

OFFICE OF THRIFT SUPERVISION

Approval of Application by a Credit Union to Convert to a Federal Mutual Savings Association and Approval of Establishment of an Operating Subsidiary and Two Service Corporations

Order No.: 2007-25
Date: June 11, 2007
Re: OTS No. 18037

Think Federal Credit Union, Rochester, Minnesota (Institution) seeks approval of the Office of Thrift Supervision (OTS) pursuant to 12 C.F.R. §§ 543.8 and 543.9 to convert to a federal mutual savings association, Think Mutual Bank, Rochester, Minnesota. In addition, the Institution seeks OTS approval under 12 U.S.C. § 1828(m) and 12 C.F.R. Part 559 to establish one operating subsidiary and two service corporations.

The Proposed Transaction

In the proposed transaction, the Institution will convert directly from a federally chartered credit union to a Deposit Insurance Fund (DIF)-insured, federal mutual savings association. The Institution's members' interests in the Institution will not change as a result of the transaction.

The Institution proposes to establish one operating subsidiary, Member Investment Services, Inc. (MIS), which would be a shell company that would hold Arthur A. Hirman Agency, Inc. (Hirman), a service corporation which would conduct insurance agency activities. The second service corporation, Think Land Holdings Company, Inc. (TLHC), would hold an investment in land for the Institution's offices.

Public Comment

One public comment was submitted regarding the Institution's application for charter conversion. The commenter asserts that: another federal thrift charter is not necessary in the communities that would be served; the Institution would be a threat to existing thrifts and home lending institutions in those communities; and the charter conversion would be a threat to the Institution. OTS has considered the comment and for the reasons discussed below has determined that the comment does not provide a basis for OTS to object to the applications.

Approval Standards

The proposed conversion of the Institution to a federal mutual savings association requires OTS approval under 12 C.F.R. §§ 543.8 and 543.9. Section 543.8 states that a depository institution, as defined in § 552.13, that is in mutual form, may convert to a federal mutual savings association with OTS approval, provided that: (i) the depository

institution, upon conversion, will have its deposits insured by the Federal Deposit Insurance Corporation (FDIC); (ii) the depository institution, in accomplishing the conversion, complies with all applicable state and federal statutes and regulations, and OTS policies, and obtains all necessary regulatory and member approvals; and (iii) the resulting federal mutual association conforms, within the time prescribed by OTS, to the requirements of § 5(c) of the Home Owners' Loan Act (HOLA).¹

The Institution is a "depository institution" within the meaning of § 552.13. The Institution has received FDIC approval of its application for insurance of accounts. Based on the information provided by the Institution in connection with its applications, we conclude that the conversion will comply with all applicable statutes and regulations, and OTS policies, and the Institution will have obtained all necessary regulatory and member approvals prior to consummation of the transaction.

With regard to the third requirement, conformity with the requirements of § 5(c) of the HOLA, based on the representations in the Institution's charter conversion application, we conclude that the Institution will comply with the lending and investment limitations contained in § 5(c) of the HOLA. The Institution has stated that it will withdraw its member capital accounts in entities specified in the application as soon as possible but not later than three years after the Institution's charter conversion. We are conditioning approval of the application on the Institution's withdrawing its capital accounts with such entities as soon as possible but no later than 3 years after the consummation of the transaction.

Accordingly, OTS concludes that the requirements of § 543.8 have been satisfied.

Section 543.9 of OTS's regulations adopts the approval standards of § 5(e) of the HOLA and § 543.2(g)(1). 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.² OTS regulations implementing this statute set forth the same standards, and, in addition, require OTS to consider whether the association will promote credit for housing consistent with the safe and sound operation of a federal savings association.

In addition, OTS's Community Reinvestment Act (CRA) regulations provide that an applicant for a federal thrift charter must submit with its application a description of how it will meet its CRA objectives.³ OTS takes the description into account when considering the application and may deny the application on that basis.

¹ 12 C.F.R. § 543.8(a) (2007).

² Section 5(e) of the HOLA, 12 U.S.C. § 1464(e).

³ 12 C.F.R. § 563e.29(b) (2007).

As to character and responsibility, the Institution's management has received ratings that are consistent with approval. In addition, OTS has reviewed the backgrounds of the proposed directors and senior executive officers, and no adverse information was revealed. Accordingly, OTS concludes that this approval criterion has been satisfied.

With respect to the probability of usefulness and success, the Institution has been operating profitably and the Institution will be "well capitalized" upon consummation of the conversion. The Institution's business plan is not objectionable. To help monitor the Institution's progress and, therefore, help increase the probability of the Institution's usefulness and success, we are imposing conditions 6 and 7. In addition, we are imposing conditions 5, 9, and 10, to help ensure that the Institution has sound management during the transition to a federal charter and that its compensation arrangements and employment contracts comply with regulatory policy and requirements.

