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Financing America's Economy

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April 11, 2011

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Notice of Intent to Require Reporting Forms for Savings and Loan Holding Companies

File Number: FR Doc. 2011-2782

Dear Ms. Johnson:

The Financial Services Roundtable (the "Roundtable"[1]) appreciates the opportunity to provide the Board of Governors of the Federal Reserve System (the "Board") with its comments on the Notice of Intent to Require Reporting Forms for Savings and Loan Holding Companies (the "SLHC Notice") as published in the Federal Register on February 8, 2011.[2]

Background

In the SLHC Notice, the Board provides a notice of its intention to require savings and loan holding companies ("SLHCs") to submit the same reports as bank holding companies ("BHCs") starting with the March 31, 2012 reporting period. The SLHC Notice indicates that the planned reporting requirements for SLHCs would provide the Board with data necessary for analyzing the financial condition of SLHCs; additionally, the Board contemplates that requiring SLHCs to submit the same reports as BHCs would allow it to populate the National Information Center database with information on the subsidiaries and affiliates of each SLHC.

Timing

The Roundtable wishes to emphasize that its substantial concerns with the SLHC Notice's March 31, 2012 compliance deadline are of critical importance. The imposition of

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1 The Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for $92.7 trillion in managed assets, $1.2 trillion in revenue, and 2.3 million jobs.

2 76 Fed. Reg. 7091 (February 8, 2011).

the comprehensive and complex BHC reporting regime on SLHCs, many of which have significantly different operational profiles and mixes of activities than "traditional" bank-centric BHCs, will require SLHCs to design, build and implement significant new systems in order to comply with the new reporting regime. These systems will also have to be tested and employees will have to be trained before the systems can reliably be implemented. Creating these extensive new systems will make it difficult, if not impossible, for most SLHCs to convert to the new reporting requirements by March 31, 2012. In addition, there are special issues that will confront SLHCs that are currently preparing their financials on a fiscal year basis, and SLHCs that may ultimately be required to form intermediate holding companies under Title VI of the Dodd-Frank Act. The affected SLHCs will need additional time to build and implement reporting systems to comply with these additional requirements. Given the comprehensive nature of the BHC reporting regime, the complexity of the conversion process, and the uncertainty as to which SLHCs might be required to form intermediate holding companies, **the Roundtable urges the Board to extend the compliance deadline for BHC reporting from the reporting period ending March 31, 2012 to at least the reporting period ending March 31, 2013.**[3] For SLHCs that might be required to form intermediate holding companies by the Board, the Roundtable requests that the compliance deadline for BHC reporting be eighteen months after the intermediate holding company's date of formation.

General Comments

As a general matter, the Roundtable has substantial concerns about the blanket imposition of a full range of BHC reports on SLHCs. The SLHC Notice fails to provide an explanation for the need for each of these forms. It simply makes the assumption that all the forms should be imposed on SLHCs because they currently apply to BHCs. The Roundtable submits that the Board should provide an explanation for the need for each of these forms, particularly given the differences in the regulatory regimes applicable to BHCs and SLHCs. In addition to an explanation of the need for each form, any ultimate proposal to require any of these forms should also have a detailed analysis of the burden that such reporting would impose. The SLHC Notice notes that it does not attempt to make any estimate of the burden, presumably because that exercise will occur as part of the subsequent proposed rulemaking to be initiated in the future.

When considering the proposed rulemaking, the Roundtable requests that the Board take into account the Obama Administration's stated policy on the imposition of unnecessarily burdensome regulation during a fragile economic recovery.[4] The Executive

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3 The Roundtable has filed a separate letter commenting on the joint notice of intent that would require savings associations currently filing the Thrift Financial Report ("TFR") to file the Call Report by March 31, 2012. *See* 76 Fed. Reg. 7082 (February 8. 2011). In the letter commenting on the joint notice, the Roundtable requests that in addition to the Board extending the compliance deadline for the conversion from the TFR to the Call Report to March 31, 2013 at the earliest, individual savings associations that are in a position to convert from the TFR to the Call Report *before* the March 31, 2013 deadline be permitted to do so. Early conversion to the Call Report by individual savings associations would ease the compliance burden for SLHCs that would be required to undertake simultaneous conversion of their reporting systems at both the savings association and holding company level.

