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Manager, Dissemination Branch
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Office of Thrift Supervision
1700 G Street, N.W.
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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)

To Whom It May Concern:

We offer the following comments regarding the Office of Thrift Supervision ("OTS") Notice of Proposed Rulemaking[1] ("Proposal") which, if promulgated in its current form, would require savings and loan holding companies ("SLHCs") to notify the OTS before engaging in or committing to engage in certain significant debt or equity transactions, transactions which significantly reduce capital, or transactions for which prior notice might otherwise be required by the OTS in its discretion.

For the reasons described below, we urge the OTS not to adopt the Proposal. If the OTS proceeds with the Proposal, we respectfully request that the OTS revise the Proposal to exclude from coverage certain SLHCs which are not consolidated with SLHCs which they control.

I. The Proposal Would Not Improve Supervision of Savings Institutions

The stated aim of the Proposal is to ensure that actions by a holding company do not pose a material risk to the safety, soundness, or stability of the subsidiary savings association. The best way to address these concerns is to focus on the relationship between the savings association subsidiary and its holding companies. The OTS employs numerous regulatory measures to accomplish this. For example, the OTS successfully enforces rules governing transactions between a savings association and its affiliates, examines whether the SLHC is relying unduly on the savings association subsidiary for

[1] 65 Fed. Reg. 64392 (Oct. 27, 2000). On December 12, 2000, the OTS extended the comment period on the Proposed Rulemaking until February 9, 2001 (65 Fed. Reg. 77528) (Dec. 12, 2000).

dividends, whether fees charged by the parent for services to the subsidiary savings association are reasonable, whether tax-sharing agreements between the parent and savings association are fair to the subsidiary savings association, and whether the parent is usurping the savings association's corporate opportunities or ability to offer new products and services. In addition, the OTS uses its examination authority to review the activities of the parent SLHC to determine whether it is engaging in activities which could be detrimental to the savings association subsidiary. The OTS also obtains substantial information on the SLHC through the filings made by the SLHC with the OTS.

This approach of regulating the relationship between the savings association and its affiliates has proven successful because it focuses on actions that actually affect the savings association. The Proposal, on the other hand, focuses on activities that do not involve the savings association, and in virtually all cases are irrelevant to the association. The OTS' limited oversight resources should be used on measures that involve the savings association, rather than on more remote events which have no impact on the savings association subsidiary. The thrust of the Proposal – preapproval of certain types of transactions – presents a very real and significant concern because of the nature of most holding company transactions. These transactions are often unique, diverse, and involve substantial documentation. The amount of time and attention that will be required by the OTS to review the notices would be substantial, and we question whether the result would be worth the limited improvement in oversight, especially given the probable negative impact such prior approval process would have on holding company transactions, which are generally very time sensitive. Put simply, the 30 day notice – if indeed it was only 30 days – would not significantly improve the current OTS oversight of SLHCs, yet will keep many holding company transactions from being consummated in a timely and efficient manner, if at all.

Moreover, applying the law of unintended consequences, the Proposal could detrimentally affect the savings and loan holding company structure. Many beneficial transactions likely would be abandoned because of the paperwork burden and time delays involved in the notice requirement, largely because the other party to the proposed transaction – generally a nonregulated entity—would be concerned about <u>any</u> regulatory review. This would impede the ability of SLHCs to efficiently enter into transactions that could otherwise serve to strengthen the SLHC, and, correspondingly, the consolidated SLHC entity. This significant cost to the industry, in our view, cannot be justified, especially in light of the fact that the OTS currently has supervisory methods already in place to accomplish the goals of the Proposal.

The mission of the OTS -- to protect savings associations -- is best served by regulation of events that affect the savings association. In short, the Proposal would not improve the OTS' ability to safeguard savings associations, is unnecessary and unduly burdensome, and would result in an inefficient use of OTS resources.

