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Via Electronic Submission

October 19, 2012

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

Re: Proposed Agency Information Collection Activities; Comment Request

File Number: FR Doc. 2012-20325

Dear Mr. deV. Frierson:

The Financial Services Roundtable[1] (the "Roundtable") the American Bankers Association[2] (the "ABA") and The Clearing House Association L.L.C. ("The Clearing House")[3] (together, the "Associations") welcome the opportunity to provide the Board of Governors of the Federal Reserve System (the "Board") with comments on its proposed

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1 The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for $92.7 trillion in managed assets, $1.2 trillion in revenue, and 2.3 million jobs.

2 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.

3 Established in 1853, The Clearing House is the oldest banking association and payments company in the United States. It is owned by the world's largest commercial banks, which collectively employ over 2 million people and hold more than half of all U.S. deposits. The Clearing House Association L.L.C. is a nonpartisan advocacy organization representing – through regulatory comment letters, amicus briefs and white papers – the interests of its owner banks on a variety of systemically important banking issues. Its affiliate, The Clearing House Payments Company L.L.C., provides payment, clearing and settlement services to its member banks and other financial institutions, clearing almost $2 trillion daily and representing nearly half of the automated clearing-house, funds transfer, and check-image payments made in the U.S. *See* The Clearing House's web page at www.theclearinghouse.org.

information collection (the "Information Request") that would require submission of the Banking Organization Systemic Risk Report (the "FR Y-15").[4]

The Associations have significant concerns regarding the Information Request. Specifically, we are concerned about the scope of application, timing of reporting, the attestation requirement and the burden placed on institutions required to file the FR Y-15. This is of particular concern for regional institutions, for which this type of reporting is new. Based on our members' experiences with both the capital and liquidity Quantitative Impact Study ("QIS") and Basel Global Systemically Important Bank ("G-SIB") monitoring, among other things, it is our strong belief that the Board's 180 hour estimate is vastly underestimated for all institutions, but particularly for those which (i) are currently under Basel I and would have to provide data on a set of rules to which they are not subject and (ii) have never reported on an international basis (*e.g.*, QIS or G-SIB monitoring), and as such do not have the systems needed to report on such data. Moreover, the Board requests and requires from all covered companies attestation of information derived from rules that have not been implemented in the U.S., such as the Basel III capital and liquidity rules and the Basel II standardized approach.[5] In fact, the Board requests data based on the Liquidity Coverage Ratio ("LCR"), the definition of which is still being negotiated by the Basel Committee and is not expected to be finalized prior to the proposed effective date of the Information Request.[6]

I. Overview

As the Board is well aware, since the financial crisis the international regulatory community has been engaged in various initiatives to assess risks to the global financial system. In October 2010, the Financial Stability Board (the "FSB") requested that the Basel Committee on Banking Supervision (the "Basel Committee") develop a methodology to assess the systemic risk of global financial institutions, specifically financial institutions "whose distress or disorderly failure, because of their size, complexity and systemic interconnectedness, would cause significant disruption to the wider financial system and economic activity."[7] In response, the Basel Committee proposed and finalized an indicator-based assessment methodology (the "G-SIB

4 Proposed Agency Information Collection Activities; Comment Request, 77 Fed. Reg. 50,102 (Aug. 20, 2012).

5 This framework will likely never be implemented in the U.S.

6 Presumably, implementation of the LCR in the U.S. would take place significantly after the approval of the LCR by the Basel Committee.

7 Press Release, FSB, Policy Measures to Address Systemically Important Financial Institutions (Nov. 4, 2011), *available at* www.financialstabilityboard.org/publications/r_111104bb.pdf.

Methodology") for identifying G-SIBs.[8] Applying the G-SIB Methodology, and using data collected and analyzed on a confidential basis from approximately 209 banks through the Basel Committee's ongoing monitoring exercise (the "Monitoring Exercise"),[9] the FSB in November 2011 designated an initial set of 29 G-SIBs.[10]

In the Information Request, the Board states that the data proposed to be collected through the Information Request is derived "directly" from ongoing data collection efforts by the Basel Committee. The Associations note several significant differences between the Information Request and the Monitoring Exercise that cause the Associations concern. First, and most importantly, the Board proposes to require that a covered company's Chief Financial Officer ("CFO") attest to the veracity and accuracy of the data submitted. Secondly, the 13 U.S. BHCs participating in the Monitoring Exercise have submitted data to the Basel Committee on a "best efforts" basis.[11] This "best efforts" approach is based not only on a recognition that the Monitoring Exercise is still novel, but more importantly, on the recognition that participating U.S. BHCs currently could not collect or aggregate all of the data items requested as part of the Monitoring Exercise and do not at this time have fully formed audit processes around the particular data fields requested in the Monitoring Exercise. In several instances, U.S. BHCs submitted blank data fields to the Basel Committee because certain of the requested data items were unavailable. Further, the Monitoring Exercise was conducted confidentially through the Basel Committee.

The Information Request presents a stark contrast to the Monitoring Exercise in several respects.

- First, rather than gathering data from 13 of the largest globally active U.S. BHCs, the Board proposes to require an additional 50 institutions, including non-internationally-active institutions, to provide data. This larger group would

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8 Basel Committee, global systemically important banks: assessment methodology and the additional loss absorbency requirement (Nov. 2011), *available at* www.bis.org/publ/bcbs207.pdf.

