



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

SCOTT G. ALVAREZ
GENERAL COUNSEL

July 18, 2014

Joseph P. Daly, Esq.
Luse Gorman Pomerenk & Schick, P.C.
5335 Wisconsin Avenue, NW, Suite 780
Washington, D.C. 20015

Dear Mr. Daly:

This responds to your submission, dated July 11, 2014, requesting a determination that no filing under the Bank Holding Company Act of 1956, as amended (“BHC Act”), 12 U.S.C. § 1841 *et seq.*, would be required for AF Mutual Holding Company (“MHC”), a federal mutual savings and loan holding company, and its subsidiary, Alamogordo Financial Corporation, a federal savings and loan holding company (“Alamogordo”), both of Alamogordo, New Mexico, to acquire Bank 1440, a state-chartered bank, Phoenix, Arizona.

The proposed transaction would facilitate the merger of Bank 1440 and Bank’34, Alamogordo, New Mexico, a federal savings association and the wholly-owned subsidiary of Alamogordo. The transaction would proceed in several steps. Alamogordo would issue shares of common stock and pay cash to the shareholders of Bank 1440 in exchange for their shares of Bank 1440 stock (“Share Exchange”). The shares of Bank 1440 stock would then be cancelled, and Bank 1440 would merge into Bank’34, with Bank’34 as the survivor (“Merger”).

You have represented that MHC and Alamogordo would control Bank 1440 for a moment in time before the Merger. However, the Share Exchange and the Merger would occur on the same business day, and upon completion of these steps MHC and Alamogordo would not meet the definition of a bank holding company under the BHC Act because they would not control a bank, as defined under the BHC Act.¹

Sections 3 and 4 of the BHC Act and Regulation Y generally require an application and notice, respectively, to the Board before a company may become a bank holding company and before a bank holding company may acquire more than 5 percent

¹ 12 U.S.C. § 1841(c)(2); 12 CFR 225.2(b)(2).

of the voting shares of any bank,² or before any bank holding company may acquire more than 5 percent of the voting shares of any nonbanking company.³ As described above, MHC and Alamogordo, through Bank 1440, would become bank holding companies for a moment in time before Bank 1440 is merged into Bank'34. In addition, as bank holding companies for a moment in time, MHC and Alamogordo would control Bank'34, a nonbanking company under the BHC Act. Accordingly, the Board's approval under sections 3 and 4 of the BHC Act ordinarily would be required for this transaction.

The Merger was approved by the Office of the Comptroller of the Currency ("OCC") under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") on June 27, 2014.⁴ In approving the merger, the OCC considered the impact the acquisition would have on competition, the financial and managerial resources and future prospects of Bank'34 and Bank 1440, and the convenience and needs of the communities served by Bank'34 and Bank 1440, the institutions' records of performance under the Community Reinvestment Act, and risks to the stability of the United States banking or financial system. These criteria are substantially similar to the criteria the Board would consider under the BHC Act.⁵

Based on all the facts of record and after consultation with the OCC, the Legal Division believes that no regulatory purpose would be served by requiring MHC and Alamogordo to file an application or notice under the BHC Act for the proposed transaction. The Legal Division, therefore, would not recommend that the Board take action to require a filing of a formal application or notice by MHC and Alamogordo in connection with the transaction described above.

This opinion is based on the specific facts and representations in your letter and in communications with Board staff, and any change in the facts or representations should be communicated immediately to Board staff and could result in a different conclusion. This opinion is limited to this proposal and does not apply to any other transaction. This opinion also is conditioned specifically on receipt by MHC, Alamogordo, and Bank'34 of all necessary regulatory approvals.

² 12 U.S.C. § 1842(a)(1).

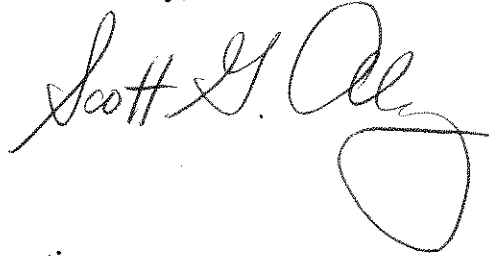
³ 12 U.S.C. § 1843(c)(8).

⁴ 12 U.S.C. § 1828(c). MHC and Alamogordo provided the Board with a copy of the bank merger application filed with the OCC for the Merger. MHC, Alamogordo, and Bank'34 have also filed an application with the Arizona Department of Financial Institutions for the Merger.

⁵ 12 U.S.C. § 1842(c); 12 CFR 225.13(b).

If you have any questions regarding this matter, please contact Tate Wilson at (202) 452-3696 or Adam Cohen at (202) 912-4658, of my staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott G. Allen". The signature is written in a cursive style with a large, prominent loop at the end.

cc: Federal Reserve Bank of Dallas
Federal Deposit Insurance Corporation
Office of Comptroller of the Currency
Arizona Department of Financial Institutions