



August 5, 2011

Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, N.W.
Washington, D.C. 20551
Attention: Jennifer J. Johnson, Secretary
Docket No. R-1425
RIN No 7100 AD 77

Re: Capital Plans

Ladies and Gentlemen:

The Clearing House Association L.L.C. (“**TCH**”), the American Bankers Association (“**ABA**”), The Financial Services Roundtable (the “**Roundtable**”) and the Securities Industry and Financial Markets Association (“**SIFMA**”) (together, the “**Associations**”)¹ appreciate the opportunity to comment on the notice of proposed rulemaking (the “**NPR**”)² issued by the Board of Governors of the Federal Reserve System (the “**Board**”) that would require U.S. bank holding companies with \$50 billion or more in total consolidated assets and certain other institutions to which the rule is determined by order to be applicable (“**Covered BHCs**”) to submit capital plans on an annual basis and to provide prior notice under certain circumstances before making capital distributions. We support sound capital planning and believe that many of the NPR’s requirements are appropriate. However, we have concerns with several aspects of the NPR, some of which go to substance and some of which go to the need for clarification. Part I of this letter addresses our substantive concerns and Part II addresses areas where we urge the Board to provide clarification.

I. Substantive Concerns

- a. Covered BHCs should be permitted to make approved capital distributions without interruptions forced by the capital planning process.**

¹ See *Annex A* for a description of the Associations.

² 76 Fed. Reg 35351 (June 17, 2011).

Under the NPR, Covered BHCs would be precluded from making capital distributions during a quarter (or near quarter), irrespective of their financial health or the robustness of their capital positions. The NPR indicates that the Federal Reserve expects that its response to a Covered BHC's annual capital plan submission would cover the quarter in which the capital plan was submitted and the subsequent three quarters. Under the time line set forth in the NPR, a non-objection received from the Federal Reserve on March 15th of Year 1 would only cover capital distributions made in Year 1. As a consequence, a Covered BHC that receives a non-objection from the Federal Reserve on March 15th of Year 1 would not be permitted to make any capital distributions from January 1st of Year 2 until the time this Covered BHC receives a non-objection from the Federal Reserve covering Year 2, which could potentially be as late as March 15th, even for a banking organization with a strong capital position, favorable earnings prospects and a reasonable capital distribution policy.

The Associations urge the Board to implement the capital planning process in a manner that permits Covered BHCs with acceptable capital plans to make capital distributions without interruption. This is particularly important with respect to balance sheet management activities. We believe it is very important that the capital planning process not be structured in a manner that prevents Covered BHCs from making capital distributions for nearly a calendar quarter in each year.

We urge the Board to address our concerns by adjusting the four quarter period during which approval of a Covered BHC's capital plan would be effective. Specifically, we recommend that the Federal Reserve's non-objection to a capital plan cover the four quarter period (the "**Capital Plan Approval Period**") that commences following the date of the non-objection, rather than the quarter in which it was submitted and the subsequent three quarters. Under the Associations' proposal and the time line set forth in the NPR, a Covered BHC could make capital distributions contemplated by the capital plan approved in the first quarter of Year 1 during the first quarter of Year 2 – that is, during the period in which the Federal Reserve is reviewing the Covered BHC's capital plan, which, if approved, will permit distributions in the following four quarters.³

The Associations believe that such an adjustment is fully consistent with the goals of the NPR. As under the NPR, Federal Reserve approval of a capital plan would still be effective for no more than four quarters. Moreover, any distributions made during the first quarter of a year would have to be consistent with the Covered BHC's current, approved capital plan, which would have been approved in the first quarter of the preceding year. Importantly, a Covered BHC also would continue to be required to submit a revised capital plan pursuant to Section 225.8(e)(4) if during the Capital Plan Approval Period there were a material change in the Covered BHC's risk profile, financial condition or corporate structure or if changes in the macro-economic outlook required the use of updated scenarios.

