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August 17, 2012

Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street NW.,
Washington, D.C. 20429

Re: Definition of "Predominantly Engaged in Activities that Are Financial in Nature or Incidental Thereto" (12 CFR Part 380; RIN 3064-AD73)

Dear Sir or Madam:

The Independent Community Bankers of America[1] (ICBA) welcomes the opportunity to comment on the FDIC's proposal to amend the definition of "financial activities" set forth in section 380.8 of the FDIC's notice of proposed rulemaking published in the Federal Register on March 23, 2011 titled "Orderly Liquidation Authority" (the "March 2011 NPR"). The March 2011 NPR proposed standards for determining if a company is predominantly engaged in financial activities for purposes of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act'). A company that is predominantly engaged in such activities is a "financial company" for purposes of Title II of the Dodd-Frank Act. If the financial company is also a "covered financial company," then for purposes of Title II, it would be subject to the FDIC's orderly liquidation rules. The orderly liquidation rules that were proposed in the March 2011 NPR other than section 380.8 were adopted in a Final Rule published on July 15, 2011.

ICBA's Comments

The Title I definition of "predominantly engaged in financial activities" under the Dodd-Frank Act is based upon activities that are "financial in nature' as defined in section 4(k) of the Bank Holding Company Act. The Federal Reserve Board previously published an Amended Notice of Public Rulemaking regarding the Title I definition of "predominantly engaged in financial activities." The Board wanted to clarify that any activity referred to

[1] *The Independent Community Bankers of America®, the nation's voice for more than 7,000 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best- in-class education and high-quality products and services. For more information, visit www.icba.org.*

in section 4(k) will be considered a financial activity without regard to conditions that were imposed on bank holding companies concerning the activity. The FDIC agrees with the exclusion of those conditions and limitations that the Federal Reserve Board has excluded and proposes to adopt the same approach in determining which activities are financial activities for purposes of Title II of the Dodd-Frank Act.

ICBA agrees with the FDIC that any interpretation of "financial in nature" under Title II should be consistent with the Federal Reserve's interpretation of it under Title I particularly since the Federal Reserve is the agency charged with interpreting and implementing section 4(k) of the Bank Holding Company Act. Inconsistent interpretations could frustrate the Congressional intent regarding Title II which is to provide for the liquidation of failing financial companies that pose a significant risk to the financial stability of the United States. Since the goal of Title I is provide the authority to require the supervision of certain nonbank financial companies that could pose a threat to the financial stability of the United States, that goal can be better fulfilled if the key term "financial in nature" is given the same meaning in both Titles I and II. Furthermore, both titles should work together in a manner that provides a comprehensive framework for monitoring and controlling companies that could have a serious adverse effect on the financial stability of the United States.

ICBA also agrees that if the interpretations were different, a company might rely on the Title I interpretation of "financial in nature" to incorrectly conclude that it is not subject to the Title II's orderly liquidation authority. Conversely, a company might use the Title II interpretation of "financial in nature" to incorrectly conclude that it is not eligible under the Financial Stability Oversight Council's Title 1 authority to be supervised by the Federal Reserve and subject to enhanced prudential standards.

In a letter to the Federal Reserve dated May 24, 2012, ICBA agreed with the Federal Reserve that when considering whether a company is predominantly engaged in financial activities, the financial activities under section 4(k) should be considered without regard to the conditions that are imposed on the activities. Defining financial activities for purposes of Title I to include all of the conditions imposed on the conduct of the activities by bank holding companies would enable some companies that are predominantly engaged in financial activities to avoid consideration for designation by FSOC simply by choosing not to comply with the conditions imposed by the Board. For instance, a firm that operates and manages an investment company such as a money market mutual fund could argue that it is not engaged in that financial activity since the firm owns more than the allowed percentage of ownership under Regulation Y.

Similarly, we agree with the FDIC that defining financial activities for purpose of Title II to include all of those conditions under section 4(k) likely would enable some companies to be predominantly engaged in financial activities and yet avoid the orderly liquidation process simply by choosing not to abide by the conditions imposed on bank holding companies, including those imposed for safety and soundness.

Conclusion

ICBA agrees with the FDIC that the March 2011 NPR should be amended so that the activities that are considered financial activities are those described in section 4(k) that the Federal Reserve has determined are financial in nature or incidental thereto, but without the conditions and limitations imposed for safety and soundness reasons or to ensure compliance with other applicable law on the conduct of those activities by a bank holding company. Any interpretation of "financial in nature" under Title II should be consistent with the Federal Reserve's interpretation of it under Title I since inconsistent interpretations could frustrate the Congressional intent regarding Title II and potentially cause confusion among covered financial institutions.

ICBA appreciates the opportunity to comment on the FDIC's proposal to amend the definition of "financial activities" set forth in section 380.8 of the FDIC's notice of proposed rulemaking published in the Federal Register on March 23, 2011. If you have any questions about our letter, please do not hesitate to contact me at 202-659-8111 or Chris.Cole@icba.org.

Sincerely,
/s/ Christopher Cole

Christopher Cole
Senior Vice President and Senior Regulatory Counsel