



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

SCOTT G. ALVAREZ  
GENERAL COUNSEL

July 18, 2007

B. Robbins Kiessling, Esq.  
Cravath, Swaine & Moore LLP  
Worldwide Plaza  
825 Eighth Avenue  
New York, New York 10019-7475

Dear Mr. Kiessling:

This responds to your letter of July 13, 2007, and related correspondence, requesting confirmation that each of Perry Capital LLC ("Perry"), Marathon Asset Management LLC ("Marathon"), Tennenbaum Capital Partners, LLC ("Tennenbaum"), and D. E. Shaw & Co. L.P. and D. E. Shaw & Co., L.L.C. ("D. E. Shaw" and, collectively with Perry, Marathon, and Tennenbaum, the "Investors")<sup>1</sup> would not be deemed to control Doral Financial Corporation ("Doral Financial"), San Juan, Puerto Rico, or any Doral Investment Entity (as defined below) for purposes of the Bank Holding Company Act ("BHC Act") on consummation of a proposed investment by the Investors in Doral Financial.

The Proposal

Bear Stearns has arranged a proposed transaction to provide Doral Financial with a significant amount of new equity financing. Under the proposal, numerous investors, including Bear Stearns and the Investors, would invest a total of approximately \$627 million in Doral Holdings, L.P. ("Holdings LP"), a limited partnership that is organized under the laws of the Cayman Islands. The sole general partner of Holdings LP would be Doral GP Ltd. ("Holdings GP"), a company organized in the Cayman Islands.<sup>2</sup> Holdings LP then would contribute approximately \$627 million to Doral Holdings Delaware, LLC ("Holdings LLC" and, collectively with Holdings LP and Holdings GP, the "Doral Investment Entities"), a limited liability company organized under the laws of Delaware, in return for 99.5 percent of the limited liability interests of

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<sup>1</sup> For purposes of this letter, the term Investor includes, with respect to any of Perry, Marathon, Tennenbaum, and D. E. Shaw, the investment fund or funds advised or controlled by it that will be making the proposed investment in Doral Financial.

<sup>2</sup> Holdings GP will not have an equity investment in Holdings LP.

Holdings LLC.<sup>3</sup> Holdings LLC then would purchase approximately \$610 million of newly issued voting common stock of Doral Financial, which would represent approximately 90 percent of the voting shares of Doral Financial. Each Doral Investment Entity would become a bank holding company.

Under the proposal, each of the Investors would acquire voting limited partner interests in Holdings LP that represent between approximately 9.1 and 9.5 percent of the total equity and between approximately 9.6 and 9.9 percent of the voting securities of Holdings LP. Bear Stearns would acquire approximately 4.5 percent of the total equity of Holdings LP in the form of nonvoting limited partner interests, and limited partner investors in certain Bear Stearns partnerships, all unaffiliated with Bear Stearns and the Investors, would own voting limited partner interests in Holdings LP that represent approximately 16 percent of the total equity and voting interests of Holdings LP.

Each of the Investors proposes to own not more than 9.9 percent of the voting shares of Holdings GP. An affiliate of Bear Stearns would own 4.9 percent of the voting shares of Holdings GP. The remaining voting shares of Holdings GP would be owned by [ ] limited partner investors in Holdings LP that are not affiliated with the Investors or Bear Stearns. Each Investor in Holdings GP would be party to a shareholders agreement<sup>4</sup> under which each Investor and Bear Stearns (the "Designating Members") would have the ability to designate one member of the five-member board of directors of Holdings GP.<sup>5</sup> Actions by the board of directors of Holdings GP generally would be by majority vote, and in no circumstance would a single director be able to block an action by the board of directors of Holdings GP. After consummation of the proposal, the board of directors of Doral Financial would have eleven members, including the five directors of Holdings GP designated by the Designating Members.

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<sup>3</sup> Holdings LP also will be the managing member of Holdings LLC. Several investment partnerships controlled by the merchant banking group of Bear Stearns would acquire the remaining 0.5 percent of the limited liability interests of Holdings LLC.

<sup>4</sup> The Investors have represented that the shareholders agreement conforms to the Board's interpretation on voting trusts and buy-sell agreements. Letter dated May 4, 1972, from Tynan Smith, Secretary of the Board, to the Presidents of the Federal Reserve Banks (Federal Reserve Regulatory Service 4-185.5). The agreement relates only to the equity of a single bank holding company; terminates within 25 years; serves no function other than to impose certain transfer and voting restrictions on equity holders in Holdings GP; and involves parties who are not, and will not become, parties to any similar agreement with respect to any other banking or nonbank organization.

<sup>5</sup> In the event that one of the five Designating Members reduces its interest in Holdings LP by 50 percent or more, the remaining Designating Members will select a replacement designating investor that is not affiliated with any of the remaining Designating Members.

