OFFICE OF THRIFT SUPERVISION

Approval of Bank Merger Act Application and Related Applications

Order No.: 2007-40
Date: September 5, 2007
Re: OTS No. 14460

Merrill Lynch Bank & Trust Co., FSB, New York, New York (Association), seeks the Office of Thrift Supervision's (OTS) approval: (i) to acquire First Republic Bank, Las Vegas, Nevada (Bank), pursuant to Section 18(c) of the Federal Deposit Insurance Act (Bank Merger Act or BMA) and 12 C.F.R. § 563.22(a); (ii) to establish five operating subsidiaries (Operating Subsidiaries), under 12 C.F.R. Part 559; (iii) to modify its business plan; and (iv) to establish five transactional websites, pursuant to 12 C.F.R. Part 555.

In connection with this transaction, Merrill Lynch Group, Inc., New York, New York (Holding Company) proposes to dividend all of the Association's shares to Merrill Lynch & Co. Inc., New York, New York (Parent), causing the Association to become a direct, wholly owned subsidiary of the Parent. The Holding Company has requested to be deregistered as a savings and loan holding company, pursuant to 12 C.F.R. § 584.1(d).

In addition, the Association requests that OTS grant an exemption under the OTS Management Interlocks Regulations (Interlocks Regulations)[1] for Roger O. Walther (Individual) to serve as an advisory board member of the Association, while serving as a director of The Charles Schwab Corporation, a bank holding company (BHC).

The California Reinvestment Coalition submitted a comment objecting to the proposed transaction. Fourteen other community groups submitted similar comments. In addition, OTS received a late-filed comment from Inner City Press/Fair Finance Watch. (Collectively, the foregoing comments are referred to as the Comments.)

The Parties

The Association is a Deposit Insurance Fund (DIF)-insured, federal savings association and is a direct subsidiary of the Holding Company and a second-tier subsidiary of the Parent. The Parent, a Delaware corporation, is the top-tier holding company for several subsidiaries that provide investment, financing, advisory, insurance and related products and services. The Holding Company, also a Delaware corporation, is a wholly owned subsidiary of the Parent. The Association has several subsidiaries, including First Franklin Financial Corporation, San Jose, California, which engages in non-prime mortgage origination and servicing activities.

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[1] 12 C.F.R. Part 563f (2007).

The Bank is a DIF-insured, Nevada-chartered commercial bank that is regulated by the Nevada Department of Business and Industry, Division of Financial Institutions and by the Federal Deposit Insurance Corporation. The Operating Subsidiaries are currently subsidiaries of the Bank.

The Proposed Transaction

Prior to the acquisition, the Holding Company proposes to dividend all of the Association's shares to the Parent, causing the Association to become a direct, wholly owned subsidiary of the Parent. Subsequently, the Bank will merge with and into the Association, with the Association being the surviving association. The Bank will operate as a separate division of the Association (Bank Division). Certain board members of the Bank will become advisory board members of the Bank Division. As a result of the merger, the Association will acquire control of the Operating Subsidiaries, which will become operating subsidiaries of the Association.

Bank Merger Act Application

In evaluating a BMA application, OTS is required to consider the effect of the transaction on the capital of the resulting association; the financial and managerial resources of the constituent institutions; the future prospects of the constituent institutions; the effect of the transaction on competition; the convenience and needs of the community; conformance to applicable law, regulation, and supervisory policy; and factors relating to fairness of and disclosure concerning the transaction.[2] Also, the BMA requires the responsible agency to take into consideration, in its evaluation of any BMA application, the effectiveness of any insured depository institution in combating money-laundering activities.[3] Under 12 C.F.R. § 563e.29, OTS must consider the constituent savings associations' record of performance under the Community Reinvestment Act (CRA).

Capital

Both the Bank and the Association are "well capitalized," and the Association will remain "well capitalized" after the merger. Accordingly, we conclude that this approval standard is satisfied.

Managerial Resources

The current senior executive officers of the Association will continue to manage the Association's business, except that two of the Bank's senior executive officers will become senior vice presidents with the Association. As the Association's regulator, OTS is familiar with the management of the Association. The operations of the Bank to be

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2 12 U.S.C. § 1828(c)(5)(B); 12 C.F.R. § 563.22(d) (2007).

