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Memo

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To: ABA Leadership Meeting Participants

ABA Contact: Robert R. Davis, EVP, Mortgage Markets, Financial Management, and Public Policy, 202-663-5588

RE: The Thrift Charter Under the Administration's Proposal

The June 17, 2009 Obama Administration White Paper outlined proposals that would, among other things, eliminate the thrift charter and place the prudential supervision of all federally chartered depository institutions under the jurisdiction of a new federal government agency, the National Bank Supervisor.¹ All holding companies that control an insured depository institution would be supervised and regulated on a consolidated basis by the Federal Reserve and be subject to the activities restrictions of the Bank Holding Company Act (BHC Act). The BHC Act exemptions for industrial loan companies, special-purpose credit card banks, trust companies, and other less traditional depositories would be revoked. Elimination of the Homeowners Loan Act (HOLA) would eliminate the thrift charter and the savings and loan holding company structure, including the grandfathered status of unitary thrift holding companies. Also, the mutual holding company option under HOLA would be eliminated, including dividend waiver policies that make this holding company structure attractive to mutual institutions. The White Paper is silent on the fate of the mutual charter itself.

ABA's position is that any regulatory restructuring effort should maintain the benefits of charter choice, both in terms of the type of bank charter (*e.g.*, member/nonmember state bank, national bank, federal or state thrift) and in terms of corporate charter (*e.g.*, publicly traded, privately held, S Corp, or mutual). A robust and resilient banking sector requires participants of all sizes and business models, including community banks, development banks, and niche-focused banks, as well as regional, national, and international banks, and all ownership structures.

ABA strongly supports maintaining the federal thrift charter and the Office of Thrift Supervision. We believe there is a very good case for keeping such thrift charters and their holding companies, which include stock federal savings associations,

¹ The interstate branching authority of thrifts would be retained and applied to all state and national banks.

mutual federal savings associations, savings and loan holding companies and mutual holding companies.²

Depository institutions should have the ability to choose the charter that best suits their business model and the needs of their customers and communities. The flexibility inherent in charter choice provides easy access to financial services to a broad range of consumers and businesses. Restricting this flexibility runs counter to the interests of the country in restoring the credit markets and providing services to the underbanked segment of the population. The 800 plus thrift institutions and their associated holding companies represent 10 percent of the banking industry.³ They are truly representative of traditional banks that are lending, that have been lending, and will continue to lend. The Obama Administration's proposal calls for originators or sponsors of securitized credit exposures to maintain a material economic interest in the asset. This is often the business model of the small- to medium-sized thrift: originate and hold.

There is also a special role for a segment of the industry that is focused on housing. Thrifts generally serve an important role as providers of housing-related credit in their communities, supporting homeowners, builders, developers, and suppliers. They must continue to comply with a qualified thrift lender test as a charter requirement.⁴ Elimination of the thrift charter could lead to a lower level of mortgage lending overall and the domination of the mortgage markets by large lenders, including less regulated non-bank mortgage companies.

Moreover, abolishing the thrift charter would do nothing to address the problem in subprime lending. Most of the subprime originators were non-banks that are no longer in business, not thrifts or banks. If the thrift charter were to be eliminated, the public is likely to infer that former thrifts are weak or were responsible for the subprime problems. Perpetuating this misperception is not only unfair to healthy thrifts, but potentially destabilizing.

The mutual thrift charter is a viable and resilient option for many thrifts, and this charter form should be preserved. Similarly, the properly structured mutual holding company option, such as exists under HOLA, offers a resilient and long-lived mutual ownership option. Mutual thrifts should not be forced arbitrarily to convert to a stockholder ownership model, or majority control by stockholders in the instance of

² State-chartered savings associations would be affected by any law eliminating the federal thrift charter as the powers and requirements of these state charters are governed under the Home Owners Loan Act. Also, state-chartered savings banks would be affected because numerous savings banks have elected to form thrift holding companies. For instance, about half of all mutual holding companies with state-chartered savings bank subsidiaries are approved and regulated by the Office of Thrift Supervision.

³ The median size of a mutual thrift is \$100 million and the median size of a stock thrift is \$250 million.

⁴ The qualified thrift lender test requires a thrift to hold qualified thrift investments equal to at least 65 percent of its portfolio assets. Qualified thrift investments include real estate-related loans and mortgage-backed securities, educational loans, small business loans, and credit card loans.

mutual holding companies. Mutual thrifts are tax-paying cooperatives that are subject to the full range of banking laws and deposit insurance. They are not driven by short-term shareholder demands for return. Rather, they take the longer view and can invest for the good of the community in longer-term projects. The capital of mutual thrifts is also very strong – typically 30 percent above industry averages.