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U P D A T E

News of Developments in the Financial Sector and Related Areas

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Small Bank Holding Company Policy Statement

The Federal Reserve Board has raised the asset size threshold for determining the applicability of its Small Bank Holding Company Policy Statement to $3 billion from $1 billion as required by Section 207 of the Economic Growth, Regulatory Relief and Consumer Protection Act. The Policy Statement includes savings and loan holding companies that also meet the Policy Statement. For purposes of the Policy Statement, the Board treats savings and loan holding companies as if they were bank holding companies. The Board last raised the asset limit in 2015 when it increased it from $500 million to $1 billion. The board recognizes that small bank holding companies have less access to equity financing than larger bank holding companies, and that the transfer of ownership of small banks often requires the use of debt. Accordingly, the Board originally adopted the Policy Statement to permit the formation and expansion of small bank holding companies with debt levels that are higher than typically permitted for larger bank holding companies. The Policy Statement also provides that a qualifying small holding company may not use the expedited applications procedures or obtain a waiver of the stock redemption filing requirements applicable to bank holding companies under the Board's Regulation Y unless the bank holding company has a pro forma debt-to-equity ratio of 1.0:1 or less.

The Policy Statement applies to bank holding companies with pro forma consolidated assets of less than $3 billion that (i) are not engaged in significant nonbanking activities either directly or through a nonbank subsidiary, (ii) do not conduct significant off-balance sheet activities (including securitization and asset management or administration) either directly or through a nonbank subsidiary, and (iii) do not have a material amount of debt or equity securities outstanding, other than trust preferred securities, that are registered with the Securities and Exchange Commission (the foregoing three items are referred to by the Board as the "Qualitative Requirements").

Under the Policy Statement, bank holding companies that meet the Qualitative Requirements may use debt to finance up to 75 percent of the purchase price of an acquisition (that is, they have a debt-to-equity ratio of up to 3:1) but are subject to certain ongoing requirements. The principal ongoing requirements are that

a qualifying small bank holding company: (i) reduce its debt in such a manner that all debt is retired within 25 years of being incurred, (ii) reduce its debt-to-equity ratio to .30:1 or less within 12 years of the debt being incurred, (iii) ensure that each of its subsidiary insured institutions is well capitalized, and (iv) refrain from paying dividends until such time as it reduces its debt-to-equity ratio to 1.0:1 or less.

If small bank holding companies and savings and loan holding companies that meet the Qualitative Requirements with $1 billion or more but less than $3 billion in total consolidated assets, they will not be required to file the FR Y-9C and the FR Y-9LP (including regulatory capital information) and would instead file the FR Y-9SP. These changes are consistent with the Policy Statement and will reduce the regulatory reporting burden for these smaller institutions. Since most bank holding companies and savings and loan holding companies with less than $3 billion in total consolidated assets have limited activities of their subsidiary banks, the Board believes relying on summary parent-only financials from the FR Y-9SP and the Consolidated Reports of Consolidation and Income is sufficient for supervisory purposes.

The revisions to the Policy Statement became effective on August 30, 2018.

May Directors Vote by Proxy

From time to time the question arises as to whether or not a director of a corporation may vote by proxy at a meeting of the board of directors due to circumstances such as being out of town, illness or incapacity. A *proxy* is basically a written authorization directing another person to act in his or her place at a meeting.

Proxy voting by shareholders in a corporation is a well recognized practice, primarily due to geographical limitations, allowing shareholders to vote at a meeting of a corporation on such matters as the election of directors and changes in common or preferred stock. Absent statutory authority for proxy voting by directors, the general rule is that directors may not vote by proxy because they have a fiduciary duty to the corporation and its shareholders.

Once elected, directors become fiduciaries, which means that they hold a special level of trust and confidence to the corporation and its shareholders. This fiduciary duty may not be delegated to others. Directors have basically two primary duties consisting of (i) duty of care and (ii) duty of loyalty.

The duty of care means that directors must be diligent and careful in performing the duties they have undertaken on behalf of the corporation and its shareholders. This duty of care, which is sometimes referred to as due diligence, means that directors should attend and participate in board meetings in order for them to be informed about the corporation's business. In addition, this duty of care means that they must make reasonable inquiry before making a decision. This duty of care also requires them to manage corporate affairs honestly and in good faith, using the level of care that a reasonable prudent person would use under the same given circumstances.

The duty of loyalty means that directors must act in the best interest of the corporation and its shareholders at the expense of their own personal interests, thus prohibiting directors from profiting at the corporation's expense in transactions involving the corporation and its assets.

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Because a director has the fiduciary responsibility for acting (i) in the best interest of the corporation, (ii) as an ordinarily prudent person would act, and (iii) only after reasonable inquiry, a director may not vote by proxy. However, it has become a generally accepted practice for directors to vote by telephone, so long as everyone present at a meeting can hear each other.

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