March 2, 2012

By electronic submission to www.regulations.gov

United States Department of the Treasury
Attn: Financial Research Fund Assessment Comments
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Re: Docket number TREAS-DO-2012-0001
Assessment of Fees on Large Bank Holding Companies and Nonbank Financial Companies Supervised by the Federal Reserve Board to Cover the Expenses of the Financial Research Fund

Ladies and Gentlemen:

The Securities Industry and Financial Markets Association,[1] The Clearing House Association,[2] the American Bankers Association,[3] the Financial Services Roundtable,[4] and the Institute of

[1] SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.

[2] Established in 1853, The Clearing House is the oldest banking association and payments company in the United States. It is owned by the world's largest commercial banks, which collectively employ over 2 million people and hold more than half of all U.S. deposits. The Clearing House Association L.L.C. 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

International Bankers[5] (the "**Associations**") thank the Department of the Treasury ("**Treasury**") for the opportunity to provide our views in connection with the Treasury's notice of proposed rulemaking ("**Proposal**") regarding the assessment schedule for bank holding companies with total consolidated assets of $50 billion or more and nonbank financial companies supervised by the Board of Governors of the Federal Reserve System ("**Federal Reserve**") to collect assessments equal to the total expenses of the Office of Financial Research ("**OFR**")[6] under Section 155 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**" or "**Dodd-Frank**").[7]

The Associations' primary concern is that the OFR assessments should be transparent, equitable, reasonable, and predictable. We are unable to assess the proposed framework against these objectives because of the scant information provided in the Proposal or otherwise available. Congress has given the OFR and FSOC very broad mandates, but public visibility into how they will execute these mandates and the resources they will need is extremely limited. The OFR has yet to provide a long-term strategic plan of how it will support the FSOC, build out its capabilities and staffing, or identify its priorities. Before finalizing an assessment schedule, the OFR should develop and release a strategic plan to ensure the public understands its long-term objectives. In this letter we expand upon these concerns and make several suggestions, including:

---

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.

[3] The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its 2 million employees. Learn more at www.aba.com.

[4] The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for $92.7 trillion in managed assets, $1.2 trillion in revenue, and 2.3 million jobs.

[5] The Institute of International Bankers (IIB) is the only national association devoted exclusively to representing and advancing the interests of the international banking community in the United States. Its membership is comprised of internationally headquartered banking and financial institutions from over 35 countries around the world doing business in the United States. In the aggregate, IIB members' U.S. operations have approximately $5 trillion in assets, provide 25% of all U.S. commercial and industrial bank loans and contribute significantly to the depth and liquidity of U.S. financial markets.

[6] Under the Dodd-Frank Act, in addition to expenses of the OFR itself, expenses of the Financial Stability Oversight Council ("**FSOC**") and of the FDIC in implementing its orderly liquidation authorities ("**OLA**") are considered expenses of, and paid by, the OFR. See Sections 118 and 210 of Dodd-Frank, respectively.

[7] All Section references in this comment letter are to sections of the Dodd-Frank Act, unless otherwise noted.

- OFR expenses and budgeting process should be transparent, open to public comment, and subject to robust governance and controls to ensure maximum accountability and efficiency;
- Treasury should create an OFR advisory committee;
- The assessment schedule should ensure that assessments are reasonably allocated between the industry and the Federal Reserve, and ensure fairness;
- The calculation of the assessment basis for the initial assessment period should be clarified;
- The assessment-basis calculation should be revised to reflect 6 months of capital expenses rather than the proposed 12 months;
- The definition of total assessable assets should exclude separate account assets;
- The proposed dates of the assessment billing and collection process should be clarified and revised to ensure assessed companies have adequate notice of final assessments; and
- Treasury should clarify the conditions and procedure under which a company ceases to be an assessed company.