The comment asserted that the charter conversion would harm the Institution, because the Institution would lose its tax exemption and be required to depart from its "not-for-profit" business model. The Institution has a history of successful operations. In addition, the Institution has submitted a detailed business plan that projects growth. Nothing in the Institution's business plan or the application indicates that successful operations would not continue. OTS has reviewed the business plan and determined it is acceptable.

Based on the foregoing, OTS concludes that there is a reasonable probability of the Institution's usefulness and success, subject to the imposition of the conditions described above.

OTS concludes that there is a necessity for the Institution in the community, based on the Institution's existing operations. The Institution's existing profitable operations support the conclusion that there is a necessity for the institution in the community. However, the comment asserted that there is no need for another savings or home lending institution in the relevant markets. The commenter further claimed that reliance on the Institution's present existence is not sufficient, because the Institution would be able to serve the entire community after the transaction, and would not be limited by field of membership considerations.

The charter conversion does not create a new competitor in the relevant markets. The Institution already competes for deposits and loans. In addition, the Institution projects only moderate overall growth after the proposed transaction. There is no indication that existing depositors will leave the Institution after it converts. Thus, its successful existing operations lead to the conclusion that there is a need for the Institution in the relevant markets.

Moreover, growth in the relevant markets is sufficient to support the projected growth of the Institution. The Institution currently operates in four distinct markets. The FDIC's summary of deposits for FDIC-insured institutions demonstrates that the amount of deposits for each market is increasing. For the Rochester, Minnesota MSA, deposits

increased from \$2.370 billion as of June 30, 2005, to \$2.513 billion as of June 30, 2006, for an increase of \$143 million or 6.03 percent. For the Chicago-Naperville-Joliet, IL-IN-WI MSA, deposits increased from \$239.618 billion, as of June 30, 2005, to \$261.968 billion, as of June 30, 2006, for an increase of \$22.35 billion or 9.33 percent. For the Minneapolis-St. Paul-Bloomington, MN-WI MSA, deposits increased from \$56.362 billion, as of June 30, 2005, to \$58.288 billion, as of June 30, 2006, for an increase of \$1.93 billion or 3.42 percent. For the Kansas City, MO-KS MSA, deposits increased from \$32.593 billion, as of June 30, 2005, to \$34.747 billion, as of June 30, 2006, for an increase of \$2.154 billion or 6.61 percent.

Accordingly, OTS concludes that there is a necessity in the community for the Institution following a charter conversion.

In addition, the Institution's charter conversion will not cause undue injury to local thrift and home financing institutions. The Institution's current operations have not caused injury to local thrift or home financing institutions. The public comment asserts that the Institution's proposed expansion of activities will undercut the deposit base and lending business of other institutions.

OTS concludes that the comment is without merit, because the Institution is currently a competitor in the relevant markets. The Institution already competes for deposits and loans in those markets and it projects only moderate overall growth after the proposed transaction. There is no indication that existing depositors will leave the Institution. Nor is there any indication that the projected growth in lending operations will harm other institutions. No existing local thrift or home lending institution objected to the application.

As demonstrated by the data set forth above regarding deposit growth in the relevant markets, the Institution's projected growth in deposits is not sufficient to harm other institutions in those growing markets. Moreover, the application indicates that the Institution's market share of deposits across all four markets would be less than half of one percent. Only in the Rochester, Minnesota MSA does the Institution have a significant presence. While its deposits are expected to grow over three years, a significant portion of that increase will likely come from new money in the market, assuming deposit growth in that market continues at its present rate.

As for loans, the Institution plans to increase lending modestly over the next three years. Because the market for residential loans is a national market, the Institution's increase in residential lending would not cause undue harm to existing local thrifts and other home lending institutions. Because the Institution has a wide base of eligible members and could increase consumer lending as a credit union, the Institution's proposed increase in consumer lending is not expected to cause undue harm to existing local thrifts and other home lending institutions. In addition, any potential harm to other competitors based on expansion of the Institution's lending activities would be mitigated as a result of growth of the relevant lending market.

Based on the foregoing, OTS concludes that the conversion of the Institution to a federal mutual savings association will not cause undue injury to local thrifts and home financing institutions.

As for the provision of credit for housing, the Institution has provided mortgage loans, and the Institution projects that it will increase mortgage lending after the proposed transaction. As for the compliance with the CRA, the Institution has not been subject to the CRA and it has satisfactorily demonstrated how it will meet its CRA obligations after the proposed transaction. Therefore, OTS concludes that approval of the charter conversion application is consistent with these standards.

