SVB›Financial Group

April 30, 2012

By Email: regs.comments@federalreserve.gov

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

Re: Regulation YY; Docket No. 1438 and RIN 7100-AD-86
Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies

Dear Ladies and Gentlemen:

SVB Financial Group ("SVB") is pleased to submit these comments in response on the Notice of Proposed Rulemaking[1] ("Proposal") published by the Board of Governors of the Federal Reserve System ("Board") to implement the enhanced prudential standards and early remediation requirements of Sections 165 and 166 of the Dodd-Frank Wall Street Reform and Consumer Protection Act[2] ("Dodd-Frank Act"). While we have a strong interest in all aspects of the Proposal, we focus our comments on three major areas: (1) Regulatory trickle-down requirements that are inconsistent with the statutory scheme; (2) Stress Testing; and (3) Risk Management issues. For issues that go beyond the specific points we raise here, we fully support and join in the comments submitted by the American Bankers Association, and by the Mid-size Bank Coalition of America in its letter of April 30, 2012.

SUMMARY OF MAIN POINTS

At SVB we believe very strongly in the importance of identifying and mitigating risk on an enterprise-wide basis. We also strongly support a role for government regulation in reaching that goal, particularly in reducing systemic risk. For those reasons, we support the goals of the Dodd-Frank Act in seeking to reduce systemic risks and to develop and implement adequate tools to identify and mitigate risk. Moreover, we recognize the enormous task that Congress assigned to the Board in passing Sections 165 and 166 of the Dodd-Frank Act. As a result, we

[1] 77 Fed. Reg. 594 (January 5, 2012) (to be codified at 12 C.F.R. Part 252).
[2] Pub. L. No. 111-203, 124 Stat. 1376 (2010).

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are supportive of most of the Proposal, which we think represents a strong effort to implement the statute. At the same time, we raise concerns here on certain provisions in the Proposal and offer alternatives where we can. An overarching concern we express relates to the ambiguity in treatment of mid-size institutions. The very purpose of the proposal is to establish enhanced prudential standards for "covered companies" (as defined in the Proposal, but generally those in excess of $50 billion in total consolidated assets. Hereafter, we refer to these as "Covered Companies").

One of the major thrusts of the Dodd-Frank Act, and particularly of its Section 165, is to identify and define the largest institutions that can pose a threat to financial stability and hold them to a different standard under the law. The Proposal defines and distinguishes those largest institutions as "covered companies" but then blurs the distinction between those Covered Companies and other financial institutions through both what it says and what it does not say.

We are very concerned that the regulatory requirements for Covered Companies will end up trickling down to smaller financial institutions, thus directly undercutting the intent of the Dodd-Frank Act of providing enhanced prudential standards for Covered Companies. Indeed, the Proposal encourages this system of trickle down regulation that will result in a one-size-fits-all program. The Proposal lays out prudential standards that examiners will be encouraged to think of as "best practices," and examiners may feel pressure to push those practices down on smaller institutions that will be forced to spread the cost over a smaller base. By definition, these smaller institutions will not present the same systemic risks, and they are not perceived to be "too big to fail." The net effect of such a practical program of uniform regulatory requirements will be to competitively disadvantage institutions of a smaller size than the Covered Companies, and it will also reduce competition in the banking sector and services for banking clients.

Consistent with the above overarching point, we provide specific responses to questions raised in the Proposal and address the following specific issues:

- The Board should limit this Proposal to Covered Companies only. In order to avoid regulatory trickle-down and the unintended consequence of encouraging examiners to apply a single standard to mid-size institutions and the largest Covered Companies, the Board should issue separate rules with separate requirements. This Proposal should strip out all references to other than Covered Companies so that it is clear that Covered Companies face the required enhanced prudential standards. The Board should address mid-size banks and others in a completely separate rule, and that rule should focus on the

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requirements that apply to those institutions. This would be more consistent with the statutory intent of the Dodd-Frank Act and will result in more vibrant competition to benefit individual consumers and the larger economy.

- The risk committee requirements should be clarified as to mid-size institutions to permit a broader definition of risk expertise and to assure that the directors' risk committee fulfills a role that is consistent with current rules of corporate governance, so that it is not performing day-to-day risk management operations.

- The Board should tailor stress testing requirements for mid-size institutions. Additionally, the Board should revise the annual stress testing cycle to provide more flexibility for smaller institutions so that the cycle does not create undue demands on resources by overlapping with other required federal regulatory filings. Simply shifting the schedule to permit mid-size institutions to file regulatory reports on a floating submission date within the reporting year would relieve unnecessary burdens on institutions like ours.

