1801 Market Street, Suite 300 • Philadelphia, PA 19103
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VIA EMAIL AND U.S. MAIL

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

Re: AMAG Comment on 2014 Agency Information Collection Proposals Operational Risk Data Reporting FR Y-14A/Q/M – OMB No. 7100-0341

Ladies and Gentlemen:

The AMA Group of The Risk Management Association is writing to request that the Board of Governors of the Federal Reserve System ("Federal Reserve') reconsider the Federal Reserve's proposed changes to the Operational Risk aspects of Agency Information Collection Proposals under FR Y-14A (Notice dated July 15, 2014), which would require large bank holding companies to provide litigation reserve information to the Federal Reserve as part of the Comprehensive Capital Analysis and Review ("CCAR") process (the "Proposal").

RMA is a 501(c)(6) not for-profit, member-driven professional association whose sole purpose is to advance the use of sound risk principles in the financial services industry. RMA helps its members use sound risk principles to improve institutional performance and financial stability and enhance the risk competency of individuals through information, education, peer-sharing and networking. RMA has 2,600 institutional members that include banks of all sizes as well as nonbank financial institutions. They are represented in the Association by more than 16,000 risk management professionals who are chapter members in financial centers throughout North America, Europe, and Asia/Pacific.

The AMAG was formed by RMA in 2005 at the suggestion of the U.S. AMA-BQT (formerly the Inter-Agency Working Group on Operational Risk). The purpose of the AMAG is to share industry views on aspects of Advanced Measurement Approaches ("AMA") implementation with the U.S. financial services federal regulatory agencies. The Group consists of operational risk management professionals working at financial service organizations throughout the United States. The AMAG is open to any financial institution regulated in the United States that is either mandated, opting in, or considering opting in to AMA. A senior officer responsible for operational risk management serves as the primary representative of each member institution on he AMAG. Of the US financial service institutions that are currently viewed as mandatory or opt-in AMA institutions; twenty-two were members of the AMAG at the time of this writing.

The members of AMAG are listed on Exhibit A attached. They are provided for identification purposes only. This letter does not necessarily represent the views of RMA's institutional membership at large, or the views of the individual institutions whose staff have participated in the AMAG.

Introduction

The purpose of such Proposal is to "provide the Federal Reserve with the additional information *and perspective* needed to help ensure that large BHC's have strong, firm-wide risk measurement and management processes support in their internal assessment of capital adequacy and that their capital resource are sufficient given their business focus." (Emphasis added). The use of the word "perspective" in the Proposal goes to the very heart of the matter – with respect to litigation reserves, the Federal Reserve is undertaking to learn not only the amounts of reserves but also, and perhaps most importantly, how a bank's legal counsel thinks about litigation generally and individual cases in particular.

For the reasons set out below, the AMA Group respectfully submits that any requirement for banks to disclose reserves for concluded (whether by verdict or settlement), pending and/or probable litigation in connection with CCAR would erode the attorney-client privilege and attorney work product doctrine, and, accordingly, would be unwise, unsound and potentially highly prejudicial.

It is important to note that the Federal Reserve adopted this reasoning propounded by the AMA Group in 2012, when the Federal Reserve first contemplated requiring disclosure of litigation reserve information. *See attachments* (i) Letter from the RMA AMAG to the Federal Reserve dated April 23, 2012, AMAG Comments on 2012 Agency Information Collection Activities Operational Risk Data Reporting FR Y-14A/Q/M – OMB Nos. 7100-0341 and 7100-0319; (ii) Letter from the RMA AMAG to the Federal Reserve dated May 24, 2012, AMAG Supplemental Response 2012 Agency Information Collection Activities Operational Risk Data Reporting FR Y-14A/Q/M – OMB Nos. 7100-0341 and 7100-0319; (iii) Letter from the RMA AMAG dated August 6, 2012, AMAG 2nd Supplemental Response 2012 Agency Information Collection Activities Operational Risk Data Reporting FR Y-14A/Q/M – OMB Nos. 7100-0341; and (iv) Letter to the Federal Reserve dated August 6, 2012 from The Clearing House Association L.L.C., The Risk Management Association/the Advanced Measurement Approaches Group, the Financial Services Roundtable, and the American Bankers Association Joint Comment Letter re: FR Y–14A/Q/M OMB Control Number: 7100–0341. (Capital Plans; Proposed Agency Information Collection Activities).

Overview of the Proposal

The purpose of the Proposal is to revise "several schedules of the FR Y-14A/Q/M reports as well as expanding the reporting panel" in order:

- That "proposed changes to the Operational Risk schedule would provide greater insight into the types and frequency of operational risk expenses incurred by respondents, which would improve both supervisory modeling and ongoing supervisory activities;" and

- To "provide greater insight into reserving practices and changes in reserve".

In addition, effective December 31, 2014, the Federal Reserve proposes (Federal Register, Vol. 79, No. 135, July 15, 2014 Notices, p.41280):

- changing the collection of the annual Legal Reserve information to be part of the quarterly Operational Risk collection as a separate sub-schedule;

- adding columns to collect Gross Increase and Decrease to Reserves to better track the flow of legal reserves; and

- requiring that the 20 previous quarters of data be submitted upon initial submission and four quarters of data thereafter.

It appears to the AMAG that these objectives are in furtherance of the Federal Reserve's expectation that banks estimate expected and stressed outcomes on "current, pending, threatened, or otherwise possible [legal] claims of all types." *See* FRB supervisory report, Appendix 1: CCAR 2014 Common Themes, p. 18. It would appear that the Federal Reserve needs to build the same into their supervisory modeling approach, and the current information the banks submit does not support this assessment well.

In addition, the Federal Reserve has proposed (1) adding a Unique Identifier item for each row in order to clearly identify record submissions with the same information that are unique records; and, effective December 31, 2014 (2) for each closed/ settled legal event above $250,000 adding (i) date of awareness, (ii) date on which a claim was filed, proceedings were instituted, or settlement negotiations began, (iii) date of settlement, fine, or final judgment, (iv) cause of action, (v) the reserve history, and (vi) terminal outcome, which would all provide greater insight into reserving practices and changes in reserves. *See* (Federal Register, Vol. 79, No. 135, July 15, 2014 Notices, p. 41281).

AMAG Objections to the Proposal

The recording of a reserve for pending or probable litigation is a matter of attorney-client privilege and is an important manifestation of attorney work product and should not be subject to disclosure, ***except*** in the most exigent circumstances. This is equally true of concluded litigation. The importance and sanctity of the attorney-client privilege and the attorney work product doctrine simply cannot be overstated. It is the attorney-client privilege which enables lawyers to consult with a bank's employees and to render advice to the bank. Obviously, one key piece of advice is the amount which should be reserved for a particular piece of litigation, which advice

may change from time to time. Moreover, with respect to concluded litigation, disclosure of reserves shows the evolution in counsel's thinking, which may be indicative of counsel's thinking in similar, related or future matters.

A bank will record a reserve for an individual case following legal counsel's completion of a litigation assessment, which will include opinion regarding a number of factors, including, but not limited to:

(a) The nature of the case (e.g., contract, securities, infringement, etc.);

(b) The known facts;

(c) Key issues, on which the outcome of the case may turn;

(d) The named defendants; i.e., parent company, subsidiaries/affiliates, officers, directors, vendors;

(e) The nature of the plaintiff and whether the bank has an ongoing relationship with the plaintiff;

(f) Opposing counsel;

(g) Venue;

(h) The settlement value of the case;

(i) The worst case scenario;

(j) The overall disposition strategy for the case; i.e., whether the primary objective is trying or settling the case;

(k) Whether the case is one of a series of similar cases involving the bank; and

(l) Whether the case is particular to the bank or is of a type brought against banks generally, such as patent infringement suits brought by non-practicing entities.

