Council of Inspectors General on Financial Oversight (CIGFO)
December 13, 2023
Video Conference Call
10:00 a.m.
Meeting Minutes

Council Members Present

Rich Delmar, Acting Chair, Deputy Inspector General, Department of the Treasury (Treasury)
Mark Bialek, Inspector General, Board of Governors of the Federal Reserve System (Board)/Consumer Financial Protection Bureau (CFPB)
James Hagen, Inspector General, National Credit Union Administration
Brian Tomney, Inspector General, Federal Housing Finance Agency (FHFA)
Dr. Brett Baker, Acting Inspector General, Commodity Futures Trading Commission
Tyler Smith, Acting Inspector General, Federal Deposit Insurance Corporation (FDIC)
Christopher Fontanesi, Senior Counsel, U.S. Department of Housing and Urban Development, Office of Inspector General (OIG)
Katherine Reilly, Deputy Inspector General for Investigations (Acting), U.S. Securities and Exchange Commission OIG

Council Members Not Present

Special Inspector General for Troubled Asset Relief Program

Guests

Debbie Harker, Assistant Inspector General for Audit, Treasury OIG
Susan Barron, Deputy Assistant Inspector General for Audit, Treasury OIG
Jeffrey Hawkins, Audit Director, Treasury OIG
Amy Altemus, Acting Counsel to the Inspector General, Treasury OIG
Camille Callender, Assistant Counsel, Treasury OIG
Andrew Berke, Senior Advisor, Treasury OIG
Jacqueline Becker, Senior Advisor and Senior Associate Inspector General, Board/CFPB OIG
Jonathan Lebruto, Chief of Staff, FDIC OIG
Robyn Thiemann, Principal Deputy Inspector General, FHFA OIG
James Lisle, Audit Director, FHFA OIG
Paul Rosen, Assistant Secretary of the Treasury for Investment Security, Department of the Treasury
Andrew Fair, Deputy Assistant Secretary for Investment Security Operations, Treasury
Jennifer Lato, Policy Advisor, Office of Investment Security, Treasury

At 10:00 a.m., Rich Delmar, Acting Chair, called the meeting to order and welcomed everyone. He then asked for consideration of the September 13, 2023, meeting minutes and asked if the members had any corrections or additions. Hearing none, Mr. Delmar called for a motion to approve the minutes which was made and seconded. The minutes were approved by unanimous consent.

Mr. Delmar introduced Paul Rosen. Mr. Rosen serves as the Assistant Secretary of the Treasury for Investment Security and leads all operations and activities of The Committee on Foreign Investment in the United States (CFIUS). Mr. Rosen explained CFIUS is an interagency committee authorized by Congress to review certain transactions by foreign persons involving foreign investment and certain real estate transactions in the United States to determine the effect of such transactions on the national security of the United States. CIFUS was established in 1975 and is comprised of the heads of the Treasury (Chair); Departments of Defense, State, Commerce, Energy, Homeland Security, Justice; and other executive offices on a case-by-case basis. CFIUS membership also includes the U.S. Trade Representative and the White House Office of Science and Technology Policy.

Mr. Rosen introduced Andrew Fair, the Deputy Assistant Secretary for Investment Security Operations. Mr. Fair explained that CFIUS has jurisdiction to review any transaction involving foreign control of any U.S. business or foreign investments in U.S. businesses engaged in critical technology, critical infrastructure, and sensitive personal data. CFIUS also has jurisdiction over certain real estate transactions. Mr. Fair defined a foreign person as any foreign national, government, or entity. Mr. Fair then discussed the different types of filings and the statutory timelines in which CFIUS is obligated to conduct a review. CFIUS conducts its reviews using a risk-based analysis process. Possible outcomes of a review may be that the parties can enter into a mitigation agreement to reduce any risks CFIUS determines may be present or a referral can be sent to the President for a decision to suspend or prohibit a transaction should the risk be unable to be mitigated. Mr. Rosen discussed penalties that CFIUS can impose for violations of its statute, regulations, or any mitigation agreements including orders or conditions imposed.

In October 2022, Treasury issued the CFIUS Enforcement and Penalty Guidelines. These guidelines discuss possible penalties and the factors CFIUS uses in determining a penalty in response to a violation. Mr. Rosen then took questions from the group. One question pertained to CFIUS' approach and if they consider the source of funding for a proposed transaction. Specifically, if it involved a bank, would CFIUS engage the bank(s) or the bank regulators? Mr. Rosen responded that the first concern in any review is whether the transaction has a national security risk. If so, they will engage appropriate parties. If the transaction does not, they would refer the matter to the right agency for further review. Mr. Delmar thanked Mr. Rosen and Mr. Fair for meeting with the group.

