

## OFFICE OF THRIFT SUPERVISION

### Approval of Application for Permission to Organize a Federal Savings Bank

**Order No.: 2007-21**

**Date: May 18, 2007**

**OTS No. 18045**

Capitol Bancorp Limited, Lansing, Michigan (Applicant) has applied for approval of the Office of Thrift Supervision (OTS) pursuant to 12 U.S.C. § 1464(e) and 12 C.F.R. § 552.2-1, for permission to organize High Desert Bank, Bend, Oregon (Savings Bank) (Application). Because the Savings Bank proposes to enter into an agreement that will provide preemptive stock purchase rights to the Applicant, the Applicant has requested that OTS waive a provision of its regulations that requires that stock issued by a Federal savings association not be subject to preemptive rights.

#### **The Proposed Transaction**

In the proposed transaction, the Applicant, a bank holding company registered with the Board of Governors of the Federal Reserve System (FRB) will form the Savings Bank. The Applicant will conduct a private placement for between \$8.0 and \$10.0 million to capitalize the Savings Bank, and will purchase 51 percent of the stock of the Savings Bank in the private placement offering. The Applicant has applied to the Federal Deposit Insurance Corporation (FDIC) for insurance of the Savings Bank's deposits, and will apply to the FRB for permission under the Bank Holding Company Act to acquire the Savings Bank.

#### **Review Criteria**

OTS may grant a federal savings association charter only: (1) to persons of good character and responsibility; (2) if, in OTS's judgment, a necessity exists for such association in the community to be served; (3) if there is a reasonable probability for the association's usefulness and success; and (4) 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 promote credit for housing consistent with the safe and sound operation of a federal savings association. Also, OTS's regulation regarding the establishment of *de novo* federal savings associations 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.

Further, 12 C.F.R. § 563e.29(b) provides that an applicant for a federal savings association 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, the Application indicates that the members of the Savings Bank's proposed board of directors possess sufficient experience in the operations of financial institutions and various other business endeavors. In addition, OTS's background checks of the Savings Bank's proposed management disclosed no material adverse information. OTS also reviewed the backgrounds of the Applicant and its officers and directors and found no material negative information. Condition eight, below, is intended to ensure that the character and responsibility of the management of the Savings Bank is consistent with approval. We conclude that the character and responsibility of the Applicant and the Savings Bank's proposed management are consistent with approval, provided that the Savings Bank and the Applicant comply with the conditions set forth below.

With respect to the necessity for the Savings Bank, the Savings Bank will engage in deposit and lending activities. The Savings Bank will focus its deposit and lending business in Bend, Oregon and the Deschutes County area. The population of Bend increased 32.6 percent between 2000 and 2005, and is expected to increase by an additional 45 percent by 2015. Insured deposits in Bend increased from \$1.692 billion to \$2.294 billion between June 2004 and June 2006. Thus, we conclude that there is a necessity in the community for the Savings Bank.

With respect to undue injury to local thrift and home financing institutions, the Savings Bank proposes that its deposits in its third year of operations will equal less than three percent of the June 30, 2006 deposits in Bend. In addition, no one opposed the Application in response to the public notice. Therefore, we conclude that the Savings Bank will not cause undue injury to local thrift and home financing institutions in the geographic area where its customers will be located.

With respect to the probability of the Savings Bank's usefulness and success, the Savings Bank will be "well capitalized." The Savings Bank's business plan projects that it will remain "well capitalized" throughout the three-year duration of the plan and will operate profitably in its third year of operations. The Savings Bank's directors and management are experienced bankers and business owners with strong ties to the local community. Conditions five, six, seven, and nine, below, are intended to ensure the safe and sound operations of the Savings Bank by requiring reports on operations, compliance with an approved business plan and an appropriate employment agreement. We conclude that the probability of the Savings Bank's usefulness and success are met, provided that the Savings Bank and the Applicant comply with the conditions set forth below.

