans (including public sector pensions for teachers, firefighters, and police officers) and other retirement systems, channeling the savings of millions of workers into diversified investments that fund their retirements. Ensuring that private capital can continue to generate retirement returns for these pension beneficiaries is central to AIC’s mission.

AIC continues to fully support efforts to protect U.S. financial stability and has a strong interest in ensuring the resiliency and effective functioning of both financial and capital markets. AIC also supports efforts to identify potential systemic risks before they arise and to address appropriately any identified risks. The depth and dynamism of U.S. capital markets are among the nation’s greatest competitive strengths, built on a regulatory framework that includes the Investment Advisers Act of 1940, the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940, all administered and enforced by the U.S. Securities and Exchange Commission (“SEC”). This framework is a foundation of investor confidence and should not be undermined by overlaying a non-transparent regulatory regime on markets that already function with exceptional depth and integrity. AIC greatly appreciates the

¹ *Authority To Require Supervision and Regulation of Certain Nonbank Financial Companies*, 91 Fed. Reg. 15,551 (Mar. 30, 2026).

Council’s effort to enhance its transparency, analytical rigor, and public engagement through this Proposed Guidance.

AIC believes the Proposed Guidance represents a significant improvement over the 2023 Interpretive Guidance² and 2023 Analytic Framework,³ and AIC supports the key changes contemplated in the Proposed Guidance. In particular, the Proposed Guidance restores and prioritizes an activities-based approach, commits to cost-benefit analysis, reinstates the assessment of the likelihood of material financial distress as a required consideration, introduces a logical interpretation of a “threat” to U.S. financial stability, and enhances procedural steps for risk remediation. We support all of these highly constructive reforms that we believe will improve the Council’s capacity to identify and address genuine systemic risks while avoiding the imposition of unnecessary costs on the U.S. economy and market participants.

I. Overview

Over the past several years, the post-Dodd-Frank migration of credit intermediation from banks to private capital has been proving the case for risk distribution: by moving lending activity outside the banking system and away from the taxpayer backstop, the Dodd-Frank framework has created a more resilient financial system in which credit losses are borne by diversified investors rather than by taxpayers. Since 2010, private credit activities in particular have been managed through hundreds of independent private capital management firms rather than concentrated within the banking system that is subject to overnight withdrawal of demand deposits. This is a feature, not a flaw, of the post-crisis regulatory framework. Private credit funds can provide liquidity in times of economic downturns or industry-specific dislocations due to their access to stable, long-term funds, and proactive engagement with borrowers. For instance, the U.S. Government Accountability Office found that during the COVID-19 economic shock, private debt funds invested billions of dollars in distressed debt.⁴ Reinforcing these conclusions, a 2025 Federal Reserve Bank of Boston report further found that any shift in direct lending from banks to private credit actually reduces financial stability risk because private credit funds use less leverage than banks and pose less run risk.⁵

Since the 2023 Interpretive Guidance was released, evidence has mounted that private capital does not pose a risk to U.S. financial stability. A broad consensus has emerged among government leaders and leading financial industry participants that private capital lacks the

² *Authority To Require Supervision and Regulation of Certain Nonbank Financial Companies*, 88 Fed. Reg. 26,234 (Apr. 28, 2023).

³ *Analytic Framework for Financial Stability Risk Identification, Assessment, and Response*, 88 Fed. Reg. 26,305 (Apr. 28, 2023).

⁴ U.S. Gov’t Accountability Off., GAO-21-167, *Agencies Have Not Found Leveraged Lending to Significantly Threaten Stability but Remain Cautious Amid Pandemic* (Dec. 2020), <https://www.gao.gov/assets/gao-21-167.pdf>.

⁵ Fed. Reserve Bank of Bos., *Could the Growth of Private Credit Pose a Risk to Financial System Stability?* (May 21, 2025), <https://www.bostonfed.org/publications/current-policy-perspectives/2025/could-the-growth-of-private-credit-pose-a-risk-to-financial-system-stability.aspx>.

structural characteristics, and does not engage in activities, that would generate systemic risk.⁶ The 2023 Analytic Framework identified risk-enhancing characteristics, which include high leverage, short-term funding dependence, and on-demand redemption rights. The 2023 Analytic Framework added that deep interconnectedness with the broader financial system can present a transmission channel that can elevate market risk or counterparty risk to potential systemic risk. Importantly, none of these characteristics are present in private capital. Private capital managers are not deposit-taking institutions. Even in the more liquid fund structures, which remain the minority of the approximately \$15 trillion of assets under management in the private capital industry, there is no possibility of a “run on the bank.” Bank runs occur when depositors lose confidence in their banking institution and can withdraw funds instantaneously; that dynamic does not exist in private credit and private equity funds.

Notably, FSOC itself shares the consensus view that private capital does not transmit or amplify systemic risk. FSOC’s financial stability monitoring experts found no evidence of risk transmission as recently as March 2026 and the May 2026 Financial Stability Report similarly found limited evidence of potential systemic risks due to recent redemptions from private credit vehicles.⁷ Similarly, the 2025 Financial Stability Report found that bank lending to private credit funds and other non-bank entities “is not significantly concentrated in any one sector, most commitments are rated investment grade, and these loans traditionally have had delinquency rates lower than loans to nonfinancial businesses.”⁸ Further, a 2025 International Monetary Fund report found that credit quality showed improvement among direct lending borrowers through late 2024 and that associated default rates have been broadly in line with other measures of credit

⁶ Federal Reserve Bank of St. Louis President Alberto Musalem, “*The Economic Outlook and Monetary Policy*,” (Apr. 1, 2025) (“Stress in private credit markets appears mostly due to liquidity issues and some marking down of net asset values, rather than widespread credit quality problems.”); Federal Reserve Governor Stephen Miran, remarks at the Washington Economic Festival (Apr. 16, 2026) (“I haven’t seen evidence that convinces me that private credit is systemic in a manner that would lead to waves of defaults in financially systemically important institutions.”); Treasury Secretary Bessent, remarks at CNBC’s “Invest in America Forum” (Apr. 15, 2026) (“At Treasury, we monitor all aspects of the capital markets, and private credit is one. I think it’s been an important new product, and we’re keeping track of it...none of our work has shown that there would be a systemic problem.”); Financial Times, “*Wall Street watchdog says private credit is ‘not a systemic risk’*” (Apr. 13, 2026) (SEC Chairman Paul Atkins: “I think as we have been looking at this area, at least as of now, it is not a systemic risk.”); Financial Times, “*Former SEC chair Jay Clayton says he does not ‘see excess leverage’ in private credit*” (May 13, 2026) (Fmr. SEC Chairman Jay Clayton: “I do not see excess leverage in the private credit world ... I just don’t see the transmission mechanism for the rest of the economy.”).

