

OFFICE OF THRIFT SUPERVISION

Approval of Charter Conversion, Holding Company, and Bank Merger Act Applications and Related Filings, and Acceptance of Control Rebuttals

Order No.: 2011-04
Date: January 19, 2011
Docket Nos.: 18139 and H-4730

First Bank and Trust Company of Indiantown, Indiantown, Florida (Bank), has applied to the Office of Thrift Supervision (OTS), pursuant to 12 C.F.R. § 552.2-6 and section 5 of the Home Owners' Loan Act (HOLA), for permission to convert from a Florida-chartered bank to a federal stock savings bank (Savings Bank). Three trusts, which will momentarily control the Savings Bank at the time of the charter conversion, and HCBF Holding Company, Inc., Fort Pierce, Florida (Applicant), which will subsequently acquire the Savings Bank, have filed holding company applications with OTS pursuant to section 10(e) of the HOLA, and OTS's Acquisition of Control Regulations (Control Regulations). In addition, the Applicant has applied to OTS for approval of the merger of the Applicant's proposed subsidiary, Interim FSB, West Palm Beach, Florida (Interim FSB), with and into the Savings Bank, under the Bank Merger Act (BMA), and OTS's implementing regulations, in connection with the Applicant's proposed acquisition of all the stock of the Savings Bank. The Applicant has requested that OTS except the Savings Bank from the qualified thrift lender (QTL) requirements of section 10(m) of the HOLA for two years following consummation of the transaction.

In addition, Stone Point Capital LLC and related entities (Stone Point Group) and Kelso Investment Associates VIII, LP and related entities (Kelso Group), each of which will own 22.13 percent of the Applicant's common stock at the closing of the proposed transaction, have filed rebuttals of control pursuant to 12 C.F.R. § 574.4(e) with respect to each of their proposed acquisitions of the Applicant's voting stock.

Background

The Bank is a Florida-chartered commercial bank, with deposits insured by the Federal Deposit Insurance Corporation's (FDIC) Deposit Insurance Fund (DIF). The Bank's state regulator is the Florida Office of Financial Regulation (FOFR). The Bank is not a member of the Federal Reserve System and its primary federal regulator is the FDIC. The Bank provides a variety of banking products and services through its home office in Indiantown, Florida, and three branch offices located in Okeechobee, Moore Haven and Palm City, Florida. The Bank is currently well-capitalized and had positive earnings for the nine months ended September 30, 2010. At the Bank's most recent Community Reinvestment Act (CRA) examination, dated December 5, 2008, the FDIC assigned the Bank a CRA rating of "Satisfactory."

The principal shareholders of the Bank are three family trusts, the Robert M. Post, Jr., Revocable Trust of 1999, the Linda M. Post Revocable Trust of 1999, and the Robert M. Post Marital Trust, each of Palm City, Florida (Trusts). The Trusts own in the aggregate 91 percent of the common stock of the Bank.

The Applicant is a Florida-chartered corporation. The Applicant is a shell corporation, and will be capitalized in the proposed transaction. The organizers of the Applicant, who are also the proposed management of the Savings Bank, were previously involved in the management of a federal savings and loan association and its holding company, located in Florida. The Stone Point Group and the Kelso Group propose to acquire 22.13 percent of the Applicant's stock in connection with the proposed transaction, but have filed rebuttal of control with respect to acquisitions of up to 25 percent of the Applicant's voting stock.

The Proposed Transaction

The proposed transaction will involve the following steps, which would occur in immediate succession.

First, the Applicant will establish Interim FSB, an interim federal savings bank, as a wholly owned subsidiary of the Applicant. Second, the Bank will convert from a Florida-chartered bank to a federal stock savings bank. Third, Interim FSB will merge with and into the Savings Bank, with the Savings Bank as the resulting institution. All outstanding shares of the Savings Bank's common stock prior to the merger with Interim FSB will be converted into the right to receive cash. The Applicant will pay the cash merger consideration to the Bank's current shareholders in connection with the acquisition. As a result of the merger, the Savings Bank will become a wholly owned subsidiary of the Applicant. Fourth, the Applicant will contribute cash to the Savings Bank.

