

OFFICE OF THRIFT SUPERVISION

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

Order No.: 2002-45

Date: October 3, 2002

**Docket Nos.: H-3715, H-3356,
02319, H-2815, H-3426, 05016**

Kearny MHC, Kearny, New Jersey (MHC-1) and Kearny Financial Corp., Kearny, New Jersey (Holding Company) (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 Pulaski Savings Bank, Springfield, New Jersey (Association). In addition, Kearny Federal Savings Bank, Kearny, New Jersey (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 Savings Bank and the Association have applied to OTS to make capital distributions under the OTS Capital Distribution Regulations. (The foregoing filings are collectively referred to as the Applications.)

The Applications

MHC-1, the top tier holding company in a federally chartered mutual holding company structure, wholly-owns Holding Company, a mid-tier, federally chartered mutual holding company, which owns all of the common stock of the Savings Bank. The Applicants propose to purchase the outstanding shares of Pulaski Bancorp, Inc., Springfield, New Jersey (Mid-Tier), a federally chartered, subsidiary mutual holding company, held by shareholders other than Mid-Tier's controlling mutual holding company, Pulaski Bancorp, M.H.C., Springfield, New Jersey (MHC-2) (Minority Shareholders). In order to consummate the acquisition, Holding Company will organize Kearny Financial Merger Sub, Inc., as a wholly owned subsidiary, to merge with and into Mid-Tier, with Mid-Tier being the resulting entity; MHC-2 will merge with and into MHC-1, with MHC-1 being the resulting entity (MHC Merger); Mid-Tier will merge with and into Holding Company, with Holding Company being the resulting entity; and the Association will merge with and into the Savings Bank, with the Savings Bank being the resulting institution. Pursuant to the Merger Agreement, each share of Mid-Tier common stock held by Minority Shareholders will be converted into the right to receive \$32.90 in cash. The outstanding shares of Mid-Tier held by MHC-2 will be canceled upon or immediately after the MHC merger. As a result of the mergers, the interests of the Association's depositors as members of MHC-2 will cease to exist and will be converted into interests of the same nature in MHC-1.

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 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 and the Association, the effect of the acquisition on the 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 Applicants, the Savings Bank and the Association, is familiar with their managerial resources. Upon consummation of the acquisition of the Association, the board of directors and the executive officers of the Applicants and the Savings Bank will consist of the present directors and executive officers of the Applicants and the Savings Bank. The Association's current directors will serve as advisory directors of the Savings Bank for one year, renewable annually for two more years. Based on its experience with the managerial resources of the Applicants and the Association, OTS concludes that the Applicants' and the Association's managerial resources are consistent with approval.

As for financial resources, OTS is familiar with the financial resources of the Applicants, the Savings Bank and the Association. As of June 30, 2002, the Savings Bank's Tier 1, Tier 1 Risk-Based and Total Risk-Based capital ratios were 15.95%, 53.70%, and 56.14%, respectively. Upon consummation of the transaction, the Savings

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).

Bank will remain "well capitalized" pursuant to the OTS Prompt Corrective Action regulation. OTS also has considered the financial resources of MHC-1 and Holding Company. Based on the foregoing, OTS concludes that the financial resources of the Applicants and the resulting institution are consistent with approval.

Based on its consideration of the managerial and financial resources of the Applicants and the resulting institution, OTS concludes that the future prospects of the Applicants and the resulting institution, 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 or the Association. 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 and the Association'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 offices and providing continuing services to the offices' customers and communities. 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, the Applications indicate that the transaction was negotiated at arms'-length, both the Association and the Savings Bank obtained fairness opinions reflecting that the transactions are fair to Minority Shareholders and MHC-2's members, and MHC-1's members, respectively, 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 concerns in this area.

Capital Distribution Notice

Both the Savings Bank and the Association seek OTS approval to make capital distributions to Holding Company and Mid-Tier, respectively. 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 Savings Bank's and 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 Savings Bank's and the Association's proposed capital distributions in connection with the proposed transaction are consistent with approval.

Mutual Holding Company Considerations

Section 575.10 of OTS' regulations provides authority for the transaction.⁴ The regulation explicitly authorizes MHC-1 to acquire MHC-2. In substance, MHC-1 is acquiring both of the Association's holding companies. While, in form, MHC-1 is not directly acquiring the Association's mid-tier holding company, OTS attempts to avoid elevating form over substance. Moreover, the regulation was intended to prevent a diminution of the interests of the depositor members of a top-tier mutual holding company by preventing such a company from being acquired by a mid-tier holding company owned by stockholders. In this case, no top-tier mutual holding company is being acquired by a subsidiary holding company. Therefore, the intent of the regulation is achieved here.

In addition, 12 C.F.R. § 575.5(a)(2) and (4) require, under these circumstances, that depositors of the Association, who currently have membership rights in MHC-2, receive, after the transaction, the same rights in MHC-1 as depositors of the Savings Bank, and borrower members be granted the same rights as borrower members of MHC-1. OTS has reviewed the proposed charter for MHC-1 and the representations made in the Applications, and concludes that these regulatory requirements have been satisfied.

Conclusions

Based on the foregoing analysis, OTS concludes that each of the foregoing Applications meets the applicable approval criteria. Accordingly, the foregoing 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 Applicants, the Savings Bank, MHC-2, 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;

⁴ 12 C.F.R. § 575.10(a)(3) (2002).

3. On the business day prior to the date of consummation of the proposed transactions, the chief financial officers of the Applicants, the Savings Bank, MHC-2, Mid-Tier 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 Applicants, the Savings Bank, MHC-2, Mid-Tier, 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 Applicants 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; and
5. The Savings Bank shall advise 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 on their insurance coverage no later than 30 days after the effective date, and provide a copy of this notice to the Regional Director.

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 October 3, 2002.


Scott M. Albinson
Managing Director
Office of Supervision