

## OFFICE OF THRIFT SUPERVISION

### Approval of Application to Expand Services

**Order No.: 2010-50**

**Date: August 21, 2010**

**OTS No. 15018**

TIAA-CREF Trust Company, FSB, St. Louis, Missouri (Savings Bank), a trust-only federal savings association, has applied for approval of the Office of Thrift Supervision (OTS) to expand its services beyond trust services authorized under section 5(n) of the Home Owners' Loan Act (HOLA), 12 U.S.C. § 1464(n).

In approving the organization of the Savings Bank in 1998, OTS imposed a condition requiring that, prior to engaging in any business other than trust activities authorized pursuant to section 5(n) of the HOLA, the Savings Bank apply to OTS and receive approval to engage in any such activity.<sup>1</sup> Based on this approval requirement, the Savings Bank seeks OTS approval to expand its business beyond trust services authorized under HOLA section 5(n), by offering deposit and loan products to the public (Application). The Order provides that OTS will consider any application to engage in additional activities under the standards of HOLA section 5(e) and the OTS's regulations thereunder, and under the Community Reinvestment Act (CRA) and OTS's regulations thereunder.

Section 5(e) of 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.<sup>2</sup> OTS regulations 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.<sup>3</sup> Also, OTS regulations regarding the establishment of a *de novo* federal savings associations 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 the association's board of directors.<sup>4</sup>

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<sup>1</sup> OTS Order No. 98-43 (April 21, 1998) (Order), Condition 7.

<sup>2</sup> 12 U.S.C. § 1464(e).

<sup>3</sup> 12 C.F.R. § 552.2-1(b)(1) (2010).

<sup>4</sup> 12 C.F.R. §§ 543.3 (2010).

The OTS CRA 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.<sup>5</sup> OTS takes this description into account in considering the application and may deny the application or condition approval on CRA grounds.

With respect to character and responsibility, OTS is familiar with the management of the Savings Bank. In order to ensure that management continues to have the requisite competence, experience and integrity in connection with the proposed expansion of the Savings Bank's activities, OTS is imposing conditions 5 and 6. OTS finds that the character and responsibility of the management of the Savings Bank is consistent with approval of the Application, subject to the Savings Bank's satisfaction of the condition.

With respect to the necessity for the Savings Bank, the Savings Bank will offer loan and deposit products to the Savings Bank's parent companies' nationwide clientele and the general public. Aggregate deposits nationwide increased from \$7.03 trillion to \$7.56 trillion between June 2008 and June 2009. The Savings Bank projects that a substantial portion of its deposit growth will be attributable to the Savings Bank's existing client base and that of its affiliates. Based on the foregoing, OTS concludes that this approval criterion is satisfied.

With respect to undue injury to local thrift and home financing institutions, the Savings Bank proposes to attract deposits primarily from the Savings Bank's affiliates' nationwide clientele. The Savings Bank's deposits in its third year of operations will equal less than 0.01 percent of the June 30, 2009, nationwide deposits. In addition, OTS received no comments objecting to the Application. Therefore, OTS concludes that the Savings Bank will not cause undue injury to any local thrift and home financing institutions.

With respect to the probability of the Savings Bank's usefulness and success, the Savings Bank will be well capitalized. The Savings Bank's business plan projects that it will remain well capitalized throughout the three-year duration of the plan and will operate profitably during each of its first three years of operations. The Savings Bank's directors and management have the requisite experience. OTS is imposing conditions 7 through 10 to ensure that the Savings Bank abides by regulatory restrictions and maintains safe and sound operations. OTS is imposing condition 4 in order to help ensure that the Savings Bank's board of directors has the requisite independence, because the Savings Bank's business plan places significant reliance on relationships with affiliates. In this regard, for example, the Savings Bank expects that a significant portion of its expanded customer base will consist of customers of its affiliates, and employees of affiliates will participate in the marketing of the Savings Bank's products. OTS concludes that there is a reasonable probability of the Savings Bank's usefulness and success, provided that the Savings Bank complies with the conditions set forth below.

