

## OFFICE OF THRIFT SUPERVISION

### Approval of Application to Form Operating Subsidiaries

**Order No.:** 2008-11  
**Date:** April 28, 2008  
**Docket No.:** 03970

IndyMac Bank, F.S.B., Pasadena, California (Savings Bank), a federal savings bank, has applied to the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1828(m) and 12 C.F.R. Part 559, to establish, in a multi-tier structure, four operating subsidiaries: (a) Global Resources LLC (GR); (b) Global Resources Investments LLC (GRI); (c) Global Resources Management LLC (GRM); and (d) IndyMac India Private Limited (Foreign Operating Subsidiary) (collectively, the Operating Subsidiaries).

#### **The Proposed Activity**

The Savings Bank currently conducts certain service operations, including, but not limited to, customer service support for retail banking, and call center support, through contractual relationships with Indian firms. The Savings Bank will establish the Operating Subsidiaries to oversee and manage its Indian external service providers.

GR will be a wholly owned, first-tier subsidiary of the Savings Bank, and will be a Delaware limited liability company, headquartered in California. GRI and GRM will both be wholly owned direct subsidiaries of GR, and will both be Delaware limited liability companies headquartered in California. GRI and GRM will each directly own 50 percent of the Foreign Operating Subsidiary's securities. The Foreign Operating Subsidiary will be organized under the laws of the Republic of India, and will be headquartered in Pune, Maharashtra, Republic of India.

GR will have staff and operations to support its oversight of the Foreign Operating Subsidiary. GRI and GRM will be shell entities formed for the purpose of holding interests in the Foreign Operating Subsidiary. The Foreign Operating Subsidiary will have the responsibility of ensuring that vendors fulfill their obligations under service contracts.

#### **Operating Subsidiary Application**

Generally, a federal savings association may invest in an operating subsidiary only if: (1) the subsidiary engages only in activities permissible for federal savings associations to engage in directly; (2) the federal savings association owns, directly or indirectly, more than 50 percent of the voting shares of the operating subsidiary; and (3) no person or entity other than the

federal savings association exercises effective operating control over the operating subsidiary.<sup>1</sup> In addition, OTS may, at any time, limit a federal savings association's investment in operating subsidiaries, or may limit or refuse to permit any activities of an operating subsidiary, for supervisory, legal, or safety and soundness reasons.<sup>2</sup>

With regard to the requirement that the operating subsidiary may engage only in activities permissible for federal savings associations to engage in directly, GRI and GRM will be shell entities that conduct no activities other than holding the stock of the Foreign Operating Subsidiary. GR and the Foreign Operating Subsidiary propose to, directly or indirectly, oversee and manage service operations that are integral to the Savings Bank's operations and that the Savings Bank presently undertakes through contracts it has with Indian service firms. Based on the facts and representations regarding the proposed activities included in the application, OTS concludes that the Operating Subsidiaries' proposed activities are permissible for a federal savings association.

With regard to the requirement that the federal savings association own, directly or indirectly, more than 50 percent of the voting shares of the operating subsidiary, the application indicates that the Operating Subsidiaries will satisfy this requirement, because the Savings Bank, directly or indirectly, will have all of the voting power of each of the Operating Subsidiaries. Based on the facts and representations regarding voting power included in the application, OTS concludes that the Operating Subsidiaries will satisfy the voting share ownership requirement.

With regard to the requirement that no person or entity other than the federal savings association exercise effective operating control over the operating subsidiary, the Savings Bank, directly or indirectly, will have all of the voting power and equity ownership of each of the Operating Subsidiaries, and there are no other arrangements that would provide another party with effective operating control. Accordingly, OTS concludes that the Operating Subsidiaries will satisfy the requirement that no person or entity other than the Savings Bank will exercise effective operating control over any of the Operating Subsidiaries.

The Subordinate Organization regulation, at 12 C.F.R. § 559.3(c)(1) refers to "voting shares." The Operating Subsidiaries will be organized as limited liability companies. The preamble to the OTS Subordinate Organization regulations states that OTS will provide flexibility for structuring savings associations' operations and will determine on a case-by-case basis if an operating subsidiary satisfies the basic requirements of majority ownership, limited liability, and effective operating control.<sup>3</sup> In this case, OTS has concluded that all three elements are comparable to those found in corporations. Moreover, there are no supervisory concerns with the organizational form of the Operating Subsidiaries that will be organized as limited liability companies.

The application adequately demonstrates that the Savings Bank will comply with the corporate separateness requirements set forth in 12 C.F.R. § 559.10.

---

<sup>1</sup> 12 C.F.R. § 559.2, 559.3(c)(1), and (e)(1) (2007).

<sup>2</sup> 12 C.F.R. § 559.1(a) (2007).

