

OFFICE OF THRIFT SUPERVISION

Approval of Application for Permission to Organize an Interim Federal Savings Bank, Change in Control Notice, Bank Merger Act Application, and Related Applications

Order No.: 2008-22
Date: June 29, 2008
Docket Nos.: 08876, 18114 and
H-1748

Mr. R. Craig Pica (Applicant) has applied to the Office of Thrift Supervision (OTS), pursuant to § 5(e) of the Home Owners' Loan Act (HOLA), 12 U.S.C. § 1464(e), and 12 C.F.R. § 552.2-1, for permission to organize Colorado Interim Bank, Greenwood Village, Colorado (Interim FSB). In addition, the Applicant has filed with OTS a change in control notice (Notice) pursuant to the Change in Bank Control Act, 12 U.S.C. § 1817(j)(1), and the OTS Acquisition of Control Regulations under 12 C.F.R. Part 574 (Control Regulations) to acquire 100 percent of the outstanding common stock of Silver Queen Financial Services, Inc. (Holding Company), which owns all of the outstanding common stock of Colorado Federal Savings Bank, Greenwood Village, Colorado (Colorado FSB). The Holding Company has applied to OTS under § 10(e) of the HOLA, 12 U.S.C. § 1467a(e), and the Control Regulations, to acquire Interim FSB. In addition, an application has been filed with OTS for the merger of Interim FSB into Colorado FSB, pursuant to 12 U.S.C. § 1828(c) and 12 C.F.R. § 563.22(a). Collectively, the foregoing filings are referred to herein as the Applications.

Background

The Holding Company is a savings and loan holding company, which owns all of the common stock of Colorado FSB. All of the Holding Company's common stock is owned by five individuals. Colorado FSB is a Deposit Insurance Fund (DIF)-insured, federal stock savings bank.

In the proposed transaction, the Applicant will organize Interim FSB as a federally chartered stock interim savings bank and capitalize it with cash. Interim FSB will not open for business and its activities will be limited to purchasing certain first mortgage loans from two entities controlled by the Applicant. Interim FSB will exist only for an instant in time.

The Applicant proposes to purchase all of the outstanding shares of the Holding Company for cash (Share Purchase). Immediately after the Share Purchase, the Applicant will make a cash capital infusion through the Holding Company into Colorado FSB.

Interim FSB will merge into Colorado FSB, with Colorado FSB surviving (Merger). Each share of common stock of Interim FSB issued and outstanding

immediately prior to the Merger will be cancelled as a result of the Merger. After the Merger, the Applicant will be the sole shareholder of the Holding Company and the Holding Company will be the sole shareholder of Colorado FSB. As a result of the proposed transaction, Colorado FSB will be well capitalized.

Permission to Organize Application

The HOLA provides that OTS may grant a federal savings association charter only: (i) to persons of good character and responsibility; (ii) if, in OTS's 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.²

In addition, OTS regulations regarding the establishment of de novo federal savings associations (Regulations) set forth standards that 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.³

Furthermore, 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.⁴ OTS takes this description into account when considering the application and may deny the application or condition approval on CRA grounds.

With regard to character and responsibility, OTS has reviewed the information it received concerning the Applicant and the proposed officers and directors of Interim FSB and has found no material adverse information. In addition, OTS is familiar with the proposed officers and directors of Interim FSB, which include certain employees of the Applicant's companies, certain officers and directors of Colorado FSB, and experienced savings and loan executives.

Based upon its experience and review of the relevant information, OTS concludes that the character and responsibility of the Applicant and the proposed officers and directors of Interim FSB are consistent with approval.

With respect to the necessity for Interim FSB in the community, Interim FSB will not open for business and its activities will be limited to purchasing certain first mortgage

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

² 12 C.F.R. § 552.2-1(b)(1) (2008).

³ 12 C.F.R. § 543.3 (2008).

