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November 1, 2011

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:

The undersigned companies are writing as a group of financial services companies, many with substantial insurance operations, each of which also controls a savings association and is a savings and loan holding company.

Our companies provide income and asset protection and growth to millions of Americans. We operate principally through the businesses of insurance and complementary asset management and brokerage. Generally, our thrift operations are a smaller component of our overall activities and serve to support and supplement our primary businesses. The thrifts provide valuable services to our policyholders, agents and customers, by offering convenience and reducing costs.

In connection with our more detailed comments below, we respectfully request that the Board provide confirmation in the Interim Final Rule to clarify that:

1. The Board to the fullest extent possible should rely upon reports and reports of examinations by other Federal or State regulatory agencies.

2. SLHCs exempt from activities restrictions pursuant to Sections 10(c)(3) and (c)(9)(C) of the Home Owners' Loan Act of 1933 (HOLA) (Exempt SLHCs) are also exempt from the requirement in Section 238.53(c) of the Interim Final Rule

Specific Comments

1. The Board to the fullest extent possible should rely upon reports and reports of examinations by other Federal or State regulatory agencies.

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Section 604(g) and (h) of the *Dodd Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act) amends sections 10(b)(2) and 2 of the HOLA to require the Board "to the fullest extent possible" rely on reports and reports of examinations by "other Federal or State regulatory agencies." Proposed section 238.4(e) of the interim final rule carries over section 584.1(g) of the OTS Regulations which provided as follows:

> (g) *Examinations.* Each savings and loan holding company and each subsidiary thereof shall be subject to such examinations as the Office may prescribe. The cost of such examinations (other than examinations of savings associations) shall be assessed against and paid by such holding company. Examination and other reports may be furnished by the Office to the appropriate State supervisory authority. The Office shall, *to the extent deemed feasible*, use for the purposes of this section reports filed with or examinations made by other Federal agencies or the appropriate State supervisory authority. (Emphasis added.)

Under section 238.4(e), each savings and loan holding company and each subsidiary thereof:

> shall be subject to such examinations as the Board may prescribe. The Board shall, to the *extent deemed feasible*, use for the purposes of this section reports filed with or examinations made by other Federal agencies or the appropriate State supervisory authority. (Emphasis added.)

While the "extent deemed feasible" information collection and reliance standards in the interim final rule tracks the OTS Regulation, in this case so doing is not appropriate since the standard conflicts with the clear instruction of the Congress to the Board in Section 604 of the Dodd-Frank Act to maximize its use of reports and reports of examinations of other regulators. As is clearly stated in the legislative history of section 604 of the Dodd-Frank Act, Congress instructed the Board to engage in coordinated regulation of SLHCs. As with the prior approval requirement discussed above, we view this more as a technical oversight. Accordingly, we suggest that section 238.4(e) of the interim regulations should be amended to incorporate the statutory standard of "to the fullest extent possible" instead of the obsolete OTS standard of "to the extent deemed feasible" which has no statutory basis.

Per Section 604(a) and (b) of the Dodd-Frank Act, these same statutory information collection and reliance standards obtain with respect to SLHCs that elect to be

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In connection with our more detailed comments below, we respectfully request that the Board provide confirmation in the Interim Final Rule to clarify that:

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<u>Specific Comments</u>

1. The Board to the fullest extent possible should rely upon reports and reports of examinations by other Federal or State regulatory agencies.

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While the "extent deemed feasible" information collection and reliance standards in the interim final rule tracks the OTS Regulation, in this case so doing is not appropriate since the standard conflicts with the clear instruction of the Congress to the Board in Section 604 of the Dodd-Frank Act to maximize its use of reports and reports of examinations of other regulators. As is clearly stated in the legislative history of section 604 of the Dodd-Frank Act, Congress instructed the Board to engage in coordinated regulation of SLHCs. As with the prior approval requirement discussed above, we view this more as a technical oversight. Accordingly, we suggest that section 238.4(e) of the interim regulations should be amended to incorporate the statutory standard of "to the fullest extent possible" instead of the obsolete OTS standard of "to the extent deemed feasible" which has no statutory basis.

Per Section 604(a) and (b) of the Dodd-Frank Act, these same statutory information collection and reliance standards obtain with respect to SLHCs that elect to be

treated as financial holding companies (FHCs) pursuant to Section 10(c)(2) of HOLA as amended by Section 606 of the Dodd-Frank Act. Thus the Board, with respect to SLHCs and subsidiaries within the scope of section 238.61 and subject to the ongoing requirements of section 238.66 of the interim final rule, likewise is required by Section 604 of the Dodd-Frank Act "to the fullest extent possible" to use reports and reports of examinations of other regulators.

Accordingly, we suggest that the Supplementary Information, Section-by-Section or other Overview or Summary published by the Board as part of the Federal Register publication of Regulation LL in its final form state that the Board will "to the fullest extent possible avoid duplication of examination activities, reporting requirements, and requests for information" in connection with the Board's information collection and examination practices relating to SLHCs under section 238.4(e) as well as SLHCs who elect FHC status under section 238.66.

2. 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 the regulation does not include exempt SLHCs in this notice requirement. However, because certain changes to the language of the predecessor rule, to conform it to Board procedures, could raise questions regarding its applicability to Exempt SLHCs, we request the clarification described below.

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 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

[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.

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.

Thus, an insurer which 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 would be exempt from those restrictions on its activities imposed by Sections 10(c)(1)(B)-(C) and (c)(9)(A)-(B). Stated differently, an insurer that is a grandfathered unitary SLHC would not be subject to HOLA's limitations on the business activities of SLHCs. These grandfather rights were preserved in GLBA and reaffirmed in the the Dodd-Frank Act.

Questions regarding the Interim Final Rule's applicability to Exempt SLHCs could be raised becausethe language in Section 238.53(c). 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).

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).

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 could raise questions regarding whether *any* SLHC should 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.
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). Such a notice and prior approval requirement would restrict by regulation the exercise of statutory grandfather rights. 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.

Second, subparagraphs (a) and (b) of Section 238.53 contain language that expressly removes Exempt SLHCs from the applicability of the requirements under Section 238.53, and which therefore clarifies the scope of the derivative subparagraph (c), regarding notice procedures.. 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, by the terms of Section 238.53(c), the procedures set forth therein are only applicable to those SLHCs that are subject to Section 238.53(b) (*i.e.*, SLHCs subject to restrictions on their activities) and therefore are not applicable to Exempt SLHCs.

Nevertheless, although we believe that Section 238.53 does not apply to Exempt SLHCs as written, questions could be raised 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). 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 clarification 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 238.4(e) of the interim regulations should be amended to incorporate the statutory standard of "to the fullest extent possible" instead of the obsolete OTS standard of "to the extent deemed feasible" which has no statutory basis. Likewise, Federal Register publication of the final Regulation LL should contain a supplementary statement or other commentary that the Board will "to the fullest extent possible avoid duplication of examination activities, reporting requirements, and requests for information" in connection with the Board's information collection and examination practices relating to SLHCs under section 238.4(e) as well as SLHCs who elect FHC status under Subpart G of the Regulation LL.
Likewise, 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 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.

We thank you for this opportunity to provide input and look forward to further opportunities to comment.

Sincerely,

Ameriprise Financial, Inc.
Ameriprise Bank, FSB

Nationwide
Nationwide Bank

Principal Financial Group
Principal Life Insurance Company
Principal Bank

Prudential Financial
Prudential Insurance Company of America
Prudential Bank & Trust, FSB

State Farm
State Farm Bank

TIAA-CREF
TIAA-CREF Trust Company, FSB

Westfield Insurance
Westfield Bank