



June 14, 2013

Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, N.W.
Washington, DC 20551
Attention: Robert deV. Frierson, Secretary

Re: Supervision and Regulation Assessments for Bank Holding Companies and Savings and Loan Companies with Total Consolidated Assets of \$50 Billion or More and Nonbank Financial Companies Supervised by the Federal Reserve (**Docket No. 1457 RIN 7100-AD-95**)

Ladies & Gentlemen:

The Clearing House Association L.L.C. (“The Clearing House”)¹ appreciates the opportunity to comment on the notice of proposed rulemaking (the “NPR”) by the Board of Governors of the Federal Reserve System (the “Board”) to implement Section 318 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 318 directs the Board to collect a total amount of assessments, fees or other charges equal to the total expenses the Board estimates are necessary or appropriate to carry out its supervisory and regulatory responsibilities with respect to (1) bank holding companies (“BHCs”) and savings and loan holding companies (“SLHCs”) with \$50 billion or more in total consolidated assets, and (2) nonbank financial companies (“NFCs”)

¹ 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 United States. See The Clearing House’s web page at www.theclearinghouse.org.

designated for Board supervision by the Financial Stability Oversight Council (“FSOC”) (“designated NFCs” and together with BHCs and SLHCs, “covered companies”).

The Clearing House appreciates the considerable work done by the Board in developing an assessment system as required under Section 318. We believe that, in order to satisfy the statute’s requirements, this assessment system must be designed to calculate carefully, accurately and transparently, as well as allocate fairly among covered companies, the cost of their supervision and regulation by the Board and the Federal Reserve Banks.²

In this letter we offer three principal comments to the NPR to assist the Board in achieving this result. First, in order to provide a meaningful opportunity for public comment, both now and for future assessments, the Board should provide a more transparent and detailed disclosure of the Board’s expenses incurred in supervising and regulating covered companies, including, importantly, a discussion of the procedures, accounting and methodology it employs to determine the assessment basis. The Clearing House believes that the need for transparency in an agency rulemaking is especially important when the agency is collecting fees to cover the expenses of its own programs, as otherwise there is little, if any, oversight or accountability over the expenses included in the assessment. This is particularly the case where, as here, the assessment program falls on a very limited number of companies.

Because the development and production of this data and methodology and the consideration of public comment on it is likely to take considerable time and effort on the part of the Board, The Clearing House believes the Board should consider postponing the commencement of its assessment program until 2014 for expenses incurred by the Board during 2013. This will enable the Board to take the necessary steps required to develop a fair and transparent assessment system that helps ensure that only the expenses the Board is authorized to recover under Section 318 are included in the assessment basis. We believe it would be inequitable to require covered

² We note that Section 318(c) gives the Board assessment authority for expenses that it “estimates are necessary or appropriate” for this purpose. This is in contrast to, and more limited than, Section 318(b), which grants the Office of the Comptroller of the Currency “sole authority to determine” the expenses it can collect.

companies to pay for these expenses until there are adequate procedures and processes in place to ensure the accuracy of the assessment basis in accordance with the statutory standards.³

Second, we believe that the Board should take care not to include in the assessment basis expenses that are incurred to supervise functionally regulated subsidiaries, including national banks, federal and state savings associations, and state nonmember banks or activities that are the primary responsibility of other agencies, unless they are clearly necessary or appropriate for the Board's consolidated supervision of their parent holding companies and not duplicative of the efforts of the primary supervisory authority.

Third, we believe that the Board should recognize the disproportionately higher costs that it will inevitably incur in respect of designated NFCs, both in connection with the designation process itself and to supervise and regulate them once designated. These additional costs should be borne by designated NFCs and not by the covered BHCs and SLHCs.

Transparency and Detail

The NPR posits \$440 million as the total amount of the Board's estimated expenses for 2012 without providing a breakdown of those expenses or any detail regarding the procedures, methodology and analytics under which the Board's actual expenses are determined and the associated budgeting processes. There is almost no information or explanation provided to allow the public to comment on the allocation of overall Board expenses. As it stands, the public cannot distinguish between those expenses incurred in the Board's exercise of its supervisory and regulatory responsibilities and its other extensive and resource-intensive activities. Likewise, the precise allocation of supervisory and regulatory expenses between covered companies

³ We also draw to your attention the positions taken in comment letters to be submitted to the Board by the American Bankers Association, 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.

and non-covered companies is equally inexplicit. The public is, therefore, unable to determine and comment on whether the assessment basis includes, as required by the statute, only those expenses that are necessary or appropriate to regulate and supervise covered companies.

