Territorial Savings Bank

April 24, 2007

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20052
Attention: OTS-2007-0007

Re: OTS-2007-0007: Proposed rulemaking regarding "Permissible Activities of Savings and Loan Holding Companies"

Dear Sir or Madam:

This letter contains the comments of Territorial Savings Bank ("Bank") (OTS Docket No. 5991), Territorial Savings Group, Inc. ("Mid-Tier") and Territorial Mutual Holding Company ("MHC") (collectively, "the Territorial Group"), all of Honolulu, Hawaii, on the referenced proposed rule. The Bank is a federal savings bank, which is wholly owned by the Mid-tier, a federal mid-tier corporation, which in turn is wholly owned by MHC, a federal mutual holding company.

The referenced proposed rule would amend Section 584.2(b)(6)(i) of the Office of Thrift Supervision's ("OTS") regulations to permit savings and loan holding companies to engage in all of the activities authorized for bank holding companies pursuant to regulations issued by the Federal Reserve Board ("FRB") under Section 4(c) of the Bank Holding Company Act ("BHCA") (generally referred to as the "Section 4(c) BHCA authority"). Existing OTS regulations authorize only activities that are permitted for bank holding companies pursuant to one subsection of Section 4(c) of the BHCA, Section 4(c)(8). The proposal would also incorporate FRB approval requirements such that if an activity is permitted for bank holding companies without prior regulatory approval under the regulations implementing the Section 4(c) BHCA authority, that activity would also be permitted for savings and loan holding companies without prior OTS approval.

The Territorial Group supports the proposed rule. As the preamble to the proposed rule indicates, the relevant statute, Section 10(c)(2)(F) of the Home Owner's Loan Act ("HOLA"), 12 U.S.C. §1467a(c)(2)(F), authorizes savings and loan holding companies to engage in all activities authorized for bank holding companies under Section 4(c), subject to regulatory discretion to limit such activities. OTS' predecessor, the Federal Home Loan Bank Board, issued regulations restricting that authority to Section 4(c)(8), while mentioning the possibility of adding the additional Section 4(c) activities later. We are unaware of any safety and soundness reason for

that limitation and believe that the OTS should strive to provide competitive parity for savings and loan holding companies. The Territorial Group, therefore, appreciates the OTS' efforts and urges that the proposal be finalized.

Inasmuch as the Territorial Group is in the mutual holding company structure, there are some issues of particular concern that it would like to address. The activities in which mutual holding companies can engage are governed by Section 10(o) of the Home Owner's Loan Act, 12 U.S.C. §1467 a(o), and the OTS' regulations at Part 575 (the "MHC Regulations"). Although those sources of authority incorporate the activities permitted for stock savings and loan holding companies to some extent, e.g. 12 C.F.R. §575.11(a), there have historically been differences that subject mutual holding companies to narrower authority and more extensive prior approval requirements than that applicable to stock savings and loan holding companies.[1] It is the interplay between the MHC Regulations and the proposed rule that is the primary reason for the Territorial Group's comment letter.

An activity in which the MHC and the Mid-tier are particularly interested in is the ability to invest, without prior regulatory approval, in up to 5% of a class of any company's voting securities ("5% investment authority"). Bank holding companies have long had that authority pursuant to Section 4(c)(6) of the BHCA and 12 C.F.R. §225.22(d)(5). Stock savings and loan holding companies have had similar authority, either because they were a unitary savings and loan holding company or by virtue of Section 10(e)(1)(A)(iii) of HOLA, 12 U.S.C. §1467a(e)(1)(A)(iii).

