

## OFFICE OF THRIFT SUPERVISION

### APPROVAL OF APPLICATIONS FOR PERMISSION TO ORGANIZE A FEDERAL SAVINGS BANK AND TRUST POWERS

**Order No.:** 2008-31  
**Date:** September 4, 2008  
**Docket No:** 18035

Enterprise Financial Services Corp., Clayton, Missouri (BHC), has applied to the Office of Thrift Supervision (OTS), pursuant to § 5(e) of the Home Owners' Loan Act (HOLA) and 12 C.F.R. § 552.2-1, for permission to organize Enterprise Trust Company, Clayton, Missouri (Savings Bank). In addition, the Savings Bank has applied, pursuant to § 5(n) of the HOLA and 12 C.F.R. Part 550, to exercise full trust powers as described in the application. Collectively, the foregoing filings are referred to herein as the Applications.

#### **The Proposed Transaction**

In the proposed transaction, the BHC will organize the Savings Bank as a federally chartered, Deposit Insurance Fund (DIF)-insured, stock savings bank. The Savings Bank will operate as a "special purpose" trust-only federal savings bank. The BHC, a registered bank holding company, intends to transfer substantially all of the trust relationships that currently reside at its banking subsidiary, Enterprise Bank & Trust, a Missouri-chartered bank and trust company (Bank), to the Savings Bank.

#### **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's judgment, a necessity exists for such association in the community to be served; (iii) if there is a 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. 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 regulations regarding the establishment of de novo federal savings associations set forth standards regarding: (i) initial capitalization of a federal association; and (ii) the residence and composition of an 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 takes this description into account

when considering an application and may deny an application or condition approval on CRA grounds.

With respect to character and responsibility, a review of the backgrounds of the directors and senior officers of the BHC and the Savings Bank conducted by OTS revealed no adverse information. The majority of the employees of the Savings Bank are current employees of the Bank. OTS has also considered the supervisory history of the BHC and the Bank. The proposed senior officers possess extensive business and professional experience and the proposed board of directors possesses experience in various business endeavors. However, OTS has not completed its background checks on certain proposed senior officers of the Savings Bank. In order to ensure that they have the requisite character and responsibility, OTS is imposing condition 10. Based on the relevant information, OTS concludes that the character and responsibility of the BHC and the proposed directors and senior executive officers of the Savings Bank are consistent with approval of the application, subject to the Savings Bank's compliance with condition 10.

With respect to the necessity in the community for the Savings Bank, the Savings Bank will engage solely in trust activities. The application indicates that the Savings Bank will continue the operations of the Bank's trust department, and the Bank's trust operations have been profitable. Based on the foregoing, 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 not be soliciting deposits from the public, and will not engage in any lending, and its trust business will be a continuation of the trust business carried on by the Bank. Therefore, the Savings Bank will have little, if any, impact on local thrift and home financing institutions in any geographic areas where the Savings Bank's customers may be located. OTS received no comments opposing the application in response to the public notice. Thus, OTS concludes that this approval criterion is satisfied.

With respect to the probability of the Savings Bank's usefulness and success, the Savings Bank will be well capitalized and the Savings Bank's business plan is reasonable. The Savings Bank's proposed officers have considerable experience. In addition, approval of the application will be subject to a number of conditions designed to help ensure that there is a reasonable probability of the Savings Bank's usefulness and success. Conditions 5 through 7, 9, and 15 below are designed to help ensure compliance with the business plan included in the application, that changes to or from that plan would not be detrimental to the Savings Bank, that the Savings Bank will operate pursuant to appropriate policies and procedures, and that OTS is able to effectively monitor the Savings Bank's progress and activities. OTS is imposing conditions 8 and 14 below to ensure compliance with regulatory provisions and policies concerning related persons or affiliated entities. Also, OTS is imposing conditions 11 and 12 below to enable OTS to confirm that the Savings Bank will be operated properly and by qualified personnel.

We are also imposing condition 13 below, relating to the composition of the Savings Bank's board of directors, because the Savings Bank will share certain management officials with the BHC and its affiliates, and the Savings Bank may market services through affiliates. This condition reflects agency concerns about captive boards in the context of holding company structures where the savings association is likely to have transactions with its affiliates and is designed to help 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 probability of the Savings Bank's usefulness and success.