Clearly the Board devotes a significant amount of resources to the supervision and regulation of state member banks, Edge Act and Agreement Corporations, U.S. branches and agencies and representative offices of foreign banks, and BHCs and SLHCs with less than \$50 billion in total consolidated assets, as well as to its monetary policy, central bank, payments, and other important responsibilities. The accurate estimation of overall Board supervisory and regulatory expenses and the proper allocation of these expenses among covered companies and non-covered companies are critical to the proper implementation of the statute. It will ensure that covered companies do not bear the burden of the Board's expenses in supervising and regulating non-covered companies or any other Board functions.

The NPR states that the assessment basis includes expenses for support, overhead and pensions. It provides little detail or explanation as to how and in what amounts or proportions these expenses are determined and allocated to the assessment basis.⁴ Likewise, there is no detail regarding its methodology for allocating the expenses of the individual Reserve Banks. There are some Reserve Banks that do not supervise or regulate covered companies at all and others that do so only to a limited extent (*e.g.*, participation by employees in a horizontal review at a covered company). Accordingly, we do not believe that covered companies should be assessed for the overhead, support and related expenses incurred by most of the more than 36 nationwide offices of the Federal Reserve Banks. Although these offices carry out the System's monetary policy, central bank, payments and other important functions, we do not believe the expenses of all these offices can be justified as necessary or appropriate to supervise and regulate the covered companies.⁵

⁴ For example, we believe the Board should disclose how the total Board pension expenses to be allocated to the assessment basis were calculated, and, in particular, whether the Board excluded pension expenses attributed to employees who retired before 2012.

⁵ The Clearing House does not question the appropriateness of the Board's expenditures to regulate and supervise covered companies. Rather, we seek only information relevant to the
(footnote continued)

Similarly, the NPR does not provide any detail as to how (and in what amounts or proportions) expenses related to staff training, research, analysis and development of supervisory and regulatory policies, and collecting, receiving, and processing reports would be determined and allocated between covered companies and non-covered companies. We also believe the Board should disclose, in sufficient detail, the methodology it has used to apportion its expenses incurred developing rules, guidelines and interpretations that apply both to covered companies and to non-covered companies, as well as any of its other activities, such as applications processing, that apply to both categories of companies.⁶

The NPR does not specify whether the expenses the Board has incurred in connection with the nonbank financial company designation process and their future regulation and supervision by the Board once designated have been included in the initial \$440 million assessment basis. As discussed below, we believe that covered BHCs or SLHCs should not be assessed for these expenses. Finally, in view of the transfer to the Consumer Financial Protection Bureau of the Board's responsibility for examining and enforcing consumer compliance for covered companies, the Board should confirm that consumer compliance expenses have not been included in the assessment basis.

We submit that administrative fairness – as well as the Board's commitment to transparency⁷ – require detailed and transparent disclosure in order to provide opportunity for meaningful public comment. We also believe that, for future assessments, the actual and budgeted expenses that will form the basis of the assessment should be disclosed at a sufficient level of detail on an annual basis, along with an explanation of the budgeting process. The rulemaking provisions of the Administrative Procedure Act (5 U.S.C. § 553(b)) provide that, in order to allow for

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separate question of whether only expenses necessary or appropriate to supervise and regulate covered companies have been included in the assessment basis.

⁶ As an example, the Board and the Reserve Banks periodically review and update geographic markets for purposes of competitive analysis. If this expense is appropriately included at all (and, as discussed below, we believe it should not), how has the Board allocated this expense between covered companies and non-covered companies?

⁷ See Letter from Board Chairman Ben Bernanke to Mr. Cass R. Sunstein, Office of Information and Regulatory Affairs, dated Nov. 8, 2011.

meaningful and informed comment, a notice of proposed rulemaking should contain a sufficiently detailed explanation of the basis for a proposed rule,⁸ including the data and methodology on which the rule is based.⁹

In furtherance of this approach, The Clearing House respectfully requests that the Board develop and make available for comment the information requested as to how the assessment basis was calculated, including the details and amounts of the various supervisory and regulatory elements included in the assessment basis. For future assessments, we urge the Board to make these disclosures sufficiently in advance of when the assessment basis is determined to allow the Board sufficient time to consider public comment. Moreover, greater advance disclosure of the Board's determination with respect to the assessment basis is necessary in order to allow covered companies to estimate accurately, and budget appropriately for, the annual assessment amount.

We believe that the level of transparency that we are advocating will significantly enhance confidence in the accuracy and fairness of the assessment and allocation process.

