



Office of Thrift Supervision

Department of the Treasury

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October 12, 2010

Marianne E. Roche, Esq.
Martin L. Meyrowitz, P.C., Esq.
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3299 K Street, Suite 100
Washington, D.C. 20007

Re: Heritage MHC, Albany, Georgia (MHC), OTS No. H-3792, and HeritageBank of the South, Albany, Georgia (Savings Bank); Conversion Application Under 12 C.F.R. Parts 563b and 575; Savings and Loan Holding Company Application by Heritage Financial Group, Inc., Albany, Georgia (Holding Company), OTS No. H-4738, and Related Applications

Dear Ms. Roche and Mr. Meyrowitz:

The MHC has filed with the Office of Thrift Supervision (OTS) an application for approval to convert from a federally chartered mutual holding company, with a mid-tier holding company, Heritage Financial Group, Albany, Georgia (Mid-Tier), holding the Savings Bank, to a stock holding company (Conversion), pursuant to 12 C.F.R. Part 563b (Conversion Regulations), and 12 C.F.R. Part 575. Also, OTS approval is requested for the Holding Company to acquire the Savings Bank. In addition, the Savings Bank requests OTS approval, pursuant to 12 C.F.R. § 563.143(a)(2), to make a capital distribution to the Holding Company of up to 50 percent of the net proceeds of the proposed public offering (Offering). (Collectively, the foregoing are referred to as the Applications.)

The Transaction

In the proposed transaction, which is described in more detail in the Applications, the Mid-Tier will establish the Holding Company as a first-tier Maryland-chartered stock holding company subsidiary. The MHC will merge with and into the Mid-Tier (the MHC Merger) pursuant to the Agreement and Plan of Merger. Immediately after the MHC Merger, the Mid-Tier will merge with and into the Holding Company (the Mid-Tier Merger) with the Holding Company as the resulting entity. As part of the Mid-Tier Merger, the minority shares of the Mid-Tier (approximately 24 percent of the currently outstanding shares) will be converted into Holding Company common stock based on an exchange ratio that ensures the Mid-Tier's

minority shareholders will receive the same percentage ownership in the Holding Company that they had in the Mid-Tier. The Holding Company and the Savings Bank each will establish a liquidation account.

Immediately after the Mid-Tier Merger, the Holding Company will issue approximately 76 percent of its common stock in the Offering. The Offering will be made to the persons described in the Plan of Conversion and Reorganization (Plan), pursuant to the Conversion Regulations. Fifty percent of the net cash proceeds raised in the Offering will be infused as capital into the Savings Bank.

The Conversion

Section 575.12 of OTS's regulations provides that a mutual holding company converting to stock form must do so pursuant to the Conversion Regulations, and that the basis for the exchange of stock held by persons other than the parent mutual holding company must be fair and reasonable. The Conversion Regulations provide that OTS will approve an application for a mutual to stock conversion only if: (i) the conversion complies with Part 563b; (ii) the converting association meets its capital requirements under 12 C.F.R. Part 567 after the conversion; and (iii) the conversion will not result in a taxable reorganization under the Internal Revenue Code (IRC).¹ In addition, OTS may deny or condition a conversion application based on the converting association's compliance with the OTS regulations under the Community Reinvestment Act (CRA) and the manner in which the converting association proposes to meet the lending needs of the communities it serves after the transaction.² Furthermore, the Conversion Regulations provide that a plan of conversion shall contain no provision that OTS determines to be inequitable or detrimental to the applicant, its savings account holders or other savings associations or to be contrary to the public interest.³

OTS has considered the MHC's Plan, and, as described in more detail below, concludes that the Plan contains the required provisions, and that the Plan is in accordance with the relevant regulatory requirements, other than the requirements for which a waiver has been requested, provided that the Savings Bank and the Holding Company comply with the conditions described below. In particular, we conclude that the purchase priorities in the subscription offering and the provisions relating to stock benefit plans are consistent with the Conversion Regulations.

The Conversion Regulations, at 12 C.F.R. § 563b.390(b), require that in a savings association's community offering, the savings association give a purchase preference to natural persons residing in the savings association's local community. The Plan defines the community

¹ 12 C.F.R. § 563b.200(a) (2010).

² 12 C.F.R. § 563b.200(c) (2010).

³ 12 C.F.R. § 563b.130 (2010).

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as the natural persons in the counties of Georgia and Florida in which the Savings Bank maintains a banking office. This definition of community includes the area in which the Savings Bank has its fifteen branch offices. For any community offering, the Plan provides: (a) a first purchase preference to natural persons residing in the community; and (b) a second purchase preference to the current public stockholders of the Mid-Tier. We conclude that the preference for persons residing in the Savings Bank's community satisfies the requirement contained in section 563b.390(b). While the Conversion Regulations do not provide for any additional preferences in community offerings, neither do those regulations specifically preclude such additional preferences. Accordingly, we conclude that the Plan, including the community offering section of the Plan, satisfies the Conversion Regulations.

