THE RISK MANAGEMENT ASSOCIATION

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July 20, 2016

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Mail Stop 9W-11
Washington, D.C. 20219

Gerard S. Poliquin, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

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

Alfred M. Pollard, General Counsel
Attention: Comments/RIN2590-AA42
Federal Housing Finance Agency
400 7th Street SW
Washington, D.C. 20219

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: **Incentive-based Compensation Arrangements** (the "NPR" or the "Proposed Rule"): **Office of the Comptroller of the Currency** 12 CFR Part 42, Docket No. OCC-20111-0001, RIN 1557-AD39; **Federal Reserve System**, 12 CFR Part 236, Docket No. R-1536, RIN 7100 AE-50; **Federal Deposit Insurance Corporation**, 12 CFR Part 372, RIN 3064-AD86; **Securities and Exchange Commission** 17 CFR Parts 240, 275 and 303, Release No. 34-77776, File No. S7-07-16, RIN 3235; **Federal Housing Finance Agency** 12 CFR 1232, RIN 2590-AA42; **National Credit Union Administration** 12 CFR Parts 741 and 751, RIN 3133-AE48

Ladies and Gentlemen:

This letter is submitted by The Risk Management Association ("RMA" or the "Association") in respect of the Proposed Rule, "Incentive-based Compensation Arrangements," which is intended to revise the Proposed Rule the Agencies published in the Federal Register on April 14, 2011, and which supplements the Guidance on Sound Incentive Compensation Policies issued jointly by the Office of the Comptroller of the Currency, Federal Reserve System and Federal Deposit Insurance Corporation,[1] with an effective date of June 25, 2010 (the "Existing Guidance"). Please note that any references to sections of the Proposed Rule are to the OCC's version thereof for ease of reference; accordingly, the comments herein pertain to the Proposed Rule in the form issued by each of the agencies.

[1] Federal Register / Vol. 75, No. 122 / Friday, June 25, 2010 / Notices

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Background

RMA is a 501(c) (6) not-for-profit, member-driven professional association whose sole purpose is to advance the use of sound risk management principles in the financial services industry. RMA helps its members use sound risk principles to improve institutional performance and financial stability and enhance the risk competency of individuals through information, education, peer-sharing and networking. RMA has 2,600 institutional members that include banks of all sizes as well as nonbank financial institutions. They are represented in the Association by more than 18,000 risk management professionals who are chapter members in financial centers throughout North America, Europe, and Asia/Pacific.

One of the most important components of RMA's mission is to provide independent analysis on matters pertaining to risk management and capital regulation. In this regard, the comments contained herein are informed by subject matter experts from member institutions of the Association, including participants in RMA's Incentive Compensation Round Table.

Request to Extend Comment Period

Section 956 of the Dodd-Frank Act directs the Agencies to ***jointly*** (emphasis added) issue regulations or guidance: (a) prohibiting incentive-based payment arrangements that the Agencies determine encourage inappropriate risks by certain financial institutions by providing excessive compensation or that could lead to material financial loss; and (b) requiring those financial institutions to disclose information concerning incentive-based compensation arrangements to the appropriate federal regulator.

As you know, the Proposed Rule was not issued jointly by the agencies as mandated by Section 956 of the Dodd-Frank Act. In fact, the Proposed Rule was issued in a disjointed fashion, with the initial release by the NCUA on April 21, 2016, conspicuously stamped "DRAFT," followed by release by the other agencies over a period of more than three (3) weeks through May 16, 2016, which is anything but joint action. The uncoordinated manner in which the Proposed Rule has been issued prejudices the public's opportunity to review and thoughtfully comment on the Proposed Rule which is approximately 300 pages in length.

Moreover, we note that the NCUA's version of the Proposed Rule set forth July 22, 2016 as the expiration of the comment period. This date was subsequently adopted by each of the other agencies, resulting in an exceedingly short comment period, particularly when measured from the June 10, 2016 date of publication in the Federal Register.

The exceedingly narrow comment window created by the staggered release of the Proposed Rule is not reasonable given the significant length of time the agencies spent revising the Proposed Rule and the far-reaching effects thereof, particularly in light of the talent gap in the industry and the role that incentive-based compensation arrangements play in attracting and retaining talented professionals. Accordingly, on behalf of the members of the Association, we hereby respectfully request an additional 90-day period, following the June 10, 2016 publication date in which to review the Proposed Rule and submit commentary.

