American Bankers Association

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[redacted]

February 27, 2015

Mr. Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090.

Re; Changes to Exchange Act Registration Requirements to Implement Titles V and Title VI of the JOBS Act, File Number S7-12-14, 79 *Federal Register* 78343, December 30, 2014

Dear Mr. Fields,

The American Bankers Association[1] is responding to the request from the Securities and Exchange Commission (SEC or Commission) for comments on the proposal to implement Titles V and VI of the Jumpstart Our Business Startups Act (JOBS Act). The JOBS Act, which was enacted on April 5, 2012, updated the thresholds for those banks, bank holding companies, and savings associations required to comply with the registration and periodic reporting obligations of the Securities Exchange Act of 1934 (the Exchange Act). For banks, bank holding companies, and savings associations, the JOBS Act increased the shareholder threshold at which registration as a public company is required under the Exchange Act from 500 to 2,000 shareholders of record. Commensurately, the JOBS Act increased the threshold for deregistration or suspension of reporting from 300 to 1,200 shareholders of record.

The proposal would incorporate into the Commission's rules these new statutory thresholds for the above financial institutions. However, because of an incomplete statutory cross reference, savings and loan holding companies were not afforded the same relief from regulatory burden as their bank holding company counterparts. The rule proposal would rectify this oversight by extending to savings and loan holding companies those same thresholds for registration, reporting, and deregistration. ABA fully supports these provisions and commends the Commission for this effort, which will provide comparable treatment across all similarly situated financial institutions.

Discussion

Section 601 of the JOBS Act amended the Exchange Act[2] to require an issuer that is a bank or a bank holding company to register as a public company if, on the last day of its fiscal year, the issuer has total assets of more than $10 million and the class of equity securities is "held of record" by 2,000 or more persons, an increase from the previous threshold of 500 persons. In addition, Section 601 amended the Exchange Act[3] to enable such financial institutions to terminate the registration of a class of securities under Section 12(g) or suspend reporting under Section 15(d)(1) if that class is held of record by less than 1,200 persons, an increase from the previous threshold of 300 persons.

[1] The American Bankers Association is the voice of the nation's $15 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $11 trillion in deposits and extend more than $8 trillion in loans.
[2] Section 12(g)(1).
[3] Sections 12(g)(4) and 15(d)(1)20.

Banks, bank holding companies, and savings associations have been able to avail themselves of these new thresholds by operation of the statute.[4] However, because the Commission's rules governing the mechanics relating to termination of registration and suspension of reporting obligations did not reflect the new thresholds, these financial institutions could not take advantage of the immediate cessation of those obligations provided only in the rules.[5] Under the proposal, these financial institutions would be able to rely on the Commission's rules to suspend reporting immediately, and to terminate their registration at any time during the fiscal year (rather than only on the first day of the fiscal year), at the higher 1,200-holder threshold.

Application of Increased Thresholds for Savings and Loan Holding Companies

The term "bank" is defined in Section 3(a)(6) of the Exchange Act to include federal savings associations *and* any other banking institution or savings association, as defined in the Home Owners' Loan Act (HOLA).[6] Thus, the revised thresholds enacted in Section 601 apply to banks, savings and loan associations, and similar entities.[7] With respect to bank holding companies, Section 601 imports the definition of "bank holding company" from Section 2 of the Bank Holding Company Act of 1956. That definition, however, expressly excludes "savings and loan holding companies" – entities that at the time were subject to the separate statutory and regulatory scheme pursuant to the HOLA. Because Section 601 did not include a separate reference to HOLA for savings and loan holding companies, the result was the anomalous situation that comparable depository institution holding companies were treated dissimilarly.

With the passage of the Dodd-Frank Act in 2010, supervisory and regulatory authority over savings and loan holding companies was transferred to the Board of Governors of the Federal Reserve System. Savings and loan holding companies are now generally required to submit the same reports to banking regulators as other banking entities regulated by the Board of Governors, including bank holding companies covered by Section 601.[8] Because the Commission believes that savings and loan holding companies should be treated consistently with other depository institutions under SEC rules, the proposal would amend Exchange Act Rules 12g-1, 12g-2, 12g-3, 12g-4 and 12h-3 to apply the Section 601 thresholds to such institutions.

[4] The term "bank" as defined in Exchange Act Section 3(a)(6) includes savings associations. The JOBS Act definition explicitly includes bank holding companies as defined in Section 2 of the Bank Holding Company Act of 1956.

[5] *See* Exchange Act rules 12g-2, 12g-3, 12g-4 and 12h-3.

[6] 12 U.S.C. § 1461.

[7] SEC Release 33-9693 at 13, footnote 34.

[8] Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, 124 Stat. 1376) (the Dodd-Frank Act) abolished the Office of Thrift Supervision, the regulator that formerly supervised savings and loan holding companies, and transferred its authorities (including rulemaking) related to savings and loan holding companies to the Board of Governors. The Board of Governors assumed supervisory responsibility for savings and loan holding companies and their non-depository subsidiaries beginning on July 21, 2011. The Board of Governors is responsible for the consolidated supervision of bank holding companies and savings and loan holding companies and requires those entities to provide data relating to capitalization, liquidity, and risk management as well as periodic financial reports in order for the Board of Governors to analyze the overall financial condition of those entities to ensure safe and sound operations. These reports include, among others, quarterly Consolidated Financial Statements for Bank Holding Companies (FR Y-9C) and an Annual Report of Bank Holding Companies (FR Y-6).

Conclusion

For the reasons stated above, ABA fully supports these provisions of the rule proposal, and we commend the Commission for instituting these common-sense changes. These rule amendments will provide consistent treatment across regulatory charters, thus simplifying compliance and supervision.

Sincerely,

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