Board of Governors of the Federal Reserve System
Washington, D. C. 20551

Mark E. Van Der Weide
General Counsel

April 1, 2021

Trisha L. Kalscheur
President
John Deere Financial, F.S.B.
8402 Excelsior Drive, P.O. Box 5328
Madison, Wisconsin 53705

Dear Ms. Kalscheur:

This is in response to your letter dated March 26, 2020, requesting an opinion regarding the effect under various statutes administered by the Board of an election by a federal savings association ("FSA") to operate as a covered savings association ("CSA") under section 5A of the Home Owners' Loan Act ("HOLA"),[1] as added by section 206 of the Economic Growth, Regulatory Relief, and Consumer Protection Act ("EGRRCPA").[2] Specifically, you inquired whether the parents of John Deere Financial, F.S.B., Madison, Wisconsin ("Deere FSB")—Deere & Company, Moline, Illinois ("Deere"), John Deere Financial Services, Johnston, Iowa ("JDFS"), and John Deere Capital Corporation, Reno, Nevada ("JDCC")—could continue to claim an exception from commercial affiliation restrictions under section 10(c)(9)(C) of HOLA[3] if Deere FSB were to elect to operate as a CSA. You also inquired whether the affiliate transaction rules applicable to national banks under sections 23A and 23B of the Federal Reserve Act ("FRA") would apply to CSAs, and whether membership in the Federal Reserve System for CSAs would be voluntary.

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[1] 12 U.S.C. § 1464a.

[2] Pub. L. No. 115-174, 132 Stat. 1296, 1310–11 (2018).

[3] 12 U.S.C. § 1467a(c)(9)(C).

Section 5A of HOLA ("section 5A") permits an FSA that meets certain criteria to elect to operate as a CSA by submitting a notice of election to the Office of the Comptroller of the Currency ("OCC").[4] With limited exceptions,[5] a CSA has the same rights and privileges, and is subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations, as a national bank that has its main office in the same location as the home office of the CSA.[6] None of HOLA,[7] the Bank Holding Company Act of 1956 ("BHC Act"),[8] or the EGRRCPA[9] addresses the treatment, for purposes of compliance with those laws, of a company that controls a CSA. The FRA likewise does not address the treatment of CSAs for purposes of compliance with the affiliate transaction rules in sections 23A and 23B of the FRA or membership in the Federal Reserve System.

Federal Reserve Treatment of Covered Savings Associations

As noted, CSAs have the same rights and privileges, and are subject to the same duties, restrictions, penalties, liabilities, conditions and limitations, as national banks.[10] As such, CSAs operate as the functional equivalents of, and present the same risks as, national banks. Treating CSAs as national banks for purposes of membership in the Federal Reserve System and prohibitions on affiliate transactions under sections 23A and 23B of the FRA accordingly is most consistent with the text and purposes of HOLA,

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[4] 12 U.S.C. § 1464a(b)(1). An FSA may elect to operate as a CSA if it had total consolidated assets equal to or less than $20 billion as of December 31, 2017. The OCC has adopted a final rule implementing section 5A, which became effective on July 1, 2019. See 12 CFR part 101. The final rule establishes procedures for an FSA to elect to operate as a CSA, terminate such an election, and divest impermissible assets following an election. 12 CFR §§ 101.3, 101.5, 101.6, 101.7. The final rule also specifies several circumstances in which CSAs must continue to comply with laws applicable to FSAs. See 12 CFR §§ 101.4, 101.5.

[5] The limited exceptions include governance (including incorporation, bylaws, boards of directors, shareholders, and distribution of dividends), consolidation, merger, dissolution, conversion (including conversion to a stock bank or to another charter), conservatorship, and receivership. 12 U.S.C. § 1464a(d).

[6] 12 U.S.C. § 1464a(c).

[7] 12 U.S.C. § 1467a.

[8] 12 U.S.C. § 1841 et seq.

[9] Pub. L. No. 115-174, 132 Stat. 1296, 1310–11 (2018).

[10] 12 U.S.C. § 1464a(c); 12 CFR 101.4(a). In fact, pursuant to OCC regulations, CSAs must divest, conform, or discontinue nonconforming subsidiaries, assets, or activities no later than two years after electing to operate as a CSA. 12 CFR 101.5.

the BHC Act, the FRA, and the EGRRCPA. Moreover, failing to treat CSAs as national banks could result in treatment inconsistent with section 5A. For example, if the Board were to apply to a CSA the affiliate transaction restrictions applicable to savings associations under HOLA, a CSA would not be subject to the same "duties, restrictions, . . . conditions, and limitations" as apply to a similarly located national bank.[11] Likewise, if a CSA were not required to become a member of the Federal Reserve System, it would not be subject to the same "duties" as a similarly located national bank, which must become a member.[12]

Section 5A is specific as to the limited purposes for which a CSA should continue to be treated as an FSA.[13] None of these limited purposes relate to the relevant FRA provisions. Accordingly, and consistent with section 5A, Board staff believes that it is appropriate to treat a CSA as a national bank for all purposes under the FRA.

