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April 30, 2013

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

RE: Regulation YY: Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies; Docket No. 1438 and RIN 7100-AD-86

Dear Mr. Frierson:

In the preamble to the Federal Reserve Board's proposed rule, the Board asks "What specific characteristics of a foreign nonbank financial company should the Board consider when determining how to apply the enhanced prudential standards and the early remediation requirements to such a company?"[1]

We respectfully note that a key distinguishing characteristic of a foreign nonbank financial company is the fact that such a company does not own or control an insured depository institution. This fact permits the Board to modify prudential standards that may otherwise be aimed at protecting depositors or insulating an insured depository institution from risks that may arise from nonbank affiliates. For example, the capital standards for a foreign nonbank financial company need not be the same as a domestic or foreign bank holding company, especially if the foreign nonbank holding company is subject to comprehensive consolidated supervision in its home country and its U.S. nonbanking operations are governed by otherwise applicable capital and supervisory standards.

Congress recognized this important distinction between nonbank financial companies and bank holding companies in the Dodd-Frank Act. Section 165(b)(3) of that Act requires that in prescribing prudential standards, the Board must consider differences between nonbank financial companies and banking companies, including "whether the company owns an insured depository institution." That section of the Act also directs the

[1] This question appears as part of Question 2 in the preamble, 77 Fed. Reg. 76635 (December 28, 2012).

Board to “adapt the required standards ... in light of any predominant line of business of such company...”.

In the preamble to the proposed rule, the Board acknowledges that it expects to tailor the application of the standards to different companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities, size, and any other risk-related factors that the Board deems appropriate. In doing so, we urge the Board also to take into consideration the fact that foreign nonbank financial companies do not own or control insured depository institutions and to modify the standards so as not to impose bank capital requirements on foreign nonbanks subject to capital and supervisory requirements by their primary U.S. and home country regulators.

Sincerely,

Barnett Sivon & Natter, PC