Comerica Bank

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Submitted Via Federal eRulemaking Portal – http://www.regulations.gov

May 29, 2011

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

Re: Proposed Rule on Incentive-based Compensation Arrangements, Docket No. R–1410 and RIN No. 7100–AD69

Dear Ms. Johnson:

We are writing to offer you our comments on the Agencies' proposed rules to implement Section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), regarding incentive based compensation arrangements. Comerica Incorporated is a bank holding company, headquartered in Dallas, Texas, with offices in various states including Arizona, California, Florida, Michigan, and Texas. On behalf of Comerica Bank, Comerica Incorporated (collectively "Comerica") appreciates the opportunity to comment on this proposal.

General Comments

The proposed rules are intended to meet the Section 956 requirements of prohibiting (1) excessive compensation that could lead to inappropriate risk taking and (2) incentive-based compensation arrangements that create inappropriate risk taking that could result in a material financial loss. Comerica is concerned the shift to more prescriptive rules, rather than more principle based guidance, creates ambiguity, implementation difficulties, and the potential for unintended consequences.

Comerica notes that in the past, full disclosure of compensation has been required as opposed to rules on the form and/or amount of compensation. Guidance, rather than rules, provides the necessary flexibility for companies rather than a "one-size fits all" approach. Several concepts in the proposed rules, including excessive compensation, incentive-based compensation and the timing of implementation remain vague and as rigid rules may lead to unintended consequences. For example, it is reasonable to conclude there may be a resulting migration to greater base salaries to avoid issues with deferral and potential forfeiture. This may run counter to the expectations of shareholders who may view incentive or performance based compensation as more effective motivation for company leaders.

Further, Comerica believes that the final rules should be consistent with the 2010 Interagency Guidance on Sound Incentive Compensation Policies adopted by the OCC, Board, FDIC, and OTS, effective June 25, 2010 (the "2010 Interagency Guidance").

Specific Comments

A. Proposed Rule 12 C.F.R. §372.3 Definitions

1. The definitions of "compensation" and "incentive-based compensation"

   The final rules should clarify the distinction between the definitions of "compensation" and "incentive-based compensation" so that incentive compensation clearly refers to compensation that varies based upon the performance of the institution and/or employee(s) in a defined period. The definition of incentive compensation should not include (i) tax-qualified retirement benefits (such as pension, 401(k), and profit sharing), or (ii) welfare benefit plans under ERISA, even if a plan includes an incentive compensation amount in the definition of "compensation" used in calculating the benefit formula or the institution's contributions to the plan depend on attaining a specific performance measure. This would be consistent with the final rules under TARP, which expressly excluded qualified retirement plans and benefits under a broad-based welfare benefit plan from the definition of "Bonus." In addition, providing examples of the most common forms of compensation would be useful to the covered institutions in its efforts to comply with the rule.

2. Definition of "executive officer"

   Comerica believes that the Agencies' final rules should provide a uniform definition of "executive officer." This definition should be the same as is used for SEC reporting so that there is uniformity across regulations.

3. Other Definitions

   Comerica believes that all terms should be clearly defined and that the rules should include a uniform method of calculation of assets. Moreover, the Agencies' final rules should apply to all financial institutions equally to better promote the purpose of Section 956 and competitive equity. The final rules should also not result in a disadvantaged class of banks nor seek to limit banks' ability to recruit and retain top talent.

B. Proposed Rule 12 C.F.R. §372.4 Required Reports to Regulators

   Comerica believes the Agencies should establish consistent timelines for their review and response. In order to be effective, both the company and employees need certainty with respect to the application of incentive compensation.

   Comerica agrees with the proposed rules' that the report not include the actual compensation of particular covered persons. Further, Comerica believes that the confidentiality of all submitted information must be maintained by the regulators and must remain private.

