

March 30, 2011

**BY ELECTRONIC SUBMISSION
AT WWW.REGULATIONS.GOV**

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

Re: RIN 7100-AD64: Definitions of “Predominantly Engaged in Financial Activities” and “Significant Nonbank Financial Company and Bank Holding Company”

Dear Ms. Johnson:

On behalf of the undersigned Federal Home Loan Banks (the “FHLBanks”), we are writing to comment on the above captioned notice of proposed rulemaking (“NPR”) published by the Board of Governors of the Federal Reserve System (the “Board”) on February 11, 2011.¹ For the reasons stated below, the FHLBanks believe that the proposed definition of a “significant nonbank financial company” set forth in the NPR should be modified as discussed below.

The FHLBanks were established in 1932 under the Federal Home Loan Bank Act² and serve approximately 8,000 member financial institutions within their respective districts as a source of liquidity and community lending opportunities. The FHLBanks’ member institutions are banks, savings institutions, credit unions, community development financial institutions and insurance companies, which, along with former members, are their sole shareholders.

1. The Board’s Proposed Definition of a “Significant Nonbank Financial Company” and the Term’s Use in Title I of the Dodd-Frank Act

In the NPR, the Board requested comment on several terms that it is required to define for purposes of implementing Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Act”).³ This letter is directed solely to the Board’s proposed definition of “significant nonbank financial company.”

¹ 76 Fed. Reg. 7731.

² 12 U.S.C. §§ 1421- 1449.

³ Pub. L. No. 111-203 (July 21, 2010).

Section 102(a)(7) of the Act requires the Board to define the terms “significant nonbank financial company” and “significant bank holding company.”⁴ These terms are used in the Act only in two provisions in Title I.

Sections 113(a)(2) and 113(b)(2) of the Act set forth criteria that the Financial Stability Oversight Council (the “Council”) is required to consider when determining whether to designate a U.S. nonbank financial company or foreign nonbank financial company for supervision by the Board (such a company is referred to herein as a systemically important financial institution (“SIFI”). Among these criteria are the extent and nature of the transactions and relationships that a company being considered by the Council for designation as a SIFI has with “other significant nonbank financial companies and significant bank holding companies.”⁵

In addition, in Section 165 of the Act, the Board is directed to require that each SIFI and each bank holding company with total consolidated assets equal to or greater than \$50 billion (a “Large BHC”) report periodically to the Council, the Board and the Federal Deposit Insurance Corporation (“FDIC”) on the nature and extent of (i) its credit exposure to “other significant nonbank financial companies and significant bank holding companies” and (ii) the credit exposure of “other significant nonbank financial companies and significant bank holding companies” to the reporting company.⁶

For these purposes, the Board has proposed in the NPR to define a “significant nonbank financial company” to mean:

- (1) Any nonbank financial company supervised by the Board [*i.e.*, a SIFI]; and
- (2) 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.”⁷

The Board also has proposed to define a “significant bank holding company” as a bank holding company or foreign bank treated as a bank holding company under Section 8(a) of the

⁴ 12 U.S.C. § 5311(a)(7).

⁵ 12 U.S.C. § 5323(a)(2)(C) and (b)(2)(C).

⁶ 12 U.S.C. § 5365(d)(2). Section 115(d)(2) of the Act provides that the Council may make recommendations to the Board regarding the reporting requirements in Section 165(d)(2). The NPR states that the Federal Reserve and the FDIC are jointly responsible for developing rules to implement these reporting requirements. 76 Fed. Reg. 7737.

⁷ 76 Fed. Reg. 7740; 12 C.F.R. § 225.302(b) (proposed).