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Introduction

RMA is generally supportive of alignment of the interests of executives and employees of financial institutions with those of the institution's shareholders and other stakeholders. Despite its support, RMA has several general concerns about the Proposed Rule, as well as several comments regarding the specific details associated with implementing the Proposed Rule. RMA respectfully submits that definitions used in the Proposed Rule should be principles-based and that institutions should have the flexibility to interpret and apply the definitions as appropriate given their size, scale, complexity, risk profile and business model. We are concerned that the Proposed Rule seeks to implement a uniform approach contrary to stated regulatory intent, which could have significant unintended consequences, including, but not limited to, market-wide liquidity dampening, credit market tightening, flight of talent to fintechs and less regulated areas, and stifling of innovation.

The Proposed Rule sets forth a Level 1-2-3 approach to the regulation of incentive-based compensation programs of covered institutions. We submit that rules premised on asset size alone are inconsistent with the broader narrative of the Dodd-Frank Act and prior agency promulgations to consider size, scale, complexity, risk profile and nature of operations. To wit, institutions with low-risk profiles do not present the risks or concerns that Section 956 of the Dodd-Frank Act is intended to address. As a result, forcing such institutions to adopt the highest level of standards imposes an unfair and significant administrative burden that would outweigh any potential benefits to the institution or mitigation of potential risk to the financial system. Accordingly, risk profile and an institution's business model should be considered in the same way that the agencies intend to consider risk profile for the relative compensation test.

Institution-wide plans and discretionary plans based on performance measures that, if increased, could not result in exposures outside the institution's risk appetite (i.e., that are based on qualitative factors such as teamwork, collaboration, attention to detail, meeting deadlines, and strong and effective communication) do not present the level of risk that individual metrics-based plans present. Accordingly, institution-wide plans and discretionary plans should be exempt from the definition of incentive compensation. Not only do these plans not contain features that could encourage inappropriate risk-taking, they serve as a strong lever for firms to encourage risk management and other risk-mitigating behaviors. Thus, use of these plans should be encouraged, not discouraged, and incentive compensation resulting from such plans should not be subject to the restrictions set forth in the Proposed Rule.

In the United States, corporate governance, including compensation plan design and implementation, traditionally has been carefully balanced between the board of directors, which is charged with policy formulation and oversight, and senior management which is charged with execution of policy and strategy and the day-to-day operations of the business. The role that incentive-based compensation plans play in the current low net interest rate environment is a key one. Institutions remain under intense pressure to control costs and one of the key tools at their disposal is variable compensation. For example, in an article published by the Society for Human Resource Management in 2015, it was noted that 90% of companies are shifting their compensation spending to variable pay because it allows such companies to recognize and reward

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performance without any corresponding increase in fixed costs associated with salaries.[2] RMA supports incentive-based compensation arrangements which are aligned with an institution's stated risk appetite and risk management framework.

As a precatory matter, RMA believes that the Existing Guidance was well accepted by the industry, and that while industry participants are in different stages of maturity with respect to their incentive-based compensation programs under the Existing Guidance, the Existing Guidance has had its intended effect, namely, that bank boards and management have properly taken steps to more clearly align incentive-based compensation arrangements with the institution's stated risk appetite and risk-balanced compensation programs. RMA notes that the Existing Guidance could fairly be described as principles-based such that institutions were able to design incentive-based compensation programs commensurate with their size, scale, risk profile, and complexity and commensurate needs to attract and retain talent. In comparison, the Proposed Rule is much more prescriptive and RMA has serious concerns about the unintended consequences of the Proposed Rule on corporate governance, particularly with respect to covered employees, deferrals and clawbacks.

While there appears to be some signs of convergence on certain aspects of incentive-based compensation programs, RMA believes that there should not be an expectation that all aspects of practice will or should eventually converge, and hence the supervisory community should continue to apply a principles-based approach, as opposed to a prescriptive one, to ensure that an institution's incentive-based compensation program does not encourage inappropriate risks. In short, the Proposed Rule raises several broad areas of concern, each of which is more fully described below.

Commentary

The following represent RMA's initial comments regarding the Proposed Rule.

Incentive-based compensation programs play a key role in the financial services industry, most importantly attracting and retaining talented employees and promoting better performance by individual employees and the institution taken as a whole. Incentive-based compensation arrangements also serve to foster innovation, which has become exceedingly important to institutions given both the current, prolonged low interest rate environment and the rise of fintechs and other firms which seek to disintermediate banks.

