

June 14, 2013

VIA ELECTRONIC MAIL

Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Re: Docket No. R-1457 and RIN 7100-AD-95

Supervision and Regulation Assessments for Bank Holding Companies and Savings and Loan Holding Companies with Total Consolidated Assets of \$50 billion or More and Nonbank Financial Companies Supervised by the Federal Reserve

Dear Ladies and Gentlemen:

The American Bankers Association (ABA)¹ is pleased to submit comments on the Notice of Proposed Rulemaking (Proposal)² published by the Board of Governors of the Federal Reserve System (Board) to implement Section 318 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank).³ Section 318 directs the Board to collect an assessment from bank holding companies (BHCs) and saving and loan holding companies (SLHCs) with total consolidated assets of \$50 billion or more and nonbank financial holding companies designated

¹ The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$14 trillion banking industry and its 2 million employees. Learn more at www.aba.com.

²78 Fed. Reg. 23162 (April 18, 2013).

³ We also draw to your attention the positions taken in comment letters to be submitted to the Board by The Clearing House Association LLC, The Financial Services Roundtable, the Institute of International Bankers and the Securities Industry and Financial Markets Association, that (i) the Board should provide more transparent and detailed disclosure of the Board's expenses included in the assessment basis and (ii) the Board should consider postponing the commencement of its assessment program until 2014 for expenses incurred by the Board during 2013.

for Board supervision (NFCs, and together Covered Companies)⁴ equal to the Board's estimated expenses that are necessary and appropriate to carry out its supervisory and regulatory responsibilities with respect to these companies.⁵

ABA has several concerns with the Proposal. As a general matter, ABA is of the view that supervision and regulation should, when appropriate, be tailored and reflect the different risk profiles of financial institutions, taking into account, among other things, business models, product offerings, complexity and where relevant, size.⁶ Notwithstanding its relative simplicity and transparency, size alone may therefore not be the most effective way to allocate the cost associated with the supervision and regulation of Covered Companies. Moreover, size-based formulas also result in significant cliff effects. For example, a BHC or SLHC just over the \$50 billion threshold is charged for all of the Board's regulation and supervision activities with respect to it, whereas an institution just below the threshold is not charged at all.

We are especially concerned about the lack of transparency of the Assessment Basis. The Proposal contains little to no information regarding the specific activities and costs incurred by the Board in the supervision and regulation of Covered Companies or the Board's methodology and processes for allocating such costs. Therefore, we are unable to evaluate fully and provide comment on the reasonableness of the Board's methodology or the Assessment Basis.

Regarding timing and the determination of assessable assets, as discussed below, we believe that the Board should not retroactively assess Covered Companies. Rules to implement the statutory provision should begin with nothing earlier than the 2013 assessment period. Moreover, the

⁴ Although certain NFCs have received notice from the Financial Stability Oversight Council of a preliminary determination that the NFCs should be supervised by the Board, to date no NFC has received a final designation notice.

⁵ The Proposal states that the Board will transfer the assessments it receives from Covered Companies to the U.S. Treasury's General Account. Without further information regarding the transfer, we are unable to determine whether the assessment is a user fee or otherwise defrays the cost incurred by the Board related to Covered Companies.

⁶ The Board notes in its recent Supervision and Regulation Letter on its "Consolidated Supervision Framework for Large Financial Institutions," that its large financial institution supervision framework is "designed to support a tailored supervisory approach that accounts for the unique risk characteristics of each firm...." The SR Letter may be found at <http://www.federalreserve.gov/bankinforeg/srletters/sr1217.pdf>.

Board should provide assessment notices to Covered Companies no later than June 30 of the calendar year following the assessment period, and the Board should use HC-K – Quarterly Averages of the FR Y-9C rather than quarter-end asset numbers in determining Total Assessable Assets.

I. The Board’s expenses, budgeting and accounting processes, and allocation methodology should be transparent and open to public comment.

Under the Proposal, the Assessment Basis equals the estimated expenses of the Board and the Reserve Banks associated with the consolidated regulation and supervision of Covered Companies. In the Proposal, the Board provides a high level list of the types of expense categories that it intends to include in the Assessment Basis. However, the categories provided are extremely broad, ranging from “providing ongoing supervision” to “implementing an ongoing macro-prudential approach,” with no visibility into the specific activities included within those categories or associated costs. Moreover, the Board has not provided sufficient insight into the process or methodology used in determining the Assessment Basis, making it difficult to comment on the Board’s methodology and on whether the expense categories or allocations are appropriate or necessary as Section 318 requires.

The Board’s supervisory and regulatory responsibilities cover a significant number of institutions and activities, including state member banks, U.S. branches, agencies and representative offices of foreign banks, and BHCs and SLHCs with less than \$50 billion in assets. Although a difficult task, an accurate estimation and allocation of expenses related to the supervision and regulation of Covered Companies is imperative to proper execution of Section 318. As written, the Proposal provides insufficient information as to whether Covered Companies may be bearing all or more than a fair proportionate share of the costs for certain categories enumerated in the Proposal.

