THE FINANCIAL SERVICES ROUNDTABLE ^

Financing America's Economy

Via e-mail

November 1, 2011

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

Re: Proposed Agency Information Collection Activities; Comment Request

File Number: FR Doc. 2011-21736

Dear Ms. Johnson:

The Financial Services Roundtable (the "Roundtable"[1]) and the American Bankers Association (the "ABA" [2]) appreciate the opportunity to respond to the request for comment (the "Comment Request") from the Board of Governors of the Federal Reserve System (the "Board") on proposed new information collection requirements for savings and loan holding companies ("SLHCs") as published in the Federal Register on August 25, 2011.[3]

The Comment Request follows a prior notice of intent ("NOI")[4] published in February 2011 in which the Board indicated its intent to require SLHCs to submit the same reports as currently required for bank holding companies ("BHCs"). During the comment period on the NOI, commenters expressed their views on various aspects of the NOI. After considering the comments received in the NOI, the Board has in the

[1] The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for $92.7 trillion in managed assets, $1.2 trillion in revenue, and 2.3 million jobs.

[2] The 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.

[3] Proposed Agency Information Collection Activities; Comment Request, 76 Fed. Reg. 53,129 (Aug. 25, 2011).

Notice of Intent to Require Reporting Forms for Savings and Loan Holding Companies, 76 Fed. Reg. 7,091 (Feb. 8, 2011).

Comment Request proposed to exempt certain SLHCs from initial regulatory reporting requirements using existing BHC reporting forms and provide a two year phase-in period for the regulatory reporting requirements applicable to non-exempt SLHCs. We appreciate the actions that the Board has proposed in response to the comments on the NOI. For the reasons discussed below, we believe that certain additional changes to the proposed reporting regime should be made to further the common goal of providing relevant information to the Board and to minimize unnecessary cost and other burdens, particularly on grandfathered unitary SLHCs.

I. General Exemptive and Phase-In Approach

In the Comment Request, the Board has proposed to initially exempt SLHCs in either of the following categories from reporting using the Board's BHC reporting forms:

- any SLHC that is exempt pursuant to Section 10(c)(9)(C) of the Home Owners' Loan Act ("HOLA") and whose savings association subsidiaries' consolidated assets make up less than 5 percent of the total consolidated assets of the SLHC as of the quarter end prior to the reporting date quarter end; or

- any SLHC where the top-tier holding company is an insurance company that only prepares financial statements based on Statutory Accounting Principles ("SAP").

In addition, the Board has proposed in the Comment Request to adopt a phased-in approach to requiring SLHCs not exempted under the above criteria to submit BHC reporting forms. Under the Board's proposed phased-in approach, non-exempt SLHCs would be required to submit the FR Y-9 series of reports for the quarter ending March 31, 2012 and either the FR Y-6 or FR Y-7 as applicable for fiscal year ends beginning December 31, 2012. During 2013, non-exempt SLHCs would be required to submit other specified BHC forms, as applicable to the particular SLHC based on its size, complexity and structure.

A. Exemption for Grandfathered Unitary SLHCs

We support the overall tailored approach to SLHC reporting reflected in the Comment Request. In particular, we support the exemption from the BHC filing requirements for any grandfathered unitary SLHC whose savings association subsidiaries' consolidated assets constitute less than 5 percent of the total consolidated assets of the SLHC. In proposing this exemption, the Board has recognized that imposing bank-centric reporting requirements on these SLHCs "may provide little useful information to [Board] analysts."[5] We suggest that the Board make the exemption permanent as the considerations supporting the exemption will remain as applicable in the long term as in the short term.

[5] Proposed Agency Information Collection Activities; Comment Request, 76 Fed. Reg. at 53,133. All exempt SLHCs would nonetheless be required to file the FR Y-6 or FR Y-7 as applicable for fiscal year ends beginning December 31, 2012.