⁷ Luke Pettit, Assistant Sec’y for Fin. Insts., U.S. Dep’t of the Treasury, Remarks at the Meeting of the Financial Stability Oversight Council (Mar. 25, 2026) (“[P]erceived signs of stress in leveraged loan markets had put valuation pressure on some publicly traded BDCs, [but] BDCs have structural features that limit potential systemic concerns, in particular regulatory leverage limits of 2 to 1, the predominant use of term funding, capped redemption structures, and contractual redemption gates . . . although certain BDCs limited redemptions, the BDC sector overall had been managing these market developments with little or no evidence of spillovers, fire sales, or funding strains across the sector.”); *Financial Stability Report*, Bd. of Governors of the Fed. Reserve Sys. (May 2026), <https://www.federalreserve.gov/publications/files/financial-stability-report-20260508.pdf>, at 45 (“Risks to financial stability from further redemption requests [in private credit] appear limited and manageable.”).

⁸ *Financial Stability Report*, Bd. of Governors of the Fed. Reserve Sys. (Apr. 2025), <https://www.federalreserve.gov/publications/files/financial-stability-report-20250425.pdf>, at 25.

distress.⁹ A 2023 Federal Reserve financial stability analysis also confirmed this view, finding: “[O]verall, the financial stability vulnerabilities posed by private credit funds appear limited. Most private credit funds use little leverage and have low redemption risks, making it unlikely that these funds would amplify market stress.”¹⁰

We believe the evolution of the post-Dodd-Frank financial system shows that private capital does not exhibit the risk enhancement or risk transmission characteristics that could amplify systemic risk. However, we appreciate this opportunity to respond to the specific questions for comment set forth in the Proposed Guidance. We present our specific comments below, followed by additional data explaining why private capital does not pose a systemic risk to U.S. financial stability.

II. Analytic Methodologies (Section II.B of the Proposed Guidance)

A. Economic Growth and Economic Security as Risk Factors

Question for Comment 1: What specific factors impacting economic growth and economic security should the Council focus on in an effort to identify potential risks to U.S. financial stability?

AIC strongly supports the recognition in the Proposed Guidance that economic growth and economic security are important considerations related to financial stability. The Council correctly recognizes that economic growth provides a strong foundation for financial stability, and that economic security supports economic growth. AIC also supports the further recognition that economic security and financial stability can both be bolstered by encouraging technological innovation in the financial system and by modernizing financial regulation to ensure it is efficient, effective, and forward-looking.

We respectfully submit that, when identifying specific factors impacting economic growth and economic security, the Council should focus on:

- the availability and cost of financing to small and mid-sized businesses;
- regulatory burdens that constrain capital formation and investment;
- the extent to which regulation promotes or inhibits the diversification of credit and financing sources; and
- the role that private capital markets play in efficiently financing innovation, infrastructure, and job creation.

⁹ Int’l Monetary Fund, *Global Financial Stability Report: Chapter 1: Enhancing Resilience Amid Global Trade Uncertainty* (Apr. 2025).

¹⁰ *Financial Stability Report*, Bd. of Governors of the Fed. Reserve Sys. (May 2023), <https://www.federalreserve.gov/publications/files/financial-stability-report-20230508.pdf>, at 47.

Private credit also has continued to serve as a vital source of financing for the American economy, supporting U.S. companies (many of which are small and mid-sized businesses). Research has shown that private credit's economic contribution in 2024 was 2.5 million jobs and \$370 billion of GDP.¹¹ Private capital can be deployed nimbly to support innovation and small and mid-sized enterprises in ways that capital in the public markets simply cannot, and is vital to American economic competitiveness. Subjecting private capital to unnecessary regulatory burdens through entity-specific designations of alternative asset managers or through activities-based regulation would impair their ability to provide this critical capital and could constrain economic growth, thereby adding (not reducing) risk to U.S. financial stability.

B. Modifications to the List of Vulnerabilities

Question for Comment 2: The Proposed Guidance adds asset valuations to the list of vulnerabilities that the Council would consider when identifying and assessing potential risks to U.S. financial stability, while removing destabilizing activities, a vulnerability that appeared in the 2023 Analytic Framework. Are these changes appropriate, and should additional modifications be made to the list of vulnerabilities that the Council would consider?

AIC believes the addition of asset valuations to the list of vulnerabilities is not necessary. We respectfully submit that any potential impact of asset valuations on financial stability is already captured by the existing vulnerability factors of “leverage,” “liquidity risk and maturity mismatch,” “interconnections,” and “concentrations.”

With respect to private capital, the current regulatory framework already requires strong valuation practices that are subject to multiple layers of independent oversight. Investment managers typically adopt and implement written valuation policies and procedures to meet their compliance obligations under the Investment Advisers Act of 1940 (“Advisers Act”) and these policies and practices are described in public filings and subject to SEC examination. For registered funds such as non-traded BDCs and interval funds, the Investment Company Act of 1940 (“1940 Act”) imposes additional requirements, including board oversight of the fair valuation process.

