April 30, 2012

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

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219

Re: Federal Reserve Notice of Proposed Rulemaking regarding Enhanced Prudential Standards for Covered Companies (Docket No. 1438, RIN 7100–AD–86); and Office of the Comptroller of the Currency Notice of Proposed Rulemaking regarding Annual Stress Tests (Docket No. OCC–2011–0029, RIN 1557–AD58)

Ladies and Gentlemen:

First Niagara Financial Group, Inc. ("*FNFG*") appreciates the opportunity to comment on the notices of proposed rulemaking (the "*NPRs*") by the Board of Governors of the Federal Reserve System (the "*Board*") and the Office of the Comptroller of the Currency (the "*OCC*" and, together with the Board, the "*Agencies*") implementing the requirements of Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "*Dodd Frank Act*").

FNFG is a $36 billion multi-faceted regional bank holding company, headquartered in Buffalo, New York, with a community banking model that provides customers with a full range of products and services. After giving effect to a planned acquisition of branches from HSBC Bank USA, National Association, expected to close in the second quarter of this year, our total consolidated assets will be $38 billion. As an institution that may at some point have $50 billion or more in total consolidated assets and be subject to the entire panoply of rules promulgated under Section 165, we are deeply interested in all aspects of the rules proposed in the NPRs.

We are a member of the American Bankers Association and The Financial Services Roundtable and support the comment letter being submitted jointly by those organizations, The Clearing House Association L.L.C., the Financial Services Forum and

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the Securities Industry and Financial Markets Association (the "*Associations*"). We also support the letter being submitted separately by the American Bankers Association.

We support the goals and objectives of the proposed rules and believe in spirit they are in alignment with good business and risk management procedures appropriate for institutions like First Niagara. In addition, there arc key differences in institutions like us and the nation's largest institutions that should be reflected in the proposed rules and certain timing aspects that need to reflect both these differences and the process that played out for the country's largest institutions. In this letter, we are commenting on (1) the specific aspects of those rules that are particularly important to us as a bank holding company with over $10 billion but less than $50 billion in total consolidated assets (an "*over $10 billion company*")—namely, implementation of the annual company-run stress tests required by Section 165(i)(2) of the Dodd-Frank Act and the portions of the NPRs' proposed rules implementing that section (the "*Proposed Stress Test Rules*") and (2) the "cliff effect" that bank holding companies face as their assets cross the $50 billion threshold.[1]

We strongly support stress testing as both a management and supervisory tool. As FNFG has grown from a $9 billion bank holding company at December 31, 2008 to our current size,[2] we have expended substantial resources and hired personnel to expand and improve our infrastructure and management capabilities as necessary to accommodate our increased size. We have made great strides in improving our risk management framework to reflect the size and complexity of the organization, and we are totally committed to further enhancing the framework to support improved measurement, management and monitoring of the institution's inherent risks. However, we (and others like us who were not part of the 2009 supervisory capital assessment program ("*SCAP*") or the 2011 or 2012 comprehensive capital adequacy reviews ("*CCARs*")) have a very

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1 Subpart G of the rules proposed in the Board's NPR implements these provisions for bank holding companies. The rules proposed in the OCC's NPR implement these provisions for national banks. Our bank subsidiary, First Niagara Bank, N.A. (First Niagara Bank, N.A. and FNFG together, "*First Niagara*"), is a national bank regulated by the OCC.

2 Our substantial growth during this relatively short period is partly due to three acquisitions (in 2009, branches of the former National City Bank; in 2010, a merger with Harleysville National Corporation; and in 2011, a merger with New Alliance Bancshares, Inc.) but also to organic growth.

large task ahead to comply with an annual stress testing process as contemplated in the Proposed Stress Test Rules. Accordingly, we believe the Agencies should give serious attention to the special circumstances of banking holding companies like ours and modify key aspects of the Proposed Stress Test Rules to appropriately recognize these differences.

1. We strongly urge the Agencies to move the effective date of the Proposed Stress Test Rules for over $10 billion companies to January 5, 2014.