The Savings Bank will not directly extend credit for housing, but will indirectly extend credit for housing by purchasing mortgage-backed securities or similar investments that satisfy the Qualified Thrift Lender (QTL) test. OTS regulations do not require that an application for a federal charter be denied if the proposed association does not intend to engage directly in home lending, but requires OTS to consider, among other things, whether the association will perform a role of providing credit for housing in a safe and sound manner. OTS concludes that this approval criterion has been satisfied.

The OTS CRA regulations establish an exception from the CRA for special purpose savings associations.<sup>1</sup> The Savings Bank is being organized for the limited purpose of exercising trust powers. The Savings Bank will not solicit deposits from the general public. The Savings Bank will not directly extend credit to the public in the ordinary course of business. Thus, the Savings Bank will satisfy the requirements for the CRA exception. Based on the conclusion that the Savings Bank will be exempt from the CRA, OTS concludes that the CRA standard set forth in at 12 C.F.R. § 563e.29(b) is not applicable to the proposed transaction.

The Savings Bank intends to adopt a federal charter and bylaws that substantially conform to the model charter and bylaws for a federal stock savings association. The Savings Bank will have an initial capitalization that exceeds the minimum regulatory requirement.

OTS Regulations require that a majority of a de novo federal savings association's board of directors be "representative" of the state in which the association is located, and provide that the OTS generally will consider a director to be "representative" of the state if such director resides, works, or maintains a place of business in the state in which the association is located.<sup>2</sup> The Regulations also require that a de novo federal savings association's board of directors be made up of persons with varied backgrounds.<sup>3</sup>

Based upon the biographical information submitted by the proposed directors,

---

<sup>1</sup> 12 C.F.R. § 563e.11(c) (2008).

<sup>2</sup> 12 C.F.R. § 543.3(d)(1) (2008).

<sup>3</sup> 12 C.F.R. § 543.3(d)(2) (2008).

four of the proposed five directors of the Savings Bank currently reside, work, or maintain a place of business in Missouri, the state in which the Savings Bank is located.

With respect to the section 543.3(d)(2) requirement that a de novo federal savings association's board of directors be diversified and composed of individuals with varied business and professional experience, OTS concludes that the Savings Bank's directors have sufficiently varied business and professional experience. With respect to the requirement that no more than one-third of the de novo federal savings association's directors be in related businesses, because the Savings Bank will be a wholly owned subsidiary of the BHC, a holding company that has substantial independent economic substance, there is no limitation on the percentage of the Savings Bank's board members who may be in closely related businesses.

Accordingly, OTS concludes that the proposed composition of the board of directors of the Savings Bank and the BHC complies with 12 C.F.R. § 543.3(d).

### **Trust Application**

The Savings Bank has filed an application for approval to conduct full trust services, consisting of fiduciary and advisory lines of business. The fiduciary line of business includes personal trust, investment agency, life insurance trusts and custodial accounts. The advisory line is financial planning and wealth management where a client is provided such services as money management, tax and estate planning, retirement sufficiency analysis and business succession planning. In reviewing a trust application, OTS must consider: (i) the financial condition of the applicant; (ii) the capital of the applicant and whether it is sufficient under the circumstances; (iii) the applicant's overall performance; (iv) the fiduciary powers proposed to be exercised; (v) the proposed supervision of the fiduciary powers; (vi) the availability of legal counsel; (vii) the needs of the community to be served; and (viii) any other factors OTS considers proper.<sup>4</sup>

With respect to the first three criteria, the Savings Bank will meet all regulatory capital requirements, and will be well capitalized under the prompt corrective action regulation throughout the three-year term of the business plan. As required by HOLA section 5(n)(8), the Savings Bank will meet the capital requirements applicable to Missouri-chartered fiduciaries. The Savings Bank's plan regarding the provision of trust services is reasonable and the BHC has submitted financial projections for the first three years of the Savings Bank's fiduciary operations, and OTS believes the projections are reasonable. Based on the foregoing, OTS concludes that the Savings Bank's financial condition and capital will be sufficient to support its operations, and that the Savings Bank's overall performance will be consistent with approval. Therefore, OTS concludes that the first three criteria have been satisfied.