Charter Conversion Application

Section 552.2-6 of the OTS regulations addresses conversions of any stock depository institution to a federal stock charter. Specifically, § 552.2-6 provides that with OTS approval, "any stock depository institution that is, or is eligible to become, a member of a Federal Home Loan Bank, may convert to a Federal stock association, provided that the depository institution, at the time of the conversion has deposits insured by the FDIC, and provided further, the depository institution, in accomplishing the conversion, complies with all applicable statutes and regulations. . . ."¹

The proposed conversion of the Bank to a federal stock savings bank charter satisfies the requirements of 12 C.F.R. § 552.2-6. The Bank is a Florida-chartered commercial bank. Under 12 C.F.R. § 552.13(b)(4), a "depository institution" is defined

¹ 12 C.F.R. § 552.2-6 (2010).

to include any commercial bank chartered in the United States and having its principal office in the United States. The Bank is a member of the Federal Home Loan Bank of Atlanta. The Bank's deposits are insured by the FDIC.

The application does not disclose any assets or investments owned by the Bank that would be impermissible for a federal savings bank. In addition, the application indicates that the Savings Bank will comply with the percentage of assets limitation requirements of § 5(c) of HOLA, upon the consummation of the proposed transaction.

The Applicant has requested a two-year exception for the Savings Bank from the QTL requirements to provide it with the appropriate transition period in which to rebalance the Savings Bank's loan portfolios in a safe and sound manner. The Applicant's projections and representations indicate that the Savings Bank will satisfy its QTL requirement within the requested two years. OTS has previously granted QTL exceptions with respect to depository institutions that convert to savings associations.² For these reasons, OTS has determined to grant the Savings Bank a two-year exception from the QTL requirements.

The application indicates that the proposed transaction is in compliance with the applicable state law.

The HOLA provides that 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 for such savings association exists in the community to be served; (iii) if there is reasonable probability of 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.³ OTS regulations implementing the HOLA include the same standards,⁴ with the additional requirement that OTS consider whether the association will promote credit for housing consistent with the safe and sound operation of a federal savings association.⁵

In addition, OTS regulations provide that an applicant for a federal thrift charter shall submit with its application a description of how it will meet its CRA objectives. OTS takes this description into account when considering the application and may deny the application or condition approval on CRA grounds.

OTS has reviewed the application under these standards and concludes that the application satisfies the standards.

² See, e.g., OTS Order 99-20 (Apr. 21, 1999).

³ Section 5(e) of the HOLA, 12 U.S.C. § 1464(e).

⁴ 12 C.F.R. § 552.2-1(b) (2010).

⁵ 12 C.F.R. § 563e.29(b) (2010).

The Bank's existing management will be the management of the Savings Bank upon the charter conversion. The application and OTS's review of the application raised no adverse information regarding the Bank's management. Accordingly, OTS concludes that the character and responsibility of the Savings Bank's proposed directors and senior officers upon the charter conversion are consistent with approval.

As for the necessity for the Savings Bank, the Savings Bank will continue the Bank's operations. Accordingly, OTS concludes 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 will continue the Bank's operations, and will continue to serve the Bank's customers. Therefore, OTS concludes that the Savings Bank will not have an undue adverse impact on 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, OTS has reviewed the Savings Bank's business plan and the competence of the management. The Savings Bank is currently well-capitalized and will continue to be well capitalized upon the charter conversion. In addition, the Savings Bank's business plan projects that it will remain well-capitalized throughout the three-year duration of the plan.

OTS is imposing condition 7 in order to help ensure that the Savings Bank will continue to be operated by qualified personnel.

Additionally, OTS is imposing condition 4 to enable OTS to confirm that the Savings Bank is being operated properly, conditions 5 and 6 to help ensure that the Savings Bank operates pursuant to an acceptable business plan and that changes to and from such business plan are not detrimental to the Savings Bank, and conditions 8 and 9 to help ensure that compensation arrangements are consistent with the Savings Bank's safe and sound operation. OTS is imposing these conditions because they help ensure that the future prospects of the Savings Bank meet the standards for approval, and they also tend to limit the insurance risks of the DIF.

OTS concludes that there is a reasonable probability of the Savings Bank's usefulness and success, subject to compliance with the approval conditions.

The applications demonstrate that the Savings Bank will provide credit for housing. The Savings Bank will have experienced management, and appropriate procedures regarding lending will be in place. Accordingly, OTS concludes that the Savings Bank will perform a role of providing credit for housing consistent with safety and soundness standards.

At the Bank's most recent CRA examination, dated December 5, 2008, the FDIC assigned the Bank a CRA rating of "Satisfactory." The applications indicate that the

proposed management of the Applicant and the Savings Bank are aware of the Savings Bank's responsibilities under the CRA and the requirements of 12 C.F.R. § 563e.29(b). Accordingly, OTS concludes that this approval criterion is satisfied.

The Savings Bank intends to adopt a charter and bylaws that substantially conform to the model charter and bylaws for a federal stock institution.