9 *See* Basel Committee, *Results of the Basel III monitoring exercise as of 30 June 2011* (Apr. 2012), *available at* http://www.bis.org/publ/bcbs217.pdf; Basel Committee, *Results of the Basel III monitoring exercise as of 31 December 2011* (Sept. 2012), *available at* http://www.bis.org/publ/bcbs231.pdf. 13 U.S. bank holding companies ("BHCs") participated in the Monitoring Exercise.

10 FSB Press Release, *supra* note 7.

11 Basel Committee Monitoring Exercise, *supra* note 9 at 8 ("For this monitoring exercise, participating banks submitted comprehensive and detailed non-public data on a *voluntary and best-efforts basis*.") (emphasis added).

include not only a much larger group of BHCs, but also savings and loan holding companies ("SLHCs") and foreign banking organizations ("FBOs").

- Second, rather than maintaining the confidentiality of submitted data, the Board proposes that all data collected from the FR Y-15 be made available publicly through the Federal Financial Institutions Examination Council ("FFIEC") website.

- Third, rather than permitting institutions to submit the FR Y-15 on a best efforts basis, the Board proposes to require an institution's CFO to attest to the veracity and accuracy of the data submitted.

- Fourth, several of the Board's data requests deviate substantially from the Basel Committee's G-SIB monitoring exercise, which could result in the erroneous selection of G-SIBs or an incorrect calibration of the higher G-SIB requirements.

- Finally, the Board proposes to require that institutions complete and submit an FR Y-15 that covers all of calendar year 2012, and do so within 45 days of December 31, 2012.[12]

In sum, the Information Request contemplates a data collection regime that in scope, specificity and timing is fundamentally different and much more expansive than the Monitoring Exercise. As discussed in detail below, the proposed data collection regime is not practicable even as to the 13 U.S. BHCs that participated in the Monitoring Exercise, and *a fortiori* is not practicable as to the broader range of Covered Companies encompassed by the Information Request.

II. Scope of Application

The Information Request states that the following companies ("Covered Companies") will be required to submit the FR Y-15 to the Board:

- BHCs with total consolidated assets of $50 billion or more ("Covered BHCs");

- SLHCs with total consolidated assets of $50 billion or more ("Covered SLHCs");

[12] We note that the Board issued the Information Request for comment while simultaneously proposing with the other Federal banking agencies the most comprehensive changes to the U.S. regulatory capital rules for banking organizations in over 20 years. The Associations informally notified the staff of the Board of their concerns that additional time would be needed to review the extraordinarily comprehensive Information Proposal, or, at a minimum, to meet with the Board staff to discuss the Information Request.

- FBOs that have combined U.S. operations that total $50 billion or more in assets;[13] and
- U.S. firms designated as G-SIBs by the Basel Committee in the previous year.

A. Purpose of the Information Request

According to the Information Request, data collected from the FR Y-15 (i) would be submitted to the Basel Committee for use in determining whether an institution is a G-SIB, and, if so, what additional capital requirement would be applied; (ii) would be used by the Board to assess the systemic risk implications of proposed mergers and acquisitions; and (iii) may be used to determine whether an institution is a domestic systemically important bank ("D-SIB").[14]

We believe it is inappropriate for the Board to attempt to achieve these three disparate and independent objectives through a single information request that appears to be connected to only one of them. It is not clear why an indicator-based data collection designed for the purposes of determining whether an institution is a G-SIB easily or intuitively transposes to analyses of domestic systemic importance or of the systemic risk implications of mergers or acquisitions. The Board has provided no explanation of why it does. Further, the Board has offered no explanation why it is necessary or appropriate to collect data in the proposed form on the proposed timeline and from the proposed set of financial firms for either of these purposes. To the extent the Board does require data to "assess the systemic risk implications of proposed mergers and acquisitions" or "determine whether an institution is a domestic systemically important bank," these objectives should be addressed through separate and independent data collection initiatives that are tailored to those purposes and on an appropriately tailored timeline, not through the submission of a report based on a framework designed to assess whether an individual institution is a G-SIB.

Even as to the stated purpose of collecting information for use in determining whether an institution is a G-SIB, we are concerned that the Board has proposed to require any BHC with $50 billion or more in total consolidated assets to submit the FR Y-15. This proposed scope encompasses a large number of institutions not included in the Monitoring Exercise, and not reasonably within the scope of possible G-SIB

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[13] An FBO is required to submit the FR Y-15 if its total U.S. operations, including branches, have assets of $50 billion or more.

[14] We assume that any analysis by the Board of whether an institution is a D-SIB will be based on the Board's possible future adoption of rules similar to the Basel Committee framework addressing the issue. *See* Basel Committee, *A framework for dealing with domestic systemically important banks* (October 2012), *available at* http://www.bis.org/ publ/bcbs224.pdf.

designation. As to the institutions designated by the Basel Committee as G-SIBs, although two U.S. BHCs with between approximately $200 and $500 billion in assets were designated G-SIBs, perhaps because of their unique circumstances, each of the other U.S. BHCs designated as a G-SIB had $500 billion or more in total consolidated assets. We submit that the Board should not impose the Information Request for purposes of potential G-SIB determination on companies that are entirely outside the scope of the Monitoring Exercise and outside the reasonable scope of any potential G-SIB designation. Accordingly, we submit that the Information Request as modified by the various comments contained in this letter should be applied only to companies that have participated in the Monitoring Exercise.

