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CHEVY CHASE BANK

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Manager, Dissemination
Information Management and Services Division
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552

Attn: Docket No. 2000-91

Re: Savings and Loan Holding Companies Notice of Significant Transactions or Activities and OTS Review of Capital Adequacy

Ladies and Gentlemen:

Chevy Chase Bank, F.S.B. ("Chevy Chase") and its thrift holding company parent, the B.F. Saul Real Estate Investment Trust (the "Trust"), appreciate this opportunity to comment on the OTS's proposal to revise significantly the regulatory scheme for thrift holding companies.[1]

Chevy Chase is the largest depository institution headquartered in the Washington, D.C. metropolitan area with total assets of nearly $11 billion and 170 branches. Chevy Chase has been operating for over 30 years, and the Trust and the B.F. Saul Company have been registered and regulated as thrift holding companies for over 15 years.[2] The Trust's principal business activity is the ownership and development of income-producing properties, including hotels, office buildings, and industrial projects. Chevy Chase represents over 95 percent of the Trust's consolidated tangible assets. However, the banking and real estate activities are conducted by independent management teams with virtually no operational overlap. Moreover, a majority of Chevy Chase's board of directors consists of outside directors not affiliated in any way with the Trust or Chevy Chase's other holding companies.

As discussed more fully below, Chevy Chase and the Trust believe that the OTS proposal (i) represents an unnecessarily burdensome way to accomplish OTS's stated policy objectives, (ii) raises a number of technical issues that would make compliance virtually impossible under certain circumstances, (iii) is particularly unworkable for thrift holding

[1] In addition to the Trust, which owns 80 percent of Chevy Chase, three other companies are also registered as savings and loan holding companies by virtue of their direct and indirect shareholdings in the Trust and/or Chevy Chase. The discussion below focuses on the Trust, whose operations would be most significantly affected by the proposal; however, most of the comments apply equally to Chevy Chase's other holding companies.

[2] The other two Chevy Chase holding companies have been registered and regulated as thrift holding companies since 1995.

companies which, like the Trust, are engaged in real estate activities, and (iv) raises questions concerning the appropriateness of implementing such a far-reaching proposal without explicit Congressional authorization.

I. Policy Considerations.

According to Director Seidman's January 17, 2001 remarks to the Exchequer Club of Washington, D.C., the current thrift holding company proposal is designed to address OTS policy concerns in the following three areas: (1) excessive leveraging at the holding company level, which may inhibit the ability of the holding company to access the capital markets in order to assist the thrift in times of need or place excessive dividend demands on the thrift; (2) conducting new activities or acquiring new businesses that are inherently more risky than traditional operations; and (3) increased interdependence between a thrift holding company and its subsidiary thrift, particularly among newly chartered thrifts. While we appreciate these concerns, we do not believe that imposing the significant industry-wide burdens and costs associated with this proposal is necessary to, and would in fact, achieve the OTS's policy objectives.

First, the OTS has not cited any specific evidence that the longstanding and far less obtrusive case-by-case approach to thrift holding company supervision and regulation--which generally involves monitoring, through examinations and periodic reports, the interaction and relationships between the subsidiary thrift, its holding company, and its affiliates--has resulted in any significant harm to thrift subsidiaries. In fact, the OTS itself stated in its 1998 background supplement on thrift holding companies that "[t]hrift holding companies have not been a direct cause of a thrift failure over the past four-and-one-half years...," and, based on industry performance, that situation is unlikely to have changed since then.

Moreover, the OTS has a broad range of options available to it to address concerns with individual thrift holding companies, including the ability to conduct investigations and issue cease and desist orders prohibiting certain activities or requiring divestitures of subsidiaries. 12 U.S.C. § 1467a(g). In the case of holding company activities deemed by the OTS to constitute a serious risk to the safety and soundness of the thrift, the OTS may act even more promptly by issuing directives to (i) restrict dividends and other distributions by the thrift, (ii) limit the thrift's transactions with its parent or affiliates, or (iii) restrict the activities of thrift itself. 12 U.S.C. § 1467a(p). In short, the OTS should not replace its longstanding and successful approach to thrift holding company regulation with a significantly more intrusive regulatory regime along the lines contemplated by the proposal without at least first undertaking a more comprehensive study of the systemic or industry-wide risks that the proposal is presumably designed to address.

