AMERICAN BANKERS ASSOCIATION

1120 Connecticut Avenue, NW
Washington, DC 20036

1-800-BANKERS
www.aba.com

World-Class Solutions, Leadership & Advocacy Since 1875

Christopher M. Paridon
Counsel
Office of Regulatory Policy
Phone: 202 663-5056
Fax: 202 828-5052
cparidon@aba.com

By electronic delivery

April 25, 2007

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: No. 2006–36
regs.comments@ots.treas.gov

Re: Permissible Activities of Savings and Loan Holding Companies, **OTS** Docket No. 2007-0007; 72 Federal Register 14246 (March 27, 2007)

Ladies and Gentlemen:

The American Bankers Association ("ABA") appreciates the opportunity to comment on the proposal by the Office of Thrift Supervision ("OTS") to expand the permissible activities in which a savings and loan holding company ("SLHC") may engage ("Proposal"). On behalf of the more than two million men and women who work in the nation's banks, the ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership--which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, savings banks, and bankers banks--makes the ABA the largest banking trade association in the country.

Summary of Comments

- The ABA believes the Proposal is consistent with the overall objective of eliminating unnecessary regulatory burden and impediments to the full exercise of powers authorized by Congress.
- It is important that OTS clarify that any SHLC seeking to exercise powers pursuant to §§ 4(c)(9) or 4(c)(13) of the bank Bolding Company Act ("BHCA") must comply with comparable terms and conditions as those applied to bank holding companies ("BHCs") by the Federal Reserve Board ("FRB"). Thus, for instance, these entities must meet the Qualifying Foreign Banking Organizations ("QFBO") test.
- It is appropriate for OTS to model its approval criteria for acquisitions of more than five percent of voting shares on those currently in use by the FRB, given that the statutory approval scheme provided by Congress to OTS largely tracks the approval scheme currently utilized by the FRB.

Discussion

1. The ABA Believes the Proposal is Consistent With the Overall Objective of Eliminating Unnecessary Regulatory Burden and Impediments to the Full Exercise of Powers Authorized by Congress.

Section 10(c)(9) of the Home Owners' Loan Act ("HOLA") restricts the ability of SLHCs to engage in certain activities that are permissible for financial holding companies under section 4(k) of the BHCA. Section 10(c)(2)(F)(i) permits SLHCs to engage in all activities which the FRB has found to be permissible for BHCs, unless OTS further restricts this ability. Currently, OTS has limited the permissible activities for SLHCs to those allowed for BHCs and delineated under section 4(c)(8) of the BHCA, and implemented by 12 C.F.R. §§ 225.24 and 225.28.[1] As such, despite Congressional authority for SLHCs to engage in the full range of activities permissible to BHCs under section 4(c) of the BHCA, these institutions currently may engage only in those activities enumerated in section 4(c)(8) of the BHCA.

The Proposal will permit SLHCs to engage in the full range of activities permitted under section 4(c). The OTS believes this change is appropriate given that Congress has authorized SLHCs to engage in those activities and given the absence of safety and soundness issues arising as a result of BHCs engaging in the full range of activities under section 4(c).

As a general proposition, the ABA supports OTS in its efforts to ensure that OTS regulations do not unnecessarily encumber thrift institutions and SLHCs with unnecessary regulatory requirements. Permitting SLHCs to engage in the same activities in which BHCs currently engage, such as those specified under section 4(c)(9) and 4(c)(13) of the BHCA, clearly was contemplated by Congress. Absent any supervisory concern, there is no reason not to permit the full exercise of authority granted by Congress. There is no indication that the activities approved by the FRB under section 4(c)(9) have raised supervisory concerns, and there is no reason to believe allowing SLHCs to engage in the same activities will produce any other result.

2. OTS Should Clarify That Any Foreign Entity Seeking to Exercise Powers Under Sections 4(c)(9) or 4(c)(13) Must Comply With Comparable Terms and Conditions as Those Applied by the FRB.

The ABA sees OTS's Proposal as the logical outgrowth of changes within the universe of SLHCs. Expanding the range of permissible activities for SLHCs to include the universe of activities permissible by BHCs will allow a foreign company to consider the merits of a thrift charter on the same basis as those of a bank charter without being handicapped by limitations on activities present in a thrift charter. However, the ABA believes it is important that OTS clearly specify that any foreign entity seeking to obtain a thrift charter and exercise powers under section 4(c)(9) or 4(c)(13) of the BHCA must comply with the same terms and conditions applied by the FRB. Specifically, the ABA believes that OTS should require implementation of the QFBO test for any foreign entity seeking to exercise powers under section 4(c)(9) of the BHCA. Requiring foreign entities to satisfy the terms of the QFBO will provide safeguards similar to those currently in place for foreign entities seeking a BHC charter.