By avoiding a potentially lengthy, annual period in which capital distributions would not be permitted, the Associations' recommended approach also would help mitigate the potential for the proposal to place Covered BHCs at a competitive disadvantage. Domestic Covered BHCs compete in increasingly global financial markets for capital and funding with other organizations, including foreign banking organizations (many of which have ADRs that trade in the U.S. securities markets) and nonbank

³ In order to prevent any disruptions in the first year in which the final rule is effective, the Associations also request that the Board make appropriate transitional arrangements so that Covered BHC's are not unnecessarily prevented from making capital distributions in the period between the effective date of the final rule and the first date on which a Covered BHC is permitted to make capital distributions pursuant to its initial capital plan.

financial firms. We recognize the public policy reasons for not imposing a similar capital planning requirement directly on foreign banking organizations operating in the United States. However, we also request that the Board implement the NPR in a manner that does not make it more difficult for domestic Covered BHCs to raise and maintain equity capital at a competitively reasonable price by virtue of their being prevented from making capital distributions for nearly a quarter every year.

- b. The Associations are concerned that the NPR's proposed rules could be implemented to substitute the Federal Reserve's judgment as to capital distributions for the Board of Director's judgment, going beyond the expected (and appropriate) supervisory role with respect to capital adequacy.**

The NPR represents a significant change to capital distribution oversight. We have three fundamental concerns with the new approach.

First, as a matter of both corporate law and management practices, decision-making with respect to dividends and other capital distributions is a fundamental responsibility of the Board of Directors. The NPR's approach has the potential to insert the Federal Reserve into that decision making to an extraordinary extent that would effectively replace the Board of Director's judgment with the Federal Reserve's insofar as capital distributions are concerned. Capital planning is necessary and appropriate as a matter of sound management, and review and oversight of capital planning is appropriate and necessary as a matter of proper regulatory oversight. However, we are very concerned that what starts as appropriate regulatory oversight not evolve into a Reserve Bank's effectively taking over a fundamental management responsibility. Accordingly, we urge the Federal Reserve, in deciding whether to object and framing objections to a Covered BHC's capital plan, to adhere to the standards set forth in Section 225.8(e)(2)(ii) (subject to our other comments on those standards in this letter, including in Parts I.j, I.k and II.c) in a manner that rests objections on specific concerns and not merely regulatory preferences.

Second, historically, the presumption has been that a capital distribution is permissible unless the Federal Reserve determines otherwise. The NPR inverts this presumption – capital distributions will now be subject to advance review and generally not permitted unless the Federal Reserve approves a Covered BHC's capital plan or approves the distribution pursuant to the NPR's prior notice requirements. These changes are not mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**") and will require firms to reorient management operations. As a result of this shift to a prior approval requirement, Covered BHCs will have substantially less flexibility in determining the timing and amount of capital distributions. The NPR also marks a move from a temporary Comprehensive Capital Analysis and Review ("**CCAR**") process that was developed during a time of financial stress to a permanent rule regarding capital planning that will apply not just in times of financial stress, but in times of robust growth as well. Given the uncertain competitive and financial impacts these changes will have on Covered BHCs, we believe it is critical to minimize to the greatest extent possible the final rule's potential to disrupt a Covered BHC's ability to make capital distributions.

Third, assuming the Board and the other U.S. banking agencies proceed to implement Basel III's capital conservation buffer, the proposal should not be implemented in a manner that effectively makes the buffer a nullity by, for example, preventing Covered BHCs from making capital distributions that have the potential to reduce a Covered BHC's capital to a level at which distributions would be restricted under the buffer.

- c. **Each Covered BHC should have the ability to determine its initial submission date in order to align the NPR's capital plan requirements with the Covered BHC's internal capital planning processes and facilitate communication with shareholders.**

The NPR at present requires all Covered BHCs to adhere to the same submission schedule. Under Section 225.8(d)(1)(ii)⁴ of the NPR, Covered BHCs must submit their complete capital plans to the Federal Reserve⁵ each year by January 5th. The Board must then object or provide the Covered BHC with a notice of non-objection by March 15th.

While this schedule is favored by some Covered BHCs and would comport with their internal capital planning and related processes, this schedule is suboptimal for other Covered BHCs. For example, a January submission deadline would not allow Covered BHCs to address capital distributions for the full upcoming year—whether as to dividends, share repurchases, redemptions or other steps—in their January earnings releases and related earnings calls, which is the natural time for many institutions to address these matters. Given differences in the internal capital planning processes of Covered BHCs and in order to facilitate Covered BHCs' communications with shareholders, the Associations urge the Board to amend the proposed capital plan submission schedule as follows:

- The Federal Reserve would provide any stressed scenarios⁶ and data templates to be included in a Covered BHC's annual capital plan submission for a given year by early July of that year.⁷
- Covered BHCs could submit their plans any time between early October of that year and early January of the following year. In order to permit the Federal Reserve adequate opportunity to prepare for receipt of the company's plan, a Covered BHC would have to provide the Board at least 60 days' prior notice of its planned submission date.
- The Federal Reserve would then have 70 days from the date of the Covered BHC's submission to issue any objections or non-objections.

