

## OFFICE OF THRIFT SUPERVISION

### Approval of Operating Subsidiary Applications

**Order No.:** 2010-58  
**Date:** September 20, 2010  
**Docket No.:** 04410

Sovereign Bank, Wyomissing, Pennsylvania (Savings Bank), has applied to the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1828(m) and 12 C.F.R. § 559.11, to establish two operating subsidiaries and to conduct additional activities in an existing operating subsidiary. The Savings Bank would, directly or indirectly, own all of the securities of each operating subsidiary.

#### **The Parties**

The Savings Bank is a Deposit Insurance Fund-insured, federal stock savings bank. Santander Holdings, USA, Inc., Wyomissing, Pennsylvania (SHUSA), owns 80.84 percent of the stock of the Savings Bank, and Independence Community Bank Corp., a wholly owned subsidiary of SHUSA, owns the remaining 19.16 percent. SHUSA is a wholly owned subsidiary of Banco Santander, S.A., Madrid, Spain, a bank holding company regulated by the Board of Governors of the Federal Reserve System (FRB).

Capital Street Delaware LP, Wyomissing, Pennsylvania (Delaware LP), a Delaware limited partnership, and Capital Street S.A., Luxembourg City, Luxembourg (Luxembourg SA), a Luxembourg corporation, are currently wholly owned subsidiaries of SHUSA and are affiliates of the Savings Bank. Sovereign REIT Holdings, Inc., Wilmington, Delaware (Sovereign REIT), a Delaware corporation, is an existing wholly owned operating subsidiary of the Savings Bank.

Currently, SHUSA is the general partner of Delaware LP and owns a 99 percent limited partnership interest. Sovereign Delaware Investment Corporation (SDIC), a wholly owned subsidiary of SHUSA, owns the remaining one percent. SDIC owns 100 percent of several classes of equity securities of Luxembourg SA, and Delaware LP owns 100 percent of Luxembourg SA's Class B nonvoting preferred equity certificates (B PECs).

#### **The Proposed Transaction**

In the proposed transaction, SHUSA will contribute its interests in Delaware LP and Luxembourg SA to the Savings Bank. Upon completion of the multi-step transaction, the Savings Bank would be the general partner and directly own 99 percent of the limited partnership interests of Delaware LP, with the remaining one percent owned by Sovereign REIT. In addition, the Savings Bank would directly own the classes of equity securities of Luxembourg SA that SDIC currently holds, and Delaware LP would continue to own Luxembourg SA's B PECs. SHUSA's proposed contribution of its investments in Delaware LP and Luxembourg SA and a related proposed cash contribution to the Savings Bank will increase the Savings Bank's equity capital.

Upon consummation of the proposed transaction, the Savings Bank would hold Sovereign REIT, Delaware LP, and Luxembourg SA (collectively, Operating Subsidiaries) as wholly owned direct or indirect operating subsidiaries.

### **Operating Subsidiary Applications**

Generally, a federal savings association may invest in an operating subsidiary only if: (1) the subsidiary engages only in activities permissible for federal savings associations to engage in directly; (2) the federal savings association owns, directly or indirectly, more than 50 percent of the voting shares of the operating subsidiary; and (3) no person or entity other than the federal savings association exercises effective operating control over the operating subsidiary.<sup>1</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>2</sup>

With regard to the requirement that the operating subsidiary may engage only in activities permissible for federal savings associations to engage in directly, the Operating Subsidiaries propose to hold certain investments that the Savings Bank could hold directly. As proposed, Luxembourg SA would hold permissible investments, consisting mostly of investment grade corporate bonds and municipal bonds. Delaware LP would hold automobile loans, as well as securities of Luxembourg SA.<sup>3</sup> Sovereign REIT will hold a one percent limited partnership interest in Delaware LP. Accordingly, the Operating Subsidiaries will engage solely in activities permissible for federal savings associations.

With regard to the requirement that the federal savings association own, directly or indirectly, more than 50 percent of the voting shares of the operating subsidiary, the Savings Bank indicates that each of the Operating Subsidiaries will satisfy this requirement, because the Savings Bank will, directly or indirectly, own all the securities of each of the Operating Subsidiaries.