In practice, fund managers typically employ robust, multi-step valuation frameworks: fair value determinations are made in accordance with generally accepted accounting principles (“GAAP”) and applicable regulatory standards, relying on a range of inputs including comparable market transactions, discounted cash flow analyses, enterprise valuations, and current credit metrics. Many fund managers engage independent third-party valuation agents to provide additional assessments of portfolio holdings, and fund financial statements are subject to annual audits by independent public accounting firms and, at least in the case of alternative asset managers that are public companies, independent audit committees. Internal valuation

¹¹ *Economic contribution of the US private equity sector in 2024*, Ernst & Young LLP (March 2025) (available at: <https://www.investmentcouncil.org/wp-content/uploads/2025/03/EY-AIC-2024-Economic-contribution-of-the-US-private-equity-sector.pdf>); *Economic contribution of private credit to the US economy in 2024*, Ernst & Young LLP (June 2025) (available at: <https://www.investmentcouncil.org/wp-content/uploads/2025/05/EY-Report-Economic-contribution-of-private-credit-to-the-US-economy-in-2024.pdf>).

committees composed of senior investment and risk professionals review and approve valuations on a regular basis, providing an additional check on the process. Overall, the valuation infrastructure supporting private capital is well-developed, transparent to the public and to the SEC, and is therefore subject to meaningful regulatory and market discipline.

Additionally, and as described more fully below, private equity and private credit fund structures offer limited redemption rights, so they do not transmit or amplify risks that might arise from asset valuations. Even if market conditions spur short-term changes to asset valuations, private equity and private credit funds are largely immune to pressure to liquidate the assets they hold because they have limited obligations to provide short-term liquidity to their own investors. Therefore, private equity and private credit funds would not exacerbate market pressure to liquidate assets in the short term and may even serve as a stabilizing source of long-term capital to hold assets through recovery or to make additional investments when other market participants are under pressure to sell.

Separately, we believe the removal of “destabilizing activities” from the vulnerability list is a sound correction. As AIC argued in its 2023 comment letter, this vulnerability was circular, and including a catch-all category of activities that are “by their nature” destabilizing undermined any analytical discipline the listing was intended to impose.

AIC continues to urge the Council to provide greater specificity regarding how the identified vulnerabilities will be assessed, both individually and in combination, and how they relate to the 10 statutory factors FSOC must consider under section 113(a)(2) of the Dodd-Frank Act. Some of the section 113(a)(2) factors, such as “the extent to which assets are managed rather than owned by the company,” have no analogue in the Proposed Guidance’s vulnerability categories. The Proposed Guidance should make clear that, in evaluating each vulnerability and transmission channel, risks arising from exposures to assets managed by a company on behalf of third parties are distinct from exposures to assets owned by, or liabilities issued by, the company itself. The Proposed Guidance also includes vulnerabilities, such as “complexity or opacity,” that have no analogue in section 113(a)(2). AIC recommends that the Council provide illustrative examples of how the vulnerabilities would be used to assess specific types of nonbank financial companies. AIC stands ready to support the Council’s efforts to identify and discuss illustrative examples. Without such specificity, the vulnerability framework may lack sufficient rigor to be a meaningful tool for transparent and consistent analysis.

AIC also recommends that the Council adopt specific metrics, thresholds, and illustrative examples for different types of nonbank financial companies, consistent with the approach taken by the International Association of Insurance Supervisors, which assigns percentage weights to specific risk categories, backed by quantitative measures, in its analysis to produce an overall score for each company.

III. Activities-Based Approach (Section II.C of the Proposed Guidance)

A. Prioritization of the Activities-Based Approach

General Question 1: Does the Council’s proposal described above to prioritize its efforts to identify, assess, and address potential risks to U.S. financial stability through a process that begins with an activities-based approach, first introduced under the 2019 Interpretive Guidance, enable the Council to achieve its statutory purposes? Should the Council’s proposed approach to the activities-based approach be modified for other considerations?

AIC strongly supports the Proposed Guidance’s restoration and prioritization of the activities-based approach. Under the Proposed Guidance, the Council would prioritize its efforts to identify, assess, and respond to potential risks to U.S. financial stability through a process that begins with an activities-based approach, and would pursue entity-specific determinations under section 113 of the Dodd-Frank Act only if a potential risk to U.S. financial stability cannot be, or is not, adequately addressed through that approach. AIC agrees that this prioritization is critical and recommends that the Council confirm, in finalizing this Proposed Guidance, that it would consider a nonbank financial company for a potential determination under section 113 only in rare instances, consistent with the 2019 Interpretive Guidance.¹²

The Proposed Guidance correctly recognizes that an activities-based approach is most effective to address risks that arise across multiple firms engaging in similar practices, which can support more uniform application of safeguards to comparable activity. In addition, an activities-based approach can mitigate competitive distortions by reducing disparate regulatory burdens across firms engaged in comparable activity.

As AIC stated in our 2023 comment letter, the abandoning of the activities-based approach was inconsistent with FSOC’s role as an oversight body rather than a primary financial regulator. FSOC’s statutory mandate is to provide financial stability oversight through the coordination of primary regulators, not to substitute itself as the primary regulator of market participants. The Dodd-Frank Act envisions FSOC facilitating information sharing and coordination, recommending priorities, and identifying gaps in regulation—not directly subjecting individual companies to bank-like regulatory regimes in the first instance. Private capital already is subject to a comprehensive regulatory framework and is subject to rigorous oversight by the SEC and other agencies. Publicly offered funds are also subject to regulation under the 1940 Act statutory framework and other provisions of the U.S. federal securities laws. Fund managers also are subject to a robust and adaptable regulatory framework under the Advisers Act that allows the SEC to oversee fund sponsors, the funds they manage, and the investments they make. Furthermore, investors such as pensions and insurance companies are themselves heavily regulated entities. In addition, many states impose licensing or registration requirements on lending activities, although in some states commercial lending by direct lenders is exempt from these requirements.

¹² *Authority To Require Supervision and Regulation of Certain Nonbank Financial Companies*, 84 Fed. Reg. 71,740 (Dec. 30, 2019).

General Question 2: When undertaking the activities-based approach, are there specific categories of risks to U.S. financial stability that should be examined by the Council, or specific macroeconomic considerations or metrics that the Council should consider when assessing such risks?