International Banking Act of 1978 that had \$50 billion or more in total consolidated assets as of the end of the most recently completed calendar year as reported to the Board.⁸

2. Congress Did Not Intend for All Nonbank Financial Companies With \$50 Billion or More of Assets to be Treated as Significant Nonbank Financial Companies

In the preamble of the NPR, the Board provides the following explanation for its proposed definitions of “significant nonbank financial company” and “significant bank holding company”:

In establishing these definitions, the Board considered its supervisory experience with **bank holding companies** as well as the fact that Congress established \$50 billion in total consolidated assets as the threshold at which the **bank holding companies** should be subject to enhanced prudential supervision without any special determination by the Council that the **bank holding company’s** failure would pose a threat to financial stability.⁹

While the preamble may provide support for the Board’s proposed definition of “significant bank holding company,” it does not explain how this criterion might be applied to a nonbank financial company or address or support the Board’s proposed definition of “significant nonbank financial company.”

The Board’s reference to Congress’ decision to establish a \$50 billion total asset threshold for the application of enhanced prudential standards to Large BHCs under Section 165(a)(1) of the Act is plainly directed at supporting the Board’s proposed definition for “significant bank holding companies” and not its definition of “significant nonbank financial companies.” Congress established a specific asset threshold for a bank holding company to be subject to enhanced prudential standards under Section 165, and declined to do so for a nonbank financial company to be designated as a SIFI.

For bank holding companies, Congress found that an automatic across-the-board standard of \$50 billion of consolidated assets was appropriate. In contrast, for a nonbank financial company, Congress chose not to adopt such a criterion. Instead, Congress directed the Council to undertake a detailed multi-factor analysis of whether a particular nonbank financial company should be designated a SIFI,¹⁰ and to provide a potential designee with an opportunity for a

⁸ 76 Fed. Reg. 7740; 12 C.F.R. § 225.302(c) (proposed).

⁹ 76 Fed. Reg. 7736-7737 (internal citation omitted) (emphasis added).

¹⁰ 12 U.S.C. § 5323(a)(2) and (b)(2).

hearing before the Council.¹¹ Moreover, Congress provided for a right to judicial review for a nonbank financial company that is designated as a SIFI.¹²

The limited relevance of size alone for identifying a SIFI was emphasized in a colloquy between Senator John Kerry and Senator Christopher Dodd, the chairman of the Senate Committee on Banking, Housing and Urban Affairs, regarding the risk factors to be considered by the Council when designating a SIFI:

Mr. KERRY: . . . The fact that a company is large or is significantly involved in financial services does not mean that it poses significant risks to the financial stability of the United States. There are large companies providing financial services that are in fact traditionally low-risk businesses, such as mutual funds and mutual fund advisers. We do not envision nonbank financial companies that pose little risk to the stability of the financial system to be supervised by the Federal Reserve. Does the chairman of the Banking Committee share my understanding of this provision?

Mr. DODD: The Senator from Massachusetts is correct. Size and involvement in providing credit or liquidity alone should not be determining factors. . .¹³

Moreover, although the preamble to the NPR appears to point to the Board's experience with supervising bank holding companies as support for its definition of a "significant bank holding company," the preamble does not provide readers with an understanding of how the Board's supervisory experience with bank holding companies is relevant to the Board's proposed definition of "significant nonbank financial companies," or how this experience supports the proposed definition. Indeed, the Board has not previously regulated these types of companies precisely because they are not bank holding companies. The balance sheets and activities of such companies can be very different from that of a bank holding company, but the Board has not explained how its "supervisory experience" with bank holding companies is relevant to its identification of significant nonbank financial companies.

Put simply, the preamble to the NPR does not provide sufficient rationale or support for the use of an automatic \$50 billion asset threshold in the definition of a "significant nonbank financial company."

¹¹ 12 U.S.C. § 5323(e).

¹² 12 U.S.C. § 5323(h).

¹³ 156 Cong. Rec. S5903 (2010).

