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

Re: Complementary Activities, Merchant Banking Activities of Financial Holding Companies Related to Physical Commodities (Doc. No. 1479; RIN 7100-AE-10)

Dear Mr. deV.Frierson:

Teachers Insurance and Annuity Association of America ("TIAA") welcomes the opportunity to comment on the above-cited advanced notice of proposed rulemaking ("ANPR") issued by the Board of Governors of the Federal Reserve System ("Board") on January 21, 2014. The ANPR requests public comment on various issues related to physical commodity activities conducted by financial holding companies, including the restrictions imposed on these activities to ensure they are conducted in a safe and sound manner and consistent with applicable law.

As described below, TIAA is a grandfathered unitary savings and loan holding company. As such, any additional requirements, restrictions or qualifications the Board may ultimately issue with respect to the physical commodity activities of financial holding companies would not be directly applicable to TIAA. However, the ANPR does request comment on a specific question relating to physical commodity activities conducted by insurance companies that are affiliated with savings and loan holding companies. In this letter we address that question, and provide further background on activities described in the ANPR as conducted by insurance companies. We submit that the unique business and regulatory model of insurance companies distinguishes them from other financial companies in their conduct of investment activity in the physical commodities markets, and makes the application to insurance companies of any proposals that the Board may ultimately seek to apply to financial holding companies both unnecessary and inappropriate. We also submit that the imposition by the Board of any limitations or restrictions on the investment authority available to insurance companies under state insurance law could raise serious questions under the McCarran-Ferguson Act.

I. TIAA Background

TIAA is a life insurance company domiciled in the State of New York which operates on a not-for-profit basis with net admitted general account assets of $250 billion[1]. TIAA is a wholly-owned subsidiary of the TIAA Board of Overseers, a special purpose New York not-for-profit corporation. Based on their indirect ownership of TIAA-CREF Trust Company, FSB, each of TIAA and the TIAA Board of Overseers is registered as a savings and loan holding company ("SLHC") under the Home Owners' Loan Act ("HOLA"). TIAA and the TIAA Board of Overseers is each a grandfathered unitary SLHC within the meaning of that term for purposes of HOLA.

TIAA is the principal operating component of TIAA-CREF, a leading provider of retirement services in the academic, research, medical and cultural fields, managing retirement assets on behalf of 4.0 million participants at more than 15,000 institutions nationwide. TIAA-CREF is an organization comprised of several distinct corporate entities whose overall assets under management or administration total $564 billion.

The College Retirement Equities Fund ("CREF") issues variable annuities and is an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940. TIAA-CREF also sponsors a family of equity and fixed-income mutual funds. TIAA-CREF's mission is "to aid and strengthen" the institutions we serve and provide financial products that best meet their specific needs. Our retirement plans and other products offer a range of options to help meet the retirement plan administration obligations of institutions and the savings goals and income and wealth protection needs of individuals.

TIAA engages in a variety of investment activities, all of which are subject to extensive regulation under applicable insurance law. As explained below, this extensive regulation of insurance company investment activity both reflects and reinforces the long-term nature of the insurance asset/liability financial model and is designed to ensure the financial strength and solvency of insurance companies.

II. General Comments

The ANPR requests comment on the risks that physical commodity activities may pose to financial holding companies, their insured depository institution affiliates, and U.S. financial stability. The ANPR focuses on three sources of authority for financial holding companies to engage in physical commodity activities:

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[1] All financial information as of December 31, 2013.

(i) the "complementary" activity authority under Section 4(k)(1)(B) of the Bank Holding Company Act (the "BHC Act");

(ii) the merchant banking investment authority under Section 4(k)(4)(H) of the BHC Act; and

(iii) the specific grandfathering authority for certain financial holding companies under Section 4(o) of the BHC Act.

The most extensive discussion in the ANPR relates to the complementary activity authority as the basis for physical commodity trading activities by financial holding companies that have specifically applied for and received that authority. In that context, the ANPR discusses a range of possible risks that may be associated with physical commodity activities, including environmental and other risks that can arise from oil spills, pipeline transmission, and earthquake damage to a nuclear facility, and other tail-risk events that could be associated with commodities activities. The Board has in its individual orders already imposed extensive restrictions on the complementary activity authority granted to specific financial holding companies.

Financial holding companies and insurance companies diverge significantly in the manner in which they engage in physical commodity activities. Financial holding companies are generally understood to engage in physical commodity activities as an extension of their market-making, lending and derivatives businesses, while insurance companies have engaged in these markets as investors. Financial holding companies, as lenders and counterparties to producers, processors and consumers in the commodity markets, have in the past sought flexibility to operate in the physical market to better hedge these banking-related activities and ensure smooth performance and liquidity in related derivatives markets. These activities have led in turn to physical trading and other businesses that mirror corresponding activity in these companies' finance and securities businesses. The physical commodity activities of insurance companies, on the other hand, have typically been limited to passive investment. For instance, insurers may diversify their portfolio holdings by investing in alternative asset classes such as real estate and natural resources, which may include or give rise to interests in commodity, energy and agricultural assets. In order to enhance the value of these investments, insurers may contract with third parties such as producers and processors of commodities, in order to develop the related assets arising out of these long-term holdings. In addition, insurers may make indirect investments in these markets through joint ventures, private funds and other vehicles, often managed by producers and similar entities involved in the physical markets. This investment activity is primarily passive, stable and long-term in nature, and does not result in active trading or market-making.

