

## OFFICE OF THRIFT SUPERVISION

### Approval of Service Corporation Applications

**Order No.:** 2007-70  
**Date:** December 26, 2007  
**Docket No.:** 08551

Washington Mutual Bank, Henderson, Nevada (Association), has applied to the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1828(m) and 12 C.F.R. § 559.11, to establish five service corporations (collectively, Service Corporations): (i) a first-tier service corporation to be organized in Nevada (Nevada Subsidiary); (ii) a second-tier service corporation to be organized in Costa Rica (Costa Rica Subsidiary); (iii) a second-tier service corporation to be organized in the Philippines (Philippines Subsidiary); (iv) a second-tier service corporation organized under the laws of Mauritius, named Providian Mauritius Investments Ltd. (PMIL); and (v) a third-tier service corporation organized under the laws of India, named Providian Technology Services Private Limited (PTSPL). The Nevada Subsidiary and PMIL will be shell entities. PTSPL, the Costa Rica Subsidiary, and the Philippines Subsidiary will arrange for, and supervise the provision of, by third parties (by telephone or electronic means), certain ministerial services to the Association or its customers. The Costa Rica Subsidiary and the Philippines Subsidiary may also directly provide such ministerial services to the Association.

#### **The Proposed Transaction**

The Association is a federally chartered, Deposit Insurance Fund-insured, stock savings association. Washington Mutual, Inc. is the parent holding company of the Association.

The Nevada Subsidiary will be organized as a corporation under Nevada law and will be located in Carson City, Nevada. It will be a wholly owned subsidiary of the Association. Its activities will be limited to holding ownership investments in the other service corporations.

The Costa Rica Subsidiary will be organized under the law of Costa Rica as the equivalent of a limited liability company and will be located in Costa Rica. All of the membership interests in the Costa Rica Subsidiary will be held by the Nevada Subsidiary.

The Philippines Subsidiary will be organized under Philippines law and will be located in the Philippines. The Nevada Subsidiary will hold over 99 percent of the shares of the Philippines Subsidiary.

PMIL is organized under Mauritius law and is located in Mauritius. PMIL will become a direct subsidiary of the Nevada Subsidiary. PMIL's activities will be limited to holding a third-tier service corporation, PTSPL.

PTSPL is organized under the law of India and is located in India. PTSPL currently supervises the services that certain vendors perform for the Association.

As proposed, the sole initial activity of PTSPL would be to arrange for and supervise third party contractors' provision of certain services for the Association. The services to be provided by third party vendors may include retail banking service calls relating to general inquiries, fund transfers, ATM card maintenance, check orders, address changes, fee reversals, account maintenance, business and personal online banking; mortgage service calls regarding auto pay, default, payment applications, account maintenance, statement inquiries, and year-end inquiries; retail banking service e-mails involving general inquiry, online banking and bill pay; mortgage service e-mails regarding auto pay, payment application, website queries, property taxes, insurance, escrow and payoff; and, card services related calls, including telemarketing, collection, and service calls.

Initially, the Costa Rica Subsidiary and the Philippines Subsidiary will engage in activities that will be comparable to those in which PTSPL engages. The applications contemplate that the Costa Rica Subsidiary and/or the Philippines Subsidiary may expand their activities to include the direct performance of the activities described above, subject to an aggregate limitation on the amount of the Association's investment, as described in the application.

### **Service Corporation Requirements**

In considering whether a proposed investment in a service corporation by a federal association is permissible, OTS must consider whether the activity is permissible, whether the amount of the investment is permissible, the state of incorporation of the proposed service corporation and the nature of the investors, and whether there are any supervisory or safety and soundness reasons to limit or refuse to permit the investment.

The Home Owners' Loan Act and OTS regulations thereunder (including, among others, 12 C.F.R. Part 560, which addresses permissible investments, and 12 C.F.R. Part 559, which addresses subordinate organizations) neither explicitly prohibit, nor explicitly authorize federal savings associations to engage in foreign activities. OTS concludes that foreign activities that are neither explicitly prohibited nor explicitly authorized may be engaged in when those activities are otherwise permissible for a federal savings association, can be conducted in a safe and sound manner, and are incidental to the clearly permissible activities of a federal savings association.<sup>1</sup>

Operations are incidental when they are subordinate or nonessential to the principal operations of the federal savings association or are ancillary to otherwise

---

<sup>1</sup> See Op. C.C. (Jan. 14, 2000).

authorized operations.<sup>2</sup> OTS concludes that operations meet this definition where they represent only a small fraction of the savings association's assets and are by their nature incidental to the operations of a savings association. In this case, the proposed foreign operations will represent significantly less than one hundredth of one percent of the Association's assets and would not be essential to the Association's viability. In addition, using a foreign entity to engage in customer service activities is ancillary to the Association's main activity because it is intended to support the Association's primary domestic operations by providing associated services and reducing the cost of operations.

