(3) Exclusion. A bridge financial company chartered pursuant to 12 U.S.C. 5390(h) shall not be deemed to be a Covered Company hereunder.

(f) Critical operations means those operations of the Covered Company, including associated services, functions and support, that, in the view of the Covered Company or as jointly directed by the Board and the Corporation, upon a failure of, or discontinuance of such operations, would likely result in a disruption to the U.S. economy or financial markets.

(g) Depositary institution has the same meaning as in section 3(c)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(1)) and includes a state-licensed uninsured branch, agency, or commercial lending subsidiary of a foreign bank.

(h) Foreign banking organization means:

(1) A foreign bank, as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)), that:

(i) Operates a branch, agency, or commercial lending company subsidiary in the United States;

(ii) Controls a bank in the United States; or

(iii) Controls an Edge corporation acquired after March 5, 1987; and

(2) Any company of which the foreign bank is a subsidiary.

(i) Functionally regulated subsidiary has the same meaning as in section 5(c)(5) of the Bank Holding Company Act, as amended (12 U.S.C. 1844(c)(5)).

(j) Material entity means a subsidiary or foreign office of the Covered Company that is significant to the activities of a critical operation or core business line (as defined in this part).

(k) Material financial distress with regard to a Covered Company means that:

(1) The Covered Company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion;

(2) The assets of the Covered Company are, or are likely to be, less than its obligations to creditors and others; or

(3) The Covered Company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

(l) Nonbank financial company supervised by the Board means a nonbank financial company or other company that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

(m) Rapid and orderly resolution means a reorganization or liquidation of the Covered Company (or, in the case of a Covered Company that is incorporated or organized in a jurisdiction outside the United States, the subsidiaries and operations of such foreign company that are domiciled in the United States) under the Bankruptcy Code that can be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk that the failure of the Covered Company would have serious adverse effects on financial stability in the United States.

(n) Significant bank holding company has the meaning given such term by rule of the Board pursuant to section 102(a)(7) of the Dodd-Frank Act, 12 U.S.C. 5311(a)(7).

(o) Significant company means a significant bank holding company or a significant nonbank financial company.

(p) Significant nonbank financial company has the meaning given such term by rule of the Board pursuant to section 102(a)(7) of the Dodd-Frank Act, 12 U.S.C. 5311(a)(7).

(q) Subsidiary means a bank or other company that is controlled by another company and an indirect subsidiary is a bank or other company that is controlled by a subsidiary of a company.

By order of the Board of Governors of the Federal Reserve System, April 8, 2011.

Jennifer J. Johnson, Secretary of the Board.

Dated at Washington, DC, this 29th day of March 2011.

By order of the Board of Directors.

Robert E. Feldman, Executive Secretary.

[FR Doc. 2011–9357 Filed 4–21–11; 8:45 am]

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FEDERAL RESERVE BOARD

12 CFR Chapter II

[Docket No. OP–1416]

Notice of Intent To Apply Certain Supervisory Guidance to Savings and Loan Holding Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of intent and request for comments.

SUMMARY: The Board of Governors of the Federal Reserve System (“Board”) invites comment on its intention to apply certain elements of its consolidated supervisory program currently applicable to bank holding companies to savings and loan holding companies (“SLHCs”) after assuming supervisory responsibility for SLHCs in July 2011. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 transfers supervisory functions related to SLHCs and their non-depository subsidiaries to the Board on July 21, 2011.

DATES: Comments must be submitted on or before May 23, 2011.

ADDRESSES: You may submit comments by any of the following methods:


• Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

• E-mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

• FAX: 202/452–3819 or 202/452–3102.

• Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board’s Web site at http://www.federalreserve.gov/generalfinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board’s Martin Building (20th and C Streets, NW) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION:

Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010
(the “Dodd-Frank Act”) was enacted into law on July 21, 2010. Title III of the Dodd-Frank Act abolishes the Office of Thrift Supervision (“OTS”) effective July 21, 2011, and transfers supervisory functions (including rulemaking) related to SLHCs and their non-depository subsidiaries to the Board. The Board will become responsible for the supervision of SLHCs beginning July 21, 2011 (“transfer date”).

