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**Date:** July 11, 2000

**Permissible Activities of Savings and Loan Holding Companies**

A nonprofit company that engages in the following community development activities will not be prohibited from becoming a savings and loan holding company: (i) loan programs for commercial loans, business development loans, student loans, small personal loans and mortgage loans; (ii) job training programs; (iii) multi-family low income housing property management; (iv) real estate acquisition and development of housing for low- and moderate-income individuals; and (v) equity investments in entities that improve job opportunities and housing for low- and moderate-income individuals.

**Subject:** Savings and Loan Holding Companies/Change in Control

**P-2000-9**

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**Office of Thrift Supervision**

Department of the Treasury

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

**P-2000-9**

*Chief Counsel*

July 11, 2000

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Re: Permissible Activities of Savings and Loan Holding Companies

Dear [ ]:

This letter responds to your letter of November 24, 1999, as supplemented by your letter of March 10, 2000, requesting that the Office of Thrift Supervision (OTS) confirm that section 401 of the Gramm-Leach-Bliley Act, Public Law No. 106-102 (GLB Act), does not prohibit [ ] ([ ] Corporation), from becoming a savings and loan holding company (SLHC). You request confirmation that the [ ] Corporation's activities are permitted under section 10(c)(2) of the Home Owners' Loan Act (HOLA) or are permissible for financial holding companies (FHCs) under section 4(k) of the Bank Holding Company Act of 1956, as amended (BHC Act). We confirm that the [ ] Corporation's present activities, as represented in your letters, are permissible activities for a SLHC.

**I. Background**

According to your correspondence, the [ ] Corporation is a nonprofit company that engages in community development activities including: (i) loan programs for commercial loans, business development loans, small personal loans, student loans and mortgage loans; (ii) job training programs; (iii) multi-family low income housing property management; (iv) real estate acquisition and development for low- and moderate-income individuals; and (v) equity investments in entities that improve job opportunities and housing for low- and moderate-income persons. We briefly summarize each activity below.

First, the [ ] Corporation's lending programs make loans to new or expanding businesses from its funds and from funds provided under programs administered by the U.S. Department of Health and Human Services and the U.S. Department of Agriculture. Loans are made to individuals for educational purposes, and for other immediate needs. The [ ]

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Corporation also engages in mortgage lending, especially to assist first-time home buyers in obtaining affordable mortgages. On certain projects, the [ ] Corporation controls the home design, site preparation and title work of projects to control costs and thereby aid in supplying affordable housing and to avoid duplicative legal work. The [ ] Corporation's construction financing eliminates points and financing fees, and takes other actions to provide savings for qualifying home buyers.

Second, the [ ] Corporation engages in a job training program through its [ ] percent ownership interest in a [ ] corporation, [ ] (Subsidiary). The Subsidiary trains persons in metal working. The persons typically are from low- and moderate-income backgrounds and are placed in jobs at local manufacturing companies.

Third, the [ ] Corporation engages in land acquisition and development by purchasing building lots in volume to reduce the total acquisition cost (by achieving economies of scale), hence lowering the ultimate cost of affordable housing by decreasing the cost per lot. By acquiring sufficient land for an entire project, additional savings can be achieved on planning costs, surveying, abstracting, construction of infrastructure, and purchasing title insurance.

Fourth, the [ ] Corporation owns a [ ] percent interest in and operates a multi-family low-income housing property management company, [ ] (Partnership).

Fifth, the [ ] Corporation makes equity investments in various projects intended to benefit the public, such as job retention and community development programs, downtown revitalization, single- and multi-family home construction, the leasing of buildings for provision of jobs in economically depressed areas, investment in commercial operations, and investment in tax credit housing projects. The [ ] Corporation invests in entities engaged in housing development whose projects are designed for low- and moderate-income persons. The [ ] Corporation's investments in commercial enterprises and commercial properties are intended to create improved job opportunities for low- and moderate-income persons generally, to promote job opportunities in rural areas, and to promote job opportunities in depressed areas.

