

OFFICE OF THRIFT SUPERVISION

Approval of Holding Company Acquisition and Related Applications

Order No.: 2003-61

Date: December 3, 2003

Docket Nos.: H-3980, H-3273, 15648

American Express Travel Related Services Company, Inc., New York, New York (Holding Company), has applied to the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1467a(e) and 12 C.F.R. § 574.3, to acquire, in a corporate reorganization, American Express Personal Trust Services, FSB, Minneapolis, Minnesota (Association). The Association seeks OTS' approval: (i) to expand its business and operations from a trust-only savings association to a full-service savings association, (ii) to acquire certain assets and certain deposits and other liabilities of American Express Centurion Bank, Salt Lake City, Utah (Centurion Bank) under section 18(c) of the Federal Deposit Insurance Act (Bank Merger Act or BMA), and 12 C.F.R. §§ 552.13 and 563.22, (iii) to establish a wholly-owned operating subsidiary to facilitate the securitization of certain credit and charge card receivables, under 12 C.F.R. § 559.11, (iv) to re-designate its home office from Minneapolis, Minnesota to Salt Lake City, Utah, under 12 C.F.R. § 545.95, and (v) to establish a transactional Internet site, under 12 C.F.R. § 555.300(b). In addition, in connection with the proposed transaction, American Express Financial Corporation, Minneapolis, Minnesota (AEFC) has filed an application under 12 U.S.C. § 1467a(b)(6) for release from registration as a savings and loan holding company. (Collectively, the various filings are referred to herein as the Applications.)

Background

The Association is a trust-only federal savings association that commenced operations on December 1, 2000. The Association is the direct subsidiary of AEFC and a second-tier subsidiary of American Express Company, New York, New York (AMEX). In the proposed transaction, AEFC will dividend all of the Association's stock to AMEX, and AMEX will contribute the stock to the Holding Company, a direct subsidiary. AEFC has applied to deregister as a savings and loan holding company, and the Holding Company has filed the holding company application. In addition, the Association is requesting approval to expand its business and operations from a limited purpose savings association, engaging solely in fiduciary and related activities, to include offering loans (principally credit and charge cards, but including first mortgage and home equity loans and lines of credit) and accepting deposits.

In furtherance of the Association's plans to become a full-service thrift, the Holding Company will transfer certain customer card relationships, cash, and cash equivalents to the Association, and the Association will purchase certain high quality

small business credit and charge card receivables and assume certain deposits from Centurion Bank. The Association will change its corporate title to "American Express Bank, FSB" and plans to relocate its home office from Minneapolis, Minnesota to Salt Lake City, Utah. The existing Minneapolis office will be retained as a trust agency office, from which it will continue to conduct its existing trust business. In addition, the Association intends to establish a new operating subsidiary to serve as a special purpose entity to facilitate credit card securitizations. The Association will also establish a transactional website.

Holding Company Application and Bank Merger Act Acquisition

Section 10(e)(1)(B) of the Home Owners' Loan Act (HOLA) and the Acquisition of Control Regulations provide that, in reviewing the proposed acquisition of a savings association by a company other than a savings and loan holding company, OTS must consider the financial and managerial resources and future prospects of the company and association, and the effect of the transaction on the association and the insurance risk of the Savings Association Insurance Fund (SAIF).¹ Also, OTS must consider the impact of any acquisition on competition.² Further, 12 C.F.R. § 563e.29(a) requires that OTS take into account assessments under the Community Reinvestment Act (CRA) when approving savings and loan holding company acquisitions.

The Bank Merger Act and the OTS regulations thereunder impose substantially similar standards.³ In addition, however, the Bank Merger Act requires the responsible agency to take into consideration, in its evaluation of a BMA application, the convenience and needs of the community to be served, and the effectiveness of any insured depository institution in combating money-laundering activities.⁴ Also, OTS regulations require that OTS consider whether the transaction is equitable to all concerned, whether full disclosure has been provided regarding written or oral agreements through which any person will receive anything of value in connection with the transaction, and whether compensation to officers, directors, and controlling persons of the disappearing association is reasonable.⁵ The CRA requires, in the context of the merger transaction, that the OTS consider the CRA performance of the institutions.⁶ Because the Association's deposits are SAIF-insured, and Centurion Bank's deposits are insured by the Bank Insurance Fund, OTS must also approve the application under Section 5(d) of the Federal Deposit Insurance Act (FDIA).⁷

With respect to managerial resources, OTS has considered the background of the boards of directors and senior officers of the Holding Company, the Association, and

¹ 12 U.S.C. § 1467a(e)(1)(B) and 12 C.F.R. § 574.7(c)(1) (2003).