The Board believes that it is important that any company that owns and operates a depository institution be held to appropriate standards of capitalization, liquidity, and risk management consistent with the principles of safety and soundness. As a result, it is the Board’s intention, to the greatest extent possible taking into account any unique characteristics of SLHCs and the requirements of the Home Owners Loan Act (“HOLA”), to assess the condition, performance, and activities of SLHCs on a consolidated risk-based basis in a manner that is consistent with the Board’s established approach regarding bank holding company (“BHC”) supervision. As with BHCs, our objective will be to ensure that the SLHC and its nondepository subsidiaries are effectively supervised and can serve as a source of strength for, and do not threaten the soundness of, its subsidiary depository institutions.

The Board has identified three elements of its current supervisory program that are particularly critical to the effective evaluation of the consolidated condition of holding companies: (i) The Board’s consolidated supervision program for large and regional holding companies; (ii) the Board’s supervisory program for small, noncomplex holding companies; and (iii) the Board’s holding company rating system. The Board believes that these programs aid in the effective supervision of BHCs and that they would be equally effective for the supervision of SLHCs.

It is the Board’s intention that, after the transfer date, the Board will issue formal guidance or notices of proposed rulemaking, as appropriate, taking into consideration any comments received on this notice, to apply the supervisory program in place for BHCs to SLHCs to the fullest extent possible taking into account the unique characteristics of SLHCs and the requirements of HOLA in order to ensure continuous and effective supervision of SLHCs. By this notice, the Board seeks to inform interested persons, including SLHCs, about the Board’s approach to supervision and invites comment on its intended approach in order to help identify issues and matters that may require special attention.

Consolidated Supervision

Consistent with its responsibilities under the Bank Holding Company Act, the Gramm-Leach-Bliley Act, and the Dodd-Frank Act, the Board supervises BHCs on a consolidated and enterprise-wide basis. The consolidated supervision program, which applies primarily to large and regional BHCs, is aimed at understanding and assessing the BHC on a consolidated basis. The program is applied in a risk-focused manner, and supervisory activities (continuous monitoring, discovery reviews, and testing) vary across portfolios of institutions based on size, complexity, and risk. The framework provides for coordination by the Federal Reserve System with, and reliance on the assessments by, bank and functional regulators of BHC subsidiaries.

The consolidated supervision program for SLHCs is essential to executing its supervisory responsibilities under the Dodd-Frank Act and is consistent with the authorities provided by HOLA. While the Board’s BHC consolidated supervision program has some similarities to the current supervisory program employed by the OTS, the Board nevertheless believes that the Board’s consolidated supervision program may entail more intensive supervisory activities than under current OTS practice, at least for some SLHCs. For example, the Board’s consolidated supervision of SLHCs may entail more rigorous review of internal control functions and consolidated liquidity, as well as the conduct of discovery reviews of specific activities.

In addition, the Board’s supervisory program may entail heightened review of the activities of nonbank subsidiaries (consistent with applicable law and regulation) and may entail greater continuous supervisory monitoring of larger SLHCs. Nevertheless, the Board does not believe that application of its BHC consolidated supervision program to SLHCs would require any specific action on the part of SLHCs prior to the transfer date or cause undue burden on an ongoing basis.

The Board intends to integrate each SLHC into existing programs that align institutions with various supervisory portfolios (e.g., community banking organizations, regional banking organizations, and large banking organizations) based on their size and complexity. Each portfolio has a supervisory program tailored to the type of institution supervised. The applicable consolidated supervision program is explained in SR 08–9.

Small, Noncomplex Holding Companies

Consistent with a risk-focused approach to supervision, both the Board and OTS have tailored specific supervisory programs for holding companies that are viewed as posing a relatively low level of risk to depository institution subsidiaries and to the financial system. The OTS currently classifies low-risk or noncomplex SLHCs (irrespective of size and as determined by supervisory staff on a case-by-case basis) as “Category I” and subjects these SLHCs to abbreviated, limited-scope on-site examinations.

