

OFFICE OF THRIFT SUPERVISION

Approval of Application for Permission to Organize a Federal Savings Bank and Related Bank Merger Act Application

Order No.: 2005-28

Date: August 12, 2005

Re: OTS Nos. 17992, 07635

Several individuals (Organizers) have applied for approval of the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1464(e) and 12 C.F.R. § 552.2-1, for permission to organize Patriot Federal Bank, Canajoharie, New York (Savings Bank). In addition, the Savings Bank and Trustco Bank, Glenville, New York (Trustco) seek OTS approval, pursuant to 12 U.S.C. § 1828(c) and 12 C.F.R. § 563.22(a), for the Savings Bank to acquire certain assets and assume certain liabilities associated with a branch office of Trustco. (Collectively, the foregoing filings are referred to herein as the Applications.)

The Parties

The Savings Bank is proposed to be organized by: Gordon E. Coleman, Douglas W. Canfield, Charles R. Conrad, Edward R. Jacksland, Camillo Alfred Santillo, Milton J. Schilde, H. Todd Spofford, Richard E. Ambrose, Gene R. Cechnicki, Thomas Jennings, James D. MacFadden, Jr., Raymond L. Parsons, Joseph P. Shannon, and Bryan R. Sydow.

The Savings Bank will be organized as a federally chartered, SAIF-insured, stock savings bank and will be a full service federal savings bank.

Trustco, a federally chartered, SAIF-insured, stock association, is headquartered in Glenville, New York, and is a wholly-owned subsidiary of Trustco Bank Corp NY, a New York corporation and registered savings and loan holding company.

The Proposed Transaction

In the proposed transaction, the Organizers will organize the Savings Bank. The Organizers propose to sell between 720,000 and 920,000 shares of common stock at \$10 per share to investors in a non-underwritten public offering. The Savings Bank will be capitalized with the proceeds from the Savings Bank's stock offering. In connection with the Savings Bank's stock offering, all subscribers will receive a warrant to purchase one share of common stock for every five shares of common stock that he or she purchases in the offering (Offering Warrants). These warrants are exercisable at a price of \$12.50 per share at any time within three years of the date that the Savings Bank opens for business. In addition, each Organizer will receive non-transferable ten-year warrants to purchase 5,000 shares of the Savings Bank's common stock for \$10 per share (Organizer Warrants).

The Savings Bank proposes to operate out of an established branch located in Canajoharie, New York, which it plans to acquire from Trustco pursuant to an April 4, 2005 Purchase and Assumption Agreement (Canajoharie Branch).

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 exists for such association in the community to be served; (iii) if there is a reasonable probability for 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. 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.

In addition, OTS regulations regarding the establishment of de novo federal savings associations set forth standards OTS considers in granting a de novo federal charter, regarding: (i) initial capitalization of a federal association; and (ii) the residence and composition of an association's board of directors.

Further, 12 C.F.R. § 563e.29(b) provides that an applicant for a federal thrift charter must submit with its application a description of how it will meet its Community Reinvestment Act (CRA) objectives. OTS takes this description into account when considering an application and may deny an application or condition approval on CRA grounds.

OTS has conducted background checks of the Organizers. The proposed Chief Executive Officer and President of the Savings Bank has extensive financial industry experience. The application materials indicate that the members of the proposed board of directors possess experience in various business endeavors. Based on the relevant information, OTS concludes that the character and responsibility of the Organizers are consistent with approval of the application.

The Savings Bank will focus its deposit taking and lending in Canajoharie, Palatine Bridge and Amsterdam, New York, and the neighboring communities. Demographic information provided in the application indicates that between 2000 and 2003, the average household income in the Canajoharie/Palatine Bridge area grew approximately of 10.83% and in the Amsterdam area grew approximately 15.77%. Moreover, the Savings Bank will commence operations through the acquisition of an existing branch that has deposits and makes loans. Thus, we conclude that there is a necessity in the community for the Savings Bank.

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 bigger and operate over a larger territory than will the Savings Bank. Moreover, because the Savings Bank will be operating out of an acquired branch, it will be replacing an existing competitor in Canajoharie. OTS received no comments opposing the application in response to the public notice. Therefore, we conclude that the Savings Bank will not have an adverse impact on local thrift and home financing institutions in the geographic area where its customers will be located.

