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November 11, 2020

Ms. Ann E. Misback
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Submitted via email to regs.comments@federalreserve.gov

Re: Docket No. R-1724 and RIN 7100-AF95

Dear Ms. Misback:

This letter is submitted on behalf of a savings and loan holding company ("SLHC") client of Sidley Austin LLP ("Client") in response to the request for comment made by the Board of Governors of the Federal Reserve System ("Board") with respect to the application of its capital planning and stress testing (including stress capital buffer) regulations ("Capital Regulations") to large covered SLHCs. The Client urges the Board to allow certain SLHCs, as described below, to elect to be subject to the Capital Regulations either formally or informally.

Allowing SLHCs to Elect to Be Subject to the Capital Regulations

As the Board is well aware, the capital planning process is critically important to the safety and soundness of our financial system. It benefits the public, consumers, and the financial institutions themselves. The Board's Capital Regulations, including the Comprehensive Capital Analysis and Review ("CCAR") process, are rigorous and robust. While the Client does not offer comment on any particular aspect of the Capital Regulations, on the whole the Board's approach to capital planning for larger bank holding companies ("BHCs") has proved effective in providing structure, timeframes, and some level of procedural transparency to those BHCs, their stakeholders, and the public.

The Board's Capital Regulations do not apply to SLHCs, however. This is not to suggest that SLHCs are not subject to scrutiny with respect to their capital plans. To the contrary, the Board's application of expectations described in SR 09-4 to the Client have resulted in appropriate oversight of the Client's capital plans and strategies. While the Board's reliance on SR 09-4 has proved effective in terms of prudent capital management, it does not have the structure, timeframes, or external transparency of the Capital Regulations that apply to similarly situated BHCs. For example, the Capital Regulations provide structure and timeframes within which institutions can plan, make decisions, and provide transparency to stakeholders.

The dichotomy between similarly situated BHCs and SLHCs with respect to capital planning can create unnecessary and troubling inconsistencies. There is no question that a BHC above $100 billion in assets and a similarly situated SLHC are both subject to thorough stress tests and other capital planning reviews. However, the Board's testing of the BHC is pursuant to the Capital Regulations, with consistent application of those requirements to its peers, which culminates in a public disclosure of results for the benefit of all stakeholders including the public at large. The Board's testing of the similarly situated SLHC has none of those benefits. This inconsistent treatment may not serve the SLHC, its stakeholders, or the public.[1]

We also note that there are meaningful benefits available to the Board if larger SLHCs had the ability to elect to be treated in a manner similar to their BHC peers. First, it would standardize the review of such SLHCs' capital planning processes pursuant to the Capital Regulations as opposed to today's less prescriptive process. Second, SLHCs subjecting themselves to the CCAR process would provide the Board with an opportunity to collect more robust and usable information from Board's regulatory purposes. Large SLHCs likely have data that would be of unique benefit to the Board.

In sum, allowing certain SLHCs to elect to be subject to the Capital Regulations would result in the following benefits:

- an electing SLHC could follow a given timeline for decisions, and once those decisions are announced, the firm can set expectations with stakeholders;
- the Board would obtain a more robust and standardized set of data from an electing SLHC; and
- the Board could compare electing SLHCs with other peer firms via a consistent framework and enhance risk identification.

Eligible SLHCs

Given that the Capital Regulations apply to BHCs of $100 billion in assets, SLHCs which meet that asset threshold should have the ability to elect for comparable capital treatment from the Board. However, it is important to note that the application of the relevant regulatory requirements is not as simple as "flicking a switch" the day an institution crosses the $100 billion asset threshold. Nor can an institution predict with certainty when it will cross $100 billion in assets, or whether it will stay above that threshold once it crosses it. Both the Board and the institution need the ability to obtain some level of certainty with respect to how the SLHC's capital plan will be reviewed and tested, regardless of fluctuations in actual or forecasted asset levels. Therefore, the Board should allow SLHCs of $100 billion—or those with a reasonable

[1] Because SLHCs may have a variety of business models that are not comparable to those of traditional BHCs, it may not always be appropriate to subject a non-traditional SLHC to the Capital Requirements applicable to BHCs.

possibility of reaching such threshold within two capital testing cycles—to elect to be subject to the Capital Regulations.

Potential Options

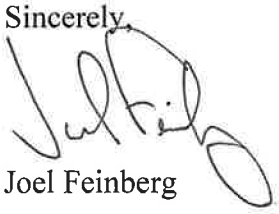
The Client anticipates that the Board could apply the Capital Regulations to an electing SLHC in one of at least two ways.

One option would be to formally apply the Capital Regulations to the electing SLHC. Prior to such an election, the SLHC would consult with the Board to determine how it could provide the necessary data that would allow the Board to stress the SLHC's capital plan the same as it would if the SLHC were a BHC subject to CCAR.

Another option would be for the Board and the electing SLHC to agree on a process (e.g., such as through a Memorandum of Understanding) to replicate the Capital Regulations without the formal application of those regulations to the SLHC. The Board, relying on its supervisory authority, could require the SLHC to provide the same data BHCs provide under the Capital Regulations. In exchange, the Board would commit to replicate the stress testing requirements as much as possible. The Board would apply the same deadlines for the SLHC and allow for the Board and SLHC to communicate relevant information to the public as the Board and BHCs do today. For example, this would give an electing SLHC the ability to replicate a stress capital buffer as part of the capital planning process and provide certainty and transparency around the ability to plan for capital returns when capital exceeds the designated capital level.

The Client appreciates the Board's consideration of these views. Please do not hesitate to contact me at (202) 736-8473 if you have any comments or questions regarding this letter.

Sincerely,



Joel Feinberg

JF:tp