

OFFICE OF THRIFT SUPERVISION

Approval of Permission to Organize, Holding Company, and Bank Merger Act Applications

Order No.: 2010-05
Date: January 22, 2010
Re: OTS Nos. H-2483

Beal Financial Corporation (Applicant), Plano, Texas, has applied to the Office of Thrift Supervision (OTS), pursuant to sections 5(e) and 10(e) of the Home Owners' Loan Act (HOLA), and 12 C.F.R. §§ 552.2-1 and 574.3(a) to organize and acquire a new savings association, to be named Charter Bank (Association), the main office of which will be located in Albuquerque, New Mexico. As a result of the transaction, the Association will become a wholly owned, first-tier subsidiary of the Applicant.

In addition, the Applicant has applied to OTS on behalf of the Association, under section 18(c) of the Federal Deposit Insurance Act (the Bank Merger Act, or BMA), and 12 C.F.R. § 563.22(a), for the Association to acquire deposit liabilities, certain other liabilities, and certain assets, from Charter Bank, Santa Fe, New Mexico (Charter), a federal stock savings association for which the Federal Deposit Insurance Corporation (FDIC) will be the receiver at the time of the transaction.

Background

The Applicant is a savings and loan holding company, which is wholly owned by D. Andrew Beal. The Applicant is headquartered in Plano, Texas. The Applicant has two depository institution subsidiaries: Beal Bank Nevada, a Nevada industrial bank, located in Las Vegas, Nevada and Beal Bank, a federal savings bank, located in Plano, Texas.

The Applicant proposes to form the Association as a federally chartered savings association. The Association will be a wholly owned, direct subsidiary of the Applicant. After completion of its organization, the Association will acquire the deposit liabilities, certain other liabilities, and certain assets of, Charter. Upon consummation of the proposed transactions, the Association will be well capitalized.

Permission to Organize Application

OTS may grant a federal savings association charter only: (1) to persons of good character and responsibility; (2) if, in OTS's judgment, a necessity exists for such association in the community to be served; (3) if there is a reasonable probability for the association's usefulness and success; and (4) if the association can be established without undue injury to properly conducted existing local thrift and home financing institutions.

In addition, OTS must consider whether the association will promote credit for housing consistent with the safe and sound operation of a federal savings association.

Also, 12 C.F.R. § 563e.29(b) provides that an applicant for a federal savings association charter must submit with its application a description of how it will meet its Community Reinvestment Act (CRA) objectives. OTS is required to take this description into account when considering the application and may deny or condition approval on CRA grounds.

With respect to character and responsibility, the Applicant is an OTS-regulated savings and loan holding company, and Association is a federally chartered savings association. The application and OTS's background checks have not disclosed any information regarding the management officials and controlling shareholder of the Applicant, its depository institution subsidiaries, and the Association, that would be inconsistent with approval, and indicate that the Association's proposed directors and officers and controlling shareholder possess sufficient experience in the operations of financial institutions and other business endeavors.

With respect to the necessity for the Association, and undue injury to local thrift and home financing institutions, the Association is being formed in order to succeed to most of the business operations of Charter, which already engages in deposit and lending activities. The fact that the activities in question are already being conducted in the community supports the conclusion that there is a necessity for such services. Also, other thrift and home financing institutions already compete with Charter. Accordingly, OTS concludes that there is a necessity in the community for the Association and that the formation of the Association will not cause undue injury to existing local thrift and home financing institutions.

With respect to the probability of the Association's usefulness and success, the Association will be well capitalized. OTS has reviewed the Association's draft business plan and has concluded that it is acceptable. The Association's directors and management are experienced in the areas of the Association's proposed operations. OTS is imposing condition four in order to ensure that the Association operates pursuant to an acceptable final business plan. OTS is imposing conditions five and six to help ensure that operations will comply with the business plan. OTS is imposing condition seven to help ensure that the Association is operated properly. OTS is imposing conditions eight, nine and eleven to help ensure the safe and sound operations of the Association by requiring OTS review and non-objection for certain contracts or agreements and new officers or directors, and ensuring that there is an independent board of directors for the Association. OTS concludes that the probability of the Association's usefulness and success standard is met, provided that the Association complies with the imposed conditions.

