STATEMENT OF

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THE FINANCIAL SERVICES ROUNDTABLE

"MADE IN AMERICA: INNOVATION IN JOB CREATION AND ECONOMIC GROWTH"

BEFORE THE

SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE

COMMITTEE ON ENERGY AND COMMERCE

UNITED STATES HOUSE OF REPRESENTATIVES

WASHINGTON, D. C.

MARCH 3, 2011

Statement by Gregory P. Wilson
The Financial Services Roundtable
Executive Summary

Congress needs to carefully consider the full impact of the new Dodd-Frank Act on innovation, the economy, and jobs. While well intentioned, the net cumulative impact on our economy could be negative. For example, if the sum total of all new rules has just a 5 or 10 percent negative impact on lending as it could potentially, then there would be roughly $250 billion to $500 billion less lending available for our economy.

There are several immediate initiatives that the Administration, the Congress, and the industry can take to ensure a more balanced and effective regulatory outcome.

Administration

- Ensure the President's new Council on Jobs and Competitiveness also applies to the financial services industry, not just manufacturing and trade
- Ensure that the President's new Executive Order on Regulation - "promoting economic growth, innovation, competitiveness, and job creation" - applies to the new Financial Stability Oversight Council and other financial regulators

Congress

- Demand economic impact assessments for critical Dodd-Frank Title I rules
- Legislate new requirements for full economic impact assessment for all future financial regulations and put on Suspension Calendar within next 30 days
- Analyze full impact of new "more stringent" restrictions for financial activities and practices on economic growth as required by Dodd-Frank
- Mandate the Oversight Council and Office of Financial Research establish Industry Advisory Committees as the Dodd-Frank Act permits to ensure balanced deliberations between regulators and regulated firms and more effective outcomes
- Hold Treasury Secretary strictly accountable in annual Oversight Council reports for impact on economy and jobs - "efficiency" and "competitiveness" as required by Dodd-Frank
- Streamline current financial regulatory reporting burdens (e.g., 185 reports to 16 agencies)

Financial services industry

- Develop new recommendations for financial market competitiveness consistent with prudential standards for consumer protection and financial safeguards
- Conduct industry diagnostic of Dodd-Frank Act to assess impact on innovation, economy, and jobs
- Develop new research, metrics, and ways of communicating financial services industry impact on the economy and jobs

Chairwoman Bono Mack, Ranking Member Butterfield, and Members of the Subcommittee. My name is Greg Wilson. I serve as a special adviser to the Financial Services Roundtable and its new Financial Stability Industry Council. On behalf of the Roundtable, I am pleased to be invited to discuss the potential impact of new U.S. financial regulations on the economy and the implications for innovation and jobs.

The Roundtable is a trade association of the largest, diversified financial services firms in the United States, which have a market capitalization of $1.7 trillion and assets under management of over $90 trillion. Roundtable member companies provide fuel for America's economic engine and directly account for 2.3 million jobs. The financial services industry at large represents 8.3 percent of our nation’s gross domestic product (GDP).

Some of the Roundtable’s core beliefs are that large, integrated financial holding companies are critical to the nation’s sustained economy growth, providing much of the fuel for our economy and job creation. Moreover, dynamic companies and competitive markets should govern the delivery of financial services to meet the needs of all consumers, subject of course to prudent risk management and regulation that is both balanced and effective.

Personally, my entire career has revolved around the issues of financial services policy and regulatory issues, having served on the staff of the old Committee on Banking, Finance, and Urban Affairs - now the Committee on Financial Services - and as a political appointee in the Administrations of Presidents Ronald Reagan and George H.W. Bush at the U.S. Treasury Department. Since then, I have been a partner at McKinsey & Company serving both public and private sector clients, and have just authored a new book, *Managing to the New Regulatory Reality: Doing Business under the Dodd-Frank Act.* So I will try and give this Subcommittee a perspective on the importance of innovation to our economy and jobs from a financial services perspective as a complement to other witnesses on this panel.

In my testimony today, I first want to provide a brief background to set the contents for my remarks. Then I will address several initiatives where the Administration, the Congress, and the financial services industry can play a vital role to ensure that U.S. financial companies and markets remain competitive, vibrant, and innovative. In turn, this should help to ensure that the United States remains the leading financial capital and marketplace within a larger, global world of competing financial centers. The Roundtable is fully engaged - and the financial services industry needs to be fully empowered - to play its critical role of financial intermediation, investment, and protection.

BACKGROUND

The obvious background to my remarks is the worst financial crisis in our lifetime, followed by the worst recession I can recall. The Bush Administration and the 110th Congress responded to the great financial panic of 2008 with the Emergency Economic Stabilization Act of 2008 to stop the bleeding. Roughly eighteen months later, the Obama Administration and Congress responded with the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), the most comprehensive regulatory reform legislation I can recall in my professional career. The Financial Crisis Inquiry Commission issued its report in early 2011, which will set the stage for continuing debate on causes of the crisis as well as for additional reforms. Moreover, the Departments of Treasury and Housing and Urban Development have just issued a report to Congress, *Reforming America's Housing Finance Market*, describing several options to re-boot housing finance and hopefully ensure sustainable finance to creditworthy homeowners in the future without the need for another round of massive taxpayer assistance.

Moreover, there are several complicating factors, some of which Congress is just now starting to address. We have a pending fiscal and potentially significant sovereign debt crisis looming in this country at the national, state, and even municipal levels. We suffer under a tax system that is as complex and complicated as it is costly, putting the United State at a competitive disadvantage internationally as an attractive place to invest and do business. We have a monetary policy with few real policy levers left to pull, with short-term interest rates stuck near zero. We have huge, global, macro economic imbalances that the Group of Twenty Leaders are struggling to address, but which are proving difficult to resolve in a meaningful way beyond rhetorical flourishes from time to time. We struggle with a credible and coherent trade policy, just as inflation is creeping into global commodity markets and international energy markets are roiled by turmoil in North Africa and the Middle East that is spreading and no one knows where it will end.

As if these factors did not create enough negative and uncertain pressures on our economy, no one knows what the full economic impact of the Dodd-Frank Act will be on our economy and our society. No one today knows the full impact of the new law on responsible innovation and future job creation. No one knows for sure what the secondary and tertiary unintended consequences will be. No one - not the Administration, not the Congress, and not the private sector.

At the international level, the debate has been engaged on both the costs and benefits of global regulatory reform, among such groups at the new Financial Stability Board (FSB), the Basel Committee of Banking Supervisors (BCBS), the International Monetary Fund (IMF), and the Institute of International Finance

(IIF), representing the private sector. Yet, that important debate is only just beginning in earnest this year here at home. That debate is healthy and needs to be encouraged among the Administration, the Congress, and the private sector. Facts need to be put on the table, and new metrics to measure the real economic impact of regulation on the economy and job creation need to be developed. Respectfully, Congress needs to enhance its oversight role of the recent Dodd-Frank Act in particular and other financial services laws in general to determine their true economic impact.

My hypothesis is that the cumulative effect of the 250 or so new regulations mandated by the Dodd-Frank Act will be a net negative drag on our economic growth and job creation in the future, which will take effect over the next several years. I hope I am wrong. I can't prove my hypothesis for you today - no one can at the moment. However, it is a hypothesis that others ought to debate and analyze as a starting point about the real economic impact of financial reform, necessary as it is. Hopefully, with a concerned Administration, a watchful Congress, and an engaged private sector, we can avoid any negative effects on our economy over time, even if we have to make some regulatory reform course corrections through new legislation or revised rules.

If the financial crisis was a wealth-destroyer, and the recession a job-killer, then the Dodd-Frank Act is a formidable regulatory game-changer for the foreseeable future.

Presently, the Roundtable is focused on implementation of the Dodd-Frank Act. The Roundtable is committed to make the regulatory changes that follow from the Dodd-Frank Act work for the American economy. At the same time, the Roundtable remains concerned that certain regulations must be implemented with the restraint required by the Act, in a commercially reasonable manner, and that they not go beyond the original intent of Congress.

