

OFFICE OF THRIFT SUPERVISION

Approval of Conversion of a State Savings Association to a Federal Savings Association, Holding Company Application, And Notice of Mutual Holding Company Reorganization

Order No.: 2002-41
Date: September 16, 2002
Docket Nos.: H-3869, H-3870, 5991

Territorial Savings and Loan Association, Honolulu, Hawaii (Savings Association), has applied, pursuant to Section 5(i) of the Home Owners' Loan Act (HOLA), and 12 C.F.R. § 543.8, to convert from a state chartered mutual savings association to a federally chartered mutual savings association (Charter Conversion). In addition, the Savings Association has filed notice (Notice) with the Office of Thrift Supervision (OTS) of its intent to reorganize into a federally chartered mutual holding company to be known as Territorial Mutual Holding Company (Mutual Holding Company), pursuant to Section 10(o) of the HOLA, and 12 C.F.R. § 575.3. Also, Territorial Savings Group, Inc. (Stock Holding Company) seeks OTS approval to acquire the Savings Association (Application), pursuant to Sections 10(e) and 10(o) of HOLA, and 12 C.F.R. §§ 574.3 and 575.14. The Notice and the Application together seek OTS approval of the Savings Association's reorganization into a mutual holding company structure, along with all of the constituent elements of such a reorganization.

The Proposed Transaction

The Savings Association proposes to convert directly from a Hawaii chartered savings association to a federal savings association. Immediately after the proposed Charter Conversion, the Savings Association would reorganize into a three-tier mutual holding company structure in a multi-step transaction, as described in the Notice. Upon completion of the reorganization, the Savings Association will be a wholly owned subsidiary of the Stock Holding Company, and the Stock Holding Company will be a wholly owned Subsidiary of the Mutual Holding Company.

The Charter Conversion

With respect to the legal authority for the Savings Association to engage in the Charter Conversion, 12 C.F.R. § 543.8 provides that, subject to OTS approval, any mutual depository institution may convert to a federal mutual charter, provided that upon conversion: (i) the institution's deposits will be insured by the FDIC; (ii) the conversion complies with all applicable state and federal statutes and regulations, and OTS policies, and the Savings Association obtains all necessary regulatory and member approvals; and (iii) the newly converted federal mutual institution conforms, within the time prescribed by OTS, to the requirements of § 5(c) of the HOLA.

The Savings Association's deposits are, and will remain insured by the FDIC. The proposed conversion will comply with the HOLA and relevant OTS statutes, and Hawaii law specifically provides authority for a Hawaii-chartered savings association, with appropriate approvals, to convert to a federal savings association. The Savings Association's assets conform to the requirements of section 5(c) of the HOLA, both with respect to the types of assets held, and the relevant percentage limits.

Section 5(e) of the HOLA and 12 C.F.R. § 543.9 provide that OTS may grant a federal savings association charter only: (i) to persons of good character and responsibility; (ii) if, in the OTS' judgment, a necessity for such savings association exists in the community to be served; (iii) if there is a reasonable probability of the savings 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 also require it to consider whether the association will promote credit for housing consistent with the safe and sound operation of a federal savings association. In addition, the OTS Community Reinvestment Act regulations, at 12 C.F.R. § 563e.29(b), provide that an applicant for a federal savings association charter must submit with its application a description of how it will meet its CRA objectives, and that OTS considers the description in its review of the application.

OTS currently supervises the Savings Association, and has extensive knowledge regarding its operations and management. OTS concludes, based on the Savings Association's Composite and Management Ratings, and operating results, that the character and responsibility of the Savings Association's management is consistent with approval. Based on the Savings Association's existing operations, OTS concludes that there is a necessity for the Savings Association in the community, and that the establishment of the Savings Association as a federal savings association will not cause undue injury to other thrifts and home financing institutions.

Given the level of the Savings Association's capital, the profitability of its operations, and its business plan, OTS concludes that there is a reasonable probability of the Savings Association's usefulness and success. Based on the Savings Association's operations, and the composition of its assets, OTS concludes that the Savings Association's provision of credit for housing is consistent with approval. Finally, the Savings Association's CRA rating and plans regarding the CRA support an OTS finding that approval of the Charter Conversion is consistent with the CRA.

Mutual Holding Company Reorganization

Section 10(o) of the HOLA and the OTS Mutual Holding Company Regulations¹ (MHC Regulations) require a savings association that proposes to reorganize into a mutual holding company structure to file prior notice of the reorganization with OTS. The HOLA and the MHC

¹ 12 C.F.R. Part 575 (2002).

