

OFFICE OF THRIFT SUPERVISION

Approval of Applications for Permission to Organize a Federal Savings Bank and Holding Company Acquisition

Order No.: 2002-31

Date: November 8, 2002

Docket Nos.: 17935 and H-3826

Modern Woodmen of America, Rock Island, Illinois (Applicant) has applied to the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. §§ 1464(e) and 1467a(e) and 12 C.F.R. §§ 552.2-1 and 574.3, for permission to organize and acquire MWABank, Rock Island, Illinois (Savings Bank). (Collectively, the permission to organize application and the holding company application are referred to herein as the Applications.)

The Applications

In the proposed transaction, the Applicant would organize the Savings Bank, and acquire all of the Savings Bank's stock, thereby becoming a savings and loan holding company. The Applicant proposes to capitalize the Savings Bank to cause the Savings Bank to be "well capitalized" for the duration of its three-year business plan. The Applicant has applied to the Federal Deposit Insurance Corporation (FDIC) for SAIF insurance of accounts for the Savings Bank.

Permission to Organize Application

The Home Owners' Loan Act (HOLA) provides that OTS may grant a Federal savings association charter only: (i) to persons of good character and responsibility; (ii) if, in OTS' judgment, a necessity for such savings association exists in the community to be served; (iii) if there is reasonable probability of the association's usefulness and success; and (iv) if the association can be established without undue injury to properly conducted existing local thrift and home financing institutions.¹ OTS regulations implementing the HOLA include the same standards, with the additional requirement that OTS consider whether the association will promote credit for housing consistent with the safe and sound operation of a Federal savings association.

OTS regulations regarding the establishment of de novo Federal savings associations set forth standards that the OTS considers in granting a de novo Federal charter, regarding: (i) initial capitalization of a Federal association; (ii) the submission

¹ Section 5(e) of the HOLA, 12 U.S.C. § 1464(e).

and content of a business plan; and (iii) the residence and composition of an association's board of directors.²

In addition, OTS regulations provide that an applicant for a Federal thrift charter shall submit with its application a description of how it will meet its CRA objectives.³ OTS takes this description into account when considering an application and may deny an application or condition approval on CRA grounds.

With respect to the character and responsibility of the Applicant and the Savings Bank, OTS has considered the background of the Applicant, the Savings Bank's proposed board of directors and senior officers, and the Applicant's senior executive officers and directors. OTS concludes the character and responsibility of the Applicant and the Savings Bank is consistent with approval.

With respect to the necessity for the Savings Bank in the community, OTS has considered relevant demographic information and has concluded that approval is consistent with this factor. With respect to undue injury to properly conducted existing local thrift and home financing institutions, OTS has considered the competitiveness of the relevant market and the Savings Bank's proposed market share in that market, and concludes that approval is consistent with this factor.

With respect to the Savings Bank's usefulness and success, OTS has reviewed the Savings Bank's business plan, historical data on the Applicant, the Savings Bank's proposed capital levels, and the competence of management. OTS concludes that the Savings Bank's probability of usefulness and success is consistent with approval, provided that the Savings Bank and the Applicant comply with the conditions set forth below, which are intended to ensure that the usefulness and success of the Savings Bank are consistent with approval.

With respect to the provision of credit for housing, OTS has considered the manner in, and extent to which, the Savings Bank will provide credit for housing, and concludes that the Savings Bank will perform a role of providing credit for housing consistent with safety and soundness standards.

With respect to CRA, OTS has reviewed the manner in which the Savings Bank will meet its CRA objectives and found its description to be reasonable. OTS concludes that the Savings Bank's plans for meeting its CRA requirements are consistent with approval.

In addition, the Savings Bank intends to adopt a charter and bylaws in compliance with the model charter and bylaws for a Federal stock institution, and will be well-

² 12 C.F.R. § 543.3 (2002).

³ 12 C.F.R. § 563e.29(b) (2002).

capitalized during the first three years of operations. The composition of the Savings Bank's board of directors complies with 12 C.F.R. § 543.3(d).

Holding Company Application

In the proposed transaction, the Applicant will acquire the Savings Bank. Accordingly, the transaction requires OTS approval under Section 10(e) of the HOLA and under 12 C.F.R. Part 574 (Control Regulations).

Section 10(e)(1)(B) of the HOLA and the Control Regulations provide that OTS must approve a holding company application seeking permission to acquire one savings association by a company other than a savings and loan holding company unless OTS finds the financial and managerial resources and future prospects of the company and association involved to be such that the acquisition would be detrimental to the savings association or to the insurance risk of the SAIF or BIF. Also, OTS must consider the impact of any acquisition on competition.⁴ Further, 12 C.F.R. § 563e.29(a) requires that OTS take into account assessments under the CRA when approving savings and loan holding company acquisitions.

With respect to managerial resources, OTS has considered the background of the Applicant, the Savings Bank's proposed board of directors and senior officers, and the Applicant's senior executive officers and directors. OTS concludes that the managerial resources of the Savings Bank and the Applicant are consistent with approval.

With respect to financial resources, OTS has considered the Applicant's financial position, and the Savings Bank's proposed capitalization and business plan. OTS concludes that the financial resources of the Savings Bank and the Applicant are consistent with approval.

With respect to future prospects, OTS has considered the financial and managerial resources of the Savings Bank and the Applicant, the character and responsibility of the organizers, and the probability of the Savings Bank's usefulness and success, and concludes that the future prospects of the Savings Bank and the Applicant are consistent with approval, subject to the conditions set forth below.

The proposed acquisition will not cause the Savings Bank to become affiliated with any other operating depository institution. Accordingly, OTS concludes that the transaction is not objectionable on anti-competitive grounds.