We respectfully submit that the regulatory community and industry alike have recognized that a well-functioning financial system requires that institutions take prudent risk positions that generate an appropriate level of earnings. Accordingly, an institution's risk level should be informed by its risk appetite, which is adopted by the board of directors. In the wake of the financial crisis and the passage of the Dodd-Frank Act, institutions are increasingly focused on aligning their risk-taking activities and incentive-based compensation programs with their stated risk appetite.

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[2] "Compensation Budgets Favor Variable over Fixed Pay – Companies Concerned about Managing Their Fixed Costs," https://www.shrm.org/hrdisciplines/compensation/articles/pages/variable-vs-fixed-pay.aspx, September 2, 2015.

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Bank boards play a critical role in promoting safety and soundness. This is increasingly clear, particularly in the wake of the financial crisis and the passage of the Dodd-Frank Act. Bank boards have a dual mandate, comprised of an advisory capacity and an oversight function. When acting in an advisory capacity, bank boards should consult with management regarding the strategic and operational direction of the bank, which is informed by and measured against the bank's risk appetite policy. The board of directors of an institution is responsible for ensuring that the institution's incentive-based compensation arrangements for senior executives and other covered employees are appropriately balanced and do not jeopardize the safety or soundness of the institution.

RMA is concerned that the Proposed Rule, if adopted, would require a significant redesign and standardize many aspects of incentive-based compensation programs, which (a) would cover an overly broad portion of an institution's employees; (b) is unduly prescriptive; and (c) would have the unintended consequences of stifling innovation and motivating talented employees to leave their institutions for fintechs and other firms and industries where their incentive compensation would not be so restricted.

In light of the foregoing, and in the spirit of advancing the dialogue between the industry and the regulatory agencies, RMA offers a number of both general and specific observations and, where possible, suggestions for improving the Proposed Rule. RMA believes that these issues can be considered and addressed for improvement, without diminishing the stated objectives of the agencies.

1. The NPR should be Principles-based.

RMA believes that the regulatory agencies should take a principles-based, as opposed to a prescriptive, approach to the supervisory oversight of incentive-based compensation programs consistent with the enterprise-wide approach to risk management articulated by the agencies in heightened standards, enhanced prudential standards and other applicable regulation and guidance, including, but not limited to, the Existing Guidance. RMA believes that the regulatory agencies should focus attention on the "outcome" of effective incentive-based compensation programs rather than attempting to harmonize the "method" of designing and implementing such programs by each covered institution by prescribing, among other things, minimum deferral amounts, minimum required deferral periods, and vesting requirements.

While we consider a principles-based approach to be preferable in order that institutions may implement pay practices, including, but not limited to incentive-based compensation arrangements, which allow them to compete for and retain talent, we do note that there is very little guidance regarding the distinction between an "appropriate risk" and an "inappropriate risk." We would submit that a risk that falls within the institution's stated risk appetite and is consistent with the institution's internal governance processes and risk management framework would not be an inappropriate risk.

Without limiting the generality of the foregoing, RMA respectfully suggests that defined terms used in the Proposed Rule should be principles-based and institutions should have the flexibility to interpret and apply the definitions as appropriate for their size, scale, complexity, risk profile, geographic location and nature of operations.

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The prescriptive nature of certain of the definitions used in the Proposed Rule are overly broad in scope and, accordingly, result in unintended consequences. For example, the term "incentive-based compensation" is defined to include "***variable*** (emphasis added) compensation, fees or benefits that serve as an incentive or reward for performance."[3] Both Section 956 of the Dodd-Frank Act and the Existing Guidance concern incentive-based compensation that could encourage inappropriate risk-taking, as opposed to all incentive compensation. Variable compensation plans are broadly used to attract and retain employees generally; variable compensation plans are widely used by institutions and are not simply designed to enrich senior management, other highly compensated employees or significant risk-takers; rather, variable compensation plans are widely available to exempt and non-exempt staff alike. Work done by the consulting firm Aon Hewitt is instructive in this regard. According to Aon Hewitt's August 2015 U.S. Salary Increase survey, salaried exempt workers were expected to receive an average 2.9% increase in base salary and variable pay estimated to represent 12.7% of total compensation.[4] Salaried, non-exempt workers and union workers also were expected to receive variable compensation as shown in the chart below[5]:

