From: Edward R. Tekeley

Proposal: 1425 (RIN 7100-AD77) - Reg Y - Capital Plans

Subject: Capital Plans

Comments:

Date: Jun 17, 2011

Proposal: Capital Plans
Document ID: R-1425
Document Version: 1
Release Date: 06/10/2011
Name: Edward R Tekeley

Comments:

At least one bank, Fifth Third Bank, has already abused the extant process for capital plan reviews and asserted that a legal event occured as the result of the Federal Reserve's silence on a proposal contained within their capital plan. This is highly irregular and, at best, questionable. At worst, it is illegal and makes the Federal Reserve complicit. Recently Fifth Third Bank, in a notice to redeem certain trust preferred securities, announced that the Federal Reserve Board did not object to the potential redemption of certain such securities as proposed potential capital actions in the Company's capital plan submitted under the Federal Reserve's Comprehensive Capital Analysis and Review. Does the Federal Reserve understand the full legal implications of what Fifth Third Bank has implied in its press release: "Federal Reserve Board did not object to the potential redemption of certain such securities as proposed potential capital actions"? Fifth Third Bank's notice appeared in a press release on Wednesday May 18, 2011, 12:24 pm EDT. The securities in question here are the Fifth Third Capital Trust VII 8.875% Trust Preferred Securities with a principal amount of $400,000,000. The Federal Reserve should be aware that the covenants to these securities explicitly state that capital treatment redemption must be triggered by a change in law that can reasonably be expected to negatively affect the status of the securities to qualify as Tier 1 capital. The Basel III requirements for Tier 1 capital would certainly qualify as a capital treatment event for this security. The Basel Committee, however, established a 6 year phased implementation period, starting in January of 2013. It is not a coincidence then that the preferred securities that most banks currently designate as Tier 1 capital, including the Fifth Third Bank securities in question, have Call provisions in 2013. Does the Federal Reserve then agree with Fifth Third Bank that a capital treatment event occurred prior to 2013 for the securities in question? What specific policy, regulation or communication establishes the effective date and time for a capital treatment event that applies to the securities in question? What specific regulatory implementation requirements did the Federal Reserve contemplate when, according to Fifth Third Bank, the Federal Reserve did not object that a capital treatment event occurred? The Fed has been promising to be more transparent. Why then has the Fed been silent on the matter of a regulatory capital treatment event that has legal and investment implications for many bank securities? And, why did the Fed not communicate well in advance to the investment public the following: (a) U.S. banks would be permitted to transition to the new capital requirements ahead of the Basel schedule, (b) the earliest date when such transition could occur, and (c) that such transition would constitute a capital treatment event with respect to securities that will no longer qualify as Tier 1 capital? I should also like to make you aware that I previously emailed the forgoing as a comment to your regulatory staff at the Federal Reserve; I requested a reply to my questions but received none. In short, your staff stiffed me. I conclude my remarks with this observation: your effort to increase transparency at the Federal Reserve is not working. Please reply at your convenience by email or postal mail.

Sincerely,

E. R. Tekeley

From: Chris Barnard

Proposal: 1425 (RIN 7100-AD77) - Reg Y - Capital Plans

Subject: Capital Plans

Comments:

Date: Jun 26, 2011

Proposal: Capital Plans
Document ID: R-1425
Document Version: 1
Release Date: 06/10/2011
Name: Chris Barnard
Affiliation:
Category of Affiliation:
Address:

City:
State:
Country:
Zip:
PostalCode:

Comments:
Dear Jennifer Johnson. Thank you for giving us the opportunity to comment on your Proposed Rule: Capital Plans, Docket No. R-1425. I support the proposals, which require large bank holding companies to submit robust, forward-looking capital plans to the Federal Reserve on an annual basis. The proposals are outwith Dodd-Frank, but are entirely appropriate in order to enhance the soundness of the banking system and the wider economy. Proposed § 225.8(d)(3) on data collection is particularly important, as this will allow you to undertake a broader and more organic qualitative analysis of bank holding companies' financial condition going forward. In answer to your specific question, the proposed rule should not allow a transitional period for institutions that did not participate in the CCAR. Any decent management should already be prepared for this type of exercise. Yours sincerely, Chris Barnard

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Monday, July 4, 2011

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

RE: Docket No. R–1426 and RIN No. 7100–AD–78

Dear Ms. Johnson:

We understand that the Federal Reserve is seeking comments on a number of proposed rules resulting from the Dodd-Frank Wall Street Reform and Consumer Protection Act. According to one source[1],

> "Public commenting occurs pursuant to statutes mandating citizen participation in agency action. These laws allow public involvement in the rule making process, and therefore the regulation of many activities involving animals. This participation gives a voice to diverse opinions and assures that all affected interests are considered during agency decision making. Public commenting is important to our nation because administrative agencies are largely insolated form public accountability through normal democratic channels."

We are writing to provide our viewpoint on these matters. We are doing so not because we believe in the Federal Reserve's ability to implement any of the suggestions we make below, but to establish a record for future generations. We are also writing in order to preserve our ability to request a Court review.

This letter provides general comments on the proposed amendment. We support the Federal Reserve's efforts and believe the proposed amendments are a proper first step.

[1] Lewis and Clark Law School, online at:
http://law.lclark.edu/student_groups/student_animal_legal_defense_fund/public_commenting/

It is our belief that capital market practices, in general, are deeply flawed. It is our hope that the Federal Reserve will begin to review market practices from a systemic, global perspective, since defective practices in one sector have been shown to be linked to faulty practices in other capital market sectors:

- In multiple cases, corporate management used fraud and deceptive practices to unfairly transferred value from outsider to insider shareholders.

- Investment analysts issue biased research reports to curry favor with management.

- Rating agencies issue defective research reports. These institutions are supposed to "base their ratings largely on statistical calculations of a borrower's likelihood of default," but one news report noted that:

    > "Dozens of current and former rating officials, financial advisers and Wall Street traders and investors interviewed by The Washington Post say the (NRSRO) rating system has proved vulnerable to subjective judgment, manipulation and pressure from borrowers. They say the big three are so dominant they can keep their rating processes secret, force clients to pay higher fees and fend off complaints about their mistakes."[2]

- Pension consultants are, also, conflicted and compromised. "Many pension plans rely heavily on the expertise and guidance of pension consultants in helping them to manage pension plan assets," but, according to a Commission report[3],

    > "Concerns exist that pension consultants may steer clients to hire certain money managers and other vendors based on the pension consultant's (or an affiliate's) other business relationships and receipt of fees from these firms, rather than because the money manager is best-suited to the clients' needs."

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[2] "Borrowers Find System Open to Conflicts, Manipulation" by Alec Klein, The Washington Post, Monday, November 22, 2004; Page A1.

[3] *Staff Report Concerning Examinations of Select Pension Consultants*. The Office of Compliance Inspections and Examinations, U.S. Securities and Exchange Commission. May 16, 2005.

Together these practices threaten the integrity of securities markets. Individuals and market institutions with the power to safeguard the system, including regulators, investment analysts and rating agencies, have been compromised. Few efficient, effective and just safeguards are in place.

Statistical models created by the firm continue to show the probability of system-wide market failure has increased over the past decade.

Investors and the public remain at risk.

Background

William Michael Cunningham registered with the U.S. Securities and Exchange Commission as an Investment Advisor on February 2, 1990. He registered with the D.C. Public Service Commission as an Investment Advisor on January 28, 1994. Mr. Cunningham manages an investment advisory and research firm, Creative Investment Research, Inc. The firm researches and creates socially responsible investments and provides socially responsible investment advisory services.

Mr. Cunningham's understanding of capital markets is based on first hand knowledge obtained in a number of positions at a diverse set of major financial institutions. He served as Senior Investment Analyst for an insurance company. Mr. Cunningham was an Institutional Sales Representative in the Fixed Income and Futures and Options Group for a leading Wall Street firm. Mr. Cunningham also served as Director of Investor Relations for a New York Stock Exchange-traded firm. On November 16, 1995, his firm launched one of the first investment advisor websites.

The firm and Mr. Cunningham have long been concerned with the integrity of the securities markets. We note the following:

- Creative Investment Research, Inc. designed one of the first mortgage security backed by home mortgage loans to low and moderate income persons and originated by minority-owned institutions. (See: *Security Backed Exclusively by Minority Loans*, The American Banker. Friday, December 2, 1994.)

- In 2001, we helped design a refinancing plan for victims of predatory lending that led to the creation of targeted community development investments. (See: http://www.socialfunds.com/news/article.cgi?sfArticleId=682)

- On December 22, 2003, statistical models created by the firm using the Fully Adjusted Return ® Methodology signaled the probability of system-wide economic and market failure. (See page 6: http://www.sec.gov/rules/proposed/s71903/wmccir122203.pdf)

- On Monday, April 11, 2005, Mr. Cunningham testified before Judge William H. Pauley III in the U.S. District Court for the Southern District of New York on behalf of investors at a fairness hearing regarding the $1.4 billion dollar Global Research Analyst Settlement.

- On February 6, 2006, statistical models created by the firm using the Fully Adjusted Return ® Methodology confirmed that system-wide economic and market failure was a growing possibility. (See page 2: http://www.sec.gov/rules/proposed/s71005/wcunningham5867.pdf)

- Also see:

  1. This Week in SRI - http://eepurl.com/erMCc
  2. http://www.prlog.org/10746429-firm-releases-transaction-cost-theory-of-the-financial-crisis.html
  3. http://twisri.blogspot.com/2009/08/wells-fargo-sued-for-racially-biased.html
  4. http://twisri.blogspot.com/2009/03/why-market-failed.html
  5. http://twisri.blogspot.com/2008/04/bear-rescue-and-senate-banking.html
  6. http://twisri.blogspot.com/2007/08/morgage-gses-predatory-lending-and.html
  7. http://twisri.blogspot.com/2009/04/adam-smith-on-current-financial-crisis.html

We incorporate these comments by reference.

Summary Comments

Repeatedly over the past thirty years, signal market participants, operating in the most materially advantaged country ever, abandoned ethical principles in the pursuit of material well being.[4] By 2011, marketplace ethics reached a new low. The following are the simple facts:

- On April 28, 2003, every major US investment bank, including Merrill Lynch, Goldman Sachs, Morgan Stanley, Citigroup, Credit Suisse First Boston, Lehman Brothers Holdings, J.P. Morgan Chase, UBS Warburg, and U.S. Bancorp Piper Jaffray, were found to have aided and abetted efforts to defraud investors. The firms were fined a total of $1.4 billion dollars by the SEC, triggering the creation of a Global Research Analyst Settlement Fund.

- In May, 2003, the SEC disclosed that several "brokerage firms paid rivals that agreed to publish positive reports on companies whose shares..they issued to the public. This practice made it appear that a throng of believers were recommending these companies' shares." This was false. "From 1999 through 2001, for example, one firm paid about $2.7 million to approximately 25 other investment banks for these so-called research guarantees, regulators said. Nevertheless, the same firm boasted in its annual report to shareholders that it had come through investigations of analyst conflicts of interest with its 'reputation for integrity' maintained."

- On September 3, 2003, the New York State Attorney General announced he has "obtained evidence of widespread illegal trading schemes, 'late trading' and 'market timing,' that potentially cost mutual fund shareholders billions of dollars annually. This, according to

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4 We refer to the following, abbreviated list of market related ethical lapses:
- The National Association of Security Dealers was found by the U.S. Securities and Exchange Commission to be "failing to police wrongdoing the NASDAQ Stock market, the second largest stock market in the world." The Washington Post (August 8, 1996. Page A1.)
- The failure of Long-Term Capital, an investment partnership started in 1994, was "laid on the kind of capitalism .. where a closed, secretive and incestuous elite held absolute sway over politics, the economy and finance, where banks lent to cronies and crooks, and the state miraculously came to the rescue when the time came to balance (or cook) the books." From "LTCM, a Hedge Fund Above Suspicion," by Ibrahim Warde, *Le Monde Diplomatique*, November 1998.

the Attorney General, "is like allowing betting on a horse race after the horses have crossed the finish line."

- On September 4, 2003, a major investment bank, Goldman Sachs, admitted that it had violated anti-fraud laws. Specifically, the firm misused material, nonpublic information that the US Treasury would suspend issuance of the 30-year bond. The firm agreed to "pay over $9.3 million in penalties." On April 28, 2003, the same firm was found to have "issued research reports that were not based on principles of fair dealing and good faith .. contained exaggerated or unwarranted claims.. and/or contained opinions for which there were no reasonable bases." The firm was fined $110 million dollars, for a total of $119.3 million dollars in fines in six months.

- On December 18, 2003, the Securities and Exchange Commission "announced an enforcement action against Alliance Capital Management L.P. (Alliance Capital) for defrauding mutual fund investors. The Commission ordered Alliance Capital to pay $250 million. The Commission also ordered Alliance Capital to undertake certain compliance and fund governance reforms designed to prevent a recurrence of the kind of conduct described in the Commission's Order. Finally, the Commission found that "Alliance Capital breached its fiduciary duty to (it's) funds and misled those who invested in them."

- On October 8, 2004, the Securities and Exchange Commission "announced..enforcement actions against Invesco Funds Group, Inc. (IFG), AIM Advisors, Inc. (AIM Advisors), and AIM Distributors, Inc. (ADI). The Commission issued an order finding that IFG, AIM Advisors, and ADI violated the federal securities laws by facilitating widespread market timing trading in mutual funds with which each entity was affiliated. The settlements require IFG to pay $215 million in disgorgement and $110 million in civil penalties, and require AIM Advisors and ADI to pay, jointly and severally, $20 million in disgorgement and an aggregate $30 million in civil penalties."

- On November 4, 2004, the Securities and Exchange Commission "filed a settled civil action in the United States District Court for the District of Columbia against Wachovia Corporation (Wachovia) for violations of proxy disclosure and other reporting requirements in connection with the 2001 merger between First Union Corporation (First Union) and Old Wachovia Corporation (Old Wachovia). Under the settlement, Wachovia must pay a $37 million penalty and is to be enjoined from future violations of the federal securities laws."

- On November 17, 2004, the Securities and Exchange Commission announced "charges concerning undisclosed market timing against Harold J. Baxter and Gary L. Pilgrim in the Commissions' pending action in federal district court in Philadelphia." Based on these charges, Baxter and Pilgrim agreed to "pay $80 million – $60 million in disgorgement and $20 million in civil penalties."

- On November 30, 2004, the Securities and Exchange Commission announced "the filing..of charges against American International Group, Inc. (AIG) arising out of AIG's offer and sale of an earnings management product." The company "agreed to pay a total of $126 million, consisting of a penalty of $80 million, and disgorgement and prejudgment interest of $46 million."

- On December 22, 2004, "the Securities and Exchange Commission, NASD and the New York Stock Exchange announced..enforcement proceedings against Edward D. Jones & Co., L.P., a registered broker-dealer headquartered in St. Louis, Missouri." According to the announcement, "Edward Jones failed to adequately disclose revenue sharing payments that it received from a select group of mutual fund families that Edward Jones recommended to its customers." The company agreed to "pay $75 million in disgorgement and civil penalties. All of that money will be placed in a Fair Fund for distribution to Edward Jones customers."

- On January 25, 2005, "the Securities and Exchange Commission announced the filing in federal district court of separate settled civil injunctive actions against Morgan Stanley & Co. Incorporated (Morgan Stanley) and Goldman, Sachs & Co. (Goldman Sachs) relating to the firms' allocations of stock to institutional customers in initial public offerings (IPOs) underwritten by the firms during 1999 and 2000."

- According to the Associated Press, on January 31, 2005, “the nation’s largest insurance brokerage company, Marsh & McLennan Companies Inc., based in New York, will pay $850 million to policyholders hurt by” corporate practices that included “bid rigging, price fixing and the use of hidden incentive fees.” The company will issue a public apology calling its conduct "unlawful" and "shameful," according to New York State Attorney General Elliott Spitzer. In addition, “the company will publicly promise to adopt reforms.”

- On Feb. 9, 2005, the Securities and Exchange Commission “announced the settlement of an enforcement action against Columbia Management Advisors, Inc. (Columbia Advisors), Columbia Funds Distributor, Inc. (Columbia Distributor), and three former Columbia executives in connection with undisclosed market timing arrangements in the Columbia funds. In settling the matter, the Columbia entities will pay $140 million, all of which will be distributed to investors harmed by the conduct. The SEC also brought fraud charges against two additional former Columbia senior executives in federal court in Boston.”

- On March 23, 2005, the Securities and Exchange Commission “announced that Putnam Investment Management, LLC (Putnam) will pay $40 million. The Commission issued an order that finds Putnam failed to adequately disclose to the Putnam Funds' Board of Trustees and the Putnam Funds' shareholders the conflicts of interest that arose from..arrangements for increased visibility within the broker-dealers' distribution systems.”

- On March 23, 2005, the Securities and Exchange Commission (Commission) “announced that it instituted and simultaneously settled an enforcement action against Citigroup Global Markets, Inc. (CGMI) for failing to provide customers with important information relating to their purchases of mutual fund shares.”

- On April 19, 2005, the Securities and Exchange Commission “announced that KPMG LLP has agreed to settle the SEC's charges against it in connection with the audits of Xerox Corp. from 1997 through 2000.” As part of the settlement, KPMG paid a fine totaling

$22.475 million.

- On April 12, 2005, the Securities and Exchange Commission "instituted and simultaneously settled an enforcement action against the New York Stock Exchange, Inc., finding that the NYSE, over the course of nearly four years, failed to police specialists, who engaged in widespread and unlawful proprietary trading on the floor of the NYSE." As part of the settlement, the "NYSE agreed to an undertaking of $20 million to fund regulatory audits of the NYSE's regulatory program every two years through the year 2011." On that same date, the Commission "instituted administrative and cease-and-desist proceedings against 20 former New York Stock Exchange specialists for fraudulent and other improper trading practices."

- On April 19, 2005, the Securities and Exchange Commission announced "that KPMG LLP has agreed to settle the SEC's charges against it in connection with the audits of Xerox Corp. from 1997 through 2000. As part of the settlement, KPMG consented to the entry of a final judgment in the SEC's civil litigation against it pending in the U.S. District Court for the Southern District of New York. The final judgment..orders KPMG to pay disgorgement of $9,800,000 (representing its audit fees for the 1997-2000 Xerox audits), prejudgment interest thereon in the amount of $2,675,000, and a $10,000,000 civil penalty, for a total payment of $22.475 million."

- On April 28, 2005, the Securities and Exchange Commission announced "that it has instituted settled enforcement proceedings against Tyson Foods, Inc. and its former Chairman and CEO Donald "Don" Tyson. The SEC charged that in proxy statements filed with the Commission from 1997 to 2003, Tyson Foods made misleading disclosures of perquisites and personal benefits provided to Don Tyson both prior to and after his retirement as senior chairman in October 2001."

- On May 31, 2005, the Securities and Exchange Commission "announced settled fraud charges against two subsidiaries of Citigroup, Inc. relating to the creation and operation of an affiliated transfer agent that has served the Smith Barney family of mutual funds since 1999. Under the settlement, the respondents are ordered to pay $208 million in disgorgement and penalties and to comply with substantial remedial measures, including an undertaking to put out for competitive bidding certain contracts for transfer agency services for the mutual funds."

- On June 2, 2005, the Securities and Exchange Commission "filed securities fraud charges against Amerindo Investment Advisors, Inc., Alberto William Vilar and Gary Alan Tanaka, Amerindo's co-founders and principals, for misappropriating at least $5 million from an Amerindo client."

- On June 9, 2005, the Commission announced that "Roys Poyiadjis, a former CEO of AremisSoft Corporation, which was a software company with offices in New Jersey, London, Cyprus, and India, agreed to final resolution of fraud charges brought against him by the Securities and Exchange Commission in October 2001. In documents filed with the federal district court in Manhattan, Poyiadjis consented to disgorge approximately $200 million of unlawful profit from his trading in AremisSoft stock -- among the largest recoveries the SEC has obtained from an individual."

- On July 20, 2005, the Securities and Exchange Commission "announced a settled administrative proceeding against Canadian Imperial Bank of Commerce's (CIBC) broker-dealer and financing subsidiaries for their role in facilitating deceptive market timing and late trading of mutual funds by certain customers. The Commission ordered the subsidiaries, CIBC World Markets Corp. (World Markets), a New York based broker-dealer, and Canadian Imperial Holdings Inc. (CIHI), to pay $125 million, consisting of $100 million in disgorgement and $25 million in penalties."

- On August 15, 2005, the Securities and Exchange Commission "charged four brokers and a day trader with cheating investors through a fraudulent scheme that used squawk boxes to eavesdrop on the confidential order flow of major brokerages so they could 'trade ahead' of large orders at better prices."

- On August 22, 2005, the Securities and Exchange Commission "filed civil fraud charges against two former officers of Bristol-Myers Squibb

Company for orchestrating a fraudulent earnings management scheme that deceived investors about the true performance, profitability and growth trends of the company and its U.S. medicines business."

- On August 23, 2005, the Securities and Exchange Commission "filed charges against two former top Kmart executives for misleading investors about Kmart's financial condition in the months preceding the company's bankruptcy."

- On November 2, 2005, the Securities and Exchange Commission "filed enforcement actions against seven individuals alleging they aided and abetted a massive financial fraud by signing and returning materially false audit confirmations sent to them by the auditors of the U.S. Foodservice, Inc. subsidiary of Royal Ahold (Koninklijke Ahold N.V.)."

- On November 28, 2005, the Securities and Exchange Commission announced "that three affiliates of one of the country's largest mutual fund managers have agreed to pay $72 million to settle charges they harmed long-term mutual fund shareholders by allowing undisclosed market timing and late trading by favored clients and an employee."

- On December 1, 2005, the Securities and Exchange Commission "announced settled enforcement proceedings against American Express Financial Advisors Inc., now known as Ameriprise Financial Services, Inc. (AEFA), a registered broker-dealer headquartered in Minneapolis, Minn., related to allegations that AEFA failed to adequately disclose millions of dollars in revenue sharing payments that it received from a select group of mutual fund companies. As part of its settlement with the Commission, AEFA will pay $30 million in disgorgement and civil penalties, all of which will be placed in a Fair Fund for distribution to certain of AEFA's customers."

- On December 1, 2005, the Securities and Exchange Commission "announced a settled administrative proceeding against Millennium Partners, L.P., Millennium Management, L.L.C., Millennium International Management, L.L.C., Israel Englander, Terence Feeney, Fred Stone, and Kovan Pillai for their participation in a fraudulent scheme to market time mutual funds. The respondents will pay over $180 million in disgorgement and penalties and undertake various compliance reforms to prevent recurrence of similar conduct."

- On December 19, 2005, the Securities and Exchange Commission "announced that it filed and settled insider trading charges both against an accountant and a former executive of Sirius Satellite Radio, Inc. who illegally profited from advance knowledge of radio personality Howard Stern's $500 million contract with Sirius."

- On December 21, 2005, the Securities and Exchange Commission "sued top executives of National Century Financial Enterprises, Inc. (NCFE), alleging that they participated in a scheme to defraud investors in securities issued by the subsidiaries of the failed Dublin, Ohio company. NCFE, a private corporation, suddenly collapsed along with its subsidiaries in October 2002 when investors discovered that the companies had hidden massive cash and collateral shortfalls from investors and auditors. The collapse caused investor losses exceeding $2.6 billion and approximately 275 health-care providers were forced to file for bankruptcy protection."

- On January 3, 2006, the Securities and Exchange Commission announced "that it filed charges against six former officers of Putnam Fiduciary Trust Company (PFTC), a Boston-based registered transfer agent, for engaging in a scheme beginning in January 2001 by which the defendants defrauded a defined contribution plan client and group of Putnam mutual funds of approximately $4 million."

- On January 4, 2006, the Securities and Exchange Commission "filed securities fraud charges against McAfee, Inc., formerly known as Network Associates, Inc., a Santa Clara, California-based manufacturer and supplier of computer security and antivirus tools. McAfee consented, without admitting or denying the allegations of the complaint, to the entry of a Court order enjoining it from violating the antifraud, books and records, internal controls, and periodic reporting provisions of the federal securities laws. The order also requires that McAfee pay a $50 million civil penalty, which the Commission will seek to distribute to harmed investors pursuant to the Fair Funds provision of the Sarbanes-Oxley Act of 2002."

- On January 9, 2006, the Securities and Exchange Commission "announced that Daniel Calugar and his former registered broker-dealer, Security Brokerage, Inc. (SBI), agreed to settle the SEC's charges alleging that they defrauded mutual fund investors through improper late trading and market timing. As part of the settlement, Calugar will disgorge $103 million in ill-gotten gains and pay a civil penalty of $50 million."

- On February 2, 2006, the Securities and Exchange Commission "announced that it filed an enforcement action against five former senior executives of General Re Corporation (Gen Re) and American International Group, Inc. (AIG) for helping AIG mislead investors through the use of fraudulent reinsurance transactions."

- On February 9, 2006, the Commission announced "the filing and settlement of charges that American International Group, Inc. (AIG) committed securities fraud. The settlement is part of a global resolution of federal and state actions under which AIG will pay in excess of $1.6 billion to resolve claims related to improper accounting, bid rigging and practices involving workers' compensation funds."

- On March 9, 2006, the Securities and Exchange Commission filed a lawsuit "against registered investment adviser BMA Ventures, Inc. and its president, William Robert Kepler, 35, of Dallas, Texas, alleging that they illegally obtained approximately $1.9 million in a fraudulent 'scalping' scheme from January 2004 through March 2005. Scalping is the illegal practice of recommending that others purchase a security and secretly selling the same security contrary to the recommendation."

- On March 16, 2006, the Securities and Exchange Commission "announced a settled enforcement action against Bear, Stearns & Co., Inc. (BS&Co.) and Bear, Stearns Securities Corp. (BSSC) (collectively, Bear Stearns), charging Bear Stearns with securities fraud for facilitating unlawful late trading and deceptive market timing of mutual funds by its customers and customers of its introducing brokers. The Commission issued an Order finding that from 1999 through September 2003, Bear Stearns provided technology, advice and deceptive devices that enabled its market timing customers and introducing brokers to late trade and to evade detection by mutual funds. Pursuant to the Order, Bear Stearns will pay $250 million, consisting of $160 million in disgorgement and a $90 million penalty."

- On April 11, 2006, the Securities and Exchange Commission announced "charges against individuals involved in widespread and brazen international schemes of serial insider trading that yielded at least $6.7 million of illicit gains. The schemes were orchestrated by..a research analyst in the Fixed Income division of Goldman Sachs, and a former employee of Goldman Sachs."

- On April 17, 2006, the Securities and Exchange Commission brought "Settled Charges Against Tyco International Ltd. Alleging (a) Billion Dollar Accounting Fraud."

- On May 10, 2006, the Securities and Exchange Commission ordered "Former Chairman and CEO of Gemstar-TV Guide International, Inc. .. to Pay Over $22 Million For Role in Accounting Fraud."

- On May 10, 2006, the Securities and Exchange Commission sued "Morgan Stanley..for Repeated E-Mail Production Failures."

- "On May 23, 2006, the (Securities and Exchange) Commission filed a settled enforcement proceeding charging the Federal National Mortgage Association ('Fannie Mae'), a shareholder-owned government-sponsored enterprise, with fraudulent accounting in violation of the anti-fraud, books and records, internal controls and reporting provisions of the Securities Exchange Act of 1934 (the 'Exchange Act') and the anti-fraud provisions of the Securities Act of 1933 (the 'Securities Act')."

- On May 30, 2006, the Securities and Exchange Commission brought "Settled Charges Against Tribune Company for Reporting Inflated Circulation Figures and Misstating Circulation Revenues."

- On May 31, 2006, Bear, Stearns & CO. Inc.; Citigroup Global Markets, Inc.; Goldman, Sachs & Co.; J.P. Morgan Securities, Inc.; Lehman Brothers Inc.; Merrill Lynch, Pierce, Fenner & Smith Incorporated; Morgan Stanley & Co. Incorporated and Morgan Stanley DW Inc.; RBC Dain Rauscher Inc.; Banc of America Securities LLC; A.G. Edwards &

Sons, Inc.; Morgan Keegan & Company, Inc.; Piper Jaffray & Co.; Suntrust Capital Markets inc.; and Wachovia Capital Markets, LLC, settled "SEC Charges Involving Violative Practices in the Auction Rate Securities Market."

- On June 27, 2006, the Securities and Exchange Commission charged "Morgan Stanley With Failure To Maintain And Enforce Policies To Prevent Misuse of Inside Information."

