

Avanti Financial Group, Inc.

2120 Carey Avenue
Cheyenne, WY 82001

March 26, 2021

Wyoming Division of Banking
2300 Capitol Ave 2nd floor
Cheyenne, WY 82002
Attn: Commissioner Albert Forkner

Dear Commissioner Forkner:

In this letter, we respectfully submit three comments to the proposed rules for Special Purpose Depository Institutions (“SPDI”) in Chapter 20.¹

1. Chapter 20, Section 5: Supervision of Controlling Interests; Affiliate Relationships

Section 5(b) reads: “A person with a controlling interest in a special purpose depository institution shall...(i) Submit annual audited financial statements, and as otherwise reasonably required by the Commissioner.”²

Pursuant to Wyoming law, a “person” includes “an individual, partnership, corporation, joint stock company or any other association or entity, public or private.”³

Comment: As drafted, it is impossible for a controlling shareholder of an SPDI that is an *individual*, rather than a business entity, to comply with the requirement. While businesses can submit audited financial statements, it is not possible for an individual to obtain audited financial statements.

We understand that the public policy behind adding Section 5 is to align Wyoming banking law with that of the federal Bank Holding Company Act (“BHCA”), and we support that policy goal. The challenge, though, is that the BHCA applies only to *companies* that own a controlling stake in a bank.⁴ It does not address the case in which an *individual* owns a controlling stake in a bank.

¹ <https://rules.wyo.gov/Search.aspx?mode=2>

² Id.

³ WY Stat § 8-1-102(a)(vi).

⁴ 12 U.S. Code § 1841.

One potential solution to the drafting issue raised in Section 5(b)(i) could be to restrict its applicability to companies rather than individuals, just as the BHCA does. Another potential solution could be to use an attestation of solvency from an individual controlling shareholder, in lieu of audited financial statements.

We request that the Division of Banking be mindful to keep the requirements for SPDIs consistent with those of traditional state-chartered banks in Wyoming, so that the compliance requirements for SPDIs are not unnecessarily more burdensome for SPDIs than for traditional banks.

2. Chapter 20, Section 5: Supervision of Controlling Interests; Affiliate Relationships

Section 5(e) reads: “If the Commissioner finds that it is in the public interest and has reasonable cause to believe it is necessary to protect the customers of a special purpose depository institution, the Commissioner may . . . (ii) Require a person with a controlling interest in a special purpose depository institution to divest or sever their relationship with the institution, if necessary to maintain safety and soundness.”⁵

Comment: This provision contains neither standards for judging “safety and soundness” nor provisions for due process that protect a controlling shareholder against a scenario in which a Commissioner might take unreasonable action in the future, such as arbitrarily requiring the controlling shareholder to divest within an unreasonably short period of time (e.g., 24 hours).

A potential solution to the drafting issue raised in Section 5(e) could be to incorporate the due process provisions applicable to Wyoming banks under Title 13, Section 10. For example, WY Stat. §13-10-203(b) contains a written notice requirement when the Commissioner intends to issue a cease and desist order pertaining to an unsafe and unsound practice at a bank, and WY Stat §13-10-203(c) contains a provision for a hearing on such a proposed cease and desist order. WY Stat §13-10-208 prescribes detailed procedures around such actions, and provides for due process.

It would seem appropriate to apply these provisions to Section 5(e). Moreover, doing so would restore equal treatment to both the SPDI and traditional bank charters in the event that the Commissioner needs to take action to protect depositors.

⁵ <https://rules.wyo.gov/Search.aspx?mode=2>

3. Chapter 20, Section 13: Operations And Activities

Section 13(c) reads: “A special purpose depository institution shall maintain policies and conduct appropriate market surveillance to prevent, detect and combat manipulative or illegal trading practices in traditional and digital asset markets.”⁶

Comment: The policy behind this provision is likely aimed at SPDIs that engage in market making activities, such as those that operate exchanges/order books or those that engage in brokerage activities. The drafting, however, requires all SPDIs to “conduct appropriate market surveillance,” even if they do not engage in such brokerage or market making activities. The challenge with such a blanket requirement is that not all SPDIs would have access to the information required to conduct market surveillance in most cases. To have access to such data probably requires participation in markets, and an SPDI that does not act as a market maker would not naturally have such pricing information.

It is possible that the Commissioner may rely on the adjective “appropriate” to conclude that this requirement does not apply to SPDIs that do not engage in market making or brokerage activities. In such cases, there may be no “appropriate” surveillance required. Ideally, though, the rules would specify the particular activities to which the requirement applies, rather than applying to all SPDIs as a whole.

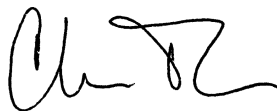
Please do not hesitate to contact us if you have additional questions.

Sincerely,



Caitlin Long
Chief Executive Officer

Sincerely,



Chuck Thompson
Chief Legal Officer / Chief Compliance Officer

⁶ Id.