As for the CRA, the Applicant and its subsidiaries have no CRA experience. OTS has received no comments from the public objecting to the proposed transaction. Accordingly, OTS concludes that approval of the proposed acquisition of the Savings Bank by the Applicant is consistent with the CRA.

⁴ 12 U.S.C. § 1467a(e)(2) and 12 C.F.R. § 574.7(c)(2) (2002).

Conclusions

Based on the foregoing analysis, OTS concludes that the Applications meet the applicable approval criteria, and are hereby approved, provided that the following conditions are complied with in a manner satisfactory to the OTS Southeast Regional Director, or his designee (Regional Director):

1. The Applicant and the Savings Bank must receive all required regulatory approvals prior to consummation of the proposed transaction with copies of all such approvals provided to the Regional Director;
2. The proposed transaction must be consummated within one hundred and twenty (120) calendar days from the date of this Order;
3. On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of the Applicant and the Savings Bank must certify in writing to the Regional Director that no material adverse changes have occurred with respect to the financial condition or operation of the respective entities as disclosed in the Applications. If additional information having an adverse bearing on any feature of the Applications is brought to the attention of the Applicant, the Savings Bank, or OTS since the date of the financial statements submitted with the Applications, the transaction must not be consummated unless the information is presented to the Regional Director, and the Regional Director provides written non-objection to consummation of the transaction;
4. The Applicant and the Savings Bank must advise the Regional Director in writing within five (5) calendar days after the effective date of the proposed transaction: (a) of the effective date of the proposed transaction; and (b) that the proposed transaction was consummated in accordance with all applicable laws and regulations, the Applications and this Order;
5. The Savings Bank must operate within the parameters of its business plan filed in the Applications. For the three year period following consummation of the transaction, the Applicant and the Savings Bank must provide notice of any proposed major deviations or material changes from the plan (including changes resulting from decisions made by the Applicant), and in particular, those pertaining to cross-marketing of products by the Savings Bank and its affiliates, a change in the role of the independent agents and call center employees, and any changes in the proposed delivery system of the Savings Bank's products, for the prior, written non-objection of the Regional Director. The request for change must be submitted a minimum of sixty (60) calendar days before the proposed change is implemented with a copy sent to the FDIC Regional Office;

6. For the three year period following consummation of the proposed transaction, the Savings Bank must submit quarterly business plan variance reports to the Regional Director within thirty (30) calendar days after each calendar quarter end;
7. At least 40 percent of the Savings Bank's board of directors must be individuals who are not officers or employees of the Applicant or its affiliates and who have not otherwise been determined by the Regional Director to lack sufficient independence; and at least one member of the Savings Bank's board of directors must be an individual who is not an officer, director or employee of the Applicant or its affiliates and who is not an officer or employee of the Savings Bank, and has not otherwise been determined by the Regional Director to lack sufficient independence. At least 50 percent of any audit committee established by the Savings Bank must be directors who are not officers or employees of the Savings Bank, the Applicant or its affiliates and have not otherwise been determined by the Regional Director to lack sufficient independence. If compliance with this condition involves the selection of additional directors, each director must receive the prior written approval of the Regional Director;
8. A majority of the Savings Bank's board of directors must not be individuals who are directors or employees of any affiliate of the Savings Bank that engages in securities brokerage, securities dealing, investment company, or investment advisor activities (Securities Affiliate(s));
9. The Savings Bank is prohibited from sharing common officers with any Securities Affiliate unless prior written approval is obtained from the Regional Director, which shall be based on criteria such as regulatory compliance, experience, character, integrity and the ability to perform both duties;
10. The Applicant, its affiliates and the Savings Bank must comply with the anti-tying restrictions of 12 U.S.C. § 1467a(n) and must develop written procedures to effect such compliance. The procedures must be submitted for the review and non-objection of the Regional Director at least 30 calendar days prior to the commencement of any cross-marketing activity;
11. For the first eighteen months after the consummation date of the proposed transaction, any contracts or agreements pertaining to transactions with affiliates not yet submitted to the OTS for review, must be submitted for the prior written non-objection of the Regional Director at least thirty (30) calendar days prior to execution;
12. No later than five (5) calendar days from the date the Savings Bank opens for business, the chief financial officer must provide the Regional Director a reconciliation of capital for the Savings Bank;

13. For the Savings Bank's first three (3) fiscal years, the Savings Bank must submit annual independent audit reports to the Regional Director. These reports must be in compliance with the audit rules set forth at 12 C.F.R. Section 562.4;
14. At least thirty (30) calendar days prior to opening, the Savings Bank must submit to the Regional Director for his review and approval, detailed policies and procedures (including written agent and call center training materials) for all operations and provide copies of such policies and procedures, and agreements and a resolution of its board of directors that indicates the directorate has reviewed and approved such policies and procedures;
15. For the first eighteen months after the consummation date of the proposed transaction, the Savings Bank must provide specific information to the Regional Director regarding all private label relationships and institutions from which the Savings Bank will purchase loans, prior to the purchase of any loans;
16. For the first three years after the consummation date of the proposed transaction, the Savings Bank must receive the prior written non-objection of the Regional Director for any proposed new directors or senior executive officers or any significant change in responsibilities of any senior executive officer;
17. For the first eighteen months after the consummation date of the proposed transaction, the Savings Bank must submit all vendor contracts for electronic services for the review and written non-objection of the Regional Director at least thirty (30) calendar days prior to execution;
18. The Savings Bank shall not activate its transactional website until the Regional Director grants written approval pursuant to 12 C.F.R. Part 555.

Any time period set forth herein may be extended for up to 120 calendar days, for good cause, by the Regional Director.

By order of the Director of the Office of Thrift Supervision, or his designee,
effective Nov. 8th, 2002.



Richard M. Riccobono
Deputy Director