B. Application to SLHCs

The Information Request would also apply to Covered SLHCs. We believe it is inappropriate to include any SLHC within the scope of the Information Request. Although the Board has general authority under the Home Owners' Loan Act ("HOLA") to require reports from SLHCs, we do not believe that either HOLA or the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") provides a basis for the Board to gather data from SLHCs for the purposes described in the Information Request. No SLHC is currently eligible for designation as a G-SIB, nor is an SLHC eligible for designation as a domestic systemically important "bank." With respect to the Board's other stated purpose of assessing the systemic risk implications of mergers and acquisitions, although section 604 of the Dodd-Frank Act amends section 3 and section 4 of the Bank Holding Company Act to direct the Board to analyze the systemic risk implications of mergers and acquisitions by BHCs, the Dodd-Frank Act contains no such provision for mergers and acquisitions by SLHCs.

In addition, although every BHC with $50 billion or more in total consolidated assets is automatically subject to heightened supervision by the Board under section 165 of the Dodd-Frank Act, there are no such provisions in the Dodd-Frank Act for SLHCs with $50 billion or more in total consolidated assets. Indeed, neither the Dodd-Frank Act nor the HOLA authorizes the Board to subject an SLHC to enhanced supervision comparable to that under section 165. Instead, only the Financial Stability Oversight Council ("FSOC") has the authority to determine whether a nonbank financial company should be subject to enhanced standards. Under the Dodd-Frank Act, this designation process is separate and distinct from the Board's general authority over SLHCs. We submit that the Information Request constitutes a clear overextension of the Board's authority with respect to SLHCs and impinges on authority reserved for FSOC.

Certain Covered SLHCs also face practical difficulties that will make it difficult, if not impossible, for these institutions to submit the FR Y-15. For instance, many Covered SLHCs that are predominantly engaged in insurance activities do not prepare financial statements in accordance with U.S. Generally Accepted Accounting Principles ("GAAP"), as required by the Information Request, and instead prepare financial

statements only in accordance with Statutory Accounting Principles ("SAP"). We discuss the particular difficulties facing Covered SLHCs that are predominantly engaged in insurance activities in greater detail in section III.F below. We believe strongly that SLHCs should be excluded entirely from the scope of the Information Request, and that in no event should SLHCs be required to submit the FR Y-15.

C. Application to FBOs

We similarly believe that it is inappropriate to include FBOs within the scope of the Information Request. Requiring FBOs to submit the FR Y-15 would constitute an unnecessary expansion of reporting requirements for FBOs regulated by the Board. Although the Board has long required FBOs to submit the FR Y-7 and similar reports, it has appropriately refrained from applying new regulatory and reporting requirements to FBOs, such as the FR Y-14 series of reports, to the same extent as U.S. institutions. In addition, several, if not all of the FBOs within the scope of the Information Request are already participating in the Monitoring Exercise through their home jurisdictions. As such, they are already providing the required data to the Basel Committee on a fully consolidated basis. It would be extremely difficult and expensive for these institutions to "de-consolidate" data on their U.S. operations from their consolidated reports and provide it to the Board, not least because many FBOs prepare financial information according to International Financial Reporting Standards rather than GAAP.

We see no reason for the Board to impose a G-SIB-based reporting requirement on FBOs that are separately providing the same data to the Basel Committee through their home jurisdictions. Even if this were not the case, it would in any event be inappropriate to impose on FBOs a requirement to de-consolidate non-GAAP-based data on their U.S. operations and then somehow convert this data into GAAP and into the format required by the FR Y-15 in a very short period of time. We urge the Board to exclude FBOs from the scope of the Information Request or, at the very least, to defer imposing any information collection proposals for FBOs with $50 billion or more in U.S. assets until such time that it has promulgated and finalized rules for FBOs under section 165 of the Dodd-Frank Act.

III. Compliance Issues

In addition to our concerns about the scope of application of the Information Request, we also have significant concerns with the Information Request that arise from a compliance perspective. We discuss our concerns with general compliance issues presented by the Information Request below. **Please see Appendix A for our comments on compliance issues presented by specific FR Y-15 line items and specific requests for clarification.**

A. Ability of Covered Companies to Provide Requested Data

We are deeply concerned that the Board appears not to have considered the experiences of the 13 U.S. BHCs participating in the Monitoring Exercise, in particular the difficulties these BHCs encountered in providing requested data to the Basel Committee. As discussed, these BHCs submitted data to the Basel Committee for purposes of the Monitoring Exercise on a best efforts basis. The Basel Committee recognized that it was difficult or impossible for these BHCs to provide many of the requested data items, and only included data in its final analyses "to the extent [institutions] were able to provide sufficient quality data" to complete it."[15] The Information Request makes no mention of these difficulties, and appears to assume that what was difficult or impossible less than one year ago can now be achieved in a matter of months and in some cases with more specificity or different data or calculation methods than requested during the Monitoring Exercise.

We submit that the reporting proposed to be required by the FR Y-15 is not feasible on the proposed timetable even for the 13 U.S. BHCs that are participating in the Monitoring Exercise. It will be even more difficult or impossible in some cases for the other Covered Companies to provide many of the requested data items. Unlike institutions that were subject to the Monitoring Exercise, most of the Covered Companies covered by the proposed FR Y-15 are neither "internationally active" nor subject to Basel II and therefore will be providing data for the first time on items to which they are not currently subject.

In addition, several of the requested data items deviate in whole or in part from the G-SIB Methodology, and therefore deviate from what the Basel Committee collected during the Monitoring Exercise. For example, while the G-SIB Methodology's "size" indicator includes total exposure as defined for use in the Basel III leverage ratio, the FR Y-15's Schedule A (Size Indicators) includes data items that are not part of the Basel III leverage ratio. Further, the Information Request appears to assume that several Basel capital and liquidity frameworks have been implemented in the U.S., and that Covered Companies are already collecting and aggregating data in accordance with these standards. For example, several of the line items in Schedule D (Complexity Indicators) incorporate by reference provisions of the Basel III LCR, a standard that is still under discussion at the Basel Committee level and has yet to be proposed or implemented in the United States.

