

## OFFICE OF THRIFT SUPERVISION

### Approval of Applications for Permission to Organize a Federal Savings Bank and Holding Company Acquisition

Order No.: 2003-55  
Date: October 27, 2003  
Docket Nos.: 17957, H-3954, H-4016,  
H-4017, H-4018 & H-4019

James G. Johnson, Charles A. Costin, Stuart Lee Shoaf, Jasper L. Smith, George W. Duren, William R. Buzzett (collectively, the Organizers), Bayside Financial Corporation, Port St. Joe, Florida (Holding Company), the Costin Belcher Revocable Family Trust (Costin Trust), the Shoaf Family Revocable Family Trust (Shoaf Trust), the L&A Revocable Family Trust (L&A Trust), the Dorothy A. Hannon Revocable Family Trust (Hannon Trust) (collectively, the four trusts are referred to herein as the Family Trusts) have applied to the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. §§ 1464(e) and 1467a(e) and 12 C.F.R. §§ 552.2-1 and 574.3, for permission to organize and acquire Bayside Savings Bank, Port St. Joe, Florida (Savings Bank). (Collectively, the permission to organize application and the holding company application are referred to herein as the Applications.)

Additionally, in connection with the holding company applications, five of the Organizers, and an additional individual, Margaret Costin, each propose to individually acquire up to 20 percent of the Holding Company's outstanding common stock after the initial formation of the Savings Bank.

#### Background

In the proposed transaction, the Holding Company would organize the Savings Bank, and acquire all of the Savings Bank's stock, thereby becoming a savings and loan holding company. The Holding Company proposes to capitalize the Savings Bank to cause the Savings Bank to be "well capitalized" for the duration of its three-year business plan. The Savings Bank received approval from the Federal Deposit Insurance Corporation (FDIC) for SAIF insurance of accounts.

The holding company applications indicates that four separate control groups will control the Holding Company, and indirectly control the Savings Bank. The four control groups consist of the following individuals and trusts: James G. Johnson, Mary L. Johnson, Larry Armstrong, and Amy Armstrong (collectively, the Johnson Group); Costin Trust, Margaret Costin, Melvin Magidson, Dorothy Magidson, Stuart Shoaf, Renee Shoaf, Melvin C. Magidson, Helen Magidson, William H. Carr, Jr., Carolyn Carr

Phinizy, and Shoaf Trust (collectively, the Costin Group); Hannon Trust, Jasper L. Smith, Frann Hannon Smith, Frank D. May, and Carla May (collectively, the Hannon-May Group); and George W. Duren, Hilda Duren, and L&A Trust (collectively, the Duren Group).

Upon consummation of the proposed transaction, the Costin Group will own 39.17 percent of the stock of the Holding Company and the Hannon-May Group will own 10.83 percent. The other two groups will own 10 percent. The holding company applications provide that each of the six Organizers, and Margaret Costin, may, after the initial organization of the Savings Bank, acquire individually up to 20 percent of the Holding Company's stock. As a result of these additional acquisitions by such persons, each Group may then acquire up to the following percentages of the stock of the Holding Company: the Costin Group – 79 percent; the Hannon-May Group – 26.6 percent, the Johnson Group – 23.3 percent, and the Duren Group – 23.3 percent.

In connection with the organization of the Savings Bank, the Holding Company entered into an agreement with a limited liability company, whose shareholders are the Organizers, to acquire a 2.16 acre tract of land (Acquisition Agreement). After consummation of the organization of the Savings Bank, the Holding Company will transfer the Acquisition Agreement, including its responsibilities thereunder, to the Savings Bank.

#### **Permission to Organize Application**

The Home Owners' Loan Act (HOLA) provides that OTS may grant a Federal savings association charter only: (i) to persons of good character and responsibility; (ii) if, in OTS' judgment, a necessity for such savings association exists in the community to be served; (iii) if there is reasonable probability of the association's usefulness and success; and (iv) if the association can be established without undue injury to properly conducted existing local thrift and home financing institutions.<sup>1</sup> OTS regulations implementing the HOLA include the same standards, with the additional requirement that OTS consider whether the association will promote credit for housing consistent with the safe and sound operation of a Federal savings association.

OTS regulations regarding the establishment of de novo federal savings associations set forth standards that the OTS considers in granting a de novo federal charter, regarding: (i) initial capitalization of a Federal association; (ii) the submission and content of a business plan; and (iii) the residence and composition of an association's board of directors.<sup>2</sup>

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<sup>1</sup> Section 5(e) of the HOLA, 12 U.S.C. § 1464(e).

<sup>2</sup> 12 C.F.R. § 543.3 (2003).

