

DEPARTMENT OF THE TREASURY

Review by the Treasury Department of the Regulatory Structure Associated with Financial Institutions.

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice; request for comments.

SUMMARY: The Treasury Department is undertaking a broad review of the regulatory structure associated with financial institutions. To assist in this review and obtain a broad view of all perspectives, the Treasury Department is issuing this notice seeking public comment.

DATES: Comments should be submitted electronically and received by Wednesday, November 21, 2007.

ADDRESSES: Please submit comments electronically through the Federal eRulemaking Portal – “Regulations.gov.” Go to <http://www.regulations.gov>, select “Department of the Treasury – All” from the agency drop-down menu, then click “Submit.” In the “Docket ID” column, select “TREAS-DO-2007-0018” to submit or view public comments and to view supporting and related materials for this notice. The “User Tips” link at the top of the Regulations.gov home page provides information on using Regulations.gov, including

instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

Please include your name, affiliation, address, e-mail address and telephone number(s) in your comment. Where appropriate, comments should include a short Executive Summary (no more than five single-spaced pages). All statements, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Jeffrey Stoltzfoos, Senior Advisor, Office of the Assistant Secretary for Financial Institutions, (202) 622-2610 or Mario Ugoletti, Director, Office of Financial Institutions Policy, (202) 622-2730 (not toll free numbers).

SUPPLEMENTARY INFORMATION: The Treasury Department is currently engaged in a number of initiatives associated with maintaining the competitiveness of United States capital markets. One of those initiatives is evaluating the regulatory structure associated with financial institutions.

The regulatory structure for financial institutions in the United States has served us well over the course of our history. Much of the basic regulatory structure associated with financial institutions was established decades ago. While there have been important

changes over time in the way financial institutions have been regulated, the Treasury Department believes that it is important to continue to evaluate our regulatory structure and consider ways to improve efficiency, reduce overlap, strengthen consumer and investor protection, and ensure that financial institutions have the ability to adapt to evolving market dynamics, including the increasingly global nature of financial markets.

The Treasury Department's review of regulatory structure will focus on all types of financial institutions: commercial banks and other insured depository institutions; insurance companies; securities firms; futures firms; and other types of financial intermediaries.

The Treasury Department is soliciting comments to assist in this review. The Treasury Department would be particularly interested in comments on the specific questions set forth below, or on other issues related to the regulatory structure associated with financial institutions. We are also interested in specific ideas or recommendations as to how we can improve our current regulatory structure.

I. General Issues

1.1 What are the key problems or issues that need to be addressed by our review of the current regulatory structure for financial institutions?

1.2 Over time, there has been an increasing convergence of products across the traditional "functional" regulatory lines of banking, insurance, securities, and futures.

What do you view as the significant market developments over the past two decades (e.g.

securitization, institutionalization, financial product innovation and globalization) and please describe what opportunities and/or pressures, if any, these developments have created in the regulation of financial institutions?

1.2.1 Does the “functional” regulatory framework under which banking, securities, insurance, and futures are primarily regulated by respective functional regulators lead to inefficiencies in the provision of financial services?

1.2.2 Does the “functional” regulatory framework pose difficulties for considering overall risk to the financial system? If so, to what extent have these difficulties been resolved through regulatory oversight at the holding company level?

1.2.3 Many countries have moved towards creating a single financial market regulator (e.g., United Kingdom’s Financial Services Authority; Japan’s Financial Services Agency; and Germany’s Federal Financial Supervisory Authority (BaFin)). Some countries (e.g., Australia and the Netherlands) have adopted a twin peaks model of regulation, separating prudential safety and soundness regulation and conduct-of-business regulation. What are the strengths and weaknesses of these structural approaches and their applicability in the United States? What ideas can be gleaned from these structures that would improve U.S. capital market competitiveness?

1.3 What should be the key objectives of financial institution regulation? How could the framework for the regulation of financial institutions be more closely aligned with the objectives of regulation? Can our current regulatory framework be improved, especially in terms of imparting greater market discipline and providing a more cohesive look at

overall financial system risk? If so, how can it be improved to achieve these goals? In regards to this set of questions, more specifically:

1.3.1 How should the regulation of financial institutions with explicit government guarantees differ from financial institutions without explicit guarantees? Is the current system adequate in this regard?

1.3.2 Is there a need for some type of market stability regulation for financial institutions without explicit Federal Government guarantees? If so, what would such regulation entail?

