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THE FINANCIAL SERVICES ROUNDTABLE



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February 9, 2001

Manager
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Office of Thrift Supervision
1700 G Street, NW
Washington, D.C. 20552

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INFORMATION
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Re: Docket No. 2000-91, Notice of Proposed Rulemaking on
Savings and Loan Holding Company Notice of Significant Transactions or Activities
and OTS Review of Capital Adequacy

Dear Sir or Madam:

The Financial Services Roundtable ("Roundtable") is a national association whose membership is reserved for 100 companies selected from the nation's 150 largest integrated financial services firms. The member companies of the Roundtable engage in a wide range of financial activities, including banking, securities, insurance, and other financial service activities. The Roundtable appreciates the opportunity to comment to the Office of Thrift Supervision ("OTS") on the Notice of Proposed Rulemaking ("NPRM") on Savings and Loan Holding Company ("SLHC") Notice of Significant Transactions or Activities and OTS Review of Capital Adequacy. The NPRM represents a significant change in OTS policy governing the regulation of SLHCs, and the Roundtable is grateful that OTS extended its original comment deadline to allow interested parties more time to articulate their views on these complex issues.

The Roundtable is aware of the many supervisory challenges faced by OTS in seeking to maintain the safety and soundness of the thrift industry as SLHCs continue to diversify their businesses, employ more leverage, or integrate with other affiliates into their corporate structure. In addition, the Roundtable understands the desire of OTS to enhance communication between itself and the institutions it oversees to receive more timely information regarding significant transactions and activities and to prevent unwelcome surprises on both sides. However, the Roundtable and its member companies contend that the approach taken in the NPRM not only does not effectively address the concerns enumerated by OTS but also would hinder the ability of OTS-regulated institutions to compete in the financial services marketplace, thereby weakening, rather than strengthening, the thrift charter.

In this comment letter, the Roundtable seeks to articulate the many concerns raised by its member companies in response to the NPRM. In addition, the Roundtable hopes to offer constructive alternative solutions that may meet the agency's overall objectives without imposing undue burden on the financial services industry and threatening the viability of the thrift charter.

Proposed Notice Requirement

The Roundtable finds the proposed notice procedure for major transactions and activities to be unnecessary, overly broad, and unduly burdensome on the financial services industry. First, the 30-day prior notice requirement is entirely unrealistic in many situations because SLHCs will not be able to act quickly enough to take advantage of profitable and wholly proper business opportunities, particularly if OTS were to raise any issues with a proposed transaction. Business opportunities arise on an *ad hoc* basis, and flexible business strategies are key to financial success. Moreover, on the funding side, market prices and desired debt structures change quickly, and institutions need to be able to respond quickly and with certainty.

Additional regulatory review of potential acquisitions decreases the certainty that a purchaser will be able to consummate a transaction, resulting in: fewer deals being brought to SLHCs; increased risk of lost employees and customers and decreased employee productivity; and an increase in the price of transactions caused by the delay. The prior notice requirement could also result in significantly longer processing periods as complex and varied transactions are being reviewed. This will effectively prevent many legitimate deals from being completed in a timely fashion. In some cases, advance notice to OTS may breach a confidentiality obligation. Notice could also result in public disclosure, leading to a higher purchase price or loss of the transaction.

In particular, the Roundtable has concerns that the proposed procedures go beyond mere notice and impose an approval requirement by OTS regulators before a deal can be consummated, or even entered into. Moreover, while the NPRM gives OTS the ability to stop or impose conditions on transactions by SLHCs, it provides no measurable standards for OTS approval. For example, the NPRM does not define what is a "material risk" to the thrift. The practical effect of this provision could be that SLHCs would be unable to negotiate transactions with a clear sense of the regulatory requirements of the transaction. This uncertainty could impact pricing, structure, and timelines, each of which can serve as deal breakers. Any delays or uncertainty associated with OTS review of new filings could raise funding costs and negatively impact liquidity management. Delays may impact the price of a deal due to market changes. It could also negatively impact holding company growth because of resulting uncertainty regarding funding.

In addition, the Roundtable questions whether OTS is able to adequately assess the benefit of transactions deemed appropriate by management of non-thrift companies. At its core, the NPRM amounts to the substitution by OTS of its business judgment for that of the holding company, especially with respect to business opportunities that OTS is ill prepared to evaluate. Moreover, many of these transactions would already be subject to review by other regulators (*e.g.*, the purchase of a bank). The Roundtable has concerns that OTS may intervene in the capital and other markets, where rating agencies, other regulators, and investors have greater information and expertise.