4 *See* Exec. Order No. 13,563. 76 Fed. Reg. 3821 (Jan. 21, 2011).

Order states that "each agency must . . . propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs."[5] The Roundtable requests that the Board undertake a careful cost-benefit analysis to ensure that any new reporting requirements are warranted and that their benefits are justified by their costs. Similar to the inquiries that the Federal banking agencies have posed in the context of a recent joint notice requiring savings associations to convert from filing the Thrift Financial Report ("TFR") to filing the Call Report by March 21, 2012, this analysis should entail such considerations as (i) whether requiring SLHCs to submit a particular BHC form is necessary for the proper performance of the Board's supervisory function, (ii) whether the information that would be provided by SLHCs in a particular BHC form has practical utility, and (iii) ways of enhancing the quality, utility and clarity of the information that will be collected.

The Roundtable submits that the costs of the BHC reporting requirements must also be considered in the broader context of the statutory and regulatory burdens being imposed on the reporting institutions. As noted above, the Federal banking agencies are proposing to require savings association subsidiaries of SLHCs to convert from filing the TFR to filing the Call Report by March 31, 2012. Simultaneously imposing two reporting changes on SLHCs will increase the burden for these institutions. Similarly, in a recently published joint notice,[6] the Federal banking agencies have implemented changes to the TFR and Call Report that implement the new assessment system required under the Dodd-Frank Act, producing additional demands on their reporting systems. Other provisions of the Dodd-Frank Act, including those in Title VI, will likely impose additional compliance burdens on SLHCs at the same time. As seen against this context, the cost of complying with the BHC reporting requirements will have an even greater impact than the Board has anticipated.

Specific Comments

In the SLHC Notice, the Board indicated that SLHCs would be required to file twelve different categories of BHC forms.[7] Requiring SLHCs to file BHC forms would impose reporting requirements on SLHCs that far exceed reporting requirements currently applicable to SLHCs under the requirements of the Office of Thrift Supervision (the "OTS"). Under currently applicable OTS reporting requirements, an SLHC is required to file Form H-(b)(11) on a quarterly and annual basis, and to supply information on Schedule HC to the TFR.[8] In contrast, the BHC forms require the compilation of information that SLHCs may not currently collect. For example, Schedules HC-H, HC-L, and HC-N to FR Y-9C require detailed consolidated financial information on interest sensitivity, past due and nonaccrual loans, leases, and other assets, and servicing, securitization, and asset sale activities. As is the case with much of the data required for the BHC forms, SLHCs are not currently required to collect the data for Schedules HC-H, HC-L, or HC-N. As a result, the

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5 Id.

6 76 Fed. Reg. 14460 (Mar. 16, 2011).

7 FR Y-6, FR Y-7, FR Y-9C, FR Y-9LP, FR Y-9SP, FR Y-9ES, FR Y-9CS, FR Y-10, FR Y-11/S, FR 2314/S, FR Y-8, and FR Y-12/12A.

8 *See* 12 CFR § 584.1(a)(2), 12 CFR § 584.1(e).

SLHC will be required to create new management information and accounting systems to collect the data (in many cases sub-ledger data) required by these forms. These BHC reporting requirements will impose very significant burdens and costs on SLHCs. In the context of other financial companies voluntarily electing to become BHCs in 2008, the Board itself acknowledged the "magnitude and complexity of the work that must be performed . . . to develop the reporting systems to comply with the Board's reporting requirements."[9] The Roundtable respectfully submits that the Board should carefully consider whether the extensive additional reporting, particularly with the level of detail that is based on historically bank-centric activities, has sufficient practical utility to outweigh these significant burdens as imposed on the diversified range of SLHCs.

