

Regulators Take Steps to Eliminate Differences in Thrift, Bank and Holding Company Reporting Requirements

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On February 3, 2011, the Office of Thrift Supervision (“OTS”) and its future successors – the Office of the Comptroller of the Currency (“OCC”), the Federal Deposit Insurance Corporation (“FDIC”), and the Federal Reserve Board (“FRB”) (collectively, the “Agencies”), announced proposed changes to the reporting requirements currently applicable to savings associations, or “thrifts”, and their parent holding companies (“SLHCs”).¹ The announcement marks one of the first steps – in many more expected to come – toward the anticipated homogenization of the regulation of thrifts and SLHCs with their commercial bank and bank holding company (“BHC”) counterparts.

Background: The Dodd-Frank Act

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”)² effective July 21, 2011,³ regulatory jurisdiction over thrifts and SLHCs will be transferred from the OTS to new primary federal regulators.⁴ Specifically, OTS supervisory functions relating to federal thrifts⁵ and all OTS rulemaking authority for federal and state-chartered thrifts will be transferred to the OCC on the transfer date.⁶ OTS supervisory functions with regard to state-chartered thrifts will transfer to the FDIC,⁷ and OTS supervisory and rulemaking functions relating to SLHCs and their non-depository institution subsidiaries will be transferred to the FRB.⁸ The OTS will then be abolished, effective 90 days after the transfer of functions.⁹

The Dodd-Frank Act generally directs the OTS successor agencies to implement existing OTS regulations, orders, resolutions, determinations and agreements for thrifts and SLHCs under the HOLA until such applicable law or guidance is modified, terminated, set aside, or otherwise superseded in accordance with law.¹⁰ Currently, the two agencies inheriting OTS rulemaking authority, the OCC and FRB, are conducting an analysis of OTS regulations and guidance documents to determine policy or technical differences, and to assess whether there are any gaps among OTS, OCC and FRB regulation. Pursuant to this review, the agencies will make a determination in regard to whether amendments to the applicable regulations or guidance documents are necessary and will pursue changes in connection with any required public notice and opportunity for comment.

Summary of Proposed Changes

The proposed changes include a change from the requirement that thrifts file quarterly Thrift Financial Reports to a requirement that they file quarterly Consolidated Reports of Condition and Income, commonly known as Call Reports, which are currently filed by all national and state-chartered banks. Among the benefits cited by the Agencies for the proposed changes are uniform reporting systems and

processes among all FDIC-insured banks and thrifts. The proposed changes would also make uniform the reporting requirements applicable to both BHCs and SLHCs, which will be supervised by the FRB. Finally, the proposed changes would provide the Agencies with a common set of reports for monitoring and evaluating financial condition and trends.

Through separate notices of proposed rulemaking, the Agencies are soliciting public comments regarding proposed changes that would:

- Require thrifts to file quarterly Call Reports, beginning with the March 31, 2012, report date. Effective on that date, all schedules of the Thrift Financial Report (including Schedules CMR and HC) would be eliminated;
- Require thrifts to file data through the Summary of Deposits with the FDIC, beginning with the June 30, 2011, report date. Effective on that date, the OTS Branch Office Survey would be eliminated;
- End collection of monthly median cost of funds data from thrifts, effective January 31, 2012; the last cost of funds indices would be published as of December 31, 2011; and
- Require SLHCs to file the same reports with the FRB that BHCs file, beginning with the March 31, 2012, report date.

Comments on the proposed changes are due within 60 days of their publication in the *Federal Register*, which is expected to be soon.

Thrifts and SLHCs should take the time now to understand the implications of the proposed reporting requirement changes and give serious consideration to how the proposed changes will impact the institution's business and operations, *e.g.*, by potentially necessitating any major or burdensome adjustments relative to information collection and processing systems currently in place, as well as to present and future thrift and SLHC activities. For example, the impact of the proposed reporting changes on SLHCs may require more extensive attention and resources than currently allotted or expected by such entities. SLHCs currently submit annual, quarterly and current reports to the OTS on Form H-(b)11. The H-(b)11 reports require SLHCs to submit to the OTS all filings made with the Securities and Exchange Commission, audited annual financial statements, quarterly financial statements, descriptions of material events, and documentation related to the SLHC's charter, bylaws, or material agreements. The OTS does not, however, generally require prior notice or application for qualified SLHCs to engage in new permissible activities. Under the proposed changes, however, SLHCs will be required to submit the same reports as BHCs,¹¹ which include:¹²

- FR Y-10, Report of Changes in Organizational Structure, which must be filed to reflect significant changes in structure, ownership, or activities as they occur;
- FR Y-6, Annual Report of Bank Holding Companies; and
- FR Y-9C, Consolidated Financial Statements for Bank Holding Companies, which must be filed by BHCs with total consolidated assets of \$500 million or more on a quarterly basis.

