

OFFICE OF THRIFT SUPERVISION

Approval of a Minority Stock Issuance by a Subsidiary of a Mutual Holding Company

Order No.: 2003-02

Date: January 30, 2003

Docket Nos.: H-3445, H-2161,
04354

Dearborn Financial Corporation, Lawrenceburg, Indiana (Applicant) has applied to the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1467a(o) and 12 C.F.R. § 575.7, to issue up to 15,000 shares of common stock to the Applicant's restricted stock plan (Plan). The Applicant owns all of the stock of Dearborn Savings Association, F.A., Lawrenceburg, Indiana (Association). In connection with the proposed transaction, the Applicant has requested that OTS waive 12 C.F.R. §§ 575.7(d)(2), 575.7(d)(6), 575.8(a)(1), 575.8(a)(3)-(6), 575.8(a)(11), 575.8(a)(14) and 575.8(a)(21).

The Association completed its mutual holding company reorganization in October 1993, and in connection with the reorganization, conducted a minority stock offering. The Applicant's mutual holding company, Dearborn Mutual Holding Company, Lawrenceburg, Indiana (MHC), currently holds 53.39% of the Applicant's stock, and minority shareholders hold the remaining 46.61%.

The Association proposes to establish the Plan as a means of providing incentives to officers and directors. The Plan was approved by the Applicant's shareholders.

OTS regulations, at 12 C.F.R. § 575.7(a), provide that no savings association subsidiary of a mutual holding company may issue stock to persons other than its mutual holding company parent unless the association obtains advance approval of each such issuance from OTS and the issuance complies with the criteria for approval set forth in 12 C.F.R. §§ 575.7 and 575.8. In addition, OTS regulations at 12 C.F.R. § 575.14(b) provide that for purposes of 12 C.F.R. §§ 575.7 and 575.8, a subsidiary holding company that proposes to issue stock, such as the Applicant, is treated as a savings association and is subject to the requirements of §§ 575.7 and 575.8.

Specifically, (i) the proposed issuance must be made pursuant to a Stock Issuance Plan (SIP) that meets the requirements of § 575.8; (ii) the SIP must be consistent with the charter of the association and the subsidiary holding company; (iii) the SIP must provide the association with fully sufficient capital and not be inequitable or detrimental to the association or the mutual holding company, or to the members of the mutual holding company; (iv) the price range of the stock must be reasonable; (v) the mutual holding company must hold more than 50 percent of the association's outstanding common stock

after the transaction; (vi) the association must furnish all information required by the OTS; (vii) the proposed stock issuance must meet the convenience and needs standards set forth in the mutual to stock conversion regulations at 12 C.F.R. § 563b.200(c); and (viii) the proposed issuance must comply with all other applicable laws and regulations. In addition, the proposed purchase priorities must be consistent with the OTS regulations on mutual to stock conversions, and comply with applicable securities requirements.

The Applicant's SIP meets the requirements of § 575.8, except for the provisions for which the Applicant has requested a waiver. The SIP provides that the MHC will hold more than 50% of the Applicant's stock after the offering. The issuance complies with the quantitative limitations of 12 C.F.R. §§ 575.8(a)(7) and 575.8(a)(8). Counsel for the Applicant has represented that the Applicant's stock has been delisted. In addition, there is a specific exemption for stock benefit plans and no further filing is required for an additional stock issuance with the Securities and Exchange Commission, pursuant to the Securities Act of 1933.

The SIP is consistent with the Association's charter, and also with the Applicant's charter, which has authorized the number of shares that would be outstanding after the issuance, and requires a shareholder vote for issuances to directors of the Applicant other than in a general public offering.

As for provision of sufficient capital to the Association, the Association is well-capitalized, as defined under the OTS's Prompt Corrective Action regulations. The proposed stock issuance, if completed in the manner described in the application, will not be inequitable to the Association, the MHC, or the MHC's members. With respect to provision of information required by OTS, the Applicant has furnished all information OTS has requested.

In light of the Association's Community Reinvestment Act rating of "Satisfactory," OTS determined that the proposed transaction meets the convenience and needs standard set forth at 12 C.F.R. § 563b.200(c). Finally, we are aware of no information indicating that the proposed transaction is inconsistent with any statute or regulation (other than provisions for which a waiver has been requested).