The Associations agree that Treasury's size-based methodology of determining assessments is simple and clear, but we disagree with the implicit premise that size is solely indicative of systemic risk underlying Treasury's statement that all assessed companies are by definition systemically important.[8]

We explain each of our main concerns in more detail below. As the OFR, FSOC and OLA evolve over time, and particularly if their associated expenses grow dramatically, the Associations may revisit these points and look forward to a continued dialogue.

OFR expenses and budgeting process should be transparent, open to public comment, and subject to robust governance and controls to ensure maximum accountability and efficiency.

The Dodd-Frank Act gives the FSOC and the OFR very broad mandates. The FSOC is charged with identifying risks to U.S. financial stability, promoting market discipline, and responding to emerging threats to U.S. financial stability. Dodd-Frank tasks the OFR with supporting the FSOC with broad data-collection and -standardization responsibilities, research mandates, and the development of risk-management tools, among other things. However, Dodd-Frank provides very little formal structure to ensure accountability or efficiency in pursuing these mandates. As a result, the scope of the activities of the FSOC and OFR could vary dramatically according to

[8] 77 Fed. Reg. 35 (Jan. 3, 2012), at 42. Although Congress established a quantitative threshold of $50 billion for bank holding companies subject to enhanced supervision by the Federal Reserve, it specifically instructed the Federal Reserve to design a program of increasingly stringent supervision based on a number of risk-related factors, of which size was only one. In doing so, Congress acknowledged that not all bank holding companies with total consolidated assets of $50 billion or more are systemically important.

the interpretations of these mandates by individual OFR directors and FSOC chairpersons. As we suggest above, a long-term strategic plan would be helpful in defining these mandates with more precision, and ensuring a consistent vision over time.

In addition, there is currently very limited visibility into the actual expenses and associated budgeting processes of the OFR, FSOC, and the FDIC's OLA implementation, much less the OFR's ultimate strategic vision. As we noted at the outset of this comment letter, the OFR has yet to provide a strategic plan of how it will support the FSOC, build out its capabilities and staffing, or identify its priorities. In the absence of a strategic plan, the President's Budget for Fiscal Year 2013 offers scant detail. While it contains 2011 actual and 2012 and 2013 estimated expenses of the FSOC and OFR, it groups these into broad, generic categories, such as "personnel compensation" and "equipment." Given the lack of detail associated with these expense categories, the definition of capital expenses contained in OMB Circular A-11 and referenced in the Proposal does not permit the public to differentiate between capital and operating expenses with any confidence. This limited visibility is compounded by the fact that since the OFR budget is not subject to the appropriations process there is currently no public process to thoroughly review and scrutinize the details of the OFR budget. The Associations believe this is all the more reason for the Treasury to proceed in a thoughtful manner, ensuring a fair and equitable assessment schedule.

We suggest that actual and budgeted expenses: (i) be publicly disclosed in detail on a semi-annual basis, along with an explanation of the budgeting process, negative actual-to-budget variances and the rationale for individual budgeted expenses; (ii) be identified as capital or operating expenses; and (iii) be subject to public comment. Disclosures should be made sufficiently in advance of the assessment schedule to allow the Treasury to consider public comment as they would in a rulemaking subject to the Administrative Procedure Act and to conduct an appropriate cost-benefit analysis to determine whether the activities associated with the proposed expenses outweigh the costs of the proposed assessment. The OFR should also consider providing this information in connection with its annual report to Congress required under Section 153(d). Visibility into actual expenses, budgeted expenses and the budgeting process itself would assist in addressing concerns of limited accountability and fluctuations in assessments from one period to the next. Further, creating a process that promotes greater transparency and public participation will help to ensure ongoing fairness and equity as the responsibilities and duties of the OFR and FSOC evolve and additional companies become subject to assessments over time.

In addition to increasing transparency and public input, the OFR should also adopt robust governance and controls around budgeting and expense practices. These could include, for example, requirements that the OFR provide detailed justification in the event expenses increase at a rate in excess of a specified threshold (e.g., 10%) over assessment periods. In the President's Fiscal Year 2013 Budget, OFR expenses increased dramatically from 2011 actual to 2012 estimated, and are budgeted to increase again in 2013, although at a somewhat moderated pace. Given this anticipated growth and the resulting corresponding increase in industry assessments, it is imperative that the OFR construct adequate governance and controls to ensure these expenses are justified and identified well in advance of assessment.