In addition, with respect to this exemption, the Comment Request makes no explicit reference to SLHCs with a tiered holding company structure. This creates a possible ambiguity as to whether each SLHC in the organizational structure must meet the consolidated asset test in order to qualify for the exemption. For a tiered holding company structure this could have the unintended effect of exempting only the top-tier holding company and not the lower tier SLHCs. Given the Board's reasons for exempting grandfathered unitary SLHCs from BHC filing requirements, we believe it is the Board's intention to apply the exemption on an enterprise-wide basis, and not individually to each intermediate SLHC in the organization. As a matter of clarity, we ask the Board to confirm that a tiered holding company structure will qualify for the exemption if the top-tier holding company meets the consolidated assets test.

1. Single Quarter Test

The Board indicates that for purposes of determining whether a grandfathered SLHC qualifies for the exemption, the Board will look to whether the consolidated assets of the SLHC's savings association subsidiaries make up less than 5 percent of the total consolidated assets of the SLHC as of the *single* quarter end prior to the reporting date. As indicated in the Comment Request, the asset size test for the March 31, 2012 reporting period would be based on the SLHC's reported assets as of December 31, 2011, while the asset size test for June 30, 2012 would be based on March 31, 2012 assets.

We believe that the use of a single quarter test is inappropriate for several reasons. First, a single quarter test will lead to significant uncertainty for certain SLHCs. As a matter of planning, an SLHC may have little advance warning of whether or not it qualifies for the exemption, because it will only be able to look to the previous quarter to make this determination. This concern is magnified, given that an SLHC that does not qualify for the exemption will be required to submit the FR Y-9C (the most complex of the BHC forms) for the next quarter. Because of the management information systems ("MIS") infrastructure and other costs that an SLHC will need to incur to prepare itself to make such a filing, it is important for SLHCs to have *ex ante* certainty about whether and when they are in fact required to incur such costs. Replacing the single quarter test with a test based on a longer time period can provide this certainty, with little if any negative impact on the Board's supervisory role.

Second, by taking an isolated snapshot of the SLHC's asset base, a single quarter test may cause an SLHC to move in and out of the exemption "bucket." For example, under the single quarter test approach the ratio of the assets of an SLHC's savings association subsidiaries to the assets of the overall entity may move above and below 5 percent during successive quarters. A test based on a single prior quarter could thus cause an SLHC to qualify for the exemption for one quarter, then cease to qualify for the exemption for the next quarter, only to re-qualify again for the exemption in the next quarter. A multi-quarter test would more appropriately account for variation in the asset ratios of the SLHC.

Third, for similar reasons other recent rulemakings have not relied on a single quarter approach. For example, the recently proposed rules implementing the so-called "Volcker Rule" require a banking entity subject to the proposed rule to comply with

certain reporting and recordkeeping requirements only if the banking entity has . . . at least $1 billion in trading assets and liabilities "as measured as of the last day *of each of the four prior calendar quarters*"[6] We request that the Board adopt a revised test, and exempt any SLHC unless its savings association subsidiaries' consolidated assets constitutes 5 percent or more of the total consolidated assets of the SLHC as of the last day of each of the four prior calendar or fiscal quarters.

2. Calendar Year vs. Fiscal Year Filing

We also ask the Board to recognize that non-exempt SLHCs that currently submit their financial statements on a fiscal year, rather than a calendar year basis, will be particularly hard-pressed to comply with the Board's March 2012 quarter reporting requirement. Fiscal year reporting SLHCs will need to either re-engineer their existing MIS infrastructure in order to have the ability to undertake calendar year reporting, or would need to develop a parallel and entirely separate MIS infrastructure entirely geared towards calendar year reporting in addition to their existing MIS infrastructure geared towards fiscal year reporting. In order to prevent calendar year SLHCs from being forced to incur significant compliance costs that would yield little supervisory benefit, we request that the Board allow fiscal year reporting SLHCs to submit any BHC reports on a fiscal year basis.

