



Holding Company of Union Bank, N.A.

March 28, 2011

SECURITIES AND EXCHANGE COMMISSION

Attention: Elizabeth M. Murphy, Secretary

100 F Street, NE

Washington, D.C. 20549-1090

VIA ELECTRONIC SUBMISSION

Re: File Number S7-18-08

Securities and Exchange Commission Release No. 33-9186; 34-63874

Dear Ms. Murphy:

UnionBanCal Corporation, a Delaware corporation (“UnionBanCal”), and Union Bank, N.A., a national banking association which is a wholly-owned subsidiary of UnionBanCal (“Union Bank”), welcome the opportunity to comment on the February 9, 2011 Proposed Rule Release (the “Proposed Rule”) published by the Securities and Exchange Commission (the “Commission”) addressing Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). In the Proposed Rule, the Commission proposes, among other actions, to replace rule and form requirements under the Securities Act of 1933 (the “Securities Act”) for securities offering rules that rely on, or make special accommodations for, security ratings (including Forms S-3 and F-3 eligibility criteria) with alternative requirements. Specifically, we wish to comment on the Commission’s proposal to replace the investment grade criterion in General Instruction I.B.2. of Form F-3¹ with a requirement that the issuer has issued

¹ Although UnionBanCal is a domestic corporation, as the subsidiary of a foreign private issuer, it relies on the eligibility criterion of General Instruction I.B.2. of Form F-3; therefore, this letter addresses the eligibility criterion of Form F-3. However, we believe that the comments of this letter are also applicable to registrants relying on the corresponding eligibility criterion of General Instruction I.B.2. of Form S-3.

at least \$1 billion of non-convertible securities in transactions registered under the Securities Act, other than equity securities, for cash during the past three years (the “\$1 Billion Requirement”).

Executive Summary

Under the Proposed Rule, if adopted by the Commission, UnionBanCal would lose its eligibility to issue debt under its currently-effective shelf registration statement on Form F-3 because it would not satisfy the \$1 Billion Requirement. In addition, the Proposed Rule, if adopted by the Commission, may also indirectly impact Union Bank’s eligibility to maintain its current bank note program under the rules and regulations of the Office of the Comptroller of the Currency (the “OCC”) at 12 C.F.R. Part 16. At a time when U.S. and international bank regulators are emphasizing the importance of long-term debt in the funding structure of depository institutions, it is inconsistent for the Commission to remove the flexibility afforded by Form F-3 eligibility and, therefore, make it more difficult for UnionBanCal and, potentially, Union Bank to opportunistically access the public debt markets.

The Commission stated in the Proposed Rule that it does not wish to change the types of issuers and offerings that could rely on the Commission’s registration forms and specifically solicited comments relating to companies that would lose short-form registration eligibility due to the Proposed Rule, particularly suggestions regarding new eligibility criteria designed to replicate, as closely as possible, the existing pool of eligible issuers.² Accordingly, we are setting forth in this letter four suggestions regarding alternative eligibility criteria that would maintain Form F-3 eligibility for UnionBanCal and, potentially, depending on the rulemaking of the OCC, Union Bank’s eligibility to maintain its current bank note program under OCC rules and regulations irrespective of the amount of securities issued. These four suggestions are summarized as follows:

- **Eligibility Based on Financial Holding Company Status:** Financial holding companies under federal law must meet capital and management requirements (that are set and examined on a periodic basis by the federal banking regulators) that form a comparable or superior proxy for creditworthiness compared to third party investment grade ratings.
- **Eligibility of “Systemically Significant” Entities:** Compliance with increased financial regulation required by the Dodd-Frank Act of the largest bank holding companies, in addition to the robust oversight currently in place by primary banking regulators, would arguably be an indication of creditworthiness that is similar to or better than investment grade credit ratings.

² See the Proposed Rule at p.13.

- **Numerical or Temporal Alternatives to the \$1 Billion Requirement in the Proposed Rule:** If the Commission decides to focus on numerical or temporal criteria for continued Form F-3 eligibility, we suggest considering other alternatives to the \$1 Billion Requirement, including reducing the numerical threshold, extending the look-back period, consolidating the securities issuances of an operating subsidiary with its holding company parent or establishing a minimum amount of public debt outstanding.
- **Parent Company as a Well-Known Seasoned Issuer:** We suggest considering the establishment of Form F-3 eligibility for issuers who are wholly-owned subsidiaries of direct or indirect parent companies that are well-known seasoned issuers based on the inference that such an issuer is widely followed in the marketplace as a component of the well-known seasoned issuer.