⁴ All references to a "Section" in this letter are to the proposed rule in the NPR unless otherwise noted.

⁵ **"Federal Reserve"** as used in this letter refers to the appropriate Federal Reserve Bank responsible for supervising a particular Covered BHC.

⁶ We are concerned that the stressed scenarios provided by the Federal Reserve are so fundamental to the capital planning process as to themselves constitute a "rule making" under the Administrative Procedures Act that should be published for comment before being adopted as the scenarios that Covered BHCs must use for purposes of the proposed rules.

⁷ Given the proposed effective date of the final rule, we recognize that the timing of the provision of stressed scenarios and data templates will need to be different in the first year in which the final rule is effective. In order to provide Covered BHCs with sufficient time to reflect the required stressed scenarios and other information in their initial capital plans, we request that the Federal Reserve provide any stressed scenarios and data templates at the time the final rule becomes effective.

- Any non-objection to a capital plan would cover a four quarter period commencing with the quarter immediately following the quarter in which the non-objection from the Federal Reserve was due, as proposed in Part I.a.

Allowing Covered BHCs to choose their submission date within the range specified above may also have the benefit of allowing the Federal Reserve to allocate supervisory resources more efficiently because supervisors likely would not have to review all Covered BHCs' capital plans at the same time. Moreover, it would not prevent the Federal Reserve from providing Covered BHCs with the same stress scenario parameters (including designated start date for the stressed scenario) in order to compare the results of these stress tests across all Covered BHCs.

d. Stressed scenarios and data templates should be provided at least twelve weeks before a Covered BHC's capital plan submission date.

Footnote 18 of the NPR states that the Board will provide stressed scenarios and any related data requests that would be required to be reflected in a BHC's annual capital plan "several weeks" before the capital plan is due. Given the experience of some of our larger members with the CCAR exercise, we are concerned that "several weeks" will not be enough time to reflect the relevant information and stressed scenarios in capital plans. Accordingly, to the extent the proposal in Part I.c is not accepted (under which the Federal Reserve would provide stressed scenarios and data templates by early July), we urge the Federal Reserve to provide Covered BHCs with any stressed scenarios and data templates no fewer than twelve weeks before a Covered BHC's capital plan submission date.

e. There should be a *de minimis* exception to the requirement that a Covered BHC provide prior notice to the Federal Reserve before making a capital distribution that would exceed the amount described in its approved capital plan.

Section 225.8(f)(1)(iv) of the NPR would require a Covered BHC to provide prior notice to the Federal Reserve before making a distribution that exceeds the amount described in the capital plan approved by the Federal Reserve, without regard to the amount by which the distribution exceeds the amount specified in the current, approved capital plan. The Associations strongly support a *de minimis* exception to this prior notice requirement and propose that any distribution be permitted pursuant to this exception that, together with all other distributions made during the Capital Plan Approval Period pursuant to the *de minimis* exception,⁸ is less than a number of basis points of the Covered BHC's risk-weighted assets measured under Basel I as of the most recent quarter end equal to the sum of (i) 15 and (ii) 2 times the number of percentage points by which the Covered BHC's Tier 1 common ratio measured under Basel I as of the most recent quarter end exceeds 7 percent. For example, if a Covered BHC's current Tier 1 common ratio measured under Basel I was 10 percent, then the *de minimis* threshold for this institution would be calculated as 21 basis points times the Covered

⁸ For the sake of clarity, we note that only the amount by which a distribution exceeds the amount described in an approved capital plan would be counted for purposes of determining the availability of the *de minimis* exception. For example, suppose that a \$20 million distribution exceeded the amount described in a Covered BHC's capital plan by \$1 million and a subsequent \$25 million distribution exceeded the amount described by \$2 million. Further suppose that this Covered BHC used the *de minimis* exception proposed above to make the portion of these distributions in excess of the approved amounts. The total amount of distributions for which the *de minimis* exception had been used would be \$3 million, as opposed to \$45 million.