Mutual holding companies however, have not had such authority, Section 575.10(a)(6) of the MHC Regulations specifies, among other things, that a mutual holding company may make a non-controlling investment in a non-thrift corporation "only if" the corporation is engaged in activities permitted either for a mutual holding company or for a service corporation of a federal savings association or of a state savings association in the state in which the mutual holding company has its home office. Even then, Section 575.11(a) of the MHC regulations requires prior OTS approval for such investments. While Section 575.11(a) gives mutual holding companies the same authority that stock savings and loan holding companies have to engage in the Section 4 BHCA activities permitted for bank holding companies by FRB regulations, as we previously noted, the OTS regulations have heretofore circumscribed such authority to include only 4(c)(8) activities and not those under other subsections of Section 4 of the BHCA, such as the Section 4(c)(6) 5% investment authority.[2]

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[1] For example, unitary mutual savings and loan holding companies are subject to prior regulatory approval requirements for engaging in permissible new activities, while unitary stock holding companies are not.

[2] The OTS limitation of the Section 4 BHCA authority did not affect stock savings and loan holding companies in this regard because they have independent 5% investment authority under HOLA. But it did effectively prohibit certain such investments by mutual holding companies.

The upshot is that mutual holding companies currently have 5% investment authority for a limited universe of companies and only with prior regulatory approval. Consequently, mutual holding companies are at a significant competitive disparity both as to bank holding companies and stock savings and loan holding companies. This has disadvantaged the Territorial Group because, as just one example, it has prevented the MHC/Mid-tier from making investments in certain high tech companies that would provide a significant tax-credit under Hawaii law.

In the Territorial Group's opinion, there are no safety and soundness or policy reasons to subject mutual holding companies to such disparate treatment. It is our impression that there is no intention to exclude mutual holding companies from the authority that would be provided by the proposed rule if finalized and the Territorial Group would strongly object to any such result. In this regard, as is described below, the Territorial Group suggests clarifying the final rule as regards its applicability to mutual holding companies.

Section 575.11(a) of the MHC regulations incorporates by reference the authority provided by Section 10(c)(2) of HOLA, including the Section 4(c) BHCA authority contained in subparagraph (F). Presumably, the broadening of the Section 4(c) BHCA authority that OTS is proposing would therefore flow through to mutual holding companies. However, there are two possible inconsistencies between language in Part 575 and the proposed rule.

First is the previously referenced language in Part 575.10(b)(6) that limits the types of companies in which mutual holding companies may make non-controlling investments. If read literally, that section could be interpreted to defeat, for mutual holding companies, the 5% authority that would otherwise be available by finalizing the proposed rule. Second is the final sentence of Part 575.11(a), which imposes prior approval requirements on activities conducted by mutual holding companies pursuant to the Section 4(c) BHCA authority contained in Section 10(c)(2)(F) of HOLA. That language could be interpreted to continue to impose a prior regulatory approval requirement on activities conducted pursuant to the Section 4(c) BHCA authority, notwithstanding the finalization of the proposed rule to eliminate prior approval requirements for activities pursuant to that authority where bank holding companies have no prior approval requirement.

In view of the ambiguity caused by the interplay between certain language in the MHC regulations, Part 575, and what we understand the intent of the proposed rule to be, the Territorial Group would appreciate clarification in the final rule that:

1. Mutual holding companies will be permitted to engage in the activities authorized by the FRB's regulations under Section 4(c) of the BHCA, notwithstanding any arguably inconsistent language in Part 575. Of particular interest is the 5% investment authority; however, we see no reason that mutual holding companies should not have <u>all</u> of the Section 4(c) BHCA authority.

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2. Mutual holding companies will be able to engage in such activities, including the 5% investment authority, without prior OTS approval where a bank holding company could engage in identical activities pursuant to the Section 4 BHCA authority without prior FRB approval, again notwithstanding any possibly inconsistent language in the MHC Regulations.
3. Notwithstanding the general clarifications requested above, we would appreciate specific confirmation that the ability of a mutual holding company to exercise the 5% investment authority will not be limited or restricted by 12 C. F. R. sections 575.10(b)(6) or 575.11(a).

Thank you for your consideration of these suggestions. Please do not hesitate to contact me if I can answer any questions.

Very truly yours,

Vernon Hirata

Vernon Hirata
Executive Vice President
General Counsel

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