

**Internal Revenue Service**

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TY:

LEGEND

Taxpayer =

Shareholder A =

Target =

Sub =

Dear :

This letter responds to your December 16, 2009 request for rulings on certain federal income tax consequences of a proposed transaction. The information submitted in that request and later correspondence is summarized below.

FACTS AND REPRESENTATIONS

Taxpayer, a domestic corporation, is a bank holding company registered under the Bank Holding Company Act. Taxpayer's annual accounting period is the calendar year, and its overall method of accounting is the accrual method. Taxpayer's primary regulator is the Federal Reserve.

Target, a domestic corporation, is a bank holding company registered under the Bank Holding Company Act and wholly owns Sub, a bank designated as a National Association. Target's primary regulator is the Federal Reserve. Sub's primary regulator is the Office of the Comptroller of the Currency. Target has one class of common stock outstanding, which is publicly traded, and one class of preferred stock that was issued to Shareholder A pursuant to the Troubled Asset Relief Program.

Sub is an accrual method taxpayer, does not use the reserve method for bad debt pursuant to §585, and takes bad debt deductions equal to the amount of debt charged off in accordance with Reg. §1.166-2(d)(1). Sub has not made a "conformity election" pursuant to Reg. §1.166-2(d)(3).

Taxpayer intends to acquire Target in a transaction in which Target would merge into Taxpayer (the "Merger"). Pursuant to the Merger, the common and preferred stock of Target would be converted, respectively, into common and preferred stock of Taxpayer. The Merger would result in Sub becoming a wholly owned subsidiary of Taxpayer.

The Merger would bring about an "ownership change" of Sub within the meaning of §382(g)(1). On the date of the Merger (the "Change Date"), Sub is expected to be a "loss corporation" as defined in §382(k), having both a net operating loss carryover and a net unrealized built-in loss ("NUBIL") within the meaning of §382(h)(3)(A)(i). The NUBIL would be primarily attributable to the excess of the adjusted basis of Sub's debt portfolio over its fair market value on the Change Date.

After the Merger, Sub may take into account one or more wholly or partially bad debt deductions pursuant to §166(a) and Reg. §§ 1.166-2(d) and 1.166-3(a)(2) on account of the charging off of debts that were held by Sub prior to the Merger. Such bad debt deductions are anticipated to be taken into account during and after the first year of the 5-year recognition period under §382(h)(7)(A). Sub does not intend to make a "conformity election" pursuant to Reg. §1.166-2(d)(3).

Sub intends to use the §1374 approach described in Notice 2003-65, 2003-40 I.R.B. 747, to identify which of its deductions taken into account during its 5-year recognition period under §382(h)(7)(A) will be recognized built-in loss under §382(h)(2)(B).

Taxpayer, Target, and Sub will treat items of income and deductions consistently for purposes of allocating income and loss between the pre-change period and the post-change period under §382(d).

## RULING

Based solely on the information submitted and the representations set forth above, we rule as follows:

Under the “§1374 approach” of Notice 2003-65, any bad debt deduction under §166 arising from a debt owed to Sub at the beginning of the recognition period will not be recognized built-in loss if the deduction is properly taken into account after the first twelve months of the recognition period. Reg. §§ 1.1374-4(b)(2) and 1.1374-4(f).

### CAVEATS

We express no opinion about the tax treatment of the proposed transaction under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transactions that are not specifically covered by the above rulings

The rulings contained in this letter are based on the facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for a ruling. Verification of the information, representations, and other data may be required as part of the audit process. Moreover, this office has not reviewed any information or made any determination regarding whether any bad debt deduction of Target or Taxpayer Affiliated Group has been or will be properly taken under §166 and the Regulations thereunder

### PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, any taxpayer filing its return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter ruling.

In accordance with the power of attorney on file in this office, a copy of this ruling letter will be sent to the taxpayer and other authorized representatives.

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Sincerely,

Mark S. Jennings  
Chief, Branch 1  
Office of Associate Chief Counsel (Corporate)