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

Subject: Docket No. R-1429 and RIN No. 7100 AD 80
Interim Final Rule establishing Regulation LL

Dear Secretary Johnson:

On behalf of Nationwide Mutual Insurance Company and its affiliated companies (Nationwide), we appreciate the opportunity to comment on the above-referenced Interim Final Rule. Nationwide operates through an insurance holding company system registered with the Ohio Department of Insurance. By virtue of its ownership of Nationwide Bank, member FDIC, Nationwide is registered as a savings and loan holding company (SLHC) pursuant to Section 10 of the *Home Owners' Loan Act of 1933* (HOLA) and, therefore, is impacted by the Interim Final Rule.

In connection with our more detailed comments below, we respectfully request that the Board consider refining the Interim Final Rule to clarify that SLHCs exempt from activities restrictions pursuant to Sections 10(c)(3) and (c)(9)(C) of HOLA (Exempt SLHCs) are also exempt from the requirement in Section 238.53(c) of the Interim Final Rule. Under the notice requirement, certain SLHCs must file a notice with the appropriate Reserve Bank and obtain Reserve Bank or Board approval if these SLHCs commence, either *de novo* or through acquisition, those services and activities prescribed in Section §238.53(b). We believe that exempt SLHCs are not included in this requirement. However, the language of the rule, on its face, could be read to include Exempt SLHCs and, accordingly, we request the clarification described below.

Specific Comments

Section 10(c)(1)(B)-(C) and (c)(2) of HOLA places restrictions on a SLHC's ability to commence or continue to engage in business activities other than certain activities

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specified therein or by regulation.[1] In addition, Section 10(c)(9)(A)-(B), as added by Title IV of the *Gramm-Leach Bliley Act of 1999* (GLBA), prohibits new affiliations between a SLHC and a commercial firm if the SLHC is not permitted to engage in certain specified activities.[2] However, Section 10(c)(9)(C) of HOLA, as added by Title IV of GLBA, read together with Section 10(c)(3), exempts from these restrictions SLHCs that, since May 4, 1999, have met and continue to meet the qualified thrift lender test of Section 10(m) of HOLA and have continued to control only one savings association subsidiary.

Nationwide is a SLHC that since May 4, 1999 has met and continues to meet the qualified thrift lender test of Section 10(m) and has continued to control only one savings association subsidiary, Nationwide Bank. As a result, Nationwide is exempt from those restrictions on its activities imposed by Sections 10(c)(1)(B)-(C) and (c)(9)(A)-(B). Stated differently, as a grandfathered unitary SLHC, Nationwide is not subject to HOLA's limitations on business activities of SLHCs. These grandfather rights were preserved in GLBA and reaffirmed in the *Dodd Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act).

Nationwide's concern with the Interim Final Rule arises from the language found in Section 238.53(c). This language does not track the language previously used in the Office of Thrift Supervision's (OTS's) regulation Section 584.2-1, which provided the following:

> (c) *Procedures for commencing services or activities.* (1) Before a savings and loan holding company ***subject to restrictions on its activities pursuant to §584.2(b)*** of this part or a subsidiary thereof may commence performing or engaging in a service or activity prescribed by paragraph (b) of this section (other than purchase or sale of a government debt security), either *de novo* or by an acquisition of a going concern, it shall file a notice of intent to do so in a form prescribed by the OTS. The activity or service may be commenced unless, before the close of the period specified immediately below, the OTS finds that the activity or service proposed would not be, under the circumstances, a proper incident to the operations of savings associations or would be detrimental to the interests of savings account holders. The period for review shall be 30 calendar days after the date of receipt of such notice, in the case of a de novo entry, or 60 calendar days, in the case of an acquisition of a going concern. (Emphasis added).

[1] These activities include those that the Board by regulation has determined to be permissible for bank holding companies under Section 4(c) of the Bank Holding Company Act of 1956, and activities permissible for multiple SLHCs on March 5, 1987.

[2] These activities include those that the Board by regulation has determined to be permissible for bank holding companies under Section 4(c) of the Bank Holding Company Act of 1956 and activities permissible for multiple SLHCs on March 5, 1987; or activities permissible for financial holding companies under Section 4(k) of the Bank Holding Company Act of 1956.

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Section 238.53(c) of the Interim Final Rule, which incorporates prior OTS regulation Section 584.2-1, omits the language emphasized above and it states the following:

> (c) *Procedures for commencing services or activities.* A notice to engage in or acquire a company engaged in a service or activity prescribed by paragraph (b) of this section (other than purchase or sale of a government debt security) shall be filed by a savings and loan holding company (including a company seeking to become a savings and loan holding company) with the appropriate Reserve Bank in accordance with this paragraph and the Board's Rules of Procedure (12 CFR 262.3).

