

OFFICE OF THRIFT SUPERVISION

Approval of Transfer of Assets, Bank Merger Act and Related Applications

Order No.: 2004-05

Date: February 2, 2004

Docket Nos.: 16423, 04544, H-2820, H-2821

DeepGreen Savings Bank, Seven Hills, Ohio (Savings Bank) seeks the Office of Thrift Supervision's (OTS) approval to transfer substantially all of the assets related to the Savings Bank's internet-based home equity line of credit origination and servicing business (Home Equity Business) to DG Acquisition Corp., Seven Hills, Ohio (Buyer), pursuant to 12 C.F.R. § 563.22(c). In addition, the Savings Bank and Third Federal Savings and Loan Association of Cleveland, Cleveland, Ohio (Association) seek OTS approval, pursuant to 12 U.S.C. § 1828(c) (BMA) and 12 C.F.R. § 563.22(a), for the Association to acquire all of the Savings Bank's deposit liabilities and certain of the Savings Bank's assets. Also, the Savings Bank has provided notice, under 12 C.F.R. § 560.32(c), to make a pass-through investment as a result of the Savings Bank's receipt of a small amount of stock of the Buyer's holding company to be received in connection with the transfer of assets. The Savings Bank's parent companies, which include a mutual holding company and certain of its subsidiaries, have applied under 12 C.F.R. § 575.11(a) to acquire the interest in the Buyer's holding company's stock. Finally, the proposed transactions require OTS approval under condition 11 of OTS Order No. 99-43 (Order), which approved the mutual holding company's acquisition of the Savings Bank. (Collectively, the various filings are referred to herein as the Applications).

The Parties

The Savings Bank is a Savings Association Insurance Fund (SAIF)-insured federal stock association, which is headquartered in Seven Hills, Ohio, and is a third tier, wholly owned subsidiary of Third Federal Savings and Loan Association of Cleveland, MHC (MHC). The Savings Bank offers home equity products and certificates of deposits to retail customers exclusively over the Internet.

The Association is a SAIF-insured federal stock association, which is headquartered in Cleveland, Ohio, and is a second tier, wholly owned subsidiary of the MHC.

The MHC, the top tier holding company in a federally chartered mutual holding company structure, wholly-owns TFS Financial Corporation (Mid-Tier), the second tier holding company. The Mid-Tier directly owns the Association, as well as another federal savings association, Ohio Central Savings, and indirectly owns all of the stock of the Savings Bank through another holding company, DeepGreen Financial.

The Buyer is a Delaware corporation formed expressly for the purpose of acquiring the Home Equity Business from the Savings Bank. The Buyer is owned by LYDG Holdings Corp.

(Holdings), which in turn, is primarily owned by The Lightyear Fund and Co-Invest Partners, L.P., two private equity funds organized and managed by Lightyear Capital, L.L.C.

The Proposed Transaction

The Buyer proposes to purchase substantially all of the assets used in the Home Equity Business for cash, and 1.5 percent of Holdings' common stock. At the same time that the Savings Bank transfers the Home Equity Business to the Buyer, the Savings Bank intends to transfer its deposit liabilities, and a corresponding amount of assets, to the Association. All of the Savings Bank's deposits are certificates of deposits.

Transfer of Assets Application

The Savings Bank has applied to transfer substantially all of its assets that relate to its Home Equity Business to the Buyer. Section 563.22(c) of OTS' regulations prohibit such a transfer without OTS approval. Section 563.22(d) of OTS' regulations provides that in considering a transfer application OTS will consider: (i) the capital levels of the resulting association; (ii) the financial and managerial resources of the constituent institutions; (iii) their future prospects; (iv) the convenience and needs of the communities to be served; (v) the conformity of the transaction to applicable laws, regulations and OTS policies; and (vi) whether the transaction is fair and equitable.

As for the capital levels of the resulting association, the Applications indicate that the Savings Bank is well capitalized and will remain well capitalized after consummation of the transfer.

As for financial and managerial resources, OTS has reviewed the financial and managerial resources of the Savings Bank. The Savings Bank will remain well capitalized after the transfer transaction. After the transaction, the Savings Bank's management team will consist of members of the Association's management. OTS is familiar with the Association's management and based on its experience with the Association's management group, OTS concludes that the Savings Bank's management resources are consistent with approval.

Based on its consideration of the managerial and financial resources of the Savings Bank, and OTS' review of the Savings Bank's plans for operations after the transfer, OTS concludes that the future prospects of the Savings Bank are consistent with approval.

As for convenience and needs, the Buyer plans to continue the Savings Bank's Home Equity Business, and there is no indication that there will be material changes in the manner in which business is conducted, or the types of services offered. Based on the foregoing, OTS concludes that the convenience and needs of the community are consistent with approval.

As for conformance to law, regulation and supervisory policy, OTS' review of the Applications did not indicate any violation of law or regulations, or non-compliance with supervisory policies, in connection with the proposed transaction. Based on the foregoing, OTS

concludes that approval of the proposed transaction is not objectionable based on conformity of the proposed transaction to applicable law, regulation, and supervisory policies.

