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March 26, 2004

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

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RE: Assessments and Fees; OTS No. 2004-6;
69 Federal Register 6201-6214 (February 4, 2004)

Dear Office of Chief Counsel:

The American Bankers Association ("ABA") appreciates the opportunity to comment on the above-cited proposed rulemaking raising semi-annual assessments for Savings and Loan Holding Companies ("SLHCs") and other changes. The ABA brings together all categories of banking institutions to best represent the interests of the 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 savings and loan holding companies – makes ABA the largest banking trade association in the country.

For the reasons listed below, we respectfully urge the Office of Thrift Supervisions ("OTS") to treat the proposed rulemaking as an Advance Notice of Proposed Rulemaking and repropose, with greater specificity and understanding, the amendments. The limited number of comments filed to date on this proposal does not reflect the seriousness of the impact – rather a resignation that assessments, like taxes, rarely go down in amount.

In addition, we have the following comments:

1. Movement from Regulation to Supervisory Bulletin. One of the striking features of the proposed rule is the movement of much of the detail of the regulation (in other words, the actual assessments and factors used to calculate assessments) from regulation to bulletin. And again, the bulletins are yet to be written or distributed. To address this lack of specificity, the preamble poses charts and examples; however, it notes that these examples "are subject to change

in the Thrift Bulletin implementing the final rule.” While we understand the OTS’s preference for placing calculation elements in a bulletin because they are easily changed, require no industry comment, and avoid coordination with other agencies, the industry itself is left without enough detail to understand the exact impact on balance sheets and income streams and little if any opportunity to comment on the increasing complexity or rationale behind the adjustments. Simply put, OTS could adjust the calculation every year via the bulletin process without notice and opportunity for impacted institutions to comment. As a public policy matter, the migration of the assessment details in this manner causes us to pause. In the wake of the OTS’s goals of “transparency and predictability” in this rulemaking, certainly something this fundamental requires more disclosure rather than less.¹

2. Matching Assessments to Costs. A number of the alternatives and questions posed by the proposal emphasize the need to match assessments to costs - the complex internationally active holding companies for which the OTS is the international regulator come quickly to mind. These institutions represent a small handful of the 946 OTS-regulated SLHCs, yet substantial supervisory efforts have been expended to seek international recognition of the OTS for the benefit of its supervised institutions. And yet, the particular benefit flows to these holding companies. Tailoring the assessments to match those institutions benefited places the costs where they are incurred. The proposal is somewhat confusing as to whether the internationally active institutions are included in the proposal as complex conglomerates. If they are, it is difficult from the text to determine how they will be assessed – there are no suggested fees, rates, or any specific calculation element listed for the complex conglomerate. Again, for the less complex holding company, it is little comfort that the complex conglomerate will have a separate assessment when there is no basis for comparison.

3. Minimum Assessments and Consolidated Assets. Another feature of the proposal is the assessment of a minimum fee for each top tier holding company (estimated at 509 out of 946 holding companies). While on the surface this appears reasonable and unassailable, there are institutions (as highlighted by the comment letters already filed) where the complexity presented by one or more holding companies in the same structure does not justify the expense, particularly where the already assessed and examined savings association is the primary asset of the holding company. For a regulation that seeks to adjust to fit complexity, the justification of a flat, minimum fee runs contrary to the rest of the regulation.

In this same vein, the proposal also uses consolidated assets for holding company assessment calculations notwithstanding the separate assessment and examination

¹ Proposed section 12 CFR 502.28(c) places the factors for organizational form in a Thrift Bulletin; proposed section 12 CFR 502.26(a) places the base assessment component in a Thrift Bulletin; the amounts for risk and complexity under proposed section 12 CFR 502.27 will be established in a Thrift Bulletin; the administrative fees will also be in a Thrift Bulletin (proposed section 12 CFR 502.35). In short, there is no way by reference to the regulatory language that anyone could figure out how much their semi-annual assessments will be or for how long the amount will be valid for budget purposes.

for the underlying savings association. This double counting of assessments is recognized under the *Organizational Form Component* as a means of justifying an additional charge for those holding companies that elect to be regulated as a savings and loan holding company pursuant to section 10(l) of the HOLA². It seems that the same reasoning justifying an additional charge can be used to justify using deconsolidated assets (minus the savings association's assets). Double counting assets is generally discouraged in the business realm and we encourage the OTS to reconsider its use in this proposal.

