



Federal Housing Finance Board

1777 F Street, N.W., Washington, D.C. 20006

Telephone: (202) 408-2500

Facsimile: (202) 408-1435

www.fhfb.gov

December 22, 1998

[REDACTION]
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[REDACTION]

Regulatory Interpretation No. 98-RI-6

Dear Mr. [REDACTION]:

I have received your letter dated November 24, 1998, and the additional documentation submitted with respect to the proposed merger of [REDACTION]Bank ([REDACTION]), a member of the Federal Home Loan Bank of [REDACTION] (FHLBank), with and into [REDACTION] Bank ([REDACTION]), a nonmember, with [REDACTION] being the surviving entity. [REDACTION] withdrew from membership in the FHLBank in 1990 and, consequently, is prohibited from being reinstated as a member, or otherwise considered for membership, until the year 2000, pursuant to section 6(h) of the Federal Home Loan Bank Act, (Bank Act), 12 USC § 1426(h). You have asked whether [REDACTION] could become a member of the FHLBank as a result of its merger with [REDACTION].

Section 6(h) of the Bank Act provides in pertinent part that "an institution which withdraws from membership may acquire membership in any Federal Home Loan Bank only after the expiration of a period of 10 years thereafter, except where such withdrawal is a consequence of a transfer of membership on a non-interrupted basis between banks or in connection with obtaining a charter as a Federal Savings Association." Id. Neither the FHLBank, nor [REDACTION] or [REDACTION] has set forth any theory or analysis under which the terms of the proposed merger would override the statutory 10-year lockout period. Indeed, it appears that the parties to the merger are content to abide by the section 6(h) prohibition. We call your attention to pages 69-70 of the Proxy Statement that you submitted, which discusses the consequences of the proposed merger on [REDACTION]'s FHLBank membership. Those pages state that both [REDACTION] and [REDACTION] are aware that membership in the FHLBank will terminate upon consummation of the merger; that [REDACTION] does not expect that its inability to utilize FHLBank advances will have a material adverse impact on its financial condition or results of operations over the short term; that the FHLBank does not presently intend to call due any outstanding advances; and that [REDACTION] intends to apply for reinstatement of its membership with the FHLBank when it becomes eligible to do so in the year 2000.

In addition, the Proxy Statement references paragraph 1.7 of the Merger Agreement (Agreement), which authorizes [REDACTION] to restructure the transactions contemplated by the Agreement so that, among other things, [REDACTION] could merge with and into [REDACTION] in order to avoid termination of FHLBank membership. The Proxy Statement also provides that "no final decision has been made as to whether or not the proposed merger of [REDACTION] with and into [REDACTION] will be restructured so as to avoid termination of the resulting bank's membership in the FHLB." (Proxy Statement, page 70.) The Proxy Statement is, therefore, quite clear, that the issue of FHLBank membership has been considered by the parties to the merger, and that, while no final decision has been made concerning the retention thereof, the current structure of the merger represents their reasoned business judgment that the loss of FHLBank membership for the remainder of the 10-year period is a consequence they are willing to accept if [REDACTION] is to be the surviving entity. We note that should the parties decide that [REDACTION] will be the surviving entity, [REDACTION] could convert to a federal savings association charter (either as part of the transaction or thereafter), automatically becoming a member of the FHLBank, which would be permitted by section 6(h) of the Bank Act.

If [REDACTION] does become the surviving entity, or if [REDACTION] converts its charter to a federal savings bank, we would concur with the representations set forth in the proxy statement, that [REDACTION] could then acquire membership in the FHLBank before the year 2000. However, given the absence of any analysis or expression of intention to the contrary by the merger parties, the Finance Board declines to consider this question further.

Should you have any questions, please call Neil R. Crowley, Deputy General Counsel, at (202) 408-2990.

Very truly yours,

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 (Oct. 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
Managing Director

cc: William W. Ginsberg
James L. Bothwell
Mitchell Berns