

June 6, 2011

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

Re: Notice of Intent to Apply Certain Supervisory Guidance to Savings and Loan Holding Companies, 76 Fed. Reg. 22662-22665 (April 22, 2011)

Dear Ms. Johnson:

The American Bankers Association (ABA) welcomes the opportunity to comment on the Board of Governors of the Federal Reserve System (Board) notice of intent to apply certain supervisory guidance to savings and loan holding companies (SLHCs), including capital adequacy assessments. ABA represents banks of all sizes and charters and is the voice for the nation's \$13.3 trillion banking industry and its 2 million employees. Institutions directly affected by the proposal are strongly represented in ABA's membership and participated in the development of this comment letter.

The purpose of the Notice of Intent is to provide the Board with a greater understanding and appreciation of Board rules and practices that may cause transition difficulties because of the differences in operation and statute. ABA supports the Board's efforts in this area and suggests that the industry is also attempting to identify "bumps in the road" at the same time as the Board effort. Information is still developing and less than complete.

The industry appreciates and participates in the educational outreach that the Board is providing through its "Ask the Fed" series, and the materials developed for that series have been helpful. In addition, particularly for those SLHCs that are diversified or reflect a business plan that differs from that of a bank holding company (BHC), a number of the SLHCs have met with their Federal Reserve Bank to begin a dialogue on the type of business model each SLHC uses so that supervisors and regulatees begin to build an understanding that leads to fair and informed supervision. Both sides of the dialogue are motivated to achieve success. We appreciate the flexibility and willingness to meet with all types of SLHCs demonstrated by the Board and the Federal Reserve Banks.

Concerns About the Supervisory Process

The industry is foremost concerned that activities and systems that comply with statute and regulations on July 20, 2011, do not become improper or deemed to be a regulatory violation on July 21, 2011 ("Transfer Date" of supervisory authority from the Office of Thrift Supervision to the Board). This means that real estate and other home lending that is required under the Home Owners' Loan Act ("HOLA") as part of the "Qualified Thrift Lender Test" or activities permitted as a grandfathered unitary or as a SLHC (i.e., real estate development) should still be permitted and encouraged after Transfer Date. Board staff have indicated that there is no desire to squeeze every SLHC variation into the single BHC box, and appreciate that the thrift charter and various SLHC structures have been

preserved by statute. We encourage the Board to consider customizing as appropriate its exam manual to provide for real estate development, mortgage, and grandfathered activities.

Customization for SLHC Industry Segments

The SLHC industry roughly splits into three segments – those that resemble BHCs (the bank is the primary asset of the holding company); those are part of an insurance company subject to state insurance regulation; and those that are manufacturers, retailers, securities firms, and utilities. Even within the group that more closely resembles BHCs, there are mutual holding companies that have unique uses and issues. It is difficult, if not impossible, to apply one set of rules or exam guidelines and ratings to entities that range in activities from traditional banking to the operation of retail stores in almost every state of the nation and in several countries. Even the application of a seemingly simple principle of requiring calendar year end data generates skewed results that would not serve any supervisory purpose (see, Macy's comment letter on this proposal) because retailers as a class include the holiday season in their fiscal years. For those SLHCs, a January 31 year end makes sense from an operation and financial transparency viewpoint and provides the clearest snapshot for supervisory review.

The range of SLHC activity suggests that the Board approach SLHC supervision in logical tranches starting first with those that are the most similar to BHCs with the express customization for HOLA permitted activities, dividends, and investments. It may provide the most efficient use of Board resources to focus on working through the supervisory inconsistencies and issues with this group first.

Issues for SLHCs Most Resembling BHCs

As noted earlier, those institutions most resembling BHCs are concerned about the ability to continue HOLA-sanctioned activities and to be assured that the supervisory reviews and ratings applied reflect these differences. They also are concerned about the ability to take the full statutorily available time to adjust to regulatory capital requirements when those requirements are promulgated.

