

OFFICE OF THRIFT SUPERVISION

Approval of an Application by a Federal Credit Union to Convert to a Federal Mutual Savings Association And Merger Into an Existing Federal Mutual Savings Bank

Order No.: 2003-01
Date: January 24, 2003
Re: OTS No. 15220

Salt City Hospitals Federal Credit Union, Syracuse, New York (Credit Union), seeks approval of the Office of Thrift Supervision (OTS) pursuant to 12 C.F.R. §§ 543.8 and 543.9 to convert to a federal mutual savings association, Salt City Interim Federal Savings Association (Interim). Beacon Federal, East Syracuse, New York (Savings Bank), seeks OTS' permission to acquire Interim in a merger transaction pursuant to 12 U.S.C. § 1828(c) (the Bank Merger Act (BMA)), and 12 C.F.R. §§ 546.2 and 563.22 (Merger). (The foregoing are referred to as the Applications.)

The Proposed Transaction

In the proposed transaction, the Credit Union proposes to convert directly from a federal credit union to a Savings Association Insurance Fund (SAIF)-insured, federal mutual savings association. Immediately thereafter, Interim would merge with and into the Savings Bank, with the Savings Bank being the surviving entity. The Credit Union's members' interests in their deposits as mutual accountholders in the newly converted savings bank, and the Savings Bank (after the Merger) would be identical in amount and in interest to their share and other accounts in the Credit Union.

Conversion Application

The proposed conversion of the Credit Union to a federal mutual savings association requires OTS approval under 12 C.F.R. §§ 543.8 and 543.9. Section 543.8 allows a depository institution, as defined in section 552.13, that is in mutual form, to convert into a federal mutual savings association, provided that: (i) the depository institution, upon conversion, will have its deposits insured by the Federal Deposit Insurance Corporation (FDIC); (ii) the depository institution, in accomplishing the conversion, complies with all applicable state and federal statutes and regulations, and OTS policies, and obtains all necessary regulatory and member approvals; and (iii) the resulting federal mutual association conforms, within the time prescribed by OTS, to the requirements of section 5(c) of the Home Owners' Loan Act (HOLA).¹

¹ 12 C.F.R. § 543.8(a) (2002).

The Credit Union is a "depository institution" within the meaning of section 552.13. The Credit Union has applied to the FDIC for SAIF insurance of accounts for the Interim. The Credit Union's members approved the conversion at a June 27, 2002 meeting.

With regard to the third requirement, conformity with the requirements of section 5(c) of the HOLA, the Credit Union holds approximately 54 percent of its assets in the form of consumer loans, and has deposits and a capital account with a corporate credit union and a deposit with the National Credit Union Share Insurance Fund (NCUSIF). With respect to the consumer loans, the converted Credit Union will not function as a separate entity after the conversion, but will merge with the Savings Bank. As of September 30, 2002, the Savings Bank's consumer loans exceeded the 35 percent limitation in 12 C.F.R. § 560.30. OTS Order No. 98-100, approving the Savings Bank's conversion from a federal credit union, provided for a three-year period for the Savings Bank to comply with this requirement, and provided the ability to extend that time period for good cause. OTS approved a one-year extension request, extending the timeframe until June 30, 2003, for the Savings Bank to comply with the asset limitation requirement. The Savings Bank plans to satisfy the consumer loan limitation by June 30, 2003.

With respect to the deposit and capital account at the corporate credit union and the deposit with the NCUSIF, OTS is imposing a condition requiring the Savings Bank, as the successor to the Credit Union, to withdraw the capital account as soon as practicable, but no later than 3 years after consummation of the transaction. The Savings Bank must withdraw the deposits as soon as possible after consummation of the transaction.

Accordingly, OTS concludes that the requirements under section 543.8 have been satisfied.

Section 543.9 of OTS' regulations adopts the approval standards of section 5(e) of the HOLA and section 543.2(g)(1). The HOLA provides that OTS may grant a federal savings association charter only: (i) to persons of good character and responsibility; (ii) if, in 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.² OTS regulations implementing this statute set forth the same standards, and, in addition, require OTS to consider whether the association will promote credit for housing consistent with the safe and sound operation of a federal savings association.

