

OFFICE OF THRIFT SUPERVISION

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

Order No.: 2007-15
Date: April 13, 2007
Docket Nos.: 18036 and H-4349

Savannah River Financial Corporation, Augusta, Georgia (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 Savannah River Banking Company, Augusta, Georgia (Savings Bank), and for approval of a branch office application pursuant to 12 C.F.R. §§ 545.93 and 545.95 (collectively, the Applications). The Savings Bank has requested that OTS permit the Savings Bank to have a board of directors with 21 members. The applicants have also applied for approval of asset purchases under OTS's Transactions with Affiliates Regulations. The applicants received approval from the Federal Deposit Insurance Corporation (FDIC) on February 2, 2007, for deposit insurance for the Savings Bank's deposits under the Deposit Insurance Fund (DIF).

The Proposed Transaction

The Holding Company is a shell holding company established by 22 persons residing in the Augusta, Georgia, and Aiken, South Carolina, areas (Organizers). The Holding Company proposes to establish and to operate a *de novo* federal stock savings association, the Savings Bank. The Holding Company proposes to capitalize the Savings Bank with approximately \$19.7 million. The board of directors of the Holding Company consists of all but one of the Organizers.

The Savings Bank intends to operate from its home office in Augusta, Georgia, and from a branch office in Aiken, South Carolina to serve its target markets in Richmond and Columbia Counties, Georgia and Aiken and Edgefield Counties, South Carolina (part of the Augusta-Aiken, GA-SC Metropolitan Statistical Area (MSA)).

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's 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.¹ In addition, OTS must consider whether the association will promote credit for housing consistent with the safe and sound operation of a federal savings association.² Also, OTS's regulation regarding the establishment of *de novo* federal savings association's sets forth standards regarding: (i) initial capitalization of the federal savings association; and (ii) the residence and composition of the savings association's board of directors.³

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's review of the backgrounds of the proposed officers and directors of the Savings Bank, the Organizers, and the officers and directors of the Holding Company revealed no adverse information. The proposed boards of the Holding Company and the Savings Bank consist of persons with a broad range of experience. Based on its review, OTS concludes that the character and responsibility of the Organizers, and the Holding Company's and the Savings Bank's managements are consistent with approval.

As for the necessity for the Savings Bank in the community, the Savings Bank will commence operations from its home office and its branch office. The Savings Bank's proposed target market has experienced approximately a 4.9 percent growth in population between July 1, 2000 and July 1, 2006, and the population is projected to grow by 4.6 percent by 2010. Deposits in the target market area grew from approximately \$5.02 billion at June 30, 2005 to \$5.4 billion at June 30, 2006, or approximately 7.6 percent, and deposits are 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. The Savings Bank's projected deposits at the end of the first and third years of operations represent less than one percent and three percent, respectively, of the target market's deposits (using June 30, 2006 deposit information). Because these amounts of deposits represent an insignificant portion of all the financial institutions' deposits in this market, 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 competence and experience of the proposed management of the Savings Bank, its business plan, and its proposed capital levels. OTS concludes that the business plan is reasonable, that the Savings Bank will have adequate capital, that the Savings Bank will be able to conduct its operations appropriately, and that the Savings Bank's managerial and financial resources are consistent with a reasonable probability of success. To help ensure that the Savings

¹ 12 U.S.C. § 1464(e) and 12 C.F.R. § 552.2-1(b)(1)(i)-(iv) (2006).

² 12 C.F.R. § 552.2-1(b)(1)(v) (2006).

³ 12 C.F.R. § 543.3(b) and (d) (2006).

Bank meets the standards for approval, OTS is imposing conditions 5 and 6, below, to help ensure that the Savings Bank operates pursuant to an OTS-approved business plan and that changes to and from such a business plan are not detrimental to the Savings Bank.

Because the Savings Bank will be acquire assets from an affiliate and may consider additional relationships with its affiliate, OTS is imposing condition 7 below concerning such transactions.

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 extend credit for housing. The origination 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 for its lending operations. 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 substantially more initial capital than required by 12 C.F.R. § 543.3(b) and the Savings Bank plans to be well capitalized, as defined in the OTS Prompt Corrective Action regulation, throughout its 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. Where the holding company does not have substantial economic substance, this criteria is applied to the holding company.⁴ 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. No more than one-third of the Savings Bank's board of directors is in closely related businesses. Because the Holding Company's board is the same as the Savings Bank's board of directors, the third criterion is satisfied.

The Savings Bank's proposed charter and bylaws substantially conform to the model federal stock charter and bylaws, with the exception of the size of the board of directors. An OTS regulation at 12 C.F.R. § 552.3 generally limits the number of board members to a maximum of 15 persons. The limit of 15 directors addresses OTS's concerns that large boards of directors may become unwieldy.

⁴ 12 C.F.R. § 543.3(d) (2006).

The Organizers believe the increased board size is appropriate because the Savings Bank will be operating from two locations. They represent that the locations, while geographically close, are two distinct, separate markets. The Organizers argue that a lesser number of directors would not provide the Savings Bank the necessary knowledge of the market and business contacts needed in both markets.

