SUBMITTED ELECTRONICALLY

March 5, 2012

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

Re: Proposed Rule Regarding 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 (the "Proposed Rule")[1] – RIN 1502—AC42

Dear Ladies and Gentlemen:

These comments are submitted by the Private Equity Growth Capital Council (the "PEGCC"). The PEGCC is an advocacy, communications and research organization established to develop, analyze and distribute information about the private equity and growth capital investment industry and its contributions to the national and global economy. Established in 2007 and formerly known as the Private Equity Council, the PEGCC is based in Washington, D.C. The PEGCC members are 35 of the world's leading private equity and growth capital firms united by their commitment to growing and strengthening the businesses in which they invest.[2]

The PEGCC understands the need for an assessment of fees to pay for the Financial Stability Oversight Council (the "FSOC") and related financial reform expenses. In response to the FSOC Notice of Proposed Rulemaking Regarding Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies[3] and the FSOC

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[1] 77 Fed. Reg. 35 (Jan. 3, 2012).

[2] The members of the PEGCC are: American Securities; Apax Partners; Apollo Global Management LLC; ArcLight Capital Partners; The Blackstone Group; Brockway Moran & Partners; The Carlyle Group; CCMP Capital Advisors, LLC; Crestview Partners; Francisco Partners; General Atlantic; Genstar Capital; Global Environment Fund; GTCR; Hellman & Friedman LLC; Irving Place Capital; The Jordan Company; Kelso & Company; Kohlberg Kravis Roberts & Co.; KPS Capital Partners; Levine Leichtman Capital Partners; Madison Dearborn Partners; MidOcean Partners; New Mountain Capital; Permira; Providence Equity Partners; The Riverside Company; Silver Lake; Sterling Partners; Sun Capital Partners; TA Associates; Thoma Bravo; TPG Capital (formerly Texas Pacific Group); Vector Capital; and Welsh, Carson, Anderson & Stowe.

[3] 76 Fed. Reg. 4,555 (Jan. 26, 2011).

Second Notice of Proposed Rulemaking Regarding Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies[4] (together, the "NPRs"), the PEGCC submitted comments on February 25 and December 16, 2011, respectively. Applying the six-part framework described in the NPRs to private equity and growth capital firms ("private equity firms") and private equity and growth capital funds ("private equity funds"), the PEGCC demonstrated in those letters that such firms and funds, as a class and individually, do not present systemic risk concerns under any or all of the criteria.[5]

We reiterate that private equity firms and funds do not present systemic risk concerns and, therefore, should not be considered systemically important non-bank financial institutions ("SIFIs") both for purposes of the proposed FSOC SIFI designation framework and for purposes of the assessment of fees set forth in the Proposed Rule. The PEGCC, nonetheless, offers comments on the Proposed Rule because the PEGCC is concerned that the standards introduced by the Proposed Rule in the context of fee assessments subsequently may be considered for other purposes as part of ongoing financial reforms under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

Specifically, the PEGCC strongly believes that the assessment basis set forth in the Proposed Rule should be revised in one respect and clarified in another. First, the PEGCC respectfully submits that basing assessments only on the asset size of a company is not in accord with the congressional directive to consider differences among companies based on the risk factors set forth in Section 115 of the Dodd-Frank Act. Second, if asset size is used in the assessment schedule, the PEGCC believes that Treasury should clarify that managed assets are not to be included in calculating asset size of a company.

A. The assessment schedule should consider factors beyond asset size in calculating assessments

Section 155 of the Dodd-Frank Act requires that the assessment schedule "take[] into account differences among [companies subject to the assessment], based on the considerations for establishing the prudential standards under Section 115."[6] The

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4 76 Fed. Reg. 64,264 (Oct. 18, 2011).

5 *See* PEGCC Letter to the FSOC (Dec. 16, 2011) (commenting on the Second Notice of Proposed Rulemaking Regarding Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies – FSOC 2011-0001); PEGCC Letter to the FSOC (Feb. 25, 2011) (commenting on the Notice of Proposed Rulemaking Regarding Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies – FSOC 2011-0001); *see also* PEGCC Letter to the FSOC (Nov. 5, 2010) (commenting on the Advance Notice of Proposed Rulemaking Regarding Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies – FSOC 2010-0001).