In addition, OTS' Community Reinvestment Act (CRA) regulations provide that an applicant for a federal thrift charter must submit with its application a description of

² Section 5(e) of the HOLA, 12 U.S.C. § 1464(e).

how it will meet its CRA objectives.³ OTS takes the description into account when considering the application and may deny the application on that basis.

As to character and responsibility, the Credit Union's management has received ratings that are consistent with approval, and accordingly, OTS concludes that this approval criterion has been satisfied.

With respect to the probability of usefulness and success, the Applications state that the Credit Union will not operate as a separate savings association. The Savings Bank, as the successor to the Credit Union's business, has demonstrated a reasonable probability of success after the transaction. To ensure that the Interim does not operate as a separate association, OTS is imposing a condition requiring that the Interim merge into the Savings Bank immediately following the conversion of the Credit Union and not operate as a separate savings association. Accordingly, OTS concludes that this approval criterion has been satisfied.

OTS concludes that there is a necessity for the institution in the community, based upon the Credit Union's existing operations. In addition, OTS concludes that the conversion of the Credit Union to a federal mutual savings bank will not cause undue injury to local thrifts and home financing institutions, in light of the Credit Union's existing operations.

As for the provision of credit for housing and compliance with the CRA, the converted Credit Union will not operate as a stand-alone federal savings association after the proposed conversion. The Savings Bank's performance, both past and proposed, indicates the continued provision of credit for housing. In addition, the Savings Bank's CRA rating is "Satisfactory." The Savings Bank has not updated its CRA Plan since 1998 and the Savings Bank's lending patterns have changed since that time. Therefore, OTS is imposing a condition requiring the Savings Bank to submit an updated CRA Plan within 90 days after the consummation of the Merger. Accordingly, OTS concludes that approval of the charter conversion application is consistent with these standards, subject to the imposition of the condition.

Accordingly, OTS concludes that the requirements under section 543.9 have been satisfied.

Bank Merger Act Application

The proposed transaction requires OTS approval of the merger between the two federal mutual savings banks following the conversion of the Credit Union, pursuant to 12 U.S.C. § 1828(c), and 12 C.F.R. §§ 546.2 and 563.22(a). OTS is required to consider the financial and managerial resources and future prospects of the Savings Bank and the convenience and needs of the community to be served.⁴ Also, OTS must consider the

³ 12 C.F.R. § 563e.29(b) (2002).

⁴ 12 U.S.C. § 1828(c)(5)(B); 12 C.F.R. § 563.22(d)(2002).

impact of the acquisition on competition.⁵ 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. Further, OTS regulations require that OTS consider: 1) the capital level of the Savings Bank after the proposed transaction; 2) whether the transaction is equitable to all concerned; 3) 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; 4) whether compensation to officers, directors, and controlling persons of the disappearing association is reasonable; and 5) whether an advisory board is established for the stated period of time and compensated only in accordance with regulatory guidelines.⁶ Finally, 12 C.F.R. § 563e.29(a)(3) requires that OTS take into account assessments under the CRA when approving a transaction that is subject to the BMA.

As to financial resources and capital, the Savings Bank is well capitalized, and will continue to be well capitalized after the proposed transaction. With respect to managerial resources, management at the Savings Bank will not change as a result of the proposed transaction. OTS, in its role as the Savings Bank's regulator, is familiar with the Savings Bank's managerial resources, and concludes that the Savings Bank's managerial resources are consistent with approval. Accordingly, OTS concludes that the financial and managerial resources and capital level are consistent with approval of the application.

As to the future prospects of the Savings Bank, the Savings Bank is expected to remain well capitalized and have adequate earnings. Accordingly, OTS concludes that the future prospects of the Savings Bank are consistent with approval.

As to the convenience and needs of the community, the business of the Credit Union will continue as part of the Savings Bank. The Credit Union's former office will continue to operate in Syracuse, New York for a period of time and will be open to the public. The office will offer the services offered by the Savings Bank's other branch offices. Accordingly, OTS concludes that convenience and needs considerations are consistent with approval of the transaction.