Holding Company Application

The proposed transaction requires OTS approval of the Applicant's acquisition of the Savings Bank and Interim FSB, as well as the Trusts' acquisition of the Savings Bank.

The HOLA and the Control Regulations provide that in reviewing the proposed acquisition of two savings associations by a company, OTS must consider the managerial and financial resources and future prospects of the company and associations involved, the effect of the acquisition on the associations, the insurance risk of the DIF, and the convenience and needs of the community to be served.⁶ The standards for reviewing an acquisition to acquire a single savings association are very similar.⁷ Also, OTS must consider the impact of any acquisition on competition.⁸ In addition, 12 C.F.R. § 563e.29 requires that OTS take into account assessments under the CRA when considering holding company acquisitions.

OTS has reviewed the holding company application under these standards and concludes that the standards are satisfied, subject to the imposed conditions.

The applications indicate that the proposed management of the Applicant and the Savings Bank will possess the requisite experience and integrity. The principal management individuals have extensive experience, and the background checks have not revealed any material negative information. The Applicant is a newly formed entity that has not previously conducted business activities. Interim FSB will exist only momentarily and it will not open for business.⁹ Based on its review and the undertaking provided in the application, OTS concludes that the managerial resources of the Applicant, the Savings Bank and Interim FSB satisfy the applicable standards.

With respect to financial resources, the Applicant will infuse capital into the Savings Bank. The Savings Bank will continue to be well capitalized upon consummation of the proposed transaction. Interim FSB will exist only momentarily.

⁶ 12 U.S.C. § 1467a(e)(2) and 12 C.F.R. § 574.4(c) (2010).

⁷ 12 U.S.C. § 1467a(e)(1)(B).

⁸ 12 U.S.C. § 1467a(e)(2) and 12 C.F.R. § 574.7(c)(2) (2010).

⁹ The proposed transaction also requires OTS approval of the formation of Interim FSB pursuant to 12 C.F.R. § 552.2-2. OTS has consistently concluded that the formation of interim federal savings banks in the manner proposed in the subject transaction meets the relevant regulatory criteria. We conclude that the proposed formation of Interim FSB is consistent with 12 C.F.R. § 552.2-2.

Accordingly, OTS concludes that the financial resources of the Applicant, the Savings Bank and Interim FSB are consistent with approval.

With respect to future prospects, based on the review of the managerial and financial resources, and the business plan, OTS is imposing the conditions discussed above. These conditions help ensure that the future prospects of the Applicant and the Savings Bank are consistent with approval. Accordingly, OTS concludes that the future prospects of the Applicant, the Savings Bank, and Interim FSB, and the risks to the DIF, are consistent with approval.

With respect to competitive considerations, the proposed transaction will not cause any operating depository institutions to become affiliated. Accordingly, OTS concludes that this approval criterion is satisfied.

With respect to the convenience and needs of the community, the proposed transaction will result in a continuation of banking services to the customers of the Bank, which currently has a Satisfactory CRA rating. Based on the foregoing, OTS has determined that the convenience and needs considerations are consistent with approval.

With respect to the CRA, the Applicant is a new entity that has not controlled a depository institution that has been subject to the CRA. At the Bank's most recent CRA examination, dated December 5, 2008, the FDIC assigned the Bank a CRA rating of "Satisfactory." The applications indicate that the proposed management of the Applicant and the Savings Bank are aware of the Savings Bank's responsibilities under the CRA and the requirements of 12 C.F.R. § 563e.29(b). Accordingly, OTS concludes that this approval criterion is satisfied.

With respect to the Trusts, the Trusts currently control the Bank and will control the Savings Bank momentarily immediately following the Bank's charter conversion to a federal savings bank. Based on our review of the managerial resources of the Trusts and their trustees, OTS concludes that managerial resources considerations are consistent with approval. The proposed conversion of the Bank to the Savings Bank will have no effect on the financial resources of the depository institution, and the Applicant will acquire the Savings Bank immediately following the charter conversion. Accordingly, we conclude that financial resources and future prospects, and competitive considerations regarding the Trusts' acquisition of the Savings Bank are consistent with approval.

Bank Merger Act Application

The Applicant seeks approval of the merger of the Interim FSB with and into the Savings Bank, under the BMA, 12 U.S.C. § 1828(c), and under the OTS Merger Regulations, at 12 C.F.R. § 563.22. In evaluating a BMA application 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 the fairness of and disclosure concerning the transaction. In addition, in evaluating a BMA 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 Bank is currently well capitalized and the Savings Bank will be well capitalized. Accordingly, OTS has determined that this approval criterion has been satisfied.

