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October 31, 2011

**BY ELECTRONIC MAIL**

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

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

Dear Ms. Johnson:

We are writing on behalf of The Auto Club Group (“ACG”) in response to the Board of Governors of the Federal Reserve System’s (the “Board”) Interim Final Rule<sup>1</sup> establishing new Regulation LL (12 CFR Part 238) (the “Interim Rule”).

Auto Club Trust (the “Bank”) is a federal savings bank and is owned by three related saving and holding companies (each, a “SLHC”). Approximately 99.1% of the Bank’s shares are owned by the Auto Club Insurance Association (“ACIA”). The remaining .9% of the Bank’s shares are owned by ACG through its wholly owned subsidiary Auto Club Services, Inc. (“ACS”). ACIA, ACS and ACG (collectively the “ACG Group”) are each a grandfathered unitary savings and loan holding company (a “Grandfathered SLHC”) under Title IV of the Gramm-Leach-Bliley Act of 1999 (“GLBA”) and Section 10(c)(9)(C) of the Home Owners’ Loan Act (“HOLA”).

The ACG Group is concerned that, in the Interim Rule, the Board has inadvertently called into question the exemption of Grandfathered SLHCs from the activities restrictions formerly contained in the Office of Thrift Supervision’s (“OTS”) Regulations at 12 CFR § 584.2-1 and now included in Subpart F of Regulation LL at 12 CFR § 238.53(c) (“Section 238.53(c”). As discussed below, this result would undermine the regulatory exemptions enjoyed by Grandfathered SLHCs, which were reaffirmed in the Dodd-Frank

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<sup>1</sup> 76 Fed. Reg. 56508 (September 13, 2011).

Act, and we request that the Board make certain modifications to Section 238.53(c) to clarify the continued exemption of Grandfathered SLHCs from the restrictions imposed on other SLHCs.

## II. Overview

Typically, SLHCs and their subsidiaries are subject to certain restrictions when engaging in business activities other than those prescribed by statute or regulation. However, the GLBA amendments to HOLA preserved the Grandfathered SLHC category, permitting this diverse category of commercial entities then holding a unitary thrift to continue to operate non-banking businesses in that holding company structure, so long as certain requirements (including the satisfaction of the qualified thrift lender test) are and continue to be met. Since 1999, the ACG Group has satisfied all applicable requirements and its separate entities each currently operate as a Grandfathered SLHC.

Among the components of the Interim Rule is the Board's new Regulation LL, which sets forth regulations generally governing the Board's supervision of SLHCs following the transition of regulatory responsibility for these institutions from the Office of Thrift Supervision ("OTS") to the Board under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

Where permitted by statute and deemed appropriate by the Board, Regulation LL simply transfers many of the OTS rules to the Board. Among these rules is the new Section 238.53(c), which replaces the old corresponding OTS regulation (12 CFR § 584.2-1) (the "OTS Regulation"). However, Section 238.53(c) differs from the OTS Regulation in one important respect— if viewed in isolation, it would appear to impose on *all* SLHCs (i.e., including Grandfathered SLHCs) certain restrictions on commencing new services or activities. As discussed in more detail below, this result is (i) contrary to the Dodd-Frank Act's preservation of the Grandfathered SLHC exemptions, and (ii) inconsistent with the Board's stated intention elsewhere in Regulation LL to leave these exemptions in place. Thus, we recommend that the Board adopt the technical correction proposed below.

## III. Recommendations

We recommend that the Board amend Section 238.53(c) of the Interim Rule to incorporate language from the OTS Regulation 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 the purchase or sale of a government debt security) shall be filed by a savings and loan holding company **subject to the restrictions on its**

**activities pursuant to § 238.51(b)** (including a company seeking to become a savings and loan holding company **subject to the 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). (emphasis added to proposed additional language)

#### **IV. Basis for Recommendations**

- A. The Board acknowledges elsewhere in the release accompanying the Interim Rule that the GLBA/HOLA statutory exemption available to Grandfathered SLHCs was unaffected by the Dodd-Frank Act and therefore remains in effect.

As drafted, when viewed in isolation, Section 238.53(c) appears to require *all* SLHCs (including, presumably, Grandfathered SLHCs) to follow the Board's procedures, including notice and approval, when commencing (through acquisition or initiation) a new service or activity. This requirement would be inconsistent with the exemptions statutorily provided to Grandfathered SLHCs.

We do not think that the Board intended for Section 238.53(c) to have this effect. This conclusion is supported by the fact that elsewhere in the release accompanying the Interim Rule, the Board recognized that Grandfathered SLHCs are exempted from the activities restrictions imposed on other categories of depository holding companies.