BHC's risk-weighted assets (*i.e.*, $15 + (2 \times (10 - 7))$). We believe that the *de minimis* standard should scale with the Tier 1 common ratio of the Covered BHC given that the higher a Covered BHC's Tier 1 common ratio capital cushion, the larger a distribution has to be before it no longer has merely a *de minimis* impact on a Covered BHC's capital position.

f. Covered BHCs should have additional time to submit requests for reconsideration.

Section 225.8(e)(3) of the NPR provides a Covered BHC with 5 calendar days following its receipt of a notice of objection from the Federal Reserve to submit a request for reconsideration. The Associations do not believe that a five calendar day period is a sufficient amount of time to prepare these requests. Moreover, given the NPR's proposed timing of responses from the Federal Reserve (*i.e.*, by March 15th of the relevant calendar year), Covered BHCs would need to submit their requests for reconsideration during the first quarter of the calendar year, a time when key personnel at many Covered BHCs are focused on the preparation of year-end reports and resources are thus particularly limited. The Associations, therefore, request that the Federal Reserve extend the amount of time that Covered BHCs have to submit a request for reconsideration to ten calendar days. In addition, to the extent the proposal in Part I.c is not adopted, given the importance of resolving any issues with capital plans as promptly as practicable, in order to offset the five day increase in the amount of time Covered BHCs have to submit requests for reconsideration, we also request that the Federal Reserve respond to annual capital plan submissions by the tenth day of the relevant month by which its response is due, rather than the fifteenth day.

g. Capital plans, non-objections or objections to capital plans, any requests for reconsideration, approvals or rejections of any such requests, prior notice filings and the results of stressed scenarios should be treated as confidential supervisory information.

As the Board has noted, CCAR is a supervisory exercise that involves an evaluation not only of potential stressed capital levels, but also of the processes used by a banking organization to manage and assess its risks and capital adequacy on an ongoing and forward-looking basis.⁹ Consistent with the nature of the CCAR process on which the NPR is based, the Associations urge the Board in the final rule to treat capital plans, objections and non-objections to capital plans, any requests for reconsideration, approvals or rejections of any such requests, prior notice filings and the results of stressed scenarios as confidential supervisory information and therefore not subject to public disclosure. Thus, for example, while a significant acquisition by a Covered BHC may warrant resubmission of a capital plan, the submission and review of the revised plan should be conducted through supervisory channels, rather than as part of any formal application process triggered by the acquisition. The Board or other agency reviewing an application in connection with such a significant acquisition would, of course, be able to consider a Covered BHC's capital plan, just as the agencies consider other confidential supervisory information (*e.g.*, examination reports) when acting on applications.

With respect to the disclosure of the results of stressed scenarios (that is, the impact of the stressed scenarios on a Covered BHC's capital ratios), this information should also be considered confidential supervisory information. Concerns with the consequences of potential disclosure could

⁹ See Board, *Comprehensive Capital Analysis and Review: Objectives and Overview* (Mar. 18, 2011), at 17 (noting that "CCAR is a broad supervisory exercise"), available at <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20110318a1.pdf>.

influence the Board in its determinations of stress scenario parameters and dampen the free exchange of communication between Covered BHCs and their supervisors that is so important to sound supervision.

- h. Covered BHCs subject to the Internal Capital Adequacy Assessment Process (“ICAAP”) requirements should be permitted to combine components of ICAAP with capital plan submissions under the NPR and submit them on the capital plan timeline.**

The requirements of the NPR overlap with many of those in ICAAP, including the requirement to provide detailed descriptions of a Covered BHC’s processes for assessing capital adequacy. It would be more efficient if, where required components of the capital plan and ICAAP are similar, a Covered BHC could satisfy the requirements of both with a single submission that satisfies the applicable requirements of ICAAP and the final rule published by the Board regarding capital planning. A single submission would not only reduce the burden of Covered BHCs subject to ICAAP requirements but also reduce potential redundancies in the regulatory review process. Moreover, because the ICAAP components and the capital plan need to be reviewed and approved by the Board of Directors or a designated committee thereof, allowing BHCs to make a single submission as suggested above would not result in a lower level of oversight. Accordingly, we urge the Board to permit Covered BHCs subject to ICAAP requirements to combine similar components of the two regulations into one submission (which satisfies the applicable requirements of ICAAP and the final rule published by the Board regarding capital planning) and to submit them according to the capital plan timeline.