Similarly, the Board has a program for BHCs with total consolidated assets of $1 billion or less ("small shell BHCs"). The Board’s consolidated supervision program may entail more intensive supervisory activities than under current OTS practice, at least for some SLHCs. For example, the Board’s consolidated supervision of SLHCs may entail more rigorous review of internal control functions and consolidated liquidity, as well as the conduct of discovery reviews of specific activities.

The determination of whether a holding company is “complex” versus “noncomplex” is made at least annually on a case-by-case basis taking into account and weighing a number of factors. Continued
that are not considered small shell BHGs, complete ratings are assigned in conjunction with inspection activities. Moreover, additional limited-scope or targeted inspection activities may be conducted as needed.⁸

Once Board supervisory staff has become familiar with the structure and financial condition of SLHCs, the Board intends to apply the program for small shell BHGs as set forth in SR 07–1 and supporting documents to SLHCs that meet the same criteria. A Reserve Bank will determine whether an SLHC with assets of $1 billion or less is complex or noncomplex, and will tailor its supervision as appropriate. For example, a number of small, noncomplex SLHCs, this may have the effect of reducing burden as onsite examinations/inspections will no longer be required.

### Holding Company Rating System

The Board and OTS (together, the “agencies”) have developed rating systems for supervised institutions to provide an assessment of financial and nonfinancial factors based on the findings of examination and inspection activities, as well as to ensure uniform treatment across institutions. Both agencies use a 1-to-5 rating scale, with 1 indicating the highest rating and least degree of supervisory concern, and 5 indicating the lowest rating and highest degree of supervisory concern. These ratings are nonpublic supervisory information and, as such, are shared with the institution being rated but are otherwise generally confidential.

The OTS rating system for SLHCs is known as “CORE.”⁹ The Board’s rating system for BHGs is known as “RFI” or “C(D)” or (commonly referred to as “RFI”). Given the similarities between the CORE and RFI rating systems, and the general goal of rationalizing supervisory processes for all institutions, the Board is considering transitioning SLHCs to the RFI rating system as the Board conducts its own independent supervisory assessment of the condition of the SLHC after the transfer date. The Board does not anticipate that any existing CORE ratings will be converted to RFI ratings until such a review is conducted.

Based on analyses of the CORE and RFI rating systems by the agencies, the Board believes there is substantial overlap between the two rating systems. However, there are some areas where the CORE and RFI rating systems differ. Under the CORE rating system, SLHCs generally are assigned individual component ratings for capital (C), organizational structure (O), risk management (R), and earnings (E), as well as a composite rating that reflects an overall assessment of the holding company enterprise as reflected by consolidated risk management and consolidated financial strength. Under the RFI rating system, BHGs generally are assigned individual component ratings for risk management (R), financial condition (F), and impact (I) of nondepository entities on subsidiary depository institutions. The risk management rating is supported by individual subcomponent ratings for board and senior management oversight; policies, procedures, and limits; risk monitoring and management information systems; and internal controls. The financial condition rating is supported by individual subcomponent ratings for capital adequacy, asset quality, earnings, and liquidity. An additional component rating is assigned to generally reflect the condition of any depository institution subsidiaries (D), as determined by the primary supervisor(s) of those subsidiaries. An overall composite rating (C) is assigned based on an overall evaluation of a BHC’s managerial and financial condition and an assessment of potential future risk to its subsidiary depository institution(s).

A primary difference between the two rating systems is that, unlike the RFI rating system, the CORE rating system does not explicitly take account of asset quality.¹¹ Asset quality is one of a number of elements that is taken into account in assigning a composite rating because, under CORE, a review of asset quality is conducted.

### Regulatory Considerations

⁸ Requirements for BHGs with special characteristics (e.g., those that are formed to acquire an existing bank, have undergone a change in control, or are de novo and have been organized to acquire a de novo bank) may differ from the guidelines described here. See section 5000 of the Federal Reserve Board’s Bank Holding Company Supervision Manual.


¹¹ The OTS does not require individual component ratings to be assigned to noncomplex and low-risk holding companies.

¹² A simplified version of the rating system that includes only the risk management component and a composite rating is applied to noncomplex BHGs with assets of $1 billion or less.