II. Congress Has Declined to Impose These Types of Restrictions on SLHCs

Congress recently addressed the SLHC regulatory scheme, and did not impose restrictions on the ability of grandfathered SLHCs to engage in the types of transactions targeted by the Proposal. In fact, OTS Director Ellen Seidman opposed certain statutory provisions, stating that they "would restrict existing and future, lawful unitary thrift holding company activities. . . . We believe the safeguards currently in place are effective and the charter should not be altered as proposed in H.R. 10."[2]

Moreover, in 1989 Congress specifically eliminated statutory provisions that had required certain SLHCs to obtain approval for the issuance of debt. Specifically, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 repealed Section 408(g) of the National Housing Act which required that a non-diversified SLHC obtain prior approval before it or its non-insured subsidiaries incurred debt in excess of 15% of consolidated net worth.

III. If the Proposal is Not Eliminated, It Should Be Modified to Exclude Certain Unconsolidated SLHCs

If the Proposal is not eliminated, it should at least be revised to make clear that certain SLHCs which we assume the OTS meant to exclude are in fact excluded from the prior notice requirements of the Proposal. Specifically, the Proposal would exempt from the notice requirements SLHCs that would have "consolidated tangible capital of 10 percent or greater following the transaction." 12 C.F.R. § 584.110(a)(2) (proposed). Certain SLHCs, such as trusts, limited partnerships and certain types of limited liability companies, are often not consolidated with a subsidiary SLHC (which subsidiary SLHC may have consolidated tangible capital of at least 10%). Often these trusts are established for estate planning purposes and are controlled by trustees who have an ownership or other relationship with the subsidiary SLHCs. Because of the broad definition of "savings and loan holding company" in the Home Owners' Loan Act, 12

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[2] Testimony of OTS Director Ellen Seidman before the House of Representatives Committee on Banking and Financial Services, Feb. 12, 1999, 1999 WL 76308 (FDCH).

U.S.C. § 1467a(a)(1)(D), these trusts and other entities are deemed to be SLHCs and would be subject to the Proposal, absent further clarification. If they were consolidated under GAAP, they would be able to take advantage of the safe harbor. However, most trusts are not consolidated. It is not clear to us that the OTS meant to subject these trusts to the prior approval requirement, or that the OTS obtains any additional supervisory comfort in reviewing transactions contemplated by trusts which control a SLHC or SLHCs which meet the 10% consolidated capital standard. More fundamentally, it is important for the OTS to provide guidance in the Proposal on how the consolidated capital test should be calculated in situations where a SLHC is not consolidated with lower-tier entities. One approach may be to exclude from the prior notice provisions of the Proposal those SLHCs that control a holding company that meets the 10% consolidated capital test. We would be pleased to work with OTS staff in helping to develop guidance on this issue.

In addition, the OTS specifically requested comment on whether it is appropriate to exempt holding companies that control only savings associations with limited operations. The OTS noted, as an example, thrifts that conduct only fiduciary operations. We believe that, if the Proposal is adopted, such exemptions should also include savings associations that do not engage in retail deposit taking.

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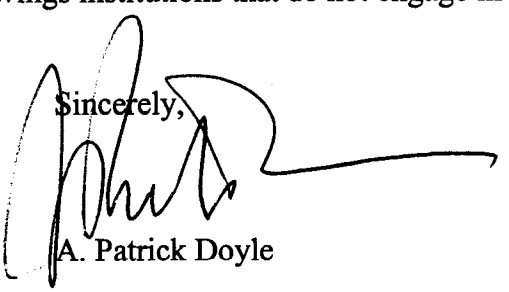
We appreciate the opportunity to comment on the Proposal. In summary, we urge the OTS to not adopt the Proposal because it does not improve oversight of savings association subsidiaries, and, to the contrary, could hinder the ability of SLHCs from efficiently conducting operations, and thereby undermine the strength of the holding company structure. If the Proposal is adopted, we urge the OTS to exclude SLHCs that are trusts, limited partnerships, or limited liability companies which control SLHCs that meet the 10% consolidated capital standard, transactions by SLHCs that are entered solely for estate planning reasons, and savings institutions that do not engage in retail deposit taking.

Sincerely,



A. Patrick Doyle