The Proposed Stress Test Rules provide that the annual company-run stress test requirements would be immediately applicable to over $10 billion companies along with covered companies. If a final version of the Proposed Stress Test Rules is promulgated in the second quarter of 2012, we would have approximately four months to prepare for the arrival of the supervisory stress scenarios for the annual company-run stress tests for 2013 (which would be the first ones to which we would be subject).[3] It is inevitable that over $10 billion companies that were not involved in the SCAP or the CCARs (and are not subject to Basel II[4]) will need additional time to comply with these requirements, and we strongly urge the Agencies to accommodate that reality.[5] The work that needs to be

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[3] According to the NPRs, the Agencies propose to publish their stress test scenarios for annual stress tests (1) in the case of the Board for bank holding companies, by not later than mid-November and (2) in the case of the OCC for national banks, approximately two months before the January 5 submission date (*i.e.*, approximately November 5).

[4] Core banks subject to Basel II (*i.e.*, those with $250 billion or more of total assets or $10 billion or more of foreign exposures) by necessity have more developed modeling capacity than non-Basel II banks, including on a forward-looking basis. A number of other institutions not required to comply with Basel II nevertheless also began years ago to build the infrastructure required to opt in to Basel II.

[5] We note that the Board has previously recognized that companies that are new to the supervisory stress test process require more time to come into compliance with stress test requirements. It was because of this concern that the Board conducted the 2012 CCAR separately from its 2012 Capital Plan Review ("*CapPR*"), which applied to bank holding companies ("*BHCs*") with total assets of greater than $50 billion that were not included in the CCAR. As the Board stated, "[d]ata submissions requested from the CapPR [bank holding companies] were not as extensive compared with the CCAR submissions. This reflected a recognition that the firms had not been through such a coordinated exercise before and that time might be needed to build and implement the internal systems necessary to satisfy the rigorous data collection requirements needed for a separate

(footnote continued)

done with respect to internal systems and personnel for First Niagara and, we anticipate, other over $10 billion companies is substantial. Our objective ultimately is to implement a robust stress-testing process that satisfies both the spirit and requirements of the Proposed Stress Test Rules, but we need time to do that.

Systems, Data and Infrastructure

Most fundamentally, First Niagara and other over $10 billion companies will need to develop internally or acquire systems both to perform the required company-run stress tests and to control, oversee and document the stress testing process. The first decision point, reflected above, is internal development versus acquisition and a reasonable weighing of the pros and cons. Although First Niagara has not yet determined which of these options it will choose, we believe that companies should be given sufficient time to develop their own systems if they so choose. Developing their own systems may be more cost effective for some companies and, more important, may allow companies to tailor the systems to their own risk profiles, thus providing them with a more useful risk management tool. Moreover, even companies that decide to acquire systems will require time to provide the data discussed below, integrate these systems with their existing financial monitoring and reporting systems, and ensure that proper controls to validate the results are in place.

At the core of building a sound stress testing framework is the need to collect the data needed to support the stress testing framework. While it is recognized that institutions will not have perfect data, the building and scrubbing of data warehouses needed to support the framework will take substantial time if results are to be meaningful. If over $10 billion companies are required to comply with the new stress test requirements immediately, however, they will likely find it extremely difficult, if not impossible, to achieve the level of data competencies and quality necessary to deliver high-quality output. One of the key industry and regulatory lessons of the Basel II effort is that data quality is at the core of good output.

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supervisory stress test." Board of Governors of the Federal Reserve System, *Comprehensive Capital Analysis and Review 2012: Methodology and Results for Stress Scenario Projections* at 7 (March 13, 2012).

Personnel

We anticipate that performing the required stress tests once systems are in place, and creating reports to the Agencies necessary to comply with the Proposed Stress Test Rules, will require a substantial amount of time from many employees in various areas of First Niagara. We, and we anticipate other over $10 billion companies, will either need to hire additional personnel or reassign existing personnel, either of which takes considerable time and effort. Employees over-seeing our stress test processes and compliance with the Proposed Stress Test Rules, whether new or existing, must first be trained in the new systems developed or acquired for this purpose and will then need to devote a substantial amount of time to developing and refining these systems. Additional time will also be required to coordinate efforts across the various functions participating in the effort, which includes both line bankers and support staff. Substantial senior management time will also be required, particularly in the first year of implementation. Including necessary individuals from various functions of the company is important to having a robust and rigorous process capable of producing high-quality output.

Additionally, we and other over $10 billion companies will need to provide sufficient time to allow our boards of directors to provide meaningful oversight of the implementation proccss and stress test results. Management will need a significant amount of time to educate and communicate with the board of directors as to the data and infrastructure needed to conduct the stress tests and the assumptions, results and implications of stress testing. We expect to conduct multiple sessions to ensure that the Board is able to fulfill its responsibilities by being educated, informed and engaged.