For example, the Assessment Basis under the Proposal includes “developing, administering, interpreting and explaining regulations, laws and supervisory guidance adopted by the Board.” This broad category of activities appears on its face to be associated with the Board’s general

supervisory and regulatory responsibilities for all BHCs, SLHCs and state member banks, rather than specifically tailored to the supervision and regulation of Covered Companies.⁷ In addition, the Proposal also includes a category of expenses related to “implementing a macro-prudential approach.” Generally, a “macro-prudential” approach to supervision fills the gaps of traditional safety and soundness regulation of individual financial institutions and is focused on activities that impact the financial system as a whole rather than on an individual institution basis.⁸ Further, with little to no insight provided into the process by which the expenses were determined, we are concerned that there is risk of double counting for activities for which Covered Companies are already assessed by other regulators, including for bank examinations. At a minimum, the Board should provide sufficient information to the public to determine what portion of these costs should be appropriately borne by Covered Companies under the requirements of Section 318.

More information and transparency around the Board’s expenses will allow Covered Companies to plan and anticipate better the amount of the assessment from year to year. Although the Assessment Basis under the Proposal is fixed at \$440 million for the first three assessment periods, beginning in 2015, the assessment will be based on the three year average of the Board’s estimated expenses associated with Covered Companies. Without additional insight into applicable expenses for the 2013 and 2014 assessment periods, institutions will have little ability to anticipate, predict and so budget for the assessment amount for year 2015 and beyond.

To address transparency concerns, we suggest that the Board’s expenses for each assessment period be published for a 30 day public comment period and include an explanation of the Board’s expense allocation methodology and budgeting and accounting processes. The disclosure should also include a detailed breakout of the types and dollar amount of each expense covered by the assessment. The Board should publish for comment the list of expenses and

⁷ However, to the extent a particular rule or guidance is strictly related to supervision and regulation of Covered Companies (e.g., the rules to implement the enhanced prudential standards established under DFA Section 165), those expenses could be included in the expense base.

⁸ Ben S. Bernanke, *Implementing a Macroprudential Approach to Supervision and Regulation* (May 5, 2011) available at <http://www.federalreserve.gov/newsevents/speech/bernanke20110505a.pdf>.

related disclosures early enough in the year prior to sending assessment notices to Covered Companies so that the companies have sufficient time to comment on the expenses and methodology, and budget for the assessment. Visibility into the Board's expenses and its budgeting and accounting processes, and allocation methodology will assist in addressing concerns regarding fluctuations in assessments from one period to the next. Further, creating a process that promotes greater transparency will help ensure ongoing fairness and equity as the Board's assessment processes and methodology evolve and additional companies become subject to assessments over time. Section 318 is clearly based upon a direct relationship between the assessment and related supervision costs. Those costs must be publicly known and subject to evaluation for the assessments to be valid under the provision.

II. Certain expenses should be excluded from the Assessment Basis.

Under Section 318, the Board may only include in the Assessment Basis those expenses that are "necessary or appropriate to carry out the supervisory and regulatory responsibilities of the Board with respect to" Covered Companies. ABA has concerns about whether several expenses that may be included in the Assessment Basis meet the statutory definition. First, the Board includes a share of the Shared National Credit (SNC) examination program in the Assessment Basis. It is our understanding that the SNC program is primarily performed at the insured depository level and therefore is likely not an expense of the Board as the consolidated supervisor of Covered Companies.

Second, the Board excludes the costs associated with its supervision and regulation of state member banks and branches and agencies of foreign banks under the Proposal, correctly stating that those costs are not associated with its role as consolidated supervisor of Covered Companies. Likewise, the Board also should ensure that it is managing any cost it incurs regarding subsidiaries of Covered Companies regulated by other supervisors, such as national banks, state non-member banks, broker dealers, futures commission merchants, and investment advisors in the most efficient manner possible. Under Section 604 of the DFA, the Board is required to rely, to the fullest extent possible, on the examination and supervisory activities of the primary federal banking or other functional regulator of the insured depository institution or

other functionally regulated subsidiaries of a BHC or SLHC, including Covered Companies. We recommend that the Board develop processes to reflect in the assessment framework that it is relying on other banking and functional regulators as much as possible, particularly where institutions are already assessed for such examination and supervision. Further, considering the transfer to the Bureau of Consumer Financial Protection of the Board's responsibility for examining and enforcing consumer compliance for Covered Companies, we believe that the Board should confirm that consumer compliance expenses have not been included in the Assessment Basis.

Finally, we question whether Board expenses related to the processing of applications and conducting competitive and financial stability analysis are also related to the Board's role as consolidated supervisor. This is particularly true of expenses incurred in the conducting of competitive analysis which is related to the Board's role in reviewing compliance with anti-trust laws.

III. Costs related to the designation, supervision and regulation of designated NFCs should not be borne by BHCs and SLHCs.

Unlike the supervisory and regulatory regime for BHCs and SLHCs, which has been in place for decades, the Board's processes and systems for supervising and regulating NFCs is in its infancy and will no doubt require significant Board resources for quite some time. New regulations, examination and reporting processes and the hiring of personnel with expertise in the supervision of NFCs will be necessary in order for the Board to properly execute on this new supervisory role.

