



Office of Thrift Supervision
Department of the Treasury

1700 G Street, N.W., Washington, DC 20552 • (202) 906-6372

John E. Bowman
Deputy Director and Chief Counsel

December 19, 2008

Re: Status of a Savings and Loan Holding
Company Under Section 10(c)(9) of the
Home Owners' Loan Act

Dear Mr. _____:

This letter responds to your letters of November 4, and December 11, 2008 (Letters), on behalf of _____ (Holding Company), which is the wholly owned subsidiary of _____, the savings and loan holding company (Parent Company) of _____ (Savings Bank). You seek confirmation of your view that the Parent Company's proposed contribution to the Holding Company of all of the Savings Bank's outstanding common stock (Common Stock Contribution) is within the scope of section 10(c)(9)(D)(i) of the Home Owners' Loan Act (HOLA), 12 U.S.C. § 1467a(c)(9)(D)(i), and will not cause the Parent Company, the Holding Company, and their subsidiaries to be subject to the activities restrictions of section 10(c)(9)(A) or (B). Based on the description set forth in your Letters, in our view, the Common Stock Contribution is within the scope of section 10(c)(9)(D)(i) and the Parent Company, the Holding Company, and their subsidiaries will not be subject to section 10(c)(9)(A) or (B).

Background

The Parent Company has been the Savings Bank's immediate holding company since August 4, 1999. The Parent Company became a savings and loan holding company pursuant to a holding company application filed on September 8, 1998. Since consummation of the acquisition of the Savings Bank, the Parent Company has owned no other federal savings association and the Savings Bank has been a qualified thrift lender. The Parent Company holds all of the Holding Company's common stock. The Parent Company is contemplating an internal corporate reorganization in which the Parent Company would contribute all of the Savings Bank's common stock to the Holding Company, *i.e.*, the Common Stock Contribution. As a result of the Common Stock Contribution, the Savings Bank would become the wholly owned subsidiary of the Holding Company and the Holding Company would remain a wholly owned

subsidiary of the Parent Company. On November 3, 2008, the Holding Company filed an application to acquire the Savings Bank pursuant to the Common Stock Contribution. OTS's West Regional Office approved the Holding Company's application on December 11, 2008.

Discussion

Section 10(c)(9)(A) prohibits a company, or its subsidiaries, from engaging in, directly or indirectly, any merger, consolidation, or other type of business combination, to acquire control of a savings association, unless the company is engaging in only those activities permitted by section 10(c)(1)(C), section 10(c)(2), or the activities permitted for financial holding companies by section 4(k) of the Bank Holding Company Act of 1956 (BHCA), 12 U.S.C. § 1843(k).

Section 10(c)(9)(B) prohibits a savings and loan holding company, and its subsidiaries other than a savings association, from engaging, directly or indirectly, in activities other than the activities permitted by section 10(c)(1)(C), section 10(c)(2), or section 4(k) of the BHCA, notwithstanding section 10(c)(3). This section is intended to prevent new commercial affiliations by existing savings and loan holding companies.

Section 10(c)(9)(C) exempts from the restrictions of paragraphs (A) and (B) those companies that were savings and loan holding companies on May 4, 1999, or had an application to become a savings and loan holding company pending with OTS on or before May 4, 1999, subject to certain requirements (subparagraphs (C)(i) and (ii)). This section grandfathers commercial powers for existing savings and loan holding companies, permitting them to continue or expand their commercial activities.

Section 10(c)(9)(D) states (by its caption) that paragraph (9) permits certain corporate reorganizations, and specifically, clause (i) does not prevent a transaction that involves "solely a company under common control with a savings and loan holding company from acquiring, directly or indirectly, control of the savings and loan holding company or any savings association that is already a subsidiary of the savings and loan holding company." This section intends to permit essentially internal corporate reorganizations without subsequently subjecting holding companies to the activities restrictions of subparagraphs (c)(9)(A) or (B).

