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THE FINANCIAL SERVICES ROUNDTABLE

September 15, 2003

Communications Division
Public Information Room, Mailstop
Office of the Comptroller of the Currency
250 E Street, S.W.
Washington, D.C. 20219
Attention: Docket No. 03-10

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552
Attention Docket No. 2003-20

Ms. Jennifer J. Johnson
Secretary
1-5
Board of Governors of the
Federal Reserve System
20th Street and Constitution Ave., N.W.
Washington, D.C. 20551
Docket No. R-1151

Robert E. Feldman
Executive Secretary
Attention: Comments/OES
Federal Deposit Insurance
Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Re: Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA")

Dear Sirs and Madams:

The Financial Services Roundtable (the "Roundtable") is a national association that represents 100 of the largest integrated financial services companies providing banking, insurance, investment products, and other financial services to American consumers. The member companies of the Roundtable appreciate the opportunity to comment to the Board of Governors of the Federal Reserve System (the "Board"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of the Comptroller of the Currency ("OCC"), and the Office of Thrift Supervision ("OTS") (collectively, "the agencies") on the regulations to reduce burden imposed on insured depository institutions, as required by section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104-208, Sept. 30, 1996) ("EGRPRA").

The Roundtable favors a streamlined regulatory process and therefore supports the joint agency effort to identify regulations that are outdated, unnecessary and unduly burdensome. The Roundtable members believe that the following proposed revisions would help reduce costs and alleviate competitive disadvantages among financial institutions. If implemented, these changes also would create a more competitive marketplace that would benefit consumers.

The following comments in the categories of "Powers and Activities, Applications and Reporting, and International Operations" are offered to reduce regulatory burden and at the same time maintain the safety and soundness of insured depository institutions and appropriate consumer protections.

I. Powers and Activities

A. Regulation CC – Availability of Funds and Collections of Checks (12 CFR 229) - The current regulation includes credit card drafts in the definition of a check (§229.2(k)). Financial institutions continue to suffer significant fraud losses concerning credit card drafts. In addition, credit card issuers generally do not comply with the requirements of Subpart C concerning a paying bank's responsibility to return checks within prescribed time frames. We *recommend* eliminating credit card drafts from the definition of a check or, alternatively, allowing exception-based holds for credit card draft deposits under §229.13(e).

B. Regulation D – Reserve Requirements of Depository Institutions (12 CFR 204) - The withdrawal limitations imposed on savings deposits under §204.2(d)(2) were created many years ago. These limitations are related to difficulties experienced during the Great Depression. The addition and popularity of certain transfers such as ACH transfers and online banking has rendered the six-transfer limit per month unrealistic. In addition, in recent years Congress has considered legislation that would significantly increase the maximum number of withdrawals or eliminate the limitations entirely. The Roundtable *recommends* either eliminating the limitations or significantly increasing the maximum number of designated withdrawals in order to accommodate the needs of the modern day consumer and be more reflective of how the retail consumer marketplace operates.

Statutory law provides that, in the liquidation of a financial institution, "deposits" receive priority over other general obligations of banks. Unfortunately, for this purpose, the Regulation D definition of "deposit" excludes U.S. banks' foreign branch deposits (which are of course properly excluded from the definition for other purposes). This has created a competitive equality problem for overseas branches of U.S. institutions which take deposits from pension funds and others where all aspects of deposit security and priority are carefully scrutinized. We would *suggest* that a simple solution would be to include U.S. foreign branch deposits within the definition of "deposit" for purposes of liquidation priority only.

C. Regulation Q - Prohibition against Payment of Interest on Demand Deposits (12 CFR 217) - Many of the provisions of Regulation Q originated in response to problems encountered during the 1930's and are outdated. With the creation of NOW accounts, there appears no current need for the prohibition to pay interest on demand deposits as required in §217.3. Furthermore, there is a disconnect between the obligations imposed under 12 CFR Part 9, requiring banks to take all steps required to earn a return on trust assets, and the provisions of Regulations Q prohibiting the payment of interest on demand deposits. It should be generally accepted, in particular, that demand deposits of funds held in a fiduciary capacity do not exhibit the same characteristics as non-fiduciary demand deposits. Therefore, we *recommend* eliminating the prohibition to pay interest on demand deposits.