² 12 U.S.C. § 1467a(e)(2) and 12 C.F.R. § 574.7(c)(2) (2003).

³ 12 U.S.C. § 1828(c)(5)(B); 12 C.F.R. § 563.22(d) (2003).

⁴ 12 U.S.C. § 1828(c)(11).

⁵ 12 C.F.R. § 563.22(d)(1)(vi) (2003).

⁶ See 12 C.F.R. § 563e.29(a) (2003).

⁷ 12 U.S.C. § 1815(d).

Centurion Bank. Both the Holding Company and the Association will be under the direction of a board and senior officers who are highly qualified and successful in their respective disciplines. There will be no significant overlap between senior executive officers of the Association and the Holding Company (or other affiliates), but the individuals who will serve in the senior positions at the Association have performed the same functions with acceptable regulatory experience at Centurion Bank, from which certain operations/functions will be transferred. Centurion Bank has received acceptable management ratings by the FDIC, on its last three examinations. OTS' review of the Applications has not revealed any significant negative information regarding these individuals. Based on the foregoing, OTS concludes that the managerial resources of the Holding Company and the Association are consistent with approval.

With respect to financial resources, OTS has considered the financial resources of the Holding Company, and notes that the AMEX organization is a prominent and successful global financial services entity with considerable financial strength. Both the Association and Centurion Bank are well capitalized. OTS concludes that the financial resources of the Holding Company and the Association are consistent with approval.

With respect to future prospects, and risks to the SAIF, OTS has considered the expansion of the Association's business activities, and concludes that the expansion will strengthen the Association's financial condition beyond what is likely as a trust-only institution. The future prospects of the Association are further enhanced in that highly experienced individuals will be transferring to the Association to manage the new activities. The Holding Company is a successful global financial services entity, and the proposed reorganization should have no significant effect on its overall operations. OTS concludes that the future prospects of the Holding Company and the Association, and the risk to the SAIF are consistent with approval.

With respect to the competitive impact of the transaction, the proposed acquisition by the Holding Company will not cause the Association to become affiliated with any depository institution with which it is not already affiliated. The proposed BMA transaction involves two depository institutions that are under common control. In addition, OTS requested competitive factors reports from the U.S. Department of Justice, and the other federal banking agencies regarding the competitive effects of the proposed BMA transaction. None of the other agencies identified any anti-competitive impact. Accordingly, OTS concludes that the transaction is not objectionable on anti-competitive grounds.

With respect to the convenience and needs of the community, the Association will continue with its trust operations, and seek to expand its business and operations from a limited purpose savings association, engaging solely in fiduciary and related activities, to include offering loans and accepting deposits on a nationwide basis. The Association will not conduct business with customers out of traditional retail banking offices, but largely through face-to-face customer contacts with financial advisors located at AMEX affiliate offices and, to a lesser extent, through a transactional website. The Association

will enable customers to conduct transactions by Internet, telephone, ATM and mail, as well as automatic bill payment for certain accounts. Accordingly, OTS concludes that the approval of the Applications is consistent with the convenience and needs of the communities to be served.

As for the CRA, the Association, as a trust-only federal savings association has no prior CRA record. The Holding Company's current depository institution subsidiary, Centurion Bank, has an "Outstanding" CRA rating. The Association's CRA program will be patterned after that of Centurion Bank. OTS has concluded that the Association is committed to meeting its responsibilities under the CRA and recognizes its continuing and affirmative obligation to help satisfy the credit needs of the community, including low- to moderate-income neighborhoods, consistent with safe and sound operations. OTS has received no comments from the public objecting to the proposed transaction on CRA grounds. Accordingly, OTS concludes that approval of the proposed acquisition of the Association by the Holding Company, and the proposed Bank Merger Act transaction are consistent with the CRA.

