June 14, 2013

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

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

Dear Mr. Frierson:

The American Financial Services Association ("AFSA") welcomes the opportunity to comment on the proposed rule (the "Proposed Rule") issued by the Board of Governors of the Federal Reserve System ("Board") to implement section 318 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The Dodd-Frank Act directs the Board to collect assessments, fees, or other charges equal to the total expenses the Board estimates are necessary or appropriate to carry out the supervisory and regulatory responsibility of the Board for bank holding companies and savings and loan holding companies with total consolidated assets of $50 billion or more and nonbank financial companies designated for Board supervision by the Financial Stability Oversight Council (collectively, the "Companies"). We greatly appreciate the opportunity to provide industry insight and comments on this important Proposed Rule and the very meaningful financial implications that will result for subject institutions.

By way of brief background, AFSA represents a broad cross-section of financial companies, including large bank holding companies, savings and loan holding companies, and nonbank financial companies. AFSA's members include leading consumer finance companies, automotive lenders and residential mortgage lenders, as well as savings and loan holding companies, bank holding companies, and their non-depository affiliates. Some members are captive financing arms of larger manufacturing or retail companies, while other members are independent providers of financial products and services.

AFSA believes that the Board should consider and address the following comments on establishing the assessment basis, the criteria for whether a company is an assessed company, the apportionment of the assessment basis to assessed companies, and what assets should be assessable. In addition, AFSA asks that the Board promulgate an intermediate holding company rule. Lastly, AFSA requests that the assessment be imposed prospectively.

Establishing the Assessment Basis

To ensure clarity, the scope of operating activities and projects giving rise to capital expenditures should be described in detail in a final rule. The Proposed Rule's discussion of these expenditures is relatively limited and provides a general reference that such expenses will be necessary or appropriate for the Board as it carries out its responsibilities under the Dodd-Frank Act. In the Proposed Rule, the Board generally notes what expenses will be included, but no breakdown or formula for the calculation is included. The Board estimates that the assessment basis would be approximately $440 million, but does not provide additional guidance on the facts or assumptions used to establish that estimate. This is inadequate for purposes of ascertaining those expenses which are funded by the assessments. The final rule must provide additional detail and transparency regarding the information, data, and assumptions used to estimate and budget the assessment basis.

Criteria for Determining Whether a Company is an Assessed Company

The Proposed Rule outlines the Board's assessment program, including how the Board would determine which companies would be subject to an assessment for each calendar-year assessment period. The Board would make the determination for each calendar-year period (the assessment period) that a company is a bank holding company or savings and loan holding company with total consolidated assets equal to or exceeding $50 billion, or a nonbank financial company designated for Board supervision by the Financial Stability Oversight Council ("Council"), based on information reported by the company on regulatory or other reports as determined by the Board.

AFSA asks that assessed companies that are grandfathered unitary savings and loan holding companies be designated as an assessed company only if the assets associated with their savings association and their other financial activities equal $50 billion or more. For these companies, to determine the amount of total assets for determining whether such a company is an assessed company, the Board should only require those assets to be reported on the FR Y-9C form. Those reported financial assets should then be used to determine if the grandfathered unitary savings and loan holding company is an "assessed company."

AFSA also asks the Board to index the $50 billion in assets standard for bank holding companies and savings and loan companies to inflation.

Apportioning the Assessment Basis to Assessed Companies

1. *Savings and Loan Holding Companies*

For savings and loan holding companies, AFSA agrees with the Proposed Rule that if the savings and loan holding company is a grandfathered unitary savings and loan holding company, total assessable assets should only include the assets associated with its savings association subsidiary and its other financial institutions. AFSA also agrees that for a savings and loan holding company, the total assessable assets should be determined by the average of the savings and loan

holding company's total consolidated assets as reported for the assessment period on the regulatory reports on the savings and loan holding company's Form FR Y-9C.