Regulations provide that OTS may disapprove a proposed mutual holding company reorganization under certain circumstances.²

Based on the Savings Association's Composite Rating, its capital and income levels, and the proposed capitalization of the Mutual Holding Company and the Stock Holding Company, OTS concludes that the Notice meets the criteria set forth a 12 C.F.R. §§ 575.4(a)(1)-(3). The Savings Association has provided the information required by OTS, and the proposed transaction, if carried out in conformity with the description contained in the Notice, will not violate any provision of law. Accordingly, the Notice satisfies the applicable criteria for approval.

Approval of the reorganization as structured requires that OTS waive two regulatory provisions, 12 C.F.R. §§ 575.6(a) and 575.6(b). OTS has routinely waived these two regulatory provisions, pursuant to 12 C.F.R. § 575.1(b), in reorganizations structured as proposed by the Savings Association, and accordingly, concludes that there is good cause to waive the two provisions in connection with the proposed reorganization.

Establishment of the Stock Holding Company as a Subsidiary Holding Company

The formation of the Stock Holding Company is consistent with the MHC Regulations. The Stock Holding Company will have a federal charter, as required by 12 C.F.R. § 575.14. The Stock Holding Company's proposed federal charter is consistent with 12 C.F.R. § 575.14(c). The Stock Holding Company proposes to hold all of the common stock of the Savings Association, as required under 12 C.F.R. § 575.14(a).

Formation of Interim Savings Associations

The Savings Association must receive OTS approval under 12 C.F.R. § 552.2-2 to form two interim savings associations. OTS must condition approval of an application to organize an interim federal stock savings association on approval of an application to merge the interim federal association, or upon OTS approval of the other transaction that the interim was designed to facilitate. In addition, OTS must consider the purpose for which the interim is organized, the form of the proposed transactions involving the association, and certain other enumerated factors.

The subject application contemplates the merger of one of the interim associations into the Savings Association, and the conversion of the other into a federal mutual holding company. It is contemplated that OTS will act on the Notice at the same time that it acts on the applications to form the interim associations. Accordingly, the proposed formation of Interim 1 and Interim 2 is consistent with 12 C.F.R. § 552.2-2.

² 12 U.S.C. § 1467a(o)(3); 12 C.F.R. § 575.4(a) (2002).

Holding Company Application

In the proposed reorganization, the Savings Association would acquire two interim savings associations, and, subsequently, the Stock Holding Company would acquire the Savings Association. Accordingly, the transaction requires OTS approval under Section 10(e) of the HOLA, and the OTS regulations thereunder (Control Regulations).³

Section 10(e)(2) and the Control Regulations provide that in reviewing the proposed acquisition of two savings associations by a company, such as the Savings Association, OTS must consider the managerial and financial resources and future prospects of the company and associations involved, the effect of the acquisition on the associations, the insurance risk to the Savings Association Insurance Fund (SAIF), and the convenience and needs of the community to be served.⁴ Section 10(e)(1)(B) of the HOLA provides that OTS must approve a holding company application proposing the acquisition of one savings association by a company other than a savings and loan holding company, such as the Stock 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 the insurance risk of the SAIF.⁵ In both cases, OTS must consider the impact of any acquisition on competition. Also, 12 C.F.R. § 563e.29 requires that OTS take into account assessments under the Community Reinvestment Act (CRA) when approving holding company acquisitions.

For the reasons discussed regarding the Charter Conversion, OTS concludes that the Savings Association's managerial resources are consistent with approval.

OTS is familiar with the Savings Association's financial resources. As of June 30, 2002, the Savings Association's core and tangible capital ratios were 5.57% and the Savings Association's risk-based capital ratio was 16.74%. The only activity of the Mutual Holding Company will be its ownership of the stock of the Stock Holding Company, and the only activity of the Stock Holding Company will be ownership of the stock of the Savings Association. Accordingly, OTS concludes that the financial resources of the Stock Holding Company and the Savings Association are consistent with approval.

Upon considering the financial and managerial resources of the Stock Holding Company and the Savings Association, and the Savings Association's business plan, OTS concludes that the future prospects of the Stock Holding Company and the Savings Association, and risks to the SAIF, are consistent with approval.

The proposed acquisition will not cause the Savings Association to become affiliated with any other operating depository institution. Accordingly, the transaction is not objectionable on competitive grounds.

³ 12 C.F.R. Part 574 (2002).

⁴ 12 U.S.C. § 1467a(e)(2); 12 C.F.R. § 574.7 (2002).

⁵ 12 U.S.C. § 1467a(e)(1)(B).

