

## OFFICE OF THRIFT SUPERVISION

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

**Order No.:** 2007-36  
**Date:** August 9, 2007  
**Docket Nos.:** H-4384, 18049

Keller Financial Group, Inc., Irvine, 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 acquire First Foundation Bank, Irvine, California (Savings Bank). In addition, the Savings Bank has applied, pursuant to 12 U.S.C. § 1464(n) and 12 C.F.R. Part 550, to exercise trust powers as described in the application. (The foregoing are collectively referred to herein as the Applications.) The Savings Bank has provided notice to OTS to conduct a transactional web site for electronic operations pursuant to 12 C.F.R. Part 555.

#### **The Proposed Transaction**

The Holding Company proposes to establish and acquire a *de novo* federal stock savings association, the Savings Bank. The Savings Bank's products and services will be marketed to customers of certain affiliates and to other individuals and businesses in Los Angeles and Orange Counties, California, which constitute the Los Angeles-Long Beach-Santa Ana Metropolitan Statistical Area (Los Angeles MSA). The Savings Bank's extended market area will include the southern California counties of San Diego, San Bernardino and Riverside. In addition to offering deposit and lending services, the Savings Bank proposes to offer fiduciary services, including revocable, irrevocable, charitable, and life insurance trusts; court supervised trusts including special needs trusts and structured settlement trusts; guardianships; conservatorships; and estate settlement; Rabbi trusts; and business escrow trusts.

The Holding Company has applied to the Federal Deposit Insurance Corporation (FDIC) for deposit insurance under the Deposit Insurance Fund (DIF) for the Savings Bank's deposit accounts.

#### **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.

OTS has reviewed the backgrounds of the officers and directors of the Holding Company and the Savings Bank, as well as the background of the Holding Company's principal subsidiary. OTS's review did not reveal any material adverse information regarding the proposed officers and directors of the Holding Company or the Savings Bank, or regarding the Holding Company's principal subsidiary. Thus, OTS concludes that the character and responsibility of the organizers of the Savings Bank are consistent with approval.

As for the necessity for the Savings Bank in the community, there has been a significant increase in the population and deposits in the Los Angeles MSA over the past five years. The application indicates that the population and deposits will increase significantly in the future in the Los Angeles MSA. Therefore, OTS concludes this criterion for approval 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 year of operations will constitute less than one percent of the deposits in the Los Angeles MSA, and less than one percent of the deposits after three years. 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 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. OTS is imposing conditions 5 and 6 to help ensure that the Savings Bank operates pursuant to an OTS-approved business plan and changes to and from such a business plan are not detrimental to the Savings Bank. To help ensure that the Savings Bank's probability of usefulness and success is consistent with approval, OTS is imposing conditions 7 and 13, below, to enable OTS to confirm that the Savings Bank is being operated properly. The Savings Bank has submitted draft copies of operations and compliance manuals, including draft policies and procedures for lending, investments, liquidity, interest rate risk, audit, compliance, information security/privacy, and Bank Secrecy Act/anti-money laundering. To help ensure that the Savings Bank's operations are conducted in a safe and

sound manner and that the Savings Bank is in compliance with fair lending laws, OTS is imposing conditions 9 and 10, below.

Because the Savings Bank will be controlled by the Holding Company and because the Savings Bank plans to have a number of ongoing interrelationships with its affiliates and may consider additional relationships with its affiliates, we are imposing condition 12, which reflects agency concerns about captive boards in the context of holding company structures where the Savings Bank is likely to have transactions with its affiliates and market products through affiliates. The condition is designed to 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, which are intended to help ensure the Savings Bank's usefulness and success.

With respect to the provision of credit for housing in a safe and sound manner, the Savings Bank will lend to multi-family housing developers as a means of providing credit for housing. The Savings Bank's business plan and other information reflects that the Savings Bank will satisfy the qualified thrift lender test by meeting either the qualified thrift lender test or the domestic building and loan association test in all periods. Based on these considerations, and the facts discussed in connection with the probability of the Savings Bank's usefulness and success, OTS concludes that the Savings Bank will provide credit for housing in a safe and sound manner, subject to the imposition of the conditions.

With respect to capital, the Savings Bank will have more initial capital than is required by OTS regulations and the Savings Bank plans to be well capitalized 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. 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. When the holding company does not have substantial independent economic substance, OTS applies the related business criterion to the holding company's board of directors. The Savings Bank will be a wholly owned subsidiary of the Holding Company, a holding company that has substantial independent economic substance. The members of the Savings Bank's board of directors meet the residency requirement for a *de novo* savings association, and the diversity requirement. The closely related businesses requirement is not applicable because the Savings Bank will be owned by a holding company of substantial independent economic substance.

With respect to the CRA and OTS' CRA regulations, the Savings Bank's CRA assessment area will consist of the Los Angeles MSA. To help ensure that the Savings Bank is meeting its

CRA obligations, OTS is imposing condition 11. Based on the Savings Bank's CRA Plan, OTS concludes that the Savings Bank has satisfactorily demonstrated that it will meet its CRA objectives.

The Savings Bank's proposed charter and bylaws conform with OTS regulations in all material respects.

### **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 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 Holding Company and the Savings Bank are satisfactory, provided the Holding Company and the Savings Bank comply with the conditions discussed above.

