



Federal Housing Finance Board

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December 21, 1998

[REDACTION]

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Regulatory Interpretation: Automatic Membership for [REDACTION] Bank Under Section 933.4(d)(1) of the Membership Regulation (98-RI-5)

Dear Mr. [REDACTION]:

This is in response to your November 25, 1998 telephone conversation with Sharon Like of my staff, in which you requested confirmation that the Federal Home Loan Bank [REDACTION] ([REDACTION] Bank) may, in its discretion, treat [REDACTION] (New B [REDACTION]), a newly chartered bank formed as part of a consolidation/reorganization of the subsidiaries of [REDACTION], Inc., as an automatic member pursuant to section 933.4(d)(1) of the Federal Housing Finance Board's (Finance Board) Membership Regulation.¹ See 12 C.F.R. § 933.4(d)(1).

Specific details of the consolidation/reorganization involving New B [REDACTION] are described in an October 20, 1998 letter to the [REDACTION] Bank from [REDACTION], as clarified by a November 6, 1998 letter from [REDACTION] to the [REDACTION] Bank ([REDACTION] letters), which were forwarded by the [REDACTION] Bank to the Finance Board. In brief, the October 20, 1998 letter states that, as part of the consolidation/reorganization, New B[REDACTION], a newly chartered [REDACTION] commercial bank which currently is not a member of the [REDACTION] Bank, will acquire certain assets and liabilities from [REDACTION] (B[REDACTION]), a [REDACTION] commercial bank which is a subsidiary of [REDACTION], Inc. and a member of the

¹ Your November 24, 1998 facsimile cover sheet (forwarding a November 6, 1998 [REDACTION] letter) to the Finance Board states that the [REDACTION] Bank plans to treat New B[REDACTION] as an automatic member under section 933.4(d)(1) of the Finance Board's Membership Regulation. The cover sheet also states that the [REDACTION] Bank will require a de novo membership application from [REDACTION], a second surviving bank pursuant to the consolidation/reorganization, instead of treating it as an automatic member under section 933.4(d)(1). In our November 25, 1998 telephone conversation, you indicated that the [REDACTION] Bank, therefore, is withdrawing its request for Finance Board confirmation whether [REDACTION] is eligible for automatic membership under section 933.4(d)(1).

[REDACTION] Bank. The November 6, 1998 letter clarifies that, upon consummation of the consolidation/reorganization, 100 percent of the assets of New B[REDACTION] will have been acquired from B[REDACTION]. The October 20, 1998 letter requests confirmation from the [REDACTION] Bank that New B[REDACTION] may be automatically approved for Bank membership under section 933.4(d)(1) of the Membership Regulation.

In addition, the October 20, 1998 letter states that a second bank, [REDACTION], which currently is not a member of the [REDACTION] Bank, will be the ultimate survivor in a series of mergers of other subsidiaries of [REDACTION], Inc. pursuant to the consolidation/reorganization. The October 20, 1998 letter requests confirmation from the [REDACTION] Bank that [REDACTION] may be automatically approved for Bank membership under section 933.4(d)(1) of the Membership Regulation.

The Finance Board's recently amended Membership Regulation provides that if a member institution (or institutions) and a nonmember institution are consolidated and the consolidated institution has its principal place of business in a state in the same Bank district as the disappearing institution (or institutions), and the consolidated institution will operate under the charter of the nonmember institution, then on the effective date of the consolidation, the consolidated institution may, in the discretion of the Bank of which the disappearing institution (or institutions) was a member immediately prior to the effective date of the consolidation, automatically become a member of such Bank upon the purchase of stock in that Bank pursuant to section 933.20 of the Finance Board's regulations, provided that:

(i) 90 percent or more of the total assets of the consolidated institution are derived from the total assets of the disappearing member institution (or institutions) (90 percent test); and

(ii) the consolidated institution provides written notice to such Bank, within 60 calendar days after the effective date of the consolidation, that it desires to be a member of the Bank.

See 12 C.F.R. § 933.4(d)(1).

Based upon the limited information provided in the two [REDACTION] letters, New B[REDACTION] would meet the 90 percent test and would be eligible for automatic membership under section 933.4(d)(1). This confirmation of automatic membership eligibility is based solely on the factual representations made in the [REDACTION] letters, as the Finance Board has not reviewed any documentation in support of the factual statements contained in those letters.

The Finance Board is not addressing [REDACTION]'s original question of automatic membership eligibility for [REDACTION] in view of the [REDACTION] Bank's plan to require a de novo membership application from [REDACTION].

If you have any additional questions, please call the undersigned at (202) 408-2570, or Sharon Like, Senior Attorney-Advisor, at (202) 408-2930.

Sincerely,

Deborah F. Silberman

Deborah F. Silberman
General Counsel

This is a Finance Board regulatory interpretation within the meaning of the Procedures for Requests and Applications adopted by the Board of Directors of the Finance Board pursuant to Resolution No. 98-51 (October 28, 1998). The regulatory guidance set forth herein may be relied upon by the recipient subject to modification or rescission by action of the Board of Directors of the Finance Board.

I concur: *William W. Ginsberg*
William W. Ginsberg

cc: William W. Ginsberg
James L. Bothwell
Mitchell Berns
[REDACTION]