

OFFICE OF THRIFT SUPERVISION

Approval of Application for Permission to Organize a Federal Savings Bank, Holding Company Application, and Related Filings

Order No.: 2005-51

Date: November 28, 2005

**Re: OTS Nos. 18000, 05848,
H-3483, H-3896, H-3897,
H-3898 and H-2265**

E*Trade Financial Corporation, E*Trade National Holdings, Inc., E*Trade BBH, Inc., E*Trade Re, LLC, ETB Holdings, Inc. (collectively, the Holding Company), and E*Trade Bank (Association), Arlington, Virginia, have applied for approval of 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, for permission to organize and to acquire E*Trade Savings Bank, Arlington, Virginia (Savings Bank). In addition, the Association has applied under 12 C.F.R. Part 559 to hold the Savings Bank as an operating subsidiary, and the Association and the Savings Bank have applied under 12 C.F.R. Part 559 to hold E*Trade Wholesale (Wholesale) as a first-tier operating subsidiary of the Savings Bank. Also, the Savings Bank has applied, pursuant to 12 C.F.R. §§ 545.93 and 545.95, to open a branch. Collectively, the foregoing filings are referred to herein as the Applications.

The Parties

The Holding Company, which engages in various securities and insurance activities, holds all of the common stock of the Association. The Association is the sixth largest savings association in the United States. Wholesale, which engages in mortgage lending, entirely on a wholesale basis, is currently a division of a Holding Company subsidiary.

The Proposed Transaction

In the proposed transaction, the Holding Company and the Association will organize the Savings Bank as a federally chartered, Savings Association Insurance Fund (SAIF)-insured, stock savings bank. The Savings Bank will be a direct, wholly owned subsidiary of the Association. The Association will capitalize the Savings Bank with funds from the Association's cash reserves.

The Savings Bank proposes to operate from its home office in Arlington, Virginia and one initial branch office in Washington, D.C. The Savings Bank intends to open 13 other branch offices in its first year of operations and 42 branch offices by the end of its third year of operations. The Savings Bank's sole source of deposits will be deposits transferred to it in connection with a sweep deposit arrangement conducted by an

affiliate. The Savings Bank's locations will accept deposits on behalf of the Association, pursuant to an interaffiliate agreement.

Wholesale is currently a division of E*TRADE Global Asset Management, Inc. (ETGAM), which is a subsidiary of E*TRADE Holdings, Inc., the parent of the Association. In the proposed transaction, ETGAM will transfer Wholesale's assets to E*Trade Holdings, which will immediately infuse those assets as a capital contribution to the Association. Immediately thereafter, the Association will transfer the assets to Savings Bank, which will in turn transfer the assets to the new operating subsidiary, which will be named Wholesale. No liabilities will be transferred in connection with any of the transfers of Wholesale's assets.

Permission to Organize Application

The Home Owners' Loan Act (HOLA) provides that OTS may grant a federal savings association charter only: (i) to persons of good character and responsibility; (ii) if, in OTS' judgment, a necessity exists for such association in the community to be served; (iii) if there is a reasonable probability of 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. OTS regulations implementing the HOLA include the same standards, with the additional requirement that OTS consider whether the association will promote credit for housing consistent with the safe and sound operation of a federal savings association.

In addition, OTS regulations regarding the establishment of de novo federal savings associations set forth standards OTS considers in granting a de novo federal charter, regarding: (i) initial capitalization of a federal association; and (ii) the residence and composition of an 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 takes this description into account when considering an application and may deny an application or condition approval on CRA grounds.

With respect to character and responsibility, OTS has conducted background checks of the proposed directors and senior officers of the Savings Bank and has reviewed the relevant information submitted in the Applications. The persons who will become the Chief Executive Officer and President, Chief Financial Officer, and Chief Operating Officer of Savings Bank serve in those positions with the Association, and have extensive financial industry experience. The proposed members of the Savings Bank's board of directors are the members of the Association's board of directors, and possess experience in the operations of depository institutions. In addition, OTS has reviewed the performance of the Association and the Holding Company and has concluded that the character and responsibility of those entities are consistent with

approval. Based on the relevant information, OTS concludes that the character and responsibility of the organizers of the Savings Bank are consistent with approval.

With respect to the necessity for the Savings Bank in the community, the Savings Bank will only be accepting deposits transferred to it from the Association in connection with a sweep deposit account arrangement. The sweep deposits originate from locations throughout the United States. Therefore, it is appropriate to look at the national market for deposits.

The United States population in 2005 is estimated to be 298.7 million people, an increase of 6.15 percent since 2000. The population of the United States is expected to increase by 6.26 percent to 317.4 million by 2010. The number of U.S. households is expected to increase from 112.4 million as of 2005 to 119.8 million by 2010, an increase of 6.5 percent. At June 30, 2005, deposits at all Federal Deposit Insurance Corporation-insured institutions were \$5.9 trillion, an 8 percent (\$460 billion) increase from June 30, 2004. Thus, OTS concludes that there is a necessity in the community for the Savings Bank.

