American Bankers Association
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Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Ave., NW
Washington, DC 20551

Re: Interim Final Rule, Savings and Loan Holding Companies
76 Fed. Reg. 56508-56606 (Sept. 13, 2011)

Dear Ms. Johnson:

The American Bankers Association (ABA) welcomes the opportunity to comment on the Board of Governors of the Federal Reserve System (Board) interim final rule addressing a number of transition rules including new Regulations LL and MM for savings and loan holding companies (SLHCs), including capital adequacy assessments. This comment letter will focus on Regulation LL; a separate letter will address Regulation MM. ABA represents banks of all sizes and charters and is the voice for the nation's $13.3 trillion banking industry and its 2 million employees. Institutions directly affected by the proposal are strongly represented in ABA's membership and participated in the development of this comment letter.

The interim final rule transfers the regulation of SLHCs to the Board's regulatory framework and attempts to preserve those items of statutory difference between the Home Owners Loan Act (HOLA) and the Bank Holding Company Act (BHCA). It is a difficult task and we commend the Board for its thoroughness and its request for comment. While efforts have been made to identify items that may provide the Board with further opportunities for regulatory consistency, given the complexity of the project, there are likely to be other items identified after the close of the rulemaking. As noted in conversations with Board staff, the industry and the Board are both learning as the process evolves.

Application and Use of Board Control Approach and Precedent

Regulation LL notes the similarity between the HOLA and BHC Act on the concepts of control and takes advantage of those similarities to use the Board's control approach for SLHCs. ABA suggests that further clarification or education is needed to help holding companies and their advisors understand the extent to which the Board's policy statement on equity ownership and control levels may or may not apply to investments in savings associations and savings and loan holding companies. For example, the policy statement provides that non-controlling equity investments may be made up to 33% of total equity, yet the HOLA and Regulation LL provide that a control "wire" is tripped if a person "has contributed more than 25% of the capital" of a company. The interplay between "total equity" and "contributions to capital," whether those terms are intended to have the same or different meanings and how the relevant percentages should be calculated is unclear. ABA suggests that further elucidation on these issues is appropriate and would be beneficial to the industry.

For example, given that the term "capital" is undefined under the HOLA for this purpose, the Board could define "capital" to mean total equity under GAAP and then limit any investment to no more than permitted under the the Board's policy statement on equity ownership and control levels. This would ensure the greatest regulatory consistency between the two statutory and regulatory regimes.

Passive v. Rebuttable.

The prior OTS regulations used rebuttable agreements to overcome specific presumptions of control rather than passivity commitments to address the more general concept of controlling influence. In making the transition from one concept to the other, the industry would benefit from additional guidance on the facts and circumstances that may give rise to the proffer and use of passivity commitments. Conversations with Board staff members suggest that there may be any number of factors including the number of board committees on which an investor may serve, the level of representation (is the investor chairing a committee?), the type of committee (e.g., compensation), in addition to the actual percentage amount of ownership. For instance an investor may have 4.99% ownership interest and serve as the Chairman of the Board of Directors and the Board may find that control is present; others may have 9.99% but have one board seat and serve on only one committee as a member and control may not be present. Or there could be a mixture of ownership and passivity commitments that allows for a higher ownership interest. Guidance on the flexible approach the Board employs is always welcome and the ABA would be delighted to work with the Board to provide opportunities for further learning.

Financial Holding Companies (FHCs).

Regulation LL removes the prior OTS determination that allowed SLHCs to be automatically eligible to engage in Section 4(k) financial activities without having to satisfy any of the FHC-related criteria. The problem is timing. Those institutions wishing to continue their Section 4(k) activities must register by December 31, 2011 (unless they are grandfathered unitaries and then the requirement does not apply to them). That is little time to restructure or eliminate activities, if necessary. For those that do not qualify as well-managed and well-capitalized, there is little or no possibility of being examined and earning the necessary designation within this timeframe. Moreover, the well-managed and well-capitalized standards, including for its subsidiary depository institutions, now apply at the holding company level, and savings and loan holding companies have not previously been subject to these requirements nor have they received a management rating from the Board. That leaves many holding companies in a box without a manageable pathway to compliance. For this reason, the ABA urges the Board to consider granting SLHCs an extension of time to meet the FHC-related criteria. The Board and its supervisory staff may want to meet individually with affected SLHCs to understand which strategic choice is being made and the timeframe necessary to achieve that choice. And, as coordination will be required with the subsidiary depository institution regulator, additional time will assist in that process as well.