D. Regulation H - Membership of State Banking Institutions in the Federal Reserve System (12 CFR 208) - 12 CFR 208.3, 208.7, and 208.21 limit the branching and investment powers of a state member bank to those permissible for a national bank. If we are to have a true dual banking system, it is not clear why a state bank's membership in the Federal Reserve System should cause it to conform to these standards. The Roundtable *recommends* that these limits, which are promulgated under Section 9 of the Federal Reserve Act, be revised accordingly.

E. Financial Subsidiaries - There are a number of limits on financial subsidiaries that seem burdensome and without meaningful purpose. These include: (i) the requirement that each of the 100 largest U.S. banks must maintain a top-three debt rating in order to hold a financial subsidiary; (ii) a prohibition on insurance underwriting and real estate development activities in a financial subsidiary (while permissible for subsidiaries of a financial holding company); and (iii) requirements that financial subsidiaries not be treated as ordinary subsidiaries for capital, 23A/23B, and anti-tying purposes. The need for FDIC review of subsidiary activities that are not permissible for national banks is also unclear. The Roundtable *recommends* that the appropriate agencies amend their rules to remove these limitations.

Furthermore, the Roundtable *recommends* that the examination and regulatory enforcement of subsidiaries be put in the context of the overall institution. For example, if a large corporation has a relatively insignificant, recent acquisition of a banking subsidiary, which requires (i) holding the acquired entity to the underwriting standards of the parent, (ii) reserves at the subsidiary level to be calculated in the same manner as the parent, (iii) the same level of portfolio reporting as done at the parent level, etc., this will not only add costs to the system organization, but will also increase the cost of operating those smaller affiliates when, by virtue of being affiliated with a much bigger company with much broader financial resources, the risk of safety and soundness issues have actually been reduced. If the regulatory bodies were satisfied that the controls and processes were satisfactory at the smaller institution before it was acquired, it makes intuitive sense that they should be continued to be adequate post-acquisition...particularly given the acquired institution is part of a larger, much sounder organization.

F. OTS Rules Regarding Subsidiaries - The OTS should consider relaxing its rule that thrifts can not own less than 100 percent of a foreign operating subsidiary. For tax, corporate governance, and deal-making reasons, this requirement is too restrictive and we believe that it may be changed without creating a threat to the safety and soundness of financial institutions.

G. Insurance Agency Activities – The Roundtable believes that Bank Holding Companies ("BHC's") should be able to conduct expanded insurance agency activities directly rather than through a bank subsidiary. The Board has examination authority over the entire BHC structure, and these activities do not pose safety and soundness (i.e., capital) concerns that would merit requiring a bank subsidiary to conduct them.

H. Cross - marketing - The scope of the cross-marketing prohibition should be narrowed. The prohibition should only apply when the Financial Holding Company ("FHC") has a controlling interest greater than 25 percent (as defined by the Bank Holding Company Act, Section 2). This exception should be extended for ownership interests by insurance companies to other FHC subsidiaries.

I. Regulation Y-Bank Holding Companies and Change in Bank Control (12 CFR Part 225) - 12 C.F.R. 225.127 is an interpretation by the Board regarding investments in entities designed primarily to promote community welfare ("Interpretation 225.127"). While originally adopted in 1972, the Board amended it in 1995 to include a quantitative limitation on the maximum aggregate amount of these investments by bank holding companies on a consolidated basis. This limitation is computed with reference to the BHC's "total consolidated capital stock and surplus".

