

# OFFICE OF THRIFT SUPERVISION

## Approval of Operating Subsidiary Applications

**Order No.:** 2006-23  
**Date:** June 1, 2006  
**Docket No.:** 08551

Washington Mutual Bank, Henderson, Nevada (Savings Bank), a federal savings bank, has applied to the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1828(m) and 12 C.F.R. Part 559, to expand the activities of its wholly owned operating subsidiary, WaMu Capital Corporation (Operating Subsidiary).

### The Proposed Transaction

The Savings Bank requests permission for the Operating Subsidiary, acting as principal or agent, to underwrite, make private placements of, make a market in, deal in, or otherwise buy, hold, sell or find buyers for debt securities issued by the Savings Bank (Savings Bank Security Filing).<sup>1</sup> In addition, the Savings Bank requests permission for the Operating Subsidiary, acting as principal or agent, to underwrite, deal in, or otherwise buy, hold, sell, or find buyers for third parties' debt securities that are rated in one of the four highest categories (Investment Grade) by a nationally recognized investment rating service (Investment Grade Security Filing).

### Operating Subsidiary Criterion

A federal savings association may engage in new activities through an existing subsidiary by filing a notice pursuant to section 18(m) of the Federal Deposit Insurance Act.<sup>2</sup> OTS regulations provide that an operating subsidiary may engage only in activities that are permissible for federal savings associations.<sup>3</sup> Also, the Savings Association that holds the operating subsidiary must hold more than fifty percent of the operating subsidiary's voting shares, and no other party may exercise effective operating control over the operating subsidiary.<sup>4</sup> In addition, OTS may, at any time, limit a federal savings association's investment in operating subsidiaries, or may limit or refuse to permit any activities of an operating subsidiary, for supervisory, legal, or safety and soundness reasons.<sup>5</sup>

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<sup>1</sup> When OTS approved the Savings Bank's operating subsidiary application to acquire the Operating Subsidiary on May 17, 2005, OTS authorized the Operating Subsidiary to deal in and underwrite asset backed securities. Therefore, this order addresses only debt securities that are not asset backed.

<sup>2</sup> 12 U.S.C. § 1828(m).

<sup>3</sup> 12 C.F.R. § 559.3(e)(1) (2006).

<sup>4</sup> 12 C.F.R. § 559.3(c)(1) (2006).

<sup>5</sup> 12 C.F.R. § 559.1(a) (2006).

The Operating Subsidiary is, and will continue to be, a wholly owned subsidiary of the Savings Bank. Accordingly, the applications satisfy the control standards set forth in 12 C.F.R. Part 559. In addition, we have no objection to the applications on supervisory grounds.

### **Savings Bank Security Filing**

The Savings Bank Security Filing proposes that the Operating Subsidiary, acting as principal or agent, underwrite, make private placements of, make a market in, deal in, or otherwise buy, sell, hold or find buyers for corporate debt securities issued by the Savings Bank.

The proposed activities are permissible for federal savings associations pursuant to section 5(c)(2)(D) of the Home Owners' Loan Act (HOLA)<sup>6</sup> and section 12 C.F.R. § 560.40. The introductory language to section 5(c) states that “[t]o the extent provided in regulations of the Director, a Federal savings association may invest in, sell, or otherwise deal in” the loans and other investments set forth in section 5(c)(1) through 5(c)(4). OTS has previously concluded that the introductory language in section 5(c) permits federal savings associations to deal in and underwrite obligations of states or their instrumentalities, which are permissible investments for federal savings associations under section 5(c)(1)(H) of HOLA.<sup>7</sup> The same introductory language, regarding investment in, selling, or otherwise dealing in loans and investments, is applicable to the proposed activities under section 5(c)(2)(D) of the HOLA. Therefore, we conclude that the HOLA provides authority for federal savings associations to underwrite and deal in their own debt securities. To help ensure that the proposed activity does not raise liability or reputational risks, we are imposing condition number two, which subjects the Savings Bank to the Interagency Statement on the Sale of Nondeposit Investment Products.<sup>8</sup>

Section 560.40 of OTS' regulations permits federal savings associations to exercise the maximum authority granted in HOLA section 5(c)(2)(D). However, that section also contains limitations on the authority to invest in corporate debt securities. Pursuant to 12 C.F.R. § 560.40(a)(2)(ii) the securities in which the association is investing must be Investment Grade.<sup>9</sup> That condition is met in this instance.

Accordingly, we conclude that the activity proposed in the Savings Bank Security Filing is permissible for the federal savings associations, and therefore, the activity is also permissible for the Operating Subsidiary.

### **Investment Grade Security Filing**

The Operating Subsidiary, as principal or agent, proposes to underwrite, make private placements of, make a market in, deal in, or otherwise buy, hold, sell or find buyers for Investment Grade debt securities.

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<sup>6</sup> 12 U.S.C. § 1464(c)(2)(D).

<sup>7</sup> See Op. C.C. (Oct. 29, 2001).

<sup>8</sup> See OTS Thrift Bulletin 23-2 (Feb. 22, 1994).

<sup>9</sup> 12 C.F.R. § 560.40(a)(2)(ii) (2006).

The proposed activity comports in all respects with the activity described for the Savings Bank Security Filing, except that it involves securities issued by entities other than the Savings Bank or its holding company or holding company subsidiaries. OTS does not believe it makes any difference that the securities have been issued by entities other than the Savings Bank or its holding company or holding company subsidiaries. Pursuant to Section 5(c)(2)(D) of the HOLA, federal savings associations are permitted to deal in, invest in, sell, or hold corporate debt securities (not to exceed 35 percent of assets). The HOLA does not limit the investments to those issued by the institution.

The implementing regulation, 12 C.F.R. § 560.40(a), contains a number of restrictions on this activity but none of those restrictions prohibit the activity as proposed here. As discussed above, 12 C.F.R. § 560.40(a)(2)(ii) mandates that the securities be Investment Grade and the Operating Subsidiary proposes to only deal in such securities. The other limitations in 12 C.F.R. § 560.40(a) concern the price to be paid, the loans to one borrower restrictions and convertibility features. Those restrictions do not prohibit the proposed investment but may limit particular investment choices in the future. Thus, for the reasons discussed above, an operating subsidiary of the federal savings association may conduct the activity proposed in the Investment Grade Security Filing.

### **Conclusion**

Based on the foregoing, OTS concludes that the applications satisfy all applicable approval standards and criteria, provided that the following conditions are complied with in a manner satisfactory to the West Regional Director, or his designee (Regional Director). Accordingly, the applications are hereby approved, subject to the following conditions:

1. The Operating Subsidiary must not materially deviate from any of the activities, facts, or representations described in the applications, except with the prior written nonobjection of the Regional Director; and
2. The Savings Bank and its subsidiaries and affiliates are subject to the provisions of 12 C.F.R. § 563.76, *Offers and Sales of Securities at an Office of A Savings Association*, and related policy established in OTS Thrift Bulletins 23-2, *Interagency Statement on Retail Sales of*

*Nondeposit Investment Products* (the "Interagency Statement"), and 23a, *Limited Exceptions to Prohibitions on Sales of Savings Institution's Securities*, and any additional or successor statements of policy or regulations addressing these subjects.

By order of the Director of the Office of Thrift Supervision, or his designee, effective June 1, 2006.

  
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Scott M. Albinson  
Managing Director  
Office of Examinations, Supervision  
and Consumer Protection