

## OFFICE OF THRIFT SUPERVISION

### APPROVAL OF APPLICATIONS FOR PERMISSION TO ORGANIZE A FEDERAL SAVINGS BANK, TRUST POWERS, TRANSFER OF ASSETS AND HOLDING COMPANY ACQUISITION

Order No.: 2003-23

Date: June 20, 2003

OTS No. 17944, H-3886, & H-3887

Suncoast Schools Federal Credit Union, Tampa, Florida (Credit Union) and CUNA Mutual Insurance Society, Madison, Wisconsin (Insurance Company) (collectively, the Applicants), have applied to the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. §§ 1464(e) and 1467a(e) of the Home Owners' Loan Act (HOLA), and 12 C.F.R. §§ 552.2-1, 563.22(c), and 574.3, to organize and to acquire Members Trust Company, Tampa, Florida (Savings Bank), as a federal savings bank, and to transfer the assets and liabilities of the Credit Union's existing wholly owned state-chartered trust company subsidiary, Members Trust Company (Trust Company), to the Savings Bank. In addition, the Savings Bank has applied, pursuant to 12 U.S.C. § 1464(n) and 12 C.F.R. Part 550, to exercise trust powers as described in the application. (The foregoing are collectively referred to herein as the "Applications.") The Savings Bank has provided notice to OTS to conduct a transactional web site for electronic operations pursuant to 12 C.F.R. Part 555. Further, OTS must waive the same price per share provision of 12 C.F.R. § 543.3(b)(1).

#### The Proposed Transaction

The Applicants propose to establish and operate a *de novo* trust only savings association, the Savings Bank. The Savings Bank will not lend or take deposits, with the exception of deposits of \$500,000 from the Applicants. The Credit Union will exchange \$3.5 million in cash and its 100 percent ownership of the Trust Company, for 2,600 shares of the Savings Bank's stock. As a result of these transactions, the Credit Union will own 52 percent of the Savings Bank's stock. The Insurance Company will contribute \$5.0 million in cash for 2,400 shares, representing a 48 percent ownership of the Savings Bank. Initial capital for the Savings Bank will be \$10.0 million less organizational expenses. The Savings Bank will be a member of the Savings Association Insurance Fund (SAIF).

#### Permission to Organize Application

OTS may grant a federal savings bank charter only: (i) to persons of good character and responsibility; (ii) if, in the OTS' judgment, a necessity exists for such association in the community to be served; (iii) if there is a reasonable probability for the 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. In addition, OTS regulations require that OTS consider whether the association will promote credit for housing consistent with the safe and sound operation of a federal savings association, and set forth policies regarding initial capitalization of a federal savings bank and requirements regarding the residence and composition of the savings bank's board of directors. Further, OTS takes into an account an applicant's description of how it will meet its Community Reinvestment Act (CRA) objectives.

With respect to character and responsibility, a review of the backgrounds of the officers and directors of the Applicants and the Savings Bank conducted by the Regional Office revealed no adverse information and that the officers and directors of the Savings Bank have the experience to operate a trust-only savings association. Thus, OTS concludes that this approval criterion is satisfied.

As for the necessity for the Savings Bank in the community and undue injury to properly conducted existing local thrift and home financing institutions, the Savings Bank will continue and expand the trust business of the Trust Company and seek to expand the business throughout the United States. The Applications include information demonstrating that credit unions desire to offer trust services to their members. In addition, several credit unions have expressed interest in establishing arrangements with the Savings Bank for offering trust and asset management services. OTS concludes that this approval criterion is satisfied.

With respect to undue injury to properly conducted existing local thrift and home financing institutions, the Savings Bank will not directly provide home financing. Because the Savings Bank will not compete for savings accounts and will not directly engage in mortgage lending in the local or national economies, and its target market will be widely dispersed, the Savings Bank will have little, if any, impact on any geographic area where the Savings Bank's customers may be located. OTS concludes that this approval criterion is satisfied.