- On June 28, 2006, the Securities and Exchange Commission settled "With Raytheon Company, Former CEO, and Subsidiary Controller for Improper Disclosure and Accounting Practices."

- On June 30, 2006, a jury found "Former PIMCO Equity Funds Chairman Defrauded Investors in Market Timing Case."

- On August 7, 2006, "Martha Stewart and Peter Bacanovic Settle(d) SEC's Insider Trading Charges."

- On August 28, 2006, Prudential Securities Inc. (APSI), now known as Prudential Equity Group, LLC ("PEG"), was ordered "to Pay $600 Million in Global Settlement of Fraud Charges in Connection With Deceptive Market Timing of Mutual Funds."

- On September 27, 2006, the Securities and Exchange Commission charged "Former CEO and Two Former Executives Affiliated with RenaissanceRe Holdings Ltd. with Securities Fraud."

- On October 30, 2006, the Securities and Exchange Commission charged "Delphi Corporation and Nine Individuals, Including Former CEO, CFO, Treasurer and Controller, in Wide-Ranging Financial Fraud; Four Others Charged With Aiding and Abetting Related Violations."

- On November 2, 2006, the Securities and Exchange Commission settled "Charges Against Eight Former Officers and Directors of Spiegel, Inc."

- On November 14, 2006 the Securities and Exchange Commission sanctioned "the City Of San Diego for Fraudulent Municipal Bond

Offerings and Order(ed) the City to Retain an Independent Consultant."

- On December 4, 2006, "Jefferies & Co., Inc. (Jefferies) Settle(d) SEC Charges Involving Illegal Gifts and Entertainment."

- On January 18, 2007, "Fred Alger Management and Fred Alger & Company (agreed) to Pay $40 Million to Settle Market Timing and Late Trading Violations."

- On January 29, 2007, "MBIA Settle(d) Securities Fraud Charges for Misuse of Reinsurance Contracts."

- On March 1, 2007, "The Securities and Exchange Commission announced insider trading charges against fourteen defendants in connection with two related insider trading schemes in which Wall Street professionals serially traded on material, nonpublic information tipped, in exchange for cash kickbacks, by insiders at UBS Securities LLC and Morgan Stanley & Co., Inc."

- On March 12, 2007, the Securities and Exchange Commission charged "Four Former Senior Executives of Nortel Networks Corporation in Wide-Ranging Financial Fraud Scheme."

- On March 14, 2007, the Securities and Exchange Commission and the NYSE settled "Enforcement Actions Against (a) Goldman Sachs Unit for Role in Customers' Illegal Trading Scheme."

- On March 14, 2007, the Securities and Exchange Commission brought an enforcement action "Against Banc of America Securities for Failing to Safeguard Nonpublic Research Information and Publishing Fraudulent Research." The firm agreed to pay $26 Million.

- On March 15, 2007, the Securities and Exchange Commission settled "With Former Raytheon Officers For Improper Disclosure And Accounting Practices."

- On March 15, 2007, the Securities and Exchange Commission announced a "$28.7 Million Settlement of Fraud Charges Against F.

David Radler, Former COO of Hollinger International, Inc."

- On March 22, 2007, the Securities and Exchange Commission charged "American Stock Exchange and Former Chairman and CEO Salvatore Sodano with Failing to Exercise Regulatory Oversight Responsibilities."

- On March 29, 2007, Nicor paid "$10 Million to Settle Fraud Charges."

- On April 2, 2007, the Securities and Exchange Commission charged "Tenet Healthcare Corporation and Four Former Senior Executives With Concealing Scheme to Meet Earnings Targets by Exploiting Medicare System."

- On April 24, 2007, the Securities and Exchange Commission charged the "Former Apple General Counsel for Illegal Stock Option Backdating."

- On April 26, 2007, the Securities and Exchange Commission charged "Baker Hughes With Foreign Bribery and With Violating 2001 Commission Cease-and-Desist Order."

- On May 9, 2007, "Morgan Stanley (agreed) to Pay $7.9 Million to Settle Best Execution Case."

- On May 14, 2007, the Securities and Exchange Commission charged "Former Oracle Vice President With Illegal Insider Trading in Stocks of Oracle Acquisition Targets."

- "On May 23, 2007, the Securities and Exchange Commission filed a civil injunctive action in United States District Court for the Southern District of New York charging The BISYS Group, Inc., a leading provider of financial products and support services, with violating the financial reporting, books-and-records, and internal control provisions of the Securities Exchange Act of 1934. BISYS has agreed to settle the case, without admitting or denying the Commission's allegations, and has agreed pay approximately $25 million in disgorgement and prejudgment interest."

- On May 31, 2007, "The Securities and Exchange Commission..filed civil fraud charges in federal district court for the Northern District of California against California-based software maker Mercury Interactive, LLC (formerly known as Mercury Interactive Corporation) and four former senior officers of Mercury -- former Chairman and Chief Executive Officer Amnon Landan, former Chief Financial Officers Sharlene Abrams and Douglas Smith, and former General Counsel Susan Skaer. The SEC alleges that the former senior officers perpetrated a fraudulent and deceptive scheme from 1997 to 2005 to award themselves and other employees undisclosed, secret compensation by backdating stock option grants and failing to record hundreds of millions of dollars of compensation expense."

- On July 25, 2007, "The Securities and Exchange Commission..filed civil charges against ConAgra Foods, Inc., a diversified international food company headquartered in Omaha, Nebraska, alleging that it engaged in improper, and in certain instances fraudulent, accounting practices during its fiscal years 1999 through 2001."

- On July 26, 2007, "The Securities and Exchange Commission..filed a civil action against Cardinal Health, Inc. (Cardinal), a pharmaceutical distribution company based in Dublin, Ohio, in which Cardinal agreed to pay $35 million to settle charges that it engaged in a nearly four-year long fraudulent revenue and earnings management scheme, as well as other improper accounting and disclosure practices."

- On September 5, 2007, the Securities and Exchange Commission charged "26 Defendants in $428 Million Securities Fraud That Targeted Senior Citizens and Retirement Savings."

- On September 19, 2007, "Evergreen Investment Management Company and Affiliates (agreed) to Pay $32.5 Million to Settle Market Timing Violations."

- On September 19, 2007, "HSBC Bank Settle(d) SEC Charges and Agree(d) to Pay $10.5 Million."

- "On September 20, 2007, the Securities and Exchange Commission filed a civil injunctive action in the United States District Court for the

Eastern District of New York charging 28 defendants in a series of fraudulent schemes involving phony finder fees and illegal kickbacks in the "stock loan" industry. The defendants include 13 current and former "stock loan" traders employed at several major Wall Street brokerage firms, including Van der Moolen ("VDM"), Janney Montgomery, A.G. Edwards, Oppenheimer, and Nomura Securities. These traders conspired in various schemes with 15 purported stock loan "finders" to skim profits on stock loan transactions."

- "On September 27, 2007, the Securities and Exchange Commission filed a settled enforcement action charging the Federal Home Loan Mortgage Corporation ('Freddie Mac'), a shareholder-owned government-sponsored enterprise, with securities fraud in connection with improper earnings management that occurred from at least the second quarter of 1998 through and including the third quarter of 2002."

- On October 25, 2007, "The Securities and Exchange Commission.. announced the filing of securities fraud charges against David H. Brooks, the former Chief Executive Officer and Chairman of the Board at DHB Industries, Inc., a major supplier of body armor to the U.S. military and law enforcement agencies. The SEC alleges that Brooks engaged in a pervasive accounting fraud at DHB between 2003 and 2005, violated insider trading laws in 2004, and used millions of dollars in corporate funds to pay personal expenses."

- On November 14, 2007, "The Securities and Exchange Commission.. filed Foreign Corrupt Practices Act books and records and internal controls charges against Chevron Corporation ('Chevron'), a California-based oil company, in the U.S. District Court for the Southern District of New York. The Commission's complaint alleges that from approximately April 2001 through May 2002, third parties with which Chevron contracted paid approximately $20 million in illegal kickback payments in connection with Chevron's purchases of crude oil under the U.N. Oil for Food Program."

- On February 5, 2008, "The Securities and Exchange Commission..announced settled insider trading charges against four Hong Kong residents for illegal tipping and trading in the securities of Dow Jones & Company, Inc. ('Dow Jones') in the weeks before the public disclosure on May 1, 2007 of an unsolicited $60 per share acquisition offer for Dow Jones (the 'Offer') by News Corporation. The alleged tip originated with David Li Kwok Po ('David Li'), who served on the Dow Jones board of directors."

- On May 1, 2008, "The Securities and Exchange Commission..filed a civil injunctive action against McCann-Erickson Worldwide, Inc. ('McCann') and the Interpublic Group of Companies, Inc. ('IPG'). The Commission alleged that McCann committed securities fraud when it misstated its financial results by failing to expense properly intercompany charges. IPG negligently failed to address the intercompany problems at its largest subsidiary, McCann."

- On May 1, 2008, the Securities and Exchange Commission charged "Banc of America Investment Services With Failing to Disclose It Favored Affiliated Mutual Funds."

- On July 30, 2008, "The Securities and Exchange Commission..charged New Hampshire-based Pax World Management Corp. with violating investment restrictions in socially responsible mutual funds that investors were told would not contain securities issued by companies involved with producing weapons, alcohol, tobacco or gambling products."

- On August 11, 2008, "The Securities and Exchange Commission..filed charges against Wextrust Capital, LLC (Wextrust), its principals, and four affiliated Wextrust entities, alleging that defendants conducted a massive Ponzi-type scheme from 2005 or earlier that raised approximately $255 million from approximately 1,200 investors. The targets of the fraudulent offerings are primarily members of the Orthodox Jewish community."

- On September 3, 2008, the "Securities and Exchange Commission..charged two Wall Street brokers (at Credit Suisse Securities (USA) LLC) with defrauding their customers when making more than $1 billion in unauthorized purchases of subprime-related auction rate securities."

- On September 3, 2008, The "Securities and Exchange Commission charged former Kellogg, Brown & Root, Inc. (KBR) executive Albert Jackson Stanley with violating the anti-bribery provisions of the Foreign Corrupt Practices Act (FCPA) and related provisions of the federal securities laws."

- On September 14, 2008, the Securities and Exchange Commission "announced..that, together with the Treasury and the Federal Reserve, it is working with Lehman Brothers to address the issues that it faces."

- On September 15, 2008, the Securities and Exchange Commission "charged the former chairman and CEO of Los Angeles-based home builder KB Home, Inc., for his participation in a multi-year scheme to backdate stock options to himself and other company officers and employees, depriving investors of accurate information about executive compensation at the company."

- On October 7, 2008, the "Securities and Exchange Commission..charged a former vice president at national home furnishing retailer Restoration Hardware with insider trading for tipping three friends that the company was about to be acquired, enabling them to make more than $900,000 in unlawful profits when public announcement of the subsequent merger caused the stock price to soar."

- On November 18, 2008, the Securities and Exchange Commission "charged four individuals for engaging in a fraudulent scheme to overvalue the commodity derivatives trading portfolio at Bank of Montreal (BMO), and thereby inflate BMO's publicly reported financial results."

- On December 11, 2008, the Securities and Exchange Commission "finalized settlements with Citigroup Global Markets, Inc. (Citi) and UBS Securities LLC and UBS Financial Services, Inc. (UBS) that will provide nearly $30 billion to tens of thousands of customers who invested in auction rate securities before the market for those securities froze in February, 2008."

- On December 11, 2008, the Securities and Exchange Commission "charged Bernard L. Madoff and his investment firm, Bernard L. Madoff

Investment Securities LLC, with securities fraud for a multi-billion dollar Ponzi scheme that he perpetrated on advisory clients of his firm."

- On December 18, 2008, the Securities and Exchange Commission "charged seven individuals and two companies involved in an insider trading ring, alleging that Matthew Devlin, a former registered representative at Lehman Brothers, Inc. in New York City, traded on and tipped his clients and friends with confidential, nonpublic information about 13 impending corporate transactions."

- On December 22, 2008, the Securities and Exchange Commission "filed a civil injunctive action against UnitedHealth Group Inc., a Minnetonka, Minn., health insurance company, alleging that it engaged in a scheme to backdate stock options. The Commission alleged that between 1994 and 2005, UnitedHealth concealed more than $1 billion in stock option compensation by providing senior executives and other employees with 'in-the-money' options while secretly backdating the grants to avoid reporting the expenses to investors."

- On February 5, 2009, the Securities and Exchange Commission "charged seven individuals involved in an insider trading ring that generated more than $11.6 million in illegal profits and avoided losses. The SEC allege(d) that two mergers and acquisitions professionals, at UBS Investment Bank and at Blackstone Advisory Services, L.P., tipped five individuals including a portfolio manager for a Jefferies Group, Inc. hedge fund, with material nonpublic information about three impending corporate acquisitions."

- On February 5, 2009, the Securities and Exchange Commission "filed an enforcement action against UBS AG, charging the firm with acting as an unregistered broker-dealer and investment adviser."

- On February 17, 2009, the Securities and Exchange Commission "charged Robert Allen Stanford and three of his companies for orchestrating a fraudulent, multi-billion dollar investment scheme centering on an $8 billion CD program."

- On March 2, 2009, the Securities and Exchange Commission "charged

Oregon-based Sunwest Management Inc. with securities fraud and is seeking an emergency court order freezing its assets. The SEC alleged that Sunwest, which operates hundreds of retirement homes across the United States, lied to investors about its operations and concealed the risks of the investments, exposing investors to massive losses when the economic downturn triggered Sunwest's collapse."

- On February 25, 2009, the Securities and Exchange Commission "took emergency action and obtained an asset freeze against two New York residents and their three affiliated entities, who orchestrated a brazen investment fraud involving the misappropriation of as much as $554 million in investor assets."

- On March 4, 2009, the Securities and Exchange Commission "brought enforcement actions against 14 specialist firms for unlawful proprietary trading on several regional and options exchanges. The firms agreed to settle the SEC's charges by collectively paying nearly $70 million in disgorgement and penalties."

- On March 11, 2009, the Securities and Exchange Commission "charged Merrill Lynch, Pierce, Fenner & Smith Inc. with securities laws violations for having inadequate policies and procedures for controlling access to institutional customer order flow. Merrill Lynch agreed to settle the SEC's charges and pay a $7 million penalty, among other remedies."

- On May 12, 2009, the Securities and Exchange Commission "charged Julio Ramirez, Jr., who was formerly affiliated with Los Angeles-based broker-dealers DAV/Wetherly Financial L.P. and Park Hill Group LLC, in connection with a multi-million dollar kickback scheme involving New York's largest pension fund."

- On June 24, 2009, the Securities and Exchange Commission "charged a money manager who lives in Wayland, Mass., for conducting a multi-million dollar Ponzi scheme in which he promised investors lofty returns as high as 20 percent but instead often stole their money for his personal use."

- On July 22, 2009, the Securities and Exchange Commission "asked a court to order the former chief executive officer of CSK Auto Corporation to reimburse the company and its shareholders more than $4 million that he received in bonuses and stock sale profits while CSK was committing accounting fraud."

- On July 28, 2009, the Securities and Exchange Commission "obtained a court order to halt an alleged offering fraud and Ponzi scheme being conducted in the Detroit area by two individuals and two companies they control."

- On August 3, 2009, the Securities and Exchange Commission "charged Bank of America Corporation for misleading investors about billions of dollars in bonuses that were being paid to Merrill Lynch & Co. executives at the time of its acquisition of the firm. Bank of America agreed to settle the SEC's charges and pay a penalty of $33 million."

- On September 28, 2009, the Securities and Exchange Commission "charged (a) Detroit-area stock broker..with fraud, alleging that he lured elderly investors into a $250 million Ponzi scheme after convincing many of them to refinance their home mortgages."

- On October 16, 2009 — the Securities and Exchange Commission "charged billionaire Raj Rajaratnam and his New York-based hedge fund advisory firm Galleon Management LP with engaging in a massive insider trading scheme that generated more than $25 million in illicit gains."

- On November 4, 2009, the Securities and Exchange Commission "charged J.P. Morgan Securities Inc. and two of its former managing directors for their roles in an unlawful payment scheme that enabled them to win business involving municipal bond offerings and swap agreement transactions with Jefferson County, Ala."

- On November 4, 2009, the Securities and Exchange Commission "charged Milwaukee-based Merge Healthcare Incorporated and two former senior executives for their roles in an accounting fraud that ultimately caused the company's stock price to drop by two-thirds during a seven-month period."

- On November 4, 2009, the Securities and Exchange Commission "charged New York City-based investment adviser Value Line Inc., its CEO, its former Chief Compliance Officer and its affiliated broker-dealer with defrauding the Value Line family of mutual funds by charging over $24 million in bogus brokerage commissions on mutual fund trades funneled through Value Line's affiliated broker-dealer, Value Line Securities, Inc. (VLS)."

- On November 5, 2009, the Securities and Exchange Commission "charged a pair of lawyers for tipping inside information in exchange for kickbacks as well as six Wall Street traders and a proprietary trading firm involved in a $20 million insider trading scheme."

- On November 16, 2009, the Securities and Exchange Commission "charged four individuals and two companies involved in perpetrating a $30 million Ponzi scheme in which they persuaded more than 300 investors nationwide to participate in purported environmentally-friendly investment opportunities."

- On December 7, 2009, the Securities and Exchange Commission "charged three former top officers of New Century Financial Corporation with securities fraud for misleading investors as New Century's subprime mortgage business was collapsing in 2006. At the time of the fraud, New Century was one of the largest subprime lenders in the nation."

- On January 5, 2010, the Securities and Exchange Commission "announced that a former Perot family companies employee it charged with insider trading in September has agreed to return all of his illicit profits — a total of more than $8.6 million."

- On January 20, 2010, the Securities and Exchange Commission "charged General Re Corporation for its involvement in separate schemes by American International Group (AIG) and Prudential Financial, Inc. to manipulate and falsify their reported financial results."

- On February 4, 2010, the Securities and Exchange Commission "charged Boston-based State Street Bank and Trust Company with misleading its investors about their exposure to subprime investments while selectively disclosing more complete information to specific investors."

- On March 4, 2010, the Securities and Exchange Commission "charged a self-proclaimed psychic who fraudulently raised $6 million after telling investors he could predict stock market highs and lows."

- On March 5, 2010, the Securities and Exchange Commission "charged a San Diego-based broker-dealer with failing to reasonably supervise one of its registered representatives who engaged in unauthorized fraudulent trading in the accounts of two Florida municipalities."

- Om March 24, 2010, the Securities and Exchange Commission "filed fraud charges against a prominent New Mexico realtor and obtained an emergency court order to halt his $80 million Ponzi scheme."

- On March 29, 2010, the Securities and Exchange Commission "charged an Ohio-based investment adviser with fraud for lying about his investment strategy, fabricating account statements to hide losses, and using investor money to buy property and pay unrelated business expenses."

- On April 1, 2010, the Securities and Exchange Commission "announced a settlement with Daimler AG for violations of the Foreign Corrupt Practices Act (FCPA), alleging that the Stuttgart, Germany-based automobile manufacturer engaged in a repeated and systematic practice of paying bribes to foreign government officials to secure business in Asia, Africa, Eastern Europe and the Middle East."

- On April 7, 2010, the Securities and Exchange Commission charged "Morgan Keegan and Two Employees With Fraud Related to Subprime Mortgages."

- On April 15, 2010, the Securities and Exchange Commission "charged a private investment firm and one of its affiliated entities for participating in a widespread kickback scheme to obtain investments from New York's largest pension fund."

- On April 16, 2010, the Securities and Exchange Commission "charged

Goldman, Sachs & Co. and one of its vice presidents for defrauding investors by misstating and omitting key facts about a financial product tied to subprime mortgages as the U.S. housing market was beginning to falter."

- On April 22, 2010, the Securities and Exchange Commission "charged a private equity firm, a money manager and his friend with participating in a fraudulent scheme through which they stole more than $3 million invested by three Detroit-area public pension funds."

- On May 7, 2010, Jerry Brown, then California's attorney general, announced a lawsuit targeting "two former officials from Calpers, the nation's largest public pension fund, alleging that they took kickbacks in exchange for a piece of the fund's lucrative investment portfolio." The lawsuit alleges "that former chief executive Federico Buenrostro Jr. accepted tens of thousands of dollars in gifts and promises of a future employment from Alfred Villalobos, a former Calpers board member who is now a placement agent. Brown's office secured a court order to freeze the assets of Villalobos's firm and to recover more than $40 million in commissions. Brown also said the court will take control of Villalobos's 20 bank accounts and all of his assets, including two Bentleys, art worth more than $2.7 million and 14 properties."

- On June 16, 2010, the Securities and Exchange Commission "charged the former chairman and majority owner of what was once the nation's largest non-depository mortgage lender with orchestrating a large-scale securities fraud scheme and attempting to scam the U.S. Treasury's Troubled Asset Relief Program (TARP)."

- On June 21, 2010, the Securities and Exchange Commission "charged a New York-based investment adviser and three of his affiliated firms with fraudulently managing investment products tied to the mortgage markets as they came under pressure in 2007."

- On July 15, 2010, the Securities and Exchange Commission "announced that Goldman, Sachs & Co. will pay $550 million and reform its business practices to settle SEC charges that Goldman misled investors in a subprime mortgage product just as the U.S. housing market was starting to collapse."

- On July 22, 2010, the Securities and Exchange Commission "charged Dell Inc. with failing to disclose material information to investors and using fraudulent accounting to make it falsely appear that the company was consistently meeting Wall Street earnings targets and reducing its operating expenses. Dell Inc. agreed to pay a $100 million penalty to settle the SEC's charges."

- On July 29, 2010, the Securities and Exchange Commission "charged Citigroup Inc. with misleading investors about the company's exposure to subprime mortgage-related assets. Between July and mid-October 2007, Citigroup represented that subprime exposure in its investment banking unit was $13 billion or less, when in fact it was more than $50 billion."

- On August 4, 2010, the Securities and Exchange Commission "charged a former Deloitte and Touche LLP partner and his son with insider trading in the securities of several of the firm's audit clients."

- On August 6, 2010, the Securities and Exchange Commission "charged two global tobacco companies with violations of the Foreign Corrupt Practices Act (FCPA) for paying more than $5 million in bribes to government officials in Thailand and other countries to illicitly obtain tobacco sales contracts. The SEC alleges that Richmond, Va.-based Universal Corporation Inc. and two competitors who have since merged to form Alliance One International Inc. engaged in a coordinated bribery scheme in Thailand."

- On August 18, 2010, the Securities and Exchange Commission "charged the State of New Jersey with securities fraud for misrepresenting and failing to disclose to investors in billions of dollars worth of municipal bond offerings that it was underfunding the state's two largest pension plans."

- On September 29, 2010, the Securities and Exchange Commission "charged ABB Ltd with violations of the Foreign Corrupt Practices Act (FCPA) for using subsidiaries to pay bribes to Mexican officials to obtain business with government-owned power companies, and to pay kickbacks to Iraq to obtain contracts under the U.N. Oil for Food Program."

- On October 15, 2010, the Securities and Exchange Commission "announced that former Countrywide Financial CEO Angelo Mozilo will pay a record $22.5 million penalty to settle SEC charges that he and two other former Countrywide executives misled investors as the subprime mortgage crisis emerged."

- On November 4, 2010, the Securities and Exchange Commission "announced sweeping settlements with global freight forwarding company Panalpina, Inc., Pride International, Inc., Tidewater Inc., Transocean, Inc., GlobalSantaFe Corp., and Noble Corporation, all companies in the oil services industry who, according to the SEC, violated the Foreign Corrupt Practices Act (FCPA) by paying millions of dollars in bribes to foreign officials to receive preferential treatment and improper benefits during the customs process."

- On December 27, 2010, the Securities and Exchange Commission "charged Paris-based telecommunications company Alcatel-Lucent, S.A. with violating the Foreign Corrupt Practices Act (FCPA) by paying bribes to foreign government officials to illicitly win business in Latin America and Asia."

- On January 25, 2011, the Securities and Exchange Commission "charged Merrill Lynch, Pierce, Fenner & Smith Incorporated with securities fraud for misusing customer order information to place proprietary trades for the firm and for charging customers undisclosed trading fees. To settle the SEC's charges, Merrill..agreed to pay a $10 million penalty and consent to a cease-and-desist order."

- On February 3, 2011, the Securities and Exchange Commission "charged three AXA Rosenberg entities with securities fraud for concealing a significant error in the computer code of the quantitative investment model that they use to manage client assets. The error caused $217 million in investor losses."

- On March 1, 2011, the Securities and Exchange Commission "announced insider trading charges against a Westport, Conn.-based business consultant who has served on the boards of directors at Goldman Sachs and Procter & Gamble for illegally tipping Galleon Management founder and hedge fund manager Raj Rajaratnam with inside information about the quarterly earnings at both firms as well as an impending $5 billion investment by Berkshire Hathaway in Goldman."

- On April 6, 2011, the Securities and Exchange Commission "charged a corporate attorney and a Wall Street trader with insider trading in advance of at least 11 merger and acquisition announcements involving clients of the law firm where the attorney worked. The SEC alleges that Matthew H. Kluger, who formerly worked at Wilson Sonsini Goodrich & Rosati, and Garrett D. Bauer did not have a direct relationship with each other, but were linked only through a mutual friend who acted as a middleman to facilitate the illegal scheme."

- On June 21, 2011, the Securities and Exchange Commission "announced that J.P. Morgan Securities LLC will pay $153.6 million to settle SEC charges that it misled investors in a complex mortgage securities transaction just as the housing market was starting to plummet. Under the settlement, harmed investors will receive all of their money back."

- On June 22, 2011, the Securities and Exchange Commission, state regulators, and the Financial Industry Regulatory Authority (FINRA) announced..that Morgan Keegan & Company and Morgan Asset Management have agreed to pay $200 million to settle fraud charges related to subprime mortgage-backed securities."

This is no mere listing of transgressions. This is a multi-year, multi-firm set of fraudulent and unethical business practices spanning every major industry in the United States. These facts support a belief on the part of some observers that these practices have become standard business operating procedures. Given this, the future of American capitalism is at stake.

Envy, hatred, and greed have flourished in certain capital market institutions, propelling ethical standards of behavior downward. Without meaningful reform there is a significant and growing risk that our economic system will simply cease functioning.[5]

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[5]Proportional hazard models created by the firm and reflecting the probability of system wide market failure first spiked in September, 1998. The models spiked again in January and August, 2001. They have continued, in general, to increase. On December 22, 2005, we met with Ms. Elaine M.

Fully identifiable entities engaged in illegal activities. They have, for the most part, evaded prosecution of any consequence. We note that the aforementioned Goldman Sachs, fined $659.3 million by the Commission for various efforts to defraud investors, subsequently received $75 million in Federal Government tax credits.[6]

We also note that the aforementioned Alliance Capital Management, fined $250 million by the Commission for defrauding mutual fund investors, received a contract[7] in August, 2004 from the U.S Department of the Interior (DOI) Office of Special Trustee for American Indians, to manage $404 million in Federal Government trust funds.[8]

Recently, we have observed several cases where corporate management unfairly transferred value from outsider to insider shareholders.[9] These abuses have been linked to the abandonment of ethical principles noted earlier. Faulty market practices mask a company's true value and misallocate capital by moving investment dollars from deserving companies to unworthy companies.

Hartmann and others from the Division of Market Regulation, U.S. Securities and Exchange Commission and specifically noted our model findings.

[6] The tax credits were awarded under the U.S. Department of the Treasury New Markets Tax Credit (NMTC) Program. (See: http://www.cdfifund.gov/programs/nmtc/).

[7] Contract number NBCTC040039.

[8] The contract was awarded despite the fact that placing Alliance Capital Management in a position of trust is, given the Commission's enforcement action, inconsistent with common sense, with the interests of justice and efficiency and with the interests of Indian beneficiaries. Alliance is also in violation of DOI Contractor Personnel Security & Suitability Requirements.