These factors are not outcome determinative, but together with counsel's judgment and experience, form the basis of a recommendation regarding reserves in a given litigation matter. Moreover, the relative weight given to such factors may change over the course of litigation as counsel's thinking about the litigation evolves. As such, the amount recorded as a reserve is the manifestation or embodiment of counsel's *perspective* about a case.

The attorney work product doctrine forms the basis of the U.S. legal system, permitting lawyers to prepare for litigation, including settlement discussions, without fear that their work product

and mental impressions will be revealed to the government or to opposing parties. In short, legal counsel's assessment of a case, which may evolve over time, will determine the bank's litigation strategy, budget and reserves.

AMAG member institutions believe that including legal reserve information in the CCAR submissions would be highly problematic. In particular, AMAG firms' legal departments' concerns center upon discoverability of the information once released in regulatory reports. Discovery of such information would quite possibly compromise an institution's legal position.

The AMAG respectfully submits that requiring banks to disclose their legal reserves for closed, pending and/or probable litigation claims in connection with CCAR would be unwise, unsound and highly prejudicial, and should not be pursued because no exigency exists. Legal reserves for litigation claims are established by banks in receiving legal advice from their legal counsel and often, if not always, entail the exercise of significant professional judgment by experienced legal counsel in weighing the relative strengths of claims and defenses in light of existing law and factual developments.

Hence, as stated above, legal reserves are both privileged and highly confidential. Any public disclosure of legal reserves would subject banks to significant prejudice, as it would both inform their adversaries of how the bank weighs the strengths/weaknesses of the subject claims and establish a floor for plaintiffs' settlement demands on those claims. Potential prejudice to the banks also looms in the risk that adversaries could seek to introduce the reserves as evidence in the litigation, as admissions of liability or the amount of damages. Furthermore, were the banks required to provide these data to the Federal Reserve as part of the CCAR exercise, there can be no assurance that it would remain confidential. CCAR requires massive efforts by the Federal Reserve, with a large number of staff devoted to analyzing all of the data provided by banks. Wide dissemination of reserve data, even within the Federal Reserve, necessarily reduces the ability to maintain strict confidentiality, and the prospect of inadvertent or erroneous disclosure is substantial. Along the same lines, it would be difficult, at best, for the Federal Reserve to resist any request by Congress to obtain these data, which would then be susceptible to broad public dissemination. The severe prejudice to banks that disclosure would entail, coupled with the substantial risk of that very result, militates strongly against requiring that banks disclose reserves data as part of their CCAR submissions. The risk of inadvertent disclosure or legal discovery by other U.S. agencies, governmental bodies, or third parties, including plaintiffs, is simply too real. This risk is even more untenable, of course, in view of the fact that bodies of the U.S. government may be plaintiffs in cases against the very banks in question.

In conclusion, AMAG members have very serious concerns about the details of this new proposal relative to FR Y-14A/Q submission requirements and requests that the Federal Reserve Board reconsider its adoption. The broad reach and increased frequency of data collection is untenable for the industry. In the spirit of preserving regulatory objectives of safety and soundness in the industry, however, AMAG welcomes a dialogue about the subject between the industry and regulatory community.

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Should there be any questions concerning the comments reflected above, kindly contact Edward J. DeMarco, Jr. General Counsel and Director of Operational Risk and Regulatory Relations at (215) 446-4052 or edemarco@rmahq.org.

Very truly yours,

Edward J. DeMarco, Jr.,
General Counsel and
Director of Operational Risk & Regulatory Relations

THE RISK MANAGEMENT ASSOCIATION

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Attachment

The AMA Group

Bank of America	GE Capital	Santander Bank
Bank of the West	Goldman Sachs	State Street Corporation
BMO Financial	HSBC	SunTrust
BNY Mellon	JP Morgan Chase	TD Bank Group
Capital One Bank	KeyCorp	Union Bank
Citizens Bank	Morgan Stanley	US Bank
Comerica	Northern Trust	Wells Fargo
Deutsche Bank	PNC Financial	

Support for the AMAG is provided by RMA and Operational Risk Advisors LLC
August 2014

THE RISK MANAGEMENT ASSOCIATION

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ATTACHMENT (i)

Letter from the RMA AMAG to the Federal Reserve dated April 23, 2012, AMAG Comments on 2012 Agency Information Collection Activities Operational Risk Data Reporting FR Y-14A/Q/M – OMB Nos. 7100-0341 and 7100-0319

THE RISK MANAGEMENT ASSOCIATION
Serving the Financial Services Industry

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April 23, 2012

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

AMAG Comments on 2012 Agency Information Collection Activities
Operational Risk Data Reporting FR Y-14A/Q/M – OMB Nos. 7100-0341 and 7100-0319

Dear Ms. Johnson:

This letter and attachments comprise the Advanced Measurement Approaches Group's (AMAG)[1] response to proposed changes to the Operational Risk aspects of Agency Information Collection Activities under FR Y-14A.

Generally speaking, AMAG member firms understand and appreciate the regulatory community's interest and needs for collecting actual loss data more frequently than on an annual basis alone. The Federal Reserve has stated its goals for the change as (1) assessing BHC's operational loss exposures in relation to the risks faced by them, (2) ensuring safety and soundness, (3) developing and calibrating supervisory stress test models, (4) evaluating the projections that BHCs' submit as part of the FR Y-14A, and (5) supporting continuous monitoring and analysis of BHCs' operational loss activity and trends.

Despite its support in concept, AMAG has concerns about some of the details of implementing this new proposal relative to FR Y-14A/Q submission requirements. As such, and in the spirit of advancing the dialogue between the industry and regulatory community, AMAG offers a number of both general and specific observations and, where possible, suggestions for improving them. AMAG member institutions believe that many of these issues can be considered and addressed for improvement, without diminishing the stated objectives of the Federal Reserve System.

[1] The Advanced Measurement Approaches Group (AMAG) was formed in 2005 by the Risk Management Association (RMA) to share industry views on aspects of Advanced Measurement Approaches (AMA) implementation with the U.S. financial services federal regulatory agencies. The members of AMAG are listed in Attachment B to this letter. They are listed for identification purposes only. This letter and attachments do not necessarily represent the views of RMA's institutional membership at large, or the views of the individual institutions whose staff have participated in the AMAG.

Conceptually, some AMAG members have questioned the rationale for U.S. agencies to develop a new detailed industry data consortium. Recognizing the need for such data, however, they suggest the collection of summary level data, as is the practice in other jurisdictions, rather than reporting detailed events.

Specific AMAG comments follow:

1) Issue -- AMAG has significant concerns about the inclusion of Legal Reserve information[2] in quarterly loss data submissions and suggests that the Federal Reserve explore alternative approaches.

   Member institutions believe that including legal reserve information in the submissions would be highly problematical. By definition they consist of loss events that have been reserved for, but have not been settled or fully adjudicated. In particular, AMAG firms' legal departments' concerns center around discoverability of the information once released in regulatory reports. Discovery of such information would quite possibly compromise an institution's legal position.

   Most members have not submitted reserve details with their annual reporting to date, beyond aggregate reserve reporting. Such detailed reserve information is highly sensitive and most believe that it should not leave their bank. Some institutions would rather invite regulators to review such information when on site.

