

# COMMITTEE ON CAPITAL MARKETS REGULATION

April 30, 2012

John G. Walsh  
Acting Comptroller of the Currency  
Office of the Comptroller of the Currency  
250 E Street, SW  
Mail Stop 2-3  
Washington, DC 20219

Re: Annual Stress Test, 77 Fed. Reg. 3408 (Docket ID OCC – 2011 – 0029, RIN 1557 – AD58).

Dear Comptroller Walsh:

The Committee on Capital Markets Regulation (Committee) appreciates the opportunity to comment on the Office of the Comptroller of the Currency's (OCC) proposed rule regarding annual stress tests<sup>1</sup> (Proposed Rules) under § 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).<sup>2</sup>

Since 2005, the Committee, composed of 33 members, has been dedicated to improving the regulation of U.S. capital markets. Our research has provided an independent and empirical foundation for public policy. In May 2009, the Committee released a comprehensive report entitled *The Global Financial Crisis: A Plan for Regulatory Reform*, which contains fifty-seven recommendations for making the U.S. financial regulatory structure more integrated, more effective, and more protective of investors in the wake of the financial crisis of 2008.<sup>3</sup> Since then, the Committee has continued to make recommendations for regulatory reform of major areas of the U.S. financial system.

The Dodd-Frank Act requires that national banks and federal savings associations supervised by the OCC, with total consolidated assets in excess of \$10 billion (Covered Institutions), conduct annual stress tests and report the results to the OCC and to the Federal Reserve. The OCC must establish methodologies for the stress tests and the form and content of the report the Covered Institutions will submit. Covered Institutions will also be required to publish a summary of their stress test results.<sup>4</sup> The OCC has not yet published specific requirements for the stress tests or for the reports, but expects to do so in the future.<sup>5</sup>

<sup>1</sup> Annual Stress Test, 77 Fed. Reg. 3,408 (proposed Jan. 24, 2012) [hereinafter Proposed Rules].

<sup>2</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act § 165(i), Pub. L. No. 111-203 (2010) [hereinafter Dodd-Frank Act].

<sup>3</sup> COMM. ON CAPITAL MKTS. REG., *THE GLOBAL FINANCIAL CRISIS: A PLAN FOR REGULATORY REFORM* (May 2009), <http://www.capmktreg.org/research.html>.

<sup>4</sup> Dodd-Frank Act § 165(i)(2)(C)(iv).

<sup>5</sup> Proposed Rules at 3,411.

We note the Federal Reserve and the Federal Deposit Insurance Corporation (FDIC) have also each proposed their own rules on stress tests.<sup>6</sup> The Dodd-Frank Act calls for the OCC and FDIC to work in coordination with the Federal Reserve and to issue “consistent and comparable regulations” to implement the stress test requirements.<sup>7</sup> The Proposed Rules acknowledge that certain banks may be subject to multiple stress tests, both at their parent company level and at the level of subsidiary financial companies, including Covered Institutions. The OCC states: “The OCC recognizes the possibility that different covered institutions within a given parent institution may be required to conduct stress tests using different scenarios, if the scenarios required by their respective primary federal financial regulators are different. In this regard, the OCC intends to coordinate with the Board and the FDIC on the development of the three scenarios that will be specified each year under these regulations. The OCC anticipates making every effort to avoid differences in the scenarios required by each primary federal financial regulator under the regulations implementing section 165(i)(2), and understands the Board and the FDIC to be in agreement.”<sup>8</sup> The OCC has also suggested that there may be certain situations where a consolidated set of stress tests may be appropriate.<sup>9</sup>

We commend the OCC for its attention to the need to coordinate with the Federal Reserve and the FDIC. The OCC should take into account comments submitted to the Federal Reserve and the FDIC during their comment periods. We believe such coordination is critical, particularly where single firms will be subject to more than one stress test requirement. Ideally, the tests required by each agency should be as close to identical as possible. If there are differences in approach, there should be a clearly articulated reason for the difference. The Federal Advisory Council, in its comments to the Federal Reserve on the Federal Reserve Proposed Rules, noted: “Aligning stress-test procedures and assumptions across the Federal Reserve, OCC, and FDIC will ensure that holding companies and bank subsidiaries are subject to a consistent set of requirements. There are also opportunities to leverage existing regulatory data repositories where available....”<sup>10</sup>

