

OFFICE OF THRIFT SUPERVISION

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

**Order No.: 2006-03
Date: February 23, 2006
Docket Nos.: 18005 and H-4229**

Liberty Banshares Florida, Inc., West Des Moines, Iowa (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, for permission to organize and to acquire Liberty Bank, FSB, Naples, Florida (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 Savings Bank has applied: (i) pursuant to section 18(c) of the Federal Deposit Insurance Act (Bank Merger Act) to acquire two branch offices from Liberty Bank, FSB, West Des Moines, Iowa (FSB);¹ and (ii) pursuant to 12 C.F.R. §§ 545.93 and 545.95 for permission to open an additional branch office in Naples, Florida. William A. Krause has applied pursuant to section 10(e)(4) of the Home Owners' Loan Act (HOLA) to acquire control of the Savings Bank.

The Proposed Transaction

The Holding Company proposes to establish and to operate a *de novo* federal stock savings association, the Savings Bank. The Holding Company, which is a newly chartered Delaware corporation organized to hold all of the Savings Bank's common stock, is conducting a private placement offering of the Holding Company's common stock to capitalize the Savings Bank. The Savings Bank will purchase the FSB's Naples and Bonita Springs, Florida, branches (Branches), for consideration described in the application. The Savings Bank also seeks to open a second branch in Naples during its first year of operation.

William A. Krause, two of his sons and his son-in-law, David Conner Prange, will own approximately 31 percent of the Holding Company's stock. Mr. Krause already owns 34.31 percent of the outstanding common stock of Liberty Iowa, the holding company that owns all of the FSB's stock.

¹ The FSB is a wholly owned subsidiary of Liberty Banshares Iowa, Inc., West Des Moines, Iowa (Liberty Iowa), a registered savings and loan holding company.

Permission to Organize Application

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 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, OTS has reviewed the backgrounds of the proposed officers and directors of the Holding Company and the Savings Bank and has concluded that the character and responsibility of the proposed officers and directors of the Holding Company and the Savings Bank are consistent with approval.

As for the necessity for the Savings Bank in the community, the Savings Bank will commence operations from two offices that the FSB currently operates. In addition, the Savings Bank's proposed market areas, in Naples/Northern Collier County and Bonita Springs, Florida, have experienced significant population and deposit growth in recent years and are expected to continue to grow. Therefore, OTS concludes that this approval criterion is satisfied.

With respect to undue injury to properly conducted existing local thrift and home financing institutions, the Savings Bank's projected level of deposits in its first two years of operations will constitute an insignificant percentage of the deposits in Naples/Northern Collier County and Bonita Springs. Also, the Savings Bank will commence operations from offices that currently operate in the relevant markets. Therefore, OTS concludes that this approval criterion is satisfied.

With respect to the 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.

We are imposing conditions 5 and 6 to help ensure that changes to or from the business plan included in the application are not detrimental to the Savings Bank. OTS is

imposing condition 7 to help ensure that the Savings Bank will be operated properly and by qualified personnel. Because of the transactions between affiliates that are projected to occur as a result of interactions between the Savings Bank and the FSB, OTS is imposing condition 8. This condition also helps to ensure that the Savings Bank's probability of usefulness and success is consistent with approval.

OTS is imposing condition 9 relating to the composition of the Savings Bank's board of directors, because the Savings Bank will be under common control with another institution and will be doing business with that institution. This condition reflects agency concerns about captive boards in the context of structures where the savings association is likely to have transactions with its affiliates and is designed to help ensure that the Savings Bank's probability of usefulness and success is consistent with approval.

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.

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 concluded 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 will have initial capital well above the \$2 million required by 12 C.F.R. § 543.3(b). 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 require, under the circumstances present in this transaction, that no more than one-third of the Holding Company's board of directors 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. OTS concludes that, based on the current occupations of the Holding Company's board of directors, the third criterion has been satisfied.