   One AMAG member institution provided their legal department's response for regulators' consideration, explaining why it would be inappropriate to require legal reserves as part of the Comprehensive Capital Analysis and Review (CCAR) quarterly submission. In view of agreement on this point by AMAG members, the statement has been incorporated in this response (see Attachment A).

2) Issue – The approach toward providing NEWLY captured and / or amended loss data[3] in isolation during the quarter is unnecessarily complicated and should be simplified.

   The proposal requires reporting of newly captured data DURING the current reporting quarter AND also provides rules for loss events that were reported in prior reporting quarter but were amended during the current reporting quarter. In addition to the burden of isolating these events each quarter, there is no allowance for events that are deleted from the dataset. The proposal would need to include a process for submitting "deleted" events.

   Most industry practitioners believe that it would be far less burdensome to provide their complete dataset each quarter. Most institutions' internal loss databases are highly "fluid" and change daily. AMAG requests, instead, that the proposal be amended to allow for a quarterly release of their entire internal loss data base each reporting period (i.e., quarterly,

[2] Section 1 of the Reporting Instructions requires that institutions report "all operational loss events ... captured in the institution's loss database. ." In view of Interagency Guidance on AMA and other regulatory communications AMAG member institutions interpret this to mean that the proposal anticipates the inclusion of legal reserves.

[3] See Section 1(a) of the Reporting Instructions.

per the proposal). In addition, assuming that institutions will be providing the detailed data, it would be most logical for this dataset to replace (i.e., since it provides the detail behind) the summary data that is currently submitted via Schedule S.

3) Issue -- The requirement to submit descriptions for losses over $100K[4] would be problematical for certain legal matters inasmuch as the descriptions of these events are generally confidential and restricted.

In view of this concern, AMAG requests flexibility in reporting such information in Section 5-R, Column C of the Reporting Instructions. As an example, AMAG believes that client information should be excluded from the description. Beyond concerns about confidentiality and discoverability, the required internal approval processes of gathering and vetting such information for release (i.e., senior management, business line leadership, legal departments and others to seek approval of language) would require a significant burden (i.e., increased hours) to complete.

4) issue – The reference to loss events that have multiple impacts across lines of business (LOBs)[5] should be clarified.

The requirement states that the event should be reported based on the LOB that incurred largest loss amount. AMAG members believe that a more effective approach would be to capture events reported based on "responsible business". This does not necessarily equate to the LOB that incurred the largest impact, however there seems to be a range of practice in this regard. The best solution may be to allow flexibility in reporting here as well. That is, this reporting requirement could allow banks to submit the data according to their internal rules.

5) Issue – The template field that requests institutions to identify whether a loss event was included in capital modeling dataset[6] has implications for decisions about including certain events in the submission.

For one, some have suggested that the required submission be limited to the dataset that is used for capital only (rather than all losses above the collection threshold). Second, given that one of regulators' primary intended uses of the datasets is to create models for stress testing, then the data provided should only be those that are actually used in the capital model. That is, boundary events (e.g., credit-related losses) and timing differences may be excluded from the data set consistent with capital model data practices. Otherwise the agency results may vary significantly from an institution's results inasmuch as such losses would likely be double counted.

[4] Section 5R of the Reporting Instructions.
[5] Section 2 of the Reporting Instructions.
[6] Section 5-O of the Reporting Instructions.

6) Issue – The proposed timing of the submission is also problematical inasmuch as it does not allow sufficient time to review it following the end of each quarter.

The proposal currently calls for submission within forty (40) days of quarter end[7]. AMAG members maintain that this timeframe is not reasonable or practical. In this scenario an institution would not yet have completed its capital modeling process for the preceding quarter. The data itself could be ready for release, but the institution's quantitative teams would not have had adequate time to update, review and evaluate their model results.

AMAG members believe that if the submission requirement stands at 40 days after quarter-end, then institutions should be permitted to limit their submissions to data on a one quarter lagged basis (i.e., for May 10th 2012 submission, the data would be as of 12/31/2011) in order to allow sufficient time for such analyses to be completed. This timeframe would be consistent with other data gathered by the agencies. An alternative approach would be to extend the submission window to a minimum of 120 days after quarter-end. This, too, would be more practicable than the proposed 40-day window in order for such analyses and reviews to be completed.

7) Issue – The requirement to provide the loss 'Accounting Date' as a required field[8] in the submission template also presents challenges and likely confusion.

Because an Accounting Date is typically collected at many firms for each impact, it would not be unusual for an event to have multiple "accounting dates".

Some AMAG firms suggest that a rule might be constructed to standardize the determination of the "accounting date" for an event, or perhaps another date field should be used, such as the date of original loss.

Thank you, on behalf of AMAG, for the opportunity to comment on the Proposed Agency Information Collection Activities. The AMAG would be pleased to engage in a dialogue about our response. Please contact us should questions arise.

Sincerely,

Robin L. Phillips
Chairman,
Advanced Measurement Approaches Group

[7] See Supporting Statement for Expanded Information, p. 17.
[8] Section 5-E of the Reporting Instructions.

Attachment A

Legal Response on Requirement to Provide Reserves

AMAG submits that requiring banks to disclose their legal reserves for pending and probable litigation claims in connection with CCAR would be unwise, unsound and highly prejudicial, and should not be pursued. Legal reserves for litigation claims are established by banks in receiving legal advice from their legal counsel and often, if not always, entail the exercise of significant professional judgment by experienced legal counsel in weighing the relative strengths of claims and defenses in light of existing law and factual developments. Hence, legal reserves are both privileged and highly confidential. Any public disclosure of legal reserves would subject banks to significant prejudice, as it would both inform their adversaries of how the bank weighs the strengths/weaknesses of the subject claims and establish a floor for plaintiffs' settlement demands on those claims. Potential prejudice to the banks also looms in the risk that adversaries could seek to introduce the reserves as evidence in the litigation, as admissions of liability or the amount of damages. Furthermore, were the banks required to provide these data to the Federal Reserve as part of the CCAR exercise, there can be no assurance that it would remain confidential. CCAR requires massive efforts by the Federal Reserve, with a large number of staff devoted to analyzing all of the data provided by banks. Wide dissemination of reserve data, even within the Federal Reserve, necessarily reduces the ability to maintain strict confidentiality, and the prospect of inadvertent or erroneous disclosure is substantial. Along the same lines, it would be difficult, at best, for the Federal Reserve to resist any request by Congress to obtain these data, which would then be susceptible to broad public dissemination. The severe prejudice to banks that disclosure would entail, coupled with the substantial risk of that very result, militates strongly against requiring that banks disclose reserves data as part of their CCAR submissions.

Attachment 3

About the AMA Group

The Advanced Measurement Approaches Group (AMAG) was formed in 2005 by the Risk Management Association (RMA) at the suggestion of the U.S. AMA-BQT (formerly the Inter-Agency Working Group on Operational Risk). The RMA is a member-driven professional association whose purpose is to advance the use of sound risk management principles in the financial services industry.

The purpose of the AMAG is to share industry views on aspects of Advanced Measurement Approaches (AMA) implementation with the U.S. financial services federal regulatory agencies. The Group consists of operational risk management professionals working at financial service organizations throughout the United States. The AMAG is open to any financial institution regulated in the United States that is either mandated, opting in, or considering opting in to AMA. A senior officer responsible for operational risk management serves as the primary representative of each member institution on the AMAG. Of the twenty or so US financial service institutions that are currently viewed as mandatory or opt-in AMA institutions; nineteen were members of the AMAG at the time of this writing.