Chief among the activities that are different from BHCs is the real estate concentration and development authority of the underlying bank. While the Board has stated that it will rely on the primary supervisor of the underlying institution, there will be differences in the financial subcomponents for assets, earnings and liquidity due to the Qualified Thrift Lending test and the use savings associations make of their Federal Home Loan Banks. Similarly the concentration considerations in the Risk Management Factor will require some adjustment. Depending on the institution, there may be a charitable foundation that was funded when the underlying association created a mutual holding company (MHC) or converted to stock form. Foundations offer savings associations an organized means of contributing to the well being of the communities they serve. Foundation activities would and should have a positive impact on reputational and strategic considerations in the risk management factors.

Further, for those MHCs that are eligible for DFA grandfathering of their dividend practices, it will be important to recognize and allow use of that authority. The ABA supported the ability of MHCs to waive dividend payments and recognizes that this ability has been curtailed for those MHCs that had not waived dividends by the DFA cut-off date.

And, while the Board has made it clear that reporting will coincide with calendar years, there are SLHCs in this group that have adopted differing fiscal years to take advantage of auditor availability and pricing, and have business model reasons for other than a calendar year end. While BHCs may also have different fiscal years other than calendar, maintaining multiple sets of financial records for different purposes (one for fiscal, another for the Board) does impose a burden on both the examiner and the SLHC to make sure that data are properly and consistently recorded in all sets of financial records. If the SLHC is a public company, SEC filing dates are different than Board filing dates. While meeting any one requirement may be entirely doable with existing SLHC resources, layering different and additional filings adds to the complexity of the task. The industry needs time to become familiar and proficient in delivering to the Board what is needed and necessary for appropriate supervision. Some consideration for staggering implementation to allow the underlying savings association to implement Call Report filing prior to the Y Series will assist this group of SLHCs in their efforts to comply and participate in the Board's consolidated supervision program.

On the capital front, the ABA supports the Board's intentions to apply the DFA Collins Amendment carve out for smaller holding companies to similarly sized SLHCs. We believe that Board has the flexibility and authority to do so and welcome the Board's clarification in this area. ABA also encourages the Board to recognize that while SLHCs did not have a uniform set of capital requirements, there are capital levels and source of strength requirements applied on an SLHC-by-SLHC basis. Formalizing the existing requirements into a regulation should allow for phased-in compliance while at the same time providing an option for SLHCs to voluntarily adopt full compliance levels at an earlier date.

Supervision Outside the Examination Context

Although not specifically raised by the Board's Notice of Intent, ABA respectfully urges the Board to address the normal operating issues of SLHCs including applications and creation of new SLHCs. Congress clearly made a choice in DFA not to repeal the HOLA, but to transfer functions to the Board and other agencies. This means that the Board needs to administer the HOLA and its separate authorities (including processing applications, dividends and other normal business transactions) on an ongoing basis unless and until the statute is changed. It would be unfortunate to have the Board through efforts at simplification treat all SLHCs as if they were created under the BHC statutes. Any clarification or further guidance that reinforces this point is helpful.

Intermediate Holding Company Solution for Insurance Company and Other Diversified SLHCs

The other supervisory tranches, insurance and fully diversified SLHCs, require an even more customized approach to supervision. ABA has suggested and continues to urge the Board to take advantage of its DFA authority to create intermediate holding companies ("IHCs") as a way of gathering useful supervisory data and providing oversight without extending its reach into the operation of retail stores, manufacturing plants or the generation of electricity. Because promulgation and implementation of an IHC approach will take time, ABA suggests that the existing OTS supervisory principles and reporting be applied to these groups through December 2012. It is difficult to support building bank reporting structures and mechanisms in entities that may not need them because their primary businesses are not financial or where there already exists a supervisory structure (e.g., insurance) process.

Use of the IHC could simplify the Board's approach to these tranches of SLHCs. It would allow the Board to take advantage of the existing state insurance regulatory structures and provide a logical supervisory touchpoint. The IHC and its parent would serve as a source of strength for the bank, but only the IHC's activities and assets would be subject to Board Y Series reporting. As to the overall health and stability of the entire structure, existing SEC and other regulatory reports could be provided. This approach would allow the Board to fulfill its supervisory obligations and understand the organization in the context of its own business model while applying bank supervision to the logical level that matches the bank's place in the holding company.

Further, the use of an IHC potentially eliminates some of the more troubling compliance issues of valuation of nonfinancial assets for capital purposes, dealing with non-regulated affiliates or parents, and dealing with functional regulators on both the state and federal level.