AIC believes that the appropriate categories of risks for Council consideration under the activities-based approach are those established by the U.S. Congress in section 113 of the Dodd-Frank Act for evaluating individual nonbank financial companies. The Council should focus its monitoring on the markets and activities most likely to present systemic risk: high leverage, particularly when combined with maturity transformation, short-term funding dependence, significant interconnectedness, and the provision of critical financial infrastructure. Private equity and private credit do not embody these characteristics in any meaningful way. While private fund managers have become more active participants in certain structured product markets, their overall footprint in the activities most likely to pose systemic concerns—including short-term funding markets and derivatives—remains limited. To the extent that private fund managers do participate in these markets, such activity is already visible to regulators through existing statutory disclosure and reporting obligations, including Form PF and Form ADV filings, which provide the tools necessary for regulators to monitor and assess any risks that may arise. Please see Section X for additional discussion of the structural features that preclude private capital from transmitting or amplifying systemic risk.

General Question 3: Does the Council's approach under the 2023 Interpretive Guidance, in which it stated that it would not prioritize an activities-based approach but instead respond to a particular risk to financial stability depending on the nature of the risk, better enable the Council to respond to threats to U.S. financial stability than prioritizing an activities-based approach as contemplated by the Proposed Guidance?

No, AIC respectfully asserts that the approach laid out in the 2023 Interpretive Guidance likely undermines the Council's goals to respond to systemic risks. By abandoning the activities-based approach in 2023, FSOC departed from the more appropriate mechanism to identify and address systemic risk outside of the banking system. The result was to replace predictable, generally applicable rules with an unpredictable framework that would seek to apply onerous, entity-specific supervision, examination, and bank-like regulation on capital markets participants for which a bank-like regulatory approach would be ill suited. Instead of looking to their primary regulators for guidance, nonbank companies were left without a clear indication about FSOC's intentions and without the information necessary to make informed decisions about their businesses. The Proposed Guidance's prioritization of the activities-based approach corrects this regrettable and unforced error.

B. Step One: Identifying and Assessing Potential Risks

Step One Question 1: What specific, consistent analyses should the Council perform to monitor markets generally or specific types of markets?

The Council should regularly monitor the markets and activities most likely to present systemic risk concerns. AIC believes the markets and activities that are most likely to present systemic risks are the short-term funding markets, derivatives markets, public debt and equity markets, and markets characterized by significant leverage and maturity transformation. With respect to private equity and private credit, the Council should leverage the substantial information available through Form PF filings, Form ADV disclosures, and the SEC's ongoing examination and supervisory program.

Step One Question 2: Are the four framing questions described in the Proposed Guidance for evaluating potential risks appropriate?

AIC believes that the four framing questions are generally appropriate. Application of these four framing questions to private equity and private credit clearly demonstrates that these firms and funds do not pose a risk to U.S. financial stability:

- What shocks or other developments could trigger the potential risk: Private equity and private credit funds generally invest in illiquid equity or debt across a wide range of industries and issuers and do not significantly increase linkages across markets or firms.
- How adverse effects may be transmitted to financial markets or market participants: Analysis of the four transmission channels described in the Proposed Guidance confirm that private equity and private credit pose no material transmission risk.
- The effects the potential risks to U.S. financial stability could have on the U.S. financial system: Private equity and private credit are quite small relative to large banks, insurance companies, and broker-dealers, and their failure would not have “spillover” or “ripple” effects on other financial system participants.
- Whether the adverse effects of the potential risk could impair financial intermediation or financial markets to a degree sufficient to inflict significant damage on the broader U.S. economy: Even the complete failure of a private equity or credit fund would merely result in the orderly wind-down of the fund, with the impact on investors limited to their committed capital.

C. Step Two: Working With Regulators

Step Two Question 1: Should the Council make any changes to step two of the activities-based approach, as described in the Proposed Guidance?

AIC supports the Council taking actions informally in most cases, through information sharing among regulators, followed by a resort to more formal recommendations only where informal methods have proven insufficient. AIC also wishes to underscore that a crucial element of the activities-based approach is the practice of making recommendations to other regulators under section 120 of the Dodd-Frank Act only to the extent that the recommendation would be consistent with the agency's statutory mandate. Section 120 should not be used to expand the

statutory mandate of an agency or to require an agency to regulate an activity or market in which it does not have sufficient existing expertise.

AIC also recommends that the Council apply cost-benefit analysis to any FSOC action under the activities-based approach, including actions under section 120 of the Dodd-Frank Act and recommendations for legislation. Cost-benefit analysis is an essential part of reasoned decision-making, and significant agency actions contemplated under the activities-based approach should be undertaken only if the expected benefits justify the expected costs. AIC notes approvingly that the Proposed Guidance already contemplates that the Council itself will conduct a cost-benefit analysis before issuing a recommendation under section 120 in cases where the primary financial regulatory agency would not be expected to perform such an analysis.

IV. Consolidation of Interpretive Guidance and Analytic Methodologies (Section II.D of the Proposed Guidance)

Question for Comment: Will the consolidation of the Council’s nonbank financial company designation guidance and analytic methodologies in a single document create a more efficient and accessible document?

Yes. AIC supports the consolidation of the Council’s designation guidance and analytic methodologies in a single document. Reproducing the structure of the 2019 Interpretive Guidance by merging these materials into one document is more administratively efficient and accessible to stakeholders and the public.

V. Cost-Benefit Analysis (Section II.E of the Proposed Guidance)

Question for Comment 1: Is the proposed framework for assessing the benefits and costs of a potential determination appropriate? How should the Council assess benefits and costs that are difficult to monetize or quantify?

AIC strongly supports the Proposed Guidance’s restoration of a commitment to cost-benefit analysis before making any designation under section 113. The 2023 Interpretive Guidance sought to eliminate the need to conduct such an analysis, though we doubt courts would have agreed that the Council is permitted to simply turn a blind eye to the costs it imposes.