Legislative and Regulatory Uncertainty – More Expected to Come for Thrifts and SLHCs

In addition to the announced changes expected to take place in the short timeframe until the July 21, 2011 transfer date, another important milestone is a Government Accountability Office (“GAO”) study required by Section 603(b) of the Dodd-Frank Act. The study, due January 21, 2012, requires the GAO to submit a report to Congress that: (i) addresses the adequacy of the regulatory framework applicable to thrifts and SLHCs, and (ii) provides an evaluation of the potential consequences of subjecting these entities to the requirements of the Bank Holding Company Act. Accordingly, it is possible that additional legislation and/or regulation with respect to thrifts and SLHCs may be forthcoming as a result of the GAO study. Given the anticipated changes that thrifts and SLHCs will be experiencing in the near term as a result of the Dodd-Frank Act, the thrift industry will unfortunately continue to face a higher degree of legislative and regulatory uncertainty than faced by their commercial bank and BHC counterparts for some time to come.

Action Plan

In the next few months, thrifts and SLHCs should solidify a comprehensive action plan that anticipates the transition to multiple new federal regulators on July 21, 2011. We recommend that your action plan include:

- active participation in the public comment process by voicing concerns about how a proposed rulemaking change, *e.g.*, with regard to the proposed reporting requirement changes or a timeframe for compliance with a proposed change, may negatively and/or unfairly impact a thrift’s and/or SLHC’s business and operations as compared to bank and BHC competitors;
- gaining knowledge, experience and familiarity with your future federal regulators and their supervisory approaches, which may differ in very distinct ways from that of the OTS;
- understanding the major differences in regulatory requirements applicable to your operations compared to the operations of your bank and BHC competitors, and gauging the impact on your business and operations if such differences are eliminated; and
- conducting a strategic analysis of the issues and considerations regarding whether the thrift charter continues to be optimal for your current and future business operations, including performing due diligence on alternative charter types that may be better for your business and long-term goals.

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If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

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- ¹ Joint Press Release, Agencies Propose Changes in Reporting Requirements for OTS-Regulated Savings Associations and Savings and Loan Holding Companies (February 3, 2011), *available at* <http://www.federalreserve.gov/newsevents/press/bcreg/20110203a.htm>.
- ² Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (enacted on July 21, 2010).
- ³ It is possible that the “transfer date,” as established under Section 311(a) of the Dodd-Frank Act, may be delayed to a date on or before January 21, 2012, if a six-month extension is required and sought by the Secretary of the U.S. Treasury Department under Section 311(b).
- ⁴ The Agencies recently adopted a Joint Implementation Plan (the “Plan”) that describes the steps that each of the Agencies have taken or plan to take to effect an orderly transition process pursuant to Sections 301-326 of the Dodd-Frank Act. The Plan generally sets forth details regarding the transfer of personnel, transfer of the OTS’s authority and responsibilities to the various successor Agencies, transfers of funds and property, and other recommendations and actions.
- ⁵ The Agencies anticipate there will be approximately 670 thrifts on the transfer date.
- ⁶ Section 312(b)(2)(B) of the Dodd-Frank Act.
- ⁷ *Id.*, Section 312(b)(2)(C). As of July 21, 2010, there were 61 state-chartered thrifts.
- ⁸ *Id.*, Section 312(b)(1) and (2)(A).
- ⁹ *Id.*, Section 313.
- ¹⁰ *Id.*, Section 316(b).
- ¹¹ <http://www.federalreserve.gov/reportforms/default.cfm>.
- ¹² The forms that the FRB is considering making applicable to SLHCs beginning with the March 31, 2012 reporting period are the FR Y-6, FR Y-7, FR Y-9C, FR Y-9LP, FR Y-9SP, FR Y-9CS, FR Y-10, FR Y-11/S, FR 2314/S, FR Y-8, and FR Y-12/12A. (Not all forms are required for all BHCs, e.g., only smaller BHCs with total consolidated assets of less than \$500 million are required to file the FR Y-9SP.) These reports are filed either quarterly (March, June, September and December), semiannually (June and December), annually (December) or event-generated.