REGIONS

April 13, 2009

Mr. Peter Dengate Thrush
Chairman of the Board of Directors
Mr. Paul Twomey
President and CEO
Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way
Suite 330
Marina del Ray, California 90292
(email: 2gtld-guide@icann.org)

Re: Regions Financial Corporation's Comment on Draft Applicant Guidebook, Version 2

Dear Messrs. Thrush and Twomey:

Regions Financial Corporation ("Regions") welcomes the opportunity to provide comments on the Draft Applicant Guidebook, Version 2 ("DAG 2"), and on ICANN's new generic top-level domains ("gTLDs") program. Regions is currently serving as chair of the Internet Security and Stability subgroup within BITS, the operating and technology division of The Financial Services Roundtable ("BITS") and has participated actively through BITS and on its own behalf in ICANN's work, including the recent working group that addressed privacy issues in relation to the WHOIS service.

Regions remains very concerned about ICANN's proposal to expand the number of gTLDs and believes that the negative effects of issuing numerous new gTLDs far outweigh the potential benefits. Nothing we have seen in the DAG 2 changes this assessment. While Regions recognizes that part of ICANN's long-term mission is to promote competition and consumer choice, we continue to believe that the roll-out of new gTLDs at this time will needlessly complicate and compromise Internet security and stability, while imposing substantial new costs on consumers, businesses and the financial services industry, in particular. At this time, ICANN's priorities should be on issues of security and stability, including improved domain name system ("DNS") technical measures such as DNSSEC that can help in the fight against fraudulent activities. We join with the many diverse stakeholders who have already commented on the DAG, Version 1 ("DAG 1"), indicating that ICANN has thus far failed to demonstrate that

1901 6th Avenue N., 18th Floor
Birmingham, Alabama 35203
(205) 326.4977
Fax (205) 583.4497

the benefits of new gTLDs outweigh the costs and risks to the public, especially to consumers and members of the business community.

I. General Concerns

A. Lack of Demand for New gTLDs

Regions has observed that a strong majority of the comments submitted in response to the DAG 1 recommended that the introduction of new gTLDs was not a good idea at this time. Regions confirms that, based on its participation in consultations within the financial sector, there is no demand for new community-based gTLDs within this sector, nor are we aware of any significant demand for new gTLDs from other industry sectors.[1] In this respect, we feel that ICANN has not squarely addressed the majority of first-round comments, which were against the launch of new gTLDs. In view of this strong response, Regions lacks a clear understanding of the reasons behind ICANN's apparent intention to press forward with the new gTLD program. Regions urges that the launch of new gTLDs as currently proposed by ICANN should be suspended until such time as the program can be entirely reconsidered.

B. The Need for an Independent and Comprehensive Economic Study

Regions considers that, in many important respects, ICANN is underestimating the impact of making dramatic changes to the existing system through the rollout of numerous new gTLDs. Changes should not be made before there is a better understanding of the problematic issues, and a much more informed comprehension of the consequences of adding new gTLDs. We support the comment of the United States Department of Commerce made in the first round, which stated that

> *"it is unclear that the threshold question of whether the potential consumer benefits outweigh the potential costs has been adequately addressed and determined."*

We join our voice to that of the Department of Commerce and others who have called for a thorough and independent economic study on the market for new gTLDs, as well as the potential impact on consumers and switching costs. No comprehensive and independent study has yet been made of these key issues. In view of this market analysis, it could be determined whether the benefits of the program are significant enough to outweigh the negative effects and costs of new gTLDs on consumers and business. In addition, the analysis may show that a gTLD expansion, if any, should be very limited in scope (as discussed below, this is a proposal that Regions would support) until appropriate cost-free safeguards are in place to protect consumers, businesses and brand owners. The financial industry, in particular, is concerned about the increasing number of cyber fraud threats that would escalate through the introduction of numerous new gTLDs.

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[1] As one area of possible exception, Regions understands that the introduction of new gTLDs may offer unique opportunities for benefit in the IDN space, where there may be a need due to Internet users whose languages are incompatible with the ASCII script used for current gTLDs. Regions, however, has no direct knowledge of any unmet demand in this area as well.

II. Concerns of Regions and the Financial Sector

A. Risks to Financial Services Sector

The financial services community has been following this topic carefully. At multiple BITS meetings, financial industry participants have discussed the pros and cons of a new gTLD for our industry, as well as the wider associated concerns. As noted above, Regions is unaware of any unmet demand for one or more new community-based gTLDs to serve the financial sector. Regions is not in favor of sponsoring a new gTLD for itself or for the financial sector (e.g., ".bank" or ".fin"). Instead, the overwhelming concern, which we share with other financial institutions, is directed toward the considerable risks, burdens and costs that the rollout of new gTLDs will impose on consumers and the financial sector, particularly at this time. Forefront among our concerns is maintaining consumer confidence in banking systems, including Internet banking.