With respect to promotion of credit for housing consistent with the safe and sound operation of a federal savings association, the Association will extend credit for housing

within its market area. In addition, the Association is projected to meet its Qualified Thrift Lender requirements. As discussed above, the Association's management has sufficient experience to conduct lending appropriately. Accordingly, OTS concludes that this approval criterion has been satisfied.

With respect to the CRA and OTS's CRA regulations, the Association will continue most of the business operations of Charter, which had previously received a CRA rating of "Outstanding." The Association's proposed CRA assessment area is consistent with OTS's CRA regulations. OTS concludes that the Association has satisfactorily demonstrated how it will meet its CRA objectives.

The Association intends to adopt a charter and bylaws that substantially conform to the model charter and bylaws for a federal stock institution.

Because the Association is being formed to acquire the operations of a savings association that is in default, pursuant to 12 C.F.R. § 552.2-3, OTS concludes that the public notice and comment procedures referenced in 12 C.F.R. § 552.2-1 are not applicable to the proposed transaction.

Holding Company Application

Section 10(e)(2) of the HOLA and the Control Regulations provide that in reviewing the proposed acquisition of a savings association by a savings and loan holding company, OTS must consider the financial and managerial resources and future prospects of the company and associations involved, the effect of the acquisition on the associations, the insurance risk to the Deposit Insurance Fund (DIF), and the convenience and needs of the community to be served.¹ Consideration of the managerial resources of a company or savings association must include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or savings association.² Also, OTS must consider the impact of any acquisition on competition.³ In addition, 12 C.F.R. § 563e.29 requires that OTS take into account assessments under the CRA when considering holding company acquisitions.

OTS has reviewed the information submitted by the Applicant with respect to the Applicant's management and controlling shareholder and the proposed management of the Association, and has concluded that the existing and proposed management and controlling shareholder possess the requisite experience and integrity. OTS is imposing condition ten in order to ensure that the Applicant's managerial resources are consistent with approval. The management of Beal Bank Nevada and Beal Bank will not change as a result of the proposed transaction. OTS concludes that the managerial resources of the

¹ 12 U.S.C. § 1467a(e)(2); 12 C.F.R. § 574.7 (2009).

² Id.

³ Id.

Applicant, Beal Bank and the Association are consistent with approval, provided the Applicant complies with the condition.

With respect to financial resources, OTS concludes that the Applicant has adequate capital. The Applicant will infuse capital into the Association in order to cause the Association to be well capitalized upon consummation of the proposed transaction. The transaction will have no effect on the capital of Beal Bank Nevada or Beal Bank. Accordingly, OTS concludes that the financial resources of the Applicant, Beal Bank and the Association are consistent with approval.

With respect to future prospects and the risk to the DIF, the managerial and financial resources of the Applicant, Beal Bank and the Association are consistent with approval, and OTS has considered the Association's business plan. OTS is conditioning approval of the holding company application upon conditions four through nine, for the reasons discussed above. The conditions are intended to ensure that the future prospects of the Association are consistent with approval. Accordingly, OTS concludes that the future prospects of the Applicant, Beal Bank and the Association are consistent with approval, that the effects of the transaction on the Association and Beal Bank are consistent with approval, and that the risks to the DIF are consistent with approval.

With respect to competitive considerations, the proposed transaction involves a newly created federal savings association's acquisition of assets and liabilities from a failed savings association. In addition, the Association will operate in Albuquerque and Santa Fe, New Mexico, and the Applicant's other depository institution subsidiaries operate outside of New Mexico. Accordingly, OTS concludes that the proposed acquisition will have no significant effect on competition.