- i. The Associations’ concerns regarding the NPR’s provisions concerning data requests are as follows:**

- 1. In order to reduce the time and expense of complying with potentially unnecessary data requests, the Federal Reserve should be cognizant of data that have already been collected when requesting information pursuant to Section 225.8(d)(3).**

The NPR permits the Board and the Federal Reserve to request an exceptionally broad range of data from Covered BHCs under Section 225.8(d)(3), some of which appears to be information that a Covered BHC likely will have already provided to a federal banking agency. For example, bank holding companies are required to report structural information on all “controlled” entities on Form FR Y-10 reports and all entities of which they own more than 5 percent of a class of voting equity in their annual report on Form FR Y-6. Moreover, some of this information (*e.g.*, information regarding a Covered BHC’s structure and credit exposure) may overlap with the information a BHC is required to file as part of its “living will” or credit exposure reports under Section 165(d) of the Dodd-Frank Act. The Associations therefore urge the Board and Federal Reserve, when requesting data under Section 225.8(d)(3), to be mindful of data that have already been or will be collected in order to reduce the time and expense of responding to potentially unnecessary data requests.

- 2. Covered BHCs should, under certain circumstances, be provided with additional time to respond to data template requests or a limited exemption from data requests. In addition, data templates should be changed as infrequently as possible.**

Covered BHCs, depending on their past experience with the capital planning process,

may need additional time to develop the technology and processes necessary to provide in a timely manner information responsive to the Federal Reserve's data template requests. Accordingly, the Associations urge the Federal Reserve to provide Covered BHCs with additional time as necessary and appropriate to respond to data template requests or the ability to request an exemption to the extent that strict compliance with a data request would result in undue burden or expense and permit the substitution of appropriate information. The Associations also ask the Board and Federal Reserve to be cognizant of the costs associated with changes to the data templates and urge the Board to make as few changes to the templates as possible in order to minimize these costs.

- j. **"Material unresolved supervisory issues" should not include issues that do not, or are unlikely to, materially impact a Covered BHC's capital position, liquidity or financial results.**

Section 225.8(e)(2)(ii)(A) of the NPR permits the Federal Reserve to object to a proposed capital plan if there are any "material unresolved supervisory issues." The Associations strongly believe that supervisory issues unlikely to have a material impact on a Covered BHC's capital position, liquidity or financial results should not be grounds for objecting to a proposed capital plan. Accordingly, the Associations urge the Board to tie the standard for what constitutes a "material unresolved supervisory issue" to supervisory issues that materially impact, or are likely to materially impact, a Covered BHC's capital, liquidity or financial condition.

- k. **The criteria for approval of a revised and resubmitted capital plan should focus on whether the plan addresses the deficiencies identified in the objection of the Federal Reserve to the capital plan.**

The NPR does not explicitly address the criteria for approval of a revised and resubmitted capital plan. Section 225.8(e)(2)(iv) provides, however, that if the Federal Reserve has objected to a Covered BHC's capital plan it generally may not make capital distributions until the Federal Reserve determines that its capital plan does not give rise to the conditions listed in Section 225.8(e)(2)(ii), which serve as the grounds for an objection to a capital plan. This reference to Section 225.8(e)(2)(ii) could be interpreted to imply that the Federal Reserve intends to perform a *de novo* review of resubmitted capital plans. The Associations believe that such a review will likely be time consuming and unnecessary and is thus undesirable. This review should instead focus on whether the resubmitted plan addresses the deficiencies identified by the Federal Reserve in its objection. The Associations urge the Board to revise the final rule accordingly.

