American Insurance Association

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INFORMATION SERVICES
DIVISION

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

Re: Savings and Loan Holding Companies
Notice of Significant Transactions or Activities

Ladies and Gentlemen:

This is in response to the Office of Thrift Supervision's ("OTS's") request for public comment on a proposed rule that would require certain savings and loan holding companies to notify the OTS before engaging in or committing to engage in certain debt transactions, asset acquisitions or transactions that reduce capital (the "Proposed Rule"). 65 *Fed. Reg.* 64392 (October 27, 2000). The OTS also seeks public comment on its proposal to codify its practice of reviewing the capital adequacy of savings and loan holding companies and requiring additional capital on a case-by-case basis.

AIA is a trade association of major property and casualty insurance companies, representing more than 375 insurers that provide all lines of property and casualty insurance throughout the United States and write more than $60 billion in annual premiums. Many insurers that are members of the AIA are savings and loan holding companies. Accordingly, these AIA member companies would become subject to the Proposed Rule.

Summary

AIA believes the OTS should not adopt the Proposed Rule. We believe that there is little evidence that the practices which the OTS identifies as the bases for the Proposed Rule present significant risks to savings associations. We believe that the additional burden placed upon holding companies cannot be justified by the minimal risk to savings associations. AIA believes that the increased burden the Proposed Rule would impose upon savings and loan holding companies is inappropriate and undesirable. The few instances in which action by the OTS may be appropriate can be dealt with by the OTS using its current authority to address supervisory concerns. Accordingly, we believe the Proposed Rule is unnecessary.

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We also believe that the proposal represents an unwarranted extension of the OTS's supervisory authority. In addition, the OTS's proposal is inconsistent with Congressional intent, as reflected in the Gramm-Leach-Bliley Act, to reduce the scope of the agencies' supervisory role to instances where remedial action need be taken in respect of a particular company. The extension of regulatory authority to holding companies in the manner proposed will also thwart Congressional intent that savings and loan holding companies be permitted to engage in a broad range of activities without undue interference by Federal financial supervisory agencies.

Finally, if the OTS determines to proceed with the proposal, we believe it should make an exception for savings and loan holding companies that are affiliated with regulated companies such as insurance companies. Because of the scrutiny and oversight which insurance companies and their holding companies undergo by state insurance authorities, we believe there is little reason to impose additional supervisory burdens on such holding companies. Insurance companies are subject to unique regulatory requirements established by state insurance authorities and industry convention. The Proposed Rule does not take into account requirements that specifically apply to the insurance industry.

Specific Comments

The OTS Does Not Have Authority to Adopt the Proposed Rule

As the OTS is aware, during the past several years, many insurance companies have formed or acquired savings associations. While the reasons for establishing a savings association subsidiary may differ from company to company, it is usually the case that the savings association is integrated into the company's operations. For example, many thrifts provide fiduciary services for customers who purchase products and services from their affiliates. The affiliated thrift's products and services are increasingly becoming an important part of the mix of products and services that are available to customers. Accordingly, thrifts serve an important role within the holding company structure.

The OTS states that many savings associations are subject to decisions that are made in the best interests of the company, with little consideration of the potential effect on the thrift standing alone. Accordingly, the OTS states that this highlights the need for increased supervisory vigilance to ensure that actions by an affiliate do not pose a material risk to the safety, soundness or stability of the thrift. The OTS identifies additional holding company practices, such as double leveraging, excessive growth, and risky investment practices that it believes justify adopting the Proposed Rule. Accordingly, the OTS would require certain holding companies to notify the OTS before engaging in certain debt transactions, transactions that reduce capital by a certain percentage, certain asset acquisitions and other transactions as determined by the OTS on a case-by-case basis.

Section 10 of the Home Owners' Loan Act of 1933 ("HOLA") establishes the framework under which savings and loan holding companies may function. 12 U.S.C. § 1467a. Congress established in that section certain authority which the OTS may use to regulate holding companies. For example, the OTS is granted broad discretion when a company applies to acquire an existing thrift or to establish a *de novo* institution to ensure that the applicant's activities will not have a negative effect upon the thrift. This is often accomplished by requiring the company to notify the OTS if it intends to modify the thrift's business plans in a material manner, or to maintain the thrift's capital at a specified level. Holding companies are also constrained in the manner in which they may engage in transactions with affiliated thrifts, and their subsidiary thrifts must provide notice to the OTS before declaring dividends. 12 U.S.C. §§ 1467a(f), 1468.