As for managerial resources, for the reasons discussed above, OTS concludes that the managerial resources of the resulting savings association, the Savings Bank, are consistent with approval.

As for financial resources and future prospects, for the reasons and conditions discussed above, OTS concludes that the financial resources and future prospects considerations are consistent with approval.

As for the convenience and needs of the community, the proposed transaction will result in a continuation of banking services to the customers of the Bank, which currently has a Satisfactory CRA rating. Based on the foregoing, OTS has determined that the convenience and needs considerations for the merger are consistent with approval.

As for the CRA, at the Bank's most recent CRA examination, dated December 5, 2008, the FDIC assigned the Bank a CRA rating of "Satisfactory." For the reasons discussed above, OTS concludes that approval of the proposed transaction is consistent with the CRA.

As for conformance to law, regulation and supervisory policy, the 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, regulations, and supervisory policies.

With respect to compliance with anti-money laundering statutes and regulations, OTS's considered the Bank's compliance and the Savings Bank's proposed compliance with anti-money laundering statutes and regulations. OTS has concluded that the anti-money laundering considerations are consistent with approval of the merger.

As for factors regarding equitable treatment and disclosure, employment contracts, and advisory boards, OTS's review of the applications provided no evidence that the proposed transaction would not be equitable to all concerned. In addition, the Bank's shareholders have approved the merger. On the basis of the foregoing, OTS

concludes that equitable treatment, disclosure, and compensation considerations are consistent with approval.

As for the competitive effects of the proposed transaction, neither the Interim FSB nor the Applicant currently engages in any business activities. Accordingly, the proposed transaction is competitively neutral. The application for the merger of the Interim FSB and the Savings Bank has been reviewed by the Department of Justice, which has not objected to the proposed transaction. Based on the foregoing, OTS concludes that competitive considerations are consistent with approval.

Control Rebuttals

The Control Regulations state that an acquiror shall be determined, subject to rebuttal, to have acquired control of a savings association if the acquiror, directly or indirectly, or through one or more subsidiaries or transactions or acting in concert with one or more persons or companies, acquires more than 10 percent of any class of voting stock of a savings association and is subject to any control factor, as described in section 574.4(c).¹⁰ Section 574.4(c)(1) provides that an acquiror is subject to a control factor if the acquiror is one of the two largest holders of any class of voting stock. The Stone Point Group and the Kelso Group will each hold more than ten percent of a class of voting securities of the Applicant and the two groups will be the two largest holders of such voting securities. Accordingly, both groups have filed a rebuttal of control submission.

Parties attempting to rebut control are required to file a submission setting forth facts and circumstances supporting their contention that no control relationship would exist after the proposed acquisition.¹¹ In addition, such parties must file a rebuttal agreement that materially conforms to the standard rebuttal agreement set forth in 12 C.F.R. § 574.100 and includes representations that the acquiror will not engage in several types of activities.¹²

OTS may reject any rebuttal that is inconsistent with the facts and circumstances known to it, or which does not clearly and convincingly refute the presumption of control.¹³ If OTS concludes that it would be injudicious to rely on an acquiror's representations, based on past activities of the acquiror, or other concerns, OTS may conclude that the acquiror has not clearly and convincingly refuted the rebuttal control determination.¹⁴ In addition, an acquiror that is in conclusive control of a savings association may not rebut control of that savings association.

¹⁰ 12 C.F.R. § 574.4(b)(1)(i) and 574.4(c) (2010). The definition of "savings association" includes holding companies. See 12 C.F.R. § 574.2(p) (2010).

¹¹ 12 C.F.R. § 574.4(e)(1) (2010).

¹² Id.

¹³ 12 C.F.R. § 574.4(e)(3) (2010).

¹⁴ Id.

An acquiror is in conclusive control of a savings association if, among other things, it has more than 25 percent of any class of the entity's voting stock, or it has contributed more than 25 percent of a holding company's capital.¹⁵ Based on the rebuttal filings, it is clear that neither group will acquire more than 25 percent of a class of the Applicant's voting stock, and neither group will have contributed more than 25 percent of the Applicant's capital.

The Stone Point Group and the Kelso Group have filed separate submissions setting forth facts and circumstances in support of their contentions that no control will exist as a result of their acquisitions of securities of the Applicant. The Stone Point Group and the Kelso Group both represent that they will acquire the Applicant's securities for investment purposes only, and not for the purpose, or with the effect, of controlling, directly or indirectly, the management, policies, or business operations of the Applicant or the Savings Bank.