---

[1] When the regulations implementing section 10(c)(2)(F)(i) were enacted in 1987, the regulators reserved the right to "expand the list of permissible nonbanking activities for [SLHCs] to include those activities approved by the FRB under other provisions of section 4(c) of the [BHCA]. See 53 Fed. Reg. 319 (Jan. 6, 1988).

Implementation of the QFBO test is an important safeguard utilized by the FRB in reviewing BHC applications from foreign entities. In order to qualify as a QFBO, a foreign banking organization must demonstrate: (a) more than half of its business is banking; and (b) more than half of its banking business comes from outside of the United States.[2] The FRB has stated that "the intent of the BHCA [and thus application of the QFBO test] was to grant exemptions to only those foreign organizations that were substantially engaged in commercial banking."[3] Thus, implementation of the QFBO test for foreign entities is designed to prevent foreign financial companies that own U.S. banks from obtaining competitive advantages. Consistent application of the QFBO by OTS will provide a level playing field for U.S. and foreign financial institutions seeking both thrift and bank holding company charters.

Similarly, SLHCs seeking to exercise powers under section 4(c)(13) should be subject to restrictions comparable to those set out in 12 C.F.R. § 211.602. That provision requires, among other things, that the direct or indirect activities of the foreign company in the United States are either banking or closely related to banking.

We believe these suggestions are consistent with the intent of the Proposal, given the express desire by OTS to achieve parity between BHCs and SLHCs to the extent possible.[4] This goal is furthered by ensuring that the SLHC vehicle does not become used in such a way as to permit entry into the United States banking system by entities engaging in activities deemed inappropriate by Congress.

3. It is Appropriate for OTS to Model Their Approval Criteria for Acquisitions of More Than Five Percent of Voting Shares on Those Currently in use by the FRB.

As currently written, section 10(e)(1)(A)(iii) of HOLA prohibits SLHCs from acquiring more than five percent of the voting shares of the either: (a) a non-subsidiary savings association; or (b) an SLHC that is not a subsidiary of the acquiring SLHC. The American Homeownership and Economic Opportunity Act of 2000 ("AHEO Act") replaced the absolute prohibition contained in HOLA with a regulatory approval requirement. However, the AHEO Act failed to provide approval standards for such regulatory approval applications. The Proposal seeks to set forth approval requirements for such applications based on the currently used requirements for BHCs that file similar applications with the FRB. Thus, OTS would apply the approval criteria found at section 3(c) of the BHCA to acquisition applications filed by SLHCs. The ABA believes this is appropriate given that the statutory approval scheme largely tracks the Congressionally-provided approval scheme utilized by the FRB for BHC acquisition applications.

Conclusion

The ABA supports the expansion of the range of activities in which SLHCs may engage. We believe that the Proposal appropriately addresses the expanded role which SLHCs play in the banking industry today, and that the list of permissible activities has been enlarged accordingly to include those found in section 4(c)(9) and 4(c)(13) of the BHCA. While the ABA supports adoption of the Proposal, we believe that it is necessary for OTS to clarify that foreign entities seeking to exercise powers via an SLHC must comply with comparable terms and conditions as those applied to BHCs by the FRB, such as the QFBO test. Additionally, the ABA applauds OTS for modeling their approval requirements for acquisitions of voting shares greater than five percent on those currently

---

[2] See 12 C.F.R. § 211.23(a).
[3] See http://www.gao.gov/new.items/d07154.pdf.
[4] See 72 Fed. Reg. at 14248.

used by the FRB, as this follows the approval schemed provided by Congress. Furthermore, the changes outlined in the Proposal could lead to greater efficiency among U.S. agencies engaged in consolidated supervision.[5] If there are any questions about these comments, please do not hesitate to contact the undersigned at (202) 663-5056.

Sincerely,

Christopher M. Paridon
Counsel

[5] See Agencies Engaged in Consolidated Supervision Can Strengthen Performance Measurement and Collaboration, GAO Report 07-154, March 2007, *available at* http://www.gao.gov/new.items/d07154.pdf.