We believe the prior notice requirements of the Proposed Rule are inconsistent with the OTS's authority under § 10 of HOLA. We are of the view that the general authority conferred on the OTS in 12 U.S.C. § 1467a(g)(1) to issue regulations necessary or appropriate to carry out the purposes of, and require compliance with, § 10 of HOLA does not authorize the OTS to adopt the Proposed Rule. Reading this provision in the manner the OTS suggests would enable the OTS to regulate the activities of holding companies without limit and without further Congressional authorization.

Nothing in § 10 authorizes the OTS to require holding companies to notify the OTS before engaging in certain transactions. The OTS's authority contained in 12 U.S.C. §§ 1467a(g)(5) and (p) applies to its ability to prevent a holding company from *continuing* an activity that poses a serious risk to the financial safety, soundness or stability of the affiliated thrift. HOLA does not provide the OTS with broad authority to require prior notice from holding companies to engage in transactions that are not engaged in by the company with the affiliated thrift. Accordingly, we believe that the OTS cannot rely upon its authority under § 10 of HOLA to adopt the Proposed Rule.

The Proposed Rule Imposes Undue Burdens on Holding Companies

The Proposed Rule would apply to holding companies when subsidiary thrifts represent 20 per cent or more of the holding companies' total consolidated assets. The OTS states that below 20 percent, the thrift represents a small share of the holding company's overall business. Such thrifts would not be the primary line of the company's business and would be less likely to be affected by the transactions covered by the proposal. AIA believes that 20 percent is too low. We believe that a 50 percent threshold is more appropriate. That percentage would be consistent with the percentage that distinguishes a diversified savings and loan holding company from other holding companies under HOLA. 12 U.S.C. § 1467a(a)(1)(F). In that section, Congress determined that a company is a diversified holding company if its thrift affiliate represents less than 50 percent of the company's consolidated net worth. We believe it is appropriate for the OTS to use a similar percentage of total assets in the Proposed Rule. This would reduce the burden on holding companies while at the same time focusing attention on transactions of holding companies that might have a more direct effect on their affiliated thrifts.

The OTS also proposes to exclude holding companies from coverage of the Proposed Rule if the company possesses consolidated tangible capital of 10 percent or more following the proposed transaction. While the OTS claims that the 10 percent level does not represent a capital requirement for holding companies, we believe that the practical effect of such a threshold will be to establish a 10 percent capital requirement. This is because holding companies will strive to avoid having to provide notice to the OTS every time they propose to engage in a material transaction.

You ask whether it is appropriate to exempt holding companies that control thrifts that perform limited operations, such as trust operations. AIA strongly supports such an exemption for such holding companies. Thrifts with limited operations are typically engaged virtually exclusively in trust functions. A holding company's transactions typically will not have an adverse effect on such thrifts because of the limited nature of the thrift's activities.

The OTS has proposed that holding companies would be required to report proposed debt transactions that would (1) increase debt by more than 5 percent (over a 12 month period), and (2) would result in consolidated non-thrift liabilities equal to 50 percent of more of the company's consolidated tangible capital. AIA strongly objects to this requirement. We believe that it is entirely inappropriate for the OTS to scrutinize debt issuances by holding companies and their subsidiaries. Such a requirement will sweep numerous transactions into the scope of the OTS's authority, a result neither mandated by HOLA nor by public policy. In this regard, an insurance company's loss reserves are regarded as liabilities. Consequently, any addition that would increase a company's loss reserves by 5 percent would likely be subject to OTS review before such an increase could take place. AIA believes this is highly inappropriate because it runs the risk of interfering with actions of state insurance authorities, and is contrary to the concept of functional regulation, which is the cornerstone of the Gramm-Leach-Bliley Act.

The Proposed Rule would also require holding companies to submit notices to the OTS prior to acquiring assets if transactions over a 12 month period would increase the company's consolidated assets by more than 15 percent. AIA believes that this requirement is highly undesirable and will have the effect of significantly interfering with the operations of holding companies.