In addition, OTS regulations provide that an applicant for a federal thrift charter shall submit with its application a description of how it will meet its Community Reinvestment Act (CRA) objectives.<sup>3</sup> OTS takes this description into account when considering an application and may deny an application or condition approval on CRA grounds.

With respect to character and responsibility, the persons who will become the Chief Executive Officer and President, Chief Financial Officer and Vice President for Operations of the Savings Bank have extensive financial industry experience. The application materials indicate that the remaining members of the Savings Bank's proposed board of directors possess sufficient experience in the operations of financial institutions and other business endeavors. In addition, routine background checks were made, and disclosed no material adverse information. A majority of the proposed officers and directors are comprised of the former officers and directors of Citizens Federal Savings Bank of Port St. Joe, Florida, a federal savings association that was acquired in February 2002. The Regional Office is familiar with these individuals and has reviewed previous examination reports, and found no information that would provide a basis for denying the application. In sum, a review of this information warrants a conclusion that the character and responsibility of the organizers of the Savings Bank are consistent with approval of the application.

With respect to the necessity for the Savings Bank, the Savings Bank will engage in deposit and lending activities. The Savings Bank will initially focus its deposit taking and lending in the greater Port St. Joe Community located in Gulf County, Florida. The primary service area will also include Southern Franklin County, Florida, and Mexico Beach, Bay County, Florida. The primary service area strategically positions the Savings Bank in the largest commercial and population center in the area. The area has experienced strong residential and deposit growth. Therefore, we conclude that there is a necessity in the community for the Savings Bank.

With respect to the probability of the Savings Bank's usefulness and success, the Savings Bank will be well capitalized. In addition, the Savings Bank's business plan is reasonable, and the proposed management meets relevant approval standards. In addition, approval of the application will be subject to various conditions, set forth below, intended to ensure that the Savings Bank maintains safe and sound operations. We conclude that there is a reasonable probability of the Savings Bank's usefulness and success, provided that the Savings Bank (and the Holding Company, to the extent applicable) complies with the conditions set forth below.

With respect to undue injury to local thrift and home financing institutions, while the Savings Bank may take some business from existing institutions, those institutions generally are larger and many operate over a larger territory than will the Savings Bank. Moreover, the Savings Bank proposes to obtain only a small percentage of the deposits in

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<sup>3</sup> 12 C.F.R. § 563e.29(b) (2003).

the Port St. Joe Community and no one opposed the application in response to the public notice. Therefore, we conclude that the Savings Bank will not cause undue injury to local thrift and home financing institutions in the geographic area where its customers will be located.

With respect to promotion of credit for housing consistent with the safe and sound operation of a federal savings association, the Savings Bank's business plan projects substantial residential mortgage lending and that the Savings Bank will meet its Qualified Thrift Lender requirements. In addition, we have concluded above that the Savings Bank's probability of usefulness and success is consistent with the standards for approval of the application. Accordingly, we conclude that the Savings Bank will provide credit for housing consistent with the safe and sound operation of a federal savings association.

With respect to the CRA and OTS' CRA regulations, OTS received no public comments objecting to the Applications. The Savings Bank's CRA assessment area will consist of all of Gulf County, Florida, and portions of Southern Franklin County and Eastern Bay County, including the towns of Mexico Beach and Apalachicola, Florida. The Savings Bank's assessment area consists of six middle-income census tracts and block numbering areas and one moderate-income census tract. Low- and moderate-income residents comprise approximately 11 percent of the households in the assessment area. While the opportunities for lending to low- to moderate-income residents will be limited, the Savings Bank projects that it will make a significant portion of its loans in low- and moderate-income areas within its CRA assessment area and to low- and moderate-income customers. We find that the Savings Bank has satisfactorily demonstrated how it will meet its CRA objectives.

The Savings Bank intends to adopt a federal charter and bylaws that conform to the model charter and bylaws for a federal stock institution. The Savings Bank will have an initial capitalization that exceeds the minimum regulatory requirement. In addition, the board of directors of the Savings Bank and the Holding Company will consist of the same individuals. Because the directors will be made up of persons who have varied backgrounds and a majority of their members live and/or work in Florida, the composition of the board of directors for both the Savings Bank and the Holding Company meet regulatory requirements.

### **Holding Company Applications**

In the proposed transaction, the Holding Company, and the four control groups, including the Costin Trust, Hannon Trust, Shoaf Trust, and L&A Trust, will acquire control of the Savings Bank. Accordingly, the transaction requires OTS approval under Section 10(e) of the HOLA and under 12 C.F.R. Part 574 (Control Regulations).

