Industrial Energy Consumers of America
The Voice of the Industrial Energy Consumers

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May 18, 2012

Robert deV. Frierson
Deputy Secretary of the Board
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Regulation Y; Docket No. R-1405
RIN 7100-AD64
Definition of "Predominantly Engaged In Financial Activities"

Dear Mr. deV. Frierson:

Thank you for your effort to prevent systemic risk and another financial crisis. However, as manufacturing companies, we are concerned about the Federal Reserve Board's proposed rule definition of "predominantly engaged in financial activities" and urge you to make changes that will be consistent with the Dodd-Frank Act. The proposed definition of what constitutes financial activities is expanded beyond those that are permissible for banks and their affiliated companies to undertake and could include the activities of our member companies. An amendment by Senator Mark Pryor and Senator David Vitter was adopted by the Senate and incorporated into Dodd-Frank that makes crystal clear that companies that are not truly financial will not be subject to the same oversight as companies that are truly predominantly engaged in financial activities as defined in the Bank Holding Company Act and in Federal Reserve Regulation Y.

The Industrial Energy Consumers of America is a nonpartisan association of leading manufacturing companies with $700 billion in annual sales and with more than 650,000 employees nationwide. It is an organization created to promote the interests of manufacturing companies through advocacy and collaboration for which the availability, use and cost of energy, power or feedstock play a significant role in their ability to compete in domestic and world markets. IECA membership represents a diverse set of industries including: chemicals, plastics, cement, paper, food processing, brick, fertilizer, steel, glass, industrial gases, pharmaceutical, aluminum and brewing.

IECA's members understand the importance of preventing systemic risk in order to avoid another financial crisis such as the one that began in 2008 and from which we are still recovering. The crisis impacted businesses, individuals and their families and is significant in size and scope. It is our view that the regulatory framework laid out by Dodd-Frank to preclude such an event happening again is necessary; however, we are deeply concerned by the proposed rule that opens the door to unintended regulation on companies that are not responsible for the financial crisis. In our opinion, this was not the goal the writers of Dodd-Frank were trying to achieve.

Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act establishes the framework to determine under which conditions a nonbank financial company could be supervised by the Financial Stability Oversight Council (FSOC). According to the framework, any nonbank financial company that is "predominantly engaged in financial activity" is a candidate for FSOC supervision. Section 102(a)(6) of Dodd-Frank defines a "predominantly engaged" company as one that generates at least 85 percent of its revenue or assets from "activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) and, if applicable, from the ownership or control of one or more depository institutions." Related to this definition, Section 102(b) of the Dodd-Frank Act grants the Board of Governors of the Federal Reserve the authority to "establish, by regulation, the requirements for determining if a company is predominantly engaged in financial activities as defined in subsection (a)(6)."

Our primary concern with the Federal Reserve's interpretation of Title I of the Dodd-Frank Act is that under the proposed rule the definition of what constitutes financial activities is expanded beyond those that are permissible for banks and their affiliated companies to undertake as outlined in 4(k) and Reg Y of the Bank Holding Company Act (BHCA). In its proposed rule, the Federal Reserve has determined that any activity referenced in 4(k) and Reg Y can be considered a financial activity *without regard* to the conditions imposed on such activities under the existing regulation. The proposed rule also indicates that any *other* activity can be financial in nature, if the Federal Reserve so decides.

The Federal Reserve is not granted the authority to do so in either 102(a)(6) or 102(b). The Dodd-Frank Act makes clear that the Federal Reserve is to "establish . . .the requirements for determining" whether a company is predominantly engaged in financial activities – that is to say, to establish criteria for assessing whether a company derives 85% of its assets or revenues from those activities described in section 4(k) of the BHCA.

This is very different from the approach the Board has taken in the proposed rule, whereby it has proposed that 4(k) will essentially be composed of two lists: one for BHCA purposes, and one for Dodd-Frank. This is clearly not provided for in the statute and turns the very purpose of Dodd-Frank on its head; if nonbanks that pose the same systemic risks as banks are to be regulated similarly, logically the list of activities which describe these "nonfinancial companies" should be the same as those permitted banks under the BHCA.

102(b) is logically read to mean that the Federal Reserve is to establish the criteria for assessing whether a particular company and its activities fall within the defined terms "predominantly engaged" and "financial activities." Thus, the Federal Reserve is to provide criteria for determining whether certain income may be excluded from the test, whether different accounting methods are permissible, how certain ownership interests are to be treated, and other matters which run to the question of whether or not a company is within the four corners of the definition of a "nonbank financial company" as explicitly defined in the statute. By deviating from this framework the Federal Reserve has instead chosen to redefine statutory terms, something that is not permissible.

The approach taken by the Federal Reserve will negatively impact IECA member companies. For instance, where the Board proposes in 13(ii) of the Appendix to Subpart N to redefine "Investment transactions as principal" from Reg Y, recharacterizes routine commercial transactions like forwards and options as financial activities. The treatment of these routine commercial transactions, so important to any consumer and producer with commodity price risk, is significantly modified from existing law in a way that is inconsistent with the intent and language of Dodd-Frank. By deviating from the carefully described limitations in Reg Y (namely, that such transactions must be cash settled and limited to bank-permissible investments) the proposed rule suddenly opens the door to systemic risk regulation of companies that are objectively not financial, and certainly had nothing to do with the financial crisis of 2008.

We appreciate the efforts of the Federal Reserve to combat financial crises that harm not only the financial sector, but also the thousands of nonfinancial businesses, employees and their families represented by IECA member companies. In that regard, we appreciate the framework established by the Dodd-Frank Act to ensure that nonbank financial companies that pose systemic risk are properly regulated.

However, the Board's proposed rule does not reflect the law's intent and could result in regulatory oversight that is cumbersome, costly and inappropriate for the companies that will be subjected to it. We ask you to reconsider the proposed rule and ensure that it is structured in such a way that is aligned with the intent and literal language of Dodd-Frank.

Thank you for your time and consideration. We are happy to provide you with any further information you may need.

Sincerely,

Paul N. Cicio
President

cc: The Honorable Mark Pryor
The Honorable David Vitter