The members of AMAG are listed below. They are provided for identification purposes only. This paper does not necessarily represent the views of RMA's institutional membership at large, or the views of the individual institutions whose staff have participated in the AMAG.

Bank of America / Merrill Lynch
BMO Financial
BNY Mellon
Capital One Bank
Citizens Bank
Deutsche Bank
Goldman Sachs
HSBC
JP Morgan Chase
Keycorp
Morgan Stanley
Northern Trust
PNC
State Street
SunTrust
TD Bank Financial Group
Union Bank
Wells Fargo / Wachovia Bank

Support for the AMAG is provided by RMA and Operational Risk Advisors LLC.

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ATTACHMENT (ii)

Letter from the RMA AMAG to the Federal Reserve dated May 24, 2012, AMAG Supplemental Response 2012 Agency Information Collection Activities Operational Risk Data Reporting FR Y-14A/Q/M – OMB Nos. 7100-0341 and 7100-0319

THE RISK MANAGEMENT ASSOCIATION
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May 24, 2012

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

AMAG Supplemental Response
2012 Agency Information Collection Activities
Operational Risk Data Reporting FR Y-14A/Q/M – OMB Nos. 7100-0341 and 7100-0319

Dear Ms. Johnson:

This letter and attachments comprise a Supplemental Response from the Advanced Measurement Approaches Group (AMAG)[1] on proposed changes to the Operational Risk aspects of Agency Information Collection Activities under FR Y-14A[2].

To be clear, *the AMAG stands by its original response of April 23, 2012 and objection to providing legal reserve data as part of the FR Y-14A/Q/M.*

Background

The Federal Reserve Board (FRB) is requesting that AMA banks submit operational risk loss data based on a new quarterly operational risk loss data collection template. The FRB's request encompasses all operational risk loss data, including reserves for pending litigation, because the reserves tend to have a significant impact on the measurement of operational risk. Among other concerns in our April 23, 2012 letter, AMAG highlighted the extremely confidential and sensitive nature of the legal reserve

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[2] Generally speaking, AMAG member firms understand and appreciate the regulatory community's interest and needs for collecting actual loss data. The Federal Reserve has stated its goals for the change as (1) assessing BHC's operational loss exposures in relation to the risks faced by them, (2) ensuring safety and soundness, (3) developing and calibrating supervisory stress test models, (4) evaluating the projections that BHCs' submit as part of the FR Y-14A, and (5) supporting continuous monitoring and analysis of BHCs' operational loss activity and trends. Despite its support in concept, AMAG has concerns about some of the details of implementing this new proposal relative to FR Y-14A/Q submission requirements.

data that would be required as part of quarterly submissions of operational risk loss data sets on the collection template, and explained why it would be inappropriate to include such information in these data sets.

Excerpt from AMAG April 23, 2012 Response

"AMAG submits that requiring banks to disclose their legal reserves for pending and probable litigation claims in connection with CCAR would be unwise, unsound and highly prejudicial, and should not be pursued. Legal reserves for litigation claims are established by banks in receiving legal advice from their legal counsel and often, if not always, entail the exercise of significant professional judgment by experienced legal counsel in weighing the relative strengths of claims and defenses in light of existing law and factual developments. Hence, legal reserves are both privileged and highly confidential. Any public disclosure of legal reserves would subject banks to significant prejudice, as it would both inform their adversaries of how the bank weighs the strengths/weaknesses of the subject claims and establish a floor for plaintiffs' settlement demands on those claims. Potential prejudice to the banks also looms in the risk that adversaries could seek to introduce the reserves as evidence in the litigation, as admissions of liability or the amount of damages. Furthermore, were the banks required to provide these data to the Federal Reserve as part of the CCAR exercise, there can be no assurance that it would remain confidential. CCAR requires massive efforts by the Federal Reserve, with a large number of staff devoted to analyzing all of the data provided by banks. Wide dissemination of reserve data, even within the Federal Reserve, necessarily reduces the ability to maintain strict confidentiality, and the prospect of inadvertent or erroneous disclosure is substantial. Along the same lines, it would be difficult, at best, for the Federal Reserve to resist any request by Congress to obtain these data, which would then be susceptible to broad public dissemination. The severe prejudice to banks that disclosure would entail, coupled with the substantial risk of that very result, militates strongly against requiring that banks disclose reserves data as part of their CCAR submissions."

Subsequent Dialogue

Consistent with AMAG's mission, the Group appreciates and welcomes the opportunity to engage in a dialogue with the regulatory community about the successful implementation of the Advanced Measurement Approaches under Basel and the safety and soundness of the U.S. banking system.

Following AMAG's April 23rd response, the Federal Reserve contacted The Risk Management Association (RMA), sponsor of AMAG, for clarification of the Group's response on the question of including legal reserves in CCAR submissions.

As part of a subsequent dialogue, the Federal Reserve made two requests. First, AMAG was asked to consider whether a reduced scope of legal reserve data (i.e., three data fields, namely amount, business line / event type, and a "rough" date) would satisfy member banks' sufficiently in order to revise its response. Second, the Federal Reserve asked whether less frequent reporting would lessen banks' concerns. Unfortunately neither of these options would provide the assurance of confidentiality. The risk of inadvertent disclosure or legal discovery by other U.S. agencies, governmental bodies, or third parties, including plaintiffs, is simply too real. This risk is even more

untenable, of course, in view of the fact that bodies of the U.S. government may be plaintiffs in cases against the very banks in question.

Analytic Alternatives

Although these suggestions remain untenable, AMAG member institutions believe that a solution may be possible that protects these critical data sets in the interest of their stakeholders – depositors, other customers, shareholders, bondholders, and employees among them – without diminishing the stated objectives of the Federal Reserve System. in the spirit of continuing a dialogue and seeking potential solutions to this apparent impasse, AMAG offers two possible analytical alternatives that have been developed by several of the AMAG banks.

AMAG recognizes that these options are not without challenges for both banks and regulators alike. We trust that industry and FRB can work toward an alternative that satisfies the sensitivities of both parties with respect to proprietary information. Specifically, AMAG is prepared to work with the FRB to assess the merits and feasibility of the following proposals in the spirit of satisfying U.S. banking agencies' need for insight into banks' operational risk exposures, while respecting the banks' and their stakeholders' own need for confidentiality of these critical data sets.

Following are high-level descriptions of the suggested alternatives for further exploration:

Alternative #1 – *Provide "processed" rather than highly confidential "raw" loss reserve data*

Rather than provide the "raw" loss data to the FRB, the AMAG banks could provide "processed" data. Undoubtedly, the FRB has plans to use the raw loss event data within some sort of modeling process. We assume that the end-to-end modeling process includes a series of analytical / quantitative tasks. Our proposal would be for the AMAG banks to perform some of the initial analytical / quantitative tasks and submit the output to the FRB. Then, the FRB could take this output and perform the remaining tasks to complete the modeling process and produce the final results.

It is difficult to determine the exact nature of the tasks to be performed by the AMAG banks without knowledge of the FRB's modeling process. However, here are some examples on how this alternative approach could work based on some typical operational risk modeling processes.

