

OFFICE OF THRIFT SUPERVISION

Approval of Holding Company Acquisition and Related Applications

Order No.: 2003-51

Date: October 14, 2003

Docket Nos.: H-1299, 7173

Colombo Bancshares, Inc., Rockville, Maryland (Holding Company), Morton A. Bender, Grace Bender, Jack Bender, Jay Bender, Kenneth Bender, Scott Bender and Lisa Feldman (Control Group), (collectively, Applicants) have applied to the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. §§ 1467a(e)(2) and 1467a(e)(4), and 12 C.F.R. § 574.3 to acquire up to 100% of the common stock of Independence Federal Savings Bank, Washington, D.C. (Association). In addition, the Applicants seek OTS approval to establish and merge an interim federal savings association (interim association) with the Association, pursuant to section 18(c) of the Federal Deposit Insurance Act (Bank Merger Act or BMA), and 12 C.F.R. §§ 552.2-2 and 563.22. Also, the Applicants seek approval under 12 U.S.C. § 1467a(e)(1)(A)(iii) for the Holding Company to acquire more than five percent of the voting stock, but less than a controlling interest, in the Association. (Collectively, the various filings are referred to herein as the Applications.)

Background

The Holding Company owns all of the stock of Colombo Bank, Rockville, Maryland (Colombo Bank), a Savings Association Insurance Fund (SAIF)-insured federal stock savings bank. The Control Group owns over 90% of the outstanding shares of the Holding Company. Two members of the Control Group, Morton and Grace Bender, currently hold approximately 9.9% of the Association's common stock. The Association is a publicly traded SAIF-insured federal stock savings bank.

The Applicants propose to acquire additional shares of the Association's stock through open market purchases, through privately negotiated transactions with individual shareholders, through a tender offer made to all shareholders, or through a merger transaction, in which the Association would survive the merger with an interim association chartered by the Holding Company. The Applications contemplate that the stock acquisitions (other than the possible merger transaction) may involve purchases by the Control Group, the Holding Company, or a combination thereof. Further, the Applicants have indicated that the stock acquisitions (other than the possible merger transaction) may involve any amount of shares between 10% and 100%.

Holding Company Application and Bank Merger Act Acquisition

Section 10(e)(2) of the HOLA and the Acquisition of Control Regulations provide that, in reviewing the proposed acquisition of a savings association by a savings and loan holding company, OTS must consider the financial and managerial resources and future prospects of the company and associations, the effect of the transaction on the associations, the insurance risk of the SAIF, and the convenience and needs of the community. Also, OTS must consider the impact of any acquisition on competition.¹ Further, 12 C.F.R. § 563e.29(a) requires that OTS take into account assessments under the Community Reinvestment Act (CRA) when approving savings and loan holding company acquisitions.

In addition, in the event the Control Group acquires shares of the Association other than through the Holding Company, the Control Group's acquisition requires OTS approval under section 10(e)(4) of the HOLA, due to the Control Group's existing control of Colombo Bank through the Holding Company. OTS regulations, at 12 C.F.R. § 574.7, require OTS to take into consideration the same standards that OTS considers in connection with a holding company application that is subject to section 10(e)(2).

The Bank Merger Act and the OTS regulations thereunder impose substantially similar standards.² In addition the Bank Merger Act requires that OTS consider, in its evaluation of the merger application, the effectiveness of the insured institutions involved in combating money-laundering activities.³ Also, OTS regulations require that OTS 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.⁴ The CRA requires, in the context of the merger transaction, that the OTS consider the CRA performance of the institutions.⁵

With respect to managerial resources, OTS has considered the background of the Applicants, Colombo Bank and the Association. OTS, as the regulator of the Holding Company and Colombo Bank, has extensive experience with Morton Bender, the Holding Company, and Colombo Bank. The Holding Company's and Colombo Bank's management are experienced bankers, with acceptable regulatory experience. The Control Group, other than Morton Bender and Scott Bender, are not active in the management of Colombo Bancshares or Colombo Bank, and we are not aware of any significant negative information regarding these individuals. Based on the foregoing, OTS concludes that the managerial resources of the Applicants, Colombo Bank and the Association are consistent with approval.