[9] Including, but not limited to, Adlephia Communications, the aforementioned Alliance Capital Management, American Express Financial, American Funds, AXA Advisors, Bank of America's Nations Funds, Bank One, Canadian Imperial Bank of Commerce, Canary Capital, Charles Schwab, Cresap, Inc., Empire Financial Holdings, Enron, Federated Investors, FleetBoston, Franklin Templeton, Fred Alger Management, Freemont Investment Advisors, Gateway, Inc., Global Crossing, H.D. Vest Investment Securities, Heartland Advisors, Homestore, Inc., ImClone, Interactive Data Corp., Invesco Funds Group Inc., Janus Capital Group Inc., Legg Mason, Limsco Private Ledger, Massachusetts Financial Services Co., Millennium Partners, Mutuals.com, PBHG Funds, Pilgrim Baxter, PIMCO, Prudential Securities, Putnam Investment Management LLC, Raymond James Financial, Samaritan Asset Management, Security Trust Company, N.A., State Street Research, Strong Mutual Funds, Tyco, UBS AG, Veras Investment Partners, Wachovia Corp., and WorldCom. Accounting firms, including Arthur Andersen and Ernst & Young aided and abetted efforts to do so. We believe there are hundreds of other cases.

We understand that, given any proposed rule, crimes will continue to be committed.[10] These facts lead some to suggest that regulatory authorities may have been "captured" by the entities they regulate.[11] We note that under the "regulatory capture" market structure regime, the public interest is not protected.

We favor efforts to increase fairness in our capital markets while opposing reform for reform's sake.

We cite the following:

> *"Falsification and fraud are highly destructive to free-market capitalism and, more broadly, to the underpinnings of our society. Above all, we must bear in mind that the critical issue should be how to strengthen the legal base of free market capitalism: the property rights of shareholders and other owners of capital. Fraud and deception are thefts of property. In my judgment, more generally, unless the laws governing how markets and corporations function are perceived as fair, our economic system cannot achieve its full potential. "*
>
> Testimony of Mr. Alan Greenspan, Chairman of the Federal Reserve Board, Federal Reserve Board's semiannual monetary policy report to the Congress. Before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate. July 16, 2002.

We agree.

We support the SEC's efforts to modernize the market system. We suggest the SEC use XBRL to do so. We detail our reasons below.

Prior to the creation and adoption of high speed, massively networked public computer systems, providing an alternative market method was a costly proposition, unfair to public companies and corporate management. This is,

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[10] We assume that "employees are 'rational cheaters,' who anticipate the consequences of their actions and (engage in illegal behavior) when the marginal benefits exceed costs." See Nagin, Daniel, James Rebitzer, Seth Sanders and Lowell Taylor, "Monitoring, Motivation, and Management: The Determinants of Opportunistic Behavior in a Field Experiment, *The American Economic Review*, vol. 92 (September, 2002), pp 850-873.

[11] See George J. Stigler, "The Theory of Economic Regulation," in *The Bell Journal of Economics and Management Science*, vol. II (Spring 1971), pp. 3-21.

however, no longer the case. Many investors and shareholders currently use websites like www.google.com/finance/[12] to obtain corporate information.

Internet technology was specifically designed for this type of problem.

We are, however, concerned that the proposed amendments do not go far enough. The suggested rule changes are incremental modifications in an environment where more significant action is required. We note such action can be constructive, especially in light of market malfeasance cited above.

For example, we believe public companies should be *required* to disclose executive and director compensation via the Internet.

Information could be submitted using a secure, tamper resistant, management-independent website. Data would be tabulated in real time. The proposed executive and director compensation database could be tied to a Board member nomination and vote tabulation system and a shareholder accounting system. Once collected, executive and director compensation information could be easily incorporated into on-line proxy materials that are the subject of other proposed amendments.

Further, we continue to recommend the creation of a fairness-enhanced, Dutch-auction style system to allocate and price initial public offerings (IPO.)[13] The network of prescreened buyers, already well known to Wall Street, could easily be moved to this system. The system would be designed to meet certain security and performance standards.

An Internet based, on-line system, allowing for the dissemination of executive and director compensation data, other corporate governance data, pricing information and securities, will significantly lower the cost of raising

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[12] Google Finance "offers a broad range of information about North American stocks, mutual funds and public and private companies along with charts, news and fundamental financial data." This dataset will include compensation information.

[13] We have developed a fairness-enhanced Dutch-auction style system to allocate and price securities, our Fully Adjusted Return[tm] Auction System. The system is proprietary and a trade secret. As such, it is beyond the scope of this comment.

capital.[14] We believe this lowered cost will result in more companies coming to market. More companies coming to market will result in, other things equal, higher levels of economic activity, lower unemployment and lower inflation.

We also believe such a system will be fairer. Currently, members of the public pay, unfairly, for the privilege of purchasing IPO shares: they can only purchase shares at an excessively high price in the after issuance market. We believe a non-proprietary, SEC-owned and managed IPO Dutch auction system will eliminate the short term run up observed in the after issuance IPO market.[15]

In summary, we believe the use of on-line, Internet-based corporate information and capital access tools will significantly reduce costs and increase the flow of capital to all sectors in society. This increase in capital access will, in turn, result in significantly increased general economic activity. We estimate, using proprietary economic models, this increased economic activity at $6 trillion dollars over ten years. (This assumes an internet based corporate information and director compensation and capital access system that is gender and racially neutral, operating without significant falsification and fraud.)

The internet is a powerful tool. We understand both the potential benefits and the potentially disruptive nature of this technology better than most.[16]

Capital market regulators in other regions of the world will, at some point, enhance their ability to access capital using internet-based tools. Thus, competitive advantage with respect to executive and director compensation

[14] On average, investment banks appropriate seven percent (7%) of the capital raised via traditional Initial Public Offerings. We estimate the cost will, over six years, fall from 7% to 1%.
[15] This run-up was, according to one source, 16 percent (for IPO stocks issued between 1960 and 1987).

[16] We appreciate the nature of the task facing regulators. Implementing the proposed modification is very much like performing surgery on a marathon runner - during a race. Corporate fraud and malfeasance threaten the entire system, just as cholesterol clogged arteries threatens the health of the aforementioned runner. To make matters worse, (and to extend this analogy far too long) the nature of the technology is such that it significantly improves the performance of every runner in the race.

information and capital access is available to any country with significant economic potential and a modest communications infrastructure.

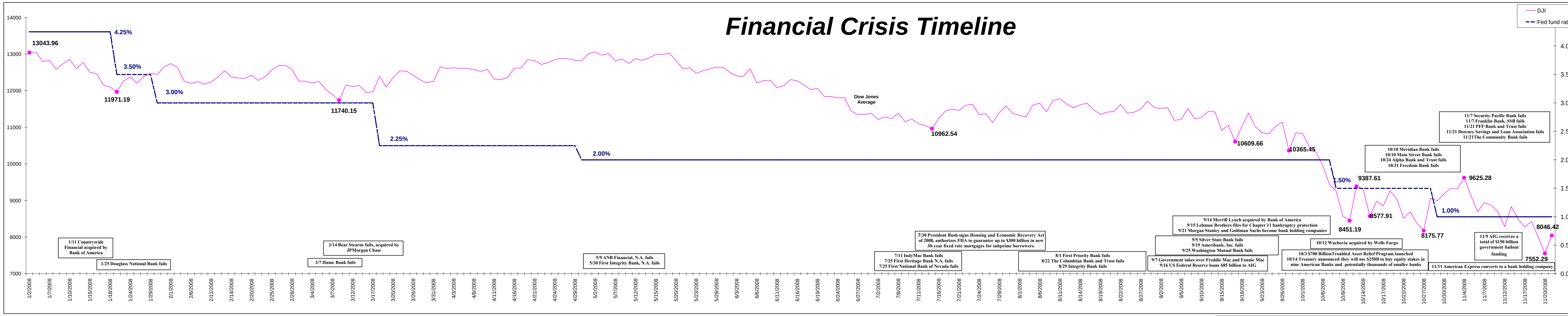
We do not know which countries will be winners over the long term. We know with certainty, however, that without the full set of internet-based and enhanced information and capital access tools outlined above, given both excessive executive compensation and the corporate fraud and malfeasance cited, it is unlikely that the United States will long maintain and enjoy its current advantage. The modifications proposed are an important first step.

We look forward to reviewing your continuing efforts to carry out your mission. We appreciate the time and effort devoted to this task. Thank you for your leadership.

Please contact me with any questions or comments.

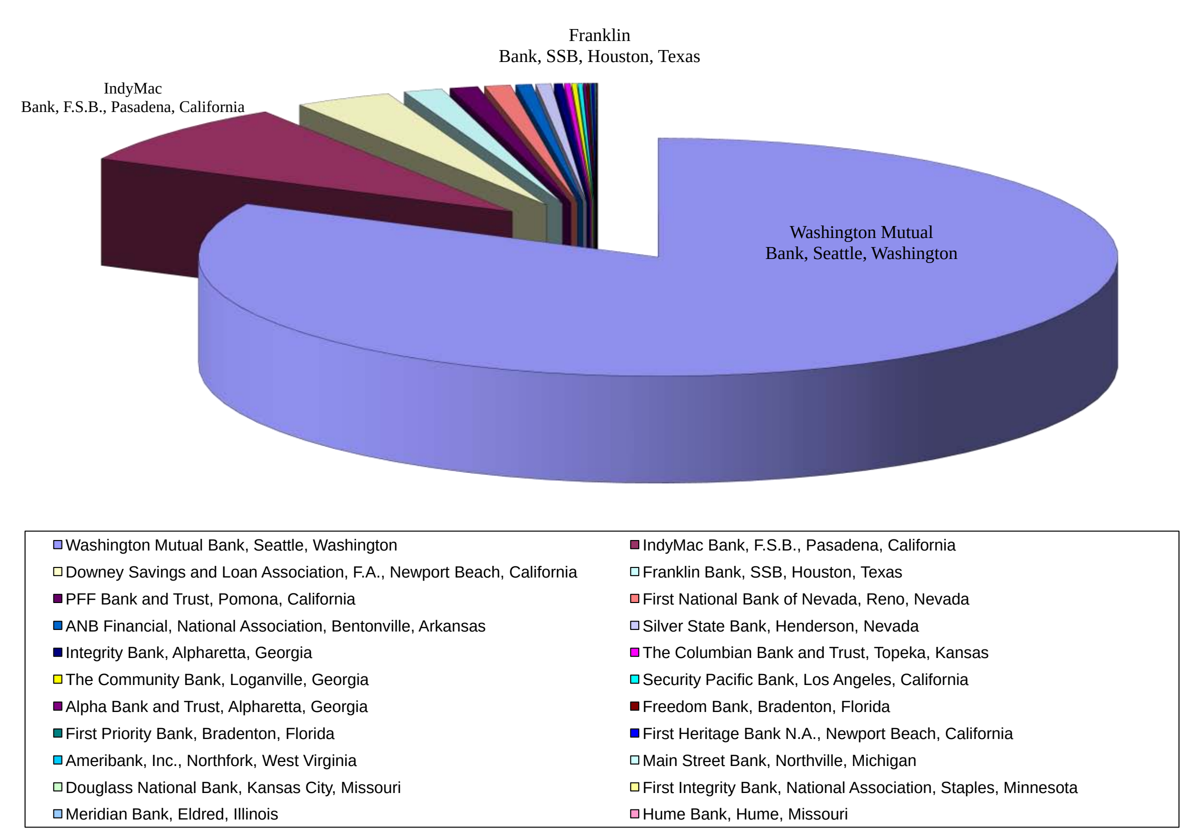
Sincerely,

William Michael Cunningham
Social Investing Adviser
for William Michael Cunningham and Creative Investment Research, Inc.

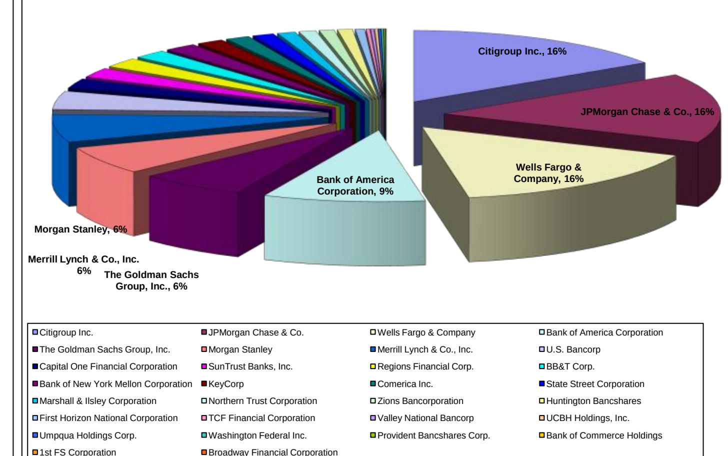


Year	Related Events
1968	Federal National Mortgage Association (Fannie Mae) is converted from a federal government entity to a stand-alone government sponsored enterprise (GSE)
1970	Federal Home Loan Mortgage Corporation (Freddie Mac) is created by an act of Congress
1974	Equal Credit Opportunity Act imposes heavy sanctions for financial institutions found guilty of discrimination on the basis of race, color, religion, national origin, sex, marital status, or age
1977	Community Reinvestment Act mandates banks and savings and loan associations to offer credit to individuals and businesses in lower income areas
1980	The Depository Institutions Deregulation and Monetary Control Act (DIDMCA) of 1980 granted all thrifts, including savings and loan associations, the power to make consumer and commercial loans and to issue transaction accounts and exempted federally chartered savings banks, installment plan sellers and chartered loan companies from state usury (unlimited interest rates) limits
1981	Each Federal Reserve bank establishes a Community Affairs Office to ensure compliance with the Community Reinvestment Act
1982	Alternative Mortgage Transaction Parity Act of 1982 (AMTPA) preempts state laws allows lenders to originate mortgages with features such as adjustable-rate mortgages, balloon payments, and negative amortization and "allows lenders to make loans with terms that may obscure the total cost of a loan"
1986	Tax Reform Act of 1986 (TRA) ended prohibited taxpayers from deducting interest on consumer loans, such as credit cards and auto loans, while allowing them to deduct interest paid on mortgage loans, providing an incentive for homeowners to take out home equity loans to pay off consumer debt
1985-1989	The effects of Tax Reform Act of 1986, the elimination of Regulation Q which had capped interest rates banks were allowed to pay, imprudent lending during the late 1970s inflationary period, as well as other causes, led to short term liabilities becoming greater than long term assets for many Savings and Loans
1989-1995	Financial Institutions Reform, Recovery and Enforcement Act ("FIRREA") established the Resolution Trust Corporation (RTC) which closed hundreds of insolvent savings and loans holding $519 billion in assets and moved regulatory authority to the Office of Thrift Supervision (OTS)
1992	Federal Housing Enterprises Financial Safety and Soundness Act of 1992 required Fannie Mae and Freddie Mac to devote a percentage of their lending to support affordable housing; Office of Federal Housing Enterprise Oversight (OFHEO) created to oversee them. **Creative Investment Research, Inc. starts process leading to first CRA pool, a Fannie Mae MBS security**
1994	Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (IBBEA) repeals the interstate provisions of the Bank Holding Company Act of 1956 that regulated the actions of bank holding companies
1995	New Community Reinvestment Act regulations break down home-loan data by neighborhood, and income, and race, enabling community groups to complain to banks and regulators about CRA compliance. Regulations also allows community groups to collect a broker's fee. Fannie Mae allowed to receive affordable housing credit for buying subprime securities
1997	The Taxpayer Relief Act of 1997 expanded the capital-gains exclusion to $500,000 (per couple) from $125,000, encouraging people to invest in second homes and investment properties
1997	Freddie Mac helped First Union Capital Markets and Bear Stearns & Co launch the first publicly available securitization of CRA pool, using a technique **invented by Creative Investment Research, Inc. in 1992**, issuing $384.6 million of such securities. All carried a Freddie Mac guarantee as to timely interest and principal. First Union was not a subprime lender
1998	"Financial Services Modernization Act" killed in Senate because of no restrictions on Community Reinvestment Act-related community groups written into law. Incipient housing bubble as inflation-adjusted home price appreciation exceeds 10% per year in most West Coast metropolitan areas
1999	Fannie Mae eases the credit requirements to encourage banks to extend home mortgages to individuals whose credit is not good enough to qualify for conventional loans
1999	Gramm-Leach-Bliley Act "Financial Services Modernization Act" repeals Glass-Steagall Act, deregulates banking, insurance and securities into a financial services industry allow financial institutions to grow very large; limits Community Reinvestment Coverage of smaller banks and makes community groups report certain financial relationships with banks
Oct-2000	Fannie Mae commits to purchase and securitize $2 billion of Community Investment Act-eligible loans. **In June, 2000, Creative Investment Research, testifies before Congress that Fannie and Freddie should be subject to a thorough social and ethical audit**
Nov-2000	Fannie Mae announces that the Department of Housing and Urban Development ("HUD") will soon require it to dedicate 50% of its business to low- and moderate-income families" and its goal is to finance over $500 billion in Community Investment Act-related business by 2010
Dec-2000	Commodity Futures Modernization Act of 2000 defines interest rates, currency prices, and stock indexes as "excluded commodities," allowing trade of credit-default swaps by hedge funds, investment banks or insurance companies with minimal oversight[33], and contributing to 2008 crisis in Bear Stearns & Co, Lehman Brothers, and AIG
2000-2001	US Federal Reserve lowers Federal funds rate 11 times, from 6.5% (May 2000) to 1.75% (December 2001). Easy-credit environment encourages less-qualified home buyers and investments in higher yielding subprime mortgages. In Minneapolis, first wide scale anti-predatory lending remediation, or loan repair program launched. Project supported by social investors, William Michael Cunningham
2002	President G.W. Bush sets goal of increasing minority home owners by at least 5.5 million by 2010 through billions of dollars in tax credits, subsidies and a Fannie Mae commitment of $440 billion to establish NeighborWorks America with faith based organizations
2002-2003	Mortgage denial rate of 14 percent for conventional home purchase loans, half of 1997
Jun-2003	Federal Reserve Chair Alan Greenspan lowers federal reserve's key interest rate to 1%, the lowest in 45 years
Sep-2003	Bush administration recommend moving governmental supervision of Fannie Mae and Freddie Mac under a new agency created within the Department of the Treasury. The changes are blocked by Congress
2004	SEC effectively suspends net capital rule for five firms - Goldman Sachs, Merrill Lynch, Lehman Brothers, Bear Stearns and Morgan Stanley. Freed from government imposed limits on the debt they can assume, they levered up 20, 30 and even 40 to 1
Sep-2005	Over protest of Democrats in U.S. Congress, the FDIC, Federal Reserve, and the Office of the Controller of the Currency allow loosening of Community Reinvestment Act requirements for "small" banks, cutting back the number of subprime loans offered to borrowers. **Creative Investment Research, Inc. serves as expert witness in NJ case seeking to hold loan servicers, investment banks, credit rating agencies responsible for supporting and facilitating subprime market abuses and fraud**
2006	In possibly the first casualty of the looming subprime crisis, Kirkland, Washington based Merit Financial Inc. files for bankruptcy and closes its doors, firing all but 80 of its 410 employees; Merit's marketplace decline about 40% and sales are not bringing in enough revenue to support overhead

Failed Banks, by assets at time of closing



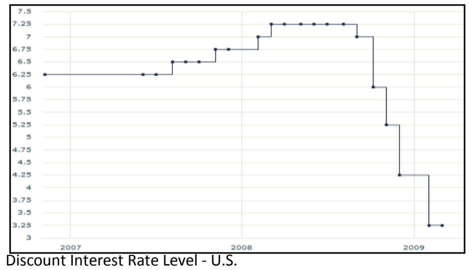
TARP Capital Purchase Program ($158.6 Billion as of 11/14/08)

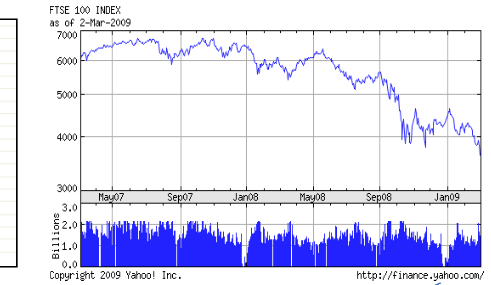


Date	Legislative Actions (Late 2008)
Sept. 19	Bush Administration Announces Bailout Plan to Confront Crisis
Sept. 24	Hearing: The Future of Financial Services: Exploring Solutions for the Market Crisis, Bernanke and Paulson on Bailout
Sept. 25	Hearing: Oversight Hearing to Examine Recent Treasury and FHFA Actions Regarding the Housing GSEs
Sept. 29	Bailout Package (HR3997 or EESA) Rejected 228-205 in House
Oct. 1	The U.S. Senate passes HR1424, their version of the $700 billion bailout bill
Oct. 3	Hours after House votes 263-171 to enact, Bush signs EESA bill
Oct. 22	Hearing: Credit Rating Agencies and the Financial Crisis
Nov. 12	Treasury Secretary Paulson abandons plan to buy toxic assets under the $700 billion troubled asset relief program (TARP).

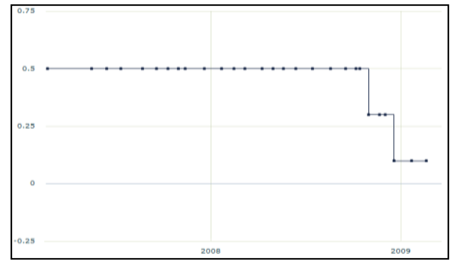
Global Market Turmoil

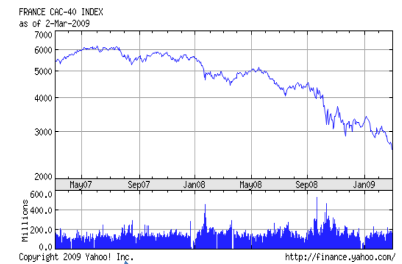
Discount Interest Rate Level - U.K.

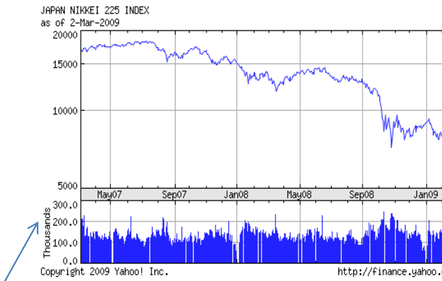




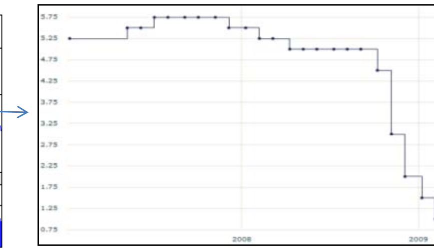
Discount Interest Rate Level (ECB)



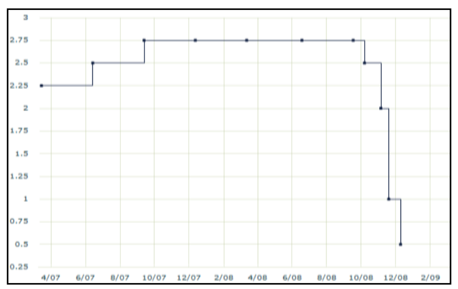


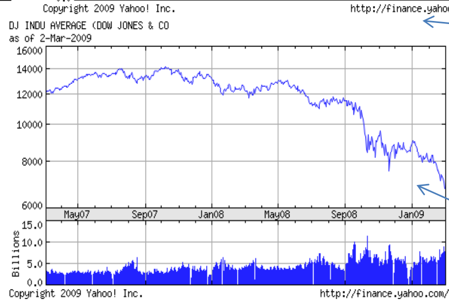


Discount Interest Rate Level - Japan



Discount Interest Rate Level - U.S.





UK: Injects £37bn ($64bn) of taxpayers' money into three major banks: Royal Bank of Scotland, HBOS and Lloyds TSB.

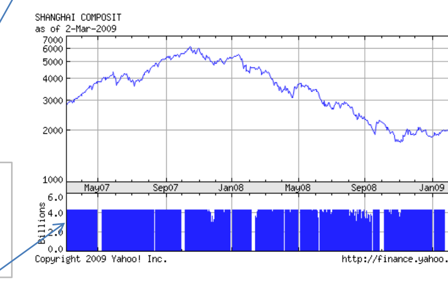
FRANCE: The chairman of French savings bank Caisse d'Epargne quit over the loss of 600m euros (£466m) in a "trading incident" amid global market chaos.

GERMANY: The German parliament overwhelmingly approved a 500 billion euro ($675bn) financial rescue package, including a fund to provide up to 400bn euros in interbank loan guarantees and 80bn euros ($109bn) to acquire stakes in troubled banks.

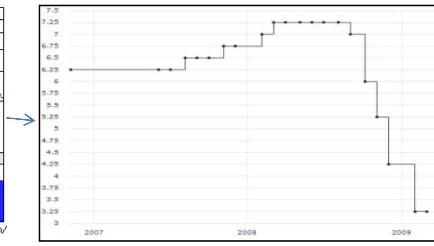
US:
* The Federal Reserve cuts its key interest rate from 1.5% to 1%, to boost the economy.
* injected $250bn into many of the nation's banks, including JP Morgan Chase, Goldman Sachs and the Bank of New York Mellon Corp.
* US President Barack Obama signs massive economic stimulus plan worth about $787bn (£548bn) into law, aimed at boosting the US economy.

JAPAN:
* The Bank of Japan reduced interest rates for the first time in seven years from 0.5% to 0.3%.
* The lower house of parliament approved a 1.8 trillion yen ($18bn) stimulus plan and the Bank of Japan put 4.5 trillion yen ($45.5bn) into the banking system.

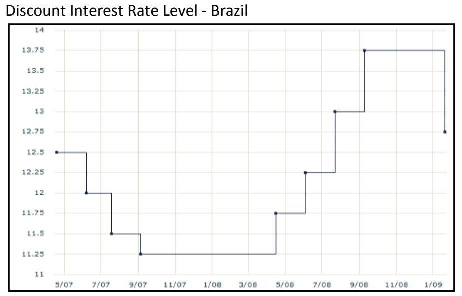
CHINA:
China's central bank cut the country's interest rate by 0.27%, from 6.93% to 6.66%, for the 3rd time in the past six weeks.

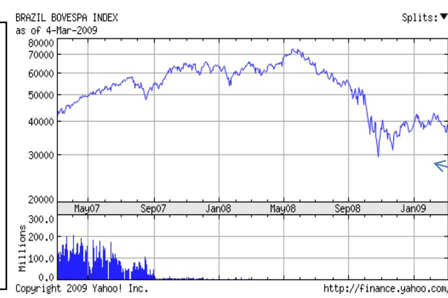


Discount Interest Rate Level - China



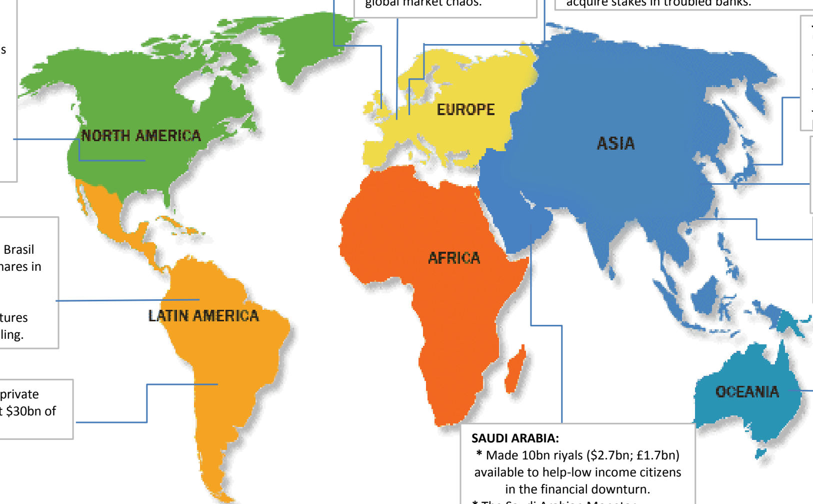
Discount Interest Rate Level - Brazil



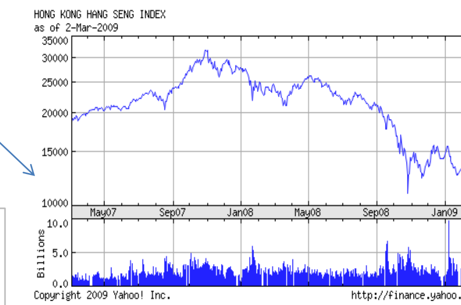


BRAZIL:
* Allowed government-controlled Banco do Brasil and Caixa Economica Federal to purchase shares in private financial institutions.
* Abandoned tax on foreign investments
* Plans to sell up to $50bn in dollar swap futures contracts to try to stop its currency from falling.

