THE FINANCIAL SERVICES ROUNDTABLE
Financing America's Economy

June 14, 2013

Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Docket No. 1457 and RIN 7100-AD-95; Assessments for Bank Holding Companies and Savings and Loan Holding Companies with Total Consolidated Assets of $50 Billion or More and Nonbank Financial Companies Supervised by the Federal Reserve

Dear Mr. deV. Frierson:

The Financial Services Roundtable[1] (the "Roundtable") appreciates the opportunity to comment on the proposed assessment program for bank holding companies and savings and loan holding companies with total consolidated assets of $50 billion or more and nonbank financial companies subject to supervision by the Federal Reserve Board (the "Board"). [2]

The Roundtable represents 100 of the nation's largest integrated financial companies, including bank holding companies and savings and loan holding companies that will be subject to the proposed assessment as well as nonbank financial companies that may be subject to the assessment following designation by the Financial Stability Oversight

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[1] The Financial Services Roundtable represents 100 integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for $98.4 trillion in managed assets, $1.1 trillion in revenue, and 2.4 million jobs.

[2] We also draw to your attention the positions taken in comment letters to be submitted to the Board by the American Bankers Association, The Clearing House Association, the Institute of International Bankers and the Securities Industry and Financial Markets Association that (i) the Board should provide more transparent and detailed disclosure of the Board's expenses included in the assessment basis and (ii) the Board should consider postponing the commencement of its assessment program until 2014 for expenses incurred by the Board during 2013.

Council. As such, many of our member companies will be directly impacted by the proposal.

I. *We recommend that the proposed assessment framework be revised in certain key respects.*

We recognize the Board's statutory obligation to establish and impose an assessment on bank holding companies and savings and loan holding companies with $50 billion or more in total consolidated assets, and on nonbank financial companies subject to the Board's supervision.[3] However, as discussed further below, we recommend that:

- the assessment be based upon factors other than just a company's asset size;
- the assessment be implemented prospectively, rather than retroactively; and
- the Board implement the assessment in a more transparent manner, and include an opportunity for public notice and comment on the specific expenses covered by the assessment.

II. *We have no objection to the methodology for determining and measuring total assessable assets of companies subject to the assessment, although we question whether asset size rather than risk or actual time spent in supervisory activities should be the primary basis for determining the amount of the assessment.*

The Board has proposed a methodology for determining the total assessable assets of the companies subject to the proposed assessment.[4] That methodology is tied to the scope of the Board's supervisory and regulatory responsibilities for such companies. More specifically, the Board has proposed that the total assessable assets for a domestic bank holding company, a domestic savings and loan holding company, other than a grandfathered unitary savings and loan holding company, and a domestic nonbank financial company will be the company's worldwide assets; the total assessable assets for a grandfathered unitary savings and loan holding company will be limited to the assets of the company's savings association subsidiary and its other financial activities; and the total assessable assets for a foreign bank holding company, a foreign savings and loan holding company, and a foreign nonbank financial company will be based upon its U.S. assets.

Additionally, the Board has proposed to use FR Y-9C form for purposes of measuring the assets of a bank holding company or a savings and loan holding company,

[3] Section 318 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

[4] Under the terms of section 318 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the companies subject to the proposed assessment are (i) top-tier, domestic bank holding companies and savings and loan holding companies with total assets of $50 billion or more; (ii) foreign banks or other foreign companies that are top-tier bank holding companies or savings and loan holding companies that have assets of $50 billion or more; and (iii) domestic and foreign nonbank financial companies supervised by the Board.

and FR Y-7Q for measuring the assets of foreign bank holding companies (and presumably foreign savings and loan holding companies). We recommend that the Board clarify that it will use Schedule HC-K in the FR Y-9C reports for purposes of determining a company's total assessable assets. Additionally, we recommend that the Board use the FR Y-9C form to measure the assets of any intermediate holding company that may be formed pursuant to section 626 of the Dodd-Frank Act.

Subject to the qualification in the next paragraph, we have no objection to the methodology the Board has proposed for determining the assets of companies. The proposed methodology appropriately recognizes the distinctive nature of the different types of companies subject to the assessment. Additionally, the reports identified by the Board should provide the Board with all the information it needs to measure the assets of bank holding companies and savings and loan holding companies. We do not believe that the Board will need to review any other regulatory reports for purposes of setting the assessment for such holding companies, assuming asset size is the sole determinant for the assessment.

On the other hand, as discussed further below, we question whether asset size rather than risk or actual time spent in supervisory activities should be the primary basis for determining the amount of the assessment. Also, we recommend that total assessable assets not include separate accounts held by insurance companies.

III. *Total assessable assets should not include separate accounts held by insurance companies.*

In the calculation of total assessable assets, we urge the Board to exclude separate accounts held by insurance companies, whether domestic or foreign. Separate accounts are special accounts established by insurance companies under applicable law. ontributions received by the insurance company are placed into a separate account on behalf of the customer, and invested in securities or other assets in accordance with the underlying contract governing the account. Any gains or losses attributable to the investments are then credited to the separate account, and may be used only to satisfy the obligations with regard to that account.

Technically, the insurance company, and not the contract holders, owns the underlying assets in a separate account and records them on its balance sheet along with an offsetting "linked" liability to the separate account customer equal to the fair value of those assets. Despite the fact that the insurance company technically owns the assets in the separate account, the insurance company assumes no market or credit risk associated with the assets; instead, the customers bear these risks. Some (but not all) insurance companies may offer separate account policies that do not have any insurance guarantee, with the amount of benefit equal to the value of the separate account. Separate account assets are not subject to the claims of the general creditors of the insurance company or other business lines of the insurance company. Because of these characteristics, separate account assets are not risks borne by the insurance company that holds them, and therefore should not be deemed to be assets of a nonbank financial company for purposes of assessments.

