

OFFICE OF THRIFT SUPERVISION

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

Order No.: 2003-66
Date: December 29, 2003
Docket Nos.: 17958 and H-3962

Bank Financial Services, Inc., Edina, Minnesota (Applicant) has 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 American Investors Bank and Mortgage, Edina, Minnesota (Savings Bank). (Collectively, the permission to organize application and the holding company application are referred to herein as the Applications.)

The Applications

In the proposed transaction, the Applicant would organize the Savings Bank, and acquire all of the Savings Bank's stock, thereby becoming a savings and loan holding company. The Applicant is an existing mortgage banking company incorporated in the State of Minnesota. The Applicant will contribute its mortgage banking operations and its experienced management to the Savings Bank as part of the proposed transaction. The Savings Bank will continue the mortgage activities of the Applicant and also offer expanded loan products and services. The Applicant 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 Applicant has applied to the Federal Deposit Insurance Corporation (FDIC) for SAIF insurance of accounts for 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.¹ 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.

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

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.²

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.³ OTS takes this description into account when considering an application and may deny an application or condition approval on CRA grounds.

With respect to the character and responsibility of the Applicant and the Savings Bank, OTS completed routine background checks on the Savings Bank's proposed board of directors and senior officers, and the Applicant's senior executive officers and directors, and found no material adverse information. OTS considered the backgrounds and experience of proposed management, and concludes that the officers and directors of the Savings Bank have the experience to operate a savings association. OTS concludes the character and responsibility of the Applicant and the Savings Bank are consistent with approval.

With respect to the necessity for the Savings Bank in the community, OTS has considered relevant demographic information, including growth in population, per capita income and total deposits in the market, and has concluded that approval is consistent with this factor. With respect to undue injury to properly conducted existing local thrift and home financing institutions, OTS has considered the size of the relevant market and the Savings Bank's small proposed market share in that market, and concludes that approval is consistent with this factor.

With respect to the probability of the Savings Bank's usefulness and success, OTS has reviewed the Savings Bank's business plan, historical data on the Applicant, the Savings Bank's proposed capital levels, and the competence of management. OTS concludes that the Savings Bank's probability of usefulness and success is consistent with approval, provided that the Savings Bank and the Applicant comply with the conditions set forth below, which are intended to ensure that the probability of usefulness and success of the Savings Bank are consistent with approval.

With respect to the provision of credit for housing, the majority of the Savings Bank's assets will be residential mortgages, and the Savings Bank will meet the qualified thrift lender test. The Savings Bank's proposed lending operations do not raise supervisory concerns. Accordingly, OTS concludes that the Savings Bank will perform a role of providing credit for housing consistent with safety and soundness standards.

² 12 C.F.R. § 543.3 (2002).

³ 12 C.F.R. § 563e.29(b) (2002).

With respect to CRA, OTS has reviewed the manner in which the Savings Bank will meet its CRA objectives and found its description to be reasonable. OTS concludes that the Savings Bank's plans for meeting its CRA requirements are consistent with approval.

In addition, the Savings Bank intends to adopt a charter and bylaws in compliance with the model charter and bylaws for a federal stock institution, and will be well-capitalized during the first three years of operations. The Savings Bank's capital upon organization will be \$5 million, which exceeds the \$2 million required by 12 C.F.R. § 543.3(b)(1). The composition of the Savings Bank's board of directors complies with 12 C.F.R. § 543.3(d), in that all of the Savings Bank's members reside in Minnesota, and the board will be diversified and composed of individuals with varied business and professional experience, and capable of operating the Savings Bank in a safe and sound manner.

Holding Company Application

In the proposed transaction, the Applicant will acquire 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.⁴ 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.

With respect to managerial resources, as noted above in the Permission to Organize Application, OTS has considered the background of the Applicant, the Savings Bank's proposed board of directors and senior officers, and the Applicant's senior executive officers and directors. OTS concludes that the managerial resources of the Savings Bank and the Applicant are consistent with approval.

With respect to financial resources, OTS has considered the Applicant's financial position, and the Savings Bank's proposed capitalization and business plan. OTS concludes that the financial resources of the Savings Bank and the Applicant are consistent with approval.

⁴ 12 U.S.C. § 1467a(e)(2) and 12 C.F.R. § 574.7(c)(2) (2002).

With respect to future prospects, OTS has considered the financial and managerial resources of the Savings Bank and the Applicant, 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 and the Applicant 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 Applicant 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 Applicant is consistent with the CRA.

Conclusions

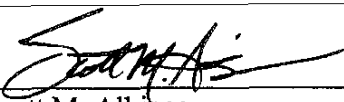
Based on the foregoing analysis, OTS concludes that the Applications meet the applicable approval criteria, provided that the following conditions are imposed. Accordingly, the Applications are hereby approved, provided that the following conditions are complied with in a manner satisfactory to the OTS Midwest Regional Director, or his designee (Regional Director):

1. The Applicant and the Savings Bank 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. On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of the Applicant 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 Applicant 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 Applicant, 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;

4. The Applicant and the Savings Bank must advise the Regional Director in writing within five calendar days after the effective date of the proposed transaction: (a) of the effective date of the proposed transaction; (b) that the proposed transaction was consummated in accordance with all applicable laws and regulations, the Applications and this Order; and (c) must provide a reconciliation of the Savings Bank's capital;
5. 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 Applicant) for the prior, written non-objection of the Regional Director. The request for change must be submitted no later than sixty calendar days prior to the desired implementation date with a copy sent to the FDIC Regional Office;
6. For the three year period following consummation of operations, the Savings Bank must submit to the Regional Director within forty-five 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;
7. During the first eighteen months of operations, any contracts or agreements pertaining to transactions with affiliates not yet submitted to the OTS for review, must be provided to the Regional Director for his written non-objection at least thirty calendar days prior to their execution and implementation;
8. 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. Section 562.4; 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.

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 December 29, 2003.



Scott M. Albinson
Managing Director
Office of Supervision