Nationwide's specific concern is that the omission of the language "subject to restrictions on its activities pursuant to [Section 238.51(b)]" (the "Caveat Language") in the Interim Final Rule creates an unnecessary ambiguity and could be interpreted as requiring *any* SLHC to provide notice to the appropriate Reserve Bank and obtain prior approval before engaging in those activities prescribed in Section 238.53(b)--even SLHCs that are exempt from restrictions on their activities pursuant to Sections 10(c)(3) and (c)(9)(C) of HOLA. A notice and prior approval requirement would restrict by regulation the exercise of statutory grandfather rights.

We believe that the Board did not intend to subject Exempt SLHCs to the requirement that they file a notice with and obtain prior approval from the appropriate Reserve Bank or the Board before commencing, whether *de novo* or through acquisition, the services and activities prescribed in Section 238.53(b). Our belief that the omission was inadvertent is supported by footnote 13 in the Board's Interim Final Rule and by reading Section 238.53(c) in conjunction with Section 238.53(a) and (b).

First, footnote 13 states, "HOLA provides an exemption from activities restrictions for certain SLHCs that only controlled, or were in the process of acquiring, one savings association at the time the Gramm-Leach-Bliley Act of 1999 was passed and that meet certain other criteria. Subsections 10(c)(3) and 10(c)(9)(C) of HOLA operate together to establish this exemption. Section 606(b) [of the Dodd-Frank Act] does not modify the operative provisions of either of these subsections and therefore should not be interpreted to modify the exemption." The foregoing demonstrates the Board's recognition that the Dodd-Frank Act did not modify HOLA's exemptions as provided by the GLBA's grandfather clause, which, as noted above, exempts SLHCs that own a single savings association and satisfy the qualified thrift lender test. Therefore, we believe that the Board did not intend that Section 238.53(c), a provision that places restrictions on the activities of SLHCs, operate to undo by regulation what Congress expressly sought to preserve through the passage of Section 606(b) of the Dodd-Frank Act.

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Second, subparagraphs (a) and (b) of Section 238.53 both contain language that expressly removes Exempt SLHCs from their applicability. Section 238.53(a) begins by stating that the section is "[f]or the purpose of Section 238.51(b)(6)(ii) of this part," a subsection to which Exempt SLHCs are not subject by operation of Section 238.52(a)(i). In addition, Section 238.53(b) begins by stating in pertinent part as follows: "Subject to the provisions of [Section 238.53(c)], a savings and loan holding company *subject to restrictions on its activities pursuant to Section 238.51(b) of this part* [...] may furnish or perform the following services and engage in the following activities to the extent that it has legal power to do so." (Emphasis added). Essentially, Section 238.53(b) provides that SLHCs that are *not* exempt from restrictions on their activities must follow the procedures laid out in Section 238.53(c), which include filing notice with and obtaining prior approval from the appropriate Reserve Bank or the Board before engaging in certain new activities. Thus, we believe that the procedures in Section 238.53(c) are only applicable to those SLHCs that are subject to Section 238.53(b) (*i.e.*, SLHCs subject to restrictions on their activities) and are not applicable to Exempt SLHCs.

Nevertheless, because Section 238.53 and prior OTS regulation Section 584.2-1 are identical but for the removal of the Caveat Language from Section 238.53(c), we believe that Section 238.53(c) could be interpreted as requiring any and all SLHCs to provide notice to the appropriate Reserve Bank, even if an SLHC is exempt from HOLA's restrictions on its activities. Therefore, we urge the Board to refine Section 238.53(c) to include the Caveat Language as follows:

> (c) Procedures for commencing services or activities. A notice to engage in or acquire a company engaged in a service or activity prescribed by paragraph (b) of this section (other than purchase or sale of a government debt security) shall be filed by a savings and loan holding company [*subject to restrictions on its activities pursuant to § 238.51(b)*] (including a company seeking to become a savings and loan holding company [*subject to restrictions on its activities pursuant to § 238.51(b)*]) with the appropriate Reserve Bank in accordance with this paragraph and the Board's Rules of Procedure (12 CFR 262.3). (Proposed amended language italicized and bracketed).

We believe that this technical correction would eliminate any confusion or ambiguity in the future and facilitate smooth and efficient insurance company SHLC operations consistent with the HOLA grandfather clause and State law governing insurance company investments and activities.

Conclusion

Section 238.53(c) should be amended to include the Caveat Language. An amendment would eliminate any ambiguity and more clearly reflect the apparent intent of both the Congress and the Board – that SLHCs meeting the grandfather exemption provided for by Sections 10(c)(3) and (c)(9)(C) of HOLA continue to be

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exempt from the restrictions on their activities, including from the notice and prior approval requirements imposed by Section 238.53(c) of the Interim Final Rule.

As always, we appreciate the dialogue and look forward to further opportunities to comment.

Very truly yours,

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