The Proposed Guidance states that the Council would make a determination under section 113 only if the expected benefits to financial stability from Federal Reserve supervision and prudential standards justify the expected costs that the determination would impose. AIC wholeheartedly agrees.

AIC has consistently supported cost-benefit analysis both as a good regulatory practice and because it is a legal requirement under section 113 of the Dodd-Frank Act. That section requires FSOC to consider “any other risk-related factors that the Council deems appropriate,” a term the Supreme Court has held is “the classic broad and all-encompassing term that naturally and traditionally includes consideration of all the relevant factors,” including “at least some

attention to cost.”¹³ In accordance with this provision, FSOC must “consider the cost of designating a company for enhanced supervision.”¹⁴ With respect to benefits and costs that are difficult to monetize or quantify, AIC supports the Council’s commitment to quantifying reasonably estimable benefits and costs, using ranges as appropriate, and also considering non-quantified benefits and costs.

Question for Comment 2: Should the Council consider other benefits or costs than those proposed in section IV of the Proposed Guidance?

Yes. AIC supports the Proposed Guidance’s recognition that, when evaluating the costs of a designation, the Council would consider not only the cost to the nonbank financial company from anticipated new or increased regulatory requirements, but also costs to the U.S. economy, including potential impacts on economic growth and economic security. Nonbank financial entity designation may have significant unintended consequences, such as activities shifting from one sector to another or substantially reducing the availability of particular financial products or services, that may cause market disruption and consolidation adverse to the interests of the customers these businesses serve and thereby increase risk to financial stability in the aggregate. The Council should also consider the risk that imposing onerous costs on the designated company may not only outweigh the benefits, but may bring about the very material distress designation aims to guard against.

Question for Comment 3: How should the Council estimate the costs of any new regulatory requirements that would result from the Council’s designation? What sources should the Council rely upon when estimating such costs?

The Council should consider costs related to risk-management requirements, supervision and examination, increased capital requirements, and liquidity requirements and could look to prior Federal Reserve Board orders prescribing enhanced prudential standards to previously designated companies to estimate such costs.¹⁵

Question for Comment 4: Should the Council consider additional factors when considering the benefits or costs of a designation to the U.S. economy?

Yes. In addition to the factors already proposed, the Council should consider whether designation would reduce the availability of capital, or increase the cost of capital, to small and mid-sized businesses, which are the primary borrowers in private credit markets. The Council should also consider the competitive effects of designation, including whether designation of a single firm or a small number of firms would create competitive distortions by imposing bank-like regulatory requirements on entities competing with undesignated firms in the same markets. In addition, the Council should take seriously the risk that unnecessary regulatory burdens on

¹³ *Michigan v. EPA*, 576 U.S. 743, 752 (2015).

¹⁴ *MetLife, Inc. v. FSOC*, 177 F. Supp. 3d 219, 241 (D.D.C. 2016).

¹⁵ See, e.g., *Final Order Applying Enhanced Prudential Standards and Reporting Requirements to General Electric Capital Corporation*, 80 Fed. Reg. 44,111 (July 24, 2015).

private capital could constrain economic growth, particularly at a time when private equity and private credit play an important role in financing the real economy.

Question for Comment 5: Should the Council consider any additional benefits to the company subject to a designation, or additional benefits to the U.S. financial system and the U.S. economy arising from a Council designation other than those listed in section IV of the Proposed Guidance? How should the Council quantify any such benefits?

While AIC agrees that the Council may appropriately consider whether a designated nonbank financial company may benefit from a lower cost of capital or higher credit ratings upon meeting its post-determination regulatory requirements, AIC cautions that the Council should not overstate such benefits. Private capital, in particular, generally relies on committed capital from investors rather than on public debt or equity markets for financing.

Question for Comment 6: How should the Council address uncertainty (for example, using alternate baselines or sensitivity analyses)?

The Office of Management and Budget has stated that “[a]n effect of regulation should not be excluded from a regulatory analysis because its estimation is highly uncertain”¹⁶ and that, when cost and benefit estimates are uncertain, the combination of plausible assumptions with data and models may help develop a probability distribution of costs and benefits.¹⁷ AIC agrees with this characterization.

Question for Comment 7: Are there additional approaches the Council should consider when measuring potential threats to U.S. financial stability in order to assess any improvement in financial stability following a determination?

The Council may consider comparing the risks to financial stability posed by a particular nonbank financial company to the risks posed by large bank holding companies, as the Proposed Guidance contemplates, in order to produce a relative assessment. However, any such comparison should account for the fundamental structural differences between bank holding companies and nonbank financial companies such as private capital firms as set forth in Section X below. Metrics calibrated to bank-like risks (such as deposit-funded leverage, maturity transformation, and on-demand liquidity provision) are poorly suited to evaluating the risk profile of private equity and private credit funds, and their use could produce misleading results that overstate the threat posed by such funds.

VI. Likelihood of Material Financial Distress (Section II.F of the Proposed Guidance)

Question for Comment 1: Is the proposed framework for assessing the likelihood of material financial distress, as part of an assessment of the benefits of a designation, appropriate?

¹⁶ Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular A-4 (Nov. 9, 2023).

¹⁷ Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular A-4 (Sept. 17, 2003).

AIC supports the reinstatement of the assessment of the likelihood of a nonbank financial company's material financial distress. This assessment is required by Dodd-Frank, which permits FSOC to designate a company if "material financial distress" at the company "could pose a threat to the financial stability of the United States." This provision requires an assessment of the likelihood of such distress, not merely a hypothetical assumption that distress has already occurred.¹⁸ Both considerations are necessary, because if a company faces minimal to no likelihood of financial distress, there is no threat that distress at the company will harm U.S. financial stability.

AIC also supports the Proposed Guidance's recognition that, in light of the unpredictability of the failure of financial companies, the Council would not seek to determine that a nonbank financial company's material financial distress is reasonably likely, but instead would use this analysis to evaluate the factors that could cause such distress as part of the assessment of benefits of a designation.