Transparency and robust governance would also keep OFR expenses to a minimum consistent with its statutory mission and encourage fiscal responsibility. Lacking this, the OFR could conceivably grow over time to a size and scope rivaling Treasury itself given its broad and challenging mandate and unlimited statutory funding. In furtherance of the goal of fiscal responsibility, the OFR should continue to utilize resources from other federal agencies, including the detailing of staff, where appropriate, as permitted under Section 152(e), without reimbursement. This includes using Treasury staff where possible. Furthermore, FDIC expenses associated with OLA implementation should be well-defined to avoid shifting costs to the OFR that are more properly borne by the FDIC. The financial-services industry has already been subject to a number of past or proposed assessments and costs, including deposit-insurance assessments, Financing Corporation fees, various state and OCC supervisory-fee assessments for banks, President Obama’s proposed home-refinancing program, heightened capital requirements under Basel III, and the global systemically-important-bank surcharge. Given the cumulative impact of these assessments and costs, we believe that the OFR should do its utmost to operate in the most efficient manner.

Treasury should create an OFR advisory committee.

We also recommend creating an advisory committee to the OFR comprised of relevant stakeholders, including industry representatives, with input into the OFR’s governance and expenses. Section 152(h) specifically authorizes the OFR to appoint advisory committees useful in carrying out its functions. As has been the case with other Dodd-Frank mandates, advisory committees can be a source of expertise to agencies and confer increased legitimacy on their actions. For example, the FDIC created the Systemic Resolution Advisory Committee to provide it with advice and recommendations on a broad range of issues regarding the resolution of systemically important financial companies. Where, as here, Dodd-Frank has created agencies with broad responsibilities but few constraints, an advisory committee is particularly appropriate.

The assessment schedule should ensure that assessments are reasonably allocated between the industry and the Federal Reserve, and ensure fairness.

The Dodd-Frank Act provided interim funding for the OFR from the Federal Reserve through July 2012. Had Treasury proceeded to establish and build out the OFR without delay, the Federal Reserve would have funded a significant portion – if not all – of the initial start-up costs, including capital expenses, associated with establishing the OFR, creating the FSOC and its designation methodology, and implementing OLA during this interim period. However, the unanticipated delay in establishing the OFR will shift a significant portion of these initial start-up costs beyond the two-year period during which Congress intended the Federal Reserve to bear

OFR expenses. We note that in the President's Fiscal Year 2013 Budget total FTEs supported by the Financial Research Fund increases from 19 for FY2011 to an estimated 312 at the end of FY2013, and the total cost of operations during the same time period increases from just over $14 million to almost $158 million. While we do not have projections beyond FY2013, this large increase demonstrates that the Treasury is only now beginning to build out the OFR, resulting in a shift in start-up costs from the Federal Reserve to assessed companies. We believe that a corresponding adjustment should be made to the initial assessment basis to adjust for the delay in establishing the OFR and for those initial start-up costs that, as a result, will not be incurred until after July 2012. Such an adjustment would better reflect Congressional intent in the Dodd-Frank Act. The delay in OFR getting off the ground has also heightened fairness concerns associated with the assessment schedule. For example, the rule governing the determination of nonbank financial firms for Federal Reserve supervision is, understandably, not yet final and no such firms have been designated. Therefore, the assessment fee rate does not yet reflect any nonbank firms. In addition, the timing of a nonbank financial company's designation relative to a determination date will affect the portion of expenses it bears. At the extreme, under the Proposal, if the FSOC designated a nonbank financial company on January 1, 2013, it would not be responsible for OFR expenses until the assessment period beginning October 2013. The same delay would apply to a bank holding company that becomes an assessed company shortly after a determination date.