- l. **Capital plan resubmissions should be responded to within 15-days, subject to a 15-day extension.**

Although the NPR would appear to prohibit a Covered BHC from making any capital distributions while the Federal Reserve reviews a re-submitted capital plan, the NPR does not provide a separate time frame for review of a re-submitted plan. We believe that a shorter approval period than the approximately 70-day period for annual submissions is warranted. In particular, we propose that the Federal Reserve should respond to capital plan resubmissions within 15-days, subject to a 15-day extension if, in the judgment of the Federal Reserve, additional time is necessary or otherwise appropriate to conduct the review. Because the Federal Reserve will have reviewed a Covered BHC's annual capital plan submission prior to the filing of a resubmission, it will already have some familiarity with the Covered BHC's capital planning processes, which should facilitate its review of a resubmission.

and lessen the need for a lengthy review period. Moreover, a reduced review period for resubmissions (as compared with the review period for annual submissions) will help to reduce the disruptive impact that the prohibition on capital distributions during the review period could have on a Covered BHC's ability to manage its balance sheet.

- m. The criteria in Section 225.8(e)(4)(ii) for plan resubmission should focus on events that occurred after the date the Federal Reserve issued its non-objection.**

The Associations note that the triggers for resubmission of a capital plan in Section 225.8(e)(4)(ii) are not limited to changes that have occurred since approval of the Covered BHC's annual capital plan, but rather could be read as permitting the Federal Reserve to require resubmission based only on an after-the-fact reassessment of the Covered BHC's approved capital plan. For example, the proposed rule would appear to allow the Federal Reserve to require a Covered BHC to submit a revised capital plan if the Federal Reserve, after issuing a non-objection, subsequently determined (without any change in circumstances) that the Covered BHC's previously approved capital plan (i) is incomplete, or (ii) the scenarios used in the capital plan were not sufficiently stressed. We do not believe that this was the intent of the NPR. Accordingly, the Associations urge the Board to amend the final rule to provide that the conditions for resubmission in Section 225.8(e)(4)(ii) will only be triggered if there has been a change of circumstances following the issuance of the non-objection.

- n. If a covered BHC resubmits its capital plan, a Covered BHC's current, approved capital plan should remain in force – and distributions consistent with that capital plan should be permitted –until the Federal Reserve responds to the resubmission or informs the Covered BHC that such capital distributions are not permitted.**

It appears that the NPR would prevent a Covered BHC from making capital distributions while the Federal Reserve is reviewing a resubmitted capital plan. The Associations urge the Board to confirm in the final rule that, if a Covered BHC resubmits its capital plan, a Covered BHC's current, approved capital plan remains in force – and distributions consistent with that capital plan are permitted – until the Federal Reserve either responds to the resubmission or informs the Covered BHC that capital distributions are not permitted under the current, approved plan. The criteria in Section 225.8(e)(4) for resubmission are broad, and the Associations are concerned that these requirements have the potential to be disruptive to a Covered BHC's ability to make capital distributions. As remarked in Part I.a, it is critical that the capital planning process not be structured in a manner that prevents Covered BHCs from managing their balance sheets. Permitting a Covered BHC to make previously approved distributions while its resubmission was reviewed, as proposed, would help to prevent unnecessary disruptions to balance sheet management activities. Moreover, the Federal Reserve could always prohibit such distributions, if in its supervisory judgment, it believed prohibition was warranted.

- o. The Board should retain authority to grant exemptions from the requirements under the final rule.**

The NPR does not establish a process under which the Board may consider an exemption request by a Covered BHC from its timing and other requirements. For example, under the NPR, a Covered BHC that announces a material acquisition on October 16th must submit a revised capital plan on or before November 15th (*i.e.*, within 30 days of determining that there will be a material change to the Covered BHC's corporate structure) or December 15th, if the Reserve Bank extended the deadline by 30 days. This Covered BHC would also be required to submit its annual capital plan by

January 5th.¹⁰ Given the difficulty of anticipating timing and other issues stemming from the NPR, the Associations request that the Board establish a process that would allow a Covered BHC to request on a case-by-case basis an exemption from one or more requirements under the final rule to address unforeseen issues resulting under the final rule (including, for example, the ability to extend the time frame covered by an updated capital plan to align with its annual cycle).