Example A: LDA-type modeling which focuses on determining parametric frequency and severity distributions using the empirical loss data

- Determining Frequency distribution parameters: Loss amount information is not necessary for frequency modeling; therefore the AMAG banks could provide the number of loss event for each unit of measure without providing loss amount. This information would not compromise the confidentiality of the reserve data and would not impede the FRB in modeling frequency of loss.
- Determining Severity Distribution parameters: Loss amount information is critical to determining severity distribution parameters. Therefore, the proposal would be for the FRB to provide the AMAG banks with the specifications on how the loss data should be fitted. The AMAG banks would be responsible for running the fitting process and submitting the results (fitted distribution parameters for each UOM). The loss amount for individual events would not be submitted and the

confidentiality of the reserve data would not be jeopardized. In addition, AMAG banks could provide other statistics such as goodness-of-fit test results and other statistical properties of the empirical distribution (mean mode, median, variance, etc.)

Example B: Panel Regression analysis between Frequency of loss and macroeconomic factors (in line with the model used by the FRB for the recent CCAR analysis)

- This type of analysis would not require loss amount information as the regression analysis is performed against the frequency of loss. Therefore, AMAG banks could submit the loss data without loss amounts.
- Once the number of losses for a given stress period is determined, the FRB would need some estimate of severity. In the recent CCAR analysis, the FRB used "sample averages by event type for each BHC" as the estimate of severity. The AMAG banks could provide these statistics (along with other statistics) for each UOM without compromising the confidentiality of the reserve information.

Alternative #2 – *IT Solution – Data sets are not submitted, rather they remain hosted by the individual banks and accessed by the FRB remotely*

In this alternative, AMAG banks would create a secure environment within their own networks and authorized FRB personnel would access the data to perform the quantitative analysis. FRB personnel could perform the desired analysis but would not be able to extract the raw data. They would be able to extract the results of the analysis.

AMAG banks would have a significant amount of control over who accesses the information and an audit trail / log of the activity. That is, reserve loss amounts would be disclosed to FRB personnel, but the information would not leave the AMAG bank's network

Once again, these options are provided in the spirit of continuing a dialogue between the industry and regulatory community, and in seeking a solution to the data collection problem.

Thank you, on behalf of AMAG, for the opportunity to clarify our previous response and offer possible solutions. The AMAG would be pleased to continue a dialogue about these issues.

Please contact us accordingly.

Sincerely,

Robin L. Phillips
Chairman,
Advanced Measurement Approaches Group

Attachment
About the AMA Group

Attachment

About the AMA Group

The Advanced Measurement Approaches Group (AMAG) was formed in 2005 by the Risk Management Association (RMA) at the suggestion of the U.S. AMA-BQT (formerly the Inter-Agency Working Group on Operational Risk). The RMA is a member-driven professional association whose purpose is to advance the use of sound risk management principles in the financial services industry.

The purpose of the AMAG is to share industry views on aspects of Advanced Measurement Approaches (AMA) implementation with the U.S. financial services federal regulatory agencies. The Group consists of operational risk management professionals working at financial service organizations throughout the United States. The AMAG is open to any financial institution regulated in the United States that is either mandated, opting in, or considering opting in to AMA. A senior officer responsible for operational risk management serves as the primary representative of each member institution on the AMAG. Of the US financial service institutions that are currently viewed as mandatory or opt-in AMA institutions; nineteen were members of the AMAG at the time of this writing.

The members of AMAG are listed below. They are provided for identification purposes only. This paper does not necessarily represent the views of RMA's institutional membership at large, or the views of the individual institutions whose staff have participated in the AMAG.

Bank of America / Merrill Lynch
Bank of the West
BMO Financial Group
BNY Mellon
Capital One Bank
Citizens Bank
Deutsche Bank
Goldman Sachs
HSBC
JP Morgan Chase
Keycorp
Morgan Stanley
Northern Trust
PNC
State Street Corporation
SunTrust
TD Bank Financial Group
Union Bank
Wells Fargo

Support for the AMAG is provided by RMA and Operational Risk Advisors LLC.

THE RISK MANAGEMENT ASSOCIATION

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ATTACHMENT (iii)

Letter from the RMA AMAG dated August 6, 2012, AMAG 2nd Supplemental Response 2012 Agency Information Collection Activities Operational Risk Data Reporting FR Y-14A/Q/M – OMB Nos. 7100-0341

THE RISK MANAGEMENT ASSOCIATION
Serving the Financial Services Industry

1801 MARKET STREET, SUITE 300 • PHILADELPHIA, PA 19103 • 215-446-4000 • FAX 215-446-4101 • www.rmahq.org

August 6, 2012

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

AMAG 2nd Supplemental Response
2012 Agency Information Collection Activities
Operational Risk Data Reporting FR Y-14A/Q/M – OMB Nos. 7100-0341

Dear Ms. Johnson:

This letter and attachments comprise the second Supplemental Response from RMA's Advanced Measurement Approaches Group (AMAG)[1] on proposed changes to the operational risk aspects of Agency Information Collection Activities under FR Y-14A[2]. It should be read in conjunction with the AMAG's earlier responses dated April 23, 2012 and May 24, 2012, respectively.

The AMAG reiterates the positions and recommendations outlined in its April 23, 2012 and May 24, 2012, letters including, but not limited to, the members' objection to providing legal reserve data as part of the FR Y-14A/Q/M.

In its original proposal the Federal Reserve Board (FRB) requested that AMA banks submit operational risk loss data based on a new quarterly operational risk loss data collection template. The FRB's request encompassed all operational risk loss data, including reserves for pending litigation, because the reserves tend to have a significant impact on the measurement of operational risk. Among other concerns in our previous April 23, 2012 and May 24, 2012 letters, the AMAG highlighted the extremely

[1] The Advanced Measurement Approaches Group (AMAG) was formed in 2005 by the Risk Management Association (RMA) to share industry views on aspects of Advanced Measurement Approaches (AMA) implementation with the U.S. financial services federal regulatory agencies. The members of AMAG are listed in Attachment B to this letter. They are listed for identification purposes only. This letter and attachment do not necessarily represent the views of RMA's institutional membership at large, or the views of the individual institutions whose staff have participated in the AMAG.

[2] Generally speaking, AMAG member firms understand and appreciate the regulatory community's interest and needs for collecting actual loss data. The Federal Reserve has stated its goals for the change as (1) assessing BHC's operational loss exposures in relation to the risks faced by them, (2) ensuring safety and soundness, (3) developing and calibrating supervisory stress test models, (4) evaluating the projections that BHCs submit as part of the FR Y-14A, and (5) supporting continuous monitoring and analysis of BHCs' operational loss activity and trends. Despite its support in concept, AMAG has concerns about some of the details of implementing this new proposal relative to FR Y-14A/Q submission requirements.

confidential and sensitive nature of the legal reserve data that would be required as part of quarterly submissions of operational risk loss data sets on the collection template, and explained why it would be inappropriate and potentially prejudicial, in the context of pending litigation, to include such information in these data sets.

Recent Dialogue with Regulators

Notwithstanding its objection to reporting such highly confidential and sensitive legal reserve information, the AMAG appreciates the opportunity to have engaged in a dialogue with the regulatory community about addressing this topic of reporting extremely sensitive information. Following the AMAG's April 23rd response, the Federal Reserve contacted The Risk Management Association (RMA), sponsor of the AMAG, for clarification of the Group's response on the question of including legal reserves in CCAR submissions.

