

**Date:** February 1, 2000

**Foreign Currency Denominated Debt Issuance**

Federal savings associations may issue debt securities and warrants to purchase debt securities denominated in foreign currencies, consistent with safety and soundness principles.

**Subject:** Home Owners' Loan Act/Savings Association Powers.

**P-2000-2**



## Office of Thrift Supervision

Department of the Treasury

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

# P-2000-2

*Chief Counsel*

February 1, 2000

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Re: [ ] - Foreign Currency Denominated Debt Issuance

Dear Ms. Burak:

This responds to your inquiry regarding whether federal savings associations may issue debt securities and warrants to purchase debt securities denominated in foreign currencies. For the reasons explained more fully below, we conclude that federal savings associations may issue debt securities and warrants to purchase debt securities denominated in foreign currencies, provided that such an issuance is offered in a manner consistent with safety and soundness principles.

### **I. Background**

You have advised us that [ ] (the "Savings Bank"), with the assistance of its holding company [ ], obtains funding for its operation using the capital markets, including markets outside the United States. By accessing the worldwide market to obtain funding, the Savings Bank is able to use additional sources of liquidity, expand and diversify its investor base, capitalize on varying preferences for certain maturities and structure of securities (including the preference of many investors to invest in securities denominated in their own currency), and reduce funding costs over time by reducing reliance on the United States capital markets. The Savings Bank intends to obtain funding for its operation by issuing debt securities and warrants to purchase debt securities. A warrant is an agreement that allows an investor to acquire the underlying debt securities at some point in the future at a pre-determined price. The specific terms of the issuance are described in the Form OC (the "Offering Circular") filed by the Savings Bank.

## II. Discussion

The Home Owners' Loan Act ("HOLA") provides that:

To such extent as the Director may authorize in writing, a Federal savings association may borrow, may give security, may be surety as defined by the Director, and may issue such notes, bonds, debentures, or other obligations, or other securities, including capital stock.<sup>1</sup>

The OTS has not provided specific written authorization for Federal associations to issue debt securities or warrants to purchase debt securities. OTS regulations, however, provide that a Federal savings association may exercise all authority granted to it by the HOLA, and its charter and bylaws, whether or not implemented specifically by OTS regulations, subject to the limitations and interpretations contained in 12 C.F.R. Part 545.<sup>2</sup>

The federal thrift charter is granted primarily to provide credit for housing to consumers within the United States. In this instance, however, it is our opinion that this type of funding mechanism is permissible as it is incidental to the Savings Bank's domestic operations. The issuance of debt securities and warrants to purchase debt securities is incidental because it is subordinate to the Savings Bank's main activities. The issuance does not create foreign customers of the Savings Bank and does not elicit deposit taking or lending outside the United States. In addition, the Savings Bank's charter and bylaws do not prohibit this issuance and the OTS has not imposed regulatory, or other, limitations on a Federal association's ability to issue such securities abroad, or in denominations other than United States currency.

Based on the foregoing, in our opinion, the Savings Bank has the authority to issue debt denominated in foreign currency as well as warrants to acquire debt denominated in foreign currency. However, the securities must be issued in a manner that is consistent with safety and soundness principles, and the Savings Bank must address all potentially relevant safety and soundness issues, such as foreign currency risk. The Savings Bank must consult with the OTS Central Regional Office and comply with any restrictions that office may impose.

In addition, this letter does not address foreign operations relating to deposit taking, lending, or other such activities. In reaching the foregoing conclusion, we have relied on the factual representations made in the materials you provided. Our conclusions depend on the accuracy and completeness of those facts. Any material differences in facts or circumstances from those described herein could result in a different conclusion.

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<sup>1</sup> 12 U.S.C. § 1464(b)(2).

<sup>2</sup> 12 C.F.R. § 545.1 (1999).

