



Office of Thrift Supervision
Department of the Treasury

Harris Weinstein
Chief Counsel

1700 G Street, N.W., Washington, D.C. 20552 • (202) 906-6404

August 13, 1991

[REDACTED]

Dear [REDACTED]:

This is in response to your letter of May 28, 1991 in which you requested our opinion as to whether [REDACTED] (the "Holding Company") or its wholly owned subsidiary, First [REDACTED] (the "Savings Bank"), [REDACTED], may guarantee and provide additional collateral for a loan from a third party lender (the "Lender") to the Savings Bank's Employee Stock Ownership Plan (the "ESOP"). Because the question of a savings association's extension of credit to its ESOP raises significant legal and policy issues that are under review at this time, we decline to opine as to whether the Savings Bank may guarantee or collateralize the loan to the ESOP. As discussed more fully below, however, we have no legal objection to the Holding Company issuing a guarantee or providing additional collateral for a loan on behalf of the ESOP. We defer to the OTS supervisory staff to determine whether the proposed transaction would be permissible under safety and soundness standards.

According to your letter, the ESOP was created to invest primarily in the outstanding common stock of the Holding Company and acquired such stock in connection with the conversion of the Savings Bank from the mutual to the stock form of organization. The purchase of the stock was financed with a [REDACTED] million loan to the ESOP from the Lender. Under the terms of a "Guaranty Agreement" required by the Lender in consideration for its loan to the ESOP, the Holding Company or the Savings Bank is obligated to seek OTS approval to guarantee the loan on behalf of the ESOP.

As you know, we have recently expressed the view that neither the Home Owners' Loan Act (the "HOLA") nor the regulations promulgated thereunder generally prohibit a savings and loan holding company from guaranteeing a loan to the ESOP of its savings

association subsidiary.¹ Thus, any potential concerns regarding such arrangements are primarily supervisory in nature and involve whether the guarantee or pledge of additional collateral would place undue pressure on the savings association subsidiary to pay excessive dividends to the holding company or otherwise constitute an unsafe and unsound practice. Accordingly, the Holding Company and the Savings Bank should consult the appropriate OTS supervisory staff to determine if the proposed transaction would comply with such standards.

In reaching the foregoing conclusions, the OTS has relied on the factual representations contained in the materials submitted to us. The position set forth herein thereby depends upon the accuracy and completeness of those representations. Any material change in circumstances from those set forth in your submissions could result in conclusions different from those expressed herein.

If you have any further questions regarding the foregoing, please do not hesitate to contact V. Gerard Comizio, Deputy Chief Counsel for Securities and Corporate Structure, at (202) 906-6411 or Leonard J. Essig, Staff Attorney, Corporate and Securities Division, at (202) 906-6476.

Very truly yours,



Harris Weinstein
Chief Counsel

cc: Regional Director,
Regional Counsel
Central Regional Office

¹ See Ops. Chief Counsel, February 26, 1991, July 18, 1988, April 14, 1987, and January 31, 1986.