SPENCER BACHUS, AL, CHAIRMAN

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

BARNEY FRANK, MA, RANKING MEMBER

May 24, 2012

The Honorable Ben Bernanke
Chairman
Federal Reserve Board
20th Street & Constitution Avenue, NW
Washington, D.C. 20551

Dear Chairman Bernanke:

Last month the Federal Reserve Board (the Board) issued a supplemental Notice of Proposed Rulemaking to establish requirements for determining whether a company is "predominantly engaged in financial activities." This proposal seems to misinterpret key provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) and the limitations on the power of the Financial Stability Oversight Council (FSOC). I would appreciate the opportunity to speak with you or your staff further about this matter.

Title I of Dodd-Frank grants the FSOC the ability to designate a "nonbank financial company" for enhanced regulation if it is determined that such company poses systemic risk or its failure could endanger the economy of the United States. Section 102 of Dodd-Frank further provides for the definition of a "nonbank financial company," and grants the Board the authority to issue its proposed rule. However, the current proposal appears to have misconstrued both the plain language of the statute as well as the intent of Title I.

The clear purpose of Section 102 is to limit potential bank-like prudential regulation to those companies that are effectively competing with banks by engaging in similar activities. The universe of such companies was described as those whose revenues or assets are primarily derived from the same activities that banks and their affiliates are permitted to engage in under the Bank Holding Company Act. However, Section 102 does not instruct the Board to redefine an already defined term ("financial activities"), which is what it seeks to do in its proposed rule.

Under Dodd-Frank, Congress defined "financial activities" with reference to existing law. In the proposed rule, the Board proposes to create two separate definitions under 4(k) of the Bank Holding Company Act and Regulation Y: one for activities of bank holding companies, and another for purposes of Title I. There is no statutory authority for this approach. The authorities the Board refers to in its release, Sections 113 and 167 of Dodd-Frank, relate to the authority of the FSOC to designate companies that are actively seeking to evade regulation. These sections do not grant the Board the authority to redefine what constitutes activities that are "financial in nature" under section 4(k).

The approach the Board takes in its proposed rule would allow it to designate any activity, and thus any company, as financial. This runs contrary to Congressional intent. I urge you to withdraw this proposal, and for your staff to contact mine to discuss this matter further.

Sincerely,

Randy Neugebauer

RANDY NEUGEBAUER
Chairman – Oversight & Investigations

Cc: The Honorable Spencer Bachus
The Honorable Barney Frank
The Honorable Mike Capuano