ICBA
INDEPENDENT COMMUNITY
BANKERS of AMERICA

March 30, 2011

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

Re: Definitions of "Predominantly Engaged in Financial Activities" and "Significant Nonbank Financial Company" and "Bank Holding Company"

Dear Ms. Johnson:

The Independent Community Bankers of America[1] (ICBA) welcomes the opportunity to comment on proposed amendments to Regulation Y that establish the criteria for determining whether a company is "predominantly engaged in financial activities" and define the terms "significant nonbank financial company" and "significant bank holding company" for purposes of Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"). Title I established the Financial Stability Oversight Council ("FSOC") and requires FSOC to determine the "nonbank financial companies" that could pose a threat to the financial stability of the United States.

ICBA's Comments

ICBA strongly supported the creation of the FSOC when the Dodd-Frank Act was being considered by Congress. We strongly believe that certain large nonbank financial companies should be subject to enhanced prudential standards including higher capital, leverage, and liquidity standards, concentration limits and contingent resolution plans.

[1] The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever changing marketplace.

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold $1 trillion in assets, $800 billion in deposits, and $700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

ICBA also believes that FSOC's process for determining which nonbank financial institutions should be considered systemically important should be a sufficiently broad enough inquiry to include as many large or interconnected nonbank financial firms that pose systemic risk to the financial system and the economy as possible. The list should include, but not necessarily be limited to, large investment banks, insurance companies, hedge funds, private equity funds, venture capital firms, mutual funds (particularly money market mutual funds), industrial loan companies, special purpose vehicles, and nonbank mortgage origination companies. Any company that is "predominantly engaged in financial activities" as the Dodd-Frank Act defines that term should be considered if its failure or material financial distress could cause financial instability in the United States.

The Federal Reserve Board has proposed two tests for determining that a company is "predominantly engaged" in financial activities and classified as a nonbank financial company. Under the first test, referred to as the Two-Year Test, a company would be considered predominantly engaged in financial activities if in either of its two most recently completed fiscal years, the company's annual gross financial revenues or consolidated financial assets equal or exceed 85 percent of its total consolidated annual gross revenues or total consolidated assets respectively. The second test which is a case-by-case method, would allow the Federal Reserve Board to subjectively determine, based on facts and circumstances, whether 85 percent or more of a company's annual gross revenues or consolidated assets are financial in nature. Furthermore, the Board would allow companies to use their consolidated, year-end financial statements prepared in accordance with GAAP as the basis for determining their annual gross revenue and consolidated assets.

ICBA's agrees that both tests carry out the statutory mandates of Title I of the Dodd-Frank Act and at the same time, are flexible enough not to impose an unnecessary regulatory burden on those companies that must comply with Title I. The Two-Year Test would, for example allow FSOC to designate a systemically important firm whose financial assets and revenues traditionally have met or exceeded the required 85 percent threshold, but that experienced a temporary decline in financial revenue or assets during its last fiscal year. Also, the Two-Year Test would provide FSOC a period of time to reevaluate an existing designation with respect to a systemically important nonbank financial company should the company's level of financial revenues or assets fall below the 85 percent threshold at the end of a single year. Allowing companies to use their consolidated yearend financial statements prepared in accordance with GAAP as the basis for determining their annual gross revenue and consolidated assets also provides a way for the Federal Reserve to compare such amounts across a broad spectrum of companies and should also facilitate the ability of companies to determine whether they are a nonbank financial company for purposes of Title I of the Dodd-Frank Act.

The Dodd-Frank Act also defines financial activities by reference to those activities that have been determined to be financial in nature under Section 4(k) of the Bank Holding

Company Act. ICBA agrees with the Federal Reserve Board that the activities that should be considered "financial" are listed in Section 225.86 of Federal Reserve Regulation Y. This list of financial activities would also include those that have been considered by the Board as "closely related to banking" and that are listed in Sections 225.28(b) and 225.86(a)(2) of Regulation Y.

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

The proposed rule also defines the terms "significant nonbank financial company" and "significant bank holding company," which are used in connection with the criteria that FSOC must consider in determining whether to require that a nonbank financial company become supervised by the Federal Reserve Board under the Dodd-Frank Act. A firm that is defined as a significant nonbank financial company or a significant bank holding company does not become subject to any additional supervision or regulation because of that definition. Rather, relationships between firms and these significant nonbank financial company and significant bank holding companies become a relevant factor in other determinations and additional information will be collected about these relationships.

ICBA agrees with the Federal Reserve that significant financial nonbank financial company should include any nonbank financial company that is supervised by the Federal Reserve and any other nonbank financial company that had $50 billion or more in total consolidated assets as of the end of its most recently completed fiscal year. Furthermore, a significant bank holding company should be one that had $50 billion or more in total consolidated assets as of the end of the most recently completed calendar year. We agree that since Congress established the $50 billion threshold for determining which bank holding companies should be subject to enhanced prudential supervision, that this threshold should also be applied to determine relationships and credit exposures between nonbank financial companies and other nonbank financial companies and significant bank holding companies.

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Conclusion

ICBA strongly supported the creation of FSOC when the Dodd-Frank Act was being considered by Congress and we strongly believe that certain large nonbank financial companies should be subject to enhanced prudential standards including higher capital, leverage, and liquidity standards, concentration limits and contingent resolution plans. The list should include, but not necessarily be limited to, large investment banks, insurance companies, hedge funds, private equity funds, venture capital firms, mutual funds (particularly money market mutual funds), industrial loan companies, special purpose vehicles, and nonbank mortgage origination companies.

ICBA's agrees that both the Two-Year Test and the subjective case-by-case method carry out the statutory mandates of Title I of the Dodd-Frank Act and at the same time, are flexible enough not to impose an unnecessary regulatory burden on those companies that must comply with Title I. Allowing companies to use their consolidated yearend financial statements prepared in accordance with GAAP as the basis for determining their annual gross revenue and consolidated assets also provides a way for the Federal Reserve to compare such amounts across a broad spectrum of companies and should also facilitate the ability of companies to determine whether they are a nonbank financial company for purposes of Title I of the Dodd-Frank Act.

ICBA agrees with the Federal Reserve that the proposed rule should broadly define "financial activities" to include all activities that have been, or may be, determined to be financial in nature under Section 4(k). This would include securities underwriting and dealing activities even if a bank holding company or other company affiliated with a depository institution may be limited in the amount of such activity it may conduct under the Volcker Rule.

Finally, we agree with the Federal Reserve that a "significant financial nonbank financial company" should include any nonbank financial company that is supervised by the Federal Reserve and any other nonbank financial company that had $50 billion or more in total consolidated assets as of the end of its most recently completed fiscal year. Furthermore, a significant bank holding company should be one that had $50 billion or more in total consolidated assets as of the end of the most recently completed calendar year.

ICBA appreciates the opportunity to comment on proposed amendments to Regulation Y. If you have any questions about our letter, please do not hesitate to contact me at 202-659-8111 or Chris.Cole@icba.org.

Sincerely,
/s/ Christopher Cole

Christopher Cole
Senior Vice President and Senior Regulatory Counsel