Virginia O'Neill
Senior Counsel
Center for Regulatory Compliance
202-663-5073
voneill@aba.com

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By electronic delivery to:
www.regulations.gov

Ms. Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street N.W.
Washington, D.C. 20552

Re: Proposed procedural rules to establish supervisory authority over certain nonbank covered persons based on risk determination, Docket No. CFPB-2012-0021; RIN 3170-AA24

Dear Ms. Jackson:

The American Bankers Association (ABA) welcomes the opportunity to respond to the proposed rule establishing procedures to be used by the Bureau of Consumer Financial Protection (Bureau) to bring nondepository covered persons (Nondepositories) within the Bureau's supervisory authority based on a risk determination.[1] ABA represents banks of all sizes and charters and is the voice for the nation's $14 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than $165 million in assets.

A cornerstone of Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) was the authority given to the Bureau to establish a supervisory program for Nondepositories to ensure that federal consumer financial law is "enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition."[2] As noted in our comments on the Bureau's "larger participant" proposal, ABA fully supports the Bureau's efforts to define its Nondepository supervisory scope. Experience demonstrates that consumer protection laws and regulations must be enforced in a fair, comparable, and rational way if there is to be any hope that the legal and regulatory obligations are observed. ABA believes that establishing comparable accountability across all providers of comparable financial products and services is a fundamental mission of the Bureau.

Accordingly, we support the Bureau's next step in this process – the proposal of procedures by which a Nondepository covered person of *any* size, operating in *any* market for consumer financial products and services may become subject to the supervisory authority of the Bureau because it "is engaging, or has engaged, in conduct that poses risk to consumers with regard to

[1] 77 Fed. Reg. 31226 (May 25, 2012).
[2] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, 124 Stat. 1337, *to be codified at* 12 U.S.C. §5511(b)(4).

the offering or provision of consumer financial products or services."[3] Establishing procedures to exercise this authority efficiently, expeditiously, and fairly is essential to ensuring law abidance and transparency—without creating competitive distortions—for the benefit of consumers.

ABA believes that the supervisory jurisdiction Congress gave the Bureau in section 5514 is intended to fill the gaps presented by "larger participant" definitions that by their very nature can miss smaller competitors. As we noted in our comment to the initial Larger Participant proposal, competition is often a localized phenomenon, especially in rural markets in which financial services are limited and their providers are few in number. Community banks face competition not only from nationwide financial service providers, but also from local entities that lack a significant market share on a national level but are nonetheless sizable competitors in a particular local market. ABA supports the proposed procedures that will subject to the Bureau's supervisory authority even the smallest competitors who choose not to follow existing laws and regulations and are engaged in conduct that poses risk to consumers. Moreover, we believe that the possibility of oversight should encourage compliance efforts that might otherwise be lacking in entities that believe that they will never be subject to the Bureau's supervisory and record-keeping requirements because they fall below the applicable larger participant threshold. As such the proposed rule is an essential step toward ensuring that the Bureau enforces "Federal consumer financial law consistently" and that "markets for consumer financial products and services are fair, transparent, and competitive."[4]

Proposed section 1091.110 establishes procedures to petition for termination of an order bringing a Nondepository within the supervisory authority of the Bureau. Specifically, §1091.110(a) states that a Nondepository respondent to an order may petition the Director of the Bureau "no sooner than two years after issuance of such an order and no more frequently than annually thereafter."[5] Subparagraph (b) directs the petition for termination to state "the reasons supporting termination of the order, including any actions taken by a respondent since issuance of the order, and may include any supporting information or evidence that the petitioner believes is relevant to the Director's determination of the matter."[6] Although ABA appreciates the need to define clearly a minimum period of time that a respondent will be subject to the supervisory authority of the Bureau, we believe that the time period should be defined in terms of a minimum number of examination cycles, rather than a minimum time period. Indeed, it is unlikely that a Nondepository will be subject to more than one examination within the proposed two-year period, and we firmly believe that a determination by the Director that a Nondepository no longer poses risk to consumers and should not be subject to the Bureau's supervisory jurisdiction requires *at least* two full-scale, on-site examinations. The reports from these examinations will permit the Director to judge independently whether the remedial policies, procedures, and controls implemented by the respondent have in fact eradicated the previously identified risk posed to consumers.

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[3] *See* Dodd-Frank Act, *supra,* §1024(a)(1)(C), *to be codified at* 12 U.S.C. §5514(a)(1)(C).
[4] *Id*. at §5511.
[5] *See* 77 Fed. Reg.,*supra at* 31236.
[6] *Id.*

Similarly, ABA urges the Bureau to amend section 1091.113, which establishes the procedure followed when a Nondepository voluntarily consents to the Bureau's supervisory jurisdiction under Dodd-Frank Act §5514. Proposed §1091.113 provides that the consent agreement shall specify the duration of time that the Nondepository shall be subject to the Bureau's supervisory authority, and the Nondepository shall not be eligible to petition for termination of an order under pursuant to proposed section 1091.110. For the reasons stated above, ABA believes that the proposed rule should require a consent order to impose a minimum number of examination cycles – we suggest at least two – for Nondepositories that voluntarily consent to the Bureau's supervisory authority.

ABA appreciates the opportunity to comment on the proposed procedures to establish supervisory authority over a Nondepository that is engaging, or has engaged, in conduct that poses risk to consumers of financial products or services. If you have any questions about these comments or desire further input, please contact the undersigned at 202-663-5073 or voneill@aba.com.

Sincerely,

Virginia O'Neill

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Senior Counsel