Spending on Variable Pay as a Percent of Payroll								
	2008	2009	2010	2011	2012	2013	2014	2015 (projected)
Salaried Exempt	10.8%	12.0%	11.3%	11.6%	12.0%	12.0%	12.7%	12.7%
Salaried Nonexempt	5.7%	6.5%	6.0%	6.3%	6.2%	6.0%	6.7%	6.8%
Nonunion Hourly	5.0%	5.8%	5.3%	5.2%	6.0%	5.4%	6.1%	5.9%
Union	5.9%	6.6%	4.6%	5.0%	4.9%	4.8%	5.6%	5.0%
Source: Aon Hewitt, *2014 U.S. Salary Increase Survey*								

As illustrated by the chart above, the use of the term "variable compensation" in the definition of "incentive-based compensation" has the unintended consequence of broadening the pool of persons who may be

[3] §42.2(r)

[4] *See* "U.S. Organizations Report Highest Compensation Spend in 39 Years," http://ir.aon.com/about-aon/investor-relations/investor-news/news-release-details/2015/US-Organizations-Report-Highest-Compensation-Spend-in-39-Years/default.aspx, August 26, 2015.

[5] https://www.shrm.org/hrdisciplines/compensation/articles/pages/variable-pay-high.aspx.

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considered "significant risk-takers." As a threshold matter, simply because salaried exempt staff participate in and receive variable compensation, does not mean that all such persons are significant risk-takers within the scope of Section 956. Likewise, salaried non-exempt staff and union and nonunion hourly staff would not ordinarily be deemed significant risk-takers within the meaning of Section 956. As a result, the fact that a person receives (or is eligible to receive) variable compensation does not equate to that person being in a position to encourage the institution to take inappropriate risks. We respectfully suggest that Section 956 of the Dodd-Frank Act is restricted to incentive-based compensation arrangements that could encourage inappropriate risk-taking. RMA does not believe that the agencies by definition consider all institution-wide variable compensation, or bonus plans to encourage inappropriate risk-taking intended to be prevented by Section 956. Accordingly, we would suggest that the term "variable" be deleted from the definition set forth in §42.2(r) and be replaced by "compensation, other than base pay, which is based on individual performance results related to risk appetite measures generated by the employee."

Doing so we believe would help bring the Proposed Rule back in line with the legislative intent of Section 956 to focus on risk, as well as prior regulatory guidance, but that alone is not enough to correct the over-inclusive scope of the provisions. The definitions of "senior executive officers" ("SEOs") and "significant risk-takers" ("SRTs") as drafted are problematic as well.

The proposed definition of SEOs would pull in individuals who are not considered senior officers of the institution and hold them to the same standards and restrictions as the most senior officers of that institution. However, such a result is inappropriate given that these individuals have vastly differing levels of ability to take material risk, and beyond that, differing performance incentives and thus incentive compensation risk. The Executive Chairman, President, and Chief Executive Officer of an institution, for instance, as individuals with authority over the entire business, have more ability to impact material risk-taking than the Chief Accounting Officer or Chief Compliance Officer of that business, whose authority would be limited to their particular area of oversight. Further, control function roles are in the position of risk-mitigating, not risk-taking. Unless a control function officer is an executive with the discretionary ability to change the institution's risk appetite or threshold levels, he/she should not be treated as an SEO.

Under the Existing Guidance, banks have understood that "senior executive officer" means its Section 16 or executive Regulation O officers. Other material risk-takers, including any Senior Vice Presidents, Vice Presidents, and others in a position to expose the institution to material financial loss fall under the next category of "individual employee" risk-takers. Fitting within this category would be all non-executive Regulation O officers, and any other individuals in a position to expose the institution to material financial loss, which might include the Chief Compliance Officer, Chief Credit Officer, Chief Lending Officer, Chief Accounting Officer, etc.

The proposed definition of SEOs is particularly problematic and can produce irrational results when combined with the proposed consolidation principle. Specifically, officers of a smaller subsidiary would be deemed SEOs subject to the same restrictions as the SEOs of the parent, even if they lack the inherent risk and/or incentive compensation arrangement that could result in material financial loss to the parent. Take for instance an individual who holds the role of Chief Accounting Officer of a Level 3 covered entity subsidiary that has a Level 1 BHC parent. The individual would be considered an SEO subject to Level 1 standards, on par with the top executives of the parent, but in fact is a person who has neither the ability nor incentives to expose the parent to material financial loss; meanwhile, SRTs at the parent, who may earn

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far more and/or have greater inherent risk in their role than this individual, would be subject to lower standards.