Unfortunately, while understandable politically and well-intentioned by its sponsors and supporters, we do not have a clear assessment or comprehensive view of what the Dodd-Frank Act will to financial intermediation and financial protection that is vital for our economy and jobs. We don't fully know what the cumulative impact will be on our economy of higher and higher capital and liquidity requirements, other new prudential requirements, and designating certain large financial institutions - banks and nonbanks - for closer systemic supervision by the new Financial Stability Oversight Council and Federal Reserve. We don't know what the new Bureau of Consumer Financial Protection, with its noble goals of better consumer disclosure and financial literacy, will have on the cost and availability of credit to consumers and others. We don't know what the combined effect of Dodd-Frank and whatever G20 policies to which President Obama commits the United States will have on the competitiveness of all financial firms doing business in our markets. We don't know what such action will have in terms of ensuring that the United States is an attractive market to invest and raise capital. We still don't know what it will do to the cost of capital or the ability of firms to earn a healthy return on top of their cost of capital.

All financial intermediaries by definition are in the business of taking risks, but we don't have a clear picture of what the Dodd-Frank Act collectively will do to increase or decrease prudential risk-taking by firms in the future. As an economic imperative, we need strong, healthy financial companies that can innovate responsibly and take measured risks to grow our economy and create and better jobs new jobs.

This continuing uncertainty itself about the likely economic impact of our regulatory reforms, in turn, is likely to have a negative effect on both our economy as well as the historic U.S. leadership role in global financial markets. Our historic U.S. role unquestionably has been damaged severely by the crisis. Yet, it is not too late to ensure that the final outcome of the Dodd-Frank Act is balanced and effective, that our economy and jobs are protected from regulatory excess, and that we fully understand the economic consequences of our actions over time.

At the same time, we need to ensure that we do everything humanly possible to mitigate the impact of the next financial crisis. Unfortunately, there will be more financial crises, notwithstanding the best intentions of the Dodd-Frank Act.

FUTURE ACTIONS TO AVOID A NEGATIVE IMPACT ON THE ECONOMY AND JOBS

So what can we do as a nation, and more specifically what can the Administration, the Congress, and the financial services industry do to ensure a good outcome without the negative economic impact for our country?

Let me offer several practical and actionable starting points for your consideration as you and other Congressional committees engage this year on these issues. Admittedly, most of these suggestions fall within the jurisdiction of my former committee, but they are important to understand and get on the record as Congress conducts its critical oversight and legislative responsibilities.

What the Administration can do

President Obama should be commended for two recent actions, actions that need to be expanded and applied to the financial services especially in the wake of the Dodd-Frank Act.

First, President Obama appointed Jeff Immelt, GE's Chairman and CEO as the Chairman of his new Council on Jobs and Competitiveness. Mr. Immelt was quoted recently in the *Financial Times* as saying that the United States needs to be a country that "builds things" to revive the economy and create jobs,[1] and he is absolutely right.

At the same time, we need to ensure that the United States also is a country that "finances things" and encourages "investments in things" as competitively as any financial center on the planet. If we are united in "winning the future," as President Obama has declared, then we need to make sure that we fully understand the impact of the Dodd-Frank Act on innovation, the economy, and jobs. At the same time, we need to be mindful of the economic imperative of U.S. financial market competitiveness to meet the needs of consumers wherever they may reside or do business.

Looking backwards, the Dodd-Frank Act was understandably crafted with a bias toward financial stability and consumer protection. Looking forward, we need to embrace broader and equally critical policy objectives such as ensuring a strong and vibrant financial sector to support our economy and the needs of all consumers. We need policy objectives and rules that are balanced and effective, and not overly tipped in the direction of financial stability solely for the sake of financial stability.

Our shared national aspiration should be to ensure that the U.S. financial marketplace is the most attractive, secure, well governed, and welcoming one in the world to finance, invest, protect assets, and raise capital. If we can achieve that simple aspiration, then we will be ensuring a financial system fully and prudently enabled to support manufacturing, commerce, trade, innovation, growth, and jobs.

This may sound like a heretical point so soon after the worst financial crisis in history and enactment of the Dodd-Frank Act. Yet, we still need competitive, world class financial institutions and markets to finance "things" like manufacturing and exports, to grow and create new jobs and stimulate economic growth.

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[1] "Obama gives GE chief key jobs role," *Financial Times*, January 22, 2011, p. 1.

Our current economic predicament of stubbornly high unemployment as well as an uncertain economic future demands a greater balancing of the ideal of financial stability and the reality of our precarious economic position as a nation. We need financial institutions that are well governed, ethically run, and prudently regulated for capital, liquidity, and risk. Good management is the first line of defense, followed by capable supervisors as the second line of defense. However, as a practical matter, we also need those same companies to be able to compete fairly to serve their clients - from retail consumers and Main Street businesses to corporate America and governments - to provide a strong, unsurpassed financial foundation for sustained economic recovery and growth.

Second, President Obama issued an important new Executive Order on January 18, 2011 - "Improving Regulation and Regulatory Review." While the President didn't mention financial services in that context, it nevertheless should be applied to all segments of our economy and not just some industries. To be comprehensive and complete, the President can publicly instruct his direct reports to fully implement both the letter and the spirit of his January 18th Executive Order.

For example, President Obama should direct Treasury Secretary Geithner to apply Section 1 of his new Executive Order - "promoting economic growth, innovation, competitiveness, and job creation" - to all of the rules, decisions, and actions the new Financial Stability Oversight Council that he chairs. This means Title I of the Dodd-Frank Act in particular, which affects the largest financial institutions in the country, including those financial holding companies with assets greater than $50 billion as well as nonbank financial companies ultimately.

These actions include not only the pending notice of proposed rulemaking for the designation of nonbank financial companies for regulation by the Federal Reserve, our new financial stability regulator, but also the new rule coming later this year on new prudential standards, which are required to be "more stringent" and "increase in stringency" based on a risk-based assessment yet to be crafted by the Council and overseen by the Board of Governors.

For good measure, Secretary Geithner can also use his bully pulpit as Council chair to encourage his fourteen other fellow Council members to start using their offices now to consider and promote the spirit of the President's Executive Order, even if the order doesn't strictly bind them.

Moreover, President Obama should specifically instruct his Directors of the National Economic Council (NEC) and the Office of Management and Budget (OMB) to take every opportunity within their purview to ensure that both the letter and spirit of his new Executive Order are implemented faithfully with the goal of "promoting economic growth, innovation, competitiveness, and job creation" for the financial services industry as well as all other industries in our economy.

What Congress can do

Let me turn next to what Congress can do. First, Congress can use its considerable power of oversight to ensure a balanced and effective outcome for all Dodd-Frank Act and other rules, just as this Subcommittee is doing. The House Financial Services and Oversight Committees are starting this process as well, as is the Senate Banking Committee.

Relentless, fact-finding oversight should be encouraged and structured in such a way so we are always asking and probing on the impact of financial reforms on the economy and jobs. Congress may need to rely more heavily on its own Congressional Budget Office (CBO) for economic impact analysis or outside expertise than it ever has in the past. Congress also can use its oversight powers over Treasury's new Office of Financial Research (OFR) to ensure that it is doing the kind of economic impact assessment that has never really been done in the past, but needs to be done in the future, not just in the name of financial stability - a term left undefined by Congress and the regulators - but from a broader national economic perspective.

The new requirements in Title I - the Financial Stability Act - are perhaps the most potentially impactful for our economy. They cover all basic aspects of financial intermediation, from capital and liquidity, to new prudential standards for credit exposures and reporting, to new recovery and resolution planning. At a minimum, they affect the top 35 bank holding companies by assets (those companies with total assets greater than $50 billion), and this number will expand once the Council designates nonbank financial companies for regulation and supervision by the Federal Reserve. Just the top 35 financial holding companies institutions alone affect a significant portion of our economy as highlighted in the following table, suggesting that the extensive new regulation coming under Title I could have a significant impact on our economy given these numbers for the top 35.

So, given these numbers, Congress needs to ensure that any actions taken by the Oversight Council are carefully considered, especially in the light of our fragile economic economy and the role these financial institutions play in our economy. This is not an issue of big companies versus small companies, or whether big companies are bad. Financial institutions of all size have an important role to play in our economy. Big companies are simply large, and they can have a significant impact on our economy. New regulations imposed only on that unique class of institutions, as contemplated by Title I, also potentially can have a serious impact on the economy by extension.

