

OFFICE OF THRIFT SUPERVISION

Approval of Applications for Permission to Organize a Federal Savings Bank and Holding Company Acquisition

Order No.: 2005-19
Date: June 13, 2005
Docket Nos.: 17966 and H-4000

CMG Financial Services, San Ramon, California (Holding Company), has applied to the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. §§ 1464(e) and 1467a(e), and 12 C.F.R. §§ 552.2-1 and 574.3, to organize and to acquire CMG Bank, FSB, San Ramon, California (Savings Bank). The Holding Company has filed an application with the Federal Deposit Insurance Corporation (FDIC) for insurance of the Savings Bank's deposits under the Savings Association Insurance Fund (SAIF).

The Proposed Transaction

The Holding Company proposes to establish and to operate a *de novo* federal stock savings association, the Savings Bank. The Savings Bank intends to conduct traditional thrift operations. The Holding Company, which currently conducts wholesale and retail mortgage banking and brokerage through its two wholly owned subsidiaries, CMG Mortgage, Inc. (Mortgage Company) and CMG Mortgage Services, Inc., proposes to engage in an offering of the Holding Company's common stock to raise approximately \$12 million. The Holding Company will exchange approximately \$11 million in cash for all of the stock of the Savings Bank.

Permission to Organize Application

OTS may grant a federal savings association 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 must consider whether the association will provide credit for housing consistent with the safe and sound operation of a federal savings association. OTS also considers the initial capitalization of the federal savings association; and the residence and composition of the savings association's board of directors.

Further, 12 C.F.R. § 563e.29(b) provides that an applicant for a federal thrift charter must submit with its application a description of how it will meet its Community Reinvestment Act (CRA) objectives. OTS is required to take this description into account when considering the application and may deny or condition approval on CRA grounds.

With respect to character and responsibility, a review of the backgrounds of the identified officers and directors of the Holding Company and the Savings Bank revealed no adverse information and also indicated that the proposed officers and directors of the Savings Bank have adequate managerial resources to operate a federal savings association. The Savings Bank expects to name additional directors and officers. Accordingly, to ensure that any new senior managers have the requisite character and responsibility, OTS is requiring the Savings Bank to receive the prior written non-objection of the West Regional Director, or his designee (Regional Director) for any new directors or senior executive officers, or any significant changes in the responsibilities of any senior executive officer for the first two years of operations. Thus, OTS concludes that this approval criterion is satisfied, subject to the imposition of the condition, which is intended to help ensure the officers and directors of the Savings Bank have the requisite character and responsibility.

As for the necessity for the Savings Bank in the community, the Savings Bank will commence deposit taking, mortgage lending, consumer lending and commercial lending from its San Ramon office. The Savings Bank's proposed market area, Contra Costa County, California, has experienced steady population and deposit growth in recent years and is expected to continue to grow. Therefore, OTS concludes that this criterion is satisfied.

With respect to undue injury to properly conducted existing local thrift and home financing institutions, the Savings Bank will provide new competition in the local market. However, the Savings Bank's projected level of deposits in its first three years of operations will constitute an insignificant percentage of the deposits in Contra Costa County. Accordingly, OTS concludes that the Savings Bank will not cause undue injury to properly conducted existing local thrift and home financing institutions.

With respect to the reasonable probability of the Savings Bank's usefulness and success, OTS reviewed the Savings Bank's business plan, proposed capital levels, and the competence and experience of proposed management. OTS concludes that the business plan is reasonable, that the Savings Bank will have adequate capital, and that the Savings Bank's managerial and financial resources are consistent with a reasonable probability of success. To help ensure the success of the Savings Bank, OTS is requiring the Savings Bank to develop, establish and submit to the Regional Director for his review and non-objection, prior to opening for business, policies and procedures for all major areas of the Savings Bank, and to hire a controller, branch operations manager, and a compliance officer prior to opening for business. Also, prior to opening for business, management of the Savings Bank must meet with designees of the Regional Director, on-site at the Savings Bank, and demonstrate that it has completed its pre-opening staffing effort and has implemented effective policies, procedures and controls. In addition, during the first year of operation, all employment agreements that have not been previously submitted to OTS must be provided to the Regional Director for his written non-objection prior to implementation. OTS is

imposing a condition of approval concerning the Service Agreement with affiliates to ensure that the Savings Bank operates in a safe and sound manner. OTS also is requiring the Savings Bank to submit, for the first 18 months of operations, any new contracts or agreements regarding transactions with affiliates, or any material changes to existing contracts or agreements, to the Regional Director for his prior written non-objection.

To help ensure the independence of the Savings Bank's board of directors and its audit and loan committees, and thereby help ensure that the Savings Bank operates successfully, OTS is imposing a condition addressing the composition of the Savings Bank's board, and its audit and loan committees. OTS has concluded that imposition of the condition is appropriate, in light of the volume of mortgage loans the Savings Bank intends to acquire from an affiliate, the Mortgage Company.

Based on the foregoing analysis, OTS concludes that the probability of the Savings Bank's usefulness and success is consistent with approval, subject to the imposition of the conditions, which are intended to help ensure the probability of the Savings Bank's usefulness and success.