For these reasons, we recommend refining the definition of SEOs to "Section 16 officers and executive Regulation O officers," which is consistent with Existing Guidance. All other individuals having the ability to expose the institution to material financial loss, including the individuals called out by title in the Proposed Rule's definition for SEOs, should fall under the SRT definition. This will help ensure consistency and fairness in treatment across employees and business lines within an enterprise, while capturing all the individuals who should be captured.

In addition the term "significant risk taker," as proposed, is overly broad and would capture employees who have neither the ability nor incentives to create material risk. Our concerns include the following:

(i) The definition of Covered Institutions prescribes a classification which results in varied levels of risk-related requirements under the rule; however, this classification is based on total consolidated assets. This singular measure is not necessarily correlated with and does not consider the firm's size, scale, complexity, risk profile, or nature of operations.

(ii) The compensation test[6], which provides that employees of an institution who are in the second and third line of defense and who are highly compensated would be denoted as significant risk-takers, meaning that independent risk management, internal audit and other control functions would be deemed significant risk-takers by virtue of their compensation even though persons in such roles do not have the capacity nor financial incentives to encourage the institution to engage in inappropriate risks.

(iii) The overly broad definition of incentive-based compensation captures employees of an institution who are not senior executives, highly compensated, nor actually have the power or authority to expose the institution to inappropriate risk; rather, the term also includes any employee at a Level 1 or Level 2 covered institution who receives incentive-based compensation – which by definition includes "variable compensation" as discussed above. What this means is that any person who participates in a firm-wide bonus plan or in a front-line customer service-based incentive plan could be a "covered person" and "significant risk taker." We respectfully suggest that in addition to modifying the definition of "incentive-based compensation" that the federal agencies add a prong that considers the individual's material risk-taking ability to better align the rules with the legislative intent of Section 965 and prior regulatory guidance.

[6] *See* §42.2(hh)(1) (i); (ii): in a Level 1 covered institution a person whose compensation places himself or herself among the highest 5% would be a significant risk taker, as would a person in a Level 2 covered institution whose total compensation places him or her in the top 2%.

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(iv) The exposure test[7] is extremely far-reaching. By way of example and not limitation, according to the April 22, 2016 edition of the Wall Street Journal an estimated 52,000 people at the 6 largest institutions[8] might be affected.

(v) The definition of "significant risk taker" also includes persons designated by the OCC. RMA respectfully suggests that covered institutions, not the federal agencies, are in the best position to determine, which of their employees are significant risk-takers. There is no limitation on the OCC's designation authority, which means that the authority could be applied retroactively, exposing a person to clawbacks, deferrals and the like on a *post hoc* basis.

(vi) The Proposed Rule should be revised to provide institutions a rationale for why a role that meets the "significant risk taker" or "exposure test" should not be covered due to a limited ability to expose the institution to material financial loss. We note that many institutions currently use this practice to explain why certain roles within three (3) levels of the CEO are not covered. We also note that European rules provide a similar exclusion opportunity.

(vii) The Proposed Rule should be revised to clarify that the first 180-day look-back period used to define a "significant risk taker" begins after the effective date of the final rule to avoid the application of the prescriptive limitations of such rules to existing compensation arrangements.

(viii) The Proposed Rule should be clarified to limit the risk management and controls, governance, additional prohibitions, and all other requirements of the Proposed Rules to SEOs and SRTs and not all covered persons as the SEOs and SRTs are the individuals involved in risk-taking that could lead to material financial loss.

In addition, assuming that the Proposed Rule and the Existing Guidance are intended to co-exist, there must be some reconciliation between the "covered employee" concept of the Existing Guidance and the "significant risk taker" concept set forth in the Proposed Rule in order for institutions to avoid costly, duplicative processes. Moreover, under the Existing Guidance, institutions have enhanced risk management structures to more clearly include incentive-based compensation arrangements. The Proposed Rules should be clarified to provide that triggering events for downward adjustment and forfeiture requirements are to be defined by institutions consistent with their enterprise-wide risk management programs, which will allow institutions to use existing risk management structures and avoid creating multiple work streams for the same events.

