



# Permitted Activities for Bank Holding Companies

Presented by  
Mike Lochmann and George Sand



STINSON  
LEONARD  
STREET

# PRESENTER NOTES ...

**Mike W. Lochmann**



## **DIRECT CONTACT**

**816.691.3208**

mike.lochmann@stinson.com

1201 Walnut,  
Suite 2900  
Kansas City, MO 64106



# PRESENTER NOTES ...

## George B. Sand



### **DIRECT CONTACT**

**816.691.2381**

george.sand@stinson.com

1201 Walnut,  
Suite 2900  
Kansas City, MO 64106



**STINSON  
LEONARD  
STREET**

# Banking Powers – General Principles

- BHCs, SLHCs and their non-bank subsidiaries may not engage in any business or activity that is not expressly permitted by statute, regulation or regulatory order
- Holding companies are deemed to be engaged in all activities that their direct and indirect non-bank subsidiaries engage in

# Commercial Activities Prohibited

- Glass-Steagall Act – BHCs, SLHCs and their non-bank subsidiaries may not engage in commercial activities
- General Motors and Walmart may not own a commercial bank
- But what about:
  - John Deere Financial, FSB
  - Target Bank, a Utah industrial loan company

# Grandfathered Commercial Activities

- Prior to 1999, a unitary SLHC that owned only one federal savings bank (and no commercial bank) could also engage in any financial or commercial activity if the bank was a “qualified thrift lender”
  - John Deere could manufacture tractors and own a federal savings bank
  - Gramm Leach Bliley Act grandfathered existing unitary SLHCs, but prohibited new commercial affiliations
- Commercial companies may own special-purpose depository institutes which have more limited powers than commercial banks
  - Industrial banks, credit card banks and trust companies
  - Target may own an industrial bank

# BHC Permitted Activities

- Owning and controlling national banks and state-chartered commercial banks
- Activities “so closely related to banking as to be properly incident thereto” (“4(c) Activities”)
- Owning 5% or less of the outstanding shares of any class of voting securities of a company (including commercial companies)

# Approval 4(c) Activities

Approved 4(c) Activities include:

- consumer finance, credit card and mortgage lending
- commercial finance operations
- operating nonbank depository institutions, such as trust companies and industrial loan companies
- financial counseling services
- leasing companies
- investment in community development corporations;
- financial data processing services
- management consulting for other financial institutions



# Approval 4(c) Activities (continued)

Approved 4(c) Activities include:

- bank-related courier services
- credit life insurance
- money transmittal
- collection agency services
- tax preparation services
- consumer credit bureau services
- consumer financial counseling
- securities brokerage services for customer investments
- government securities underwriting
- printing and selling checks

# Activities Not Deemed Closely Related to Banking

- Real estate brokerage activities
- Land development activities
- Real estate syndication activities
- Property management activities

# SLHC Permitted Activities

- Owning and controlling federal savings banks and state-chartered savings associations
- Section 10 Exempt activities, such as:
  - holding, managing or liquidating assets owned or acquired from a subsidiary savings association
  - performing management services for a savings association subsidiary
- Section 4(c) Activities (same as BHCs)
- 1987 Activities – certain services and activities that were permissible for SLHCs and their subsidiaries by regulation in 1987
  - broader than 4(c) activities
  - include some real estate activities

# 1987 Activities

SLHCs are authorized to engage in activities that multiple SLHCs were authorized, by regulation, to engage in on March 5, 1987:

- Originating, purchasing, selling and servicing loans
- Accounting and internal audit services for affiliates
- Preparing tax returns
- Purchasing and selling gold coins
- Insurance underwriting (credit life and health only) in connection with credit extensions by savings association subsidiaries
- Data processing, research, advertising and other services for affiliates

Including certain real estate activities:

- Acquisition of unimproved real estate for prompt development (e.g. residential subdivisions)
- Acquisition of real estate and mobile homes for rental
- Development and construction of homes on such real estate
- Remodeling, maintenance and management of improved real estate

# Financial Holding Company (“FHC”)

- A BHC or SLHC may elect to become a FHC and engage in expanding 4(k) activities
  - written statement of intent and certifications given to Federal Reserve electing to become an FHC
  - not an application (no approval required)
- Requirements:
  - holding company and all its subsidiary banks must be well capitalized
  - holding company and all its subsidiary banks must be well managed
  - all subsidiary banks must have satisfactory or high CRA rating
- AND must continuously maintain such ratings

# FHC 4(k) Activities

- Activities financial in nature or incident thereto
- Activities complimentary to a financial activity, that do not pose safety and soundness risks
- May be conducted by the FHC itself or by a direct or indirect non-bank subsidiary
- May continue to engage in all 4(c) Activities (closely related to banking)

# Activities Financial in Nature

- Acting as agent, broker or underwriter of life, health, property or casualty insurance and annuities
- Acting as a securities broker-dealer, underwriter and market maker
- Organizing, sponsoring, managing and advising a mutual fund;
- merchant banking activities (venture capital investments)
- Issuing or selling asset back securities (“ABS”) that are permitted bank investments

