

Federal Reserve Bank of San Francisco
101 Market Street, San Francisco, California 94105

August 3, 2011

To State Member Banks, Bank
Holding Companies, Financial Holding
Companies, and Foreign Bank Offices
in the Twelfth Federal Reserve District

SR 11-13 Guidance Regarding Prior Notices with Respect to Dividend Declarations by Savings Association Subsidiaries of Savings and Loan Holding Companies

Effective July 21, 2011, any savings association that is a subsidiary of a savings and loan holding company (SLHC) must provide notice to the Board at least 30 days before declaring a dividend.¹ The duty to review and process these notices is one of the new responsibilities the Board assumed on July 21, 2011, as part of the supervisory and rulemaking authority previously held by the Office of Thrift Supervision (OTS) with respect to SLHCs.

The 30-day prior notice is required by statute.² The statute also provides that the 30-day period runs from the date the notice is submitted to the agency, and that a dividend declared during the review period or without filing the notice is null and void.

Procedural Operations

A prior notice with respect to a proposed dividend declaration must be filed with the appropriate Reserve Bank on the designated form.³ Notices should be submitted to the Applications Units at each applicable Reserve Bank. In evaluating a savings association's notice, the Reserve Bank should work closely with the savings association's supervisor(s). Therefore, upon receiving a notice, the Reserve Bank should immediately transmit a copy of the notice to the savings association's supervisor(s)⁴ at the district or field office level, accompanied by a transmittal letter requesting comment within 15 calendar days. In addition, Reserve Bank supervision staff with direct inspection responsibility for the SLHC should be consulted to solicit their view of the request. Savings associations should be provided with contact information and relevant procedural expectations pertaining to the notification process.

Review Standards

¹ 12 USC 1467a(f); Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Section 369(8)(K), 124 Stat. 1376 (July 21, 2010).

² 12 USC 1467a(f). Under the statute, a savings association that is a subsidiary of a mutual holding company must file its notice with both the Board and the savings association's federal supervisor. 12 USC 1467a(o)(11).

³ Prior to July 21, 2011, the OTS used Form 1583 for all applications and notices involving capital distributions. It is expected that Form 1583 will be revised to reflect the Board's regulation governing dividends by savings association subsidiaries of SLHCs. Savings associations will continue to use OTS Form 1583 until such time as the form is updated. See Form 1583 – Capital Distribution.

http://www.federalreserve.gov/reportforms/slhc/OTS_Form1583_20110721.pdf

⁴ If the notificant is a federal savings association, the Reserve Bank must send a copy of the notice along with a transmittal letter to the assistant deputy comptroller (ADC) of the appropriate Office of the Comptroller of the Currency (OCC) Supervisory Office. If the notificant is a federal savings association supervised by OCC Special Supervision, the Reserve Bank must send a copy of the notice to the ADC and Director of Special Supervision. If the notificant is a state savings association, the Reserve Bank must send a copy of the notice and a transmittal letter to both the appropriate Federal Deposit Insurance Corporation Regional/Area Director and the appropriate state supervisor.

The Board expects to issue regulations implementing review standards for dividend notices submitted by savings associations that are subsidiaries of SLHCs. It is expected that the applicable regulation will provide that a dividend notice may be denied by the Board, or by a Reserve Bank after consultation with the Board, if:

- a. Following the dividend, the savings association will be less than adequately capitalized as set forth in applicable regulations under 12 USC 1831o;
- b. The proposed dividend raises safety or soundness concerns; or
- c. The proposed dividend violates:
 - a prohibition contained in any statute, regulation, enforcement action, or agreement between the savings association or SLHC of which it is a subsidiary and an appropriate Federal banking agency;
 - a condition imposed on the savings association or SLHC of which it is a subsidiary in an application or notice approved by an appropriate Federal banking agency; or
 - any formal or informal enforcement action involving the savings association or SLHC of which it is a subsidiary.

A Reserve Bank will have delegated authority to issue a non-objection to a dividend notice or to deny such a notice. However, a Reserve Bank must consult with Board staff prior to denying a dividend notice or requesting withdrawal of such a notice. In evaluating a savings association's notice, supervisory staff should evaluate the comprehensiveness and effectiveness of management's capital planning and capital adequacy. Such evaluations may rely heavily on the findings and recommendations of the savings association's primary federal or state regulator. In cases where the evaluations conducted by the Reserve Bank and the primary federal or state regulator result in an unresolved disagreement, Reserve Bank staff should consult with Board staff. In every case, the review of a savings association's notice must be completed before the end of the statutory 30-day review period.

Minimum Documentation Requirements

Supervisory staff should document their analyses of notices received and include such documentation in workpapers related to supervisory activities. Supervisory staff must document any denial or request for withdrawal of a notice. Documentation showing an appropriate evaluation of the savings association's dividend notice, the primary supervisor's evaluation and recommendation, and the Reserve Bank's final determination provides the basis for constructive dialogue with the primary regulator and will support current and future supervisory evaluations of dividend notices submitted by the savings association.

Additional Information

All circulars and documents are available on the Internet through the Federal Reserve Bank of San Francisco's website, at <http://www.frbsf.org/banking/letters>.

For additional information, please contact:

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