

## OFFICE OF THRIFT SUPERVISION

### Approval of Holding Company Application

**Order No.:** 2010-46  
**Date:** July 29, 2010  
**Docket Nos.:** 18064, H-4700,  
H-4699 and H-4744

NBC Bancshares, LLC (NBC), NHI III, LLC (NHI) and NHI Financial Services Partners, LLC (Partners), Lincoln, Nebraska (collectively, the Applicants) have applied to the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1467a(e)(1)(B) and 12 C.F.R. § 574.3, for approval to acquire up to 89 percent of the common stock of Community Bank of Lincoln (Savings Bank), Lincoln, Nebraska.

#### **Background**

NBC, NHI and Partners are Delaware-chartered limited liability companies. Partners, which is owned in equal parts by Lee Stuart, David Hadani and Ben Harris (collectively, the Managers), manages both NBC and NHI, and owns an interest in NBC. The Managers own approximately 52 percent of the interests of NHI. NHI owns approximately 34.9 percent of the interests of NBC.

The Savings Bank is a Deposit Insurance Fund (DIF)-insured, federally chartered stock savings bank with a single office in Lincoln, Nebraska. The Savings Bank is currently a second-tier subsidiary of Capitol Bancorp Ltd. (Current Holding Company). The Current Holding Company owns all of the stock of Community Development Bancorp Limited VII (CDBL). CDBL owns 51 percent of the Savings Bank's outstanding common stock. The Current Holding Company is a multi-bank bank holding company that owns several banks and savings associations.

The Applicants, acting through NBC, propose to acquire up to 88.4 percent of the Savings Bank's common stock in three separate transactions. First, the Applicants propose that NBC will acquire 51 percent of the Savings Bank's common stock for cash from CDBL. Immediately thereafter, NBC will exercise a warrant (Initial Warrant) to acquire additional shares of the Savings Bank's common stock from the Savings Bank, thereby providing additional capital to the Savings Bank and also increasing the Applicants' percentage ownership of the Savings Bank's common stock to approximately 66.4 percent. Third, the Applicants have requested OTS approval to acquire additional shares of the Savings Bank's common stock through exercise, over time, of an additional warrant (Subsequent Warrant) that would, if

exercised in its entirety, result in the Applicants holding approximately 88.37 percent of the Savings Bank's common stock. The Subsequent Warrant is exercisable, in whole or in part, at any time within five years of the Applicants' acquisition of the Savings Bank, and, if exercised, would result in the infusion of additional capital into the Savings Bank.

### **Holding Company Application**

Section 10(e)(1)(B) of the Home Owners' Loan Act and the OTS Acquisition of Control Regulations<sup>1</sup> 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 DIF. Also, OTS must consider the impact of any acquisition on competition. 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.

With respect to managerial resources, OTS has reviewed the backgrounds of the Applicants and the Applicants' officers and directors and controlling parties, and the backgrounds of the proposed officers and directors of the Savings Bank. OTS's review of the above-mentioned parties has not revealed any information that would lead OTS to conclude that managerial resources considerations are not consistent with approval. Based on the relevant information, OTS concludes that the managerial resources of the relevant persons and companies are consistent with approval of the application.

With respect to financial resources, OTS has considered the Applicants' financial resources, and the financial resources of the Savings Bank. The Applicants have sufficient funds to consummate the acquisition and engage in their proposed activities. The Savings Bank is currently well capitalized under the OTS Prompt Corrective Action regulation, and its capital will increase after consummation of the proposed transaction. OTS concludes that the Applicants' and the Savings Bank's financial resources are consistent with approval of the application.

With respect to future prospects and the insurance risk to the DIF, OTS has considered the financial and managerial resources of the Applicants and the Savings Bank. In addition, OTS has reviewed the Savings Bank's proposed business plan, and concludes that it is acceptable. OTS is imposing condition 4 to help ensure that the Savings Bank operates pursuant to its business plan and that changes to and from the business plan are not detrimental to the Savings Bank. OTS also is imposing condition 5, to enable OTS to confirm that the Savings Bank is being operated in accordance with the business plan. The conditions are intended to ensure that the Savings Bank's future prospects are consistent with approval.