It is unrealistic to expect that Covered Companies are collecting and aggregating data in accordance with standards that have yet to be finalized internationally or even proposed for implementation in the U.S. Setting aside certain line items that may be

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[15] *Results of the Basel III monitoring exercise as of 31December 2011*, *supra* note 9 at 8.

consistent with current data collection practices by some Covered Companies, we are not aware of any Covered Company that has processes in place[16] (or the ability to put such processes in place before the initial submission deadline) to collect and aggregate data on a consolidated basis in accordance with Basel capital and liquidity standards that have not been implemented in the U.S., including, but not limited to, the Basel II standardized approach, Basel III, and the LCR and Net Stable Funding Ratio liquidity standards.

The Information Request goes beyond the baseline Monitoring Exercise and introduces additional complexity and compliance burdens by requiring all Covered Companies to provide specific data items not requested as part of the Monitoring Exercise and by assuming the implementation of and compliance with Basel capital and liquidity standards that have not been implemented in the U.S. It is therefore not surprising that Covered Companies will face serious hurdles in attempting to complete the FR Y-15.[17]

B. Attestation Requirement

The instructions indicate that the FR Y-15 must be signed by the CFO of a Covered Company or by an individual performing an equivalent function. By signing the FR Y-15, the CFO or equivalent would be acknowledging that any knowing and willful misrepresentation or omission of a material fact constitutes fraud and may subject the officer to legal sanctions.

Our discussion of the significant compliance issues presented by the Information Request leads directly to our strong opposition to any attestation requirement for purposes of the initial submission of the FR Y-15. In a recent letter to the Board, the Associations strongly opposed a similar proposal to require attestation in the near term for purposes of the FR Y-14 series of forms, which are novel in their own right, and, like the FR Y-15, are either new to many Covered Companies or contain new data fields that would be required to be submitted and attested to.[18] The Board subsequently determined

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[16] We note that it may be impossible to make the system changes necessary to collect the requested data at this late date because of routine end-of-year system freezes.

[17] The ability of the Covered Companies to collect, ensure the quality of and report on the requested data is further constrained by other reporting requirements that will be need to be fulfilled concurrently with the Information Request. For example, simultaneous with preparation of the FR Y-15, Covered BHCs will be producing and submitting other reports to the Board, such as the FR Y-9C and FR Y-14, several of which are proposed to be source documents for the FR Y-15 itself.

[18] *See* Letter from the Associations, to Jennifer J. Johnson 3-4 (Sept. 4, 2012), *available at* http://www.theclearinghouse.org/index.html?f=074303.

not to include an attestation requirement.[19] For many of the same reasons, we also strongly oppose any attestation requirement in the near term for purposes of the FR Y-15. An attestation requirement is clearly inappropriate in light of the fact that no institution has yet submitted, or even prepared to submit, or in some cases is even in the position to believe it can submit the FR Y-15 according to the proposed timeline, the significant difficulty (or in some cases, impossibility) of providing several of the requested data items, and the practical difficulties Covered Companies will face when attempting to comply with the Information Request.

An analysis of the underlying facts surrounding the Information Request clearly indicates that an attestation requirement is wholly inappropriate at this juncture. Even under the most ideal of circumstances, the CFO of a Covered Company will not have sufficient time to fully appreciate the multiplicity of operational steps that must be completed in order to gather and collect the necessary data and determine whether the submitted information is accurate and complete in all respects. This is particularly true because the Information Request requires Covered Companies to submit data for calendar year 2012, in effect requiring companies to retroactively apply the FR Y-15 to prior data collection processes. In essence, the CFO would be required to attest to the "accuracy" of a Covered Company's data collection and aggregation operations, a requirement that makes little sense from a policy perspective, especially given that it is not even clear that institutions have the operational capacity to provide the data being requested. We urge the Board not to require attestation for purposes of initial submission of the FR Y-15. An attestation requirement should only be considered for well-established, well-understood reporting requirements that institutions have ample notice of and experience with, as is clearly not the case in this instance.

C. Publication of Submitted Data

The Basel Committee Monitoring Exercise utilized "data submissions of individual banks to their national supervisors on a voluntary and *confidential* basis."[20] Nevertheless, the Board proposes that *all* FR Y-15 data be made available publicly through the FFIEC website.

Publicizing FR Y-15 data would clearly be at odds with the approach taken in the Monitoring Exercise to date, and the Basel Committee's views regarding the importance of preserving the confidentiality of submitted data. The Basel Committee recognized that institutions provided it with highly sensitive data as part of the Monitoring Exercise, and

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[19] *See* Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB, 77 Fed. Reg. 60,695, 60,697 (Oct. 4, 2012).

[20] Basel Committee Monitoring Exercise, *supra* note 9 at 1 (emphasis added).

as a result, took steps to present the results of the Exercise in a manner that "maintain[ed] confidentiality" of data.[21]

The Basel Committee's approach is appropriately informed by an understanding of the real and concrete harms that would result if submitted data was publicly disclosed. These harms are just as likely to manifest themselves in this context. For example, requiring public disclosure of FR Y-15 data is likely to harm the competitive position of affected institutions, especially *vis-à-vis* competitors that are not subject to such a requirement. By creating opportunities for counterparties to use the disclosed data to exploit affected institutions and due to the additional new data elements being potentially confusing to investors, a public disclosure requirement may even threaten the safety and soundness of affected institutions, a result that is in the interest of neither the Board nor Covered Companies. We urge the Board to maintain the confidentiality of submitted data, and to refrain from publicizing FR Y-15 data not otherwise required to be published pursuant to other disclosure and reporting regimes (*e.g.*, through disclosure on the FR Y-9C). At a minimum, we urge the Board to treat submitted data as confidential supervisory information.

