

7

THE FINANCIAL SERVICES ROUNDTABLE



1001 PENNSYLVANIA AVENUE, NW
SUITE 500 SOUTH
WASHINGTON, DC 20004
TEL. 202-289-4322
FAX 202-289-1903

March 26, 2004

Carolyn J. Buck
Chief Counsel
Office of Thrift Supervision
1700 G Street N.W.
Washington, D.C. 20552
Attention: 2004-06

E-Mail rich@fsround.org
www.fsround.org

RICHARD M. WHITING
EXECUTIVE DIRECTOR AND
GENERAL COUNSEL

RE: Notice of Proposed Rulemaking on Assessments and Fees

Dear Ms. Buck:

The Financial Services Roundtable¹ (the "Roundtable") appreciates the opportunity to comment on the proposed rulemaking issued by the Office of Thrift Supervision ("OTS") on assessments and fees.

Background

While the Roundtable generally supports efforts to create efficiencies and explore new approaches in the regulation of financial institutions it represents, we are concerned that the proposed rulemaking creates certain ambiguities that will have a negative impact on financial institutions. In fact, we believe finalization of the proposal would increase regulatory burden exactly at the same time that most regulations and legislation are seeking the opposite objective. We also believe that the proposed rule conflicts with the framework of functional regulation developed in the Gramm-Leach-Bliley Act of 1999 ("GLB").

The proposed rule would create two categories of top tier Savings and Loan Holding Companies ("SLHCs") and assess each differently based upon complexity. The apparent justification for the difference in classification is an asserted link between complexity and risk. Perhaps a more appropriate link could be established between actual performance of

¹ The Financial Services Roundtable (the "Roundtable") represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Roundtable member companies provide fuel for America's economic engine accounting directly for \$18.3 trillion in managed assets, \$678 billion in revenue, and 2.1 million jobs.

the SLHC as found in the examination and the assessment charged. In that manner SLHCs would be assessed based upon their performance (or that of their subsidiary financial institution(s)) and the consequent risk they present rather than merely their complexity without regard to the composite risk of the organization.

The proposed rule is too ambiguous

The ambiguities in the proposed rule involve the definitions and classifications of SLHCs in separate categories based upon risk. The Category I top tier SLHCs are considered to have noncomplex structures with relatively low risk and would be subject to only an abbreviated examination program. The Category II top tier SLHCs, on the other hand, would be examined using the CORE Holding Company Examination Program. It is unclear from the proposed rule, however, exactly what type of structure the OTS would consider “complex” or how complexity would impact risk. The ambiguity between what constitutes a Category I entity *versus* a Category II entity could be eliminated if SLHCs were assessed on actual performance rather than complexity.

Similar ambiguity is contained in the additional category of SLHCs labeled in the proposed rule as “conglomerates.” Though the classification of top tier SLHCs between Category I and II is purportedly designed to address a perceived need to treat institutions differently based upon complexity, the proposed rule creates an additional classification for “particularly complex enterprises.” The proposed rule does not clearly define the characteristics of such enterprises and leaves open the calculation of the assessment—referring simply in the commentary to the OTS’s anticipation “that these assessments will substantially exceed the amounts prescribed for other SLHCs under the proposed rule.”

This ambiguity will negatively impact the business models of financial institutions, as it will be difficult to budget for these assessments. In addition, institutions will need to expend additional resources on compliance clarification of these classifications.

The proposed rule conflicts with the framework of functional regulation under GLB

The member companies of the Roundtable are concerned that the “subcategory” of conglomerates conflicts with the functional regulatory framework developed by GLB. Conglomerates are characterized under the proposed rule as enterprises consisting of a number of different companies operating in diversified fields. The functional regulatory framework developed by GLB established a new methodology of regulation for entities that became combined or affiliated following the removal of restrictions on such combinations. The functional regulatory framework of GLB was meant to avoid

duplicative and overlapping oversight on the part of regulators by defining and distinguishing their respective roles.

The Roundtable believes the proposed rule represents a shift away from this framework by subjecting entities currently subject to regulation by other functional regulators recognized under GLB to duplicative and costly regulation of their operations outside of the OTS's area of responsibility.

The proposed rule does not enhance the examination and supervision of financial institutions

Though the commentary expresses a belief that the proposed rule would create efficiencies by encouraging efforts to perform examination-related SLHC work off-premises when possible, there would not appear to be a commensurate savings in fees and assessments. Indeed, without identifying any additional benefits to regulated SLHCs or setting forth increased burdens placed upon the OTS examination staff, the proposed rule would likely significantly increase assessments for virtually the same level of examination oversight.

A negative factor should be applied to trust only thrifts

One component of the general SLHC semi-annual assessment is organizational form. Under Section 502.28, the OTS will determine if the organizational form of a company causes the OTS to incur different supervisory costs and may modify the assessment accordingly.

We believe the proposed rule would create a significant increase in the examination fees assessed to thrifts that operate as trust only institutions and do not accept insured deposits. Therefore, the Roundtable recommends that the OTS apply a negative factor to the assessment for trust only thrifts that would counter these increased costs. This negative factor should effectively match the assessment to the actual cost.

Conclusion

We believe that the ambiguous definitions and classifications of SLHCs and conglomerates in the proposed rule would be burdensome for financial institutions at a time when regulations have the goal of lessening regulatory burden. The lack of specificity would create compliance burdens and make it difficult for institutions to budget for assessments. Furthermore, the burdens on the institutions created by additional fees and assessments would not be outweighed by any benefits in the way

institutions are examined or supervised. Finally, we believe the proposed rule conflicts with the framework of functional regulation under GLB and subjects institutions to duplicative regulation.

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