Table 1 - Impact of Top 25 Financial Holding Companies on the Economy

Indicator	Share of top 35 FHCs as a percent of total bank holding companies reporting to Federal Reserve (%)	Total ($)
Total Assets	87%	$13.9 Trillion
Total Risk-based Capital	86%	$1.3 Trillion
Total Loans and Leases	81%	$5.4 Trillion
Total Commercial and Industrial Loans	77%	$735.0 Billion
Total Domestic Real Estate loans	73%	$2.5 Trillion
Total Agricultural Loans	42%	$13.7 Billion

For example, the top 35 financial holding companies in Table 1 made over 80 percent of all total loans and leases in 2010, or $5.4 trillion, using fourth quarter data. If we assume that the net cumulative impact of all new Dodd-Frank Act rules - capital, liquidity, leverage, and everything else in Title I - was a negative hit of 5 or 10 percent less lending, which seems reasonable under my hypothesis, then we would lose roughly $250 billion to $500 billion in lending to our economy. Let me repeat, $250 billion to $500 billion in less lending potentially to all kinds of customers - if the Title I rules have this kind of impact, which reasonable people can debate. If these numbers have any validity, then we simply can not afford that kind of economic impact, especially given our weak economy today. So Congress needs to keep these numbers in Table 1 in mind as financial stability regulations are being written that will impact all companies ultimately captured by Title I.

Now, with respect to specific Congressional actions, here are six practical and immediate initiatives to consider:

1. **Economic impact assessment of all Title I rules.** Title I of the Dodd-Frank Act contains some of the most potentially impactful provisions for our economy that need to be fully analyzed and understood. Through both its oversight and legislative functions, the Congress can play an important role to ensure that the kind of economic impact assessment needed is fully considered by the Council and the regulators before the rules go into effect and impact the

real economy.

Specifically, the Council already has issued two proposals on the designation of nonbank financial companies to be subject to Federal Reserve regulation and supervision and the so-called Volcker rule, named after former Federal Reserve Chairman Paul A. Volcker. Both rules should have an economic impact assessment attached to them, so Congress has a full appreciation of their potential effects on innovation, the economy, and jobs.

The same applies to the new Basel III minimum capital, leverage, and liquidity rules that have been blessed by the G20, the Financial Stability Board, and the Basel Committee itself. The U.S. rules to implement these minimum requirements have not been proposed yet, nor have the additional "more stringent" requirements on top of these new minimums as required by Sections 115 and 165 of the Dodd-Frank Act.

The Roundtable believes increased capital standards, beyond what is required for safety and soundness, will directly retard the growth of credit availability and increase its cost, which will make it harder and more costly for businesses to borrow, thus making job creation more difficult. Similarly, overly strident liquidity requirements will reduce the amount of loans available, as they are comparatively illiquid assets, and negatively impacting economic growth.

Congress will need to have a firm understanding of the economic impact of these rules as well before they are finalized. For the record, I am attaching two recent Roundtable letters on these topics in an Appendix to my testimony for the Committee's attention; these letters describe the concerns of Roundtable member companies in greater detail.

2. **Legislative economic impact assessment.** More importantly, to show its renewed concern for the impact of financial regulation on innovation, the economy, and jobs, the Congress should quickly pass new legislation in the next 30 days to ensure that all future financial rules are subject to a more rigorous, real world economic impact assessment and more rigorous cost-benefit analysis than has been the practice in the past. All new rules should contain an equally dynamic analysis of the rule's potential impact on innovation, competitiveness, growth, and employment, in line with the President's new Executive Order I discussed previously.

   To paraphrase House Speaker Boehner, we simply don't need any more job-killing rules at this point in our fragile economic recovery. Based on my experience as a former Congressional staffer, this would be a simple one or two paragraph amendment to the Dodd-Frank Act and should be able to pass the House easily and overwhelmingly on the suspension calendar before the Memorial Day recess at the latest.

3. **Impact of "more stringent" financial restrictions on economic growth.** Section 120 empowers the Council to recommend "more stringent" regulation financial activities and practices as well as "new and heightened" standards and safeguards if the Council is worried about a variety of factors related to systemic risks. Section 120 is the also the only place in Title I where the words "economic growth" appear. There is a specific criterion that these new or heightened standards and safeguards "shall take cost to long-term economic growth into account. . . ." Congress should hold the Council fully accountable any time it makes such a recommendation under Section 120 and demand that the Secretary deliver a rigorous economic impact assessment to Congress every time a new Section 120 recommendation is issued to the primary regulators, who are the ultimate enforcers.

4. **Professional Advisory Committees.** Section 111 of Title I of the Dodd-Frank Act - the Financial Stability Act of 2010 - authorizes the Treasury Secretary, as Oversight Council Chairman, to appoint technical and professional committees to assist the Council. Congress should encourage the Secretary to go ahead and appoint these committees, as the Council's October 2010 timeline indicates. He should do it now.

   These committees could be patterned after the Federal Reserve's Federal Advisory Council (FAC), with diverse industry participation. These advisory committees can help to ensure that issues such as the impact of new financial regulation on the industry and its ability to support the economy are fully considered and debated between regulators and regulated firms on a formal, regular, and ongoing basis as market developments and supervisory practices change over time.

5. **Annual Oversight Council report to Congress**. Section 112 of the Dodd-Frank Act mandates that the Secretary of the Treasury report annually to the Congress on the Council's activities. Buried new the end of that provision is the requirement that the Secretary offer his recommendations to "enhance the integrity, efficiency, competitiveness, and stability of U.S. financial markets." Congress should hold the Secretary fully accountable for fulfill this Congressionally mandated requirement. While the words "innovation" and "jobs" are nowhere to be found in Title I, Congress should signal the Secretary and the Council that it will take its oversight responsibilities seriously in the context of this specific provision. Such action will help to ensure that we achieve a balanced and effective outcome, carefully weighing the competing policy objectives of financial stability and financial market competitiveness and their subsequent impact on the economy and employment.

6. **Streamline current regulatory reporting.** The Roundtable recently completed a survey of its members and found that they file more than 185 separate reports to at least 16 different federal agencies. The frequency varies, and these do not include "special requests" like recent stress test reporting. This substantial reporting burden will only increase under the Dodd-Frank Act in the coming years. Congress should investigate this reporting burden and oversee regulatory efforts to streamline reporting and make it more efficient and useful to both regulators and the industry. I would be happy to provide the Roundtable's survey to the Subcommittee separately.

As a final suggestion, I want to call to your attention 10 ideas for possible legislative changes to improve the Dodd-Frank Act that Congress should consider. From my perspective, many of these proposed changes would be beneficial to the economy in the long run. While early changes to the Dodd-Frank Act may have to wait given other priorities and agendas, Congress nevertheless needs to consider early thinking given our current environment. More importantly, Congress should analyze and hold hearings on all of these ideas as the year progresses. These 10 ideas were recently published by another colleague of mine, Jim Sivon, a founding partner of Barnett- Sivon, & Natter, in his firm's monthly newsletter, *Our Perspectives.* Not all of these ideas have been formally endorsed by the Roundtable, but they deserve serious attention by Congress in my view given the potential impact of the new law on the economy. Jim's article is attached to my testimony as an addendum.

What the financial services industry can do

Third, the financial services industry can play an important role as well. As I argue in my new book, *Managing to the New Regulatory Reality: Doing Business under the Dodd-Frank Act,* the industry needs to do several things differently and better in the future.

For starters, the industry can go back to the recent financial market competitiveness reports by Mayor Michael Bloomberg and Senator Schumer, the Financial Services Roundtable, U.S. Chamber of Commerce, the Bush Administration, and others, and resurrect those recommendations that not only make sense in our new regulatory reality but also can strengthen our economy. As the Bloomberg-Schumer report correctly noted in 2007, getting the legal, regulatory, and talent/skills (e.g., immigration) regimes right from a business investing perspective is a critical ingredient for the health and productivity of our financial markets. The same goes for corporate tax, ease of doing business and business certainty, and political stability - if we really want to see both our markets and our economy thrive and prosper.