¹ 12 U.S.C. § 1467a(e)(2) and 12 C.F.R. § 574.7(c)(2) (2003).

² 12 U.S.C. § 1828(c)(5)(B); 12 C.F.R. § 563.22(d) (2003).

³ 12 U.S.C. § 1828(c)(11).

⁴ 12 C.F.R. § 563.22(d)(1)(vi) (2003).

⁵ See 12 C.F.R. § 563e.29(a) (2003).

With respect to financial resources, OTS has considered the Applicants' financial position. Morton Bender has sufficient capital to effect the acquisition and has the resources to infuse additional capital into the Association or the Holding Company if needed. The Holding Company, Colombo Bank, and the Association are well-capitalized. OTS concludes that the financial resources of the Applicants, the Association and Colombo Bank are consistent with approval.

With respect to future prospects, and risks to the SAIF, based on its review of the financial and managerial resources of the Applicants, Colombo Bank and the Association, OTS concludes that the future prospects of the Applicants, Colombo Bank and the Association, and the risk to the SAIF are consistent with approval, subject to the conditions set forth below.

With respect to the competitive impact of the transaction, Montgomery County, Maryland, is the only market in which both Colombo Bank and the Association currently operate. Both institutions are relatively small in comparison to the major banks that operate in this market, and both have market shares of deposits of well under one percent. Based on the small size of these institutions, their market shares, and the number of competitors in the markets in which they operate, the acquisition should have no detrimental effect on competition. In addition, OTS requested competitive factors reports from the U.S. Department of Justice, and the other federal banking agencies regarding the competitive effects of the proposed transaction. None of the other agencies identified any anti-competitive impact. Accordingly, OTS concludes that the transaction is not objectionable on anti-competitive grounds.

With respect to the convenience and needs of the community, the Applicants anticipate making no significant changes in services or products offered by Colombo Bank or the Association as a result of the acquisition. The Applicants intend to continue the two institutions' present policies and procedures addressing the needs of the relevant communities. The Applicants represent that the Association will continue to provide programs, products and services that meet the existing or anticipated needs of the community, including low- and moderate-income geographies, and also committed to expand minority programs to serve the community, including the establishment of additional branches in the Washington D.C. community. Accordingly, OTS concludes that the approval of the application is consistent with the convenience and needs of the communities to be served.

As for the CRA, the Holding Company's current depository institution subsidiary, Colombo Bank, has a "Satisfactory" CRA rating. Further, the Association's latest CRA rating was "Satisfactory," and the interim association will, at the time of any merger, have no prior CRA record. OTS has received no comments from the public objecting to the proposed transaction on CRA grounds. Accordingly, OTS concludes that approval of the proposed acquisition of the Association by the Applicants, and the proposed merger of the Association into an interim association are consistent with the CRA.

With respect to equitable treatment, full disclosure, compensation of officers and directors, and issues regarding advisory directors, the terms of any merger have not been established. Thus, OTS is imposing a condition requiring that, prior to any merger of the Association and the interim association, the Holding Company obtain the non-objection of the Regional Director to the proposed terms of the merger. Subject to this condition, OTS concludes that these regulatory considerations are consistent with approval.

Under the BMA, in reviewing the proposed merger of the Association and the interim association, OTS must review the two institutions' record of compliance with anti-money laundering statutes and regulations. OTS' compliance examination includes an evaluation of a savings institution's compliance with the anti-money laundering provisions of the Bank Secrecy Act. At the time of the proposed merger, the proposed interim association will have had no operating experience. OTS has considered the Association's record of compliance with anti-money laundering statutes and regulations, and does not object to approval of the proposed merger on anti-money laundering grounds, particularly in light of the fact that the Association is the target in the merger acquisition.

The Holding Company must receive OTS approval under 12 C.F.R. § 552.2-2 to form the interim association. The establishment of and transaction involving the interim association is consistent with previous transactions OTS has approved, and is consistent with 12 C.F.R. § 552.2-2. The Applications contemplate that the interim association will never open for business, that it will be merged into the Association and that it will be formed to facilitate the acquisition of the Association by the Holding Company. OTS is acting on all aspects of the transaction simultaneously.

