

July 21, 2016

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

Legislative and Regulatory Activities
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Office of the Comptroller of the
Currency
400 7th Street SW
Suite 3E-218
Mail Stop 9W-11
Washington, DC 20219

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

RE: Incentive-based Compensation Arrangements (FRB Docket No. 1536 and RIN No. 7100 AE-50; OCC Docket ID OCC-2011-0001; and FDIC RIN 3064-AD86)

Dear Sirs or Madam:

The American Bankers Insurance Association (ABIA)¹ appreciates the opportunity to submit this letter to the Board of Governors of the Federal Reserve System (the “Federal Reserve Board” or the “Board”), the Federal Deposit Insurance Corporation (the “FDIC”), and the Office of the Comptroller of the Currency (the “OCC”) (collectively, the “Federal Banking Agencies” or the “Agencies”) in connection with the Agencies’ joint proposal on incentive-based compensation arrangements (the “Proposed Rule”).

ABIA’s comments are focused on the Board’s proposal to apply to the rule to persons providing insurance. As explained below, that proposal is inconsistent with joint rulemaking and is unenforceable. We ask that the Board align its application of the Proposed Rule with the other Federal Banking Agencies by excluding persons providing insurance from the rule.

The Federal Reserve Board’s proposed coverage of persons providing insurance is not consistent with joint rulemaking and is unenforceable.

In the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”), Congress directed the Agencies to develop the incentive-based compensation rule on a

¹ The American Bankers Insurance Association (ABIA), a subsidiary of the American Bankers Association, is the leading trade association for banks selling insurance products and services. ABIA leverages the resources of ABA as well as its own expertise to ensure member banks of all sizes receive the most current information and proven bank-insurance solutions.

joint basis. In recognition of this directive, the preamble to the Proposed Rule refers to the rule as “a uniform set of enforceable standards,” and acknowledges the merits of “consistent” requirements for internationally active financial organizations.² Yet, unlike the other Federal Banking Agencies, the Federal Reserve Board has proposed to apply the incentive-based compensation rule to “persons providing insurance.”

The Board’s proposed treatment of persons engaged in insurance is inconsistent with the goal of joint rulemaking. The Board’s proposal would cause some insurance entities to be treated differently than other insurance entities, simply because they are affiliated with institutions supervised by the Board. Additionally, the Board lacks the authority to enforce the proposed rule against persons providing insurance.

We recommend that the Federal Reserve Board align its proposal with the other Federal Banking Agencies and exclude persons providing insurance from the Proposed Rule.

The Board’s definition of a “covered person” conflicts with the definitions used by the other Federal Banking Agencies.

The Proposed Rule issued by the Federal Banking Agencies was mandated by section 956 of the Dodd-Frank Act. To guide the Agencies in the promulgation of the rule, section 956 includes a definition of the term “covered financial institution.” That definition specifically lists a number of financial institutions, but, notably, does not include any reference to insurance firms. The definition in section 956 defines a “covered financial institution” to include the following types of institutions that have \$1 billion or more in assets:

(2) the term a “covered financial institution” means....

(A) a depository institution or depository institution holding company, as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(B) a broker-dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o);

(C) a credit union, as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act;

(D) an investment advisor, as such term is defined in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11));

(E) the Federal National Mortgage Association;

(F) the Federal Home Loan Mortgage Corporation; and

(G) any other financial institution that the appropriate Federal regulators, jointly, by rule, determine should be treated as a covered financial institution for

² 81 Fed. Reg. 37677 and 37678 (June 10, 2016).

purposes of this section.³

The “catch-all” provision in subparagraph (G) permits the Agencies to determine that other financial institutions should be covered by the rule. However, that provision requires that any such determination be made “jointly” by the Agencies. The definition of “covered institution” proposed by the Board is not consistent with this requirement.

Each of the Federal Banking Agencies has proposed to define the term “covered institution” for purposes of identifying the entities subject to the Proposed Rule. The definition of “covered institution” proposed by the FDIC and the OCC would exclude persons providing insurance that are supervised by those two agencies. The definition of “covered institution” proposed by the Board includes no similar exclusion.