About UnionBanCal and Union Bank

UnionBanCal

UnionBanCal is a financial holding company and bank holding company registered under the Bank Holding Company Act of 1956 (the “Bank Holding Company Act”) and is subject to the supervision and regulation of the Board of Governors of the Federal Reserve System (the “Federal Reserve Board”). At December 31, 2010, UnionBanCal had approximately \$79 billion in assets on a consolidated basis. At such date, UnionBanCal was the 26th largest bank holding company in the United States in terms of assets. Prior to its privatization in November 2008, the common stock of UnionBanCal was listed for trading on the New York Stock Exchange (the “NYSE”) and was registered under Section 12(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and, therefore, UnionBanCal was subject to the reporting requirements of Section 13 and 15(d) of the Exchange Act. Since its privatization, all of the issued and outstanding shares of UnionBanCal’s capital stock have been held by The Bank of Tokyo-Mitsubishi UFJ, Ltd., which is in turn wholly-owned by Mitsubishi UFJ Financial Group, Inc. (“MUFG”). MUFG is one of the largest financial holding companies in the world with consolidated total assets of approximately \$2 trillion at March 31, 2010. American depository shares representing shares of MUFG common stock are listed for trading on the NYSE and are registered under Section 12(b) of the Exchange Act and, therefore, MUFG is subject to the reporting requirements of Section 13 and 15(d) of the Exchange Act as a foreign private issuer. Following its privatization, UnionBanCal continued to file periodic reports with the Commission on a voluntary basis without interruption and on January 11, 2009 registered its common stock pursuant to a registration statement on Form 8-A under Section 12(g) of the Exchange Act (File No. 000-28118), once again, resulting in UnionBanCal being subject to the reporting requirements of Section 13 of the Exchange Act.

In June 2009, UnionBanCal filed a shelf registration statement with the Commission on Form F-3 pursuant to General Instruction I.A.5(ii), in reliance on MUFG satisfying the required registrant requirements of Form F-3 and UnionBanCal proposing to offer and sell investment grade securities for cash that are not convertible into shares of common equity as required by Transaction Requirement B.2 under Form F-3 (File No. 333-159741) (the “UnionBanCal F-3”). The UnionBanCal F-3 was declared effective by the Commission on June 30, 2009. To date, UnionBanCal has not offered or sold any securities under the UnionBanCal F-3, although UnionBanCal considers the public debt markets an important potential source of funding and does not wish to lose its shelf registration eligibility pursuant to Form F-3. UnionBanCal last accessed the public markets with registered securities in 2003 under its then effective Form S-3 shelf registration statement. The amount of that offering was \$400 million, putting UnionBanCal outside of the proposed eligibility criteria for future Form F-3 registration contemplated by the \$1 Billion Requirement both from a timing and a dollar amount perspective.

The long-term debt ratings of UnionBanCal and Union Bank as of December 31, 2010 are as follows:

	<u>UnionBanCal</u>	<u>Union Bank</u>
Standard & Poor’s	A	A+
Moody’s	—	A2
Fitch	A	A
DBRS	A	A (high)

Plans for the future public issuance of registered debt by UnionBanCal will depend on a variety of factors, but while there is a very high likelihood that UnionBanCal will seek to access the public markets again at some point, it is uncertain that it would do so in a way that will satisfy the \$1 Billion Requirement. As a result, the prospect of losing Form F-3 shelf eligibility, and the related inability to continue to use the UnionBanCal Form F-3, is particularly concerning.

Union Bank

Union Bank, the principal subsidiary of UnionBanCal, is a national bank organized under the National Bank Act and is subject to the primary supervision and regulation of the OCC. Union Bank is a commercial banking organization that provides a wide range of financial services to consumers, small businesses, middle-market companies and major corporations, primarily in California, Oregon, Washington and Texas, as well as nationally and internationally. As of December 31, 2010, Union Bank operated 400 full-service branches in California, Oregon, Washington and Texas, as well as two international offices and its total assets were approximately \$79 billion at December 31, 2010.