In connection with the above, we note that industry-wide the number and availability of individuals with experience and expertise in this type of stressed modeling is limited, making hiring more difficult, particularly now that many institutions are currently in the process of hiring additional personnel for the purpose of preparing to comply with these and other new regulatory requirements.[6] Third-party consultants provide an alternative to hiring personnel; however, these consultants are, for the same reason, also in high demand, and their capacity is therefore limited. Moreover, the usefulness of such consultants is limited, given that they lack of intimate knowledge of

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[6] To give an idea of the number of companies preparing for the Proposed Stress Test Rules alone, we note that as of December 31, 2011, there were forty bank holding companies with over $10 billion but less than $50 billion in total consolidated assets.

their respective companies and that when replaced with permanent employees much of the knowledge gained during the implementation process would "walk out the door".

2. We urge the Agencies to consider providing formal guidance as to application of the Proposed Stress Test Rules to over $10 billion companies at the outset, anticipating to the extent possible the special circumstances of companies that have not previously gone through the SCAP or CCARs.

First Niagara is concerned that the Proposed Stress Test Rules do not reflect the need for guidance from the Agencies for compliance with the stress test requirements by over $10 billion companies. These smaller banks, not having participated in the SCAP and CCARs, will need additional guidance on the expectations of the Agencies before the initial implementation of the stress tests. In addition, First Niagara believes the Agencies should provide guidance on the procedures the Agencies will follow in evaluating the submissions of the stress test results, the standard of their review of such submissions and the supervisory implications of such review. This need for the Agencies to formulate and circulate additional guidance is a further reason that the initial implementation date for over $10 billion companies should be moved to 2014.

Additional guidance should also cover the expectations of the Agencies with respect to any differences in application of the Proposed Stress Test Rules' stress test requirements for over $10 billion companies as compared to companies with greater than $50 billion in consolidated assets (and yet further differences as compared to global systemically important financial institutions). First Niagara understands that the CCAR submissions to date have been very lengthy and exhaustively detailed. We acknowledge and welcome the recent statement by Governor Daniel K. Tarullo that for over $10 billion companies, "the nature of any stress testing requirements will be quite different from that used in the CCAR",[7] but more guidance is needed as to what specific differences the Agencies contemplate. Such additional guidance would be particularly helpful to companies that choose to develop their own internal systems rather than acquiring systems from vendors; as discussed above, companies may find that developing their own systems is more efficient and would produce a system more suitable to their own needs. Further, we think the more regional nature of the banks between $10-$50 billion raises numerous implementation questions not particularly relevant or obvious to

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7 *Remarks to the Federal Reserve Bank of Chicago Annual Risk Conference: Developing Tools for Dynamic Capital Supervision* (April 10, 2012).

the SCAP or CCAR institutions. A delay would allow the industry and regulators time to thoroughly define and address these differences.

We are encouraged by the additional information the Board provided in its April 20, 2012 release of frequently asked questions regarding CCAR 2012. In addition, the announcement of the symposium to be held at the Federal Reserve Bank of Boston on September 13 and 14 on the design and implementation of stress testing models is helpful. However, it will be difficult if not impossible for companies to incorporate or possibly change their approach and systems to incorporate this guidance given the current timing.

Regulatory Correspondence

Notwithstanding that we were not involved in the SCAP or CCARs, we hope that the learning developed through those exercises will provide substantial help to First Niagara and other over $10 billion companies in complying with Section 165(i)'s company-run stress test requirements. Nevertheless, we believe it is inevitable that there will be a need for substantial interface and discussion between the affected companies and their respective regulators. The questions we and others will have and their resolution will be addressed in a more orderly and efficient manner if the implementation date of the Proposed Stress Test Rules for the over $10 billion companies is moved to January 5, 2014, thus allowing for more thoughtful internal consideration of the requirements, interactive dialog with the Agencies and, as the Agencies may deem useful, published guidance.

3. It is exceedingly important that the Agencies coordinate their stress test requirements so that the compliance process for bank holding companies and their bank subsidiaries subject to the requirements is as efficient and streamlined as possible and the results of their stress tests are as uniform as possible.