Under Interpretation 225.127, the terms "capital stock" and surplus" include only total equity capital and the allowance for loan and lease losses. Most notably, Interpretation 225.127 excludes all subordinated debt that qualifies as Tier 2 capital under applicable risk-based capital guidelines. This formulation with respect to "capital stock" and "surplus" is inconsistent with that applied by the Board in other contexts where a quantitative limit is imposed with reference to an institution's "capital stock" and "surplus." In these other contexts, including the computation of the quantitative limit applicable to community development investments by state-chartered member banks, the Board has utilized a "capital stock" and "surplus" definition that includes an Tier 1 and Tier 2 capital under applicable risk-based capital guidelines plus the balance of the allowance for loan and lease losses excluded from tier 2 capital. See, for example, 12 C.F.R. 206.2(g) (total capital includes Tier 1 and Tier 2 capital), 12 C.F.R. 208.2(d), 12 C.F.R. 211.2(c), 12 C.F.R. 215.2(i), and 12 C.F.R. 223.3(d).

The Board's formulation in Interpretation 225.127 is also inconsistent with that utilized by the OCC, including the computation of the quantitative limit applicable to community development investments by national banks. The OCC employs a "capital stock" and "surplus" definition that includes Tier 1 and Tier 2 capital under applicable risk-based capital guidelines plus the balance of the allowance for loan and lease losses excluded from Tier 2 capital. See, for example, 12 C.F.R. 3.100, 12 C.F.R. 5.3(d), 12 C.F.R. 24.2(b), and 12 C.F.R. 34.2(b).

The Roundtable *recommends* that the Board replace the current "capital stock" and "surplus" definition set forth in Interpretation 225.127(h) with a definition that includes Tier 1 and Tier 2 capital under applicable risk-based capital guidelines plus the balance of the allowance for loan and lease losses excluded from Tier 2 capital. Such a change would comport both with the purpose of EGRPRA, Section 2222, as well as Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 USC 4803, which directs the federal banking agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies, to the extent consistent with principles of safety and soundness, statutory law and policy, and the public interest.

J. Use of the Interest Rate Exportation Doctrine by Institutions with Multi-State Branches – In OCC Interpretive Letter #822 (February 17, 1998), the OCC provided guidance regarding the use of the interest rate exportation doctrine by institutions with multi-state branches. The FDIC provided similar guidance in FDIC General Counsel Opinion No. 11 (May 18, 1998). The guidance of the OCC and FDIC differs from guidance provided by the OTS in an OTS Chief Counsel Interpretive Letter dated December 24, 1992. The Roundtable *recommends* that the three agencies provide guidance on this matter that is consistent in all respects. Further, the Roundtable *recommends* that the agencies clarify their guidance in the following respects. First, the agencies should make clear that an institution may always use its home state rates, regardless of the contacts (or lack of contacts) between the home state and the loan. Second, the agencies should clarify the criteria that will be used to identify the state whose rates will be used (*i.e.*, where a state other than the home state will be used). Applying the criteria identified by the agencies leaves many questions where branches and non-branch offices in two, three, or more states participate in the loan origination process. The need for clarification will only grow as the loan origination process becomes increasingly automated. Third, the OCC Chief Counsel has opined that an operating subsidiary of a national bank may use the interest rate exportation doctrine to the same extent as the national bank itself. Neither the FDIC nor the OTS has formally addressed this issue. Those two agencies should provide guidance on this issue that is consistent with the OCC's guidance. Fourth, while the OCC, OTS and FDIC have issued regulations or opinions that adopt the same standard for defining "interest," the three agencies should scrutinize their interpretations to make sure that their guidance is fully consistent. For example, although the OCC has opined that prepayment penalties are "interest," the OTS has declined to address this issue.

II. Applications and Reporting

A. <u>Regulation E – Electronic Fund Transfers (12 CFR 205)</u> - Certain provisions of Regulation E are unfairly protective to consumers. There have been an increasing number of fraudulent claims of unauthorized transactions because consumers have recognized the protective nature of these provisions. Consumer liability for unauthorized transactions is based solely on the timing with which consumers notify financial institutions regarding the transaction (§205.6(b)). The 60-day time frame provision of a periodic statement concerning notification of unauthorized transactions exposes financial institutions to significant losses. Furthermore, the Regulation E requirement that financial institutions resolve disputes in 10 business-days (§205.11(c)) is unreasonable and impractical. Most disputes cannot be resolved within this time frame, despite the institutions' best efforts, resulting in excessive provisional credits and significant losses to financial institutions. And finally, whereas there can be no chargeback to a merchant for an unauthorized use claim unless the cardholder provides a signed writing with respect to the claim, Regulation E requires dispute investigations to be initiated and completed solely on the basis of an oral notice of error.