<sup>3</sup> See, 61 Fed. Reg. 66561, at 66564 (Dec. 18, 1996).

With regard to supervisory considerations, OTS has reviewed the application, and has concluded that the transaction does not present supervisory concerns, provided the conditions set forth below, which are intended to address potential issues regarding the establishment of a foreign operating subsidiary, are satisfied.

In order to be in a position to deal effectively with problems that may arise from the proposed foreign operations, OTS is imposing conditions 5 through 9. The conditions help ensure that OTS will: (i) have control over any proposed modification of the type and scope of the Foreign Operating Subsidiary's activities, and the location of such activities; (ii) have access to the books and records of the Foreign Operating Subsidiary at a U.S. location; (iii) have jurisdiction over the foreign operations, including examination, supervision and enforcement authority; and (iv) have the ability to require termination of operations if OTS determines there is undue risk. In sum, the conditions are intended to help ensure that the Savings Bank will operate the Foreign Operating Subsidiary in a safe and sound manner under effective regulatory oversight.

### **Conclusion**

Based on the foregoing, OTS concludes that the application satisfies all applicable approval standards and criteria, provided the following conditions are complied with in a manner satisfactory to the West Regional Director, or his designee (Regional Director). Accordingly, the application is hereby approved, subject to the following conditions:

1. The proposed transaction must be consummated within 120 calendar days of the date of this Order;
2. The Savings Bank and Operating Subsidiaries must receive all required regulatory approvals for the transaction prior to consummation of the proposed transaction with copies of all such approvals supplied to the Regional Office;
3. On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of the Savings Bank and the Operating Subsidiaries 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 and the Operating Subsidiaries 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 Savings Bank, the Operating Subsidiaries, or OTS since the date of the financial statement 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 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

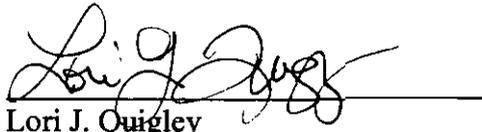
transaction; and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the application, and this Order;

5. The Savings Bank and the Foreign Operating Subsidiary must make available to OTS such information as OTS deems necessary from time to time to monitor the activities of the Foreign Operating Subsidiary and the effect of its activities on the safe and sound operation of the Savings Bank. The Savings Bank must maintain a duplicate set of records of the Foreign Operating Subsidiary in the U.S., at the Savings Bank's main office. Such records must be in the English language and in U.S. dollars;
6. The Foreign Operating Subsidiary, and each senior executive officer and director of the Foreign Operating Subsidiary, must consent in writing in a form acceptable to the Regional Director to: (i) the jurisdiction of the U.S. and OTS over, and the applicability of U.S. law to, the Foreign Operating Subsidiary and such senior executive officer or director for purposes of all claims made by, proceedings initiated by, or obligations to, the U.S., OTS, and any U.S. governmental agency, department, or division; and (ii) the jurisdiction of OTS over the Foreign Operating Subsidiary and such senior executive officers or directors for purposes of examination, supervision, and enforcement. The Foreign Operating Subsidiary and all senior executive officers and directors of the Foreign Operating Subsidiary must further agree in writing in a form acceptable to the Regional Director not to challenge the authority of any conservator/receiver appointed for the Savings Bank to control the Foreign Operating Subsidiary and all assets associated with the Foreign Operating Subsidiary;
7. The Savings Bank must agree in writing to terminate the operations of the Foreign Operating Subsidiary if OTS, in its sole discretion, determines that such operations present undue risk;
8. Within 30 calendar days after any material change in the Foreign Operating Subsidiary's operations or its relation to the Savings Bank's domestic operations or any material change in the regulatory authority to which the operations of the Foreign Operating Subsidiary is subject, the Savings Bank must notify the Regional Director of the facts relating to such change and, thereafter, the Savings Bank must abide by any decision OTS shall in its sole and absolute discretion issue with respect to the operations of the Foreign Operating Subsidiary;
9. The documents required by the following items must be submitted to the Regional Director prior to commencement of operation of the Operating Subsidiaries:
  - a. The Savings Bank must establish and document internal controls that demonstrate adequate oversight of the operations of the Operating Subsidiaries, and provide materials documenting the institution of such internal controls; and
  - b. The Savings Bank and the Foreign Operating Subsidiary must consent in writing to the disclosure by all foreign governmental authorities, to OTS of such information on

the operations of the Foreign Operating Subsidiary that OTS deems necessary from time to time to determine and enforce compliance with applicable U.S. laws and regulations.

The Regional Director may, for good cause, extend for up to 120 calendar days any time period set forth herein.

By order of the Director of the Office of Thrift Supervision, or his designee, effective  
April 28, 2008.



Lori J. Quigley  
Managing Director,  
Examinations and Supervision-Operations