As the Committee noted in our comment letter to the Federal Reserve,<sup>11</sup> we would expect that stress-testing requirements under the Federal Reserve Proposed Rules, the Federal Reserve’s capital planning requirements and the Comprehensive Capital Analysis and Review (CCAR) be conducted once and be identical. We would thus encourage the OCC similarly to follow this single model in its own stress tests. Further, we note that the Committee is currently undertaking to review bank stress test requirements, and expects to issue more specific recommendations regarding the content and reporting of these tests in the future.

In addition, unlike the Federal Reserve’s supervisory stress tests, company-run stress tests will not be standardized, and thus comparison of results across companies may not be

<sup>6</sup> See Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies, 77 Fed. Reg. 594 (proposed Jan. 5, 2012); Annual Stress Test, 77 Fed. Reg. 3,166 (proposed Jan. 23, 2012).

<sup>7</sup> Dodd-Frank Act § 165(i)(2)(C).

<sup>8</sup> Proposed Rules at 3,412.

<sup>9</sup> *Id.*

<sup>10</sup> Memorandum from the Fed. Advisory Council to the Bd. of Governors of the Fed. Reserve Sys. (Feb. 3, 2012), [http://www.federalreserve.gov/SECRS/2012/February/20120228/R-1438/R-1438\\_022412\\_105569\\_535302029000\\_1.pdf](http://www.federalreserve.gov/SECRS/2012/February/20120228/R-1438/R-1438_022412_105569_535302029000_1.pdf).

<sup>11</sup> Letter from the Comm. on Capital Mkts. Reg. to Jennifer J. Johnson, Secretary, Bd. of Governors of the Fed. Reserve Sys. (Apr. 30, 2012).

possible. The Proposed Rules include minimum public summary disclosure requirements for these tests.<sup>12</sup> We would encourage the OCC to provide companies with a standardized template for disclosure that would enable better understanding by the capital markets and the public.

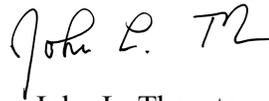
Finally, we note that cost-benefit analysis is critical in light of the ruling this past July by the U.S. Court of Appeals for the D.C. Circuit in *Bus. Roundtable v. Sec. and Exch. Comm'n.*<sup>13</sup> While the OCC has asked for comment on the anticipated costs associated with data collection and developing methodologies for stress testing on Covered Institutions,<sup>14</sup> the Proposed Rules provide no cost-benefit analysis (other than a summary of the hourly paperwork burden and a conclusion that the Proposed Rules will not have a significant economic impact on small businesses).<sup>15</sup> We also note that the OCC is more likely to be the primary federal regulator for institutions that are on the smaller end of the spectrum of those required to implement stress tests. The cost-benefit considerations of these institutions may be different in kind and relative impact from those of larger institutions, and these differences should be considered carefully when finalizing the Proposed Rules. If the Proposed Rules are to withstand judicial scrutiny, robust analysis of the broader impact of these rules must be undertaken.

Thank you for considering our comments. Please do not hesitate to contact us at (617) 384-5364 if we can be of any further assistance.

Respectfully submitted,



R. Glenn Hubbard  
Co-CHAIR



John L. Thornton  
Co-CHAIR



Hal S. Scott  
DIRECTOR

<sup>12</sup> Proposed Rules at 3,411.

<sup>13</sup> *Bus. Roundtable v. Sec. & Exch. Comm'n.*, 647 F.3d 1144, 1148 (D.C. Cir. 2011).

<sup>14</sup> Proposed Rules at 3,411.

<sup>15</sup> *Id.* at 3,412-3,413.