In addition, there are several specific situations that should also be considered by the Board in making any decision about a new reporting regime for SLHCs. First, some SLHCs currently report financial data on a fiscal year, rather than a calendar year basis. For these SLHCs, the costs discussed above would be even greater, as these SLHCs would either have to redesign their internal management and accounting systems to convert to a calendar year reporting basis or would have to maintain both fiscal year reporting systems *and* calendar year reporting systems in order to meet any calendar year reporting requirement imposed by the Board. An additional concern arises from the fact that some fiscal year reporting SLHCs are wholly owned subsidiaries of Securities and Exchange Commission ("SEC") registrants. At a minimum, confidential treatment of calendar year-based BHC forms by the Board would likely be necessary to assure compliance with SEC requirements. The Roundtable submits that the costs of building and maintaining separate reporting systems outweigh any supervisory benefit that would result from imposing such a requirement.

Second, we note that Section 626 of the Dodd-Frank Act grants the Board authority to require grandfathered unitary SLHCs to conduct certain financial activities through an intermediate holding company.[10] In the event that a grandfathered SLHC were required to form an intermediate holding company, additional time would be necessary for the SLHC to establish the management information systems and audit systems necessary to file the reports that the Fed intends to require from SLHCs. The Roundtable assumes that if a SLHC were required to form an intermediate holding company, any BHC-type reporting requirements would apply to the intermediate holding company itself, rather than to the ultimate parent. In order to accommodate the material impact on any SLHCs that are required to form intermediate holding companies, the Roundtable reiterates its request that the compliance deadline for SLHCs that are required to form intermediate holding companies be eighteen months after the intermediate holding company is actually formed.

Third, there are a number of mutual insurance companies and fraternal benefit societies that are SLHCs. Mutual insurance companies and fraternal benefit societies

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9 *See* Letter from Robert deV. Frierson, Deputy Secretary, Board of Governors of the Federal Reserve System, to Colm Kelleher, Chief Accounting Officer, Morgan Stanley, Feb. 5, 2009.

10 *See* section 626(b)(1)(A) of the Dodd-Frank Act.

prepare their financial statements in accordance with statutory accounting principles ("SAP") as required by state insurance law and regulation, and are not required to prepare consolidated financial statements based on generally accepted accounting principles ("GAAP"). The Board currently requires that the consolidated financial statements for FR Y-9C be prepared in accordance with GAAP. These mutual insurance companies and fraternal benefit societies could not comply with that requirement. It is important to note that insurance companies that file SAP-based financial statements do so under the purview of robust state insurance legal and regulatory regimes. The rules governing SAP are developed by the National Association of Insurance Commissioners ("NAIC"), which promulgates comprehensive accounting guidelines that are then implemented under state law and state insurance regulation. Similar to the Financial Accounting Standards Board, the NAIC undertakes periodic reviews of, gives guidance on, and issues formal interpretations of its accounting rules. SAP-based accounting is generally more conservative than GAAP-based accounting.[11] In light of the well-established regulatory policies supporting SAP, the Roundtable submits that these SLHCs should be permitted to continue to submit financial reports based on SAP. In support of this position, we note that the OTS has permitted SLHCs that are insurance companies to file financial statements based on SAP.[12] In addition, the Board has permitted foreign banking entities to file financial statements based on locally applicable accounting principles.[13] The Roundtable asks the Board to apply these precedents and accept SAP-based financial statements for BHC reporting purposes for SLHCs that currently prepare financial statements based on SAP, rather than GAAP.

