

## OFFICE OF THRIFT SUPERVISION

### **Approval of Notice to Reorganize Into a Mutual Holding Company Structure, Application for Holding Company Acquisition, Application for Capital Distribution, and Related Applications**

**Order No.:** 2010-51  
**Date:** August 24, 2010  
**Re:** OTS Nos. 03587, H-4712,  
H-4713

Fidelity Federal Savings and Loan Association of Delaware, Delaware, Ohio (Association), a federal mutual savings association, has filed a notice (Notice) with the Office of Thrift Supervision (OTS) of its intent to reorganize into a federal mutual holding company to be known as Fidelity Federal Savings and Loan Association, M.H.C., Delaware, Ohio (Mutual Holding Company), pursuant to 12 U.S.C. § 1467a(o), and 12 C.F.R. § 575.3. In addition, Fidelity Financial Corporation, Inc., Delaware, Ohio (Applicant), seeks OTS approval, pursuant to 12 U.S.C. §§ 1467a(e) and 1467a(o) and 12 C.F.R. §§ 574.3 and 575.14, to acquire the Association. The Association also seeks OTS approval to make capital distributions under 12 C.F.R. § 563.143. The various filings and related applications together seek OTS approval of the Association's reorganization into a mutual holding company structure, along with all of the constituent elements of the reorganization.

#### **The Proposed Transaction**

The Association proposes to reorganize into a three-tier mutual holding company structure in a multi-step transaction described in detail in the Notice. Upon completion of the reorganization, the Association will be a wholly owned subsidiary of the Applicant, a federally chartered subsidiary holding company, and the Applicant will be a wholly owned subsidiary of the Mutual Holding Company. The Association will capitalize the Mutual Holding Company with \$100,000 and the Applicant with \$7.7 million, from capital distributions totaling \$7.8 million. The Association has asserted that the \$7.7 million capital distribution to the Applicant will significantly reduce the Association's state tax liability.

#### **Mutual Holding Company Reorganization**

Section 10(o) of the Home Owners' Loan Act (HOLA) and the OTS Mutual Holding Company Regulations<sup>1</sup> (MHC Regulations) require a savings association that proposes to reorganize into a mutual holding company structure to file prior notice of the reorganization with OTS. The HOLA and the MHC Regulations provide that OTS may

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<sup>1</sup> 12 C.F.R. Part 575 (2010).

disapprove a proposed mutual holding company reorganization under certain circumstances.<sup>2</sup>

OTS, as the regulator of the Association, is familiar with the Association's resources and operations. The Notice includes a proposed \$7.7 million capital distribution to the Applicant, and a \$100,000 capital distribution to the Mutual Holding Company. After the proposed capital distribution, the Association will remain well capitalized, with Tier 1 capital of approximately 12 percent and risk-based capital of approximately 24 percent. However, because, as a mutual organization, the Mutual Holding Company is subject to certain constraints in raising capital to support the savings association should the need arise, OTS is imposing conditions 5, 6 and 7 to help ensure that funds distributed to the Mutual Holding Company and the Applicant will remain available to provide capital support for the Association if needed, and that the Mutual Holding Company and the Applicant will serve as a source of support for the Association.

Based on OTS's knowledge of the Association, and the Association's capital position after the proposed capital distributions, OTS concludes that the Notice meets the criteria set forth at 12 C.F.R. § 575.4(a)(1) through (3), subject to the imposition of conditions 5, 6, and 7. There will be no minority stock issuance in the proposed transaction, so the approval criterion at 12 C.F.R. § 575.4(a)(4) is not applicable. The Association has provided the information required by OTS, and the proposed transaction, if carried out in conformity with the description contained in the Notice, will not violate any provision of law. Accordingly, the Notice satisfies the applicable criteria for approval.

Approval of the reorganization as structured requires that OTS waive two regulatory provisions, 12 C.F.R. §§ 575.6(a) and 575.6(b). OTS has routinely waived these two regulatory provisions, pursuant to 12 C.F.R. § 575.1(b), to streamline the application process in reorganizations structured as proposed by the Association. We conclude that there is good cause to waive the two provisions in connection with the proposed reorganization here for the same reasons that the provisions have previously been waived.

