Massachusetts Bankers Association

(44)

February 9, 2001

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2001 FEB -9 P 4:
INFORMATION SERVICES DIVISION

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

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

Dear Sir or Madam:

The Massachusetts Bankers Association represents approximately 230 commercial, co-operative and savings banks, and savings and loan associations with more than $350 billion in assets, of these, 22 are federally-chartered savings and loan associations. We appreciate the opportunity to comment on the proposed regulation referenced above which would require certain savings and loan holding companies to notify the Office of Thrift Supervision (OTS) before engaging in, or committing to engage in, certain debt or asset acquisition transactions, and other transactions that significantly reduce capital. The OTS also seeks comment on whether it should codify its current practices for reviewing the capital adequacy of saving and loan holding companies and when necessary, requiring additional capital on a case-by-case basis.

In recent months, the OTS has undertaken a progressive review of it supervisory strategy governing institutions including rules relating to reorganizations and the mutual to stock conversion process. The Association acknowledges that periodically regulators must undertake such comprehensive reviews of its policies to remain current with changes in the marketplace and to improve its supervision of institutions over which it has jurisdiction. We applaud the OTS for it efforts in modernizing its rules. At the same time, regulators must take care not to create policies which unnecessarily complicate and burden the institutions under its supervision. We believe that the prior notice requirements in this proposal do just that. The Association is concerned about the extent and long-term implications of this proposal and believes that the agency's "super aggressive" supervision is unwarranted and the proposal should be withdrawn.

Background

In the supplementary information contained in the proposal, the OTS expressed concern over the changing relationship between savings and loan holding companies and their savings association subsidiaries. It notes that savings and loan holding companies are frequently managed on a consolidated basis with their subsidiaries, which is troublesome to the OTS because "problems in one entity in the corporate structure may affect other affiliated entities, including thrifts."

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Furthermore, this trend often involves the outsourcing from the savings association of critical functions, such as asset liability management and cross marketing of products. As a result, the OTS believes that many savings associations are subject to decisions based on the overall best interests of the corporation with little consideration of the impact of the decisions on the stand alone thrift. For this reason, the OTS believes it should intervene to ensure that thrifts are not exposed to material risk or safety and soundness issues. In addition, the OTS cites other actions for increasing its regulatory vigilance, namely:

- excessive leveraging by some holding companies (in its view, this may prevent parent holding companies from being able to support savings association subsidiaries in times of need;
- certain abusive affiliate relationships that may exist in a small number of organizations;
- 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; and
- an overall increase in the risk levels associated with holding company activities following the passage of the Gramm-Leach-Bliley Act.

OTS Proposal

Notice of Significant Transactions or Activities

In response to these concerns and the rare occurrences of such instances, the OTS prematurely proposes to require that specific holding companies notify the OTS before engaging in certain debt transactions, transactions that reduce capital, some asset acquisitions, and other transactions determined by OTS on a case-by-case basis. This position represents a significant change from its current practices, since the OTS does not analyze proposed major transactions by holding companies before these transactions are completed except in certain situations i.e., reviewing applications for the acquisition of an existing thrift or chartering a de novo thrift.

The proposal would generally exempt holding companies whose savings association subsidiaries comprise 20% or less of total assets. In addition, any holding company that maintains consolidated tangible capital of 10% or more following a significant transaction also would be exempt.

Under the proposal, holding companies that are not exempt would be required to 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 maintain sufficient capital to support or be the source 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.

Comments

The Association believes that it is appropriate for the OTS to intervene when the safety and soundness of an institution is in jeopardy or when there is a legitimate concerns that a holding company engages in activities that puts its savings association subsidiary at risk. However, we believe that broad-based regulatory policies that are implemented to address a small number of abuses are unfair and unwarranted. Many healthy well-managed institutions would be subject to this regulatory intrusion without just cause, seriously impairing their ability to quickly take advantage of business opportunities.

We believe the OTS already has sufficient authority on a case-by-case basis to deal with excessively risky practices that would threaten the viability of a savings association thrift. While there may be potential problems from integrated operations under one corporate structure, we do not believe that thrifts are anymore susceptible under this structure than any other type of financial entity. We respectfully disagree with the agency's view that many savings associations are subject to decisions that are made at the corporate level without regard to the impact on subsidiaries. Arguably, the health of a holding company's affiliates including thrifts, is in the best interest of the parent organization.

Recognizing that there may be a legitimate concern with respect to excessive leveraging and some asset acquisitions, the agency should take a more moderate approach by providing supervisory guidance on such matters as debt issuance and strategic acquisitions. Rather than subjecting holding companies to a prior notice process, the agency should seek to monitor these transactions through other means. The OTS could improve its supervision by increasing the use of electronically filed Securities and Exchange Commission (SEC) report data, and revising the OTS's Form H-b(11) to make data more electronically accessible to the agency.

Prior Notice Provisions

The Association believes that the prior notice provisions of the proposed regulation are harmful in several ways:

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

delay or prevent many legitimate deals from being completed. Many debt issuances and asset acquisitions are developed and accomplished within very tight timeframes. This regulation would effectively prevent or significantly hinder such business transactions. They may threaten the growth strategy of institutions that the OTS has exempted at some point in time.

- Requiring prior notice for "commitments to engage" in covered transactions creates an onerous regulatory burden for savings and loan holding companies competing in a dynamic business environment.
- The 10% capital trigger represents an effective 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 places excessive discretionary authority in regional OTS offices, which will result in disparate treatment and varying standards of review among regions. This creates a great amount of uncertainty for business management when preparing to negotiate and complete any number of legitimate business transactions that are not appropriate for prior regulatory review.
- They penalize many well-managed organizations. Most of the OTS concerns can be appropriately addressed through prudent management and sound business practices on a case-by-case basis rather than pre-approval of planned business activities.

Capital Standards

Although the OTS has stated this proposal is not designed to establish minimum capital standards for savings and loan holding companies, it exempts holding companies that have "a significant capital cushion" and attempts to establish a minimum 20% threshold for the holding companies' consolidated assets. We do not believe that fixed percentages or numerical thresholds are appropriate. This thinking comes close to establishing what may ultimately lead to minimum capital standards.

Conclusion

As we have stated in previous comments to this agency, an important issue for savings associations will be whether the regulation of holding companies at both the state and federal level is flexible enough to permit the structure that is most suitable for individual business needs. In this instance, the OTS should take care that its policies do not establish new minimum capital standards. Federal savings and loan association holding companies making sound business decisions should not be subject to another layer of regulatory scrutiny that disadvantages the organization or lengthens business transactions.

The Association is and always has been a strong advocate for the dual banking systems and actively opposes any practices that decreases the attractiveness of one charter over another. For these reasons, the Association strongly opposes this proposal, and does not support a model that would result in the establishment of defined holding company capital standards, or significantly increase regulatory burdens for federal savings and loan holding companies.

Thank you for reviewing our comments. If you have any questions, please contact me at (617) 566-6365.

Sincerely,

Tanya M. Duncan
Director, Federal Regulatory and Legislative Policy

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