The AMAG has also since participated with certain trade associations in teleconferences and meetings with the FRB. Notably, on July 16, 2012 representatives of the AMAG attended in person and participated by telephone in a meeting at the FRB in which three (3) FRB alternative Methods for reporting were discussed. At that meeting, the AMAG also had an opportunity to describe more fully its own two analytic alternative approaches outlined in our May 24, 2012 letter that should meet both the needs of the FRB and protect the confidentiality of these critical bank data. In light of that discussion, the AMAG believes that, in particular, one of the two approaches that we outlined in our May 24, 2012 has potential for further discussion and careful consideration as it would alleviate the AMAG members' concerns and further the interests of the FRB.

Analytic Alternatives

Following the July 16, 2012 meeting, the AMAG has also received brief descriptions of reporting Methods 4 and 5 as proposed by the FRB. Of these, Method 4 holds potential, subject to some modifications. For one, a reduction of the number of matrix cells (i.e., less granularity) would enhance protection of confidentiality (e.g., possibly collapsing the entire matrix to the aggregate bank level and submitting both legal reserve and all other data using this method). Also, reporting frequency data for periods in which reserves are established and increased would be a preferred approach, as opposed to reporting only one frequency entry when the reserve is first established.[3]

In the absence of these enhancements, however, the AMAG is using this Comment period to reiterate one of our two reporting alternatives outlined in our letter of May 24, 2012 (See Attachment A). The AMAG recognizes that these options are not without challenges for both banks and regulators. The AMAG stands ready, however, to work with the FRB to assess the merits and feasibility of its proposals in the spirit of satisfying U.S. banking agencies' need for insight into banks' operational risk exposures, while respecting the banks' and their stakeholders' own need for confidentiality of these critical data sets.

[3] Note that the AMAG has participated with certain trade associations in developing detailed response commentary on the five reporting Methods offered by the FRB. See separate joint letter dated August 6, 2012.

Lastly, some AMAG members believe that banks should also be given the option of reporting such sensitive data either under one of the confidential reporting methods referenced herein, or reporting such data as it would all other operational risk data, if it so chooses.

Thank you, on behalf of AMAG, for the opportunity to continue a dialogue on possible solutions. The AMAG would be pleased to continue this discussion at your convenience.

Please contact us as appropriate.

Sincerely,

Robin L. Phillips
Chairman,
Advanced Measurement Approaches Group

Attachments

A – AMA Group Alternative Reporting Proposal
B -- About the AMA Group

Attachment A

AMA Group Alternative Reporting Proposal

Following is a restatement and elaboration of one of the two possible alternatives offered by AMAG in May 2012. It is included herein for further consideration and discussion.

AMAG Processed Data Alternative – *Provide "processed" rather than highly confidential "raw" loss reserve data*

Rather than provide the "raw" loss data to the FRB, AMA banks could provide "processed" data. Undoubtedly, the FRB has plans to use the raw loss event data within a modeling process. We assume that its end-to-end modeling process will include a series of analytical / quantitative tasks. Our proposal would be for AMA banks to perform some of the initial analytical / quantitative tasks and submit the output to the FRB. Then, the FRB could take this output and perform the remaining tasks to complete the modeling process and produce the final results.

It is difficult to determine the exact nature of the tasks to be performed by the AMA banks without knowledge of the FRB's modeling process. However, following are some examples on how this alternative approach could work based on some typical operational risk modeling processes.

Example A: LDA-type modeling, which focuses on determining parametric frequency and severity distributions using the empirical loss data.

- Determining Frequency distribution parameters: Loss amount information is not necessary for frequency modeling; therefore AMA banks could provide the number of loss event for each unit of measure without providing the loss amount. This information would not compromise the confidentiality of the reserve data and would not impede the FRB in modeling frequency of loss.

- Determining Severity Distribution parameters: Loss amount information is critical to determining severity distribution parameters. Therefore, the proposal would be for the FRB to provide the AMA banks with the specifications on how the loss data should be fitted. The AMA banks would be responsible for conducting the fitting process and submitting the results [i.e., fitted distribution parameters for each Unit of Measure (UOM)]. The loss amounts for individual events would not be submitted and the confidentiality of the reserve data would not be jeopardized. In addition, AMA banks could provide other statistics such as goodness-of-fit test results and other statistical properties of the empirical distribution (e.g., mean mode, median, variance).

Example B: Panel Regression analysis between Frequency of loss and macroeconomic factors (in line with the model used by the FRB for the recent CCAR analysis)

- This type of analysis would not require loss amount information as the regression analysis is performed against the frequency of ioss. Therefore, AMA banks could submit the loss data without loss amounts.

- Once the number of losses for a given stress period is determined, the FRB would need some estimate of severity. In the recent CCAR analysis, the FRB used "sample averages by event type for each BHC" as the estimate of severity. The AMA banks could provide these statistics (along with other statistics) for each UOM without compromising the confidentiality of the reserve information.

This "Processed Data option" is similar in some respects to the FRB's Method 4 but with some additional important benefits. In fact, one could interpret the FRB's Method 4 as one example of "process data". A key difference, however, is that in the AMA bank-processed data alternative, the institutions could submit the Frequency matrix and the Total Loss Amount for a given period for all of the data (non-reserve losses and reserve losses). A second difference is that the level of "processing" would be less granular than that of FRB Method 4 (e.g., possibly collapsing the entire matrix to the aggregate bank level).

The benefits of submitting the information for all combined events would:

- Completely eliminate any potential for compromising the confidentiality of reserve information; and

- Remove the potential concern about "double counting" of losses when current reserves turn into actual settlements over time.

Furthermore, the AMAG alternative would allow the FRB to change the nature of the requested "processed data" over time. In this alternative, it is envisioned that the FRB would establish a set of processed data to be submitted, which could change over time (i.e., with appropriate amount of lead time, of course) as the FRB determines the need for a different set of information.

Notwithstanding members' objection to reporting any Legal Reserve data, and although the AMAG banks are conceptually supportive Method 4 as a possible option, banks are left to make a number of assumptions about FRB Method 4. Because of the difficulty of making such assumptions AMAG continues to believe that "the processed data" alternative should be given due consideration because it affords more long-term flexibility, is more protective of confidential nature of reserves, and potential less problematic to use in the FRB models.

Attachment B

About the AMA Group

The Advanced Measurement Approaches Group (AMAG) was formed in 2005 by the Risk Management Association (RMA) at the suggestion of the U.S. AMA-BQT (formerly the Inter-Agency Working Group on Operational Risk). The RMA is a member-driven professional association whose purpose is to advance the use of sound risk management principles in the financial services industry.

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Keycorp
Morgan Stanley
Northern Trust
PNC
State Street Corporation
SunTrust
TD Bank Financial Group
Union Bank
Wells Fargo

Support for the AMAG is provided by RMA and Operational Risk Advisors LLC.

THE RISK MANAGEMENT ASSOCIATION

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ATTACHMENT (iv)

Letter to the Federal Reserve dated August 6, 2012 from The Clearing House Association L.L.C., The Risk Management Association/the Advanced Measurement Approaches Group, the Financial Services Roundtable, and the American Bankers Association Joint Comment Letter re: FR Y–14A/Q/M OMB Control Number: 7100–0341. (Capital Plans; Proposed Agency Information Collection Activities.

