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May 25, 2011

Office of the Comptroller of the Currency
250 E Street, SW, Mail Stop 2-3
Washington, D.C. 20219
Docket Number OCC-2011-0001

Jennifer J. Johnson, Secretary
Board of Governors of the Federal
Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

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

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW.
Washington, DC 20552
Attention: OTS-2011-0037

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100F Street, NE.
Washington, DC 20549
File Number S7-12-11

RE: Proposed Rule – Incentive-Based Compensation Arrangements

Dear Sirs and Mesdames:

Nationwide Mutual Insurance Company and its affiliated companies (collectively, “Nationwide”) appreciate the opportunity to comment on the Agencies’ proposed rules to implement Section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”).

Nationwide respectfully requests clarification of the definitions of “compensation,” “covered financial institution,” “larger covered financial institution,” “executive officer,” and “incentive-based compensation.” Nationwide also requests that the requirement to defer at least 50 percent of the incentive-based compensation of an executive officer be eliminated or, if not eliminated, that it is clarified to provide flexibility by, for example, permitting incentive-based compensation arrangements that award or grant incentive compensation in one year, but do not actually payout those awards or grants until the end of a three year performance period subject to actual performance over that timeframe.

The proposed rule impacts Nationwide Mutual Insurance Company as a U.S. non-bank financial company. By virtue of its ownership of Nationwide Bank, Nationwide Mutual Insurance Company is registered with the Office of Thrift Supervision as a savings and loan holding company (“SLHC”) pursuant to Section 10 of the Home Owners’ Loan Act of 1933. Nationwide

operates through an insurance holding company system registered with the Ohio Department of Insurance. Nationwide sincerely appreciates the opportunity to comment.

Specific Comments:

Nationwide Comment on Proposed Rule 12 C.F.R. §372.3 Definitions

1. The definitions of “compensation” and “incentive-based compensation”

Nationwide believes that the definition of “compensation” requires clarification. In particular, it is unclear when “compensation” would be considered “awarded” and/or “granted.” Clarification in this regard will be of fundamental importance in determining whether a larger covered financial institution is in compliance with any deferral requirement(s) set forth in the final rule.

Many long-term incentive-based compensation arrangements “award” or “grant” an incentive compensation target opportunity in one year, but subject that target opportunity to actual performance over a specified period of time. We believe that such awards or grants should be considered “compensation” in the year in which the participant receives the target opportunity. As a result, the award or grant itself should commence any specific deferral requirement(s) set forth in the final rule.

2. The definition of “covered financial institution” and “larger covered financial institution”

Nationwide believes that the Agencies’ final rules should clarify the definitions of “covered financial institution” and “larger covered financial institution” to exclude entities such as Nationwide Mutual Insurance Company.

Most banks are owned by bank holding companies. And, as a general rule, a bank holding company is a non-operating entity that owns the bank, which is the true operating entity. The assets of a bank holding company are attributable to the bank operating entity. It makes sense for the definitions to include bank holding companies. Nationwide’s situation is different.

As indicated above, Nationwide Mutual Insurance Company is an operating and highly regulated mutual insurance company that, by virtue of owning a small federal savings institution (i.e., Nationwide Bank), is registered as a SLHC. Unlike a non-operating bank holding company, Nationwide Mutual Insurance Company is predominately engaged in the business of insurance and financial services, subject to significant regulatory oversight and monitoring by state insurance departments; and, consequently, its total consolidated assets are predominately attributable to the business of insurance and not activities closely related to banking. But for ownership of the small thrift, Nationwide Mutual Insurance Company would be excluded from the proposed definitions. We believe that the final rule should exclude SLHCs with top-tier regulated insurance companies.

Notably, in enacting Title I of the Act, Congress specifically recognizes bank holding companies with \$50 billion in consolidated assets as systemically significant and imposes upon them prudential standards more stringent than for bank holding companies and non-bank holding companies that by definition do not pose similar risks to the financial stability of the United States. *See* Section 165 of the Act. By contrast, Title I of the Act excludes from the \$50 billion bank holding company definitional threshold SLHCs and non-bank financial firms like Nationwide Mutual Insurance Company. Such firms must be designated by the Financial Stability Oversight Council based upon a detailed analysis of eleven statutory factors. *See* Section 113 of the Act. Section 956 of the Act serves similar legislative purposes to promote financial stability. *See* Footnote 90 of the proposed rule at 76 F.R. 21192. Likewise, we think the

exclusion should extend to the definitions of “covered financial institution” and “larger covered financial institution” in the context of incentive-based compensation.

