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Submitted via www.regulations.gov

August 17, 2012

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

Re: Proposed Definition of ''Predominantly Engaged in Activities That Are Financial in Nature or Incidental Thereto'', [RIN 3064–AD73]

Dear Mr. Feldman:

This comment letter represents the views of the Credit Union National Association (CUNA) regarding the Federal Deposit Insurance Corporation (FDIC)'s proposed definition of ''predominantly engaged in activities that are financial in nature or incidental thereto" for purposes of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA). By way of background, CUNA is the largest credit union advocacy organization in this country, representing approximately 90% of our nation's 7,200 state and federal credit unions, which serve about 95 million members.

While we realize that your documents do not recognize that credit unions are covered entities under this proposal, the scope of the statutory authority under the DFA regarding a "nonbank" and "financial company" is unclear. We are submitting comments to seek clarity that credit unions should not be covered under this proposal and Title II of the DFA.

CUNA believes that credit unions should not be considered entities subject to the proposed definition of ''predominantly engaged in activities that are financial in nature or incidental thereto" for the purposes of the Ordinary Liquidating Authority (OLA) under Title II of the DFA. The OLA should only apply to "systemically risky" entities that did not previously have federal resolution authority. Credit unions are already subject to existing federal resolution authority under the National Credit Union Share Insurance Fund (NCUSIF) or private share insurance.

Congress intended the OLA only to apply to large, interconnected "systemically risky" nonbank financial companies, bank holding companies (BHCs), and bank affiliates that did not have federal resolution authority prior to the enactment of the DFA.[1] As Martin Gruenberg, Acting Chairman of the FDIC recently noted, the FDIC has been taking steps to implement its new systemic resolution responsibilities for such "systemically risky" entities that were not previously covered by the FDIC's resolution authority.[2]

This proposal is based on Section 4(k) of the BHC Act and its list of activities that are considered "financial in nature." In 2011, the Federal Reserve Board and FDIC published similar, related proposals on "predominantly engaged in activities that are financial in nature," for the purposes of Titles I and II of the DFA, respectively.[3]

Under Title II of the DFA, a "financial company" is either a: 1) bank holding company (BHC), 2) a supervised nonbank financial company, 3) a company that is "predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the BHC Act," or 4) any subsidiary of the aforementioned companies. The DFA definition of a "financial company" also excludes farm credit system institutions; government entities; and government-sponsored enterprises. An entity may be subject to the OLA if it meets the definition of a "financial company" and is in danger of default and meets systemic risk and other factors, if the Secretary of the Treasury determines the FDIC should be appointed receiver for the entity, after consultation with the U.S. President, and based on recommendations of the Federal Reserve and the FDIC.[4]

The OLA should also not apply to credit unions because credit unions are already subject to federal resolution authority under the NCUSIF or private share insurance. Title II of the DFA is similar to, and is modeled after, existing federal resolution authority for banks and credit unions. In 1970, Title II of the Federal Credit Union Act established the NCUSIF to insure member's deposits in federally-insured credit unions and to resolve credit union failures.[5] All federally-insured credit unions must pay periodic deposits and premium charges to fund the operations of the NCUSIF.[6] In

[1] *See e.g., Regulating and Resolving Institutions Considered "Too Big to Fail": Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs,* 111th Cong. (2009).
[2] Remarks by Martin J. Gruenberg Acting Chairman, FDIC to the Federal Reserve Bank of Chicago Bank Structure Conference (May 10, 2012), available at http://www.fdic.gov/news/news/speeches/chairman/spmay1012.html.
[3] 76 Fed. Reg. 16,324 (Mar. 23, 2011); 76 Fed. Reg. 7,731 (Feb. 11, 2011).
[4] Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), Pub. L. No. 111-203, § 203(b).
[5] 12 U.S.C. 1781 et seq.
[6] 12 U.S.C. 1783.

addition, a small number of credit unions are covered under private share insurance, which provides similar insurance and resolution functions.

Thank you for the opportunity to comment on this proposal. If you have any questions concerning our letter, please feel free to contact Senior Vice President and Deputy General Counsel Mary Dunn or me at (202) 508-6733.

Sincerely,

Dennis Tsang

Dennis Tsang
Regulatory Counsel