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Via Electronic Transmission
www.regulations.gov

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

Re: Notice of Intent to Apply Certain Supervisory Guidance to Savings and Loan Holding Companies – Docket No. OP-1416

Dear Ms. Johnson:

On behalf of Mutual of Omaha, we appreciate the opportunity to provide information in response to the Notice of Intent (NOI) referenced above. As a mutual insurer that will also become a savings and loan holding company, we are concerned about the manner in which the Federal Reserve Board (Board) may exercise its authority over savings and loan holding companies. We are specifically concerned about the Board's application of its current consolidated supervisory approach for bank holding companies (BHCs) to savings and loan holding companies (SLHCs).

The NOI identifies the Board's objective to ensure that SLHCs and their nondepository subsidiaries are effectively supervised and can serve as a source of strength for, and do not threaten the soundness of, their subsidiary depository institutions (76 Fed. Reg. at 22663). We support this objective but join the ACLI in its recent comment letter, illustrating the basic tenet that insurance activities are fundamentally different from traditional banking and BHC activities. Failure to recognize this fact, as the NOI approach would do, risks not only overlapping or duplicative supervision but also, more likely, conflicting and ineffective supervision. We believe the longstanding and comprehensive regulatory and supervisory system established under state insurance law and implemented and enforced by state insurance authorities has demonstrated its effectiveness for insurance holding companies such as ours. There have been attempts to link the well-publicized problems of AIG to the insurance industry, generally. However, it is now well known that those issues largely arose from the activities of AIG Financial Products, a non-insurance, derivatives trading unit within the AIG corporate structure. In light of the insurance industry's ability to comfortably weather the unparalleled financial crisis of 2008-2009, the current system should be given great weight and deference as the Board assumes its new supervisory responsibilities for SLHCs, in keeping with the Board's historical reliance on the primary regulator.

Consolidated Supervision

Title III of the *Dodd-Frank Act* (DFA) made clear that both federal thrifts and their holding companies will continue to be governed by the *Home Owners Loan Act* (HOLA), which is an entirely different regulatory regime from the *Bank Holding Company Act*. The Board states in the NOI that it will take into account, to the extent possible, the unique characteristics of SLHCs and the requirements of the HOLA to assess the condition, performance and activities of SLHCs on a consolidated basis (76 Fed. Reg. at 22663)

Applying all of the BHC requirements to SLHCs is certainly a streamlined and consistent approach, but it is not necessarily a fair or effective one given the differences in business profiles and risk characteristics. Similar to the industry's argument against applying BHC reporting requirements to SLHCs, the Fed should also take a more deliberate approach in its application of its supervisory process. This is especially true given that SLHCs are specifically exempted from the *Bank Holding Company Act*.

The NOI further states the Board does not believe that "application of its BHC consolidated supervision program to SLHCs would require any specific action on the part of SLHCs prior to the transfer date or cause undue burden on an ongoing basis" (76 Fed. Reg. at 22663). However, the changes SLHCs currently face are immense. In addition to new regulators and proposals for new capital standards, risk measurements, examiners and reporting requirements, we face review of non-bank subsidiary activities to which we were not previously subjected.

Given our structure, we will need time to review, identify and process the required information and create new administrative methods to gather and report accurate data. We do not believe the Board has fully explored the extent to which its supervisory regime would impact SLHCs. As such, Mutual of Omaha respectfully requests the Board conduct additional collaborations with the industry to identify the specific regulatory costs and burdens associated with applying the proposed supervisory guidance to SLHCs and revise its approach with those in mind to create a more relevant and appropriate supervisory regime.

Capital Adequacy

The NOI acknowledges "one material difference between the OTS and Board supervisory programs for holding companies is the assessment of capital adequacy" (76 Fed. Reg. at 22665). Section 171 of the DFA requires that BHCs and SLHCs be subject to minimum leverage and risk-based capital requirements that are not less than the generally applicable leverage and risk-based capital requirements applied to depository institutions.

The Board's earlier Joint Notice of Proposed Rulemaking on Risk-Based Capital Standards: Advanced Capital Adequacy Framework – Basel II; Establishment of a Risk-Based Capital Floor (See FRB Docket No. R-1402 and RIN No. 7100-AD62), Section

I.E., entitled "*Effect of Section 171 of the Act on Certain Institutions and Their Assets,*" discussed certain depository institution holding companies that are subject to section 171 have not previously been subject to bank capital requirements and may hold assets that do not have a specific risk-weight assigned under generally applicable bank risk-based capital requirements. We appreciate this realization and again fully support all of the concerns expressed by the ACLI in its recent letter, specifically that bank capital rules under Basel II, or the Basel III initiative, could be inappropriately applied to life insurance companies.

We find that applying section 171 to institutions where it has not previously been applied will present significant capital compliance issues for the following reasons:

- <u>Savings and loan holding companies and bank holding companies have different capital requirements at the parent level.</u>

  While there are nearly identical capital standards for banks, bank holding companies and thrifts, there is a significant difference in the treatment of savings and loan holding companies versus bank holding companies at the parent level. In the present system, OTS does not impose a quantitative capital requirement on savings and loan holding companies but requires that they maintain a "prudential" level of capital. Bank holding companies and financial holding companies, on the other hand, are subject to specific capital requirements at the parent holding company level.

- <u>Accounting and capital rules for insurance companies differ from accounting and capital rules for banks.</u>

  Although the rulemaking does not address accounting issues, we believe that for mutual insurers that are savings and loan holding companies, imposition of bank risk-based capital rules creates a conflict between bank and insurance capital standards. Insurance company capital standards carefully consider both asset and insurance liability risk characteristics. Inappropriately applying bank-specific capital factors to an insurance statutory or GAAP balance sheet may result in misleading capital implications, impacting millions of customers.

- <u>The Federal Reserve and OCC should first review whether an insurance company/parent is adequately capitalized under its state insurance regulator and take corrective action if it is not.</u>

  As an insurance company, Mutual of Omaha is subject to regulatory capital standards imposed by state insurance regulators. As a savings and loan holding company, we are subject to the prudential capital requirements of the OTS, soon to be merged into the OCC. In order to address the discrepancies between bank and insurance capital rules, we believe regulatory language should reflect an insurer's risk-based capital standard equivalent. This standard should clarify that as long as a mutual insurer meets its state regulator's capital requirements it would be deemed to be in compliance with bank capital requirements. If it fails to meet its state regulator's capital requirements or, upon specific findings that such requirements are inadequate, the Federal Reserve could intervene and impose a capital standard on that particular insurer. **Such a standard would not diminish the Board's authority to act as a consolidated regulator, impose additional capital standards or require that a mutual insurance company that is organized as a bank holding company or savings and loan holding company act as a source of strength for a subsidiary insured depository institution.**

Mutual of Omaha provides insurance, income and asset protection and growth to millions of Americans. We operate principally through the business of insurance and complementary asset management and brokerage. Our company provides valuable services to our policyholders, agents and banking customers by offering convenience and reducing costs. Effective and appropriate supervision and certainty in the application of our capital requirements is paramount to our ability to continue to provide these services and for the Board to attain its stated objectives.

Once again, we appreciate the opportunity to comment on these very important issues. Thank you for your consideration.

Respectfully submitted,

David A. Diamond
EVP, CFO & Treasurer
Mutual of Omaha