

OFFICE OF THRIFT SUPERVISION

Approval of Application for Permission to Organize a Federal Savings Bank and Holding Company Acquisition

Order No.: 2002-35
Date: August 16, 2002
Docket Nos.: 17868, H-3760, and H-3861

Victory Bancorp, Inc., Ft. Mitchell, Kentucky (the Holding Company), and the EMF Trust (collectively, the Applicants) have applied for approval of the Office of Thrift Supervision (OTS) pursuant to 12 U.S.C. §§ 1464(e) and 1467a(e) and 12 C.F.R. §§ 552.2-1 and 574.3 for permission to organize and acquire Victory Community Bank, Ft. Mitchell, Kentucky (the Savings Bank). (The foregoing are collectively referred to as the Applications.)

OTS has considered the Applications under the standards set forth in 12 U.S.C. §§ 1464(e) and 1467a(e) and 12 C.F.R. §§ 543.3, 552.2-1, 574.4 and 574.7, and other applicable statutes and regulations. OTS also has considered the Applications under the Community Reinvestment Act (CRA), 12 U.S.C. §§ 2901 *et seq.*, and the OTS regulations thereunder, 12 C.F.R. Part 563e. In addition, OTS has considered the submissions made by the Applicants and the results of examinations conducted by federal agencies.

The two organizers who will become the Chairman of the board of directors and the Chief Executive Officer of both the Holding Company and the Savings Bank were partners in a profitable mortgage company that has become a subsidiary of the Holding Company, and three of the proposed senior managers of the Savings Bank have extensive financial industry experience. The application materials indicate that the remaining members of the proposed board of directors possess extensive experience in the operations of financial institutions and other business endeavors. In addition, routine background checks were made. In sum, a review of this information warrants the conclusion that the character and responsibility of the Applicants are consistent with approval of the Applications.

The Savings Bank will engage in deposit and lending activities. The Savings Bank will initially focus its deposit taking in the Kentucky suburbs of Cincinnati and lending activities in the entire Cincinnati Ohio-Kentucky-Indiana MSA (Cincinnati MSA). The population of the Cincinnati MSA is increasing and the areas near the proposed home office of the Savings Bank have seen significant increases in both population and insured deposits. Thus, we conclude that there is a necessity in the community for the Savings Bank.

With respect to undue injury to local thrift and home financing institutions, while the Savings Bank may take some business from existing institutions, those institutions generally are bigger and operate over a larger territory than will the Savings Bank. Moreover, the Savings Bank proposes to obtain only a small fraction of the deposits in the Cincinnati MSA market area and no one opposed the application in response to the public notice. The limited additional competition the Savings Bank will provide should be salutary. Therefore, we conclude that the Savings Bank will not have an adverse impact on local thrift and home financing institutions in the geographic area where its customers will be located.

The Savings Bank will be well capitalized. In addition, the Savings Bank will take over a significant portion of the mortgage company's business, the Savings Bank's business plan is reasonable, and the proposed management appears to be competent. In addition, approval of the application will be subject to conditions requiring that the Savings Bank submit any proposed major changes or deviations from the business plan to OTS for prior written non-objection, and that the Savings Bank submit independent audit reports to the Regional Office during its first three years of operation. OTS review of material changes to the business plan helps ensure that changes to the business plan included in the application would not be detrimental to the Savings Bank. The audit reports enable OTS to review the controls and procedures employed by the Savings Bank during its first years of operation. Such oversight is appropriate so OTS may confirm that proper procedures are being developed and followed. Moreover, because the Savings Bank will sublease facilities from the Holding Company and engage in a number of transactions with its affiliates, the Savings Bank will be required to have at least 40 percent of its board of directors be persons who are not officers or employees of the Holding Company or its affiliates or who the Regional Director has otherwise determined lack sufficient independence, and have at least one member of the Savings Bank's board of directors be a person who is not an officer or director of the Holding Company or any of its affiliates (other than the Savings Bank) and who also is not an officer or employee of the Savings Bank or someone who the Regional Director has otherwise determined lacks sufficient independence. Furthermore, the Savings Bank will be required to obtain approval from the Regional Director for any change in the responsibilities of any senior executive officer and for the addition of any new executive officer or director during its first three years of operations. These conditions are appropriate to enable OTS to confirm that the Savings Bank will be operated properly and by qualified personnel. Accordingly, these conditions are appropriate for maintaining the safe and sound operation of the Savings Bank. With these conditions, we conclude that there is a reasonable probability of the Savings Bank's usefulness and success.