With respect to undue injury to local thrift and home financing institutions, Savings Bank will not have deposits generated through its branches, and all of its deposits will be transfers of existing deposits held elsewhere in the holding company structure. There is no evidence to indicate that there would be any injury to existing local thrift and home financing institutions as a result of the establishment of Savings Bank. OTS received no comments opposing the application in response to the public notice. Therefore, OTS concludes that the impact on local thrift and home financing institutions is consistent with approval.

With respect to the probability of the Savings Bank's usefulness and success, the Savings Bank will be well capitalized and the Savings Bank's business plan is reasonable. The Savings Bank's proposed officers have considerable experience, and its directors' character and responsibility are consistent with approval of the application. In order to ensure that Wholesale conducts its operations in a safe and sound manner, OTS is imposing Condition No. 11 below. This condition will help ensure that the probability of the Savings Bank's usefulness and success meets the standards for approval. In addition, approval of the Applications will be subject to a number of other conditions designed to help ensure that there is a reasonable probability of the Savings Bank's usefulness and success. Conditions 5, 6, 7, and 10 below are designed to help ensure compliance with the business plan included in the application, that changes to or from that plan would not be detrimental to the Savings Bank, and that the Savings Bank operates pursuant to appropriate policies and procedures. OTS is imposing condition 9 below to ensure compliance with regulatory provisions and policies concerning related persons or affiliated entities. Also, because the Savings Bank will be a subsidiary of a holding company that has another operating subsidiary and because the Savings Bank will share several officers with and do business with the Holding Company and/or the

Association, OTS is imposing conditions 8 and 12 below to enable OTS to ensure that the Savings Bank will be operated properly and by qualified personnel.

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.

The Savings Bank's business plan projects substantial residential mortgage lending through Wholesale's operations, and that the Savings Bank will meet Qualified Thrift Lender requirements. The Savings Bank will have experienced management, and appropriate procedures regarding lending will be in place. Accordingly, we conclude that the Savings Bank will provide credit for housing consistent with the safe and sound operation of a federal savings association.

OTS received no public comments objecting to the application. In addition, OTS has reviewed the Savings Bank's CRA statement and has found it to be acceptable. OTS concludes that the Savings Bank has made a satisfactory showing that it will satisfy the requirements for the CRA and OTS' implementing regulations.

The Savings Bank intends to adopt a federal charter and bylaws that conform to the model charter and bylaws for a federal stock savings association. The Savings Bank will have an initial capitalization that exceeds the minimum regulatory requirement. In addition, the composition of the Savings Bank's board of directors will comply with 12 C.F.R. § 543.3(d), because a majority of the Savings Bank's directors live or work in the Metropolitan Statistical Area where the Savings Bank will be located, and the Savings Bank's board of directors will be made up of persons with varied backgrounds. Because the Savings Bank will be owned by a holding company that has substantial independent economic significance, there is no limitation on the percentage of board members who are in closely related businesses.

Holding Company Application

Section 10(e)(2) of the HOLA and the OTS Acquisition of Control Regulations provide that in reviewing the proposed acquisition of a savings association by a savings and loan holding company, such as the Holding Company, and the acquisition of more than one savings association by any company, such as the Association,¹ OTS must consider the managerial and financial resources and future prospects of the company and associations involved, the effect of the acquisition on the associations, the insurance risk to the SAIF, and the convenience and needs of the community to be served.² Consideration of the managerial resources of a company or savings association must include consideration of the competence, experience, and integrity of the officers,

¹ See the accompanying order regarding the Association's acquisition of E*Trade Credit Bank.
² 12 U.S.C. § 1467a(e)(2); 12 C.F.R. § 574.7 (2005).

directors, and principal shareholders of the company or savings association.³ OTS must consider the impact of any acquisition on competition.⁴ Also, 12 C.F.R. § 563e.29 requires that OTS take into account assessments under the CRA when approving holding company acquisitions.

For the reasons set forth above, OTS concludes that the managerial resources of the Holding Company, the Association, and the Savings Bank are satisfactory.

With regard to financial resources, OTS reviewed the Holding Company's and the Association's financial positions and the Savings Bank's proposed capitalization and business plan. The Association and the Holding Company have demonstrated adequate resources. 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, the Association, 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 Holding Company, the Association, and the Savings Bank, the character and responsibility of the officers and directors of each entity, and the probability of the Savings Bank's usefulness and success, OTS concludes that the future prospects of the Holding Company, the Association, and the Savings Bank are consistent with approval, and will not pose undue risk to the SAIF, subject to the imposition of the conditions discussed above.