¹³ Although liquidity is not rated separately under the CORE system, it is nevertheless taken into account in both the organizational structure and earnings components.
subjected into other rating elements (it is taken into account indirectly in assessing the capital and earnings components).

Additionally, as discussed in more detail below, in contrast to BHCs, SLHCs currently are not subject to regulatory capital requirements. As one element of its overall assessment of capital adequacy, the (F) component of the RFI rating system does not take into account regulatory capital requirements for BHCs. The (C) component of the CORE rating system takes into consideration both a qualitative and quantitative supervisory capital assessment that can be found in OTS guidance. With the exception of the regulatory capital requirement for BHCs, the methods used by the agencies to determine capital adequacy for purposes of establishing a supervisory rating are similar. Until such time as consolidated capital standards for SLHCs are finalized by the Board, the Board anticipates that it will assess SLHC capital using supervisory quantitative and qualitative methods similar to those currently employed by the OTS.

The Board notes that changes to the RFI rating system guidance and policies may be necessary to accommodate SLHCs and differences in their statutory and regulatory framework. The Board is reviewing this guidance to determine where adjustments may be necessary.

The Board is seeking comment on all aspects of this approach. Specifically, the Board requests comment with regard to:

1. The burden of these potential modifications to supervisory activities on SLHCs; and
2. Whether there are any unique characteristics, risks, or specific activities of SLHCs that should be taken into account when evaluating which supervisory program should be applied to SLHCs and what changes would be required to accommodate these unique characteristics.

Capital Adequacy

One material difference between the OTS and Board supervisory programs for holding companies is the assessment of capital adequacy. Currently, SLHCs are not subject to minimum regulatory capital ratio requirements. The OTS instead applies both a qualitative and quantitative supervisory capital assessment to SLHCs that is based in guidance. Section 171 of the Dodd-Frank Act requires that BHCs and SLHCs be subject to minimum leverage and risk-based capital requirements that are not less than the generally applicable leverage and risk-based capital requirements applied to depository institutions.15 Small BHCs that are subject to the Small Bank Holding Company Policy Statement (Appendix C of 12 CFR part 225) are exempt from these requirements. Section 171 of the Act did not expressly provide a similar exemption for small SLHCs.

Pursuant to the Dodd-Frank Act and the Basel Committee on Banking Supervision’s “Basel III: A global regulatory framework for more resilient banks and banking systems” report (“Basel III”), the Board, together with the other Federal banking agencies, is reviewing consolidated capital requirements for all depository institutions and their holding companies. The Board is considering applying to SLHCs the same consolidated risk-based and leverage capital requirements as BHCs to the extent reasonable and feasible taking into consideration the unique characteristics of SLHCs and the requirements of HOLA. The Board, together with the other Federal banking agencies, expects to issue a notice of proposed rulemaking in 2011 that will outline how Basel III-based requirements will be implemented for all institutions, including any relevant provisions needed to comply with the Dodd-Frank Act. It is expected that the Basel III notice of proposed rulemaking also would address any proposed application of Basel III-based requirements to SLHCs. The Board expects that final rules establishing Basel III-based capital requirements would be finalized in 2012 and implementation would start in 2013, in accordance with the international agreement. The Board invites SLHCs to monitor and participate in the Basel III capital rulemaking process.

Although the Board believes it is important for SLHCs generally to be subject to the same consolidated leverage and risk-based capital requirements as BHCs, it recognizes that SLHCs have traditionally been permitted to engage in a broad range of nonbanking activities that were not contemplated when the general leverage and risk-based capital requirements for BHCs were developed. The Board is seeking specific comment with respect to any unique characteristics, risks, or specific activities of SLHCs the Board should take into consideration when developing consolidated capital requirements for SLHCs based on Basel III. What specific provisions, consistent with the Dodd-Frank Act, should be incorporated in the proposed rule in order to address such unique characteristics, risks, and/or specific activities? Additionally, the Board is seeking comment on the following:

1. The burden of these potential modifications to supervisory activities on SLHCs; and
2. Whether there are any unique characteristics, risks, or specific activities of SLHCs that should be taken into account when evaluating which supervisory program should be applied to SLHCs and what changes would be required to accommodate these unique characteristics.

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