As we have more fully discussed previously,¹ the principal purpose of section 10(c)(9) is to prohibit (except for corporate reorganizations) new unitary savings and loan holding companies from engaging in nonfinancial activities or affiliating with nonfinancial entities. The prohibition applies to a company that becomes a unitary savings and loan holding company pursuant to an application filed with the OTS after May 4, 1999. A grandfathered unitary thrift

¹ Op.C.C. May 18, 2001.

holding company (one in existence or applied for on or before May 4, 1999) retains its authority to engage in nonfinancial activities.²

The U.S. Senate discussion of section 10(c)(9) focused almost entirely on the separation of banking and commerce,³ with little discussion regarding the acquisition of grandfathered unitary thrift holding companies by commercial companies, the powers and authorities of grandfathered unitary thrift holding companies acquired by financial holding companies, and the ability of OTS to prevent circumvention of the prohibition.⁴ Only passing reference or inference is made to the ability of unitary thrift holding companies to engage in corporate reorganizations and transactions that are the subject of section 10(c)(9)(D).⁵ Such brief legislative history offers minimal guidance to OTS on interpreting this section as it relates to multi-step, complex reorganization transactions.

While section 10(c)(9)(D) addresses which companies would be, and which kinds of transactions would result in, grandfathered holding companies after the transaction, or merger, consolidation, or other type of business combination, it does not address other aspects of these transactions. Many issues that arise in corporate reorganization transactions are not addressed by paragraph (D), such as the status under section 10(c)(9)(C) of the savings and loan holding companies that come into or move out of the direct or indirect chain of ownership.

In our view, as previously expressed,⁶ the phrase “solely a company under common control with a savings and loan holding company” in clause (i) should be read as a single descriptive phrase that defines what entity may engage in a corporate reorganization transaction that is not prevented by paragraph (9). The company to be used in such a transaction must be under the common control of the persons or entities that presently control the savings association or savings and loan holding company.

The Common Stock Contribution proposes that an existing wholly owned subsidiary of the Parent Company, the Holding Company, will be moved within the corporate structure to become the direct holding company for the Savings Bank. This aspect of the Common Stock Contribution complies with our view of clause (i) because the Holding Company is under the control of the Parent Company at the inception of the transaction.

We further conclude that the Holding Company would accede to the grandfathered status of the Parent Company under section 10(c)(9)(C) because the Parent Company had applied to

² H.Rep. 106-434, Cong.Rec. H11299, November 2, 1999.

³ See, for example, the Senate’s original consideration at Cong. Rec. S4830-4839, 4848-4850, May 6, 1999.

⁴ Cong. Rec. S13902, 13904-13906, November 4, 1999.

⁵ *Id.*, at 13902.

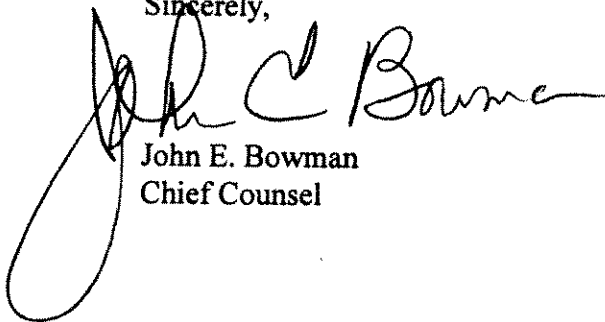
⁶ Op.C.C. May 18, 2001.

acquire a savings association and become a savings and loan holding company before May 4, 1999. The Parent Company, the Holding Company, and their subsidiaries will not be subject to section 10(c)(9)(A) or (B). Of course, the Parent Company and the Holding Company must comply with the restrictions in clauses (i) and (ii) of section 10(c)(9)(C).

In reaching the foregoing conclusions, we have relied on the factual representations contained in the materials submitted to us by you on behalf of the Holding Company. Our positions depend on the accuracy and completeness of those representations. Any material change in facts or circumstances could result in different conclusions from those expressed herein. Moreover, our conclusions represent our position on the interpretation of the statutes and regulations implicated in this particular case. Accordingly, this letter may not be used as precedent by any other parties.

If you have any questions regarding the above matter, please contact Gary Jeffers, Senior Attorney, Business Transactions Division, at (202) 906-6457.

Sincerely,

A handwritten signature in black ink that reads "John E. Bowman". The signature is written in a cursive style with a large, looping initial "J".

John E. Bowman
Chief Counsel

cc: Regional Director
Regional Counsel
Caseload Manager
West Regional Office

Kevin A. Corcoran
Deputy Chief Counsel
for Business Transactions

Gary Jeffers
Business Transactions Division