II. Clarifications

- a. **The Associations request that the Board clarify the relationship between the “stressed scenarios” required by the NPR and those required under Section 165 of the Dodd-Frank Act and provide additional guidance regarding what constitutes a “material” change under Section 225.8(e)(4). In particular, the Associations urge the Board to clarify, in its final rules, that a “material” change must adversely affect a Covered BHC’s financial condition and capital position in order for the resubmission requirement in Section 225.8(e)(4) to apply.**

Section 225.8(d)(iii)(A) of the NPR requires Covered BHCs to estimate revenues, losses and pro forma capital levels, among other things, over a minimum nine-quarter planning horizon under both expected conditions and stressed scenarios, some of which will come from the Federal Reserve and at least one of which the Covered BHC will develop. In addition, a Covered BHC will be required to calculate its pro forma tier 1 common ratio under expected and stressed conditions under Section 225.8(d)(vi). The Associations would appreciate additional clarity regarding the relationship between the above described “stressed scenarios” and the stress tests required under Section 165(i) of the Dodd-Frank Act. Namely, to what extent do these stress test requirements, which largely apply to the same institutions, interrelate? To the extent the stress tests in Section 165(i) of the Dodd-Frank Act are partly or entirely separate from those required under the NPR, we urge the Board to clarify the ways in which they will differ as well as to consider the cumulative impact of these requirements.¹¹

In addition, Section 225.8(e)(4) of the NPR requires a Covered BHC to revise and resubmit its capital plan if “there has been or will likely be a material change in the [Covered BHC]’s risk profile . . . , financial condition, or corporate structure.” The Associations urge the Board to clarify, in the final rule, that a material change requiring a revision and resubmission of a capital plan is only a material change that *adversely* affects a Covered BHC’s financial condition and capital position.

¹⁰ Under the NPR, the Federal Reserve in consultation with the Board may extend the deadline by 60 days for an updated capital plan and provide for a later date in the case of an annual capital plan submission.

¹¹ As public sector officials have acknowledged, the aggregate impact of the current financial-services regulatory reforms in the U.S., including the Dodd-Frank Act and Basel III, has not been fully analyzed. See, e.g., Chairman Bernanke, Remarks at a Question and Answer Session Following Chairman Bernanke’s Speech on the U.S. Economic Outlook (June 7, 2011) (transcript available at <http://video.cnbc.com/gallery/?video=3000026289>) (noting that no one had yet done an analysis of the impact of the recent financial reform on credit and stating, “It’s just too complicated. We don’t really have the quantitative tools to do that.”).

- b. The Federal Reserve should provide the reasons for its objection to a capital plan at the time it notifies the Covered BHC of its objection, and its written notice of reasons for objection should address the separate components of the capital plan that concern the Federal Reserve.**

Section 225.8(e)(2)(i) of the NPR provides that the Federal Reserve has until March 15th to object to a capital plan or provide a Covered BHC with a notice of non-objection. Section 225.8(e)(2)(iii) requires the Federal Reserve to notify a Covered BHC in writing of the reasons for a decision to object to its capital plan, but does not specify a date by which it must do so. We assume the Federal Reserve will specify the reasons for objections to a capital plan in the notice of objection. We urge the Board to clarify in the final rule that our assumption is correct. Additionally, we urge the Board to indicate in any written notice of objection which components of the capital plan are not acceptable or whether a scaled down component would make the capital plan acceptable. Providing this information in notices of objection would make the resubmission process more efficient and improve the transparency of decisions regarding capital plans. It would also not be feasible for Covered BHCs to file a meaningful request for reconsideration without a complete understanding of the reasons for the objection. Moreover, a Covered BHC's resubmission of its capital plan as required under Section 225.8(e)(4)(ii) could be delayed to the extent the Federal Reserve has not provided the reasons for its objection.

- c. The Associations request that the Board clarify that a "matter requiring attention" does not necessarily constitute a "material unresolved supervisory issue."**

The Associations seek to confirm that a "matter requiring attention" in an examination does not necessarily constitute a "material unresolved supervisory" issue for purposes of Section 225.8(e)(2). As discussed in Part I.j, the Associations believe that objections to capital plans should be tied to supervisory issues that impact a Covered BHC's capital, liquidity or financial condition. A "matter requiring attention" potentially may relate to a wide range of issues, some of which are unlikely to impact capital, liquidity or financial condition. More fundamentally, we do not believe that all matters identified as requiring management's attention following an examination (including matters that may relate to a Covered BHC's capital or liquidity risk management processes) rise to the level that would require the relevant Covered BHC to submit a revised capital plan.