3. Intermediate Holding Companies

Section 626 of the Dodd-Frank Act expands the existing HOLA framework and authorizes the Board to require grandfathered unitary SLHCs to form IHCs to conduct certain of the SLHC's financial activities when the creation of an IHC would ensure that the Board's supervision would not extend to the non-financial activities of the SLHC. The Dodd-Frank Act directs the Board to promulgate rules to implement these IHC provisions. The Board has not yet proposed rules to implement the IHC provisions of Section 626.

As we have previously commented in our letter on the NOI, we believe that it is not appropriate to impose BHC reporting requirements on entities that will cease to be treated as SLHCs upon the creation of an IHC within their structure. We thus reiterate our request that the Board refrain from imposing new reporting requirements on grandfathered unitary SLHCs until it finalizes rules implementing the IHC provisions of Section 626 of the Dodd-Frank Act.

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[6] OCC, Board, FDIC, SEC, Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds, §____.7(a) (emphasis added) (Oct. 11, 2011) (to be codified at 12 C.F.R. pt.____7(a)), *available at* http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20111011a1.pdf.

Letter from the Roundtable, to the Board, Apr. 11, 2011, *available at* http://www.fsround.org/fsr/policy_issues/regulatory/pdfs/pdfs11/FINAL-CommentLetteronSLHCtoBHCReporting4.11.11 .pdf.

B. Exemption for "SAP-Only" SLHCs

We also support the exemption for any SLHC whose top-tier holding company is an insurance company that only prepares SAP-based financial statements. We suggest that this exemption also be made permanent. Since the principal objective of an SLHC reporting regime is to ensure the safety and soundness of the SLHC's savings association subsidiary and the overall financial strength and health of the SLHC itself, SAP-based financial statements, which are generally more conservative than Generally Accepted Accounting Principles ("GAAP")-based financial statements, provide appropriate information to accomplish this objective. The limited benefits, if any, of requiring reporting based on GAAP for SAP-only SLHCs is far outweighed by the extraordinary costs that would be imposed by mandating GAAP reporting. In enacting the Dodd-Frank Act, Congress recognized the distinctions between the statutory and regulatory regimes governing BHCs and SLHCs, particularly those subject to alternative regulatory accounting practices such as SAP.[o] We believe the Board should recognize these distinctions when developing its supervisory and reporting regime for SLHCs. Making the exemption permanent also would be fully consistent with Congressional intent and the Board's mission to ensure the financial health and strength of the affected SLHCs.

While we greatly appreciate the Board's recognition that it could be unduly burdensome for certain SLHCs to develop accounting systems to comply with BHC reporting requirements, we believe that limiting the exemption to SLHCs that only prepare SAP financial statements may not achieve the full objective of the underlying exemption. For SLHCs that also prepare GAAP financial statements for limited internal purposes, but not for regulatory purposes, their GAAP preparation may not be sufficient to meet the FR Y-9C form and regulatory specific consolidated BHC reporting requirements. Thus, requiring these SLHCs to further expand their existing, GAAP reporting to comply with the specific requirements of the BHC forms could result in undue burden considering the fast-approaching deadlines for filing these reports. The Board's ability to rely on SAP financial statements should not be affected by whether the SLHC only prepares statements under SAP. Accordingly, the Board should just as easily be able to rely on the SAP information and reports for SLHCs that prepare GAAP financial statements, but not on a full-blown SEC basis.

Therefore, we suggest the Board revise the exemption to tailor its application to SLHCs where the top-tier holding company is an insurance company that is not a reporting company under Section 13 or 15(d) of the Securities and Exchange Act of 1934 (the "Exchange Act"). This approach recognizes the legal form of insurance companies, particularly mutual insurance companies under state insurance law that have never had a regulatory obligation to prepare GAAP financials. For SLHCs that currently prepare GAAP financial statements for other than regulatory purposes and forms, the clarification will provide greater certainty when SLHCs prepare for their reporting obligations in the immediate future. Finally, the Board would still have the ability to make a case-by-case determination that a SLHC's current GAAP reporting system is sufficient for regulatory

[o] *See, e.g.,* S. Rep. No. 170, 111th Cong. 2nd Sess. 89.

reporting purposes and, therefore, the SLHC would not be unduly burdened by having to comply with the BHC reporting requirements.