### **Establishment of the Applicant as a Subsidiary Holding Company**

The formation of the Applicant is consistent with the MHC Regulations. The Applicant will have a federal charter, as required by 12 C.F.R. § 575.14. The Applicant's proposed federal charter is consistent with 12 C.F.R. § 575.14(c). The Applicant proposes to hold all of the common stock of the Association, as required under 12 C.F.R. § 575.14(a) and the Mutual Holding Company will hold more than 50 percent of the stock of the Applicant as required by 12 C.F.R. § 575.14(b).

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<sup>2</sup> 12 U.S.C. § 1467a(o)(3); 12 C.F.R. § 575.4(a) (2010).

### **Formation of Interim Associations**

The Association must receive OTS approval under 12 C.F.R. § 552.2-2 to form two interim federal savings associations. The establishment of, and transactions involving, the two interim federal savings associations are consistent with previous transactions OTS has approved and are consistent with 12 C.F.R. § 552.2-2.

### **Holding Company Applications**

In the proposed reorganization, the Association would acquire two interim federal savings associations, and, subsequently, the Applicant would acquire the Association. Accordingly, the transaction requires OTS approval under § 10(e) of the HOLA, and the OTS regulations thereunder (Control Regulations).

Section 10(e)(2) and the Control Regulations provide that in reviewing the proposed acquisition of two savings associations by a company, such as the Association, 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 to the Deposit Insurance Fund (DIF), and the convenience and needs of the community to be served.<sup>3</sup> Section 10(e)(1)(B) of the HOLA provides that OTS must approve a holding company application proposing the acquisition of one savings association by a company other than a savings and loan holding company, such as the Applicant, unless OTS finds the financial and managerial resources and future prospects of the company and association involved to be such that the acquisition would be detrimental to the savings association or the insurance risk of the DIF.<sup>4</sup> In both cases, OTS must consider the impact of any acquisition on competition.<sup>5</sup> Also, 12 C.F.R. § 563e.29 requires that OTS take into account assessments under the Community Reinvestment Act (CRA) when approving holding company acquisitions.

As for managerial resources, OTS, in its role as the Association's regulator, is familiar with the Association's managerial resources, and concludes that the Association's managerial resources are consistent with approval. The board of directors of the Applicant will consist of the present directors of the Association, and the executive officers of the Applicant will consist of the executive officers of the Association. The interim savings associations will be shell entities that never open for business. Accordingly, OTS concludes that the managerial resources of Applicant, the Association and the interim associations are consistent with approval.

As for financial resources, OTS is familiar with the Association's financial resources. As of June 30, 2010, the Association was "well capitalized," and the

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<sup>3</sup> 12 U.S.C. § 1467a(e)(2); 12 C.F.R. § 574.7 (2010).

<sup>4</sup> 12 U.S.C. § 1467a(e)(1)(B).

<sup>5</sup> 12 U.S.C. § 1467a(e)(2).

Association will remain well capitalized upon consummation of the proposed transaction. Accordingly, we conclude that the financial resources of the Applicant, the Association, and the two interim associations are consistent with approval.

After considering the financial and managerial resources of the Applicant, the Association and the two interim associations, we conclude that the future prospects of the Applicant, the Association and the two interim associations, and risks to the DIF, are consistent with approval.

The proposed acquisitions will not cause the Association to become affiliated with any other operating depository institution. Accordingly, the transactions are unobjectionable on competitive grounds.

As for the CRA, and convenience and needs of the community, the Association currently has an "Outstanding" CRA rating. The Association does not propose to reduce its services. The Applicant, as a newly formed entity, has no CRA experience. OTS has received no comments objecting to the proposed transaction. Accordingly, we conclude that approval of the holding company acquisitions is consistent with the CRA and with the convenience and needs standard.

### **Bank Merger Act Application**

The proposed merger of one of the interim federal associations into the Association requires OTS approval under 12 U.S.C. § 1828(c) (Bank Merger Act) and 12 C.F.R. §§ 552.13 and 563.22(a). The approval standards for the merger are similar to the approval standards set forth under § 10(e) of the HOLA, which have been discussed previously.<sup>6</sup> In addition, the Bank Merger Act requires that OTS consider the effectiveness of any insured depository institution in combating money laundering activities.<sup>7</sup> Also, § 563.22(d) requires OTS to consider whether the transaction conforms to applicable laws, regulations, policies, and factors relating to fairness and disclosure. The CRA requires that OTS consider the CRA record of the Association in evaluating the merger application.