⁴ 12 C.F.R. § 563e.29(b) (2008).

loans. Between June 30, 2006, and June 30, 2007, the deposits of banks and savings associations in the Denver – Aurora, Colorado area increased from \$42.67 billion to \$45.24 billion, an increase of approximately 6 percent. Therefore, OTS concludes that there is a necessity in the community for Interim FSB.

With respect to whether Interim FSB will be established without undue injury to other local thrift and home-financing institutions, there is no evidence to indicate that there would be any injury to existing local thrift and home financing institutions by the establishment of Interim FSB. OTS received no comments opposing the application to organize Interim FSB in response to the public notice. Accordingly, OTS concludes that Interim FSB will meet this approval criterion.

With respect to the reasonable probability of Interim FSB's usefulness and success, Interim FSB will purchase certain performing first mortgage loans. The pro forma financial statements provided with the application reflect that Interim FSB is projected to be well capitalized. Based on the foregoing, OTS concludes that Interim FSB will be useful and successful and meets this approval criterion.

Interim FSB's proposed purchase of first mortgage loans includes housing-related loans. In addition, OTS has determined that the proposed purchase of the first mortgage loans does not raise any safety and soundness concerns. Accordingly, OTS concludes that Interim FSB will provide credit for housing consistent with the safe and sound operation of a federal savings association.

As required by 12 C.F.R. § 563e.29(b), the Applications include a description of how Interim FSB's proposed purchase of first mortgage loans will address its CRA objectives. The Applications include information indicating that Interim FSB through the proposed purchase of first mortgages loans will help meet the existing and anticipated credit needs of all of the communities its serves, including low- and moderate-income borrowers and neighborhoods. OTS's review of the relevant information indicates that Interim FSB will meet its CRA objectives and responsibilities. OTS received no public comments objecting to the application to organize Interim FSB or raising any CRA concerns. Accordingly, OTS concludes that Interim FSB will satisfactorily comply with the CRA.

Interim FSB will adopt a charter and bylaws that conform to the model charter and bylaws for a federal stock institution. Interim FSB will have an initial capitalization that exceeds the minimum regulatory requirement set forth in 12 C.F.R. § 543.3(b).

The Regulations require that a majority of a de novo association's board of directors be "representative" of the state in which the association is located, and that OTS generally will consider a director to be "representative" of the state if such director resides, works, or maintains a place of business in the state in which the association is

located.⁵ Although Interim FSB's home office is Greenwood Village, Colorado, four of the proposed directors reside and work in California and one resides in Florida. Because Interim FSB's sole activity will consist of purchasing first mortgage loans that were made on a national basis, OTS has concluded that there is good cause to waive this requirement of § 543.3(d)(1).

In addition, § 543.3(d)(2) requires that a de novo federal association's board of directors be diversified and composed of individuals with varied business and professional experience, and that, except in the case of a de novo association that is wholly owned by a holding company, no more than one-third of a de novo association's board of directors may be in closely related businesses. If the holding company does not have substantial independent economic substance, the latter requirement applies to the holding company.

The Applicant will own all the common stock of Interim FSB. OTS's review indicates that the proposed directors of Interim FSB have diverse skills and expertise. In addition, the proposed board of Interim FSB will comply with the requirement that no more than one-third of the directors be in closely related businesses.

Accordingly, with the above waiver, OTS concludes that the proposed composition of the board of directors of Interim FSB complies with 12 C.F.R. § 543.3(d).

Change in Control Notice

The Applicant seeks OTS approval of the Notice for his proposed acquisition of all of the outstanding voting stock of the Holding Company and, indirectly, of Colorado FSB, pursuant to 12 U.S.C. § 1817(j)(1) and 12 C.F.R. § 574.3.

OTS may disapprove a change of control notice if: (i) the proposed acquisition would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the banking business in any part of the United States; (ii) the proposed acquisition would lessen competition, create a monopoly, or restrain trade, and have anticompetitive effects which are not outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served; (iii) the financial condition of any acquiring person or the future prospects of the institution are such as might jeopardize the financial stability of the association or prejudice the interests of the depositors of the association; (iv) the competence, experience, or integrity of any acquiring person or any of the proposed management personnel indicates that it would not be in the interests of the depositors of the association, OTS, or the public to permit such person to control the association; (v) the acquiring person fails or refuses to furnish information requested by OTS; or (vi) OTS determines that the proposed acquisition would have an adverse effect on the DIF.⁶

⁵ 12 C.F.R. § 543.3(d)(1) (2008).

