

OFFICE OF THRIFT SUPERVISION

Approval of Operating Subsidiary and Mutual Holding Company Activity Applications

Order No. 2003-40
Date: August 26, 2003
Docket Nos. 14752, H-2820, H2821

Ohio Central Savings (Association), a federal savings association, has applied to the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1828(m) and 12 C.F.R. § 559.11 to establish an operating subsidiary, which will be called AutoArm (Subsidiary), that will underwrite, fund and service consumer automobile loans for other financial institutions. In addition, Third Federal Savings and Loan Association of Cleveland, MHC, Cleveland, Ohio (MHC), and Third Federal Financial Corporation, Cleveland, Ohio (Holding Company), have applied to OTS, pursuant to 12 C.F.R. § 575.11(a), for permission to establish the Subsidiary as a non-thrift subsidiary.

Operating Subsidiary Application

OTS regulations, at 12 C.F.R. § 559.3(c)(1), provide that a federal savings association may invest in an operating subsidiary if it owns, directly or indirectly, at least 50 percent of the voting shares of the operating subsidiary and no other party has operating control of the subsidiary. Section 559.3(e)(1) provides that an operating subsidiary of a federal association may engage in any activity that a federal savings association may conduct directly.

The Association will directly own all of the voting shares of the Subsidiary, and no other party will have operating control of the Subsidiary. The Subsidiary will underwrite, fund and service consumer automobile loans for other financial institutions, which are permissible activities for federal savings associations. Accordingly, the operating subsidiary application satisfies the requirements of §§ 559.3(c)(1) and 559.3(e)(1).

In addition, § 559.1(a) provides that OTS may, at any time, limit a federal savings association's investment in an operating subsidiary, or may limit or refuse to permit any activities of an operating subsidiary, for supervisory, legal, or safety and soundness reasons. Based on the filing, OTS concludes that, the proposed investment is not objectionable on safety and soundness or supervisory grounds.

Mutual Holding Company Considerations

Section 575.11(a) states 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 savings association has its home office; and (2) the corporation is not controlled, directly or indirectly, by a savings association subsidiary of the mutual holding company.²

With respect to the first criterion, the proposed investment is permissible for a federal savings association under Part 559. Because investment in the Subsidiary is permissible for a federal savings association, the MHC and the Holding Company may invest in the Subsidiary consistent with § 575.10(a)(6)(i)(B).

The Subsidiary is a limited liability company (LLC) rather than a corporation. OTS has previously interpreted language in § 5(c)(4)(B) of the HOLA mentioning corporations as providing authority for similar investments in limited liability entities. The 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"³ 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 Subsidiary is an LLC, which has the standard limited liability features. Therefore, the Subsidiary 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 corporations in which a mutual holding company invests under the authority of 12 C.F.R. § 575.10(a)(6) must not be "controlled, directly or indirectly, by a savings association subsidiary of the mutual holding company." OTS has previously concluded that § 575.10(a)(6)(ii) prohibits a mutual holding company from directly or indirectly holding investments in subsidiaries of its savings association subsidiary other than through the savings association itself, and does not prohibit a savings association subsidiary of a

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

² 12 C.F.R. §§ 575.10(a)(6) (2003).

³ See 61 Fed. Reg. 66561, at 66564 (Dec. 18, 1996).

mutual holding company from having a wholly owned subsidiary.⁴ Accordingly, the Association's proposed investment in the Subsidiary is permissible under the mutual holding company regulations.

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, the Holding Company and the Association have the requisite experience and expertise to manage the Subsidiary.

For the reasons set forth above, OTS has determined that the applications satisfy 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 applications are hereby approved, subject to the following conditions:

1. The MHC, the Holding Company and the Association 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. The Subsidiary must commence the proposed activities no later than 12 months from the date of this Order, unless extended by the Regional Director for good cause; and
3. The Subsidiary must not materially deviate from any of the activities, facts or representations described in the application, except with the prior written non-objection of the Regional Director.

By order of the Director of the Office of Thrift Supervision, or his designee,
effective August 26, 2003.



Scott M. Albinson
Managing Director
Office of Supervision

⁴ See OTS Order No. 2002-20 (May 17, 2002).