Approval Under 12 U.S.C. § 1467a(e)(1)(A)(iii)

Although the Applicants seek approval to acquire up to 100% of the outstanding common stock of the Association, in the event the Holding Company (alone, or acting in concert with the Control Group) acquires more than 5% of the voting shares of the Association, but less than a controlling interest in the Association, the Holding Company seeks approval under 12 U.S.C. § 1467a(e)(1)(A)(iii).

Section 10(e)(1)(A)(iii) generally prohibits a savings and loan holding company from acquiring, directly or indirectly, more than five percent of any class of voting shares of any other savings and loan holding company, or savings association, not a subsidiary of the acquiring savings and loan holding company, without prior OTS approval. In reviewing an application under section 10(e)(1)(A)(iii), OTS considers the factors set forth in section 10(e)(2) of the HOLA. We have considered the Applicants' proposed acquisition of a non-controlling interest in the Association exceeding five percent of the Association's voting stock under the standards set forth in HOLA § 10(e)(2), and based on the considerations set forth in the analysis of the holding company application, conclude that the acquisition meets the applicable approval standards.

Public Comment

OTS received two comments regarding the proposed acquisition. The comments addressed concerns regarding potential violations of section 10(e) by the Applicants, and the preservation of the minority status of the Association. OTS has considered the comments in reviewing the Applications. We have concluded that any potential issue regarding the Applicants' actions prior to filing the Applications have been addressed in a satisfactory manner in connection with OTS' review of the Applications. In addition, based on supervisory considerations, OTS concluded that the acquisition of the Association is in its best interest.

Conclusions

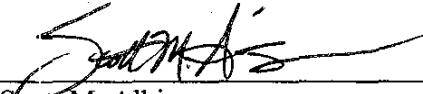
Based on the foregoing analysis, OTS concludes that the Applications meet the applicable approval criteria, provided that the following conditions are imposed. Accordingly, the Applications are hereby approved, provided that the following conditions are complied with in a manner satisfactory to the OTS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

1. The proposed acquisition contemplated by the Applications must be consummated within one year from the date of this order, in accordance with the terms and representations in the Applications;
2. On the business day prior to the date of the proposed acquisition of 10, 25, 50, and 95 percent of the stock of the Association, the chief financial officers of the Holding Company, the Association and Colombo 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 Applicants, the Holding Company, the Association, Colombo 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;
3. The Applicants, the Holding Company and the Association must advise the Regional Director in writing within 5 calendar days after the effective date of the proposed acquisition of 10, 25, 50, and 95 percent of the stock of the Association: (a) of the effective date of the proposed acquisition; and (b) that the proposed acquisition was consummated in accordance with all applicable laws and regulations, the Applications and this Order;

4. At the direction of the Regional Director, the Applicants must submit to the OTS, for the prior, written non-objection of the Regional Director, a revised business plan for the Association for the next three-year period. The Association must operate within the parameters of the business plan submitted with the Applications or an approved, amended business plan for a three-year period. During that period, any proposed major deviations or material changes from the plan must be submitted for the prior, written non-objection of the Regional Director. The request for change must be submitted no later than 60 calendar days prior to the desired implementation;
5. Within 30 days of the acquisition of 95 percent of the stock of the Association, the Applicants must provide an accounting opinion, which addresses the relevant accounting treatment for all affected entities and whether the proposed accounting treatment, including the computation and amortization of any intangibles, is in accordance with GAAP;
6. Within 30 days from the date of this order, the Applicants must provide an opinion from their tax counsel or tax accountant addressing the tax consequences of the proposed acquisition; and
7. Prior to any merger of the Association and the interim association, the Holding Company must submit the proposed terms of the merger, including the disclosure and compensation to insiders, and any employment agreements, for the prior, written non-objection of the Regional Director. In addition, the proposed merger must be consummated no earlier than fifteen (15) calendar days after the date of the Order.

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 14, 2003.



Scott M. Albinson
Managing Director
Office of Supervision