C. Proposed Rule 12 C.F.R. §372.5 Prohibitions

   1. Definition of "excessive compensation" must be flexible and connected to risk

      Defining "excessive compensation" is a subjective concept and must be determined by each financial institution's board of directors (or a committee thereof). The Agencies should only provide guidance. The decision on what level of total compensation an employee receives should be up to the institution and align with employee/company performance. The Dodd-Frank Act requires that any regulation of excessive compensation should be connected to an inappropriate level of risk.

   2. Flexibility of Board of Directors

      Comerica believes that if the final rules require the board or committee to determine when amounts paid are unreasonable or disproportionate to the services performed by a covered person, taking into consideration specific factors, then the final rules should also permit taking into consideration all factors considered relevant by the board or committee, including the need to retain and motivate key performers.

      Comerica also notes that certain factors such as comparable compensation practices at comparable institutions will be difficult to implement because position titles will have different responsibilities at different institutions resulting in different compensation for what appears on the surface to be the same position. Additionally, compensation and benefit programs give companies a competitive advantage in attracting and retaining talent. As such, detailed information is guarded making the ability to assess or compare compensation programs to other financial institutions practically infeasible.

Retaining flexibility is also important because a covered financial institution may determine the most appropriate method to risk-adjust certain covered employees' deferred incentive compensation, while still incenting sustained company performance, is to tie the value of such compensation to its stock price. The covered financial institution may determine, for certain other covered employees, the most appropriate method to risk-adjust their deferred incentive compensation, again while still incenting sustained company performance, is to tie the value of such compensation to the performance of the covered employees' business line.

In addition to retaining flexibility, Comerica believes the final rules should be clear they would not require deferral and risk-adjustment approaches that result in adverse accounting or tax consequences.

3. Mandating Deferral of a Specific Percentage of Compensation is <u>Not</u> Appropriate

Comerica believes that the Agencies' final rules should not dictate the period for deferral of annual incentive-based compensation, or the deferral of a specific percentage of the annual incentive-based compensation of any executive officer or employee. Applying a prescriptive deferral for senior executives hinders a company's flexibility and ability to compensate executives appropriately based on their role in the organization. It is common for the components of compensation to be specific to the individual in order to obtain company objectives and goals. This provision would essentially preclude this and prescribe how every covered financial institution should compensate its executives.

Additionally, it will make it more difficult for covered financial institutions to attract and retain key employees. If the Agencies' final rules require minimum deferral provisions for senior executives at larger financial institutions, larger financial institutions would be unfairly placed at a disadvantage as the same constraints may not exist elsewhere. For example, individuals may depart the organization to take leadership positions at smaller organizations not subject to the deferral requirements or positions at larger organizations in roles that are not subject to deferral or move outside the financial industry all together. Regardless, the rules create the potential for talent loss. Comerica believes that the Agencies should maintain a level playing field among financial institutions and not be disadvantaged against other industries in the competition for talented professionals.

4. Recommendations if Deferral is Mandated

If the Agencies' final rules require the deferral of a percentage of the annual incentive-based compensation of executive officers of larger financial institutions, then Comerica believes the Agencies' final rules should:

- Clarify that a covered financial institution may pay out interest or investment earnings to compensation required to be deferred (in addition to requiring adjustment of deferrals to reflect actual losses or other measures or aspects of performance that are realized or become better known during the deferral period).
- Clarify that mandatory deferral need not continue to apply in the event of the employee's death, disability, retirement, or a change in control.
- Provide further guidance, using existing standards of measurement, as to the meaning of the phrase "substantial in relation to the institution's size, capital, or overall risk tolerance."
- Provide additional examples of the targeted covered persons.
- Clarify that the following forms of compensation would be considered deferred for the requisite period:
    - Stock awards (e.g., stock options or restricted stock) that have multiple year vesting periods.

- o Payments of cash that is subject to a recoupment obligation that lapse after three years.
- o Long-term incentive payments made only upon the completion of three-year (or longer) time period.

- Provide that, if a covered financial institution's compensation committee determines that deferral is sufficient to mitigate risk, the amount deferred need not be subject to additional adjustments tied to performance. For example, the committee could conclude that the exercisability of a stock option grant that vests over three years need not be subject to performance conditions.

