



## Federal Housing Finance Board

1777 F Street, N.W., Washington, D.C. 20006  
Telephone: (202) 408-2500 Facsimile: (202) 408-1435

September 18, 1998

[REDACTED]

Bank  
[REDACTED]

Dear [REDACTED]

This responds to our letter dated August 21, 1998, in which you seek, on behalf of [REDACTED] Insurance [REDACTED]. ( [REDACTED] our concurrence that the term "insurance company" as used in Section 4(a) of the Federal Home Loan Bank Act, 12 U.S.C. 1424(a), should be construed to include both companies that offer insurance products as principal (i.e., an underwriter) and those that offer insurance products on an agency basis (i.e., an insurance agency). You included with your letter a legal analysis to support your position.

Section 4(a) of the Bank Act provides that an "insurance company," among other entities, may be eligible for membership in the Federal Home Loan Bank (FHLBank) System if it is duly organized under state or federal law, is subject to inspection and regulation under federal or state banking laws (or similar laws), and makes such home mortgage loans as the Finance Board determines to be long-term loans. The regulations of the Finance Board provide further details as to what is required to comply with these eligibility requirements. See 12 C.F.R. §§ 933.6 - 933.18.

The term "insurance company" is not defined in either the Bank Act or the regulations. As a matter of practice, the Finance Board has determined that the term includes an underwriter of insurance, as it is my understanding that each of the thirty-six insurance companies that are members of the FHLBank System is such an underwriter. Whether the term also could be, or should be, construed to include an insurance agency involves issues of both law and policy that ultimately would have to be decided by the board of directors of the Finance Board.

Although you have asked whether an insurance agency may be an "insurance company" for membership purposes, your ultimate question is whether [REDACTED] a wholly owned subsidiary of [REDACTED] Bank [REDACTED], [REDACTED] [REDACTED], may become a member of the FHLBank of [REDACTED]. Assuming for present purposes that [REDACTED] were to be deemed an "insurance company," it still would have to comply with the other eligibility criteria of Section 4(a). It is not clear from your letter whether [REDACTED] would be able to comply with Section 4(a)(1)(B) and (C), which pertain to its regulatory oversight and its mortgage lending practices. In light of that uncertainty, we will not consider the "insurance agency" issue any further until you provide us with additional information indicating how you believe [REDACTED] would comply with those provisions.

Section 4(a)(1)(B) requires that an eligible institution be “subject to inspection and regulation under the banking laws, or under similar laws, of the State or of the United States.” Finance Board regulations require an insurance company to be subject to inspection and regulation by a state regulator accredited by the National Association of Insurance Commissioners (NAIC). 12 C.F.R. § 933.8 (1998). Your letter indicates that [REDACTED] is regulated by the [REDACTED] Insurance Commissioner (Commissioner), which is a member of the NAIC, as well as by the Comptroller of the Currency, by virtue of being an operating subsidiary of a national bank. It is unclear, however, whether the Commissioner’s oversight of insurance agencies differs in any material respect from its oversight of insurance underwriters. Typically, for example, insurance underwriters (like depository institutions) must comply with minimum capital requirements and are subject to periodic inspection and examination by the state regulator, and must file periodic financial reports with the regulator.

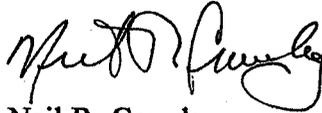
If [REDACTED] is subject to the same capital, financial reporting, and examination requirements as is an underwriter of insurance in [REDACTED], I ask, that your response describe those requirements and provide the appropriate **statutory and regulatory** citations. If [REDACTED] is subject to different regulatory requirements, please describe those requirements and indicate how they differ from those applicable to insurance underwriters. Please note that being “subject to” regulation by the Commissioner only presumptively demonstrates compliance with Section 4(a)(1)(B). *See* 12 C.F.R. § 933.17(a). If the Commissioner’s oversight of insurance agencies differs materially from the oversight of insurance underwriters, particularly if insurance agencies are subject to less rigorous financial or examination requirements, the presumption of compliance with Section 4(a)(1)(B) may not apply. In that event, you would have to demonstrate how the Commissioner’s oversight of insurance agencies meets the statutory requirement.

Similarly, Section 4(a)(1)(C) requires that an eligible institution “makes such home mortgage loans as, in the judgment of the Board, are long-term loans”. The regulations of the Finance Board provide that an institution is deemed to make such loans if its most recent regulatory financial report filed with its primary regulator (the Commissioner) shows that it originates or purchases long-term home mortgage loans. 12 C.F.R. § 933.9. It is my understanding from our conversation that [REDACTED] has no mortgage loans or mortgage related securities on its books at present and has no history of making mortgage loans, although you indicated that [REDACTED] could obtain such assets from an affiliate. Whether a transfer of mortgage loans or mortgage related securities to an entity that has no history of mortgage lending would suffice for purposes of the “makes such home mortgage loans” test ultimately would be for the board of directors of the Finance Board to determine. Your response should address this issue as well, particularly the types of mortgage assets you anticipate contributing to [REDACTED], the terms of the contribution, and the anticipated mortgage investment and lending practices of [REDACTED] should it become a member,

Your response also should indicate whether [REDACTED] would meet the requirements of 12 C.F.R. § 933.16, under which an insurance company applicant is deemed to meet the financial condition requirement of Section 4(a)(2)(B) if its most recent regulatory financial report filed with the Commissioner demonstrates that it meets the minimum statutory and regulatory capital requirements and the capital standards established by the NAIC.

You may address your response to our request for additional information to my attention'. I understand that the FHLBank of [REDACTED] has requested that certain outstanding advances made to a former affiliate of [REDACTED] Bank that had been a member of the FHLBank of [REDACTED] be repaid shortly. If you believe that you may not be able to fully respond to our request within that timeframe, we would have no objection to you requesting, and the, FHLBank granting, a further extension while staff considers the issue. If you have any questions about this request please call me directly at (202) 408-2990.

Sincerely yours,



**Neil R. Crowley**  
Deputy General Counsel

cc: William W. Ginsberg  
James L. Bothwell

[REDACTED]