We strongly support the comments that were submitted by the U.S. Federal Deposit Insurance Corporation ("FDIC") in response to the DAG 1, that

> *"new gTLDs could potentially create new rounds of financial fraud, consumer confusion, misdirected trust in a gTLD, and could force trade name [and trademark protection] costs onto the financial industry during a period of economic stress."*

The general instability of the financial sector – worldwide – has eroded consumer confidence. The announcement of new gTLDs, including one or more gTLDs that are directed toward the financial sector, at a time when all financial sector costs are being closely scrutinized by the public, Congress, the White House, and regulatory agencies, and particularly those financial institutions which have received US Government assistance through TARP capital investments and other programs aimed at strengthening the banking system, is a significant concern. We are concerned that the proposal will result in an escalation in the amount of fraudulent and malicious activity. It could also further erode the public's confidence in our sector's ability to manage finances appropriately. The new gTLDs will place an added burden on consumers and financial institutions due to fraudulent activities such as phishing, pharming and other scamming behavior.

B. Avoid the Need for Defensive Registrations

A significant focus of the discussions within Regions and in its consultations with other BITS members is on the potential need to apply for one or more gTLDs merely for defensive purposes ("defensive gTLD registrations"). Unfortunately, the DAG 2 has not eliminated Regions' concerns on this issue. One of the design goals for ICANN's new gTLD program should be to implement it in a manner that eliminates the incentives or need to engage in defensive gTLD registrations. In other words, if due to the policies and procedures of ICANN's gTLD program as set forth in the DAG 2, businesses or other stakeholders feel compelled to apply for one or more new gTLDs merely as a defensive measure, then ICANN will have failed in its goals. Likewise, if Regions and other financial institutions feel compelled to obtain defensive registrations within the second level of new gTLDs, then ICANN will have failed in its goals. New gTLDs will not be implemented for reasons of innovation and opportunity. Instead, ICANN will collect fees and substantial burdens will be imposed on those who – when confronted with a classic prisoner's dilemma caused by ICANN's program – will be obliged to apply for a gTLD or obtain a reservation within the second level of a gTLD for the wrong reasons: merely as a defensive measure. For this reason, Regions strongly supports the proposals of a reserved names list that includes certain strings relevant to the financial sector, as well as a very limited rollout of new gTLDs (an option which ICANN appears already to have rejected).

C. <u>High Costs and Burdens</u>

Regions is concerned about the very considerable costs and management time and effort that would be required as a result of ICANN's new gTLD program. Although the overall economics associated with new gTLDs remains vague, and there are overarching concerns that include possible losses in the future due to potential registry failures, Regions considers that the following direct costs could impose significant burdens immediately:

- <u>Application costs</u>: Defensive registrations would be costly. The application fee, annual renewal fee, and costs to operate a registry for a new gTLD could easily approach $500,000. For example, if the financial community considered it necessary to register ".bank", we would have to take the process from application through registrar evaluation and registry testing. There would also be the continuing management time and annual fees to maintain the gTLD, even if few financial institutions decide to migrate their domains or use the new gTLD.

- <u>Switching costs</u>: Regions estimates that its costs to switch to a new gTLD would be in excess of one million dollars. Not only are there programming costs to change embedded application uniform resource locators ("URLs"), but the costs for educational programs and initiatives, advertising and changing all collateral media (forms, bill inserts, brochures, educational materials, etc.) are significant. The financial sector industry has worked diligently to educate consumers not to trust fraudulent emails, URLs, as well as a number of other security lessons. While education efforts continue, the introduction of new gTLDs would create new and substantial costs to educate consumers.

- <u>Governance costs</u>: The implementation of one or more new financial gTLDs would create new governance costs that do not exist today. At a time when many financial institutions are monitoring and managing expenses closely, and seeking to avoid unnecessary costs, there is little interest in adding new expenditures to the operating expense budget.,

- <u>Monitoring and enforcement activities</u>: Not only would there be fees for filing objections and then participating in the process to object to gTLD applications, there would also be costs associated with the need to monitor potentially infringing gTLDs, as well as monitor more broadly the activities in this new area and take needed actions to protect against fraudulent schemes and brand abuse in the new gTLDs.

- As the DAG 2 indicates, gTLD applications could result in objections in four different venues: string confusion objection; legal rights objection; morality and public order objection; and community objection. This could result in four discrete filing fees, as well as the time and effort to object to the four different administering bodies handling each type of objection. The objection fees could run from $1000 to $6000 per filing.