⁶ 12 U.S.C. § 1817(j)(17); 12 C.F.R. § 574.7(d) (2008).

As for the competitive effects of the proposed transaction, the Applicant's proposed acquisition of the Holding Company will not cause any operating depository institutions to become affiliated. Accordingly, the proposed transaction is competitively neutral. Based on the foregoing, OTS concludes that competitive considerations are consistent with approval. Accordingly, the first two criteria set forth above do not provide a basis for disapproval of the notice.

OTS has reviewed the financial information it received concerning the Applicant. The relevant information reviewed for the Applicant does not include any material adverse information regarding the financial condition of the Applicant. In addition, OTS's review does not indicate that the Applicant's financial condition would jeopardize the financial stability of Colorado FSB or prejudice the interests of the depositors of Colorado FSB. With respect to future prospects, the Applicant is proposing to recapitalize Colorado FSB in connection with a cash infusion and a merger with Interim FSB, which will result in Colorado FSB being well capitalized.

Accordingly, OTS concludes that neither the financial condition of the Applicant nor the future prospects of the institution are such as might jeopardize the financial stability of Colorado FSB or prejudice the interests of the depositors of Colorado FSB, and that such considerations are consistent with approval of the Notice.

With regard to competence, experience, and integrity, OTS's review of the relevant information found no material adverse information regarding the Applicant's competence, experience, or integrity. Accordingly, OTS concludes that the competence, experience, and integrity of the Applicant are consistent with approval of the Notice.

The Applicant has supplied the information required by OTS in connection with the Notice. Accordingly, there is no basis for disapproval of the Notice under this criterion.

The Applicant's proposed acquisition of all of the Holding Company's outstanding common stock is part of a transaction to resolve a supervisory case. Upon consummation of the proposed transaction Colorado FSB will be well capitalized and will comply with all its capital requirements. Based on the foregoing, OTS concludes that the proposed acquisition would not have an adverse effect on the DIF.

Holding Company Application

In the proposed transaction, the Holding Company will acquire Interim FSB. Section 10(e)(2) of the HOLA and the Control Regulations provide that in reviewing the proposed acquisition of a savings association by a savings and loan holding company, such as the Holding Company, OTS must consider the managerial and financial resources and future prospects of the company and associations involved, the effect of the acquisition on the associations, the insurance risk to the DIF, and the convenience and

needs of the community to be served.⁷ Consideration of the managerial resources of a company or savings association must include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or savings association.⁸ In addition, OTS must consider the impact of any acquisition on competition.⁹ Also, 12 C.F.R. § 563e.29 requires that OTS take into account assessments under the CRA when approving holding company acquisitions.

Because the Holding Company is acquiring Interim FSB in connection with a supervisory transaction in which Interim FSB will be merged into Colorado FSB, thereby resolving its capital problems, OTS hereby waives the publication requirement of 12 C.F.R. § 574.6(d), pursuant to the exception at 12 C.F.R. § 574.6(g).

The proposed officers and directors of the Holding Company, the Interim FSB, and those of Colorado FSB after the Merger, will be the same persons. As discussed above, OTS is familiar with the proposed management. In addition, OTS's review of the relevant information regarding the proposed management found no material adverse information. OTS concludes that the managerial resources of the Holding Company, Interim FSB, and Colorado FSB meet the standard for approval.

With regard to financial resources, OTS reviewed the financial positions of the Holding Company, the proposed capitalization of Interim FSB, and the proposed capitalization and earnings of Colorado FSB after consummation of the proposed transaction. The information provided demonstrates that the Holding Company, Interim FSB, and Colorado FSB will have adequate financial resources. The review of the relevant financial information found no adverse information that warrants denial based on financial resources.