## **II. Discussion**

### **A. The Statutory and Regulatory Structure**

SLHCs may engage in activities permissible for bank holding companies (BHCs), FHCs, multiple SLHCs (as authorized on March 5, 1987) and certain other activities listed in the HOLA.

Sections 10(c)(9)(A) and (B) of the HOLA limit the activities of SLHCs. Section 10(c)(9)(A)<sup>1</sup> of the HOLA provides that:

Notwithstanding paragraph (3) [HOLA section 10(c)(3)], no company may directly or indirectly, including through any merger, consolidation, or other type of business combination, acquire control of a savings association after May 4, 1999, unless the company is engaged, directly or indirectly (including through a subsidiary other than a savings association), only in activities permitted— (i) under paragraph (1)(C) or (2) of this subsection; or (ii) for financial holding companies under section 4(k) of the Bank Holding Company Act of 1956.

Section 10(c)(9)(B)<sup>2</sup> of the HOLA provides that:

Notwithstanding paragraph (3) [HOLA section 10(c)(3)], no savings and loan holding company may engage directly or indirectly (including through a subsidiary other than a savings association) in any activity other than as described in clauses (i) and (ii) of subparagraph (A).

Section 10(c)(2) provides that all SLHCs are permitted to engage in the following activities:

(A) Furnishing or performing management services for a savings association subsidiary of such company.

(B) Conducting an insurance agency or escrow business.

(C) Holding, managing, or liquidating assets owned or acquired from a savings association subsidiary of such company.

(D) Holding or managing properties used or occupied by a savings association subsidiary of such company.

(E) Acting as trustee under deed of trust.

(F) Any other activity--

(i) which the Board of Governors of the Federal Reserve System, by regulation, has determined to be permissible for bank holding companies under section 4(c) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(c)], unless the Director, by regulation, prohibits or limits any such activity for savings and loan holding companies; or

(ii) in which multiple savings and loan holding companies were authorized (by regulation) to directly engage on March 5, 1987.

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<sup>1</sup> 12 U.S.C. § 1467a(c)(9)(A).

<sup>2</sup> 12 U.S.C. § 1467a(c)(9)(B).

(G) In the case of a savings and loan holding company, purchasing, holding, or disposing of stock acquired in connection with a qualified stock issuance if the purchase of such stock by such savings and loan holding company is approved by the Director pursuant to subsection (q)(1)(D) of this section [HOLA section 10].<sup>3</sup>

OTS has set out the activities permissible for multiple SLHCs (as authorized on March 5, 1987) under section 10(c)(2)(F)(ii) in its regulations at 12 C.F.R. § 584.2-1. The Federal Reserve Board (FRB) has listed activities permissible for BHCs under section 4(c) of the BHC Act in its regulations at 12 C.F.R. § 225.28. Permissible activities for FHCs are set out in 12 C.F.R. § 225.86.<sup>4</sup> We discuss the authority for each of the [ ] Corporation's activities in the following section.

**B. Authority for the [ ] Corporation's Activities**

First, the [ ] Corporation's lending programs would be permissible under several different authorities. The real estate loans offered by the [ ] Corporation are consistent with the types of loans permitted under section 584.2-1(b)(1). Section 584.2-1(b)(1) provides that a SLHC may engage in originating, purchasing, selling or servicing loans and participation interests in loans secured by real estate. These loans also are permissible under section 225.28(b)(1) and section 4(k). As for its commercial and consumer loans, section 225.28(b)(1) permits a BHC to make, acquire, broker, or service loans or other extensions of credit for the company's accounts or the accounts of others.<sup>5</sup> In addition, lending of money is a permissible activity for FHCs under section 4(k)(4)(A) of the BHC Act, and thus, permissible for SLHCs under section 10(c)(9).<sup>6</sup>

Second, with respect to the Subsidiary's job training activities, a BHC may invest in entities that engage in activities "designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas by providing housing, services, or jobs for residents." 12 C.F.R. § 225.28(b)(12)(i) (1999). You cite a January 29, 1999, letter from Scott G. Alvarez, Associate General Counsel, FRB, in which a BHC's ownership of a limited liability company that provides job training services and employment opportunities to disadvantaged persons, was determined to be a permissible community development investment under section 225.28(b)(12)(i). In our view, the job training program of the [ ] Corporation is consistent with the activities contemplated by the FRB regulations and guidance because the program is target primarily for low income persons.