The Savings Bank will be well capitalized. In addition, the Savings Bank's business plan is reasonable. The Savings Bank's proposed officers have considerable experience, and its directors' character and responsibility are consistent with approval of the application. In addition, approval of the application will be subject to various conditions, set forth below, intended to ensure that the Savings Bank's probability of usefulness and success are consistent with approval, including: the Savings Bank's submission of a revised business plan reflecting the actual amount of capital raised in the stock offering, the Savings Bank's receipt of OTS non-objection before changing its business plan, the submission of policies, procedures and internal controls for privacy of consumer information and fair lending, and the submission of a report addressing the Savings Bank's proposed outsourcing of functions. We conclude that there is a reasonable probability of the Savings Bank's usefulness and success, provided that the Savings Bank complies with the conditions set forth below.

The Savings Bank's business plan projects substantial residential mortgage lending and that the Savings Bank will meet Qualified Thrift Lender requirements. The Savings Bank will have experienced management, and appropriate procedures regarding lending will be in place. Accordingly, we conclude that the Savings Bank will provide credit for housing consistent with the safe and sound operation of a federal savings association.

OTS received no comments objecting to the application. In addition, OTS has reviewed the Savings Bank's CRA statement and has found it to be acceptable. The Savings Bank's CRA assessment area includes Montgomery, Fulton, and Schoharie counties, New York. We find that the Savings Bank has made a satisfactory showing that it will satisfy the requirements of the CRA and OTS' implementing regulations.

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 composition of the Savings Bank's board of directors will comply with 12 C.F.R. § 543.3(d), because: (i) a majority of the Savings Bank's directors live or work in New York; (ii) the Savings Bank's board of directors will be made up of persons with varied backgrounds; and (iii) no more than one-third of the Savings Bank's directors are in related businesses.

Bank Merger Act Application

The Savings Bank seeks OTS approval to acquire certain assets and assume certain liabilities associated with Trustco's Canajoharie Branch, pursuant to 12 U.S.C. § 1828(c) (BMA) and the OTS Merger Regulations, 12 C.F.R. § 563.22(a). In addition, Trustco seeks OTS approval under 12 C.F.R. § 563.22(c) to transfer the Canajoharie Branch to the Savings Bank.

In evaluating a BMA application, and in evaluating an application under 12 C.F.R. § 563.22(c), OTS considers the effect on the capital of the resulting association; the financial and managerial resources of the constituent institutions; the future prospects of the constituent institutions; the convenience and needs of the community; conformance of the transaction to applicable law, regulation, and supervisory policy; and factors relating to fairness of and disclosure concerning the transaction. In addition, in evaluating a BMA application, OTS considers the effect of the proposed transaction on competition, and the effectiveness of the depository institutions in combating money-laundering activities. OTS also considers the constituent savings associations' record of performance under the CRA.

As for capital, the Applications indicate that the Savings Bank will be well capitalized and will remain well capitalized after Trustco's transfer of the Canajoharie Branch to the Savings Bank.

As for managerial resources, the proposed transaction will not result in changes to Trustco's management. We have concluded, in the discussion of the permission to organize application, that the Savings Bank's management is acceptable. Accordingly, we conclude that the managerial resources of the parties are consistent with approval.

As for financial resources and future prospects, the Applications indicate that the transaction will not have a material impact on the financial resources or future prospects of Trustco. The transfer of the Canajoharie Branch will enhance the financial resources and future prospects of the Savings Bank by enabling the Savings Bank to commence its banking operations from an existing platform in the Canajoharie banking market. Accordingly, OTS concludes that the parties' financial resources and future prospects are consistent with approval, subject to compliance with the conditions set forth below.

As for convenience and needs of the community, the proposed acquisition of the branch will enhance the Savings Bank's ability to meet the convenience and needs of its community, by providing an established based of operations immediately upon commencement of business. The Savings Bank will be assuming the operations of an existing bank branch office and will be providing comparable service to that branch's customers and communities. Based on the foregoing, OTS concludes that convenience and needs considerations are consistent with approval of the proposed transaction.

As for the CRA, OTS has considered Trustco's record of performance under the CRA in assessing the proposed transaction. Trustco has a "Satisfactory" CRA rating, and the sale of the branch office is not expected to have a negative impact on Trustco's CRA performance. The Savings Bank is newly organized and, while it has no CRA history, it has provided an adequate plan for CRA compliance. OTS received no adverse comments regarding the Applications. Based on the foregoing, OTS concludes that approval of the proposed transaction is consistent with the CRA.

