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Janet L. Yellen
Chair
Board of Governors of the Federal Reserve System
20th Street & Constitution Ave., NW
Washington, DC 20551

Re: Concentration Limits on Large Financial Companies (Docket No. R-1489 & RIN 7100 AE 18)

Dear Chair Yellen:

These comments are submitted on behalf of the American Council of Life Insurers (the “ACLI”). The ACLI is a national trade association with over 300 member companies representing more than 90 percent of the assets and premiums of the life insurance and annuity industry in the United States. We appreciate the opportunity to submit comments on the Federal Reserve Board’s (the “FRB”) notice of proposed rulemaking (the “Proposed Rule”) implementing the concentration limits on large financial companies of Section 622 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Section 622”).¹ Our comments focus on two aspects of the Proposed Rule – the treatment of de-registered savings and loan holding companies (“SLHCs”) and the calculation of consolidated liabilities under the Proposed Rule.

I. Application to Trust-Only Companies that have De-Registered as SLHCs

The Proposed Rule applies to six enumerated classes of “financial companies,” including any “company that controls an insured depository institution.”² This term potentially could be read to include companies that have de-registered with the FRB as SLHCs because their limited-purpose subsidiary savings associations qualify as “trust-only” companies pursuant to section 2(c)(2)(D) of the BHC Act (“Trust-Only Companies”).³

The ACLI respectfully requests that the FRB clarify that a limited-purpose savings association subsidiary of a Trust-Only Company is not an “insured depository institution” for purposes of the Proposed Rule. In order for a Trust-Only Company to de-register with the FRB, the firm must commit that it and its subsidiary limited purpose savings association will not (i) maintain or accept demand deposits; (ii) offer commercial loans; or (iii) establish an account at any Federal Reserve Bank or seek to exercise discount or borrowing privileges with the Federal Reserve.⁴ By definition, therefore, a limited-purpose savings

¹ Concentration Limits on Large Financial Companies, 79 Fed. Reg. 27801 (May 15, 2014). Section 622 is codified as new Section 14 of the Bank Holding Company Act.

² 79 Fed. Reg. at 27812-13.

³ 12 U.S.C. § 1841(c)(2)(D). Title VI of the Dodd-Frank Act amends the Home Owners’ Loan Act (the “HOLA”) to provide that a Trust-Only Company is not an SLHC. 12 U.S.C. § 1467a(a)(1)(D)(ii)(II).

⁴ See, e.g., Letter from the FRB to Raymond J. Manista, General Counsel, The Northwestern Mutual Life Insurance Company (Sept. 26, 2012).

association subsidiary of a Trust-Only Company is unable to engage in quintessential deposit-taking or commercial lending activities or access the federal safety net and, thus, these companies should not be treated as insured depository institutions for purposes of Section 622.

Indeed, the only apparent reason that a limited-purpose savings association is an “insured depository institution” in the first instance is because the HOLA has been read to require a savings association to maintain a single insured deposit.⁵ Most limited-purpose savings associations satisfy this requirement by holding a single \$500,000 deposit from an affiliate, meaning that a Trust-Only Company could be captured by the Proposed Rule because of a single affiliated deposit accepted by an institution that does not otherwise engage in depository activities, clearly an inappropriate outcome. Furthermore, no analogous requirement exists under the National Bank Act, leading to the counterintuitive and inequitable result that a company that controls a limited-purpose savings association may be subject to Section 622, while a company that controls a limited-purpose national bank would not.

To avoid this result, which could not have been intended by Congress, the ACLI urges the FRB to clarify that the final rule does not apply to Trust-Only Companies. The FRB has ample interpretive authority to reach this result and has in the past effectively exercised its authority to avoid inequitable and unintended policy outcomes arising out of the definition of “insured depository institution,” e.g., in the context of the swaps push-out provisions of Section 716 of the Dodd-Frank Act.⁶ Doing so would remove from the denominator only a relatively small number of institutions, thus not impacting the overall test in any material way. The ACLI requests the FRB to take a similar approach here and exercise its interpretive authority to avoid an unintended and inequitable policy result.

II. Calculating Liabilities

Under the Proposed Rule, financial companies that do not calculate total consolidated assets or liabilities under generally accepted accounting principles (“GAAP”) for any regulatory purpose may submit a request to the FRB to use an accounting standard other than GAAP to calculate liabilities for purposes of Section 622. The FRB states that it may, in its discretion, permit the company to provide the total estimated consolidated liabilities on an annual basis using the alternative accounting standard.⁷

As we have discussed in previous letters to the FRB, certain mutual and fraternal insurance companies do not prepare consolidated GAAP financial statements for any regulatory purpose and, instead, prepare financial statements in accordance with statutory accounting principles (“SAP”), as required by state insurance law.⁸ We request the FRB clarify in the preamble or text of the final rule implementing Section 622 that SAP will automatically meet the definition of “applicable accounting standards” for purposes of the final rule, and that SAP-based calculations of consolidated liabilities will be deemed sufficient for Section 622 purposes. This approach would be consistent with the Financial Stability Oversight Council’s finding in favor of use of publicly reported data for this purpose, since SAP data is publicly reported for insurers.

⁵ See 12 U.S.C. § 1462(2).

⁶ See Prohibition Against Assistance to Swaps Entities, 79 Fed. Reg. 340, 341 (June 10, 2013) (FRB believes that “treating uninsured branches of foreign banks as insured depository institutions is appropriate” for purposes of Regulation KK). We also note that section 622(d) gives the FRB the authority to issue interpretations and guidance regarding the application of the section to an individual financial company or to financial companies in general.

⁷ 79 Fed. Reg. at 27814.

⁸ See, e.g., Letter from the ACLI to the FRB re: Regulatory Capital Rules (Oct. 12, 2012), available at http://www.fdic.gov/regulations/laws/federal/2012-ad-95-96-97/2012-ad-95-96-97_c_248.pdf.

In all events, we urge the FRB to take a flexible approach towards the use of alternative approaches to calculate consolidated liabilities. For example, the FRB should, whenever possible, permit companies to leverage calculations they have already undertaken for similar purposes, so as to minimize cost and administrative burdens. To this end, certain SLHCs may have already undertaken similar calculations for purposes of compliance with Section 318 of the Dodd-Frank Act and the FRB's Regulation TT, and the FRB should accept such calculations for purposes of the Proposed Rule. In addition, SLHCs may calculate and publicly disclose consolidated liabilities for non-regulatory purposes, and the FRB should also accept these calculations for purposes of Section 622. In short, a flexible approach that permits SLHCs to leverage public information and previously undertaken calculations will minimize administrative burdens, while still achieving the objectives of Section 622.

III. Conclusion

We thank the FRB for considering our views. We are available for further discussion on this matter at your convenience.

Respectfully submitted,



Julie A. Spiezo