With respect to equitable treatment, full disclosure, compensation of officers and directors, and issues regarding advisory directors, the proposed transaction represents an internal corporate reorganization and has no impact regarding these standards.

Under the BMA, OTS must review the savings association's record of compliance with anti-money laundering statutes and regulations. OTS' compliance examination includes an evaluation of a savings institution's compliance with the anti-money laundering provisions of the Bank Secrecy Act. OTS has considered the Association's record of compliance, as well as Centurion Bank's record of compliance, with anti-money laundering statutes and regulations, and does not object to approval of the proposed BMA transaction on anti-money laundering grounds.

With respect to the applicable criteria under Section 5(d)(3) of FDIA, the Association has provided the information that OTS has required, the proposed merger will not result in the transfer of any insured depository institution's deposit insurance from one insurance fund to the other, and the Association will meet all applicable capital requirements upon consummation of the transaction. Accordingly, the transaction meets the FDIA Section 5(d)(3) criteria.

Notice to Establish an Operating Subsidiary

The Association plans to establish an operating subsidiary to facilitate securitization of credit and charge card receivables. Generally, a federal association may invest in an operating subsidiary if: (1) the operating subsidiary engages only in activities permissible for federal associations to engage in directly; (2) the federal association owns, directly or indirectly, more than 50 percent of the voting shares of the operating

subsidiary; and (3) no person or entity other than the federal association exercises operating control over the operating subsidiary.⁸

With respect to the specific regulatory criteria, the Association will hold all of the common stock of the operating subsidiary, and OTS is not aware of any information indicating that the Association will not have sole operating control of the operating subsidiary. With respect to the regulatory criterion that the operating subsidiary engages only in activities permissible for federal associations, the application indicates that the operating subsidiary's proposed activities are permissible for a federal association.

In addition, the Association plans to organize the operating subsidiary as a limited liability company. OTS has previously concluded that an operating subsidiary may be organized as a non-corporate operating subsidiary.⁹ OTS has reviewed the operating subsidiary from a safety and soundness perspective and has no objections. Accordingly, OTS concludes that approval of the notice is consistent with the regulatory criteria.

Business Plan Modification

In the Order approving AMEX's application to establish the Association,¹⁰ OTS required the Association to obtain OTS approval before expanding its activities beyond trust activities. In the Order, OTS stated that it would consider any such application under the standards applicable to permission to organize applications. The HOLA provides that OTS may grant a federal savings association charter only: (i) to persons of good character and responsibility; (ii) if, in the 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.¹¹ OTS regulations implementing the HOLA include the same standards, with the additional requirement that the OTS consider whether the association will promote credit for housing consistent with the safe and sound operation of a federal savings association.¹²

The OTS regulations regarding the establishment of de novo federal savings associations (Regulations) 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.¹³

⁸ 12 C.F.R. §§ 559.2, 559.3(e)(1) and (e)(1) (2003).

⁹ See OTS Order No.: 2003-54 (October 21, 2003).

¹⁰ OTS Order No. 2000-50 (June 8, 2000) (Order).

¹¹ Section 5(e) of the HOLA, 12 U.S.C. § 1464(e).

¹² 12 C.F.R. § 552.2-1(b)(1) (2003).

¹³ 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 CRA objectives.¹⁴ The OTS takes this description into account when considering an application and may deny an application or condition approval on CRA grounds.

Most of these criteria have been previously addressed, either directly or indirectly, in connection with approval criteria applicable to the holding company or Bank Merger Act applications.

As for the necessity for the Association in the community, the Association will continue its trust operations, and acquire or continue additional operations currently conducted by affiliates. Given that these operations are currently being conducted, and numerous customers avail themselves of these services, OTS concludes that there is a necessity for the Association in the community.

With respect to undue injury to properly conducted existing local thrift and home financing institutions, the Association will conduct operations that are already being conducted by other entities. Accordingly, the Association's conduct of these activities should have little impact on any existing depository institution. Also, the Association's target market will be widely dispersed, and the Association will have little, if any, impact on any geographic area where its customers may be located. OTS concludes that the proposed transaction will not result in undue injury to existing local thrift and home financing institutions.

