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Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
regs.comments@federalreserve.gov

Re: Notice and Request for Comment on Definitions of "Predominantly Engaged in Financial Activities" and "Significant" Nonbank Financial Company and Bank Holding Company – Docket No. R-1405

Dear Ms. Johnson:

The Institute of International Bankers appreciates the opportunity to comment on the above-captioned rulemaking proposal (the "Proposal") by the Board of Governors of the Federal Reserve System (the "Board"). Our comments focus in particular on the proposed definition of "significant bank holding company" and its application in the context of Section 165(d)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The Institute's members are banking organizations headquartered outside the United States that engage in a variety of banking and other financial activities in the United States. Almost all Institute member banks either are bank holding companies or are treated as bank holding companies for purposes of the Dodd-Frank Act and therefore are potentially "significant bank holding companies" for purposes of Section 165(d)(2).

The Proposal would amend the Board's Regulation Y to define the term "significant bank holding company" as it is used in Section 113 and Section 165(d)(2) of the Dodd-Frank Act.[1] The definition provides that a bank holding company is "significant" for these purposes if it had $50 billion or more in total consolidated assets as of the end of the most recently completed

[1] 76 Fed. Reg. 7731, 7740 (Feb. 11, 2011) (proposed provisions of 12 C.F.R. 225.302(c)). We note that the terms "significant nonbank financial company" and "significant bank holding company" also are used in Section 115(d) of the Dodd-Frank Act, which authorizes the Financial Stability Oversight Council to make recommendations to the Board concerning implementation of Section 165(d)'s requirements.

calendar year. In the case of a foreign banking organization ("FBO") that is or is treated as a bank holding company, total consolidated assets are equal to the amount reported by the FBO on the Federal Reserve's Form FR Y-7Q (Capital and Asset Report for Foreign Banking Organizations).[2] Thus, under the Proposal an FBO's status as a "significant bank holding company" is based on its global consolidated assets and not the assets of its U.S. operations.

Summary

We agree it is important to establish a transparent standard that may be applied by the Financial Stability Oversight Council (the "Council") when making designations under Section 113.[3] However, we do not believe the Dodd-Frank Act requires any of the following conclusions: (i) the meaning of the term "significant bank holding company" must be the same for purposes of Section 113 and Section 165(d)(2); (ii) the meaning of that term for purposes of Section 165(d)(2) must be established at the same time as its meaning is established for purposes of Section 113; and (iii) treatment of an FBO as a "significant bank holding company" for purposes of either Section 113 or Section 165(d)(2) must be based on its global consolidated assets. Rather than providing that the Board necessarily must reach these conclusions, the Dodd-Frank Act provides the Board considerable discretion in deciding how to define "significant" for purposes of Section 113 and Section 165(d)(2).

The Proposal appears to be premised on the view that the purposes for which the term "significant bank holding company" is used in Section 113 and Section 165(d)(2) are sufficiently similar to require the use of a common definition. We believe the differences between the two provisions are sufficiently significant to merit giving further consideration to whether different definitions should be used. As to timing, we believe it would be more appropriate to bifurcate the rulemaking process and thus to consider the meaning of "significant bank holding company" for purposes of Section 165(d)(2) separately from determining its meaning for purposes of Section 113.[4] This is especially so in light of the impending joint rulemaking by the Board and the FDIC to implement the provisions of Section 165(d).[5] However these two questions are resolved, we believe that reference in either context to the global consolidated assets of an FBO as the basis for its designation as a "significant bank holding company" would not effectively

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[2] Id. (proposed provisions of 12 C.F.R. 225.302(c)(2)). "Total assets at the end of the period" are reported in line item 5 of Form FR Y-7Q in the amount calculated on the basis of home country requirements.

[3] See id. at 7737.

[4] While our concerns relate in particular to the definition of "significant bank holding company," our recommendation to bifurcate the rulemaking process between Section 113 and Section 165(d)(2) includes as well the definition of "significant nonbank financial company."

[5] On March 29, 2011, the FDIC's Board of Directors approved a notice of proposed rulemaking regarding the submission of resolution plans and credit exposure reports pursuant to Section 165(d) of the Dodd-Frank Act. As required by Section 165(d)(8), the notice will be issued jointly with the Board.

promote the purposes of the statute and would impose needless burdens. If an asset-based test is used, then we recommend that it be applied instead by reference to the total consolidated assets of an FBO's U.S. operations.

