

# COMMITTEE ON CAPITAL MARKETS REGULATION

March 21, 2011

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, NW  
Washington, DC 20551

Re: Definitions of “Predominantly Engaged In Financial Activities” and “Significant” Nonbank Financial Company and Bank Holding Company, 76 Fed. Reg. 7731 (RIN No. 7100-AD64; Docket No. R-1405)

Dear Ms. Johnson:

The Committee on Capital Markets Regulation (Committee) appreciates the opportunity to comment on the Board of Governors of the Federal Reserve System’s (Fed) Proposed Rules<sup>1</sup> defining “significant” nonbank financial company under §113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).<sup>2</sup> Although the general approach taken by the Proposed Rules is sound, the Fed should carefully consider whether \$50 billion is the appropriate threshold.

Since 2005, the Committee has been dedicated to improving the regulation of U.S. capital markets. Our research has provided an independent and empirical foundation for public policy. In May 2009, the Committee released a comprehensive report entitled, *The Global Financial Crisis: A Plan for Regulatory Reform*, which contains 57 recommendations for making the U.S. financial regulatory structure more integrated, more effective, and more protective of investors in the wake of the financial crisis of 2008.<sup>3</sup> Since then, the committee has continued to make recommendations for regulatory reform of major areas of the U.S. financial system.

The Dodd-Frank Act allows FSOC to designate nonbank financial companies for supervision by the Fed if FSOC determines that a company, if met with financial distress, “could pose a threat to the financial stability of the United States.”<sup>4</sup> The Act specifies eleven characteristics FSOC should use in making its determination. One of these is “the extent and nature of the transactions and relationships of the company with other significant nonbank financial companies.”<sup>5</sup> The Fed is required to define the term “significant nonbank financial

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<sup>1</sup> Definitions of “Predominantly Engaged In Financial Activities” and “Significant” Nonbank Financial Company and Bank Holding Company, 76 Fed. Reg. 7,731 (proposed Feb. 11, 2011) (hereinafter Proposed Rules).

<sup>2</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act (hereinafter Dodd-Frank Act), Pub. L. No. 111-203, §113.

<sup>3</sup> COMM. ON CAPITAL MKTS. REG., *THE GLOBAL FINANCIAL CRISIS: A PLAN FOR REGULATORY REFORM* (May 2009), <http://www.capmksreg.org/research.html>.

<sup>4</sup> Dodd-Frank Act §113(a)(1).

<sup>5</sup> Dodd-Frank Act §113(a)(2)(C).

compan[y].”<sup>6</sup> The proposed definition includes any nonbank financial company that is already subject to supervision by the Fed, as well as any nonbank financial company with \$50 billion or more in total consolidated assets.<sup>7</sup>

The Committee applauds the Fed’s use of asset thresholds in defining “significant” nonbank financial companies. In response to FSOC’s requests for comment regarding its authority to require supervision and regulation of certain nonbank financial companies,<sup>8</sup> the Committee has twice recommended that, if FSOC is to designate any companies as systemically important, then it should use asset thresholds. In its letter dated November 5, 2010,<sup>9</sup> the Committee stated, “it is less harmful to use the single, objective, predictable measurement of asset size” and reinforced this point in its letter dated February 22, 2011,<sup>10</sup> stating, “asset thresholds are the only sensible method.” We are happy to see the Fed adopt this approach.

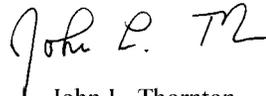
The Fed, however, provided little support for setting the threshold at \$50 billion. We encourage the Fed to exercise caution in setting an appropriate threshold. First, it should justify, with appropriate data, the particular threshold it chooses. Second, it should recognize how its threshold for this one criterion will implicitly affect FSOC’s own determination of systemically important companies. Thus, it would be hard to argue that a company with less than \$50 billion in assets is systemically important when the Fed has determined that when FSOC considers that company’s relationship to other companies, the only other companies that are relevant must have \$50 billion in assets (or have been already designated by FSOC as systemically important).

Thank you for considering our comments. Please do not hesitate to contact us at (617) 384-5364 if we can be of any further assistance.

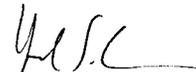
Respectfully submitted,



R. Glenn Hubbard  
Co-CHAIR



John L. Thornton  
Co-CHAIR



Hal S. Scott  
DIRECTOR

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<sup>6</sup> Dodd-Frank Act §102(a)(7).

<sup>7</sup> Proposed Rules §225.302(b), 76 Fed. Reg. at 7,740.

<sup>8</sup> Advance Notice of Proposed Rulemaking Regarding Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, 75 Fed. Reg. 61,653 (proposed Oct. 6, 2010); Notice of Proposed Rulemaking Regarding Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, 76 Fed. Reg. 4,555 (proposed Jan. 26, 2011).

<sup>9</sup> Comm. on Capital Mkts. Regulation, comment to Financial Stability Oversight Council Advance Notice of Proposed Rulemaking, *Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies*, 75 Fed. Reg. 61,653 (filed Nov. 5, 2010).

<sup>10</sup> Comm. on Capital Mkts. Regulation, comment to Financial Stability Oversight Council Notice of Proposed Rulemaking, *Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies*, 75 Fed. Reg. 61,653 (filed Feb. 22, 2011).