

## OFFICE OF THRIFT SUPERVISION

### **Approval of Application to Convert to a Federal Stock Savings Bank, Holding Company Application, and Fiduciary Powers Application**

**Order No.:** 2008-23  
**Date:** July 2, 2008  
**Docket Nos.:** 18096, H-4475,  
H-4492

Reliance Trust Company, Atlanta, Georgia (Trust Company), has applied to the Office of Thrift Supervision (OTS), pursuant to 12 C.F.R. § 552.2-6, to convert from a state-chartered trust company to a federal savings bank. In addition, Reliance Financial Corporation and RFC Investment Partners, LLP, both of Atlanta, Georgia, and the persons controlling these entities (see Exhibit A) (collectively, the Applicants), have applied to OTS, pursuant to 12 U.S.C. § 1467a(e) and 12 C.F.R. § 574.3, to acquire the Trust Company. The Trust Company has applied to exercise fiduciary powers, pursuant to 12 C.F.R. Part 550.

#### **The Proposed Transaction**

The Trust Company proposes to convert directly from a state-chartered trust company to a federal savings bank. The Applicants would become savings and loan holding companies as a result of the proposed transaction. The Trust Company proposes to conduct trust activities and it proposes to establish a banking division to offer deposit and lending products to its customers, employees, directors, and shareholders; to the customers, employees, directors, and shareholders of its affiliates; and, on a limited basis, to other customers.

#### **Conversion of the Trust Company to a Federal Savings Bank**

Section 552.2-6 of OTS's regulations provides that, with OTS approval, any stock depository institution that is, or is eligible to become, a member of a Federal Home Loan Bank, may convert to a federal stock savings association, provided that the depository institution, at the time of conversion, has deposits insured by the Federal Deposit Insurance Corporation (FDIC); and the depository institution, in accomplishing the conversion, complies with all applicable statutes and regulations. The resulting federal savings association must comply within the time prescribed by OTS with the requirements of section 5(c) of the Home Owners' Loan Act (HOLA).

The proposed conversion of the Trust Company conforms to the requirements of section 552.2-6. The Trust Company is a state-chartered trust company, is eligible to become a member of the Federal Home Loan Bank of Atlanta, and has applied for its deposits to be FDIC-insured. Section 552.13(b)(4) defines "depository institution" to include a trust company. The Trust

Company does not hold any investments that would be impermissible under section 5(c) of the HOLA.

The HOLA provides that OTS may grant a federal savings association charter only: (i) to persons of good character and responsibility; (ii) if, in OTS's 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. 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.

In addition, OTS regulations provide that an applicant for a federal thrift charter must submit with its application a description of how it will meet its Community Reinvestment Act (CRA) objectives. OTS takes this description into account when considering the application and may deny the application or condition approval on CRA grounds.

With respect to the management of the Trust Company, the Trust Company's officers and directors will not change as a result of the charter conversion. OTS has considered the Trust Company's supervisory history and the materials submitted with the application. OTS has considered the background of the Applicants, and the competence, experience and integrity of their management. In considering the supervisory history of the Applicants, OTS has considered the views of the regulators that have overseen the Trust Company and the Applicants. OTS concludes that the character and responsibility of the Applicants and the Trust Company are consistent with approval.

As for the necessity for the Trust Company in the community, and undue injury to properly conducted existing local thrift and home financing institutions, the Trust Company will continue its current business activities and will offer deposit and lending products. The Trust Company's home office will be located in Atlanta, Fulton County, Georgia. Deposits in Fulton County increased from \$55.281 billion in 2006 to \$55.733 billion in 2007. The population of Fulton County is estimated to have increased from 816,006 in 2000 to 992,137 in 2007. The Trust Company estimates that it will have approximately \$127 million in deposits at the end of its third year of operations, an amount that represents less than 0.3 percent of the deposits in Fulton County as of June 2007. Based on the growth in deposits and population, OTS concludes that there is a necessity in the community for the Trust Company. Based on the small market share that the Trust Company is projected to have, OTS concludes that the change in the charter to a federal savings bank will not result in undue injury to existing institutions.

