

900 Nineteenth St. NW, Ste. 400
Washington, DC 20006

TEL: (202) 857-3100

FAX: (202) 296-8716

E-MAIL: info@acbankers.org

http: www.acbankers.org

2A



Diane M. Casey
Assistant & Chief Executive Officer

February 6, 2001

Manager, Dissemination Branch
Office of Thrift Supervision
Information Management & Services Division
1700 G Street, N.W.
Attention: Docket No. 2000-91
Washington, D.C. 20552

Re: **Savings and Loan Holding Companies Notice of Significant Transactions or
Activities and OTS Review of Capital Adequacy**
65 Fed. Reg. 64392 (October 27, 2000)

2001 FEB 06 AM 11:39
RECEIVED
INFORMATION SERVICES
DIVISION

Dear Sir or Madam:

America's Community Bankers ("ACB")¹ is pleased to comment on the proposed regulations issued by the Office of Thrift Supervision ("OTS"), which would require certain savings and loan holding companies to notify the OTS before engaging in, or committing to engage in, significant debt or asset acquisition transactions, as well as transactions that significantly reduce capital, or transactions for which prior notice otherwise might be required by the OTS in its discretion.²

ACB Position Summary

At the outset, ACB must state its strong opposition to this proposal, both in terms of the specific regulations drafted and in terms of the proposal's broader implications. In ACB's view, the proposed regulations do not respond to the OTS's underlying concerns relating to the independent franchise value of savings associations, excessive leveraging by holding companies, and alleged abusive affiliate relationships that may exist in a handful of organizations.

Instead, this rule introduces an unnecessary and overly burdensome regulation for hundreds of well-capitalized and well-managed savings and loan holding companies that is without sound regulatory justification. At best, the proposed rule introduces a previously unknown, and practically unworkable, prior notice regulatory scheme; at worst, it represents an unjustified substitution of the appropriate business judgment of qualified holding company management with that of the OTS.

¹ ACB represents the nation's community banks of all charter types and sizes. ACB members pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

² 65 Fed. Reg. 64392 (October 27, 2000) (The comment period on the proposed rulemaking was extended until February 9, 2001 (65 Fed. Reg. 77528 (December 12, 2000))).

In summary, ACB believes this proposal is fatally flawed and must be withdrawn.

More broadly, ACB has serious reservations concerning the potential for this regulation to serve as a first step in formalizing or establishing a "source of strength" doctrine. Such a standard finds no statutory support.

Proposal Background

The OTS recently has expressed concerns over the nature of the relationship between the financial stability and health of savings and loan holding companies and the financial condition of savings association subsidiaries. First, the OTS notes that there has been a fundamental change in the manner in which savings associations are operated in many holding company structures. Today, many savings associations are part of highly integrated corporate structures. This trend often involves the outsourcing from the savings association of critical functions, such as asset liability management. As a result, the OTS believes that many savings associations are subject to decisions based on the overall best interests of the organization, and not necessarily with a view toward the best interests of the savings association in particular. The OTS, thus, believes that the independent franchise value of the savings association charter may be compromised through relationships with affiliates.

Second, the OTS has stated its concerns about the excessive leveraging at the holding company level that has occurred in some organizations. In its view, this may prevent parent holding companies from being able to support savings association subsidiaries in times of need. Next, the OTS cites certain instances where holding companies have engaged in transactions or practices that were likely to cause harm to the subsidiary savings association, and may have violated existing statutes or regulations. Finally, the OTS has noted an overall increase in the risk levels associated with holding company activities following the passage of the Gramm-Leach-Bliley Act.

OTS Proposal

Prior Notice Requirements

In response to these concerns and the specific issues occurring in a handful of transactions, the OTS proposes to require that certain holding companies notify the OTS before engaging in certain described debt transactions, transactions that reduce capital, some asset acquisitions, and other transactions determined by OTS on a case-by-case basis. Currently, the OTS does not analyze proposed major transactions by holding companies before these transactions are consummated. Under the proposal, holding companies with savings association subsidiaries comprising 20% or less of total assets would be exempt. In addition, any holding company that maintains consolidated tangible capital of 10% or more following a significant transaction also would be exempt.

For those holding companies that are not exempt, the proposed rules would require that the holding company provide prior notice to the regional OTS office before engaging in, or committing to engage in, any asset acquisition equaling 15% of the holding company's

consolidated assets; any issuance, renewal or guarantee of debt resulting in an increase of its consolidated, non-thrift liabilities of 5% or more (or total consolidated non-thrift liabilities representing 50% or more); or any transaction (or series of transactions) during a 12-month period that would reduce its ratio of consolidated tangible capital to consolidated total assets by 10% or more. In addition, the regional OTS office would have the discretionary authority to notify any holding company in writing that the OTS believes a prior notice is required in connection with a particular transaction.

Capital Standards for Holding Companies

In view of the concerns noted by the OTS regarding the ability of savings and loan holding companies to serve as sources of strength for their subsidiary savings associations, the OTS also is considering whether to codify its current practice for reviewing the capital adequacy of savings and loan holding companies and, when necessary, requiring additional capital on a case-by-case basis. The OTS has indicated that it may or may not issue a final capital rule, or may do so following the comments received during this rulemaking process.

