

## OFFICE OF THRIFT SUPERVISION

### Approval of an Application by a State-Chartered Credit Union to Convert to a Federally Chartered Mutual Savings Bank

**Order No.:** 2005-15  
**Date:** May 13, 2005  
**Re:** OTS No. 17993

Community Credit Union, Plano, Texas (Credit Union), a Texas-chartered credit union, seeks approval of the Office of Thrift Supervision (OTS) pursuant to 12 C.F.R. §§ 543.8 and 543.9 to convert to a federal mutual savings bank, Community Mutual, Plano, Texas (Savings Bank).

#### **The Proposed Transaction**

In the proposed transaction, the Credit Union proposes to convert directly from a Texas-chartered credit union to a Savings Association Insurance Fund (SAIF)-insured, federally chartered mutual savings bank. The Credit Union's members' interests in the newly converted savings bank would be identical to their interests in the Credit Union.

The Credit Union has a deposit with the National Credit Union Share Insurance Fund (NCUSIF) and accounts and a membership in the Southwest Federal Corporate Credit Union (Southwest). The Credit Union represents that it will terminate these investments as soon as practicable.

The Credit Union has a wholly owned subsidiary, Community Financial Services, Inc. (CFS). The Credit Union also owns a 75 percent interest in Community Title LLC (Community Title). Before commencing operation as a federal association, the Credit Union will contribute its interest in Community Title to CFS, causing Community Title to become a second-tier subsidiary. The Credit Union has requested approval to hold CFS and Community Title as first- and second-tier service corporations.

#### **Conversion Application**

The proposed conversion of the Credit Union to a federally chartered mutual savings bank requires OTS approval under 12 C.F.R. §§ 543.8 and 543.9. Section 543.8 allows a depository institution, as defined in 12 C.F.R. § 552.13, that is in mutual form, to convert into a federal mutual savings bank, provided that: (i) the depository institution, upon conversion, will have its deposits insured by the Federal Deposit Insurance Corporation (FDIC); (ii) the depository institution, in accomplishing the conversion, complies with all applicable state and federal statutes and regulations, and OTS policies, and obtains all necessary regulatory and member approvals; and (iii) the resulting federal

mutual association conforms, within the time prescribed by OTS, to the requirements of § 5(c) of the Home Owners' Loan Act (HOLA).

The Credit Union is a "depository institution" within the meaning of § 552.13. On April 25, 2005, the FDIC approved SAIF insurance of accounts for the Savings Bank. The non-disapproval by the National Credit Union Administration, which is required before the proposed transaction can be consummated, was received on March 31, 2005. The State of Texas, Credit Union Department, approved the proposed conversion on February 1, 2005. The Credit Union's members are scheduled to vote on the conversion at a June 21, 2005, meeting.

With regard to permissible investments, OTS is imposing a condition requiring the Savings Bank, as the successor to the Credit Union, to liquidate the Credit Union's deposit with the NCUSIF, and its investments in Southwest as soon as practicable, but no later than three years after consummation of the transaction.

The Credit Union has requested that the Savings Bank be allowed to exceed the limitations on consumer loans set forth in section 5(c)(2)(D) of the HOLA, and OTS regulations thereunder, for three years. Under 12 C.F.R. § 543.8(a)(3), OTS has allowed institutions converting to a federal charter pursuant to section 543.8 to exceed certain of the section 5(c) limits for up to three years, with the potential for a one-year extension. This phase-in period enables a depository institution that is becoming subject to the HOLA asset limitations to restructure its asset composition in a safe and sound manner, without being subject to undue pressure to divest non-conforming assets or acquire conforming assets.

Pursuant to 12 C.F.R. § 543.8(a)(3), OTS is granting the Savings Bank's request for a three-year phase-in period regarding the investment limits of section 5(c)(2)(D) of the HOLA. OTS is imposing a condition requiring that the Savings Bank comply with the asset investment limitations contained within Section 5(c)(2)(D) of the HOLA at the earliest possible date without material loss to the Savings Bank, but no later than three years from the date of the transaction, unless such period is extended for one year upon a determination by OTS that such extension would be consistent with the purposes of the HOLA.

Accordingly, OTS concludes that the requirements under section 543.8 have been satisfied, subject to the imposition of the above-described conditions.

Section 543.9 of OTS' regulations adopts the approval standards of § 5(e) of the HOLA and § 543.2(g)(1). 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' 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 this

statute set forth the same standards, and, in addition, require OTS to consider whether the association will promote credit for housing consistent with the safe and sound operation of a federal savings association.

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

Based upon review of the application and other materials, as well as the fact that the Credit Union's management has been well rated, OTS concludes that the Credit Union's management's character and responsibility are consistent with approval.

With respect to the probability of usefulness and success, the Savings Bank, as the successor to the Credit Union's business, has demonstrated a reasonable probability of success after the transaction, provided the Savings Bank complies with the conditions set forth below. The conditions require, among other things, that the Savings Bank: (i) receive the prior written non-objection of OTS for any proposed new directors or officers during the first two years of its operation; and (ii) submit to OTS an amended employment agreement for the Savings Bank's President for OTS review and nonobjection before executing such agreement. These conditions will help to ensure that the Savings Bank has sound management during the transition to a federal charter, and that the contract with the Savings Bank complies with applicable regulations. OTS has not objected to the Savings Bank's business plan. Accordingly, OTS concludes that this approval criterion has been satisfied.