As to the competitive impact of the transaction, the proposed transaction will have no significant impact on competition in the Syracuse, New York area, because the Credit Union has assets of \$8.6 million, and the aggregate deposits of all savings associations and banks in Syracuse, New York totaled approximately \$8.23 billion as of June 30, 2002. The Department of Justice and the other banking agencies were notified of the transaction and raised no objections. Based on the foregoing, OTS concludes that the competitive considerations are consistent with approval.

As for the conformity with laws and regulations, approval will be conditioned on the applicants obtaining any necessary approvals and providing evidence thereof to the Regional Office before the transaction is consummated.

⁵ 12 U.S.C. § 1828(c)(5)(B); 12 C.F.R. § 574.7(c)(2) (2002).

⁶ 12 C.F.R. § 563.22(d)(1)(vi) (2002).

As for equitable treatment, full disclosure, employment considerations and advisory boards, the transaction was negotiated at arm's length. The transaction does not involve any payment of consideration because the merging associations are both mutual institutions. All agreements and understandings have been disclosed. The Savings Bank is expected to form an advisory board consisting of Credit Union directors, and the advisory board as proposed is consistent with OTS guidelines. There are no issues under the provisions of section 563.22(d) pertaining to employment contracts. Accordingly, OTS concludes that approval of the transaction is not objectionable based on equitable treatment, full disclosure, and compensation of officers and directors, and advisory boards.

As for compliance with money laundering statutes and regulations, OTS examines savings associations for compliance with such statutes and regulations. OTS has reviewed the compliance record of the Savings Bank and the Credit Union, which involves an evaluation of the Savings Bank's and the Credit Union's compliance with anti-money laundering provisions. OTS' review did not reveal any significant violations of the Bank Secrecy Act by the Savings Bank or the Credit Union. OTS concludes that the Savings Bank's and the Credit Union's effectiveness in combating money-laundering activities is consistent with approval.

As for compliance with the CRA, the Savings Bank has a CRA rating of "Satisfactory." No adverse comments were received concerning the Merger. Accordingly, OTS concludes that approval of the transaction is consistent with the CRA, subject to the imposition of the condition described above.

For the reasons set forth above, OTS finds 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:

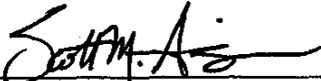
1. The Savings Bank and the Credit Union must receive all required regulatory approvals prior to consummation of the proposed transaction with copies of all such approvals provided to the Regional Director;
2. The proposed transaction must be consummated no earlier than fifteen (15) calendar days and 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 transaction, the chief financial officers of the Savings Bank and the Credit Union must certify in writing to the Regional Director that no material adverse events or material adverse changes have occurred with respect to the financial condition or operation of the Savings Bank and the Credit Union 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 Savings Bank, the Credit Union, 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 the consummation of the transaction;

4. The Savings Bank must advise the Regional Director in writing within five (5) calendar days after the effective date of the proposed transaction: (a) of the effective date of the proposed transaction; and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the Applications and this Order;
5. Interim will not operate as a separate savings association. Interim must merge into the Savings Bank with the Savings Bank as the survivor immediately following the Credit Union's conversion to Interim;
6. The Savings Bank must submit an updated CRA Plan to the Regional Director no later than 90 days after the effective date of the Merger;
7. No later than 30 calendar days after the effective date of the Merger, the Savings Bank must advise each accountholder, whose withdrawable accounts in the resulting institution would increase above \$100,000 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 within this 30 day period; and
8. The Savings Bank must withdraw the capital account with the corporate credit union as soon as practicable, but no later than 3 years after the consummation of the transaction, and must withdraw the deposit with the NCUSIF and the deposit with the corporate credit union as soon as possible. The Savings Bank must submit satisfactory evidence to the Regional Director upon the withdrawal of these accounts.

Any time period specified herein may be extended by the Regional Director, for good cause, for up to 120 calendar days.

By order of the Director of the Office of Thrift Supervision, or his designee,
effective January 24, 2003.



Scott M. Albinson
Managing Director
Office of Supervision