Section 10(e)(1)(B) of the HOLA and the Control Regulations provide that OTS must approve a holding company application seeking permission to acquire one savings association by a company other than a savings and loan holding company 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 to the insurance risk of the SAIF or BIF. Also, OTS must consider the impact of any acquisition on competition.<sup>4</sup> Further, 12 C.F.R. § 563e.29(a) requires that OTS take into account assessments under the CRA when approving savings and loan holding company acquisitions.

The Holding Company's management will be made up of persons who also serve as managers of the Savings Bank. For the reasons set forth above, OTS concludes that the managerial resources of the Savings Bank and the Holding Company are consistent with approval.

With respect to financial resources, OTS has considered the Holding Company's financial position, and the Savings Bank's proposed capitalization and business plan. The Holding Company will raise \$6 million through a private placement offering. The Holding Company intends to retain \$15,000 of the net proceeds for general corporate purposes. The remaining proceeds will be used to acquire all of the stock of the Savings Bank. The business plan of the Savings Bank indicates that it should be profitable in its second year of operations and that it will remain "well capitalized" throughout its first three years of operations. The Family Trusts are passive investment vehicles. OTS concludes that the financial resources of the Savings Bank, the Holding Company, and the Family Trusts are consistent with approval.

With respect to future prospects, OTS has considered the financial and managerial resources of the Savings Bank and the Holding Company, the financial resources of the Family Trusts, the character and responsibility of the Organizers, and the probability of the Savings Bank's usefulness and success, and concludes that the future prospects of the Savings Bank, the Holding Company, and the Family Trusts are consistent with approval, subject to the conditions set forth below.

The proposed acquisition will not cause the Savings Bank to become affiliated with any other operating depository institution. Accordingly, OTS concludes that the transaction is not objectionable on anti-competitive grounds.

As for the CRA, the Holding Company is a shell holding company and has no CRA experience. OTS has received no comments from the public objecting to the proposed transaction. Accordingly, OTS concludes that approval of the proposed acquisition of the Savings Bank by the Holding Company is consistent with the CRA.

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<sup>4</sup> 12 U.S.C. § 1467a(e)(2) and 12 C.F.R. § 574.7(c)(2) (2003).

## Conclusion

Based on the foregoing analysis, OTS concludes that the Applications, and the transactions described therein meet the applicable approval criteria, and are hereby approved, provided that the following conditions are complied with in a manner satisfactory to the OTS Southeast Regional Director, or his designee (Regional Director):

1. The Savings Bank and the Holding Company must receive all required regulatory approvals and submit copies of all such approvals to the Regional Director prior to consummation of the proposed transaction;
2. The proposed transaction must be consummated within 120 calendar days from the date of this Order;
3. The proposed acquisition of additional shares by the Organizers and the control groups must be consummated within one year from the date of this Order;
4. On the business day prior to the consummation of the proposed transaction, the chief financial officers of the Holding Company and the Savings Bank must certify in writing to the Regional Director that no material adverse changes have occurred with respect to the financial condition or operation of the Holding Company and the Savings Bank as disclosed in the Applications. If additional information having a material adverse bearing on any feature of the Applications is brought to the attention of the Holding Company, the Savings Bank or OTS since the date of the financial statements submitted with the 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;
5. The Holding Company and the Savings Bank must advise the Regional Director in writing within 5 calendar days after the effective date of the proposed transaction: (a) of the effective date of the transaction; (b) that the transaction was consummated in accordance with all applicable laws and regulations, the Applications and the commitments provided therein, and this Order; and (c) must provide a reconciliation of the Savings Bank's capital;
6. The Savings Bank must submit independent audit reports to the Regional Director for its first three years of operations. These reports must be in compliance with the audit rules set forth at 12 C.F.R. § 562.4;
7. The Savings Bank must operate within the parameters of its three-year business plan. The Savings Bank must submit any proposed major deviations or material changes from the plan (including those initiated by the Holding Company) for the prior, written non-objection of the Regional Director. The request for change must be submitted no later than 60 calendar days prior to the desired implementation date with a copy sent to the FDIC Regional Office;

8. For a three year period following commencement of operations, the Savings Bank must submit to the Regional Director within 45 calendar days after the end of each calendar quarter, a business plan variance report detailing the Savings Bank's compliance with the business plan and an explanation of any deviations; and
9. For two years following the date of consummation, the Savings Bank must receive the prior written non-objection of the Regional Director for any proposed new directors or senior executive officers or any significant change in responsibilities of any senior executive officer.

In addition, OTS hereby approves the Holding Company's assignment of the Acquisition Agreement to the Savings Bank, and the consummation of the transaction described therein.

Any time period set forth herein may be extended for up to 120 calendar days, for good cause, by the Regional Director.

By order of the Director of the Office of Thrift Supervision, or his designee,  
effective October 27, 2003.



Scott M. Albinson  
Managing Director  
Office of Supervision