3 12 U.S.C. § 1828(c)(11).

merged with and into the Association will continue to be managed, as a division of the Association, by the Bank's current management. OTS reviewed the backgrounds of the Association's new officers and the management of the Bank Division and received no adverse information regarding any of these individuals. Although the Comments address issues that relate to the quality of the Association's management, as discussed below, we conclude that the matters raised in the Comments do not provide grounds to object based on this approval criterion and that managerial resources considerations are consistent with approval

Financial Resources and Future Prospects

The Association is projected to be profitable and "well capitalized" after the merger. The Bank will cease to exist as a separate entity after the transaction. The Association's proposed business plan is acceptable. To help ensure the financial resources and future prospects of the Association are consistent with approval, we are imposing conditions 6, 7 and 9.

Based on the foregoing, we conclude that the financial resources and future prospects of the Association and the Bank are consistent with approval, subject to the conditions.

Competitive Impact

With respect to competitive factors, the relevant geographic area for the proposed merger consists of Metropolitan NY-NJ-PA-CT Banking Market (as defined by the Federal Reserve Board). This is the only market in which both the Association and the Bank have banking offices. As of the last Deposit Market Share Report, June 30, 2006, the Association had a market share of 0.93 percent and ranked nineteenth. The Bank has a market share of 0.15 percent. As a result of the merger, the Herfindahl-Hirschman Index (HHI) would remain unchanged, at 1,102. Under the U.S. Department of Justice (DOJ) merger guidelines, mergers producing an increase in the HHI of less than 100 points in moderately concentrated markets post-merger are unlikely to have adverse competitive effects. The DOJ has reviewed the transaction and has not objected to the merger. Based on the foregoing, OTS concludes that competitive considerations are consistent with approval.

Convenience and Needs of the Community

With respect to the convenience and needs of the community, the Association will continue its current operations, as well as the Bank's existing operations. Although the Comments address issues that relate to the convenience and needs of the community, as discussed below, we conclude that the matters raised in the Comments do not provide a basis for concluding that the transaction is inconsistent with the convenience and needs of the community. Accordingly, we conclude that convenience and needs considerations are consistent with approval.

Community Reinvestment Act

As for the CRA, the Association, until recently, was a trust-only federal savings association with no prior CRA record. The Bank currently has a "Satisfactory" CRA rating. Although the Comments objected to the merger application on CRA grounds, as discussed below, we conclude that the matters raised in the Comments do not provide a basis for concluding that the transaction is inconsistent with the CRA. Accordingly, we conclude that approval of the BMA application is consistent with the CRA.

Conformity With Law; Anti-Money Laundering

As for conformance to law, regulation and supervisory policy, OTS's review of the BMA application 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.

OTS must also review the constituent institutions' records of compliance with anti-money laundering statutes and regulations as part of the analysis of any BMA transaction. OTS has reviewed the Association's compliance record, which took no exceptions to the Association's compliance with the Bank Secrecy Act or any other anti-money laundering laws or regulations. Similarly, the Bank's federal regulator reviewed the Bank's compliance with such laws and did not object to the Bank's compliance. Therefore, we conclude that these criteria for approval under the BMA have been met.

Fairness and Disclosure

We are aware of no basis for objection to the merger resulting from fairness and disclosure issues. Appropriate publications have occurred, and disclosure materials relating to the proposed transaction have been filed with the appropriate regulators and have been provided to the Bank's stockholders. Accordingly, we are not aware of any basis for objection to the BMA application based on fairness.

Analysis of the Comments

The Comments allege that the proposed merger will not meet or benefit the convenience and needs of California communities, and that the Parent has not presented a meaningful CRA plan that remedies the inadequacies of the Bank and the Parent's current subsidiaries to meet such community needs. In addition, the Comments expressed concerns about the Association's subprime lending activities, including concerns that relate to the types and amount of lending products offered and the terms of such products, concerns relating to consumer safeguards and predatory lending, and financial exposure due to subprime warehouse lending. Accordingly, the Comments

relate to at least three approval criteria – managerial resources, convenience and needs, and CRA performance.

With respect to concerns expressed in the Comments relating to convenience and needs of the California communities, and that the Parent has not presented a meaningful CRA plan, the Association has addressed the Comments, has provided an acceptable CRA Plan, and has demonstrated a willingness to address key community development challenges and revise its strategies. Although the Association has no prior CRA record, it recently acquired, by merger, an affiliated bank, Merrill Lynch Bank &Trust Company, which had an "Outstanding" CRA rating. The Bank has a "Satisfactory" CRA rating. Both ratings are indicative of effective CRA-related activities. We conclude that the Association's responses regarding these issues are acceptable, and based on the above, there is no reason to believe that the Association has not fulfilled its CRA responsibilities or that, after the proposed transaction, will not fulfill its CRA responsibilities and meet the convenience and needs of relevant communities.

