

## ICI VIEWPOINTS

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## ICYMI: Congress Asks Questions About SIFI Designation and Asset Managers; SEC Chair White Provides Telling Answers

By Mike McNamee

*DC scene setter, 2013–2014:* The Financial Stability Oversight Council (FSOC) is examining asset managers for possible “systemically important financial institution” (SIFI) designation, which would bring with it enhanced prudential regulation from the Federal Reserve. Such “bank-style” regulation is foreign to U.S. capital markets.

*Capitol Hill engages, April 29:* In its Securities and Exchange Commission (SEC) oversight hearing, the House Financial Services Committee spent significant time talking to SEC Chair Mary Jo White about FSOC’s review of asset managers. Chairman Jeb Hensarling (R-TX) focused his questions for SEC Chair White on the issue, as did other members of the committee; Chairman White provided some telling answers.

In her testimony, the SEC Chair:

- Stated that the SEC has the existing authority and expertise to regulate the asset management industry
- Explained the fundamental differences between banks and asset managers
- Confirmed that “concerns” are “real” about the potential negative impact that designation could have on investors in a SIFI-designated fund

*ICI’s view:* The FSOC should listen to its esteemed colleague at the SEC—the only regulator with significant capital-markets expertise and extensive experience regulating mutual funds—when it comes to discussion and deliberation of asset management issues.

What follows is a preliminary transcript of the Hensarling/White exchange during the hearing:

**HENSARLING:** Many have called the asset management industry part of the shadow banking group, which is, obviously, a pejorative term. As chair of the SEC, are asset managers unregulated, from your vantage point?

**WHITE:** Yes, they are, and they have been for many years.

**HENSARLING:** So, they are regulated?

**WHITE:** They are regulated.

**HENSARLING:** In your opinion, does your commission lack any authority that it needs to adequately regulate the asset management industry?

**WHITE:** Obviously, we are always looking to see whether that it is the case, but I do not believe we do lack that authority, Mr. Chairman. In other words, we have the authority we need.

**HENSARLING:** Okay. Madam Chair, one thing that you and I may have in common—some might accuse us of being vertically challenged. Notwithstanding that, you’ve managed to poke your head way up to put out for comment the [OFR Asset Management Study](#) when others would not. I want to thank you, along, again, with our chairman of our Capital Markets Subcommittee, for doing

that.

So, we know that FSOC has moved already on several non-bank SIFI designations on what I might call part of the shadow regulatory process, as FSOC continues to be a rather opaque organization, if you will, using a rather amorphous process. Be that as it may, from your perspective, how do asset managers differ from traditional—how are they different from traditional banks and bank-holding companies?

**WHITE:** Well, they're different in many ways. I think the most fundamental difference is that they are an agent. And they, therefore, manage others' monies. And, therefore, you have to make certain that you're distinguishing that when you're looking at any systemic risk issues. We're not talking about positions on the balance sheet, but we're talking about acting as agents, you know, in the spaces that they act in.

**HENSARLING:** We know that designating a firm as a SIFI imposes increased cost upon an entity or an organization. In this case, potentially, this could be imposed upon investors in mutual funds—people who are saving for retirement, maybe a down payment on a home, maybe to send their kids to college. Do you believe that any evaluation of asset managers for a SIFI designation should take into account the economic cost that ultimately could be borne by our nation's hardworking investors?

**WHITE:** Without getting into discussions, I can't, because they are, you know, confidential when we deal with—on FSOC with any potential designation.

**HENSARLING:** Which may be part of the problem, but continue.

**WHITE:** Well, I think it's—I mean, I—you know, FSOC is—is focused on the issue of transparency and enhancing transparency, I think. But it's also important to recognize that these discussions of potentially systemically important institutions contain a lot of confidential data, as do some of the other discussions, which, you know, would—you would not want to be—I don't believe anyone would want to be made public.

I think that the primary focus, and really, the primary Congressional mandate given to FSOC, is to focus on identifying and addressing systemic risk to the broader, you know, financial system. And while I think, you know, any consideration of any decision any organization makes should take into account all facts and circumstances and impacts. We can't lose sight of—that is the—that is the main [inaudible].

**HENSARLING:** Where do you see the systemic threat posed by the asset management in—let's try that again—specifically, the mutual fund industry?

**WHITE:** The answers—I mean, that's obviously been, you know, studied, and is continuing to be studied by FSOC, of which—of which I am a member. You know, clearly, the SEC also is the primary regulator of the mutual fund industry and asset managers. And I think our regulations, you know, do address, and, frankly, increasingly, any potential systemic risk that that industry, or any particular member of it might pose.

**HENSARLING:** Under the Dodd-Frank Act, non-bank SIFIs potentially could be assessed to help pay for the resolution of a failing financial institution. Which I believe could have the consequence—if you designate a mutual fund as a SIFI, it means that individual fund investors, many of whom have entrusted their retirement savings to a mutual fund—they could be on the hook for bailing out large financial institutions. Is that your understanding? And do you think this is an appropriate consequence for moderate-income mutual fund investors?

**WHITE:** Well, I mean, I think it remains to be seen just how the designations, you know, play out, and, indeed, how even enhanced regulation is exercised, if there is to be a designation. But plainly, I—the concerns that you note are real ones.

*Source: Political Transcripts by CQ Transcriptions, April 29, 2014*

In a related note, in April more than 40 members of the House Financial Services Committee [sent a letter](#) to Treasury Secretary Jacob Lew raising substantive concerns and addressing process shortcomings related to FSOC's review of asset management.

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