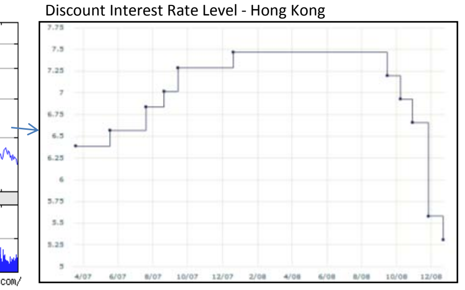
ARGENTINA: Nationalised the country's 10 private pension funds, putting it in control of almost $30bn of investments.



HONG KONG:
* The central bank cuts interest rates.
* Promised to guarantee all bank deposits until 2010.

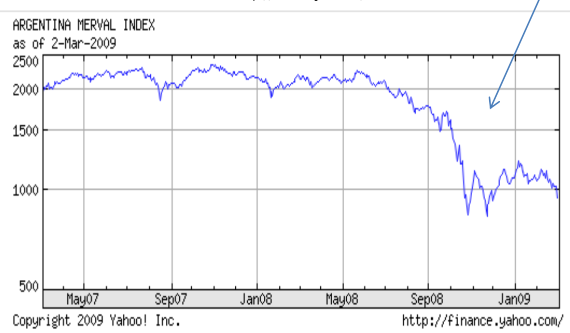


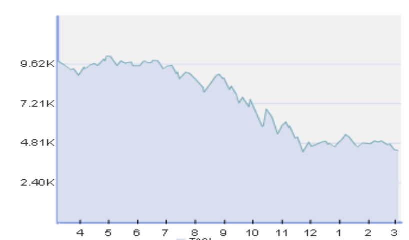
Discount Interest Rate Level - Hong Kong

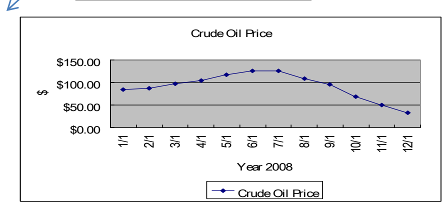


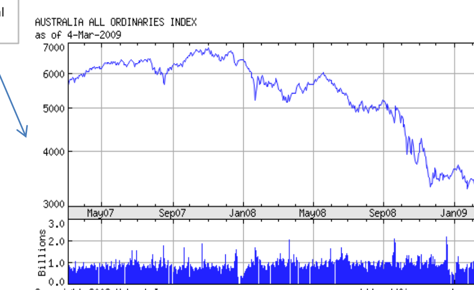
AUSTRALIA:
* Australia's central bank intervened to support its currency
* Australia's central bank cut its key interest rate from 7% to 6%
* Government announced it would guarantee all bank deposits with financial institutions over the next three years.

SAUDI ARABIA:
* Made 10bn riyals ($2.7bn; £1.7bn) available to help-low income citizens in the financial downturn.
* The Saudi Arabian Monetary Agency (SAMA) cuts its benchmark interest rate on 12 October for the first time in almost two years.

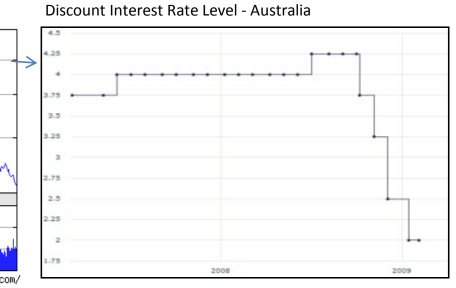








Discount Interest Rate Level - Australia



Global Fiscal Stimulus (as of 2/2009)

Country	$(USB)
Argentina	$ 3.8
Brazil	$ 283.3
Britain	$ 30.0
Canada	$ 30.0
Chile	$ 4.0
China	$ 586.0
Egypt	$ 5.4
EU-wide	$ 254.6
Finland	$ 2.0
France	$ 33.0
Germany (1st)	$ 29.0
Germany (2nd)	$ 67.0
Hungary	$ 15.7
India	$ 8.0
Indonesia	$ 6.3
Israel	$ 5.1
Italy	$ 2.0
Japan	$ 516.3
Mexico	$ 5.8
Norway	$ 2.2
Poland	$ 31.4
Portugal	$ 2.0
Russia	$ 5.0
Singapore	$ 13.6
South Africa	$ 3.6
Sweden	$ 1.0
Thailand	$ 3.3
United States	$ 787.0
Vietnam	$ 6.0
TOTAL	$2,742.4

Source: Gallagher, Kevin P., et al, Survey of Stimulus and IMF Rescue Plans During the Global Financial Crisis: I, February, 2009. Survey conducted by graduate students at Boston University.

Other Actions: (October, November, 2008)

Arab States:	On 31 October, Middle Eastern investors put up to £7.3bn ($11.8bn) into the UK bank Barclays. Kuwait, on 26 October, introduced legislation to guarantee bank deposits - after losses were reported at Gulf Bank. Saudi Arabia also said it would make 10bn riyals ($2.7bn; £1.7bn) available to help-low income citizens in the financial downturn.
Belarus:	Belarus has been in talks with the International Monetary Fund to obtain funding in the wake of the recent financial turmoil.
Belgium:	The country's largest banking group, Fortis, needed the intervention of the Belgian and Dutch governments and the sale of some of its assets to French giant BNP Paribas, to stay alive after getting into difficulty over the purchase of Dutch bank ABN Amro.
Canada:	Cut key interest rate by a quarter point, to 2.25%, on 21 October. Rate cut by half a percentage point on 8 October in a co-ordinated effort with other central banks. On 10 October announced a CAN$25bn ($21bn) of asset-swaps between the country's major banks and the government-owned Canada Mortgage and Housing Corporation (CMHC).
Denmark:	The Danish parliament approved a government-backed crisis plan, which includes an unlimited guarantee on savings deposits. The central bank has raised its key interest rate by 0.5 percentage points to 5.5%.
Estonia:	The government more than doubled its bank deposit guarantee to 50,000 euros ($68,000), in line with other European Union member states.
Greece:	The Greek government said on 3 October it would fully guarantee all bank deposits of citizens, but an official added that this was a "political commitment" and the banking system was not at risk.
Hungary:	On 28 October, granted a rescue package by the IMF, the EU and the World Bank worth $25bn (£15.6bn).
Iceland:	On 24 October, became the first Western nation to go to the IMF for support since 1976. Iceland got in financial difficulties after it took over its three biggest banks: Landsbanki, Kaupthing and Glitnir.
India:	On 1 November, India's central bank cut its main short-term lending rate, the repo rate, by half a percentage-point to 7.5%. It is the latest in a series of cuts by the Reserve Bank of India, which has brought the rate down from 9%.
Ireland:	Ireland was the first government to come to the rescue of its citizens' savings, promising on 30 September to guarantee all deposits, bonds and debts in its six main banks for two years.
Italy:	Finance Minister announces on 13 October that the government would spend "as much as necessary" to support his country's financial institutions. The governor of the Bank of Italy announced it would temporarily swap up to 40bn euros ($54bn) of bonds for Italian bank debt.
Malaysia:	The government has offered to guarantee all local and foreign currency deposits up until the end of 2010.
Mexico:	On 21 October, Mexican government offered $3.92bn in loan guarantees to help local firms refinance debt maturing in 2008. This is in addition to the President's proposal to spend $4.4bn on infrastructure and energy projects to boost the economy.
Netherlands:	Government provided a 3bn euro ($3.8bn; £2.4bn) cash injection to the insurer Aegon on 28 October. The government is also offering a 200bn euro package of loan guarantees to Dutch banks.
New Zealand:	The government is planning to guarantee retail deposits, initially for two years.
Norway:	On 29 October, Norway's central bank cut interest rates by 0.5%, to 4.75%. It also revised down its forecast for economic growth for 2008, from 3.25% to 2.5%.
Portugal:	The government said it would guarantee bank deposits and offer a financing line worth 20bn euros ($27.5bn) to guarantee the liquidity of its banks.
Singapore:	The government has offered to guarantee all local and foreign currency deposits up until the end of 2010.
South Korea:	On 3 November, South Korea announced an economic package worth about 14 trillion won ($10.9bn; £6.6bn) to boost the economy and help avert a recession.
Spain:	On 10 October, the government announced the creation of a 30bn euro ($40bn) fund to buy assets from Spanish financial institutions to help stabilise them and unfreeze credit. Three days earlier, it had increased bank deposit guarantees to 100,000 euros ($136,000) from the current 20,000 euros.
Sweden:	Central bank cut interest rates by 50bps to 3.75% on 23 October, second reduction in two weeks, and said it planned further cuts within six months. Guaranteed new medium-term liabilities of banks up to a level of 1.5 trillion crowns (£117.2bn; $205bn). Also putting 15bn crowns into a fund that will be used in case a bank needs emergency capital.
Switzerland:	Switzerland strengthed its largest bank, UBS, by giving it 6bn Swiss francs ($5.3bn; £3.1bn) in exchange for a 9.3% stake. UBS will also be able to transfer up to $60bn of toxic assets to a fund supported by the Swiss central bank.
Ukraine:	Loan from the IMF announced on 26 October. But the $16.5bn (£10.6bn) loan is dependent on the bitterly divided parliament giving the green light to several anti-crisis laws, including the establishment of a fund to bail out the country's banks.

Source: British Broadcasting Company (BBC) News

Editor: William Cunningham. Compiled by: Chih-Huei Debby Su, Teng Su, Tian Weng, Interns.

From: Pal

Proposal: 1425 (RIN 7100-AD77) - Reg Y - Capital Plans

Subject: Capital Plans

Comments:

Date: Jul 22, 2011

Proposal: Capital Plans
Document ID: R-1425
Document Version: 1
Release Date: 06/10/2011
Name: Pal

Comments:
Requiring a large down payment will bring a severe hardship to the housing market and to home buyers and home sellers. It is not an essential requirement for loan quality, and it will likely bring hardship to new home buyers who will exhaust savings that might have been needed for emergency, home repairs, or some other economic decision. We will tie up a good bit of liquidity into home purchases, and impact middle class families by denying them access to home ownership and the prospects of a rent free residence. Other standards can better accomplish credit quality goals. They already have. This proposal sets the US housing market back by 40-50 years. Most people fall behind on their mortgages when their income situation changes, not because they "lied" on their loan application. Even these mythical "liar loans" have a place in business, just ask the person to put down 25% down if he doesn't want to show income, this should be a good way to decrease the risk. This is a capitalist county, if there is nobody buying this type of mortgage in the secondary market, this type of loan will go away. You don't need a new federal agency for it!! It's RIDICULOUS! It shows complete IGNORANCE about the housing market by Dodd and Frank. Creating a new government agency in this market will kill the overall housing market, put huge burden on the homebuyers and will suffocate our country's recovering economy in a bunch of red tape. In my personal opinion, this law is a pure and simple SABOTAGE of the US housing market and must be repealed!

Julie A. Spiezio
Senior Vice President, Insurance Regulation & Deputy General Counsel
(202) 624-2194 t (866) 953-4083 f
juliespiezio@acli.com

July 28, 2011

The Honorable Ben S. Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th Street & Constitution Ave., N.W.
Washington, D.C. 20551

Re: Proposed Rule on Capital Plans (*Docket No. R-1425; RIN No. 7100 AD 77*)

Dear Chairman Bernanke:

These comments are submitted on behalf of the American Council of Life Insurers ("ACLI"). The ACLI is a national trade association with over 300 member companies representing more than 90 percent of the assets and premiums of the life insurance and annuity industry in the U.S. On behalf of all our members, we appreciate the opportunity to submit comments on the proposed rule for capital plans (the "Proposed Rule") referenced above as proposed by the Board of Governors of the Federal Reserve System (the "Board") and published at 76 Federal Register 35351 (June 17, 2011).

The Proposed Rule would require top-tier U.S. bank holding companies with total consolidated assets of $50 billion or more to submit capital plans to the Board on an annual basis and to provide prior notice to the Board under certain circumstances before making a capital distribution. In its press release accompanying the Proposed Rule, the Board notes that the Proposed Rule builds upon and institutionalizes the Comprehensive Capital Analysis and Review conducted earlier this year at the 19 largest U.S. bank holding companies.[1] Based on the most recent available data, there are approximately 35 U.S. bank holding companies with $50 billion or more in consolidated assets that would be covered by the Proposed Rule. In the Supplementary Information section of the Federal Register notice, the Board indicates that through separate rulemaking or by order, it expects that the requirements of the Proposed Rule would be extended to large savings and loan holding companies and nonbank financial companies supervised by the Board pursuant to section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").[2]

A number of ACLI member companies own insured savings associations and thus may become subject to any future extension of the Proposed Rule to large savings and loan holding companies or nonbank financial companies supervised by the Board pursuant to section 113 of the Dodd-Frank Act. Because of the implications of any possible future extension of the Proposed Rule to large savings and loan holding companies, particularly those that are predominantly engaged in insurance activities or have significant insurance operations, or

1 Federal Reserve Press Release (June 10, 2011).
2 76 Fed. Reg. 35351, 35352 n.9 (June 17, 2011).

nonbank financial companies, the ACLI is offering its comments on the Proposed Rule. The predominant insurance nature of the ACLI member companies that own depository institution subsidiaries provides an important perspective for commenting on any possible future extension of the Proposed Rule to savings and loan holding companies or nonbank financial companies supervised by the Board pursuant to section 113 of the Dodd-Frank Act.[3]

1. <u>General Observations on a Supervisory Approach to Savings and Loan Holding Companies</u>

As the ACLI has noted in earlier comment letters to the Board,[4] the ACLI believes that the Board should recognize as a basic principle in any supervisory approach to savings and loan holding companies that many savings and loan holding companies, particularly those that are predominantly engaged in insurance activities, have significantly different business and risk profiles than the bank holding companies that the Board has traditionally regulated. In addition, many savings and loan holding companies own savings associations that represent a very small percentage of assets or revenues of their overall corporate entity. This is particularly true of savings and loan holding companies that are predominantly insurance enterprises and distinguishes these savings and loan holding companies from virtually all bank holding companies for which the depository subsidiaries represent a predominant percentage of the assets and revenues of the overall corporate entity. In developing an appropriate supervisory approach to savings and loan holding companies and nonbank financial companies, the Board must recognize the different business models and risk profiles that distinguish many large savings and loan holding companies and other nonbank financial companies from large bank holding companies and tailor its supervisory approach to the specific business models and risk profiles of the entities to be supervised.

This approach has the clear advantage of structuring a supervisory program to the actual risk characteristics of the entities to be supervised rather than to a model that no matter how well designed or accepted does not reflect the characteristics (either in terms of diversity of activities or the relative weight of depository activities) of the entities to be supervised. This tailored approach also allows for differentiated supervision of organizations that are low-risk or noncomplex irrespective of size. This tailored approach has the additional advantage of allowing the necessary and appropriate weight to be accorded to the existing regulatory regimes that apply to particular types of financial entities such as insurance companies. These general principles guide the following comments from the ACLI with respect to the possible future extension of the Proposed Rule to large savings and loan holding companies and other nonbank financial companies that are predominantly insurance enterprises or have significant insurance operations.

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[3] While the comments in this letter focus primarily on the issues related to any potential extension of the Proposed Rule to savings and loan holding companies that are predominantly insurance enterprises, the comments are also relevant to the issues of the application or extension of the Proposed Rule to any entity that is predominantly an insurance enterprise or has significant insurance operations, including an entity that is a bank holding company or a nonbank financial company supervised by the Board pursuant to section 113 of the Dodd-Frank Act.

[4] *See* ACLI Letter to Hon. Ben S. Bernanke (April 6, 2011);
ACLI Letter to Hon. Ben S. Bernanke (May 20, 2011).

2. Savings and Loan Holding Companies Predominantly Engaged in Non-Depository Activities

As the Board has consistently noted in its supervisory guidance relating to the payment of dividends and the redemption and repurchase of stock by bank holding companies, "[a] fundamental principle underlying the Federal Reserve's supervision and regulation of BHCs is that a BHC should serve as a source of management and financial strength to its subsidiary banks."[5] Indeed, much of the Bank Holding Company Act regime is focused on protecting the safety and soundness of the subsidiary banks of the holding company.[6] A supervisory approach to capital planning at a holding company level, including a capital plan requirement, is consistent with these objectives when the depository subsidiary or subsidiaries represent a significant percentage of the overall assets or revenues of the holding company.

The supervisory approach should be modified, however, when the depository subsidiary or subsidiaries represent a relatively small percentage of the consolidated holding company entity. In such a case, the assets available to the holding company to provide additional capital or other financial support to the depository subsidiary may be many times the amount of any additional capital requirement at the depository subsidiary. In addition, in the case of a large holding company with a small depository subsidiary, there will be much reduced risk of reliance on dividends from the depository subsidiary to service the obligations at the holding company level (and much reduced risk of any problem arising from double leverage at the holding company level).[7] As a structural matter, a large savings and loan holding company with a small depository institution is inherently better aligned with the source-of-strength doctrine than the typical large bank holding company with a large depository subsidiary or subsidiaries. To subject a large holding company with a small depository subsidiary to a regulatory requirement for a formal capital plan and for review and non-objection by the Board is thus unnecessary and disproportionate to the intended purpose and does not make the appropriate allowance for the differences between the financial profile of large bank holding companies and most large savings and loan holding companies.

As part of its supervisory responsibility over savings and loan holding companies, the Board will have the full range of other supervisory and regulatory tools to assess and monitor the capital position of savings and loan holding companies. These supervisory and regulatory tools can be more appropriately tailored to the individual situation of savings and loan holding companies than a capital plan requirement. The ACLI encourages the Board to consider the appropriate range of supervisory and regulatory tools available to it to monitor the capital positions of savings and loan holding companies and to tailor its approach to the differing situations of individual savings and loan holding companies.

The use of a tailored approach to capital monitoring for savings and loan holding companies is also consistent with another principle articulated by the Board in issuing the Proposed Rule, i.e., that the amount of capital held by a holding company should be commensurate with the

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[5] *See* Division of Banking Supervision and Regulation SR Letter 09-4 (Feb. 24, 2009) (revised March 27, 2009); Federal Reserve Board Policy Statement, Unsafe Banking Practices – Cash Dividends Not Fully Covered by Earnings (Nov. 14, 1985). The Dodd-Frank Act has now extended the source of strength doctrine to all holding companies of insured depository institutions. *See* Dodd-Frank Act § 616(d).

[6] *See* Bank Holding Company Supervision Manual §1050.1 (Jan. 2009).

[7] In the case of a savings and loan holding company, the Home Owners' Loan Act of 1933 ("HOLA") already provides a direct mechanism for regulatory review of all dividend payments to the holding company. *See* 12 U.S.C. § 1467a(f). The Office of Thrift Supervision has by regulation expanded the review process beyond dividends to all forms of capital distributions (other than dividends payable in shares) by a savings association subsidiary to its holding company. *See* 12 C.F.R. §§ 563.141-536.146.

company's risk profile. Many large savings and loan holding companies have risk profiles that differ significantly from large bank holding companies. For example, the largest bank holding companies are engaged in various financial activities that the Congress identified as posing significant risks to the financial system, such as acting as primary dealers, acting as derivatives dealers, managing payment and clearing systems, providing prime brokerage services, and sponsoring and underwriting structured products. Many savings and loan holding companies are not engaged in these activities at all or only to an insignificant extent in the case of individual institutions. The significant difference in the risk profiles of large bank holding companies and large savings and loan holding companies should be recognized in any supervisory approach that the Board adopts, providing for a tailored assessment of the risk profiles of individual large savings and loan holding companies.[8] As discussed in the following section, recognition of the difference in risk profiles between large bank holding companies and large savings and loan holding companies is particularly appropriate for large savings and loan holding that are predominantly engaged in insurance activities or have significant insurance operations.

3. Special Considerations Applicable to Savings and Loan Holding Companies Predominantly Engaged in Insurance Activities

Within the set of large savings and loan holding companies, special considerations apply to those savings and loan holding companies that are predominantly engaged in insurance activities. In effect, these entities represent a unique subset of institutions because of the nature of their business and the attendant regulatory structure that flows from that business. Consistent with the underlying approach reflected in the Dodd-Frank Act, the Board in developing its supervisory approach to large savings and loan holding companies should tailor its approach to the predominant line of business of the savings and loan holding company. This is particularly appropriate for savings and loan holding companies that are predominantly engaged in insurance activities because of the longstanding and comprehensive regulatory and supervisory system that applies to entities engaged in insurance activities. The amendments made to HOLA by the Dodd-Frank Act recognize this principle as applied to savings and loan holding companies that own functionally regulated subsidiaries.[9]

As the ACLI has noted in an earlier comment letter, any supervisory capital approach developed by the Board for savings and loan holding companies that are predominantly engaged in insurance activities must take full account of the "inherent differences" between the insurance and banking businesses and the resulting differences in the risk-based capital methodology

[8] In issuing the Proposed Rule, the Board noted that while the proposal is not mandated by the Dodd-Frank Act, the Board believes that it is appropriate to hold large bank holding companies to an elevated capital planning standard because of the elevated risk posed to the financial system by large bank holding companies. The Board also noted that the proposed asset threshold of $50 billion for bank holding companies is consistent with the threshold established by section 165 of the Dodd-Frank Act relating to enhanced prudential supervision for large, interconnected bank holding companies. 76 Fed. Reg. at 35352. It should be noted, however, that neither section 165 nor section 166 of the Dodd-Frank Act, which is also cited by the Board in Supplementary Information section of the Proposed Rule, apply to savings and loan holding companies as such. Likewise, the related sections 115 and 116 of the Dodd-Frank Act do not apply to savings and loan companies as such, reflecting Congressional recognition that large savings and loan holdings generally present a different risk profile than large, interconnected bank holding companies.
[9] *See* Dodd-Frank Act § 604(g) & (h).

adopted by the insurance and banking regulators.[10] As the ACLI has further noted, the best way to address the inherent differences between the insurance and banking business would be to recognize and accept for supervisory purposes to the greatest extent possible the insurer risk-based capital requirements for savings and loan holding companies that are predominantly engaged in insurance activities.[11] As discussed below, the insurance regulatory system provides both for required capital levels and controls on dividend payments by insurers. These are essential elements of the insurance regulatory system for insurers. They should also be recognized as essential elements of any supervisory system that the Board implements for savings and loan holding companies that are predominantly engaged in insurance activities. The following discussion provides a high level summary of the relevant capital requirements and dividend restrictions applicable to insurance companies under state insurance law and regulation.

A. *Insurer Risk-Based Capital*

Under state law insurers are subject to conservative risk-based capital ("RBC") requirements that take into account both investment (asset) and insurance (liability) risks as well as interest rate risk, off balance sheet items like guarantees and contingent liabilities and the risk of collectability of reinsurance. If an insurer's RBC ratio (Total Adjusted Capital/Authorized Control Level RBC) falls below 200%, the insurer must present its domestic state insurance regulator with a plan to improve its financial position. The insurer's domestic state insurance regulator is authorized to place an insurer in receivership if the RBC ratio falls below 100%, and is required to place the insurer into receivership if the RBC falls below 70%.[12] A well-capitalized insurer generally holds multiples of the required RBC level. It is important to note that the insurer RBC calculation is formulaic, and is not based on insurer's own risk estimates or internal models.

While insurer RBC is important generally to the financial health of a top-tier depository institution holding company that owns both an insurer and an insured depository institution, insurer RBC takes on additional importance when an insurer itself owns, directly or indirectly, the insured depository institution. This will be the case for all top-tier depository institution holding companies that are mutual insurers. Since mutual insurers and fraternal benefit societies have no parent, they are the top-tier depository institution holding company. In addition, this will be the case for a top-tier depository institution holding company that owns a stock insurer that, in turn, directly or indirectly, owns an insured depository institution. In this case, the capital standards imposed by insurer RBC indirectly supports the continued financial health of the depository subsidiary.

B. *Stock Insurer Shareholder Dividend Limitations*

State insurance laws typically include regulation of shareholder dividends made by stock insurers. These are usually contained in state insurance holding company statutes. The typical law[13] requires the following:

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[10] *See* ACLI Letter to Hon. Ben S. Bernanke (May 20, 2011) (quoting from the Report of the National Association of Insurance Commissioners (NAIC) and the Federal Reserve System Joint Subgroup on Risk-Based Capital and Regulatory Arbitrage (May 24, 2002).
[11] Id.
[12] *See* National Association of Insurance Commissioners, Risk-Based Capital (RBC) Model Act §§ 3-5.
[13] *See, e.g.*, Ill. Rev. Stat. Ch. 215 §§ 5/27 (earned surplus) 5/131.20a(2) (extraordinary dividend) and 50 Ill. Adm. Code 855.30(a)(1) (ordinary dividend).

(i) All shareholder dividends be paid only from earned surplus (accumulated earnings) and not contributed surplus (proceeds from the sale of its stock). Some states may allow shareholder dividends to be paid from other than earned surplus but only with the prior approval of the insurer's domestic state insurance regulator.[14]

(ii) No "extraordinary dividend" may be paid without giving the domestic state insurance regulator at least 30 days prior notice, during which time the regulator may disapprove the proposed shareholder dividend. An "extraordinary dividend" is typically defined as one, which together with other dividends made within the prior 12 months, exceeds the greater of (i) 10% of the insurer's surplus as of the prior December 31, or (ii) the net income of the insurer for the 12-month period ending the prior December 31.

(iii) The insurer must give its domestic state insurance regulator notice of each and every "ordinary dividend" – any dividend that is not an "extraordinary dividend." A typical state law or regulation may require notice 5 business days following declaration of the ordinary dividend and no less than 10 business days prior to payment of the ordinary dividend. This allows the regulator to review the impact of the proposed ordinary dividend on the financial condition of the insurer and, if warranted, allow the regulator to intervene and prohibit the ordinary dividend.[15]

These state law restrictions serve the same general purpose as the restrictions in banking law on the payments of dividends. They are used when necessary to preserve the financial strength of the insurance subsidiary; they also serve as a prophylactic matter to discourage undue reliance by a holding company on dividends or other distributions from an insurance subsidiary. If a savings association subsidiary is owned directly or indirectly by an insurance company, they can also serve indirectly to discourage undue reliance by the holding company on dividends or capital distributions from the savings association subsidiary in conjunction with the direct regulatory regime applicable under HOLA.

C. *Policyholder Dividends*

If the Proposed Rule were to be extended to savings and loan holding companies that are mutual insurance companies or mutual insurance holding companies, it could present significant problems for such entities. The Proposed Rule contains a broad definition of the term "Capital distribution" to mean:

> "a redemption or repurchase of any debt or equity capital instrument, a payment of common or preferred stock dividends, a payment that may be temporarily or permanently suspended by the issuer on any instrument that is eligible for inclusion in the numerator of any minimum regulatory capital ratio, and any similar

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[14] *See, e.g.*, Pa. Stat. Ann. Tit. 40, § 459.8(a), (b).

[15] In addition, if an insurer's domestic state insurance regulator determines that the continued operation of the insurer may be hazardous to the policyholders or the general public, then the regulator may issue an order requiring the insurer to, among other things, suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders. *See* National Association of Insurance Commissioners, Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition § 4.B(5).

transaction that the Federal Reserve determines to be in substance a distribution of capital."[16]

Mutual insurers and mutual insurance holding companies regularly pay "dividends" to their policyholders or members. However, these are not distributions on any capital instrument. Policyholders and members are neither shareholders nor debt holders in that capacity. Nonetheless, the ACLI is concerned that the phrase "any similar transaction that the Federal Reserve determines to be in substance a distribution of capital" could be construed as including dividends to policyholders or members of a mutual insurer or a mutual insurance holding company. In no event should any proposed capital plan requirement extend to the payment of dividends to policyholders or members of a mutual insurer or a mutual insurance holding company.[17]

Policyholder dividends of mutual life insurers are already subject to regulation under state insurance laws. For example, under New York law, a mutual life insurer must ascertain the surplus earned by it each calendar year. It may then set aside from that earned surplus an amount for deferred dividend policies and an amount its deems advisable for the accumulation of surplus (capital), but then must use the remainder of the earned surplus for the payment of policyholder dividends in accordance with insurance regulatory standards.[18] As a general matter, current year policyholder dividends are paid from current year earnings.[19]

4. Phase-in for Savings and Loan Holding Companies

The Proposed Rule would apply to every top-tier bank holding company domiciled in the United States that has $50 billion or more in total consolidated assets. However, as noted in the Supplementary Information section of the Federal Register, "[c]onsistent with the phase-in period for the imposition of minimum risk-based and leverage capital requirements established in section 171 of the Dodd-Frank Act," the Proposed Rule by its terms would not apply until July 21, 2015 to any bank holding company subsidiary of a foreign banking organization that has relied on Supervisory and Regulatory Letter SR 01-01 issued by the Board.[20]

We believe that this postponement for such foreign-owned bank holding companies is appropriate both as a policy matter and as a matter of statutory intent. For the reasons discussed in the previous sections of this letter, the ACLI believes that a capital plan requirement at least in the form of the Proposed Rule should not be extended to large savings and loan holding companies. If, however, the Board should decide to extend a proposed capital plan rule to large savings and loan holding companies, the ACLI submits that the Board should provide the same phase-in period for savings and loan holding companies pursuant to section 171(b)(4)(D) of the Dodd-Frank Act as the Proposed Rule provides to bank holding company subsidiaries of foreign banking organizations pursuant to section 171(b)(4)(E) of the Dodd-

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[16] 76 Fed. Reg. at 35359 (to be codified at 12 C.F.R. § 225.8(c)(2)).
[17] This same reasoning would also apply to similar types of distributions made by other insurers such as insurers operating on a not for profit basis and fraternal benefit societies.
[18] N.Y. Ins. L. § 4231(a). So that a mutual life insurer cannot accumulate an excessive amount of surplus and pay no policyholder dividends, under New York law a mutual life insurer may not maintain surplus in excess of the greater of (i) $850,000, or (ii) 10% of its policy reserves and policy liabilities, or (iii) 10% of its policy reserves and policy liabilities plus 300% of its authorized control level RBC minus the asset valuation reserve as reported in its annual statement, or (iv) the minimum amount of capital and surplus required by law of another state in which the insurer is authorized to do business. N.Y. Ins. L. § 4219(a)(1).
[19] A mutual life insurer that in good faith apportions its divisible surplus on an annual basis may pay dividends from its accumulated surplus so long as it maintains the minimum amount required by law.
[20] 76 Fed. Reg at 35352.

