



Federal Housing Finance Board

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September 3, 1993

Ms. Carol A. Jackson
 Group Vice president and Chief Credit Officer
 Federal Home Loan Bank of Atlanta
 P.O. Box 105565
 Atlanta, Georgia 30348

Dear Carol:

Thank you for your letter dated August 2, 1993, in which you request approval under Section 6(f) of the Federal Home Loan Bank Act ("Act") to effect the transfer of up to \$20 million in Federal Home Loan Bank stock from several yet-to-be identified member and nonmember institutions to Fortune Bank, Clearwater, Florida ("Fortune"), a member of the FHLBank of Atlanta.

The Finance Board's Office of Legal and External Affairs ("OL&EA") has concluded that there is no express authority that would allow approval of the transfer of FHLBank stock from a nonmember to a member. However, it appears that the Finance Board is able to approve the transfer of FHLBank stock to a member from other members that are not as yet identified, so long as certain conditions are satisfied. (A copy of the legal analysis is enclosed.)

You indicate that any transfer of FHLBank stock from another member to Fortune would be made with the stipulation that both the provider of the stock and the recipient would remain in full compliance with their required stock subscription requirements both before and after the stock transfer. Under authority delegated to me by the Finance Board, I approve such proposed stock transfers up to the dollar amount indicated in your letter, under the conditions that they are done at par value, the stock transfers are duly entered on the books of the Atlanta Bank, and all members involved in the transfer remain in full compliance with their stock subscription requirements.

If you have any questions, please contact Tom Sheehan at (202) 408-2870.

Sincerely,



Philip L. Conover
 Managing Director

Enclosure



Federal Housing Finance Board

August 26, 1993

MEMORANDUM

TO: Thomas D. Sheehan
Assistant Director
Regulatory Oversight Division

THROUGH: Beth L. Climo *BLC*
General Counsel

FROM: Bruce W. McDougal *BW*
Attorney-Advisor

SUBJECT: Transfer of FHLBank Stock from a Non-member to a Member

We have reviewed two issues arising out of a request by the Federal Home Loan Bank ("FHLBank") of Atlanta for Federal Housing Finance Board ("Finance Board") approval of a transfer of stock in the FHLBank of Atlanta to a member of the FHLBank from unnamed institutions, some of which are members and some of which are not members. A copy of the request from the FHLBank of Atlanta is attached. The first issue is whether the Finance Board may approve the transfer of FHLBank stock from an institution that is currently not a member of a FHLBank to a member of that FHLBank. The second issue is whether the Finance Board may approve a transfer of FHLBank stock without knowing the identity of the transferor(s).

Conclusions

- I. Section 6(f) of the Bank Act, as implemented through Finance Board regulations and a delegation of authority, does not expressly provide authority to approve the transfer of FHLBank stock from a non-member to a member.
- II. Section 6(f) of the Bank Act, as implemented through Finance Board regulations and a delegation of authority, would appear to allow the Finance Board to approve the transfer of FHLBank stock to a member from other member institutions that are not identified, so long as certain conditions are satisfied.

Discussion

- I. Section 6(f) of the Bank Act, as implemented through Finance Board regulations and a delegation of authority, does not expressly provide authority to approve the transfer of FHLBank stock from a non-member to a member.

Bank Act Language

Section 6(f) of the Bank Act specifically permits the Finance Board to approve transfers of FHLBank stock from members to other members. Section 6(f) of the Bank Act states that "[a] Federal Home Loan Bank may, with the approval of the Board, permit the disposal of stock to another member . . ." 12 U.S.C. § 1426(f) (emphasis added). The use of the word "another" in reference to a member that is the transferee of FHLBank stock implies that the transferor also must be a member. Section 6(f) of the Bank Act is silent regarding whether the Finance Board also may approve the transfer of FHLBank stock from a non-member to a member. Research indicates that there is no legislative history regarding Congress' intent in adopting section 6(f), and thus there is no guidance as to whether Congress, by specifically authorizing such transfers between members, intended to prohibit the Finance Board from approving transfers of FHLBank stock from non-members to members.

Finance Board Regulation

The Finance Board's existing membership regulation and its recently adopted revised membership regulation do not address the transfer of FHLBank stock from non-members to members.

Delegation of Finance Board Authority

The relevant Finance Board resolution does not address the issue of Finance Board approval of the transfer of FHLBank stock from a non-member to a member pursuant to section 6(f) of the Bank Act. On December 13, 1979, the Bank Board adopted a resolution delegating to the Bank Board's Office of District Banks ("ODB") the authority to approve, pursuant to section 6(f) of the Bank Act, the transfer of FHLBank stock from one member to another provided certain conditions were met (the "delegation"). A copy of the delegation is attached hereto. As the successor to the Bank Board, the Finance Board is subject to all delegations adopted by the Bank Board until such time as the Finance Board chooses to rescind or replace them. Section 401(h) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. 101-73, 103 Stat. 183 (August 9, 1989) ("FIRREA"). The DBD of the Finance Board has replaced the ODB of the Bank Board, and the DBD therefore has the powers delegated to the ODB by the Bank Board.

The delegation specifically refers to the transfer of FHLBank stock "by a member to another member," and to the transfer of excess FHLBank stock "among members." It does not appear to grant the ODB, now the DBD, the authority to approve transfers of FHLBank stock from a non-member to a member.

Other Issues

This memorandum does not address the issue of whether the Finance Board may have the authority to adopt a regulation or issue a delegation providing for the approval of transactions involving the transfer of FHLBank stock from non-members to members. The Office of Legal & External Affairs - Legal Division would be glad to review that issue if requested by the DBD.

- II. Section 6(f) of the Bank Act, as implemented through Finance Board regulations and a delegation of authority, would appear to allow the Finance Board to approve the transfer of FHLBank stock to a member from other member institutions, regardless of whether the transferors are identified, so long as certain conditions are satisfied.

Section 6(f) states "[a] Federal Home Loan Bank may, with the approval of the Board, permit the disposal of stock to another member, . . ." 12 U.S.C. Sc 1426(f). Section 6(f) is silent regarding whether the Finance Board is required to know the identity of members that are transferring FHLBank stock. The Finance Board's existing membership regulation and its recently adopted revised membership regulation also do not provide guidance regarding whether the Finance Board must know the identity of members that are transferring FHLBank stock.

The delegation adopted by the Bank Board on December 13, 1979 delegated to the ODB the authority to approve transfers of FHLBank stock between members so long as three conditions were satisfied. Those conditions are, first, that the transfer of FHLBank stock occurs at par value, second, that the transfer of the shares of FHLBank stock is duly entered on the books of the FHLBank, and third, that the FHLBank is satisfied that, following the transfer of FHLBank stock, all members involved in the transfer of FHLBank stock meet the stock purchase requirements found in sections 6(b) and 10(c) of the Bank Act.

Although the delegation was adopted prior to the addition of section 10(e) of the Bank Act, the clear intent of the delegation is to ensure that the parties to the stock transfer are in compliance with all applicable stock purchase requirements. Therefore, all members involved in a transfer of FHLBank stock that is approved by DBD pursuant to the delegation should be in compliance with the stock purchase requirements found in section 10(e) of the Bank Act, as well as sections 6(b) and 10(c).

The delegation, however, does not require that the ODB be provided the identity of the institutions transferring the FHLBank stock. Therefore, it is within DBD's authority to approve transfers of FHLBank stock between members without knowing the identity of the transferor member(s).

Attachments