With respect to the Association's role in providing credit for housing consistent with safe and sound operations of a federal savings association, the Association plans to include residential mortgage loans among the products and services it offers or makes available to customers, and OTS has already concluded that the Association's future prospects are consistent with approval. Accordingly, OTS concludes that the Association will provide credit for housing consistent with safe and sound operations of a federal savings association.

With respect to the Association's board of directors requirements, the "restructured" board of the Association will continue to comply with all conditions of approval regarding board composition set forth in the Order, which approved the initial organization of the Association. The Association's board will also be in compliance with the board composition requirements of 12 C. F. R. § 543.3(d), except for the requirement in § 543.3(d)(1) that a majority of a *de novo* association's board of directors be representatives of the state in which the savings association is located. Only three of the Association's nine directors will reside, work, or maintain a place of business in Utah. The remaining directors reside in Minnesota (3), New York (2), and Florida (1). OTS hereby waives the representation requirement of 12 C.F.R. § 543.3(d)(1) because the regulation requirement is not imposed under any statute, the Association's proposed

¹⁴ 12 C.F.R. § 563e.29(b) (2003).

operations will be conducted on a nationwide basis, and because the Association was chartered on December 1, 2000, the three-year period during which § 543.3(d) applies to the Association has almost expired.

Further, there are no regulatory standards or requirements for the business plan modification. OTS has reviewed the business plan modification from a safety and soundness perspective, and based on the above, has no objections. Accordingly, OTS concludes that the approval criteria have been satisfied.

Other Related Applications

AEFC seeks OTS' approval to be released from registration as a savings and loan holding company, pursuant to 12 U.S.C. § 1467a(b)(6). Upon completion of the reorganization and transfer of the Association's stock from AEFC to the Holding Company, AEFC will no longer control a savings association. Accordingly, OTS grants AEFC's request to be deregistered as a savings and loan holding company, subject to the conditions that the proposed transaction be completed as described in the Applications.

In addition, the applicants have filed the following: (i) a notification pursuant to 12 C.F.R. § 545.95 related to the re-designation of the Association's home office from Minneapolis, Minnesota to Salt Lake City, Utah, and (ii) a notification pursuant to 12 C.F.R. § 555.300(b) of the Association's intent to establish a transactional Internet site.

OTS has reviewed the notifications from a safety and soundness perspective, and has no objections to these notifications.

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 West Regional Director, or his designee (Regional Director):

1. The Association 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. On the business day prior to the consummation of the proposed transaction, the chief financial officers of the Association and the Holding Company 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 Association or the Holding

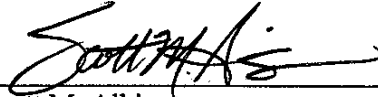
Company, respectively, as disclosed in the Applications. If additional information having a material adverse bearing on any feature of the Applications is brought to the attention of the Association, the Holding Company or OTS since the date of the financial statements submitted with the Applications, 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 Association 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; and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the Applications, and this Order;
5. The Association must submit independent audit reports to the Regional Director for its first three fiscal years of expanded operations. These reports must be in compliance with the audit rules set forth at 12 C.F.R. § 562.4. The Regional Director may modify or waive this condition as he deems necessary;
6. The Association must operate within the parameters of its three-year business plan. The Association must submit any proposed major deviations or material changes from the plan 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;
7. For the three years following commencement of the Association's expanded operations, the Regional Director may require the Association to submit quarterly business plan variance reports detailing the Association's compliance with the business plan and an explanation of any deviations;
8. For one year following commencement of the Association's expanded operations, the Association 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; and
9. For one year following commencement of the Association's expanded operations, the Association must receive the prior written non-objection of the Regional Director for all employment contracts prior to their execution and implementation.

The conditions set forth in OTS Order No. 2000-50, dated June 8, 2000, approving the original application to charter the Association, remain in full force and effect to the extent applicable.

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 3, 2003.



Scott M. Albinson
Managing Director
Office of Supervision