D. Timing

The Board proposes to implement the collection of the FR Y-15 with an initial "as of" date of December 31, 2012. The filing deadline for the initial submission of the FR Y-15 would be 45 days after that date.

As noted above, it is not clear that Covered Companies will be able to complete and submit the FR Y-15 for an indeterminate period, particular to each institution, much less by February of 2013. While we recognize and appreciate that several of the FR Y-15 data items overlap with data already collected through the FR Y-9C and FFIEC Country Exposure Report, this overlap in no material sense alleviates the significant administrative burden associated with providing some of the other required data items. Even in the most ideal of circumstances, a company would need a significant amount of time to gather, aggregate and verify the data needed to submit a complete FR Y-15. We urge the Board to provide additional time for initial submissions of the FR Y-15, as we discuss in section IV.B below, and we further submit that in no event should the Information Request be applied to any company that has not participated in the Monitoring Exercise.

We also note that the 45-day submission deadline will be difficult to meet on an ongoing basis. As proposed, the FR Y-15 would have the same deadline as the FR Y-9C, the FFIEC 101, the FFIEC 009, and the upcoming Pillar 3 disclosures, all of which take a

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[21] *See, e.g.*, Basel Committee Monitoring Exercise at 8 ("To maintain confidentiality, many of the results shown in this report are presented using box plot charts.").

significant amount of time to prepare. To ease the burden in light of the numerous other submissions with the same deadline, the filing deadline should be no earlier than 60 days after the year-end.[22]

E. Ability of FBOs to submit the FR Y-15 in accordance with GAAP

One of the particular compliance difficulties presented by the Information Request is the requirement that the FR Y-15 be completed and submitted in accordance with GAAP. Some FBOs do not maintain or report standalone data on a GAAP basis for their U.S. operations, and it therefore would be extremely difficult for these FBOs to submit standalone GAAP-based information regarding their U.S. operations, as the Board proposes to require. Although as discussed above we do not believe that it is appropriate to include FBOs within the scope of the Information Request, to the extent the Board does require FBOs ultimately to submit the FR Y-15, it should make liberal allowance for the fact that certain U.S. operations of an FBO may not prepare GAAP-based information, and that others may only do so on a consolidated basis rather than with respect to the FBO's U.S. operations specifically.

F. Impact on Covered SLHCs Predominantly Engaged in Insurance Activities

Although the Information Request takes little account of the difficulties that U.S. BHCs have faced in providing data for purposes of the Monitoring Exercise, the Request also fails to take into account the burdens facing Covered SLHCs, in particular Covered SLHCs that are predominantly engaged in insurance activities. These institutions do not have the management information systems in place to prepare and submit the FR Y-15 in accordance with GAAP, as would be required by the Board. While we do not believe it is appropriate for SLHCs to be included in the scope of the Information Request, it is particularly inappropriate to include SAP-reporting SLHCs within the scope of the Information Request, and then to expect that these institutions prepare and submit the FR Y-15 in accordance with GAAP. We again submit that in no event should SLHCs be included in the Information Request or be required to submit the FR Y-15, and note that it will likely be impossible for SAP-reporting SLHCs to complete the FR Y-15 as proposed.

In addition, we note that it would be duplicative of other ongoing international data collection efforts to require SLHCs predominantly engaged in insurance activities to submit the FR Y-15. Under assignment from the Bank for International Settlements, the International Association of Insurance Supervisors ("IAIS") is currently collecting data

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[22] This proposed filing deadline would be applicable for ongoing submissions, but as discussed in section IV.B below, initial submission of the FR Y-15 should not be required any earlier than June 30, 2013.

from insurers that are SLHCs for purposes of finalizing a methodology for the identification of global systemically insurers and has already sent out two data requests, which require recipients to collect, aggregate and produce company-specific information to the IAIS. These data requests have been designed specifically to gather relevant information relating to the systemic risk implications of global systemically important insurers. SLHCs that are predominantly engaged in insurance activities, even those with $50 billion or more in total consolidated assets, are not of a sufficient size or nature to be deemed G-SIBs. We therefore submit that requiring SLHCs predominantly engaged in insurance activities to submit the FR Y-15 would be a particularly inefficient use of the Board's resources.

G. Inconsistent with Basel G-SIB Methodology

As noted previously, several of the requested data items deviate in whole or in part from the G-SIB Methodology, and therefore deviate from what the Basel Committee collected during the Monitoring Exercise. Since the G-SIB selection and calibration is an effort to designate global systemically important banks, applicable banks (those in the U.S. participating in the Monitoring Exercise) must be measured on a consistent basis globally since they will be measured by their proportion of the aggregate global total. Otherwise, it could result in the erroneous selection of G-SIBs or an incorrect calibration of the higher G-SIB requirements. We therefore urge the Board to remove any deviations from the Basel Committee's approach with respect to the G-SIB methodology.

IV. Additional Recommendations

Because of our serious concerns with the Information Request, both from the perspective of the scope of application and from the perspective of compliance with the Request itself, we respectfully suggest the following alternative approach to the Board.