With regard to the requirement that no person or entity other than the federal savings association exercise effective operating control over the proposed operating subsidiary, the Savings Bank represents that no person or entity other than the federal savings association will exercise effective operating control over the Operating Subsidiaries. The Savings Bank proposes to own, directly or indirectly, all of the voting securities of each of the Operating Subsidiaries and the information provided in the application indicates that no person or entity other than the federal savings association will have a role in managing the operations of the Operating Subsidiaries.

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<sup>1</sup> 12 C.F.R. §§ 559.2, 559.3(c)(1), and 559.3(e)(1) (2010).

<sup>2</sup> 12 C.F.R. § 559.1(a) (2010).

<sup>3</sup> The applications indicate that any automobile loans that are past due will not be transferred with Delaware LP to the Savings Bank.

The Subordinate Organization regulation, at 12 C.F.R. § 559.3(c)(1), refers to “voting shares.” While Sovereign REIT is organized as a Delaware corporation and Luxembourg SA is organized as a Luxembourg corporation, Delaware LP is organized as a Delaware limited partnership. The preamble to the OTS Subordinate Organization regulations addresses whether an operating subsidiary may be structured other than as a general corporation. The preamble states that OTS will provide flexibility for structuring savings associations’ operations and will determine on a case-by-case basis if an operating subsidiary satisfies the basic requirements of majority ownership, limited liability, and effective operating control.<sup>4</sup> In this case, OTS has determined that all three elements are comparable to those found in corporations. Moreover, there are no supervisory concerns with the organizational form of Delaware LP.

OTS has no supervisory objections regarding compliance by the Savings Bank and the Operating Subsidiaries with the corporate separateness requirements set forth in 12 C.F.R. § 559.10.

With regard to supervisory considerations regarding the establishment of a foreign operating subsidiary and the complexity of the transaction, and in order to ensure that the Operating Subsidiaries operate safely and do not raise supervisory concerns, OTS is imposing conditions 5 through 16. Each of these conditions will help ensure that the proposed transaction is acceptable from a supervisory perspective.

In order to ensure that SHUSA’s proposed contribution of Delaware LP and Luxembourg SA to the Savings Bank is consistent with the relevant provisions of section 23A of the Federal Reserve Act and the regulations of the FRB that implement section 23A,<sup>5</sup> SHUSA is making a cash contribution to the Savings Bank simultaneously with the consummation of the proposed transaction. In order to ensure that the Savings Bank does not subsequently make a capital distribution that would be inconsistent with the treatment of the transaction, as presently structured, under Regulation W,<sup>6</sup> OTS is imposing condition 17 below, which requires the Savings Bank to obtain the non-objection of OTS prior to any capital distribution during the three years following consummation of the transaction.

## **Conclusion**

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

1. Prior to the date of consummation of the proposed transaction, the Savings Bank must receive all required regulatory approvals and submit copies of all such approvals to the Regional Director;

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<sup>4</sup> See 61 Fed. Reg. 66561, at 66564 (Dec. 18, 1996).

<sup>5</sup> 12 C.F.R. § 371c and 12 C.F.R. Part 223 (Regulation W).

<sup>6</sup> See 67 Fed. Reg. 76560, at 76585, December 12, 2002.

