



VIA EMAIL

October 22, 2012

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

RE: Docket Nos. R-1430, R-1442; RIN No. 7100-AD 87:
Joint Notice of Proposed Rulemaking – Regulatory
Capital Rules (Basel III and Standardized Approach)

Ladies and Gentlemen:

I am writing on behalf of Macy's, Inc. ("Macy's" or the "Company"), a grandfathered unitary savings and loan holding company ("GU-SLHC"). Macy's appreciates the opportunity to comment on the Proposed Capital Rules ("Proposals") issued by the three Federal Banking Agencies, including the Board of Governors of the Federal Reserve System (the "Board"). Macy's comments relate specifically to the "Basel III" (Docket No. R-1430) and "Standardized Approach" (Docket No. R-1442) Proposals.

I. Applicability of Regulatory Capital Rules to Savings and Loan Holding Companies

A. Implementation of the Basel III and Standardized Approach Capital Requirements for SLHCs Should Begin No Earlier Than July 21, 2015

While bank holding companies ("BHCs") historically have been subject to uniform regulatory capital requirements, savings and loan holding companies' ("SLHCs") capital adequacy has been addressed on an institution-specific basis. Until the Dodd-Frank Act ("DFA") regulatory capital provisions take effect, SLHCs will not be subject to regulatory capital requirements under any federal statutes or regulations. Section 171 of the DFA (the "Collins Amendment") directs the Board to establish minimum leverage and risk-based capital requirements for BHCs, SLHCs and insured depository institutions. These minimum standards establish a common floor for capital requirements that is to be no less stringent than the generally applicable leverage capital requirements and the generally applicable risk-based capital requirements in effect for insured depository institutions on the DFA's date of enactment (July 21, 2010). Notably, the term "generally-applicable risk-based capital requirements," as defined in Section 171(a)(2), "includes the regulatory capital components in the numerator of those capital requirements, the risk-weighted assets in the denominator of those capital requirements, and the required ratio of the numerator to the denominator."

Most importantly, Section 171(b)(4)(D) of the DFA provides that for any SLHC (as SLHCs were not supervised by the Board as of May, 19, 2010), "the requirements of [the Collins Amendment], except as set forth in subparagraphs (A) and (B), shall be effective 5 years after the date of enactment of [the DFA]," or July 21, 2015 (the "Collins Deferred Effective Date"). The "except as set forth in subparagraphs (A) and (B)" reference (i) prohibits SLHCs from issuing trust preferred securities from May 19, 2010 through July 20, 2015 and (ii) requires a three-year phase-in period beginning January 1, 2013 for any regulatory capital deductions for grandfathered trust preferred securities issued before May 19, 2010, respectively. Thus, for SLHCs that have not issued trust preferred securities before, on or after

May 19, 2010, such as Macy's, Section 171 by its terms becomes effective on the Collins Deferred Effective Date.

The Basel III Proposal would apply its minimum regulatory capital ratios, capital adequacy and transition provisions to SLHCs effective January 1, 2013, while the Standardized Approach Proposal would apply its standardized approach for risk-weighted assets, market discipline and disclosure requirements effective January 1, 2015. The language of DFA Section 171(b)(4)(D), however, clarifies that neither of these Proposals (nor the Advanced Approaches Proposal, which will not apply to Macy's¹), in final form, should apply to SLHCs until the Collins Deferred Effective Date.

Indeed, in the Basel III Proposal, the Board has concluded that "[c]onsistent with the [DFA], a [BHC] subsidiary of a foreign banking organization that is currently relying on the Board's Supervision and Regulation Letter (SR) 01-1 would not be required to comply with the proposed capital requirements under any of these [Proposals] until July 21, 2015." Basel III Proposal, 77 Fed. Reg. 52792, 52795 (Aug. 30, 2012). This text references Section 171(b)(4)(E) of the DFA (*see id.* at 52795 n.9), which provides that "[f] or [BHC] subsidiaries of foreign banking organizations that have relied on Supervision and Regulation Letter SR-01-1 issued by the [Board] (as in effect on May 19, 2010), the requirements of [the Collins Amendment], except as set forth in subparagraph (A), shall be effective 5 years after the date of enactment of [the DFA]." The "except as set forth in subparagraph (A)" reference prohibits these BHC subsidiaries of foreign banking organizations from issuing trust preferred securities from May 19, 2010 through July 20, 2015.

