



SIDLEY AUSTIN LLP
1501 K STREET, N.W.
WASHINGTON, D.C. 20005
(202) 736 8000
(202) 736 8711 FAX

jfeinberg@sidley.com
(202) 736-8473

BEIJING
BRUSSELS
CHICAGO
DALLAS
FRANKFURT
GENEVA
HONG KONG
LONDON
LOS ANGELES
NEW YORK
SAN FRANCISCO
SHANGHAI
SINGAPORE
SYDNEY
TOKYO
WASHINGTON, D.C.

FOUNDED 1866

July 2, 2007

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552
Attention: OTS-2007-0008

Re: Docket ID OTS-2007-0008

Ladies and Gentlemen:

On behalf of our client General Motors Corporation ("GM"), we submit this comment letter in response to the interim final rule regarding prohibited service at savings and loan holding companies ("Interim Rule") published by the Office of Thrift Supervision ("OTS"). 72 Fed. Reg. 25948 (May 8, 2007). While GM is primarily engaged in the worldwide production and marketing of automobiles, GM is also a savings and loan holding company ("SLHC") by virtue of its ownership of National Motors Bank, FSB. GM appreciates this opportunity to comment on the Interim Rule.

The sole issue on which GM offers its comments is the scope of the exemption provided for employees of an SLHC whose responsibilities and activities are limited to agriculture, forestry, retail merchandising, manufacturing, or public utilities operations under section 585.100(a). GM strongly supports such an exemption, and agrees that employees working in the listed areas are unlikely to pose any threat to the safety and soundness of a subsidiary savings association. However, as currently drafted, the exemption imposes several conditions which GM believes are overly burdensome to SLHCs and would significantly diminish the utility of such an exemption. GM's specific comments are outlined below.

Scope of Activities

As currently drafted, section 585.100(a)(1) provides that an employee may be exempt from Part 585 if, among other things, the employee's responsibilities and activities are "limited solely to agriculture, forestry, retail merchandising, or public utilities operations." *Id.* at 25956 (emphasis added). The preamble to the Interim Rule provides that this exemption is available both to employees who are directly engaged in these areas, as well as those who provide support

services to these areas. *Id.* at 25951. However, based on the preamble, it appears that employees who provide support services to multiple business units in an SLHC, or to subsidiaries of an SLHC, which engage in activities other than those listed—regardless of the frequency or scope of such support—would not satisfy subsection (a)(1) and would not be eligible for the exemption.

Employees of an SLHC who provide support services (*e.g.*, human resources, accounting or audit) commonly support multiple business units, some of which may engage in activities outside the scope of the listed activities. Thus, in practice, many employees who provide support services will not satisfy the requirement of subsection (a)(1). Yet, to the extent that such persons do not provide any support to an SLHC's subsidiary savings association, they seem to pose no risk to the institution. Moreover, many SLHCs may find that the burden of isolating employees from certain business units for the sake of the exemption may outweigh any benefit associated with the exemption.

GM urges the OTS to revise subsection (a)(1) to expressly include employees of an SLHC who provide support services to the listed operations, so that the interpretation of section subsection (a)(1) is not left to the preamble. GM further urges the OTS to include such SLHC employees in subsection (a)(1) even if they also provide support to businesses that engage in non-listed activities, so long as such employees do not provide support services to a subsidiary savings association.

Policymaking Functions

Section 585.100(a)(3) provides that employees of an SLHC eligible for the exemption from Part 585 may not exercise any policymaking function at the SLHC. The Interim Rule does not define "policymaking function," nor is it apparent how this standard relates to other similar benchmarks, such as the "major policymaking" standard employed by the Board of Governors of the Federal Reserve System in its Regulation O, or the "significant policymaking" threshold employed by the Securities and Exchange Commission ("SEC") in the definition of "officer" in its Rule 16a-1, both of which are referenced in footnote 14 of the preamble to the Interim Rule. *Id.* at 25951. Thus, it is unclear how subsection (a)(3) applies in practice.

In addition, in the preamble to the Interim Rule, the OTS indicates that a central focus of the new section 19(e) of the Federal Deposit Insurance Act is on a person's ability to affect "major policymaking" of an SLHC. *Id.* The exclusion of a person from the exemption for exercising a lower level of policymaking function seems at odds with the foregoing view of the OTS. Moreover, employing an apparently lower standard in section 585.100(a)(3) than the Regulation O and Rule 16a-1 standards will unnecessarily disqualify a significant number of employees who pose no threat to the safety and soundness of an SLHC's subsidiary savings association. For this reason, GM urges the OTS to define "policymaking function" in Part 585,

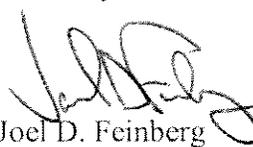
and to do so by reference to the widely known and clearly articulated definition of “officer” in SEC Rule 16a-1.¹

Conduct of the Affairs

Lastly, section 585.100(a)(4)(iii) prohibits employees eligible for the exemption from participating, directly or indirectly, in the conduct of the affairs of the SLHC. Again, we understand the OTS’s primary focus to be on those persons with major policymaking authority at an SLHC. Yet, this provision could inadvertently disqualify lower level employees. The “conduct of the affairs” standard is not defined in the Interim Rule or in the federal banking statutes. If read literally, this limitation could all but nullify the exemption because many employees in low-level and mid-level positions arguably participate in the conduct of the affairs of the SLHC. GM urges the OTS to delete subsection (a)(4)(iii). The substance of the provision is already addressed by subsection (a)(4)(i), which applies to institution-affiliated parties (including any person who participates in the conduct of the affairs of an SLHC) and appropriately carves out a person’s employment. In the alternative, GM strongly encourages the OTS to add the following language to the end of the subsection: “other than by virtue of the employment described in paragraph (a) of this section.”

Once again, GM appreciates the opportunity to comment on the Interim Rule. If you have any questions regarding our comments, please contact me at (202) 736-8473.

Sincerely,



Joel D. Feinberg

cc: Martin I. Darvick

¹ Rule 16a-1 provides that a “officer” is “an issuer’s president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer. Officers of the issuer’s parent(s) or subsidiaries shall be deemed officers of the issuer if they perform such policy-making functions for the issuer. In addition, when the issuer is a limited partnership, officers or employees of the general partner(s) who perform policy-making functions for the limited partnership are deemed officers of the limited partnership. . . . ‘Policy-making function’ is not intended to include policy-making functions that are not significant.” 17 C.F.R. § 240.16a-1(f) (emphasis added).