SLHCs Associated with Insurance Companies

The SLHCs associated with insurance companies have a number of issues including what qualifies for capital, reporting mechanisms (e.g., consolidated v. non-consolidated), GAAP v. SAP accounting, and potential regulatory disputes over implementation of source of strength (what if a state insurance regulator prohibits the holding company from serving as a source of strength for the bank?) Even the type of insurance business conducted results in differing capital and liquidity requirements as outlined in the comment letters submitted pursuant to the Board's Notice.

ABA appreciates that the Board will want to treat the insurance affiliated SLHCs in the same manner as insurance affiliated BHCs. While similar, the fact remains that the two groups operate under different statutes. And although insurance is financial in nature, the products and business models are different from a traditional bank model and, thus, require a different or functional regulator supervisory approach. For many of these SLHCs, the bank is a significant, but smaller, part of the overall structure. ABA respectfully urges the Board to consider that there are effective risk management approaches that are appropriate for entities primarily engaged in insurance and that application of a "one size fits all" BHC consolidated supervisory approach to these already regulated structures may not be the best use of the Board's supervisory resources. ABA urges the Board to take its time to understand this group of SLHCs before applying its BHC supervisory framework and to customize its approach to fit the risk profile of the group.

In particular, ABA encourages the Board to consider the specific differences between the banking and insurance industries with regard to asset classes. Separate account assets are reported on the balance sheet of an insurance entity but, for non-guaranteed products, pose no investment risk to the insurer unless guarantees are in place (non-guaranteed separate accounts are similar to mutual funds). For guaranteed separate accounts, it would be prudent to look through the separate account and risk weight based on the types of assets held in the separate account. Another asset that is unique for the insurance industry is the deferred acquisition cost asset.

In addition, the capital adequacy calculation needs to consider the difference in liability structures between banks and insurance enterprises. In many cases the liabilities are long term in nature, which is vastly different than demand deposits. The assets needed to back long term liabilities will differ as well. As noted in many of the comments and discussions, it is important that the risk weighting for assets and

target ratios consider the liability profile of the enterprise. It is for this reason that a number of insurance SLHCs have suggested that the Board use the NAIC capital calculations rather than bank-centric capital requirements as part of its reliance on functional regulators and allow these SLHCs to continue to use SAP as appropriate or needed.

Diversified Grandfathered Unitary SLHCs

The most diverse group of SLHCs, the diversified, nonfinancial grandfathered unitary SLHCs, present the most difficult group for the application of BHC consolidated supervision, ratings and capital requirements. There simply isn't the reporting and risk infrastructure because manufacturing, retail stores and other businesses are not subject to such requirements. This is one reason why the OTS regulatory approach has traditionally focused on protecting the bank from improper use or pressure from parent and affiliated companies rather than reaching into each and every entity in a holding company structure. It is also the most logical group for use of the IHC. The difficulty of applying BHC capital requirements to inventory, plants and equipment is just one example of almost unimaginable regulatory detail and burden that would be incurred if this group was wedged into the BHC supervisory mold and demonstrates why the Board should consider a different approach. Pending the promulgation of IHC regulations or other more flexible approaches, ABA urges the Board to continue to use the OTS approach to supervision.

Orderly Transition

All SLHCs want to successfully move to Board supervision and implement the changes required by DFA in an orderly fashion that minimizes disruption to basic business models. To accomplish this, more and greater dialogue will have to happen and the Board's use of the Notice approach is helpful. The industry wants to anticipate and provide the Board with the information and tools needed for Board supervision. In certain cases, this will require the Board to focus on a segment of the holding company rather than the entire enterprise because the enterprise is beyond banking or has its own regulatory infrastructure. It is important for the Board to provide timetables and transition periods for modified or tailored BHC supervision, guidance on application procedures and transfer of regulations, opinion letters and other SLHC matters before full DFA implementation. Transition will not and cannot happen all at once – it is just too daunting given the volume of change. The Board has the flexibility and discretion to use longer timeframes as appropriate, and ABA respectfully urges the Board to lengthen the timeframes to provide an orderly transition for both the Board and the industry. As noted in other comments, the extra time will be valuable for everyone.

Sincerely,



C. Dawn Causey