With respect to concerns expressed in the Comments that relate to the types and amount of lending products offered and the terms of such products, as long as such products and terms are in accordance with applicable laws and regulations, including CRA responsibilities, the Association has the discretion to determine the types, terms and amounts of lending products it will offer. With respects to the concerns relating to consumer safeguards and predatory lending, the Association has identified guidelines, practices and programs to address these concerns. We conclude that the Association's responses regarding these issues are acceptable.

Additionally, a comment was raised regarding the financial exposure of the Association with respect to warehouse lending. OTS's review has not identified any basis for objection to the transactions related to the Association's warehouse lending activities.

Based on the Association's responses to the Comments, and other relevant information, we conclude that the Comments do not provide a basis to deny the applications or to impose non-standard conditions of approval.

Notice to Establish Operating Subsidiaries

As a result of the merger, the Association will acquire control of five of the Operating Subsidiaries, which will become operating subsidiaries of the Association.

A federal association may invest in an operating subsidiary only if: (1) the federal association owns, directly or indirectly, more than 50 percent of the voting shares of the operating subsidiary; (2) no person or entity other than the federal association exercises effective operating control over the operating subsidiary; and (3) the operating subsidiary

engages only in activities permissible for federal associations to engage in directly.[4] In addition, OTS may object to the establishment of an operating subsidiary on supervisory grounds.

With respect to ownership and operating control, the Association will hold all of the Operating Subsidiaries' common stock. No party other than the Association will have effective operating control over the Operating Subsidiaries.

With respect to the requirement that the Operating Subsidiaries engage only in activities permissible for federal associations, the proposed activities, registered investment advisory services, securities brokerage services, and real estate investment trust activities, are permissible for federal savings associations.

Two of the Operating Subsidiaries will be limited liability companies. OTS has previously concluded that an operating subsidiary may be organized as a non-corporate operating subsidiary.[5]

Management Interlocks Exemption Request

The Individual has served as chairman of the board of the Bank for many years and as a director of the BHC since April 1, 1989. On May 1, 2000, the Board of Governors of the Federal Reserve System (FRB) granted the BHC an exemption from the Depository Institution Management Interlocks Act (Act) and the FRB's Regulation L for the Individual to retain his position as director of the BHC while also serving at the Bank. As part of the merger of the Bank with and into the Association, the Association will create an Advisory Board consisting of the directors of the Bank immediately prior to the effective time of the merger to advise the management of the Bank Division.

Under the Act and the Interlocks Regulations, management interlocks between a depository organization (or any affiliates of such organization) with total assets exceeding $2.5 billion, and an unaffiliated depository organization (or any affiliates of such organization) with assets exceeding $1.5 billion are generally prohibited.[6] Because the Association and the BHC both have total assets exceeding $2.5 billion, the proposed interlock is subject to this prohibition. Thus, the proposed interlock between the Association and BHC would be impermissible, unless an exemption is granted.

Pursuant to 12 C.F.R. § 563f.6(a), OTS may grant an exemption for otherwise prohibited interlocks if it determines that the interlock would not result in a monopoly or substantial lessening of competition, or threaten safety and soundness.

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4 12 C.F.R. §§ 559.2, 559.3(c)(1) and (e)(1) (2007).

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

6 12 U.S.C. § 3203 and 12 C.F.R. § 563f.3(c) (2007).

Because the potential diminution in competition that may result from interlocking management is similar to that associated with horizontal mergers (mergers of direct competitors) OTS's general practice in reviewing interlock exemption applications is to evaluate competition between the entities using analysis that is similar to the analysis OTS would apply to a merger between the depository organizations or institutions. That analysis includes consideration of the effect of combining the subject firms' respective shares of deposits in any relevant geographic markets under guidelines established by the DOJ that employ the HHI to gauge the significance of various degrees of market concentration.[7]

Prior to the consummation of the merger, the businesses of the Association and the BHC's national bank subsidiary (National Bank) have been similar in that neither maintains a branch network and their customers come to them as the result of a relationship with the Association's and the National Bank's broker-dealer affiliates. After the merger, the Bank Division will establish a retail presence for the Association. Nevertheless, given the National Bank's national market, and lack of local retail presence, it does not appear that the National Bank has a significant presence in any particular geographic market. In addition, the Individual's advisory board responsibilities relate solely to the Bank Division. Accordingly, the Individual will not have access to non-public information regarding the Association as a whole, or any of the Association's affiliates.