To address these issues, the Roundtable *recommends*:

- Expanding consumer liability to include the standard of negligence;
- Reducing the 60-day time frame for consumer notification of unauthorized transactions to 30 days;
- Increasing the general 10 business-day time frame for resolving disputes to 20 business days for all disputes; and
- Annually adjusting consumer liability dollar limits based on inflation or the Consumer Price Index using "catch-up" provisions.
- Allowing financial institutions to terminate an investigation if the cardholder refuses to put his/her claim in writing.

B. Regulation O - Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks (12 CFR 215) - Since Regulation O became effective, the $100,000 general lending limit to executive officers under §215.5(c)(4) has never been revised. We *recommend* increasing this limit to be adjusted for inflation based on the inflation rate or the Consumer Price Index using "catch-up" provisions.

C. Section 42 of the Federal Deposit Insurance Act ("FDIA") sets forth guidelines for financial institutions to notify the FDIC and its customers regarding proposals to close a branch office. These notices involve a relatively lengthy and unnecessarily complex process with limited benefits. The Roundtable *recommends* these procedures be thoroughly examined and changed to a less onerous process.

D. General Application Procedures - There are several inconsistencies between the agencies in the application process. The Roundtable suggests the following inadequacies be rectified.

- First, the Board should change its ex parte contact rules to conform to the practice of the other agencies regarding protested applications. The practice of declining to have substantive discussions with applicants regarding protested applications causes great inefficiency in the processing of applications, and is not required by law.

- Second, OTS should eliminate the requirement for a formal meeting/hearing on any application where a commenter asks for one (12 CFR 516.170(e)). No other bank regulatory agency has this requirement. We *recommend* a required hearing only when there is a material issue of fact to be determined.

- Third, the filing procedures for BHC's that are well-managed, well-capitalized, and meet Community Reinvestment Act (CRA) requirements should be aligned with the filing procedures for FHC's. BHC's meeting the criteria of well capitalized, well managed and a satisfactory CRA record would otherwise qualify to become a FHC and be able to engage in a broader range of activities (securities and insurance underwriting, etc.). Also, BHC's are no riskier organizations than FHC's, so there is no reasonable justification for retaining BHC requirements that are stricter than the FHC requirements.

- Fourth, as a general matter, all Bank Merger Act (BMA) transactions between affiliates should require streamlined filing procedures and approval timeframes. We have the following specific comments in this regard: (i) the agencies should clarify the meaning of the phrase "substantially all" in the BMA section pertaining to bulk asset transfers. The phrase "substantially all" should be clarified to exclude asset transfers that do not materially impact the depository institutions involved in the transfer; (ii) the agencies should establish a de minimis exception for transferring deposit liabilities among affiliates; (iii) the post-approval waiting period should be waived for BMA transactions that are affiliate transactions.

- Fifth, the agencies should align their publication requirements to be consistent among different applications in order to avoid confusion. For example, timing requirements for public notices should be uniform for all similar types of applications.

- Sixth, the OTS should place additional controls on the 30-day notice period applicable to well-managed/well-capitalized thrifts, which can sometimes become a de facto application process without a set deadline. More specifically, the OTS should clarify the conditions upon which such a notice will become an application and separate the notice requirements from the application requirements.

- Seventh, the agencies should change their procedures so that what are now routine applications will instead be handled as after-the-fact notice filings. This may be restricted to institutions that have composite ratings of 1 or 2, are well managed, and have satisfactory CRA ratings. These applications are invariably approved, and eliminating them in favor of after-the-fact notice filings will reduce costs and regulatory burden for the agencies and the affected institutions alike. Examples include applications relating to the establishment of branches in states where the applicant already has a branch, relocation of branches not involving branch closures, and applications relating to the establishment of subsidiaries of all kinds.