As for the CRA, and convenience and needs of the community, the Savings Association currently has a Satisfactory CRA rating, and the Savings Association does not propose to reduce its services. The Stock Holding Company, as a newly formed entity, has no CRA experience. OTS has received no comments objecting to the proposed transaction. Accordingly, OTS concludes that approval of the holding company acquisitions is consistent with the CRA and with the convenience and needs standard.

Bank Merger Act Application

The proposed merger of Interim 2 into the Savings Association requires OTS approval under section 12 U.S.C. § 1828(c) and 12 C.F.R. §§ 552.13 and 563.22(a). The approval standards for the merger are similar to the approval standards set forth under section 10(e) of the HOLA, which have been discussed previously.⁶ In addition, the USA PATRIOT Act amended 12 U.S.C. § 1828(c) to require that OTS consider the effectiveness of any insured depository institution in combating money laundering activities. The CRA requires that the OTS consider the CRA record of the Savings Association in evaluating the merger application.

The merging interim association would be a shell entity. Accordingly, the merger would have no material effect on the Savings Association's managerial and financial resources and future prospects, and no effect on competition. Because the Savings Association has a Satisfactory CRA rating, the transaction would not result in a reduction in the Savings Association's services, and the OTS has received no comments objecting to the transaction, we conclude that the merger application satisfies the convenience and needs and CRA criteria. OTS' review of the Savings Association's compliance activities did not provide grounds for objection under 12 U.S.C. § 1828(c)(11) based on the Savings Association's anti-money laundering activities.

Conclusion

Based on the foregoing analysis, the Charter Conversion, the Notice, and the accompanying holding company applications, merger application, application to form interim associations, applications for federal charters for the Mutual Holding Company and the Stock Holding Company, and other component steps of the mutual holding company reorganization are hereby approved, pursuant to delegated authority, provided that the following conditions are complied with in a manner satisfactory to the West Regional Director, or his designee (Regional Director):

1. The Savings Association must receive all required regulatory and member approvals prior to consummation of the Charter Conversion, and the Savings Association, the Mutual Holding Company and the Stock Holding Company must receive all required

⁶ 12 U.S.C. § 1828(c)(5), and 12 C.F.R. § 563.22(d) (2002).

regulatory and member approvals prior to consummation of the reorganization, with copies of all such approvals supplied to the Regional Director;

2. The Charter Conversion, reorganization and acquisition must be consummated within 120 calendar days after the date of this approval letter;
3. On the business day prior to consummation of the Charter Conversion, reorganization and acquisition, the Savings Association must submit to the Regional Director a certification stating that the reorganization has been approved by the majority of the total votes eligible to be cast at the special meeting of members of the Savings Association called to vote on the transaction;
4. On the business day prior to the date of consummation of the Charter Conversion, reorganization and acquisition, the chief executive officers of the Mutual Holding Company, the Stock Holding Company, and the Savings 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 the Mutual Holding Company, the Stock Holding Company, or the Savings Association, respectively, since the date of the financial statements submitted with the Notice and related applications. If additional information having a material adverse bearing on any feature of the Charter Conversion, the Notice or related applications is brought to the attention of the Mutual Holding Company, the Stock Holding Company, the Savings Association, or OTS since the date of the financial statements submitted with the Charter Conversion application, the Notice or related 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;
5. Upon completion of the organization of the interim federal savings associations, the board of directors of the interim federal savings associations, the Mutual Holding Company, the Stock Holding Company, and the Savings Association must ratify the Plan and Agreement of Reorganization; and
6. No later than five calendar days from the date of consummation of the Charter Conversion, reorganization and acquisition, the Mutual Holding Company, the Stock Holding Company, and the Savings Association must file with the Regional Director a certification by legal counsel stating: (i) the effective date of Charter Conversion, the reorganization and acquisition; (ii) the exact number of shares of stock of the Savings Association acquired by the Stock Holding Company; (iii) the respective initial capitalizations for the Mutual Holding Company and the Stock Holding Company; (iv) the exact number of shares of the Stock Holding Company acquired by the Mutual Holding Company; (v) that the interim federal savings associations did not open for business; and (vi) that the Charter Conversion and reorganization were consummated in accordance with all applicable laws and regulations, the Notice, the related applications,

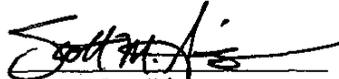
the Plan of Reorganization, all representations made by the Savings Association and its counsel in connection with OTS's review of the proposed transactions, and this Approval Order.

In addition, pursuant to 12 C.F.R. § 575.1(b), the OTS hereby waives the applicability of 12 C.F.R. §§ 575.6(a) and 575.6(b).

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

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

September 16, 2002



Scott M. Albinson
Managing Director
Office of Supervision