As for the Trust Company's probability of usefulness and success, based on the Trust Company's business plan, historical data regarding the Trust Company, the Trust Company's proposed capital levels, and competence of management, OTS concludes that there is a reasonable probability of the Trust Company's usefulness and success. OTS is imposing conditions 5 and 6 to help ensure that the Trust Company operates safely and soundly, pursuant

to an acceptable business plan and that changes to and from the business plan are not detrimental to the Trust Company. To help ensure that the Trust Company's probability of usefulness and success is consistent with approval, OTS is also imposing condition 9 below to assist OTS in confirming that the Trust Company is being operated properly. OTS is imposing condition 7 to help ensure that the Trust Company's management continues to have the necessary competence to contribute to the Trust Company's usefulness and success. Further, to help ensure the independence of the Trust Company's board of directors and its audit committee, in light of the proposed affiliate relationships, OTS is imposing condition 8, addressing the composition of the Trust Company's board and its audit committee.

Based on the Trust Company's plans to engage in mortgage lending and to invest in mortgage-backed securities, as well as the Trust Company's business plan and its proposed management, OTS concludes that the Trust Company's role in providing credit for housing consistent with safe and sound operations of a federal association is consistent with approval.

With respect to the CRA and OTS's CRA regulations, the Trust Company has requested that it be treated as a wholesale savings association for CRA purposes. Because the Trust Company will not hold itself out to the public as engaging in retail lending and will not engage in such lending to a significant degree and because it has proposed satisfactory community development activities, OTS approves that request. In addition, based on the Trust Company's CRA Plan, OTS concludes that the Trust Company has satisfactorily demonstrated that it will meet its CRA objectives. Based on this analysis, OTS concludes that approval is consistent with the CRA.

### **Holding Company Application**

In the proposed transaction, the Applicants will acquire control of a 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 Deposit Insurance Fund (DIF). Also, OTS must consider the impact of any acquisition on competition. 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 the managerial resources of the Applicants and the Trust Company, OTS has considered the background of the Applicants and the Trust Company, and the competence, experience and integrity of their management. OTS has considered the Applicants' and Trust Company's supervisory history and the materials submitted with the application. On the basis of

OTS's review, OTS concludes that the managerial resources of the Applicants and of the Trust Company are consistent with approval.

With regard to financial resources, OTS has reviewed the Applicants' financial position and the Trust Company's capitalization and business plan. Each of the Applicants has demonstrated adequate resources. The Trust Company will be well capitalized upon conversion and is projected to remain well capitalized. Based on the foregoing, OTS concludes that the financial resources of the Applicants and the Trust Company are consistent with approval of the holding company application.

Based on the factors considered in the above discussion regarding the managerial and financial resources of the Trust Company and the Applicants, and the discussion regarding the probability of the Trust Company's usefulness and success, OTS concludes that the future prospects of the Applicants and the Trust Company, and the insurance risk to the DIF, are consistent with approval.

The transaction will not result in any currently operating, unaffiliated depository institutions becoming affiliated. Accordingly, OTS finds no basis for objection to the transaction on anti-competitive grounds.

With respect to the Applicants' performance under the CRA, the Applicants have not been subject to the CRA. OTS received no comments objecting to the application on CRA grounds. Accordingly, OTS concludes that CRA considerations are consistent with approval.

### **Trust Powers Application**

In reviewing a trust powers application, OTS must consider: (i) the financial condition of the applicant; (ii) the capital of the applicant and whether it is sufficient under the circumstances; (iii) the applicant's overall performance; (iv) the fiduciary powers proposed to be exercised; (v) the proposed supervision of the fiduciary powers; (vi) the availability of legal counsel; (vii) the needs of the community to be served; and (viii) any other factors OTS considers proper.

With respect to the first three criteria, the Trust Company will be well capitalized, and the current operations of the Trust Company and the Applicants are profitable historically. The Trust Company's capital exceeds state law requirements. Therefore, OTS concludes that the first three criteria have been satisfied.

