Permissible Activities of Multiple Savings and Loan Holding Companies Under Section 10(c) of the Home Owners' Loan Act

Multiple savings and loan holding companies may engage in activities permitted to "financial holding companies" under section 4(k) of the Bank Holding Company Act, as amended by the Gramm-Leach-Bliley Act.

Subject: Savings and Loan Holding Companies/Change in Control

P-2001-2

Office of Thrift Supervision
Department of the Treasury
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April 11, 2001

MEMORANDUM

TO: Ronald N. Karr
Regional Director, OTS Central Region

FROM: Carolyn J. Buck
Chief Counsel

SUBJECT: Permissible Activities of Multiple Savings and Loan Holding Companies Under Section 10(c) of the Home Owners' Loan Act

In your memorandum dated April 2, 2001, you request our interpretation of section 10 (c) of the Home Owners' Loan Act (HOLA), 12 U.S.C. § 1467a(c), regarding the activities in which multiple savings and loan holding companies may engage. Specifically, you have asked whether, after enactment of the Gramm-Leach-Bliley Act (GLB Act),[1] which amended section 10(c) of HOLA to add paragraph (9), multiple savings and loan holding companies may engage in the activities permissible for financial holding companies under section 4(k) of the Bank Holding Company Act of 1956 (BHCA)[2]. In brief, we conclude that multiple savings and loan holding companies may engage in activities that are permissible for financial holding companies under section 4(k) of BHCA.

Background

Activities of savings and loan holding companies are governed by section 10(c) of HOLA. Prior to the GLB Act, the permitted activities for a holding company depended upon the number and type of savings association subsidiaries it held.

Section 10(c)(1) sets out the general requirements on the scope of permitted activities and provides:

> Except as otherwise provided in this subsection, no savings and loan holding company and no subsidiary which is not a savings association shall –
> . . .

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1 Pub. L. 106-102 (November 12, 1999).
2 12 U.S.C.1843(k).

> (B) commence any business activity, other than the activities described in paragraph (2) [section 10(c)(2) of HOLA]; or
> (C) continue any business activity, other than the activities described in paragraph (2), after the end of the 2-year period beginning on the date on which such company received approval under subsection (e) of this section to become a savings and loan holding company. . . .

Section 10(c)(2) lists several specific activities, and also includes two broad categories of activities: (i) activities permissible for bank holding companies, and (ii) activities that the Federal Home Loan Bank Board approved for multiple savings and loan holding companies prior to March 5, 1987.

Section 10(c)(3) created a category of certain savings and loan holding companies that are not subject to the limitations of sections 10(c)(1)(B) and (C). Any subsidiary savings association held by these companies must be a qualified thrift lender and all or all but one of their savings associations must have been acquired in certain types of supervisory transactions.[3] As long as the company met those conditions, it could engage in any activity.

The GLB Act added section 10(c)(9) to expand permitted activities, prevent subsection (c)(3) savings and loan holding companies from engaging in unlimited activities, and grandfather the unlimited activities for a subcategory of the subsection (c)(3) companies.[4] Subparagraph (A) of section 10(c)(9) provides that, notwithstanding subsection (c)(3), no company may acquire a savings association unless it is engaged only in the activities set forth in subsections (c)(1)(C) and (c)(2), or the activities described in section 4(k) of BHCA. Subparagraph (B) provides that, notwithstanding subsection (c)(3), no savings and loan holding company may engage in any activities not described in subparagraph (A). Subparagraph (C) provides that savings and loan holding companies that held (or filed an application to hold) a savings association as of May 4, 1999 are not limited by subparagraphs (A) or (B), subject to certain requirements, including that the holding company meets and continues to meet the requirements of subsection (c)(3).

Analysis

Prior to the enactment of the GLB Act, multiple savings and loan holding companies were governed by section 10(c)(1) which sets forth the activities restrictions for savings and loan holding companies generally. The activities limitation in section 10(c)(1) provides that "[e]xcept as otherwise provided in this subsection," no savings and loan

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[3] Under section 10(c)(3), multiple savings and loan holding companies that acquired all or all but one of their savings association subsidiaries in certain types of supervisory transactions are exempt from the activities limitations of sections 10(c)(1)(B) and (C), provided that all of the savings association subsidiaries of such companies meet the qualified thrift lender test under section 10(m) of HOLA. For ease of reference, the term "multiple savings and loan holding company" as used in this opinion does not refer to such companies.
[4] Section 104(a), 113 Stat. 1338, 1434-1435.

holding company and no subsidiary which is not a savings association shall engage in activities in contravention of section 10(c)(1). The exception language means that the limitations in section 10(c)(1) may be superseded by less restrictive prohibitions elsewhere in section 10(c) (such as, historically, section 10(c)(3)). The issue, then, is whether section 10(c)(9), enacted as part of the GLB Act, provides superseding authority for multiple savings and loan holding companies.