The Board directly states that "Section 606(b) of the Dodd-Frank Act amends HOLA by inserting a new requirement that conditions the ability of SLHCs *that are not exempt* from HOLA's restrictions on activities . . . to engage in certain activities."<sup>2</sup> (emphasis added) In the footnote accompanying this provision of the release, the Board 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 [GLBA] was passed and that meet certain other criteria. . . . Section 606(b) does not modify the operative provisions of [the applicable statutes] *and therefore should not be interpreted to modify the exemption [available to Grandfathered SLHCs].*"<sup>3</sup> (emphasis added)

The Board reiterates this position elsewhere in the Regulation LL release. In Subpart G (Financial Holding Company Activities), the Board requires that SLHCs seeking to engage in financial holding company activities must, among other requirements, provide the Board with notice after commencing financial holding company activities or

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<sup>2</sup> 76 Fed. Reg. 56508, 56510.

<sup>3</sup> Id. at n.13.

consummating an acquisition of a company engaged in the activities specified in section 4(K) of the Bank Holding Company Act. However, the release notes that “Subpart G *does not apply to SLHCs described in Section 10(c)(9)(C) of HOLA.*”<sup>4</sup> (emphasis added) As the footnote accompanying this text explains, “[t]hese SLHCs are referred to as grandfathered unitary savings and loan holding companies.”<sup>5</sup>

Based on these unambiguous provisions from elsewhere in Regulation LL, we think it is clear that the Board did not intend to alter or abridge in any way the exemptions available to Grandfathered SLHCs.

B. Notwithstanding the language of Section 238.53(c), other provisions of Subpart F appropriately exempt Grandfathered SLHCs

Though it creates uncertainty on the point, we believe that when read in conjunction with the other provisions of Subpart F, the language of Section 238.53(c) does not actually restrict the activities of Grandfathered SLHCs.

12 CFR § 238.51(b) (“Section 238.51(b)”), which does not apply to Grandfathered SLHCs, prohibits non-grandfathered SLHCs from engaging in unrelated business activities, except under certain limited circumstances, and specifically enumerates the activities that are permissible for such SLHCs, including those activities specified in 12 CFR § 238.53.<sup>6</sup> The activities specified in Section 238.53 (i.e., which are permissible for SLHCs) include a list of various business activities and it is to SLHCs engaging in (or seeking to engage in) *these* activities to which the notice and procedural requirements of Section 238.53(c) apply. In other words, the procedures required under Section 238.53(c) apply only to the activities permitted by Section 238.51(b) (in this case, Section 238.51(b)(6)) and which are enumerated in Section 238.53(b).

However, 12 CFR § 238.52(a)(i) (“Section 238.52(a)(i)”) provides that the limitations of Section 238.51(b) do not in the first place apply to Grandfathered SLHCs. In essence, then, Section 238.52 removes Grandfathered SLHCs entirely from the Section 238.51(b) analysis. If this is indeed the case, then the language as drafted in Section 238.53(c) does not present the problems outlined earlier in this letter as it would never apply to Grandfathered SLHCs. However, even if the Board agrees with this analysis, we still request for the sake of clarity that the Board make the changes to the Interim Rule proposed above, especially in light of the differences in language between Section 238.53(c) and the OTS Regulation. Alternatively, the Board could otherwise confirm

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<sup>4</sup> 76 Fed. Reg. 56508, 56516.

<sup>5</sup> Id. at n.48.

<sup>6</sup> Section 238.51(b)(6)(ii).

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that Grandfathered SLHCs are not subject to the notice/approval procedures of Section 238.53(c).

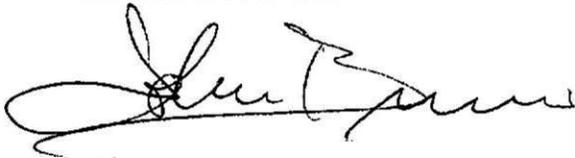
**V. Conclusion**

We appreciate the Board's efforts in working with SLHCs to adopt effective regulations to ensure the safe and sound operations of federal thrifts and their holding companies and we appreciate the opportunity to comment on the Interim Rule.

Please contact the undersigned with any questions about this request at the telephone number or email listed above.

Respectfully submitted,

LOCKE LORD LLP

A handwritten signature in black ink, appearing to read "John Bruno", with a large, stylized flourish at the end.

John Bruno

cc: Christine B. Viegas  
Vice President, Office of General Counsel  
The Auto Club Group