

## OFFICE OF THRIFT SUPERVISION

### Approval of Permission to Organize, Holding Company, and Bank Merger Act Applications, and Related Filings, and Acceptance of Control Rebuttals

**Order No.:** 2009-13  
**Date:** March 4, 2009  
**Re:** OTS Nos. 18129 and H-4585

OneWest Bank Group LLC (Direct HC), IMB HoldCo LLC (HoldCo), IMB Management Holdings LP (Limited Partnership), IMB Management Holdings GP LLC (General Partner), all of Pasadena, California, and The SHM 2009D Trust (Trust) (collectively, Applicants), have applied to the Office of Thrift Supervision (OTS), pursuant to sections 5(e) and 10(e) of the Home Owners' Loan Act (HOLA), and 12 C.F.R. §§ 552.2-1 and 574.3(a) to organize and acquire OneWest Bank, FSB, Pasadena, California (Association). As a result of the transaction, the Association will become a wholly owned, first-tier subsidiary of Direct HC.

In addition, the Applicants have applied to OTS on behalf of the Association: (i) under section 18(c) of the Federal Deposit Insurance Act (the Bank Merger Act, or BMA), and 12 C.F.R. § 563.22(a), for the Association to acquire deposit liabilities, certain other liabilities, and certain assets, from IndyMac Federal Bank, FSB (Transferor); and (ii) under section 18(m) of the Federal Deposit Insurance Act and 12 C.F.R. Part 559 for the Association to establish seven operating subsidiaries and one service corporation.

Also, Paulson & Co., Inc. and related entities (Paulson Group) and J.C. Flowers & Co. LLC and related entities (Flowers Group), each of which will initially hold 24.99 percent of HoldCo's membership interests, have filed rebuttals of control pursuant to 12 C.F.R. § 574.4(e) with respect to their proposed investments in membership interests of HoldCo.

#### **Background**

Direct HC, a limited liability company formed under Delaware law, is a wholly owned subsidiary of HoldCo, which also is a limited liability company formed under Delaware law. HoldCo's managing member is the Limited Partnership, a Delaware limited partnership. The General Partner, a Delaware limited liability company, is the general partner of the Limited Partnership. The limited partners of the Limited Partnership, at the time of the acquisition, will be Steven Mnuchin, and the Trust. Steven Mnuchin is the sole member of the General Partner.

### **The Proposed Transaction**

The Applicants propose to form the Association as a federally chartered savings association. The Association will be a wholly owned, direct subsidiary of Direct HC. After completion of its organization, the Association will acquire the deposit liabilities, certain other liabilities, and certain assets of, the Transferor. Upon consummation of the proposed transactions, the Association will be well capitalized.

### **Permission to Organize Application**

OTS may grant a federal savings association charter only: (1) to persons of good character and responsibility; (2) if, in OTS's judgment, a necessity exists for such association in the community to be served; (3) if there is a reasonable probability for the association's usefulness and success; and (4) if the association can be established without undue injury to properly conducted existing local thrift and home financing institutions. In addition, OTS must consider whether the association will promote credit for housing consistent with the safe and sound operation of a federal savings association.

Also, 12 C.F.R. § 563e.29(b) provides that an applicant for a federal savings association charter must submit with its application a description of how it will meet its Community Reinvestment Act (CRA) objectives. OTS is required to take this description into account when considering the application and may deny or condition approval on CRA grounds.

With respect to character and responsibility, the Applicants are newly formed entities that have not previously engaged in business activities. The Application and OTS's background checks have not disclosed any information regarding the management officials of the Applicants and the Association, that would be inconsistent with approval, and indicate that the Association's proposed directors and officers possess sufficient experience in the operations of financial institutions and other business endeavors. However, OTS's background checks on certain individuals have not been completed. OTS is imposing condition eleven to help ensure that the character and responsibility of the relevant individuals are consistent with approval.

With respect to the necessity for the Association, and undue injury to local thrift and home financing institutions, the Association is being formed in order to succeed to most of the business operations of the Transferor, which already engages in deposit and lending activities through 33 offices. The fact that the activities in question are already being conducted in the community supports the conclusion that there is a necessity for such services. Also, other thrift and home financing institutions already compete with the Transferor. Accordingly, OTS concludes that there is a necessity in the community for the Association and that the formation of the Association will not cause undue injury to existing local thrift and home financing institutions.