Frank Act. The provisions in section 171(b)(4)(D) and (E) of the Dodd-Frank Act reflect the legislative judgment that the institutions covered by these provisions should be provided with the same phase-in period before being subjected to new capital requirements. In addition, if the Board formally proposes extension of the Proposed Rule to savings and loan holding companies or other non-bank holding company entities, we respectfully request those entities be given an opportunity equal to that afforded to bank holding companies to comment on the specific rules that would apply to such entities prior to any final decision to expand their application.

5. The Capital Plan Submission Process

The Proposed Rule would generally require that capital plans be submitted to the Board by January 5th of each year and that the Board would provide a notice of non-objection by March 15th. Any effort to address concerns expressed by the Board would presumably further delay this timeframe and the associated completion of a capital plan for the year. This would significantly restrict a subject company's ability to address annual capital distributions by effectively disabling all subject companies from setting forth a final capital plan within at least the first quarter of each calendar year.

Use of the first quarter time frame for all bank holding companies, savings and loan holding companies and systemically significant nonbank financial companies is extremely disruptive to the corporate governance framework of the companies and is equally inefficient for the Board's use of its resources. The Proposed Rule establishes a timeline that is potentially unfair and adverse to the interests of shareholders and policyowners of subject companies and mandates a regulatory framework for capital distribution decisions that limits the flexibility of the subject company to deal with those plans in the ordinary course of its corporate governance process. The Proposed Rule also establishes a process that will require Board staff to review all capital plan submissions within a two month period at the beginning of each calendar year. There is no demonstrable regulatory need for such a timing requirement.

We recommend that the Board modify the Proposed Rule to permit subject companies to follow their regular corporate governance timeline for development of capital distribution plans and to submit those plans to the Board as appropriate over the course of the year. The Board would then have some period of time following the submission to respond to the capital plan. This would permit subject companies to continue to manage their individual capital distribution planning process and would spread the regulatory burden for review of capital plan submissions. This approach would have no adverse affect on Board review of capital plans or the Board's ability to supervise these companies.

6. Informational Requests under the Proposed Rule

The Proposed Rule permits the Board to request a broad range of data from subject companies. It is unclear why the Board would require such submissions in connection with the capital plan process when much of the information requested has already been collected in other reports required for submission by the subject companies. The scope of the capital plan submission is overbroad and very burdensome as a result.

In addition, the Proposed Rule envisions the potential for submission of data as it relates to a specific date and on a loan level basis. Again the scope of the data request has the potential to be overbroad and extremely burdensome without consideration of whether there exist sufficient regulatory need for such submission in connection with the capital plan review.

We recommend that any final rule clarify that any data submission should first require the Board to seek the information from other sources/formats in which the information has already been collected and that any information requested should be consistent with current regulatory reporting so as not to require significant additional system expenditure in order to comply.

Thank you for your consideration of our views. We are available for further discussion on this matter at your convenience.

Respectfully submitted,

Julie A. Spiezio

Julie A. Spiezio

CC: Jennifer J. Johnson
Secretary, Board of Governors of the Federal Reserve System
20th Street & Constitution Ave., NW
Washington, DC 20551

ICBA
INDEPENDENT COMMUNITY
BANKERS of AMERICA

August 3, 2011

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

Re: Capital Plans
Federal Reserve Docket No. R-1425, RIN No. 7100 AD 77

Dear Ladies and Gentlemen:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to provide comments on the proposed rule to amend Regulation Y that would require certain large bank holding companies to submit annual capital plans to the Federal Reserve. Under certain circumstances large bank holding companies would be required to provide prior notice to the Federal Reserve before making a capital distribution. The goal of the proposal is to establish minimum supervisory standards for the development, implementation, and monitoring of capital planning strategies for large bank holding companies. Additionally, the amendment aims to guide boards of directors and senior management of large bank holding companies in communicating strategies and processes to the Federal Reserve. Finally, the amendment provides the Federal Reserve with the ability to review certain capital distributions of large bank holding companies.

[1] The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold $1 trillion in assets, $800 billion in deposits, and $700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

Background

The proposed rule requires every top-tier bank holding company that is domiciled in the United States with $50 billion or more in total consolidated assets to develop a capital plan. The capital plan would include detail on the expected uses and sources of capital over the next nine quarters based on the holding company's complexity, risk profile, and scope of operations for both expected and stressed conditions. The capital plan would also provide detail on the large bank holding company's processes for assessing capital adequacy and the effectiveness of these processes. The large bank holding company's board of directors or their designated committee would be charged with approving the capital plan and reviewing the processes to ensure that any deficiencies are corrected. Once approved by the board of directors, the capital plan would be submitted to the holding company's Federal Reserve Bank and the Federal Reserve Board. The holding company would be required to update and resubmit its capital plan when there has been a material change in risk profile, financial conditions, corporate structure or as directed by the Federal Reserve Bank.

Each capital plan developed by a large bank holding company would be required to contain at a minimum the following components:

- Discussion of how the bank will maintain capital during stressful conditions
- Discussion of how the bank will maintain access to funding, meet obligations to creditors and counterparties, and serve as a credit intermediary during stressful conditions
- Discussion of sources and uses of capital over the next nine quarters including estimates of projected revenues, losses, reserves, pro forma capital levels, and additional capital measures
- Discussion of the results of the stress tests imposed by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010
- Description of planned capital actions during the next nine quarters
- The bank holding company's capital policy
- Discussion of expected changes to the bank holding company's business plan that would likely have a material impact on capital adequacy or liquidity
- Calculation of the pro forma tier 1 common ratio under expected and stressed conditions with a discussion on how the bank would maintain a pro forma tier 1 common ratio of five percent in stressed conditions (required through 2015)

As part of the submission of the capital plan, the large bank holding company would be required to provide specific data to the Federal Reserve including information on the bank holding company's financial condition, structure, assets, risk exposure, policies and procedures, liquidity, and management.

In the event that the Federal Reserve raises objection to a submitted capital plan, the large bank holding company generally would not be able to distribute capital without providing

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a 30 day prior notice to the Federal Reserve. The large bank holding company would also be required to provide prior notice before making a capital distribution even if the Federal Reserve does not object to its capital plan if it would not meet the minimum regulatory capital ratio after the distribution, the distribution would result in a material adverse change in the organization's capital or liquidity structure, earnings currently are materially underperforming projections, the distribution exceeds the amount described in the capital plan approved by the Federal Reserve, or the distribution would occur at a time when the Federal Reserve is reviewing the capital plan.

ICBA's Comments

ICBA supports the proposed rule to require large bank holding companies to submit capital plans to the Federal Reserve because we believe that many of the largest bank holding companies did not maintain adequate capital cushions to protect against substantial losses during the recent economic crisis. Large bank holding companies were distributing capital back to shareholders immediately before the crisis while capital levels were not adequate to guard against the economic stresses in the financial markets. Because large bank holding companies generally maintain complex asset and liability management structures that introduce incremental risks to capital, ICBA believes that they should maintain appropriate forward projections and forecasts of income, losses, and capital in simulated environments that reflect stressed economic conditions with the goal of creating safeguards to ensure that any one large bank holding company is not undercapitalized. In building forward projections, these institutions should better understand the risks inherent in their capital structures to fully determine whether current capital levels are sufficient in challenging economic environments.

ICBA further supports the established threshold of $50 billion in total consolidated assets in defining large U.S. bank holding companies subject to the proposed rule. Large bank holding companies with consolidated assets of $50 billion or more represent the greatest risk to the U.S. banking system as they acquire and manage complex financial instruments that have the potential to diminish large amounts of capital in a short period of time when that capital is needed most to protect the institution from losses. However, just as we stated with respect to stress testing, capital planning should be commensurate with the size, complexity, business activities, and overall risk profile of the banking organization. For instance, capital planning and the disclosures to the Federal Reserve for a trillion dollar banking institution with significant exposures to derivatives should be vastly more detailed and extensive than that for a $50 billion banking institution that operates more like a traditional bank.

Finally, ICBA supports the view by the Federal Reserve that large bank holding companies should be required to give prior notice to the Federal Reserve prior to making a capital distribution when a large bank holding company's capital plan has not been approved or under certain limited circumstances as discussed above. Capital distributions that could result in weakening a large bank holding company's capital structure or interfere with its ability to meet liquidity needs in a stressed economic environment should be submitted to the Federal Reserve for review prior to a distribution to avoid a repeat of what happened during the past economic downturn when large bank holding companies had inadequate capital levels to face the challenging economic environment and in some cases, had to be bailed out by the government.

ICBA appreciates the opportunity to comment on this proposal. If you have any questions or would like additional information, please do not hesitate to contact me at (202) 659-8111 or james.kendrick@icba.org.

Sincerely,

/s/

James Kendrick
Vice President, Accounting & Capital Policy

AMERICAN EXPRESS

August 3, 2011

Daniel T. Henry
Executive Vice President &
Chief Financial Officer

American Express Company
World Financial Center
200 Vesey Street
New York, NY 10285

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

Re: **Proposed Rule: Capital Plans**
Docket No. R–1425 and RIN 7100–AD 77

Dear Ms. Johnson:

American Express Company ("American Express") appreciates the opportunity to comment on the Federal Reserve Board's (the "Board") proposed rule that would require certain bank holding companies ("BHCs") to submit annual capital plans to the Federal Reserve and provide prior notice under certain circumstances before making capital distributions. American Express respectfully requests that the proposal be modified and clarified to resolve the concerns expressed below.

I. The Capital Plan Submission and Non-Objection Dates Should be Moved to Not Later than October 15 and February 1

The Board's proposed approach generally would require a BHC to file its capital plan each year by January 5 and the Federal Reserve to provide the BHC an objection or notice of non-objection by March 15 of the same year. As a result, the BHC would be able to act upon its capital plan only after March 15 of each year.

If adopted, this timeline would create difficulties for BHCs that wish to distribute capital, especially to effect share repurchases, within the first quarter. Typically, the period between March 15 and 31 falls within an earnings "blackout" during which a publicly traded BHC will not be in the market to repurchase its shares because it is in possession of material, non-public information regarding its first-quarter financial results, which will not be released until the second quarter. Thus, a BHC could be effectively precluded from effecting share repurchases for all of the first quarter, absent applying for and receiving individualized approvals from the Federal Reserve for such distributions. To avoid this issue, we respectfully recommend that the submission deadline for capital plans be moved forward to October 15 of each prior year, and the non-objection deadline be moved forward to no later than February 1.

We acknowledge that Section 225.8(f) of the proposed rule would create a process by which BHCs may provide a notice to the Federal Reserve regarding individualized capital distributions while a capital plan is being reviewed. This process, however, would create duplicative and potentially cumbersome application work given the detailed requirements for the individualized notices. We would urge that the individualized notice process should be reserved for individualized circumstances, not be used as a substitute for the plan approval process for virtually the entire first quarter.

If the Board determines not to move the approval process earlier as noted above, we respectfully request that the Federal Reserve's approval of capital plans by March 15 generally cover capital distributions for the rest of the current year and the following year's first quarter, rather than essentially covering only the remainder of the current year after the plan is approved. The Board's proposal contemplates approval of capital plans annually by March 15, in which each BHC would obtain non-objection for uses of capital for the remainder of the current year. If the non-objection covered the following year's first quarter in addition to the final three quarters of the current year, BHCs would not be hindered in their ability to use capital in the first quarter of each year during the pendency of the Federal Reserve's capital plan review for the ensuing four quarters. This alternative solution, however, would not apply in time to remedy these issues for the first quarter of 2012 (unless the effective date of the rule were pushed until after that quarter). We prefer moving the approval process to the earlier timeline starting in October, as discussed above.

II. The Board Should Clarify that BHC Capital Plans May Incorporate Alternative Uses of Surplus Capital

The proposed rule defines a "capital plan" in Section 225.8(c)(3)(i) to include, among other items, "an assessment of the expected uses and sources of capital." This language suggests that a capital plan may incorporate not only a BHC's intended use(s) of capital, but also the BHC's alternative uses of capital. This reading of the proposed rule is supported by the proposed rule's preamble, which states that the "proposal is designed to be flexible enough to accommodate bank holding companies of varying degrees of complexity and to adjust to changing conditions over time." Thus, for instance, a BHC capital plan that earmarks surplus capital for acquisitions may also incorporate alternative uses for the capital, such as a stock repurchase or other distribution, in the event planned acquisitions are not fully executed, and a BHC with an approved plan may pursue the alternative, as circumstances develop, and so long as the BHC maintains the capital targets approved under its capital plan.

Although we read the proposed rule's definition of a capital plan to naturally include such flexibility to incorporate alternative capital uses, given the importance of such flexibility, we request clarification to remove any doubt on this point. We therefore respectfully suggest that Section 225.8(c)(3)(i) of the proposal be modified to read: "an assessment of the expected uses, including alternative uses, and sources of capital . . . ."

* * *

Thank you for considering this letter. American Express appreciates the opportunity to share its views and would be happy to discuss them with the Federal Reserve staff at its convenience. If you have any questions please do not hesitate to contact me.

Respectfully submitted,

Daniel T Henry

Daniel T. Henry
Executive Vice President, Chief Financial Officer
American Express Company

Nationwide
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Executive Vice President
Chief Financial Officer
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August 1, 2011

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Subject: Docket No. R-1425 and RIN No. 7100 AD 77
Proposed Rule Amending Regulation Y—Capital Plans

Dear Secretary Johnson:

On behalf of Nationwide Mutual Insurance Company and its affiliated companies (Nationwide), we appreciate the opportunity to comment on the above-referenced proposal. Nationwide operates through an insurance holding company system registered with the Ohio Department of Insurance. By virtue of its ownership of Nationwide Bank, member FDIC, Nationwide is registered as a savings and loan holding company (SLHC) pursuant to Section 10 of the *Home Owners' Loan Act of 1933* (HOLA) and, therefore, is impacted by the proposed rule. [1]

In connection with our more detailed comments below, we respectfully request that the Board consider refining the rule to more carefully tailor its scope to actual risk and risk profile. Specifically, we believe that the Board should:

- (1) Narrow the application of the proposed rule using one or more objective tests so that it applies not to all large SLHCs, but only to SLHCs that own large banks;
- (2) Look to state insurance law for capital requirements and dividend restrictions when applying the rule to an operating mutual insurance company that is also a SLHC;

[1] While the proposed rule, if adopted, would apply to U.S. bank holding companies with total consolidated assets of $50 billion or more and not to large SLHCs, the Board states in footnote 9 of the proposal that through separate rulemaking or by order, it is expected that the proposal's requirements would be extended to large SLHCs and nonbank financial firms supervised by the Board pursuant to Section 113 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Act). Nationwide hereby submits this comment letter because of the implications of the possible extension of the rule to large SLHCs.

Nationwide
On Your Side®

Mark R. Thresher
Executive Vice President
Chief Financial Officer
Nationwide Insurance

- (3) Include a transition period for institutions that did not participate in the Comprehensive Capital Analysis and Review (CCAR);
- (4) Create an exemption from the prior-notice requirement if the effect of the capital distribution would be *de minimis,* even if the distribution exceeds a prior filed and approved capital plan.

Specific Comments

1.) The Board Should Exclude from the Proposed Capital Planning Requirements SLHCs that Own Smaller Depository Institutions.

The capital planning requirements in the proposed rule explicitly and appropriately apply to bank holding companies (BHCs), but in Nationwide's view, should not apply to all SLHCs. Under long-standing Federal Reserve supervisory practice, a BHC is expected to serve as a source of strength to subsidiary banks.[2] Moreover, the Dodd Frank Act specifically extended the source-of-strength doctrine to encompass not just BHCs, but also SLHCs.[3] However, linking the capitalplanning requirement to all SLHCs could actually undermine the statutory purpose and design that a SLHC serve as a source of strength since the requirement could impose an undue costly burden on SLHCs. We believe that it is unnecessary and overbroad to apply the capital planning requirement to all SLHCs, and that the requirement should reflect the actual risk of the SLHC's failure to serve as a source of capital strength to its subsidiary bank. In other words, SLHCs with smaller subsidiary depository institutions should be excluded from a formal capital plan requirement.

We believe that given the statutory applicability of the source-of-strength doctrine to SLHCs, the BHC supervisory framework does not materially enhance capital adequacy and the ability to operate when applied to a SLHC with a smaller depository institution. In such a case, the SLHC may have more than enough resources to ensure sufficient capital for the depository institution and may not rely in any way upon dividends from the subsidiary depository institution. When applied to such SLHCs, the proposed capital plan requirement would pose unnecessary expense and burden in derogation of source of strength. We think that it would be inappropriate to subject a SLHC that is not systemically significant, or one which demonstrates a lower degree of depository

[2] "A fundamental principle underlying the Federal Reserve's supervision and regulation of BHCs is that a BHC should serve as a source of managerial and financial strength to its subsidiary banks. Consistent with this premise, the Federal Reserve expects an organization to hold capital commensurate with its overall risk profile." Division of Banking Supervision and Regulation SR Letter 09-4 (Feb. 24, 2009)(revised March 27, 2009), at p. 2.

[3] Section 616(d) of the Act (adding Section 38A to the *Federal Deposit Insurance Act*).

activities within its structure under objective tests, to a formal capital requirement. Furthermore, if such a SLHC is predominately engaged in the business of insurance, we believe that the SLHC would likely have more than adequate capital on hand with which to serve as a source of strength for its smaller bank.

We suggest that the Board consider applying an objective test to determine whether a SLHC should be subject to the formal capital plan requirement because it owns one or more large banks. Nationwide provides a good example of the inappropriateness of the application of the capital plan requirement to certain SLHCs. Nationwide Bank is a federal savings bank with $4 billion in total assets. Nationwide has invested $350 million in equity constituting the Bank's capital and Nationwide as an operating insurance company maintains over $17 billion in statutory surplus. We believe that the BHC supervisory framework is more effectively directed toward BHCs or SLHCs other than SLHCs of smaller banks. The Board's creation of an exclusion for SLHCs with small banks would further the statutory purpose of enhancing their ability to act as a source of strength while avoiding the imposition of an inappropriate burden. Nationwide believes that if the regulation is focused on holding companies of large banks rather than all large holding companies, the cost of compliance and risk management systems is more likely to be commensurate with the risk. With respect to holding companies that own small banks, the cost of compliance should be rationally related to the consolidated assets of all the depository institutions under the control of the holding company.

Specifically, Nationwide believes that in the case of an SLHC that is a top tier mutual insurance company owning a small bank, there are much less expensive means to ensure source of strength that do not create an undue burden. The Federal Reserve, as a SLHC regulator, has other supervisory tools already available that could be more precisely tailored to the actual risk without adding unnecessary burdens and costs. Such tools should be deployed consistently across the country with uniform guidance from the Board of Governors to all Federal Reserve Banks. For example, a capital planning requirement should be applied to SLHCs; however, we believe that a formal annual capital planning requirement subject to regulatory approval and limits, as embodied in the proposed rule, is neither appropriate nor necessary.

We suggest that the Board consider applying an objective test to determine whether an SLHC should be subject to the formal capital plan requirement because it owns one or more large banks. Nationwide believes that any one of several tests would be appropriate. First, the Board could rely upon a designation under Title I of the Act by the Financial Stability Oversight Council that a firm is systemically significant and subject to the Board's supervision under heightened prudential standards. Thus, only bank holding companies with $50 billion in assets and nonbank financial firms that are designated as nonbank systemically important financial institutions (SIFIs) would be subject to heightened prudential standards, one of which could include the filing of the

Mark R. Thresher
Executive Vice President
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proposed formal annual capital plan. We note that although the $50 billion threshold for bank holding company designation is tied to the holding company and not to the size of the bank, nonetheless virtually all bank holding companies falling into the statutory threshold maintain large banks. We also believe that an insurance company with a small bank should be less likely to be deemed significant given the less risky business model of insurance relative to banking. We think that for SLHCs, a Council designation is an efficient and appropriate way for the Board to determine that an SLHC should be subject to the proposed regulation.

A second, alternative, objective test the Board could use with respect to SLHCs is one based upon the definition of "predominately engaged" as set forth in Section 102(a)(6) of the Act concerning financial activities. If the SLHC's activities are predominately depository, then the capital planning regulation should apply. Under this test, a SLHC with $50 billion or more in assets that owns one or more large banks on a consolidated basis would be covered by and subject to the formal capital plan requirement. Such a SLHC would be defined as one in which the annual gross revenues derived by all of its depository institution subsidiaries represents 85% or more of the consolidated annual gross revenues of the company. Alternatively, this test could define a covered SLHC as a SLHC in which the consolidated assets of all its depository institution subsidiaries represent 85% or more of the consolidated assets of the company. As in the context of financial activities, the 85% tests capture the degree and substance of the activities of the holding company.

A third alternative test the Board could use for SLHCs with $50 billion or more in assets in determining whether the formal capital planning requirement should apply is the ratio of depository institution capital to holding company capital. Thus, a multiple of x (defined by the Board) could result in the imposition of a capital planning requirement, but one that is more flexible, less costly, and less burdensome to the holding company than the automatic imposition of a formal capital planning requirement as proposed.

We believe that such objective tests would provide an effective method of sweeping in only appropriate SLHCs, and should be established by the Board of Governors and deployed consistently across the country. In sum, in the instances where an SLHC owns large banks or is determined to be systemically significant by the Financial Stability Oversight Council in light of the eleven statutory factors, the value of a capital plan is apparent. By contrast, if a large SLHC owns a small bank and does not raise source-of strength-concerns given its capital resources relative to its small depository institution, then the value of a capital plan is much less obvious and could actually pose unnecessary expense and burden, undermining the role of the SLHC as a source of strength.

2.) <u>The Board Should Rely on State Insurance Regulators and State Law Regarding Capital Planning for an Operating Insurance Company.</u>

Mark R. Thresher
Executive Vice President
Chief Financial Officer
Nationwide Insurance

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As Nationwide noted in prior comment letters, the business of insurance is materially different from the business of banking. We recommend that the Board recognize this difference in its regulation of SLHCs that are operating insurance companies. The risks, time horizons and frameworks of the two business models are fundamentally distinct. For example, catastrophe risk of an insurer does not compare to that of a bank. Likewise, credit risk or interest rate risk for a bank does not compare to that of an insurer. Because these differences between insurance and banking are so large, the information derived from an insurance company through a formal capital plan filing may be of limited value and lack data comparability across holding companies filing annual capital plans.

The regulatory regime governing capital requirements for insurance companies is also very different than for banks. For example, as a mutual insurance company, Nationwide is already subject to conservative risk-based capital requirements under state insurance law. These capital standards support the financial strength of its downstream subsidiary depository institution. Moreover, an insurer's failure to meet minimum ratios can trigger state insurance regulatory actions including authorizing or requiring the state insurance department to assume conservatorship or receivership of the insurer. The process is somewhat similar to the prompt corrective action regime for insured depository institutions under the *Federal Deposit Insurance Act*.

And finally, mutual insurance companies are authorized to pay dividends to the policyholders who own the company. Under state insurance law, payments to policyholders are not capital distributions in the sense of dividends on equity or debt instruments. Thus, a capital action issued by the Federal Reserve under the proposal directed to a SLHC that is also a mutual insurance company could pose serious state insurance law issues.

Unlike equity or debt, insurance policies issued by mutual insurance companies are indemnity contracts priced according to a number of risk assumptions determined by actuaries. One assumption upon which pricing or other policy features may be based includes the possibility of a policy dividend. For example, workers compensation policies can authorize the payment of dividends. While the payment of dividends is not guaranteed by the policy, a board of directors of the mutual company declaring a dividend will often calculate a dividend based upon standards filed with the state insurance department. The standards can be based upon policy loss ratios and experience. Nationwide's concern is that a capital action by the Federal Reserve against a SLHC that is an operating mutual insurance company could frustrate policyholder expectations rooted in state insurance law concerning the payment of dividends under a policy that is priced based upon actuarial assumptions pursuant to a plan and reflected in a form filed with the State insurance department. This concern would extend to other lines of mutual insurance, where, under state insurance law, a policyholder is a member of the company whose policy reflects a membership interest and policy rights.

Mark R. Thresher
Executive Vice President
Chief Financial Officer
Nationwide Insurance

Finally, a Federal Reserve capital action could prejudice the rights of policyholders under state insurance laws that provide for state regulatory suspension of or limitation on dividends in the event that the insurer's financial condition is found to be hazardous to the public. Excluding from the proposed rule operating mutual insurance companies that are SLHCswould eliminate this problem.

3.) The Proposed Rule Should Include a Transitional Period for Institutions That Did Not Participate in the Comprehensive Capital Analysis and Review (CCAR).

In our view, the final rule should include a transitional period, consistent with Section 171(b)(4)(D) of the Dodd-Frank Act, for institutions that did not participate in CCAR. Section 171(b)(4)(D) allows for a transition period through July 21, 2015 with respect to depository institution holding companies not supervised by the Board on May 19, 2010. For example, Nationwide's primary federal supervisor on that date was the Office of Thrift Supervision and therefore, in our view, the capital requirements of the Act, including a formal capital plan filing requirement, should also be subject to a five-year transition period. The purpose of transition periods is to avoid disruption and to facilitate an orderly phase in of requirements, and allowing a five-year transition period under the final rule would serve that goal.

4.) The Board should Recognize an Exemption From the Prior-Notice Requirement if the Effect of the Distribution Would be *de minimis*, Even if it Exceeds a Prior Filed and Approved Plan.

We respectfully suggest that, if in making a capital distribution, an SLHC would exceed the dollar amount of the capital distribution described in the capital plan previously filed and approved by the Board, the Board should grant a blanket exemption from the notice requirement if the excess over the previously filed and approved amount or the actual distribution would be *de minimis*.

Such an exemption would properly recognize substance over form, avoid unnecessary potential for disruption of a distribution transaction and have nominal impact upon the statutory objective of preservation of the holding company's source of strength. In our view, if the distribution would not reduce the holding company's Tier 1 Risk Based Capital by 10 basis points or more, the holding company should be exempted from a prior-notice requirement.

Conclusion

In summary, we believe that the purpose behind the proposed rule can be met, and unnecessary costs and burdens can be avoided, by exempting large SLHCs with small depository institutions from the formal capital plan requirement. Nationwide

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encourages the Board to use existing supervisory tools to address the potential risks posed by such companies. In determining if a large SLHC owns a small bank or should otherwise be exempt from the capital plan requirement, we recommend that Board adopt an objective test, as described above. We also believe that imposing the requirements on SLHCs that are operating mutual insurance companies could unnecessarily create conflicts with state insurance laws directed at policyholder rights. Finally, an exception for insurance company SLHCs that own small banks would eliminate issues regarding the comparability of the data to holding companies with large banks.

As always, we appreciate the dialogue and look forward to further opportunities to comment.

