

P-99-5-A

Date: June 8, 1999.

Summary Conclusion: A holding company and its subsidiaries would be entitled to the exemption for certain multiple savings and loan holding companies in section 10(c)(3)(B) of the HOLA and 12 C.F.R. § 584.2a(a)(1)(ii) of OTS's Holding Company Regulations following consummation of certain acquisitions requiring approval under section 10(e) of the HOLA.

Subjects: Home Owners' Loan Act/Savings Association Powers; Savings and Loan Holding Companies/Change in Control.



Office of Thrift Supervision
Department of the Treasury

P-99-5-A

Chief Counsel

1700 G Street, N.W., Washington, D.C. 20552 • (202) 906-6251

June 8, 1999

[

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Re: Exempt Multiple Savings and Loan
Holding Companies

Dear []:

This is in response to your letter of March 25, 1999, seeking our concurrence that
[] (the "Holding Company") and its subsidiaries, [

] (collectively the "Holding Companies")
would be entitled to the exemption for certain multiple savings and loan holding
companies contained in section 10(c)(3)(B) of the Home Owners' Loan Act ("HOLA")
and Section 584.2a(a)(1)(ii) of the OTS Holding Company Regulations after the
consummation of certain acquisitions requiring approval under section 10(e) of the
HOLA. We concur.

Background

As you have related the facts, the Holding Companies are savings and loan
holding companies that control [] (the "Savings Bank").
The Holding Companies acquired the Savings Bank in []. In the initial acquisition,
the Holding Companies acquired [] failed Texas savings associations, [

], by merging the
institutions into the Savings Bank. The Federal Home Loan Bank Board approved this
transaction (the "[] Acquisition"), which the Holding Companies consummated with
assistance from the Federal Savings and Loan Insurance Corporation, pursuant to sections
406(f) and 408(m) of the National Housing Act. According to the chart enclosed with

your letter, upon consummation of the [] Acquisition, the Savings Bank had assets of approximately \$ [] .

At the time of the [] Acquisition, the Holding Companies controlled [] ("Old Thrift"), which they had acquired without assistance on [] . At the time the Holding Companies acquired the Savings Bank, the Old Thrift had approximately \$ [] assets. The Holding Companies maintained the Savings Bank and the Old Thrift as separate subsidiaries until they were merged together, with the Savings Bank as the survivor, on [] (the "[] Merger"). Between [] , and [] , the Old Thrift engaged in [] supervisory transactions, all purchase and assumption transactions, in which the Old Thrift acquired a total of \$ [] in assets. At the time of the [] Merger, the Savings Bank and the Old Thrift had a total of \$ [] in assets. Of that total, approximately \$ [] , or 99 percent of the Savings Bank's assets, were acquired in supervisory transactions.

Since the [] Merger, the Holding Companies have acquired three smaller savings associations. In each case, the Holding Companies immediately merged the target association into the Savings Bank, and the Savings Bank was the surviving institution.

In an application pending before the OTS, the Holding Companies are proposing to acquire [] and merge its wholly owned savings association subsidiary, [] (the "Disappearing Association"), into the Savings Bank, immediately following the acquisition. The Savings Bank would be the surviving savings association.

The Holding Companies also intend to organize and acquire a savings bank chartered by the State of [] (the "New Savings Bank"), which the Holding Companies would hold as a separate subsidiary. Immediately upon its formation, the New Savings Bank would elect, pursuant to section 10(l) of the HOLA, to be treated as a "savings association" for purposes of section 10 of the HOLA.¹

You ask that we assume that each of the subsidiary savings associations of the Holding Companies will satisfy the qualified thrift lender test upon completion of the transactions.

Based on the foregoing, you seek our confirmation that:

¹ 12 U.S.C. § 1467a(l).

1. The Savings Bank is currently considered an institution initially acquired under supervisory circumstances for purposes of section 10(c)(3)(A)(i)(1) of the HOLA;
2. The Savings Bank will continue to be considered an institution initially acquired under supervisory circumstances for purposes of section 10(c)(3)(A)(i)(1) of the HOLA after acquiring the Disappearing Association;
3. The Holding Companies will be exempt from the activities restrictions imposed by section 10(c)(1)(B) and (C) of the HOLA, pursuant to section 10(c)(3), after organizing and acquiring the New Savings Bank; and
4. The status of the Savings Bank and the Holding Companies would not be adversely affected if OTS were to adopt in final form amendments to Section 584.2a of the Holding Company Regulations that were proposed in February 1999.²

Analysis

The scope of activities in which a savings and loan holding company may engage depends on the number of savings associations it controls, how it acquired those associations, and whether the associations satisfy the qualified thrift lender (“QTL”) test. The activities of unitary savings and loan holding companies (*i.e.*, holding companies that control only one savings association) are essentially unrestricted, provided that the subsidiary savings association meets the QTL test.