With respect to the probability of the Association's usefulness and success, the Association will be well-capitalized. OTS has reviewed the Association's draft business plan and has concluded that it is acceptable. The Association's directors and management are experienced in the areas of the Association's proposed operations. OTS is imposing condition four in order to ensure that the Association operates pursuant to an acceptable final business plan. OTS is imposing conditions five and six to help ensure that operations will comply with the business plan. OTS is imposing condition seven to help ensure that the Association is operated properly. OTS is imposing conditions eight, nine, ten, and thirteen to help ensure the safe and sound operations of the Association by requiring OTS review and non-objection for certain contracts or agreements and new officers or directors. OTS concludes that the probability of the Association's usefulness and success standard is met, provided that the Association complies with the imposed conditions.

With respect to promotion of credit for housing consistent with the safe and sound operation of a federal savings association, the Association will extend credit for housing within its market area. In addition, the Association is projected to meet its Qualified Thrift Lender requirements. As discussed above, the Association's management is competent and should be able to conduct lending appropriately. Accordingly, OTS concludes that this approval criterion has been satisfied.

With respect to the CRA and OTS's CRA regulations, the Association will continue most of the business operations of the Transferor. IndyMac Bank, F.S.B., which had previously conducted the businesses ultimately transferred to the Transferor, previously received a CRA rating of "Satisfactory." The Association's proposed CRA assessment area is consistent with OTS's CRA regulations. OTS concludes that the Association has satisfactorily demonstrated how it will meet its CRA objectives.

The Association intends to adopt a charter and bylaws that substantially conform to the model charter and bylaws for a federal stock institution.

Because the Association is being formed to acquire the operations of a savings association that is in default, pursuant to 12 C.F.R. § 552.2-3, OTS concludes that the public notice and comment procedures referenced in 12 C.F.R. § 552.2-1 are not applicable to the proposed transaction.

### **Holding Company Application**

Section 10(e)(1)(B) of the HOLA and 12 C.F.R. Part 574 (Control Regulations) provide that OTS must approve a holding company application seeking permission to acquire one savings association by a company other than a savings and loan holding company unless OTS finds the financial and managerial resources and future prospects of the company and association involved to be such that the acquisition would be detrimental to the savings association or to the insurance risk of the Deposit Insurance

Fund (DIF). Also, OTS must consider the impact of any acquisition on competition.<sup>1</sup> In addition, 12 C.F.R. § 563e.29 requires that OTS take into account assessments under the CRA when considering holding company acquisitions.

OTS has reviewed the information submitted by the Applicants with respect to the Applicants' management and the proposed management of the Association, and has concluded that the existing and proposed management possess the requisite experience and integrity. OTS is imposing condition twelve, requiring the Applicants to obtain OTS non-objection to directors and senior executive officers, in order to ensure that the Applicants' managerial resources are consistent with approval. OTS concludes that the managerial resources of Direct HC, HoldCo, the Limited Partnership, the General Partner, the Trust, and the Association are consistent with approval, provided the Applicants comply with the condition.

With respect to financial resources, OTS concludes that each of the Applicants has adequate capital. The Applicants will infuse capital into the Association in order to cause the Association to be well capitalized upon consummation of the proposed transaction. Accordingly, OTS concludes that the financial resources of the Applicants and the Association are consistent with approval.

With respect to future prospects and the risk to the DIF, the managerial and financial resources of the Applicants and the Association are consistent with approval, and OTS has considered the Association's business plan. OTS is conditioning approval of the holding company application upon conditions four through nine, for the reasons discussed above. The conditions are intended to ensure that the future prospects of the Association are consistent with approval.

With respect to competitive considerations, the proposed transaction will not cause any existing depository institutions to become affiliated. Accordingly, in our opinion, the proposed acquisition will have no significant effect on competition, and there is an adequate legal basis to conclude that this approval criterion has been satisfied.

With respect to the CRA, the Applicants have not been subject to the CRA. IndyMac Bank, F.S.B., which previously conducted the operations being transferred from the Transferor to the Association, received a Satisfactory CRA rating in its most recent examination, dated December 14, 2004. Accordingly, OTS concludes that this approval criterion has been satisfied.