BACKGROUND ON SVB FINANCIAL GROUP

SVB is a publicly traded bank and financial holding company. Our principal subsidiary, Silicon Valley Bank, is a California-chartered bank and a member of the Federal Reserve System. As of December 31, 2011, SVB had total assets of $20 billion.

We are the premier provider of financial services for start-up and growing companies in the technology, life science, and clean technology sectors, as well as the venture capital funds that finance their growth. Over nearly thirty years, we have become the most respected bank serving the technology industry. We have developed a comprehensive array of banking products and services specifically tailored to meet our clients' needs at every stage of their growth. Today, we serve roughly half of the venture-backed high growth start-ups across the United States and well over half of the venture capital firms, working through 26 U.S. offices and international offices located in China, India, Israel and the United Kingdom.

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While we have grown significantly over the last few years[3], we maintain the highest standards for credit quality and capital and liquidity management. Our credit quality throughout the recent downturn was comparable to peer institutions at its worst and better than most peers through the recession's trough.[4] Our ability to lend actively to our clients while maintaining strong credit quality reflects our commitment to provide the credit our clients need to grow, our deep understanding of the markets we serve, and the fundamental strength of the technology sector. As one measure of our performance, Forbes Magazine recently listed SVB as one of the ten best performing banks in the United States, for the third year in a row.[5]

For purposes of this Proposal, SVB is generally treated as a publicly traded bank holding company with more than $10 billion in assets. We have less than $50 billion in total consolidated assets and therefore fall outside the definition of "covered company" as provided in most sections of the Proposal. Our comments on the Proposal reflect that perspective.

I. The Board Should Act to Assure that Regulatory Trickle-Down Does Not Undercut the Statute's Intended Focus on Covered Companies

The clear purpose of Sections 165 and 166 of the Dodd-Frank Act is to "establish enhanced prudential standards for covered companies." [6] The Proposal itself recognizes:

> The focus of this proposal is stronger regulation of major bank holding companies and nonbank financial companies designated by the Council for Board supervision. In particular, sections 165 and 166 of the Dodd-Frank Act require the Board to impose a package of enhanced prudential standards on bank holding companies with total consolidated assets of $50 billion or more and nonbank

[3] The Federal Financial Institutions Examination Council ("FFIEC") shows that between the third quarter of 2009 and the third quarter of 2011 SVB grew its loan portfolio by 36% while peer institutions, on average, grew their loan portfolios by 11%.
[4] SVB analysis based on FFIEC data.
[5] "America's Best and Worst Banks," Forbes Magazine. 2009, 2010, 2011. Forbes' rankings are based on institutions' financial performance (return on equity), credit quality (non-performing loans as a percent of total loans and loan loss reserves as a percent of non-performing loans), and capital/liquidity strength (tier 1 ratio and leverage ratio).
[6] § 252.1(b)

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> financial companies the Council has designated, . . . for supervision by the Board (together, covered companies and each a covered company).[7]

Thus, Covered Companies are generally defined as large bank holding companies that have $50 billion or more in consolidated assets, and the Proposal describes them as "companies that the Financial Stability Oversight Council has determined pose a grave threat to financial stability." [8] In Congress' discussions and in the popular press, the defined Covered Companies are often referred to as banks that are "too big to fail." Six of the eight operative subparts of the Proposal apply by their terms exclusively to Covered Companies. Unfortunately, the line between Covered Companies and others, particularly mid-size banks, becomes blurred in two primary ways.

First, the text of the Proposal expressly discusses requirements for non-Covered Companies. Two of the Proposal's subparts directly impose requirements on non-covered institutions. Subparts E (Risk Management and Risk Committee Requirements) and F (Stress Testing Requirements) both apply certain provisions to "publicly traded over $10 billion bank holding company[ies]" (hereafter referred to as "Mid-Size BHCs"). In addition to the application of specific provisions to Mid-Size BHCs, the Proposal also makes the blanket assertion that "the Board may determine that a bank holding company that is not a covered company shall be subject to one of more of the standards established" under the Proposal as the Board deems appropriate[9].

Second, we believe the Proposal will encourage a regulatory trickle-down effect where the practices that are required of Covered Companies will be seen as best practices that should be imposed on Mid-Sized BHCs and others. In the absence of strong language stating a contrary intent and the constant oversight by policy makers, we are very concerned that examiners will feel pressure to impose the Covered Companies' standards on all banks, particularly Mid-Size BHCs. This would be an understandable bureaucratic response, but it would run directly contrary to the intent of Congress and the plain meaning of the Dodd-Frank Act.