As for conformance to law, regulation and supervisory policy, OTS' review of the Applications did not indicate any violation of law or regulations, or non-compliance with supervisory policies, in connection with the proposed transaction. Based on the foregoing, OTS concludes that approval of the proposed transaction is not objectionable based on conformity of the proposed transaction to applicable law, regulation, and supervisory policies.

As for compliance with anti-money laundering statutes and regulations, OTS has reviewed the compliance records of Trustco, which involves an evaluation of their anti-money laundering practices and compliance with anti-money laundering provisions. On the basis of the foregoing, OTS concludes that Trustco's effectiveness in combating money-laundering activities is consistent with approval. The Savings bank, a newly organized entity, has no record with respect to combating money laundering activities.

As for factors regarding equitable treatment and disclosure, employment contracts, and advisory boards, OTS' review of the Applications provided no evidence that the proposed transaction would not be equitable to all concerned. The Savings Bank and Trustco published notice of the transaction, and OTS received no comment from the public. On the basis of the foregoing, OTS concludes that approval of the proposed transaction is not objectionable based on equitable treatment, disclosure, or compensation issues.

As for the competitive effects of the proposed transaction, the proposed transaction involves the transfer of a retail branch to a newly organized savings association, and consequently does not lessen competition or create a monopoly. Neither the Department of Justice nor the other banking regulators objected to the proposed transaction on competitive grounds. Based on the foregoing, OTS concludes that the competitive considerations are consistent with approval.

Conclusion

OTS finds that the Applications satisfy the applicable approval standards, provided the following conditions are complied with in a manner satisfactory to the Northeast Regional Director, or his designee (Regional Director). Accordingly, the Applications are hereby approved, subject to the following conditions:

1. 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 consummation of the proposed transaction, the chief financial officer of the Savings Bank and Trustco 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 Savings Bank or Trustco 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 Savings Bank, Trustco, 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 Savings Bank must, within 5 calendar days after the effective date of the proposed transaction: (a) advise the Regional Director in writing of the effective date of the transaction and of the Savings Bank's insurance of accounts; (b) advise the Regional Director in writing that the transaction was consummated in accordance with all applicable laws and regulations, the Applications, and this Order; and (c) provide a reconciliation of the Savings Bank's capital to the Regional Director;
5. The Savings Bank must submit independent audit reports to the Regional Director for its first three fiscal years of operations. These reports must be in compliance with the audit rules set forth at 12 C.F.R. § 562.4;
6. No later than 45 calendar days following commencement of operations, the Savings Bank must submit to the Regional Director, with a copy to the FDIC Regional Office, a business plan that reflects the actual amount of net capital raised in the stock offering, which must be no less than the minimum net capital as set forth in the approved offering circular;
7. The Savings Bank must operate within the parameters of its three-year business plan (as revised to reflect the actual amount of capital raised in the public stock offering). The Savings Bank must submit for the prior, written non-objection of the Regional Director, any proposed major deviations or material changes from the plan. 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 the three years 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;

9. For two years following commencement of operations, 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;
10. During the first eighteen months of operations, any contracts or agreements pertaining to transactions with related interests as defined in 12 C.F.R. § 561.5(d) not yet submitted to OTS for review, must be provided to the Regional Director for his written non-objection at least 30 calendar days prior to their execution;
11. At least 30 calendar days prior to commencing operations, the Savings Bank must submit to the Regional Director a report identifying each function it is outsourcing to a third party vendor, including the name of the service provider. During the first three years of operation, the Savings Bank must inform the Regional Director of any significant changes in outsourcing as represented in this report at least 30 calendar days prior to such change;
12. At least 30 calendar days prior to commencing operations, the Savings Bank must develop and submit to the Regional Director for his review and non-objection a copy of all policies, procedures and internal controls for Privacy of Consumer Financial Information and Fair Lending; and
13. At least 30 calendar days prior to commencing operations, the Savings Bank must identify the proposed Compliance officer and/or the independent third party that will be responsible for the Saving Bank's compliance function.

The Regional Director may, for good cause, extend any time period set forth herein for up to 120 calendar days.

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

August 12, 2005.



Scott M. Albinson
Managing Director
Office of Examinations, Supervision and Consumer
Protection