

## OFFICE OF THRIFT SUPERVISION

### Approval of Holding Company Application and Election Under § 10(l) of the Home Owners' Loan Act

**Order No.:** 2002-28  
**Date:** July 15, 2002  
**Docket Nos.:** H-3843 and H-3844

Pacific Mutual Holding Company (Holding Company) and Pacific LifeCorp (Subsidiary Holding Company), Newport Beach, California (jointly, the Holding Companies), have filed an application for College Savings Bank, Princeton, New Jersey (Savings Bank), to be deemed a "savings association" for purposes of § 10 of the Home Owners' Loan Act (HOLA), pursuant to § 10(l) of the HOLA. In addition, the Holding Companies seek the approval of the Office of Thrift Supervision (OTS) to acquire the Savings Bank, under § 10(e) of the HOLA, 12 U.S.C. § 1467a(e), and 12 C.F.R. § 574.3. The Savings Bank is a BIF-insured, New Jersey state-chartered stock savings bank. (Collectively, the § 10(l) application and the holding company application are referred to herein as the Applications.)

#### **The Applications**

The Subsidiary Holding Company, the Savings Bank, and Mr. Peter A. Roberts, the owner of 95.6 percent of the Savings Bank's outstanding common stock, have entered into an Agreement and Plan of Reorganization (Merger Agreement), which provides for the acquisition by the Holding Companies of the Savings Bank, pursuant to a Plan of Merger. The proposed transaction will be structured through the chartering of an interim New Jersey state-chartered savings bank subsidiary (Interim) of the Subsidiary Holding Company, which will merge into the Savings Bank. As a result, the Savings Bank will become a wholly-owned direct subsidiary of the Subsidiary Holding Company.

#### **The Election By The State Savings Bank to be Treated as a Savings Association**

Section 10(l) of the HOLA<sup>1</sup> provides, in pertinent part, that upon application, a savings bank, as defined in section 3(g) of the FDIA,<sup>2</sup> shall be deemed to be a savings association for purposes of section 10 of the HOLA, if the OTS determines that the savings bank is a qualified thrift lender (QTL), as defined in section 10(m) of the HOLA.<sup>3</sup> The Applications indicate that: the Savings Bank will remain a BIF-insured,

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<sup>1</sup> 12 U.S.C. § 1467a(1).

<sup>2</sup> 12 U.S.C. § 1813(g).

<sup>3</sup> 12 U.S.C. § 1467a(m).

New Jersey state-chartered stock savings bank; the Savings Bank's percentage of qualified thrift investments to portfolio assets is above 65 percent and satisfies the requirements for the QTL test; and the Savings Bank will continue to satisfy the QTL requirements following consummation of the proposed transaction. Accordingly, OTS has concluded that the § 10(l) application satisfies the requirements for approval.

### **Holding Company Application**

In the proposed transaction, the Holding Companies would 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 the 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 the 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.<sup>4</sup> 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.<sup>5</sup> Also, the OTS must consider the impact of any acquisition on competition.<sup>6</sup> Further, 12 C.F.R. § 563e.29(a) requires that the 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, experience, and regulatory and supervisory history of the Savings Bank's current chief executive officer and chief financial officer, the Savings Bank's proposed board of directors, and the senior executive officers and directors of the Holding Companies. OTS concludes the managerial resources of the Savings Bank and the Holding Companies are consistent with approval.

With respect to financial resources, OTS has considered the financial condition and operations of the Savings Bank and the Holding Companies; the financial statements for the Savings Bank and the Holding Companies; the business plan of the Savings Bank; the current capital levels and earnings of the Savings Bank and the Holding Companies; and the financial strength of the Holding Companies. OTS concludes that the financial resources of the Savings Bank and the Holding Companies are consistent with approval.

With respect to future prospects, OTS has considered the financial and managerial resources of the Savings Bank and the Holding Companies; financial statements for the Savings Bank and the Holding Companies; the business plan, pro forma financial

<sup>4</sup> 12 U.S.C. § 1467a(e)(1) (B). See also 12 C.F.R. § 574.7(c) (2002).

<sup>5</sup> 12 U.S.C. § 1467a(e)(1) (B).

<sup>6</sup> 12 U.S.C. § 1467a(e)(2) and 12 C.F.R. § 574.7(c)(2) (2002).

statements that project that the Savings Bank will meet all of its capital requirements and will be "well-capitalized" under the FDIC's prompt corrective action standards; the financial strength of the Holding Companies; the supervisory history of the Savings Bank as an FDIC- and state-regulated savings bank; the supervisory history of the Holding Companies as holding companies for a state regulated insurance company and regulated securities affiliates; and certain approval conditions set forth below, which are intended to ensure that the future prospects of the Holding Companies and the Savings Bank are consistent with approval. OTS concludes that the future prospects of the Savings Bank and the Holding Companies and any insurance risk to the BIF or SAIF are consistent with approval, provided that the Savings Bank and the Holding Companies comply with the relevant conditions.

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, at the most recent CRA examination, the FDIC assigned the Savings Bank a CRA rating of Satisfactory. The Holding Companies 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 Holding Companies is consistent with the CRA and with the convenience and needs standard.

### **Conclusions**

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

1. The Holding Companies and the Savings Bank must receive all required regulatory approvals and shareholder 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 Holding Companies 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 Holding Companies, the Savings Bank, or OTS since the date of the financial statements submitted with the applications, the transaction must not be consummated unless the

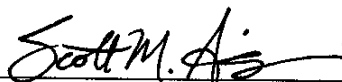
information is presented to the Regional Director, and the Regional Director provides written non-objection to consummation of the transaction;

4. The Holding Companies 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 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. For the three year period following consummation of the transaction, the Holding Companies 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 Holding Companies), and in particular, those pertaining to cross-marketing by the Savings Bank and its affiliates, to the Regional Director a minimum of 60 calendar days before the proposed change is implemented with a copy sent to the FDIC Regional Office;
6. At least 40 percent of the Savings Bank's board of directors must be individuals who are not officers or employees of the Holding Companies or affiliates thereof and who have not otherwise been determined by the Regional Director to lack sufficient independence. 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 Holding Companies or any affiliate 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 the Savings Bank's audit, investment and any trust committees must be directors who are not officers or employees of the Savings Bank, the Holding Companies or any 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 director(s), each director must receive the prior written approval of the Regional Director. In addition, prior to consummating the proposed transaction, the Savings Bank must submit evidence to the Regional Director that its board and board committees comply with all applicable OTS guidelines and regulations;
7. 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));
8. 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;

9. The Holding Companies, their 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;
10. 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 provided to the Regional Director at least 30 calendar days prior to execution and must receive his written non-objection prior to any implementation; and
11. For the Holding Companies' officers and directors who filed background information as part of the application, their permanent service is subject to completion of the OTS background investigation without disclosure of any adverse information that is inconsistent with this approval pursuant to 12 U.S.C. § 1467a(e)(2) and 12 C.F.R. § 574.7(c).

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 July 15, 2002.



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Scott M. Albinson  
Managing Director  
Office of Supervision