Accordingly, OTS concludes that the Association's foreign operations are incidental to its domestic operations. Therefore, the activities are permissible if they are authorized under OTS's Subordinate Organization Regulations<sup>3</sup> and can be conducted in a safe and sound manner. As discussed below, OTS concludes that the activities are consistent with the Subordinate Organization Regulations and they can be conducted in a safe and sound manner, provided that certain conditions are imposed.

The OTS Subordinate Organization Regulations set forth, at 12 C.F.R. § 559.4, preapproved activities for service corporations of federal savings associations. The proposed activities to be conducted by the five subsidiaries are permissible for the Association itself to conduct. The Nevada Subsidiary and its subsidiary, PMIL, will only invest in lower-tier entities, which is permissible under 12 C.F.R. § 559.3(f)(2). PTSPL, the Philippines Subsidiary, and the Costa Rica Subsidiary will initially arrange for and supervise contractors who will perform call center services for the Association under contract. Subsequently, the Costa Rica Subsidiary and the Philippines Subsidiary may perform the call center services themselves. Providing the proposed contract negotiation and supervision and the proposed call center services for the Association are authorized activities that all federal savings associations may conduct directly, and are therefore preapproved under 12 C.F.R. § 559.4(a).

The Association's proposed service corporation investment is within its investment limits. Under 12 C.F.R. § 559.5(a), federal savings associations may invest up to three percent of assets in service corporations, provided that any investment in excess of two percent of assets must "serve primarily community, inner city, or community development purposes." OTS has reviewed the application and determined that the Association's proposed investment in the Service Corporations raises no issues with respect to the investment limitations of 12 C.F.R. Part 559.

The proposed investment in the Service Corporations is consistent with the statutory and regulatory provisions addressing incorporation and ownership. The Nevada Subsidiary will be chartered and incorporated in Nevada, where the Association's home office is located, as required by 12 C.F.R. § 559.3(b)(2). The geographic chartering and ownership restrictions of Part 559 applicable to service corporations do not apply to lower-tier entities, such as the proposed foreign service corporations.<sup>4</sup>

---

<sup>2</sup> Op. C.C. (Jan. 14, 2000); OTS Order No. 2007-61 (December 6, 2007).

<sup>3</sup> 12 C.F.R. Part 559 (2007).

<sup>4</sup> 12 C.F.R. § 559.3(f)(2) (2007).

OTS requires that service corporations maintain separate corporate identities from their parent savings associations.<sup>5</sup> The activities of each Service Corporation will be conducted distinctly from that of the other Service Corporations and the Association. Separate books and records will be maintained for each subsidiary and each subsidiary will hold itself out to the public as a separate enterprise. OTS concludes that the proposed establishment of the Service Corporations raises no issues with respect to separate corporate identities.

OTS may, at any time, limit a savings association's investment in service corporations, or may limit or refuse to permit any activities of such entities for supervisory, legal, or safety and soundness reasons.<sup>6</sup> Foreign operations entail different risks than domestic operations and those safety and soundness issues must be addressed.<sup>7</sup> In addition, foreign operations may become subject to new foreign regulatory requirements that may ultimately affect the Association's overall operation.

In order to be in a position to deal effectively with problems that may arise from the proposed foreign operations, OTS is imposing conditions 5 through 9. The conditions help ensure that OTS will: (i) have control over any proposed modification of the type and scope of the Service Corporations' activities, and the location of such activities; (ii) have access to the books and records of the Service Corporations at a U.S. location; (iii) have jurisdiction over the foreign operations, including for examination, supervision and enforcement; and (iv) have the ability to require termination of operations if OTS determines there is undue risk. In sum, the conditions are intended to help ensure that the Association will operate the Service Corporations in a safe and sound manner under effective regulatory oversight.