1.3.3 Does the current system of regulating certain financial institutions at the holding company level allow for sufficient amounts of market discipline? Are there ways to improve holding company regulation to allow for enhanced market discipline?

1.3.4 In recent years, debate has emerged about “more efficient” regulation and the possibility of adopting a “principles-based” approach to regulation, rather than a “rules-based” approach. Others suggest that a proper balance between the two is essential. What are the strengths, weaknesses and feasibility of such approaches, and could a more “principles-based” approach improve U.S. competitiveness?

1.3.5 Would the U.S. financial regulatory structure benefit if there was a uniform set of basic principles of regulation that were agreed upon and adopted by each financial services regulator?

1.4 Does the current regulatory structure adequately address consumer or investor protection issues? If not, how could we improve our current regulatory structure to address these issues?

1.5 What role should the States have in the regulation of financial institutions? Is there a difference in the appropriate role of the States depending on financial system protection or consumer and investor protection aspects of regulation?

1.6 Europe is putting in place a more integrated single financial market under its Financial Services Action Plan. Many Asian countries as well are developing their financial markets. Often, these countries or regions are doing so on the basis of widely adopted international regulatory standards. Global businesses often cite concerns about the costs associated with meeting diverse regulatory standards in the numerous countries in which they operate. To address these issues, some call for greater global regulatory convergence and others call for mutual recognition. To what extent should the design of regulatory initiatives in the United States be informed by the competitiveness of U.S. institutions and markets in the global marketplace? Would the U.S. economy and capital market competitiveness be better served by pursuing greater global regulatory convergence?

II. Specific Issues

2.1 Depository Institutions

2.1.1 Are multiple charters for insured depository institutions the optimal way to achieve regulatory objectives? What are the strengths and weaknesses of having charters tied to specific activities or organizational structures? Are these distinctions as valid and important today as when these charters were granted?

2.1.2 What are the strengths and weaknesses of the dual banking system?

2.1.3 What is the optimal role for a deposit insurer in depository institution regulation and supervision? For example, should the insurer be the primary regulator for all insured depository institutions, should it have back-up regulatory authority, or should its functions be limited to the pricing of deposit insurance, or other functions?

2.1.4 What role should the central bank have in bank regulation and supervision? Is central bank regulatory authority necessary for the development of monetary policy?

2.1.5 Is the current framework for regulating bank or financial holding companies with depository institution subsidiaries appropriate? Are there other regulatory frameworks that could or should be considered to limit the transfer of the safety net associated with insured depository institutions?

2.1.6 What are the key consumer protection elements associated with products offered by depository institutions? What is the best regulatory enforcement mechanism for these elements?

2.2 Insurance

2.2.1 What are the costs and benefits of State-based regulation of the insurance industry?

2.2.2 What are the key Federal interests for establishing a presence or greater involvement in insurance regulation? What regulatory structure would best achieve these goals/interests?

2.2.3 Should the States continue to have a role (or the sole role) in insurance regulation? Insurance regulation is already somewhat bifurcated between retail and

wholesale companies (e.g., surplus lines carriers). Does the current structure work?

How could that structure be improved?

2.2.4 States have taken an active role in some aspects of the insurance marketplace (e.g., workers' compensation and residual markets for hard to place risks) for various policy reasons. Are these policy reasons still valid? Are these necessarily met through State (as opposed to federal) regulation?

2.3 Securities and Futures

2.3.1 Is there a continued rationale for distinguishing between securities and futures products and their respective intermediaries?

2.3.2 Is there a continued rationale for having separate regulators for these types of financial products and institutions?

2.3.3 What type of regulation would be optimal for firms that provide financial services related to securities and futures products? Should this regulation be driven by the need to protect customers or by the broader issues of market integrity and financial system stability?

2.3.4 What is the optimal role for the states in securities and futures regulation?

2.3.5 What are the key consumer/investor protection elements associated with products offered by securities and futures firms? Should there be a regulatory distinction among retail, institutional, wholesale, commercial, and hedging customers?

2.3.6 Would it be useful to apply some of the principles of the Commodity Futures Modernization Act of 2000 to the securities regulatory regime? Is a tiered

system of regulation appropriate? Is it appropriate to make distinctions based on the relative sophistication of the market participants and/or the integrity of the market?

Dated:

Taiya Smith
Executive Secretary of the Treasury