With respect to scope of application of the Information Request, we submit that the FR Y-15 Information Request should not be imposed on any company other than a company that has participated in the Monitoring Exercise, and then only if the Board makes appropriate modifications to the Information Request in a manner consistent with the other comments contained in this letter. The Board has taken a similar approach in its implementation of the Capital Plan Rule, in that the Board initially applied the rule's requirements only to BHCs that participated in the Supervisory Capital Assessment Program, and only later expanded the scope of the rule to include other BHCs with $50 billion or more in total consolidated assets.

A. Initial submissions of the FR Y-15 must be on a best efforts basis.

We strongly request that for purposes of initial submission, any company required to submit the FR Y-15 be permitted to do so on a best efforts basis. To require initial submissions of the FR Y-15 to be mandatory in their entirety would be to ignore the

practical realities associated with aggregating and analyzing the required data, practical realities made abundantly clear through the Monitoring Exercise.

The retroactive nature of the Information Request requires that initial submissions be on a best efforts basis. The Information Request currently contemplates that Covered Companies will submit data for all of 2012 in accordance with a template they were only made aware of within the last few months and that has not been finalized. In order to complete the FR Y-15, Covered Companies would therefore be required to construct management information systems designed to provide information relevant for the individual FR Y-15 schedules, and then somehow apply these systems retroactively to events that have already occurred and to data already collected during 2012, data that was collected in accordance with existing processes and systems rather than a data collection template that had yet to be proposed. We find it difficult to understand how the Board can expect Covered Companies to retroactively examine data that has already been collected, and somehow be able to retroactively fit this data to accord with the FR Y-15 and then further attest to its accuracy under penalty of law. If the Board is to require any subset of Covered Companies to submit the FR Y-15, fundamental fairness demands that these companies be provided with adequate time and advance notice of what data they are expected to provide, so that they can take the necessary steps, including constructing and implementing necessary systems and processes, to gather and collect it.

B. The deadline for initial submission of the FR Y-15 should be moved to June 30, 2013 at the earliest. The initial FR Y-15 would be submitted on this later date on a best-efforts basis.

Although we do not disagree with an "as of" date for the required data of December 31, 2012, the filing deadline for initial submission of the FR Y-15 should be no earlier than June 30, 2013, and *only if* companies are permitted to submit the FR Y-15 on a best efforts basis. If the Board will not permit initial submissions to be on a best efforts basis, then in no event should initial submission of the FR Y-15 be required until June 30, 2014 for data covering calendar year 2013. As discussed above, it is unfair to retroactively impose a mandatory data collection requirement without providing affected institutions adequate notice and sufficient time to take the necessary steps to comply with such a requirement. Permitting initial submissions on a best efforts basis or permitting initial submission in 2014 for data covering calendar year 2013 would at least partially assist in remedying such a decision.

We make a request for an initial submission deadline of no earlier than June 30, 2013 because of the experiences of the 13 U.S. BHCs during the Monitoring Exercise, and because of the difficulties that a February filing deadline would impose even on the 13 U.S. BHCs participating in the Monitoring Exercise. As part of the Monitoring Exercise, 13 U.S. BHCs initially submitted data with a December 31, 2011 "as of" date to the Basel Committee by April 2012. It is important to note that these data were not considered final upon submission, and were the subject of discussion between the U.S.

BHCs, the Board and the Basel Committee in subsequent months. In fact, the final data were not used by the Basel Committee for purposes of its analysis until the end of June 2012. An initial submission deadline of no earlier than June 30, 2013 would allow for a similar timeline.

It is particularly appropriate for the Board to extend the due date to no earlier than June 30, 2013 (and to only require submission on a best efforts basis, as discussed above) because of the context in which the Information Request was promulgated. The Information Request was promulgated near the beginning of the third quarter of 2012, and yet proposes to require Covered Companies to provide data covering all of 2012. Covered Companies would be required to collect and aggregate this data during the last three months of 2012, precisely at the same time finance and reporting personnel from these institutions will be dealing with a multiplicity of regulatory reporting and disclosure requirements, many of which will be due at or near the end of 2012, including required submissions under the Board's capital plan rules adopted in 2011 as Section 225.8 of Regulation Y (the "Capital Plan Rule"), the specific compliance requirements of which continue to be in flux. Setting aside the substantial compliance burdens that would be imposed by the Information Request itself, the Information Request will impose significant additional demands on finance and reporting personnel at Covered Companies that are already stretched as they comply with multiple existing requirements. An extended compliance timeline, culminating with a deadline of no earlier than June 30, 2013 for initial submission, would help to alleviate this strain on resources and allow companies enough time to gather the necessary data.

We again note that under our suggested alternative approach, the December 31 "as of" date would remain the same, and that the initial submission deadline of no earlier than June 30, 2013 would be subject to change in future years depending on the state of the Monitoring Exercise and the Basel Committee's annual G-SIB review. Again, an initial submission deadline of no earlier than June 30, 2013 would be practical only if institutions are permitted to submit their initial FR Y-15s on a "best efforts" basis, as discussed above.

C. To the extent necessary, separate data collection processes should be established to analyze the systemic risk implications of mergers and acquisitions and whether any U.S. institutions should be considered D-SIBs with sufficient time for notice, comment and compliance.

As discussed below, the Board should not use a data collection process based on the G-SIB framework to collect data either for purposes of analyzing the systemic risk implications of proposed mergers and acquisition or for determining whether any U.S. institutions should be considered D-SIBs.