Since 2006, Union Bank has maintained a \$4 billion bank note program which is exempt from registration with the Commission pursuant to Section 3(a)(2) of the Securities Act but is subject to the rules and regulations of the OCC.³ The OCC permits national banks to offer and sell nonconvertible debt without registration under the rules and regulations of the OCC so long as, among other requirements, the bank is a subsidiary of a bank holding company with securities registered under the Exchange Act and the debt is “investment grade.” As you are aware, Section 939A of the Dodd-Frank Act also requires the OCC to remove references and requirements relating to credit ratings and replace them with substitute standards of creditworthiness. On August 25, 2010, the OCC issued a Notice of Advance Rulemaking titled “Alternatives to the Use of External Credit Ratings in the Regulations of the OCC” (the “OCC Release”).⁴ In the portion of the OCC Release which discusses the “investment grade” requirement of its nonconvertible debt offering regulations, the OCC stated that it will consider the Commission’s final rules adopted under the Proposed Rule.⁵ Therefore, the rules adopted by the Commission could also indirectly affect Union Bank’s bank note program to the extent Union Bank would not otherwise satisfy the \$1 Billion Requirement. Since its launch in 2006, Union Bank has issued \$1.85 billion in aggregate principal amount of bank notes under its current bank note program, including a \$400 million senior note issuance in December 2010. Union Bank has remaining \$2.15 billion authorized for issuance under its current bank note program.

We would note that it is important for bank holding companies to be able to preserve their flexibility to access the public debt markets which Form F-3 provides in light of the increasing emphasis by U.S. and international bank regulators on the importance of longer-term debt for the funding structure of depository institutions. For example, the Federal Deposit Insurance Corporation has recognized the benefits of long-term debt by incorporating an “Unsecured Debt Adjustment” into its assessment pricing methodology, which has the effect of *lowering* the cost of debt issued by depository institutions.⁶ Additionally, the Basel Committee on Banking Supervision has proposed liquidity standards that will necessitate increased issuance of long-term debt by banks in the coming years.⁷ These liquidity standards are very likely to impact institutions that are smaller than Union Bank and therefore even less likely to satisfy the alternative criteria in the Proposed Rule. It would be inconsistent for the banking regulators to call for increased issuance of long-term debt by banks and bank holding companies and the Commission to impede their ability to do so.

³ See 12 C.F.R. Section 16.6.

⁴ 79 Fed.Reg. 49423 (Aug. 10, 2010).

⁵ Id. at 49425-49426.

⁶ 76 Fed.Reg. 10672 (Feb. 25, 2011).

⁷ Basel Committee on Banking Supervision, International regulatory framework for banks (Basel III).

Suggested alternative eligibility criteria

We would like to suggest alternative Form F-3 eligibility criteria under the Proposed Rule which, if implemented, may relieve some of the burdens that would be placed on UnionBanCal, Union Bank and similarly sized regional banking groups if the Proposed Rule is adopted. As a preliminary matter, while the Proposed Rule states that the \$1 Billion Requirement is the most workable alternative for determining whether an issuer is widely followed in the marketplace, we respectfully submit that an issuer's "wide following" is not necessarily the best proxy for creditworthiness typically evidenced by investment grade ratings and, therefore, is not necessarily the best criterion for evaluating Form F-3 eligibility.

Eligibility Based on Financial Holding Company Status

We believe an appropriate replacement for the investment grade ratings criterion of Form F-3 as to bank holding companies in the United States would be to replace Transaction Requirement B.2 as applicable to the eligibility requirements of General Instruction I.A.5(ii) of Form F-3 with an eligibility requirement based on a registrant's status as a financial holding company (an "FHC") under the Bank Holding Company Act and the rules and regulations of the Federal Reserve Board.⁸

The Gramm-Leach-Bliley Act of 1999 authorized bank holding companies that meet certain eligibility criteria to become FHC's upon the filing of an election with the Federal Reserve Board which is not disapproved. FHC's may engage in a broader range of financially related activities than bank holding companies which are not FHC's. As codified at Section 4 of the Bank Holding Company Act and implemented through the Federal Reserve Board's Regulation Y, in order to make an FHC election, all depository institutions (in this case, Union Bank) owned by the bank holding company must be both "well managed" and "well capitalized" and have achieved at least a rating of "satisfactory record of meeting community credit needs" under the Community Reinvestment Act (the "CRA") at the institution's most recent examination.⁹ Further, Section 606 of the Dodd-Frank Act will extend capital requirements to the FHC itself similar to those to which depository institutions are presently subject as a condition to their parent holding company maintaining FHC status. While UnionBanCal is already "well capitalized" on a stand-alone basis, Section 606 of the Dodd-Frank Act will require such capitalization for UnionBanCal and all other FHC's as of July 22, 2011 (subject to a possible six-month extension).¹⁰

⁸ See 12 U.S.C. 1843k; 12 C.F.R. Part 225.

