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April 5, 2004

Regulation Comment
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552

Attention: No. 2004-06

Thank you for the opportunity to supplement our telephone conversation on March 24th to discuss the Office of Thrift Supervision's (OTS) proposal to change current assessment rules to better reflect the actual costs of supervising savings and loan holding companies (SLHCs). In the proposed rule, the OTS points out that as SLHCs have become more complex in both structure and the nature of their operations, OTS staff has spent substantially more time off-site addressing supervisory and examination related issues as well as monitoring the financial condition of SLHCs. In response, the OTS is proposing a revision of its assessment regulation to permit OTS to recoup supervisory expenses related to the examination of SLHCs through semi-annual assessments. In connection with this change, the OTS will stop charging most fees connected with staff time devoted to SLHC and affiliate supervision and examination.

CSBS¹ wishes to address two specific elements in the proposed rule: the planned assessment of top tier SLHCs and planned changes in the assessment of 10(l) holding companies involving state savings institutions. CSBS also seeks clarification that the proposed assessment changes are not intended to expand the OTS' current supervisory jurisdiction.

Assessment of Top Tier SLHCs

The proposed rule indicates that, in most cases, the OTS performs only one examination of each SLHC structure, although the examination often includes a review of multiple tiers of direct and indirect thrift ownership. The OTS proposes to institute a semi-annual assessment only on the top-tier SLHC. The top tier is defined as the highest level of ownership by a registered holding company in the holding company structure. While CSBS recognizes the importance of taking steps to ensure that appropriate assessment structures are in effect to provide for quality supervision, CSBS is concerned that the current OTS proposal could result in an inappropriate funding protocol.

For example, if the top tier parent is a large, complex institution that owns a relatively small, non-complex savings institution, basing an assessment on the large top tier holding company may prove to be excessive relative to the risk to which the savings institution is exposed by the parent. CSBS notes that the OTS has proposed a relatively modest base assessment of \$3,000.

¹ CSBS is the professional association for the nations 54 state bank regulators, more than 6,000 state chartered banks and state licensed foreign banking institutions.

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However, the OTS would charge an additional semi-annual assessment on a progressive basis that increases significantly based on the assets of the SLHC for a “risk and complexity component.”

To determine the assessment for the risk and complexity component, the OTS proposes to divide SLHCs into two groups: category I and category II institutions.² The OTS would charge the largest of the less complex category I SLHCs (with assets over \$300 billion) up to \$12,500 semi-annually in addition to the \$3,000 base assessment. Similarly, the OTS would assess the largest of the more complex category II SLHCs (with assets over \$300 billion) up to \$45,000 semi-annually in addition to the \$3,000 base assessment. CSBS notes that semi-annual fees charged to smaller SLHCs could also be significant, particularly for holding companies that own small, non-complex savings institutions.

The proposal indicates that the OTS will assign the category I and II designations based on a series of factors including the SLHCs financial condition; whether the SLHC lacks a consistent source of reliable cash flow and stable earnings from operations other than proceeds from the thrift or affiliates that are regulated financial entities; whether the SLHC is significantly leveraged or has major investments that could rapidly require significant cash expenditures or whether the SLHC is in a cyclical industry that is distressed or experiencing adverse trends. CSBS notes that such factors appear to be reasonable to assess risk exposures. However, CSBS also recommends that the OTS consider the source of positive financial strength a SLHC can provide to the underlying savings institution.

Organizational Form Component

The OTS proposal indicates that the second component of the general SLHC semi-annual assessment is the organizational form component. OTS regulated SLHCs can own thrifts in a variety of forms, including stock holding companies, mutual holding companies, and trust holding companies. Additionally, OTS regulates holding companies under section 10(l) of the Home Owners Loan Act that permits a state savings bank or state cooperative bank to elect to be treated as a savings association for the purposes of regulating the holding company. CSBS is directing our comments to the proposed organization form component that would affect 10(l) holding companies.

The proposal indicates that the OTS may incur different supervisory costs to properly supervise 10(l) holding companies for several reasons, including limited direct information on the operations of the state subsidiary depository institution and a regulatory obligation to ensure that the state subsidiary depository institution complies with a number of requirements applicable under section 10 of HOLA. Among other things, due to section 10 requirements, the OTS must verify compliance with: certain transactions with affiliate restrictions; advance notice of dividend declarations with the OTS; and compliance with the qualified thrift lender test. The proposal also indicates that the OTS must work with federal regulators and a subset³ of the nation’s 54 state regulators.