C. Request for Additional Phase-In

The Comment Request indicates that SLHCs that qualify for the exemption criteria "will be reviewed on a case-by-case basis to determine if they should be required to submit [Board] regulatory reports."[9] We request that the Board consider an additional phase-in approach for SLHCs that qualify for either of the exemptions, but are nevertheless required by the Board to submit BHC reports based on a case-by-case determination. With the end of 2011 rapidly approaching, it would be unduly burdensome for an SLHC to comply with BHC reporting requirements for the quarter ending March 2012 if the SLHC qualified for either exemption and acted in reliance on its qualification. Creating the MIS and compliance infrastructure necessary for compliance with the BHC reporting requirements requires planning, budgeting, and a significant amount of time for implementation. To require an SLHC to create this MIS and compliance infrastructure in an abbreviated amount of time when the SLHC relied in good faith on the Board's exemption would be to impose significant cost and compliance burdens on the SLHC. To avoid the imposition of such burdens, the Board should allow any SLHC that qualifies for either exemption, and acts in good faith on this qualification, an appropriate phase-in of any BHC reporting requirements based on a subsequent case-by-case determination.

II. FR Y-6 and FR Y-10 Reporting Requirements

In its Comment Request, the Board indicated that it plans to issue a separate reporting proposal for the FR Y-10 report later in 2011 or early in 2012. As we have previously noted in our comment letter on the NOI, certain of the reporting requirements in the FR Y-10 (and the FR Y-6) are based on specific statutory and regulatory requirements applicable to BHCs and not to grandfathered SLHCs. We respectfully submit that the Board should carefully weigh the significant cost burdens to grandfathered SLHCs of complying with the full breadth of the FR Y-10 reporting requirements and certain of the FR Y-6 reporting requirements. We believe that these significant costs outweigh the unspecified supervisory benefits that might arise from the Board requiring such reporting. For example, the FR Y-6 would require a grandfathered SLHC to report every instance in which it "directly or indirectly in the aggregate controls more than 5 percent, but less than 25 percent, of the outstanding shares of any class of voting securities" of any "Nonbanking Company."[10] Grandfathered SLHCs are not required by HOLA to report such investments for regulatory purposes. We do not believe any generalized supervisory advantage derived from imposing such a reporting requirement on grandfathered SLHCs would outweigh the costs to the SLHCs of complying with such a reporting requirement. At a minimum, if the Board were to

[9] Proposed Agency Information Collection Activities; Comment Request, 76 Fed. Reg. at 53,133.

[10] Board, *Instructions for Preparation of Annual Report of BHCs, FR Y-6,* at GEN-5-6, *available at* http://www.federalreserve.gov/reportforms/forms/FR_Y-620101231_i.pdf.

impose such a reporting requirement, we submit that it should become applicable only for holdings in excess of 10 percent of any class of voting securities of a "Nonbanking Company." This increase in the reporting threshold would significantly reduce the cost burden on the affected SLHCs.

Conclusion

We conclude by reiterating our general support for the Comment Request. The exemption for certain grandfathered SLHCs contemplated by the Board (which we believe should be permanent) is a positive step, and stands for the important recognition that integrating non-traditional SLHCs into the Board's supervisory framework requires a tailored process, and will require significant learning on the part of both the Board and SLHCs. As the Board indicated, "it will take time for [Board] supervisory staff to better understand an SLHC's operations and business model."[11] We agree with this view, and encourage the Board to recognize the differences in the structure, operations and activity mixes of SLHCs as it continues to develop its supervisory program. We also support an exemption for insurer SLHCs that are not required to file reports pursuant to Section 13 or 15(d) of the Exchange Act.

We thank the Board for the opportunity to comment on the Comment Request. If you have any questions, please contact me or Brian Tate at (202) 289-4322.

Sincerely,

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[11] Board Supervision and Regulation Letter 11-11, at 2 (July 21, 2011).