Section 10(c)(9)(B) provides that "[n]otwithstanding paragraph (3), no savings and loan holding company may engage directly or indirectly . . . in any activity other than as described in clauses (i) and (ii) of [paragraph (9)(A)]." Clause (i) references activities that are permitted under section 10(c)(1)(C) or (2), which were already authorized for all holding companies. Clause (ii) refers to activities permitted for financial holding companies under section 4(k) of BHCA, which is a new authority for multiple savings and loan holding companies.

Section 10(c)(9)(B), in effect, replaces the superseding authority contained in subsection (c)(3). It applies to any savings and loan holding company, prohibiting it from engaging in activities other than those permitted under sections 10(c)(1)(C) and (2) of HOLA and section 4(k) of BHCA.[5] Stated positively, for those savings and loan companies that could not meet the standards for grandfathering of unlimited activities in paragraph (9)(C), paragraph (9)(B) expands the range of permissible activities to include the section 4(k) activities permitted for financial holding companies.[6]

The legislative history of the GLB Act indicates that the purpose of sections 10(c)(9)(A) and (B) was to curtail the mixture of banking and commerce in savings and loan holding company structures.[7] Congress' concern focused on the ability of savings and loan holding companies to engage in activities beyond those allowed for bank holding companies or financial holding companies. There is no evidence that Congress intended to limit the types of savings and loan holding companies that could engage in financial holding company activities or that multiple savings and loan holding companies were to be barred from such activities. In conferring section 4(k) activities on all financial holding companies, Congress did not distinguish among them based on the number of banks they held. We are aware of no policy reasons for treating multiple savings and loan holding companies differently than multiple financial holding companies in terms of the section 4(k) activities. In fact, one of the purposes of section 401 of the GLB Act, which added section 10(c)(9), apparently was to make the permitted activities for savings and loan

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[5] Certain savings and loan holding companies are excepted from section 10(c)(9)(B) under sections 10(c)(9)(C), (D) and (F).

[6] We note that section 10(e)(1)(A)(iii) of HOLA would continue to limit the method in which a multiple savings and loan holding company may engage in a non-bank holding company activity that is permissible under section 4(k) of BHCA. That section provides that multiple savings and loan holding companies may not acquire or retain more than five percent of the voting shares of a company not a subsidiary which is engaged in any business activity other than the activities specified in section 10(c)(2) of HOLA. See 12 U.S.C. § 1467a(e)(1)(A)(iii).

[7] See, e.g., H. Rep. No. 106-434, at 105 (1999).

holding companies more consistent with the activities of financial holding companies that control banks.

The legislative history of section 401 also demonstrates that earlier versions of the legislation were worded more clearly than section 10(c)(9) by amending section 10(c)(2) to simply include the section 4(k) activities permissible for financial holding companies.[8] The legislative history does not indicate that the change in language was in any way intended to change the permissible activities of multiple savings and loan holding companies from those contemplated in the earlier draft legislation.[9]

Based on the foregoing, in our opinion, multiple savings and loan holding companies may, under section 10(c) of HOLA, engage in the activities that are permissible for financial holding companies under section 4(k) of BHCA.

If you have any questions regarding the foregoing, please contact John E. Bowman, Deputy Chief Counsel for Business Transactions at (202) 906-6372, or Kevin A. Corcoran, Assistant Chief Counsel for Business Transactions at (202) 906-6962.

cc: Regional Directors
Regional Counsel

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[8] See section 103 of S.900 as passed by the Senate on May 6, 1999.

[9] In fact, OTS staff had various discussions during the legislative process with staff involved with the version of the statute that was not ultimately adopted. Those discussions suggest that when the current wording of section 401 of the GLB Act was agreed upon, the parties who introduced the original version did not view the modification to substantively change the intent of section 103 of S. 900 as to permissible activities for non-grandfathered savings and loan holding companies.