Under the proposal, a 10(l) holding company would be subject to the base \$3,000 assessment, the risk and complexity component described in the previous section of our comments, and a new

² The OTS considers Category I SLHCs to be noncomplex and present relatively low risk; category II SLHCs are considered complex structures that exhibit characteristics that present a higher degree of risk.

³ According to the *2002-2003 CSBS Profile of State Chartered Banking*, 34 state banking departments supervise state savings institutions that may have the option of electing 10(l) status.

organizational component. The organizational component would add a multiplier of 50 percent for section 10(l) holding companies. As a result, category I and category II SLHCs face another semi-annual charge. CSBS notes for example, that the OTS would assess the largest category one institutions the base \$3,000 assessment plus a risk and complexity component of \$12,500 plus an organizational component of \$7,750 semi-annually (50% of the base assessment and the risk and complexity component). This would amount to more than \$23,000 in new semi-annual fees for well rated non complex top-tiered SLHCs, for a total of nearly \$50,000 in new proposed annual assessments.⁴

For the largest more complex category II 10(l) SLHCs the new fees are even more significant. Well rated SLHCs with \$300 billion or more in assets would face the semi annual base assessment of \$3,000 plus the risk and complexity component of \$45,000 plus another \$24,000 for the organizational component assessment. Such fees (\$144,000) on an annual basis present significant new costs. Fees for smaller 10(l) SLHCs would also be significant. For example, a well-rated 10(l) with \$1 billion in assets would face a base assessment of \$3,000, a risk and complexity assessment of \$6,000 plus an organizational component assessment of \$4,500 resulting in semi-annual assessments totaling \$13,500 or nearly \$27,000 per year.

Given the magnitude of the proposed assessments, CSBS asks the OTS to consider the following recommendations in order to ensure that the OTS has the supervisory resources that it needs, while balancing added regulatory burdens imposed on the industry:

- (1) The OTS should rely to the fullest extent possible on the primary state and federal regulators for 10(l) holding companies (state bank regulators and the FDIC) to provide supervisory information needed to evaluate SLHCs. The OTS currently receives examination reports on state savings institutions from both the FDIC and state banking departments. CSBS encourages the OTS to work closely with state banking agencies and the FDIC to expand examination and information sharing protocols as necessary to expand the data the OTS needs to supervise SLHCs and to monitor 10(l) savings institutions. CSBS would be happy to work with the OTS to identify information sharing mechanisms that may be necessary, particularly relating to information sharing with state banking agencies. Taking such steps could obviate much of the need for the assessments contained in the proposal.
- (2) The OTS should consider a phase-in period and or grandfather exception for institutions that will confront the new range of assessments outlined in the proposal.
- (3) After adopting any new assessment protocols arising from the proposed rule, the OTS should track actual examination resources utilized to supervise SLHCs to determine whether the new supervisory assessments are appropriate.

Clarification of Regulatory Jurisdiction

The proposal indicates that the OTS intends to apply the new supervisory assessment outlined previously in our comments to top tier SLHCs. There are several large state chartered

⁴ The OTS would assess significant additional fees if the most recent examination rating assigned to the top tier SLHC or the most recent exam rating assigned to any savings and loan holding company directly or indirectly controlled by the top-tier SLHC was "unsatisfactory." Unsatisfactory ratings indicate that the SLHC presents a detrimental or burdensome effect on the thrift. For these institutions, the OTS would charge a condition component equal to 100% of the total of the base assessment, the risk and complexity component, and the organizational component.

institutions that are not subject to the Federal Reserve's jurisdiction that own or are affiliated with a savings and loan institution. For many of these institutions, the savings institution amounts to a very small part of the parent institution. CSBS seeks clarity regarding whether the OTS intends to expand its holding company jurisdiction to a broader class of financial institutions. Before taking any steps to begin supervising institutions that the OTS has not previously examined, CSBS urges the OTS to rely to the fullest extent possible on primary regulators including state banking agencies and the FDIC.