OTS's regulations generally contemplate that a savings association will commence operations in one market. Where organizers propose to commence operations in two markets simultaneously, it may be appropriate to have additional directors, in order to provide the necessary knowledge of each market and business contacts in each market. The Savings Bank's charter provision is intended to reflect that the Savings Bank will be operating from two locations, which are in two distinct, separate markets, and to ensure that the Savings Bank's board of directors is familiar within both markets and can provide business contacts that would help ensure the future success of the Savings Bank. Based on the foregoing, OTS concludes there is a sufficient basis to approve this charter provision.

With respect to the CRA and OTS's CRA regulations, the Savings Bank's CRA assessment area will consist of the Augusta-Aiken MSA. The Savings Bank intends to meet the borrowing needs of its assessment area through residential mortgage lending, including lending to low- and moderate-income persons and neighborhoods in the Augusta-Aiken MSA. Based on the Savings Bank's CRA Plan, 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 (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 DIF. 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 Organizers, the Holding Company and the Savings Bank are satisfactory.

With regard to financial resources, OTS reviewed the Holding Company's financial position and the Savings Bank's proposed capitalization and business plan. The Applications project that the Savings Bank will meet all of its capital requirements and will be well capitalized 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 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, 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 are consistent with approval, and will not pose undue risk to the DIF, 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.

Transactions with Affiliates

The Savings Bank proposes to purchase two parcels of land from the Holding Company. Section 223.42(i) of the Federal Reserve Board's Regulation W excepts asset purchases by a newly formed member bank⁵ from an affiliate from the restrictions of Regulation W, except for the safety and soundness requirements of section 223.13 and the market terms requirement of section 223.51, if OTS approves the asset purchases in writing in connection with its review of the formation of the member bank. The Holding Company has requested such approval. The Organizers have obtained appraisals of the two parcels that indicate that the purchase prices are within the range of current market prices. OTS concludes that the Savings Bank's plan to purchase the assets is a reasonable strategy to begin operations. Therefore, OTS approves the proposed asset purchases in connection with the formation of the Savings Bank.

Branch Office

OTS permits a federal savings association to establish a branch office if the savings association meets or exceeds its minimum capital requirements, and if the savings association's overall policies, condition and operations afford no basis for objection. In addition, OTS evaluates the savings association's record for meeting the credit needs of the entire community, including low- and moderate-income neighborhoods.⁶ Also, if the branch is located in a different state than the federal savings association's main office, section 5(r) of the HOLA provides that the assets of the federal savings association attributable to the out-of-state branch must qualify the branch, if it was otherwise eligible, as a domestic building and loan association under 26 U.S.C. § 7701(a)(19) or as a qualified thrift lender (QTL) under 12 U.S.C. § 1467a(m), as applicable.

The Organizers have published notice regarding the establishment of the Aiken, South Carolina, branch and the branch is an integral part of the Savings Bank's business plan. The Savings Bank's business plan indicates that the Savings Bank will be well capitalized. Under the

⁵ For OTS purposes, the reference in Regulation W to "member bank" applies to savings associations. See 12 C.F.R. § 563.41(b) (2006).

⁶ 12 C.F.R. § 545.95(b) (2006).

Savings Bank's CRA plan, the Savings Bank will address the credit needs of the community, including low- and moderate-income neighborhoods. The Savings Bank's proposed policies, condition and operations appear acceptable to provide for its safe and sound operations. The assets attributable to the Aiken, South Carolina branch, as projected in the business plan, indicate that the branch will meet the QTL requirements. Based on the above, OTS concludes that the criteria for establishment of the Aiken branch office are satisfied.

Conclusion

Based on the information provided with the Applications, OTS's analysis of such information, the representations and commitments provided by the Organizers and the Holding Company, OTS concludes that the Applications satisfy the applicable approval standards, provided that 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, the request for a 21 member board of directors is approved, and the asset purchases are approved for purposes of section 223.42(i), subject to the following conditions:

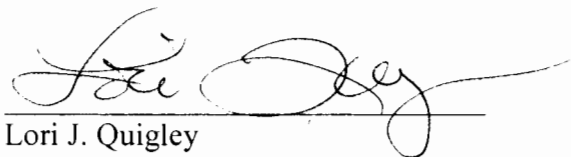
1. The Holding Company and the Savings Bank must receive all required regulatory approvals prior to consummation of the proposed transaction with copies of all such approvals provided to the Regional Director;
2. The proposed transaction must be consummated within 120 calendar days from the date of this Order;
3. On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of the 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;
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 provided by the Holding Company and Savings Bank during the application process, 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 operate within the parameters of its three-year business plan. The Savings Bank must submit any proposed major deviations or material changes from the business plan (including those initiated by the applicants) 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 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;
7. For eighteen months following the Savings Bank's commencement of operation, any contracts or agreements pertaining to transactions with affiliates or related interests of affiliated persons, as defined in 12 C.F.R. § 561.5(d), not yet submitted to the OTS for review must be provided to the Regional Director for his written non-objection at least 30 calendar days prior to their execution and implementation; and
8. The Savings Bank must submit independent audit reports to the Regional Director for its first three years of operations. 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

4/13/07



Lori J. Quigley
Assistant Managing Director
Examinations and Supervision-
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