It would be "consistent with" the Board's application of the July 21, 2015 effective date to the Proposals for BHC subsidiaries of foreign banking organizations that have relied on SR-01-1 to apply this effective date to the Proposals for SLHCs as well. In fact, the key operative language of both subparagraphs (D) and (E) of Section 171(b)(4) of the DFA concerning the delayed effective date of the final capital regulations is identical, and they should be construed identically.

Section 616(b) of the DFA does not alter this conclusion. Section 616(b) amends Section 10(g)(1) of the Home Owners' Loan Act to provide in pertinent part that "[t]he Board is authorized to issue such . . . regulations and orders relating to capital requirements for [SLHCs], as the Board deems necessary or appropriate to enable the Board to administer and carry out the purposes of [Section 10]," including countercyclical capital requirements. While Section 616(b) does "authorize" the Board to develop capital requirements for SLHCs, it does not require the Board (i) to do so, (ii) to do so by a particular deadline or (iii) even to adopt the same capital requirements for BHCs and SLHCs so long as the Board, the OCC and the FDIC (collectively, the "Federal Banking Agencies") establish the common floor for capital requirements for BHCs, SLHCs and insured depository institutions mandated by the Collins Amendment.

Insofar as there is a conflict between Sections 171(b)(4)(D) and 616(b) of the DFA regarding the effective date of the final capital regulations for SLHCs, general rules of statutory construction resolve the conflict in favor of the application of the Collins Deferred Effective Date to SLHCs. One general rule of statutory construction declares that the more specific statutory mandate concerning the effective date of the regulations for SLHCs controls the more general grant of authority to issue the regulations if (as is the case here) both provisions are enacted simultaneously. Interpreting Section 616(b) to authorize the Board to issue capital regulations for SLHCs that take effect on January 1, 2013 (Basel III Proposal) or January 1, 2015 (Standardized Approach Proposal) would render DFA Section 171(b)(4)(D) inoperative and

¹ The Advanced Approaches Proposal will not apply to Macy's because the Company has neither (i) \$250 billion or more in total assets nor (ii) \$10 billion or more of total on-balance sheet foreign exposure, and is not expected to meet either standard for the foreseeable future. These statements are based upon the beliefs and assumptions of and on information available to the management of the Company at the time such statements are made.

superfluous. Another general rule of statutory construction prescribes that a statute should be construed so that effect is given to all of its provisions and no part of the statute will be inoperative or superfluous. The proper application of these rules of statutory construction makes clear that the Collins Deferred Effective Date should be the effective date of the final capital regulations for SLHCs.

Congress clearly intended to create a five-year transition period for SLHCs (and qualifying BHC subsidiaries of foreign banking organizations) to attain compliance with the final capital regulations. Overriding congressional intent concerning the effective date of the regulations for SLHCs, as the Board has done in the Proposals, exceeds the Board's discretion.

Accordingly, there are several compelling grounds for applying the Collins Deferred Effective Date to the final capital regulations for SLHCs. Should the Board nonetheless remain inclined to retain the respective proposed effective dates of the Basel III and Standardized Approach capital requirements for SLHCs (as well as BHCs and insured depository institutions), there is no sound basis to apply an earlier effective date to the Basel III Proposal than to the Standardized Approach Proposal for SLHCs. Among other aspects of the Basel III Proposal, it establishes risk-based capital requirements for BHCs, SLHCs and insured depository institutions. These requirements include "the regulatory capital components in the numerator of those capital requirements, the risk-weighted assets in the denominator of those capital requirements, and the required ratio of the numerator to the denominator." See DFA Section 171(a)(2). The Basel III Proposal sets the risk-based capital ratios with which, in final form, BHCs, SLHCs and insured depository institutions (collectively, "banking organizations") must comply.

The Standardized Approach Proposal, however, establishes the actual risk weighting of assets. SLHCs are to use the finalized classification of risk-weighted assets (when the final capital regulations begin to apply to them) for the *first* time to calculate (i) the individual components of the risk-weighted assets, and (ii) the total risk-weighted assets that must be included as the denominator to ensure that their risk-weighting of assets complies with the final capital regulations. If the final Basel III rule takes effect before the final Standardized Approach rule, SLHCs will have no rules for risk weighting of assets to apply during this "interim period" to determine the denominator of their risk-based capital ratios. (The Board should not apply the existing risk weighting of assets for other banking organizations to SLHCs during the interim period due to Congress' direction that SLHCs have five years after the DFA's enactment to come into compliance with any capital regulations.)

