



February 14, 2000

VIA EMAIL

Mr. John D. Hawke, Jr.
Comptroller of the Currency
Communications Division
Third Floor
Office of the Comptroller of the Currency
250 E Street, SW
Washington, D.C. 20219

Re: Docket No. 00-03; Financial Subsidiaries and Operating Subsidiaries

Dear Mr. Hawke:

The Securities Industry Association (“SIA”)¹ welcomes the opportunity to comment on the proposal of the Office of the Comptroller of the Currency to amend its rules to implement section 121 of the Gramm-Leach-Bliley Act, authorizing national banks to conduct expanded financial activities through financial subsidiaries. The proposed rule establishes procedures for national banks seeking to acquire a financial subsidiary, or to commence an expanded financial activity in a financial subsidiary. The proposal is of concern to the securities industry because the GLB Act permits these new financial subsidiaries to engage in securities activities, including underwriting, dealing in, or making a market in securities, and other “financial in nature” activities.

SIA commends the OCC for acting swiftly to issue rules enabling national banks to commence a new financial subsidiary on the first day permitted by the GLB Act. The OCC should be further commended for furthering Congress’s intent by creating a self-

¹ The Securities Industry Association brings together the shared interests of more than 740 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>.)

executing approval process that requires only a showing of the specific statutory factors set out in the legislation. Furthermore, the OCC's proposed rule, in general, is clear and provides a simple, straightforward filing process. SIA, however, does wish to address certain issues raised by the rule.

SIA believes that the rule should require that any financial subsidiary that engages in securities underwriting, dealing or market making, or engages in securities activities beyond those limited activities permitted for banks under sections 201 and 202 of Title II of the GLB Act should be registered as a broker or dealer with the Securities and Exchange Commission pursuant to section 15(a) of the Securities Exchange Act of 1934. That would merely be incorporating into the rule the functional regulation provisions of the GLB Act, and make clear that these securities activities are regulated by the SEC. Making such a change to the rule is important because regulation of securities activities by the SEC is central to the GLB Act's statutory scheme, which thereby promotes investor trust and confidence in securities markets, in securities firms and in securities ownership.

Some additional clarification may be needed in the two alternate filing procedures for seeking OCC approval to commence financial subsidiary activities that are set forth in proposed section 5.39(i) of the rule. It is through these filings that a bank certifies that its depository institution affiliates are well capitalized and well managed, and provides notice of the financial subsidiary being acquired or financial activity being commenced. In particular, one of the filing options – the combined “Financial Subsidiary Certification and Notice” appears to offer little practical benefit. Alternatively, a bank may file a “Financial Subsidiary Certification,” and thereafter file a separate “Financial Subsidiary Notice” at the time of making the investment or engaging in the new activity. Because the rule does not state otherwise, presumably, the Notice could be filed on the day after the Certification is filed, and possibly even earlier. However, the combined Certification and Notification must be filed five business days before acquiring a financial subsidiary or engaging in a new financial activity through an existing subsidiary. Thus, it is not clear what real benefit the combined Certification and Notice provides, when a bank could skirt its five-day waiting period by filing the separate Certification, and waiting until the next day to file the Notice. Accordingly, SIA recommends that the OCC review these filing procedures to determine whether any additional clarification is needed.

In addition, SIA believes that the rule should include provisions that would enable banks to withdraw their Certification and Notification, if necessary, and to terminate the activities of a financial subsidiary.

SIA wishes to briefly address the OCC's solicitation for comments on whether federal branches and agencies of foreign banks should be able to invest in financial and operating subsidiaries. SIA supports the proposition that regulations should be applied to foreign banks with due regard to principles of national treatment and equality of competitive opportunity. Clearly, this principle is embodied in the GLB Act's provision

that permits foreign banks to elect financial holding company status. Moreover, the GLB Act was intended to enable financial institutions to diversify their product lines, have more flexibility in structuring their business, and offer one-stop shopping to customers, even those across borders. Extending the same panoply of opportunities to foreign institutions as extended to domestic institutions would advance the goals of the GLB Act, increase competition, and ultimately benefit consumers. It is within this context that SIA believes that national treatment principles would be furthered if foreign banks that meet certain criteria were able to establish financial subsidiaries through federal branches or agencies. However, we say that without having had an opportunity because of the limited comment period to further develop this position with our membership. Nor have we had an opportunity to develop a recommendation on the qualification standards that should be applied to such entities, but would welcome such opportunity at a later time, if appropriate.

Lastly, the OCC should encourage the Secretary of the Treasury and the Federal Reserve Board to give a high priority to developing the list of additional financial in nature activities (and activities incidental to a financial activity) that will be permissible for financial holding companies and financial subsidiaries. Expanding the list of activities will allow U.S. firms to remain at the lead of the financial services industry and continue to offer consumers the best products and services.

SIA looks forward to working with the OCC during the implementation of the legislation. If we can provide any further information, please contact the undersigned at (202) 296-9410.

Sincerely,

Alan E. Sorcher
Assistant Vice President and
Assistant General Counsel

Cc: Marc Lackritz - SIA
Stuart Kaswell - SIA