State of Washington
DEPARTMENT OF FINANCIAL INSTITUTIONS
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ISGC – 2004 – 010 - DOB

Formerly LETTER 2004 – 011 LC (JMV)

July 23, 2004

[redacted]

RE: Proposed Acquisition by [redacted] of [redacted]

Dear Mr. Miller:

You have requested from the Washington State Department of Financial Institutions (hereinafter, "DFI"), which regulates [redacted] hereinafter, " [redacted]") and its subsidiary, [redacted] Bank of Washington (hereinafter, "[redacted]"), an interpretation of Washington State law concerning whether the application by [redacted] (hereinafter, "[redacted]") to acquire [redacted] would require an application to the DFI, mere notification, or no affirmative action.

This letter sets forth the requirements under present Washington State law concerning such a transaction.

[redacted] Representations

In requesting an interpretation, you have made, and we have relied upon, the following representations:

1. As of June 25, 2004, [redacted] and [redacted] publicly announced the execution of a definitive agreement pursuant to which [redacted] proposes to acquire [redacted]
2. [redacted] is a bank holding company organized under Ohio law and has been in operation for at least three (3) years.
3. [redacted] National Association, [redacted] (hereinafter, "[redacted]"), is a national bank and wholly owned subsidiary of [redacted].

Facts & Assumptions

In making our interpretation, we also rely upon the following uncontested facts and known assumptions:

1. [redacted] is a Washington state savings bank chartered and regulated pursuant to Title 32 of the Revised Code of Washington (RCW 32).
2. [redacted] is the parent of EverTrust and is a financial service holding company.
3. [redacted] is a Washington State corporation.

Questions

1. Would the acquisition of [redacted] a Washington financial services holding company, by [redacted] an Ohio bank holding company, require an application to the DFI, or a notification to the DFI?

2. Would the merger of [redacted] a Washington savings bank, with and into [redacted], a national banking association, require application or notice to the DFI?

Interpretation

Acquisition of [redacted] by [redacted] RCW § 32.32.228(2)(a) and (b) states as follows:

> (2)(a) It is unlawful for any person to acquire control of a converted savings bank until thirty days after filing with the director a completed application.
>
> (b) Notwithstanding any other provision of this section, a bank or bank holding company which has been in operation for at least three consecutive years or a converted mutual savings bank or the holding company of a mutual savings bank need only notify the director and the savings bank to be acquired of an intent to acquire control and the date of the proposed acquisition of control at least thirty days before the date of the acquisition of control.

Notwithstanding any general rule set forth in RCW § 32.32.228(2)(a), and based on your representations, the uncontested facts and known assumptions, [redacted] may follow the requirements of RCW § 32.32.228(2)(b) and acquire [redacted] merely by notifying the Director of the DFI, or the Director of the Division of Banks, of an intent to acquire [redacted] and the proposed date of acquisition, at least 30 days prior to the acquisition date. No application is required as otherwise set forth in RCW § 32.32.228(2)(a).

Subsequent Acquisition of [redacted] by [redacted]. RCW § 32.32.500(1) generally sets forth the authority of a savings bank to be acquired by or merge into another institution, and provides, in pertinent part, as follows:

> "A savings bank may merge with . . . ***any depository institution as defined in 12 U.S.C. Sec. 461***, any financial institution

> chartered or authorized to do business under the laws of any state, territory, province, or other jurisdiction of the United States or another nation, ***or any holding company*** or subsidiary ***of such an institution***, subject to the approval of . . . (b) ***if the surviving institution is to be a bank***, savings bank, savings and loan association, or other depository institution ***that is federally chartered under the laws of the United States, the federal regulatory authority having jurisdiction over the transaction under the applicable laws***, ..."

[Emphasis added.]

[redacted] is a national banking association and is, therefore, a "depository institution" as defined under 12 U.S.C. § 461(b)(1)(A)(i) and 12 U.S.C. § 1813. [redacted] is its holding company. As you have represented, [redacted] , a "savings bank" under RCW Title 32, intends to merge into Key Bank subsequent to the acquisition of [redacted] by [redacted]

Accordingly, the subsequent approval of [redacted]'s acquisition of [redacted] would require the approval only of [redacted]'s applicable, federal regulatory authority. No *advance* notice to the DFI would be required, although courtesy notification to the Division of Banks is appropriate. In the instant case, the applicable, approving federal regulator for a subsequent acquisition of [redacted] by [redacted] would be the Office of the Comptroller of the Currency (OCC).

Concluding Remarks

The statutory standards for making the interpretations in this letter are uniformly applicable for any national bank, Washington savings bank, or holding company of either a national bank or Washington savings bank, similarly situated. However, institutions other than [redacted], [redacted], [redacted] and [redacted] are advised that the facts and circumstances of each merger-acquisition transaction may be different; and such relevant facts and circumstances, as applied to the governing law, may result in the DFI reaching a conclusion different than the one made herein.

Should you have any questions, please do not hesitate to call upon me at either (360) 902-0516 or (206) 956-3229.

Sincerely,

Washington State
Department of Financial Institutions

By:
Joseph M. Vincent, Legal Counsel

Cc: David G. Kroeger
Director, Division of Banks