In the Proposal, Treasury states its intention to review its methodology for determining the assessment fee for nonbank financial companies as the FSOC begins to make determinations regarding Federal Reserve supervision of nonbank financial companies.[9] We fully agree, and would encourage the Treasury to consider the timing issue as it reviews its approach.

The Associations believe that these issues of fairness are a strong argument for ensuring the Federal Reserve bear start-up costs as Congress intended. The Treasury could delay funding the OFR through industry assessments until the OFR has been fully established and its expenses stabilize. In the meantime, the Federal Reserve Board could continue to fund the OFR. While Section 155(d) requires the Treasury to establish an assessment schedule after July 21, 2012, it does not specify the effective date of such assessment schedule. Furthermore, while Section 155(c) requires the Federal Reserve to provide interim funding to the OFR through July 21, 2012, it does not preclude it from providing funding beyond this date. Thus, Dodd-Frank does not foreclose this option, and it would be consistent with Congressional expectations regarding OFR start-up costs.

The calculation of the assessment basis for the initial assessment period should be clarified.

Section 150.4 of the Proposal states that the initial assessment basis shall include capital expenses for the OFR and FSOC through April 30, 2013, and the FDIC's expenses associated

[9] See 77 Fed. Reg. 35 (Jan. 3, 2012), at 38 (note 11) and 40 (note 12).

with the implementation of OLA through September 30, 2013. However, the initial assessment period concludes on March 31, 2013. Accordingly, the initial assessments for capital expenses for the OFR and FSOC and OLA-implementation expenses should be limited to funding projected expenses through March 31, 2013. This limitation would mirror the treatment of budgeted operating expenses of the OFR and FSOC for this initial assessment period.

The assessment-basis calculation should be revised to reflect 6 months of capital expenses rather than the proposed 12 months.

The Treasury currently proposes to assess companies based on anticipated capital expenses of the OFR over a 12-month period.[10] We believe that Treasury should revise this calculation to include only six months of anticipated capital expenses for two reasons. First, assessing companies every six months for 12 months of capital expenses would result in an unnecessarily large amount of unused resources from one assessment period to another. Second, this treatment of capital expenses differs from that of operating expenses and OLA-implementation expenses, where the Treasury proposes to assess only six months of these expenses per assessment period. The Proposal provides no explanation for this disparity.

The definition of total assessable assets should exclude separate account assets.

The Proposal generally defines "total assessable assets" as total consolidated assets.[11] The Associations suggest that Treasury modify the definition by excluding separate account assets of insurance companies. While separate account assets are consolidated for GAAP purposes, they differ from general account assets in that they are not guaranteed by the insurer. Instead, they hold premiums from customers associated with variable investment contracts in which the customer, not the insurer, assumes market risk. Unlike general account assets, separate account assets are also not available to claims by general creditors of the insurer. Since separate account assets are not indicative of insurer risk, we believe they should be excluded from the definition of total assessable assets. This exclusion would be consistent with other related FSOC rulemaking. Specifically, the FSOC has proposed excluding separate account assets from its calculation of leverage and short-term debt ratios for purposes of identifying nonbank financial companies for Federal Reserve supervision. It did so because assets of separate accounts are not available to claims by general creditors.[12]

---

[10] See section 150.4(b) of the Proposal.

[11] See section 150.2 of the Proposal.

[12] See 76 Fed. Reg. 64264 (Oct. 18, 2011), at 64282.

The proposed dates of the assessment billing and collection process should be clarified and revised to ensure assessed companies have adequate notice of final assessments.

The timeline established in the proposed rule text differs in several respects from that set forth in the table showing proposed dates of the assessment billing and collection process contained in the preamble.[13] The table in the preamble states that confirmation statements will be available to assessed companies about *two weeks after the determination date*, which would be mid-January or mid-July for semiannual assessment periods. However, the preamble and section 150.6(a) of the Proposal specify that Treasury will send confirmation statements to assessed companies *no later than the 30th calendar day prior to the first day of a semiannual assessment period*, which would be early the following March or September. While these statements are not technically inconsistent, there is a great deal of difference between whether Treasury sends confirmation statements in mid-January or early March in any given year. We recommend that Treasury revise the proposed rule text to reflect the table in the preamble – that is, that Treasury will send confirmation statements within 14 calendar days after the determination date.