⁹ 12 C.F.R. Sections 225.82 and 225.83.

¹⁰ We note that the capital standards to be implemented under the Dodd-Frank Act may not extend to FHC's that are "foreign banking organizations" (as such term is defined in Regulation K of the Federal Reserve Board at 12 C.F.R. Part 211) such as MUFG.

In order to become an FHC, a bank holding company files an election with the Federal Reserve Board.¹¹ The Federal Reserve Board may negate the effectiveness of the election if it determines that the company's CRA rating is not at least satisfactory or any depository institution controlled by it is not well capitalized or well managed.¹² To be well managed, the institution must have at least a satisfactory composite rating from its primary federal banking regulator under the banking agencies' uniform rating system and must also have at least a satisfactory rating for its management, if a separate rating is given.¹³ In addition, the Federal Reserve Board is expected to make amendments to its Regulation Y to implement the FHC capitalization requirements of Section 606 of the Dodd Frank Act.

We believe that a registrant's status as an FHC is a suitable Form F-3 replacement criterion for the current investment grade ratings criterion for several reasons. First, FHC's must meet capital and management requirements (that are set and examined on a periodic basis by the federal banking regulators) that form a comparable or superior proxy for creditworthiness compared to third party investment grade ratings. In addition, as FHC status is subject to disapproval by the Federal Reserve Board and the Federal Reserve Board publishes a list of FHC's, a registrant's status as an FHC would be easy to verify by both the registrant and the Commission and, therefore, we submit is a workable, objective criterion. Finally, the FHC requirements are ongoing and failure to satisfy the FHC criteria on an ongoing basis will cause a registrant to lose such status.¹⁴

Eligibility of "Systemically Significant" Entities

Another potential alternative would be to recognize the additional oversight by the Financial Stability Oversight Counsel ("FSOC") under the Dodd-Frank Act of "systemically significant" bank holding companies and non-bank financial companies. Section 115 of the Dodd-Frank Act provides that bank holding companies with consolidated assets of \$50 billion or more may be placed under the purview of the FSOC. The FSOC is called upon to, among other tasks, propose and promulgate prudent standards for covered institutions on capital, liquidity and credit exposures. In addition, under Section 116 of the Dodd-Frank Act, the FSOC is authorized to require additional reporting and disclosure by covered institutions. Compliance with this increased financial regulation, in addition to the robust oversight currently in place by primary banking regulators, would arguably be an indication of creditworthiness that is similar to or better than investment grade credit ratings. In addition, such large companies are also likely to have a "wide following in the marketplace" as favored by the Proposed Rule.

¹¹ 12 C.F.R. Section 225.82.

¹² 12 C.F.R. Section 225.82(c).

¹³ 12 C.F.R. Section 225.2(s).

¹⁴ A financial holding company must notify the Federal Reserve Board in writing within 15 calendar days of becoming aware that any depository institution controlled by the company has ceased to be well capitalized or well managed. 12 C.F.R. Part 225.83(b).

Numerical or Temporal Alternatives to the \$1 Billion Requirement in the Proposed Rule

Although the Commission indicated in the Proposed Rule that the \$1 Billion Requirement may be the most workable alternative to reliance on investment grade credit ratings for determining Form F-3 eligibility, we respectfully submit that the \$1 Billion Requirement may not be the best *substantive* substitute for this criterion, especially if the goal is to preserve the types of issuers and offerings that could rely on the Commission's short-form registration process. It appears from the Proposed Rule that the Commission has proposed the \$1 Billion Requirement because of its usage in determining "well-known seasoned issuer" status, which is one prerequisite for the ability to file an automatically effective registration statement under the Securities Act. However, whether or not an issuer is sufficiently well-known in the marketplace to justify automatic effectiveness of a registration statement (and the related lack of Commission review) should not also be determinative of whether the same issuer has a level of creditworthiness equivalent to investment grade credit ratings and, therefore, should be eligible to enjoy the benefits of standard short-form registration pursuant to Form F-3, which would still be subject to Commission review. In other words, the \$1 Billion Requirement in the Proposed Rule seems to set the bar too high for a reporting issuer (without any public equity float) who is simply seeking to remain eligible for short-form registration (subject to Commission review) as opposed to the justifiably higher standard for automatic effectiveness of a registration statement. When the Commission adopted amendments to its rules and regulations to create the "well-known seasoned issuer" category, there was no suggestion in the adopting release that the eligibility criteria for this category was based on creditworthiness of the issuer; instead, such adopting release indicated that the new category was being established for "issuers that have a reporting history under the Exchange Act and are presumptively the most widely followed in the marketplace."¹⁵

