

February 24, 2011

Financial Stability Oversight Council
Attn: Lance Auer
Deputy Assistant Secretary
United States Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Authority to Require Supervision and Regulation of Certain Nonbank Financial
Companies; RIN 4030-AA00

Dear Mr. Auer:

The American Bankers Association (ABA) appreciates the opportunity to comment on the Financial Stability Oversight Council's (Council) Notice of Proposed Rulemaking¹ regarding the Council's authority to require supervision and regulation of certain nonbank financial companies (proposal).² This rulemaking invites comment on a list of factors the Council proposes to consider and the process it would follow when determining whether a nonbank financial company should be supervised by the Board of Governors of the Federal Reserve System (Board).

We support the effort to ensure that no systemically important financial company is allowed to operate unsafely and unsoundly because it falls in a gap between supervisory systems. Section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA) was enacted to avoid that result, and the proposal tracks the language of section 113 very closely. Given that the proposal is conceptually very similar to the Advance Notice of Proposed Rulemaking (ANPR) published by the Council last year,³ we incorporate by reference the points we made in our comment to the ANPR.⁴ As noted in that letter, we believe it is important to apply comparable prudential standards to all systemically important financial companies that engage in similar activities or functions.

We appreciate the challenge faced by the Council in creating a workable system to identify systemically important nonbank financial institutions. The proposal, however, provides virtually no guidance that nonbank firms can use in their business planning and risk management.

¹ 76 Fed. Reg. 4555 (Jan. 26, 2011).

² 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. The majority of ABA's members are banks with less than \$165 million in assets. Learn more at www.aba.com.

³ 75 Fed. Reg. 61653 (Oct. 6, 2010).

⁴ See letter from Kathleen P. McTighe to the Council, dated Nov. 5, 2010 (available at http://www.aba.com/NR/rdonlyres/DC65CE12-B1C7-11D4-AB4A-00508B95258D/69604/cl_FSOC_NonbankFinCompanies2010Nov.pdf).

Instead, it relies on the broadly-stated statutory factors and a case-by-case process whereby a nonbank company will be notified by the Council of a proposed determination and the company will be provided the opportunity to respond. Moreover, there is no indication that the various factors will be weighted. As we noted in our comment to the ANPR, we believe the Council should focus on interconnectedness and the risk of contagion. Size or condition, by themselves, should not be a sufficient basis for designating a company as systemically significant.

As the Council gains experience with implementing section 113 of the DFA, we suggest that it publish more specific information about the factors that have led to determinations that nonbank companies should be supervised by the Board. This will enable other companies to make better informed decisions about the likelihood that they, too, will be brought within the Board's supervision, which in turn will help inform their business planning. Moreover, it will be important that a nonbank financial company designated by the Council as a company to be brought within the jurisdiction of the Board be given adequate time following such a designation to adjust to whatever heightened prudential standards apply.

The proposal differs from the ANPR in one potentially significant respect. The preamble to the proposal states that the Council proposes to use a framework for applying the ten statutory factors (plus whatever other factors the Council deems appropriate) that will divide the ten factors into the following six categories:

1. Size;
2. Lack of substitutes for the financial services and products the company provides;
3. Interconnectedness with other financial firms;
4. Leverage;
5. Liquidity risk and maturity mismatch; and
6. Existing regulatory scrutiny.

The preamble goes on to note that these six categories would be divided into two groups. The first group – size, lack of substitute, and interconnectedness – will seek to assess the potential for spillovers from a firm's distress to the broader financial system. The second group – leverage, liquidity risk and maturity mismatch, and existing regulatory scrutiny – would seek to assess how vulnerable a company is to financial distress. The preamble then provides a chart showing how each of the statutory criteria fits within the six categories identified by the Council.

Our members are unclear on the purpose and utility of the categorization and sub-categorization that the Council proposes to use. While we do not disagree that the categories and groups identified by the Council are consistent with the broader set of statutory criteria, we do not understand how those six categories and two groups will be used and whether they introduce new substantive factors. Thus, we request that the final rule clarify the significance of the six categories and the two broad groups and how financial institutions are to apply the information about those categories and groups in the institutions' business planning and risk management.

ABA suggested in our comment on the ANPR that the Council create an advisory committee. The proposal did not address this, and we urge the Council to revisit this issue. As we noted in our comment on the ANPR, such committees are used by other regulators (*see, e.g.*, the Federal Advisory Council and the Thrift Institutions Advisory Council created by the Federal Reserve

Board and the FDIC Advisory Committee on Community Banking). They provide a very helpful opportunity for the agencies to gain perspectives about various issues while providing a vehicle for industry views to be heard. Moreover, the statute clearly contemplates the use of such committees. Section 111(d) of the DFA states that the Council “may appoint such special advisory, technical, or professional committees as may be useful in carrying out the functions of the Council....” Given the enormous scope of issues that the Council will consider over the coming years, we believe that such committees, coupled with other communications with financial institutions on a less formal basis, would be very useful in helping the Council and its constituent members address issues in the most appropriate and robust fashion.

Similarly, we suggest that the process of identifying industry-specific metrics be ongoing and open. The preamble to the proposal states that “the metrics that are best suited to measure the six categories of systemic importance likely will differ across industry sectors. The Council will review these metrics on a periodic basis and revise them as appropriate.”⁵ We believe this is appropriate and essential to ensure that the designation of nonbank firms as systemically important be comprehensive and grounded in those factors that most clearly speak to systemic risk.

Thank you for considering our views. If you would like to discuss any of the points raised in our letter, please feel free to contact the undersigned at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark J. Tenhundfeld". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Mark J. Tenhundfeld

⁵ 76 Fed. Reg. at 4561.