As for factors regarding equitable treatment and disclosure, employment contracts, and advisory boards, OTS' review of the Applications indicates that the proposed transaction appears to be equitable to all concerned. The transfer was negotiated at arms'-length between independent parties.

Bank Merger Act Application

The Association seeks OTS approval to assume all of the Savings Bank's outstanding deposit liabilities, and to purchase certain other assets of the Savings Bank with an aggregate value equal to the value of the assumed deposits, pursuant to the BMA and 12 C.F.R. § 563.22(a). In addition, the Savings Bank seeks OTS approval under 12 C.F.R. § 563.22 to transfer these assets and liabilities to the Association.

In evaluating a BMA application, OTS considers the effect on the capital of the resulting association; the financial and managerial resources of the constituent institutions; the future prospects of the constituent institutions; the convenience and needs of the community; the effectiveness of the depository institutions in combating money laundering activities; conformance to applicable law, regulation, and supervisory policy; factors relating to fairness of and disclosure concerning the transaction; and the effect on competition. OTS also considers the constituent savings associations' record of performance under the Community Reinvestment Act (CRA).

As for capital, the Applications indicate that both the Savings Bank and the Association are well capitalized and will remain well capitalized after the Savings Bank's transfer of deposit liabilities and related assets to the Association.

As for financial and managerial resources and future prospects, the Applications indicate that the transaction will not have a material impact on the financial and managerial resources or future prospects of the Association. The transaction will increase the Association's total assets and total liabilities by less than 1%, respectively, and as a consequence, will have an insignificant impact on the financial condition and performance of the Association. The Association's directors and senior executive officers will not change as a result of the transaction. The Savings Bank will remain well capitalized after the transaction, and the Savings Bank's management, after the transaction, will be made up of members of the Association's current management team. In addition, OTS has reviewed the Savings Bank's plan for operations after the transaction. Based on the foregoing, OTS concludes that the financial and managerial resources and future prospects of the Association and the Savings Bank are consistent with approval, subject to satisfaction of the conditions set forth below.

As for convenience and needs of the community, OTS' review of the Applications shows no evidence that the transaction would adversely affect the Association's ability to meet the convenience and needs of its community. Although the Savings Bank will no longer engage in

the business of taking deposits, the Association will assume the Savings Bank's existing deposits. Based on the foregoing, OTS concludes that convenience and needs considerations are consistent with approval of the proposed transaction.

As for the CRA, OTS has considered the Savings Bank's and the Association's record of performance under the CRA in assessing the proposed transaction. The Association, whose management will continue in place, has a "Satisfactory" CRA rating. The Savings Bank also has a "Satisfactory" CRA rating. Based on the foregoing, OTS concludes that approval of the proposed transaction is consistent with the CRA.

As for conformance to law, regulation and supervisory policy, OTS' review of the Applications did not indicate any violation of law or regulations, or non-compliance with supervisory policies, in connection with the proposed transaction. Based on the foregoing, OTS concludes that approval of the proposed transaction is not objectionable based on conformity of the proposed transaction to applicable law, regulation, and supervisory policies.

As for compliance with anti-money laundering statutes and regulations, OTS has reviewed the compliance records of the Savings Bank and the Association, which involves an evaluation of their anti-money laundering practices and compliance with anti-money laundering provisions. On the basis of the foregoing, OTS concludes that the Savings Bank's and the Association's effectiveness in combating money-laundering activities is consistent with approval.

As for factors regarding equitable treatment and disclosure, employment contracts, and advisory boards, OTS' review of the Applications indicates that the proposed transaction is equitable to all concerned. The Savings Bank and the Association are indirect wholly owned subsidiaries of the same holding company. The Savings Bank and the Association published notice of the transaction, and OTS received no comment from the public. On the basis of the foregoing, OTS concludes that approval of the proposed transaction is not objectionable based on equitable treatment, disclosure, or compensation issues.

As for the competitive effects of the proposed transaction, the proposed transaction involves the Association's acquisition of deposits from an affiliated depository institution. Accordingly, the BMA transaction is competitively neutral. Neither the Department of Justice nor the other banking regulators objected to the proposed transaction on competitive grounds. Based on the foregoing, OTS concludes that the competitive considerations are consistent with approval.

Pass-Through Investment

As part of the transaction, the Savings Bank will acquire 1.5% of Holdings' common stock. The Savings Bank has applied to hold the investment as a pass-through investment pursuant to 12 C.F.R. § 560.32. The investment is not eligible for the prior notice exemption available under 12 C.F.R. § 560.32(b) because Holdings is a corporation, and does not fall within the categories set forth in § 560.32(b)(5). The proposed investment is consistent with the other

criteria set forth in § 560.32(b), because the investment does not exceed 15% of the Savings Bank's capital, the Savings Bank's total pass-through investments would be less than 50% of the Savings Bank's capital following the investment, the investment would not give the Savings Bank control of Holdings, and the Savings Bank's liability would be limited to the amount of the investment in the stock. OTS concludes that the proposed stock acquisition is not objectionable on supervisory grounds, and that the pass-through investment is consistent with approval.

