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By Hand and by Electronic Mail

Desk Officer for the Financial Stability Oversight Council
Office of Information and Regulatory Affairs
Office of Management and the Budget
725 17th Street, NW
Washington, DC 20503

Re: Financial Stability Oversight Council, *Notice of Proposed Rulemaking Regarding Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies*, 76 Fed. Reg. 4555 (Jan. 26, 2011).

Board of Governors of the Federal Reserve System, *Notice of Proposed Rulemaking Regarding Definitions of "Predominantly Engaged in Financial Activities" and "Significant" Nonbank Financial Company and Bank Holding Company*, 76 Fed. Reg. 7732 (Feb. 11, 2011).

Federal Deposit Insurance Corporation, *Notice of Interim Final Rulemaking Regarding Orderly Liquidation Authority Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 Fed. Reg.4207 (Jan. 25, 2011).

Federal Deposit Insurance Corporation, *Notice of Proposed Rulemaking Regarding Orderly Liquidation Authority,* 76 Fed. Reg. 16324 (Mar. 23, 2011).

Dear Sir or Madam:

We are writing on behalf of our client, Federated Investors, Inc. and its subsidiaries ("Federated"), regarding the above-referenced proposals by the Financial Stability Oversight Council ("FSOC"), the Board of Governors of the Federal Reserve System ("FRB") and the Federal Deposit Insurance Corporation ("FDIC") to adopt a set of interrelated regulations for the implementation of Titles I and II of the Dodd Frank Wall Street Reform and Consumer Protection Act ("DFA").[1] In particular, we are writing regarding the burdens associated with the

[1] Pub. L. No. 111-203 (2010).

collections of information that the agencies are proposing to require from certain financial companies in the above-cited releases.

Federated has served since 1974 as an investment adviser to money market mutual funds ("Money Funds").[2] As a participant in the money markets and a sponsor of Money Funds, Federated is interested in many of the details of the proposed rules, and has been actively engaged in the comment process with regard to each. We therefore appreciate the opportunity to provide you with our comments on the agencies' estimates of the burdens that the proposed rules will impose on financial companies.

In brief, under Title I of the DFA, the FSOC may designate certain non-bank financial companies as systemically significant to the U.S. economy. Specifically, under Section 113 of DFA, the FSOC may designate a nonbank financial company as systemically significant if it determines that material financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of its activities, could pose a threat to the stability of the US economy. The FSOC will be supported by the newly established Office of Financial Research ("OFR"), whose accountants, economists, lawyers, former supervisors, and specialists will gather and analyze data for this purpose.

Designation would have serious consequences for a firm. If a non-bank financial company is designated as systemically significant, it will become subject to additional regulation and supervision by the FRB. The FRB may then subject it to heightened prudential standards. These heightened prudential standards include, but are not limited to, more stringent risk-based and contingent capital requirements, leverage limits, liquidity requirements, credit exposure report requirements, concentration limits, disclosure rules, short-term debt limits, and overall risk management requirements. In addition, if the FRB determines that the firm presents a "grave" threat to US financial stability, the FSOC may approve an FRB decision to prohibit the company from growing further, offering certain financial products, or engaging in certain activities. The company could also be required to submit resolution plans (so-called "living wills") with information as to their ownership structure, assets, liabilities, contractual obligations, major counterparties, pledged collateral and any other information that the FRB and the FDIC may jointly require by rule or order. In the event of its financial distress, the company could also be subjected to FDIC receivership under Title II of the DFA.

In order to implement these provisions, the FSOC, FRB and FDIC have advanced a set of intertwined proposed rulemakings. To this end, the FSOC has proposed a set of proposed rules that it describes as a framework for assessing a non-bank financial company's systemic

[2] Federated has more than thirty-five years in the business of managing Money Funds and, during that period, has participated actively in the development of the money market. The registration statement for Federated's Money Market Management fund first became effective on January 16, 1974, making it one of the longest continuously operating Money Funds in existence.

importance and a process for potential designation. The proposed regulations primarily a repetition of the provisions of the statue, but they also provide that non-bank financial companies may be required to provide reports to the OFR,[3] submit to examinations by the FRB,[4] and provide information in proceedings relative to a determination of systemic risk or in connection with emergency proceedings.[5]

In a related proposal, the FRB has published proposed rules to establish the criteria for defining a "nonbank financial company" that could be subject to a determination of systemic significance by the FSOC, as well as definitions of other related terms. This rulemaking would thus establish the parameters for determining whether a firm is eligible for designation in the first place. The FDIC has proposed rules to define and clarify when a "financial company" may be subject to FDIC receivership and resolution under Title II of DFA. For these purposes, the FDIC is proposing to specify when a company is "predominantly engaged" in "financial activities."

For these proposals, the agencies have provided estimated total annual reporting burdens, as required by the Paperwork Reduction Act of 1980 ("PRA"), as follows:

- The FRB's NPR estimates that the reporting obligations under its Title I rules will be applicable to only three respondents, and only if those respondents affirmatively come forward with a request for a determination as to whether a particular activity is financial in nature. In such an event, the FRB estimates that the collection of information will take four hours per respondent, for an aggregate total paperwork obligation of 12 hours for the industry as a whole.
- The FDIC estimates that there will be no paperwork – zero – generated by its rulemakings.
- The FSOC estimates that the total reporting burden on the financial service industry under its proposed rules will be 500 hours. In other words, the FSOC estimates that one individual, working ten hour days, could complete all of the paperwork and reporting required for the entire industry, working from Monday through Friday, in ten weeks. The FSOC's announcement of its proposed new rules did not supply any estimate of the potential number of respondents.