The Meaning of the Term "Significant Bank Holding Company" Need Not Be the Same for Purposes of Section 113 and Section 165(d)(2)

The Dodd-Frank Act does not define the term "significant bank holding company." Instead, Section 102(a)(7) provides that its meaning shall be established by rule and assigns rulemaking responsibility solely to the Board. In the absence of any statutory guidance on the meaning of the term, it is helpful to consider the contexts in which the term is used and the purposes it serves.

Section 113 prescribes the factors the Council is required to consider when designating those nonbank financial companies that, as a result of such designation and for the duration of such designation, will be subject to supervision by the Board under Section 165 and therefore subject to the heightened capital and other prudential standards prescribed thereunder. One of these factors is "the extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies."[6] Designations under Section 113 ultimately are based on the Council's conclusion, based on its overall assessment of the various prescribed factors, regarding the extent to which a nonbank financial company poses a threat to the financial stability of the United States.

Section 165(d)(2) establishes the terms of one of the required prudential standards that are applicable to nonbank financial companies designated by the Council under Section 113, as well as to bank holding companies (and FBOs that are treated as bank holding companies) with total consolidated assets equal to or greater than $50 billion (collectively, "Section 165 Companies"). Whereas Section 113 seeks to identify whether an institution should be subject to the requirements of Section 165, Section 165(d)(2) addresses the different question of what one of those requirements should be.

Section 165(d)(2) requires each Section 165 Company to report periodically to the Board, the Council and the FDIC on the nature and extent of both (i) its credit exposure to significant nonbank financial companies and significant bank holding companies and (ii) the credit exposure of significant nonbank financial companies and significant bank holding companies to the Section 165 Company. The purpose of Section 165(d)(2) is to provide information regarding the credit exposures of Section 165 Companies in order to assist the Board, the Council and the FDIC to understand better the nature of the risks Section 165 Companies present to the financial stability of the United States.

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[6] Section 113(a)(2)(C) and Section 113(b)(2)(C) of the Dodd-Frank Act.

Thus, Section 113 and Section 165(d)(2) address the relevance of significant nonbank financial companies and significant bank holding companies from different perspectives and focus on different aspects of the relationship such companies have to (i) in the case of Section 113, nonbank financial companies (whether or not they have been designated as a Section 165 Company), and (ii) in the case of Section 165(d)(2), Section 165 Companies. In light of these differences, we believe it is appropriate to give further consideration to whether, as contemplated by the Proposal, the definitions used for purposes of Section 165(d)(2) should be the same as those used for purposes of Section 113. A bifurcated approach to this question is especially appropriate inasmuch as the Dodd-Frank Act requires a separate, and different, rulemaking to implement the provisions of Section 165(d)(2).

The Meaning of the Term "Significant Bank Holding Company" for Purposes of Section 113 and Section 165(d)(2) Should Be Established in Separate Rulemakings

Given the Board's understandable interest in providing definitions to facilitate the prompt consideration of potential designations under Section 113 by the Council,[7] we recommend that the current rulemaking be limited to defining the terms "significant nonbank financial company" and "significant bank holding company" as used in Section 113, with consideration of the terms' meanings as used in Section 165(d)(2) postponed to the impending joint rulemaking under Section 165(d).[8] As the Proposal itself explains, the Board and the FDIC are required to develop joint rules implementing the credit exposure reporting requirements under Section 165(d)(2), and the Proposal further states that the Board in any case expects to review the definitions as part of that separate, joint rulemaking.[9]

Thus, there is no need at this time to address the meaning of the terms in the context of Section 165(d)(2), and we believe that a delay in addressing this question until the rulemaking undertaken pursuant to Section 165(d)(2) would not have any adverse regulatory consequences.[10] To the contrary, in light of the foregoing considerations we believe a bifurcated approach to defining the terms would enable a more orderly and informed rulemaking process. Moreover, it appears that a key definitional issue under the Proposal – the basis on which an FBO should be

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7 See 76 Fed. Reg. at 7733.

8 Consideration of the terms' meanings as used in Section 165(d)(2) should include consideration of their meanings in the related provisions of Section 115.

9 76 Fed. Reg. at 7737.