With respect to the remaining approval criteria, the Conversion would not cause the Savings Bank, which is currently well capitalized, to fail to meet its regulatory capital requirements and the Conversion will not result in a taxable reorganization of the Savings Bank under the IRC.

With respect to the requirement that the MHC reorganize in conformance with 12 C.F.R. § 575.12, which requires any conversion to stock form to be in accordance with the Conversion Regulations, OTS concludes that the Conversion is in accordance with that section. Also, OTS concludes that the basis for the stock exchange is fair and reasonable, because the minority shareholders of the Mid-Tier will receive Holding Company stock in an amount that will maintain the ratio between them and the interest formerly held by the MHC.

Based on the Savings Bank's CRA rating of "Satisfactory" and the business plan, OTS concludes that the application meets the convenience and needs requirement set forth at 12 C.F.R. § 563b.200(c).

OTS is imposing condition 3 because many of the post-transaction restrictions relating to mutual-to-stock conversions continue for three years. For OTS to ensure that an institution complies with these requirements, it is appropriate to require the institution to remain subject to OTS jurisdiction for that period of time.⁴

OTS is imposing condition 4 because OTS carefully applies the criteria set forth in 12 C.F.R. § 563b.525 in reviewing an offer or acquisition under 12 C.F.R. § 563b.525 in the first three years following conversion. Accordingly, it is appropriate for the Savings Bank (and its holding company) to seek OTS clearance before speaking with potential acquirors, given the possibility that the acquisition may not ultimately be approved. This condition helps ensure compliance with 12 C.F.R. § 563b.525, and helps ensure the Savings Bank's safety and

⁴ Where, as in the Savings Bank's situation, the Savings Bank is already a state-chartered institution, maintenance of an appropriate state charter with a section 10(l) election satisfies the condition.

soundness by reducing the possibility that the Savings Bank or the Holding Company will expend time and resources pursuing a transaction that they ultimately may not be able to complete.

The Conversion Regulations provide that a plan of conversion shall contain no provision that OTS determines to be inequitable or detrimental to the applicant, its savings account holders or other savings associations or to be contrary to the public interest. We conclude that the Plan complies with these requirements, provided that the parties comply with the conditions set forth below.

Holding Company Application

In the transaction, the Holding Company will acquire the Savings Bank. Accordingly, the transaction requires OTS approval under Section 10(e) of the Home Owners' Loan Act (HOLA), and the OTS regulations thereunder (Control Regulations).⁵

The HOLA and the Control Regulations provide 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 unless OTS finds that the financial and managerial resources and future prospects of the company and the association involved are such that the acquisition would be detrimental to the association or the insurance risk of the Deposit Insurance Fund (DIF).⁶ Consideration of the managerial resources of a company or a savings association must include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the entity.⁷ OTS must deny a holding company application, however, if the transaction would have certain anticompetitive effects.⁸ In addition, 12 C.F.R. § 563e.29 requires that OTS take into account assessments under the CRA when reviewing savings and loan holding company applications.

With respect to managerial resources, OTS has access to information generated by the Savings Bank's primary federal regulator and OTS, in its role as the MHC's and Mid-Tier's regulator, is familiar with the MHC's and the Mid-Tier's managerial resources. The proposed directors and executive officers of the Holding Company and the Savings Bank will be made up of persons who have served as managers of the MHC, the Mid-Tier, and the Savings Bank. OTS concludes that the managerial resources of the Holding Company and the Savings Bank are consistent with approval, subject to the satisfaction of the condition.

⁵ 12 C.F.R. Part 574 (2010).

⁶ 12 U.S.C. § 1467a(e)(1)(B).

⁷ Id.

⁸ 12 U.S.C. § 1467a(e)(2).

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With respect to financial resources, OTS is familiar with the Savings Bank's financial resources. The Savings Bank is well capitalized. The Holding Company will infuse 50 percent of the net cash proceeds of the Offering into the Savings Bank. The only activities of the Holding Company will be its ownership of the stock of the Savings Bank and making a loan to the employee stock ownership plan. Accordingly, we conclude that the financial resources of the Holding Company and the Savings Bank are consistent with approval.

With respect to future prospects, we have considered the financial and managerial resources of the Holding Company and the Savings Bank, the proposed capital infusion into the Savings Bank, and the Savings Bank's proposed business plan. The conditions set forth below are intended to ensure that the Savings Bank's future prospects are consistent with approval. We conclude that, provided the conditions set forth below are satisfied, the future prospects of the Savings Bank, and the Holding Company, and the risks to the DIF, are consistent with approval.