D. Problems with New gTLDs for the Financial Services Sector

The FDIC's comment in the first round emphasized some of the concerns that are unique to the financial sector. In particular, assuming ICANN moves forward with its launch of new gTLDs, a new gTLD in the financial services field, if not properly sponsored and operated, could negatively impact consumers as well as erode trust and confidence in Internet banking. New gTLDs such as ".bank" could mistakenly imply industry endorsement and command a higher level of trust from the public than is actually merited. No "open" applications should be permitted. We agree with the FDIC's recommendation that there should be a separate and distinct process for financial sector gTLDs. Any financial sector gTLD should be implemented

> *"from a top down approach to ensure that no unsponsored gTLDs are issued, and that if issued, such gTLDs are managed within an industry and regulatory framework."*

In addition to the key issue of cost described above, some of the problems in the financial sector that prevent reaching consensus on the issue of a new gTLD in this area include:

- Regions and other financials institutions feel strongly that registrations in a new financial sector gTLD should require verification by the registrar that the entity is truly a financial institution in good standing. Unfortunately, there is no single regulatory or trade body which represents all financial institutions, domestically or internationally. For instance, within the United States, banks are regulated by the FDIC, the Federal Reserve, the Office of the Comptroller of the Currency ("OCC"), and state banking agencies. Savings and Loans are regulated by the FDIC and the Office of Thrift Supervision, while certain credit unions are regulated by the National Credit Union Administration. Not all financial institutions are members of BITS, the American Bankers Association ("ABA") or the Financial Services Information Sharing and Analysis Center ("FSISAC").

- A gTLD such as ".bank" will not cover all aspects of financial institution's product offerings. Many financial institutions offer banking, brokerage and insurance services, among others. Would prospective buyers for an insurance product consider searching for this product on a ".bank" website?

- We are uncertain whether consumers will feel more secure for sites within a ".bank" gTLD, or whether they should. Will such a new gTLD lead to a reduction in phishing sites and stolen credentials? Despite intense customer education, financial institutions are still the number one target for phishers. Research has indicated that customers can be easily fooled by phishing sites. This is because customers often ignore the URL string while at the same time the phishers regularly and deliberately obfuscate the URL string. Using Regions' own statistics, we are aware that of the 2454 phishing sites from 2008, of the customers *who reported* responding to phishing sites, 19% admitted to giving up their credentials. The actual number is probably higher.

III. Comments on DAG 2

Regions provides the following specific comments on the DAG 2:

- Module 1: Evaluators – Regions raises the question of whether the evaluator in relation to any community-based financial gTLD should have a general knowledge of the financial services industry. As in the case of geographic names, any such financial industry gTLD applications should be referred to appropriate financial sector regulatory and industry bodies.

- Notification: The DAG 2 does not provide an easy mechanism for financial institutions to be alerted when there are applicants for gTLDs, which the financial institutions would find objectionable for various reasons: financial-related strings, intellectual property infringement, legal rights, public order (i.e. consumer protection/consumer confusion). ICANN should develop a mechanism by which institutions can sign-up for electronic notices that will be sent for each new gTLD applicant.

- Community based gTLDs: The DAG 2 regards a community-based" gTLD as a gTLD that is operated for the benefit of a defined community consisting of a restricted population. However, the current process asks the applicant to designate whether their gTLD string is community-based: "[a]n applicant designating its application as community-based will be asked to substantiate its status as representative of the community it names in the application." Regions is concerned that there should be adequate documentation and independent verifications from industry representatives and regulators before any entity is selected as a representative of the financial community to operate a financial sector gTLD.

- The DAG 2 permits an applicant to submit a notarized affidavit in lieu of proof of legal establishment and proof of good standing. From a financial institution perspective, an affidavit is insufficient proof of legal establishment and proof of good standing for any community based gTLD that would purport to represent financial institutions.

- The DAG 2 permits each institution handling disputes to develop its own dispute resolution processes. In so far as possible, there should be a consistent set of "base" processes to be followed by all dispute resolution providers, so that the system does not become overly complicated.

- The costs for challenge to new gTLDs are too high.

IV. Recommendations

Regions supports the following proposals as amendments to the DAG 2. We are aware that some of these proposals have already achieved support from other stakeholders:

- Top-level reserved names list: Regions supports the proposal for a reserved names list to protect brand owners. Regions proposes that the following strings related to the financial sector should also be added to the reserved names list until such time as a representative body of the financial sector makes an appropriate proposal to ICANN:

  ".bank", ".fin", ".finance", "banc", ".ins", ".insurance", and ".broker."