With respect to the reasonable probability of usefulness and success, OTS reviewed the Savings Bank's financial condition, business plan, proposed capital levels, and the competence of proposed management. The review revealed no negative information on the Savings Bank's directors and proposed officers. Also, based on the background of the individuals, the Regional Office concluded that the proposed officers and directors of the Savings Bank have sufficient experience to operate a savings association with trust powers.

With respect to capital, the Savings Bank plans to be well capitalized throughout the first three years of operations. OTS concludes that the Savings Bank will have capital sufficient for its proposed level of trust operations. OTS concludes that the Savings Bank's business plan is acceptable.

Based on the above, OTS concludes that the criteria for the reasonable probability of usefulness and success have been satisfied, subject to the imposition of the conditions below that are intended to help ensure that the Savings Bank operates in a safe and sound manner.

With respect to the provision of credit for housing, the Savings Bank will not directly extend credit for housing, but would indirectly extend credit for housing by purchasing mortgage-backed securities. The purchase of such mortgage-backed securities will enable the Savings Bank to satisfy the qualified thrift lender test. It is not required that an application for a Federal charter be denied if the proposed association does not intend to engage in home lending to a significant extent, but OTS must consider, among other things, whether the association will perform a role of providing credit for housing in a safe and sound manner. OTS concludes that, when an applicant for a Federal charter satisfies the other approval criteria, the lack of direct home lending would not compel the OTS to deny the application.

OTS regulations require that a majority of a *de novo* association's board of directors be "representative" of the state in which the association is located. OTS regulations also require that a *de novo* association's board of directors be diversified and composed of individuals with varied business and professional experience. Further, the regulations provide that, except in the case of a *de novo* association that is wholly owned by a holding company, no more than one-third of a *de novo* association's board of directors may be in closely related businesses. Based on the residency and experience of the Savings Bank's proposed directors, OTS concludes that the Savings Bank's proposed board of directors meets these criteria.

To ensure the independence of the Savings Bank's board of directors, OTS is imposing a condition regarding the composition of the Savings Bank's board, and its trust, audit, and investment committees. The condition reflects concerns about captive boards. Such concerns are important because trust assets held by the Savings Bank may consist principally of proprietary and distributed mutual funds, and affiliates of the Savings Bank will market the Savings Bank's trust services to the affiliates' members and their customers.

OTS' CRA regulations establish an exception from the CRA for special purpose savings associations. The Savings Bank will satisfy the requirements for the exception because the Savings Bank will not perform retail banking services, will not offer any non-trust deposit accounts, and will provide only trust services. Thus, OTS concludes that the Savings Bank will be exempt from the CRA and the approval standard in the OTS CRA regulations is not applicable to the proposed transaction.

The sales of the Savings Bank's shares in the manner described above result in the shares being sold at different per share prices. Section 543.3(b)(1) requires that an offering of securities by a *de novo* savings association must be sold at the same price per share. OTS hereby waives this requirement. Section 500.30(a) provides that OTS may waive the applicability of any regulation for good cause, to the extent permitted by statute. The regulatory requirement under section 543.3(b)(1) is not set forth in any statute. OTS concludes that there is good cause to waive the section 543.3(b)(1) requirement because the purchasers are both large sophisticated organizations

that have the financial expertise to evaluate and to understand the nature of the proposed investment. Each organization has the ability to analyze the proposed financial circumstances of the proposed investment, recognize the different per share price, and act to protect their respective interests if the matter was material to them.

### **Holding Company Application**

Section 10(e)(1)(B) of the HOLA and the Acquisition of Control Regulations thereunder provide that OTS must approve a proposed acquisition of a savings association by a company, other than a savings and loan holding company, unless OTS finds that the financial and managerial resources and future prospects of the company and association involved would be detrimental to the association or the insurance risk of the SAIF. OTS must also consider the impact of the acquisition on competition. Finally, OTS must take into account assessments under the CRA when considering holding company applications.