We note that there is a wide variation in even the hypothetical risks potentially associated with physical commodity activities. Accordingly, the Board should seek to understand the wide range of risk management and risk mitigation steps that financial institutions already take to address the potential risks identified with physical commodity activities. The ownership of agricultural and timber-producing land, for example, presents an entirely different risk profile than the operation of deep-water oil wells or a nuclear power facility. We believe that the existing risk management policies and procedures developed by financial institutions with experience in these markets, which have been tailored to their own investment, regulatory and business models, provide substantial protection.

Further, we respectfully submit that the Board would need to thoroughly familiarize itself with the business and regulatory model of insurance companies, which differs significantly from that of banks and financial holding companies, before considering the possibility of extending to insurance companies any restrictions on investment activities that the Board might impose on banks or financial holding companies. As we indicate in the next section of this letter, we believe that after such study the Board would conclude that any such extension would be inappropriate and in conflict with the extensive regulatory system to which insurance companies are already subject.

III. Specific Comments Relating to Insurance Companies

In addition to the general comments above, we wish to offer specific comments in response to Question 12 in the ANPR, relating to investments made by insurance companies that are affiliated with SLHCs. Question 12 appears to suggest that the Board might extend to such insurance companies any limitations, restrictions or qualifications that the Board might ultimately decide to impose on physical commodity activities or investments of financial holding companies. Even if the Board were to propose any such limitations, restrictions or qualifications for certain financial holding companies, we believe there is no compelling legal or policy basis for extending them to insurance companies that are affiliated with SLHCs, and that any such proposed extension would be inappropriate and in conflict with the extensive regulatory system to which insurance companies are subject under state law.

The extensive state insurance regulatory system reflects an understanding of the differences between the insurance company business model and the business model of other financial institutions. The longer-term liability structure of life insurance companies means that they require (both as a commercial and regulatory matter) longer-term assets to support their liabilities, necessitating investment in a wide range of sectors that may include real estate, physical commodities and associated activities. The life insurance business model (*e.g.*, the issuance of long-term annuities with often little or no

current cash surrender value) means that this liability profile is generally long-term. This long-term liability profile both supports and requires a long-term, diversified investment approach.

To this end, state insurance regulatory systems generally include among their provisions investment laws that are specifically designed to cause insurance companies to support their long-term liabilities with an appropriately diversified asset mix, by means of limiting exposure to particular asset classes. State investment laws have been designed by state authorities with long-standing and in-depth insurance expertise to ensure the sound operation of insurance companies. For example, state insurance company investment laws generally include (but are not limited to) specific limits on investments in equities, low-grade debt securities, or the securities of any one issuer. State investment laws also limit the type and extent of investments that an insurance company may include as "admitted" assets on its statutory balance sheet filed with state insurance regulators for purposes of determining whether it has sufficient assets to discharge its obligations and meet capital and surplus requirements.

State investment laws encourage diversification of investments across a wide range of asset classes, including government debt, corporate debt, preferred stock, mortgages, real estate, equity investments and foreign investments. Investments relating to physical commodities and commodity-related businesses are part of an important asset class that historically has had a low correlation with other common investment types. These investments, though relatively small in proportion to the aggregate investment portfolio of an insurance company as a result of the aforementioned investment restrictions, represent an important diversification tool in the equity and real estate portfolios of insurance companies, and can help to reduce overall volatility therein. They also provide a very important hedge against inflation, which is particularly important to protecting the long-term liability paying capacity of an insurance company.

In addition, insurance company investment activities are already subject to comprehensive regulation and oversight. For example, state insurance regulators have broad oversight and examination power over all insurance company investments to ensure the investments are in compliance with state investment laws and that they do not threaten the solvency of the insurance company. As part of this regulatory and oversight regime, insurance companies are required to file annual financial reports that disclose each distinct investment made by the insurance company. They are also subject to risk-based capital requirements that take into account the varying risk characteristics of permitted investments under insurance law. By impacting various parts of the insurance company's risk profile, including its statutory reserves, capital calculations, and overall solvency, existing state insurance law regimes serve as an effective mechanism for regulating insurance company investment activities.

Finally, we submit that the imposition by the Board of any regulatory limitations, restrictions or qualifications on the investment authority provided to an insurance company by state insurance law would raise serious questions under the McCarran-Ferguson Act. That Act provides in relevant part that "[n]o [a]ct of Congress shall be construed to . . . impair . . . any law enacted by any State for the purpose of regulating the business of insurance . . . unless the [a]ct specifically relates to the business of insurance." The imposition of limitations, restrictions or qualifications by the Board on the investment authority otherwise provided by state insurance investment law could impair relevant insurance investment law, which is clearly designed for the purpose of regulating the business of insurance.

IV. Conclusion

In adopting the final regulations under the Volcker Rule, the Board and the other federal agencies recognized the importance of distinguishing the investment profile and activities of insurance companies that are affiliated with insured depository institutions from the investment and trading activities of other affiliates of insured depository institutions. This recognition flowed *inter alia* from the comprehensive state regulation and oversight applicable to insurance companies, and the distinct business model of insurance companies. The same comprehensive state regulatory system applies to all the investment activities of insurance companies and distinguishes them from the trading and market-making activities of financial holding companies. Accordingly, we respectfully submit that it is unnecessary and inappropriate to impose any such restrictions on the unique investment activities of insurance companies.

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Again, we appreciate the opportunity to comment on the insurance-related issues in the ANPR and would be happy to discuss our views further to assist the Board in this endeavor if you would find that helpful.

Very truly yours,

Brandon Becker

Brandon Becker
Executive Vice President and
Chief Legal Officer