

OFFICE OF THRIFT SUPERVISION

Approval of Holding Company Application

Order No.: 2002-56

Date: December 3, 2002

Docket Nos.: H-3896, H-3897, H-3898

E*Trade National Holdings, Inc. (National), E*Trade BBH, Inc. (BBH), and E*Trade Re, LLC (LLC)(Subsidiary Holding Companies), Arlington, Virginia, have filed an application for approval of the Office of Thrift Supervision (OTS) to acquire E*Trade Bank, Arlington, Virginia (Savings Bank), under § 10(e) of the Home Owners' Loan Act (HOLA), and 12 C.F.R. § 574.3 (Application).

Background

The Savings Bank, a SAIF-insured, federally chartered stock savings bank, is a wholly owned indirect subsidiary of E*Trade Group, Inc. (Holding Company), and a wholly owned direct subsidiary of E*Trade Financial Corporation (ETFC). The Holding Company proposes to reorganize, by causing three of its newly formed subsidiaries to become holding companies of the Savings Bank. The Holding Company directly holds all of the stock of National and BBH, both of which are Delaware Corporations. National owns a 95 percent interest in LLC, and BBH owns the remaining 5 percent interest.

In the proposed transaction, the Holding Company will contribute 95 percent of its stock of ETFC to National, and the remaining 5 percent to BBH. National and BBH will, in turn, contribute the ETFC stock to LLC, a South Carolina chartered limited liability company. Following the transaction, LLC will own all of the stock of ETFC, and ETFC will continue to own all of the stock of the Savings Bank.

The Subsidiary Holding Companies will be engaged, directly or indirectly, only in activities that satisfy the requirements of § 10(c)(9) of the HOLA. National and BBH will be shell corporations. LLC proposes to engage in the reinsurance of private mortgage insurance and automobile insurance. Reinsurance activities are permissible for a savings and loan holding company under § 10(c)(9) of the HOLA because such activities are permitted for financial holding companies under 12 U.S.C. § 1843(k)(4)(B).

Holding Company Application

Section 10(e)(1)(B) of the HOLA and 12 C.F.R. Part 574 provide that 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 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.¹ 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.² Also, OTS must consider the impact of any acquisition on competition.³ 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, the management of the Subsidiary Holding Companies will consist largely of management officials of the Holding Company and the Savings Bank. OTS, as the regulator of the Savings Bank and the Holding Company, has considerable experience regarding the background of the relevant individuals. In addition, based on this experience, and the materials submitted with the Application, OTS concludes that the managerial resources of the Subsidiary Holding Companies are consistent with approval. In addition, based on its experience, OTS concludes that the managerial resources of the Savings Bank, which will not change as a result of the proposed transaction, are consistent with approval.

With respect to financial resources, OTS has considered the financial condition and operations of the Savings Bank, as well as the proposed capitalization and operations of the Subsidiary Holding Companies; the financial statements for the Savings Bank and the Subsidiary Holding Companies; the business plan of the Subsidiary Holding Companies; and the current and projected capital levels and earnings of the Savings Bank and the Subsidiary Holding Companies. OTS concludes that the financial resources of the Savings Bank and the Subsidiary 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 Subsidiary Holding Companies; financial statements for the Savings Bank and the Subsidiary Holding Companies; the business plan of the Subsidiary Holding Companies; and the supervisory history of the Savings Bank. Based on the foregoing, OTS concludes that the future prospects of the Savings Bank and the Subsidiary Holding Companies and any insurance risk to the BIF or SAIF are consistent with approval, provided that the Savings Bank and the Subsidiary Holding Companies comply with the conditions set forth below.

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.

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

² 12 U.S.C. § 1467a(e)(1) (B).

³ 12 U.S.C. § 1467a(e)(2) and 12 C.F.R. § 574.7(c)(2) (2002).

As for the CRA, at the most recent CRA evaluation, OTS assigned the Savings Bank a CRA rating of Satisfactory. The Subsidiary 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 Subsidiary Holding Companies is consistent with the CRA.

Conclusions

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

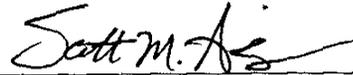
1. The Subsidiary Holding Companies and the Savings Bank must receive all required regulatory approvals prior to consummation of the proposed transaction with copies of all such approvals provided to the Regional Director;
2. The proposed transaction must be consummated within 120 calendar days from 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 Subsidiary 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 Application. If additional information having an adverse bearing on any feature of the Application is brought to the attention of the Subsidiary Holding Companies, the Savings Bank, 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 consummation of the transaction;
4. The Subsidiary Holding Companies and 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 proposed transaction was consummated in accordance with all applicable laws and regulations, the Application and this Order;
5. The Subsidiary Holding Companies must operate within the parameters of the business plan. For three years following consummation of the transaction, the Subsidiary Holding Companies must provide notice of any proposed major deviations or material changes from the plan, including any proposed change in the jurisdiction in which LLC holds its insurance license, to the Regional Director for his prior non-objection a minimum of 60 calendar days before the proposed change is implemented;
6. For three years following consummation of the transaction, the Subsidiary Holding

Companies must submit to the Regional Director within 30 calendar days after the end of each calendar quarter, a business plan variance report detailing the Subsidiary Holding Companies' compliance with the business plan and an explanation of any deviations;

7. For three years following consummation of the transaction, the Subsidiary Holding Companies must submit to the Regional Director copies of all filings made with other regulatory authorities and correspondence from other regulatory authorities relating to such filings; and
8. The Subsidiary Holding Companies and the Savings Bank must submit a revised tax sharing agreement acceptable 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 December 3, 2002.



Scott M. Albinson
Managing Director
Office of Supervision