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March 5, 2012

U.S. Department of the Treasury
Attn: Financial Research Fund Assessment Comments
1500 Pennsylvania Avenue, N.W.
Washington D.C. 20220

Re: Assessment of Fees on Large Bank Holding Companies and Nonbank Financial Companies Supervised by the Federal Reserve Board to Cover the Expenses of the Financial Research Fund (RIN 1505-AC42)

Dear Sir or Madam:

The Investment Company Institute[1] appreciates the opportunity to comment on the Department of the Treasury's proposal to establish a schedule for the collection of assessments equal to the total expenses of the Office of Financial Research, as required by Section 155 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[2] As written, the Proposal would apply to bank holding companies with at least $50 billion in total consolidated assets ("large BHCs") and to nonbank financial companies supervised by the Federal Reserve Board ("SIFIs").

On previous occasions, ICI has expressed its view that SIFI designation would not be appropriate for registered investment companies or their investment advisers because they do not present the risks that such designation is intended to address.[3] We are hopeful that the Financial Stability Oversight Council ("FSOC"), through its review of asset management companies, will reach

[1] The Investment Company Institute (ICI) is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $12.5 trillion and serve over 90 million shareholders.

[2] *See* Department of the Treasury, *Assessment of Fees on Large Bank Holding Companies and Nonbank Financial Companies Supervised by the Federal Reserve Board to Cover the Expenses of the Financial Research Fund*, 77 Fed. Reg. 35 (Jan. 3, 2012) ("Proposal").

[3] *See* Letters from Paul Schott Stevens, President & CEO, Investment Company Institute, to the Financial Stability Oversight Council, dated Nov. 5, 2010 and Feb. 25, 2011, available at http://www.ici.org/pdf/24696.pdf and http://www.ici.org/pdf/24994.pdf, respectively.

the same conclusion.[4] Nevertheless, at this time, the scope of SIFI designations remains an open question. It is for this reason that we have decided to offer our comments on the Proposal.

Application of this rulemaking to SIFIs is premature

ICI submits that it is premature to apply the Proposal to SIFIs at this time. As Treasury acknowledges in the preamble, the FSOC "has not made a determination regarding the applicability of [Federal Reserve] Board supervision . . . for a nonbank company."[5] In fact, the FSOC has not yet finalized the criteria by which it will evaluate nonbank financial companies for possible SIFI designation. It is therefore difficult, if not impossible, to provide meaningful substantive comments on the Proposal's application to SIFIs, when the public does not yet know with any degree of certainty what a SIFI is.

Treasury appears to appreciate the possibility that a different assessment methodology may be appropriate for SIFIs. The preamble indicates that as the FSOC begins to make SIFI determinations, the assessment fee methodology for SIFIs "would be reviewed and, as needed, revised through the rulemaking process to assure that the corresponding assessment fees charged to these companies would be appropriate."[6] Despite these assurances, we are concerned that adopting an assessment methodology now that nominally applies to SIFIs will create a bias against tailoring the methodology for SIFIs in the future.

In another recent rulemaking under the Dodd-Frank Act, the Federal Reserve Board refrained from proposing requirements that would apply to SIFIs, offering the following explanation:

> The [Federal Reserve] Board is not proposing at this time any additional capital requirements, quantitative limits, or other restrictions on nonbank financial companies pursuant to section 13 of the [Bank Holding Company] Act, as it believes doing so would be premature in light of the fact that the [FSOC] has not yet finalized the criteria for designation of, nor yet designated, any nonbank financial company.[7]

We urge Treasury similarly to hold off on proposing requirements for entities that have yet to be identified.

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[4] *See* Financial Stability Oversight Council, Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, 76 Fed. Reg. 64264 (Oct. 18, 2011), at 64269.

[5] 77 Fed. Reg. at n.11 and n.12.

[6] *Id.* at n.12.

[7] *See* Prohibitions and Restrictions on Proprietary Trading and Certain Interests In, and Relationships With, Hedge Funds and Private Equity Funds, 76 Fed. Reg. 68846 (Nov. 7, 2011) at n.4.

Proposed assessment schedule does not comport with Section 155

Under the Proposal, assessments would be determined solely on the basis of a company's total consolidated assets. This approach is directly at odds with Section 155 of the Dodd-Frank Act. Section 155 expressly requires Treasury to establish an assessment schedule "that takes into account differences among [assessed] companies, based on the considerations for establishing the prudential standards under Section 115" of the Dodd-Frank Act.[8] These considerations include, among other things, the various risk-related factors set forth in Section 113 of the Dodd-Frank Act (*e.g.*, extent of the company's leverage, extent and nature of its off-balance-sheet exposures, amount and types of the company's liabilities). As the foregoing illustrates, basing assessments solely on a company's total consolidated assets is inconsistent with the plain language of the statute.

The preamble explains Treasury's reasoning in proposing an assessment methodology based only on the size of each company, including a desire to achieve simplicity and transparency. But while simplicity and transparency are important regulatory goals, they cannot "trump" what the Dodd-Frank Act expressly requires. In fact, elsewhere in the preamble, Treasury itself states that it rejected the option of charging companies fees at a similar level, because that option "would appear to contradict the intent of the [Dodd-Frank] Act for the schedule to charge *larger, more complex and riskier* firms higher fees."[9] Yet, the Proposal in its current form simply ignores the relative complexity and risks of different companies, contrary to Congress's clear direction to take these into account.

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For the reasons discussed above, ICI urges Treasury to remove references to SIFIs from the Proposal and to develop an assessment methodology that reflects the considerations specifically required by the Dodd-Frank Act.

If you have any questions regarding our comments or would like additional information, please feel free to contact me at 202/326-5815, Frances Stadler at 202/326-5822 or Rachel Graham at 202/326-5819. Thank you for your consideration of these comments.

Sincerely,

/s/

Karrie McMillan
General Counsel

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[8] The preamble cites Section 115(a)(2)(A), indicating that this provision describes the factors the FSOC should consider in making recommendations regarding enhanced prudential standards. 77 Fed. Reg. at n.9. While Section 115(a)(2)(A) indicates what the FSOC "may" do in making such recommendations, the more relevant provision is Section 115(b)(3), which sets forth considerations the FSOC "shall" take into account in making recommendations concerning prudential standards under Section 115.

[9] *Id.* at 42 (emphasis added).