# Activities Financial in Nature (cont'd)

- Providing financial, investment and economic advisory services (including a requested investment admission)
- Providing management consulting services
- Lending, exchanging and investing for third parties
- Making and managing portfolio investments for insurance company affiliates
- Operating a travel agency
- Acting as a “finder” (business broker)



# Activities Complimentary to a Financial Activity

- mail order pharmacy activities, complimentary to underwriting health insurance
- physical commodity trading in energy-related commodities
- energy management services, complimentary to commodity derivatives trading

# BHC – Prior Notice or Approval Requirements

- BHCs must obtain prior approval of Federal Reserve before commencing a new 4(c) Activity
  - includes de novo activities and acquisition (in whole or in part) of a business or entity
  - includes new activities and acquisitions by non-bank subsidiaries
- However, no BHC prior notice is required (must notify Board within 10 business days of commencing activity) if:
  - No BHC depository sub has received 1 of the 2 lowest composite ratings at recent examinations
  - Before and after transaction the BHC and sub depository institution are well capitalized
  - Before and after transaction the BHC and sub depository institution are well managed
  - No outstanding regulatory orders or other impositions of Fed
  - Book value of total assets acquired does not exceed 10% of Bank Risk-Weighted Assets

(Does not apply to activities and acquisition of a subsidiary of a subsidiary bank)

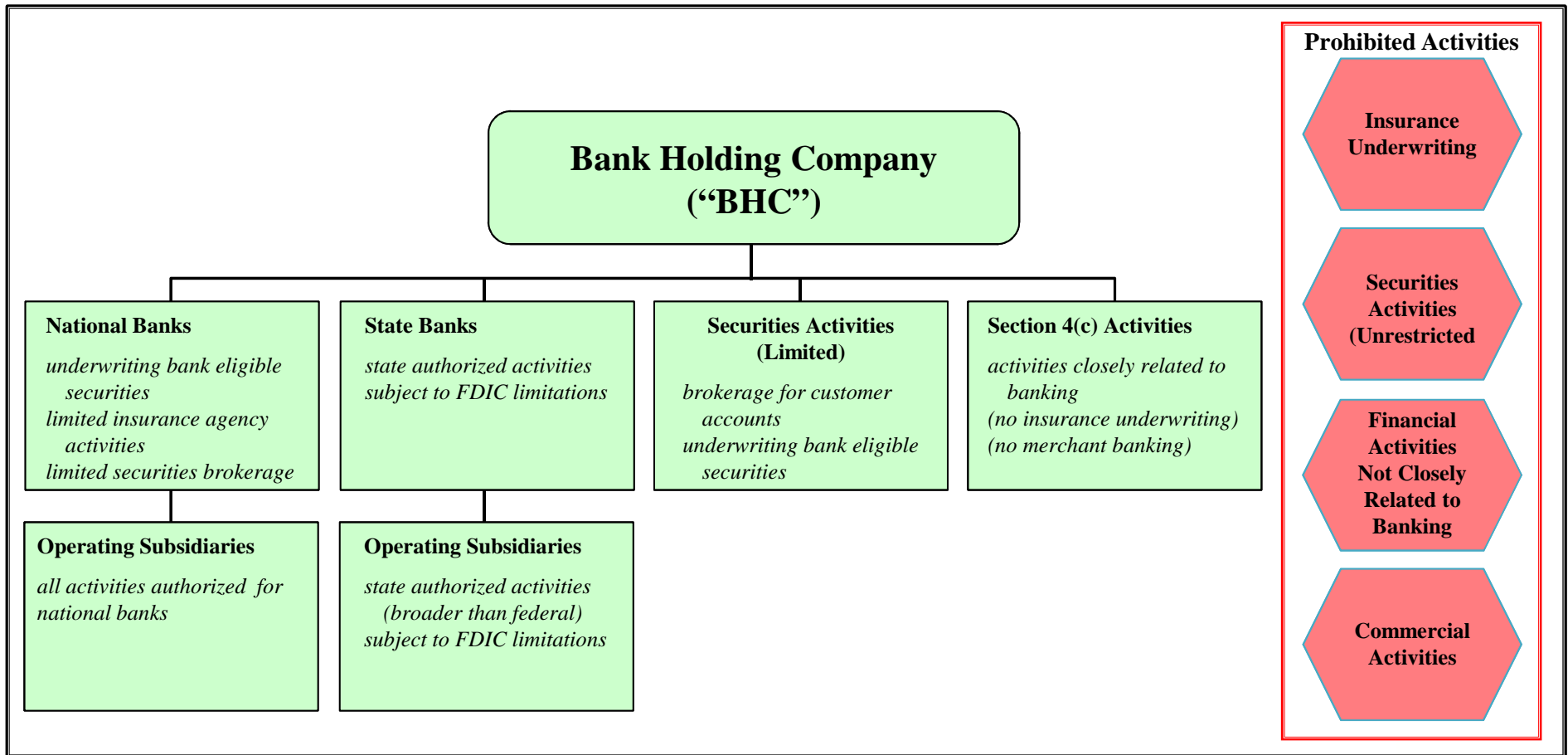
# SLHC: Prior Notice and Approval Requirements