Federal Reserve Treatment of the Holding Companies of Covered Savings Associations

The BHC Act and HOLA establish BHCs and SLHCs as mutually exclusive categories of depository institution holding companies.[14] SLHCs generally are subject to fewer limitations than BHCs, particularly with respect to permissible activities.[15] Treating the holding company of a CSA as an SLHC would create a new class of institution, conferring on the CSA and its holding company more "rights and privileges" and fewer "duties, restrictions, penalties, liabilities, conditions, and limitations" than would apply to a national bank and its holding company. Treating the parent holding company of a CSA as a BHC ensures that all the rights, privileges, duties, restrictions, penalties, liabilities, conditions, and limitations of a national bank accrue to a CSA, consistent with the text and purpose of section 5A.

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[11] See 12 U.S.C. § 1468; 12 CFR 223.72.

[12] See 12 U.S.C. § 222.

[13] 12 U.S.C. § 1464a(d).

[14] See 12 U.S.C. § 1467a(a)(1)(D)(ii)(I) (excluding from the definition of an SLHC, "a bank holding company that is . . . subject to the [BHC Act]").

[15] Compare 12 U.S.C. § 1467a(c) (permitting, inter alia, an SLHC to conduct an insurance agency or escrow business) with 12 U.S.C. § 1843 (providing for a narrower set of permissible activities for BHCs). In contrast to, and perhaps as an explanation for, the fewer limitations that are placed on their parent SLHCs, FSAs generally are subject to a number of limitations not placed on banks, particularly with respect to permissible lending. See, e.g., 12 U.S.C. §§ 1464(c)(2) through (c)(4) (restricting an FSA's investments in a number of categories of assets to specified percentages of total assets); 12 U.S.C. § 1467a(m)(1) (requiring an FSA to maintain thrift investments equal or exceeding 65 percent of portfolio assets).

Moreover, as noted above, the EGRRCPA explicitly specifies the limited purposes for which a CSA would be treated as an FSA. The limited purposes do not include holding company regulation. If Congress had wanted CSAs to be treated as FSAs for purposes of holding company regulation, it would have been easy to add this exception to the statutory list.

The legislative history of section 5A is consistent with this interpretation. The legislative history includes the "Federal Savings Association Act," a bill with provisions substantially similar to section 5A that was proposed in 2015 and again in 2017.[16] The legislative reports for the bill state that the legislative purpose of the proposal was to "establish a mechanism for federal savings associations to function with the powers and authorities of a national bank without having to change their charter," and that it would "provide flexibility for institutions to choose the business model that best suits their needs and the communities they serve, without having to go through the process or incurring the legal expense of converting to a national bank charter."[17] This legislative history suggests that the purpose of section 5A is to allow a CSA to be treated as a national bank under federal law without changing its charter rather than to create a new class of financial institution with broader powers than a national bank.

Therefore, consistent with the text and purposes of the BHC Act, HOLA, and the EGRRCPA, Board staff interprets section 5A as requiring the holding company of a CSA to be treated as a BHC, rather than as an SLHC.

Applicability to Deere, JDFS, JDCC, and Deere FSB

For the reasons discussed above, if Deere FSB were to elect to operate as a CSA, Board staff would consider Deere FSB to be a national bank for all purposes—other than those specifically limited by section 5A—within the Federal Reserve's jurisdiction, including the FRA and the BHC Act. Deere FSB would be required to become a member of the Federal Reserve System, and the affiliate transaction rules applicable to national banks would apply to Deere FSB. In addition, because each of Deere, JDFS, and JDCC controls Deere FSB, each would be treated as a bank holding company;[18] each would cease to be an SLHC; and each would no longer be able to claim an exemption under section 10(c)(9)(C) of HOLA.[19]

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[16] H.R. 1660, 114th Congress (2015); H.R. 1426, 115th Congress (2017).

[17] See H.R. REP. 114-873 (2016).

[18] 12 U.S.C. § 1841(a)(1).

[19] See 12 U.S.C. § 1467a(t) (providing that section 10 of HOLA "shall not apply" to a bank holding company that is subject to the BHC Act). See also 12 U.S.C. § 1467a(a)(1)(D)(ii)(I) (exempting from the definition of "savings and loan holding

This opinion is based on all the facts of record and the representations made by you to the Board. Any change in the facts presented could result in a different conclusion.

Sincerely,

cc: Office of the Comptroller of the Currency
Federal Reserve Bank of Chicago

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company" any "bank holding company that is registered under, and subject to, the [BHC Act], or to any company directly or indirectly controlled by such company").