

OFFICE OF THRIFT SUPERVISION

Approval of Service Corporation Activity

Order No.: 2003-57

Date: November 21, 2003

OTS No. 17945

First Niagara Bank, Lockport, New York (Applicant), has applied for approval of the Office of Thrift Supervision (OTS) pursuant to Condition Eight of OTS Order 2002-50 (November 1, 2002), for one of its service corporation subsidiaries, First Niagara Risk Management, Inc. (Subsidiary), to continue to engage in certain activities that its predecessors were engaged in when the Applicant converted to a federal savings association (Application). To ensure that the subsidiary activities are permissible for service corporations of a federal savings association, Condition Eight required the Applicant to either terminate the activities within two years or file subsidiary applications to OTS for approval to continue the activities.

OTS's subordinate organization regulations govern whether the Subsidiary may engage in the subject activities.¹ OTS has considered the submission made by the Applicant in determining whether the Subsidiary's activities are permissible under the subordinate organization regulations.

The primary business of the Subsidiary is acting as a broker or agent for the sale or procurement of various kinds of insurance. OTS's regulations provide that such activities are preapproved for service corporations.² In connection with its insurance agency and brokerage business, the Subsidiary provides risk management services. This activity involves consulting with clients about financial subjects and thus is also preapproved for a service corporation under 12 C.F.R. § 559.4(b)(4).³

In addition to its insurance agency business, the Subsidiary consults in the area of employee and executive benefits and retirement and estate planning. Such consulting services are generally finance-related because they relate to planning with respect to income and expenditures, including taxes. Because the consulting services are generally finance-related they also constitute a preapproved activity for service corporations under OTS's regulations.⁴ Also, those activities are preapproved under OTS's regulations to the extent that they constitute development or administration of personnel benefit programs for the Subsidiary's clients.⁵

¹ See, 12 C.F.R. Part 559 (2003).

² See, 12 C.F.R. § 559.4(i) (2003).

³ See also, 12 C.F.R. § 559.4(d)(1) (2003).

⁴ See, 12 C.F.R. § 559.4(b)(4) (2003); see also, 12 C.F.R. § 559.4(d)(1) (2003).

⁵ See, 12 C.F.R. § 559.4(b)(9) (2003)

Finally, the Subsidiary is engaged in insurance claims adjustment, including third-party administration for self-insured clients. This activity is generally not preapproved for service corporations.⁶ However, OTS's regulations permit OTS to approve service corporation activities that are reasonably related to the activities of financial institutions.⁷

There are no specific criteria for determining whether an activity is reasonably related to the activities of financial institutions. However, in adopting a somewhat different "reasonably related" standard, the Federal Home Loan Bank Board (FHLBB) suggested that the regulation allows broad discretion in determining the nature and scope of such activities.⁸ Moreover, in promulgating the current subordinate organization regulations OTS stated that: "federal savings associations may apply . . . for approval of any proposed service corporation activity that is 'reasonably related' to the activities of federal savings associations and other financial institutions." 61 Fed. Reg. 66561, 66565 (Dec. 18, 1996) (footnote omitted). The term "other financial institutions" is not necessarily limited to insured depository institutions. Thus, the subsidiary regulations provide OTS with broad discretion to approve activities for service corporations.

The proposed insurance adjustment activities are similar to activities that savings associations regularly engage in. Estimating losses involves making judgments about property valuations. Savings associations regularly estimate property valuations, both when making loans and when determining if loans have become subject to classification. Similarly, savings associations regularly enter into negotiations concerning financial matters including claims by or against the savings association. Also, as noted above, two aspects of the insurance adjusting business, establishing an insurance paying account and paying claims, are preapproved activities that can be engaged in by service corporations. Accordingly, the insurance adjustment business is similar in nature to businesses savings associations presently engage in. In addition, acting as principal, agent or broker for the purpose of insuring against losses is an activity explicitly authorized by statute for financial holding companies.⁹ The staff of the Board of Governors of the Federal Reserve System (Federal Reserve Board) has opined that adjusting insurance claims, including investigating claims and estimating losses, are activities that are encompassed within the meaning of insurance authority for financial holding companies contained in section 4(k)(4)(B) of the Bank Holding Company Act, 12 U.S.C. § 1843(k)(4)(B).¹⁰ Accordingly, OTS concludes that it has the authority to approve adjusting insurance claims as a service corporation activity of a federal savings association, and OTS hereby permits the Subsidiary to continue to engage in that business.

⁶ Two aspects of the activity, establishing an insurance paying account and paying claims, are preapproved activities. See, 12 C.F.R. § 559.4(i) (2003).

⁷ See, 12 C.F.R. § 559.3(e)(2) (2003).

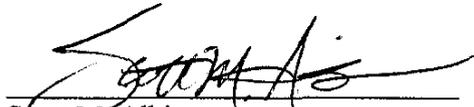
⁸ A predecessor service corporation regulation, 12 C.F.R. § 545.9-1 (1971), permitted "such other activities . . . as the [FHLBB] may approve . . ." 35 Fed. Reg. 10751, 10752 (July 2, 1970). In 1973, the FHLBB added the "reasonably related" standard to "reduce the number of applications filed by deterring those involving non-related activities which in any case would not be approved." 38 Fed. Reg. 24200 (Sept. 6, 1973).

⁹ See, 12 U.S.C. § 1843(k)(4)(B).

¹⁰ See, e.g., Letter from the General Counsel of the Federal Reserve Board (July 10, 2002).

Therefore, OTS concludes that the Subsidiary may continue to engage in the activities disclosed in the Application.

By order of the Director of the Office of Thrift Supervision, or his designee,
Effective November 21, 2003.



Scott M. Albinson
Managing Director
Office of Supervision