The Investors have made certain passivity commitments with respect to the Doral Investment Entities, Doral Financial, and their subsidiaries (collectively, the “Doral Entities”) that are substantially similar to the passivity commitments that the Board has relied on in previous cases in finding that an investment was non-controlling.<sup>6</sup> Under these commitments, among other things, each Investor commits not to take any action that may cause the Doral Entities to become a subsidiary of the Investor; not to acquire or retain shares of the Doral Entities that would cause the Investor, together with its officers, directors, and affiliates, to own 10 percent or more of a class of voting securities of the Doral Entities; not to exercise or attempt to exercise a controlling influence over the management or policies of the Doral Entities; not to have or seek to have more than one representative serve as a director of the Doral Entities; and not to have or seek to have any representative serve as an officer, agent, or employee of the Doral Entities. Each Investor also commits that it will not enter into any business relationships with Doral Financial and its subsidiaries, except that the Investor (i) may establish one or more deposit accounts on market terms with a subsidiary depository institution of Doral Financial in an aggregate amount up to \$500,000; and (ii) may purchase assets from Doral Financial and sell assets to Doral Financial in amounts up to 10 percent of the assets originated or purchased by Doral Financial in any two-year period (so long as the Investor also complies with the 5 percent asset purchase limit in section 4(f)(2)(A)(ii) of the BHC Act as if it were subject to such section).

Each of the Investors also has made certain representations regarding its independence from the other investors in the Doral Investment Entities. Among other things, each Investor has represented that it: (i) is not an affiliate of any other investors in the Doral Investment Entities; (ii) reached its decision to invest in the Doral Investment Entities independently from the other investors; (iii) has entered into no agreements with the other investors for the purpose of controlling the Doral Investment Entities (other than as set forth in the organizational documents of the Doral Investment Entities and in the Holdings GP shareholders agreement); (iv) has entered into no agreements with the other investors regarding voting its interest in the Doral Investment Entities in concert with the other investors, or otherwise to act in concert with the other investors with respect to the Doral Investment Entities (other than as set forth in the organizational documents of the Doral Investment Entities and in the Holdings GP shareholders agreement); and (v) will not consult with the other investors regarding the voting of its interest in the Doral Investment Entities (other than as provided in the Holdings GP shareholders agreement regarding the election of directors). In addition, none of the Investors can restrict any other investor’s ability to transfer its interests in the Doral Investment Entities.

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<sup>6</sup> These passivity commitments are set forth in the attachment to this letter.

## Legal Framework

For purposes of the BHC Act, a company has control over another company if the company (i) directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company; (ii) controls in any manner the election of a majority of the directors of the other company; or (iii) directly or indirectly exercises a controlling influence over the management or policies of the other company.<sup>7</sup> The Board's Regulation Y also sets forth a set of rebuttable presumptions of control.<sup>8</sup>

Under the proposal, an Investor only would be deemed to control a Doral Entity for purposes of the BHC Act if the Board were to find that the Investor exercised a controlling influence over the management or policies of the Doral Entity. No Investor would own, control, or hold with power to vote 25 percent or more of any class of voting securities of, or control the election of a majority of the directors of, any Doral Entity.<sup>9</sup> In addition, no Investor would trigger any of the rebuttable presumptions of control in Regulation Y with respect to any Doral Entity.

## Discussion and Analysis

The size and nature of the equity investment by each Investor in the Doral Investment Entities, when combined with each Investor's director representation at the Holdings GP and Doral Financial level, raise the issue of whether each Investor would have a controlling influence over the management or policies of any Doral Entity.

A number of mitigating features, described above, constrain the ability of each Investor to influence the management and policies of the Doral Entities, including:

- The investment by each Investor would represent less than 10 percent of the voting interest and total equity of each Doral Entity.
- Each Investor has provided passivity commitments that the Board has relied on previously to make non-control determinations in the context of similar investments. Although the commitments would permit each Investor to engage in the business relationships with Doral Financial described above, these relationships would be limited in amount, non-exclusive, and on arm's length terms.

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<sup>7</sup> 12 U.S.C. § 1841(a)(2); 12 CFR 225.2(e).

<sup>8</sup> See 12 CFR 225.31(d).

<sup>9</sup> There is no agreement among the investors in Holdings GP regarding the selection of directors of Holdings GP, other than as set forth in the Holdings GP shareholders agreement. [

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- Each Investor has provided substantial representations regarding its independence from the other investors in the Doral Investment Entities.

In view of all the facts of record in this case – including in particular the attached passivity commitments made by each Investor and the small relative size of the voting and equity investment by each Investor in the Doral Entities – staff would not at this time recommend that the Board find that the proposal would allow any Investor to exercise a controlling influence over the management or policies of any Doral Entity for purposes of the BHC Act.