With respect to promotion of credit for housing consistent with the safe and sound operation of a federal savings association, the Savings Bank will extend credit for housing within its market area. In addition, the Savings Bank is projected to meet its Qualified Thrift Lender requirements. As discussed above, the Savings Bank's management is competent and should be able to conduct lending appropriately. Accordingly, we conclude that this approval criterion has been satisfied.

With respect to the CRA and OTS's CRA regulations, OTS received no public comments objecting to the Application. The Savings Bank's CRA assessment area will be Deschutes County, Oregon, which is consistent with OTS's CRA regulations. There are low- and moderate-income individuals spread throughout the area. We find that the Savings Bank has satisfactorily demonstrated how it will meet its CRA objectives.

The Savings Bank intends to adopt a charter and bylaws that conform to the model charter and bylaws for a Federal stock institution, with the exception of Section 6 of the proposed charter. OTS regulations require the charter to provide that holders of the Savings Bank's stock are not entitled to preemptive stock purchase rights.<sup>1</sup> The Savings Bank and the Applicant propose to enter into an agreement that would provide the Applicant with preemptive stock purchase rights. The Savings Bank has requested that OTS waive its regulation to permit the grant of preemptive stock purchase rights to the Applicant. OTS may waive any of its regulations for good cause, unless the regulation incorporates a statutory requirement.<sup>2</sup> The prohibition regarding preemptive stock purchase rights is not prescribed by statute.

The purpose of OTS's restriction on preemptive stock purchase rights is to facilitate raising additional capital when needed through stock offerings. Where preemptive rights exist, a shareholder can block an offering by insisting that they be allowed to maintain their percentage of ownership while at the same time declining to purchase additional stock. However, the Savings Bank would not need to raise capital for safety and soundness purposes if it remains "well capitalized" at all times. Therefore, OTS hereby grants the requested waiver, provided that the waiver is applicable only for so long as the Savings Bank is "well capitalized."

The Savings Bank's initial capitalization will exceed the minimum regulatory requirement. In addition, the Savings Bank's board of directors will be made up of persons with varied backgrounds, and a majority of its members live and/or work in Oregon. The Applicant, the Savings Bank's holding company, has substantial independent economic substance, and therefore the provisions of 12 C.F.R. § 543.2(d)(2), regarding the participation of directors in closely related businesses are inapplicable here. We conclude that the proposed composition of the Savings Bank's board of directors complies with 12 C.F.R. § 543.3(d).

Based on the foregoing analysis, OTS concludes that the Application meets the

---

<sup>1</sup> See 12 C.F.R. § 552.3 (2007).

<sup>2</sup> See 12 C.F.R. § 500.30(a) (2007).

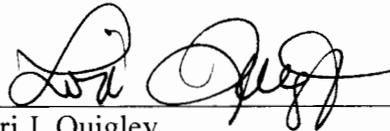
applicable approval criteria, and is hereby approved, provided that the following conditions are complied with in a manner satisfactory to the Southeast Regional Director, or his designee (Regional Director):

1. The Savings Bank and the Applicant 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 Applicant 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 Applicant and 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 Applicant, the Savings Bank or OTS since the date of the financial statements submitted with the Application, 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 Applicant and the Savings Bank must advise the Regional Director in writing within 5 calendar days after the effective date of the proposed transaction: (a) of the effective date of the transaction; (b) that the transaction was consummated in accordance with all applicable laws and regulations, the Application, and this Order;
5. 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;
6. 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 plan (including those initiated by the Applicant) for the prior, written non-objection of the Regional Director. 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. Employment of the proposed Chief Credit Officer is subject to completion of a background investigation by OTS and the written non-objection of the Regional Director; and
9. A new employment agreement between the Savings Bank and its President must be submitted to the Regional Director for review and non-objection prior to its execution.

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 May 18, 2007.

  
\_\_\_\_\_  
Lori J. Quigley  
Managing Director  
Examinations and Supervision – Operations