The lack of risk weighting rules for SLHCs to apply during this interim period renders the different effective dates for the Basel III Proposal and the Standardized Approach Proposal unworkable for SLHCs. (In contrast, BHCs and insured depository institutions can apply the risk weighting rules currently applicable to them during the interim period.) This unworkable timing further confirms Congress' wisdom in establishing the Collins Deferred Effective Date as the effective date of the final capital regulations for SLHCs. Congress understood that prior to the enactment of the DFA, SLHCs had not been subject to capital requirements under any federal statute or regulation, and intended that they should have five years to come into compliance with those requirements. The Board should codify congressional intent in establishing the effective date of the final capital regulations for SLHCs.

Finally, even should the Board conclude that none of the above arguments compel it to apply the Collins Deferred Effective Date for SLHCs, the Board should honor congressional intent and exercise its discretion under Section 616(b) to defer the effective date of the SLHC capital regulations until July 21, 2015.

B. The Basel III Capital Framework Should Not Apply to SLHCs

Macy's understands the Federal Banking Agencies' desire to begin implementing the Basel III international capital framework on January 1, 2013. The Basel III framework, however, was intended to apply only to very large, complex, internationally active banks and BHCs. Under current Federal Banking Agency rules, these institutions include only banking organizations with total consolidated assets of \$250 billion or more or consolidated on-balance sheet total foreign exposure of \$10 billion or more (the "Basel III thresholds"). The Basel III framework was not developed to apply to smaller banks or savings associations or to their respective holding companies that do not meet the Basel III thresholds. Thus, virtually all SLHCs (including Macy's) are not the types of banking organizations to which the Basel III framework was intended to apply. *See* note 1 above.

The DFA does not mandate that the Basel III framework be applied to *all* U.S. banking organizations. It simply is unnecessary for supervisory purposes and constitutes regulatory "overkill" to apply the extraordinarily complex prescriptions of this framework to smaller, non-complex banking organizations. Accordingly, the Federal Banking Agencies should exercise discretion to exempt from the Basel III framework all U.S. banking organizations that do not meet the Basel III thresholds.

Should the Federal Banking Agencies nonetheless decide to apply the Basel III framework to all U.S. banking organizations, the Board should apply the Collins Deferred Effective Date as the effective date of the final capital regulations for SLHCs.

C. The Federal Banking Agencies Should Substantially Defer the Effective Date of the Final Capital Regulations

It is unreasonable to apply the Basel III Proposal to all U.S. banking organizations on January 1, 2013. Given that (i) the Proposals were issued only on June 7, 2012 and published in the Federal Register only on August 30, 2012, (ii) the comment period on the Proposals and the Advanced Approaches Proposal ends on October 22, 2012 and (iii) the Federal Banking Agencies collectively (and perhaps individually) will have thousands of comments to review and consider, it is virtually certain that the final capital regulations will be issued well *after* January 1, 2013. Further, it is likely that the final regulations will be modified from the Proposals. We do not believe that any of the Federal Banking Agencies should or will apply the final Basel III capital rule retroactively. Moreover, on January 1, 2013, U.S. banking organizations will have had less than *seven months' notice* of the Proposals. Accordingly, the Federal Banking Agencies should apply principles of reasonable notice and make the final capital regulations effective no earlier than 24 months after they are published in the Federal Register.

There is precedent for the Board to delay substantially the effective date of new capital requirements. For example, the Board issued final consolidated risk-based capital guidelines for BHCs on January 18, 1989. The transition provision for these capital requirements, however, did not begin for BHCs until December 31, 1990, almost two years later. *See* 54 Fed. Reg. 4186, 4186 (Jan. 27, 1989). All U.S. banking organizations, and particularly SLHCs as they previously have not been subject to regulatory capital requirements, should be afforded the same type of reasonable advance notice of capital requirements that BHCs were granted in 1989. In SLHCs' case, consistent with DFA Section 171(b)(4)(D) and congressional intent, the effective date of the final capital regulations should be no earlier than the *later* of (i) July 21, 2015 or (ii) the effective date set by the Federal Banking Agencies.

Finally, the SLHC industry generally has believed that, in accordance with the above statutory analysis, the Collins Deferred Effective Date applied to defer the effective date of final capital regulations until July 21, 2015. In reliance on this understanding, SLHCs had made representations to their shareholders,

creditors, contractual counterparties, potential investors and others before the Proposals were issued. This reliance was reasonable given the five-year deferral of the effective date for the final capital regulations explicitly set forth in DFA Section 171(b)(4)(D). Thus, applying the Basel III Proposal (or the final Basel III capital rule) beginning January 1, 2013 would significantly disrupt many SLHCs' business plans, such as potential acquisitions, new initiatives, share repurchases and issuance of dividends, without reasonable notice. Macy's respectfully requests that the Board set an effective date of the final capital regulations for SLHCs of no earlier than the *later* of (i) July 21, 2015 or (ii) a later effective date set by the Federal Banking Agencies.