This opinion is limited to the transactions described above and is based on the facts, representations, and commitments included in your letter and related correspondence. The commitments are deemed to be conditions imposed in writing by the Federal Reserve System in connection with its findings and decision on the applications and notices filed by the Doral Investment Entities to obtain prior approval of the Federal Reserve System pursuant to sections 3 and 4 of the BHC Act to acquire Doral Financial and its subsidiaries. Any material change in the facts presented may result in a different conclusion and should be reported to Board 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, looped initial "S". Below the signature is a large, empty oval shape, likely a placeholder for a stamp or seal.

**APPENDIX**  
***Investor Commitments***

Investor commits to the Board that, for so long as such investment shall be in effect, the Investor will not, directly or indirectly:

- (1) take any action that may cause Holdings GP, Holdings LP, Holdings LLC, Doral Financial or any of their subsidiaries to become a subsidiary of the Investor;
- (2) acquire or retain shares that would cause the Investor, together with its officers, directors and affiliates, to have an interest that would equal to or exceed 10% of the outstanding voting shares of Holdings GP, Holdings LP, Holdings LLC, Doral Financial or any of their subsidiaries;
- (3) exercise or attempt to exercise a controlling influence over the management or policies of Holdings GP, Holdings LP, Holdings LLC, Doral Financial or any of their subsidiaries;
- (4) have or seek to have any representative serve as an officer, agent or employee of Holdings GP, Holdings LP, Holdings LLC, Doral Financial or any of their subsidiaries;
- (5) enter into any other banking or non-banking transaction with Holdings GP, Holdings LP, Holdings LLC, Doral Financial or any of their subsidiaries, except that (i) the Investor may establish and maintain deposit accounts with Doral Bank or Doral Bank, FSB, provided that the aggregate balances of all such accounts for the Investor do not exceed \$500,000 and that the accounts are maintained on substantially the same terms as those prevailing for comparable accounts of persons unaffiliated with Doral Bank or Doral Bank, FSB, (ii) the Investor may purchase from Doral Financial and its subsidiaries, and sell to Doral Financial and its subsidiaries, mortgages and mortgage-backed securities (including those serviced by Doral Financial or its subsidiaries) in transactions in which Doral Financial or its subsidiary receives no less than three competitive bids from nationally recognized financial institutions, provided that, on a trailing twenty four month basis, such transactions do not exceed 10% of the dollar value of all loans originated or purchased from third parties by Doral Financial and its subsidiaries, and (iii) the Investor may enter into transactions with Doral Financial and its subsidiaries not involving mortgages or mortgaged-backed securities (such as purchases or sales of government securities, agency securities or derivative transactions), provided that such other transactions do not constitute, on a trailing twenty four month basis, more than 10% of the dollar value of such transactions entered into by Doral Financial and its subsidiaries; provided further that all such transactions between the Investor, on the one hand, and Holdings GP, Holdings LP, Holdings LLC, Doral Financial or any of their subsidiaries, on the other hand, will be on an arm's length basis and will not restrict Holdings GP, Holdings LP, Holdings LLC, Doral Financial or any of their subsidiaries from entering into transactions of the same type with other parties. In connection with the foregoing, and although the Investor does not own or control an institution that would

cause it to be subject to Section 4(f) of the BHC Act, the Investor agrees to comply with the asset acquisition limitations of Section 4(f)(2)(A)(ii) of the BHC Act with respect to the insured depository institution subsidiaries of Doral Financial;

(6) seek or accept representation on the board of directors of Holdings GP, Holdings LP, Holdings LLC, Doral Financial or any of their subsidiaries, except that the Investor may be represented on the board of directors of Holdings GP by one director, who may also serve on the board of directors of Doral Financial;

(7) propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or board of directors of Holdings GP, Holdings LP, Holdings LLC, Doral Financial or any of their subsidiaries;

(8) solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of Holdings GP, Holdings LP, Holdings LLC, Doral Financial or any of their subsidiaries, except to the extent that the Investor may be deemed to solicit or participate in soliciting proxies as a result of being represented by one director on the board of directors of Doral Financial as described in paragraph 6 above;

(9) attempt to influence the dividend policies; loan, credit, or investment decisions or policies; pricing of services; personnel decisions; operations activities, including the location of any offices or branches or their hours of operation, etc.; or any similar activities or decisions of Holdings GP, Holdings LP, Holdings LLC, Doral Financial or any of their subsidiaries, except to the extent the Investor may be deemed to have such influence as a result of being represented by one director on the board of directors of Holdings GP and Doral Financial as described in paragraph 6 above; or

(10) dispose or threaten to dispose of shares of Holdings GP, Holdings LP, Holdings LLC or Doral Financial directly or indirectly held by it in any manner as a condition of specific action or nonaction by Holdings GP, Holdings LP, Holdings LLC or Doral Financial.

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