Next, the financial industry can start its own diagnostic of the Dodd-Frank Act through the lens of the President's new Executive Order - "promoting economic growth, innovation, competitiveness, and job creation." Provisions such as the so-called Volcker rule, swap market changes, artificial size limits that know no G20 equivalent, price controls on interchange fees, "heightened" prudential standards, and resolution planning are good starting points. For good measure, an independent review of the dated 1956 Bank Holding Company Act and the 1978 International Banking Act would be in order as well.

Finally, the financial services industry needs to learn and fully embrace a new way of communicating with policymakers and regulators, speaking not just in the language of quarterly earnings and shareholder value creation, but more importantly in the new language of the impact of financial laws and regulations on economic growth and job creation. New research and analysis will be required as will new metrics.

To these ends, the Financial Services Roundtable created a new Financial Stability Industry Council last year to monitor the actions of the Oversight Council and offer its collective expertise wherever and whenever required to ensure that the Title I policies and regulations are as balanced and as effective as possible for the economy. This Industry Council is chaired by Brian Rogan, the Chief Risk Officer of BNY Mellon; its new Executive Director is Don Truslow, who was the Chief Risk Officer at Wachovia before it was acquired by Wells Fargo.

This Industry Council comprises most of the large financial holding companies already covered by Title I, and expects to increase in size at the Oversight Council designates new nonbanks in the future. Its members have met twice since last year and have established five substantive subcommittees that cover the full range of issues embedded in Title I. Each subcommittee is composed of industry experts, who can be a vital resource for the Oversight Council and the financial regulators.

SUMMARY

In summary, the Administration, the Congress, and the financial services industry have a common interest and an important responsibility to ensure that the Dodd-Frank Act policies and regulations are as balanced and as effective as possible, and fully consider their impact on innovation, our economy, and employment. The new attention by the Administration on U.S. competitiveness in manufacturing and trade is a critical national priority and welcomed. We also have other critical economic imperatives that need immediate attention, such as stopping runaway government spending and reversing our wealth-destroying national debt.

Yet, as a nation, we can't afford to ignore the equally vital imperative for responsible innovation and competitiveness for all financial firms doing business in U.S. markets. If we do these elements, then we put our own needed economic recovery - and future economic growth and standing as a global financial power - at even greater risk.

The Financial Services Roundtable and its new Industry Council are committed to playing a constructive and leadership role, and stand ready to work with the Administration and the Congress to achieve the aspiration I mentioned above - a financial system second to none. Looking forward, we have regulatory choices ahead of us that will have a direct impact on our economy and its ability to innovate and produce more and better jobs. If we are successful in implementing the Dodd-Frank Act by working constructively together for balanced and effective outcomes, then our economy and employment should prosper.

Thank you for your attention, and I look forward to your questions.

THE FINANCIAL SERVICES ROUNDTABLE

Financing America's Economy

January 26, 2011

The Honorable Timothy F. Geithner
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United States Department of the Treasury
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The Honorable Ben S. Bernanke
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Mr. William C. Dudley
President
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Re: Basel III capital and liquidity requirements

Ladies and Gentlemen:

The Financial Services Roundtable (the "Roundtable") is composed of large, integrated financial services companies who finance most of the nation's economy and are critical to its sustained growth. The Roundtable strives to be the premier executive forum for the leaders of the financial services industry and to provide a positive industry perspective on legislative and regulatory policy. The Roundtable believes that the competitive marketplace should largely govern the delivery of products and services and that regulation should mitigate systemic risk and enhance financial stability.

The Roundtable appreciates the opportunity to provide its comments regarding the proposed Basel III capital and liquidity regulatory standards. The Roundtable's standing within the financial services industry provides it with a unique perspective on these standards and their potential impact on both the industry and the global economy. Our membership fully supports the Basel III goals of increasing the quantity and enhancing the quality of loss-absorbing capital, while bolstering liquidity by promoting adequate liquidity reserves and a proper balance between short- and long-term funding. However, the Roundtable contends that certain provisions and aspects of the proposed standards overstate the capital and liquidity risks faced by financial institutions and understate the ability of those institutions to absorb losses. Consequently, these new requirements as proposed could have a negative impact on an already weak economic recovery and much needed longer-term growth.

Therefore, in establishing these new capital and liquidity standards, it is also necessary for US regulatory authorities to carefully assess the associated macroeconomic impact of compliance. Financial services institutions play a vital role in providing credit and capital to US consumers and companies both large and small. By definition, achieving compliance with the more restrictive capital and liquidity standards will constrict the amount of credit financial institutions have available to lend and thereby create a drag on US economic output. Therefore, regulatory authorities cannot make an informed decision on the proper balance between lost output and increased safety without sound quantitative data. The Basel Committee on Banking Supervision (the "Committee") conducted a quantitative impact study of the new standards, but the sample size of respondents was relatively small and the results have not been widely disseminated. This approach stands in stark contrast to previous reform efforts during which the Committee conducted multiple quantitative impact studies and published the results. We urge regulatory authorities to fully consider the quantitative impact study before implementing the new standards and request that the Committee publish the results.

The Roundtable strongly contends that the paramount goal of the regulatory standards for US financial institutions should be to ensure the safety and soundness of those institutions and the US financial system as a whole. While harmonization of international regulatory standards is another worthwhile goal, we also strongly contend that the proposed standards should and must account for certain country-specific institutions, financial products and markets, as we further outline below. These new capital and liquidity standards, in their current form, would create a competitive disadvantage for US financial services institutions relative to their international counterparts. While we recognize that these new capital and liquidity standards are the product of extensive multilateral negotiations between international financial regulatory authorities, we do not believe a major outcome of harmonization should be to damage the fundamental competitiveness of US financial services institutions.

For the aforementioned reasons, the Roundtable respectfully requests certain modifications to the proposed capital and liquidity standards. The modifications we request herein would leave the principles and primary components of the standards intact while recognizing certain financial market institutions, products or experiences that are unique to US financial services companies. Without these modifications, we contend the proposed standards materially overstate the capital and, in particular, the liquidity risks of US financial services institutions. As a consequence of enacting the proposed standards in their current form, the US economy will experience an unnecessary and permanent loss of output and US financial services companies will find it difficult or impossible to compete with many rival international companies.

The Roundtable contends the following modifications would significantly improve the efficacy of the proposed capital and liquidity standards, and we respectfully request your consideration of our recommended changes. We address first our concerns in regard to the liquidity standards, followed by those related to the capital standards.

Liquidity

Recommendation 1. Include, without limit, the debt and mortgage-backed securities obligations of US government sponsored enterprises in the definition of high quality liquid assets and, accordingly, reduce the haircuts those securities receive in the liquidity ratios.

The consultative document[1] underlying the proposed standards states that the Liquidity Coverage Ratio ("LCR") is designed to ensure a financial institution maintains a sufficient stock of high quality liquid assets that can be converted to cash to meet its liquidity needs for a 30-day time horizon under an acute liquidity stress scenario. After numerous comment letters protested the treatment of US government sponsored enterprise ("GSE") mortgage-backed securities ("MBS") and debt, the Committee agreed[2] to reduce the LCR haircut on these and certain other 20% risk-weighted securities to 15%. However, these securities are classified as "Level 2" liquid assets for the purpose of the LCR, subjecting them to a cap that limits them to no more than 40% of an institution's total stock of liquid assets.

This cap is inappropriate for two reasons. First, US GSE debt and MBS exhibit all of the characteristics of high quality liquid assets, including low credit and market risk, AAA credit ratings, low correlation with risky assets and direct purchases of these securities by the US government. Second, the cap unfairly disadvantages US financial services institutions relative to foreign competitors that receive higher LCR credit for securities rarely found in US financial institution portfolios, such as certain covered bonds and debentures of foreign public sector entities.

The current Basel III treatment of US GSE securities would likely have particularly dire consequences for the US economy. US financial institutions hold a very large share of their liquid securities portfolios in GSE securities and the proposed cap would force these institutions to sell a significant share of their holdings. This forced selling would restrict funding for the US housing sector, which accounts directly for approximately 15% of US GDP and indirectly for much more. US homeowners would inevitably face higher mortgage rates and limited access to funds for housing. Therefore, we urge US regulatory authorities to further lower the haircut applied to US

[1] "International Framework for Liquidity Risk Measurement, Standards and Monitoring", Basel Committee on Banking Supervision, Bank for International Settlements, December 2009.