With respect to the convenience and needs of the community, the proposed transaction will help ensure that the customers of Charter will continue to receive the services that Charter has provided. Accordingly, we conclude that convenience and needs considerations are consistent with approval.

With respect to the CRA, OTS takes into account an applicant's record of performance under the CRA for a holding company application under § 10(e) of the HOLA. The Applicant's savings banking subsidiaries have "Satisfactory" CRA ratings. Further, the application indicates that the Association's CRA program will be patterned after that of Charter, which received an "Outstanding" CRA rating in its most recent examination. Accordingly, OTS concludes that this approval criterion has been satisfied.

Because the proposed transaction is being undertaken and approved for supervisory reasons, pursuant to 12 C.F.R. § 574.6(g), OTS hereby waives the applicability of the public notice and comment procedures of 12 C.F.R. §§ 574.6(d) and 574.6(e).

Bank Merger Act Application

The Applicant seeks OTS approval for the Association's acquisition of the deposit liabilities, certain other liabilities, and certain assets of Charter, pursuant to the BMA and 12 C.F.R. § 563.22(a). Because Charter will be in receivership at the time of the proposed transaction, there are sufficient grounds for OTS to waive the publication requirement set forth in the BMA and 12 C.F.R. § 563.22(e), and any waiting period for consummation of the transaction, and OTS hereby waives these requirements.

In evaluating a BMA application, OTS considers the effect on the capital of the resulting association; the financial and managerial resources of the constituent institutions; the future prospects of the constituent institutions; the convenience and needs of the community; conformance of the transaction to applicable law, regulation, and supervisory policy; and factors relating to the fairness of and disclosure concerning the transaction. In addition, in evaluating a BMA application, OTS considers the effect of the proposed transaction on competition, and the effectiveness of the depository institutions in combating money-laundering activities. OTS also considers the constituent savings associations' record of performance under the CRA.

As for capital, the Association will be well capitalized after the transaction. Accordingly, OTS concludes that this approval criterion has been satisfied.

As for managerial resources, for the reasons discussed above, OTS concludes that the managerial resources of the resulting savings association, the Association, are consistent with approval.

As for financial resources, OTS has concluded that the Applicant has adequate capital. The Applicant will infuse capital into the Association in order to cause the Association to be well capitalized upon consummation of the proposed transaction. The Association is projected to be well capitalized for the term of its business plan. Accordingly, OTS concludes that the financial resources of the Association are consistent with approval.

As for future prospects, OTS has considered the managerial and financial resources of the Association, as well as its business plan, and has concluded that future prospects considerations are consistent with approval, subject to imposition of the conditions discussed above.

As for convenience and needs of the community, the proposed transaction will help ensure that the customers of Charter continue to receive the services that Charter has provided. Accordingly, OTS concludes that convenience and needs considerations are consistent with approval of the proposed transaction.

As for the CRA, Charter had received an "Outstanding" CRA rating. The Association, at the time of the transaction, will be newly organized and have no CRA

history. Based on the foregoing, OTS concludes that approval of the proposed transaction is consistent with the CRA.

As for conformance to law, regulation and supervisory policy, OTS's review of the applications has not indicated any violation of law or regulations, or non-compliance with supervisory policies, in connection with the proposed transaction. Based on the foregoing, OTS concludes that approval of the proposed transaction is not objectionable based on conformity of the proposed transaction to applicable law, regulations, and supervisory policies.

As for compliance with anti-money laundering statutes and regulations, in August 2009, OTS conducted an examination of Charter, and found its effectiveness in combating money laundering to be satisfactory. It is our understanding that the Association will continue to follow the same policies and procedures for combating money laundering as had Charter. Moreover, nothing has come to our attention that indicates that Charter's effectiveness in combating money laundering is less than satisfactory. Accordingly, anti-money laundering considerations are consistent with approval.