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<sup>1</sup> 12 C.F.R. Part 574 (2010).

OTS is imposing condition 6, to help ensure the directors of the Savings Bank have the requisite independence, in light of the provision of certain services by affiliates to the Savings Bank, and the existence of another certain investment vehicle controlled by the Managers. In addition, OTS is imposing condition 7 in order to help ensure that transactions between the Savings Bank and its affiliates or related persons are not detrimental to the Savings Bank's future prospects.

OTS concludes that the future prospects of the Applicants and the Savings Bank, and the risks to the DIF, are consistent with approval provided that the Applicants and the Savings Bank comply with the conditions set forth herein.

The transaction will not result in any currently operating, unaffiliated insured depository institutions becoming affiliated. Accordingly, OTS finds no basis for objection to the transaction on anti-competitive grounds.

As for the CRA, the Applicants do not control an insured depository institution, and therefore, are not subject to the CRA. The Savings Bank has a "Satisfactory" CRA rating, and the Applicants will adhere to the Savings Bank's current CRA plan. OTS received no public comments relating to the proposed transaction. Accordingly, OTS concludes that there is no basis for objection to the Applicants' acquisition of the Savings Bank on CRA grounds.

## **Conclusion**

Based on the foregoing analysis, OTS concludes that the holding company application meets the applicable approval criteria. Accordingly, the holding company application is hereby approved, subject to the following conditions:

1. The Applicants' proposed acquisition of the Savings Bank's common stock from CDBL, and the Applicants' proposed acquisition of stock of the Savings Bank pursuant to exercise of the Initial Warrant, must be consummated within 30 calendar days from the date of this Order; the OTS Central Regional Director or his designee (Regional Director) may grant an extension of 30 calendar days for good cause. The Applicants' proposed acquisition of stock of the Savings Bank pursuant to the Subsequent Warrant must be consummated within one year from the date of this Order; the Regional Director may grant an extension of one year for acquisitions pursuant to the Subsequent Warrant for good cause;
2. Prior to the consummation of the Applicants' proposed acquisition of common stock from CDBL, the chief financial officers of the Applicants 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 Applicants and the Savings Bank, respectively, 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 Applicants, the Savings Bank, 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. The Applicants and the Savings Bank must, within 5 calendar days after the effective date of the proposed acquisition of common stock from CDBL: (a) advise the Regional Director in writing of the effective date of the proposed transaction; (b) advise the Regional Director in writing that the transaction was consummated in accordance with all applicable laws and regulations, the application, and this Order; and (c) provide a reconciliation of the Savings Bank's capital to the Regional Director;
4. 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 any of the Savings Bank's holding companies) 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;
5. For three years following consummation of the proposed acquisition of stock from CDBL, 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 material deviations;
6. At least 40 percent of the Savings Bank's board of directors must be individuals who are not officers or employees of the Applicants or affiliates thereof, and who have not otherwise been determined by the Regional Director to lack sufficient independence. At least one member of the Savings Bank's board of directors must be an individual who is not an officer, director or employee of the Applicants or any affiliate, and who is not an officer or employee of the Savings Bank, and who has not otherwise been determined by the Regional Director to lack sufficient independence. At least 50 percent of any audit committee established by the Savings Bank must be directors who are not officers or employees of the Savings Bank, the Applicants, or any affiliates, and who have not otherwise been determined by the Regional Director to lack sufficient independence; and
7. For two years following the consummation of the proposed acquisition of common stock from CDBL, any contracts or agreements pertaining to transactions with affiliates and related interests of affiliated persons, as defined in 12 C.F.R. § 561.5(d), of the Applicants and the Savings Bank not yet submitted for review must be provided to the Regional Director at least 30 calendar days prior to their planned execution and receive the Regional Director's written non-objection prior to implementation of the contract or agreement.

The Regional Director may, for good cause, extend for up to 120 calendar days any time period set forth herein other than the time periods set forth in condition 1, which may be extended as provided therein.

By order of the Acting Director of the Office of Thrift Supervision, or his designee,  
effective July 29, 2010.



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Grovetta N. Gardineer  
Managing Director  
Corporate & International Activities