LAW OFFICES

SILVER, FREEDMAN & TAFF, L.L.P.

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

3299 K STREET, N.W., SUITE 100
WASHINGTON, D.C. 20007
PHONE: (202) 295-4500
FAX: (202) 337-5503
WWW.SFTLAW.COM

WRITER'S DIRECT DIAL NUMBER
202-295-4536

September 19, 2012

VIA EMAIL: regs.comments@federalreserve.gov

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

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

Ladies and Gentlemen:

Silver Freedman & Taff, L.L.P. is submitting this comment on the joint notice of proposed rulemaking ("NPR") issued by the Board of Governors of the Federal Reserve ("Board") and other federal bank regulators in June 2012. In the NPR, the Board imposes new regulatory capital on savings and loan holding companies ("SHLCs") earlier than Congress provided for in Section 171 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). A number of our clients are SHLCs, and we are concerned that the timing of these new regulatory capital requirements will have a material impact upon those clients and other SLHCs. The NPR also fails to address the requirement in Section 616 of the Dodd-Frank Act that holding company capital requirements be countercyclical to economic trends.

Prior to July 2011, SHLCs were regulated by the Office of Thrift Supervision and were not subject to uniform regulatory capital requirements. Any issues about their capital adequacy were addressed on an institution-specific basis through supervisory orders or agreements. In July 2011, regulation of SHLCs was transferred to the Board. Bank holding companies ("BHCS") have been regulated by the Board and been subject to uniform regulatory capital requirements for many years.

Congress recognized this difference when it enacted Section 171 of the Dodd-Frank Act (12 U.S.C. § 5371 (Supp. 2012), often referred to as the Collins Amendment), which provided for a July 21, 2015 effective date for the imposition of any uniform regulatory capital requirements for SLHCs. Section 171 required the Board to establish minimum leverage and risk-based capital requirements for both BHCs and SLHCs that were no less stringent than the capital requirements in effect for insured depository institutions on July 21, 2010. However, Section 171(b)(4)(D) specifically states that the imposition of these capital requirements on SHLCs "shall be effective 5 years after July 21, 2010." Until the NPR was issued, SHLCs appropriately believed that they would not be subject to generally applicable regulatory capital requirements until the end of the five-year period dictated by the statute. However, the NPR, if enacted as proposed, would make SHLCs subject to new regulatory capital requirements on January 1, 2013.

Nothing in the preamble included in the NPR mentions the five-year deferral provided for SHLCs by Section 171 or gives any justification for the Board ignoring the explicit intent of Congress. Without any specific language from the Board justifying the basis for proceeding in this fashion, we and others commenting on the NPR have to guess at the Board's reasoning.

What makes it particularly difficult to determine the Board's justification for ignoring the five-year deferral period for SHLCs, is that the Board did not ignore an identical five-year deferral period for the new imposition of capital requirements for certain US-regulated BHC subsidiaries of foreign banking corporations. Section 171(b)(4)(E) establishes a five-year deferral period for these BHC subsidiaries of foreign banking corporations, using the same statutory language "shall be effective 5 years after July 21, 2010" as in the provision creating the deferral for SHLCS. The NPR in proposed 12 C.F.R. 217.300 does provide that these US-regulated BHC subsidiaries of foreign banking corporations are not subject to the general BHC regulatory capital requirements until July 21, 2015. In the preamble, at 77 Fed. Reg. 52,792, 52,795 (8/30/2012), the Board indicates that this five-year deferral for BHC subsidiaries of foreign banking corporations is "consistent with the Dodd-Frank Act." Even though the language establishing the deferral period for SLHCs is identical to that for BHC subsidiaries of foreign banking corporations, the NPR did not propose the same five-year deferral for the effectiveness of SLHC capital requirements and does not mention Section 171(b)(4)(D). SLHCs expected the Board to construe the SLHC deferral period the same as it has construed the five-year deferral period for BHC subsidiaries of foreign banking organizations. Identical statutory language and purpose dictates common regulatory treatment. Because, there is no mention of Section 171(b)(4)(D) and no justification for ignoring its language, it is not clear whether this inconsistency was intentional or a mere oversight.