This is particularly true with respect to the analysis of the systemic risk implications of mergers and acquisitions. The Board has already approved two transactions where such an analysis was required, and there is no indication that the

Board was unable to adequately review the transactions or that the Board had insufficient data to understand what, if any, systemic risk concerns were presented. Governor Tarullo's recent remarks indicate that the Board's methodology for analyzing the systemic risk implications of mergers and acquisitions is still inchoate, and it would be inappropriate to implement such a significant data collection requirement to achieve a regulatory objective that has yet to be fully fleshed out from an analytical perspective.[23] If the Board is to implement a data collection exercise for the purpose of analyzing the systemic risk implications of mergers and acquisitions, it should only do so after it has finalized an analytical framework for this purpose.

We submit that while the framework for the analysis of the systemic risk implications of mergers and acquisitions is in its infancy, the framework for the analysis of whether an institution is a U.S. D-SIB is perhaps even more incomplete. The Basel Committee has only very recently published a final version of its document on the D-SIB framework. The final framework contemplates that national authorities will have substantial discretion to designate and apply enhanced standards to D-SIBs, and consequently there are numerous and substantial steps that must be taken to translate the final framework to actionable regulatory and supervisory frameworks that can be implemented on a national level. To the extent the Board (or any national regulator) seeks to leverage the framework as a basis for designating or making a capital determination regarding D-SIBs, and requires data to do so, the appropriate approach is to articulate and design a carefully calibrated data reporting template for such a purpose, and promulgate such a template with notice to affected parties and sufficient opportunity for comment.[24] It is inappropriate, however, for the Board to take the path it has chosen here: namely, to require a variety of institutions, many of them well below thresholds for G-SIB designation, to complete and submit a data collection template based on the G-SIB framework on an accelerated timetable. Until the Board (and the other Federal banking agencies, if necessary) has taken these steps, it is inappropriate to consider imposing a data collection requirement on U.S. institutions, whether based on the G-SIB framework or otherwise, for the purpose of determining whether U.S. institutions are D-SIBs or whether they should be subject to a D-SIB-based capital surcharge.

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[23] *See* Daniel K. Tarullo, Member, Board, Remarks at the University of Pennsylvania Law School Distinguished Jurist Lecture: Financial Stability Regulation (Oct. 10, 2012), *available at* http://www.federalreserve.gov/newsevents/speech/tarullo20121010a.pdf.

[24] In this regard, we note that Title I of the Dodd-Frank Act appears to establish at least a *de facto* threshold for domestic systemic importance of $50 billion in assets. In addition, by requiring that the Board take into account various considerations described in section 113 of the Dodd-Frank Act when prescribing enhanced prudential standards, Title I also appears to establish parameters for the calibration of any potential capital surcharge that may be imposed on such institutions.

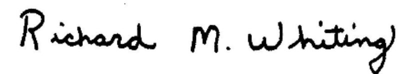
V. **Specific Comments**

Please see Appendix A for our specific comments on the Information Request and the FR Y-15.

VI. **Conclusion**

We thank the Board for the opportunity to comment on the Information Request. If you have any questions, please do not hesitate to contact me, Richard Foster at (202) 589-2424, Beth Knickerbocker at (202) 663-5042, or Brett Waxman at (212) 612-9211.

Sincerely,



Executive Director and General Counsel
The Financial Services Roundtable

Senior Counsel and Vice President
Office of Regulatory Policy
American Bankers Association

Vice President and Associate General Counsel
The Clearing House Association

Appendix A

General Questions

1) Requirement for electronic submission of FRY-15- There is insufficient time to allow respondents to prepare the electronic submission file. The current draft form does not contain the relevant MDRM positions which are critical for the development of the transmission file.

2) Will the Board provide the respondents with a population of validity error checks that can be used to compare data between different reports prior to the submission of the FRY-15?

3) Currently the FRY-9C permits rounding of balances to the millions. Will BHCs be able to round the balances to millions as is done on the FRY-9C? Rounding to millions, as opposed to thousands, would align the data more closely to that of other reports.

4) For a G-SIB which has a consolidated broker-dealer subsidiary, should the FRY-15 include the broker dealer, since it files a FOCUS report?

Schedule A – Size Indicators

Schedule A requires Covered Companies to provide data on total notional amount of credit derivatives sold, whereas the Basel III size indicator (the Basel III leverage ratio) does not include total notional amount of credit derivatives sold. This divergence creates an inconsistency between monitoring regimes in the U.S. vs. non-U.S. jurisdictions. Consistency between regulatory regimes is critical to preserve the competitiveness of U.S.-based financial institutions. Furthermore, consistency promotes efficiency of reporting and risk management for institutions that may become subject to rules based on the Basel III framework.

Schedule A also references a number of data items that are to be computed under the Basel frameworks. As the Board is well aware, the Basel frameworks have not been fully implemented in the U.S. or been applied to most Covered Companies. For example, (i) line items 2c (off-balance sheet items with a 0% CCF, including unconditionally cancellable commitments), 2d (off-balance sheet items with a 20% CCF), 2e (off-balance sheet items with a 50% CCF), and f (off-balance sheet items with a 100% CCF) each refer to calculations under Basel II and (ii) line item 3 (regulatory adjustments) requests reporting of regulatory adjustments to Tier 1 capital under the fully implemented Basel III framework, which has only been recently proposed in the U.S. We believe that metrics calculated under the Basel frameworks should not be included in the Information Request until such frameworks are fully implemented in the U.S.

We also have the following questions regarding Schedule A:

- Line item 2a. Potential future exposure for derivatives – there is reference in the instructions to section 32(c)(5)(ii) and (c)(6). Where is this section located?