With respect to the provision of credit for housing, the Savings Bank will directly and indirectly extend credit for housing. The origination and purchase of mortgage loans will enable the Savings Bank to satisfy the qualified thrift lender test. OTS has determined that the Savings Bank will have adequate policies, procedures and controls, provided that the Savings Bank complies with the conditions set forth in this order. Based on the above, OTS concludes that the Savings Bank will provide credit for housing in a safe and sound manner.

With respect to capital, the Savings Bank plans to be well capitalized throughout the first three years of operations. Accordingly, OTS concludes that the Savings Bank's proposed capital levels are consistent with approval.

OTS regulations require that a majority of a *de novo* federal association's board of directors be "representative" of the state in which the association is located. OTS regulations also require that a *de novo* federal 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* federal association that is wholly owned by a holding company, no more than one-third of a *de novo* federal 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 the first two criteria. Because the Savings Bank will be a wholly owned subsidiary of the Holding Company, the third criterion is inapplicable.

With respect to the CRA and OTS' CRA regulations, the Savings Bank's initial CRA assessment area will consist of Contra Costa County, California. The Savings Bank intends to meet the borrowing needs of its assessment area through residential mortgage lending. OTS concludes that the Savings Bank has satisfactorily demonstrated that it will meet its CRA objectives.

Holding Company Application

Section 10(e)(1)(B) of the Home Owners' Loan Act 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 Holding Company and the Savings Bank are satisfactory, subject to the conditions recommended above regarding management and the board of directors.

With regard to financial resources, OTS reviewed the Holding Company's financial position and the Savings Bank's proposed capitalization and business plan. The Holding Company demonstrated adequate resources and operations. The application projects 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 the financial resources of the Holding Company and the Savings Bank are consistent with approval of the holding company application.

To help ensure that the proposed offering by the Holding Company is conducted properly, and in a manner that is consistent with the future prospects of the Holding Company and the Savings Bank, OTS is requiring that any offering circular/prospectus or other offering materials be provided to OTS for review and OTS' non-objection before any offering is commenced. Based on the factors considered in the above discussions regarding the managerial and financial resources of the Savings Bank and the Holding Company, the character and responsibility of the officers and directors of each entity, the probability of the Savings Bank's usefulness and success, the composition of the Savings Bank's board of directors, OTS concludes that the future prospects of the Holding Company and the Savings Bank are consistent with approval, and will not pose undue risk to the SAIF, subject to the imposition of the above 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 Holding Company's performance under the CRA, the Holding Company has 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.

Conclusion

Based on the foregoing, OTS concludes that the applications satisfy the applicable approval standards, provided that the following conditions are complied with in a manner satisfactory to the Regional Director. Accordingly, the applications are hereby approved, subject to the following conditions:

1. The Holding Company 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. Any offering circular/prospectus or other offering materials must be provided to OTS for review and OTS' non-objection before any offering is commenced;
4. Prior to opening for business, the Savings Bank must hire a controller, a branch operations manager, and a compliance officer. The Savings Bank must provide background and financial information regarding these persons to the Regional Director and receive his prior written non-objection prior to the Savings Bank's opening;
5. Prior to opening for business, the Savings Bank must establish detailed policies and procedures for all major 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;
6. Prior to opening for business, management of the Savings Bank must meet with designees of the Regional Director, on-site at the Savings Bank, and demonstrate that it has completed its pre-opening staffing effort and has implemented effective policies, procedures and controls;
7. On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of the Holding 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 Holding Company and the Savings Bank, respectively, 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 Holding Company, 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 written non-objection to consummation of the transaction;

8. The Holding Company and the Savings Bank must, within 5 calendar days after the effective date of the proposed transaction: (a) advise the Regional Director in writing of the effective date of the proposed transaction and of the Savings Bank's insurance of accounts; (b) advise the Regional Director in writing that the transaction was consummated in accordance with all applicable laws and regulations, the applications and this Order; and (c) provide a reconciliation of the Savings Bank's capital to the Regional Director;
9. The Savings Bank must operate within the parameters of its three year business plan, and must submit any proposed major deviations or material changes from the plan 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;
10. For three years following the Savings Bank's 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;
11. For one year following the Savings Bank's commencement of operations, all employment agreements that have not been previously submitted to OTS must be provided to the Regional Director for his written non-objection prior to implementation of any agreement;
12. For eighteen months following the Savings Bank's commencement of operation, any contracts or agreements pertaining to transactions with affiliates not yet submitted to the OTS for review, or any material changes to previously submitted contracts or agreements, must be provided to the Regional Director for his written non-objection at least 30 calendar days prior to their execution and implementation;
13. For two years following the Savings Bank's 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 not already reviewed by OTS, or any significant change in responsibilities of any senior executive officer;
14. The Savings Bank must submit independent audit reports to the Regional Director 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; and
15. At least 40 percent of the Savings Bank's board of directors must be individuals who are not officers or employees of the Holding Company 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 Holding Company 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 and loan committees established by the Savings Bank must be directors who are not officers or employees of the Savings Bank, the Holding Company or any affiliates, and who have not otherwise been determined by the Regional Director to lack sufficient independence.

The Regional Director may, for good cause, extend any time period set forth herein for up to 120 calendar days.

By order of the Director of the Office of Thrift Supervision, or his designee, effective

June 13, 2005.



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