The table in the preamble also states that Treasury will publish the assessment-fee rate about one month prior to payment date. While section 150.2 of the proposed rule text also states that the Treasury will publish the assessment fee rate, it does not specify when or where. We suggest Treasury amend section 150.5(b) of the Proposal to state that Treasury will publish the assessment fee rate for each upcoming semiannual period in the Federal Register at least 45 calendar days prior to the payment date. We further suggest that the Treasury provide an additional 30 days notice if the assessment fee rate exceeds a specified threshold, e.g., 10%, over the prior period. Such additional time will allow institutions to better account for the resulting increases in their budgets and financial planning processes.

These revisions, which are important in order to provide predictability to the firms regarding their semiannual fee, can be easily accomplished if the determination date is moved earlier by 30 days. To illustrate the impact of our proposed changes, we have identified the key dates for the first semiannual period of April 1, 2013 to September 30, 2013 below:

- The determination date becomes November 30, 2012;[14]
- Treasury sends assessed companies a confirmation statement by December 14, 2012 (i.e., two weeks after the determination date);

[13] See 77 Fed. Reg. 35 (Jan. 3, 2012), at 39.

[14] Under the Proposal, total assets of an assessed company are based on the average of total assets at end of period as reported on such company's four most recent Consolidated Financial Statements for Bank Holding Companies. Under the suggested time frame, an assessed company's most recent report would be as of September 30, 2012, and filed with the Federal Reserve on or before October 31, 2012, giving Treasury ample time to meet the proposed determination date.

- Treasury publishes the assessment fee rate in the Federal Register by January 31, 2013 (i.e., at least 45 calendar days prior to the payment date), unless the assessment fee rate exceeds the previous assessment period by 10%, in which case the assessment fee rate is published by December 31, 2012;
- Treasury sends each assessed company an electronic billing notification by March 1, 2013 as specified in the Proposal; and
- Assessed companies pay their assessments on March 15, 2013 as specified in the Proposal.

Treasury should clarify the conditions and procedure under which a company ceases to be an assessed company.

Unlike the Federal Reserve's proposed rule implementing Sections 165 and 166[15] and the FDIC's and Federal Reserve's joint final rule on resolution plans under Section 165(d),[16] the Proposal does not specifically address the conditions and procedure under which a company ceases to be an "assessed company." We believe the Proposal would benefit from additional clarity on this point and should be consistent with the other rulemakings as described above pertaining to assessed companies.

* * * *

We welcome the opportunity to comment on this Proposal. The Associations stand ready to assist the Treasury in any way that we can to achieve a transparent, equitable, reasonable, and predictable assessment structure that adequately reflects the statutory provisions. If you have any questions, please do not hesitate to e-mail or call the undersigned.

Sincerely,

Kenneth E. Bentsen, Jr. Executive Vice President, Public Policy and Advocacy Securities Industry and Financial Markets Association kbentsen@sifma.org / (202) 962-7400	Mark Zingale Senior Vice President and Associate General Counsel The Clearing House Association L.L.C. Mark.Zingale@TheClearingHouse.org / (212) 613-9812

[15] See 77 Fed. Reg. 594 (Jan. 5, 2012).

[16] See 76 Fed. Reg. 67323 (Nov. 1, 2011).

Wayne Abernathy
Executive Vice President,
Financial Institutions Policy and
Regulatory Affairs
American Bankers Association
wabernat@aba.com / (202) 663-5222

Richard M. Whiting
Executive Director and General
Counsel

brian@fsround.org / (202) 589-2417

Richard Coffman
General Counsel
Institute of International Bankers
rcoffman@iib.org / (646) 213-1149