Such regulatory trickle-down would also have substantial practical implications on banks and their customers. For example, the Proposal addresses only Covered Companies in Subpart D

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[7] Proposal, at p. 595, footnotes omitted.
[8] Summary at p. 594.
[9] § 252.1(3).

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on Single-Counterparty Credit Limits. This focused application is consistent with the Dodd-Frank Act's purpose and seems clear. However, if examiners were to view this section as a best practice that should be followed by mid-size institutions like SVB, we would find it nearly overwhelming to comply with the terms of this Proposal. Investment limits, now often set by securities type and external risk rating would have to be recalculated to focus on a very expansive view of the definition of "single-counterparty." The monitoring requirements would be far out of proportion to any potential benefit from this change.

The application of one-size-fits-all prudential standards to a wide variety of financial institutions will create competitive barriers that will protect the too big to fail banks that are the subject of much of the Dodd-Frank Act, including Section 165. Substantially increased compliance costs will be spread out and borne most easily by the largest banks. The opportunity cost of paying for that increased regulatory burden will be paid by mid-sized and smaller banks and by all customers of all banks.

We make two suggestions to help avoid the problem of regulatory trickle-down. First, we recommend the Board separate this Proposal in two. One proposed rule should address exclusively Covered Companies, and it should make very clear that none of its provisions apply to other institutions, unless the Board designates any such institution as a Covered Company. In a completely separate rule, the Board should address the prudential standards expected of Mid-Size BHCs and other institutions. In that way, prudential standards would be very clearly articulated for each institution, and the statutory scheme would be respected. The over $50 billion banks would be regulated by one rule aimed at systemically important institutions. Smaller banks would not be pushed to meet regulatory burdens that would unduly harm their ability to compete, grow and serve their customers.

Second, we recommend that the Board state explicitly that the standards designed in the Proposal for Covered Companies are not intended to be considered best practices for other institutions. The Proposal should be amended to state that mid-size and smaller institutions should face tailored prudential standards and a different regulatory burden. The Board should make clear that it does not intend to apply one set of standard to all and that it recognizes that an appropriately sized regulatory expectation helps promote and protect the safety and soundness of financial institutions.

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II. The Risk Management Provisions Should be Clarified for Mid-Size BHCs

A. The provisions on Risk Committees should be clarified.

We generally support the Proposal's enhanced risk management provisions, and we already practice many of the Proposal's risk management requirements at SVB. Our comments to this portion of the Proposal are mostly in the nature of requests for clarifications. It is important to note, however, that most provisions of the risk management section (Subpart E) apply to both the very large banks (over $50 billion) and to Mid-sized BHCs. As discussed throughout this letter, treating smaller institutions in the rule that is explicitly aimed at the too-big-to-fail Covered Companies is likely to lead to confusion and regulatory trickle-down in practice.

We believe the Proposal acts appropriately in requiring one member (the Chair) of the directors' risk committee to be independent, certainly as the requirement applies to Mid-size BHCs. [10] We also believe there should be no additional qualifications for director independence, since the existing standards are well known and changes may complicate the ability of Mid-Size BHCs to maintain an appropriate mix of the highest caliber directors for all the purposes an institution seeks.[11]

We think the Proposal lands at the right balance by requiring one member of the directors' risk committee to have risk management experience. Requiring more than one such director is certainly not appropriate for the smaller institutions swept into this Proposal. We also generally support the definition of risk management expertise required for a qualified director. We support strongly the linkage of the required expertise to the individual company's risk profile. We do not believe it is appropriate, however, to require the risk management expertise be limited to banking organizations. Particularly for smaller institutions, shareholders and boards should be able to consider individuals with broader risk management skills. This requirement would be similar to the SEC's requirement for financial expertise on audit committees.

[10] Proposal, Question 62.
[11] Proposal, Question 61.

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Finally, we do express a concern that the Proposal may create the risk of conflating or confusing the roles of management and the board of directors on risk management matters. The directors' risk committee is responsible under the Proposal to "oversee the operation of . . . an appropriate risk management framework."[12] The Proposal should be revised to make clear that this requirement is meant to be undertaken consistent with the general rules of corporate governance applicable to institutions and that management, not the directors' risk committee, is responsible for performing day-to-day risk management operations.