As for factors regarding equitable treatment and disclosure, employment contracts, and advisory boards, OTS's review of the applications provided no evidence that the proposed transaction would not be equitable to all concerned. On the basis of the foregoing, OTS concludes that approval of the proposed transaction is not objectionable based on equitable treatment, disclosure, or compensation issues.

As for the competitive effects of the proposed transaction, the proposed transaction involves a newly created federal savings association's acquisition of assets and liabilities from a failed savings association. Moreover, the operations of the Applicant's other banking subsidiaries are concentrated outside of New Mexico, where Charter's operations are located. Based on the foregoing, OTS concludes that the competitive considerations are consistent with approval.

Conclusion

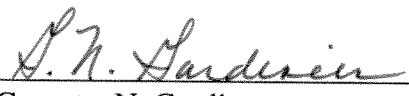
Based on the foregoing analysis and upon the representations and commitments provided by the Applicant during the application process, OTS concludes that the permission to organize application, holding company application, and BMA application meet the applicable approval criteria. Accordingly, the applications are hereby approved, subject to the following conditions:

1. The proposed transaction must be consummated within five calendar days from the date of this Order, and the Applicant must obtain all required regulatory approvals prior to consummation;

2. Prior to the consummation of the proposed transaction, the chief financial officers of the Applicant must certify in writing to the Western Regional Director or his designee (Regional Director) that no material adverse changes have occurred with respect to the financial condition or operation of the Applicant, 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 Applicant, 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;
3. The Applicant must, within 5 calendar days after the effective date of the proposed transaction: (a) advise the Regional Director in writing that the transaction was consummated in accordance with all applicable laws and regulations, the applications, and this Order; and (b) provide a reconciliation of the Association's capital to the Regional Director;
4. The Association must file with the Regional Director, with a copy sent to the FDIC Regional Office, a comprehensive three-year business plan, including a CRA plan, that supports the most recent pro forma financial data submitted with the applications within 60 calendar days after the consummation of the proposed transaction, and obtain the prior written non-objection of the Regional Director for that plan prior to its implementation;
5. The Association must operate within the parameters of the comprehensive three-year business plan required under condition 4. The Association must submit any proposed major deviations or material changes from the plan (including those initiated by the Applicant) for the prior, written non-objection of the Regional Director. The request for change must be submitted no later than 60 calendar days prior to the desired implementation date with a copy sent to the FDIC Regional Office. Within the first three years of the business plan, the Regional Director may, in his sole discretion, extend the business plan requirement for an additional two years beyond the initial three year requirement;
6. For three years following commencement of operations, the Association must submit to the Regional Director within 45 calendar days after the end of each calendar quarter, a business plan variance report detailing the Association's compliance with the business plan and an explanation of any material deviations. Additionally, to the extent that, within the first three years of the business plan, the Regional Director has extended the business plan requirement, then the business plan variance report requirement will be extended similarly;

7. The Association must submit independent audit reports to the Regional Director for three years after the date of consummation of the transaction. These reports must be in compliance with the audit rules set forth at 12 C.F.R. § 562.4;
8. For two years following consummation of the transaction, any contracts or agreements pertaining to transactions with affiliates, affiliated persons or related interests not yet submitted to OTS for review, or any material changes to previously submitted contracts or agreements, must be provided to the Regional Director, and obtain his written non-objection;
9. The majority of the Association's board of directors must be composed of individuals who are not officers or employees of the Association, the Applicant or their affiliates, or directors of the Applicant or its affiliates, and who have not been otherwise determined by the Regional Director to lack sufficient independence. Within 60 calendar days of the consummation of the transaction, the Association must appoint the independent directors, subject to the review and written non-objection of the Regional Director;
10. Within 60 calendar days of the consummation of the transaction, all directors and senior executive officers of the Association must be identified and their service subject to the review and written non-objection of the Regional Director; and
11. For two years following consummation of the transaction of operations, the Association must receive 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.

By order of the Acting Director of the Office of Thrift Supervision, or his designee, effective JANUARY 22, 2010.



Grovetta N. Gardineer
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