Separate account assets held by an insurance company should be excluded from the definition of total assessable assets regardless of whether they are held by a U.S. or foreign-domiciled insurance company. Certain foreign jurisdictions provide for similar treatment of separate account assets in their regulated insurance entities. For example, U.K. law provides that separate account funds of a U.K. insurance company are not subject to the claims of the insurance company's general creditors, and U.K. Financial Services Authority's prudential rules require that separate account assets be maintained separately from the general account assets of the U.K. insurance company. Where the applicable foreign legal regime governing separate accounts is similar to that of the U.S., the case for excluding separate accounts held by the foreign insurance company is the same as the case for excluding separate accounts held by a U.S. insurance company.

IV. *The assessment should not be imposed prior to the designation of one or more nonbank financial companies.*

Section 318 of the Dodd-Frank Act directs the Board to collect assessments, fees, or other charges to cover its "total expenses" associated with the supervision of a specific set of companies. As noted above, those companies are domestic and foreign bank holding companies and savings and loan holding companies with more than $50 billion in assets and nonbank financial companies supervised by the Board. Yet, as the Board acknowledges in the preamble to the proposed rule, the Financial Stability Oversight Council has not finalized any designation of a nonbank financial company for supervision by the Board. Thus, the set of companies upon which the assessment is to be imposed is not complete, and until it is, the Board cannot possibly know what its "total expenses" are for purposes of this directive or what companies should be assessed for these expenses.

Additionally, imposing the assessment prior to the final designation of any nonbank financial companies by the Financial Stability Oversight Council is unfair to the other categories of companies listed in section 318. Until a nonbank financial company has been designated by the Financial Stability Oversight Council, the entire burden of the assessment would fall upon large bank holding companies and savings and loan holding companies.

Given these concerns, we recommend that the Board delay the imposition of the assessment until after one or more nonbank financial companies have completed the designation process for supervision by the Board. If, however, the Board decides to impose the assessment prior to the designation of any such companies, we urge the Board to ensure that the assessment basis does not include any costs that would otherwise be associated with supervising such companies. We assume that the examination and supervision of nonbank financial companies will impose new personnel and systems demands on the Board and these costs should not be borne by traditional banking organizations.

V. *The assessment should be imposed prospectively; the retroactive imposition of the assessment imposes an unfair cost on covered companies and is not consistent with Congressional intent.*

Even if the Board concludes that it can impose the assessment prior to the designation of a nonbank financial company for supervision by the Board, we urge the Board to implement this program in 2013 or later, rather than retrospectively. The retroactive imposition of the assessment is an unplanned, and sizable, expense for covered companies. We acknowledge that section 318 became effective, as a matter of law, on July 21, 2011. However, the Board has some discretion in the manner in which it implements this requirement, since the statute simply directs the Board to cover its costs, and does not tell the Board how to do so. Moreover, we believe that the better reading of section 318 is that it is intended to be applied prospectively. In other words, the assessment should cover the predicted costs for supervision of the delineated companies for the year ahead. This is based on the fact that section 318 requires the Board to impose the assessment based upon an "estimate" of its costs. If this authority was intended to be applied retroactively, the Board would not have to estimate its costs, but would know how much it spent on supervision. Thus, a retroactive assessment does not appear to be consistent with Congressional intent.

VI. *The proposed assessment basis should be more transparent, and include an opportunity for public notice and comment.*

The Board has proposed an assessment basis of $440 million for years 2012 through 2014. We appreciate the predictability of the proposal over several years, but are concerned by the lack of transparency associated with the $440 million amount or any future assessment basis. In the preamble to the proposed rule, the Board notes that this amount is based upon a "framework" it developed for "the estimation of appropriate expenses." At a minimum, we believe that the Board should publish this proposed "framework."

More importantly, we recommend that the Board annually issue, for public comment, a line-item break out of the expenses included in the assessment. The Board's expenses are not subject to the normal appropriations process, which provides for public scrutiny and review of budget details. The annual publication of the expenses, and the opportunity for public comment on those expenses, would help to ensure that the expenses included in the assessment base are reasonably related to the necessary costs of supervising and regulating covered companies.

Additionally, we recommend that the Board's Office of Inspector General, as part of that Office's annual audit of the agency, conduct a separate analysis to ensure that the expenses included in the assessment basis are properly allocated to the costs of supervising the companies subject to the assessment and not any other duties and responsibilities of the Board.

VII. *The Board should adopt an assessment framework that is based upon risk and other factors, rather than just asset size.*

The Board has proposed an assessment program that is based solely upon the size of a company. In other regulatory contexts, it has been recognized that size, alone, should not be a conclusive indicia of risk. For example, in designating nonbank financial companies to be subject to supervision by the Board, the Financial Stability Oversight Council is required not only to consider the size of a company, but also its nature, scope, scale, concentration, interconnectedness, and mix of activities. Thus, in this case, we urge the Board to consider basing the amount of a company's assessment on a combination of factors, including size, complexity, capital structure, and interconnectedness.

Alternatively, or in addition, assessments could be based on the time and amount of resources that the Board devotes to individual companies. If this alternative is pursued, the Board also may wish to consider imposing surcharges on "problem" companies as well as "discounts" for less complex, well managed companies.

Under these approaches, companies that pose the greater risks, and which require greater supervisory attention, would be subject to greater relative assessments than companies that pose little risk.

VIII. *Conclusion*

Thank you for considering the comments and recommendations set forth in this letter. If you have any questions or need further information, please do not hesitate to contact: Richard Foster, Senior Counsel for Regulatory and Legal Affairs, The Financial Services Roundtable at 202-589-2424 (email: Richard.Foster@fsround.org).

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