Conclusion

CSBS fully supports all reasonable steps that state and federal regulators take to ensure that the regulation delivered to the industry under their jurisdiction is efficient and delivered through examiners with expertise. Such steps provide value to the financial services industry that can in turn, provide critical capital to fuel our economy and invaluable services to consumers. We stand ready to work with the OTS to support such efforts while striking a balance to eliminate unnecessary regulatory burdens for the industry.

Best personal regards,

Neil Milner

A handwritten signature in black ink that reads "Neil Milner". The signature is written in a cursive, flowing style.

President and CEO

MEMORANDUM

TO: Public File

FROM: Karen Osterloh, Special Counsel

DATE: April 5, 2004

RE: Assessments and Fees; Proposed Rule – Docket No. 2004-06
Summary of OTS meeting with members of the public

Attendees

On March 24, 2004, the following individuals participated in a conference call on OTS's proposed rule on assessments and fees.

- Members of the public – Ms. Montrice Yakimov and Mr. Alan Cox, representing Conference of State Bank Supervisors, and Mr. Ed Leary, Bank Commissioner, representing the Utah Department of Financial Institutions.
- OTS – Carolyn J. Buck, Chief Counsel, and Karen Osterloh, Special Counsel.

Summary of Discussion

Ms. Yakimov observed that the proposed rule would impose an organizational form component on section 10(l) holding companies. She noted that OTS based this extra charge on the additional costs of supervising this type of holding company, including additional costs of obtaining information on the operations of the subsidiary state savings bank. Ms. Yakimov indicated that the states and OTS have entered into various agreements on sharing examination reports. Ms. Yakimov asked whether OTS has had any problems obtaining state examination reports.

Ms. Buck responded that she was not aware of any problems. States either routinely provide copies of these reports to OTS, or respond to OTS requests for copies.

Mr. Cox indicated that he contacted the FDIC, which indicated that they routinely provide OTS with copies of their examination reports.

Since the states and the FDIC provide examination reports, Ms. Yakimov asked whether OTS was not receiving any other necessary information from the states, and whether this had served as the basis for the additional assessment under the organizational component.

Ms. Buck noted that the examination reports, while helpful, do not allow OTS to fully understand the impact of the savings and loan holding company on the subsidiary institution. To do so, OTS examiners must spend hours on-site at the holding company and off-site preparing for the examination and monitoring the holding company. While

OTS's current system captures on-site hours, it does not currently capture off-site monitoring and supervision.

Ms. Yakimov asked for clarification whether the charges under the proposed rule would be imposed on the holding company or on the subsidiary savings association.

Ms. Buck responded that the assessment would be imposed on the holding company.

Ms. Yakimov asked whether OTS would like to obtain any additional type of analyses from the states to assist it in their supervision of section 10(l) holding companies.

Ms. Buck indicated that she did not know, but would present this question to Supervision.

Mr. Leary observed that some industrial loan companies (ILC) have affiliates in their corporate structures that are federal savings associations. Mr. Leary presented an example where a company owns an ILC and a savings association. In the example, the ILC does not hold any direct interest in the savings association. Mr. Leary asked whether the assessment regulation somehow would give OTS jurisdiction over this ILC.

Ms. Buck believes that a company that owns a savings association and an ILC is a savings and loan holding company and is subject to OTS jurisdiction, unless the company also owns a bank. In this latter case, the FRB is the holding company regulator. Ms. Buck stated that the assessment regulation would not alter this statutory scheme. Ms. Buck indicated that she would review this matter to make sure that there was no special statutory provision on ILCs that would alter this general rule. If the ILC is held by a savings and loan holding company, Ms. Buck noted that ILC assets would be consolidated onto the holding company's balance sheet. Since one component of the holding company assessment is based on consolidated assets, the ILC's assets would increase the holding company's assessment.

Ms. Yakimov indicated that CSBS may include a question about the treatment of ILCs in their comments.

Mr. Leary asked whether OTS envisions any changes in their approach to the supervision of holding companies.

Ms. Buck indicated that she would refer this question to OTS Supervision.

Ms. Yakimov asked whether Ms. Buck knew what percentage of examinations of section 10(l) holding companies were joint examinations with State or FDIC regulators.

Ms. Buck did not know.

Ms. Yakimov asked whether OTS would exempt certain existing holding companies from all or any portion of the final assessments rule.

Ms. Buck indicated that OTS had not considered such a provision, but would address this issue if it were raised in the comments.