

OFFICE OF THRIFT SUPERVISION

Approval of Mutual Holding Company Activity Application

Order No. 2003-17
Date: April 16, 2003
Docket Nos. H-2820, H-2821

Third Federal Savings and Loan Association of Cleveland, MHC, Cleveland, Ohio (MHC), and TFS Financial Corporation, Cleveland, Ohio (Holding Company), have applied (Application) to the Office of Thrift Supervision (OTS), pursuant to 12 C.F.R. § 575.11(a), for permission for their subsidiaries, Third Capital, Inc. (Subsidiary I) and Third Cap Associates, Inc. (Subsidiary II) to invest in certain private equity funds.

Section 575.11(a) specifies that a mutual holding company, which includes subsidiary stock holding companies, may engage in activities specified by § 10(c)(2) or 10(c)(9)(A)(ii) of the Home Owners' Loan Act (HOLA),¹ and activities described in 12 C.F.R. § 575.10(a)(6). Section 575.10(a)(6) provides that a mutual holding company may acquire control of, and make non-controlling investments in the stock of, any corporation other than a savings association or savings and loan holding company only if: (1) the corporation is engaged exclusively in activities permitted by § 575.11(a), or the corporation's stock would be a permissible investment for a federal savings association under Part 559 or by a state savings association under the law of any state where the mutual holding company's subsidiary thrift has its home office²; and (2) the corporation is not controlled, directly or indirectly, by a savings association subsidiary of the mutual holding company.³

With respect to the first criterion, § 1151.346(A) of the Ohio Revised Code provides that, "(i)n addition to the other loans and investments provided for in Chapter 1151 of the Revised Code, . . . , a savings and loan association may invest up to fifteen percent of the association's assets in such loans or investments as are authorized by the board of directors of the association." Because an Ohio state-chartered savings association would be authorized to invest in such entities, the MHC and the Holding Company may invest in such funds consistent with § 575.10(a)(6)(i)(B).

The private equity funds are limited partnerships rather than corporations. OTS has previously interpreted language in the HOLA mentioning corporations as providing authority for similar investments in limited liability entities. Section 5(c)(4)(B) of the HOLA authorizes federal savings associations to invest in certain "corporations." The

¹ 12 U.S.C. § 1467a(c)(2) or § 1467a(c)(9)(A)(ii).

² In addition, this type of investment is specifically authorized by § 10(o)(5)(D) of the HOLA.

³ 12 C.F.R. §§ 575.10(a)(6) (2002).

preamble to Part 559 states that "OTS believes the HOLA authorization to invest in service corporations should be read to permit any organizational form that provides the same basic protections as the corporate form of organization" ⁴ Similarly, OTS reads the reference to "corporations" in section 10(o)(5)(D) of the HOLA, and 12 C.F.R. § 575.10(a)(6) as not limiting the investment authority therein solely to entities organized as corporations.

The funds in which Subsidiaries I and II will invest are limited partnerships, which will have standard limited liability features. Therefore, the entities in which Subsidiaries I and II will invest will have the same basic protections as the corporate form of organization. Accordingly, OTS concludes that the organizational structure presented by the Application is consistent with section 10(o) of the HOLA and 12 C.F.R. Part 575.

With respect to the second criterion, § 575.10(a)(6)(ii) provides that investments under the authority of § 575.10(a)(6) must not be "controlled, directly or indirectly, by a savings association subsidiary of the mutual holding company." Because the proposed investments will be made through Subsidiaries I and II, which are not controlled by any savings association subsidiary of the MHC or the Holding Company, this criterion is satisfied.

OTS notes that the MHC, the Holding Company and their subsidiary savings associations are well-capitalized and well-managed institutions. OTS has reviewed the proposal and determined that the MHC and the Holding Company have the requisite experience and expertise to manage the proposed investments.

For the reasons set forth above, OTS has determined that the Application satisfies all applicable approval standards and criteria, provided that the following conditions are complied with in a manner satisfactory to the Northeast Regional Director, or his designee (together, the Regional Director). Accordingly, the Application is hereby approved, subject to the following conditions:

1. The MHC and the Holding Company must receive all required regulatory approvals prior to consummation of the proposed transaction with copies of all such approvals supplied to the Regional Office;
2. Subsidiary I and Subsidiary II must not materially deviate from any of the activities, facts or representations described in the Application; and

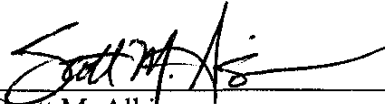
⁴ See 61 Fed. Reg. 66561, at 66564 (Dec. 18, 1996).

3. The MHC must advise the Regional Director in writing within 5 calendar days after the effective date of any future investment authorized herein: (a) of the effective date of the transaction; and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the Application, and this Order.

By order of the Director of the Office of Thrift Supervision, or his designee,

effective

April 16, 2003



Scott M. Albinson
Managing Director
Office of Supervision