As the initial designation process nears an end with the formal designation of some NFCs likely to occur shortly, we are concerned that BHCs and SLHCs may be bearing a disproportionate share of the costs associated with the initial start-up of the Board's NFC supervisory program and its participation in the NFC designation process as a part of the \$440 million assessment charged to Covered BHCs and SLHCs particularly for the 2012 and 2013 assessment periods. If NFC supervisory and regulatory costs are contained in the initial Assessment Basis, then BHCs

and SLHCs would be forced to bear the start-up costs of NFC supervision. Not only would that be inappropriate, but it is also an easily avoidable inequity.

We suggest that the Board establish a separate transparent and prospective assessment process for NFCs once designated to cover the costs associated with the Board's consolidated supervision of such entities. Such a process however, should take into consideration any designated NFC that is also a SLHC to ensure that any assessment charged to the SLHC is fair and equitable and avoids the potential for duplicative charges. If, going forward, the Board chooses to have only one assessment process for all Covered Companies, it should publish again for notice and comment how the Assessment Basis will be impacted and when and how NFCs will begin paying a portion of the assessment. Doing so will ensure that the process is fair and equitable to all Covered Companies.

IV. The Board's assessment of Covered Companies should apply to a period beginning no earlier than the 2013 assessment period.

Under the Proposal, the initial assessment period is calendar year 2012. The first time Covered Companies were provided any notice of the Board's intention to impose a retroactive 2012 assessment was on April 15, 2013, the date the Board issued a public release on its Proposal. Further, although the Board states that it has completed the development of its assessment framework as a justification for assessing companies for 2012, the public comment process, including information provided in response to specific questions the Board posed in the Proposal, could potentially result in substantive changes to the final rule. Therefore, it is unlikely that the Proposal will be finalized until the second half of 2013. Until the final rule is issued, Covered Companies cannot even begin to accrue for the assessment.

ABA is concerned about the retroactive nature of the initial assessment period and believes that it is unreasonable to impose such assessments on companies without advance notice. Covered Companies have not had sufficient notice or opportunity to budget for the 2012 assessment, which would impose potentially significant unplanned costs— in some cases in the tens of millions. To address these concerns, ABA recommends that the Board assess Covered

Companies only on a forward-looking basis beginning with the 2013 assessment period, which will allow Covered Companies sufficient time to plan and properly accrue for the assessments in their budgets.

V. The Board should provide assessment notices to Covered Companies as early as possible, but no later than June 30 following the assessment period.

The Board proposes to provide assessment notices to Covered Companies by July 15 following each assessment period. Most Covered Companies are publicly-traded and release second quarter earnings information on or around July 15 of each year. Receiving assessment notices during earnings season will not give Covered Companies sufficient time to review and potentially appeal the assessment before the companies may be required to disclose the assessment publicly under securities laws or to respond to an investor question during an earnings call. As a result, ABA requests that the Board provide assessment notices as early as possible, but no later than June 30 of the year following each assessment period to allow Covered Companies sufficient time to review the notice to ensure the assessments are adequately addressed in publicly released earnings information.

VI. In determining Total Assessable Assets, the Board should use Schedule HC-K – Quarterly Averages of the FR Y-9C rather than quarter-end asset numbers.

The Board proposes to determine Total Assessable Assets for purposes of the assessment on the basis of FR Y-9C Schedule HC – Consolidated Balance Sheet. As a result, a Covered Company’s supervisory assessment would be calculated on a quarter-end snap shot basis, by averaging total consolidated assets for each of the four reporting periods.

We recommend that the Board use FR Y-9C Schedule HC-K – Quarterly Averages for determining Total Assessable Assets. Under this alternative, the assessment would reflect the average of a Covered Company’s daily balance sheet assets over the course of the full calendar year, thereby ensuring greater accuracy in the measurement of total consolidated assets and reducing the possibility of market or other temporary anomalies skewing the Assessment Basis.

This alternative would also help reduce the impact of balance sheet volatility that may occur at quarter-end and avoid an overreliance on any particular day during a quarter.

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In conclusion, ABA thanks the Board for the opportunity to comment on the Proposal and respectfully asks for consideration of the recommendations and suggestions in this letter. We urge the Board to provide greater transparency into both the specific costs incurred by the Board in supervising and regulating Covered Companies and the Board's budgeting and accounting processes and allocation methodologies. We also ask that the Board assess Covered Companies only prospectively beginning no earlier than the 2013 assessment period, provide notice of the assessment annually as early as possible, but no later than June 30 following the assessment period, and use Schedule HC-K of the FR Y-9C in determining total assessable assets. Finally, we ask that the Board continue to evolve its assessment process to ensure that it is transparent and fair both in the short and long term. ABA looks forward to an ongoing dialogue with the Board as the assessment process evolves over time.

If you have any questions or need further information, please contact Beth Knickerbocker, Vice President and Senior Counsel, at bknicke@aba.com or (202) 663-5042.

Sincerely,

A handwritten signature in cursive script that reads "Beth Knickerbocker". The signature is written in black ink and is positioned to the left of a vertical line.

Beth Knickerbocker
Vice President and Senior Counsel