2. The Proper Role of the Board of Directors

One overarching concern that RMA has with respect to the NPR is the apparent shift in oversight from the Board of Directors of the institution to the regulatory agencies regarding the threshold determination as to

[7] *See* §42.2(hh)(iii) persons who may commit or expose 0.5% or more of the common equity tier 1 capital.

[8] JPMC, BOA, Wells, Citi, Goldman and Morgan Stanley

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whether a particular incentive-based compensation arrangement encourages inappropriate risks by providing excessive compensation or that could lead to material financial loss. Specifically, it is the regulatory agencies, and not the Board of Directors, who have ultimate authority to determine whether an incentive-based compensation arrangement is within the institution's risk appetite and does not encourage inappropriate risk-taking. Section 42.4 of the NPR presumes that incentive compensation payments are excessive unless a multipronged test is satisfied. It is unclear from a plain reading of the NPR whether the Board of Directors or the regulatory agencies are charged with applying this test to the applicable incentive-based compensation arrangement. We would respectfully request that Section 42.4 be revised so that compensation is deemed not to be excessive in instances where the Board of Directors determines that such compensation is not unreasonable or disproportionate to the value of the services performed by a covered person taking into account all relevant factors, such as the factors set forth in clauses (1) through (6). In that regard, we note that an institution may determine that its pay practices will be materially higher than those of comparable institutions in order to attract and retain talent, and accordingly, such a determination should not be deemed to result in the payment of "excessive" compensation.

In addition, RMA suggests that the Board of Directors of an institution should be charged with delineating the method by which its incentive-based compensation programs will be administered and adjudicated, again in order for each institution to (a) implement incentive-based compensation arrangements that are consistent with its size, scale and complexity and risk appetite, and (b) to allow it to attract and retain talent, particularly in the current low interest rate environment where participants in the "shadow banking" industry may be inclined to offer more generous compensation packages to attract talent from the regulated part of the industry. In that regard, RMA respectfully suggests that defining the level of compensation that must be deferred is overly prescriptive and is best left to each individual institution to determine. Moreover, setting a minimum deferral percentage may have the unintended consequence of trickling down to impact employees who are not significant risk-takers, which may act as an incentive for such persons to seek alternate employment which is clearly not desirable in an industry facing a talent shortage.

If the agencies are opposed to allowing the Board of Directors of each institution to implement appropriate incentive compensation requirements, we respectfully suggest that the agencies simplify the application of the deferral requirements under the Proposed Rule. Instead of separately applying the required deferral percentages to incentives with a 1-year performance period and with a 3-year performance period, the Proposed Rule should be revised to apply the percentage to total incentives and then apply different deferral requirements whether the deferral is delivered using a 1-year or 3-year performance period.

Similarly, the prohibition of acceleration of vesting in the context of M&A transactions and involuntary terminations and the prohibition of personal hedging transactions would best be left to the judgment of the Board of Directors of each institution rather than being prescribed by the agencies.

Finally, we note a host of issues regarding the 7-year clawback period. First, the 7-year period is excessive and imposes unduly burdensome recordkeeping requirements. Moreover, this clawback period may be at odds with state law and not be enforceable consistently throughout an institution or among institutions. In addition, it is longer than the average business cycle, which according to the National Bureau of Economic

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Research[9] is 5-1/2 years. In particular, clawback from the vesting date means awards could be subject to clawback for up to 11 years calculated as follows:

- grant date, with 3-year performance period;
- plus 1-year deferral period;
- plus 7-year clawback period;
- equals 11 years.

We respectfully suggest that institutions should have the flexibility to determine how to address inappropriate risk-taking in a manner consistent with their respective needs and applicable state law. At a minimum, the clawback period should be reduced to 7 years from the beginning of the performance period, if not to 5-1/2 years which would equate to the length of the typical business cycle.

* * * * *

Should there be any questions concerning the comments above, kindly contact Edward J. DeMarco Jr., General Counsel and Director of Regulatory Relations at [redacted] or [redacted].

Very truly yours,

Edward J. DeMarco, Jr.,
General Counsel and
Director of Regulatory Relations

[9] The National Bureau of Economic Research is the private nonpartisan nonprofit organization that determines the official starts and ends of business cycles. The time from one economic peak to the next, or one recessive trough to the next, is considered a business cycle. From the year 1945 to the year 2009, the NBER defined eleven cycles, with the average cycle lasting slightly more than 5-1/2 years. *See* http://www.nber.org/cycles.html