The Roundtable further believes that OTS may have significantly underestimated the paperwork and reporting burdens associated with the proposed notice requirement. Potential notificants would be required to devote significant resources to tracking potentially covered transactions, preparing notices, and even retaining counsel on particularly sensitive or fast-developing transactions. The regulatory “costs” associated with a single transaction could involve hundreds of hours and thousands of dollars.

In addition, because the NPRM specifically targets the issuance, renewal, or guarantee of debt by SLHCs, the proposal would significantly restrict the ability of SLHCs in managing debt and investment portfolios.

Even though the NRPM excludes SLHCs with consolidated tangible capital of ten percent or less following the transaction, the Roundtable believes that this exclusion is inappropriate. First, it will exempt certain less financially sound SLHCs from reporting, while requiring excessive reports from other companies that are financially sound. Second, capital requirements vary significantly across industry types. Industrial companies must maintain higher capital than financial services companies to receive similar credit ratings. Finally, any SLHC reporting requirements should incorporate industry-based equity standards, liquidity measures, and debt ratings.

The Roundtable also has concerns with the 20 percent asset exemption. If a thrift is close to the 20 percent of assets threshold that triggers the rule, assets will be moved out of the thrift regardless of whether they provide a long-term benefit to the thrift, as such benefits could not outweigh the immediate costs to the rest of the company.

The Roundtable also believes that the NPRM’s “shelf registration” suggestion does not reflect an accurate understanding of how such transactions develop. All too frequently, the gestation period of any particular deal is less than 90 days from initiation.

Moreover, the Roundtable feels that the NPRM lacks sufficient clarity and would make it exceedingly difficult for SLHCs to compete in today’s marketplace. The NPRM allows OTS Regional Directors to require notice in certain circumstances but provides no measurable standards for the Regional Director to use. The NPRM also fails to clearly articulate what “concerns” are sufficient to require such notice. Moreover, the NPRM does not even cite

examples of what other types of transactions might trigger a notice requirement. The Roundtable has concerns that there is no way to ensure consistency in reviews among the regions.

Another issue not addressed by the NPRM that could lead to confusion is the lack of guidance as to what happens if there are material changes to the transaction within the 30-day notice period. In addition, the NPRM does not define when a company “commits to engage” in a transaction. It also is unclear who may be required to file when the parent SLHC, but not its mid-tier holding companies, is exempt.

The OTS specifically requested comment on whether it is appropriate to exempt SLHCs that control only savings associations with limited operations (*e.g.*, a subsidiary thrift that conducts only fiduciary operations). If OTS should decide to go forward with the NPRM, the Roundtable feels strongly that companies with limited purpose thrifts, such as SLHCs with trust-only subsidiary thrifts, should be explicitly exempted. Such institutions, which limit their activities to trust operations, do not present the type of risk that the NRPM attempts to address. These non-deposit taking institutions and their holding companies should therefore be exempted from the notice and prior approval requirement for capital and debt transactions.

The Roundtable and its member companies contend that the regulatory burden that would result from implementing the proposed notice requirements may outweigh the value of retaining a thrift in a financial services corporate family. Moreover, SLHCs will face significant competitive disadvantages *versus* financial holding companies (FHCs) and companies that are not federally regulated. Companies subject to the NPRM will have to install and implement new systems to track debt and acquisition transactions and produce notice filings. The Roundtable is concerned that these requirements could diminish the value of being an SLHC and negatively affect the financial strength of thrift affiliates.

Capital Proposal

The Roundtable agrees with OTS that a single, one-size-fits-all capital standard is inappropriate for SLHCs. Savings and loan holding companies contain a wide diversity of businesses and risk. In addition, the market view of equity is very different than existing bank regulatory definitions of capital. The Roundtable also realizes that the capital proposal in the NPRM is a codification of OTS’ current practices for reviewing the capital adequacy of SLHCs. However, the Roundtable feels strongly that a formal rule on SLHC capital is not necessary. Regulatory discretion is crucial to address the prudentially varied risk within business lines and between companies.

The Roundtable is concerned that the imposition of capital requirements on an institution could have a negative impact on that institution’s credit rating if the institution is issuing debt in the public marketplace. Because capital requirements would be imposed on a case-by-case basis,

the market could view such cases as *per se* notice that the institution is troubled, thus driving down the institution's ratings.

In addition, the imposition of capital requirements may restrict an institution's management of its debt and investment portfolio.

Moreover, the imposition of a Fed-like "source of strength" doctrine is a significant departure from OTS' historical position on regulating holding companies and is not supported by an articulated factual or legal basis. Rather, this approach is premised on purely anecdotal evidence to justify this conclusion. In order to adequately and accurately develop minimum capital standards for this narrowly defined complex group of holding companies, it is appropriate that OTS develop a factual historical record of the consolidated organization's business, which leads necessarily to general regulatory oversight, something that is not justified under the statutes.