- d. The Associations request that the Board clarify that the capital planning process should focus on the consolidated organization.**

The NPR requires a Covered BHC to develop and maintain a capital plan providing a written presentation of the Covered BHC's capital planning strategies and capital adequacy processes. The Associations would appreciate the Board's clarifying that (i) the capital plan should address the capital strategies and plans of the consolidated organization and (ii) the result of stress tests addressed in the capital plan should be focused on the consolidated organization. Given the structural and limited relationship a Covered BHC has with unconsolidated entities, such as a non-subsidiary affiliate of the top-tier Covered BHC, we do not believe that it would be reasonable to require a top-tier Covered BHC to address the capital strategies and plans of such unconsolidated entities in the Covered BHC's capital plan (although, of course, a Covered BHC's own capital strategies and plans would have to take into account any investments in and relationships with such companies). In addition, the relevant stress test results for purposes of capital planning are those of stress tests conducted at the consolidated Covered BHC level. Addressing the results of subsidiary level stress tests (which would have different

assumptions and as of dates, among other things) in the capital plan would be burdensome, unhelpful and inappropriate.

- e. The Board should clarify in the final rule that a Covered BHC is not required to file a new capital plan under Section 225.8(d)(1)(iv)(A) if the Federal Reserve has required that an updated plan be filed under Section 225.8(d)(1)(iv)(B).**

The Associations request that the Board clarify that a Covered BHC is not required to file a new capital plan under Section 225.8(d)(1)(iv)(A) (which requires a Covered BHC to resubmit its capital plan following certain material changes) if the Federal Reserve has requested that a Covered BHC file an updated capital plan under Section 225.8(d)(1)(iv)(B). As drafted, this Section could be read to require multiple resubmissions if the conditions in clause (A) and clause (B) are both satisfied at around the same time. We do not believe that requiring overlapping submissions would be a sensible result and assume the Board does not intend to require overlapping submissions.

- f. The Associations would appreciate additional information from the Board regarding data template requests as well as the security controls and processes the Board and the Federal Reserve have in place to safeguard data.**

The Associations would appreciate additional guidance from the Board regarding the expected content of the data template requests and their relevancy to the evaluation of capital adequacy as well as the expected process for requesting and providing information pursuant to Section 225.8(d)(3) and the timing of these requests. In addition, we request that, in the release of the final rule, the Board describe the security controls and processes the Board and the Federal Reserve have in place to safeguard and maintain Covered BHCs' data given the sensitivity of this information.

- g. The Associations request that the Board clarify that an objection to an annual capital plan submission would not prevent distributions under a current, approved capital plan.**

The Associations urge the Board to clarify in the final rule that an objection to a Covered BHC's annual capital plan submission would not prevent a Covered BHC from making a capital distribution consistent with its current, approved capital plan during the Capital Plan Approval Period. For example, if the Federal Reserve issued in Year 1 a non-objection to a Covered BHC's capital plan covering the second quarter of Year 1 through the first quarter of Year 2, this Covered BHC would be able to make capital distributions consistent with its capital plan in the first quarter of Year 2, even if the Federal Reserve objected to the capital plan filed by this Covered BHC in January of Year 2 on March 1st of Year 2. We believe that permitting such distributions is consistent with the forward looking nature of the capital plan approval process. Moreover, under the NPR, a Covered BHC would only be able to make distributions pursuant to its current, approved capital plan if there had not been any material changes in its risk profile or financial condition and there were no material unresolved supervisory issues outstanding. Thus, there would seem to be little risk to a Covered BHC's capital adequacy, liquidity or financial condition in permitting these distributions to be made in accordance with a Covered BHC's current, approved capital plan.

If you have any questions, or need further information, please contact Eli Peterson, Vice President and Regulatory Counsel, of TCH at (202) 649-4602 (email: eli.peterson@theclearinghouse.org); Hugh Carney, Senior Counsel II, of the ABA at (202) 663-5324 (e-mail: hcarney@aba.com); Rich Whiting, Executive Director and General Counsel, of the Roundtable at (202) 289-4322 (e-mail: rich@fsround.org); or Kenneth Bentsen, Executive Vice President, Public Policy and Advocacy, of SIFMA at (202) 962-7356 (e-mail: kbentsen@sifma.org).

Respectfully submitted,



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cc: The Honorable Daniel K. Tarullo
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