For the reasons set forth above, OTS concludes that the managerial resources of the Applicants and the Savings Bank are reasonable, subject to the conditions recommended above regarding management and the board of directors.

With regard to financial resources, OTS reviewed the Applicants' financial positions and the Savings Bank's proposed capitalization and business plan. The Applicants demonstrated adequate cash resources and appear to be financially successful and stable. Further, the Savings Bank's *pro forma* financial statements project that the Savings Bank will meet all of its capital requirements and will be "well-capitalized" under the OTS prompt corrective action regulation throughout the first three years of operation. Based on the foregoing, OTS concludes that approval criteria regarding the financial resources of the Applicants and the Savings Bank are consistent with approval of the holding company application.

Based on the factors considered in the above discussions regarding the managerial and financial resources of the Savings Bank and the Applicants, the character and responsibility of the organizers, the probability of the Savings Bank's usefulness and success, and the composition of the Savings Bank's board of directors, OTS concludes that the future prospects of the Applicants and the Savings Bank are reasonable and that this approval criteria is met, subject to the imposition of the recommended conditions.

The transaction will not result in any currently operating, unaffiliated depository institutions becoming affiliated. Accordingly, OTS finds no basis for objection to the transaction on anti-competitive grounds. With respect to the Applicants' performance under the CRA, the Applicants have not been subject to the CRA. Accordingly, OTS concludes that there is not any basis for objection to the holding company application based on CRA grounds.

### **Transfer of Assets Application**

For any transfer of assets to or from a federal savings association pursuant to 12 C.F.R. § 563.22(c), OTS must consider: (i) the capital level of the resulting savings association; (ii) the financial and managerial resources of the constituent institutions; (iii) the future prospects of the constituent institutions; (iv) the convenience and needs of the communities to be served; (v) the conformity of the transaction to applicable law, regulation, and supervisory policies; and (vi) factors relating to the fairness of and disclosure concerning the transaction, including, but not limited to, the equitable treatment of all concerned, the full disclosure of all written and oral agreements or understandings, compensation to officers, advisory boards, the accounting and tax treatment of the transaction, and fees paid and professional services rendered.

The Applicants propose to capitalize the Savings Bank with approximately \$10 million, less approximately \$750,000 in organization expenses. Accordingly, OTS concludes that this application criterion is satisfied. For the reasons set forth above, OTS concludes that the managerial and financial resources of the Savings Bank meet these approval criteria, subject to the conditions recommended above.

Based on the factors considered in the above discussions regarding the managerial and financial resources of the Savings Bank and the Applicants, the character and responsibility of the organizers, the probability of the Savings Bank's usefulness and success, and the composition of the Savings Bank's board of directors, OTS concludes that the future prospects of the Applicants and Savings Bank meet this approval criteria, subject to the conditions recommended in those discussion.

The Savings Bank will provide services that, to a great extent, have not been previously available to credit union customers. OTS is imposing a condition of approval requiring the Savings Bank to submit a comprehensive compliance program for the Regional Director's approval. In addition, the Savings Bank will not be subject to the CRA. Accordingly, OTS concludes that the approval of the transfer of assets application is consistent with the convenience and needs of the community.

With respect to the fairness of and disclosure concerning the transaction, including, but not limited to, the equitable treatment of all concerned, the transaction was the result of extensive arm's length negotiations between the Applicants. The terms of the transaction appear to be fair and equitable to the parties involved.

The proposed accounting for the transaction and fees paid and professional services rendered are disclosed in the application. No advisory boards are proposed.

## Trust Application

Section 5(n) of the HOLA authorizes OTS to grant federal savings associations the power to act as trustee, executor, administrator, guardian or in any other fiduciary capacity permitted for State banks, trust companies, or other corporations which compete with such associations in the state where the federal association is located.