The Stone Point Group and the Kelso Group have submitted rebuttal of control agreements that conform to the standard rebuttal agreement, set forth at 12 C.F.R. § 574.100, with certain exceptions. Each agreement provides that the relevant group may have one representative on the Applicant's and Savings Bank's board of directors. In addition, the subscription agreements provide that the relevant group has a right to designate one person as a non-voting observer to attend board of director meetings. The observer would not vote at such meetings. OTS has reviewed the relevant facts and has concluded that the possible presence of an observer at the board meetings does not provide the Stone Point Group or the Kelso Group with the ability to influence or control the Applicant or the Savings Bank, and therefore, does not contravene the purposes of a rebuttal of control.

In addition, although the standard rebuttal agreement provides that the rebutting party may not engage in any transactions with the entity for which control is being rebutted (and its subsidiaries), both proposed rebuttal agreements have been amended to provide that the relevant group may establish and maintain deposit accounts with the Savings Bank, provided that the aggregate balance of all such deposit accounts does not exceed \$500,000 and that such deposit accounts are maintained on substantially the same terms as those prevailing for comparable deposit accounts of persons unaffiliated with the Applicant or the Savings Bank. OTS has approved similar exceptions on several occasions.¹⁶

Accordingly, OTS concludes that these proposed relationships do not contravene the purpose of the standard rebuttal agreement.

¹⁵ See 12 C.F.R. § 574.4(a) (2010). The section lists additional conclusive control criteria, but none of those criteria are applicable in this case.

¹⁶ In addition, the draft rebuttal agreement for the Kelso Group has a non-standard provision regarding access to non-public information. The provisions in question are consistent with provisions OTS has previously permitted.

Conclusion

Based on the foregoing analysis, OTS concludes that the charter conversion application, the holding company application for the Applicant and the Trusts, the BMA application, and related applications, meet the applicable approval criteria. Accordingly, the applications are hereby approved, subject to the following conditions:

1. The proposed transaction must be consummated no earlier than 15 calendar days and no later than 120 calendar days from the date of this Order, and the Bank, the Savings Bank, and the Applicant, must obtain all required regulatory approvals prior to consummation;
2. On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of the Applicant and the Bank must certify in writing to the Regional Director or his designee (Regional Director) that no material adverse changes have occurred with respect to the financial condition or operation of the Applicant and the Bank, as disclosed in the applications. If additional information having a material adverse bearing on any feature of the application is brought to the attention of the Applicant, the 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;
3. The Applicant and the Savings Bank must, within 5 calendar days after the effective date of the proposed transaction: (a) 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 (b) provide a reconciliation of the Savings Bank's capital to the Regional Director;
4. The Savings Bank must submit independent audit reports to the Regional Director for the three fiscal years following consummation of the transaction. These reports shall comply with the audit rules set forth in 12 C.F.R. § 562.4;
5. The Savings Bank must operate within the parameters of the Applicant's submitted revised three-year stand-alone business plan (Business Plan). The Savings Bank must submit any proposed major deviations or material changes from this Business Plan (including those initiated by the Applicant) for the prior, written non-objection of the Regional Director. The request for a change must be submitted no later than 60 calendar days prior to the desired implementation date;
6. For three years following the consummation date of the proposed transaction, 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 the consummation date of the proposed transaction, the Applicant and the Savings Bank must receive the prior written non-objection of the Regional Director for any proposed new directors or new senior executive officers, or for any significant changed in responsibilities of any senior executive officer, prior to their election or appointment;
8. For two years following the consummation date of the proposed transaction, the Applicant and the Savings Bank must receive the prior written non-objection of the Regional Director for all proposed stock benefit plans and employment agreements; and
9. For three years following the consummation date of the proposed transaction, the Savings Bank must receive the prior written non-objection of the Regional Director, before it implements any non-salary component for its compensation program for employees in conjunction with the implementation of a new loan product.

Also, OTS grants the Savings Bank a two-year exception from the QTL requirements.

In addition, based on the foregoing analysis, OTS concludes that the Rebuttal of Control by the Stone Point Group and the Rebuttal of Control by the Kelso Group meet the applicable criteria. Accordingly, the two Rebuttals of Control are hereby accepted. As a result, neither group will control the Applicant or the Savings Bank within the scope of 12 C.F.R. § 574.4, and the members of the two groups are not required to register as savings and loan holding companies.

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

By order of the Acting Director of the Office of Thrift Supervision, or his designee, effective January 19, 2011.



Grovetta N. Gardineer
Managing Director
Corporate & International Activities