THE FINANCIAL SERVICES ROUNDTABLE

August 6, 2012

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

Re: FR Y–14A/Q/M OMB Control Number: 7100–0341. (Capital Plans; Proposed Agency Information Collection Activities)

Dear Ms. Johnson:

The Clearing House Association L.L.C., ("The Clearing House"), The Risk Management Association / The Advanced Measurement Approaches Group ("The RMA / AMAG"), The Financial Services Roundtable ("The Roundtable") and the American Bankers Association (the "ABA" and, together with The Clearing House, The RMA / AMAG and The Roundtable, the "Associations")[1] are writing to request reconsideration of the proposal (the "Original Proposal") by the Board of Governors of the Federal Reserve System (the "Federal Reserve") to require large bank holding companies to provide confidential, highly sensitive information relating to banks' individual litigation reserves to the Federal Reserve as part of the Comprehensive Capital Analysis and Review ("CCAR") process. For the reasons discussed below, disclosure of this information would be potentially very damaging to banks whenever they are defendants in litigation, irrespective of the merits of the claim, and thus inimical to the safety and soundness of banking institutions. Disclosure would also create fundamental unfairness for bank defendants, most clearly in the case of claims by the Federal Reserve itself and claims of other Governmental agencies, but also more broadly.

We are appreciative that the Federal Reserve has been willing to consider alternatives to the disclosure of individual litigation reserves. Following a discussion of the reasons why the Associations are so concerned about the Original Proposal, we set

[1] The Associations collectively represent financial institutions accounting for a substantial majority of banking and financial assets in the United States. Descriptions of the Associations are provided immediately following the signature page of this letter.

forth our views of the alternatives and, in particular, our preference for Method 4 proposed by the Federal Reserve, subject to resolution of certain issues and concerns, as outlined herein.

Concerns about the Original Proposal

We assume it is beyond dispute that an adverse party's knowledge of the amounts of a bank's reserves for individual litigation matters would be extremely detrimental to the bank's position in settlement negotiations. If a bank has reserved $X for a litigation matter, and that becomes known to the plaintiff, a settlement below $X becomes highly improbable. Indeed, if a plaintiff is made aware of a bank's reserve, that plaintiff may argue that it is a statement against interest or an admission of a party opponent and attempt to have the reserve amount introduced at trial (or at least before the court to influence its views). In short, once a reserve is known, the bank's ability to argue for damages below $X would be severely compromised. Accordingly, a bank that establishes its litigation reserves conscientiously and conservatively would place itself at a serious financial and competitive disadvantage if the amounts of the reserves became known.

This fundamental point can be illustrated by considering the imposition of a similar requirement on plaintiffs. Is it even imaginable that plaintiffs or their counsel would be required to provide their estimate of the anticipated value of a settlement? The obvious negative answer would be for the same reason as should apply to a defendant bank. The plaintiff's position would be severely compromised. How, then, can it possibly be reasonable to require that defendant banks alone provide this information?

We understand, of course, that the litigation information would be provided to the Federal Reserve on a confidential basis, and we are deeply appreciative of the Federal Reserve's strong record of maintaining the confidentiality of information that has been provided to it.[2] The problem, however, is that the Federal Reserve might be obligated to, or feel itself obligated to, release the litigation reserve information to others that have demonstrated less care in protecting confidential bank information. As just one recent, but telling, example, a Congressionally appointed commission, the Financial Crisis Inquiry Commission, included portions of confidential bank examination reports on its website.

We further understand that the Federal Reserve can give banks no assurance that it will not provide the litigation reserve information to Congress or other

[2] We are, however, concerned by a recent Federal Reserve determination to make disclosure of certain mortgage foreclosure information filed confidentially on the basis that it was "in the public interest".

Government authorities. In the absence of such assurance, banks would be placed at great risk.

A further significant concern arises from the necessarily substantial attorney input into the determination of litigation reserves. Without attempting to debate here the question of the banking agencies' authority to obtain from banks information protected by the attorney-client privilege, work product doctrine or similar protection, the banking agencies should proceed with caution in seeking such information and infringing upon those rights.[3] The agencies should not seek such information unless there is a compelling "need to know" and no available substitute.

The request for litigation reserves becomes particularly troubling when the reserves relate to litigation between the bank and the Federal Reserve itself or a potential enforcement action by the Federal Reserve against the bank. The bank would then be providing the Federal Reserve with the bank's own assessment of its vulnerability, thereby virtually destroying the bank's ability to defend itself. We submit that such a situation is profoundly unfair. This special problem is not limited to the Federal Reserve. If the bank is in litigation with, or under investigation by, another Government agency, and that agency obtains the bank's litigation reserve information from the Federal Reserve, the bank will be severely disadvantaged.

As we stated at the outset, we believe that disclosure of confidential litigation reserve information will threaten the safety and soundness of banking institutions. Litigation against banks has exploded in the wake of the financial crisis and government enforcement actions have multiplied. If banks are significantly handicapped in their ability to defend themselves, their additional losses could amount to billions of dollars. Perhaps even more damagingly, banks' reputation and credibility would be severely damaged as they are forced to settle claims far above their legitimate settlement value. In this respect, banks would be unique among all American businesses in their Government-imposed vulnerability to litigation.

Concerns about the Original Proposal

The remaining question is whether the potentially devastating impact of disclosure of individual litigation reserves is offset by a compelling "need to know". We recognize that the adequacy of litigation reserves may be relevant to the assessment of a bank's capital position in stressed circumstances. Nonetheless, we question whether there is a compelling need for the Federal Reserve to review the individual litigation

[3] The attorney-client privilege is a bedrock common law protection, long regarded by the courts as a fundamental legal principle. *See Upjohn* v. *United States*, 449 U.S. 383, 389 (1981). Further, in *U.S.* v. *Deloitte*, 610 F.3d 129 (2010), the D.C. Circuit affirmed that work product protection extends to documents prepared in the course of determining appropriate litigation reserves, including audit documents where those documents contain the legal advice of counsel to the audit client.

reserves to make a capital adequacy determination. The bank examination process should provide the Federal Reserve with deep insight into the individual banks' processes for establishing litigation reserves. If those processes are unsatisfactory the Federal Reserve can model additional reserves to account for that inadequacy.

We also question the value of the information that the Federal Reserve would obtain from individual litigation reserves. That value is dependent on the Federal Reserve's ability to assess the adequacy of the individual reserves and substitute its own judgment for that of the bank. Not only is the judgment as to the appropriate litigation reserve level highly subjective, but it requires extensive knowledge of the case. With due respect, we believe that the Federal Reserve would not be in a position to make informed judgments about the adequacy of individual reserves. We also understand that the Federal Reserve may be seeking this information to be able to make judgments on a "horizontal" basis, comparing the levels of multiple banks' litigation reserves in seemingly similar cases. We believe that such a horizontal comparison is potentially highly misleading, as nominal similarities may mask profound differences in individual litigation matters. Even if the underlying claims are similar, there will inevitably be different facts and different levels of capacity and appetite to contest the claim.

Alternatives

As mentioned above, the Associations appreciate the Federal Reserve's efforts to develop alternatives that would reduce risk to the banks and we believe Method 4 has promise for the reasons set forth below. We also highlight below what we believe to be the critical deficiencies in the other Methods proposed by the Federal Reserve. Finally, we propose an additional method for your consideration that we believe may address the Federal Reserve's information collection needs while affording greater confidentiality protection for the legal reserve information.

Methods 1 & 5

These methods are similar in that they would require submission of legal reserve information on an event level basis with the actual amount of the reserve being part of the submission. Regardless of which method is employed to limit the disclosure of detailed descriptive information, providing reserve information with the actual loss amount would significantly jeopardize the bank's position. Therefore, we do not think that either of these two alternatives is acceptable.