Accordingly, we conclude that the proposed interlock is not likely to have an adverse effect on competition for deposit products in any market. Further, the proposed interlock is not objectionable on supervisory grounds. Therefore, we conclude that the proposed interlock between the Association and the BHC meets the applicable approval criteria.

Application to Modify Business Plan

The Association has filed an application to modify its business plan in order to proceed with the proposed acquisition. Under the terms of OTS Approval Order No. 2006-28, dated July 14, 2006, the Association is required to submit any major deviations or material changes from its three-year business plan to the OTS for prior, written non-objection of the OTS Regional Director. OTS has reviewed the proposed acquisition from a safety and soundness perspective and does not object to the proposed transaction.

Transactional Websites

The Association has filed a notice to establish five transactional websites, pursuant to 12 C.F.R. §§ 555.300 and 310. OTS has reviewed the relevant circumstances

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7 See 1992 Horizontal Merger Guidelines [with April 8, 1997, Revisions to Section 4 on Efficiencies] (http://www.ftc.gov/bc/docs/horizmer.htm).

and has not objected to the continued operations of the websites. Accordingly, we conclude that the notices meet the requirements of 12 C.F.R. Part 555.

Holding Company Deregistration

The Holding Company has requested that it be deregistered as a savings and loan holding company after it dividends its shares of the Association's common stock to the Parent, pursuant to 12 C.F.R. § 584.1(d). After completion of the dividend, the Holding Company will no longer hold any shares or other securities of the Association. Accordingly, we conclude that, after the proposed dividend, the Holding Company will no longer control the Association.

Conclusion

Based on the applications and the foregoing analysis, OTS concludes that the applications satisfy the applicable approval standards, provided that 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 Association and the 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 transactions must be consummated no earlier than 15 calendar days and no later than 120 calendar days from the date of this Order;

3. On the business day prior to the date of consummation of the proposed transactions, the chief financial officers of the Association and the 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 the Association, and the Bank, 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 Parent, the Holding Company, the Bank, or OTS since the date of the financial statements submitted with the applications, the transactions must not be consummated unless the information is presented to the Regional Director, and the Regional Director provides written non-objection to the consummation of the transactions;

4. The Association must, within 5 calendar days after the effective date of the proposed transactions: (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 transactions were consummated in accordance with all applicable laws and regulations, the applications and this Order;

5. No later than 30 calendar days after the merger of the Bank with and into the Association, the Association must advise each accountholder whose withdrawable accounts in the Association would increase above $100,000 as a result of the transaction, or whose uninsured balance would increase as a result of the merger, of the effect of the transaction on deposit insurance coverage, and submit a copy of such notice to the Regional Director;

6. For three years following the date of consummation of the proposed transactions, the Association must operate within the parameters of its modified three-year business plan. The Association must submit any proposed major deviations or material changes from the plan (including, but not limited to any proposals to open additional retail branch offices and changes relating to cross-marketing) 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;

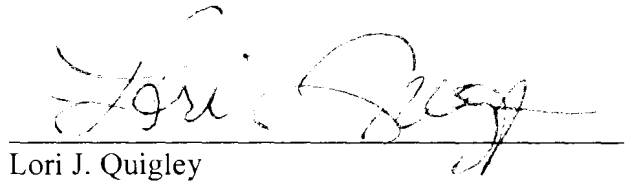
7. For three years following the date of consummation of the proposed transactions, the Association must submit to the Regional Director within 45 calendar days after the end of each calendar quarter, a business plan variance report detailing the Association's compliance with the business plan and an explanation of any deviations;

8. The deregistration of the Holding Company as a savings and loan holding company is not effective until the Parent provides written confirmation to the Regional Director that the Holding Company no longer holds any shares of the Association's common stock; and

9. The Association must submit to the Regional Director the final signed federal tax opinion within 60 calendar days of the date of this Order.

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

By order of the Director of the Office of Thrift Supervision, or his designee, effective September 5, 2007.



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