The Roundtable believes that in certain instances (*i.e.*, SLHCs that also are BHCs or FHCs), OTS review over any functionally regulated thrift affiliate is contrary to the purpose and structure of the Gramm-Leach-Bliley Act ("GLB Act"), which separates various types of entities for regulatory purposes. In such situations, OTS would have more control over transactions than any other functional regulator and could negatively impact another regulated institution in order to support the thrift.

Moreover, one of the major advantages for SLHCs in a post-Gramm-Leach-Bliley marketplace is the absence of aggressive holding company regulation. This is a major reason that many institutions fought hard for the grandfathering of unitary thrift holding companies when Congress was debating the GLB Act. However, by imposing substantial additional requirements at the holding company level, the NPRM undermines the flexibility that was preserved for SLHCs in the GLB Act and substantially diminishes the attractiveness of the thrift charter. This will serve to weaken the value of a thrift charter to such holding companies and may well lead to migration to an alternate regulatory environment (with the concomitant loss of support to the housing mission of thrift institutions).

Alternative Solutions

The Roundtable believes that OTS has sufficient supervisory authority and adequate regulatory controls in place to address the concerns raised by OTS in the NPRM. The OTS already requires 30-day notice for thrift capital distributions and thrift portfolio acquisitions outside the ordinary course of business. Sections 23A and 23B of the Federal Reserve Act significantly limit interaffiliate loans and asset purchases, and all contracts must include arms-length pricing. In addition, OTS has broad supervisory authority to require examinations and reports. New regulations will not prevent problems caused by the handful of companies that fail to follow existing regulations.

The Roundtable also notes that significant information is currently available to OTS supervisory staff. Thrifts and certain large affiliates are required to file 10Ks, 8Ks, and/or 10Qs, as well as HB-11s. Additionally, OTS staff has access to a wide variety of public information, including rating agency debt ratings and reports, equity and fixed income analyst reports, regulatory filings, press reports, and stock price and volume movements. OTS staff may also rely on informal contacts and meetings with management at OTS-regulated institutions for obtaining information about financial performance and strategic plans. Moreover, beginning with the March 2001 Thrift Financial Report (“TFR”) cycle, OTS will collect consolidated financial and other holding company information on a consistent basis, including data on total assets and liabilities, long- and short-term debt, cash flow and income information. The Roundtable respectfully requests that OTS consider deferring further action on the NPRM until it is clear how much more useful information the new TFRs provide to examiners. If OTS then feels that more information is needed, it could increase the amount of information it gets through supervisory guidance rather than imposing intrusive regulatory requirements.

The Roundtable offers several alternatives to the notice requirement in the NPRM that may adequately address the concerns of OTS while imposing far less burden on the financial services industry. OTS supervisory staff could conduct more extensive reviews of holding company strategic plans. OTS examiners could schedule more periodic telephone calls or meetings with SLHC management. OTS also could continue to conduct more risk-focused examinations of holding companies on an as-needed basis. OTS could require independent strategic planning committees for thrift subsidiaries. OTS could increase reportings through HB-11s or copies of Hart-Scott-Rodino filings. OTS could create a “safe harbor” in any published rule for publicly-rated companies with investment grade ratings.

On the issue of the capital proposal, OTS already possesses the necessary tools to ascertain whether or not a thrift’s parent can support it during times of need, or whether the thrift might be put in the position of supporting its parent beyond reasonably expected returns on investment. Finally, the Roundtable suggests that the agency’s concerns could be addressed by imposing capital directives on specific institutions. The Roundtable strongly believes that any new requirements on SLHCs should be narrowly tailored to address situations that actually pose significant financial risk to the subsidiary thrift.

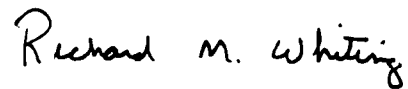
Conclusion

In light of the aforementioned concerns, the Roundtable respectfully requests that OTS withdraw the NPRM. The Roundtable strongly believes that OTS can effectively achieve its desired aims within the existing regulatory and supervisory format through means far less burdensome and harmful to the thrift industry. New regulations would result in competitive dislocation and increased costs for SLHCs. This will, in turn, pose a serious risk to the long-term viability and attractiveness of the federal savings association charter. The Roundtable and

its member companies welcome the opportunity to continue the ongoing dialogue with OTS staff to help find alternative solutions to address the agency's concerns.

Thank you for considering The Financial Services Roundtable's views on these important issues. If you have any further questions or comments on this matter, please do not hesitate to contact me or Maura Solomon of the Roundtable staff at (202) 289-4322.

Sincerely,

A handwritten signature in black ink that reads "Richard M. Whiting". The signature is written in a cursive style with a large initial 'R'.

Richard M. Whiting