National Association of Industrial Bankers

NAIB

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April 19, 2013

Mr. Gary A. Kuiper
Counsel
Comments, Room NYA-5046
Federal Deposit Insurance Corporation
550 17th St.
Washington, DC 20429

VIA EMAIL TO: comments@FDIC.gov

Re: Request for comments regarding Proposed Agency Information Collection Activities.

Dear Mr. Kuiper,

The National Association of Industrial Bankers (NAIB)[1] appreciates the opportunity to respond to the Request for Comments published in the Federal Register on February 21, 2013 beginning on page 12141, by submitting the following comments on behalf of our member banks regarding the proposed changes in information required to be filed as part of an institution's call reports.

Our member banks are particularly concerned about the requirement applicable only to institutions whose parent holding company is not a bank or savings and loan holding company in which the institution would report in Schedule RC-M the total consolidated liabilities of its parent holding company annually as of December 31 to support the Board of Governor's administration of the financial sector concentration limit established by Section 622 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Parent holding companies of industrial banks will fall into this category. While our members understand the purpose for requesting this information and have no concern about reporting it per se, the requirement to obtain the information through a call report instead of another means presents several issues outlined below.

Due to these concerns, NAIB, on behalf of its member banks, requests and recommends that the Federal Reserve devise another method to collect this information

[1] First chartered in 1910, industrial banks operate under a number of titles; industrial banks, industrial loan banks, industrial loan corporations, thrift and loan companies. These banks engage in consumer and commercial lending on both a secured and unsecured basis. They do not offer demand checking accounts but do accept time deposits, savings deposit money market accounts and deposits that may be withdrawn through negotiable orders for withdrawal ("NOW" accounts). Industrial banks provide a broad array of products and services to customers and small businesses nationwide, including some of the most underserved segments of the U.S. economy. Our members are chartered in California, Nevada and Utah.

and not include it in a bank's call reports. There are more cost effective and less burdensome means available to obtain this information without imposing the requirements on banks.

Liabilities of some parent holding companies are not public information and should be maintained confidentially when efficient and cost effective options are available that would avoid public disclosure.

Section 622(b) of the Dodd-Frank Act ("DFA") provides:

> . . . a financial company may not merge or consolidate with, acquire all or substantially all of the assets of, or otherwise acquire control of, another company, if the total consolidated liabilities of the acquiring financial company upon consummation of the transaction would exceed 10 percent of the aggregate consolidated liabilities of all financial companies at the end of the calendar year preceding the transaction.

Section 622(d) of the DFA authorizes the Board of Governors of the Federal Reserve to adopt implementing regulations. The Request for Comment was issued by the Federal Reserve, the OCC and the FDIC instead of the Federal Reserve alone as part of a request for comments covering several changes to the call report.

Nothing in Section 622 of the DFA mandates public disclosure of total holding company liabilities. It only requires the Federal Reserve to collect that information so it can calculate aggregate liabilities for each year.

Requiring public disclosure of this information is highly objectionable to both publicly and privately held holding companies. Nothing in the law mandates public disclosure and disclosure of individual company information is not unavoidable when the Federal Reserve's fulfills its responsibilities to gather this data.

Unlike a bank holding company or most savings and loan holding companies, which tend to be shells only holding bank stock, many industrial bank parent holding companies engage in other business activities, some of which have no connection to the bank other than common ownership. For many reasons, information about holding company liabilities may be proprietary and confidential and disclosing it to the public would be objectionable and possibly harmful to the holding company. Requiring this information to be publicly disclosed regardless of the harm that it may cause to the holding company cannot be justified when that information can easily be obtained by other means while maintaining its confidentiality.

Many industrial banks are owned by holding companies that are not publicly traded. Their information is proprietary and not otherwise publicly available in any other circumstance. Requiring public disclosure of the individual company information

gathered by the Federal Reserve would unnecessarily violate the legal rights to privacy of these companies and possibly cause considerable harm to the company.

It is potentially a big problem for publicly traded parent companies as well. The date when information must be reported to the Federal Reserve for purposes of Section 622 of the Dodd-Frank Act may not correspond to the parent's fiscal year end or a reporting date required by federal securities laws. Publicly traded companies must be careful whenever it publicly releases company information that might be tracked by investors and analysts. Some holding companies will not have audited figures on the date information about liabilities will need to be reported to the Federal Reserve for purposes of Section 622. It is critically important for the purpose of complying with federal securities laws that a company not be required to publicly disclose financial information before it has been properly audited and verified as ready for public release.

A better option is for each federal regulatory agency to adopt a regulation requiring a holding company that is not a bank or savings and loan holding company to provide information about total liabilities to the Board annually on forms specified by the Board and provide that the only the aggregate figures are available to the public. That would actually be a more efficient way to obtain the information than requiring the holding company to give the information to the bank then have the bank include it on a call report then have the regulator check the call report.

Timing can be a problem when holding company financial statements are not finalized as soon as call reports. A parent company may utilize a fiscal year rather than a calendar year.

Timing will be a problem in other ways besides the confidentiality issue. Some industrial bank holding companies are large and complex corporate groups. Their annual audits require considerable work and often take several months to prepare. Further, fiscal year-end for some parent holding companies may be later than its subsidiary institution. Accordingly, call reports are typically filed before these parent's annual audits are done and year-end numbers are finalized, and may even be filed before the parent's fiscal year has ended. It would make more sense to require an Industrial Bank holding company to file the information when it becomes available in the finalized annual audit or at least set a deadline for filing the information at a time after the calendar year end. For publicly held industrial bank holding companies, providing this information after the parent has filed its annual Form 10-K would seem to be a reasonable approach. If that information must be filed with the December 31 call report, it will rarely contain final audited numbers and may even include estimates.

Some industrial bank parent holding companies do not prepare the parent's financial statements according to GAAP but instead utilize foreign or international accounting rules.

Requiring that information to be provided in accordance with GAAP could require considerable additional work by the auditors and expense to the parent holding

company. The narrative to the request for comments notes that the Financial Stability Oversight Council recommended that the liability figures ". . . of a financial company (that is not subject to consolidated risk-based capital rules substantially similar to those applicable to bank holding companies) should be calculated according to GAAP ***or other appropriate accounting standards applicable to such company.***" [emphasis added]. NAIB believes it would be unnecessarily burdensome to prepare financial statements of a large corporate group according to GAAP solely to provide aggregate indebtedness numbers for the purpose of processing change of control applications not involving that company and recommends accepting numbers from a foreign parent if the numbers are prepared in accordance with accounting rules applicable in the company's home country and would not be substantially different from GAAP.

Attestation.

As noted in the request for comments, the CFO of a subsidiary bank cannot certify information about the parent holding company that the bank CFO does not prepare. Certifying numbers that were merely given to the person providing the certification would be a very unusual practice and many of our member bank CFOs will be unable to provide the required certification. What if the number turns out to be inaccurate? Would the bank CFO be held responsible if the error is material?

All of these issues are eliminated simply by obtaining the information directly from the parent holding company and let the CFO who is responsible for the numbers certify their accuracy.

Conclusion.

There is no dispute about whether the Board is entitled to obtain information about a parent holding company's liabilities. That information can easily be obtained directly from the parent holding company. Obtaining it directly from the parent holding company would allow the Board to maintain the confidentiality of information about privately held holding companies, which is important for some holding companies. For these reasons we urge the agencies to adopt a system to obtain this information directly from the parent holding companies and not burden the bank or require the bank to certify what it may not have the ability to actually verify.

Sincerely,

Frank R. Pignanelli
Executive Director