Very truly yours,

Mark R. Thresher
Executive Vice President and Chief Financial Officer
NATIONWIDE

SunTrust

Aleem Gillani
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August 4, 2011

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

Re: Regulation Y; Docket No. R-1425, RIN 7100-AD 77, Capital Plans

Ladies and Gentlemen:

SunTrust appreciates the opportunity to comment on the proposed amendments to Regulation Y requiring large bank holding companies to submit capital plans to the Federal Reserve on an annual basis and requiring such bank holding companies to provide prior notice to the Federal Reserve under certain circumstances before making a capital distribution. SunTrust is broadly in support of these amendments as they are consistent with both industry and regulatory practice over the past several years, and has several suggestions around operational aspects of these amendments that may improve both the accuracy of the underlying work and its benefit to the bank holding companies and various regulatory bodies that will rely on it. These suggestions are detailed below.

The following comments are ordered consistent with the organization of the document outlining the proposed amendments.

Section III. Capital Plans, A. Annual capital planning requirement

The proposed amendments include the following three distinct requirements for capital plans, with specific comments where needed:

1) An assessment of the expected uses and sources of capital over a nine-quarter forward-looking planning period (beginning with the quarter preceding the quarter in which the bank holding company submits its' capital plan) that reflects the bank holding company's size, complexity, risk profile, and scope of operations, assuming both expected and stressful conditions

   Comment: SunTrust recommends reconsidering the nine-quarter planning period. In practice, this is not a nine-quarter forecast, as the first of the nine quarters (the 4^{th} quarter) will be complete prior to the submission of the capital plan (the proposal requests that the plan be submitted on January 5^{th}). This puts a bank holding company in a difficult situation, as it will be basing forecasts on end of 3^{rd}-quarter data, but will not be submitting its' capital plan until 4^{th} quarter results are complete, if not finalized. This adds both inaccuracy and complexity to the process, as by the time the capital plans are submitted, the data used will be long out of date. Possibly worse, significant new information for the 4^{th} quarter could be available that would skew the accuracy of the stress tests and potentially materially impact the capital plans. To address this, the bank holding companies' planning teams must decide to either ignore this material data or largely overwrite their forecasts for the 4^{th} quarter (stressed and expected) with actual results. The former approach cannot be desirable and the latter approach results in a forecast that has a meaningful gap between the first two periods—i.e., the (actual, if not finalized) 4^{th} quarter "forecast" and the 1^{st} quarter forecast (which was forecasted based on end of 3^{rd}-quarter data). As a better approach, SunTrust suggests delaying the submission date to later in the 1^{st} quarter, for example March 21^{st}. This would allow bank holding companies to use actual, finalized 4^{th} quarter results, base their annual capital planning process on actual year-end numbers (more consistent with management practice), and eliminate the gap between the forecast's first and second quarters. The capital planning process would cover the same planning horizon (two full calendar years) but in a way that would be cleaner, more accurate, and more useful to both the bank holding companies submitting the capital plans and the regulatory agencies using them.

2) A detailed description of the bank holding company's processes for assessing capital adequacy

   Comment: SunTrust requests confirmation that it is not necessary to include this description in the capital plan itself, but that it can be included as a separate document (e.g., in a policy or a framework document), as long as this document receives sufficient management review. A description of these processes is extremely detailed (it could easily be longer than the plan itself), and it may easily distract readers from the critical elements of the capital plan.

3) An analysis of the effectiveness of these processes

   Comment: SunTrust requests additional detail as to what is required for bank holding companies to determine "effectiveness" and that, similar to the above, confirmation that this analysis can be reviewed by senior management and submitted as a separate document. For example, would it be sufficient that the capital adequacy and planning process be reviewed in parts or in whole by the independent internal audit function? If so, would it be enough to note this in the capital plan, or simply submit the audit report along with the capital plan? Are there other means to show the effectiveness of these processes?

Section III. Capital Plans, D. Federal Reserve action on a capital plan

Comment: The proposal's description of the timing of the Federal Reserve's review and response to a bank holding company's capital plan indicates that the bank holding company would not be notified until March 15th of Year 2 whether or not the Federal Reserve had any objections to dividend payments in the 1st quarter of Year 2. This leaves very little time for 1st quarter distributions. SunTrust recommends instead that the Federal Reserve consider five full quarters in its Year 1 review of a bank holding company's capital plan. Bank holding companies would be required to maintain the dividend assumptions for the 1st quarter of Year 2 (the 5th quarter being reviewed) that were defined in the Year 1 capital plan. This approach would give bank holding companies the flexibility to maintain existing dividend schedules, which typically allow for 1st quarter distributions to be made prior to March 15th.

Section IV. Prior notice requirements

Comment: The Board explicitly requested comments on whether there should be a de minimis exception regarding materiality. For example, should the Board exempt a capital distribution from the proposed prior notice requirements if the effect of that distribution, combined with all other capital distributions in the prior 12 months to which the Federal Reserve has been given prior notice, would reduce the bank holding company's tier 1 risk-based capital ratio by 10 basis points or less? SunTrust strongly supports more detail being provided around materiality and minimum materiality thresholds, with a particular focus on safety and soundness. Certainly, as in the example provided, changes to capital actions that do not jeopardize well-capitalized minimums and do not result in a risk-based capital ratio (either currently or forecast) decreasing by more than 10 basis points lower than that in the capital plan should be permitted without the proposed prior notice requirements. Though we believe that this exception would include the following, we request that you provide clarity around two possible applications of this.

First, ensure that timing changes are addressed in these exceptions. For example, a proposed capital action's timing may be dependent on an event outside of the bank holding company's control, such as the release of a regulatory rule. The delay of this rule would, by necessity, delay the bank holding company's proposed capital action. Assuming the outside delay is resolved within the given planning year (that is, prior to the submission of the next year's capital plan), and the delay in the capital action does not impact the safety and soundness of the institution (that is, capital ratios are not more than 10 basis points lower either currently or forecast), the carrying out of the capital action should be permitted without the bank holding company meeting the proposed prior notice requirements. Similarly, share buybacks are often tied to more than just capital ratios (they may be driven by share price as well, for example). It should be permissible for bank holding companies to define share buybacks using flexible timing "ranges" or to delay share buybacks with explicit timing until favourable market conditions exist without the proposed prior notice requirements.

Second, ensure that capital actions are sufficiently flexible to respond to greater than forecast performance. If an institution outperforms the results submitted in its' capital plan, it should be able to increase capital actions without being subject to the prior notice requirements so long as the de minimis threshold is not breached.

If there are any questions regarding these comments, please contact me directly at 404-813-5760.

Sincerely,

Aleem Gillani

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

Re: "Capital Plans" (RIN 7100-AD 77)

Dear Ms. Johnson,

This letter constitutes comments on the Notice of Proposed Rulemakings issued by the Board of Governors of the Federal Reserve complementing the Dodd-Frank Wall Street Reform and Consumer Protection Act. These comments are submitted on behalf of UNITE HERE.

UNITE HERE represents 250,000 workers throughout the U.S. and Canada who work in the hotel, gaming, food service, manufacturing, distribution, laundry, and airport industries. UNITE HERE supports the legislative intent of Dodd-Frank to reduce risk and ensure the long term stability of the financial system. It is critical that rules adopted by the Federal Reserve effectively promote this aim.

The Proposed Rule would require large bank holding companies (those with over $50 billion in assets) to submit annual capital plans to the Federal Reserve. UNITE HERE supports this proposal. We believe such capital plans are especially necessary at US-domiciled bank holding companies that are subsidiaries of foreign banks and have therefore not been subject until recently to US minimum capital and leverage requirements. The Rule would explicitly "apply to any U.S.-domiciled bank holding company subsidiary of the foreign bank or foreign banking organization that meets the proposal's size threshold." In principle, the Rule will help ensure that all large bank holding companies, including those owned by foreign firms, remain a source of strength for US bank depositors and the financial system writ large.

As of March 31, 2011, four bank holding companies that are subsidiaries of foreign bank organizations met the $50 billion in assets threshold and would, consequently, be subject to the Proposed Rule.[1] But we are concerned that recently reported maneuvers by several of these firms may allow them to sidestep the Proposed Rule, at least as it is currently proposed. A reorganization plan embarked upon by one institution—Taunus Corporation—is of particular concern.

Taunus Corporation, a bank holding company subsidiary of Deutsche Bank AG, is the largest foreign owned bank holding company now operating in the United States. As of March 31, Taunus held over $396 billion in total assets, making it the eighth largest BHC in the United States.[2] It is the parent

[1] Federal Reserve, *Top 50 BHCs,* (March 31, 2011). Available at http://www.ffiec.gov/nicpubweb/nicweb/Top50Form.aspx
[2] Ibid.

company of Deutsche Bank Securities Inc. (one of the largest US broker dealers), Deutsche Bank Trust Company Americas (a US depository bank), and a number of other corporate finance and holding companies which operate in the United States.

Through Taunus, Deutsche Bank was a major contributor to the financial crisis. At the peak of the mortgage bubble, between 2005 and 2008, Deutsche Bank Securities Inc. issued over $85 billion in private label securitizations and $71 billion through whole loan sales.[3] It acquired two subprime mortgage originators with the expressed intention of funneling "a steady stream of product into the mortgage capital markets."[4] It was later revealed that Deutsche Bank's top CDO trader privately disparaged certain Deutsche sponsored mortgages as "crap" or "pigs," that Deutsche often ignored ratings by its own due diligence firms on the quality of these mortgages, and that Deutsche failed to disclose these risks to investors.[5]

When the mortgage market crashed, many Deutsche Bank investors and clients who had invested in mortgage linked synthetic collateralized debt obligations (CDOs) faced heavy losses. Deutsche Bank and its subsidiaries have faced litigation related to losses in these securities.[6]

Deutsche Bank's part in the foreclosure crisis is also felt by communities across the United States. In its role as trustee, Deutsche Bank National Trust Company has foreclosed on thousands of US homes across the United States.[7] Some of these homes have been neglected or fallen into disrepair, further destabilizing neighborhoods. [8]

Deutsche Bank has also been a major beneficiary of Federal Reserve programs aimed to stabilize the financial system during the crisis. Specifically:

- As one of the largest counterparties of failed insurer AIG, Deutsche Bank received $11.8 billion of the funds used to bail out AIG. [9]
- The Federal Reserve made emergency low-cost funds widely available to foreign as well as US member institutions through its discount window. Deutsche Bank was the second heaviest user of such funds, borrowing more than $2 billion.[10]

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[3] Deutsche Bank, *SEC Form 20-F*, (March 15, 2011), F-134.
[4] Deutsche Bank Press Release, *Deutsche Bank Completes Acquisition of MortgageIT Holdings*, (January 3, 2007) available at http://www.deutsche-bank.de/presse/en/content/press_releases_2007_3312.htm#print
[5] US Senate Permanent Subcommittee on Investigations, "Wall Street and the Financial Crisis: Anatomy of a Financial Collapse," April 13, 2011, p.331-332; Testimony of Vicki Beal, Senior Vice President, Clayton Holdings before the Financial Crisis Inquiry Commission, September 23, 2010. See, in particular, "All Clayton Trending Reports," 1st Quarter 2006-2ndQuarter 2007, available at http://fcic-static.law.stanford.edu/cdn_media/fcic-testimony/2010-0923-Clayton-All-Trending-Report.pdf.
[6] Deutsche Bank, *Annual Review 2010*, "Notes to the Consolidated Balance Sheet," (March 51, 2011), p.286.
[7] Christoph Pauly and Thomas Schulz, "'America's Foreclosure King' How the United States Became a PR Disaster for Deutsche Bank," *Spiegel Online*, June 10, 2010. Available at http://www.spiegel.de/international/business/0,1518,druck-699754,00.html
[8] See, for example, Robert Gearty, "Banks Default on Duty, let foreclosed homes become eyesores – and disregard fines," *NY Daily News*, July 24, 2011. Edvard Pettersson, "Deutsche Bank Sued by City of Los Angeles for Evicting Low Income Tenants," *Bloomberg*, May 4, 2011. Steve Schifferes, "Foreclosure Wave Sweeps America," *BBC News,* November 5, 2007.
[9] "German and French banks got $36 billion from AIG bailout," *Business Week*, March 15, 2009.
[10] "Foreign Banks tapped Fed's Secret Lifeline Most at Crisis Peak," *Bloomberg*, April 1, 2011.

- The Federal Reserve also created the Term Asset-Backed Securities Lending Facility, which allowed banks to use their assets, including troubled or hard-to-value assets, as collateral for short term loans. Deutsche Bank was the largest user of the program, sending the Fed more than $290 billion worth of mortgage securities.[11]

Despite the generous support of US taxpayers, Taunus remains undercapitalized. As of March 31, 2011, due to write downs and the deduction of deferred tax assets, Taunus held negative Tier 1 capital. It had a Tier 1 leverage ratio of -1.17% and a Tier 1 risk-based capital ratio of -5.3%.[12] According to the *Wall Street Journal*, Taunus Corporation will need as much as $20 billion to meet all of the applicable capital and leverage ratios that will apply to BHCs when the Collins Amendment is fully phased-in by 2015.[13]

However, rather than taking the steps necessary to raise capital, Deutsche Bank is attempting a reorganization that it hopes will effectively exempt the bank from new capital requirements.[14] The proposed restructuring has two steps:

1. Deutsche Bank will separate its depository banking subsidiary from Taunus and make it a direct subsidiary of Deutsche Bank AG in Germany. This move will mean that Taunus is no longer the parent company for any deposit-taking banks though it will still control a broker dealer, a corporate finance arm, and other companies. Taunus will then deregister as a bank holding company.

2. Deutsche will consolidate the remaining portions of Taunus with Deutsche Bank, New York Branch, a direct, non-bank holding company arm, solely for tax purposes. This will allow Deutsche to avoid the potentially higher tax burden that would otherwise result from the Taunus reorganization.

The stated intent of this reorganization is to exempt Taunus from capital requirements (Basel II, Basel III and the Collins Amendment of the Dodd Frank Act).[15] But presumably, none of the restructured entities would be subject to the Proposed Rule (submission of capital plans) either, because they would not be bank holding companies.

Meanwhile, the restructuring (if approved by the IRS) manages to preserve the tax benefits and, implicitly, the Federal Reserve support that results from the bank's *de facto* position as a too-big-to-fail financial institution. Restructurings executed solely to circumvent the new capital requirements undermine the purpose of the Proposed Rule and the integrity of the new regulatory regime envisioned by Dodd-Frank.

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[11] "Fed Opens Books, Revealing Foreign Megabanks Were Biggest Beneficiaries," *Huffington Post*, January 31, 2011.
[12] Taunus Corporation. *Federal Reserve Form FR Y-9C: Consolidated Financial Statement for Bank Holding Company*, March 31, 2011.
[13] David Enrich, Laura Stevens, and Alexandra Berzon. "Deutsche Maneuvers Around New Law," *Wall Street Journal*, April 13, 2011.
[14] Ibid.
[15] Deutsche Bank AG and Deutsche Bank Financial LLC, *Joint Report of the Management Board of Deutsche Bank and the Board of Managers of Deutsche Bank Financial LLC on a Partial Profit and Loss Transfer Agreement between Deutsche Bank AG and Deutsche Bank Financial LLC in Accordance with Section 293a of the German Stock Corporation Act*. March 30, 2011.

In light of this concern, UNITE HERE recommends that the Proposed Rule be expanded to include the significant non-bank financial entities that were affiliated with foreign-owned bank holding companies as of the passage of the Dodd-Frank legislation. Alternately, the Federal Reserve could simply refrain from approving Deutsche Bank's proposed restructuring. Either approach would be consistent with the broad goals of Dodd-Frank, as well as recent regulations adopted by the Federal Reserve. The establishment of Risk-Based Capital Standards, for instance, applies to "insured depository institutions, depository institution holding companies, and *nonbank financial companies supervised by the Federal Reserve.*" (emphasis added) [16] Either approach would also be consistent with the "Hotel California" provision of the Act, which prevents institutions that received TARP funds from reorganizing simply to escape provisions of the Act. Although Deutsche Bank did not receive direct funding from TARP, it was nevertheless one of the largest beneficiaries of the Federal Reserve's panoply of post-crisis assistance programs.

We appreciate the opportunity to provide comments to the Board regarding the Proposed Rule, and we would be pleased to discuss any questions the Board might have with respect to these comments. Please feel free to contact me at (202)661-3681 with any questions.

Sincerely,

Marty R. Leary

UNITE HERE

[16] "Risk-Based Capital Standards: Advanced Capital Adequacy Framework—Basel II; Establishment of a Risk-Based Capital Floor." 12 CFR §§ 208,225 (2011).

Scott T. Parker
Executive Vice President
Chief Financial Officer

August 5, 2011

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
10th Street & Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Docket No. R-1425 and RIN 7100AD 77; Capital Plans

Dear Sir or Madam:

CIT Group Inc. ("CIT") appreciates the opportunity to file this comment on the notice of proposed rulemaking ("NPR") issued by the Board of Governors of the Federal Reserve System ("Board") that would require bank holding companies ("BHCs") with more than $50 billion in assets to prepare and submit capital plans to the Board on an annual basis.

CIT is a bank holding company with approximately $50 billion in assets. We provide financing and leasing capital to more than one million small business and middle market customers across 30 industries.

We support the goals of the NPR. We recognize that capital planning is a fundamental component of sound risk management. However, for the reasons given below, we recommend a one-year extension in the effective date of the rule for BHCs that did not participate in the Comprehensive Capital Analysis Review ("CCAR"). This would enable non-CCAR BHCs, like CIT, to make the necessary adjustments to comply with the rule and gain the level of experience and competence that CCAR BHCs bring to the process by virtue of their participation in the CCAR.

We further recommend that during the transitional year non-CCAR BHCs participate in a capital planning "exercise." This exercise would require non-CCAR BHCs to prepare data templates and conduct stress testing for feedback from the Board, but otherwise would not subject them to the other requirements imposed by the rule. Such an exercise would help to ensure compliance by non-CCAR BHCs once the rule is effective. During this transitional period nothing would limit the Board's existing authority to address capital distributions by the non-CCAR BHCs.

Non-CCAR BHCs Should be Given a Transitional Year to Make the Necessary Adjustments to Comply with the Rule

In the preamble to the proposed rule, the Board asks whether the capital planning rule should include a transitional period for bank holding companies that did not participate in the CCAR process. While we recognize that CCAR participation was not voluntary, we believe that it afforded CCAR participants a strong boost along what will be a steep learning curve given the many deliverables proposed in the NPR. Therefore, we recommend that the final rule give non-CCAR BHCs a transitional one-year period to make the systems, procedural, and personnel adjustments necessary to comply with the rule. This will enable non-CCAR BHCs to enter the formal capital plan process with a degree of experience and familiarity that will result in a more productive process.

CIT, like other non-CCAR BHCS, currently engages in risk-based capital adequacy assessment and planning, including the use of stress testing. However, the requirements that would be imposed by the NPR differ in several material respects from current industry practices. A one-year delay in the effective date of the rule for non-CCAR BHCs would enable CIT and other non-CCAR BHCS to better integrate stress testing into overall business planning, establish appropriate governance and validation procedures, and allocate additional resources to this process. In other words, a one-year delay would help to ensure more effective compliance and promote a better overall result once the rule is effective for non-CCAR BHCs.

Additionally, a one-year delay in the effective date of the rule for non-CCAR BHCs would facilitate compliance with the extensive data collection requirements imposed by the rule. The NPR places significant weight on data collection and submission; yet, the NPR provides little in the way of specific guidance on the nature and scope of such submissions. While the uncertainty regarding data requirements will pose a challenge for all BHCs, non-CCAR BHCs will be more challenged by these requirements because they have not gone through the CCAR process and will be required to develop new data sets. Along with the required stress testing and documentation enhancements, the data collection and submission requirements will place an unequal burden on the non-CCAR institutions compared to those BHCs that have participated in the CCAR process.

Finally, we believe that a one-year delay in the effective date for non-CCAR BHCS can be informative and beneficial to the Board. The CCAR process enabled the Board to gain a better understanding of the operations and activities of large BHCS.[1] Delaying the

[1] "As a result of the CCAR, the Federal Reserve has developed a deeper understanding of the processes by which large bank holding companies form and monitor their assessments and expectations for maintaining appropriate capital, and the appropriateness of their planned actions and policies for returning capital to shareholders." *Comprehensive Capital Analysis and Review: Objectives and Overview*, Federal Reserve Board, March 18, 2011, page 3.

effective date for non-CCAR BHCS would give the Board a similar opportunity to gain a better understanding of the operations and activities of non-CCAR BHCs. This would permit the Board to tailor the data templates and stress testing requirements to the risk profiles of non-CCAR BHCs, as appropriate.

Non-CCAR BHCs Should Engage in a Capital Planning "Exercise" during the Transitional Year

To further facilitate compliance by non-CCAR BHCs, we believe it would be useful for non-CCAR BHCs to engage in a capital planning "exercise" with the Board sometime during the transitional year based upon further discussions with the Board and relevant Reserve Banks. In this exercise, non-CCAR BHCs would complete data templates and conduct stress tests based upon scenarios provided by the Board, but otherwise would not be subject to the rule. This would help non-CCAR BHCs to identify systems changes and personnel realignments needed and establish necessary infrastructure to prepare satisfactory capital plans and data templates and to conduct both internally-generated and Board-defined stress tests. This would allow the Board and the Reserve Banks to provide useful feedback to the non-CCAR BHCs. It also would provide a window through which the Board and the Reserve Banks could monitor non-CCAR BHCs and reduce any potential risk exposure that may result from the proposed delay in effective date of the rule for non-CCAR BHCs. During this transitional period nothing would limit the Board's existing authority to address capital distributions by the non-CCAR BHCs.

Thank you for considering these views on the transitional delay and flexibility required to enable a productive transition for non-CCAR BHCs under the NPR.

If you have any questions about these comments or seek further information, please contact Lon Goldstein, Senior Vice President of Government Relations, at (202) 756-3011.

Sincerely,

Scott T. Parker

Scott T. Parker
Chief Financial Officer
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August 5, 2011

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

Re: Proposed Amendments To Regulation Y To Require Large Bank Holding Companies To Submit Capital Plans (Docket No. R-1425)

Dear Ms. Johnson:

The Institute of International Bankers ("IIB") appreciates the opportunity to comment on the amendments to Regulation Y proposed by the Board of Governors of the Federal Reserve System (the "Board") to require large bank holding companies to submit capital plans on an annual basis and to provide prior notice to the Federal Reserve under certain circumstances before making a capital distribution.[1] The proposed rule would apply to every top-tier bank holding company domiciled in the United States that has $50 billion or more in total consolidated assets (the "$50 Billion Asset Threshold"). As of March 31, 2011, there were 35 such BHCs, of which 9 were owned by foreign banks, each of which is a member of the IIB.

Our comments (i) address considerations that are specific to foreign-owned Large U.S. Bank Holding Companies, (ii) recommend that the $50 Billion Asset Threshold be measured over the previous four quarters of financial results (rather than two as proposed), (iii) discuss the importance of coordinating effectiveness of the Proposal with the regulations to be promulgated under Section 165(i) of the Dodd-Frank Act, (iv) recommend modifications to the proposed timeframes related to the submission, review and updating of capital plans, and (v) support the adoption of a 1-year transition period for those Large U.S. Bank Holding Companies that were not included in the Federal Reserve's recently completed Comprehensive Capital Analysis and Review ("CCAR").

[1] 76 Fed. Reg. 35351 (June 17, 2011) (the "Proposal"). Capitalized terms used in this letter that are not otherwise defined in this letter have the meanings given in the Proposal.

Considerations Specific To Foreign-Owned Large U.S. Bank Holding Companies

Sound risk management calls for robust systems and processes that incorporate forward-looking projections of revenue and losses to monitor and maintain an institution's internal capital adequacy. We strongly support the view embedded in the Proposal that the level of detail and analysis required for a capital plan varies based on the characteristics of each institution preparing the plan, including its size, complexity, risk profile, and scope of operations, and that capital planning requirements should be sufficiently flexible to adjust to changing conditions over time.

It is also essential to recognize that, in contrast to U.S.-headquartered Large U.S. Bank Holding Companies, each of which issues publicly-traded shares and is the ultimate, controlling organization within its group, foreign-owned Large U.S. Bank Holding Companies are wholly-owned U.S. subsidiaries of banking organizations that are headquartered outside the United States. Among other things, these differences result in foreign-owned Large U.S. Bank Holding Companies taking into account in the normal course of their capital planning considerations that are not relevant to their U.S.-headquartered counterparts, such as the financial condition of their parent foreign bank and/or developments in the parent foreign bank's home country. In addition, as privately held U.S. subsidiaries of foreign-headquartered banking organizations, they approach capital distribution questions from a perspective that is significantly different from that of their publicly traded U.S.-headquartered counterparts.

We request that the Board clarify in connection with finalizing the Proposal (i) the relevance of these considerations to foreign-owned Large U.S. Bank Holding Companies' capital plans (once they become subject to the prescribed capital planning requirements[2]) and (ii) the significance of consultation and coordination with appropriate home country supervisory authorities to the capital planning and review process.

The $50 Billion Asset Threshold

As discussed in the Board's June 10th press release, the Proposal is intended to institutionalize and expand to all Large U.S. Bank Holding Companies the CCAR, which covered 19 domestically-headquartered bank holding companies that participated in the Treasury Department's Capital Assistance Plan. For purposes of identifying the scope of the capital planning requirement, the $50 Billion Asset Threshold is based on the average of a U.S.-domiciled bank holding company's total consolidated assets over the course of the previous two calendar quarters, as reflected on the bank holding company's consolidated financial statements as reported to the Federal Reserve on Form FR Y-9C.

2 Reflecting the provisions of Section 171(b)(4)(E) of the Dodd-Frank Act, proposed Section 225.8(b)(1)(i) of Regulation Y postpones to July 21, 2015 the effective date of the capital planning requirement for any Large U.S. Bank Holding Company subsidiary of a foreign banking organization that has relied on the Board's Supervision and Regulation Letter SR 01-01 (as in effect on May 19, 2010).

We do not object to $50 billion total consolidated assets as the basis for identifying Large U.S. Bank Holding Companies for purposes of the capital planning requirement. However, to minimize the prospect that a U.S.-domiciled bank holding company would become subject to the capital planning requirement solely as a result of transient fluctuations in its total consolidated assets, we recommend that the test be based on the average of a U.S.-domiciled bank holding company's total consolidated assets over the course of the previous four quarters, as reported on Form FR Y-9C.

Capital Planning and Stress Testing:
Coordination with Section 165(i) of the Dodd-Frank Act

The Proposal contemplates that the capital planning required of a Large U.S. Bank Holding Company would include a range of stressed scenarios, including any provided by the Federal Reserve and at least one developed by the Large U.S. Bank Holding Company. It is intended that a Large U.S. Bank Holding Company would incorporate into the capital plan it prepares in accordance with the requirements of Regulation Y the results of the stress testing it conducts pursuant to Section 165(i)(2) of the Dodd-Frank Act, but the Board does not expect that these results will be sufficient to address all relevant adverse outcomes that should be covered in a satisfactory capital plan under Regulation Y. We have three comments on this aspect of the Proposal:

- First, it does not appear to take into account the unique circumstances of foreign-owned Large U.S. Bank Holding Companies. As discussed above, as foreign-owned entities they are subject to certain considerations that do not apply to their U.S.-headquartered counterparts. With specific regard to stress testing, the foreign bank parent may require its Large U.S. Bank Holding Company subsidiary, by virtue of its operating as part of the larger, global banking group, to incorporate into its stress testing certain scenarios prescribed by the foreign bank, or the Large U.S. Bank Holding Company itself may seek to include in its stress testing scenarios related to the foreign bank or the foreign bank's home country. Stress testing requirements and standards prescribed by the foreign bank's home country supervisory authority may also be relevant to the Large U.S. Banking Organization's stress tests. We request that the Board reflect these considerations in finalizing the Proposal.

- Second, we request that the Board confirm in connection with adopting the final rule that the stress testing called for under the final rule is subject to, and should be conducted in accordance with the relevant provisions of, the final interagency "Guidance on Stress Testing for Banking Organizations with Total Consolidated Assets of More Than $10 Billion" that is ultimately adopted based on the proposed guidance published for comment this past June.[3]

[3] *See* 76 Fed. Reg. 35072 (June 15, 2011).