Second, the proposed approach is fundamentally inconsistent with recent trends reducing the regulatory burdens for holding companies with strong depository institution subsidiaries, as reflected in the Gramm-Leach-Bliley Act of 1999 (the "GLB Act"). For example, under the GLB Act and the Federal Reserve Board's implementing regulations, a bank holding company may engage in a broad range of new activities without prior application or notice to the Federal Reserve if it qualifies as a "financial holding company;" a status that is based on the subsidiary depository institutions of the holding company, but not the holding company itself, being well managed, well capitalized, and maintaining a satisfactory Community Reinvestment Act rating. 12 U.S.C. §§ 1843(k)(6) and 1843(*l*). Rather than reducing regulatory burdens on thrift holding companies, such as the Trust, whose subsidiary thrift, Chevy Chase Bank, is well managed, well capitalized, and maintains a satisfactory CRA rating, the OTS's proposal significantly increases those burdens and ties them to the capital level of the holding company (*e.g.*, exempting those holding companies with consolidated tangible capital in excess of 10 percent of their consolidated tangible assets).

Third, the proposal will significantly interfere with the legitimate business operations of thrift holding companies and affect the pricing, structure and timing of transactions. For example, as an active acquiror of real estate, the Trust faces significant competition from other potential purchasers that are not thrift holding companies and often needs to move quickly to take advantage of opportunities in the market. In fact, the time from the execution of a letter of intent to acquire a piece of property to the execution of a binding purchase contract frequently does not exceed 45 days. Under the proposal, the Trust would be required to provide 30 days advance notice to the OTS before acquiring a property under any one of the three notice triggers (*i.e.*, incurring debt (to finance the acquisition), acquiring an asset, or reducing capital). The mere fact that the Trust would be subject to this regulatory requirement will place it at a competitive disadvantage since, in the absence of a material difference in price or other terms, a seller would undoubtedly elect to sell to a potential purchaser who did not present the added regulatory risk. As a practical matter, the Trust could be forced to try to overcome this disadvantage by offering a higher purchase price for a property in an effort to compensate the seller for the increased regulatory risk created by the OTS notice requirement. In fact, Chevy Chase has experienced similar disadvantages in seeking to acquire or lease attractive branch sites because it, but not its non-bank competitors for those sites (*e.g.*, fast-food or other retail establishments), must obtain regulatory approval for the branch.

Fourth, the proposal represents a "one size fits all" approach that does not adequately take into account significant differences among a highly diverse group of thrift holding companies. For example, the proposal would disproportionately affect thrift holding companies like the Trust that are significantly engaged in real estate ownership and development activities. This is because real estate companies typically have lower or

potentially even negative levels of "regulatory capital" as a result of the requirement under GAAP to record real estate at its historical cost less accumulated depreciation. Because both the overall exemption level (10 percent tangible capital) and the "any transaction" notice trigger would be based on "consolidated tangible capital," real estate companies like the Trust would be required to notify the OTS of a much broader range of activities.[3]

In light of these problems with the proposed approach, the OTS should focus on alternatives for addressing its policy objectives. For example, the OTS can expand on recent steps to enhance its current reporting requirements for thrift holding companies, by, for example, updating and revising the Form H-(b)11 and ensuring more timely and convenient access to those and other reports (including, in many cases, SEC periodic reports) filed by thrift holding companies. The OTS also could consider increased use of meetings between OTS regional staff and thrift holding company management to discuss the company's business plans and proposed activities.

II. Practical Problems.

In addition to these policy considerations, the OTS proposal raises a host of practical problems, several examples of which are highlighted below.

First, as discussed above, creation of a uniform regulatory capital-based notice threshold will disproportionately affect some thrift holding companies, particularly those engaged in real estate activities. Under the proposal, the Trust apparently would be required to provide 30 days advance notice for literally "any transaction."

Second, the debt approval aspect of the proposal is particularly problematic. For example, the proposal does not define the term "debt" for purposes of the notice requirement. It is therefore unclear whether items such as accounts payable, guarantees, and/or cross-collateralized loans (common in the real estate industry) would be covered. In addition, nonrecourse debt is apparently not excluded, even though it has a limited impact on the overall financial condition of the holding company particularly if, as is typically the case in the real estate industry, the debt is incurred through a single asset subsidiary established solely to acquire and develop a specific project.