Presumptive Disqualifers & Withdrawal of Applications

The Board included in Regulation LL the former OTS rules on presumptive disqualifiers in connection with acting on applications. The Board does not include similar provisions for BHCs in Regulation Y. Instead, the Board has always found it appropriate to consider such items as part of its

internal application processing standards. We believe the Board should take the same approach with respect to SLHCs as a matter of regulatory consistency.

However, if the Board retains the presumptive disqualifiers, these include the former OTS rules loosely referred to as the "integrity" factors (Section 238.15) to be considered in connection with an evaluation of the managerial resources of an applicant. Included in that list is a presumptive disqualifier if an acquirer or its affiliates had previously withdrawn a control-related application filed with a regulator. As noted in conversations with Board staff members, times have changed between the time those original regulations were adopted by the OTS and present practice. It is now not uncommon, based on informal conversations and other communications with a regulator, to withdraw an application before a final determination is rendered.. Often, regulators encourage applications to be withdrawn for policy reasons and such withdrawals should not penalize an applicant with respect to future filings. Further, because the Board is eliminating most of the prefiling procedures that OTS employed. ABA suggests that the presumptive disqualifier regarding withdrawn applications should also be eliminated. It is a vestige of prior practice. There is no comparable inference in the BHC regulations and we urge the Board to eliminate it for SLHCs.

Control and Proxy Solicitations.

Prior OTS regulations included a proxy solicitation exemption from the prior approval process for voting shares acquired through the receipt of revocable proxies in connection with a proxy solicitation for the purpose of conducting business at an annual or special meeting. The BHCA and Regulation Y contain a similar exemption for proxy solicitations involving BHCs. Because HOLA does not expressly contain the exemption in its statutory language, the Board apparently declined to continue the exemption in Subpart B of Regulation LL. ABA suggests that better practice would be for the Board to use its supervisory flexibility to treat BHCs and SLHCs similarly in this respect and include the proxy solicitation exemption in Regulation LL to avoid inhibiting traditional proxy solicitation activities that do not raise control or holding company issues.

HOLA Section 10(l) Elections

Regulation LL does not appear to address the ability to exercise Section 10(l) elections. It would be helpful to at least include in the preamble some mention that the Board plans to continue the availability and use of the election for those institutions and entities that qualify.

Intermediate Holding Company Solution for Insurance Company and Other Diversified SLHCs

ABA has suggested and continues to urge the Board to take advantage of its DFA authority to create intermediate holding companies ("IHCs") as a way of gathering useful supervisory data and providing oversight without extending its reach into the operation of retail stores, manufacturing plants or the generation of electricity. Because promulgation and implementation of an IHC approach will take time, ABA suggests that the existing OTS supervisory principles be applied to these groups through December 2012. It is difficult to support building structures and mechanisms in entities that may not need them because their primary businesses are not financial or where there already exists a supervisory structure (e.g., insurance) process. Further, the use of an IHC potentially

eliminates some of the more troubling compliance issues of valuation of nonfinancial assets for capital purposes, dealing with non-regulated affiliates or parents, and dealing with functional regulators on both the state and federal level.

Use of the IHC could simplify the Board's approach to these tranches of SLHCs. It would allow the Board to take advantage of the existing state insurance regulatory structures and provide a logical supervisory touchpoint. The IHC and its parent would serve as a source of strength for the bank, but only the IHC's activities and assets would be subject to Board Y Series reporting. As to the overall health and stability of the entire structure, existing SEC and other regulatory reports could be provided. This approach would allow the Board to fulfill its supervisory obligations and understand the organization in the context of its own business model while applying bank supervision to the logical level that matches the bank's place in the holding company.

SLHC Dividend Notice.

Under the BHC Act, the underlying supervised institution does not need to give the Board notice when it determines to pay a dividend. In contrast, Regulation LL requires subsidiary savings associations to provide the Board with 30 day's prior notice of a proposed declaration of a dividend. For federal savings associations, this is in addition to giving the OCC, under certain circumstances, 30 days prior notice of a proposed dividend. That means that two agencies may be required to rule on the same proposed dividend. For regulatory efficiency and to avoid the result of federal agency disagreement, we suggest that, pending statutory amendment, the Board and OCC agree between the two agencies how to handle this duplicative process so that only one agency rules on a proposed dividend. Both agencies have expanding portfolios and finite resources. It just makes sense not to perform duplicative work.

Conclusion

The industry appreciates the difficult task the Board faced in melding two regulatory schemes no matter how similar on the surface they appeared. Our comments highlight those items that were most apparent to the industry and its practitioners. ABA fully anticipates that more glitches will be discovered as the Board and industry work together. ABA encourages flexibility and patience as the process unfolds. ABA offers its assistance in creating an ongoing dialogue as implementation goes forward.

Sincerely,

C. Dawn Causey