Neither the Holding Company nor the Savings Bank has any prior CRA performance. OTS received no public comments objecting to the Applications. The

Savings Bank will extend credit for housing within its market area. In addition, the Savings Bank projects that it will make a substantial portion of its loans in low and moderate-income areas within its CRA assessment area and to low and moderate-income customers. The Savings Bank's CRA assessment area will be the area encompassed by the Cincinnati MSA. We find that the Savings Bank has made a satisfactory showing that it will satisfy the requirements for the CRA.

The Savings Bank intends to adopt a charter and bylaws that generally conform to the model charter and bylaws for a Federal stock institution and will have an initial capitalization that exceeds the minimum regulatory requirement. In addition, as the Savings Bank's board of directors will be made up of persons with varied backgrounds and a majority of its members live and/or work in the Cincinnati MSA, the composition of the board meets regulatory requirements.

The Savings Bank will engage in a number of transactions with its affiliates. In addition, the Savings Bank will engage in some cross marketing with its affiliates. In order to ensure that the Savings Bank's transactions between itself and affiliates and the cross marketing of products conform to limits imposed on such transactions, OTS will condition approval of the Applications by requiring the Savings Bank to submit to the Regional Office any contract or agreements with affiliates that have not previously been submitted, and require the Savings Bank to comply with the anti-tying provisions of the HOLA and to develop and submit to the Regional Director for his non-objection written procedures to effect such compliance.

Among the EMF Trust's assets are some unimproved real estate held for sale. Because those particular real estate assets are not held for the purpose of prompt development they constitute an impermissible investment for a savings and loan holding company. See, 12 U.S.C § 1467a(c)(1)(C); cf., 12 C.F.R. § 584.2-1(b)(4). Accordingly, OTS is requiring the EMF Trust to divest those assets within two years from the date of this order.

Accordingly, the Applications are hereby approved, subject to the following conditions:

1. The Savings Bank and the Holding Company must receive all required regulatory approvals prior to consummation of the proposed transaction with copies of all such approvals provided to the Regional Director;
2. The proposed transaction must be consummated within one hundred and twenty (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 Holding Company 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 the Holding Company and the

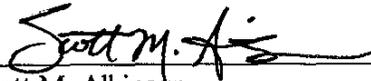
Savings Bank as disclosed in the Applications. If additional information having an adverse bearing on any feature of the Applications is brought to the attention of the Holding Company, the Savings Bank or OTS since the date of the financial statements submitted with the Applications, the transaction shall 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 Holding Company and the Savings Bank 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 Savings Bank must submit independent audit reports to the Regional Director for its first three years of operations. These reports must be in compliance with the audit rules set forth at 12 C.F.R. § 562.4;
6. 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 60 calendar days prior to the desired implementation date with a copy to the FDIC Regional Office;
7. For a three year period following commencement of operations, the Savings Bank must submit to the Regional Director within 30 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;
8. No later than five calendar days from the date the Savings Bank opens for business, the chief financial officer of the Savings Bank must provide the Regional Director with a reconciliation of the Savings Bank's capital;
9. At least 40 percent of the Savings Bank's board of directors must be individuals (a) who are not officers or employees of the Holding Company or its affiliates (other than the Savings Bank) or (b) who have not otherwise been determined by the Regional Director to lack sufficient independence, and at least one member of the Savings Bank's board of directors must be an individual (a) who is not an officer or employee of the Holding Company or its affiliates (including the Savings Bank) or a director of the Holding Company or its affiliates (other than the Savings Bank) or (b) who has not otherwise been determined by the Regional Director to lack sufficient independence;

10. For a period of three years following the date of consummation, the Savings Bank 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;
11. During the first three years of operations, any contracts or agreements pertaining to transactions with affiliates not yet submitted to OTS for review, must be provided to the Regional Director for his written non-objection at least 30 days prior to their execution and implementation
12. The Holding Company and its affiliates, including the Savings Bank, must comply with the anti-tying restrictions of 12 U.S.C. 1464(q) and 1467a(n) and must develop written procedures to effect such compliance and submit such procedures for and obtain the Regional Director's non-objection prior to the Savings Bank commencing operations;
13. Within two years of the date of this Order, the EMF Trust must divest any unimproved real estate that was not held for prompt development as of the date of this Order.

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
August 15, 2002.



Scott M. Albinson
Managing Director
Office of Supervision