B. The Chief Risk Officer role should be clarified for other than Covered Companies.

The proposal discusses the qualifications, responsibilities and role of Chief Risk Officers for Covered Companies, but it does not address the same for Chief Risk Officers of other companies, including Mid-Size BHCs. The Board should amend the Proposal to expressly state that the provisions of this subpart should not be applied to Mid-Size BHCs indirectly through examinations or otherwise. Otherwise, there is a strong concern that the provisions here will be considered a "best practice" that will be pushed down to smaller institutions.

III. Stress Testing Requirements Should be Revised to Fit Smaller Banks

At SVB, we strongly support stress testing as a tool for management, board of directors and regulators. We do have some concerns about the Proposal's stress testing requirements. First, we note that the stress testing requirements again blur the line between Covered Companies and mid-size institutions. Subpart F ("Supervisory Stress Test Requirements") applies by its terms only to Covered Companies. Subpart G ("Company-Run Stress Test Requirements") applies to both Covered Companies and mid-size companies. Within Subpart G, most provisions apply to both Covered Companies and mid-size institutions, but some requirements apply only to Covered Companies. As discussed throughout this letter, we believe the Dodd-Frank Act addressed most directly the Covered Companies of over $50 billion in size. There is substantial risk of trickle-down regulation where regulations that may be appropriate for Covered Companies will be imposed down upon mid-size institutions.

[12] § 252.126(c).

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A. The Stress Test Requirements should be tailored to avoid creating competitive disadvantages for mid-size banks.

The enhanced company-run stress tests will require much more analysis and work from institutions, including the requirement of interpreting the Board's economic scenarios, translating those broad assumptions into entity-specific scenarios and then conducting enterprise-wide stress tests at the level of detail required by the Board. The increased regulatory demands will require not simply more resources; the demand will require more expertise and more specialized resources, such as sophisticated analytics professionals. Since both big banks and mid-size banks will largely face the same burdens, the burden of meeting similar demands will fall much more intensely on mid-size banks. Larger institutions are able to spread that burden over a much larger resource base. The end result is that mid-size institutions will face a competitive disadvantage resulting from the disproportionate compliance burden.

In addition, it will be important to recognize that not all mid-size banks are the same, and that requirements that may be appropriate for all big banks and many mid-size banks may not be appropriate to other mid-size institutions. The stress tests should be tailored so that they make sense for individual mid-size banks. For example, Silicon Valley Bank maintains a mortgage portfolio that represents less than 5% of our total loans outstanding.[13] In this way, our institution presents a risk profile that is fundamentally different from most institutions of our size or larger. The stress test requirement should recognize those differences.

The Proposal would require publication of substantial amounts of assumptive and hypothetical detail from a mid-size bank's required stress testing. We are concerned that publication of this level of detail on hypothetical situations may be misunderstood as projections or otherwise provide a potentially misleading snapshot of information. A broader summary of the results would provide a more contextualized and accurate view of the prudential capitalization of institutions. Moreover, the Proposal goes beyond the language of the Dodd-Frank Act, which requires only that mid-sized institutions provide a public summary of the required stress results.[14] The increased level of detail carries substantial cost, little benefit and is outside of the statutory regulatory balance. The Proposal should be amended to require only a summary of the stress test results for mid-sized institutions.

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[13] Information as of December 31, 2011.
[14] See Dodd-Frank Act, § 165(i)(2)(C)(iv).

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B. The Board should revise the stress testing calendar to provide flexibility and avoid overlapping peak reporting demand periods.

Affected Mid-size BHCs are all publicly traded companies who face regular SEC and other filing deadlines. Those filings follow a calendar cycle with the greatest demand from year end through the first quarter. The Proposal's calendar cycle would exacerbate that peak period of demand. At SVB, there is substantial overlap between the employees who would work on both sets of regulatory filings. The Board should revise the annual stress testing cycle to provide more flexibility for smaller institutions so that it does not create undue demands on resources by overlapping with other required SEC filings. Simply shifting the schedule to permit mid-size institutions to file regulatory reports at their discretion within the year or even at the end of the first or second quarter and to make required public disclosures one quarter later would relieve unnecessary burdens on institutions like ours.

Accordingly, we urge the Board to provide for a floating submission date where a bank must submit its results, using the previous year's stress scenarios, by December 31. Such regulatory flexibility would permit SVB and similar institutions to conduct the stress tests when we have the resources available and would still provide the same information to the public.

IV. Conclusion

On behalf of SVB, I thank you for your willingness to consider our concerns and suggestions for improvements to the Proposal on Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies. Please contact me if we may provide any more information or be of help in your consideration of this matter.

Sincerely,

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