<sup>3</sup> 12 U.S.C. § 1467a(c)(2).

<sup>4</sup> 65 F.R. 14433, 14438-14439 (March 17, 2000).

<sup>5</sup> 12 C.F.R. § 225.28(b)(1) (1999).

<sup>6</sup> 12 U.S.C § 1843(k)(4)(A).

Third, with respect to the [ ] Corporation's land acquisition and development activities, section 584.2-1(b)(4)<sup>7</sup> permits a SLHC to acquire unimproved land for resale to others for construction, and for development of the land for sale or rental. Subparagraph (b)(4) requires the "prompt" development and subdivision of the unimproved real estate. Section 584.2-1(b)(5) permits development, subdivision and construction of improvements on the land acquired under the authority of section 584.2-1(b)(4).<sup>8</sup> The [ ] Corporation engages in real estate acquisition and development primarily to provide affordable housing for low- and moderate-income families; thus, in our view is a permissible activity under section 584.2-1(b)(4). Development of real estate projects progresses as resources are available and as sales of developed lots permit reinvestment of sales proceeds. In our view, in the context of an entity such as the [ ] Corporation, the development of real estate as economic resources become available and as market conditions permit so that development is economically viable with respect to offering affordable housing to low- and moderate-income home buyers, meets the "prompt" requirement of subparagraph (b)(4). Further, the subdivision, development and construction of the attendant, requisite infrastructure, *e.g.*, roads, sewer system, to support the developing community is permissible under section 584.2-1(b)(5). Based on your description of the [ ] Corporation's real estate activities, in our view, the [ ] Corporation's real estate developments and other real estate activities are permissible activities for a SLHC under sections 584.2-1(b)(4) and (5).

Fourth, with respect to the [ ] Corporation's property management activities, section 584.2-1(b)(8) provides that a SLHC may manage improved real estate. Accordingly, the [ ] Corporation's property management investment and activity through the Partnership is, in our view, consistent with section 584.2-1(b)(8).

Fifth, with respect to the [ ] Corporation's equity investment in various entities, we believe that the activities of the other equity investments are consistent with the activities contemplated by the FRB regulations because the activities are designed to create job opportunities for low- and moderate-income persons, and to provide housing and to manage

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<sup>7</sup> Subsection (4) provides:

(4) Acquisition of unimproved real estate lots, and acquisition of other unimproved real estate for the purpose of prompt development and subdivision, for:

- (i) Construction of improvements,
- (ii) Resale to others for such construction, or
- (iii) Use as mobile home sites;
- (iv)

<sup>8</sup> Subsection (5) provides:

(5) Development, subdivision and construction of improvements on real estate acquired pursuant to paragraph (b)(4) of this section, for sale or rental;

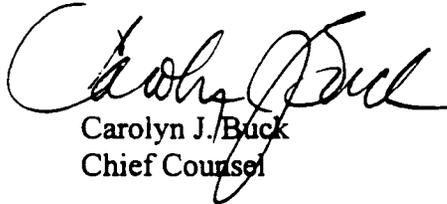
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housing for low- and moderate-income persons. Therefore, it would be permissible for the [ ] Corporation to invest in these entities based on section 225.28(b)(12)(i).

In reaching the foregoing conclusions, we have relied on the factual representations contained in the materials that you have submitted to us. Any different facts or conditions may require a different conclusion. If you have any questions regarding the foregoing, please contact Gary Jeffers, Senior Attorney, at (202) 906-6457.

Sincerely



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cc: [ ]

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