With respect to the CRA and OTS' CRA regulations, the Savings Bank's initial CRA assessment area will consist of Naples/Northern Collier County and Bonita Springs, Florida. The Savings Bank intends to meet the needs of low- and moderate-income customers in its assessment area by offering a complete line of products and services to

such customers. 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 HOLA 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 consistent with approval.

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 has demonstrated adequate resources. The applications project 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.

Based on the factors considered in the above discussion 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, and the probability of the Savings Bank's usefulness and success, OTS concludes that the future prospects of the Holding Company and the Savings Bank, and the insurance risks to the SAIF, are consistent with approval, subject to the imposition of the conditions herein.

The transaction will not diminish competition. Rather, a new institution will replace a currently operating depository institution in the relevant geographic market. 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.

Bank Merger Act Application

The Savings Bank seeks OTS approval to acquire certain assets and assume certain liabilities associated with the Branches, pursuant to the Bank Merger Act, 12 U.S.C. § 1828(c), and the OTS Merger Regulations, 12 C.F.R. § 563.22(a). In addition, the FSB seeks OTS approval under 12 C.F.R. § 563.22(c) to transfer the Branches to the Savings Bank.

In evaluating a Bank Merger Act application, and in evaluating an application under 12 C.F.R. § 563.22(c), 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; conformance of the transaction to applicable law, regulation, and supervisory policy; and factors relating to fairness of and disclosure concerning the transaction. In addition, in evaluating a Bank Merger Act application, OTS considers the effect of the proposed transaction on competition, and the effectiveness of the depository institutions in combating money-laundering activities. OTS also considers the constituent savings associations' record of performance under the CRA.

As for capital, the applications indicate that the Savings Bank will be well capitalized and will remain well capitalized after its acquisition of the Branches, and the FSB will remain well capitalized after its sale of the Branches.

As for managerial resources, OTS has no objection to the managerial resources of the FSB, and the proposed transaction will not result in changes to the FSB's management. For the reasons discussed above, in the discussion of the permission to organize application, OTS concludes that the Savings Bank's managerial resources are acceptable. Accordingly, OTS concludes that the managerial resources of the parties are consistent with approval.

As for financial resources and future prospects, the applications indicate that the transaction will not have a material impact on the financial resources or future prospects of the FSB. The transfer of the Branches will enhance the financial resources and future prospects of the Savings Bank by enabling the Savings Bank to commence its banking operations from an existing platform in the Naples/Collier County and Bonita Springs banking market. Accordingly, OTS concludes that the parties' financial resources and future prospects are consistent with approval, subject to compliance with the conditions set forth below.

As for convenience and needs of the community, the proposed acquisition of the Branches will enhance the Savings Bank's ability to meet the convenience and needs of its community, by providing it with an established base of operations. The Savings Bank will be assuming the operations of existing bank branch offices and will be providing comparable service to the customers and communities served by those offices. 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 FSB's record of performance under the CRA in assessing the proposed transaction. The FSB has a "Satisfactory" CRA rating, and the sale of the branch offices is not expected to have a negative impact on the FSB's CRA performance. The Savings Bank is newly organized and, while it has no CRA history, it has provided an adequate plan for CRA compliance. OTS received no adverse comments regarding the applications. 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 FSB, which involves an evaluation of its anti-money laundering practices and compliance with anti-money laundering provisions. Based on its review of the FSB, OTS concludes that the FSB's effectiveness in combating money-laundering activities is consistent with approval. The Savings Bank, a newly organized entity, has no record with respect to combating money laundering activities.

As for factors regarding equitable treatment and disclosure, employment contracts, and advisory boards, OTS' review of the applications provided no evidence that the proposed transaction would not be equitable to all concerned. The Savings Bank and the FSB 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 transfer of the Branches to a newly organized savings association, and consequently does not lessen competition or create a monopoly. 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.

