



**H&R BLOCK®**

William C. Cobb  
President & CEO

October 22, 2012

*Via email (regs.comments@federalreserve.gov)*

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> and C Street, NW  
Washington, DC 20551

RE: Regulatory Capital Requirements for Savings and Loan Holding Companies  
Docket No. R-1430; RIN No. 7100-AD87

Board of Governors:

H&R Block, Inc. ("H&R Block") writes to comment on the above-referenced joint notice of proposed rulemaking published in the Federal Register on August 30, 2012 (the "NPR"). H&R Block's comments are specific to the proposed effective date for the new regulatory capital requirements for savings and loan holding companies ("SLHCs") established by the Board of Governors of the Federal Reserve (the "Board") and the application of Basel capital guidelines to banking organizations that are neither the size and scale nor the type of enterprise contemplated by the proponents of Basel capital guidelines.

H&R Block is a public company that provides retail and digital income tax preparation and related banking products and services. H&R Block is the top-tier savings and loan holding company for H&R Block Bank ("HRB Bank"), a federal savings bank, and is directly affected by the timing and scope of the Board's proposed regulatory capital requirements for SLHCs. As H&R Block has previously announced, due in part to the manner in which the Board is proposing to apply regulatory capital requirements to SLHCs, H&R Block is in the process of evaluating alternative means of ceasing to be an SLHC, in which case H&R Block would no longer be subject to regulation by the Board as an SLHC.

**Effective Date for SLHC Capital Requirements.**

Historically, bank holding companies ("BHCs") have been subject to uniform regulatory capital requirements, while the capital adequacy of SLHCs (which may engage in a much

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broader range of activities than BHCs) have been addressed on an institution-specific basis. It will take many SLHCs, including H&R Block, time and considerable effort to comply with the uniform regulatory capital guidelines proposed in the NPR. Some SLHCs may be required to adjust their capital structure, balance sheets and business plans. These changes require thoughtful planning and communications with stakeholders. The proposed January 1, 2013, effective date does not provide the time necessary for SLHCs to undertake these tasks.

When the Board first issued final consolidated risk-based capital requirements for BHCs in 1989, it provided approximately two years advance notice before BHCs were required to meet the new capital requirements. Such meaningful advance notice was important then and we urge the Board to provide the same meaningful advance notice with respect to the capital requirements for SLHCs in the NPR. Prior Board notices on the supervision and regulation of SLHCs stated that capital issues would be addressed later. It was not until the current NPR was made available by the Board and other federal banking regulators in June 2012 that SLHCs learned they would have only six months to implement an entirely new capital regime. Imposing new regulatory capital requirements on SLHCs, without adequate prior notice, would be highly disruptive, discriminatory and unfair.

There is strong evidence within the Dodd-Frank Act that Congress intended for uniform capital requirements to apply to SLHCs beginning on July 21, 2015. Section 616 of the Dodd-Frank Act provided the Board general authority to issue regulations and orders relating to SLHC capital requirements. Section 171 of the Dodd-Frank Act (the "Collins Amendment") requires the Board to establish minimum capital requirements for BHCs and SLHCs, but specifically provides for a five-year deferral of the effective date for such capital requirements for SLHCs. The proposal in the NPR to make the uniform regulatory capital requirements effective for SLHCs beginning on January 1, 2013, is inconsistent with the required deferral of minimum capital requirements in the Collins Amendment and would render the Collins Amendment's five-year deferral period inoperative, irrelevant and of no effect.

Applying the five-year deferral period to all new regulatory capital requirements for SLHCs would also be consistent with the Board's application of the five-year deferral period for BHC subsidiaries of foreign banking organizations in the Collins Amendment. In the NPR, the Board said that implementing capital regulations for BHC subsidiaries of foreign banking organizations on July 21, 2015 (after a five-year deferral period) is "consistent with the Dodd-Frank Act." Even though the related statutory language in the Collins Amendment is the same for SLHCs, the NPR did not include the same five-year deferral of the effective date for SLHC capital requirements. It is unclear whether this inconsistency was intentional or a mere oversight. In either case, the Board should apply the deferral period for SLHCs in the Collins Amendment in the same manner that

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it applied the five-year deferral period to BHC subsidiaries of foreign banking organizations. Common statutory language dictates consistent regulatory treatment.

At a minimum, we believe it would be consistent with the timeframes set forth in the Collins Amendment to make the uniform capital requirements in the NPR effective on July 21, 2015 (and some commentators have argued that imposing such requirements before July 21, 2015, would be in contravention of a statutory mandate and clear Congressional intent).<sup>1</sup> Further, we believe the adverse consequences of applying the proposed capital regulations to SLHCs beginning on January 1, 2013, greatly exceed the benefits of doing so. The result is particularly inequitable if the Board does not impose similar capital requirements on subsidiaries of foreign banking organizations until July 21, 2015. Accordingly, H&R Block strongly urges the Board to reconsider and delay the effective date for applying uniform regulatory capital requirements to SLHCs until July 21, 2015.

**Basel uniform capital requirements were not created to apply to all financial institutions.**

According to the Basel Committee on Banking Supervision, the Basel capital requirements are intended to apply to complex, internationally active banks and holding companies that are the parent entity within a group that engages predominantly in banking activities (such groups are referred to by the Basel Committee on Banking Supervision as "Banking Groups"). First, it is notable that the vast majority of banks and holding companies that will become subject to the capital guidelines in the NPR are not complex, internationally active organizations. Second, the Basel capital guidelines were not created to apply to organizations predominantly engaged in activities other than banking.