Because the proposed transaction is being undertaken and approved for supervisory reasons, pursuant to 12 C.F.R. § 574.6(g), OTS hereby waives the applicability of the public notice and comment procedures of 12 C.F.R. §§ 574.6(d) and 574.6(e).

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<sup>1</sup> 12 U.S.C. § 1467a(e)(2) and 12 C.F.R. § 574.7(c)(2) (2008).

### **Bank Merger Act Application**

The Applicants seek OTS approval for the Association's acquisition of the deposit liabilities, certain other liabilities, and certain assets of the Transferor, pursuant to the BMA and 12 C.F.R. § 563.22(a). Because the Transferor will be in receivership at the time of the proposed transaction, there are sufficient grounds for OTS to waive the publication requirement set forth in the BMA and 12 C.F.R. § 563.22(e), and any waiting period for consummation of the transaction.

In evaluating a BMA application, OTS considers the effect on the capital of the resulting association; the financial and managerial resources of the constituent institutions; the future prospects of the constituent institutions; the convenience and needs of the community; conformance of the transaction to applicable law, regulation, and supervisory policy; and factors relating to the fairness of and disclosure concerning the transaction. In addition, in evaluating a BMA application, OTS considers the effect of the proposed transaction on competition, and the effectiveness of the depository institutions in combating money-laundering activities. OTS also considers the constituent savings associations' record of performance under the CRA.

As for capital, the Association will be well capitalized after the transaction. Accordingly, OTS concludes that this approval criterion has been satisfied.

As for managerial resources, for the reasons discussed above, OTS concludes that the managerial resources of the resulting savings association, the Association, are consistent with approval.

As for financial resources, OTS has concluded that each of the Applicants has adequate capital. The Applicants will infuse capital into the Association in order to cause the Association to be well capitalized upon consummation of the proposed transaction. The Association is projected to be well capitalized for the term of its business plan. Accordingly, OTS concludes that the financial resources of the Applicants and the Association are consistent with approval.

As for future prospects, OTS has considered the managerial and financial resources of the Association, as well as its business plan, and has concluded that future prospects considerations are consistent with approval, subject to imposition of the conditions discussed above.

As for convenience and needs of the community, the proposed transaction will help ensure that the customers of the Transferor continue to receive the services that the Transferor has provided. Accordingly, OTS concludes that convenience and needs considerations are consistent with approval of the proposed transaction.

As for the CRA, the Association, at the time of the transaction, will be newly organized and have no CRA history. Certain operations previously conducted by

IndyMac Bank, F.S.B. will be transferred from the Transferor to the Association. IndyMac Bank, F.S.B. had received a “Satisfactory” CRA rating. Based on the foregoing, OTS concludes that approval of the proposed transaction is consistent with the CRA.

As for conformance to law, regulation and supervisory policy, OTS’s review of the applications has not indicated any violation of law or regulations, or non-compliance with supervisory policies, in connection with the proposed transaction. Based on the foregoing, in our opinion, OTS concludes that approval of the proposed transaction is not objectionable based on conformity of the proposed transaction to applicable law, regulations, and supervisory policies.

As for compliance with anti-money laundering statutes and regulations, in January 2008, OTS conducted an examination of IndyMac Bank, F.S.B., and found its effectiveness in combating money laundering to be satisfactory. It is our understanding that the Transferor has continued to follow the same policies and procedures for combating money laundering as had IndyMac Bank, F.S.B. Moreover, nothing has come to our attention that indicates that the Transferor’s effectiveness in combating money laundering is less than satisfactory.

As for factors regarding equitable treatment and disclosure, employment contracts, and advisory boards, OTS’s review of the applications provided no evidence that the proposed transaction would not be equitable to all concerned. On the basis of the foregoing, OTS concludes that approval of the proposed transaction is not objectionable based on equitable treatment, disclosure, or compensation issues.

As for the competitive effects of the proposed transaction, the proposed transaction will not result in the affiliation of two operating depository institution. To the extent that the proposed transaction results in a more effective competitor in the market, the transaction will have the effect of promoting competition. Based on the foregoing, OTS concludes that the competitive considerations are consistent with approval.