None of these is a credible estimate of the reporting burden for one company, much less the entire universe of financial services companies in the aggregate. Indeed, if financial companies were to compile responses to requests for information within the time that the regulators seem to believe would be sufficient, it is likely that they would incur charges of

[3] Proposed 12 C.F.R. § 1310.20(b).

[4] Proposed 12 C.F.R. § 1310.10(e).

[5] Proposed 12 C.F.R. § 1310.21; .22.

neglect or sloppiness and potential litigation for failing to take due care in responding to such important matters. The FDIC's estimate is especially troublesome. Given the involvement of the FDIC in the process of approving "living wills" and exercising backup examination authority over companies designated under Title I in preparation for exercising Title II resolution power, its statements that its rules will involve no new collections of information are not credible.

By way of comparison, the Securities and Exchange Commission ("SEC") recently issued proposed rules under Section 956 of the DFA, which requires banks, broker-dealers and investment advisers to evaluate their compensation systems and eliminate features that cause those firms to engage in excessive risk-taking, and imposes related reporting and recordkeeping requirements. The SEC estimates that the combined initial recordkeeping and reporting burden of these proposed rules on broker-dealers and investment advisers with over $50 billion in assets will be approximately 8,500 hours for the first year (with an associated cost of $3,400,000), and 4,400 hours per year thereafter (with associated annual costs of $1,750,000). The estimate for broker-dealers and investment advisers with $1 billion to $50 billion in balance sheet assets adds another 66,400 hours of initial reporting and recordkeeping burden for the first year (and associated costs of $27.1 million) and 22,300 hours of annual recordkeeping and reporting (and associated costs of $8.9 million) for subsequent years. Titles I and II of DFA are far more complex and will require far more extensive recordkeeping, reporting and paperwork than Section 956. Surely the paperwork and reporting hourly burden and costs of Title I and II must be far higher than those under Section 956.

Unless one can infer from the FRB's proposal that the regulators are estimating that only three nonbank financial firms might potentially be designated, each of the FRB's paperwork estimate, the FSOC's paperwork estimate, and the FDIC's paperwork estimate, is off by orders of many magnitudes.[6] This error is central to the consideration of the proposed rules, and contrary to the President's recent Executive Order requiring agency consideration of the time and

[6] When Congress was considering the systemic risk designation provisions of the DFA, FRB Chairman Ben Bernanke testified that a total of roughly 25 firms, "virtually all of" which were bank holding companies already regulated by the Board, would meet the test of systemic significance for designation under the Act. *Regulatory Perspectives on the Obama Administration's Regulatory Reform Proposals, Part II,* Hearings before the Financial Services Committee, U.S. House of Representatives, 111th Cong., 1st Sess. July 24, 2009, H.R. 111-68 at 47-48 (testimony of Federal Reserve Board Chairman Ben Bernanke). Similar statements that only a very few firms were appropriate for designation under Title I were made on several occasions during consideration of the DFA. *See, e.g.* Written Statement of former Federal Reserve Board Chairman Paul A. Volcker to Senate Banking Committee (Feb. 2, 2010), Written Statement of former Federal Reserve Board Chairman Paul A Volcker to House Financial Services Committee (Sept. 24, 2009) (estimating number between 5 and 25 firms globally). However, now that Titles I and II are being implemented, "mission creep" has entered the process, at least at some of the regulators that are implementing Titles I and II. Recent testimony, while recognizing the need to consider the cost and economic burden associated with regulation, suggests that the Council plans to exercise its designation authority very broadly. Written Statement of FDIC Chairman Sheila C. Bair before Senate Banking Committee (Feb. 17, 2011) (*available at http://www.fdic.gov/news/news/speeches/chairman/spfeb1711.html).*

burden associated with new or amended regulations and their impact on efficiency and competitiveness.[7]

Under the PRA, federal agencies may not conduct or sponsor the collection of information unless the Director of the Office of Management and Budget ("Director") has approved of it (or such approval is inferred).[8] In this regard, the Director may file comments on the proposal, and in an appropriate case, even disapprove or instruct an agency to make substantive changes to a collection of information.[9] We submit that here, where the agencies have supplied such obviously deficient estimates, the Director should submit comments to the agencies and request their further consideration of the burdens that the proposed rules would impose.

We appreciate this opportunity to provide you with our comments. Should you have any questions regarding these matters, please do not hesitate to contact me at the above address.

Sincerely,

John D. Hawke, Jr.

John D. Hawke, Jr.

cc: Michael Tae
Department of the Treasury

Lance Auer
Department of the Treasury

Kieran Fallon
Federal Reserve Board

Marc Steckel
FDIC

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[7] *Improving Regulation and Regulatory Review*, Executive Order 13563 (Jan. 18, 2011).

[8] 44 U.S.C. 3507(a)(2).

[9] 44 USC 3507(d), (e).