

Applicability of Holding Company Activity Restrictions Under § 10(c) of HOLA

Summary Conclusion: A savings and loan holding company that was exempt from the activities restrictions of HOLA Section 10(c) did not become subject to activities restrictions as a result of its subsidiary savings association's acquisition of a national bank in a merger transaction.

Date: December 3, 2003

Subjects: Savings and Loan Holding Companies/Change in Control

P-2003-10



Office of Thrift Supervision
Department of the Treasury

P-2003-10

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

December 3, 2003

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Re: Applicability of Holding Company Activity
Restrictions Under Section 10(c) of the
Home Owners' Loan Act

Dear []:

In your letter of September 15, 2003, you requested our concurrence with your view that the transactions described in your letter would not affect the status of your client, [A], under section 10(c)(3) of the Home Owners' Loan Act (HOLA). Specifically, you requested our concurrence that: (i) [A] or its subsidiaries would not become subject to the activities restrictions of section 10(c)(1) by reason of the proposed transaction; and (ii) there will be no lapse in the exempt status of [A] or its subsidiaries in connection with the proposed transaction. In a subsequent letter, dated November 19, 2003, you requested our further concurrence that [A] would not become subject to activities limitations under section 10(c)(9) of the HOLA as a result of the proposed transaction.

[A] presently owns a Texas-chartered savings bank, [SSB].¹ The institution has elected to be treated as a savings association under HOLA section 10, pursuant to section 10(l), 12 U.S.C. § 1467a(l), and is a qualified thrift lender. [A] acquired [SSB] in an acquisition pursuant to former 12 U.S.C. § 1729(f).

[A] proposes to acquire, in a multi-step transaction, a national bank (Target Bank) that had approximately [] in assets as of June 30, 2003. [A] would merge the Target Bank into [SSB]. As of June 30, 2003, [SSB] had approximately [] in assets. As a result of the acquisition, certain of the Target Bank's officers would become employees of [SSB]. There would be no other management changes at [A], or its subsidiaries.

¹ [SSB] is the resulting association in a merger of two section 10(l) savings association subsidiaries of [A], which occurred on September 1, 2000.

HOLA section 10(c)(3) exempts savings and loan holding companies from the activities limitations of section 10(c)(1) if, among other things, the holding company controls only one savings association and that savings association is a qualified thrift lender.

Given that [A] currently controls only one savings association, and would continue to control only one savings association after the proposed transaction, and you have represented that the savings association is a qualified thrift lender, in our view, [A] would continue to be an exempt savings and loan holding company under HOLA section 10(c)(3) after the proposed transaction, and there would be no lapse in [A]'s eligibility for the HOLA section 10(c)(3) exemption.

In 1999, the Gramm-Leach-Bliley Act² added section 10(c)(9) to the HOLA. This section is intended to prevent new affiliations between savings and loan holding companies and commercial firms. In general, sections 10(c)(9)(A) and (B) permit only companies that engage only in certain activities permissible under section 10(c)(1)(C) or (2), or activities permissible for financial holding companies pursuant to 12 U.S.C. § 1843(k), to acquire or retain, directly or indirectly, a savings association. Section 10(c)(9)(C) provides that sections 10(c)(9)(A) and (B) do not apply with respect to a company that was a savings and loan holding company on May 4, 1999 (or becomes a savings and loan holding company pursuant to an application pending with OTS on or before May 4, 1999), that continues to meet the requirements of section 10(c)(3), and that continues to control not fewer than one savings association that it controlled on May 4, 1999, or the successor to such savings association.

[A] was a savings and loan holding company on May 4, 1999, because it controlled [SSB] and [SSB2], at that date. As discussed above, [A] meets the requirements of section 10(c)(3).³ Finally, [A] continues to control [SSB], which it controlled on May 4, 1999. Thus, [A] meets the requirements of section 10(c)(9)(C), and the activities limitations of subparagraphs (A) and (B) do not apply to [A], nor would they apply after the proposed transaction. Therefore, in our view, the proposed acquisition of the Target Bank would not cause [A] to become subject to activities limitations under section 10(c)(9).

In reaching the foregoing conclusion, we have relied on the factual representations contained in the materials submitted to us, and conversations with you. Because this position is based on representations made in your letter and conversations, any different facts or conditions

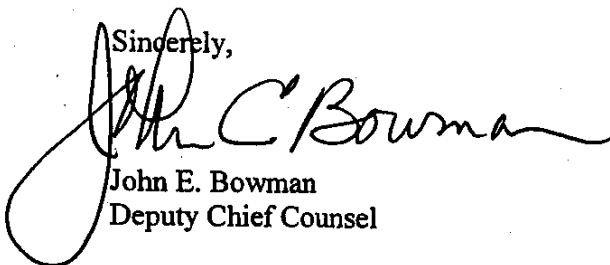
² See section 401 of Pub. L. 106-102, Nov. 12, 1999.

³ In addition, [A] met the requirements of section 10(c)(3) as of May 4, 1999, because it controlled more than one savings association, and all, or all but one, of those savings associations were acquired by [A] in transactions under 12 U.S.C. § 1729(f), as it then existed.

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might require a different conclusion. If you have any questions regarding the foregoing, please contact Gary Jeffers, Senior Attorney, at (202) 906-6457.

Sincerely,

A handwritten signature in black ink that reads "John E. Bowman". The signature is fluid and cursive, with a large loop at the end of the name.

John E. Bowman
Deputy Chief Counsel

cc: Regional Director
Regional Counsel