Method 2

With this method, the Federal Reserve proposes to aggregate the information into a matrix by business line, event type, and time period. Although reserves are not submitted at the event level, there is a strong likelihood that the confidentiality of large individual reserves, or even small reserves, would be

jeopardized. For many units within the matrix, firms would often have few, if any, legal reserve events. Even for firms with a number of reserve events in a particular unit, a series of data submissions over time would enable specific reserves to be calculated.

Method 3

In this method, the Federal Reserve attempts to limit disclosure of the actual amount of individual reserves through a randomization process, but we fail to understand the value that this information would provide to the Federal Reserve for its stated purposes. Short of attempting to reverse the randomization method, the only actual information is the number of the legal reserve events and the total amount at the time of submission. Given that, we think that Method 4 below is superior to Method 3.

Method 4

Of all the methods presented by the Federal Reserve, we believe this method is the most viable. However, some instruction details are missing which causes the concerns laid out below. We look forward to further clarification of the details of this method to address these concerns.

Method 4 : Quarterly submission of the frequency data

The Federal Reserve's instructions are detailed and clear. The example table lays out the structure in a transparent manner; however, the example data create the appearance of the existence of numerous legal reserve events at a single institution, which does not reflect the reality for most banks. Some institutions are concerned about the fact that at some point in time a given cell within the table could have a value of "1" and hence indicate that a reserve has been established for a given legal matter which – together with other information submitted and addressed below – could jeopardize the position of the bank as a defendant in litigation. Therefore, the combination of the frequency data submission with a specific method for submitting reserve amount information is critical to the viability of Method 4.

Method 4 : Yearly submission of the Total Reserve Amount

The details for the methodology to submit the total reserve amount are not clear. We assume that, in this method, if a reserve is established in one year and increased in a subsequent year, then the initial reserve amount would be reported for the year the reserve was established, and the amount of the increase would be attributed to the year the increase was recognized in the financial statements. For example, a bank may have established two reserves in 2010, Reserve 1 for $100 and Reserve 2 for $900. The legal reserve balance submitted pursuant to Method 4 would be $1,000. In 2011, Reserve 1 is increased by $100, while Reserve 2 remains unchanged. The legal reserve balance submitted for 2011 would be $1,100.

The following are our concerns with this method:

> By way of continuing submissions subsequent to the original data submission, if a bank has only very few reserves established in a given year, then the amount for a given reserve can be inferred from the total amount. This concern is most relevant if only a single reserve is established for a given year, or if very few reserves are established and this data set contains one significant reserve.

> Some banks voiced the concern that it would be difficult and sometimes impossible for a financial institution to provide precise historical data on legal reserves that may have been made many years ago. To those banks, it does not seem reasonable for the Federal Reserve to request that all legal events since the oldest reserve, potentially even those that were settled in the interim, be included in the initial report.

The following alternative is proposed: In the initial report submitted by a financial institution (using as a form the Example for Method 4), the first column under Number of Legal Events would be entitled "Total Events 2010" and would include a total figure (i.e., frequency) of all legal events for which a reserve had been established by, and was still in place at the end of 2010, regardless of the date of the establishment of the reserve. The remaining columns would reflect actual events that take place during the listed quarters, starting from Q1 2011. This would establish a baseline for the Federal Reserve of almost two years of data.

Another alternative would be for financial institutions to submit a report just like the Example of Method 4, and not include legal event numbers where the initial reserve occurred before 2010 and is still outstanding. In this approach the Legal Reserve Balance would include reserve dollars but the year when the reserve initially occurred would not be reflected in the form because it occurred before 2010.

> As legal cases get settled over time, the loss amount would become part of the "non-reserve" dataset for which the Federal Reserve has finalized the instructions earlier. This could result in the amount for a given event present in <u>both</u> the "non-reserve" data set (after settlement) as well as the previously submitted and not updated total reserve amounts for multiple years (before settlement).

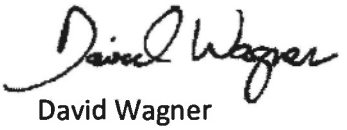
Additional Proposal

In view of the issues presented by each of the five Federal Reserve alternatives (even Method 4), we suggest that the Federal Reserve give further consideration to the "processed data option" that is described by the Risk Management Association and its AMA Group in their May 24, 2012 Supplemental Response and elaborated upon in a separate August 6, 2012 2nd Supplemental Response. In essence, it appears similar to Method 4 (based on industry assumptions about the characteristics of Method 4), but would provide the industry added confidentiality benefits because it would apply to all data - reserve and non-reserve data – combined.

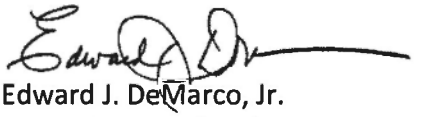
*****

We thank you for this opportunity to comment and for consideration of our views. If you have any questions or need further information, please contact (i) at The Clearing House, David Wagner, its Senior Vice President Finance Affairs (e-mail – david.wagner@theclearinghouse.org, telephone number – (212) 613-9883; (ii) at RMA / AMAG, Edward J. DeMarco, Jr., its General Counsel and Director of Operational Risk and Regulatory Relations (e-mail – edemarco@rmahq.org, telephone number – (215) 446-4052); (iii) at The Roundtable, Richard M. Whiting, its Executive Director and General Counsel (e-mail – Rich@fsround.org, telephone number – (202) 589-2413); and (iv) at ABA, Hugh Carney, its Senior Counsel (e-mail - hcarney@aba.com, telephone number – (202) 663-5324).

Respectfully submitted,



David Wagner
Senior Vice President
Finance Affairs
The Clearing House Association L.L.C.



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Benjamin W. McDonough
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Joseph Peter
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Kenneth Lamar
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Federal Reserve Bank of New York

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The Associations

The Clearing House Association

Established in 1853, The Clearing House is the oldest banking association and payments company in the United States. It is owned by the world's largest commercial banks, which collectively employ over 2 million people and hold more than half of all U.S. deposits. The Clearing House Association L.L.C. is a nonpartisan advocacy organization representing—through regulatory comment letters, amicus briefs and white papers—the interests of its owner banks on a variety of systemically important banking issues. Its affiliate, The Clearing House Payments Company L.L.C., provides payment, clearing, and settlement services to its member banks and other financial institutions, clearing almost $2 trillion daily and representing nearly half of the automated-clearing-house, funds-transfer, and check-image payments made in the U.S. See The Clearing House's web page at www.theclearinghouse.org.

The Risk Management Association / The Advanced Measurement Approaches Group

The Risk Management Association (RMA), a 501(c)(6) not-for-profit corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, is a member-driven professional association serving the financial services industry. Its sole purpose is to advance the use of sound risk principles in the financial services industry. RMA promotes an enterprise approach to risk management that focuses on credit risk, market risk, operational risk, securities lending, and regulatory issues.

The Advanced Measurement Approaches Group (AMAG) was formed in 2005 by RMA at the suggestion of the U.S. AMA-BQT (formerly the Inter-Agency Working Group on Operational Risk). The purpose of the AMAG is to share industry views on aspects of Advanced Measurement Approaches (AMA) implementation with the U.S. financial services federal regulatory agencies and promote the successful implementation of AMA. The Group consists of operational risk management professionals working at financial service organizations throughout the U.S.

The Financial Services Roundtable

The Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products 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 and account directly for $92.7 trillion in managed assets, $1.1 trillion in revenue, and 2.3 million jobs.

American Bankers Association

The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $14 trillion banking industry and its 2 million employees.