Based on the foregoing, OTS concludes that the financial resources of the Holding Company, Interim FSB, and Colorado FSB are consistent with approval of the holding company application.

Based on the discussion above, regarding the probability of Interim FSB's usefulness and success, the character and responsibility of the parties, and the financial and managerial resources of the Holding Company, Interim FSB, and those of Colorado FSB, and the discussion below in the merger application section, regarding the future prospects of a recapitalized Colorado FSB after the merger of Interim FSB into Colorado FSB, OTS concludes that this approval criterion has been satisfied.

As for the competitive effects of the proposed transaction, the proposed transaction involves the merger of two savings associations that will be under common control, one of which will have never operated. Accordingly, the proposed transaction is competitively neutral. In addition, pursuant to § 10(e)(2) of HOLA, OTS requested from

⁷ 12 U.S.C. § 1467a(e)(2); 12 C.F.R. § 574.7 (2008).

⁸ Id.

⁹ Id.

the Department of Justice (DOJ) a report on the competitive factors involved in the application. DOJ has advised OTS that it has no objections to the competitive factors pertaining to the holding company application. Based on the foregoing, OTS concludes that competitive considerations are consistent with approval.

With regard to the convenience and needs of the community to be served, Interim FSB's activity will consist of purchasing certain first mortgage loans from two entities controlled by the Applicant. Interim FSB does not propose to diminish the services that the purchased loans provide to the community. Based on the foregoing, OTS concludes that convenience and needs considerations are consistent with approval.

With respect to performance under the CRA, Colorado FSB's most recent CRA rating was "Satisfactory." Accordingly, OTS concludes that there is not any basis for objection to the holding company applications based on CRA grounds.

Merger Application

The Applicant seeks OTS approval for the merger of Interim FSB with and into Colorado FSB, pursuant to 12 U.S.C. § 1828(c) (BMA) and the OTS Merger Regulations, at 12 C.F.R. § 563.22(a). Colorado FSB's condition is such that OTS must act immediately to prevent the probable default of Colorado FSB, there are sufficient grounds for OTS to waive the publication requirement set forth in the BMA and 12 C.F.R. § 563.22(e), and any waiting period for consummation of the Merger.

In evaluating a BMA application, 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 the 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, Colorado FSB will be well capitalized after the merger of Interim FSB into Colorado FSB. Accordingly, OTS concludes that this approval criterion has been satisfied.

As for managerial resources, for the reasons discussed above, OTS concludes that the managerial resources of the resulting savings association, Colorado FSB, are consistent with approval.

As for financial resources and future prospects, as discussed above, the transaction will not have an adverse impact on the financial resources or future prospects of Colorado FSB, which is projected to be well capitalized during the period covered by

its business plan. The Merger will enhance the financial resources and future prospects of Colorado FSB by recapitalizing Colorado FSB.

In addition, due to the level of problem assets at Colorado FSB, OTS is imposing condition number 3. This condition is intended to help ensure that the future prospects of Colorado FSB meet the standards for approval.

Accordingly, OTS concludes that following the Merger Colorado FSB's financial resources and future prospects are consistent with approval, provided that the recommended condition is imposed.

As for convenience and needs of the community, the proposed acquisition of Interim FSB will enhance Colorado FSB's ability to meet the convenience and needs of its community, by enabling Colorado FSB to continue to operate. Based on the foregoing, OTS concludes that convenience and needs considerations are consistent with approval of the proposed merger transaction.

As for the CRA, Colorado FSB has a "Satisfactory" CRA rating. Interim FSB is newly organized and has no CRA history. 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, the 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, in our opinion, OTS concludes that approval of the proposed transaction is not objectionable based on conformity of the proposed transaction to applicable law, regulations, and supervisory policies.