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<sup>5</sup> 12 C.F.R. § 563e.29(b) (2010).

With respect to promotion of credit for housing consistent with the safe and sound operation of a federal savings association, the Savings Bank proposes to satisfy this requirement by originating mortgages and investing in mortgage-backed securities. The Savings Bank is projected to meet its Qualified Thrift Lender requirements. As discussed above, the Savings Bank's management is consistent with approval. Accordingly, OTS concludes that this approval criterion has been satisfied.

With respect to the CRA and OTS' CRA regulations, the Savings Bank has submitted a CRA plan focusing on the community surrounding its office in St. Louis, Missouri. OTS has reviewed the CRA plan and has concluded that the CRA plan is acceptable. OTS received no comments objecting to the Application on CRA grounds.

The Savings Bank's charter and bylaws are consistent with OTS regulations. The Savings Bank's capitalization is consistent with approval.

OTS's regulations require that a majority of a *de novo* federal association's board of directors be "representative" of the state in which the association is located. Although the Savings Bank's home office is located in St. Louis, Missouri, the Savings Bank's activities are conducted nationwide. Accordingly, OTS concludes that it is appropriate to consider the Savings Bank as being located throughout the United States, and to conclude that the Savings Bank's board of directors, which includes directors located in various states, is consistent with approval.

OTS regulations also require that a *de novo* federal association's board of directors be diversified and composed of individuals with varied business and professional experience. The Savings Bank's board of directors includes individuals with diverse skills and expertise. OTS concludes that these persons have sufficiently varied business and professional experiences to meet the regulatory standard.

The OTS regulations provide that, except in the case of a *de novo* federal association that is wholly owned by a holding company, no more than one-third of a *de novo* federal association's board of directors may be in closely related businesses. When the holding company does not have substantial independent economic substance, OTS applies the related business criterion to the holding company's board of directors. The Savings Bank's holding companies have substantial independent economic substance, and accordingly, this requirement is not applicable.

Based on the foregoing analysis, OTS concludes that the Application meets the applicable approval criteria, and is hereby approved, provided that the following conditions are complied with in a manner satisfactory to the Western Regional Director, or his designee (Regional Director):

1. The proposed expansion of services must be initiated within 120 calendar days from the date of this Order;

2. On the business day prior to initiating the proposed expansion of services, the chief financial officer of 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 the Savings Bank 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 Savings Bank or OTS since the date of the financial statements submitted with the Application, the expansion of services must not be initiated unless the information is presented to the Regional Director, and the Regional Director provides written non-objection to the initiation of the expansion of services;
3. The Savings Bank must advise the Regional Director in writing within 5 calendar days after the effective date of the proposed expansion of services: (a) of the effective date of the expansion of services; and (b) that the expansion of services was initiated in accordance with all applicable laws and regulations, the Application, and this Order;
4. At least 40 percent of the Savings Bank's board of directors must be individuals who are not officers or employees of the Savings Bank's holding companies 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 Savings Bank's holding companies 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;
5. The Savings Bank must receive the prior written non-objection of the Regional Director for any proposed new directors or senior officers during the first two years following commencement of full-service operations;
6. The Savings Bank must identify and receive the Regional Director's non-objection for a chief lending officer and a CRA officer within 90 calendar days of the date of this Order;
7. At least 45 calendar days before offering products and services through agents of affiliates, the Savings Bank must submit to the Regional Director a comprehensive regulatory compliance training program for such agents, and receive the written non-objection of the Regional Director prior to implementation;
8. The Savings Bank must submit independently audited financial reports for the first three years following commencement of full-service operations;
9. 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 for the prior, written non-objection of the Regional Director. The

request for change must be submitted no later than 30 calendar days prior to the desired implementation date; and

10. For three years following initiation of the proposed expansion of services, 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 deviations.

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

By order of the Director of the Office of Thrift Supervision, or his designee, effective August 21, 2010.



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