



Securities Industry Association

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By Hand and Via Electronic Mail

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Real Estate Brokerage and Management Regulation
Office of Financial Institution Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Room SC 37
Washington, D.C. 20220

**Re: Proposal Regarding Real Estate Brokerage and Management Activities
of Financial Holding Companies, Docket No. R-1091**

Ladies and Gentlemen:

The Securities Industry Association (“SIA”)¹ welcomes the opportunity to comment on the proposal issued by Board of Governors of the Federal Reserve System (“Board”) and the Department of the Treasury to determine that real estate brokerage and real estate management are activities that are “financial in nature or incidental” to financial activity. We strongly support the proposal, and urge the agencies to approve these activities, which are permitted under the Gramm-Leach-Bliley Act (“GLB”)

¹ The Securities Industry Association brings together the shared interests of more than 680 securities firms throughout North America to accomplish common goals. SIA member firms (including investment banks, broker-dealers, and mutual fund companies) are active in U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of more than 50-million investors directly and tens of millions of investors indirectly through corporate, thrift and pension plans. The industry generates more than \$300 billion of revenues yearly in the U.S. economy and employs more than 600,000 individuals. (More information about SIA is available at our Internet web site, <http://www.sia.com>.)

(Pub. L. No. 106-102, 113 Stat. 1338 (1999)), and will increase competition and bring benefits to consumers.

SIA believes that real estate brokerage and management fall squarely within the activities that were contemplated by Congress to be financial in nature or incidental to financial activity. To that end, the GLB Act clearly contemplates that the list of financial activities will expand to include activities that are necessary or appropriate to allow a financial holding company (FHC) to compete effectively with other financial service companies. Consequently, Congress vested the Board and Treasury with broad authority to add new activities to the list of approved financial activities.

- **Real Estate Brokerage and Management are Financial Activities**

Real estate brokerage and management are activities that are either financial in nature, or at least incidental to financial activities. As the agencies acknowledge in their release, financial in nature “represents a significant expansion of the ‘closely related to banking’ standard that the Board previously applied in determining the permissibility of activities for bank holding companies.” Moreover, Congress sent no signal that FHCs could not engage in real estate activities as it did for subsidiaries of national banks, which are prohibited from engaging in real estate development. Indeed, nothing in GLB would prevent the agencies from authorizing FHCs to engage in real estate development.

Real estate brokerage is financial in nature because almost every aspect of a real estate transaction is financial or has financial implications. We believe that the purchase or sale of a home or other real estate is a financial transaction because it is the most significant financial transaction consumers enter into, and viewed by most consumers as an investment – in many cases their largest investment. Buying a home also involves obtaining a mortgage loan, and property and title insurance, which are all financial activities.

While we think the financial overtones of real estate brokerage are sufficient to enable the agencies to classify these activities as financial, at the very least, these activities should be considered “incidental” to financial activities, such as obtaining a mortgage or obtaining insurance. We believe that because the purchase of real estate is a “financial” transaction, real estate brokerage could also be viewed as being authorized by GLB as part of the listed financial activity of “arranging, effecting, or facilitating financial transactions for the account of third parties.” We think that real estate brokerage could come under the statutorily listed financial activities, and believe this provides additional support that Congress contemplated these kind of activities. Clearly, the statutory mandate is clear, and the agencies action in approving these activities would be well founded.

FHCs already engage in a wide variety of activities that are functionally and operationally similar to real estate brokerage. For instance, FHCs engage in real estate

lending and settlement; handle escrow and appraisal services; sell property, title and private mortgage insurance; and arrange equity financing for commercial real estate. Moreover, conducting real estate brokerage is an activity that is very similar to acting as a finder, which the Board recently approved for FHCs, and the Office of the Comptroller of the Currency has allowed for national banks. As such, FHCs are well positioned and well qualified to conduct real estate brokerage. Furthermore, any concerns of permitting banking organizations to engage in these activities should be allayed by the fact that banks have a long history of managing real estate as part of their trust and fiduciary work. In short, real estate brokerage will be a rational and narrow extension of what FHCs are presently doing.