2. The proposed transaction must be consummated within 30 calendar days from the date of this Order;
3. On the business day prior to the consummation of the proposed transaction, the chief financial officers of SHUSA, the Savings Bank, Delaware LP, and Luxembourg SA, must certify in writing to the Regional Director that no material adverse changes have occurred with respect to the financial condition or operation of SHUSA, the Savings Bank, Delaware LP, and Luxembourg SA, respectively, as disclosed in the applications. If additional information having a material adverse bearing on any feature of the applications is brought to the attention of SHUSA, the Savings Bank, Delaware LP, Luxembourg SA, or OTS, since the date of the financial statements submitted with the applications, the transaction must not be consummated unless the information is presented to the Regional Director, and the Regional Director provides written non-objection to consummation of the transaction;
4. Within five calendar days after the effective date of the proposed transaction, SHUSA and the Savings Bank must file with the Regional Director a written certification by legal counsel stating: (a) the effective date of the transaction; and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the applications, and this Order;
5. No later than 30 calendar days after the date of consummation of the proposed transaction, the Savings Bank must submit to OTS a final balance sheet and regulatory capital ratios (tangible equity, Tier one leverage, Tier one risk-based, and total risk-based) of the Savings Bank before and after the transaction, with adjusting entries and footnotes explaining each adjustment;
6. Prior to the consummation date of the transaction, the Savings Bank must submit, to the satisfaction of the Regional Director, a copy of the final signed federal tax opinion in substantially the same form and content as the draft submitted with the applications;
7. The Savings Bank and Luxembourg SA must make available to OTS such information as OTS deems necessary from time to time to monitor the activities of Luxembourg SA and the effect of its activities on the safe and sound operation of the Savings Bank;
8. Luxembourg SA must maintain a duplicate set of records of Luxembourg SA in the United States (U.S.) at the Savings Bank's home office, or, if satisfactory to the Regional Director, elsewhere in the U.S., and such records must be in the English language;
9. Luxembourg SA must maintain a registered agent in the Savings Bank's home office or, if satisfactory to the Regional Director, elsewhere in the U.S. to receive service or process on Luxembourg SA's behalf;

10. Luxembourg SA must provide all financial statements in U.S. dollars in accordance with generally accepted accounting principles, including the financial information required to be submitted quarterly in the Thrift Financial Report;
11. The Savings Bank must promptly inform the Regional Director in writing of all changes in the directors, officers, and employees or managers of Luxembourg SA;
12. Prior to the consummation date of the transaction, the Savings Bank must establish and document internal controls that demonstrate adequate oversight of Luxembourg SA, provide material documenting the institution of such internal controls to the Regional Director, and obtain a written non-objection to such documents from the Regional Director;
13. Prior to the consummation date of the transaction, Luxembourg SA and any institution-affiliated party associated with Luxembourg SA must consent in writing to the jurisdiction of the U.S. over, and the applicability of U.S. law to, Luxembourg SA and its institution-affiliated parties for purposes of all claims made by, proceedings initiated by, or obligations to, the U.S., OTS, and any U.S. governmental agency, department, or division, and must consent in writing to the jurisdiction of OTS over Luxembourg SA and its institution-affiliated parties for purposes of examination, supervision, and enforcement. Luxembourg SA and its institution-affiliated parties must further agree in writing not to challenge the authority of any conservator or receiver appointed for the Savings Bank to control the Savings Bank and the Savings Bank's interests in Luxembourg SA, and obtain a written non-objection to such documents from the Regional Director;
14. Prior to the consummation date of the transaction, Luxembourg SA must submit a reasoned opinion of counsel in a form acceptable to OTS indicating that there are no laws of Luxembourg that would restrict OTS access to, or enforcement authority over, Luxembourg SA or its institution-affiliated parties, and obtain a written non-objection to such documents from the Regional Director;
15. Prior to the consummation date of the transaction, Luxembourg SA must consent in writing to the disclosure by the Luxembourg governmental authorities to OTS of such information on its operations and its affiliates that OTS deems necessary from time to time to determine and enforce compliance with applicable U.S. law, and obtain a written non-objection to such documents from the Region Director;
16. Prior to the consummation date of the transaction, Luxembourg SA and the Savings Bank must agree in writing to terminate operations of Luxembourg SA as soon as possible (but no later than 30 calendar days) after being advised in writing that OTS, in its sole discretion, has determined that such operations present undue risk, and obtain a written non-objection to such documents from the Regional Director; and
17. During the three years following the consummation date of the transaction, the Savings Bank must obtain the written non-objection of OTS before making any capital distribution.

The Regional Director may, for good cause, extend for up to 120 calendar days any time period specified herein.

By order of the Acting Director of the Office of Thrift Supervision, or his designee, effective Sept. 20, 2010.



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Grovetta N. Gardineer  
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Corporate & International Activities