The OCC’s and FDIC’s proposed definitions of “covered institution” are as follows:

OCC: A covered institution means: (1) a national bank, Federal savings association, or Federal branch or agency of a foreign bank with average total consolidated assets greater than or equal to \$1 billion; and (2) a subsidiary of a national bank, Federal savings association, or Federal branch or agency of a foreign bank that: (i) is not a broker, dealer, *person providing insurance*, investment company, or investment adviser; and (ii) has average total consolidated assets greater than or equal to \$1 billion.⁴

FDIC: A covered institution means: (1) a state nonmember bank, state savings association, or a state insured branch of a foreign bank, as such terms are defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813, with average total consolidated assets greater than or equal to \$1 billion; and (2) a subsidiary of a state nonmember bank, state savings association, or a state insured branch of a foreign bank, as such terms are defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813, that: (i) is not a broker, dealer, *person providing insurance*, investment company, or investment adviser; and (ii) has average total consolidated assets greater than or equal to \$1 billion.⁵

In the case of the Board, a “covered institution” is proposed to be defined as a “regulated institution,” which, in turn, is defined as follows:

A regulated institution means: (1) A state member bank, as defined in 12 CFR 208.2(g); (2) A bank holding company, as defined in 12 CFR 225.2(c), that is not a foreign banking organization, as defined in 12 CFR 211.21(o), and a subsidiary of such a bank holding company that is not a depository institution, broker-dealer, or investment adviser; (3) A savings and loan holding company, as defined in 12 CFR 238.2(m), and a subsidiary of a savings and loan holding company that is not a depository institution, broker-dealer, or investment adviser;....⁶

³ 12 U.S.C. § 5641(e)(2).

⁴ Proposed 12 C.F.R. § 42.2(i) (emphasis added).

⁵ Proposed 12 C.F.R. § 372.2(i) (emphasis added).

⁶ 12 C.F.R. § 236.2(dd).

The exclusions for “persons providing insurance” that appear in the OCC and FDIC versions of the Proposed Rule are based upon a provision in the Dodd-Frank Act that prohibits those federal agencies from enforcing the proposed rule against “persons providing insurance.”⁷ The Board is subject to the same prohibition. Yet, for reasons that are not explained in the preamble to the Proposed Rule, the Board has not proposed a similar exclusion in its version of the rule. As such, the Board’s rule is contrary to the terms of the Dodd-Frank Act.

The Federal Reserve Board lacks the authority to enforce the rule against persons providing insurance.

Section 956 also includes a provision that addresses enforcement of the Proposed Rule.⁸ That provision stipulates that the incentive-based compensation regulations are to be enforced under section 505 of the Gramm-Leach-Bliley Act (GLBA), and that section of the GLBA expressly states that the Board does not have enforcement authority over a person engaged in insurance; that authority is reserved for state insurance regulators. The relevant provision of section 505 of the GLBA states that the Board’s authority under that section is limited to the following institutions:

[M]ember banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act, and bank holding companies and their nonbank subsidiaries or affiliates (*except brokers, dealers, persons providing insurance, investment companies, and investment advisers*).⁹

Thus, the Board lacks the authority to enforce the incentive-based compensation rule against persons providing insurance.

Thank you for considering ABIA’s comments on the Proposed Rule. Please do not hesitate to contact me by email at sferman@aba.com or by phone (202) 663-5510 if ABIA can provide you with any additional information.

Sincerely,



Sarah Ferman
Head of Government Relations and Advocacy

⁷ The term “persons providing insurance” is a term used in Section 505 of the Gramm-Leach-Bliley Act, which, as discussed below, governs the enforcement of the incentive-based compensation rule. Under Section 505, persons providing insurance are subject to regulatory enforcement by state insurance authorities. The National Association of Insurance Commissioners has interpreted this authority to apply to all persons licensed by a state, including insurance companies and insurance producers. See http://www.naic.org/documents/prod_serv_legal_md1_672.pdf.

⁸ 12 U.S.C. § 5641(d).

⁹ 15 U.S.C. § 6805(a)(1)(B) (emphasis added).