While H&R Block's core business (income tax preparation) has long been deemed an activity "closely related to banking", tax preparation is not a banking activity, nor are H&R Block and its subsidiaries a Banking Group. Income tax preparation is a service activity that does not have any of the credit risk, interest rate risk or currency risk that are assumed by Banking Groups that serve as financial intermediaries. The Basel

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<sup>1</sup> See, e.g., Comment letter from Mike Lochmann, Stinson Morrison Hecker LLP to Jennifer J. Johnson, Secretary, Bd. of Governors of the Fed. Reserve Sys., Re: Proposal for New Regulatory Capital Requirements for SLHCs Docket No. R-1430; RIN No. 7100-AD87, at 2 (Aug. 27, 2012), available at [http://www.federalreserve.gov/SECRS/2012/September/20120911/R-1430/R-1430\\_082712\\_108257\\_535447265095\\_1.pdf](http://www.federalreserve.gov/SECRS/2012/September/20120911/R-1430/R-1430_082712_108257_535447265095_1.pdf); Comment letter from Marianne E. Roche, Silver, Freedman & Taff, L.L.P. to Jennifer J. Johnson, Secretary, Bd. of Governors of the Fed. Reserve Sys., Re: Docket No. R-1430; RIN No. 7100-AD87 Timing of Imposition of Regulatory Capital Requirements on Savings and Loan Holding Companies and Lack of Countercyclical Capital Standards, at 3 (Sept. 19, 2012), available at [http://www.federalreserve.gov/SECRS/2012/September/20120927/R-1442/R-1430\\_091912\\_108360\\_400293229192\\_1.pdf](http://www.federalreserve.gov/SECRS/2012/September/20120927/R-1442/R-1430_091912_108360_400293229192_1.pdf).

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capital requirements were drafted to apply to financial intermediaries, not companies predominantly engaged in a service business (such as H&R Block) or in retailing or manufacturing activities, that also happen to own a federal savings bank. The Board acknowledged this when it issued its Notice of Intent to Apply Certain Supervisory Guidance to Savings and Loan Holding Companies in April 2011, but the NPR evidences no such distinction.

H&R Block's core tax preparation business is fundamentally different from a Banking Group in terms of the nature of its revenues, assets, liabilities and capital structure. A ratio of tangible common equity to tangible assets may be an appropriate standard by which to evaluate the financial strength of an internationally active Banking Group with a core business that generates revenue from purchasing, holding or selling financial assets. However, the relevant standards for evaluating the financial strength of H&R Block are cash flow related, and consist of ratios of debt to EBITDA and EBITDA to interest rather than tangible capital to tangible assets or debt to tangible equity. Unlike banks and Banking Groups, H&R Block generates revenue primarily from tax preparation services, not from the purchase, holding or sale of financial assets.

HRB Bank is well-managed and well-capitalized. H&R Block maintains HRB Bank's regulatory capital at levels greatly in excess of applicable regulatory capital requirements. Considering the very high capital levels of HRB Bank, H&R Block has already been, and can continue to be, a source of strength to HRB Bank. We do not believe it is necessary for H&R Block to maintain additional (and we believe redundant) regulatory capital at the holding company level.

We urge the Board to reconsider the effects of implementing uniform Basel based capital regulations for SLHCs and to weigh those effects against the benefit from applying such requirements. If the Board decides to make the Basel based capital requirements generally applicable to all BHCs and SLHCs, then we believe that the capital regulations should explicitly reserve the right for the Board to establish, by written agreement or order, individual capital requirements for an SLHC that depart from the Basel capital guidelines and are crafted to that specific SLHC's unique characteristics, risks and activities. Doing so will not undermine the Board's international commitments to implement Basel capital guidelines, and will give uniquely situated SLHCs the ability to retain and operate their thrift subsidiaries in a safe and sound manner.

#### **Impact on SLHCs, Including H&R Block**

In its 2011 Notice of Intent to Apply Certain Supervisory Guidance to Savings and Loan Holding Companies, the Board recognized the unique characteristics of SLHCs and indicated that it would consider those unique characteristics in applying capital requirements to SLHCs. We believe the Board has disregarded the unique characteristics of SLHCs in the NPR, effectively forcing a number of SLHCs, including

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H&R Block, to evaluate alternative means of ceasing to be an SLHC. Further, by imposing Basel capital regulations on all SLHCs beginning on January 1, 2013, the Board is forcing SLHCs to consider these alternatives without meaningful notice.

We believe that the manner in which the Board is proposing to apply these new capital requirements, and the lack of meaningful notice, is damaging and unnecessary. HRB Bank is well-managed and well-capitalized and H&R Block has served as a source of strength for HRB Bank. Given the nature of H&R Block's business, additional excess capital at the holding company level is unnecessary. By applying a "one-size-fits-all" approach, the Board is creating unintended consequences – potentially precluding safe and sound SLHCs from owning and operating their well-run savings banks.

### **Summary and Conclusion**

To give SLHCs adequate prior notice of, and reasonable time to adjust to, the new regulatory capital requirements, and in light of the Collins Amendment's explicit five-year deferral period for SLHC minimum capital requirements, we request that the Board make the new SLHC capital requirements effective on July 21, 2015, not January 1, 2013.

Because the Basel capital requirements were intended to apply only to complex, internationally active Banking Groups, we ask the Board not to apply Basel-based capital requirements to SLHCs that are predominantly engaged in a service business (such as H&R Block's income tax preparation), or in retailing or manufacturing activities. If the Board decides to generally impose Basel capital requirements on all SLHCs, then we ask the Board to reserve for itself the right to establish, by written agreement or order, individual capital requirements that are crafted to an SLHC's unique characteristics and risks.

We appreciate the Board's consideration of our comments.

Sincerely,



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