Question for Comment 2: What metrics or factors should the Council consider when attempting to quantify the likelihood of a company's material financial distress? If such quantification is not possible with respect to a specific company, what additional factors should the Council consider? What are the appropriate methodologies or models (including appropriate time horizons and assumptions) to assess the likelihood of a nonbank financial company's material financial distress?

AIC supports the Proposed Guidance's suggestion that the Council would consult with a company's primary financial regulatory agency when assessing the likelihood of its material financial distress.

Question for Comment 3: After the Council assesses the likelihood of a company's material financial distress, what should be the threshold for the Council taking further action regarding a potential determination with respect to the company?

AIC believes that the Council should proceed to further action only where the assessment of the likelihood of material financial distress reveals a meaningful probability that distress could actually occur and that such distress could be transmitted through the financial system in a manner that would inflict severe damage on the broader U.S. economy. Where the structural characteristics of a nonbank financial company make material financial distress exceedingly remote, as is the case for private capital firms, the Council should not proceed further with a potential designation. The assessment of the likelihood of material financial distress should serve as a meaningful gatekeeping function, enabling the Council to better distinguish between scenarios where distress is a plausible pathway for systemic transmission and scenarios where distress is highly remote.

¹⁸ 12 U.S.C. § 5323(a)(1).

VII. Process for Member Agencies to Address Potential Risks (Section II.G of the Proposed Guidance)

Question for Comment: Will the proposed new process described above for making recommendations to agencies enable the Council to respond to potential risks to U.S. financial stability in a timely and effective manner?

AIC generally supports the Proposed Guidance's addition of a structured process by which the Council would notify an existing financial regulatory agency in writing of a potential risk to U.S. financial stability and request a written response regarding the actions the agency proposes to take to address the potential risk. This process is a constructive complement to the activities-based approach, as it provides a formal mechanism for the Council to engage with primary regulators before resorting to the more drastic step of an entity-specific designation.

AIC notes, however, that this process should respect the expertise and statutory mandates of the primary financial regulatory agencies. The SEC already possesses robust statutory authority to regulate private capital. Any recommendations to the SEC through this new process, for example, should be consistent with the SEC's existing statutory mandate and should not be used to expand the scope of the SEC's authority or to impose bank-like regulatory requirements on entities for which such requirements are inappropriate. AIC also reiterates that the Council should apply cost-benefit analysis to any formal actions taken through this process.

VIII. Interpretation of Threat to Financial Stability (Section II.H of the Proposed Guidance)

Question for Comment: The Proposed Guidance defines "threat to the financial stability of the United States" to mean the threat of an impairment of financial intermediation or of financial market functioning to a degree that would be sufficient to inflict severe damage on the broader U.S. economy. Is this an appropriate definition of a "threat to the financial stability of the United States"? What criteria or metrics should the Council consider when evaluating whether a threat is sufficient to inflict "severe" damage on the broader U.S. economy?

AIC supports the interpretation of the term "threat to the financial stability of the United States," consistent with the 2019 Interpretive Guidance, to mean the threat of an impairment of financial intermediation or of financial market functioning to a degree that would be sufficient to inflict severe damage on the broader U.S. economy. This interpretation represents a higher threshold than the one set forth in the 2023 Analytic Framework, which interpreted this term to mean "events or conditions that could 'substantially impair' the financial system's ability to support economic activity."

The Council is correct that this is the appropriate threshold for any potential use of its designation authority, given the number of other authorities and tools available to the Council to respond to potential risks to U.S. financial stability, including the activities-based approach. By using the threshold, the Council seeks to focus its designation evaluation on situations where the magnitude of potential economic harm is greatest and where the marginal value of applying

Federal Reserve supervision and prudential standards is expected to be highest. This approach also reduces the likelihood that the Council undertakes designation, and imposes related costs, in circumstances where the benefits are uncertain or limited.

As AIC articulated in 2023, a clear definition of “threat” to financial stability is essential to preserve a meaningful and achievable measure of objectivity in FSOC’s designation procedures. By maintaining this measure of objectivity, a clear definition of “threat” would allow market participants to determine properly and effectively how to manage their businesses and reduce their systemic risk profile, which would improve financial stability in a market-driven and cost-efficient manner.

When evaluating whether a threat is sufficient to inflict “severe” damage on the broader U.S. economy, the Council should consider:

- the degree of interconnectedness between the activity and systemically important financial infrastructure;
- the potential for contagion to the banking system or other critical intermediaries; and
- the availability of substitute providers for any services or functions the entity provides.

As discussed in more detail in section X below, AIC notes that private capital fails to meet any reasonable threshold on any of these criteria.

IX. Administrative Process for Nonbank Financial Company Determinations (Section II.I of the Proposed Guidance)

Question for Comment 1: Will the new procedural step proposed to be added to the Council’s administrative process for nonbank financial company determinations provide a nonbank financial company or financial regulatory agencies sufficient opportunity to undertake steps to address a potential threat to U.S. financial stability?

AIC supports the Proposed Guidance’s addition of a new procedural step under which the Council, based on its preliminary evaluation (Stage 1), intends to identify steps a nonbank financial company or financial regulatory agencies could take to address a potential threat to U.S. financial stability. Subject to any necessary administrative procedures required to remediate the risk, the Council generally expects material risks to U.S. financial stability to be addressed within 180 days.

This remediation step reflects a sound regulatory principle: a Stage 2 evaluation or a Proposed or Final Determination should be employed only when more proportionate responses have proven inadequate. However, AIC would encourage the Council to further strengthen this remediation mechanism. The 180-day remediation period should be treated as a reference rather than a maximum, particularly for complex companies with multiple business lines, and the Council should be willing to extend this period where a company is making demonstrable progress. Further, FSOC should require that a company be given a meaningful opportunity to

implement remediation steps and that the Council give due weight to a company's good-faith remediation efforts before proceeding to Stage 2 or a Proposed or Final Determination.

Question for Comment 2: Would any other changes to the designation process be appropriate in helping the Council satisfy its statutory requirements?