Finally, a notice would also be required if the company's tangible capital ratio to tangible assets would, over a 12 month period, decrease by 10 percent or more. We object to this requirement on two bases. First, the requirement could result in inappropriate control by the OTS of transactions that it should not ordinarily be involved with. For example, a company would not be permitted to write off assets until it had notified the OTS if the effect of the write-off would be to reduce the company's capital by 10 percent. Second, we believe that a 10 percent threshold is too low. Many types of transactions could result in a reduction in a company's capital ratio of 10 percent.

For example, a holding company would not be permitted to declare a dividend if the effect is to reduce its tangible capital ratio by 10 percent.

A notice requirement is also inconsistent with the provisions of HOLA which permit the OTS to require a thrift institution to notify the OTS before declaring a dividend. Congress did not provide the OTS with any authority to require holding companies to provide a similar notice to the OTS. Accordingly, we believe that the standard the OTS proposes is unwarranted.

You also ask if a holding company should be required to notify the OTS if it intends to enter a new line of business or divest itself of significant assets or a line of business. AIA opposes any such requirement. We see no need for such a level of micromanagement by the OTS. We do not believe the OTS is in a position to determine what types of new businesses are appropriate for a holding company or what strategies a holding company may choose to employ to divest itself of various businesses. Such a requirement would transform the OTS into a "super regulator" of nonthrift operations, a role clearly outside the scope of the agency's authority and expertise.

The 30 Day Notice Period

AIA also objects to the requirement that a holding company provide a notice to the OTS at least 30 days prior to engaging in the transaction. We believe that it is unlikely that the OTS will be in a position to process a notice within 30 days. Transactions for which notices are necessary will undoubtedly require extensive analysis by the OTS staff. What is most likely is that the OTS will require the notificant to extend the time period for the OTS's review. This will undoubtedly result in additional delays and perhaps loss of market opportunities. Given the turbulent nature of today's markets, it is imperative that companies be in a position to take advantage of opportunities as they may present themselves. If a company is required to notify the OTS 30 days prior to issuing debt or acquiring assets, it may very well lose a market opportunity. Accordingly, we believe that a requirement of prior notice should not be adopted. Rather, we believe that a notice after the transaction has been consummated should be sufficient to inform the OTS of possible action it may wish to consider to ensure that an affiliated thrift is not adversely affected by the transaction. The OTS can then take remedial action under its broad authority to require holding companies to take actions to reduce serious risks to thrifts under 12 U.S.C. §§ 1467a(g)(5) and (p).

The Disapproval Standards Are Vague

The Proposed Rule states that the OTS may disapprove a transaction if it determines that it will pose a material risk to the financial safety, soundness or stability of an affiliated thrift. The OTS states that in making this determination, it will consider such factors as the extent to which the transaction is funded by debt and on what terms, the effect of the transaction on cash flow and liquidity of the thrift, the impact of the transaction on the risk of the overall organization, and the effect of the transaction on the company's capital and earnings.

AIA believes that these factors are quite vague and do not provide meaningful standards which holding companies can employ to assess the likelihood that the OTS will not disapprove the transaction. We believe that it is important that the OTS establish more concrete standards that companies can rely upon to determine whether a proposed transaction will meet the OTS's scrutiny.

The Proposed Review of Capital Adequacy is Inappropriate

The OTS has also asked for public comment on whether it should adopt a rule codifying its current practice of reviewing capital adequacy on a case-by-case basis. You indicate that you are not proposing to establish capital guidelines applicable to holding companies. Nevertheless, we believe that it is unnecessary to codify the OTS's current practice. The OTS's practice of reviewing the financial resources of prospective holding companies and its authority to take remedial action against holding companies which are inadequately capitalized are, in our judgment, the appropriate methods for addressing the issue of capital. We do not believe that it is necessary for the OTS to adopt a rule that merely restates the factors it considers in evaluating the adequacy of a holding company's capital. The factors you present are quite general and do not provide a great deal of guidance to holding companies. In addition, you indicate that they are not an exhaustive list of the factors you may consider. Accordingly, we do not believe that there is great benefit to holding companies for you to merely list the factors in a rule. This could be accomplished through the issuance of a regulatory bulletin or other similar communication.

The AIA appreciates the opportunity to provide its comments on the Proposed Rule. If you have any questions, please do not hesitate to call.

Sincerely,

Craig A. Berrington

Craig A. Berrington
Senior Vice President
and General Counsel