

## OFFICE OF THRIFT SUPERVISION

### Approval of an Application for a Temporary Exemption From the Qualified Thrift Lender Requirement

**Order No.:** 2009-33  
**Date:** June 17, 2009  
**Re:** OTS No. 08146

Mutual of Omaha Bank, Omaha, Nebraska (Savings Bank), a federal savings bank, seeks approval of the Office of Thrift Supervision (OTS), pursuant to 12 C.F.R. § 552.13(c)(3), for a temporary exemption from the qualified thrift lender (QTL) requirement until March 31, 2010. Section 552.13(c)(3) of the OTS regulations provides that OTS may grant an exemption from the QTL requirement in connection with acquisitions by the Savings Bank of other depository institutions.<sup>1</sup> Section 552.13(c)(3) permits granting such an exemption after an acquisition has been consummated.

On July 25, 2008, OTS approved the Savings Bank's application to acquire First National Bank of Nevada, Reno, Nevada, and its affiliated bank, First Heritage Bank, Newport Beach, California, in a transaction in which the Federal Deposit Insurance Corporation (FDIC) provided assistance under 12 U.S.C. §1823(c). The Savings Bank acquired those depository institutions immediately thereafter.

The acquisitions of the commercial banks substantially increased the Savings Bank's combined cash, investment securities and non-mortgage loans, and caused the Savings Bank's QTL ratio to fall below 65 percent as of July 31, 2008. Currently, the Savings Bank fails the QTL requirement because its QTL ratio has been less than 65 percent in more than 3 out of the last 12 months.

In this case, the Savings Bank, in a supervisory transaction, acquired a significant amount of non-QTL-qualifying-assets and is in the process of acquiring QTL-qualifying-assets at a time when the mortgage and real estate markets are experiencing a high degree of stress and uncertainty. The Savings Bank has made significant progress towards regaining QTL compliance. In order to achieve and maintain a QTL ratio in excess of 65 percent, the Savings Bank will continue to sell current investments or redirect current liquidity to granting mortgage loans and acquiring other qualifying assets. However, because of market uncertainties and the Savings Bank's policy of employing conservative lending practices, it cannot ensure compliance prior to March 31, 2010.

Given the need to execute a gradual increase in qualified investments prudently so as not to raise supervisory concerns and the uncertainties of the current economic

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<sup>1</sup> The QTL waiver provision in 12 C.F.R. § 552.13(c)(3) is derived from § 10(m)(2) of the Home Owners' Loan Act, 12 U.S.C. § 1467a(m)(2). Under § 552.13(c)(3), OTS has granted waivers when the circumstances necessitating the waiver were not wholly within the control of the institution, and where compliance with the QTL test would have given rise to supervisory issues. *See, e.g.*, OTS Order No. 97-43 (April 30, 1997).

environment, OTS has concluded that granting the temporary exemption from the QTL requirements through March 31, 2010, will ensure that the Savings Bank has adequate time to invest in QTL-qualified assets in a safe and sound manner. Accordingly, the Savings Bank's request for a temporary exemption from the QTL requirements through March 31, 2010, is hereby granted.

By order of the Acting Director of the Office of Thrift Supervision, or his designee, effective 6/17/2009.



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