In sum, OTS concludes that the requirements under § 543.9 have been satisfied.

Operating Subsidiary and Service Corporation Applications

The Institution proposes to organize one operating subsidiary, MIS, and two service corporations, Hirman and TLHC. The Institution will invest less than two percent of its assets in service corporations.

MIS will be a shell corporation that will not engage directly in any activities other than holding the stock of a service corporation subsidiary. In addition, MIS will be a wholly owned subsidiary of the Institution, and no other party will have effective operating control of MIS. Accordingly, MIS satisfies the requirements under 12 C.F.R. Part 559 for operating subsidiaries.

Hirman will be a wholly owned, Minnesota-chartered subsidiary of MIS. The Institution proposes that Hirman will engage exclusively in activities that are preapproved for service corporations under 12 C.F.R. § 559.4. Therefore, we conclude that the Institution may establish Hirman as a service corporation.

The Institution proposes to hold TLHC, a Minnesota-chartered corporation, as a first-tier service corporation. TLHC's sole activity will be to hold land for the Institution's offices. TLHC's proposed activity is preapproved for a service corporation under 12 C.F.R. § 559.4(a), because the investment would be permissible for the Institution pursuant to 12 C.F.R. § 560.37. In addition, as a first-tier service corporation, TLHC is subject to 12 C.F.R. §§ 559.3(b)(2) and (d)(2), which, respectively, limit who can invest in first-tier service corporations, and require first-tier service corporations to be incorporated in the same state as the parent federal savings association. The proposed investment in TLHC meets the requirements of 12 C.F.R. §§ 559.3(b)(2) and 559.3(d)(2) because the Institution will hold all of TLHC's stock, and TLHC is a Minnesota corporation.

Based on the foregoing, OTS concludes that the Institution may hold MIS as an operating subsidiary, and hold Hirman and TLHC as service corporations.

Conclusion

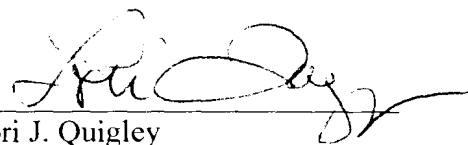
For the reasons set forth above, and based on the commitments that the Institution and its counsel have provided, OTS concludes that the applications satisfy the applicable approval standards, provided that the following conditions are complied with in a manner satisfactory to the Midwest Regional Director, or his designee (Regional Director). Accordingly, the applications are hereby approved, subject to the following conditions:

1. The Institution must receive all required member and regulatory approvals prior to consummation of the proposed transaction with copies of all such approvals provided to the Regional Director;
2. The conversion of the Institution must be consummated no later than 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 officer of the Institution must certify in writing to the Regional Director that no material adverse events or material adverse changes have occurred with respect to the financial condition or operation of the Institution 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 Institution, 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 the consummation of the transaction;
4. The Institution must advise the Regional Director in writing within five calendar days after the effective date of the proposed transaction: (a) of the effective date of the proposed transaction; and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the applications, the above-referenced commitments, and this Order;
5. For two years following the date it commences operation as a federal savings association, the Institution must receive the prior written non-objection of the Regional Director for any proposed new directors or senior executive officers or any significant changes in responsibilities of any senior executive officer;
6. The Institution must operate within the parameters of its business plan, and submit for the prior, written non-objection of the Regional Director, any proposed major deviations or material changes from the business plan. 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 the date it commences operation as a federal savings association, the Institution must submit to the Regional Director within 30 calendar days after the end of each calendar quarter, a business plan variance report detailing the Institution's compliance with the business plan and an explanation of any deviations;
8. The Institution must withdraw all capital accounts with the two entities described in the application as soon as possible but no later than three years after consummation of the transaction. The Institution must submit satisfactory evidence to the Regional Director that each of the accounts has been withdrawn within the three year period and such evidence shall be provided promptly after the withdrawal of each such account;
9. Subsequent to the Institution's conversion, an amended employment agreement for the Institution's Chief Executive Officer must be submitted to the Regional Director for his review and non-objection before the Institution enters into a new or extends an existing agreement with that officer; and,
10. For three years immediately following the Institution's conversion, the Institution must submit to the Regional Director for his review and non-objection any new compensation arrangement or employment contract, or any amendment to an existing contract, with any person who participates in, exercises significant influence over, or has authority to participate in, any major policymaking function of the institution.

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

By order of the Director of the Office of Thrift Supervision, or his designee,
effective June 11, 2007.



Lori J. Quigley
Managing Director
Examinations and Supervision-Operations