### **Subsidiary Organization Filings**

In the proposed transaction, the Association will establish seven operating subsidiaries and one service corporation. Generally, a federal association may invest in an operating subsidiary if: (1) the operating subsidiary engages only in activities permissible for federal associations to engage in directly; (2) the federal association owns, directly or indirectly, more than 50 percent of the voting shares of the operating subsidiary; and (3) no person or entity other than the federal association exercises operating control over the operating subsidiary.<sup>2</sup> In addition, the OTS Subordinate Organization Regulations provide that OTS may, at any time, limit a savings

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<sup>2</sup> 12 C.F.R. §§ 559.2, 559.3(c)(1) and (e)(1) (2008).

association's investment in any subordinate organization, or refuse to permit activities in a subordinate organization, for supervisory reasons.<sup>3</sup>

The seven operating subsidiaries are: (i) Financial Freedom Acquisition LLC, a provider of reverse mortgages; (ii) IMB Investments LLC, which will own mortgage-backed securities held for trading purposes; (iii) IMB Resources LLC, a provider of payroll and employee services to the Association and its subsidiaries; (iv) IMB REO LLC, which will hold "real estate owned" (REO); (v) OneWest Ventures Holdings LLC, which will engage in no other activities other than being the sole member of another operating subsidiary, IndyMac Venture LLC; (vi) IndyMac Venture LLC, which will hold legal title to, service, and be entitled to certain cash distributions related to, certain consumer construction loans, loans to builders, and lot loans originated by IndyMac Bank, F.S.B. ;and (vii) IMB Finance (SA1) LLC, which will facilitate a funding arrangement between the Association and the Federal Deposit Insurance Corporation (FDIC) by acquiring from the Association certain rights to reimbursement for advances made by the Association for specified pools of mortgage loans and mortgage backed securitizations and transferring such receivables to a trust.

OTS concludes that the establishment of the operating subsidiaries is consistent with applicable approval standards. The Association will be the sole owner of each of these operating subsidiaries, and no other party will have effective operating control of any of these subsidiaries. Each subsidiary will engage solely in activities that are permissible for federal savings associations: (i) the provision of reverse mortgages; (ii) holding mortgage-backed securities for trading purposes; (iii) providing payroll and employee services to the thrift and its subsidiaries; (iv) holding REO; (v) holding another operating subsidiary; (vi) holding and servicing certain types of loans; and (vii) acquiring and transferring certain mortgage-based receivables. In addition, based on the relevant facts, and commitments provided by the Applicants, OTS does not object to the establishment of any of the operating subsidiaries based on supervisory grounds.

The Subordinate Organization regulation, at 12 C.F.R. § 559.3(c)(1) refers to "voting shares." The Operating Subsidiaries will be organized as limited liability companies. The preamble to the OTS Subordinate Organization regulations states that OTS will provide flexibility for structuring savings associations' operations and will determine on a case-by-case basis if an operating subsidiary satisfies the basic requirements of majority ownership, limited liability, and effective operating control.<sup>4</sup> In this case, OTS has concluded that all three elements are comparable to those found in corporations. Moreover, there are no supervisory concerns with the organizational form of the Operating Subsidiaries that will be organized as limited liability companies.

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<sup>3</sup> 12 C.F.R. § 559.1(a) (2008).

<sup>4</sup> See, 61 Fed. Reg. 66561, at 66564 (Dec. 18, 1996).

With respect to the service corporation, the Association proposes to establish IndyMac Financial Services, Inc. as a wholly owned service corporation. The service corporation will engage in insurance brokerage activities.

In considering whether a proposed investment in a service corporation by a federal savings association is permissible, OTS must consider whether the activity is permissible, whether the amount of the investment is permissible, the state of organization 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.

Insurance brokerage is a preapproved service corporation activity for federal savings associations.<sup>5</sup> The Association's proposed investment in the service corporation is well within applicable investment limitations. The service corporation will be incorporated in California, where the Association's home office will be located, and the Association will be the service corporation's sole shareholder. Accordingly, the establishment of the service corporation is consistent with applicable provisions regarding the state of organization and ownership. OTS has no supervisory objection to the establishment of the service corporation.