### **Conclusion**

For the reasons set forth above, OTS has concluded that the applications satisfy all applicable approval standards and criteria, provided that the following conditions are complied with in a manner satisfactory to the West Regional Director, or his designee (Regional Director). Accordingly, the applications are hereby approved, subject to the following conditions:

1. The Association must consummate the proposed transaction and establish the Service Corporations within 120 days from the date of this Order;
2. The Association must receive all required regulatory approvals prior to commencement of operation of the Service Corporations, with copies of all such approvals provided to the Regional Director;

---

<sup>5</sup> 12 C.F.R. § 559.10 (2007).

<sup>6</sup> 12 C.F.R. § 559.1(a) (2007).

<sup>7</sup> See e.g., Op. C.C. (May 10, 1995) (concluding that foreign mortgage lending was permissible if it satisfied OTS's safety and soundness concerns).

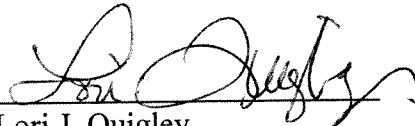
3. On the business day prior to the date on which the Association commences operation of the Service Corporations, the chief financial officer of the Association must certify in writing to the Regional Director that no material adverse events or material adverse changes have occurred with respect to the financial condition or operation of the Association and the Service Corporations as disclosed in the applications. If additional information having a material adverse bearing on any feature of the applications is brought to the attention of the Association, the Service Corporations or OTS, since the date of the financial statements submitted with the applications, the Association must not commence operation of the Service Corporations, unless the information is presented to the Regional Director, and the Regional Director provides written non-objection to the commencement of operation of the Service Corporations;
4. No later than five calendar days after the date on which the Association commences operation of the Service Corporations, the Association must file with the Regional Director a certification by its legal counsel stating the effective date of the transaction, and that the transaction has been consummated in accordance with the provisions of all applicable laws and regulations, the applications, and this Order;
5. The Association and the Service Corporations must make available to OTS such information as OTS deems necessary from time to time to monitor the activities of the Service Corporations and the effect of their activities on the safe and sound operation of the Association. The Association must maintain a duplicate set of records of each of the Service Corporations in the U.S., at the Association's main office. Such records must be in the English language and in U.S. dollars;
6. The Association, each of the Service Corporations, and each senior executive officer and director of the Service Corporations must consent in writing in a form acceptable to the Regional Director to: (i) the jurisdiction of the U.S. and OTS over, and the applicability of U.S. law to, the Service Corporations and such senior executive officer or director for purposes of all claims made by, proceedings initiated by, or obligations to, the U.S., OTS, and any U.S. governmental agency, department, or division and (ii) the jurisdiction of OTS over the Service Corporations and such senior executive officer or director for purposes of examination, supervision, and enforcement. The Association and all senior executive officers and directors of the Service Corporations must further agree in writing in a form acceptable to the Regional Director not to challenge the authority of any conservator/receiver appointed for the Association to control the Service Corporations and all assets associated with the Service Corporations;
7. The Association must agree in writing to terminate the operations of the Service Corporations if OTS, in its sole discretion, determines that such operations present undue risk;
8. Within 30 calendar days after any material change in the Service Corporations' operations or their relation to the Association's domestic operations or any material change in the regulatory authority to which the operations of the Service Corporations

are subject, the Association must notify the Regional Director of the facts relating to such change and, thereafter, the Association must abide by any decision OTS shall in its sole and absolute discretion issue with respect to the operations of the Service Corporations;

9. The documents required by the following items must be submitted to the Regional Director prior to commencement of operation of the Service Corporations:
  - a. The Association must establish and document internal controls that demonstrate adequate oversight of the operations of the Service Corporations, and provide materials documenting the institution of such internal controls; and
  - b. The Association and the Service Corporations must consent in writing to the disclosure by all foreign governmental authorities, to OTS of such information on the operations of the Service Corporations that OTS deems necessary from time to time to determine and enforce compliance with applicable U.S. laws and regulations.

The Regional Director may, for good cause, extend any time period set forth herein for up to 120 calendar days.

By order of the Director of the Office of Thrift Supervision, or his designee, effective December 26, 2007.



Lori J. Quigley  
Managing Director,  
Examinations and Supervision-Operations