Real estate management is clearly an activity that is financial in nature or incidental to a financial activity, and should therefore be approved as a permissible activity. As we have said, banking organizations, securities firms and insurance companies have been active in many activities related to real estate. Moreover, we agree with the agencies that the real estate management functions proposed are very similar to activities presently conducted by many bank and financial holding companies – collecting rent payments and maintaining security deposits are similar to collecting loan payments and disbursing escrow payments. In addition, banks and bank holding companies have extensive experience in managing real estate as part of trust work and through real estate acquired by foreclosure or used by their own organizations. Lastly, many securities firms and insurance companies have operations involved in real estate management. In short, we believe the real estate management functions are financial activities and are merely an extension of the many activities currently done by FHCs. We also think real estate management could be authorized under the listed financial activities of “arranging, effecting, or facilitating transactions for the account of third parties.”

- **Real Estate Brokerage and Management will Increase Competition But Not Increase Risk**

Most significantly, permitting real estate brokerage and management activities will allow FHCs to compete effectively with many diversified financial service providers that already provide these services. As the agencies release acknowledges, many companies provide many aspects of traditional financial services and also provide real estate brokerage services. For instance, as the agencies state, General Motors Acceptance Corporation provides real estate brokerage, owns a thrift and makes mortgage loans. Other companies provide insurance, mortgage services and real estate brokerage services. Long and Foster, the well-known real estate brokerage company, also provides insurance products and mortgage loans. FHCs will be put at a competitive disadvantage if they are not permitted to engage in real estate brokerage and management as they compete in the broader marketplace. In addition, in that securities firms are permitted to have real estate affiliates, and some do, authorizing these activities will further the “two-way street” by

permitting a securities firm to partner with a bank without having to pare back any real estate activities.

Permitting FHCs to engage in real estate brokerage and management presents no more significant risks than those posed by other permissible activities. Current law establishes sufficient restrictions to safeguard the safety and soundness of insured depository institutions and protect consumers. Sections 23A and 2B of the Federal Reserve Act prohibit a bank from making below market loans to an affiliate and would limit a bank's credit and certain other transactions with a real estate brokerage or management affiliate. As the agencies acknowledge, the Office of Thrift Supervision has permitted federal savings associations, through their service corporations, to provide general brokerage services, and we are aware of no evidence that suggests these brokerage activities have subjected the thrifts to any undue risk. Consumers are also well protected by current federal laws. For example, the Bank Holding Company Act, by prohibiting the "tying" of various services, prevents a bank from forcing a consumer to use a bank service if the consumer used a real estate brokerage company affiliated with a bank. Further protections for consumers are also found in the Real Estate Settlement Procedures Act.

- **Employee Relocation Services Should Be Approved**

The agencies have requested comment on whether FHCs should be able to provide employee relocation services as part of real estate brokerage, and if so, the kinds of such services that should be permissible. We recommend that the proposal permit FHCs to engage in employee relocation services and to purchase real estate, with certain limitations, in connection with these services. However, the proposal, at present, prohibits holding title to real estate and would, therefore, not allow a FHC to compete effectively in the employee relocation business.

We recommend that as part of the employee relocation service, FHCs be permitted to take title to property. This is necessary because typically in the relocation business the relocation agent buys the residence of a relocating employee and then sells it. The employer indemnifies the relocation agent for any losses incurred in the sale of the property, and receives the benefit from any profit. Thus, the relocation agent's role is similar to that of a trustee, and the risks are addressed through the employer's guarantee and the security provided by the real estate.

To address any additional concerns over risks related to the holding of real estate, we suggest that holding title in connection with employee relocation service be limited to an initial six-month holding period. If the property was not sold during this six month period, the FHC could be required to provide written documentation establishing why the property had not been sold and what attempts had been made to sell it. Any holding beyond one year would require the approval of the appropriate federal regulator.

We recommend the agencies approve employee relocation services with the limitations outlined here. Such services will allow FHCs to better compete in the real estate brokerage market by providing them with a full range of services to offer customers.

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We believe that approving real estate brokerage and management as permissible activities for FHCs will enhance competition in these businesses and increase benefits for consumers. Doing so will enable consumers to have more choices in real estate brokers - not just the handful of companies that today dominate the market. Consumers will also truly have "one-stop" shopping, and be able to meet all of their home purchasing needs at one place -- if they so desire. SIA also believes that the enhanced competition will also benefit real estate brokers through the increased efficiencies, innovation, and the new opportunities for joint ventures and mergers that will likely result.

In sum, SIA believes expanding the list of permissible activities to include real estate brokerage and management strengthens the financial services industry, ensures vigorous competition, and provides benefits to consumers.

If we can provide any further information, please contact Alan E. Sorcher at (202) 296-9410.

Sincerely,

James E. Reilly
Chair
Holding Company Committee