3. The Definition of Significant Nonbank Financial Company Should Be Modified to Delete Automatic Designation Based on \$50 Billion Asset Size

In any rulemaking undertaken by the Board under Section 102(a)(7) of the Act, we believe that it is essential that a \$50 billion asset automatic threshold be deleted from any final rule regarding the definition of a significant nonbank financial company. Just as the Board appears to believe that it is appropriate for the definition of “significant bank holding company” to mirror the \$50 billion asset threshold used to make a bank holding company subject to enhanced prudential standards under Section 165, it is possible that the Council in designating a SIFI might look to mirror an automatic \$50 billion asset threshold in a Board regulation defining a “significant nonbank financial company.” As discussed above, such a result would be inconsistent with Congress’ requirements for the SIFI designation process, and the Board should take appropriate action in any final rule to prevent this possibility.

For the reasons discussed above, we respectfully request that the Board modify proposed Section 225.302(b) to delete the prong of the proposed definition regarding the automatic \$50 billion asset trigger. The revised regulation would read as follows:

(b) Significant nonbank financial company. A “significant nonbank financial company” means any nonbank financial company supervised by the Board.

Under this approach, nonbank financial companies would not be automatically swept up and labeled as significant nonbank financial companies without more meaningful analysis of whether a particular company, in fact, had the appropriate attributes for such a designation. With this modification, the Council in considering the interconnectedness criteria set forth in Sections 113(a)(2)(C) and 113(b)(2)(C) would look to the relationship between a nonbank financial company and (i) the numerous companies that would be treated as significant bank holding companies (under the Board’s proposed definition) and (ii) any nonbank financial companies that the Council had designated as SIFIs. Avoiding arbitrary overinclusion of nonbank financial companies in the transactions and relationships to be examined under Sections 113(a)(2)(C) and 113(b)(2)(C) would prevent the introduction of a bias for unwarranted designations of SIFIs.

4. Conclusion

For the reasons described above, we respectfully request that the Board modify the definition of “significant nonbank financial company” as set forth in the NPR to eliminate the \$50 billion asset-based threshold. We appreciate the opportunity to submit these comments.

Sincerely,

Federal Home Loan Bank of Atlanta



Reginald T. O'Shields
Senior Vice President, Deputy General Counsel
and Director of Legal Services

Federal Home Loan Bank of Boston



Carol Hempfling Pratt
Senior Vice President and General Counsel

Federal Home Loan Bank of Chicago



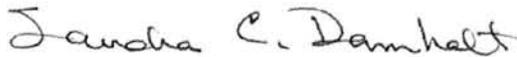
Peter E. Gutzmer
Executive Vice President, General Counsel and
Corporate Secretary

Federal Home Loan Bank of Cincinnati



Andrew S. Howell
Executive Vice President and Chief Operating
Officer

Federal Home Loan Bank of Dallas



Sandra C. Damholt
Vice President and General Counsel

Federal Home Loan Bank of Des Moines



Aaron B. Lee
Vice President, General Counsel and Corporate
Secretary

Federal Home Loan Bank of Indianapolis



Daniel A. Lane
First Vice President and General Counsel

Federal Home Loan Bank of New York



Paul S. Friend
Vice President and General Counsel

Federal Home Loan Bank of Pittsburgh



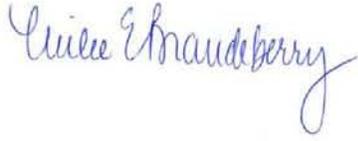
Dana A. Yealy
Managing Director, General Counsel and
Corporate Secretary

Federal Home Loan Bank of San Francisco



Suzanne Titus-Johnson
Senior Vice President, General Counsel and
Corporate Secretary

Federal Home Loan Bank of Seattle

A handwritten signature in blue ink that reads "Mike E. Brandeberry". The signature is fluid and cursive, with the first name being the most prominent.

Mike E. Brandeberry
Senior Vice President and Chief Counsel

Federal Home Loan Bank of Topeka

A handwritten signature in black ink that reads "Patrick C. Doran". The signature is cursive and includes the initials "P.C.D." followed by a stylized "Doran".

Patrick C. Doran
Senior Vice President and General Counsel