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July 8, 2014

Submitted Electronically

Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., NW
Washington, D.C. 20551

Re: Federal Reserve Notice of Proposed Rulemaking on Concentration Limits on Large Financial Companies; Docket No. R-1489, RIN 7100 AE 18

Dear Mr. Frierson:

The Asset Management Group ("**AMG**")[1] of the Securities Industry and Financial Markets Association ("**SIFMA**") appreciates the opportunity to provide comments to the Board of Governors of the Federal Reserve System (the "**Board**") regarding proposed Regulation XX (the "**Proposed Rule**"),[2] implementing section 14 of the Bank Holding Company Act of 1956, which was added by section 622 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[3]

The Proposed Rule generally would establish concentration limits that would prohibit a large financial company from consummating a "covered acquisition" if the liabilities of the resulting financial company would exceed 10 percent of the financial sector liabilities. Absent clarification, we are concerned about potential unintended consequences of the Proposed Rule, as it may relate to actions taken by a financial company on a non-principal basis, i.e., when acting as a fiduciary or agent on behalf of clients, such as when acting as an asset manager.

Although subsection 251.2(f)(2) of the Proposed Rule provides an exception from the definition of "covered acquisition" for acquisitions "in good faith in a fiduciary capacity," we believe that there should be a complete, unconditional exclusion of assets acquired by a financial company acting in a fiduciary capacity, such as an investment

[1] AMG's members represent U.S. asset management firms whose combined assets under management exceed $30 trillion. The customers of AMG member firms include, among others, registered investment companies, ERISA plans and state and local government pension funds.

[2] Concentration Limits on Large Financial Companies, 79 Fed. Reg. 27801 (May 15, 2014).

[3] 12 U.S.C. § 1852.

adviser. Such assets would not be treated as balance sheet assets of the fiduciary, and therefore, should not impact the fiduciary's liabilities for purposes of the concentration limits under the Proposed Rule.[4] As the definition of "covered acquisition"[5] contained in the Proposed Rule includes a reference to "control" and provides that "control" has the same meaning as set forth in 12 C.F.R. §225.2(e), it is possible that "control" for these purposes includes the ownership, control or power to vote 25% or more of the outstanding shares of a class of voting securities of a company.[6] Even if a financial company has sole discretionary voting authority over the acquired shares, the acquisition of shares should not be treated as a "covered acquisition" if the financial company acquired the shares in a fiduciary capacity as voting power is not indicative of economic concentration and would not result in inclusion of the acquired shares on the balance sheet of the financial company. Simply put, any investments made by a financial company acting on a fiduciary basis on behalf of clients, irrespective of the fiduciary's voting power over those investments, should not be included in the calculation of the concentration limits under any final rule implementing the Proposed Rule.

Similarly, any assets acquired in a non-principal, but non-fiduciary capacity, should also be excluded from the calculations of concentration limits under a final rule. For example, if a financial company "acquires" assets in its role as a custodian, acting for the account of or on behalf of its client(s), the acquisition of those assets should not be treated as a "covered acquisition" or included in the concentration limits under the final rule as the financial company will not be holding these assets as a principal.[7]

We, therefore, respectfully request that the Board very clearly carve out any acquisition of assets by a financial company acting in a fiduciary or other non-principal capacity, irrespective of voting power, from the definition of "covered acquisition" in any final rule implementing the Proposed Rule.

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[4] *See* Instructions for Preparation of Consolidated Reports of Condition and Income (FFIEC 031 and 041) at 9 *avialable at*: https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_201403_i.pdf.

[5] Section 251.2(f) of the Proposed Rule defines a "covered acquisition" as "a transaction in which a company … acquires control of another company …."

[6] In addition, the definition of "control" under 12 C.F.R. §225.2(e) includes the power to exercise a controlling influence over the management or policies of the company. Under Regulation Y, a financial company that acquires securities in a fiduciary capacity but has sole discretionary authority to vote the securities is treated as controlling those securities for the purposes of making this determination. See 12 C.F.R. § 225.41(c)(2); § 225.12(a)(1).

[7] *See, e.g.*, Instructions for Preparation of Consolidated Reports of Condition and Income (FFIEC 031 and 041), Schedule RC-T – Fiduciary and Related Services *avialable at*: https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_ FFIEC041_201403_i.pdf.

Should you have any questions, please do not hesitate to contact Tim Cameron at 202-962-7447 or Matt Nevins at 212-313-1176.

Sincerely,

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