10 We are not aware of any reason that would prevent the Board from addressing the meaning of the terms for purposes of Section 165(d)(2) in connection with the impending joint rulemaking with the FDIC to implement Section 165(d)(2)'s substantive requirements. For example, concurrently with finalizing the joint rulemaking with the FDIC, the Board could amend the provisions of Section 302 of Regulation Y – which, under the approach discussed in this letter, would be limited to the definitions of the terms as used in Section 113 – to incorporate the definitions as used in Section 165(d)(2).

determined to be a "significant" bank holding company – will also be presented, in a different but related context, in connection with the impending rulemaking under Section 165(d).[11]

If An Asset-Based Test Is Used, It Should Be Applied by Reference to the Total Consolidated Assets of an FBO's U.S. Operations Instead of to Its Global, Consolidated Assets

We estimate that basing the determination of whether an FBO is treated under the Dodd-Frank Act as a "significant bank holding company" on the FBO's global consolidated assets would result in designating as "significant" the substantial majority of FBOs that are or are treated as bank holding companies, regardless of the size or complexity of their U.S. operations. We believe that this approach is over inclusive and consequently would result in reporting more information than what would be reasonably necessary for the analysis of Section 165 Companies' credit exposures that is intended by Section 165(d)(2). Indeed, by virtue of the sheer volume of information that this approach likely would generate, such over reporting might well impede such analysis.

To take an extreme example, but one that we believe would not be uncommon, the definition set forth in the Proposal would require reporting under Section 165(d)(2) with respect to a "significant" FBO that has only a limited presence in the United States. It is by no means evident that such reporting would meaningfully contribute to a better understanding of the nature of the risks presented to the financial stability of the United States by Section 165 Companies' credit exposures relating to such FBOs.[12] Moreover, compiling and reviewing the information that has to be reported may be quite burdensome for the reporting entity and supervisory authorities charged with reviewing those reports, respectively.[13] These concerns reasonably call

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[11] We note that the notice of proposed rulemaking approved by the FDIC's Board of Directors on March 29th bases the test for classifying an FBO that is or is treated as a bank holding as a Section 165 Company (referred to in the notice as a "Covered Company") on the same measurement applied by the Proposal with respect to classification as a significant bank holding company – total consolidated assets of at least $50 billion as reported on Form FR Y-7Q.

[12] Similarly, it is by no means evident that the Council's deliberations under Section 113 would be meaningfully enhanced by focusing on the nature of the transactions and relationships a nonbank financial company has with such a "significant" FBO.

[13] The proposed definition of "significant nonbank financial company" poses additional significant burdens for Section 165 Companies. The Proposal contemplates that each Section 165 Company, in connection with complying with the requirements of Section 165(d)(2), would be required to determine whether a nonbank company to which it has credit exposure, or which has credit exposure to the Section 165 Company, is reportable as a "significant nonbank financial company" because the company either (i) has been designated by the Council as a Section 165 Company or (ii) if the nonbank company has $50 billion or more in total consolidated assets, whether the nonbank financial company is "predominantly engaged" in financial activities. Applying the "predominantly engaged" criteria can be a complex and burdensome exercise even if restricted to determining the extent of the company's activities that are financial in nature (as defined in Section 4(k) of the Bank Holding Company Act). The difficulty would be only compounded if other types of activities are considered financial in nature, and we do not believe any other activities should be included in making this determination.

into question whether, on balance, it would be worthwhile to require Section 165 Companies to undertake the effort on as broad a basis as would be required under the Proposal.

We have the same type of concern regarding the impact that applying a test based on global assets would have if such test also were applied to identifying FBOs as Section 165 Companies that must submit the credit exposure reports – *i.e.*, basing the credit exposure reporting requirement under Section 165(d)(2) on an FBO's global consolidated assets would result in the substantial majority of FBOs that maintain some type of presence in the United States having to file such reports regardless of whether the reported credit exposures bear any meaningful relevance to the concerns addressed by Section 165. As discussed above, we accordingly believe it would be appropriate, and would allow for a more orderly and informed rulemaking process, to combine consideration of the threshold question of which FBOs are subject to the credit exposure reporting requirements of Section 165(d)(2), because they are Section 165 Companies, with the related question of which FBOs should be the subject of those reports, because they are "significant bank holding companies."

We do not in this letter express a view regarding what level of assets would be appropriate for characterizing an FBO as a "significant bank holding company" or whether an asset-based test is an appropriate measurement for these purposes. However, in the event an asset-based test is applied for these purposes, as well as for purposes of identifying FBOs as Section 165 Companies (as appears to be contemplated by the joint notice of proposed rulemaking under Section 165(d)), then we believe it would be more appropriate to base that test on the assets of the FBO's U.S. operations rather than on its global assets. We look forward to addressing this matter further in connection with our comments on the joint notice of proposed rulemaking under Section 165(d) once it is published in the Federal Register.

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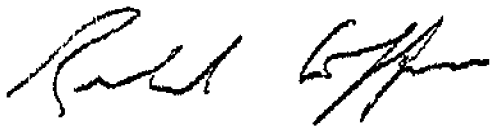
Please contact the undersigned if we can provide any additional information or assistance.

Sincerely,



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