As for the fourth criterion, the fiduciary services to be offered, the BHC has provided a legal opinion from counsel concluding that Missouri law authorizes the

---

<sup>4</sup> 12 C.F.R. § 550.100 (2008).

proposed trust activities for Missouri-chartered trust companies. As for the Savings Bank's plans for the supervision of fiduciary activities, the Savings Bank will be staffed by experienced trust management. With respect to availability of legal counsel, the Savings Bank will obtain outside counsel. With respect to the needs of the community to be served, for the reasons discussed above, OTS concludes that there is a need for the trust services in question in the Savings Bank's proposed market. Accordingly, OTS concludes that the standards for approval of the trust application have been satisfied.

### **Conclusion**

Based on the foregoing, 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 BHC, the Bank 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 consummation of the proposed transaction, the chief financial officers of the BHC, the Bank 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 BHC, the Bank and the Savings Bank 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 BHC, the Bank, 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 BHC 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 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, and must submit any proposed major deviations or material changes from the business plan (including those initiated by the BHC), and in particular, those pertaining to cross-marketing by the Savings Bank and its affiliates, for the prior,

written non-objection of the Regional Director. The request for change must be submitted a minimum of 60 calendar days prior to the desired implementation date, with a copy sent to the FDIC Regional Office;

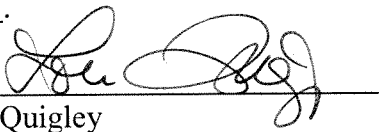
6. For three years following commencement of operations, the Savings Bank must submit to the Regional Director within 45 calendar days after the end of each calendar quarter, a business plan variance report detailing the Savings Bank's compliance with the business plan and an explanation of any material deviations;
7. The Savings Bank must submit independent audit reports to the Regional Director for its first three fiscal years of operations. These reports must be in compliance with the audit rules set forth at 12 C.F.R. § 562.4;
8. During the first eighteen months of the Savings Bank's operations, any contracts or agreements pertaining to transactions with affiliates, affiliated persons or related interests not yet submitted to OTS for review, or any material changes to previously submitted contracts or agreements, must be provided to the Regional Director at least 30 calendar days prior to their planned execution and receive his written non-objection;
9. Within 30 calendar days after the commencement of operations, the Savings Bank must submit to the Regional Director, a copy of the executed Transfer Agreement and Tax-Sharing Agreement between the BHC, the Bank and the Savings Bank;
10. With respect to any proposed officer of the Savings Bank for whom background checks have not been completed, the Savings Bank must take such action as required by the Regional Director, if the Regional Director objects to any such person based on information obtained during the background check;
11. During the first two years of the Savings Bank's operations, the Savings Bank must receive the prior written non-objection of the Regional Director for any proposed new directors or executive officers or any significant change in responsibilities of any executive officer;
12. For two years following the commencement of operations, the Savings Bank must receive the prior written non-objection of the Regional Director for any new, revised, extended or modified employment agreement not already submitted to OTS;
13. At least 40 percent of the Savings Bank's board of directors must be individuals who are not officers or employees of the BHC or its 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 BHC or any affiliate of the Savings Bank, 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, investment, and trust committee established by the

Savings Bank must be directors who are not officers or employees of the Savings Bank, the BHC or any affiliate, and who have not otherwise been determined by the Regional Director to lack sufficient independence. If compliance with this condition involves the selection of additional directors, each director must receive the prior written approval of the Regional Director;

14. The Savings Bank must comply with the anti-tying restrictions of 12 U.S.C. § 1464(q) and must develop written procedures to effect such compliance. The procedures must disclose any proposed bundling arrangements and must be submitted for the review and non-objection of the Regional Director at least 30 calendar days prior to the commencement of the cross-marketing activity; and
15. Prior to engaging in any business activity other than that authorized pursuant to section 5(n) of the HOLA, the Savings Bank must apply to OTS and receive approval of its application to engage in such activity. OTS will consider any such application under the standards required for a new federal thrift charter which standards are set forth at section 5(e) of the HOLA and OTS regulations thereunder, and under the CRA and OTS regulations thereunder at 12 C.F.R § 563e.29. Any such application will be subject to the public notice and comment procedures set forth in 12 C.F.R. Part 516, Subparts B and C.

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 September 4, 2008.

  
\_\_\_\_\_  
Lori J. Quigley  
Managing Director  
Supervision