- Third, because of the close relationship between the stress testing that will be required under Section 165(i) and that to be undertaken in connection with capital planning under Regulation Y, we recommend that the effectiveness of the capital planning requirements be structured to coincide with the effectiveness of whatever rules are adopted under Section 165(i). Failure to do so may result in Large U.S. Bank Holding Companies having to adjust their capital plans in order to accommodate the incorporation of the results of stress tests undertaken pursuant to Section 165(i), an exercise likely to result in significant and needless burdens and costs for the covered companies and the diversion of scarce supervisory resources.[4]

Timeframe for Submission and Review of Capital Plans; Updated Plans

The Proposal sets forth a rigid and highly prescriptive timeframe for submission and review of capital plans. Each Large U.S. Bank Holding Company would be required to submit its complete capital plan by January 5th each year, and the appropriate Reserve Bank, after consultation with the Board, would provide its response by March 15th. A Large U.S. Bank Holding Company that receives a notice of objection to its plan would have 5 calendar days following receipt to make a written request for reconsideration, and the Board would notify the Company of its decision with 10 calendar days of receipt of the request.

Although required as a regulatory matter by virtue of the Proposal, capital planning is fundamentally a supervisory undertaking and as such its timing should be adapted to the circumstances of each reporting entity. We recognize the need for timely submission and review of plans on an annual basis, but we do not think there is any reason for all Large U.S. Bank Holding Companies to be required by regulation to undertake this on a calendar year basis. In the case of foreign-owned Large U.S. Bank Holding Companies a calendar year filing might conflict with reporting obligations to which the U.S. bank holding company is subject as a subsidiary of a foreign bank (for example, internal capital planning by the Large U.S. Bank Holding Company subsidiary may be undertaken in conjunction with the parent bank's capital planning, which may not be done on a calendar year basis (especially where the parent bank's fiscal year is other than a calendar year)).

Moreover, mandating simultaneous submission of capital plans by all bank holding companies subject to the requirement and expecting an informed decision on their acceptability within approximately 75 days would place considerable, and in our view unnecessary, pressures and burdens on both a reporting Large U.S. Bank Holding and Federal Reserve staff. Likewise, we believe it is unrealistic to expect that a Large U.S. Bank Holding Company would be able to

[4] The Proposal refers to stress tests conducted pursuant to Section 165(i)(2) (76 Fed. Reg. at 35354), but we note that Section 165(i)(1) requires annual stress testing conducted on the basis of parameters prescribed by the Board. We request clarification of how these parameters would relate to scenarios provided by the Board pursuant to proposed Section 225.8(d)(2)(iii)(A) of Regulation Y.

submit a meaningful, well-reasoned request for reconsideration of a notice of objection within 5 calendar days of its receipt, and even if *arguendo* this were feasible, we question the adequacy of 10 calendar days for the Board to provide a considered response.

We recommend that the Board reconsider the proposed timeframe for the submission and review of capital plans and adopt in its place a more flexible approach whereby the timing of the submission of a capital plan would be determined by the Federal Reserve in consultation with each Large U.S. Bank Holding Company, bearing in mind the need for timely submission of plans but also taking into account the circumstances of each reporting company. At a minimum, the final rule should permit a reporting company to obtain a reasonable extension for good cause shown, both with respect to its initial annual submission and a request for reconsideration.

We have similar concerns regarding the proposed framework for submission of updated plans. Instead of mandating resubmission within 30 calendar days of a triggering event,[5] we recommend that the timing of resubmissions/updates be based on the nature of the triggering event (and in this regard, we further recommend that the Board provide greater clarity on the circumstances that would trigger a resubmission – especially with respect to "material" changes in the bank holding company's risk profile).

Our concerns relating to resubmissions/updates would be mitigated to some extent if the regulation did not in effect require submission of updates in the form of a new plan and a Large U.S. Bank Holding Company could simply update the portions of the plan affected by the change or provide an informational supplement to the plan describing the change and its impact.[6] The supplementary discussion of the Proposal in the Federal Register notice to some extent addresses this concern,[7] but it nevertheless presumes that only exceptional circumstances would justify submission of less than a full plan. Moreover, the supplementary discussion is not fully reflected in proposed Section 225.8(d)(1)(vi) of Regulation Y, which states that any updated capital plan must satisfy all the requirements applicable to the annual capital plan, "unless otherwise specified by the appropriate Reserve Bank, after consultation with the Board." We recommend that the final rule scale the timing and content of updates to the triggering circumstances and not as a general matter require submission of a new plan.

Our final comment on timing relates to the implementation of the final rule. The Board's June 10th press release states that the Board plans to finalize the proposal later this year and begin

[5] We note that proposed Section 225.8(d)(1)(v) would permit the appropriate Reserve Bank "at its sole discretion" to extend the 30-day period for up to an additional 60 calendar days. Consistent with the approach we suggest with respect to annual submissions and requests for reconsiderations, we recommend that the Board modify this provision to enable reasonable extensions based on good faith requests.

[6] If changed circumstances were so profound as to merit the submission of an entirely new plan, then we would question whether 30 calendar days would provide sufficient time to do so.

[7] *See* 76 Fed. Reg. at 35353.

the annual capital reviews in early 2012. The Board has suggested that a one-year transition period be provided for those Large U.S. Bank Holding Companies that did not participate in the CCAR.[8] We believe such a transition period would be appropriate and recommend that it be incorporated into the final rule.

* * *

We appreciate the Board's consideration of our comments. Please contact the undersigned if we can provide any additional information or assistance.

Very truly yours,

Richard Coffman
General Counsel

[8] *See* 76 Fed. Reg. at 35353.

August 5, 2011

Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, N.W.
Washington, D.C. 20551
Attention: Jennifer J. Johnson, Secretary
Docket No. R-1425
RIN No 7100 AD 77

Re: Capital Plans

Ladies and Gentlemen:

The Clearing House Association L.L.C. ("**TCH**"), the American Bankers Association ("**ABA**"), The Financial Services Roundtable (the "**Roundtable**") and the Securities Industry and Financial Markets Association ("**SIFMA**") (together, the "**Associations**")[1] appreciate the opportunity to comment on the notice of proposed rulemaking (the "**NPR**")[2] issued by the Board of Governors of the Federal Reserve System (the "**Board**") that would require U.S. bank holding companies with $50 billion or more in total consolidated assets and certain other institutions to which the rule is determined by order to be applicable ("**Covered BHCs**") to submit capital plans on an annual basis and to provide prior notice under certain circumstances before making capital distributions. We support sound capital planning and believe that many of the NPR's requirements are appropriate. However, we have concerns with several aspects of the NPR, some of which go to substance and some of which go to the need for clarification. Part I of this letter addresses our substantive concerns and Part II addresses areas where we urge the Board to provide clarification.

I. Substantive Concerns

a. Covered BHCs should be permitted to make approved capital distributions without interruptions forced by the capital planning process.

1 See *Annex A* for a description of the Associations.

2 76 Fed. Reg 35351 (June 17, 2011).

Under the NPR, Covered BHCs would be precluded from making capital distributions during a quarter (or near quarter), irrespective of their financial health or the robustness of their capital positions. The NPR indicates that the Federal Reserve expects that its response to a Covered BHC's annual capital plan submission would cover the quarter in which the capital plan was submitted and the subsequent three quarters. Under the time line set forth in the NPR, a non-objection received from the Federal Reserve on March 15th of Year 1 would only cover capital distributions made in Year 1. As a consequence, a Covered BHC that receives a non-objection from the Federal Reserve on March 15th of Year 1 would not be permitted to make any capital distributions from January 1st of Year 2 until the time this Covered BHC receives a non-objection from the Federal Reserve covering Year 2, which could potentially be as late as March 15th, even for a banking organization with a strong capital position, favorable earnings prospects and a reasonable capital distribution policy.

The Associations urge the Board to implement the capital planning process in a manner that permits Covered BHCs with acceptable capital plans to make capital distributions without interruption. This is particularly important with respect to balance sheet management activities. We believe it is very important that the capital planning process not be structured in a manner that prevents Covered BHCs from making capital distributions for nearly a calendar quarter in each year.

We urge the Board to address our concerns by adjusting the four quarter period during which approval of a Covered BHC's capital plan would be effective. Specifically, we recommend that the Federal Reserve's non-objection to a capital plan cover the four quarter period (the "**Capital Plan Approval Period**") that commences following the date of the non-objection, rather than the quarter in which it was submitted and the subsequent three quarters. Under the Associations' proposal and the time line set forth in the NPR, a Covered BHC could make capital distributions contemplated by the capital plan approved in the first quarter of Year 1 during the first quarter of Year 2 – that is, during the period in which the Federal Reserve is reviewing the Covered BHC's capital plan, which, if approved, will permit distributions in the following four quarters.[3]

The Associations believe that such an adjustment is fully consistent with the goals of the NPR. As under the NPR, Federal Reserve approval of a capital plan would still be effective for no more than four quarters. Moreover, any distributions made during the first quarter of a year would have to be consistent with the Covered BHC's current, approved capital plan, which would have been approved in the first quarter of the preceding year. Importantly, a Covered BHC also would continue to be required to submit a revised capital plan pursuant to Section 225.8(e)(4) if during the Capital Plan Approval Period there were a material change in the Covered BHC's risk profile, financial condition or corporate structure or if changes in the macro-economic outlook required the use of updated scenarios.

By avoiding a potentially lengthy, annual period in which capital distributions would not be permitted, the Associations' recommended approach also would help mitigate the potential for the proposal to place Covered BHCs at a competitive disadvantage. Domestic Covered BHCs compete in increasingly global financial markets for capital and funding with other organizations, including foreign banking organizations (many of which have ADRs that trade in the U.S. securities markets) and nonbank

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3 In order to prevent any disruptions in the first year in which the final rule is effective, the Associations also request that the Board make appropriate transitional arrangements so that Covered BHC's are not unnecessarily prevented from making capital distributions in the period between the effective date of the final rule and the first date on which a Covered BHC is permitted to make capital distributions pursuant to its initial capital plan.

financial firms. We recognize the public policy reasons for not imposing a similar capital planning requirement directly on foreign banking organizations operating in the United States. However, we also request that the Board implement the NPR in a manner that does not make it more difficult for domestic Covered BHCs to raise and maintain equity capital at a competitively reasonable price by virtue of their being prevented from making capital distributions for nearly a quarter every year.

b. The Associations are concerned that the NPR's proposed rules could be implemented to substitute the Federal Reserve's judgment as to capital distributions for the Board of Director's judgment, going beyond the expected (and appropriate) supervisory role with respect to capital adequacy.

The NPR represents a significant change to capital distribution oversight. We have three fundamental concerns with the new approach.

First, as a matter of both corporate law and management practices, decision-making with respect to dividends and other capital distributions is a fundamental responsibility of the Board of Directors. The NPR's approach has the potential to insert the Federal Reserve into that decision making to an extraordinary extent that would effectively replace the Board of Director's judgment with the Federal Reserve's insofar as capital distributions are concerned. Capital planning is necessary and appropriate as a matter of sound management, and review and oversight of capital planning is appropriate and necessary as a matter of proper regulatory oversight. However, we are very concerned that what starts as appropriate regulatory oversight not evolve into a Reserve Bank's effectively taking over a fundamental management responsibility. Accordingly, we urge the Federal Reserve, in deciding whether to object and framing objections to a Covered BHC's capital plan, to adhere to the standards set forth in Section 225.8(e)(2)(ii) (subject to our other comments on those standards in this letter, including in Parts I.j, I.k and II.c) in a manner that rests objections on specific concerns and not merely regulatory preferences.

Second, historically, the presumption has been that a capital distribution is permissible unless the Federal Reserve determines otherwise. The NPR inverts this presumption – capital distributions will now be subject to advance review and generally not permitted unless the Federal Reserve approves a Covered BHC's capital plan or approves the distribution pursuant to the NPR's prior notice requirements. These changes are not mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**") and will require firms to reorient management operations. As a result of this shift to a prior approval requirement, Covered BHCs will have substantially less flexibility in determining the timing and amount of capital distributions. The NPR also marks a move from a temporary Comprehensive Capital Analysis and Review ("**CCAR**") process that was developed during a time of financial stress to a permanent rule regarding capital planning that will apply not just in times of financial stress, but in times of robust growth as well. Given the uncertain competitive and financial impacts these changes will have on Covered BHCs, we believe it is critical to minimize to the greatest extent possible the final rule's potential to disrupt a Covered BHC's ability to make capital distributions.

Third, assuming the Board and the other U.S. banking agencies proceed to implement Basel III's capital conservation buffer, the proposal should not be implemented in a manner that effectively makes the buffer a nullity by, for example, preventing Covered BHCs from making capital distributions that have the potential to reduce a Covered BHC's capital to a level at which distributions would be restricted under the buffer.

c. Each Covered BHC should have the ability to determine its initial submission date in order to align the NPR's capital plan requirements with the Covered BHC's internal capital planning processes and facilitate communication with shareholders.

The NPR at present requires all Covered BHCs to adhere to the same submission schedule. Under Section 225.8(d)(1)(ii)[4] of the NPR, Covered BHCs must submit their complete capital plans to the Federal Reserve[5] each year by January 5th. The Board must then object or provide the Covered BHC with a notice of non-objection by March 15th.

While this schedule is favored by some Covered BHCs and would comport with their internal capital planning and related processes, this schedule is suboptimal for other Covered BHCs. For example, a January submission deadline would not allow Covered BHCs to address capital distributions for the full upcoming year—whether as to dividends, share repurchases, redemptions or other steps—in their January earnings releases and related earnings calls, which is the natural time for many institutions to address these matters. Given differences in the internal capital planning processes of Covered BHCs and in order to facilitate Covered BHCs' communications with shareholders, the Associations urge the Board to amend the proposed capital plan submission schedule as follows:

- The Federal Reserve would provide any stressed scenarios[6] and data templates to be included in a Covered BHC's annual capital plan submission for a given year by early July of that year.[7]

- Covered BHCs could submit their plans any time between early October of that year and early January of the following year. In order to permit the Federal Reserve adequate opportunity to prepare for receipt of the company's plan, a Covered BHC would have to provide the Board at least 60 days' prior notice of its planned submission date.

- The Federal Reserve would then have 70 days from the date of the Covered BHC's submission to issue any objections or non-objections.

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4 All references to a "Section" in this letter are to the proposed rule in the NPR unless otherwise noted.

5 **"Federal Reserve"** as used in this letter refers to the appropriate Federal Reserve Bank responsible for supervising a particular Covered BHC.

6 We are concerned that the stressed scenarios provided by the Federal Reserve are so fundamental to the capital planning process as to themselves constitute a "rule making" under the Administrative Procedures Act that should be published for comment before being adopted as the scenarios that Covered BHCs must use for purposes of the proposed rules.

7 Given the proposed effective date of the final rule, we recognize that the timing of the provision of stressed scenarios and data templates will need to be different in the first year in which the final rule is effective. In order to provide Covered BHCs with sufficient time to reflect the required stressed scenarios and other information in their initial capital plans, we request that the Federal Reserve provide any stressed scenarios and data templates at the time the final rule becomes effective.

- Any non-objection to a capital plan would cover a four quarter period commencing with the quarter immediately following the quarter in which the non-objection from the Federal Reserve was due, as proposed in Part I.a.

Allowing Covered BHCs to choose their submission date within the range specified above may also have the benefit of allowing the Federal Reserve to allocate supervisory resources more efficiently because supervisors likely would not have to review all Covered BHCs' capital plans at the same time. Moreover, it would not prevent the Federal Reserve from providing Covered BHCs with the same stress scenario parameters (including designated start date for the stressed scenario) in order to compare the results of these stress tests across all Covered BHCs.

d. Stressed scenarios and data templates should be provided at least twelve weeks before a Covered BHC's capital plan submission date.

Footnote 18 of the NPR states that the Board will provide stressed scenarios and any related data requests that would be required to be reflected in a BHC's annual capital plan "several weeks" before the capital plan is due. Given the experience of some of our larger members with the CCAR exercise, we are concerned that "several weeks" will not be enough time to reflect the relevant information and stressed scenarios in capital plans. Accordingly, to the extent the proposal in Part I.c is not accepted (under which the Federal Reserve would provide stressed scenarios and data templates by early July), we urge the Federal Reserve to provide Covered BHCs with any stressed scenarios and data templates no fewer than twelve weeks before a Covered BHC's capital plan submission date.

e. There should be a *de minimis* exception to the requirement that a Covered BHC provide prior notice to the Federal Reserve before making a capital distribution that would exceed the amount described in its approved capital plan.

Section 225.8(f)(1)(iv) of the NPR would require a Covered BHC to provide prior notice to the Federal Reserve before making a distribution that exceeds the amount described in the capital plan approved by the Federal Reserve, without regard to the amount by which the distribution exceeds the amount specified in the current, approved capital plan. The Associations strongly support a *de minimis* exception to this prior notice requirement and propose that any distribution be permitted pursuant to this exception that, together with all other distributions made during the Capital Plan Approval Period pursuant to the *de minimis* exception,[8] is less than a number of basis points of the Covered BHC's risk-weighted assets measured under Basel I as of the most recent quarter end equal to the sum of (i) 15 and (ii) 2 times the number of percentage points by which the Covered BHC's Tier 1 common ratio measured under Basel I as of the most recent quarter end exceeds 7 percent. For example, if a Covered BHC's current Tier 1 common ratio measured under Basel I was 10 percent, then the *de minimis* threshold for this institution would be calculated as 21 basis points times the Covered

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8 For the sake of clarity, we note that only the amount by which a distribution exceeds the amount described in an approved capital plan would be counted for purposes of determining the availability of the *de minimis* exception. For example, suppose that a $20 million distribution exceeded the amount described in a Covered BHC's capital plan by $1 million and a subsequent $25 million distribution exceeded the amount described by $2 million. Further suppose that this Covered BHC used the *de minimis* exception proposed above to make the portion of these distributions in excess of the approved amounts. The total amount of distributions for which the *de minimis* exception had been used would be $3 million, as opposed to $45 million.

BHC's risk-weighted assets (*i.e.*, 15 + (2 x (10 – 7))). We believe that the *de minimis* standard should scale with the Tier 1 common ratio of the Covered BHC given that the higher a Covered BHC's Tier 1 common ratio capital cushion, the larger a distribution has to be before it no longer has merely a *de minimis* impact on a Covered BHC's capital position.

f. Covered BHCs should have additional time to submit requests for reconsideration.

Section 225.8(e)(3) of the NPR provides a Covered BHC with 5 calendar days following its receipt of a notice of objection from the Federal Reserve to submit a request for reconsideration. The Associations do not believe that a five calendar day period is a sufficient amount of time to prepare these requests. Moreover, given the NPR's proposed timing of responses from the Federal Reserve (*i.e.*, by March 15th of the relevant calendar year), Covered BHCs would need to submit their requests for reconsideration during the first quarter of the calendar year, a time when key personnel at many Covered BHCs are focused on the preparation of year-end reports and resources are thus particularly limited. The Associations, therefore, request that the Federal Reserve extend the amount of time that Covered BHCs have to submit a request for reconsideration to ten calendar days. In addition, to the extent the proposal in Part I.c is not adopted, given the importance of resolving any issues with capital plans as promptly as practicable, in order to offset the five day increase in the amount of time Covered BHCs have to submit requests for reconsideration, we also request that the Federal Reserve respond to annual capital plan submissions by the tenth day of the relevant month by which its response is due, rather than the fifteenth day.

g. Capital plans, non-objections or objections to capital plans, any requests for reconsideration, approvals or rejections of any such requests, prior notice filings and the results of stressed scenarios should be treated as confidential supervisory information.

As the Board has noted, CCAR is a supervisory exercise that involves an evaluation not only of potential stressed capital levels, but also of the processes used by a banking organization to manage and assess its risks and capital adequacy on an ongoing and forward-looking basis.[9] Consistent with the nature of the CCAR process on which the NPR is based, the Associations urge the Board in the final rule to treat capital plans, objections and non-objections to capital plans, any requests for reconsideration, approvals or rejections of any such requests, prior notice filings and the results of stressed scenarios as confidential supervisory information and therefore not subject to public disclosure. Thus, for example, while a significant acquisition by a Covered BHC may warrant resubmission of a capital plan, the submission and review of the revised plan should be conducted through supervisory channels, rather than as part of any formal application process triggered by the acquisition. The Board or other agency reviewing an application in connection with such a significant acquisition would, of course, be able to consider a Covered BHC's capital plan, just as the agencies consider other confidential supervisory information (*e.g.*, examination reports) when acting on applications.

With respect to the disclosure of the results of stressed scenarios (that is, the impact of the stressed scenarios on a Covered BHC's capital ratios), this information should also be considered confidential supervisory information. Concerns with the consequences of potential disclosure could

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[9] *See* Board, *Comprehensive Capital Analysis and Review: Objectives and Overview* (Mar. 18, 2011), at 17 (noting that "CCAR is a broad supervisory exercise"), available at http://www.federalreserve.gov/newsevents /press/bcreg/bcreg20110318a1.pdf.

influence the Board in its determinations of stress scenario parameters and dampen the free exchange of communication between Covered BHCs and their supervisors that is so important to sound supervision.

h. Covered BHCs subject to the Internal Capital Adequacy Assessment Process ("ICAAP") requirements should be permitted to combine components of ICAAP with capital plan submissions under the NPR and submit them on the capital plan timeline.

The requirements of the NPR overlap with many of those in ICAAP, including the requirement to provide detailed descriptions of a Covered BHC's processes for assessing capital adequacy. It would be more efficient if, where required components of the capital plan and ICAAP are similar, a Covered BHC could satisfy the requirements of both with a single submission that satisfies the applicable requirements of ICAAP and the final rule published by the Board regarding capital planning. A single submission would not only reduce the burden of Covered BHCs subject to ICAAP requirements but also reduce potential redundancies in the regulatory review process. Moreover, because the ICAAP components and the capital plan need to be reviewed and approved by the Board of Directors or a designated committee thereof, allowing BHCs to make a single submission as suggested above would not result in a lower level of oversight. Accordingly, we urge the Board to permit Covered BHCs subject to ICAAP requirements to combine similar components of the two regulations into one submission (which satisfies the applicable requirements of ICAAP and the final rule published by the Board regarding capital planning) and to submit them according to the capital plan timeline.

i. The Associations' concerns regarding the NPR's provisions concerning data requests are as follows:

1. In order to reduce the time and expense of complying with potentially unnecessary data requests, the Federal Reserve should be cognizant of data that have already been collected when requesting information pursuant to Section 225.8(d)(3).

The NPR permits the Board and the Federal Reserve to request an exceptionally broad range of data from Covered BHCs under Section 225.8(d)(3), some of which appears to be information that a Covered BHC likely will have already provided to a federal banking agency. For example, bank holding companies are required to report structural information on all "controlled" entities on Form FR Y-10 reports and all entities of which they own more than 5 percent of a class of voting equity in their annual report on Form FR Y-6. Moreover, some of this information (*e.g.*, information regarding a Covered BHC's structure and credit exposure) may overlap with the information a BHC is required to file as part of its "living will" or credit exposure reports under Section 165(d) of the Dodd-Frank Act. The Associations therefore urge the Board and Federal Reserve, when requesting data under Section 225.8(d)(3), to be mindful of data that have already been or will be collected in order to reduce the time and expense of responding to potentially unnecessary data requests.

2. Covered BHCs should, under certain circumstances, be provided with additional time to respond to data template requests or a limited exemption from data requests. In addition, data templates should be changed as infrequently as possible.

Covered BHCs, depending on their past experience with the capital planning process, may need additional time to develop the technology and processes necessary to provide in a timely manner information responsive to the Federal Reserve's data template requests. Accordingly, the Associations urge the Federal Reserve to provide Covered BHCs with additional time as necessary and appropriate to respond to data template requests or the ability to request an exemption to the extent that strict compliance with a data request would result in undue burden or expense and permit the substitution of appropriate information. The Associations also ask the Board and Federal Reserve to be cognizant of the costs associated with changes to the data templates and urge the Board to make as few changes to the templates as possible in order to minimize these costs.

j. "Material unresolved supervisory issues" should not include issues that do not, or are unlikely to, materially impact a Covered BHC's capital position, liquidity or financial results.

Section 225.8(e)(2)(ii)(A) of the NPR permits the Federal Reserve to object to a proposed capital plan if there are any "material unresolved supervisory issues." The Associations strongly believe that supervisory issues unlikely to have a material impact on a Covered BHC's capital position, liquidity or financial results should not be grounds for objecting to a proposed capital plan. Accordingly, the Associations urge the Board to tie the standard for what constitutes a "material unresolved supervisory issue" to supervisory issues that materially impact, or are likely to materially impact, a Covered BHC's capital, liquidity or financial condition.

k. The criteria for approval of a revised and resubmitted capital plan should focus on whether the plan addresses the deficiencies identified in the objection of the Federal Reserve to the capital plan.

The NPR does not explicitly address the criteria for approval of a revised and resubmitted capital plan. Section 225.8(e)(2)(iv) provides, however, that if the Federal Reserve has objected to a Covered BHC's capital plan it generally may not make capital distributions until the Federal Reserve determines that its capital plan does not give rise to the conditions listed in Section 225.8(e)(2)(ii), which serve as the grounds for an objection to a capital plan. This reference to Section 225.8(e)(2)(ii) could be interpreted to imply that the Federal Reserve intends to perform a *de novo* review of resubmitted capital plans. The Associations believe that such a review will likely be time consuming and unnecessary and is thus undesirable. This review should instead focus on whether the resubmitted plan addresses the deficiencies identified by the Federal Reserve in its objection. The Associations urge the Board to revise the final rule accordingly.

l. Capital plan resubmissions should be responded to within 15-days, subject to a 15-day extension.

Although the NPR would appear to prohibit a Covered BHC from making any capital distributions while the Federal Reserve reviews a re-submitted capital plan, the NPR does not provide a separate time frame for review of a re-submitted plan. We believe that a shorter approval period than the approximately 70-day period for annual submissions is warranted. In particular, we propose that the Federal Reserve should respond to capital plan resubmissions within 15-days, subject to a 15-day extension if, in the judgment of the Federal Reserve, additional time is necessary or otherwise appropriate to conduct the review. Because the Federal Reserve will have reviewed a Covered BHC's annual capital plan submission prior to the filing of a resubmission, it will already have some familiarity with the Covered BHC's capital planning processes, which should facilitate its review of a resubmission and lessen the need for a lengthy review period. Moreover, a reduced review period for resubmissions (as compared with the review period for annual submissions) will help to reduce the disruptive impact that the prohibition on capital distributions during the review period could have on a Covered BHC's ability to manage its balance sheet.

m. The criteria in Section 225.8(e)(4)(ii) for plan resubmission should focus on events that occurred after the date the Federal Reserve issued its non-objection.

The Associations note that the triggers for resubmission of a capital plan in Section 225.8(e)(4)(ii) are not limited to changes that have occurred since approval of the Covered BHC's annual capital plan, but rather could be read as permitting the Federal Reserve to require resubmission based only on an after-the-fact reassessment of the Covered BHC's approved capital plan. For example, the proposed rule would appear to allow the Federal Reserve to require a Covered BHC to submit a revised capital plan if the Federal Reserve, after issuing a non-objection, subsequently determined (without any change in circumstances) that the Covered BHC's previously approved capital plan (i) is incomplete, or (ii) the scenarios used in the capital plan were not sufficiently stressed. We do not believe that this was the intent of the NPR. Accordingly, the Associations urge the Board to amend the final rule to provide that the conditions for resubmission in Section 225.8(e)(4)(ii) will only be triggered if there has been a change of circumstances following the issuance of the non-objection.

n. If a covered BHC resubmits its capital plan, a Covered BHC's current, approved capital plan should remain in force – and distributions consistent with that capital plan should be permitted –until the Federal Reserve responds to the resubmission or informs the Covered BHC that such capital distributions are not permitted.

It appears that the NPR would prevent a Covered BHC from making capital distributions while the Federal Reserve is reviewing a resubmitted capital plan. The Associations urge the Board to confirm in the final rule that, if a Covered BHC resubmits its capital plan, a Covered BHC's current, approved capital plan remains in force – and distributions consistent with that capital plan are permitted – until the Federal Reserve either responds to the resubmission or informs the Covered BHC that capital distributions are not permitted under the current, approved plan. The criteria in Section 225.8(e)(4) for resubmission are broad, and the Associations are concerned that these requirements have the potential to be disruptive to a Covered BHC's ability to make capital distributions. As remarked in Part I.a, it is critical that the capital planning process not be structured in a manner that prevents Covered BHCs from managing their balance sheets. Permitting a Covered BHC to make previously approved distributions while its resubmission was reviewed, as proposed, would help to prevent unnecessary disruptions to balance sheet management activities. Moreover, the Federal Reserve could always prohibit such distributions, if in its supervisory judgment, it believed prohibition was warranted.

o. The Board should retain authority to grant exemptions from the requirements under the final rule.