Branch Office Application

Pursuant to 12 C.F.R. §§ 545.92 and 545.95, a branch office application has been submitted for the establishment of an additional branch office in Naples, Florida. Under

12 C.F.R. § 545.95, OTS approves a savings association's branch 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. OTS also considers an applicant's record under the CRA.

The Savings Bank will exceed the minimum capital requirements and OTS' evaluation of the Savings Bank's proposed CRA plan indicates that it will fulfill its obligation of meeting the credit needs of its entire community, including low- and moderate- income neighborhoods. OTS has concluded that the Savings Bank's policies, condition and operations are consistent with approval of the branch office application, and that the proposed branching is consistent with applicable regulations.

Application Under Section 10(e)(4)(A) of the HOLA

OTS, in evaluating a filing under section 10(e)(4)(A) of the HOLA and 12 C.F.R. § 574.3, considers the managerial and financial resources and future prospects of the acquiror and the associations involved, the impact of the transaction on the SAIF, the impact of the transaction on competition, and the convenience and needs of the community to be served.²

OTS is familiar with William A. Krause's managerial resources as a result of his control of Liberty Iowa, and his positions as chairman of Liberty Iowa and the FSB. In addition, OTS has reviewed the financial information Mr. Krause has filed in connection with the organization of the Savings Bank. Liberty Iowa and the FSB received acceptable ratings in their last examinations. While the FSB will sell the Branches to the Savings Bank in the transaction, as discussed above, that sale will not have a detrimental effect on the managerial and financial resources or future prospects of the FSB. As discussed above, OTS has concluded that the Savings Bank's managerial and financial resources are acceptable. OTS concludes the managerial and financial resources of Mr. Krause, the FSB, and the Savings Bank are consistent with approval. As for future prospects, as discussed above, OTS has concluded that the future prospects of the Savings Bank and the FSB are acceptable.

The proposed transaction will not result in the diminution of competition in any deposit market in the country. While the effect of the transaction is that two savings associations will become affiliates, the Savings Bank is a new entity and it is the successor to the FSB in the local market in Florida. The FSB will continue to operate in Iowa. Therefore, in our opinion, there is an adequate legal basis to conclude that approval is consistent with this review criterion.

With respect to the convenience and needs of the community to be served, the FSB will continue its current operations in Iowa upon consummation of the proposed transaction, and the Savings Bank will provide services in Florida that are comparable to

² See, 12 C.F.R. § 574.7(b) (2005).

those that the FSB had been providing there. The Savings Bank has submitted an acceptable CRA plan, and the FSB has received a CRA rating of "Satisfactory." Based on the foregoing, there is an adequate legal basis to conclude that convenience and needs considerations are consistent with approval.

Conclusion

Based on the foregoing, including all information and commitments furnished in the application materials, OTS concludes that the applications satisfy the applicable approval standards, provided that the following conditions are complied with in a manner satisfactory to the Midwest Regional Director (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. On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of the FSB, 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 FSB, 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 FSB, 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;
4. 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, all information and commitments in the applications and this Order; (c) provide a reconciliation of the Savings Bank's capital to the Regional Director; and (d) affirm to the Regional Director that the Holding Company and the Savings Bank will continue to comply with all commitments made in the applications;
5. 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;

6. 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 material deviations;
7. 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;
8. For the first eighteen months following commencement of operations, any contracts or agreements pertaining to transactions with affiliates, not yet submitted to the OTS for review, shall be provided to the Regional Director, or his designee (together, the Regional Director) at least 30 days prior to execution and shall receive the Regional Director's written non-objection prior to implementation;
9. For three years following commencement of operations, 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 or have otherwise been determined by the Regional Director to lack sufficient independence, at least 50 percent of the Savings Bank's audit committee must be Savings Bank directors who are not officers or employees of the Savings Bank, the Holding Company or any affiliates or a person whom the Regional Director has concluded lacks the requisite independence, and 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 or has otherwise been determined by the Regional Director to lack sufficient independence; and
10. 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.

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 February 23, 2006.



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