[2] See "Annex" to July 26, 2010 Bank for International Settlements press release entitled "The Group of Governors and Heads of Supervision reach broad agreement on Basel Committee capital and liquidity reform package".

GSE securities in both the LCR and the Net Stable Funding Ratio ("NSFR") and to eliminate the cap on US GSE securities as Level 2 assets.

Recommendation 2. Include available borrowing capacity at the Federal Home Loan Banks in the numerator of the LCR and increase the credit for Federal Home Loan Bank advances in the denominators of both the LCR and the NSFR.

The Federal Home Loan Bank ("FHLB") system serves as an important source of funding for many US banks and a vital source of liquidity for the US mortgage finance system. Throughout the recent financial crisis, the FHLBs served as a reliable source of funding as advances (secured funding) to member banks peaked during the period that many US banks experienced impaired access to the debt capital markets; total FHLB system advances reached their record level (more than $900 billion) in the second half of 2008.

The FHLB system is unique to the United States, however, and consequently did not receive due consideration by the Committee when constructing the proposed standards. As currently proposed, the LCR would not allow US banks to include available borrowing capacity at the FHLBs and the NSFR does not classify outstanding short-term advances as "stable funding", despite the fact that these advances are secured with high quality collateral and consistently rolled over if required. Consequently, the LCR and NSFR significantly overstate the amount of liquidity risk at US banks. The Roundtable urges US regulatory authorities to rectify this inequity by allowing banks to include their available FHLB borrowing capacity in the LCR numerator. For the same reasons, we strongly advocate that FHLB advances, regardless of tenor, receive a 100% Available Stable Funding ("ASF") factor in the NSFR denominator and a 0% run-off factor in the LCR denominator.

Recommendation 3. In regard to the LCR treatment of committed liquidity facilities, eliminate the logical inconsistency inherent in the assumptions by recognizing the realities demonstrated by the recent financial crisis.

The LCR currently has two serious problems in regard to the draw down assumptions on committed liquidity facilities. The first problem is a logical inconsistency. That is, banks are required to assume that they would lose all of their ability to draw upon their committed lines from other banks while, at the same time, also assume that their committed lines to other banks will be 100% drawn. This assumption is both a logical and practical impossibility. Second, the LCR assumptions specify that committed liquidity facilities extended to non-financial corporate customers and other non-retail legal entities would be drawn 100% immediately. This assumption is both extreme and inconsistent with the actual experience of US banks during the recent financial crisis.

Recommendation 4. Provide empirical support for the assumptions in the liquidity standards.

The unrealistic draw down assumptions are an example of a broader problem in the Basel III liquidity standards— assumptions have no empirical support and are starkly inconsistent with the actual experience of US financial institutions in stress situations. The recent financial crisis featured all of the hallmarks of a severe stress scenario, including the deepest economic recession since the Great Depression, extended periods of severe financial market disruptions and the collapse of major financial institutions. And yet, many of the assumptions in the liquidity standards bear neither a resemblance to the actual experience of US financial institutions during the crisis nor support from a quantitative impact study or other empirical data.

The deposit run-off assumptions in the LCR are another prominent example of this problem. The Basel III liquidity ratios assume that all banks, in aggregate, lose deposits. Again, there is no empirical support for this assumption and it ignores the reality that there were both winners and losers in the recent financial crisis. Therefore, it is impossible for this assumption to be correct across the financial system.

Capital

The Roundtable agrees with the Committee that it is important to back financial institution risk exposures with a robust and high quality capital base. That is, financial service institutions and their investors should have confidence that the regulatory process has adequately identified inherent risks and that an institution's capital base is sufficient to absorb the losses that may materialize from these risks. The Roundtable also supports the Committee's objective of focusing on the ability of different capital types to support financial institutions as going concerns.

The following is a list of the primary areas of concern the members of the Roundtable have in regard to the Basel III capital standards. In general, where the Roundtable differs from the Committee is in the proposed standards' overly conservative treatment of the loss-absorbing capacity of various capital types and in the use of assumptions that have no empirical backing or historical precedent.

Recommendation 5. Coupon/dividend deferral

We believe that the ability to defer coupon or dividend payments on capital instruments is sufficient to ensure loss absorption, but the proposed standards go one step further by requiring Tier 1 "going concern" capital to be cancelable (not just deferrable). Since many capital instruments with coupon/dividend deferrals suffered losses during the recent financial crisis, the Roundtable contends that there is no need to fix something that is not broken and would urge regulatory authorities to retain the current capital treatment of coupon/dividend deferral features.

Recommendation 6. Goodwill and intangibles

Another prominent area in which the Roundtable differs from the Committee is in its treatment of goodwill and certain other intangibles. The most prominent of these items is mortgage servicing rights ("MSRs"). Due to the central role and structure of the housing market in the US economy, MSRs are valuable assets that hold a prominent place on the balance sheets of many large US banks and financial institutions. MSRs generate tangible cash flows, the value of which is readily measurable using market inputs, even under times of stress. While the Roundtable supports the Committee in its objective of adjusting an institution's capital base for any balance sheet items with uncertain values in times of stress or insolvency, MSR values are demonstrated through regular trading and independent surveys also provide external valuations. The proposed standards would limit recognition of MSRs to no more than 10%, and no more than 15% when aggregated with certain other items (e.g., deferred tax assets), of an institution's Tier 1 common equity. The Roundtable urges the regulatory authorities to exercise their discretion in retaining the current treatment of MSRs. With regard to deferred tax assets ("DTAs"), the Roundtable recommends that the Committee include in capital such DTAs that are expected to be utilized within the next twelve months, with the residual subject to the proposed limitation.

Recommendation 7. Cyclicality

The Roundtable strongly supports the Committee's efforts to more clearly define the goals and key inputs used in estimating risk-weighted assets, particularly where the choice of inputs and their weights may materially affect the cyclicality of capital. At issue is how to estimate the probabilities of default by asset class in a cyclical downturn or stress scenario. The consultative document[3] considers two different approaches, specifically using 1) the highest average historical probability of default by asset class, and 2) the average of historical probabilities of default by asset class, akin to the "through the cycle" approach widely discussed in the Basel II development process.

The Roundtable recognizes that each approach has pros and cons which result in a trade-off between the level of risk sensitivity and the cyclicality of capital levels. The first approach results in overly conservative probability of default estimates that would likely distort capital allocations away from asset classes, such as residential mortgages. The second approach would cause cyclical fluctuations in the probabilities of default for various asset classes. Faced with the choice between the two approaches, the Roundtable would opt for the second while urging regulatory authorities to adopt a methodology that does not require equal weights among the probabilities of default experienced in the various years of an economic cycle.

[3] "Strengthening the Resilience of the Banking Sector", Basel Committee on Banking Supervision, Bank for International Settlements, December 2009.

Recommendation 8. Leverage ratio

The Roundtable also contends that the proposed Basel III leverage ratio, like the LCR, contains numerous assumptions that are overly conservative, arbitrary and inconsistent with the empirical evidence from the recent financial crisis. Specifically, the proposed standard would impose an as yet unspecified uniform credit conversion factor for most off-balance sheet items. We urge US regulatory authorities to work with financial services institutions to perform a more detailed quantitative analysis of the data from the period of the recent financial crisis so that the leverage ratio can properly reflect tail risk exposures without resorting to arbitrary or punitive methods. In addition, Roundtable members will be focused on the interplay between the Basel III leverage ratio and existing leverage rules already in effect for US financial institutions.

Recommendation 9. Capital conservation buffer

Under the Basel III capital standards, banks would be required to maintain a capital conservation buffer to absorb losses stemming from a severely stressed economic or financial environment. The Roundtable urges that regulators consider the size of the buffer and the sanctions for breaching it in tandem. Moreover, we contend that US regulators should retain the discretionary authority to decide whether and how to impose sanctions on a case-by-case basis if and when a financial institution's capital ratios fall below the capital conservation buffer level. In other words, sanctions should only be mandatory if an institution's capital ratios fall below some clearly and previously specified threshold level less than the capital conservation buffer level. Finally, we strongly contend sanctions should be limited to restrictions on capital distributions, as opposed to operational restrictions similar to those proscribed by prompt corrective action regulations.