With regard to financial resources, OTS reviewed the Holding Company's financial position and the Savings Bank's proposed capitalization and business plan. The application projects that the Holding Company will have sufficient resources and that the Savings Bank will meet all of its capital requirements and will be well capitalized, as defined in 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 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 described 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.

## Trust Application

Section 5(n) of the HOLA authorizes OTS to grant federal savings associations the power to act as trustee, executor, administrator, guardian or in any other fiduciary capacity permitted for State banks, trust companies, or other corporations which compete with such associations in the state where the federal association is located.

OTS regulations set forth the factors that OTS considers in reviewing trust powers applications: (1) the association's financial condition; (2) the association's capital and whether that capital is sufficient under the circumstances; (3) the association's overall performance; (4) the fiduciary powers the association proposes to exercise; (5) the association's proposed supervision of those powers; (6) the availability of legal counsel; (7) the needs of the community to be served; and (8) any other facts or circumstances that OTS considers proper.

With respect to the criteria relating to financial condition, capital sufficiency and performance of the Savings Bank, OTS concludes that the Savings Bank will meet all regulatory capital requirements, will be well capitalized, and that the Savings Bank's proposed capital levels are acceptable. The HOLA requires that the Savings Bank meet the capital requirements applicable to California-chartered trust companies, and OTS concludes that the Savings Bank's proposed capital level exceeds the California requirements. OTS concludes that the Savings Bank's financial condition and capital will be sufficient, and that the Savings Bank's overall performance will be consistent with approval. As to the fiduciary services to be offered, OTS concludes that the Savings Bank's proposed trust activities are authorized by California law for California-chartered corporate fiduciaries.

With respect to the supervision of its trust activities, the Savings Bank will adopt extensive controls to monitor the trust operations. Further, certain management members have extensive trust experience and the Savings Bank intends to hire additional experienced personnel. As discussed under the permission to organize application, OTS is imposing conditions addressing the adoption of policies and procedures governing the Savings Bank's operations. Accordingly, OTS concludes that the Savings Bank's supervision of trust powers will be consistent with approval, subject to the imposition of the conditions. The Savings Bank intends to retain experienced trust counsel to advise it with respect to fiduciary matters. OTS is imposing condition 8 to ensure that adequate counsel is available to the Savings Bank.

As discussed under the permission to organize application, OTS concludes that there is a need in the community for the Savings Bank's products and services based on the projected increase in population and deposits in the Los Angeles MSA. OTS concludes that, based on the increased population in the Los Angeles MSA, need also exists for the Savings Bank's trust services.

## **Electronic Operations**

The Applicants filed a notice under Part 555 on behalf of the proposed Savings Bank to conduct operations using a transactional Internet web site. OTS concludes that the Savings Bank has addressed satisfactorily the matters noted in Part 555.

## **Conclusion**

Based on the information provided with the applications, OTS' analysis of such information, the representations and commitments provided by the Holding Company and the Savings Bank, OTS concludes that the applications satisfy the applicable approval standards, provided that the following conditions are complied with in a manner satisfactory to the West Regional Director or his designee (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 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, 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 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. Prior to opening for business, the Savings Bank must finalize detailed policies and procedures for all major areas of operations, including those submitted in draft form with the applications, and submit them to the Regional Director along with a resolution of its board of directors evidencing its review and approval of such policies and procedures;
8. Prior to opening for business, the Savings Bank must provide the Regional Director with evidence that it has retained qualified outside legal counsel for trust/asset management matters;
9. Prior to opening for business, the Savings Bank must implement a compliance management program that includes, at a minimum, the following components:
  - The assignment of specific compliance responsibilities to individuals who are knowledgeable and experienced in administering consumer protection, nondiscrimination, and other compliance laws administered by the OTS;
  - Regular and comprehensive self-assessment reviews to ensure compliance on a day-to-day basis;
  - Periodic compliance audits;
  - Comprehensive training for all affected staff;
  - An ongoing system for assuring compliance with Federal fair lending statutes and regulations, and for handling consumer inquiries or complaints; and
  - Appropriate written policies and procedures;
10. No later than 30 days after the end of each calendar quarter, the Savings Bank must submit a status report, in a form acceptable to the Regional Director, that details the implementation of its compliance management program and fair lending programs and the results of its compliance monitoring efforts as required by the compliance management program. This quarterly report is required until at least the completion of the Savings Bank's first full examination cycle, but in no case beyond 18 months after opening for business;
11. No later than 30 days after the end of each calendar quarter, the Savings Bank must submit a status report, in a form acceptable to the Regional Director, that details:
  - (i) the results of its various lending programs and initiatives; and
  - (ii) its level of

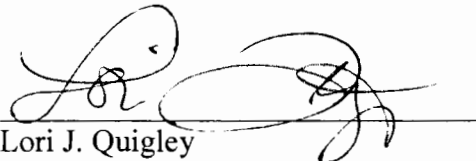
lending to low- and moderate-income individuals, to low- and moderate-income communities, and to small businesses. This quarterly report is required until at least the completion of the Savings Bank's first CRA examination cycle, but in no case beyond 18 months after opening for business;

12. 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; and
13. 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

August 9, 2007 .



Lori J. Quigley  
Managing Director  
Examinations and Supervision - Operations