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May 24, 2012

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Re: Definition of "Predominantly Engaged in Financial Activities" (Regulation Y; Docket No. R-1405; RIN 7100-AD-64)

Dear Sir or Madam:

The Independent Community Bankers of America[1] (ICBA) welcomes the opportunity to comment on proposed rules that would clarify the criteria for determining whether a company is "predominantly engaged in financial activities" for purposes of Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

The Federal Reserve Board previously published a notice of proposed rulemaking on February 11, 2011 (2011 NPR) that would amend Regulation Y to establish the criteria for determining whether a company is "predominantly engaged in financial activities" and define the terms "significant nonbank financial company" and "significant bank holding company" for purposes of Title I of the Dodd-Frank Act. The Board proposed that a company should be consider "predominantly engaged" in financial activities if either (1) the annual gross revenues derived by the company and all subsidiaries from activities that are financial in nature as defined in section 4(k) of the Bank Holding Company Act represents 85% or more of the consolidated annual gross revenues, or (2) the consolidated assets of the company and all of its subsidiaries related to activities that are financial in nature as defined in section 4(k) of the Bank Holding Company Act represents 85% or more of the consolidated assets of the company.

The Board is now proposing to amend the 2011 NPR to clarify that any activity referring in section 4(k) will be considered to be a financial activity without regard to conditions that were imposed on bank holding companies concerning the activity. The Board is also

[1] *The Independent Community Bankers of America®, the nation's voice for more than 7,000 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best- in-class education and high-quality products and services. For more information, visit www.icba.org*

issuing as an appendix to the 2011 NPR a list of the activities that would be considered to be financial activities as of April 2, 2012.

**ICBA's Position**

ICBA strongly supported the creation of the Financial Stability Oversight Council (FSOC) when the Dodd-Frank Act was being considered by Congress. We believe that certain large nonbank financial companies should be subject to enhanced prudential standards including higher capital, leverage, and liquidity standards, concentration limits and contingent resolution plans. **ICBA also believes that FSOC's process for determining which nonbank financial institutions should be considered systemically important should be a sufficiently broad enough inquiry to include as many large or interconnected nonbank financial firms that pose systemic risk to the financial system and the economy as possible.** The list should include large investment banks, insurance companies, hedge funds, private equity funds, venture capital firms, mutual funds (particularly money market mutual funds), industrial loan companies, special purpose vehicles, and nonbank mortgage origination companies. Any company that is predominantly engaged in financial activities should be considered if its failure or material financial distress could cause financial instability in the United States.

**In our original letter concerning the 2011 NPR, ICBA strongly agreed with the Federal Reserve that the proposed rule should broadly define "financial activities" to include all activities that have been, or may be, determined to be financial in nature under Section 4(k).** This should be defined broadly to all financial activities, regardless of where the activity is conducted by a company, regardless of whether a bank holding company or a foreign banking organization could conduct the activity under some legal authority other than Section 4(k) of the Bank Holding Company Act, and regardless of whether any Federal or State law other than Section 4(k) of the Bank Holding Company Act may prohibit or restrict the conduct of the activity by a bank holding company. For instance, all securities underwriting and dealing activities should be considered financial activities for purposes of the proposed rule even if a bank holding company or other company affiliated with a depository institution may be limited in the amount of such activity it may conduct under the Volcker Rule.

**ICBA agrees with the Federal Reserve that when considering whether a company is predominantly engaged in financial activities, the financial activities under section 4(k) should be considered without regard to the conditions that are imposed on the activities.** Defining financial activities for purposes of Title I to include all of the conditions imposed on the conduct of the activities by bank holding companies would enable some companies that are predominantly engaged in financial activities to avoid consideration for designation by FSOC simply by choosing not to comply with the conditions imposed by the Board. For instance, a firm that operates and manages an investment company such as a money market mutual fund could argue that it is not engaged in that financial activity since the firm owns more than the allowed percentage of ownership under Regulation Y.

ICBA agrees that the proposed clarification to the 2011 NPR is consistent with the purpose and legislative history of Title I, which demonstrated that Congress wanted to make eligible for FSOC designation, companies that were not bank holding companies but that were engaged in a broad range of financial activities. To read Title I as limiting the scope of companies considered to be predominantly engaged in financial activities to only those companies that conduct such activities in compliance with the conditions applicable to bank holding companies would severely undermine the purpose of Title I and the authority granted by Congress to FSOC.

ICBA also agrees that FSOC's anti-evasion authority under section 113 of the Dodd Frank Act demonstrates Congress's intent to broadly define "nonbank financial companies." Congress did not want to give any company the ability to avoid qualifying as a nonbank financial company by manipulating its financial revenues and assets or by altering the manner in which it conducts its activities.

ICBA commends the Federal Reserve for proposing an appendix that would enumerate the activities that would be considered financial in nature as of April 2, 2012. This should make clear to potential nonbank financial companies the activities that are considered financial. These activities will be identical to those in Section 4(k) that are permissible for financial holding companies as of such date, but will not include the conditions imposed on the conduct of the activity.

**Conclusion**

ICBA believes that FSOC's process for determining which nonbank financial institutions should be considered systemically important should be a sufficiently broad inquiry that includes as many large or interconnected nonbank financial firms that pose systemic risk to the financial system and the economy as possible. We agree with the Federal Reserve that the proposed rule should broadly define "financial activities" to include all activities that have been, or may be, determined to be financial in nature under Section 4(k) of the Bank Holding Company Act, and that the financial activities under section 4(k) should be considered without regard to the conditions that are imposed on the activities.

The Federal Reserve's proposed clarification to the 2011 NPR is consistent with the purpose and legislative history of Title I, which demonstrated that Congress wanted to make eligible for FSOC designation, companies that were not bank holding companies but that were engaged in a broad range of financial activities. We also like the idea of an appendix that that would enumerate the activities that would be considered financial in nature and that would be identical to those listed in Section 4(k).

ICBA appreciates the opportunity to comment on the Federal Reserve's proposed rules that would clarify the criteria for determining whether a company is "predominantly engaged in financial activities" for purposes of Title I of the Dodd-Frank Act.
If you have any questions about our letter, please do not hesitate to contact me at 202-659-8111 or Chris.Cole@icba.org.

Sincerely,
/s/ Christopher Cole

Christopher Cole
Senior Vice President and Senior Regulatory Counsel