- May non-Basel banks put nothing in Line Item 2(c) and use this caption to include all other items receiving a 0% CCF under the general risk-based capital rules?

- Does Basel II, or would the ability to utilize Line Item 2(c)(2), accommodate U.S. banking regulation's (current rules and Basel III NPRs) "unconditionally cancellable" exception for home equity lines of credit cancellable to the full extent of the law?[1]

Schedule B – Interconnectedness Indicators

Schedule B references a number of data items that are to be calculated under the Basel frameworks, for example line items 5b (potential future exposure), 5c (fair value of collateral that is held outside of the master netting agreements) and 8 (net negative current exposure of securities financing transactions with other financial institutions). As discussed above, we recommend that requests for data which rely on the Basel frameworks be postponed until these frameworks are fully implemented in the U.S. Additionally, several data points request information on deposits by and exposures to "financial institutions," which is an undefined term. We respectfully request clarification as to whether the term "financial institution" as used in Schedule B (and in other Schedules as well) is a reference to the term "financial institution" as defined for purposes of the recently issued notices of proposed rulemakings to implement Basel II and Basel III in the U.S.[2]

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[1] *See* 12 C.F.R. 225, App. A, fn. 60 ("In the case of a consumer home equity or mortgage line of credit secured by liens on 1-4 family residential properties, the bank is deemed able to unconditionally cancel the commitment for the purpose of this criterion if, at its option, it can prohibit additional extensions of credit, reduce the credit line, and terminate the commitment to the full extent permitted by relevant Federal law."); Regulatory Capital Rules: Standardized Approaches for Risk-Weighted Assets; Market Discipline and Disclosure Requirements; 77 Fed. Reg. 52,888, 52,902 (Aug. 30, 2012) ("Standardized Approach NPR") ("In the case of a residential mortgage exposure that is a line of credit, a banking organization would be deemed able to unconditionally cancel the commitment if it can, at its option, prohibit additional extensions of credit, reduce the credit line, and terminate the commitment to the full extent permitted by applicable law.")

[2] Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action, 77 Fed. Reg. 52,792 (Aug. 30, 2012); Standardized Approach NPR; Regulatory Capital Rules: Advanced Approaches Risk-Based Capital Rule; Market Risk Capital Rule; 77 Fed. Reg. 52,978 (Aug. 30, 2012).

We also have the following additional questions regarding Schedule B:

- We request clarification regarding the term "intra-financial." For example, does this term include transactions between a Covered Company and its affiliates, such as foreign subsidiaries or branches?

- Line item 1. All funds deposited with or lent to other financial institutions – define "funds" (cash, marketable securities) and define "deposited" – funds are wired for margin calls to banks/brokers (via a bank) – does it matter if cash collateral is held in deposit accounts, general ledger accounts or investment accounts? Does this line item require the capture of all "funds" sent to a financial institution for every business day for a year and not what the balance is on December 31, 2012?

- Line item 5.b. Same as 1.a above. In addition, the instructions reference the Current Exposure Method (CEM). Where is this calculation defined?

- Line item 7a and b. Same question as 2.a above.

Schedule C – Substitutability Indicators

Schedule C requires Covered Companies to report on the total value of all payments sent by the institution, including the total value of all payments sent on behalf of other institutions. Such figures are required to "reflect gross payment activity" but most Covered Companies currently report on a net, rather than gross basis. In fact, it is not even clear that it will be possible for Covered Companies to gather and collect the requested payments data, as it appears to far exceed the type of payments data currently collected even by Covered BHCs.

Indeed, Schedule C fails to provide sufficient specificity with regard to the collection of payments activities for the Covered Companies to form a view as to whether implementation of such reporting is possible. We respectfully request that the Board provide additional information regarding whether the payments referred to are the payments for a given institution's purchase of assets, its customers' purchase of assets, or both. Does it include payments made to vendors, payments on principal and interest on debt? Payments made by a Covered Company's trust department as trustee for customers? Payments made on behalf of online banking customers? ACH payments? Wire? If reporting is to include customers' purchase of assets, we respectfully request that the Board clarify whether retail, commercial and merchant customers of a company should be included in such reporting. For example, does line 5 include U.S. as well as cross-border assets that a Covered Company holds as custodian on behalf of customers? Does this include those assets for which a Covered Company uses a third-party as a sub-

custodian? In addition, does the population include managed, as well as non-managed assets?

Finally, although the instructions to Schedule C permit a Covered Company to exclude payments data on "inter-group transactions," the term "inter-group transactions" is not defined. The resulting lack of clarity around the scope of this exclusion exacerbates the already substantial difficulties of complying with Schedule C. We respectfully request that the Board consider meeting with company representatives to discuss the substantial compliance challenges presented by Schedule C.

Schedule D – Complexity Indicators

Schedule D requires that Covered Companies provide a number of data items that reference Basel frameworks, such as the Basel Liquidity Coverage Ratio. As discussed above, the Federal banking agencies have only recently proposed to implement Basel III in the U.S., and have not yet even proposed rules to implement the Liquidity Covered Ratio. As we have noted repeatedly, it is inappropriate to require institutions to provide information under Basel regimes that have yet to be finalized at the Basel Committee level and by extension have yet to be finalized in the U.S.

Schedule F – Ancillary Indicators

Clarification is needed regarding securities borrowed (line 8) and derivative transactions (lines 9/10). The current instructions are not clear with respect to intercompany transactions between a respondent and non-respondent, such as an affiliate that is a foreign branch. Regarding line 12, is the country of jurisdiction based on the physical address or the registered address?