

OFFICE OF THRIFT SUPERVISION

Approval of Holding Company Applications, Bank Merger Act Application, And Related Filings

Order No.: 2002-23

Date: June 10, 2002

Docket Nos.: H-2805/08266

H-2821/06998

MSB Capital Corporation, Columbus, Ohio (Holding Company), United Midwest Savings Bank, DeGraff, Ohio (Savings Bank), and Ellen H. Hardymon, John C. Havens, Thomas F. Havens, and Suzanne H. Nick (Control Group) (collectively, Applicants) have applied pursuant to 12 U.S.C. § 1467a(e) and 12 C.F.R. § 574.3, for approval of the Office of Thrift Supervision (OTS) to acquire Pendleton Federal Savings Bank, Falmouth, Kentucky (Association). In addition, the Savings Bank and the Association have applied pursuant to 12 U.S.C. § 1828(c) and 12 C.F.R. §§ 552.13 and 563.22(a), for OTS approval of the merger of the Association into the Savings Bank. The Association has applied to OTS to make a capital distribution under the OTS Capital Distribution Regulations. Also, the Association's existing holding companies, Third Federal Savings and Loan Association of Cleveland, MHC (MHC) and TFS Financial Corporation, Cleveland, Ohio (Mid-Tier), seek OTS approval to sell the Association's stock, as required under Condition 5 of OTS Order No. 2000-14 (December 1, 2000) (OTS Order). (The foregoing are collectively referred to as the Applications.)

The Applications

The Control Group controls the Holding Company, which owns all of the common stock of the Savings Bank. The Applicants propose to purchase all of the common stock of the Association, a SAIF-insured federally chartered stock savings bank, from the Mid-Tier, which is a wholly owned subsidiary of the MHC. Immediately following the acquisition, the Association will merge into the Savings Bank, a SAIF-insured Ohio chartered stock savings and loan association, with the Savings Bank surviving. The Association will make a capital distribution to the Mid-Tier prior to consummation of the proposed transaction.

Holding Company and Bank Merger Act Applications

The Applicants' acquisition of the Association and the merger of the Association into the Savings Bank require OTS approval under section 10(e) of the Home Owners' Loan Act (HOLA), and the OTS regulations thereunder (Control Regulations), and under section 18(c) of the Federal Deposit Insurance Act (FDIA) (Bank Merger Act or BMA), and 12 C.F.R. §§ 552.13 and 563.22(a).

Section 10(e) of the HOLA and the OTS Acquisition of Control Regulations require that OTS consider, with respect to the proposed transactions, the financial and managerial resources and future prospects of the Applicants, the Savings Bank, the Association and Crown Bank, FSB, Casselberry, Florida (Crown Bank) (in which the Control Group holds a controlling interest), the effect of the acquisition on the three savings associations, the insurance risk to the Savings Association Insurance Fund (SAIF), and the convenience and needs of the community to be served. OTS also must consider the impact of the acquisition on competition. Further, 12 C.F.R. § 563e.29(a) requires that the OTS take into account assessments under the Community Reinvestment Act (CRA) when approving holding company acquisitions.

The Bank Merger Act and the OTS regulations thereunder impose substantially similar standards of approval.¹ In addition, OTS must consider whether the transaction is equitable to all concerned, whether full disclosure has been provided regarding written or oral agreements through which any person will receive anything of value in connection with the transaction, and whether compensation to officers, directors, and controlling persons of the disappearing association is reasonable.² The CRA requires, in the context of the merger transaction, that the OTS consider the CRA performance of the institutions.³ Also, the USA Patriot Act (Act) amended the Bank Merger Act, adding 12 U.S.C. § 1828(c)(11), which requires the responsible agency to take into consideration, in its evaluation of the BMA application, the effectiveness of any insured depository institution in combating money laundering activities.

As for managerial resources, OTS, in its role as the regulator of the Holding Company, the Savings Bank and Crown Bank, is familiar with their managerial resources. Upon consummation of the acquisition of the Association, the board of directors and the executive officers of the Holding Company and the Savings Bank will consist of the present directors and executive officers of the Holding Company and the Savings Bank. Based on its experience with the managerial resources of the Savings Bank and the Holding Company (including the Control Group), and Crown Bank, OTS concludes that the managerial resources of the Holding Company and the relevant savings associations are consistent with approval.

As for financial resources, OTS is familiar with the Savings Bank's financial resources. As of March 31, 2002, the Savings Bank's core and tangible capital ratios were 10.8% and the Savings Bank's risk-based capital ratio was 19.6%. Upon consummation of the transaction, the Savings Bank will remain "well capitalized" pursuant to the OTS Prompt Corrective Action regulation. OTS also has considered the financial resources of the Holding Company. Further, OTS has considered the financial resources of Crown Bank, which is not directly involved in the transaction. Based on the foregoing, OTS concludes that the financial resources of the Holding Company and the relevant savings associations are consistent with approval.

¹ 12 U.S.C. § 1828(c)(5)(B); 12 C.F.R. § 563.22(d) (2002).

² 12 C.F.R. § 563.22(d)(1)(vi) (2002).

³ See 12 C.F.R. § 563e.29(a)(2002).