In this regard, we respectfully request the addition of exclusionary language.

3. The definition of “executive officer”

Nationwide believes that the Agencies’ final rules should clarify that the definition of “executive officer” does not include employees of entities that are exempt from the final rule for the same reasons specified in Section 2, above.

Nationwide Comment on Proposed Rule 12 C.F.R. §372.5 Prohibitions

1. The definition of “excessive compensation”

Nationwide believes that the attempt to regulate “excessive compensation” is far too broad and should not be included in the final rule or, in the alternative, that clarification be provided in the form of specifically defined terminology and guiding principles. In particular, Nationwide does not believe that excessive compensation - standing alone - poses a direct correlation to compensation that encourages significant or excessive risk.

Nationwide is also concerned that the concepts included in the proposed rule relating to excessive compensation are far too vague and will be incredibly difficult to ascertain. For example, the proposed rule specifies that the Agencies will consider the compensation history of the covered person and other individuals with comparable expertise in order to determine whether the covered person’s compensation is excessive; but, the proposed rule leaves unanswered questions including:

- how will the Agencies determine what is “comparable” in this regard; and
- how will the Agencies determine what is comparable for purposes of compensation practices at comparable institutions?

Because Nationwide is a mutual insurance company, there is not always access to the compensation practices of other like entities as data is not typically publicly available. While we appreciate the effort of the Agencies to establish a flexible framework, a greater degree of specificity and guidance would be useful and afford greater transparency.

2. Specific Requirements for Covered Financial Institutions with \$50 billion or more in total consolidated assets

As noted in the discussion above concerning the definitions of covered financial institution and larger covered financial institution, Nationwide Mutual Insurance Company believes that it should be excluded from these definitions as a SLHC that is a top-tier operating mutual insurance company subject to state supervision and regulation.

Moreover, even if the definitions were to apply, Nationwide does not believe mandatory deferral is appropriate. Mandating deferral for only larger covered financial institutions creates for them significant hardship. For example, it will be very difficult for such institutions to attract highly sought after senior executives and other key employees when those individuals can otherwise accept employment with entities not subject to the rule and would, therefore, not be required to defer a portion of their compensation for what may be perceived as a lengthy period of time.

If the Agencies do insist on deferral-like requirements, we ask that a more flexible approach be considered. The proposed rule identifies four methods that are often used to “make

compensation more sensitive to risk.” And, we ask that the final rule consider all four methods as viable options (*versus* mandating deferral) so that boards of directors are afforded needed flexibility through use any one of these methods or a combination of the same.

As currently proposed, Nationwide does not believe the requirement to defer at least 50 percent of the annual incentive-based compensation of an executive officer over a period of no less than three years is clear. As specified above, many incentive-based compensation arrangements “award” or “grant” an incentive compensation target opportunity in one year, but subject that target opportunity to actual performance over a specified period of time. We believe that such awards or grants should commence any specific deferral requirement, including the three year deferral requirement proposed. For example, we believe that an award or grant of long-term incentive compensation that is subject to performance metrics over a three year performance period and payable in a lump sum at the end of the three year period should satisfy the deferral requirement specified in the proposed rule.

We request clarity in this regard.

We also ask that the Agencies consider how short- and long-term incentive arrangements should work together. From an administrative perspective, it will be unduly burdensome for employers to administer such arrangements separately if both are required to be deferred for specified periods of time that may or may not be consistent.

Nationwide Comment on Proposed Rule Effective Date of Final Rule

1. Grandfathering

Nationwide believes that the final rule should not apply to incentive-based compensation arrangements in existence as of the effective date of the final rule. The terms and conditions of certain incentive plans may create contractual obligations that cannot be altered after an incentive compensation award or grant is made. Without a grandfather for existing arrangements, the rule could potentially result in an unintended impairment of contractual obligations that are constitutionally protected. Ample time will also be needed to transition existing incentive-based compensation arrangements following issuance of the final rule in order to ensure compliance with that rule.

In summary, for the foregoing reasons, Nationwide urges the Agencies to consider our comments carefully. Nationwide thanks you for your consideration and looks forward to future opportunities to comment.

Very truly yours,

NATIONWIDE



Mark R. Thresher
Executive Vice President—Chief Financial Officer