

OFFICE OF THRIFT SUPERVISION

Approval of Operating Subsidiary Application

Order No.: 2009-10
Date: February 9, 2009
Docket No.: 05848

E*TRADE Bank, Arlington, Virginia (Association) has applied for OTS approval, pursuant to 12 C.F.R. Part 559, to establish its securities broker affiliate, E*TRADE Securities LLC, New York, New York (Securities) as a wholly owned operating subsidiary.

The Parties

The Association is a federally chartered, Deposit Insurance Fund (DIF)-insured, stock savings bank headquartered in Arlington, Virginia. The Association is an indirect, wholly owned subsidiary of E*TRADE Financial Corporation, New York, New York (Parent). Securities is an indirect subsidiary of the Parent and is registered with the Securities and Exchange Commission as a broker-dealer.

The Proposed Transaction

In the proposed transaction, the Parent will transfer all of Securities' ownership interests to the Association.

Operating Subsidiary Notice

As a result of the proposed transaction, Securities will become a wholly owned operating subsidiary of the Association. An operating subsidiary must engage only in activities permissible for a federal savings association to engage in directly, the federal savings association must own, directly or indirectly, more than 50 percent of the voting shares of the operating subsidiary, and no person or entity other than the federal savings association may exercise operating control over the operating subsidiary. In addition, OTS may, at any time, limit or refuse to permit any activities of an operating subsidiary, for supervisory, legal, or safety or soundness reasons.

The Association will hold all of Securities' voting securities, and no party other than the Association will have operating control of Securities. With respect to the regulatory criterion that the operating subsidiary engages only in activities permissible for federal associations, OTS has determined that federal savings associations and their operating subsidiaries have the legal authority under Home Owners' Loan Act (HOLA) to engage in activities of a securities broker¹ and may offer foreign currency exchange services to their customers.²

¹ See Op. C.C. (November 28, 2006).

² See Op. C.C. (Aug. 11, 1995).

From time to time, Securities participates in underwriting activities regarding equity securities. OTS has never taken the position that this type of underwriting activity is permissible for federal savings associations. Because Securities' equity underwriting raises a significant issue regarding permissible activities of a federal savings association, OTS is imposing Condition 5 set forth below to ensure that the Association conforms this activity to the activities restrictions of the HOLA within two years of consummation of the transaction. The Association may conform the activity to the HOLA by, for example, discontinuing the activity or transferring the activity to a non-subsiary affiliate (with the underwriting activity continuing to be conducted by a non-subsiary affiliate), by obtaining an opinion from OTS that the underwriting activities are permissible for a federal savings association, or by providing additional information regarding the activities that demonstrates that the activities are already permissible under HOLA.

The Association plans to organize the operating subsidiary as a limited liability company. OTS has concluded that an operating subsidiary may be organized as a non-corporate operating subsidiary.³

Conclusion

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

1. The Association 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 officers of the Parent, the Association and Securities 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 Parent, the Association and Securities as disclosed in the Application. If additional information having a material adverse bearing on any feature of the Application is brought to the attention of the Parent, the Association, Securities or OTS since the date of the financial statements submitted with the Application, 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;

³ See OTS Order No.: 2003-54 (October 21, 2003).

4. The Parent and the Association must advise the Regional Director in writing within 5 calendar days after the effective date of the proposed transaction: (a) of the effective accordance with all applicable laws and regulations, the Application, and this Order; and
5. The Association must conform its equity securities underwriting activities to the activities restrictions of the HOLA within two years of consummation of the transaction.

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

By order of the Director of the Office of Thrift Supervision, or his designee,
effective February 9, 2009.



Grovetta N. Gardineer
Managing Director
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