Conclusion

In conclusion, before formally implementing any new capital or liquidity standards, the Roundtable respectfully requests that regulatory authorities take an appropriate amount of time to fully consider the interplay between and quantitative impact of the large number of international and national regulatory changes that are occurring simultaneously. The Basel III reforms come at a time of great change for financial industry regulations including, for US financial services institutions, the Dodd-Frank Wall Street Reform Act. A deliberate approach to regulation would benefit all by minimizing unintended consequences for our economy, while promoting a level playing field among US institutions and international competitors.

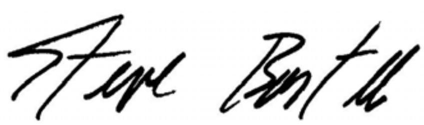
For instance, we strongly support, as the Committee has recommended, an observation period before finalizing and a phase-in period before implementing certain new standards. This applies particularly to the NSFR, which the Committee acknowledged will require a number of structural changes.[4] A deliberate approach

[4] See "Annex" to July 26, 2010 Bank for International Settlements press release entitled "The Group of Governors and Heads of Supervision reach broad agreement on Basel Committee capital and liquidity reform package", specifically page 7.

would also enable US regulatory authorities to ensure proper alignment between and thoughtful treatment of similar but distinct or unresolved provisions in the Basel III reforms and US law. As an example, the Roundtable contends that the timing of the phase-out of trust preferred securities as Tier 1 capital should be consistent under both Basel III and the Dodd-Frank Wall Street Reform Act. A further example is the definition of the more stringent capital standards required of systemically important financial institutions ("SIFIs"); we urge US regulatory authorities to consider these requirements in the broader context of the entire capital regulation framework, adopting a thoughtful approach that doesn't necessarily resort to subjective tools (e.g., a generic capital surcharge).

In summary, the Roundtable strongly supports the primary goal of the Basel III reforms—to strengthen international capital and liquidity regulations with the intent of promoting a more resilient financial services sector. We greatly appreciate your careful review of the specific provisions we have highlighted as needing modification. Once you have had a chance to review our proposed recommendations, we would welcome the opportunity to meet with you in person to discuss balanced and effective standards in more detail. While a number of reform matters remain unresolved, it is clear that all parties would benefit from an on-going dialogue about these issues. We stand ready to discuss these issues with you.

Respectfully submitted,



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February 25, 2011

Financial Stability Oversight Council
Attention: Lance Auer
1500 Pennsylvania Avenue, NW
Washington, DC 20220

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

Dear Mr. Auer:

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") gives the Financial Stability Oversight Council (the "Council") the authority to determine that a nonbank financial company should be supervised by the Federal Reserve Board (the "Board") and subject to enhanced prudential standards. The Council has proposed a rule that sets forth the criteria the Council will consider, as well as the process the Council will follow, in making such a determination. The Financial Services Roundtable (the "Roundtable") appreciates the opportunity to submit these comments on the proposed rule.[1]

I. The Council Should Clarify Key Features of the Determination Process, Reissue the Rule for Public Comment, and Not Finalize the Rule or Make Any Determinations Pursuant to Section 113 Until All Voting and Non-Voting Members of the Council are in Place

The proposed rule is intended to achieve two objectives. It is intended to "lay out the framework" the Council will use to determine if a nonbank financial company poses a threat to the financial stability of the United States.[2] It also is intended to "implement the process" the Council will follow in considering whether to subject a firm to supervision by the Board.[3] In its current form, however, the proposed rule lacks sufficient detail to achieve either of these objectives. The "framework" that is described in the preamble to the proposed rule does not appear in the rule itself. Nor does the framework provide any insight into what may constitute

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[1] The 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.
[2] Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, 76 Fed. Reg. 4555, 4559 (proposed Jan. 26, 2011) (to be codified at 12 C.F.R. pt. 1310).
[3] Id.

a threat to the financial stability of the United States. Moreover, the processes and procedures that do appear in the rule are primarily a restatement of the terms of the Dodd-Frank Act and leave many questions about the determination process unanswered.

The lack of detail in the proposed rule stands in sharp contrast to President Obama's recent Executive Order on Improving Regulation and Regulatory Review.[4] Section 1 of that Order states that regulations issued by federal agencies should "promote predictability and reduce uncertainty." The proposed rule does not meet this principle. Its skeletal structure does not provide stakeholders, including nonbank financial companies, financial markets, Congress and the general public, with sufficient understanding or insight into the determination process.

Additionally, the absence of detail in the proposed rule raises serious concerns with the Council's compliance with the requirements of the Administrative Procedures Act ("APA"). There is a long history of case law which establishes that the rulemaking must be based on reasonable decision-making. Specifically, the notice of proposed rulemaking must show the agency's views "in a concrete and focused form so as to make criticism or formulation of alternatives possible."[5] The agency must explain its reasoning,[6] explore possible alternatives "within the ambit of the existing [s]standard,"[7] and respond to relevant and significant arguments or comments made in the rulemaking process.[8] In her testimony before the Senate Banking Committee, FDIC Chairman Sheila Bair indicated that the Council "has begun developing measures of potential risks posed by" nonbank financial companies.[9] These measures do not appear in this proposed rule, and therefore the rule should be republished with more detail and clarity.

Based on the principles stated in the President's Executive Order, the apparent non-compliance with APA requirements, and our desire for greater clarity around the determination process, we recommend that the Council reissue the rule for public comment and address the matters described in the balance of this letter. Without the additional details recommended below, we are concerned that the determination process may not be developed and applied in a transparent, effective and consistent manner.

The publication of a new rule would permit the Council to address the merits of the comments received in response to the ANPR.[10] The preamble to the proposed rule summarizes those comments

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[4] See http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order. We have concluded that the Council is subject to this Executive Order since the proposed rule is classified a "significant regulatory action" as defined in Executive Order 12866, and President Obama's Executive Order is a supplement to Executive Order 12866.
[5] Home Box Office v. FCC, 567 F.2d 9, 36 (D.C. Cir. 1977).
[6] *See*, e.g., Am. Petroleum Inst. V. EPA, 216 F.3d 50, 57-8 (D.C. Cir. 2000); National Tank Truck Carriers Inc. v. EPA, 907 F.2d 177, 184 (D.C. Cir. 1990).
[7] Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co., 463 U.S. 29 (1983).
[8] Auto. Parts & Accessories Ass'n v. Boyd, 407 F.2d 330, 338 (D.C. Cir. 1968).
[9] *Implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act" Before the S. Comm. On Banking, Housing and Urban Affairs*, 112th Cong. (2011) (statement of Sheila Bair, Chairman, Federal Deposit Insurance Corporation).
[10] Advanced Notice of Proposed Rulemaking Regarding Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, 75 Fed. Reg. 61653 (proposed Oct. 6, 2010) (to be codified at 12 C.F.R. Chp. XIII).

but provides no insight into the Council's evaluation of those comments. Addressing the merits of those comments would serve as an additional guide to the manner in which the Council intends to make determinations pursuant to section 113 of the Dodd-Frank Act.

Republication also would allow the Council to address more fully the costs and benefits of the rule. The costs are widely acknowledged but the Council has not publicly weighed them against the purported benefits in a rigorous transparent manner or indicated whether, how or when it will do so.[11] The Council only mentions costs in the rule proposal when it justifies its failure to conduct a regulatory flexibility analysis by asserting that it "does not expect the rule to directly affect a substantial number of small entities."[12] Although the rule may not have a significant direct economic effect on small entities, it certainly will have a significant direct economic effect on those entities designated for supervision by the Board and significant indirect effects on the competitive structure of industries that include small entities, and on the U.S. economy as a whole.[13] After all, designation is only supposed to be used to mitigate "a threat to the financial stability of the United States," so its effects will necessarily have a broad impact. Accordingly, we recommend that the Council conduct a thorough cost/benefit analysis with public participation.

Finally, we do not believe that the Council should finalize this rule or make any determination pursuant to section 113 of the Dodd-Frank Act until existing vacancies on the Council are filled. Section 111 of the Dodd-Frank Act provides that the Council shall consist of voting and non-voting members who have certain areas of responsibility or expertise. In identifying these members, it is evident that Congress intended the Council to have a deep and working knowledge of all sectors of the financial services industry and financial markets. At present, however, three key positions on the Council remain unfilled: a voting member who has insurance expertise, the Director of the Office of Financial Research, who is a non-voting member, and the Director of the Federal Office of Insurance, also a non-voting member. These vacancies deprive the Council of valuable insights and input. Given the potential significance of this rule and section 113 determinations, the Council should have the benefit of the input and insights from all voting and non-voting members.

