

April 11, 2011

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Ladies and Gentlemen:

The Clearing House Association L.L.C. (“The Clearing House”),¹ an association of major commercial banks, and the American Bankers Association (“ABA”)² are writing to express certain preliminary concerns that we have regarding the Basel II Advanced Capital Adequacy Framework (“Basel II Rules”),³ Part VIII, disclosure rules issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (hereinafter collectively the “Agencies”) and the Consultative Document: Pillar 3 disclosure requirements for remuneration issued by the Basel Committee on Banking Supervision (the “Consultative Document”).⁴ These

¹ Established in 1853, The Clearing House is the nation’s 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. The Clearing House Association is a nonpartisan advocacy organization representing – through regulatory comment letters, amicus briefs and white papers – the interests of its owner 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 The Clearing House’s web page at www.theclearinghouse.org.

² ABA represents banks of all sizes and charters and is the voice for the nation's \$13.4 trillion banking industry and its two million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities.

³ 72 Fed. Reg. 69288 (December 7, 2007).

⁴ Basel Committee on Banking Supervision, “Pillar 3 Disclosure Requirements for Remuneration,” December 2010, www.bis.org/publ/bcbs191.pdf.

disclosure rules provide guidance on the public disclosure (Pillar 3) requirements for banks employing the Basel II Advanced Approaches.⁵ While we plan to submit additional comments regarding other provisions of the Basel II Rules that we believe require clarification, we wanted to take this opportunity to identify certain issues that are of concern to our members. The Clearing House and ABA also would welcome an ongoing dialogue with the Agencies on the issues raised herein and other Pillar 3 issues.

Executive Summary

The Clearing House and ABA support the Agencies' objective of improving market discipline by requiring banks to provide enhanced and meaningful public disclosures.⁶ To further this objective, The Clearing House and ABA recommend that:

- the Agencies provide sufficient notice to a core bank⁷ when granting it permission to exit its parallel run;⁸
- the annual Pillar 3 disclosure submission deadlines be no earlier than the corresponding SEC filing deadlines (60 days);
- the first Pillar 3 disclosure submission deadline be a minimum of 60 days after quarter end; and
- the disclosures described in the Consultative Document regarding remuneration not be adopted by the Agencies.

Our comments on Basel II Pillar 3 disclosures, developed in consultation with representatives from all U.S. core banks, are presented below.

A. The Agencies should provide sufficient notice when they grant permission to a core bank to exit its parallel run.

The Clearing House and ABA are concerned that a core bank may not have sufficient time to review with, and obtain the approval from, senior management and the bank's board of directors for its initial Pillar 3 disclosures in advance of exiting its parallel run in time to assure the accuracy and completeness of these Pillar 3 disclosures. To facilitate the transition from parallel run to the first reporting period for which Pillar 3 disclosures are required, The Clearing House and ABA respectfully request that the Agencies provide notice of their approval to the

⁵ 72 Fed. Reg. at 69432-69445.

⁶ 72 Fed. Reg. at 69384.

⁷ "Core banks," as used in this letter, are those that are required or elect to apply the Advanced Risk-Based Approaches.

⁸ A satisfactory "parallel run" is defined as a "period of at least four consecutive calendar quarters during which a bank complied with all the qualification requirements to the satisfaction of its primary Federal supervisor." 72 Fed. Reg. at 69301.

bank to exit its parallel run at least thirty days prior to the end of the bank's final parallel-run quarter.

For example, if a core bank is granted permission to exit the parallel run as of December 31, 2011, we request that the bank receive notice of that approval from the Agencies no later than December 1, 2011.⁹ In this example, the bank would need to provide Basel II Pillar 3 disclosures for the March 31, 2012, reporting period, which, if 60 days are permitted for the initial Pillar 3 disclosures, would be due by May 30, 2012 (See Section C below).

B. Annual Pillar 3 disclosures submission deadlines should be no earlier than those of SEC Reporting (Annual Reports on Form 10-Ks).