  The existing Top-Level Reserved Names list in Module 2, which focuses only on ICANN and DNS related generic terms, should be expanded for this purposes. As discussed above, ICANN should avoid implementing a system that forces applicants to apply for a new gTLD simply as a defensive measure. One of the best ways to achieve this is through a reserved names list, with costs of any challenge against the reserved name to be borne by the challenger-applicant unless the applicant succeeds in its challenge.

- Approval for financial gTLDs: If ICANN is not agreeable to removing financial-type gTLDs from the application process, then we need to be assured that that any registration for the financial sector gTLDs has both community and regulatory body approval.

- Limit the rollout of new gTLDs and Use Dutch Auction: Regions would join with those who favor a very limited rollout of gTLDs (e.g., only 4-6 new gTLDs) at this time. ICANN has stated that there "does not appear to be a way to fairly limit rounds and the efficiency gains from a smaller application pool are not a significant enough advantage to alter this position." Regions disagrees with this assessment, and suggests that ICANN has not provided adequate empirical data to justify its conclusion. The benefit of launching a restricted number of gTLDs relates directly to lower costs and burdens on consumers and businesses, as described above. As to concerns of fairness, ICANN should consider a system such as a Dutch auction process (e.g., the auctioneer begins with a high asking price which is lowered until some participant is willing to accept the auctioneer's price), with a minimum reserve application price, as a means of selecting the first 4-6 entities who will then be permitted to proceed through the application process.

This will identify those who place the highest value on a new gTLD. It is also a "Fair" process for limiting the number of applications.

- Notification system for financial gTLDs: DAG 2 does not provide an easy mechanism for financial institutions to be alerted when there are applicants for gTLD, which financial institutions would find objectionable for various reasons: potential community-based string, intellectual property infringement, legal rights, public order (i.e. consumer protection/consumer confusion). ICANN should develop a mechanism by which institutions can sign-up for notices that will be electronically sent for each new gTLD applicant.

- Rights protection mechanisms: The DAG 2 requires that gTLD applicants must identify the rights protection mechanism (RPM") that they intend to use and require that gTLD operators must provide RPMs, including post-delegation dispute resolution processes to address post-delegation infringements. We believe that ICANN should require a standard set of RPMs, which should be low-cost, administratively efficient, and uniform across all new gTLDs. To avoid consumers and business from being unfairly burdened by having to deal with a diverse set of RPM processes, the uniformity of procedures is important. These mechanisms should be in place before any new gTLDs are launched. Regions is aware that ICANN has called for the Implementation Recommendations Team ("IRT") to develop and propose solutions to the overarching issue of trademark protection in connection with the introduction of new gTLDs. We believe expedited forms of takedown options should be developed for clearly abusive cases. Regions looks forward to receiving the IRT's recommendations.

- Sunrise period: One such RPM would be a uniform sunrise process for all new gTLDs, whereby trademark holders can register domain names before the registration process is opened up to the general public. The fees for such service should be very low. One alternative, as discussed above (reserved names list) is that ICANN oversee a centralized database – a form of protected name registry – allowing trademark owners and certain other community representatives to apply to have their trademarks or relevant strings placed on the reserve list.

- DNSSEC service: The introduction of new gTLDs provides an opportunity for the registry operator to offer DNSSEC as a service. Regions believes strongly that DNSSEC should be a required part of any new gTLD servicing the financial services industry.

- WIPO's post-delegation procedure: ICANN should consider adopting WIPO's post-delegation procedure for new gTLD registries, after that procedure has been subjected to comments and review from the broader community. We believe that use of a new gTLD by a registry operator may cause or materially contribute to trademark abuse or abuse of other legal rights. To prevent these issues, some form of standard post-delegation procedures are needed, particularly if ICANN decides to permit numerous new gTLDs.

Sincerely,

Michele Cantley

Michele Cantley
Senior Vice President &
Chief Information Security Officer

Hope D. Mehlman

Hope D. Mehlman
Senior Vice President &
Associate General Counsel

About Regions Financial Corporation

Regions Financial Corporation is a member of the S&P 100 Index and Forbes Magazine's "Platinum 400" list of America's best big companies. With nearly $146 billion in assets, Regions is one of the nation's largest full-service providers of consumer and commercial banking, trust, securities brokerage, mortgage and insurance products and services. Regions serves customers in 16 states across the South, Midwest and Texas, and through its subsidiary, Regions Bank, operates some 1,900 banking offices and more than 2,300 ATMs. Its investment and securities brokerage, trust and asset management division, Morgan Keegan & Company Inc., provides services from more than 330 offices. Additional information about Regions and its full line of products and services can be found at www.regions.com.