Comerica further believes if the Agencies' final rules mandate a minimum deferral period for incentive-based compensation, then the Agencies' final rules should:

- Not require a deferral period of longer than three years, and
- Specify the "deferral period" would include/credit any performance measurement period, vesting period, or other time-period during which the compensation amount is not fully vested. For example, if an institution awards restricted stock that vests on the third anniversary of the award date, the rules should not require that those shares must be deferred or remain forfeitable for an additional three-year period.

D. Proposed Rule -- Coordination with the 2010 Interagency Guidance

The OCC, Board, FDIC and OTS previously adopted the 2010 Interagency Guidance and, in connection, the Federal Reserve commenced a special horizontal review of incentive compensation practices at Large Complex Banking Organizations. There is considerable overlap between the 2010 Interagency Guidance and the proposed rules. Many financial institutions have invested significant time and money in working with the Board to comply with the 2010 Interagency Guidance. Comerica believes the final rules should be coordinated with the 2010 Interagency Guidance, as well as interpretations issued by the Board under the horizontal review process to ensure consistency.

1. Unintended Consequences

Coupled with the pressure to reduce risk in the 2010 Interagency Guidance, the final rules may further cause covered financial institutions to become less competitive as they are directed to take the path of less incentives and risk (likely resulting in more fixed compensation, such as base salary). The Supplementary Information, Background Section of the 2010 Interagency Guidance and other written guidance from the Board has acknowledged performance measures should be set at a floor level rather than encouraging higher performance that incents responsible growth. This approach could result in the separation of interests of shareholders and covered employees.

2. Mandatory Deferral

The 2010 Interagency Guidance outline four methods that are "often used to make compensation more sensitive to risk": (i) risk adjustment of awards; (ii) deferral of payment; (iii) longer performance periods; and (iv) reduced sensitivity to short-term performance. By contrast, the proposed rules establish a requirement to use one of these four methods –deferral of payment, which seemingly undermines the 2010 Interagency Guidance and the judgment of companies evaluating the best approach for establishing incentive compensation arrangements for its employees.

E. Proposed Rule – Effective Date

1. Grandfathering

Comerica believes that the Agencies' final rules should not apply to incentive-based compensation arrangements currently underway. Financial institutions may have contractual limitations in their ability to change the terms of such pre-existing plans. This may create unexpected potential liabilities and/or costs in an effort to comply.

Comerica believes the final rules should apply to any grant of incentive compensation made in the calendar year following the effective date of the final rules. This protects against unexpected liability and provides companies time to make the necessary adjustments. Thus, if the effective date of the final rules is April 12, 2012, the final rules should not apply to:

- An annual incentive plan award for calendar year 2012, or
- A three-year long-term incentive plan running from January 1, 2012 (or earlier) through December 31, 2014.

Because of the mandated deferrals, companies may need more time to evaluate and adopt compensation arrangements that will also ensure continuity of affected employees' expected compensation. Notably, TARP rules generally grandfathered pre-existing entitlements to incentive-based compensation.

2. First Date Reports are Required

   Comerica believes that the Agencies' final rules should specify the first year in which reports are due, recognizing covered institutions need time to develop compliant compensation arrangements. Again, because of the deferral requirements, institutions need time to adjust and adopt compensation arrangements that will allow for continuity of affected employees' expected compensation.

3. Compliance Dates for Different Types of Institutions

   Comerica believes that the Agencies' final rules should not designate different compliance dates for different types of covered financial institutions. Comerica believes, in all instances, there should be a level playing field for all covered financial institutions, without discrimination between large and small firms.

We value each and every opportunity to provide comments regarding regulatory proposals. We trust that you find the comments noted above useful in formulating the final regulation. If you have any questions, please contact me at 313.222.6160.

Very truly yours,

DJ Culkar
Senior Vice President, Assistant General Counsel, and
Assistant Secretary