Third, the mechanics of the 30-day advance notice requirement will raise a series of practical problems that would seriously undermine a thrift holding company's competitive

[3] The proposal already appears to reflect the difficulty of crafting a "one size fits all" approach by allowing thrift holding companies to exclude "deferred policy acquisition costs" from consolidated tangible capital and consolidated tangible assets in computing certain thresholds.

position, particularly again for those engaged in the real estate acquisition and development business. For example, in addition to the basic requirement to provide 30 days advance notice, thrift holding companies will be subject to additional uncertainty and delay resulting from the OTS's ability to request additional information after the notice has been filed. In addition, what if the OTS "approves" the transaction based on the notice, but the terms of the transaction change based on subsequent negotiations? Must OTS be notified of the changes (and, if so, any changes or only "material" changes) and would a new 30-day review period be triggered? Furthermore, the broad scope of the notice requirement coupled with the diverse nature of thrift holding companies will result in OTS reviewing a large range of transactions in a variety of industries with which it may have little or no experience, potentially resulting in even more delays and uncertainty.

Finally, the OTS's proposed "shelf registration" option, under which a thrift holding company would be permitted to submit a schedule of anticipated transactions over a period of up to 12 months, may not provide much relief. The drafting of a schedule of proposed transactions will take time to prepare and probably would have to be submitted two to three months before the beginning of the 12 month period to provide the OTS with sufficient time to review the schedule and allow the holding company to respond to any objections or revisions requested by the OTS. As a result, holding companies such as the Trust would have to predict transactions for up to 15 to 18 months in advance and could be precluded from taking advantage of opportunities to acquire assets or engage in other transactions that could not have been anticipated at the time of filing the "shelf registration."

III. Authority.

The proposal also raises significant questions concerning whether the OTS can and should make such fundamental changes in the method of regulating thrift holding companies without express authorization from Congress. First, nothing in the Home Owners' Loan Act of 1933 ("HOLA") expressly authorizes the OTS to impose a prior notice or regulatory capital requirement on thrift holding companies. In the proposal, the OTS cites its "general statutory authority to prescribe regulations necessary for carrying out all provisions of the HOLA" and its general authority to issue such regulations or orders as are "necessary and appropriate to carry out section 10 of the HOLA." The lack of express authority in the HOLA is in direct contrast to the Bank Holding Company Act, which expressly authorizes the Federal Reserve Board to impose activity notice and application requirements and contains numerous references to capital-based limitations on bank holding companies. 12 U.S.C. §§ 1841(o)(1), 1842(a), 1842(d)(1)(A), and 1843(j)(4). The absence of express authority to impose holding company-level capital requirements is also noteworthy in light of other provisions of the HOLA that specifically direct OTS to apply capital standards at the thrift level. 12 U.S.C. § 1464(t).

Second, the proposal represents a fundamental shift in the nature and method of the OTS's supervision of thrift holding companies after Congress only recently decided against making wholesale changes to the thrift and (with the exception of banning commercial ownership of thrifts) thrift holding company regimes in the GLB Act. In fact, Congress specifically rejected proposals to subject thrift holding companies to Federal Reserve regulation and supervision.

Third, the OTS proposal to require prior notice for certain debt transactions effectively seeks to reinstate the holding company regulatory regime that Congress eliminated 12 years ago when it adopted FIRREA and repealed the old Federal Home Loan Bank Board statutory debt approval requirement. 12 U.S.C. § 1730a(g) (1989).

Finally, with respect to the capital adequacy proposal, the OTS should continue its existing case-by-case review of the overall financial condition of thrift holding companies based on their relationship to their subsidiary thrifts, rather than attempt to set uniform minimum regulatory capital requirements for such a diverse group of companies. In any event, however, the OTS should not impose thrift holding company capital requirements without first publishing a more specific proposal for public comment.

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Once again, we appreciate the opportunity to provide our comments on these important issues. Should you have any questions or wish to discuss our comments in greater detail, please feel free to call Steve Halpin at 301-986-6865.

Sincerely,

Stephen R. Halpin, Jr.
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Chevy Chase Bank, F.S.B.

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