Section 616 of the Dodd-Frank Act authorized (but unlike Section 171, did not require) the Board to issue "regulations and orders relating to the capital requirements" for SLHCs and BHCs and required that such requirements be countercyclical, increasing requirements in times of economic expansion and decreasing requirements in times of economic contraction, subject to safety and soundness. Nothing in the NPR provides for downward adjustments in required capital levels in times of economic contraction. In fact, the NPR proposes to establish new and higher capital requirements in the midst of economic contraction. Section 616 is a grant of authority to adopt capital regulations and does not require that BHCs and SLHCs be subject to identical capital requirements. The reference to safety and soundness allows the Board to establish capital requirements contrary to the countercyclical requirement and does not establish a basis for ignoring the specific intent of Congress to establish a five-year deferral for SHLC regulatory capital levels. If there is any question or inconsistency in federal statutes, it is the general rule that the more specific statutory directive regarding the effective date of the regulations controls the more general grant of authority to issue the regulations. Therefore, Section 616 does not supersede the more specific language in Section 171 to postpone the imposition of general SHLC capital requirements until July 2015. Construing Section 616 to give the Board authority to issue capital requirements for SLHCs that become effective on January 1, 2013, would render Section 171(b)(4)(D) inoperative and effectively superfluous.

General issues of safety and soundness do not trump the language in Section 171. For example, many SHLCs are shell companies carrying no risk or safety and soundness above those in place for their insured institution subsidiary. If a SHLC was not meeting its source of financial strength responsibilities or there were specific safety and soundness concerns at a specific holding company, the Board could impose an individual minimum capital requirement on the troubled SHLC in question prior to July 21, 2015, as was done by the Office of Thrift Supervision before July 2011. Nothing in Section 171 would prohibit taking that individual action. However, the potential for safety and soundness concerns does not justify ignoring Congressional intent and imposing general capital regulatory capital requirement on all SHLCs.

Until the NPR was issued, SHLCs rightfully relied on the five-year-deferral period in Section 171 in their business and capital strategic planning. Before the issuance of the NPR, the Board gave no indication that it was considering ignoring the five-year deferral period in Section 171. SLHCs deserve a reasonable amount of time to plan for compliance with brand new capital requirements, as the Board did for BHCs when imposing new capital requirements for them some 23 years ago. Section 171 provided for that reasonable advance notice and lead time to comply with more complex capital requirements, including the risk-based capital standards. We ask the Board to also consider the substantial burden placed on SLHCs to comply with complex regulatory capital requirements for the first time without significant lead time. The proposed regulatory capital requirements would force some SLHCs to significantly change their capital structure and balance sheets. Changes of this magnitude require thoughtful planning and should not be made hastily.

SHLCs with trust preferred securities issued before May 2010 believed they had until July 2015 to deal with separate capital requirements at the holding company level that would change the treatment of those securities. SLHCs relied on the Section 171 deferral period in their communications and representations to their shareholders, creditors and contractual counterparties. SLHCs that are public companies may suffer due to uncertainty regarding the timing and effect of the SLHC capital requirements and their impact on prior disclosures. SLHCs and their subsidiary financial institutions may have to scale back plans for expansion and job growth, reconsider beneficial acquisitions that create GAAP goodwill and otherwise modify their strategic plans.

The early imposition of these new SLHC regulatory capital requirements, with no meaningful prior notice, is unfair and highly disruptive. It would exacerbate the financial challenges that SLHCs already face and negatively impact the economic recovery. We ask the Board to reconsider this matter and decide that the adverse consequences of applying the proposed capital regulations to SLHCs beginning on January 1, 2013 greatly exceed the benefits of doing so.

For the foregoing reasons, we respectfully request that the Board adopt July 21, 2015, as the effective date for the new SLHC capital requirements, as required by Congress, and revise the proposed new capital regulations to establish standards for countercyclical adjustments as provided by Section 616. If you have questions regarding these comments, please contact Marianne Roche at 202-295-4536 or marianne@sftlaw.com.

Very truly yours,

/s/ Marianne E. Roche