



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

SCOTT G. ALVAREZ  
GENERAL COUNSEL

January 29, 2015

Joseph P. Daly, Esq.  
Luse Gorman Pomerenk & Schick, P.C.  
5335 Wisconsin Avenue, NW  
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Washington, D.C. 20015-2054

Dear Mr. Daly:

This responds to your letter, dated December 9, 2014, to the Federal Reserve Bank of Philadelphia requesting a determination of whether an application under the Home Owners' Loan Act ("HOLA")<sup>1</sup> is required for Putnam County Savings Bank ("PCSB"), Brewster, New York, a mutual savings bank, to acquire CMS Bancorp, Inc., a savings and loan holding company, White Plains, New York, and its wholly owned subsidiary, CMS Bank, Mount Vernon, New York, a state savings bank that has elected to be treated as a savings association for purposes of section 10(*l*) of HOLA.

The purpose of the proposed transaction is to facilitate the merger of CMS Bank into PCSB, with PCSB as the sole surviving entity. As represented, the transaction would occur as follows, on the same business day: (1) CMS Bancorp would merge with and into Acquisition Corp., a newly formed wholly owned operating subsidiary of PCSB, with CMS Bancorp as the surviving entity; (2) immediately thereafter, CMS Bancorp would merge with and into PCSB, with PCSB as the surviving entity; and (3) immediately thereafter, CMS Bank would merge into PCSB, with PCSB as the sole surviving entity. PCSB has filed an application with the Federal Deposit Insurance Corporation ("FDIC") requesting approval of the bank merger under section 18(c) of the Federal Deposit Insurance Act (the "Bank Merger Act").<sup>2</sup>

Section 10(e)(1)(B) of HOLA and the Federal Reserve Board's ("Board") Regulation LL (12 CFR 238) require that an application be filed with the Board before any company may acquire control of a savings association. However, the proposed transaction is in substance a merger of depository institutions that is subject to the prior approval of the FDIC under the Bank Merger Act. In approving the bank merger, the FDIC must consider the impact the acquisition would have on competition, the financial and managerial resources and future prospects of the constituent institutions, the convenience and needs of the communities served by the constituent institutions, and

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<sup>1</sup> 12 U.S.C. § 1461 *et seq.*

<sup>2</sup> 12 U.S.C. § 1828(c).

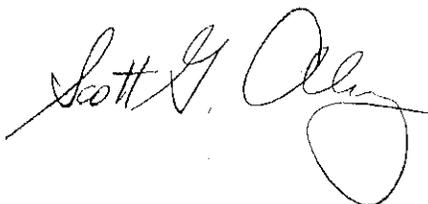
such institutions' records of performance under the Community Reinvestment Act.<sup>3</sup> These criteria are substantially similar to the criteria the Board would consider under HOLA.<sup>4</sup>

Based on all the facts of record, and after consultation with the Division of Banking Supervision and Regulation, the Legal Division believes that no regulatory purpose would be served by requiring PCSB to file an application under HOLA in connection with the proposed acquisition of CMS Bancorp and CMS Bank. The transaction is in substance a merger of CMS Bank with and into PCSB that is subject to review and approval by the FDIC under the standards imposed by the Bank Merger Act. PCSB has represented that it would become a savings and loan holding company only for an instant in time and as an incident to the merger of the two insured depository institutions. Accordingly, the Legal Division would not recommend that the Board take action to require that PCSB obtain prior Board approval under HOLA in connection with the transaction described above. This view is subject to receipt by PCSB of all other necessary regulatory approvals.

This opinion is based on the specific facts and representations in your letter and in communications with Board staff. Any change in the facts or representations should be communicated immediately to Board staff and could result in a different opinion. This opinion also is limited to this proposal and does not apply to any other transaction.

If you have any questions regarding this matter, please contact Derald Seid at (202) 452-2246 or Evans Muzere at (202) 452-2621 of my staff.

Sincerely,



cc: Robert Tillman, Assistant Vice President  
Federal Reserve Bank of Philadelphia

John F. Vogel, Regional Director  
Federal Deposit Insurance Corporation

Ruth Adams, Deputy Superintendent of Financial Services  
New York State Department of Financial Services

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<sup>3</sup> 12 U.S.C. § 1828(c)(5).

<sup>4</sup> 12 U.S.C. § 1467a(e); 12 CFR 238.15.