Based on its consideration of the managerial and financial resources of the Applicants and the relevant savings associations, OTS concludes that the future prospects of the Applicants and the savings associations, and the effect of the transaction on the SAIF are consistent with approval, provided that OTS imposes the conditions set forth below.

As for the competitive impact of the transaction, there is no overlap in market areas of the Savings Bank, the Association or Crown Bank. The Department of Justice's competitive factors report has not objected to the transaction. Accordingly, OTS concludes that the transaction is not objectionable on competitive grounds.

As for CRA, the Savings Bank's, the Association's and Crown Bank's most recent CRA ratings are "Satisfactory." No comments objecting to the Applications have been filed. Accordingly, OTS concludes that approval of the transaction is consistent with the CRA.

As for convenience and needs, the Savings Bank will be assuming the operations of the Association's existing two offices and providing continuing services to the offices' customers and communities. The Applicants anticipate consolidating the Association's home office into the branch office, the impact of which is negligible because the offices are located within one mile of each other. Accordingly, OTS concludes that approval of the transaction is not objectionable based on convenience and needs.

As for equitable treatment, full disclosure, compensation of officers and directors, and advisory boards, there will be no material alteration of the interests of savings account holders and creditors of the Association; full disclosure has been provided regarding written or oral agreements or understandings through which any person or company will receive anything of value in connection with the proposed transaction; and compensation to directors and officers, and proposed advisory directors is consistent with the regulations. Accordingly, OTS concludes that approval of the transaction is not objectionable based on equitable treatment, full disclosure, compensation of officers and directors, and advisory boards.

As for compliance with money laundering statutes and regulations, OTS examines savings associations for compliance with such statutes and regulations, and has not noted material concerns in this area.

Capital Distribution Notice

The Association seeks OTS approval to make a capital distribution to the Mid-Tier prior to selling the Association. The OTS Capital Distribution Regulations require OTS to consider a savings association's capital position upon completion of the capital distribution, the effects of the capital distribution on the safety and soundness of the savings association, and the conformity of the capital distribution with applicable statutes, regulations, and other limitations. Based on the Association's capital position after the transaction, relevant safety and soundness considerations, and the fact that the

distribution does not violate any relevant statute, regulations, or other provision, OTS concludes that the Association's proposed capital distribution is consistent with approval.

Disposition of the Association's Stock by the MHC and the Mid-Tier

OTS approved the MHC's and the Mid-Tier's acquisition of the Association in OTS Order No. 2000-14 (December 1, 2000). Condition 5 of the OTS Order requires prior OTS written approval of, among other things, any disposition of the Association's stock by the MHC or the Mid-Tier. The purpose of the condition was to address concerns that mutual holding company structures present regarding potential transfers of resources from mutual holding companies or their subsidiaries to insiders. The proposed transaction does not raise the concerns that prompted OTS to impose Condition 5. The proposed transaction does not involve the acquisition of any of the Association's shares by insiders of the MHC or the Mid-Tier, and the Association is currently a wholly owned subsidiary of the Mid-Tier.

Conclusions

Based on the foregoing analysis, OTS concludes that each of the Applications meets the applicable approval criteria. Accordingly, the Applications are hereby approved, provided that the following conditions are complied with in a manner satisfactory to the Northeast Regional Director, or his designee (Regional Director):

1. The Holding Company, the Savings Bank, the MHC, the Mid-Tier and the Association must receive all required regulatory and shareholder approvals for the proposed transaction and submit copies of such approvals to the Regional Director prior to the consummation of the proposed transaction;
2. The proposed transaction must be consummated no earlier than 15 calendar days and no later than 120 days from the date of this Order;
3. On the business day prior to the date of consummation of the proposed transactions, the chief financial officers of the Holding Company, the Savings Bank, and the Association 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 operations of their respective entities, since the date of the financial statements submitted with the Applications. If additional information having a material adverse bearing on any feature of the Applications is brought to the attention of the Holding Company, the Savings Bank, the Association 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 Holding Company and the Savings Bank must advise the Regional Director in writing within five calendar days after the effective date of the proposed

transaction (a) of the effective date of the transaction and (b) that the transaction was consummated in accordance with all applicable laws, regulations, the Applications and this Order;

5. No later than 30 days after the effective date of the transaction, the Savings Bank shall provide notice to each accountholder whose withdrawable accounts would increase above \$100,000 as a result of the transaction, or whose uninsured balance would increase as a result of the transaction, of the effect of the transaction on their insurance coverage, and provide a copy of the notice to the Regional Director;
6. Prior to the consummation of the proposed transaction, the Savings Bank must submit to the Regional Director a certified copy of the resolutions adopted in response to the items for corrective action appearing in the February 19, 2002, Report of Examination (Resolutions). Such Resolutions should be in substantially the same form as the draft resolutions previously provided to the Regional Director for review; and
7. Within 90 calendar days after the adoption of the Resolutions, the Savings Bank must submit to the Regional Director for his review and nonobjection an updated business plan that reflects all material changes made as a result of the February 19, 2002 examination.

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 June 10, 2002.



Scott M. Albinson
Managing Director
Office of Supervision