

OFFICE OF THRIFT SUPERVISION

APPROVAL OF APPLICATION FOR PERMISSION TO ESTABLISH AGENCY OFFICE

Order No.: 2004-11

Date: March 5, 2004

Ohio Savings Bank, Cleveland, Ohio (Savings Bank), has applied for approval of the Office of Thrift Supervision (OTS) to establish an agency office (Agency Office) in Toronto, Canada, pursuant to 12 C.F.R. § 545.96(b)(Application). The proposed Agency Office would originate acquisition, development and construction loans for 1-4 family and multi-family residences.

Section 5(a) of the Home Owners' Loan Act authorizes the Director of OTS to provide for the organization, incorporation, examination, operation and regulation of federal savings associations. This broad delegation of authority gives OTS wide regulatory discretion.¹ OTS may determine where federal savings associations may locate branches and other offices.²

Pursuant to this broad grant of authority, OTS promulgated 12 C.F.R. § 545.96. The regulation, at 12 C.F.R. § 545.96(b), provides that OTS may approve the establishment of agency offices that offer services other than making payments on savings accounts. Section 545.96 does not contain specific standards for OTS review of applications submitted under section 545.96(b). However, OTS review of an application to open an agency office is governed by the overriding statutory standard that the Director "shall provide for the examination [and] safe and sound operation . . . of savings associations." (12 U.S.C. § 1463(a)(1)).

OTS has reviewed the Application and has concluded that, provided the following conditions are imposed, the Application is not objectionable on safety and soundness grounds. The conditions help ensure that the foreign lending operation will be conducted in a safe and sound manner, and will not have a negative effect on OTS' ability to regulate the Savings Bank. Accordingly, the Application is hereby approved, subject to the following conditions:

1. The Savings Bank must commence operation of the Agency Office within one year from the date of this Order and promptly notify the Northeast Regional Director, or his designee (Regional Director) of the date of commencement and the address of the Agency Office;
2. The Savings Bank must receive all required regulatory approvals prior to commencement of operation of the Agency Office, with copies of all such approvals provided to the

¹ See, e.g., Fidelity Federal Sav. & Loan Assn v. de la Cuesta, 458 U.S. 141, 160-167 (1982).

² See, e.g., Fayetteville Sav. & Loan Assn v. FHLBB, 570 F.2d 693, 700-01 (8th Cir. 1978); Central Sav. And Loan Assn v. FHLBB, 422 F.2d 504, 507 (8th Cir. 1970); Independent Bankers Assn of America v. FHLBB, 557 F. Supp. 23, 26 (D.D.C 1982).

Regional Director;

3. On the business day prior to the date on which the Savings Bank commences operation of the Agency Office, the chief financial officer of 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 Savings Bank as disclosed in the Application. If additional information having a material adverse bearing on any feature of the Application is brought to the attention of the Savings Bank or OTS since the date of the financial statements submitted with the Application, the Savings Bank must not commence operation of the Agency Office unless the information is presented to the Regional Director, and the Regional Director provides written nonobjection to the commencement of operation of the Agency Office;
 4. Prior to the commencement of activities at the Agency Office, the Savings Bank must receive the prior written nonobjection of the Regional Director to the individual who will manage the operations of the Agency Office;
 5. The Savings Bank must not modify or expand the type and scope of the proposed activities of the Agency Office, or change the country or province location of the Agency Office, without the prior written approval of OTS;
 6. The Savings Bank and the Agency Office must make available to OTS such information as OTS deems necessary from time to time to monitor the activities of the Agency Office and the effect of its activities on the safe and sound operation of the Savings Bank. In this regard, the Savings Bank must maintain a duplicate set of records of the Agency Office in the U.S. in a location accessible to OTS examiners. Such records must be in the English language;
 7. The Savings Bank and each institution-affiliated party of the Savings Bank, as defined in 12 U.S.C. 1813(u), associated with the Agency Office must consent in writing to the jurisdiction of the U.S. over, and the applicability of U.S. law to, the Agency Office and its institution-affiliated parties for purposes of all claims made by, proceedings initiated by, or obligations to OTS and any other U.S. governmental agency, department or division, and must consent in writing to the jurisdiction of OTS over the Agency Office and its institution-affiliated parties for purposes of examination, supervision and enforcement;
 8. The Savings Bank must consent in writing to the disclosure by the Office of the Superintendent of Financial Institutions, or other relevant Canadian governmental authorities, to OTS of such information on the operations of the Agency Office that OTS deems necessary to determine and enforce compliance with applicable U.S. laws and regulations; and
 9. The Savings Bank must agree in writing to terminate the operations of the Agency Office if OTS, in its sole discretion, determines that such operations present undue risk.
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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 March 5, 2004.

A handwritten signature in black ink, appearing to read "Scott M. Albinson", written over a horizontal line.

Scott M. Albinson
Managing Director,
Examinations, Supervision, and Consumer Protection