BHC Form FR Y-10

In addition to financial reporting, the Board has proposed that SLHCs submit certain corporate organization reports that BHCs submit, including the FR Y-10. The proposed FR Y-10 reporting requirement would impose significant cost burdens on SLHCs. The FR Y-10 is based on activity restrictions in the Bank Holding Company Act of 1956 ("BHC Act"). Grandfathered SLHCs are not subject to the types of activity restrictions applicable to BHCs under the BHC Act. The FR Y-10 is used to report a wide range of events, including the acquisition of interests in nonbanking companies, transfers or sales of such interests, internal reorganizations, commencement of new activities, and changes in existing activities. These reporting requirements are based on the activity restrictions in the BHC Act, which do not apply to grandfathered SLHCs. The Roundtable submits that imposing a comprehensive requirement for the filing of FR Y-10 reports on SLHCs is not

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11 *See* Report of the National Association of Insurance Commissioners and the Federal Reserve System Joint Subgroup on Risk-Based Capital and Regulatory Arbitrage (May 24, 2002).

12 *See* H-(b)11 Package Annual/Current Report, General Instructions, Current Reporting Instructions, OTS Form H-(b)11, Item 5. Financial Statements (allowing holding companies that are insurance companies to file financial statements prepared in conformity with statutory accounting principles if they do not prepare GAAP financial statements for any other purpose). *See also* Thrift Financial Report, Schedule HC (permitting a savings association to file SAP-based financial information).

13 *See* FR Y-7, General Instructions for Preparation of the Annual Report of Foreign Banking Organizations, Report Item 1a: Financial Statements (directing foreign banking organizations to prepare financial statements "in accordance with local accounting practices").

justified as a regulatory matter because of the different statutory regime applicable to SLHCs.

If the Board nonetheless decides to impose an FR Y-10-type reporting requirement on SLHCs, the Roundtable strongly urges that the Board modify the contents and frequency of any such reporting requirement for SLHCs. Specifically, the Roundtable requests that the Board consider requiring an FR Y-10 filing only if the change in an SLHC's organizational structure meets specific size, materiality and activity thresholds. For example, the Board could consider requiring SLHCs to provide an initial FR Y-10 filing only for material subsidiaries or controlled entities, and thereafter only for material changes in the organizational structure, rather than requiring SLHCs to file an FR Y-10 for every subsidiary or controlled entity and for every change in organizational structure on an ongoing basis. In addition, the Roundtable requests that the Board consider modifications of the activity codes with respect to affiliates of diversified SLHCs that conduct significant amounts of nonfinancial activities, as such modifications would provide the Board with better information on the structure and operations of diversified SLHCs. The Roundtable believes that appropriate adjustments to the FR Y-10 requirement would allow the Board to continue to gather information more than sufficient for the supervision of SHLCs, while greatly reducing the cost and compliance burdens arising from the FR Y-10.

Conclusion

In summary, the Roundtable requests that the Board carefully consider any discretionary proposal that would result in the blanket imposition of BHC reporting requirements on SLHCs, particularly at a time when other new requirements mandated by the Dodd-Frank Act will impose additional burdens on SLHCs and their depository institution subsidiaries. In this regard, the Roundtable requests that the Board consider the differences between the statutory and regulatory regimes applicable to BHCs and the statutory and regulatory regimes applicable to SLHCs. The Roundtable requests that the Board consider the need for each category of BHC reporting that it intends to impose on SLHCs, and that it do so after conducting a careful cost-benefit analysis. Finally, the Roundtable requests that the Board extend the compliance deadline for any new reporting requirements from March 31, 2012 to at least March 31, 2013, or in the case of an SLHC that is required to form an intermediate holding company, eighteen months after the date of formation. We also request that the Board consider the possibility that individual entities may need even longer to comply with certain provisions of the reporting requirements, and that the granting of exceptions in such cases may be appropriate. The Roundtable submits that a measured approach to the imposition of new reporting requirements will permit the development of a more effective and focused reporting regime that minimizes the costs to the industry and maximizes the utility of the filings to the Board.

The Roundtable thanks the Board for the opportunity to comment. If you have any questions, please feel free to contact me or Brian Tate at (202) 289-4322.

Sincerely,

Richard M. Whiting

Richard Whiting
Executive Director and General Counsel