Multiple savings and loan holding companies (*i.e.*, those that control more than one savings association) are not subject to activities restrictions, if they qualify for the exemption provided in section 10(c)(3)(B) of the HOLA (the “Exemption”), which applies if

(i) all, or all but 1, of the savings association subsidiaries of such company were initially acquired by the company or by an individual who would be deemed to control such company if such individual were a company—

(I) pursuant to an acquisition under section 13(c) or 13(k) of the Federal Deposit Insurance Act [12 U.S.C. 1823(c) or (k)], or section 408(m) of the National Housing Act [12 U.S.C. 1730a (m)]; or

(II) pursuant to an acquisition in which assistance was continued to a savings association under section 13(i) of the Federal Deposit

² 64 Fed. Reg. 5982 (Feb. 8, 1999).

Insurance Act; and

(ii) all of the savings association subsidiaries of such company are qualified thrift lenders. . . .³

A. Current Status of the Savings Bank

The questions of the effect of the acquisition of the Disappearing Association on the treatment of the Savings Bank under section 10(c)(3) of the HOLA, and the acquisition of the New Savings Bank are moot if the OTS considers the Savings Bank, at this time, as not to have been “initially acquired” by the Holding Companies in a “supervisory transaction” within the scope of section 10(c)(3).

The key issue is the extent to which a subsidiary savings association may be “transformed” by subsequent events and still retain its status as “initially acquired” by the holding company in an assisted acquisition.

There are no restrictions on the length of time the Exemption applies and no bar to growth or shrinkage of the acquired institution or to the methods by which it may grow or shrink. The Exemption simply provides that the savings association must be “initially acquired” under one of the Assistance Statutes and all savings association subsidiaries of the holding company must be qualified thrift lenders.

One may conclude from the adjective “initially” that Congress contemplated that the institution could be transformed over time and still be considered as having been “initially acquired” under one of the Assistance Statutes. Otherwise, the institution could be unreasonably limited in adapting to changing circumstances. On the other hand, in our view, the Exemption should not be interpreted so as to enable a holding company to gain the benefits of the Exemption without, in substance, acquiring a troubled savings association.

There are two distinct issues relating to the current status of the Savings Bank: (i) the effect of the [] Merger of the Old Thrift into the Savings Bank; and (ii) the effect of the subsequent acquisitions of three other savings associations.

We do not consider the [] Merger of the Old Thrift into the Savings Bank as altering the status of the Savings Bank as having been initially acquired in a supervisory transaction. The Savings Bank was the surviving association in the merger. While the

³ 12 U.S.C. 1467a(c)(3). The “exempt multiple” treatment in section 10(c) of the HOLA is reiterated in the OTS Holding Company regulations at 12 C.F.R. § 584.2a(a)(1)(ii) (1999). Sections 13(c) and 13(k) of the Federal Deposit Insurance Act, and former sections 406(f) and 408(m) of the National Housing Act are referred to herein as the “Assistance Statutes.”

Old Thrift was slightly larger in asset size than the Savings Bank at the time of the merger, the Old Thrift had acquired over 95% of its assets in supervisory transactions. After the Holding Companies' initial acquisition of the Old Thrift, which had assets of \$ [] at the time of the acquisition, the Old Thrift acquired \$ [] of assets in supervisory transactions with the Resolution Trust Corporation ("RTC"). The Holding Companies caused the Old Thrift (rather than the Savings Bank) to acquire the assets from the RTC, because such acquisitions by the Savings Bank were prohibited under a "hold separate" agreement between the Holding Companies and the RTC, dated []. Although the Holding Companies did not "initially acquire" the Old Thrift in a supervisory transaction, we consider the merger of the two associations to be, in essence, the merger of two supervisory subsidiaries, because nearly all of the Old Thrift's assets were acquired in supervisory transactions.

Similarly, we do not consider the three mergers with other associations as altering the "initially acquired" status of the Savings Bank. The Savings Bank was the surviving entity in each merger, and each merger occurred promptly upon the Holding Companies' acquisition of the savings association. Also, we have previously considered the acquisition, by merger, by a "supervisory" savings association of a much smaller association to have no effect on the "initially acquired" status of the supervisory association.⁴ At the time of each merger, the Savings Bank was substantially larger than the acquired association:

<u>Date</u>	<u>Savings Bank's Assets</u>	<u>Target Association's Assets</u>
[]	\$ []	\$ []
[]	\$ []	\$ []
[]	\$ []	\$ []

Accordingly, in our opinion, the Holding Companies may consider the Savings Bank, at this time, to have been "initially acquired" in a supervisory acquisition.

B. Acquisition of the Disappearing Association

In our opinion, the Savings Bank's acquisition of the Disappearing Association would not change the nature of the Savings Bank, for the same reasons the three previous mergers did not change the status of the Savings Bank. The Savings Bank's charter will survive the merger, the merger will occur immediately upon the Holding Companies' acquisition of the Disappearing Association's holding company, and the Savings Bank, with assets of \$ [], is substantially larger than the Disappearing Association, which had assets of approximately \$ [] as of June 30, 1998.