Ms. Amy Altemus, Treasury OIG, then discussed the recently published Financial Stability Oversight Council (FSOC) Analytic Framework (framework). The framework details the approach FSOC expects to take in identifying, assessing, and responding to certain potential risks to U.S. financial stability. Ms. Altemus noted that under the framework, FSOC's monitoring for potential risks to financial stability may cover an expansive range of asset classes, institutions, and activities and that the framework describes the material upon which FSOC will rely on in its evaluations. The framework also details certain sample quantitative metrics used to measure vulnerabilities, for example: leverage, liquidity risk, interconnections, and operational risks. The framework explains each metric and relates it to the systemic risk determination.

As for addressing potential risks, the framework acknowledges that FSOC may take different approaches to respond to a risk. FSOC may also use multiple tools to mitigate a risk, including acting to reduce the risk of a shock arising from within the financial system and improving the resilience of the financial system to shocks. FSOC asserts that it works with relevant financial regulatory agencies at the federal and state levels to seek the implementation of appropriate actions to ensure a potential risk is adequately addressed. In addition, the framework notes that FSOC may also make formal public recommendations to primary financial regulatory agencies and Congress. Also, in certain cases, FSOC may evaluate one or more nonbank financial companies for an entity-specific determination that a nonbank financial company will be supervised by the Federal Reserve Board and be subject to prudential standards.

Regarding such entity-specific determinations, on November 17, 2023, FSOC issued revised procedural and interpretive guidance regarding its process for considering a nonbank financial company for potential designation. Ms. Altemus stated that these determinations and designations are allowed under section 113 of the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). In making an entity-specific determination, FSOC may conclude that the material financial distress at the nonbank financial company could pose a threat to the financial stability of the United States. Other considerations may be the nature, scope, size, scale, concentration, interconnectedness, or mix of activities of the nonbank financial company which also could pose a threat to the financial stability of the United States.

Ms. Altemus explained that under the guidance, FSOC expects to follow a two-stage process of evaluation and analysis when evaluating a nonbank financial company under section 113 of the Dodd-Frank Act. During the first stage of the process, a nonbank financial company identified for review will be notified and subject to a preliminary analysis. The analysis is to be based on quantitative and qualitative information available to FSOC primarily through public and regulatory sources. In light of the preliminary nature of a review in stage one, FSOC expects that not all companies reviewed will proceed to stage two or result in an entity-specific determination. Following this first stage, any nonbank financial company that is selected for additional review will receive notice that it is being considered for a proposed determination that the company will be supervised by the Federal Reserve Board and be subject to prudential standards; and further that the company will be subject to an in-depth evaluation during the second stage of review. The company may submit relevant information during the analysis. If, after the stage one review, the notice to the company, and consideration of additional material submitted by the company, FSOC makes a proposed determination, the nonbank financial company may request a hearing. After holding any written or oral hearing, FSOC may vote to make a final determination.

The guidance further provides that FSOC staff-level committees will be responsible for monitoring a broad range of asset classes and institutions, as described in FSOC's Analytic Framework and describes the committees and their duties in making the evaluations. The committees are charged to monitor each sector of the financial system at least annually, and to report to the Deputies Committee regarding potential risks to financial stability. The guidance provides that in evaluating the potential risks associated with a nonbank financial company, FSOC may consider the company and its subsidiaries separately or together, which enables FSOC to consider potential risks arising across the entire organization. This also allows FSOC to retain the ability to make a determination regarding either the parent or any individual nonbank financial company subsidiary (or neither), depending on which entity FSOC determines could pose a threat to financial stability. The guidance provides for annual reevaluation, in which companies may bring additional information to FSOC and it may amend an earlier decision.

The final item on the agenda was a discussion on potential working group topics for the next CIGFO working group. Mr. Delmar explained that the last CIGFO Working Group project on the *Audit of FSOC's Efforts to Address Climate-Related Financial Risk* was issued in August 2023. CIGFO has traditionally completed one Working Group project per year. Jeff Hawkins, Treasury OIG, presented the five proposed topics that were received from the members since the last quarterly meeting. He gave a brief overview of each proposal and then turned it over to Mr. Delmar to lead the discussion. The members discussed the merits of each proposal, and a general consensus was reached that the majority of the group preferred to further explore two of the ideas; emerging technologies and FSOC's revised Designation of Nonbank Financial Companies guidance. It was decided that FDIC OIG would develop a formal proposal for emerging technologies and Treasury OIG would develop one for the Designation of Nonbank Financial Companies guidance. The proposals will be circulated in February with the goal of having the members vote at the March meeting.

A motion was made and seconded to adjourn and was approved by all.

The meeting adjourned at 11:00 a.m.