As for compliance with anti-money laundering statutes and regulations, OTS has reviewed the compliance record of Colorado FSB, which involves an evaluation of its anti-money laundering practices and compliance with anti-money laundering provisions and found it to be adequate. On the basis of the foregoing, OTS concludes that Colorado FSB's effectiveness in combating money-laundering activities is consistent with approval. Interim FSB, a newly organized entity that will never open for business, has no record with respect to combating money laundering activities. Accordingly, OTS concludes that anti-money laundering considerations are consistent with approval.

As for factors regarding equitable treatment and disclosure, employment contracts, and advisory boards, OTS's review of the Applications provided no evidence that the proposed transaction would not be equitable to all concerned. 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 merger of two savings associations that will be under common

control, one of which will have never operated. Accordingly, the proposed transaction is competitively neutral. Based on the foregoing, OTS concludes that the competitive considerations are consistent with approval.

Transactions With Affiliates

Interim FSB's proposed purchase of loans from affiliated entities is a covered transaction for the purposes of § 23A of the Federal Reserve Act, 12 C.F.R. Part 223 (Regulation W), and OTS's Transactions With Affiliates regulations, at 12 C.F.R. § 563.41. The value of the proposed transaction substantially exceeds the applicable quantitative limits on covered transactions. Because the value of the proposed asset purchases by Interim FSB exceeds the applicable quantitative limits, the purchases would be prohibited in the absence of an exemption.

Regulation W, at 12 C.F.R. § 223.42(i), exempts asset purchases by newly formed savings associations from, among other things, the applicable quantitative limits.¹⁰ Specifically, this provision exempts: "The purchase of an asset from an affiliate by a newly formed [savings association], if the appropriate Federal banking agency for the [savings association] has approved the asset purchase in writing in connection with its review of the formation of the [savings association]."

OTS has conducted a detailed review of the assets to be included in the proposed transaction in connection with its review of the formation of Interim FSB, and has concluded that the transaction is consistent with safe and sound banking practices, and satisfies the safety and soundness requirement of 12 C.F.R. § 223.13.

Accordingly, OTS hereby approves Interim FSB's proposed purchase of assets from affiliates as set forth in the Applications.

Conclusion

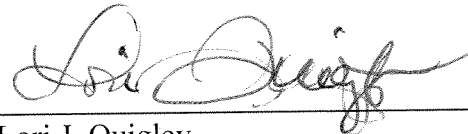
OTS concludes that the Applications satisfy the applicable approval standards, provided the following conditions are complied with in a manner satisfactory to the West Regional Director, or his designee (Regional Director). Accordingly, the Applications are hereby approved, and the requirements of 12 C.F.R. § 543.3(d)(1) are waived, subject to the following conditions:

¹⁰ Transactions exempt under 12 C.F.R. § 223.42(i) are exempt from the quantitative limits of §§ 223.11 and 223.12, the collateral requirements of § 223.14, and the prohibition on the purchase of a low quality asset of § 223.15. The transactions, however, are subject to the safety and soundness requirement of § 223.13.

1. The proposed transactions must be consummated on the date of this Order, unless an extension not exceeding one day is granted, for good cause, by the Regional Director;
2. The Applicant, the Holding Company, and Colorado FSB must, within 8 calendar days after the effective date of the proposed transaction: (a) advise the Regional Director in writing of the effective date of the proposed transactions; and (b) advise the Regional Director in writing that the transaction was consummated in accordance with all applicable laws and regulations, the Applications, all commitments and representations, and this Order; and
3. Within 30 calendar days after consummation of the proposed transaction, Colorado FSB must submit to the Regional Director a plan for reducing the level of classified assets (CAP). The CAP must include specific plans for each classified asset and a timetable for resolving the asset's classified status. Within 45 calendar days after the end of each quarter, Colorado FSB must submit an updated CAP to the Regional Director. Such reporting must continue for a three year period or such shorter period as the Regional Director determines.

The Regional Director may, for good cause, extend any time periods set forth in conditions 2 and 3 for up to 120 calendar days.

By order of the Director of the Office of Thrift Supervision, or his designee,
effective JUNE 29, 2008.



Lori J. Quigley
Managing Director
Examinations and Supervision - Operations