II. Matters That Require Clarification

A. The Rule Should Include a General Explanation of the Determination Procedure

The proposed rule and the preamble accompanying the rule identify several steps in the process that the Council will follow in determining whether a nonbank financial company will be subject to supervision by the Board. These steps include: (i) the potential creation of metrics to measure the risk profile of industry sectors, (ii) the collection of data from individual firms, (iii) a "screening" process, (iv) a "consideration" notice, (v) a "proposed" determination notice, (vi) a "final" determination, and (vii) an annual reevaluation of a determination. As proposed, however, the rule provides little detail on the timing and interaction of these various steps. For

[11] *See*, e.g., "Identifying and Regulating Systemically Important Financial Institutions: The Risk of Under and Over Identification and Regulation", (Jan. 16, 2011), available at http://www.brookings.edu/~/media/Files/rc/papers/2011/0116_regulating_sifis_elliott_litan/0116_regulating_sifis_elliott_litan.pdf.

[12] 76 Fed. Reg. 4561.

[13] *See*, e.g., Brookings paper cited above at p. 16 - "the designation of [systemically important financial institutions] under the new law will have critically important effects not only on the designated institutions but on entire industries and indeed on the economy."

example, it is not clear what the relationship is between the “screening” process that is described in the preamble and the “consideration” notice that is described in the rule.

To help make this process more transparent and comprehensible, we recommend that the authority and purpose section of the proposed rule be expanded to include a general explanation of the determination process. This explanation would serve as a basic guide to stakeholders. Ideally, it would (i) set out the chronological order of actions that may be taken by the Council, or its staff; (ii) identify who is responsible for what actions at key points in the process; and (iii) indicate when and how a company may interact with the Council or its staff during the process.

B. The Rule Should Define “Material Financial Distress” and “Financial Stability”

The Dodd-Frank Act requires that any determination by the Council be based upon a finding that “material financial distress” at the company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company, could pose a threat to the “financial stability” of the United States.[14] These findings of “material financial distress” and “financial stability” are central to any determination by the Council. Yet, the proposed rule does not provide any guidance on the meaning of these key terms or clarify how the risk metrics developed by the Council or any data collection requests relate to these findings.[15]

We recommend that the definitions section of the proposed rule be revised to define these important terms. Greater clarity around the meaning of these terms would help nonbank financial companies better appreciate the connection between any risk metrics proposed by the Council as well as any data requests that may be made by the Council or the Office of Financial Research.

In defining these key terms, we urge the Council to take into consideration systemic risk definitions under consideration by other G-20 countries. This will help to ensure that the Council’s view of systemic risk is consistent with the views of other nations where appropriate.

Additionally, we note that the Board separately has invited public comment on proposed definitions of the terms “significant nonbank financial company” and “significant bank holding company,” and in doing so has stated that any firm defined as a “significant bank holding company” or “significant nonbank financial company” will not be subject to any additional supervision or regulation by virtue of that definition.[16] We recommend that this rule similarly clarify the impact of those definitions.

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[14] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 113(a)(1) (2010).
[15] The preamble to the proposed rule states that the analytical framework (described in the preamble) incorporates these concepts. However, the preamble does not explain how it does so. 76 Fed. Reg. 4561.
[16] Definitions of "Predominantly Engaged in Financial Activities" and "Significant" Nonbank Financial Company and Bank Holding Company, 76 Fed. Reg. 7731, 7736 (proposed Feb. 11, 2011) (to be codified at 12 C.F.R. pt. 225).

C. The Proposed Analytical Framework Should be Incorporated into the Rule

The Dodd-Frank Act lists several factors the Council must consider in determining if a nonbank financial company should be subject to supervision by the Board.[17] In the preamble to the proposed rule, the Council proposes an analytical framework for the application of these factors.[18] That framework, however, is not contained in the rule itself. If the Council plans to utilize this framework, we recommend that it be incorporated into the rule. The framework provides stakeholders with some – albeit limited – guidance on how the statutory criteria will be applied by the Council in making determinations pursuant to section 113 of the Dodd-Frank Act.

At the same time, we believe it is important for the rule to state that the analytical framework is intended as a mechanism for the Council to evaluate *all* of the statutory factors in the Dodd-Frank Act and that it will not be used to place any special weight on one factor over another or provide that any single factor can lead to a designation. As we noted in our comment letter on the ANPR, the financial stability of the United States is influenced by many factors, including the operations of financial markets, the activities and practices of individual financial companies, and governmental policies. Moreover, section 113 of the Dodd-Frank Act requires the Council to consider all statutory factors in making determinations. Alternatively, if the Council intends to apply the framework in a manner that distinguishes among the statutory factors (e.g., treating some as increasing the propensity for systemic risk or others as mitigating against systemic risk), we believe it is incumbent upon the Council to explain such distinctions in the rule.

Additionally, we recommend that the rule explicitly state that the analytical framework is intended to be applied in a manner that is consistent with comparable international efforts in order to reduce concerns about regulatory arbitrage. This statement, which currently appears in the preamble to the proposed rule, is a logical addition to the rule if the analytical framework is placed within the rule. It affirms the importance of international coordination and would complement other sections of the proposed rule that require consultation with foreign regulatory authorities. Those other sections of the proposed rule direct the Council to consult with the appropriate foreign regulatory authorities for U.S. nonbank financial companies and foreign nonbank financial companies that have cross-border activities in the determination process regarding those companies. Those provisions reinforce comparable language contained in the Dodd-Frank Act regarding the coordination with foreign/home country regulatory authorities and standards and should be retained in the final rule.

D. The Risk Metrics Developed by the Council should be Subject to Public Comment

If the Council uses metrics to measure risk for purposes of making determinations under section 113 of the Dodd-Frank Act, we believe the Council would benefit from public input on the original design of the metrics and any subsequent changes in that design. Public input would help to ensure that any metrics used by the Council are consistent with best practices. Public input on this

[17] Pub. L. 111-203, § 113(a)(2) (2010).

[18] The framework places the statutory factors into six broad categories (size, lack of substitutes for the financial services and products the company provides, interconnectedness with other financial firms, leverage, liquidity risk and maturity mismatch, and existing regulatory scrutiny). It further divides these categories into two groups. One group (size, lack of substitutes, and interconnectedness) is intended to assess the potential for spillovers from a company's distress to the broader financial system or real economy. The other group (leverage, liquidity risk and maturity mismatch, and existing regulatory scrutiny) is intended to assess how vulnerable a company is to financial distress. See 76 Fed. Reg. 4561.

feature of the determination process also is consistent with Section 2 of the President's Executive Order on Improving Regulation and Regulatory Review, which states, in part, that "… regulations shall be based, to the extent feasible and consistent with law, on the open exchange of information and perspectives among … experts in relevant disciplines [and] affected stakeholders in the private sector." Therefore, we recommend that the rule provide for the publication of any metrics developed by the Council and invite public comment on their merits.[19]

E. The Rule Should Clarify the Nature and Timing of Data Requests

The proposed rule provides that in making determinations the Council may request information from State and Federal financial regulators and from individual nonbank financial companies.[20] We recommend that the rule clarify the nature and timing of potential data requests.

More specifically, the rule should: (i) specify the types of data that may be requested and the timing for such requests; (ii) provide for a company to be informed if the Council seeks information about the company from a State or Federal regulatory body; (iii) provide for the Council to explain to the company if a data request relates to a potential designation or some other function of the Council; and (iv) clarify that proprietary information will remain confidential.[21]

Additionally, as we stated in our comment on the ANPR, we urge the Council to rely to the greatest extent possible on existing data and not require companies to create new data systems. Only if existing data is substantially inadequate should additional data requirements be imposed on nonbank financial companies.