### **Rebuttals of Control**

The Control Regulations state that an acquiror is deemed, subject to rebuttal, to have acquired control of a savings association<sup>6</sup> if the acquiror, directly or indirectly, or through one or more subsidiaries or transactions or acting in concert with one or more persons or companies, acquires more than 10 percent of any class of voting stock of a savings association and is subject to any control factor, as described in 12 C.F.R. § 574.4(c).<sup>7</sup>

Parties attempting to rebut control are required to file a submission setting forth facts and circumstances supporting their contention that no control relationship would exist after the proposed acquisition. In addition, such parties must file a rebuttal of control agreement.

OTS may reject any control rebuttal that is inconsistent with the facts and circumstances known to it, or which does not clearly and convincingly rebut the presumption of control. If OTS concludes that it would be injudicious to rely on an acquiror's representations, based on past activities of the acquiror, or other concerns, OTS may conclude that the acquiror has not clearly and convincingly rebutted a

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<sup>5</sup> 12 C.F.R. § 559.4(i) (2008).

<sup>6</sup> The definition of "savings association" includes savings and loan holding companies. See 12 C.F.R. § 574.2(p) (2008). The Paulson Group and the Flowers Group, as the two largest holders of HoldCo membership interests, are both subject to a control factor. See 12 C.F.R. § 574.4(c)(1)(2008).

<sup>7</sup> 12 C.F.R. § 574.4(b)(1)(i) and 574.4(c) (2008).



determination of control. In addition, an acquiror that is in conclusive control of a savings association may not rebut control.

An acquiror is in conclusive control of a savings association if, among other things, it has more than 25 percent of any class of the entity's voting stock, or it has contributed more than 25 percent of a holding company's capital.<sup>8</sup> The rebuttal filings demonstrate that neither the Paulson Group nor the Flowers Group will acquire more than 25 percent of a class of HoldCo's voting stock, and neither group will have contributed more than 25 percent of HoldCo's capital in connection with the proposed transaction.

Both the Paulson Group and the Flowers Group have filed written submissions setting forth facts and circumstances in support of their contention that no control relationship will exist between either of the two groups and HoldCo, Direct HC, or the Association. The Paulson Group and the Flowers Group both represent that they will acquire HoldCo securities for investment purposes only, and not for the purpose, or with the effect, of controlling, directly or indirectly, the management, policies, or business operations of HoldCo, Direct HC, or the Association.

The Paulson Group and the Flowers Group have submitted rebuttal of control agreements that conform to the standard rebuttal agreement, set forth at 12 C.F.R. § 574.100, with certain exceptions. Each agreement provides that the relevant group may have, in addition to one representative on HoldCo's board of directors, an observer attend HoldCo's board meetings. The observer would not vote at such meetings. OTS has reviewed the relevant facts and has concluded that the presence of an observer at the board meetings does not provide the Paulson Group or the Flowers Group with the ability to influence or control HoldCo, Direct HC, or the Association, and therefore, does not contravene the purposes of a rebuttal of control.

In addition, although the standard rebuttal agreement provides that the rebutting party may not engage in any transactions with the entity for which control is being rebutted (and its subsidiaries), both proposed rebuttal agreements have been amended to provide that the relevant group may engage in three distinct types of transactions: (i) deposits accounts of up to \$1 million; (ii) transactions, such as purchases and sales of assets between HoldCo and its affiliates and each group, on arms'-length terms, provided that such transactions do not constitute more than two percent of the dollar value of such transactions entered into by HoldCo or its affiliates; and (iii) mortgage servicing arrangements with the groups on arms'-length terms, provided that revenues derived from such arrangements do not constitute more than two percent of the mortgage servicing revenues of HoldCo or its affiliates.

OTS has considered the magnitude of these transactions, and the relationship of the transactions to the overall business of HoldCo and its affiliates. Each business

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<sup>8</sup> See 12 C.F.R. § 574.4(a) (2008). The section lists additional conclusive control criteria, but it is clear that none of those criteria are applicable in this case.

relationship will not constitute a significant part of HoldCo's business relationships of the particular type in question, and overall, the relationships should not constitute a significant portion of HoldCo's business. In addition, the rebuttals represent that the transactions will be conducted on an arms'-length basis. Accordingly, OTS concludes that the proposed relationships do not contravene the purpose of the standard rebuttal agreement.