With respect to anticompetitive effects, the acquisition of the Savings Bank is a transaction among affiliates and does not involve operating depository institutions other than the Savings Bank. Therefore, the proposed acquisition is competitively neutral.

With respect to the CRA, the Savings Bank received a "Satisfactory" CRA rating in its most recent CRA examination, the Savings Bank does not propose to reduce its level of services, and the Savings Bank's business plan does not raise concerns in this area. OTS has received no comments objecting to the proposed transaction. Accordingly, we conclude that approval of the holding company application is consistent with the CRA.

In summary, we conclude that the Holding Company's application to acquire the Savings Bank meets all of the standards for approval.

Capital Distribution

The Savings Bank has requested OTS approval, pursuant to 12 C.F.R. § 563.143(a)(2), to make a capital distribution of 50 percent of the net cash proceeds of the Offering to the Holding Company. OTS's regulations provide that a capital distribution application may be denied if, generally, the proposed capital distribution would: (i) cause the institution to become undercapitalized; (ii) raise safety and soundness concerns; or (iii) violate any statute, regulation, agreement with OTS or condition of approval.⁹

The proposed distribution does not raise safety and soundness concerns and it will not violate any prohibition contained in law, agreement with OTS, or condition of approval, and the

⁹ 12 C.F.R. § 563.146 (2010).

Savings Bank will remain well capitalized after the distribution. Accordingly, we conclude that the Savings Bank's capital distribution is consistent with approval.

Conclusions

Based on the foregoing analysis, OTS concludes that the conversion application meets the applicable approval criteria. Accordingly, pursuant to delegated authority, the conversion application is hereby approved, subject to the following conditions:

1. Promptly after the completion of the sale of all the shares of capital stock to be sold in connection with the Offering, the Savings Bank must submit to the Southeast Regional Director or his designee (Regional Director): (a) a certification by the Holding Company's chief executive officer stating that all the shares proposed to be sold or exchanged have been sold or exchanged, the price at which they were sold or exchanged, and the date of completion of the Offering; (b) executed copies of the proposed amendments to the Savings Bank's charter; and (c) a statement by the Savings Bank's independent appraiser that, to the best of his/her knowledge and judgment, nothing of a material nature has occurred (taking into account all of the relevant factors including those which would be involved in a change in the maximum subscription price) which would cause him/her to conclude that the sale price was not compatible with his/her estimate of the Holding Company's and the Savings Bank's total *pro forma* market value at the time of sale;
2. The following general principles of conversion contained in 12 C.F.R. Part 563b, as amended by successor regulations, apply to the Holding Company, and if applicable, any successor company, subsequent to the Conversion as if they were the converting savings bank:

563b.500, 563b.505, 563b.510, 563b.515, 563b.520, 563b.525 and 563b.530;
3. For three years following completion of the Conversion, the Savings Bank must maintain its election under section 10(l) of the HOLA to be treated as a savings association or otherwise have a charter that subjects it to OTS's jurisdiction; and
4. For three years following the completion of the Conversion, neither the Holding Company nor the Savings Bank may, without the prior written consent of the Managing Director, Corporate & International Activities, or her designee, take any action with a view toward a transaction which would require stockholder approval under 12 C.F.R. § 552.13(h).

Furthermore, based on the foregoing analysis, OTS concludes that the holding company application and the capital distribution application meet the applicable approval criteria, provided the following conditions are satisfied. Accordingly, the holding company application and the capital distribution application are hereby approved, pursuant to delegated authority, provided that the following conditions are complied with in a manner satisfactory to the Regional Director:

5. The proposed transaction must be consummated no later than 120 calendar days after the date of this approval letter;
6. The applicants must receive all required regulatory and shareholder or accountholder approvals for the proposed transaction and submit copies of all such approvals to the Regional Director prior to consummation of the proposed transaction;
7. The Holding Company must comply with each of the conditions, and must submit each of the certifications, as specified in 12 C.F.R. § 574.7(a)(2) and (3), within the time frames specified therein;
8. The Holding Company must not take any action that would prevent its stock from being listed on a national or regional securities exchange; and
9. The applicants must submit a certification from their independent legal counsel to the Regional Director within five calendar days after the effective date of the transactions stating: (a) the effective date of each of the transactions; and (b) that the transactions were consummated in accordance with all applicable laws and regulations, the Applications, and this approval letter.

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

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The proxy soliciting materials included under Items 3 and 4 of the conversion application, and the stock offering materials included under Item 3 and Exhibit 2(b) of the conversion application will be discussed in a separate letter.

Sincerely,

_____/s/_____
Donald W. Dwyer
Director, Applications
Corporate & International Activities

_____/s/_____
Kevin A. Corcoran
Deputy Chief Counsel for
Business Transactions

cc: Regional Director
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