The NPR does not establish a process under which the Board may consider an exemption request by a Covered BHC from its timing and other requirements. For example, under the NPR, a Covered BHC that announces a material acquisition on October 16th must submit a revised capital plan on or before November 15th (*i.e.*, within 30 days of determining that there will be a material change to the Covered BHC's corporate structure) or December 15th, if the Reserve Bank extended the deadline by 30 days. This Covered BHC would also be required to submit its annual capital plan by

January 5th.[10] Given the difficulty of anticipating timing and other issues stemming from the NPR, the Associations request that the Board establish a process that would allow a Covered BHC to request on a case-by-case basis an exemption from one or more requirements under the final rule to address unforeseen issues resulting under the final rule (including, for example, the ability to extend the time frame covered by an updated capital plan to align with its annual cycle).

II. Clarifications

a. The Associations request that the Board clarify the relationship between the "stressed scenarios" required by the NPR and those required under Section 165 of the Dodd-Frank Act and provide additional guidance regarding what constitutes a "material" change under Section 225.8(e)(4). In particular, the Associations urge the Board to clarify, in its final rules, that a "material" change must adversely affect a Covered BHC's financial condition and capital position in order for the resubmission requirement in Section 225.8(e)(4) to apply.

Section 225.8(d)(iii)(A) of the NPR requires Covered BHCs to estimate revenues, losses and pro forma capital levels, among other things, over a minimum nine-quarter planning horizon under both expected conditions and stressed scenarios, some of which will come from the Federal Reserve and at least one of which the Covered BHC will develop. In addition, a Covered BHC will be required to calculate its pro forma tier 1 common ratio under expected and stressed conditions under Section 225.8(d)(vi). The Associations would appreciate additional clarity regarding the relationship between the above described "stressed scenarios" and the stress tests required under Section 165(i) of the Dodd-Frank Act. Namely, to what extent do these stress test requirements, which largely apply to the same institutions, interrelate? To the extent the stress tests in Section 165(i) of the Dodd-Frank Act are partly or entirely separate from those required under the NPR, we urge the Board to clarify the ways in which they will differ as well as to consider the cumulative impact of these requirements.[11]

In addition, Section 225.8(e)(4) of the NPR requires a Covered BHC to revise and resubmit its capital plan if "there has been or will likely be a material change in the [Covered BHC]'s risk profile . . ., financial condition, or corporate structure." The Associations urge the Board to clarify, in the final rule, that a material change requiring a revision and resubmission of a capital plan is only a material change that *adversely* affects a Covered BHC's financial condition and capital position.

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[10] Under the NPR, the Federal Reserve in consultation with the Board may extend the deadline by 60 days for an updated capital plan and provide for a later date in the case of an annual capital plan submission.

[11] As public sector officials have acknowledged, the aggregate impact of the current financial-services regulatory reforms in the U.S., including the Dodd-Frank Act and Basel III, has not been fully analyzed. *See, e.g.*, Chairman Bernanke, Remarks at a Question and Answer Session Following Chairman Bernanke's Speech on the U.S. Economic Outlook (June 7, 2011) (transcript available at http://video.cnbc.com/gallery/?video=3000026289) (noting that no one had yet done an analysis of the impact of the recent financial reform on credit and stating, "It's just too complicated. We don't really have the quantitative tools to do that.").

b. The Federal Reserve should provide the reasons for its objection to a capital plan at the time it notifies the Covered BHC of its objection, and its written notice of reasons for objection should address the separate components of the capital plan that concern the Federal Reserve.

Section 225.8(e)(2)(i) of the NPR provides that the Federal Reserve has until March 15th to object to a capital plan or provide a Covered BHC with a notice of non-objection. Section 225.8(e)(2)(iii) requires the Federal Reserve to notify a Covered BHC in writing of the reasons for a decision to object to its capital plan, but does not specify a date by which it must do so. We assume the Federal Reserve will specify the reasons for objections to a capital plan in the notice of objection. We urge the Board to clarify in the final rule that our assumption is correct. Additionally, we urge the Board to indicate in any written notice of objection which components of the capital plan are not acceptable or whether a scaled down component would make the capital plan acceptable. Providing this information in notices of objection would make the resubmission process more efficient and improve the transparency of decisions regarding capital plans. It would also not be feasible for Covered BHCs to file a meaningful request for reconsideration without a complete understanding of the reasons for the objection. Moreover, a Covered BHC's resubmission of its capital plan as required under Section 225.8(e)(4)(ii) could be delayed to the extent the Federal Reserve has not provided the reasons for its objection.

c. The Associations request that the Board clarify that a "matter requiring attention" does not necessarily constitute a "material unresolved supervisory issue."

The Associations seek to confirm that a "matter requiring attention" in an examination does not necessarily constitute a "material unresolved supervisory" issue for purposes of Section 225.8(e)(2). As discussed in Part I.j, the Associations believe that objections to capital plans should be tied to supervisory issues that impact a Covered BHC's capital, liquidity or financial condition. A "matter requiring attention" potentially may relate to a wide range of issues, some of which are unlikely to impact capital, liquidity or financial condition. More fundamentally, we do not believe that all matters identified as requiring management's attention following an examination (including matters that may relate to a Covered BHC's capital or liquidity risk management processes) rise to the level that would require the relevant Covered BHC to submit a revised capital plan.

d. The Associations request that the Board clarify that the capital planning process should focus on the consolidated organization.

The NPR requires a Covered BHC to develop and maintain a capital plan providing a written presentation of the Covered BHC's capital planning strategies and capital adequacy processes. The Associations would appreciate the Board's clarifying that (i) the capital plan should address the capital strategies and plans of the consolidated organization and (ii) the result of stress tests addressed in the capital plan should be focused on the consolidated organization. Given the structural and limited relationship a Covered BHC has with unconsolidated entities, such as a non-subsidiary affiliate of the top-tier Covered BHC, we do not believe that it would be reasonable to require a top-tier Covered BHC to address the capital strategies and plans of such unconsolidated entities in the Covered BHC's capital plan (although, of course, a Covered BHC's own capital strategies and plans would have to take into account any investments in and relationships with such companies). In addition, the relevant stress test results for purposes of capital planning are those of stress tests conducted at the consolidated Covered BHC level. Addressing the results of subsidiary level stress tests (which would have different assumptions and as of dates, among other things) in the capital plan would be burdensome, unhelpful and inappropriate.

e. The Board should clarify in the final rule that a Covered BHC is not required to file a new capital plan under Section 225.8(d)(1)(iv)(A) if the Federal Reserve has required that an updated plan be filed under Section 225.8(d)(1)(iv)(B).

The Associations request that the Board clarify that a Covered BHC is not required to file a new capital plan under Section 225.8(d)(1)(iv)(A) (which requires a Covered BHC to resubmit its capital plan following certain material changes) if the Federal Reserve has requested that a Covered BHC file an updated capital plan under Section 225.8(d)(1)(iv)(B). As drafted, this Section could be read to require multiple resubmissions if the conditions in clause (A) and clause (B) are both satisfied at around the same time. We do not believe that requiring overlapping submissions would be a sensible result and assume the Board does not intend to require overlapping submissions.

f. The Associations would appreciate additional information from the Board regarding data template requests as well as the security controls and processes the Board and the Federal Reserve have in place to safeguard data.

The Associations would appreciate additional guidance from the Board regarding the expected content of the data template requests and their relevancy to the evaluation of capital adequacy as well as the expected process for requesting and providing information pursuant to Section 225.8(d)(3) and the timing of these requests. In addition, we request that, in the release of the final rule, the Board describe the security controls and processes the Board and the Federal Reserve have in place to safeguard and maintain Covered BHCs' data given the sensitivity of this information.

g. The Associations request that the Board clarify that an objection to an annual capital plan submission would not prevent distributions under a current, approved capital plan.

The Associations urge the Board to clarify in the final rule that an objection to a Covered BHC's annual capital plan submission would not prevent a Covered BHC from making a capital distribution consistent with its current, approved capital plan during the Capital Plan Approval Period. For example, if the Federal Reserve issued in Year 1 a non-objection to a Covered BHC's capital plan covering the second quarter of Year 1 through the first quarter of Year 2, this Covered BHC would be able to make capital distributions consistent with its capital plan in the first quarter of Year 2, even if the Federal Reserve objected to the capital plan filed by this Covered BHC in January of Year 2 on March 1st of Year 2. We believe that permitting such distributions is consistent with the forward looking nature of the capital plan approval process. Moreover, under the NPR, a Covered BHC would only be able to make distributions pursuant to its current, approved capital plan if there had not been any material changes in its risk profile or financial condition and there were no material unresolved supervisory issues outstanding. Thus, there would seem to be little risk to a Covered BHC's capital adequacy, liquidity or financial condition in permitting these distributions to be made in accordance with a Covered BHC's current, approved capital plan.

* * *

If you have any questions, or need further information, please contact Eli Peterson, Vice President and Regulatory Counsel, of TCH at (202) 649-4602 (email: eli.peterson@theclearinghouse.org); Hugh Carney, Senior Counsel II, of the ABA at (202) 663-5324 (e-mail: hcarney@aba.com); Rich Whiting, Executive Director and General Counsel, of the Roundtable at (202) 289-4322 (e-mail: rich@fsround.org); or Kenneth Bentsen, Executive Vice President, Public Policy and Advocacy, of SIFMA at (202) 962-7356 (e-mail: kbentsen@sifma.org).

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cc: The Honorable Daniel K. Tarullo
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Annex A

The Associations

TCH is an association of major commercial banks. Established in 1853, TCH is the United States' oldest banking association and payments company. It is owned by the world's largest commercial banks, which collectively employ 1.4 million people in the United States and hold more than half of all U.S. deposits. TCH is a nonpartisan advocacy organization representing through regulatory comment letters, amicus briefs, and white papers the interests of its member 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 TCH's web page at www.theclearinghouse.org.

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SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to develop policies and practices which strengthen financial markets and which encourage capital availability, job creation and economic growth while building trust and confidence in the financial industry. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association.

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August 5, 2011
Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW.
Washington, DC 20551

Re: *Capital Plans,* Y; Docket No. R–1425; RIN 7100–AD 77

Dear Ms. Johnson:

American for Financial Reform ("AFR") appreciates this opportunity to comment on the Proposed Rule regarding Capital Plans. AFR is a coalition of over 250 national, state, local groups who have come together to advocate for reform of the financial sector. Members of the AFR include consumer, civil rights, investor, retiree, labor, religious and business groups along with prominent economists and other experts.

AFR supports this proposed rule on capital planning, although we have several suggestions for strengthening it below. Many elements of this rule are critical to ensuring the maintenance of sufficient high-quality capital at major U.S. bank holding companies during the long transition to full Basel III enforcement. Certain aspects also provide assurance against the potential weakening of Basel III rules relative to current U.S. supervisory practice. Particularly useful elements of this rule include:

- The basic requirement to plan capital adequacy so as to maintain a 5 percent ratio of Tier 1 common capital even under stressed conditions.

- The definition of Tier 1 common capital in accordance with Federal Reserve supervisory practice in the Comprehensive Capital Analysis and Review (CCAR), as opposed to the Basel definition.

- The limitations on distributions of capital without a specific finding from supervisors that such distributions will not lead to unacceptably low capital levels under stressed conditions at any point within the planning horizon.

If effectively implemented, these basic requirements would make real progress toward addressing some of the issues with capital regulation that occurred prior to the crisis. As the rule points out, in the years prior to the financial crisis many of the large bank holding companies covered by this rule made capital distributions proper consideration of the impact that an economic downturn could have on their capital adequacy. Another lesson of the crisis was that, in the words of the recently retired vice-chair of the Federal Reserve, there is "no substitute for common equity" during tough times.[1] The CCAR Tier 1 capital definition is limited to common equity while the current Basel definition is not.

However, AFR urges the Federal Reserve to strengthen the rule in the following areas.

Increased capital levels: The minimum 5 percent tier 1 common ratio under stressed conditions does represent a significant improvement on current Basel requirements. However, the tier 1 common equity ratio for the top 19 bank holding companies in Q4 2008 was 5.4 percent, higher than the required minimum here.[2] It is clear that neither the market nor regulators believed that the 5.4 percent common equity ratio in late 2008 was sufficient. This level of capital still mandated extensive government intervention to support the banking system through loan guarantees and the 2009 SCAP stress testing process. Given the many reasons to believe that the social (as opposed to the private) costs of additional bank capital are limited at most, AFR advises regulators to set higher minimum capital levels.[3]

Minimum leverage ratios: In light of the evidence of widespread arbitrage of risk-based capital requirements under Basel II, both the Dodd-Frank Act and Basel III requirements have shifted toward supplementing risk-based capital ratios with pure leverage metrics. The rule does refer to the need for capital planning to maintain at least the minimum regulatory leverage level under stressed conditions. However, regulators should also consider mandating leverage levels that are somewhat higher than the Basel minimums, as has been done with capital ratios here.

Mandated stress tests: Both this rule and the recent Federal Reserve guidance on stress testing reflect a fundamental tension in relying on stress testing. On the one hand, it is very difficult for a single mandated stress test to capture all of the possible risks or stress scenarios that a particular bank might be confronted with, or to sufficiently reflect the diversity of bank portfolios. Given this, supervisory guidance so far has leaned toward directing banks to design a wide variety of stress tests tailored to their particular circumstances. (As this rule states, these tests will be supplemented by stress scenarios provided centrally by supervisors).

1Baker, Blair, "Interview With Donald Kohn", Risk Magazine, August 16, 2010.

2 See p. 6 of "Comprehensive Capital Analysis and Review", Board of Governors of the Federal Reserve System, March 18, 2011.

3 See Admati, Anat, R. DeMarzo, Peter M., Hellwig, Martin F. and Pfleiderer, Paul C., "Fallacies, Irrelevant Facts, and Myths in the Discussion of Capital Regulation: Why Bank Equity is not Expensive" (March 23, 2011). Rock Center for Corporate Governance at Stanford University Working Paper No. 86.

However, a stress testing regime involving a large variety of bank-designed scenarios has several potential flaws. One is that a large number of stress scenarios with no clear single focus or priority could lead to stress testing becoming a paper exercise, since the results of multiple tests will disagree and offer bank management the capacity to pick a relatively rosy scenario. Another is that bank-designed tests will be too lenient. A third is that a multiplication of stress scenarios across banks will cause regulators to lose the benefits of the "horizontal" view of systemic risk obtained when all major banks test a single scenario simultaneously.

It is clear that the Federal Reserve is sensitive to some of these issues. A very positive element of the recent stress testing guidance is the reference to the need for stress tests to incorporate extreme and unprecedented scenarios and not simply be based on historical experience. However, we hope that supervisors will design a small number of focused stress scenarios based on extreme yet plausible conditions that are administered simultaneously across multiple banks. The enforcement of Section 165 of the Dodd Frank Act could provide a framework for such tests, and they could change over time to reflect shifts in the market.

Address potential evasion: While this rule has many positive elements, it covers only large U.S. bank holding companies. We urge the Federal Reserve to act aggressively to prevent evasion of this rule by preventing companies from shifting out of a bank holding company status. This is especially important in light of the evidence that major financial institutions are reorganizing to shed their bank holding company status. For example, Deutsche Bank is maneuvering to eliminate its bank holding company status for its U.S. subsidiary the Taunus Corporation specifically in order to evade new capital requirements.[4]

Where appropriate, we also urge the Federal Reserve to expand this rule or a similar framework to incorporate systemically critical financial institutions that are not bank holding companies once these are designated by the Financial Stability Oversight Committee. Regulators should also carefully monitor major subsidiaries of financial institutions that are not U.S. based but have a large U.S. presence in order to ensure capital adequacy. This seems especially important given that the Tier 1 capital definition in this rule diverges from the Basel definition and that the EU stress tests for parent European banks differ substantially from those performed in the U.S.

Thank you very much for the opportunity to comment on this rule. Should you have further questions, please contact Marcus Stanley, AFR's policy director, at (202) 466-3672 or marcus@ourfinancialsecurity.org.

4 David Enrich, Laura Stevens, and Alexandra Berzon, "Deutsche Maneuvers Around New Law," *Wall Street Journal*, April 13, 2011.

Following are the partners of Americans for Financial Reform.

All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

- A New Way Forward
- AARP
- AFL-CIO
- AFSCME
- Alliance For Justice
- Americans for Democratic Action, Inc
- American Income Life Insurance
- Americans United for Change
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Greenlining Institute
- Good Business International
- HNMA Funding Company
- Home Actions
- Housing Counseling Services
- Information Press
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research

- Krull & Company
- Laborers' International Union of North America
- Lake Research Partners
- Lawyers' Committee for Civil Rights Under Law
- Move On
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National People's Action
- National Council of Women's Organizations
- Next Step
- OMB Watch
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club
- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS
- U.S. Public Interest Research Group
- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

Partial list of State and Local Signers

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY
- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY

- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- Neighborhood Economic Development Advocacy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network
- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI

- WISPIRG

Small Businesses

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Pheonix AZ
- The Holographic Repatterning Institute at Austin
- UNET

From: Ramin Redjai

Proposal: 1425 (RIN 7100-AD77) - Reg Y - Capital Plans

Subject: Capital Plans

Comments:

Date: Aug 09, 2011

Proposal: Capital Plans
Document ID: R-1425
Document Version: 1
Release Date: 06/10/2011
Name: Ramin Redjai
Affiliation:

Comments:
The fact that the Fed is running out of options on dealing with the matters of our economic issues and their effect on the world economy is quiet concerning. However, there is an effective way of brininging economic stability back and to save the MBS market that is the root problem of the issues on hand. I would like to submit a plan or discuss my plan with the Fed or have the opportunity to present this plan at a meeting with a representative of the Fed. I am quiet certain that my plan will be welcomed by the board. Please respond back with an appointed time and place for submission of this plan. also, this plan can assist with the upcoming debt talks and could have very posative results for all parties involved. Thank you Concerned , Businessman, Father, Son

USAA®
9800 Fredericksburg Road
San Antonio, Texas 78288

August 5, 2011

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
regs.comments@federalreserve.gov

Re: Proposed Rule on Capital Plans (Regulation Y; Docket No. R-1425; RIN 7100-AD 77)

Dear Ms. Johnson:

United Services Automobile Association (USAA) is pleased to provide our comments with respect to the Board of Governors of the Federal Reserve System (the Board) Proposed Rule on Capital Plans[1] (the Proposed Rule).

USAA is a membership-based association, which together with its family of companies, serves present and former commissioned and noncommissioned officers, enlisted personnel, retired military, and their families. Since USAA's inception in 1922 by a group of U.S. Army officers, we have pursued a mission of facilitating the financial security of our members and their families by providing a full range of highly competitive financial products and services, including personal lines of insurance, retail banking and investment products. Our core values of service, honesty, loyalty and integrity have enabled us to perform consistently and be a source of stability for our members, even in the midst of the unprecedented financial crisis of recent years.

USAA Federal Savings Bank (FSB), an indirect wholly owned subsidiary of USAA, is a federally chartered savings association organized to offer personal retail banking services. FSB was chartered in 1983, and is USAA's only savings association. USAA is, therefore, a grandfathered unitary savings and loan holding company.

The Proposed Rule release (in Footnote 9) indicates that through separate rulemaking or by order, it is expected that the Proposed Rule's requirements would be extended to large savings and loan holding companies and nonbank financial companies supervised by the Board pursuant to Section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act).[2] As a large savings and loan holding company (SLHC), USAA has significant concerns regarding the implications of any future extension of the Proposed Rule. Specifically, USAA is concerned with the application of Bank Holding Company (BHC) capital requirements to SLHCs and the Board's ability to influence capital distributions, specifically, "dividends" to policyholders and members.

[1] Capital Plans, 76 Fed. Reg. 35351 (June 17, 2011).
[2] *Id.* at 35352 n.9.

A. Consider SLHC risk profiles prior to implementation of capital requirements and capital plans.

We appreciate the Board's stated intention in its Supervisory and Regulation (SR) letter 11-11[3] (SR 11-11) to take into account any unique characteristics of SLHCs and coordinate with the primary supervisors and functional regulators of the parent or its nondepository subsidiaries. As expressed in our comment letter submitted on May 23, 2011,[4] USAA has significant concerns that imposing existing BHC capital requirements on insurer SLHCs without rationalizing those guidelines with insurer capital requirements and existing state regulations will result in inappropriate capital requirements and ratings for insurer SLHCs. The assessment of the condition, performance and activities of insurer SLHCs through a consolidated asset-based framework would not capture the unique risk profile of insurers. Because insurers with affiliated depository institutions have traditionally operated in SLHC structures, it is critical the Board incorporate the distinctive features, controls and existing supervision of insurance company operations by modifying BHC supervisory capital requirements for insurer SLHCs.

The business and risk profile of SLHCs often is fundamentally different from that of BHCs. For example, commercial banks typically extend loans to business as well as consumers, which can result in risk concentrations within entities and particular industries. On the other hand, USAA's savings and loan subsidiary, like those of many other SLHCs, lend to consumers, thus mitigating concentration risk. Further, in contrast to most BHCs and SLHCs, Unitary SLHCs operate diversified businesses outside the banking industry as permitted by the Home Owners' Loan Act. For USAA, our insurance enterprises represent a significant portion of our consolidated revenue. The same would not be true for BHCs, which operate primarily in the banking industry. We reiterate the importance of considering these unique aspects of SLHC business and risk profiles when implementing any new supervisory requirements on SLHCs.

We also appreciate the Board in SR 11-11 acknowledges that it will take time for supervisory staff to better understand SLHC's operations and business model.[5] We reiterate our recommendation from our May 23 comment letter that the Board partner with SLHCs and study their unique characteristics to systematically rationalize the BHC capital requirements with insurer SLHC risk profiles prior to the implementation of SHLC capital plans and capital requirements.[6]

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[3] Board of Governors of the Federal Reserve System, Division of Banking Supervision and Regulation, Division of Consumer and Community Affairs, SR 11-11 / CA 11-5, *Supervision of Savings and Loan Holding Companies (SLHCs)*, dated July 21, 2011.

[4] Letter from Steven Alan Bennett, General Counsel, USAA, to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, at 1(May 23, 2011), *available at* http://www.federalreserve.gov/SECRS/2011/May/20110526/OP-1416/OP-1416_052311_73334_478586071148_1.pdf.

[5] SR 11-11, *supra* note 3.

[6] Letter from Steven Alan Bennett to Jennifer J. Johnson, *supra* note 4, at 2.

B. Exempt dividends to members and policyholders from the definition of capital distributions.

If the Proposed Rule is extended to large SLHCs, USAA, as an insurer, has concerns about the broad definition of capital distributions. The definition of capital distributions in the Proposed Rule includes "any similar transaction that the Federal Reserve determines to be in substance a distribution of capital."[7]

Like many insurance companies, USAA pays "dividends" and other similar distributions to its policyholders and members. As a state-regulated insurer, USAA's payment of these distributions is subject to regulation under state laws and primarily by the Texas Department of Insurance. USAA's decision to pay dividends and other similar distributions is influenced by a number of factors including the association's financial performance, claims and catastrophe costs, the investment market and the ongoing financial strength of the association.

We are concerned that such policyholder distributions could fall within the broad language of the proposed definition of capital distributions because they are approved annually by the board of directors and funded from annual earnings and policyholder surplus. These distributions, however, are unlike stock dividends. First, these distributions are not based on ownership rights, but represent a return of insurable premiums paid by policyholders, and for that reason are generally tax free to the policyholder. Second, because policyholder distributions effectively decrease the cost of insurance to the consumer, these dividends impact consumer pricing and insurer competitiveness.

Insurance is a highly competitive industry and insurers compete on price. Policyholder dividends help insurance companies keep the effective cost of insurance low for customers. Insurers base premium costs on estimated expenses, including claims and catastrophe costs. If, for example, an insurer has a year with less than expected catastrophe costs that result in excess premiums, rather than keep this excess earned surplus, policyholder distributions allow the insurer to pay the excess back to its policyholders. Therefore, any inability of an insurer SLHC to pay such distributions effectively increases the cost of insurance for consumers.

Further, policyholder distributions help maintain strong customer relations. We believe a return of premium through dividends and distributions builds goodwill and encourages our members to renew their coverage. Maintaining insurance customers not only benefits and strengthens the SLHC, but decreases costs for consumers. Keeping an existing policyholder is less costly than adding a new customer.

Finally, imposing regulations on insurer SLHC distributions, which would not apply to non-SLHC insurers, puts insurer SLHCs at a competitive disadvantage. Strong insurance operations have a positive impact on an insurer SLHC and the depository institution it supports. We therefore urge the Board to expressly exempt dividends and other distributions to members and policyholders from the broad definition of capital distributions.

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[7] Capital Plans, 76 Fed. Reg. at 35359 (defining capital distribution in Regulation Y Section 225.8(c)(2)).

C. Measure materiality by relating a proposed capital distribution to capital adequacy and the SLHC's ongoing financial strength.

The Proposed Rule, if extended to large SLHCs, requires a SLHC to provide prior notice to the Federal Reserve before making capital distributions if the dollar amount of the capital distribution exceeds the amount described in the capital plan approved by the Federal Reserve. The Board provided an example of a *de minimis* exception relating to a 10 basis point reduction of Tier 1 risk-based capital. An unintended consequence of the proposed *de minimis* exception is that SLHCs with capital far in excess of requirements are unfairly impacted when compared to SLHCs with less excess Tier 1 risk-based capital. While USAA understands the Board's intent, a better measure for materiality would relate the proposed capital distribution to capital adequacy and the SLHC's ongoing financial strength. The *de minimis* exception should be the subject of a sliding scale that increases depending on the SLHC's capital level.

D. Maintain confidentiality of capital plans and stress tests.

Any final rule issued by the Board should expressly provide that capital plans, including stress tests submitted to the Board, will be confidential and not subject to public disclosure. Should capital plans and stress tests be made public, an insurer SLHC would be at a material disadvantage to other non-SLHC insurers. Disclosure of the results of stress test scenarios could give rise to member or policyholder responses that are unwarranted. Moreover, concerns with the consequences of potential public disclosure could influence the Board in its determinations of stress scenario parameters.

E. Delay implementation of capital requirements on SLHCs.

In the Supplementary Information section of the Proposed Rule, the Board acknowledges that the Proposed Rule is not mandated by the Dodd-Frank Act,[8] but relates to the Act insofar as the Act imposes enhanced prudential standards, including stress testing requirements, on large BHCs. As the Board has contemplated imposing the Proposed Rule's requirements on large SLHCs[9] that have not previously been regulated by the Board, we respectfully request that the Board not impose the Proposed Rule on SLHCs, if at all, until five years after the date of the Act's enactment. Such a delay would allow for the alignment the capital plan requirements with the institution of risk based capital requirements, with delayed effectiveness pursuant to Section 171 of the Act.[10] In the Proposed Rule, the Board has applied Section 171 for BHC subsidiaries of foreign banking organizations, thereby providing precedent for using Section 171 to delay application of the Proposed Rule to large SLHCs.

[8] *Id.* at 35352.

[9] *Id.*

[10] Section 171 of the Dodd-Frank Act governs risk-based capital (RBC) requirements and provides that the Board establish minimum leverage and RBC requirements on a consolidated basis for SLHCs. The Dodd-Frank Act provides that for any depository institution holding company that was not previously supervised by the Board, the RBC requirements are effective five years after the date of enactment of the Dodd-Frank Act. *See* Section 171(b)(4)(D) of the Dodd-Frank Act. We note that Congress drafted this section with the words "shall be effective" five years after the date of enactment and did not provide for a phase-in period over the course of the five-year period.

F. Allow SLHCs an opportunity to comment on future proposed rulemakings.

If the Board extends the requirements of the Proposed Rule to large SLHCs as suggested in the Proposed Rule Supplementary Information, we respectfully request the Board issue a formal Proposed Rule and allow SLHCs and impacted entities to comment on the specific implications of such a rule.

* * * * *

USAA appreciates the important role the Board will play in providing for the safe and sound operation of the banking system in the United States. We appreciate the Board's consideration of our comments and look forward to working with the Board in the future. Should you have any questions or wish further clarification or discussion of our points, please contact Michael Broker at 210-498-0029.

Sincerely,

Steven Alan Bennett
Executive Vice President
General Counsel & Corporate Secretary