

Request for Waiver of Certain Provisions of OTS Securities Offering Regulation

Summary Conclusion: OTS may waive certain provisions of its regulations related to the offering of securities by OTS-regulated entities. Savings associations may be permitted to engage in a registered offering of nonconvertible, unsecured subordinated debentures, subject to the same requirements that are applicable to such issuances of securities by national banks under OCC regulation section 16.6, and in compliance with the terms of an OTS letter dated November 25, 1996.

Date: December 23, 2002

Subjects: Home Owners' Loan Act/Savings Association Powers

P-2002-10



Office of Thrift Supervision
Department of the Treasury

P-2002-10

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

December 23, 2002

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Re: Request for Waiver of Certain Provisions of
OTS Securities Offering Regulation

Dear []:

This letter responds to your letter dated October 23, 2002, in which you request, on behalf of [] ("Savings Bank"), a wholly owned subsidiary of [] ("Holding Company"), that the Office of Thrift Supervision ("OTS") waive certain provisions of its regulations related to the offering of securities by OTS regulated entities, 12 C.F.R. Part 563g ("Securities Offering regulations"). The Savings Bank requests that it be permitted to engage in a registered offering of nonconvertible, unsecured subordinated debentures, subject to the same requirements that are applicable to issuances of such securities by national banks under regulations promulgated by the Office of the Comptroller of the Currency ("OCC") at 12 C.F.R. § 16.6 ("OCC section 16.6"), and compliance with the terms of an OTS letter dated November 25, 1996 ("November 1996 letter"), and certain limitations enumerated therein. For the reasons discussed below, the Savings Bank's request is granted.

Background

The Savings Bank proposes to engage in a global note program in which it would issue certain registered global debt to institutional investors¹ in an offering. The debt instruments would consist of subordinated notes maturing in 2012, using a specified interest rate to be set at closing. The Savings Bank will use a Fiscal and Paying Agent Agreement ("Agreement") in lieu of a trust indenture to set out certain rights and to direct out the administration of the offering.²

¹ The institutional investors would qualify as "accredited investors" under Rule 501(a)(1), (2), (3), or (7) of the Securities and Exchange Commission, 17 C.F.R. § 230.501(a)(1), (2), (3), or (7) (2002).

² The separate waiver request for substitution of the Agreement for an indenture is addressed in the approval of the Savings Bank notice pursuant to 12 C.F.R. § 563.81.

The subordinated debt offered by the Savings Bank may be subject to registration pursuant to the Securities Offering regulations, therefore, these securities will be registered with OTS. You have supplied OTS staff with draft copies of the proposed Offering Circular and the Agreement to assist the staff in the review of the Savings Bank's request. The Savings Bank has provided notice to OTS to include the subordinated debt in its regulatory capital.

Previously, OTS, in a letter dated August 23, 1996, was requested to waive certain of its Securities Offering regulations, subject to the condition that the requesting savings bank adhere to specific OCC regulations addressing the manner of the offering and the type of security being offered, *i.e.*, OCC section 16.6. The requesting savings bank would remain subject to the antifraud provisions of applicable statutes and regulations. OTS staff reviewed OCC section 16.6, compared and contrasted that regulation to the Securities Offering regulations, considered the reasons cited by the requesting savings bank for waiving the Securities Offering regulations, and concluded that, for the reasons stated and with certain limitations, OTS would waive certain provisions of the Securities Offering regulations for the registration of the requesting savings bank's nonconvertible debt offering and permit the application of OCC section 16.6 to the offering. OTS staff's review and conclusions were set forth in the November 1996 letter cited by the Savings Bank, but the November 1996 letter limited the application of the terms to the specific offering by the requesting savings bank. The Savings Bank requests that OTS permit it to engage in an offering of debt securities, as briefly described above, in compliance with the terms of the November 1996 letter.

Discussion

As stated in the November 1996 letter, the Securities Offering regulations are intended to foster integrity, confidence, and discipline in the market for thrift securities.³ Further, the Securities Offering regulations are designed to accomplish these purposes through regulations requiring full disclosure of relevant, material information regarding the security and the issuer.⁴

The Securities Offering regulations⁵ permit OTS to waive any requirement of the Securities Offering regulations if a particular provision is determined to be unnecessary by OTS to a particular transaction. In addition, OTS regulations, at 12 C.F.R. § 500.30(a), include a general waiver provision, which states that the "Director may, for good cause and to the extent permitted by statute, waive the applicability of any provision of this chapter."

³ 50 Fed. Reg. 53284 (Dec. 31, 1985).

⁴ Id.

⁵ 12 C.F.R. § 563g.14 (2000).

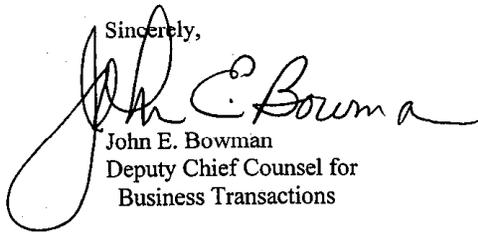
We have reviewed the terms of the proposed debt offering, the terms of the November 1996 letter, and the basis for our conclusions, and have concluded that the requirements set out in the below specified sections are unnecessary under the circumstances, and that there is an adequate basis for OTS to waive provisions of the Securities Offering regulations identified by the Savings Bank, subject to the Savings Bank's compliance with the reasoning and terms of the November 1996 letter and, specifically, with requirements of OCC section 16.6 as if the Savings Bank were a national bank, except as described below. Accordingly, OTS hereby waives 12 C.F.R. §§ 563g.2, 563g.5, 563g.6, 563g.7, 563g.12, and 563g.18, as they apply to the proposed offerings, subject to the following limitations:

1. The Savings Bank complies with the requirements of 12 C.F.R. § 16.6;
2. OTS does not waive 12 C.F.R. §§ 563g.2(b),⁶ 563g.5(b), 563b.8(e)(4), and 563b.8(i); and
3. OTS waives 12 C.F.R. § 563g.5 only to the extent that the OCC regulations do not impose analogous requirements on debt offerings that are subject to 12 C.F.R. § 16.6.

In reaching the foregoing conclusions, we have relied on the factual representations contained in the materials submitted to us by the Savings Bank. Our positions depend on the accuracy and completeness of those representations. Any material change in facts or circumstances could result in different conclusions from those expressed herein. Moreover, our conclusions represent our position on the waiver of the regulations implicated in this particular case. Accordingly, this letter may not be used as precedent by any other parties.

If you have any questions regarding the above matter, please contact Gary Jeffers, Senior Attorney, Business Transactions Division, at (202) 906-6457.

Sincerely,



John E. Bowman
Deputy Chief Counsel for
Business Transactions

⁶ This regulation sets forth safe harbor provisions that define what communications do not constitute offers for sales of securities. This section is substantially the same as 12 C.F.R. § 16.4(a)(1)-(3), to which offerings under section 16.6 are subject.