We respectfully submit that numerical criteria based on the amount of securities issued over a particular period of time is not the best proxy for creditworthiness of an issuer evidenced by investment grade credit ratings. As a result, we would ask the Commission to focus its attention on the first two alternatives discussed in this letter because we believe those are more appropriate substitutes for the existing investment grade credit ratings criterion in Form F-3. However, to the extent the Commission ultimately concludes that a numerical (and perhaps temporal) test based on the amount of securities issued by an issuer is nonetheless the alternative it will adopt for evaluating Form F-3 eligibility (in lieu of the existing investment grade credit ratings criterion), we respectfully request that the Commission then consider the following alternatives to the \$1 Billion Requirement, which as described elsewhere in this letter, would disqualify UnionBanCal from the use of Form F-3:

¹⁵ SEC Release Nos. 33-8591; 34-52056; IC-26993; FR-75 (File No. S7-38-04), page 23.

- Reduce the threshold (from \$1 billion) and extend the look-back period (from three years) for determining whether an issuer is eligible to use Form F-3 (although we note that even a reduction in threshold and extension in look-back period may not initially benefit UnionBanCal because it has not issued public securities since 2003).
- Permit a holding company, such as UnionBanCal, to count securities issued by it and its operating subsidiaries towards the \$1 Billion Requirement.¹⁶ Such a consolidated view would allow depository institutions with funding needs at multiple entities to continue to address those needs in a flexible way (that is, without having regulatory constraints dictate the most efficient capital raising approach for a consolidated entity), while simultaneously addressing the Commission's goal of allowing Form F-3 short-form registration only for issuers that would be broadly followed and scrutinized by investors. This view of a consolidated organization would, in fact, be consistent with the way that many investors view issuance by multiple entities under the same parent holding company.
- Adopt a Form F-3 eligibility criterion that would be based on the amount of public debt outstanding that would complement the criterion based on the amount of public equity float (\$75 million), irrespective of whether issued on a registered or private basis. If a goal of the Commission is to preserve Form F-3 eligibility for issuers that have a wide following in the secondary market, we believe that a minimum amount of public debt outstanding would be consistent with achieving such a goal to the same extent public equity float does. Said differently, if a minimum public equity float is sufficient for F-3 eligibility, why should not some minimum amount of debt float also be sufficient? In some ways, this is a superior alternative to the \$1 Billion Requirement because it does not rely on an artificially chosen time period (three years) for issuance, which may lead to unintended results and funding decisions by issuers that are tied to regulatory flexibility rather than actual need.

Parent Company as a Well-Known Seasoned Issuer


Despite our disagreement with this approach as discussed earlier in this letter, if the Commission believes that wide following in the marketplace is a legitimate substitute for investment grade credit ratings, another alternative approach for Form F-3 eligibility would be for issuers who are wholly-owned subsidiaries of direct or indirect parent companies that are well-known seasoned issuers (including with the absence of a guarantee from such parent company, which we do not believe is indicative of stand-alone creditworthiness of the

¹⁶ As an aside, if this approach was adopted, we would urge the Commission to "count" securities issued by banks that would be exempt from registration under Section 3(a)(2) of the Securities Act; unlike securities issued in a private placement pursuant to Section 4(2) or related rules and regulations of the Commission, we do not believe exempt securities under Section 3 of the Securities Act raise the same liability concerns given the public policy underlying these exemptions and, specifically, with respect to national bank securities, the separate regulation of issuances of bank securities by the OCC.

subsidiary). If an issuer is a subsidiary of a well-known seasoned issuer and is otherwise eligible to use Form F-3, it would be reasonable to infer that such issuer is widely followed in the marketplace as a component of the well-known seasoned issuer. If this alternative is considered by the Commission, it could be combined with some of the numerical elements discussed above (for example, the criterion for Form F-3 eligibility could be a wholly-owned subsidiary of a well-known seasoned issuer which has at least \$250 million of public debt outstanding as of the relevant determination date).

We appreciate the opportunity to comment on the Proposed Rule and respectfully ask that the Commission address the requests and proposed alternative criterion set forth above. If you have any questions or if additional information would be helpful, please contact me at 415-765-2000.

Sincerely,



John F. Woods

Vice Chairman & Chief Financial Officer