INTERPRETIVE LETTER 93-016 (SEPTEMBER 24, 1993)

Bank holding company that acquires 100% of second bank holding company must use push down accounting.

In response to your letter of *, we have reviewed the applicability of push down accounting to the recent acquisition of State Bank of * ("Bank") by * Bancorp ("Bancorp"). In this acquisition, Bancorp acquired 100% of the bank holding company, which, in turn, owned 100% of Bank. In your inquiry, you outlined that Bancorp proposed to use push down accounting, then immediately write off intangible assets created in the process, and subsequently transfer an unspecified amount from surplus to undivided profits in order to pay a "moderate dividend payment to Bancorp." You have asked three questions:

1. Whether push down accounting is required for this transaction;

2. If push down accounting is required, whether the Commissioner would object to the immediate write-off of the intangible assets; and

3. Whether the Commissioner would object to the immediate write-off of all purchase accounting adjustments, both tangible and intangible, with a corresponding transfer to undivided profits to restore the deficit created by such a write-off.

Push down accounting would be required because the 100% acquisition exceeds the 95% threshold under Generally Accepted Accounting Principles ("GAAP") and policies of the Federal Financial Institutions Examination Council ("FFIEC").

Also, assets and liabilities should be restated to fair market value, the entire undivided profits account should be eliminated, and capital should be increased or decreased, depending on whether an acquisition premium is paid over pre-acquisition book values. For regulatory purposes, intangible assets such as goodwill are not included in calculating Tier I capital and the lending limit. Such assets are amortized over the estimated useful life of the intangible asset, not to exceed 15 years, unless the appropriate federal banking regulator requires a quicker write-off; they are not written off immediately, as you proposed. Also, since the undivided profits account is eliminated, FFEIC call report instructions confirm that "the entire undivided profits of the bank before acquisition will not be available for the payment of dividends after the acquisition."

GAAP and FFEIC treat the bank as a new bank from the date of acquisition, so that dividends, if any, may only be declared and paid from net earnings after the date of acquisition. The Commissioner's Office applies the same policy.

Therefore, the responses to your questions are:

1. Yes, push-down accounting is required;

2. Immediate write-off of intangibles is not required and would be discouraged;

3. The transfer from surplus to undivided profits would not be approved.