- Most SLHCs must obtain prior approval of Federal Reserve before commencing (de novo or by acquisition) a new 4(c) Activity directly or through a non-bank subsidiary
  - Grandfathered unitary SLHCs are exempt
  - Only notice is required if SLHC
    - has a composite rating of “1” or “2”
    - is not in troubled condition
    - activity is not commenced through an acquisition
- A SLHC that has elected to be a FHC may engage in any activity that has been determined to be financial in nature without prior approval
- A SLHC that has elected to be a FHC must obtain prior approval to engage in activity that is complimentary to a financial activity
- A SLHC must obtain prior approval to engage in any 1987 activity

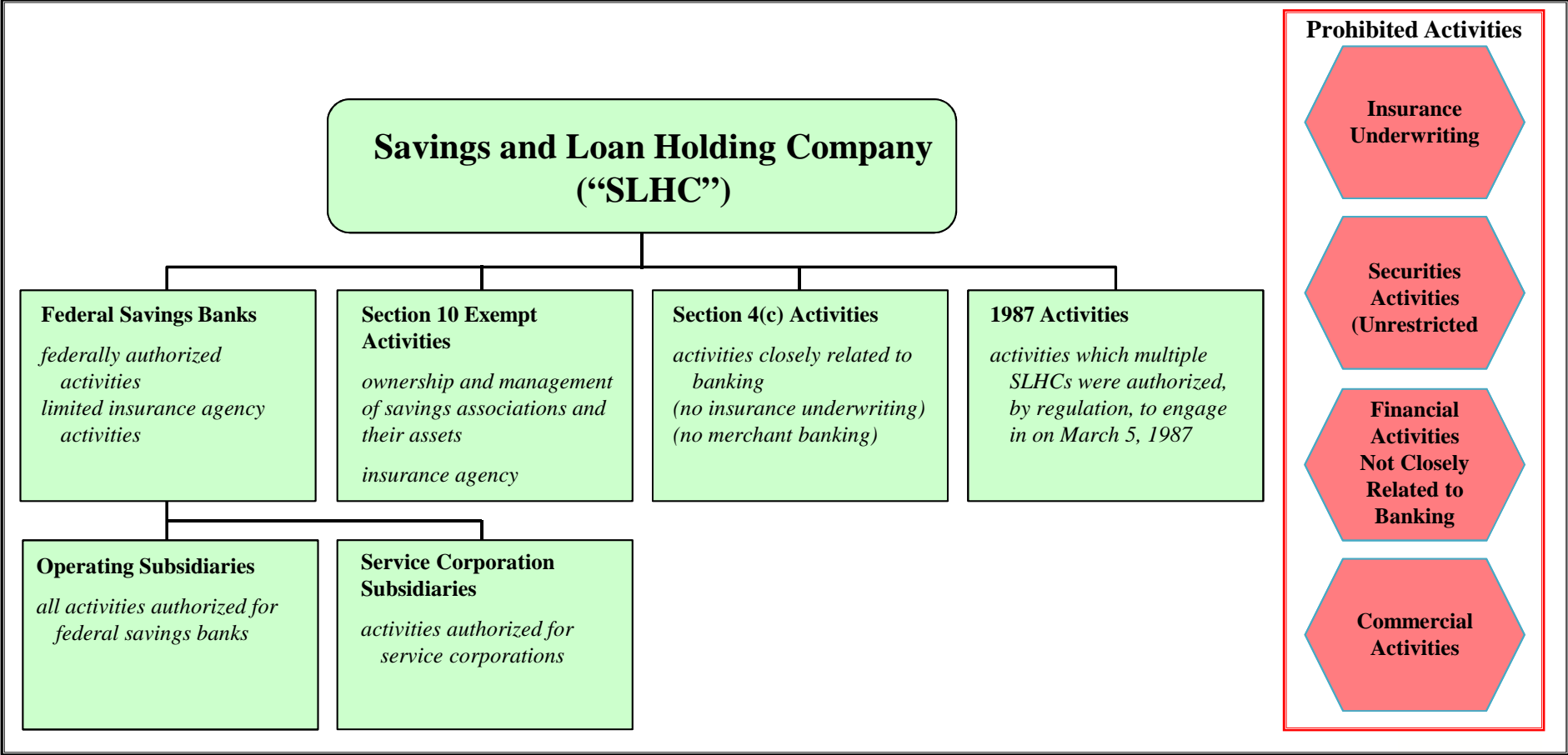
# FHC: Prior Notice and Approval Requirements

- BHC must provide written statement of intent electing to become a FHC
- But a FHC may engage in any activity that has already been determined to be financial in nature without prior notice or approval
  - this applies to 4(c) Activities because they are included in activities that are financial in nature
  - also applies to acquisition of entities engaged in such activities
  - Exception: prior approval is required if acquiring an entity with \$10 billion of assets
- FHC must obtain prior approval to engage de novo or by acquisition in an activity that is complimentary to a financial activity

# Permissible BHC Activities and Affiliations



# Permissible SLHC Activities and Affiliations



# Permissible FHC Activities and Affiliations