The merging interim association would be a shell entity. Accordingly, the merger would have no material effect on the Association's managerial and financial resources and future prospects, and no effect on competition. OTS's review of the Association's compliance activities does not provide a basis for objection under 12 U.S.C. § 1828(c)(11) based on the Association's anti-money laundering activities. We have concluded that the Association has made adequate disclosures regarding the transaction, and that the transaction, an internal reorganization, is unobjectionable on fairness grounds. We are aware of no information indicating that the proposed transaction is inconsistent with any law or regulation. Further, because the transaction would not result

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<sup>6</sup> 12 U.S.C. § 1828(c)(5), and 12 C.F.R. § 563.22(d) (2010).

<sup>7</sup> 12 U.S.C. § 1828(c)(11).

in a reduction of the Association's services, and because the Association has an "Outstanding" CRA rating and OTS has received no comments objecting to the transaction, we conclude that the merger application satisfies the convenience and needs and CRA criteria.

### **Capital Distribution Notice**

The Association has requested OTS approval, pursuant to 12 C.F.R. § 563.143(a)(2), to make capital distributions. The Association proposes to make capital distributions of \$100,000 to the Mutual Holding Company and \$7.7 million to the Applicant. The Association will remain well capitalized after the distributions, and for the reasons discussed above, OTS is imposing conditions 5, 6, and 7. The proposed distributions do not violate any law or agreement with OTS. Accordingly, we conclude that the Association's proposed capital distributions are consistent with approval, subject to the imposition of conditions 5, 6 and 7.

### **Conclusion**

Based on the foregoing analysis, the Notice, and the accompanying holding company applications, merger application, application to form interim associations, applications for federal charters for the Mutual Holding Company and the Applicant, and other component steps of the mutual holding company reorganization are hereby approved pursuant to delegated authority, provided that the following conditions are complied with in a manner satisfactory to the Central Regional Director, or his designee (Regional Director):

1. The reorganization and acquisition must be consummated within 120 calendar days after the date of this Order;
2. No later than the business day prior to consummation of the reorganization and acquisition, the Association must submit to the Regional Director a certification stating that the reorganization has been approved by the majority of the total votes eligible to be cast at the special meeting of members of the Association called to vote on the transaction;
3. On the business day prior to the date of consummation of the reorganization and acquisition, the chief financial officers of the Mutual Holding Company, the Applicant, and the Association 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 operations of the Mutual Holding Company, the Applicant, or the Association, respectively, since the date of the financial statements submitted with the Notice and related applications. If additional information having a material adverse bearing on any feature of the Notice or related applications is brought to the attention of the Mutual Holding Company, the Applicant, the Association, or OTS


since the date of the financial statements submitted with the Notice or related 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. Upon completion of the organization of the interim federal savings associations, the boards of directors of the interim federal savings associations, the Mutual Holding Company, the Applicant, and the Association must ratify the Plan of Reorganization;
5. The Mutual Holding Company and the Applicant, without prior written approval of the Regional Director, must not use the funds received from the capital distributions except: (a) to invest in (i) a deposit account at the Association, or (ii) U.S. Treasury and agency securities; (b) to pay (i) regulatory fees and assessments, (ii) its portion of any tax liabilities under the Tax Sharing Agreement, or (iii) the Association under a management services agreement; or (c) as a capital infusion into Association;
6. Upon OTS's written request, the Mutual Holding Company and the Applicant must promptly infuse funds received in the capital distributions into the Association to the extent requested by OTS;
7. The Mutual Holding Company and the Applicant must serve as a source of support for the Association as long as they control the Association; and
8. No later than five calendar days after the date of consummation of the reorganization and acquisition, the Mutual Holding Company, the Applicant, and the Association must file with the Regional Director a certification by legal counsel stating the effective date of the reorganization and acquisition, the exact number of shares of stock of the Association acquired by the Applicant, the exact number of shares of the Applicant acquired by the Mutual Holding Company, that the interim federal savings associations did not open for business, and that the reorganization was consummated in accordance with all applicable laws and regulations, the Notice, the related applications, the Plan of Reorganization, and this Order.

In addition, pursuant to 12 C.F.R. § 575.1(b), OTS hereby waives the applicability of 12 C.F.R. §§ 575.6(a) and 575.6(b).

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

By order of the Acting Director of the Office of Thrift Supervision, or his designee, effective August 24, 2010.

  
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Grovetta N. Gardineer  
Managing Director,  
Corporate & International Activities