AIC recommends several enhancements to the designation process to help protect the rights of nonbanks during the determination process and enhance FSOC governance, credibility, and accountability:

- The primary financial regulatory agency of the nonbank under review should be an integral participant throughout FSOC's review process, rather than merely consulted by FSOC staff from time to time.
- FSOC principals should be available to meet with the nonbank and the primary financial regulatory agency throughout the process, along with FSOC member agency staff and FSOC staff.
- FSOC principals (rather than staff or deputies) should be required to vote to commence the review of a nonbank in Stage 1, given the potential consequences of designation and the nondelegable duty of FSOC's voting members to themselves determine whether designation is appropriate.
- Nonbanks should be given an opportunity and ample time to review and correct the evidentiary record on which FSOC will base its decision to move to Stage 2 or a Proposed or Final Determination.

AIC notes that the 2019 Interpretive Guidance specified that FSOC would subject a nonbank financial company to review for entity-specific determination "only in rare instances, such as if the products, activities, or practices of a company that pose a potential threat to U.S. financial stability are outside the jurisdiction or authority of financial regulatory agencies."¹⁹ We suggest that the Council reiterate this clarification, which helps provide specific guidance to market participants about the role of the Council as an oversight body rather than as a primary regulator, and entity-specific determination as a tool of last resort when no primary regulator is able to take action to address perceived market risk.

Question for Comment 3: Should any aspect of the Proposed Guidance described in this section II be modified for other considerations?

The Council should provide clearer guidance on the evidentiary standard it will apply in the administrative process for nonbank financial company determinations. Without greater clarity on the evidentiary burden, the designation process risks appearing standardless and

¹⁹ 84 Fed. Reg. at 71,755.

vulnerable to legal challenge and imposes significant uncertainty on nonbank financial companies.

X. Private Capital Does Not Pose a Risk to U.S. Financial Stability

AIC urges the Council to make unmistakably clear, in finalizing this Proposed Guidance, that private capital does not pose a systemic risk warranting designation or enhanced activities-based systemic regulation. Under any reasonable application of the Proposed Guidance, private equity and private credit should be found to present no threat to U.S. financial stability.

A. Structural Features Preclude Systemic Risk

Private credit and private equity funds are built with structural protections that significantly mitigate run risk and help reduce market stress. Importantly, these structural features are not mere technicalities—they are the reason that private capital can form quickly, deploy nimbly into the real economy, and provide stable, long-term financing that powers American businesses and generates returns for the pension beneficiaries, endowments, and foundations that invest through these vehicles.

Institutional closed-end private equity and private credit funds are structured as limited partnerships in which limited partners make long-term capital commitments for the term of the fund, with capital drawn down during the investment period as needed. Critically, limited partners do not have a right to redeem their investments on demand; rather, the investment periods for credit funds are approximately three to five years, with a total fund term of seven to ten years. AIC acknowledges that private credit is not managed exclusively in these long-dated, commitment-style vehicles. In recent years, more capital managed by private credit firms has flowed into “retail” vehicles. Roughly half of direct lending assets are managed in business development companies (“BDCs”), many of which are publicly traded. Non-traded BDCs and other types of semi-liquid funds offer quarterly liquidity subject to well-disclosed caps. In practice, quarterly liquidity is typically set at 5% per quarter, with notice periods designed to ensure that assets can be sold in an orderly fashion to meet investors' liquidity needs. Some of these vehicles have periodically reached their quarterly redemption limits, but there have been no fire sales to fund redemptions, in part because credit repayments fund liquidity needs over time. These liquidity limits protect long-term investors who would otherwise be harmed if the funds were forced to sell long-term portfolio assets at a discount in response to short-term redemption pressure.

The redemption limits function exactly as designed: they are disclosed in advance to investors and they provide the manager with the opportunity to wait out short-term public misperceptions about fund exposures. Current experience demonstrates that the private capital plumbing is working as Congress intended when it enacted the Dodd-Frank Act and, as noted in the Overview, historical experience also confirms that these structural protections work as designed. During the COVID-related real estate market dislocation, for instance, semi-liquid real estate funds with similar structural features helped reduce stress in the underlying market by providing stable, flexible, long-term capital during a period of extreme uncertainty.

Turning to leverage, both private equity and private credit use significantly less leverage than banks. Private equity funds rarely use leverage at the fund level and the largest private credit funds operate at approximately 1x leverage, compared to greater than 10x leverage for a typical bank. These conservative leverage levels are not merely a risk-mitigation feature. Rather, they are what align manager incentives with long-term investor returns, so that private credit and private equity managers can take a long-term view on credit risk that supports economic growth and job creation in a way that highly leveraged, short-term-funded bank balance sheets often cannot. Additionally, only a nominal amount of derivatives are used in executing private equity and private credit fund investment strategies, mainly for hedging purposes such as currency and interest rate management. The risks associated with leveraged lending in private equity and private credit are known, priced for, and mitigated through strong credit risk standards established in funds' constitutional documents and demanded by sophisticated investors. Investments are reviewed for appropriate risk management, including covenants, collateral, EBITDA calculations, and the presence of any incremental facilities.

With respect to the investor base, traditional closed-end private credit and private equity funds are backed by sophisticated institutional limited partners—including pension plans whose beneficiaries depend on these returns to fund their retirements—and semi-liquid credit funds, purchased by retail investors, are bought through financial intermediaries who can explain the value proposition of a semi-liquid product as part of a balanced investment portfolio.

B. Application of the Transmission Channels Framework Confirms the Absence of Systemic Risk

Under the Proposed Guidance's four transmission channels, private equity and private credit pose no material risk:

Exposure transmission channel. The proper metric for measuring the systemic relevance of a private equity or credit firm is risk assets (the total amount that a firm would lose in the extraordinarily unlikely event that the firm and all of the funds it advises were to fail) not assets under management, because the firm cannot use the assets under management to gain access to liquidity or to settle the firm's debt. Liabilities of private equity and private credit funds also are relatively small because they do not have significant counterparty exposure, and these firms typically do not engage in significant derivatives or securities financing strategies. While private credit exposure can flow back into the banking system by virtue of bank financing to private credit funds, these interconnections are precisely the types of bank exposures that prudential bank regulators such as the OCC, the Federal Reserve, and the FDIC are already equipped and mandated to supervise. The appropriate regulatory response to bank-level credit risk is to ensure that bank regulators can exercise adequate oversight over banks, not to subject private capital to a designation regime.