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 regard to the convenience and needs of the community to be served, the Savings Bank intends to offer mortgage lending products, including wholesale lending products through Wholesale, and retail lending, thus serving the convenience and needs of the community to be served. The Savings Bank's offices will provide deposit-taking services for the Association's customers, increasing the availability of those services. In addition, the Savings Bank will participate in the Association's arrangements involving sweep deposit accounts, which will enhance the services available to the Association's customers, thus serving the convenience and needs of the community to be served. Accordingly, OTS believes the convenience and needs considerations are consistent with approval.

With respect to the Association's performance under the CRA, the Association has a "Satisfactory" CRA rating. OTS did not receive any comments objecting to the

³ Id.

⁴ Id.

application on CRA grounds. Accordingly, OTS concludes that there is not any basis for objection to the holding company application based on CRA grounds.

Operating Subsidiary Notices

As a result of the proposed transactions, the Savings Bank will become a wholly owned operating subsidiary of the Association and Wholesale will become a wholly owned operating subsidiary of the Association and the Savings Bank.

An operating subsidiary must engage only in activities permissible for a federal savings association to engage in directly, the federal savings association must own, directly or indirectly, more than 50 percent of the voting shares of the operating subsidiary, and no person or entity other than the federal savings association may exercise operating control over the operating subsidiary. In addition, OTS may, at any time, limit or refuse to permit any activities of an operating subsidiary, for supervisory, legal, or safety or soundness reasons.

With respect to the Association's establishment of the Savings Bank as an operating subsidiary, the Savings Bank will be an insured depository institution engaging in mortgage lending and deposit taking activities. OTS regulations, at 12 C.F.R. § 559.3(e)(1), specifically provide that a federal savings association may hold another insured depository institution as an operating subsidiary. The Association will hold all of the Savings Bank's voting securities, and no party other than the Association will have operating control of the Savings Bank. OTS is imposing the conditions set forth below to ensure that the establishment of the Savings Bank is acceptable from a supervisory perspective.

With respect to the Association's and the Savings Bank's establishment of Wholesale as an operating subsidiary, Wholesale will engage in mortgage lending, an activity that is permissible for a federal savings association. In addition, the Savings Bank will hold all of Wholesale's voting stock, and the Savings Bank will have sole operating control of the Savings Bank.

OTS concludes that the establishment of the Savings Bank and Wholesale as operating subsidiaries is consistent with 12 C.F.R. Part 559.

Branching Application

The Savings Bank will operate from its headquarters in Arlington, Virginia, and an initial branch office in Washington, D.C. Pursuant to 12 C.F.R. § 545.93 and 545.95, the Savings Bank has requested approval for the branch office, which is proposed to be located at 1850 K Street, Washington, D.C. OTS regulations, at 12 C.F.R. § 545.95, provide that OTS shall approve a branching application only if the overall policies, condition and operations of the savings association afford no basis for supervisory objection and the proposed branch will open within twelve months of approval. The

Savings Bank will exceed the minimum capital requirements, and OTS has concluded that its business plan is consistent with approval. In addition, the Savings Bank's proposed CRA plan indicates that Savings Bank will fulfill its obligation of meeting the credit needs of its entire community, including low- and moderate- income neighborhoods. Therefore, OTS concludes that the establishment of the proposed branch is consistent with applicable regulations.

Conclusion

OTS concludes that the Applications satisfy the applicable approval standards, provided 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 Savings Bank must receive all required regulatory approvals, and submit copies of all such approvals 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 consummation of the proposed transaction, the chief financial officers of the Savings Bank, the Association and E*TRADE Financial Corporation (ETFC) 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, the Association or ETFC 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 Savings Bank, the Association, ETFC 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;
4. 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 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;
5. The Savings Bank must submit independent audit reports to the Regional Director for its first three fiscal years of operations. 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 for the prior, written non-objection of the Regional Director, any proposed major deviations or material changes from the plan. The request for change must be submitted no later than 60 calendar days prior to the desired implementation date with a copy sent 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 deviations;
8. For two 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 change in responsibilities of any senior executive officer;
9. During the first eighteen months of operations, any contracts or agreements pertaining to transactions with affiliates and related interests of affiliated persons as defined in 12 C.F.R. § 561.5(d) of the Savings Bank and the Association, not yet submitted to OTS for review, must be provided to the Regional Director at least 30 calendar days prior to their planned execution and implementation;
10. Prior to the Savings Bank's commencing operations, the Savings Bank must establish detailed policies and procedures as required by the Regional Director and provide evidence of board of director approval to the Regional Director of those policies and procedures;
11. Prior to beginning a broker compensation program at Wholesale, Wholesale shall submit information outlining how the program will work, including any policies, procedures, and broker agreements to the Regional Director; and
12. Should OTS determine that any employee acting in dual roles with respect to the Savings Bank and the Association is having a detrimental effect upon the Savings Bank, OTS may require the elimination of such dual roles.

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 November 28, 2005.



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