OTS regulations set forth the factors that OTS considers in reviewing trust powers applications: (1) the association's financial condition; (2) the association's capital and whether that capital is sufficient under the circumstances; (3) the association's overall performance; (4) the fiduciary powers the association proposes to exercise; (5) the association's proposed supervision of those powers; (6) the availability of legal counsel; (7) the needs of the community to be served; and (8) any other facts or circumstances that OTS considers proper.

With respect to the financial condition, capital sufficiency and performance of the Savings Bank, OTS concludes that the Savings Bank will meet all regulatory capital requirements, will be well capitalized, and that the Savings Bank's proposed capital levels are acceptable. The HOLA requires that the Savings Bank meet the capital requirements applicable to Florida-chartered trust companies, and OTS concludes that the Savings Bank's proposed capital level exceeds the Florida requirements. OTS concludes that the Savings Bank's financial condition and capital will be sufficient, and that the Savings Bank's overall performance will be consistent with approval. As to the fiduciary services to be offered, OTS concludes that the Savings Bank's proposed trust activities are authorized by Florida law for Florida-chartered corporate fiduciaries.

To ensure that the Savings Bank does not expand its services beyond trust activities described in the application, OTS is imposing a condition requiring the Savings Bank to obtain OTS approval before engaging in any activities other than trust activities.

The Savings Bank will supervise its trust activities using methods currently used to supervise the Trust Company's operations, and will adopt additional, extensive controls to monitor the newly established agency and representative office arrangements. Certain existing experienced management, trust officers, and employees will transfer to the Savings Bank upon consummation of the proposed transaction, and the Savings Bank intends to hire additional personnel. As discussed under the Permission to Organize Application, OTS is imposing conditions addressing the adoption of policies and procedures governing the Savings Bank's operations. Accordingly, OTS concludes that the Savings Bank's supervision of trust powers will be consistent with approval, subject to the imposition of the conditions. The Savings Bank will retain experienced trust counsel to advise it with respect to fiduciary matters.

As discussed under the Permission to Organize Application, OTS concludes that there is a need in the community for trust services. OTS has not identified any other facts and circumstances relevant to the trust application, which should be considered in approving the application.

## Electronic Operations

The Applicants filed a notice under Part 555 Electronic Operations on behalf of the proposed Savings Bank to conduct operations via a transactional Internet web site. OTS has noted no significant concerns about the proposed web site.

## Conclusion

OTS has considered the Applications under the standards set forth in 12 U.S.C. §§ 1464(e), 1464(n) and 1467a(e), and 12 C.F.R. §§ 543.3, 552.2-1(b), 563.22(d), and 574.7 and Part 550, and under the Community Reinvestment Act, 12 U.S.C. §§ 2901, et seq., and the OTS regulations thereunder, 12 C.F.R. Part 563e. OTS finds that the Applications satisfy the applicable approval standards, provided that the following conditions are complied with in a manner satisfactory to the Southeast Regional Director, or his designee (Regional Director). Accordingly, the Applications are hereby approved, subject to the following conditions:

1. The Applicants, the Trust Company, and the Savings Bank must receive all required regulatory approvals and submit copies of all such approval to the Regional Director prior to consummation of the proposed transaction;
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 Applicants, the Trust Company, 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 Applicants, the Trust Company, and the Savings Bank 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 Applicants, the Trust Company, the Savings Bank, or OTS since the date of the financial statements submitted with the Applications, the transaction shall 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 5 calendar days after the effective date of the proposed transaction: (a) the effective date of the proposed transaction and of the Savings Bank's insurance of accounts; (b) that the transaction was consummated in accordance with all applicable laws and regulations, the Applications and this Order; and (c) must provide a reconciliation of the Savings Bank's capital;
5. The Savings Bank must submit independent audit reports to the Regional Office for its first three fiscal years. These reports must be in compliance with the audit rules set forth at 12 C.F.R. § 562.4;