Asset liquidation transmission channel. Private equity and private credit funds are not subject to the rapid liquidation "run" dynamics that characterize leveraged financial institutions like banks, which depend on short-term funding. Critically, investors have limited redemption or withdrawal rights and as a result investors cannot force the rapid unwind of a fund or the fire sale

of its assets. In addition, ownership of fund assets is dispersed across many investors such that deterioration of the assets of a fund would have a limited impact on other market participants other than to the committed capital of the investors to that fund.

Critical function or service transmission channel. While private equity and private credit funds provide a nimble and important source of financing (particularly to small- and mid-sized firms), they do not provide products, services, or infrastructure that is subject to sharp disruption for which there are no ready substitutes. Rather, there is intense competition in the marketplace to raise funds from sophisticated investors and to engage in corporate lending, and if a private equity or credit firm is subject to stress then there are large numbers of investment professionals and firms ready and able to step in and compete for investor capital and engage in corporate lending.

Contagion transmission channel. The enumerated contagion risks described in the Proposed Guidance (specifically, limited transparency into investment risks, correlated markets, operational risks, or the loss of confidence in financial instruments treated as substitutes for money) capture the risk of market dislocations or fire sales that can result in further dislocation or losses for other market participants. These risks simply do not apply to private capital in any manner that could generate systemic consequences.

From a mechanical perspective of risk transmission, private equity and private credit funds invest in diversified portfolios across numerous industries and do not issue instruments that are treated as cash substitutes. These portfolios are transparent to fund investors. The failure of any private equity or private credit fund would result simply in an orderly wind-down of the fund, with the impact on investors limited to their committed capital. Critically, even if a particular nontraded BDC or tender offer fund were to fail due to mismanagement, other managers would not be affected because their funds hold different portfolios with different exposures (though there is naturally some portfolio overlap among funds that pursue similar investment strategies). Funds managed by the same investment management firm generally are not cross-collateralized, meaning the failure of one fund cannot pull down another fund within the same firm, let alone other firms across the industry. The result is that losses are contained within the affected fund and its investors, without the risk of contagion through the rest of the financial system.

C. Private Capital is Subject to Robust Existing Regulation

One of the statutorily required considerations the Council must take into account is the degree to which the nonbank financial company is already regulated by one or more primary financial regulatory agencies. Private capital is subject to a variety of regulatory compliance and reporting requirements that provide FSOC and its member agencies with information regarding the systemic risk profile of these financing activities. Furthermore, private capital managers are, subject to very limited exceptions, registered with the SEC as investment advisers and therefore subject to robust regulation, reporting, and examination by that agency, and are also subject to fiduciary duties of care and loyalty. In addition, interests in private equity and private credit

funds are offered to sophisticated investors or through sophisticated financial intermediaries in transactions that are subject to the antifraud provisions of U.S. federal and state securities laws.

The SEC operates a comprehensive regulatory program that addresses the very risks the Council's designation authority is intended to mitigate. Private capital managers must comply with a suite of SEC rules addressing risk, including:

- **Examination by the SEC, Section 203A:** SEC staff have statutory authority to conduct on-site examinations of private capital firms and other registered investment advisers. The examination and enforcement staff accounts for about half of all the staff of the SEC and the SEC's Division of Examinations expressly states that its mission is to protect investors and ensure market integrity by monitoring for risk, among other things.
- **Custody Rule, Rule 206(4)-2:** The Advisers Act custody rule requires segregation of client assets to prevent them from risk associated with pooling assets with other advisory clients.
- **Compliance Program Rule, Rule 206(4)-7:** Private capital managers are required to establish extensive compliance programs to help avoid and identify violations of the U.S. securities laws.
- **Form PF Reporting Rule 204(b)-1:** Private fund advisers are required to report information about regulatory assets under management to FSOC on Form PF, for risk monitoring.
- **Form ADV Reporting, Rules 203-1 and 204-1:** Investment advisers are required to provide extensive information about their businesses and the private funds they manage on Form ADV.

D. Updated Data Confirm the Limited Systemic Footprint of Private Capital

Despite recent growth, private credit remains a relatively modest share of overall U.S. corporate financing. This limited scale is a critical point: while there can certainly be defaults and investment losses through different business cycles, those losses do not equate to systemic risk unless they cause other institutions to fail. Put simply, private credit and private equity are not large enough for cascading risk to materialize. Moreover, private capital represents only one source of financing in an intensely competitive marketplace. Accordingly, no single fund or firm occupies a position of such significance that its distress would raise substitutability concerns for the broader market.

XI. Conclusion

AIC believes the growth of private capital has diversified the sources of financing available to the real economy, reducing concentration in the banking system and thereby potentially strengthening, rather than weakening, overall financial stability. This is precisely the

outcome that the Dodd-Frank Act was designed to achieve. The United States' existing regulatory framework for private capital, anchored in the federal securities laws and enforced by the SEC, ensures that these markets operate with the transparency and integrity that make U.S. capital markets the deepest and most trusted in the world. Overlaying a non-transparent designation regime on this well-functioning system would risk impairing the very capital formation engine that powers American economic growth and funds the retirement of American workers. AIC appreciates the opportunity to comment on the Proposed Guidance and commends the Council for the significant improvements it contemplates over the 2023 Interpretive Guidance and 2023 Analytic Framework. AIC would be pleased to answer any questions that you might have concerning our comments and would welcome the opportunity to discuss these issues further with the Council and its staff.

Respectfully submitted,

/s/ Shelby Telle
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American Investment Council