II. Special Considerations on Applicability of Regulatory Capital Rules to Grandfathered Unitary SLHCs, Especially Those That are Commercial Rather Than Financial Companies

A. As Some GU-SLHCs May be Required to Establish or Operate Intermediate Holding Companies, Implementation of the Basel III and Standardized Approach Capital Requirements for GU-SLHCs and IHCs Should Begin No Earlier Than July 21, 2015

Section 626(b)(1)(A) of the DFA provides in pertinent part that “[i]f a [GU-SLHC] conducts activities other than financial activities, the Board may require such company to establish and conduct all or a portion of such financial activities in or through an intermediate holding company [“IHC”], which shall be a[n] [SLHC].” DFA Section 626(b)(1)(B) provides that:

“[n]otwithstanding subparagraph (A), the Board shall require a [GU-SLHC] to establish an [IHC] if the Board makes a determination that the establishment of such [IHC] is necessary – (i) to appropriately supervise activities that are determined to be financial activities; or (ii) to ensure that supervision by the Board does not extend to the activities of such company that are not financial activities.”

The Board has not yet issued proposed, much less final, regulations establishing criteria for determining whether to require a GU-SLHC to establish (or, if (as is the case with Macy's), the GU-SLHC already has an intermediate-tier SLHC, operate) an IHC. Under DFA Section 626(c)(1), the Board is required to issue such final regulations. As of the date of this comment letter, the Board has not issued a timetable for issuing proposed regulations under Section DFA Section 626(c)(1).

It would be extremely burdensome for a GU-SLHC to have to comply with the Proposals (in final form) beginning January 1, 2013 (or at some later date), only to be required once the final rule on IHCs is issued to establish, or convert its existing intermediate-tier SLHC into, an IHC. Once a GU-SLHC has established an IHC, it no longer is (i) an SLHC or (ii) subject to regulation as such (including any capital requirements). *See* DFA Section 604(i). (Macy's is aware that should the Company be required to operate an IHC, it still would be required to serve as a “source of strength” to the IHC under DFA Section 604(b)(3).) The unfairness of this potential scenario serves as yet another reason for the Board to apply an effective date of the final capital regulations for SLHCs of no earlier than the *later* of (i) July 21, 2015 or (ii) a later effective date set by the Federal Banking Agencies (taking into consideration the date that the IHC final rule is issued).

B. GU-SLHCs That are Commercial Rather Than Financial Companies Should be Subject to a Much Simpler Capital Regime Than That Established Under the Proposals

A number of GU-SLHCs, including Macy's, are engaged overwhelmingly in commercial rather than financial activities (“commercial GU-SLHCs”). The assets of these commercial GU-SLHCs frequently

consist predominantly of fixed assets, premises, inventory and similar items rather than financial assets. Requiring commercial GU-SLHCs to comply with extraordinarily complex capital requirements designed for organizations predominately engaged in financial activities is like “trying to force a square peg into a round hole.” This approach is not a meaningful or appropriate way to determine the financial strength of or otherwise regulate commercial GU-SLHCs.

The Board should use discretion to apply a considerably simpler capital regime to commercial GU-SLHCs such as Macy’s that have only a relatively small percentage of their total consolidated assets (“TCAs”) in insured depository institution subsidiaries or other financial assets. As of the end of the Company’s 2012 fiscal second quarter (July 28, 2012), according to the Company’s Form 10-Q filed with the SEC (and with the Board as part of the Company’s FR H-(b)11 filing), Macy’s had TCAs of \$20.565 billion. Macy’s only insured depository institution subsidiary, FDS Bank (the “Bank”), a federally-chartered savings association, had total assets of \$142.731 million (or less than one percent (1%) of Macy’s TCAs) and total deposits of \$20 million as of June 30, 2012. The Bank does not accept deposits from individuals or nonaffiliates.²

Macy’s acknowledges that should the Company remain a GU-SLHC, it will continue to be required to serve as a “source of strength” to the Bank. Macy’s, however, need not maintain a significant level of capital to meet this obligation because the Bank represents absolutely no threat to the FDIC’s Deposit Insurance Fund or the stability of the U.S. financial system. The Bank holds a small amount of deposits, takes no public deposits and its total assets for the quarters ended September 30, 2011 through June 30, 2012 have ranged between \$139 million and \$202 million.

