

THE FINANCIAL SERVICES ROUNDTABLE



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July 9, 2007

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: No. 2004-26

Re: Prohibited Service at Savings and Loan Holding Companies, 72 FR 25948 (May 8, 2007)

Dear Sir or Madam:

The Financial Services Roundtable¹ (the "Roundtable") appreciates the opportunity to comment on the interim final rule issued by the Office of Thrift Supervision ("OTS") to implement the provisions of Section 19(e) of the *Federal Deposit Insurance Act* ("FDIA"). Section 19(e) of the FDIA prohibits any person who has been convicted of any criminal offense involving dishonesty or a breach of trust, or money laundering or has agreed to enter a pretrial diversion or similar program in connection with a prosecution for such an offense from holding certain positions with a savings and loan holding company ("SLHC") without the prior written consent of the Director of the OTS.

I. Background

The Financial Services Regulatory Relief Act of 2006 amended Section 19 of the FDIA by adding a new section 19(e) that expands the application of provisions of Section 19 to SLHCs as if they were insured depository institutions. Section 19 generally prohibits any person who has been convicted of any criminal offense involving dishonesty or a breach of trust, or money laundering or has entered into a pretrial diversion or similar program in connection with a prosecution for such an offense from holding certain positions with respect to an insured depository institution and now a SLHC without the prior written consent of the relevant regulator, the Federal Deposit Insurance Corporation ("FDIC") or the Director of the OTS. With regard to any insured depository institution or SLHCs, such a person may not become or continue as an institution affiliated party; own or

¹ The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for \$65.8 trillion in managed assets, \$1 trillion in revenue, and 2.4 million jobs.

control, directly or indirectly; or otherwise participate, directly or indirectly in the conduct of affairs of any insured depository institution or SLHC.

There are many diversified holding companies engaged in commercial and other businesses at the holding company level that have not been permitted to bank holding companies. Many of these diversified holding companies have thousands of employees and the subsidiary savings association is very small in relation to the holding company. Therefore, the OTS must address these issues that are unique to a SLHC.

Section 19(e) provides that the Director of OTS may grant exemptions from the prohibitions in the statute by regulation or order. The interim final rule includes an exemption for persons whose responsibilities and activities are limited solely to certain specific operations (agriculture, forestry, retail merchandising, manufacturing or public utility operations) and who also meet other requirements. The interim final rule also provides for exemptions from the prohibitions.

Roundtable member companies are committed to protecting the integrity of the nation's banking system and the need to avoid unnecessary regulation. The Roundtable supports the interim final rule, but believes that additional clarification is needed regarding the exemptions in the rule. We offer the following recommendations on how the proposed rule may be improved.

II. Scope of Responsibilities and Activities:

Section 585.100(a)(1) creates a condition precedent for exempting a SLHC employee of "The employee's responsibilities and activities are limited solely to agriculture, forestry, retail merchandising, manufacturing, or public utilities operations." The Roundtable believes that the current list of selected activities is too narrow to accommodate the variety of employees in SLHCs. This has the potential to conflict with the organizational structure of many SLHCs. The Roundtable would suggest exemptions be expanded to include individuals who provide general support services to many parts of SLHCs, such as human resources support and accounting, but do not provide those services to the subsidiary savings association. We also suggest expanding the exemption to include all non-financial categories, such as "real estate development," "media and entertainment" and other categories. A more complete approach would be to extend the exemption to all employees whose responsibilities and activities are not "financial in nature" as used in section 4(k) of the Bank Holding Company Act

III. Case-by-Case Exemptions.

As noted in the preamble to the Interim Rule, section 19(e)(2) of the Federal Deposit Insurance Act permits the OTS to provide exemptions from application of section 19(e)(1) to SLHCs by regulation or order. Part 585 implements this authority by providing a permanent exemption for employees engaged in certain activities and outlining procedures for individual-specific or position-specific exemption applications.

However, we contend that section 19(e)(2) also permits the OTS to grant a specific exemption by order for a particular SLHC, which may be warranted by unique facts or circumstances of an SLHC. As such, we urge the OTS to clarify in Part 585 that it retains this authority and will exercise it where appropriate.

IV. Policymaking Positions.

This term is used in the section 585.100(a) exemption, but is not defined in the regulation. A narrower and carefully tailored definition should be added to the regulation to provide specific guidance to SLHCs in their efforts to comply with this rule.

V. Participation

Section 585.100(a)(4)(iii) includes a condition of the exemption of “Does not participate, directly or indirectly, in the conduct of the affairs of the savings and loan holding company.” This requirement could be interpreted as nullifying the other conditions of the exemption relating to specific types of businesses and policy making functions. Subsection (a)(4)(iii) should be deleted or made consistent with those other requirements of the section 585.100(a) exemption.

VI. Conclusion

The Roundtable supports the OTS efforts to protect the integrity of the banking system and avoid unnecessary regulation. We support the exemption given to SLHCs under the interim final rule. We recommend that the OTS reexamine the terms of that exemption and provide clarification as suggested above.

If you have any further questions or comments on this matter, please do not hesitate to contact me at (202) 289-4322.

Sincerely,

Richard M. Whiting

Richard M. Whiting
Executive Director and General Counsel