

P-99-4-C

Date: May 12, 1999.

Summary Conclusion: Based upon a savings and loan holding company's status as an insurance company, it may retain a 9.9 percent interest in the common stock of a general partner of a limited partnership that will control a savings bank upon organization, without violating section 10(e)(1)(A)(iii) of the HOLA based on sections 10(e)(1)(A)(iii)(VII) and 10(e)(6) 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

1700 G Street, N.W., Washington, D.C. 20552 • (202) 906-6000

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May 12, 1999

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Re: Treatment of Insurance Companies Under
12 U.S.C. § 1467a(e)(1)(A)(iii)

Dear []:

This is in response to your letter of February 16, 1999, regarding investments by [] (the "Holding Company"), an existing unitary savings and loan holding company that is an insurance company, as defined in 15 U.S.C. § 80a-2, in two companies that are proposing to become savings and loan holding companies by forming a de novo Federal savings bank subsidiary (the "Savings Bank"). In your letter, you request confirmation that the transactions that you describe will not result in the Holding Company violating section 10(e)(1)(A)(iii) of the Home Owners' Loan Act ("HOLA") and will not result in the Holding Company acquiring control of the Savings Bank. In a second letter dated April 30, 1999, you asked that we not address the control issue until you submit additional support for your position. Therefore, this letter addresses only the issue relating to investments by the Holding Company under section 10(e)(1)(A)(iii) of the HOLA.

As discussed in more detail below, in our opinion, based on the Holding Company's status as an insurance company, the Holding Company's retention of a 9.9% interest in the common stock of the General Partner of a Limited Partnership that will control the Savings Bank upon organization would not be prohibited by section 10(e)(1)(A)(iii) of the HOLA. We are not opining on the permissibility of the Holding Company's holdings of 12.226% of the limited partnership interests of the Limited Partnership under section 10(e)(1)(A)(iii) of the HOLA because we are awaiting your submission of additional information.

Background

As we understand the facts, a limited partnership, [] (“Limited Partnership”), will organize the Savings Bank and own all of its stock. [] (“Limited Partner”) has contributed 85.48% of the Limited Partnership’s capital and holds a commensurate limited partnership interest. The Holding Company has contributed 12.226% of the Limited Partnership’s capital and also holds a commensurate limited partnership interest. The remaining limited partner, an individual, has contributed 2.194% of the Limited Partnership’s capital. The sole general partner of the Limited Partnership is [] (“General Partner”), a [] corporation, which has contributed 0.1% of the Limited Partnership’s capital. You represent that the power to operate, manage, and control the Limited Partnership resides solely with the General Partner.

Two individuals, [] and [], own 87.5% of the General Partner's common stock. These individuals also own all of the stock of the Limited Partner. The Holding Company currently owns 12.5% of the General Partner’s common stock. However, you represent that the Holding Company will reduce its ownership level in the General Partner to 9.9% prior to the filing of any applications by the Limited Partnership and the General Partner with the OTS. You further state that the Holding Company will reduce its representation on the General Partner’s seven-member board of directors from three directors to one. The Holding Company already is a savings and loan holding company of a savings association not affiliated with the Limited Partnership and the General Partner.

Based on these facts, you are seeking confirmation of your view that the level of the Holding Company's investments in the General Partner and Limited Partnership would be permissible for a savings and loan holding company that is an insurance company under section 10(e)(1)(A)(iii) of the HOLA.

Analysis

The Limited Partnership and the General Partner will become savings and loan holding companies by acquiring control of the Savings Bank. Section 10(e)(1)(A)(iii) of the HOLA generally prohibits any savings and loan holding company, such as the Holding Company, from acquiring or retaining more than five percent of the voting shares of a savings association or savings and loan holding company that is not a subsidiary of the acquiring or retaining holding company.¹

Two other provisions of section 10(e)(1)(A)(iii) of the HOLA address insurance company holdings more specifically. First, section 10(e)(1)(A)(iii)(VII) creates an exception to the general

¹ 12 U.S.C. § 1467a(e)(1)(A)(iii).

five percent limitation for voting shares "held by any insurance company, as defined in [15 U.S.C. § 80a-2], except as provided in paragraph (6)."² Second, this paragraph (6) ("section 10(e)(6)") provides that the general five percent limitation in section 10(e)(1)(A)(iii) applies to voting stock in excess of five percent of non-subsidary savings associations and savings and loan holding companies held by all insurance company affiliates of the holding company or the savings association.³

Section 10(e)(1)(A)(iii) further limits shareholdings under section 10(e)(1)(A)(iii)(VII) by providing that shares held under section 10(e)(1)(A)(iii), other than under the exceptions set forth at sections 10(e)(1)(A)(iii)(I), (II), (III), (IV), and (VI), may not exceed, in the aggregate, 15 percent of the voting power of a savings association or savings and loan holding company.⁴

All of the exceptions to sections 10(e)(1)(A)(iii), including exception (VII) and the concluding language, and section 10(e)(6) were part of extensive amendments made to section 10, as well as other parts of the HOLA, by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.⁵ The legislative history provides no insight as to the interrelationship of the provisions.

In our view, one must look first to section 10(e)(6) in analyzing the application of section 10(e)(1)(A)(iii)(VII) to insurance affiliates, because that section explicitly states that exception (VII) is subject to section 10(e)(6). Section 10(e)(6) limits the amount of shares held "under clause (iii)(VII)" to five percent of the voting power of a non-subsidary holding company or savings association.

The key issue, then, is whether the five percent permitted under sections 10(e)(1)(A)(iii)(VII) and 10(e)(6) is in addition to the five percent holdings permitted generally under section 10(e)(1)(A)(iii). In our view, the provisions have an additive effect. The first sentence of section 10(e)(1)(A)(iii) imposes the general five percent restriction. Section 10(e)(6) effectively permits holdings of another five percent by virtue of its reference to "all shares held under such clause (iii)(VII)". (Emphasis added.) The alternative reading, that the two five percent provisions are not additive, does not make sense. If Congress had wished to limit insurance companies to five percent, the first sentence of section 10(e)(1)(A)(iii) would have accomplished such a result, and Congress would not have created exception (VII).

Accordingly, in our opinion, sections 10(e)(1)(A)(iii)(VII) and 10(e)(6) enable insurance companies in savings and loan holding company structures to hold an aggregate of 10 percent of the voting stock of a savings association or savings and loan holding company not a subsidiary, with five percent being authorized under the general five percent exception in section

2 12 U.S.C. § 1467a(e)(1)(A)(iii)(VII).

3 12 U.S.C. § 1467a(e)(6).

4 This language is set forth in the final clause of section 10(e)(1)(A)(iii).

5 Pub. L. No. 101-73, § 301, 103 Stat. 183, 327 (1989).

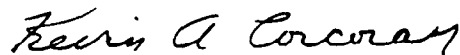
10(e)(1)(A)(iii), and an additional five percent being authorized under exception (VII) as limited by section 10(e)(6).

Therefore, the Holding Company's proposed 9.9% interest in the General Partner's common stock would not be prohibited by section 10(e)(1)(A)(iii) of the HOLA upon the organization of the Savings Bank. However, the Holding Company's 12.25% interest in the Limited Partnership would be permissible only if the Limited Partnership interests are not voting stock under section 10(e)(1)(A)(iii). We are reserving our opinion on the voting stock issue in the matter you have presented pending your submission of additional materials as described in your letter of April 30.

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 contact Richard L. Little, Senior Counsel, at (202) 906-6447.

Very truly yours,



Kevin A. Corcoran
Acting Deputy Chief Counsel
Business Transactions Division

cc: Regional Directors
Regional Counsel