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Sent: Friday, March 26, 2004 1:40 PM
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March 24, 2004

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street NW
Washington, D.C. 20552

Attention: No. 2004-06

To Whom It May Concern:

MidFirst, a federally chartered savings association, and Midland Financial Co., a savings and loan holding company (herein used to refer to the combined holding company structure involving MidFirst), are pleased for the opportunity to respond to the Notice of Proposed Rulemaking regarding Assessments and Fees published in the February 10, 2004, *Federal Register*. MidFirst and Midland support the OTS's efforts to better balance fees paid by a holding company with the OTS overhead associated with regulating that holding company. It is reasonable to conclude that those entities requiring greater oversight, whether due to activities or to condition or to some other factor, should be responsible for the expenses associated with the increased oversight.

MidFirst and Midland are concerned that "Category I" and "Category II" are not adequately defined in the proposed rule which imposes difficulties for a holding company, within a reasonable level of confidence, to determine in which category it would be designated. MidFirst and Midland would oppose any decision to designate a certain number or a certain percentage of holding companies as "Category II" since the risk imposed by a company and the respective OTS oversight of that company should be based solely on the particular characteristics of that company in isolation and distinct from the characteristics of other regulated entities. Better definitions for "Category I" and "Category II" will increase the opportunity for OTS to achieve its goal of better expense distribution across OTS regulated holding companies.

MidFirst and Midland also request that the OTS consider placing the assessment on intermediate level holding companies rather than the top-tier holding companies in situations where the top-tier holding company has limited activity and exists primarily as a shell entity as in the case of many trust holding companies. In such a situation, the intermediate level holding company would have greater activity, would require the majority of OTS oversight, and would generate the majority of the OTS supervisory

overhead expense related to the structure. As presented in greater detail below, MidFirst and Midland would recommend that not only would the assessment be charged to the intermediate level holding company but the assessment would not be based on the assets, condition, or organization of the top-tier holding companies.

The proposed regulation would require the assessment to be calculated and charged to each top-tier entity in a multiple top-tier holding structure. With the assessment calculated on each top-tier holding company, the total assessment would become a multiple of the number of existing top-tier holding companies while the supervisory oversight and expense would not change. For example, the rule as proposed requires the assessment to be calculated on the base assessment, the risk or complexity component, the organizational form, and the condition component for each of the top-tier entities so that the total assessment paid by the combined holding company group would be a multiple of the number of top-tier holding companies. This assessment approach would result in a total fee paid by the group of holding companies far in excess of an identical structure involving a single top tier holding company and would be far in excess of what the top tier holding company pays under the current holding company assessment based on examination hours. This combined fee paid by the group of top-tier holding companies would bear no resemblance to the total OTS expense incurred in supervising this structure. This concern is particularly problematic in situations where the top-tier holding companies have limited activity outside of the investment in the savings association and in situations where the top-tier holding companies are related by a common control group such as a family. The proposed process further exacerbates the potential problem, identified below, occurring when the vast majority of assets are owned by the subsidiary savings association; namely, in such situations, the same assets would be utilized in calculating the assessment for the savings association and each holding company. OTS has available information to calculate the potential impact on Midland and MidFirst, but it is clear that the potential exists for the holding company assessment in the case of Midland to increase from the prior holding company examination fee by an amount (likely well in excess of 500 percent) that is clearly not commensurate with the OTS's supervisory time and expense with the supervisory structure.

MidFirst and Midland request explicit confirmation that should the holding company assessment methodology in the proposed rule be adopted, the current assessment process based on examination hours would be abandoned. OTS alludes to this in the commentary but is not specific as to either confirmation that the hourly rate would be abandoned or the specific change that might be made relating to the hourly examination fee.

MidFirst and Midland also suggest that the use of consolidated holding company assets in the assessment formula can pose concerns in some instances. One such instance is a nondiversified holding company whose subsidiary institution contributes the vast majority of holding company consolidated assets. Because the subsidiary institution is regulated by OTS and subject to a separate assessment, any holding company assessment based on those same assets should be tempered so as to minimize the effect of double counting.

MidFirst would be happy to respond to any questions.

Sincerely,

Charles R. Lee
Vice President and
Director of Bank Administration

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