### **Conclusion**

Based on the foregoing analysis, OTS concludes that the permission to organize application, holding company application, BMA application, and subsidiary organization filings meet the applicable approval criteria. Accordingly, the applications are hereby approved, subject to the following conditions:


1. The proposed transaction must be consummated within 30 calendar days from the date of this Order, and the Applicants must obtain all required regulatory approvals prior to consummation;
2. On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of Direct HC, HoldCo, the Limited Partnership and the General Partner must certify in writing to the West Regional Director or his designee (Regional Director) that no material adverse changes have occurred with respect to the financial condition or operation of Direct HC, HoldCo, the Limited Partnership, and the General Partner, respectively, as disclosed in the applications. If additional information having a material adverse bearing on any feature of the application is brought to the attention of Direct HC, HoldCo, the Limited Partnership, the General Partner, or OTS since the date of the financial statements submitted with the application, the transaction must not be consummated unless the information is presented to the Regional Director, and the Regional Director provides written non-objection to consummation of the transaction;
3. Direct HC, HoldCo, the Limited Partnership, and the General Partner must, within 5 calendar days after the effective date of the proposed transaction: (a) advise the Regional Director in writing that the transaction was consummated in accordance with all applicable laws and regulations, the application, and this Order; and (b) provide a reconciliation of the Association's capital to the Regional Director;
4. The Association must file a detailed three-year business plan, including a CRA plan, that supports the most recent pro forma financial data submitted with the application within 60 calendar days after the consummation of the proposed transaction, for the prior written non-objection of the Regional Director with a copy sent to the FDIC Regional Office;

5. The Association must operate within the parameters of its detailed three-year business plan. The Association must submit any proposed major deviations or material changes from the plan (including those initiated by HoldCo or Direct HC) for the prior, written non-objection of the Regional Director. The request for change must be submitted no later than 60 calendar days prior to the desired implementation date with a copy sent to the FDIC Regional Office;
6. For three years following consummation of the transaction, the Association must submit to the Regional Director within 45 calendar days after the end of each calendar quarter, a business plan variance report detailing the Association's compliance with the business plan and an explanation of any material deviations;
7. The Association must submit independent audit reports to the Regional Director for three years after the date of consummation of the transaction. These reports must be in compliance with the audit rules set forth at 12 C.F.R. § 562.4;
8. For eighteen months following consummation of the transaction, any contracts or agreements pertaining to transactions with affiliates, affiliated persons or related interests not yet submitted to OTS for review, or any material changes to previously submitted contracts or agreements, must be provided to the Regional Director, and obtain his written non-objection;
9. The Association's board of directors must include at least two directors who are not officers or employees of the Association, the Applicants or their affiliates, or who have been otherwise determined by the Regional Director to lack sufficient independence. Within 60 calendar days of the consummation of the transaction, the Association must appoint two independent directors, subject to the review and written non-objection of the Regional Director;
10. Within 90 calendar days of the consummation of the transaction, the Association will identify individuals to serve permanently as Chief Financial Officer, and Chief Risk Officer, subject to the review and written non-objection of the Regional Director;
11. With respect to any proposed director and senior executive officer for whom background checks have not been completed, the Association must take such action as required by the Regional Director, if the Regional Director objects to any such person based on information obtained during the background check;

12. Within 60 calendar days of the consummation of the transaction, all directors, trustees, and senior executive officers of Direct HC, HoldCo, the General Partner, the Limited Partner, and the Trust, must be identified and their service subject to the review and written non-objection of the Regional Director; and
13. For two years following consummation of the transaction, the Association must receive the prior written non-objection of the Regional Director for any proposed new directors or new senior executive officers, or for any significant changes in responsibilities of any senior executive officer.

In addition, based on the foregoing analysis, OTS concludes that the Rebuttal of Control by the Paulson Group and the Rebuttal of Control by the Flowers Group meet the applicable criteria. Accordingly, the two Rebuttals of Control are hereby accepted. As a result, neither group will control HoldCo, Direct HC, or the Association within the scope of 12 C.F.R. § 574.4, and the members of the two groups are not required to register as savings and loan holding companies.

By order of the Acting Director of the Office of Thrift Supervision, or his designee, effective March 4, 2009.

  
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Grovetta N. Gardineer  
Managing Director  
Corporate & International Activities