ACB's Concerns

ACB agrees that the OTS has legitimate concerns whenever a savings and loan holding company acts to put its savings association subsidiary at risk. However, we believe the OTS's record of regulating savings associations demonstrates quite effectively that the agency already possesses the requisite supervisory tools to prevent such rare occurrences within a narrow universe of holding companies requiring heightened scrutiny.

ACB also believes that the OTS's ability to engage in regular, meaningful and ongoing communications with its regulated institutions results in a better understanding and more productive relationship. This practice, in turn, minimizes the opportunity for risky activities to go undetected and uncorrected. Moreover, ACB believes that initiatives such as increasing the use of electronically filed Securities and Exchange Commission report data, and revising the OTS's Form H-b(11) to make data more electronically accessible will facilitate further this essential information flow between the OTS and its regulated holding companies.

It is partly because of the presence of such supervisory resources that ACB finds the proposed regulation so troublesome. If adopted in its current form, savings and loan holding companies will be hamstrung by this regulation and will operate at significant competitive disadvantage. This will, in turn, pose a serious risk to the long-term viability and attractiveness of a federal savings association charter.

Prior Notice Provisions

ACB believes that the prior notice provisions of the proposed regulation are notably flawed in several ways:

- The proposed 30-day prior notice timeframes could, in fact, result in significantly longer processing periods as complex and varied transactions are reviewed. This will effectively

prevent many legitimate deals from being completed in a timely fashion. Many debt issuances and asset acquisitions are developed and consummated within very tight timeframes. This regulation effectively prevents such deals because the specter of a prior approval period looms overhead.

- That the OTS has attempted to restrict this regulation to a limited class of holding companies does not assuage our fundamental concerns. Even if not covered by the regulation at any particular point in time, this proposal also threatens holding companies that might grow to reach coverage thresholds.
- The review process would be unfairly lengthy as OTS develops the necessary resources to review such a wide variety of potentially covered – and often complex – transactions.
- The 10% capital trigger represents a capital standard that, in operation, would result in well-run organizations having to seek prior approval for transactions that pose no significant safety and soundness risks.
- The proposal vests too much discretionary authority in regional OTS offices, which will result in disparate treatment and varying standards of review among regions. ACB is especially concerned with the proposed “catch all” authority of the OTS to require a notice application from any savings and loan holding company in the event such notice is deemed necessary by the regional OTS office acting in its discretion. This potential for ad hoc reviews of business decisions would significantly impact the ability of OTS-regulated holding companies to negotiate and complete any number of legitimate business transactions that are not appropriate for prior regulatory review.
- Requiring prior notice for “commitments to engage” in covered transactions ignores the dynamics and fluid nature of transaction negotiations in a modern business environment.

Capital Standards

Although the OTS has stated this proposal is not designed to establish minimum capital standards for savings and loan holding companies, ACB believes that its comments portend such a step. And, with the recent publication of the Basel Committee on Banking Supervision’s proposed capital accord, we believe it is vitally important that any capital discussion first be delayed until the full effect of the more comprehensive global effort is analyzed and developed. Regardless, any capital proposal must be developed and subjected to review in accordance with applicable Administrative Procedures Act requirements and regulations.

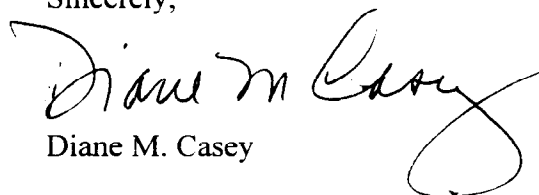
Conclusion

The historical value of the savings and loan holding company structure has been its flexibility. ACB remains a strong proponent of safety and soundness. Yet nothing in this proposal adds measurably to improving safety and soundness and at the same time it jeopardizes the very existence of a corporate structure that has proven valuable over the years. ACB strongly opposes this imposition of additional regulations governing transactions by holding companies. Furthermore ACB does not support any OTS proposal that would result in the establishment of defined holding company capital standards that would place savings and loan holding companies at a competitive disadvantage in the market place.

ACB appreciates the opportunity to comment on this important matter. We are prepared to assist the OTS in any way possible in developing useful regulatory guidance that addresses legitimate supervisory concerns, while avoiding any significant increase in regulatory burdens already faced by savings and loan holding companies. ACB strongly believes that the OTS has more than adequate authority to accomplish its stated goals, including increased communication, through supervisory means. Upon the withdrawal of the proposal, ACB's working group will work with the OTS to determine how to best respond to the agency's concerns.

If you have any questions, please contact Charlotte M. Bahin at (202) 857-3121, or via email at cbahin@acbankers.org, or Michael W. Briggs at (202) 857-3122, or mbriggs@acbankers.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Diane M. Casey". The signature is fluid and cursive, with a large loop at the end of the last name.

Diane M. Casey