2. *Nonbank Financial Companies Supervised by the Board*

The Dodd-Frank Act explicitly provides the Board with the authority, if not mandate, to consider a number of factors contained in Section 113 of the Dodd-Frank Act when determining the assessment fee assigned to the Companies. These factors include, among other things, capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors deemed appropriate.

The legislative history to the Dodd-Frank Act clearly indicates that certain firms, such as nondepository captive finance companies, "do not pose the types of risks that warrant" designation under Section 113. Congress directed the Board to consider multiple factors in designating and assessing the Companies because no single factor appropriately captures the complexity of a given firm.

Additionally, the Board should confirm in the final rule that no nonbank financial company will be required to pay an assessment until the assessment rule has been reviewed and the particular characteristics of the designated nonbank financial company or companies are considered consistent with the factors outlined in Section 113. Moreover, without a bright-line asset test that allows nonbank financial companies to prepare and budget for implications of Council designation, the final rule should affirmatively confirm that any such company so-designated is not subject to an assessment until the first assessment determination date following designation by the Council, at the earliest. This will permit nonbank financial companies to prepare and budget accordingly.

Finally, the Proposed Rule is unclear on the appropriate treatment for non-public companies that may be designated as nonbank financial companies. The final rule should specifically detail how non-public companies would be treated under the rule and the manner in which information regarding such companies would need to be reported to the Board for purposes of the assessments. To the extent that any information provided or related to the assessment process is non-public and exempt from public disclosure, the Board should also make reference to the rules and regulations regarding the confidential treatment of such information.

Non-domestic and Non-financial Assets Should Be Excluded from Assessment

AFSA believes that the final rule should provide additional clarification regarding the types of assets that are considered in making an assessment determination. Assets that are both non-domestic and non-financial should not be included in the assessment. Only assets related to domestic U.S. operations should be considered for assessment purposes. Total consolidated assets should not include foreign affiliates that are consolidated for accounting and public reporting purposes.

Assets determined to be related to a company's activities that are financial in nature, as defined by the Bank Holding Company Act of 1956, should be considered for nonbank financial

companies that are designated by the Council and are not savings and loan holding companies. While it may be less complex and less burdensome to adopt a rudimentary mechanism for determining assessable assets, such an approach is (1) not equitable in practice; (2) not consistent with statutory directives of the Dodd-Frank Act; and (3) not consistent with the functions or duties of the regulators and agencies whose expenses are funded through the assessment process. It is inconsistent to include activities, operations, and assets of nonbank financial companies that are independent of the financial markets or financial functions of the Board. Financial Companies should not be evaluated based on "total assessable assets," but should rather be assessed based on the total consolidated assets that are financial in nature.

The Board could resolve this issue by promulgating an intermediate holding company rule. The delay in promulgating an intermediate holding company rule has created uncertainty for companies that are primarily non-depository firms as to whether the assessable assets will be determined: (1) using the assets of the entire corporate enterprise, which may be primarily non-depository and non-financial operations; (2) using the assets of just its financial services operations, including depository and non-depository financial services entity(s); or (3) using the assets of just the depository financial services entity(s). We ask that the Board promulgate the rule promptly.

The Assessment Should Be Imposed Prospectively

AFSA strongly believes that the assessment should be imposed prospectively. That is, the assessment should cover the predicted costs for supervision for the year ahead, not the previous year. A retroactive imposition of the assessment would impose an unfair cost on covered companies and would not be consistent with Congressional intent. The retroactive imposition of the assessment would be an unplanned and sizable expense for covered companies. Additionally, Congress directed the Board to impose the assessment based on an "estimate" of its costs. If the assessment was intended to be applied retroactively, the Board would not have to estimate, since it would know what its expenses were.

Conclusion

AFSA appreciates the opportunity to comment on the Proposed Rule and welcomes the opportunity to discuss further any of the issues addressed in this response letter. If you have any questions or if we can provide any additional information, please feel free to contact me at (202) 466-8616 or bhimpler@afsamail.org.

Respectfully submitted,

Bill Himpler
Executive Vice President
American Financial Services Association