Mutual Holding Company Activities Notice

The Savings Bank proposes to hold 1.5% of the stock of Holdings upon consummation of the transaction. Although the Savings Bank will hold the stock directly, the investment is, indirectly, an investment of the MHC. Accordingly, the investment also must comply with 12 C.F.R. § 575.11(a), which states, among other things, that a mutual holding company may engage in activities described in 12 C.F.R. § 575.10(a)(6).

Section 575.10(a)(6) provides that a mutual holding company may acquire control of, and make non-controlling investments in the stock of, any corporation other than a savings association or savings and loan holding company only if: (1) the corporation is engaged exclusively in activities permitted by § 575.11(a), or the corporation's stock would be a permissible investment for a federal savings association under Part 559 or for a state savings association under the law of any state where the mutual holding company's subsidiary thrift has its home office; and (2) the corporation is not controlled, directly or indirectly, by a savings association subsidiary of the mutual holding company.¹

With respect to the first criterion, § 1151.346(A) of the Ohio Revised Code provides that, "(i)n addition to the other loans and investments provided for in Chapter 1151 of the Revised Code, . . . , a savings and loan association may invest up to fifteen percent of the association's assets in such loans or investments as are authorized by the board of directors of the association." Because an Ohio state-chartered savings association would be authorized to invest in such corporation, OTS concludes that the MHC, the Mid-Tier, and the Savings Bank's immediate holding company may make the investment consistent with 12 C.F.R. § 575.10(a)(6)(i)(B).

With respect to the second criterion, § 575.10(a)(6)(ii) provides that corporations in which a mutual holding company invests under the authority of 12 C.F.R. § 575.10(a)(6) must not be "controlled, directly or indirectly, by a savings association subsidiary of the mutual holding company." Because the proposed investment will not give the Savings Bank control of Holdings, OTS concludes that this criterion is satisfied.

Recent examinations show the MHC and the Mid-Tier, and their thrift subsidiaries, to be operating in a safe and sound manner. OTS has reviewed the proposal and determined that the Savings Bank, the MHC and the Mid-Tier have the requisite experience and expertise to manage the proposed investment. Based on the foregoing, OTS concludes that the investment is not objectionable on supervisory grounds.

¹ 12 C.F.R. §§ 575.10(a)(6) (2003).

Approval Under OTS Order No. 99-43

In approving the MHC's and Mid-Tier's acquisition of the Savings Bank in a supervisory transaction in 1999, OTS imposed several conditions. Condition 11 of the Order (Condition 11) requires, in relevant part, that all distributions by the Savings Bank in connection with a voluntary dissolution of the Savings Bank receive prior written OTS approval. It is clear that these transactions are being undertaken in order to facilitate the ultimate dissolution of the Savings Bank. Accordingly, the proposed distributions of assets and liabilities require OTS approval under Condition 11.

OTS has not identified any concerns of the type that Condition 11 was intended to address. The Home Equity Business is being transferred, in an arms'-length transaction, to an unaffiliated party. The consideration in the transfer transaction will be retained by the Savings Bank, which remains an indirect, wholly owned subsidiary of the MHC. The transfer of deposits and various assets to the Association involves two wholly owned subsidiaries of the MHC, and will in no way be detrimental to the interests of the MHC's members. Accordingly, OTS concludes approval of the proposed transactions is consistent with Condition 11.

Conclusions

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

1. The Association and the Savings Bank must receive all required regulatory and shareholder approvals and submit copies of all such approvals to the Regional Director prior to the consummation of the proposed transactions;
2. The proposed transactions must be consummated within 120 calendar days from the date of this Approval Order;
3. On the business day prior to the date of consummation of the proposed transactions, the chief financial officers of the Association 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 Association or the Savings Bank as disclosed in the Applications. If additional information having a material adverse bearing on any feature of the Applications is brought to the attention of the Association, the Savings 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 prior written non-objection to consummation of the proposed transactions;

4. The Association and the Savings Bank must advise the Regional Director in writing within 5 calendar days after the effective date of the proposed transactions: (a) of the effective date of the transactions; and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the Applications, and this Approval Order;
5. No later than 30 calendar days after the consummation of the transaction, the Association must advise each accountholder, whose withdrawable accounts in the Association would increase above \$100,000, or whose uninsured deposits would increase, as a result of the transaction, of the effect of the transaction on insurance coverage. A copy of such notice should be submitted to the Regional Director; and
6. Within 45 calendar days of the earlier of: (i) the end of the Interim Period as defined in the Asset Purchase Agreement among the Savings Bank, the Buyer, and Holdings, dated September 29, 2003 (Agreement) or (ii) the termination of the Agreement, the Savings Bank must file with OTS the appropriate applications that result in the termination of the separate corporate existence of the Savings Bank.

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

February 2, 2004.



Scott M. Albinson
Managing Director
Office of Supervision