4. Complexity Components. In addition to the base charge, the OTS proposes to add a risk and complexity component for assessment purposes. The component is comprised of five subcomponents – financial condition, financial independence (of both the holding company and the subsidiary savings association), operational independence, reputational risk and management experience. While some of these subcomponents are capable of objective measurement, reputational risk, elements of independence, and management experience are subjective measures reflective of supervisory opinion and judgment. Little guidance is given (as yet) on how each subcomponent will be measured or judged.

Given the generalized nature of the guidance in the preamble, it is difficult for a simple holding company whose only asset is the subsidiary savings association not to believe that it would be deemed complex, not because of its structure, but because the major asset is the savings association (failing both financial and operational independence). Yet the holding company may be more of a shell corporation waiting for an opportunity that makes use of the holding company structure a sound business investment. Until the holding company is more actively used, it is not a complex entity. The dilemma posed by this proposal discourages institutions anticipating needs or maintaining structural flexibility because the cost is no longer negligible.

Further, when subjective elements are used to charge assessments, the need for more explanation and more opportunities for a dialogue increase. Savings associations and their holding companies need to understand fully how they are measured and what lines of review or appeal are available, if any. An errant examiner's unhappiness with a particular member of management should not be allowed to transform into an increased complexity rating that raises the entity's assessment. We encourage the OTS to outline the avenues of review and appeal for assessments and their component elements.

5. Organizational Form Component. The OTS proposes to assess section 10(l) holding companies an additional charge for their subsidiary institutions

² As explained in the preamble: "When OTS examines a SLHC that controls a savings association, it already has a thorough knowledge of thrift operations because it has examined the thrift. As a result, OTS can focus its primary efforts on understanding the operations of the SLHC. When it undertakes the examination of a section 10(l) holding company, however, OTS has little direct information on the operations of the state subsidiary depository institution and must undertake a more extensive review to understand those operations."

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because the OTS does not regulate them. Under the Gramm-Leach-Bliley Act, the financial institution regulators agreed to functional regulation, allowing each to regulate those subject to its own expertise. While some agencies have found it difficult to confine themselves to their functional regulatee, that failure should not become the excuse for others to similarly ignore the functional boundaries. OTS has a longstanding and cooperative relationship with the state banking regulators and other financial regulators. We see no need to burden this relationship with an additional charge.

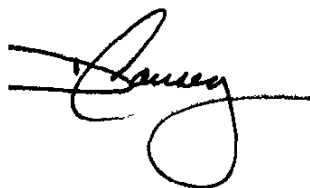
If, on the other hand, the OTS seeks to have the Organizational Form Component act as a means of lowering assessment rates, we support such efforts and look forward to reviewing a notice of proposed rulemaking to this effect.

6. Enhancement of the Charter. The savings association charter is a flexible and versatile charter that works for many business strategies and communities. The OTS is often evaluated by its licensees for value and charter strength. The industry appreciates the value of a strong and fair regulator. One of the challenges for the OTS is the balancing of costs versus charges assessed the industry. There is a point at which cost outweighs value. We encourage the OTS to cast a more critical eye at the cumulative costs potentially assessed the industry and reassess the allocation of those costs.

For the above reasons, we urge the OTS to treat the proposal as a first or Advance Notice of Proposed Rulemaking and use the comments received to develop a more definitive rulemaking. Bulletins have their place, but regulations have formality and process. Assessment rates deserve the formality of a true rulemaking process.

Your consideration of these comments is appreciated. If there are any questions on the issues raised by this letter, please do not hesitate to me at (202) 663-5434.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Dawn Causey", written over a horizontal line.

C. Dawn Causey