⁴ See, Op. Dep. C.C. (Feb. 18, 1998).

C. Acquisition of the New Savings Bank

Given that we have concluded that the Holding Companies are considered to have “initially acquired” the Savings Bank in a supervisory transaction, the Holding Companies will be eligible for the Exemption if they subsequently organize and acquire the New Savings Bank. The Holding Companies will then have two savings association subsidiaries, all but one of which has been “initially acquired” in a supervisory transaction.

D. Effect of Proposed “Exempt Multiple” Regulation

The OTS has proposed amending 12 CFR § 584.2a(a)(1)(ii) to set forth the circumstances under which exempt multiple treatment would be available to savings and loan holding companies.⁵ There are three ways in which the regulation, if promulgated in final form, could affect the eligibility of the Holding Companies for the Exemption. First, the proposed regulation addresses mergers in exempt multiple holding company structures that cause the holding company to become a unitary holding company. Second, the proposed regulation addresses acquisitions by savings associations that have been “initially acquired” in supervisory transactions. Third, the proposed regulation addresses situations in which a unitary holding company which initially acquired its sole savings association subsidiary in a transaction under one of the Assistance Statutes acquires another subsidiary in a non-supervisory transaction.

As to the first situation, the proposed regulation provides that

if an exempt multiple savings and loan holding company merges its savings association subsidiaries to become a unitary savings and loan holding company, the resulting savings association subsidiary will be considered to have been acquired in a non-supervisory transaction, unless all the savings associations merged were acquired by the holding company in supervisory transactions.⁶

Thus, under the proposed regulation, the [] Merger would cause the Savings Bank to lose its status as having been “initially acquired” in a supervisory transaction. Proposed section 584.2a(a)(2)(iii), however, provides that holding companies that believe they are entitled to exempt multiple status based on rulings or opinions that the OTS issued prior to the effective date of the regulation may request confirmation of such status. Pursuant to a 1995 letter issued by this Office, a multiple savings and loan holding company was permitted to engage in activities other than those described in

⁵ 64 Fed. Reg. 5982 (Feb. 8, 1999).

⁶ 64 Fed. Reg. 5984 and 5985, at proposed 12 C.F.R. § 584.2a(a)(1)(ii)(B).

section 10(c)(2) of the HOLA after the merger of one of its healthy thrift subsidiaries with a substantial supervisory component into its smaller supervisory subsidiary thrift.⁷ In this case, we would consider the [] Merger to be similar to the situation presented in our 1995 letter because the Old Thrift had a substantial supervisory component. Accordingly, we would not view the proposed regulation as preventing the Holding Companies from claiming the Exemption.

As to the second situation, the mergers of the various savings associations into the Savings Bank upon acquisition by the Holding Company, the proposed regulations provide that

if any savings association that was acquired in a supervisory acquisition engages in any acquisition, merger, or consolidation after the subsidiary's own supervisory acquisition, the Director, in determining whether that savings association has existed continuously since the supervisory acquisition, will consider the following factors, as appropriate:

- (A) The corporate identity of the surviving savings association as specified in its charter;
- (B) The relative sizes of the holding companies, savings associations or other depository institutions involved in terms of assets or liabilities, or both; and
- (C) Such other factors on a case-by-case basis as the Director considers appropriate.⁸

In the case of each of the mergers, the Savings Bank was the survivor. In addition, the Savings Bank was much larger than any of the acquired institutions (including their holding companies) at the times of the various acquisitions. Accordingly, in our view, the mergers would not cause the Holding Companies to be ineligible for the Exemption.

Finally, as to the third situation, the acquisition of a non-supervisory savings association subsidiary while holding a supervisory subsidiary, the preamble to the proposed regulation provides: "[A] unitary holding company that acquired its sole subsidiary savings association in a supervisory transaction and then acquires an additional association in a non-supervisory transaction will be entitled to exempt multiple status."⁹

⁷ Letter Op. (Chief Counsel) (March 28, 1995).

⁸ Proposed 12 C.F.R. § 584.2a(a)(2)(i)(A)-(C); (64 Fed. Reg. 5985).

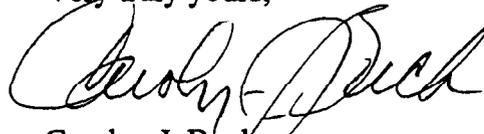
⁹ 64 Fed. Reg. 5983.

Accordingly, under the proposed regulation, the Holding Companies would continue to be eligible for the Exemption after establishing the New Savings Bank.

In reaching the foregoing conclusions, we have relied upon the factual representations contained in the materials presented to us. Our conclusion depends upon the accuracy and completeness of those representations. Any material changes in the facts or circumstances from those set forth in your submission could result in a different conclusion.

We trust that this is responsive to your inquiry. If you have any further questions, please feel free to contact Richard L. Little, Senior Counsel, at (202) 906-6447.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Carolyn J. Buck".

Carolyn J. Buck
Chief Counsel

cc: Regional Directors
Regional Counsel