As a retailer, Macy’s financial strength is not measurable by the regulatory capital rules applicable to depository institutions and their parent companies. Macy’s ultimate “source of (financial) strength” is its free cash flow, including EBITDA and similar measures. As of the end of Macy’s 2011 fiscal year (January 28, 2012), based on the Company’s Form 10-K filed with the SEC, Macy’s annual free cash flow was more than \$1.4 billion.³ None of the risk-based or leverage capital ratios, including existing standards as those reflected in the Basel III Proposal is meaningful in assessing Macy’s overall financial condition or, more specifically, its capability to serve as a “source of strength” to the Bank. Accordingly, Macy’s respectfully requests that the Board adopt a much simpler capital regime for commercial GU-SLHCs that, like the Company, have only a relatively small percentage of their TCAs in financial assets. This capital regime should focus on metrics that are meaningful in assessing such GU-SLHCs’ financial strength.

This rationale for a more simplified and tailored capital regime for GU-SLHCs serves as another basis for the Board to apply an effective date of the final capital regulations for SLHCs of no earlier than the *later* of (i) July 21, 2015 or (ii) a later effective date set by the Federal Banking Agencies (taking into consideration the date that the IHC final rule is issued).

C. GU-SLHCs That Currently File Financial Reports on a Non-Calendar Fiscal Quarter Basis Should Not be Required to Adopt a Calendar Quarter-Based Financial Reporting or Regulatory Capital Calculation Schedule

GU-SLHCs frequently operate and file financial reports (such as, in the case of publicly traded companies such as Macy’s, SEC filings) on a non-calendar fiscal quarter basis. As is customary in the retailing industry, the Company’s fiscal quarters commence approximately at the end of January, April, July and

² The \$20 million of deposits consists entirely of a deposit from Macy’s, except for less than \$100 from a small, discontinued program.

³ For these purposes, “free cash flow” is equal to funds from operations plus assets sales less capital expenditures.

October. (The Company's fiscal months are not calendar months; rather, they are based on 4-to-5 Sunday-Saturday weeks, which is appropriate and customary for the retailing industry.) Accordingly, Macy's makes SEC filings on a fiscal quarter basis. Macy's currently is authorized under Board guidance to, and does, file the quarterly FR H-(b)11 and FR 2320 regulatory reports on a fiscal quarter basis with the Board (through the Federal Reserve Bank of Cleveland). The quarterly FR H-(b)11 is filed on the same day that Macy's files its quarterly report on Form 10-Q with the SEC. Macy's also files an "event" FR H-(b)11 report on the same day that the Company files an "event" filing (e.g., Form 8-K) with the SEC. The Company also is authorized and will be required to file with the Board (i) the FR Y-6 regulatory report annually for fiscal years beginning with fiscal 2012, (ii) the FR Y-8 regulatory report quarterly for fiscal quarters beginning with the first quarter of fiscal 2013 and (iii) the FR Y-10 regulatory report as applicable beginning with the first quarter of fiscal 2013.

It would be extremely burdensome and disadvantageous for Macy's to file these regulatory reports (or, beginning at the mandated time, to have to calculate regulatory capital) on a calendar quarter basis. In essence, Macy's would be reporting two-thirds (2/3rds) of a quarter's (and 11/12ths of a year's) financial results (and, beginning at the mandated time, calculating regulatory capital) one month *in advance*, not only to (or for) the Board but also to (or for) competitors, analysts and shareholders, while nearly all of the Company's major competitors would *not* face such advance reporting obligations. Were Macy's to be required to provide the Company's audited results on a calendar year basis, the Company could not do so without a very costly separate audit.

Accordingly, Macy's believes that it is reasonable, appropriate and most efficient for the Company and any other publicly traded GU-SLHCS that currently file financial regulatory reports with the Board on a fiscal quarter basis under Board guidance to continue to file such reports with (and, beginning at the mandated time, to calculate regulatory capital for) the Board on that basis. Macy's therefore respectfully requests that in the final capital regulations or by any means that it deems appropriate and effective, the Board *permanently* authorize Macy's and other comparably situated GU-SLHCs to file financial regulatory reports with (and, beginning at the mandated time, to calculate regulatory capital for) the Board on a fiscal rather than calendar quarter basis.

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Macy's appreciates the opportunity to comment on the Proposals.

Very truly yours,

/s/ Jeffrey I. Langer

Jeffrey I. Langer
Senior Counsel