- Eighth, the agencies should review their application requirements and lessen the severity of the information requirements if the agencies have already obtained extensive information about the applicants. Both BMA and holding company applications should be streamlined if the agency is already familiar with the applicant. For example, it should not be necessary to file documentation in connection with a BMA application where documentation in connection with previously filed BMA applications remains current. Institutions should be given the opportunity to incorporate by reference any previously filed documentation so long as they certify that the documentation is materially correct or provide updates to information that has changed.

- Ninth, the agencies should adopt expedited procedures for the approval of BMA and holding company applications that are highly likely to be approved. This may be restricted to institutions that have composite ratings of 1 or 2, are well managed, and have satisfactory CRA ratings. A BMA application filed by such an institution should be highly expedited where the transaction will not cause the institution's assets to grow by more than 25% and the institution has received approval of at least one other BMA application in the preceding three years. The OTS likewise should streamline its Form H(e) application process if the applicant's structure is strong (i.e. its savings institutions have composite ratings of 1 or 2, are well managed, and have satisfactory CRA ratings).

- Tenth, the banking agencies generally should consider lessening the level of detail that is required with regard to the employees or offices of an applicant that has a very large number of employees or offices. For example, in the OTS Form H(e) application, Items 720.10 and 720.30 request a list of all offices, agencies, mobile facilities of the resulting institution, and a list of all location changes, closings and branch applications, respectively. These voluminous lists are overly burdensome for an applicant that is a large institution and unnecessary for an institution that is well-known to the OTS. As an alternative, we suggest that the list be limited to the locations that would be affected by the proposed transaction.

- Eleventh, application requirements should recognize the distinction between an internal restructuring and an acquisition of a formerly non-affiliated entity. For example, in an OTS H(e) application, certain aspects of the business are highly unlikely to be affected by a mere internal reorganization. Examples include management officials, future prospects including economic conditions, and CRA. In such cases, the applicant should be able to simply state that no changes are anticipated as a result of the restructuring or give a more detailed response only if material changes actually would result.

III. International Operations

A. Regulation K – International Banking Regulations (12 CFR 211) - The industry has been continually sensitive to inconsistent regulatory interpretation of the limits upon direct investment by member banks in foreign subsidiaries, specifically an apparent conflict between 12 CFR 211.8(b) (which limits direct investment by member banks) and 12 CFR 211.8(c) (which permits much broader categories of investment by an "investor"). The Roundtable believes that no valid purpose is served by unduly limiting direct investment in subsidiaries by member banks and thus compelling the use of an investment vehicle (such as an Investment

Edge). To resolve this situation, the Roundtable *suggests* amending 211.8(b) to explicitly permit member banks to invest directly in all permitted entities as detailed in Section 211.10.

It is possible for Edge corporations to be the primary contact within a banking organization for a customer whose business is essentially foreign and international, but which occasionally directs to the Edge the processing of purely domestic transactions which are incidental to the customer's international business. This activity does not appear to be clearly permitted under 12 CFR 211.6(a), and we do not see any useful purpose which would be served by continuing to prohibit these incidental transactions. To rectify this situation, the Roundtable *recommends* the following as a new subsection 211.6(a)(ii)(H); "Are not deposits otherwise permitted hereunder but are received from persons the majority (by both number and dollar amount) of whose deposits with such Edge or agreement corporation consist of deposits otherwise permitted hereunder."

The Roundtable believes that banks chartered in the U.S. should be allowed to operate overseas in a manner more consistent with the domestic application process. Bank Holding Companies that meet the well-managed, well-capitalized and CRA criteria, and that have some experience operating overseas through 1-2 branches or subsidiaries, should be allowed to establish non-banking operations overseas using the procedures applicable to well-managed/well-capitalized domestic institutions.

Conclusion

Thank you for considering The Financial Services Roundtable's views on these important issues. If you have any further questions or comments on this matter, please do not hesitate to contact me or John Beccia at (202) 289-4322.

Sincerely,

Richard M. Whiting

Richard M. Whiting
Executive Director and General Counsel