Assessments where the Board is not the primary supervisor

Section 318 limits the amount of assessments the Board may impose on covered companies to only those that are "necessary or appropriate" to supervise or regulate these companies. Accordingly, in the NPR, the Board proposes to exclude from the assessment basis expenses associated with supervising state member banks and branches and agencies of foreign banks,¹⁰ which the Board correctly states are not attributable to its role as *consolidated* supervisor. The Board's proposed exclusion, however, may not go far enough. We believe, in the case of expenses to supervise and

⁸ See S. Doc. No. 248, 79th Cong., 2d. Sess. 200 (1946).

⁹ See *American Medical Association v. Reno*, 57 F.3d 1129, 1132-33 (D.C. Cir. 1995); *Engine Manufacturers Association v. Environmental Protection Agency*, 20 F.3d 1177, 1181 (D.C. Cir. 1994).

¹⁰ We also believe the Board should exclude costs associated with Edge Act and Agreement Corporations.

regulate subsidiaries that are the primary responsibility of another governmental agency, the Board should take great care to ensure only expenses necessary or appropriate to the Board's role as consolidated supervisor are included in the assessment basis. This is consistent with Section 5(c) of the Bank Holding Company Act of 1956, as amended, which provides that, in order to avoid duplication and unnecessary regulatory burden and cost, the Board should use examination reports and other supervisory information provided to the primary regulatory authority.¹¹ The need for avoidance of duplicative expenses relating to the supervision of subsidiaries regulated by another governmental authority is particularly compelling in cases, such as with national bank subsidiaries, where the covered company is already paying the expenses of the primary regulator.

We also do not believe any expenses associated with the Shared National Credit Program should be included in the assessment basis because they relate to the operations of regulated subsidiaries; they are not a component of the Board's consolidated supervisory responsibility. Finally, we question whether certain expenses included in the assessment basis can be classified properly as supervisory and regulatory, such as competitive analysis and the processing of consumer complaints. Each are conducted by the Board for other purposes and may duplicate the efforts of other agencies.

Treatment of Designated NFCs

We believe that the proposed rule does not appropriately address the assessment of designated NFCs, which will require more Board supervisory attention and resources than BHCs or SLHCs of similar size and complexity. The Board will need to develop a new regulatory and supervisory framework for designated NFCs, reflecting the unique issues that these entities, with their widely varied operations, affiliations and risk profiles, are sure to present. The development of this regulatory framework will presumably continue for some time as these entities become subject to the Board's supervision for the first time, and the Board further enhances and refines its approach.

¹¹ See 12 U.S.C. § 1844(c). See also 12 U.S.C. § 1467a(b) (requiring the Board, as the consolidated supervisor for SLHCs, to use examination reports and other supervisory information provided to the primary regulatory authority).

The need for the Board to address separately the expenses of initially designating, and then supervising and regulating, designated NFCs to avoid an inequitable result is particularly pressing and illustrated by the first assessment year. The Board likely has devoted substantial resources to assist in the development of the designation protocol and create the enhanced prudential framework for designated NFCs, potentially increasing the aggregate amount of expenses to be reimbursed in this first year. We strongly believe that the costs associated with developing the supervisory and regulatory framework for designated NFCs should not be included in the assessment basis until the FSOC has issued final designations of one or more NFCs. It would be inequitable to collect any of these costs from banking organizations, as the NPR may do, because no NFC has received a notice of final designation or is subject to Board supervision and prudential standards.

Moreover, because of the necessary additional resources attributable to the oversight of designated NFCs, we believe it would be inappropriate for covered BHCs and SLHCs to bear the costs of supervising such entities once the FSOC has designated them. Accordingly, we believe such expenses should be calculated separately and collected only from designated NFCs and not from covered BHCs or SLHCs. In the event the Board decides to assess BHCs and SLHCs for these expenses, we strongly believe it should require designated NFCs to bear a greater proportion of these expenses by applying a higher assessment rate to such companies.¹²

Reporting Forms

We suggest that the Board informally communicate with covered companies prior to sending assessment notices to ensure the most accurate possible determination of assessable assets.

* * *

We appreciate the Board's consideration of our comments and would welcome the opportunity to meet with Board staff to further discuss our concerns and recommendations. If you have any questions, or need further information, please

¹² If the Board decides to assess covered BHCs and SLHCs for these costs, we believe the Board should provide details about how assessable assets of designated NFCs will be determined in order to assure they bear their proportionate share.

Robert deV. Frierson

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contact Alex Radetsky (e-mail: Alex.Radetsky@theclearinghouse.org, telephone number: (212) 612-9285).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alex Radetsky", with a long horizontal flourish extending to the right.

Alex Radetsky
Vice President and Associate General
Counsel
The Clearing House Association L.L.C.

cc: Scott Alvarez
Board of Governors of the Federal Reserve System