The Applicant has requested that OTS waive several regulatory provisions. The OTS MHC regulations at 12 C.F.R. Part 575 provide that OTS may waive a provision of the regulations for good cause.¹ In addition, OTS regulations provide generally that the "Director may, for good cause and to the extent permitted by statute, waive the applicability of any provision of [Chapter V of 12 C.F.R.]."²

¹ 12 C.F.R. § 575.1(b) (2002).

² 12 C.F.R. § 500.30(a) (2002).

None of the provisions for which the Applicant has requested a waiver is mandated by statute. Therefore, the only issue regarding the waiver is whether "good cause" exists.

The restrictions applicable to minority stock issuances are imposed for the same reasons that similar restrictions are imposed in the mutual to stock conversion process, that is, to ensure that the stock issuance process is fair to all concerned, and not detrimental to the interests of the federal deposit insurance fund.

Both the MHC regulations and the mutual-to-stock conversion regulations at 12 C.F.R. Part 563b contemplate the issuance of conversion stock to employee and director plans. The Plan, providing for restricted stock to officers and directors, is comparable to director benefit plans that OTS has allowed in connection with conversion and MHC minority stock issuance applications, in that the Plan, like management benefit plans, provides directors with common stock as an incentive for service. In addition, like other management benefit plans, the Plan has been approved by shareholders. Although the Plan is not being established in connection with an MHC reorganization or mutual to stock conversion, neither the MHC regulations nor the conversion regulations limit the ability of an entity to establish plans after the first year following reorganization or conversion. The Association completed its reorganization in 1993, and it has been approximately ten years since the Applicant established the previous plans.

For the reasons set forth below, the requested waivers would not, under the circumstances, be contrary to the purposes of the relevant regulations.

With respect to the § 575.8(a)(1) requirement that the Applicant issue stock at an aggregate price equal to the total *pro forma* market value of the stock, based upon an independent appraisal, the shares to be issued to the Plan are to serve as an incentive to management. The shares will be issued based on their market price at the relevant time. Moreover, given the nature of the Plan, the shares will be issued at no cost to the recipients. An appraisal is not necessary because under the Plan the shares are being awarded at no cost. As stated above, compensation plans awarding stock to management are typically proposed in connection with MHC-2 minority stock issuance applications.

With respect to the purchase limitations of §§ 575.8(a)(3)-(6), the amount of stock to be issued will be less than 3.2 percent of the outstanding common stock of the Applicant. When added to all other non-tax-qualified stock benefit plans, the amount of stock will be less than ten percent of the outstanding common stock of the Applicant, but more than ten percent of the outstanding common stock held by minority shareholders. Therefore, the Applicant has requested a waiver from these provisions. There is an adequate basis to grant the waiver because the SIP pertains to a relatively small percentage of shares. In addition, it has been approximately ten years since the last plan.

With respect to the § 575.8(a)(11) requirement that the Applicant issue the stock at a uniform per share price, employee and director plans, by their nature, do not issue shares at a uniform price, primarily because the shares are issued over an extended period of time. In addition, these shares will not be issued at any cost to the recipient, but will be issued at market price at the time they are awarded. The plans contemplated in MHC-2 offerings that OTS has approved have not met this requirement, and it is not appropriate to subject the Plan to more stringent requirements than other plans.

With respect to the § 575.8(a)(14) requirement that insiders of the Applicant not purchase stock of the Applicant during the three years following the offering, except with OTS approval (except in certain circumstances), the requirement is intended to be triggered by public offerings of stock. Issuances in plans approved in connection with such offerings have not been subject to a separate limitation. In addition, the Applicant has been public for almost ten years.

With respect to the §§ 575.7(d)(2) and 575.8(a)(21) limits on the duration of a stock offering, the regulatory limits are directed at public offerings, and plan offerings, by their nature, commonly continue over an extended period of time.

Finally, with respect to the § 575.7(d)(6) requirement that MHC-2 offerings issue stock in accordance with the purchase priorities and underwriting provisions applicable to mutual to stock conversions under 12 C.F.R. §§ 563b.355 – 563b.395, plans by their nature are designed to reward management. In addition, the Plan involves a relatively small amount of stock.

Accordingly, there is an adequate basis to grant the waivers requested by the Applicant, and the requested waivers are hereby granted.

Therefore, for the reasons stated above, OTS finds that the application satisfies the applicable approval standards and that there is an adequate basis to grant the waiver requests. Accordingly, the application is hereby approved and the requested waivers are granted.

By order of the Director of the Office of Thrift Supervision, or his designee,
effective January 30, 2003



Scott M. Albinson
Managing Director
Office of Supervision