6 Pub. L. 111-203 (codified in scattered sections of 12 U.S.C.).

Proposed Rule states that the Treasury Department considered that mandate in determining an assessment schedule but concluded that the assessment fee should be based on asset size.[7]

The PEGCC believes that an assessment fee calculated solely by size of assets does not meet the congressional directive to consider differences among companies based on Section 115 risk factors. Though Treasury's goals of simplicity and transparency are worthy, they should not trump the explicit guideline of Section 155. If Congress merely wanted the assessment fees to be based on size, it could have easily provided for this in the Dodd-Frank Act. Congress, however, included all of these risk factors in its guidelines on forming the assessment schedule because the assessment fees themselves should reflect the amount of systemic risk that a particular company represents. The PEGCC believes that an assessment schedule that considers other factors in addition to entity size would appropriately allocate expenses by systemic risk, as Congress directed.

B. Managed assets should not be included in total assessable assets for the purposes of calculating asset size in the assessment schedule

The Proposed Rule uses asset size to calculate the assessment and defines "total assessable assets" for U.S. SIFIs as being reported total consolidated assets. The Proposed Rule also states that once FSOC makes its SIFI designations, Treasury will review the methodology for the assessment fees of SIFIs to determine whether any changes to the approach are needed.[8]

The PEGCC strongly believes that, if the assessment schedule does use asset size as a metric, the size calculation for any asset managers designated as SIFIs should exclude managed assets. Assets that an asset manager, such as a private equity firm, manages for third-party investors (whether pursuant to separate accounts arrangements or through funds managed by the firm) should not be counted in the assessment calculations. Such third-party managed assets should not be included even if current Generally Accepted Accounting Principles ("GAAP") require some of these assets to be consolidated with those of the manager.[9]

Using a private equity firm's total consolidated assets, which in some cases could include third-party managed assets, rather than assets that are owned by the private equity

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[7] 77 Fed. Reg. at 37.

[8] 77 Fed. Reg. at 38 n.11.

[9] The Financial Accounting Standards Board ("FASB") has proposed revisions to current GAAP, which would base consolidation on whether a decision-maker is using its power as a principal or agent. *See* CONSOLIDATION: PRINCIPAL VERSUS AGENT ANALYSIS, Proposed Accounting Standards Update No. 220, § 810 (Fin. Accounting Standards Bd. 2011).

firm, would provide a misleading view of the size (and risk profile) of the private equity firm. Indeed, a private equity firm's ability to acquire, hold and dispose of third-party managed assets is strictly limited by contract, regulation and other legal arrangements. Neither the private equity firm nor any creditor of the firm can use third-party managed assets to gain access to liquidity, to settle a debt of the firm or to pay any assessments or fees levied on the firm.[10]

For these reasons, the PEGCC strongly believes, as it has detailed in prior comment letters, that the proper metric for measuring the risk attributable to the size of a firm is the amount of the firm's own assets that are at risk.[11] Because managed assets are not owned by a private equity firm and because these assets neither pose risk of spreading failure nor are available to pay fees or assessments, they should be excluded from the calculation of size, should size be used as an assessment schedule factor.

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The PEGCC appreciates the Treasury's consideration of this letter and is available to discuss any questions that the Treasury may have.

Respectfully submitted,

Steve Judge
President and CEO
Private Equity Growth Capital Council

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[10] In addition, because holdings of private equity funds that are sponsored by the same private equity firm are not cross-collateralized or cross-guaranteed, a counterparty or investor's exposure to one private equity fund managed by a particular private equity firm does not lead to exposure to other funds managed by that same firm.

[11] PEGCC Letter to the Federal Reserve (Mar. 30, 2011) (commenting on Proposed Rule: Definitions of "Predominantly Engaged in Financial Activities" and "Significant" Nonbank Financial Company and Bank Holding Company, Docket No. R–1405 and RIN No. 7100–AD64).