OTS concludes that there is a necessity for the institution in the communities it serves, based on the Credit Union's existing operations. In addition, OTS concludes that the conversion of the Credit Union to a federal mutual savings bank will not cause undue injury to local thrift and home financing institutions, in light of the Credit Union's existing operations.

As for the provision of credit for housing, residential mortgage lending currently represents a substantial portion of the Credit Union's lending activities, and the business plan indicates that real estate lending will continue to grow after conversion to a federal savings bank. Based on the current and projected level of mortgage lending and the Credit Union's managerial record, OTS concludes that the Savings Bank will provide credit for housing in a safe and sound manner. Accordingly, OTS concludes that this approval criterion has been satisfied.

Based on the foregoing, OTS concludes that the requirements under 12 C.F.R. § 543.9 have been satisfied.

The Credit Union has provided an acceptable plan for compliance with the CRA. Accordingly, OTS concludes that approval of the application is consistent with the CRA.

### **Qualified Thrift Lender Test**

The Savings Bank will not comply with the Qualified Thrift Lender (QTL) test upon its conversion, and it has requested that it be allowed to phase in compliance with the QTL test over three years. Section 10(m)(2) of the HOLA provides that OTS may grant exceptions from the minimum requirement upon a determination that "extraordinary circumstances" exist. OTS has granted QTL waivers when the circumstances necessitating the waiver were not wholly within the control of the institution, and where compliance with the QTL test would have given rise to supervisory issues. In this case, the Savings Bank will need to conform its investments to those permitted for federal savings associations. Such efforts will require considerable attention of senior management. Thus, OTS believes that a three-year exception is prudent to permit a gradual increase in qualified investments, and hereby grants the requested waiver.

### **Service Corporation Approval**

The Savings Bank has requested OTS approval to operate CFS as a first-tier service corporation, and to operate Community Title, which will be CFS' subsidiary, as a second-tier service corporation. CFS and Community Title engage exclusively in activities that are preapproved under section 559.4 of the OTS Subordinate Organization regulations. The Savings Bank's aggregate investment in these service corporations will be well within the limits of service corporation investments applicable to the Savings Bank under section 559.5. CFS, a Texas-chartered corporation, will be a wholly owned subsidiary of the Savings Bank, and Community Title, which will be a 75 percent-owned subsidiary of CFS, is organized as a Texas-limited liability company.<sup>1</sup> CFS and Community Title satisfy the organizational requirements of sections 559.3(d)(2) and (f)(2), respectively. Accordingly, OTS concludes that operation of the proposed service corporations is consistent with the Subordinate Organization regulations.

For the reasons set forth above, OTS finds that the application satisfies the applicable approval standards, provided that the following conditions are complied with in a manner satisfactory to the Midwest Regional Director, or his designee (Regional Director). Accordingly, the application is hereby approved, subject to the following conditions:

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<sup>1</sup> In interpreting section 5(c)(4)(B) of the HOLA, which authorizes service corporations "[i]nvestments in the capital stock, obligations, or other securities of any corporations . . .," OTS has followed a policy of not elevating form over substance, and has taken the position that the HOLA service corporation investment authority should be read to permit any organizational form that provides the same basic protection as the corporate form of organization, including limited liability. Thus, we have concluded that investments in state-chartered limited liability companies are permissible. See OTS Order No. 2001-66 (October 29, 2001)


1. The Savings Bank and the Credit Union must receive all required 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 no later than 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 officer of the Credit Union must certify in writing to the Regional Director that no material adverse events or material adverse changes have occurred with respect to the financial condition or operation of the Credit Union as disclosed in the application. If additional information having a material adverse bearing on any feature of the application is brought to the attention of the Credit Union or OTS since the date of the financial statements submitted with the application, the transaction must not be consummated unless the information is presented to the Regional Director, and the Regional Director provides written non-objection to the consummation of the transaction;
4. The Savings Bank must advise the Regional Director in writing within 5 calendar days after the effective date of the proposed transaction: (a) of the effective date of the proposed transaction; and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the application and this Order;
5. For two years following the date it commences operation as a federal savings association, 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 changes in responsibilities of any senior executive officer;
6. The Savings Bank must operate within the parameters of its three year business plan, and 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 no later than 60 calendar days prior to the desired implementation date with a copy sent to the FDIC Regional Office;
7. For three years following the date it commences operation as a federal savings association, the Savings Bank must submit to the Regional Director within 30 calendar days after the end of each calendar quarter, a business plan variance report detailing the Savings Bank's compliance with the business plan and an explanation of any deviations;
8. The Savings Bank must withdraw the deposit with the NCUSIF and all capital accounts with Southwest as soon as possible but no later than three years after consummation of the transaction. The Savings Bank must submit satisfactory evidence to the Regional Director upon the withdrawal of these accounts;

9. Subsequent to the Credit Union's conversion to a federal savings association charter, an amended employment agreement for the Savings Bank's president must be submitted to the Regional Director for his review and non-objection before the institution enters into a new agreement, or extends the existing agreement, with that officer;
10. The Savings Bank must comply with the asset investment limitations contained within Section 5(c)(2)(D) of the HOLA at the earliest possible date without material loss to the Savings Bank, but no later than three years from the date of the conversion, unless such period is extended for up to one year upon a determination by the Regional Director that such extension would be consistent with the purposes of the HOLA; and
11. The Savings Bank must achieve QTL compliance no later than three years following the date of the conversion.

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

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

May 13, 2005

  
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Scott M. Albinson  
Managing Director  
Office of Examinations, Supervision  
and Consumer Protection