

April 6, 2000

Re: Ruling Request

General Corporation Tax/Banking
Corporation Tax
FLR #: 004758-006

Dear Mr. _____ :

This letter responds to your request received March 6, 2000, for a ruling as to the New York City tax consequences of a declaration by _____ ("Holdco") to be a financial holding company ("FHC") under the Gramm-Leach-Bliley Act of 1999, P.L. 106-102 (the "GLB Act").

Ruling Requested

You have requested that Holdco, as a FHC, not be considered to be a corporation "registered under the federal bank holding company act of nineteen hundred fifty-six, as amended" (the "BHC Act"), for purposes of paragraph (9) of section 11-640(a) of the Administrative Code of the City of New York (the "Code").

Facts

The facts as represented by you may be summarized as follows:

Holdco is a publicly owned holding company organized and existing under the laws of _____. It has no offices or employees in New York City or in the United States. In 1999, Holdco acquired a _____ percent interest in a _____ entity engaged in a global derivatives business, _____, that is treated as

a partnership for United States federal tax purposes and that has a presence in the City.

Holdco owns 100 percent of _____ ("Bank") a foreign bank organized under the laws of _____. Bank operates a state-licensed branch office in New York City from which it conducts a banking business. ("USCo") is a corporation organized under the laws of _____. It has its headquarters and principal office in New York City. Its voting stock is _____ percent owned by Bank and _____ percent owned by Holdco. Directly and through its subsidiaries, USCo conducts an investment banking business including the following principal activities:

- Financial advisory and capital raising services for clients
- Development and sale of financial products
- Trading and investing in equity securities
- Trading and investing in fixed income securities
- Underwriting securities
- Global foreign exchange operations
- Purchase, sale and trading of securities relating to emerging country capital markets.
- Equity over-the-counter markets trading and investing
- Commodities trading

For purposes of this letter, please note that we assume that neither Holdco nor USCo is a banking corporation described in paragraphs (1) through (8) of section 11-640(a) of the Code. You have represented that USCo files as a taxpayer subject to the New York City General Corporation Tax.

Holdco is considering filing a declaration under the GLB Act as a FHC. Such a declaration would require Holdco and Bank to each file a brief written statement with the Federal Reserve Board under section 4(l) of the BHC Act, 12 USC 1843(l). Those statements would include information about Bank's compliance with certain capitalization and managerial requirements under the GLB Act and the interim regulations issued by the Federal Reserve Board under the GLB Act, 65 Fed. Reg. 3785 (January 25, 2000) (the "Interim Regulations".)

Conclusion

Based on your representations and on our review of the applicable provisions of the Code, the GLB Act, the legislative history thereof and the BHC Act, the Department will not treat Holdco as a corporation registered under the BHC Act if it files a declaration as a financial holding company under the GLB Act and will permit USCo to continue to file under the New York City General Corporation Tax. However, the Department will disallow such treatment if Holdco becomes a banking corporation as defined in section 11-640(a) of the Code or if

it acquires a subsidiary bank in the United States or otherwise become a bank holding company obligated to register under the BHC Act.

Please note that the Department is not addressing the issue of whether USCo is principally engaged in a business that might be lawfully conducted by a bank or that is so closely related to banking or managing or controlling banks as to be a proper incident thereto, as provided in paragraph (9) of Code section 11-640(a).

Discussion

The New York City Banking Corporation Tax (the "Bank Tax") is imposed under Subpart 4 of Subchapter 3 of Chapter 6 of Title 11 of the Code on banking corporations. Code section 11-640(a)(9) includes in the definition of a banking corporation a corporation 65 percent or more owned by a corporation subject to article 3A of the New York Banking Law or registered under the BHC Act if the business of the corporation so owned is one that might be lawfully conducted by a corporation subject to article 3 of the Banking Law or by a national banking association or that "is so closely related to banking or managing or controlling banks as to be a proper incident thereto" under the BHC. Therefore, if Holdco is or becomes a bank holding company registered under the BHC, USCo and its subsidiaries would be treated as banking corporations subject to the Bank Tax if their activities might be lawfully conducted by a corporation subject to article 3 of the Banking Law or by a national banking association or are "so closely related to banking or managing or controlling banks as to be a proper incident thereto" under the BHC Act.

A bank holding company is obligated to register with the Federal Reserve Board by section 5(a) of the BHC Act. 12 USC 1844(a). A bank holding company is defined by the BHC Act as a company that has control over any bank. 12 USC §1841(a)(1). However, the term "bank" for that purpose excludes a foreign bank that operates a branch in the United States. 12 USC §1841(c)(2)(A). Because Holdco does not control a bank as defined in the BHC Act, it is not a bank holding company obligated to register under the BHC Act.

The GLB Act defines a FHC as a bank holding company that meets certain requirements of the GLB Act and Interim Regulations. Notwithstanding this definition, the Interim Regulations clearly contemplate that foreign banks operating branches in the United States and companies controlling such banks can qualify as FHCs even if they are not obligated to register as bank holding companies under the BHC Act. See 12 CFR 225.90. Section 5(a) of the BHC Act provides that a declaration to be a FHC filed under section 4(l) of the GLB Act satisfies the registration requirements for bank holding companies. In our opinion, based on our review of the GLB Act and the legislative history thereof, this provision is intended to eliminate the registration requirement for bank holding companies otherwise required to register but does not constitute a

registration as a BHC for a company not otherwise required to register. Therefore, we have determined that Holdco will not be treated as a BHC for purposes of the Bank Tax as a result of its filing a declaration as a FHC under the GLB Act.

The Department reserves the right to verify the information submitted.

Very truly yours,

Devora B. Cohn /S/
Associate Commissioner for Legal
Affairs