In a joint Clearing House and ABA letter dated February 25, 2008 (a copy of which is attached hereto for your convenience), we requested that the Agencies delay their Basel II year-end Pillar 3 disclosure submission deadline to correspond with the later of existing regulatory or SEC reporting deadlines. We noted that the Basel II Rules permit a bank to provide a summary on its website that specifically indicates where all Pillar 3 disclosures may be found, including those provided in its SEC filings.¹⁰ Since annual reports on Form 10-Ks are not required to be filed with the SEC until 60 days after year-end, this creates a timing issue for certain disclosures that will reference a previously filed Form 10-K or annual report from a disclosure matrix.

In the Agencies' letter dated May 5, 2008, to The Clearing House and ABA, the Agencies acknowledged our concerns about the potential timing issue between banks' public disclosures of Pillar 3 information contained in their SEC reports and the Agencies' public disclosure of information contained in Schedules A and B of the FFIEC 101 report (and data items 1 and 2 of the operational risk Schedule S). The Agencies also stated that, although they decided to leave the proposed reporting due dates in place, they would evaluate different options during the initial parallel run reporting periods. Since most of the core banks have entered into their parallel run, The Clearing House and ABA respectfully request that the Agencies revisit the option to permit core banks to publish year-end Pillar 3 disclosures no earlier than 60 days after the end of their annual reporting period.

We note that this change would be consistent with many of the disclosure requirements which are "already required by, or are consistent with, existing GAAP, SEC disclosure requirements, or regulatory reporting requirements for banks."¹¹ The Clearing House and ABA believe that providing comparable, transparent, complete and relevant disclosures that align the governance and disclosures with the most recently filed annual period would fulfill the objective of Pillar 3 to encourage market discipline.¹² We believe that extending the filing date

⁹ These dates have been chosen for illustrative purposes only and should not be construed as a request for a specific date to exit parallel run.

¹⁰ 72 Fed. Reg. at 69432, n. 5.

¹¹ *Id.* at 69384.

¹² *Id.* at 69289.

of the year-end Pillar 3 disclosures to no earlier than 60 days after end of the annual reporting period, as requested, would help achieve that goal.

C. The Agencies should permit banks a minimum of sixty days after quarter end to submit their first Pillar 3 disclosures.

Given that the Pillar 3 disclosures are both extensive and new, banks believe that additional time is necessary in the first disclosure period to review and cross-reference their Pillar 3 disclosures to other public documents. Therefore, The Clearing House and ABA respectfully request that the Agencies permit a minimum of 60 days after quarter end for banks to submit their initial Pillar 3 disclosures.

D. The approach mandated by the Dodd-Frank Act appropriately addresses the risks associated with compensation arrangements; we do not support the Basel Committee’s proposed Pillar 3 disclosure requirements for remuneration.

On December 27, 2010, the Basel Committee on Banking Supervision issued a consultative document on “Pillar 3 disclosure requirements for remuneration.” We do not support the Consultative Document’s proposed Pillar 3 disclosures for remuneration, primarily because they do not consider the ability of local jurisdictions to implement their own legislative and regulatory approaches to what is fundamentally a corporate governance issue. As required by Section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), the Agencies are in the process of issuing proposed rules¹³ that foster an appropriate link between balanced risk management and compensation structures. The approach mandated by Dodd-Frank addresses the risks associated with compensation arrangements by prohibiting certain arrangements and requiring quantitative disclosures to regulators. This type of approach addresses concerns that compensation arrangements could encourage inappropriate risk. As a result, the disclosures described in the Consultative Document regarding remuneration are unnecessary and should not be adopted by the Agencies.

¹³ Proposed Rule on Incentive Compensation (March 30, 2011) issued by the Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); National Credit Union Administration (NCUA); U.S. Securities and Exchange Commission (SEC); and Federal Housing Finance Agency (FHFA).

We greatly appreciate your consideration of our comments and suggestions and look forward to discussing them with you. If you have any questions or are in need of any further information, please contact David Wagner at (212) 613-9883 (email: David.Wagner@theclearinghouse.org) or Rob Strand at (202) 663-5350 (email: rstrand@aba.com).

Very truly yours,



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Very truly yours,



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cc:

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