F. The Rule Should Explain the Proposed "Screening" Process

The preamble to the proposed rule states that the Council expects to "screen" nonbank financial companies using the six categories to identify those companies whose material financial distress, or the nature, scope, size, scale, concentration, interconnectedness, or mix of activities, could pose a threat to the financial stability of the United States.[22] We recommend

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[19] While not directly related, we believe that this process of considering comments with respect to the development of such metrics can also helpfully inform both the Council's recommendations under section 115 and the actions of the Board of Governors under section 165 for companies subject to enhanced supervision and prudential standards. These sections provide that such supervision and standards shall "increase in stringency, based on the considerations" set forth in section 113 and that such enhanced prudential standards may "differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Board of Governors deems appropriate." The Council's work in connection with this proposed rule can and should assist in developing metrics that can inform proper calibration by the Board of Governors as it tailors standards that are appropriately progressive in stringency.

[20] 76 Fed. Reg. 4565 (proposed 12 C.F.R. § 1310.20)

[21] The preamble to the rule invites public comment to the Office of Management and Budget on the data collection requirements imposed by the rule and estimates that the annual reporting burden associated with these requirements is 500 hours. Given the absence of any detail in the proposed rule over the scope and timing of the proposed data requirements it is difficult to comment on the burden associated with the requirements. It would be helpful if the Council would explain the basis for the estimated reporting burden. 76 Fed. Reg. 4562.

[22] 76 Fed. Reg. 4561.

that the rule clarify (i) when this screening process will be applied; (ii) how it will relate to any risk metrics utilized by the Council and any data requests made by the Council or the Office of Financial Research; (iii) what individuals or entities may assist the Council in conducting such screening; and (iv) how the screening process will relate to the consideration notice.

As we state below, we view the consideration notice as a positive feature in the proposed rule. The "screening" process also may be a useful tool for the Council and industry. However, it is difficult to comment on this feature of the process without additional information on how it would be designed and applied.

G. The Proposed Consideration Notice is a Positive Feature, but Requires Further Clarification

The proposed rule establishes a notification procedure for companies under consideration for designation. These companies are provided an opportunity to submit materials that addressing whether material financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company, could pose a threat to the financial stability of the United States.[23] We support this proposed feature of the rule. It serves as an additional point of contact between a company and the Council and will help inform the Council in making determinations under section 113 of the Dodd-Frank Act. Nonetheless, we believe that even this feature of the rule would benefit from further detail.

Specifically, we recommend that the rule require that (i) the consideration process be initiated by a majority vote of the Council meeting in executive session; (ii) Council staff consult with the primary regulatory agency and assess existing regulatory oversight for U.S. and foreign nonbank financial companies prior to the Council determining that such company be considered for designation; (iii) Council staff inform a company prior to any such vote and meet with representatives of the company; (iv) notice be provided to a company explaining the basis for subjecting the company to the consideration process including the basis for finding that existing regulatory oversight is inadequate to protect the U.S. economy; (v) a company be given no less than 60 days to respond to the notice; (vi) the Council notify a company when it is no longer under consideration; and (vii) the entire consideration process be confidential. Our rationale for these recommendations follows.

We propose that the consideration notice be initiated by a vote of the Council because it will be a formal step in the determination process. On the other hand, since this is a preliminary step in the determination process, we believe a majority vote is sufficient rather than the supermajority required in proposed or final determinations.

We propose that Council staff consult with the primary financial regulatory agency, if any, for a U.S. nonbank financial company and a foreign nonbank financial company prior to the Council determining that such company be considered for designation, for the purpose of providing the Council with a better understanding as to what other regulatory oversight is in place that would render further

[23] 76 Fed. Reg. 4565 (proposed 12 C.F.R. § 1310.21(a)).

regulatory action by the Council and the Federal Reserve redundant and unnecessary. An assessment of the adequacy or inadequacy of existing regulatory oversight with respect to the individual company should be part of the finding provided to companies as well. Reaching this conclusion would save the Council and the company considerable time and resources avoiding further pursuit of the designation review process.

We propose that Council staff meet with representatives of a company prior to a Council vote on a consideration notice in order to help both the Council and the company better understand the basis for such an action and to serve as an opportunity for an open exchange of information between the Council and the company. Understanding the complexities of the structure, operations and risk profile of a company before beginning the consideration process would better inform the Council in producing better decisions. Companies should be given sufficient notice to prepare for such a meeting and have the opportunity to bring written materials to the meeting. Also, we recommend that there be a minimum time period between the meeting and Council action on a related consideration notice.

We recommend the inclusion of a statement of the basis for the consideration notice in the notice itself in order to ensure that the company understands the Council's rationale for the notice and to ensure that the company's response to the notice is responsive to the Council's concerns. Also, we recommend that a company have 60 days, rather than 30, to respond to a consideration notice because a proper response may require some original data collection or analysis on the part of the company.

We propose that the Council formally notify a company when it is no longer subject to consideration so the company can redirect relevant personnel and resources.

Finally, we believe it is critical that the entire consideration process be confidential. By design, this step in the process is not determinative; yet its disclosure could have an impact on the company's business operations as investors and markets react to the information. To help ensure this result, we strongly recommend that the rule specifically state that the consideration process will be treated as the equivalent of a confidential supervisory review by federal banking agencies and that the process is a preliminary action by the Council and any company subject to the process may not be subject to a final determination.

H. For Examinations conducted by the Federal Reserve during the Designation Process, Companies under Consideration Should Receive Copies of Examination Results and be Given an Opportunity to Respond to such Results

The proposed rule permits the Council to request the Federal Reserve Board to examine a nonbank financial company if the Council is unable to determine whether the company poses a threat to U.S. financial stability based on other information, including discussion with the company itself.[24] Once the examination is complete, we believe the examiners should provide the company with an opportunity for an "exit interview," and orally advise the company of the preliminary exam results. Moreover, we believe the company should receive copies of all written results from the examination and be given an opportunity to respond to the results of the examination before a final determination is made by the Council. These procedures would

[24] 76 Fed. Reg. 4564 (proposed 12 C.F.R. § 1310.10(e)).

allow for a better exchange of information between the company and Council staff, and thus result in more accurate determinations by the Council.

I. All Votes of the Council Related to Designations Should be Held in Executive Session, and Designated Companies Should be Given Sufficient Notice before the Council Announces such Designation

The proposed rule requires a vote of the Council on all proposed and final determinations.[25] We recommend that all discussions and decisions by the Council regarding the designation of nonbank financial companies should be held in executive session and not be disclosed to the public. Decisions regarding proposed and final determinations naturally will involve a discussion of proprietary and sensitive business information. We also recommend that the Council provide sufficient advance notice to a designated company before publicly disclosing that company's designation under section 113. This will provide newly designated companies with the time needed to prepare and file any necessary public disclosures.

J. The Evasion Standard Should Not Prevent a Company from Taking Actions to Reduce its Risk Profile

The proposed rule permits the Council to subject a nonbank financial company to supervision by the Board if the Council determines that the company is organized or operates in a manner as to evade the application of Title I of the Dodd-Frank Act.[26] The proposed rule should clarify that this anti-evasion provision is not intended to prevent companies from taking organizational or operational steps that reduce their risk profile. Indeed, one of the stated purposes of Dodd-Frank is to prevent or mitigate risks to the financial stability of the United States, and this anti-evasion provision should not be implemented in a manner that is at odds with that purpose.

K. The Rule Should Clarify the Reevaluation and Rescission Process

The proposed rule states that the Council shall annually reevaluate determinations and rescind determinations.[27] We recommend that the rule clarify this process by (i) identifying the grounds for reevaluation and rescission; and (ii) permitting a company to petition for reevaluation and rescission based upon changes in the company's risk profile or business model.

III. Conclusion

The authority of the Council to determine whether a nonbank financial company should be subject to Board supervision and enhanced prudential standards is one of the Council's most important powers. Such a determination will have a material impact on the company, its

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[25] 76 Fed. Reg. 4563 (proposed 12 C.F.R. § 1310.10(b)).
[26] 76 Fed. Reg. 4564 (proposed 12 C.F.R. § 1310.12).
[27] 76 Fed. Reg. 4566 (proposed 12 C.F.R. § 1310.23(a)).

customers, and the markets in which it operates and the U.S. economy as a whole. The recommendations made in this letter are intended to ensure that this process is applied in a transparent, effective and consistent manner.

Sincerely,

Richard M. Whiting