It is particularly important that the Agencies make their respective stress test requirements the same and that they make the manner in which they evaluate the results of the stress test as uniform as possible. Even seemingly modest differences in, for example, the stress test scenarios or format of submissions required by the Agencies could greatly add to the compliance burden and affect the results. Section 165(i)(2)'s requirement that companies generate a summary of results makes it particularly important that the scenarios and appropriate approaches to a bank holding company and its bank subsidiary or subsidiaries be as uniform as possible.

4. We strongly urge the Agencies to provide their annual supervisory stress scenarios earlier than the November dates contemplated by the Proposed Stress Test Rules.

Apart from the special need of over $10 billion companies like ours to have additional time before becoming subject to the Proposed Stress Test Rules, we strongly endorse the recommendation of the Associations in their letters referred to above that the Agencies make the supervisory stress test scenarios available earlier than the November dates contemplated by the Proposed Stress Test Rules. Specifically, we propose that the stress test scenarios are made available by August 1 of each year. Most companies, including First Niagara, start their business planning process in early summer for the following year. If done near the same time, the inclusion of the stress scenarios would complement the overall business planning process and allow for a more informed planning process for both management and the board of directors. As noted in the Associations' letters, the SCAP and CCARs involved, we understand, substantial common endeavors by the Agencies and bank holding companies subject to the SCAP and CCARs to clarify ambiguities in supervisory scenarios, effectively decreasing the time given to banks to actually perform the required stress testing. The quality of the stress tests conducted by over $10 billion companies going through this process for the first time will, in our view, be meaningfully enhanced by a longer lead time.

5. We urge the Agencies to reduce the extent of the required stress test disclosure.

We are concerned that the extensive disclosure that would be required by the Proposed Stress Test Rules would potentially be confusing to the public. The aim of disclosure required by the Agencies is presumably to educate the public about potential risks the over $10 billion companies may pose to the financial system. We do not believe that the level of disclosure required by the Proposed Stress Test Rules is necessary to achieve that result. We note that the Dodd Frank Act itself only requires the Agencies to adopt regulations that would require companies to disclose a "summary of the results" of the stress tests, and we think that the requirements of the Proposed Stress Test Rules go well beyond that.

First Niagara is concerned that the level of disclosure required by the Proposed Stress Test Rules could be misunderstood by the public. Given the differences described above between institutions of different sizes and between national (or global) and regional institutions, extensive disclosure of stress test results is not likely to be particularly helpful to those trying to compare the risks different institutions may pose to

the financial system because the results will be based on different assumptions and methodologies.

Accordingly, we urge the Agencies to only require disclosure of: (1) a description of the types of risks being included in the stress test; (2) a general description of the methodologies employed; and (3) capital ratios at the end of the planning horizon. Such disclosure would reduce the compliance burden on companies while providing an appropriate level of disclosure to the public.

6. We strongly urge the Board to address the "cliff effect" that bank holding companies face when, as their assets cross the $50 billion threshold, they become subject to the full panoply of rules under Section 165 of the Dodd Frank Act by permitting additional time for full compliance.

Although, as discussed above, we have focused our comments on the annual company-run stress test requirements, we would like to note one additional point addressed in the letter being submitted by the American Bankers Association regarding the Board's proposed rules implementing Section 165 of the Dodd Frank Act and which we feel is particularly important. The scope of new regulations to which $50 billion plus bank holding companies become subject under Section 165 is extraordinary, including single counterparty credit limits and new liquidity, capital and governance provisions.

The efforts required to comply with these new requirements, including systems development, are substantial. For reasons similar to the ones discussed above with respect to the Proposed Stress Test Rules, bank holding companies crossing the $50 billion threshold will need additional time to apply their personnel and resources to achieving compliance with the new requirements. Accordingly, we strongly urge the Board to extend the transition period proposed by the Board such that companies have an additional year after becoming a "covered company" for such company to come into full compliance with the requirements applicable to $50 billion companies but not to over $10 billion companies.

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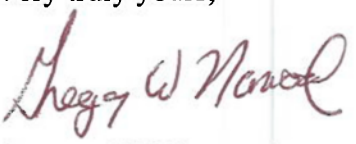
We appreciate your consideration of our comments on the Proposed Stress Test Rules. Please contact the undersigned at (716) 270-8611 (e-mail: gregory.norwood@fnfg.com) with any questions about our comments.

Very truly yours,



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