6. The Savings Bank must operate within the parameters of its three-year business plan. The Savings Bank must submit any proposed major deviations or material changes from the plan (including changes resulting from decisions made by the Applicants) for the prior written non-objection of the Regional Director. The request for change must be submitted a minimum of 60 calendar days before the desired implementation date with a copy to the FDIC Regional Office;
7. For three years following commencement of operations, the Savings Bank must submit to the Regional Director, within 45 calendar days after the end of each calendar quarter, a business plan variance report detailing the Savings Bank's compliance with the business plan and an explanation of any material deviations;
8. For three years following commencement of operations, the Savings Bank must receive the prior written non-objection of the Regional Director for any proposed new directors or senior executive officers or any significant changes in responsibilities of any senior executive officer;
9. At least 40 percent of the Savings Bank's board of directors must be individuals who are not officers or employees of the Applicants 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 Applicants or any affiliate, and who is not an officer or employee of the Savings Bank, and who has not otherwise been determined by the Regional Director to lack sufficient independence. At least 50 percent of any audit, investment, and trust committee established by the Savings Bank must be directors who are not officers or employees of the Savings Bank, the Applicants or any affiliates, and who have not otherwise been determined by the Regional Director to lack sufficient independence;
10. 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);
11. 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;
12. Prior to opening for business, the Savings Bank must submit to the Regional Director, for review and non-objection, the qualifications of a compliance officer, a business development officer, and a senior trust officer;
13. Prior to their execution, all employment contracts to be implemented within the Savings Bank's first year of operations must be submitted to the Regional Director for his written non-objection;

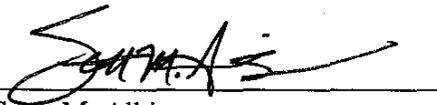
14. During the first 18 months of operations, any contracts or agreements pertaining to transactions with affiliates, not yet submitted to the OTS for review, must be provided to the Regional Director at least 30 days prior to execution and must receive his written non-objection prior to implementation;
15. Prior to opening, the Savings Bank must establish detailed policies and procedures for all operations, provide copies of such policies and procedures to the Regional Director, and provide the Regional Director with a resolution of the Savings Bank's board of directors evidencing its review and approval of those policies and procedures;
16. Prior to opening, the Savings Bank must develop and submit to the Regional Director a detailed, written oversight program, consisting of a comprehensive audit program, a compliance management program, and a risk management program. The audit program should address auditor qualifications, audit scope and method, committee involvement, reporting, and the process for effectuating corrective action. The compliance management program should ensure compliance with applicable laws, regulations, and sound fiduciary principles. It should include, at a minimum: (i) the assignment of specific compliance responsibilities to experienced staff; (ii) training for affected staff; (iii) routine self-evaluations; (iv) periodic compliance audits; and (v) appropriate written policies and procedures. The risk management program should establish criteria to identify, measure, monitor, and control risks within the fiduciary activities;
17. The Applicants, their affiliates, and the Savings Bank must comply with the anti-tying restrictions of 12 U.S.C. §§ 1464(q) and 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 prior to the opening of the Savings Bank for business;
18. Prior to engaging in any business activity other than that authorized pursuant to section 5(n) of the HOLA, the Savings Bank must apply to OTS and receive approval of its application to engage in such business activity. OTS will consider any such application under the standards required of a new federal thrift charter which are set forth at section 5(e) of the HOLA and OTS regulations thereunder, and under the Community Reinvestment Act and OTS regulations thereunder at 12 C.F.R. § 563e.29. Any such application may be subject to the public notice and comment procedures set forth at 12 C.F.R. Part 516, Subparts B and C;
19. For a three-year period following commencement of operations, the Savings Bank must provide notice to the Regional Director regarding any additional investors in the Savings Bank. The notice should be submitted to the Regional Director within 10 calendar days of the investment; and

20. The Savings Bank must comply with all applicable state and federal securities laws relating to any requirements for registration as an investment advisor, and submit evidence of such compliance acceptable to the Regional Director, prior to opening for business.

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 20, 2003.



Scott M. Albinson  
Managing Director  
Office of Supervision