As for the fourth criterion, the Trust Company has conducted the trust activities under applicable state laws and regulations, and subject to the supervision of the Department of Banking and Finance of the State of Georgia. The Trust Company intends to continue to conduct the same trust activities using the same management, who possess sufficient experience in the fiduciary activities being conducted. OTS concludes that the proposed trust activities are permissible under applicable laws and regulations and are permissible trust activities for the Trust Company after the proposed charter conversion. As for the Trust Company's supervision

of the fiduciary powers, the Trust Company has operated in an acceptable manner. With respect to the availability of legal counsel, the Trust Company has access to adequate trust counsel. With respect to the needs of the community to be served, the Trust Company will continue to offer the trust services it currently offers. Accordingly, OTS concludes there is an adequate basis to approve the trust powers application.

### **Conclusion**

OTS concludes that the applications satisfy the applicable approval standards, provided that the following conditions are complied with in a manner satisfactory to the Southeast Regional Director or his designee (Regional Director). Accordingly, the applications are hereby approved, subject to the following conditions:

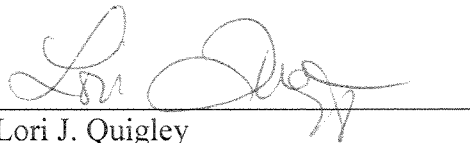
1. The Applicants and the Trust Company must receive all required regulatory approvals prior to consummation of the proposed transaction, with copies of all such approvals provided to the Regional Director;
2. The proposed transaction must be consummated within 120 calendar days from the date of this Order;
3. On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of the Applicants and the Trust Company 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 Applicants and the Trust Company, respectively, as disclosed in the applications. If additional information having a material adverse bearing on any feature of the applications is brought to the attention of the Applicants, the Trust Company, 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 Applicants and the Trust Company must, within 5 calendar days after the effective date of the proposed transaction: (a) advise the Regional Director in writing of the effective date of the proposed transaction; and (b) advise the Regional Director in writing that the transaction was consummated in accordance with all applicable laws and regulations, the applications, the representations the Applicants have made to OTS in connection with OTS's review of the applications, and this Order;
5. The Trust Company must operate within the parameters of its three-year business plan, and must submit any proposed major deviations or material changes from the plan for the prior, written non-objection of the Regional Director. The request for change must be submitted a minimum of 60 calendar days before the desired implementation date, with a copy sent to the FDIC Regional Office;

6. For three years following the Trust Company's commencement of the transaction, the Trust Company must submit to the Regional Director within 45 calendar days after the end of each calendar quarter a business plan variance report detailing the Trust Company's compliance with the business plan and explanations of any material deviations;
7. The Trust Company must receive, for one year following commencement of operations, the prior written non-objection of the Regional Director for any proposed new directors or new senior executive officers, or for any significant change in responsibilities of any senior executive officer;
8. At least 40 percent of the Trust Company's board of directors must be individuals who are not officers or employees of the Applicants or affiliates thereof, and who have not otherwise been determined by the Regional Director to lack sufficient independence. At least one member of the Trust Company's board of directors must be an individual who is not an officer, director or employee of the Applicants or any affiliate, and who is not an officer or employee of the Trust Company, and who has not otherwise been determined by the Regional Director to lack sufficient independence. At least 50 percent of the Trust Company's audit committee must be directors who are not officers or employees of the Trust Company, the Applicants or any affiliates, and who have not otherwise been determined by the Regional Director to lack sufficient independence; and
9. The Trust Company must submit independent audit reports to the Regional Director for its first three years of operations. These reports must be in compliance with the audit rules set forth at 12 C.F.R. § 562.4.

The Regional Director may, for good cause, extend any time period set forth herein for up to 120 calendar days.

By order of the Director of the Office of Thrift Supervision, or his designee, effective

July 2, 2008.



Lori J. Quigley  
Managing Director  
Examinations and Supervision - Operations

Exhibit A

**Control Persons of the Applicants**

Michael J. Flinn  
Anthony A. Guthrie  
William C. Harlow  
Lesley Maxwell Mann  
Heather A. Maxwell  
James T. Maxwell  
Kenneth J. Phelps  
Horst H. Schulze  
E. Bruce Shaw  
Ronald D. Stallings