

OFFICE OF THRIFT SUPERVISION

Approval of Mutual to Stock Conversion and Holding Company Application

Order No.: 2004-12
Date: March 15, 2003
Docket Nos.: H-4068, 02612

St. Edmond's Federal Savings Bank, Philadelphia, Pennsylvania (Savings Association) has filed an application for approval to convert from a federally chartered mutual savings bank to a federally chartered stock savings bank (the Conversion), pursuant to Section 5(i) of the Home Owners' Loan Act of 1933 (HOLA), and 12 C.F.R. Part 563b (the Conversion Regulations). In connection with the Conversion, the Savings Association has requested a waiver of 12 C.F.R. § 563b.360 relating to the subordination of one director's subscription rights to other eligible account holders. In addition, SE Financial Corp. (Holding Company), a newly formed Pennsylvania corporation, has applied pursuant to 12 U.S.C. § 1467a(e) and 12 C.F.R. § 574.3, for approval to acquire the Savings Association in connection with the Conversion.

Conversion Application

The Conversion Regulations provide that the Office of Thrift Supervision (OTS) may approve an application for conversion only if: (i) the plan of conversion adopted by the savings association's board of directors complies with 12 C.F.R. Part 563b; (ii) the savings association will meet its regulatory capital requirements after the conversion; and (iii) the conversion will not result in a taxable reorganization of the association under the Internal Revenue Code. In addition, 12 C.F.R. § 563b.200(c) provides that OTS, in reviewing an application for conversion under 12 C.F.R. Part 563b, will examine the extent to which the conversion will affect the convenience and needs of the community, and may deny or condition the application on the basis of this review.

OTS has considered the Savings Association's plan of conversion, and has concluded that, with the exception of one requirement, discussed below, the plan contains the required provisions, and is in accordance with the relevant regulatory requirements, provided that the Savings Association and the Holding Company comply with the conditions described below.

The Savings Association has requested a waiver of 12 C.F.R. § 563b.360 to permit one of its directors to purchase stock as an eligible account holder. The subject director of the Savings Association became a director in August 2002 and made his initial deposit with the Savings Association shortly thereafter. The eligibility record date for the proposed conversion is December 31, 2002. Therefore, the director qualifies as an eligible depositor but, unless section 563b.360 is waived, all of his subscription rights based on those deposits in the Savings Association would be subordinated to those of the other eligible account holders. The purpose of section 563b.360 is to ensure that insiders do not increase their subscription rights in anticipation

of the conversion. Here the director had no accounts at the Savings Association prior to becoming a director nor would he likely have had any knowledge of the potential for a conversion prior to joining the board in August 2002. Moreover, it is customary for a savings association's directors to maintain accounts at the savings association and the amounts of his deposits and proposed subscription are not excessive. Accordingly, there is good cause for the waiver, and the waiver is hereby granted, pursuant to 12 C.F.R. 563b.5(c).

The Conversion will not cause the Savings Association, which is currently well-capitalized, to fail to meet its regulatory capital requirements. Moreover, the Conversion will not result in a taxable reorganization of the association under the Internal Revenue Code.

Finally, based on the Savings Association's Community Reinvestment Act (CRA) rating of "Satisfactory", and the business plan, OTS concludes that the application meets the convenience and needs requirement set forth at 12 C.F.R. § 563b.200(c).

OTS is conditioning approval of the conversion application on the requirement that the Savings Association have a charter that subjects it to OTS jurisdiction for three years after the proposed transaction because many of the post-transaction restrictions relating to mutual-to-stock conversions continue for three years. For OTS to ensure that an institution complies with these requirements, it is appropriate to require the institution to remain subject to OTS jurisdiction for that period of time.

In addition, OTS is conditioning approval of the conversion application on the requirement that the Savings Association receive written OTS approval prior to entering into negotiations with a potential acquiror for three years. OTS carefully applies the criteria set forth in 12 C.F.R. § 563b.525 in reviewing an offer or acquisition under section 563b.525 in the first three years following conversion, and accordingly, it is appropriate for the converted entity (or its holding company) to seek OTS clearance before speaking with potential acquirors, given the possibility that the acquisition may not ultimately be approved. This condition helps ensure that the Savings Association will comply with section 563b.525, and helps ensure the Savings Association's safety and soundness by reducing the possibility that the Savings Association or the Holding Company will expend time and resources pursuing a transaction that it ultimately may not be able to complete.

The Conversion Regulations provide that a plan of conversion shall contain no provision that OTS shall determine to be inequitable or detrimental to the applicant, its savings account holders or other savings associations or to be contrary to the public interest.¹ The two conditions discussed above help to serve to ensure the fairness of the conversion and the safe and sound operation of the Savings Association.

¹ 12 C.F.R. § 563b.130 (2003).

Holding Company Application

The HOLA provides that OTS must approve a holding company application proposing the acquisition of one savings association by a company other than a savings and loan holding company unless OTS finds that the financial and managerial resources and future prospects of the company and the association involved are such that the acquisition would be detrimental to the association or the insurance risk of the Savings Association Insurance Fund (SAIF).² Consideration of the managerial resources of a company or savings association must include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the entity. OTS must deny a holding company application, however, if the transaction would have certain anticompetitive effects.³ In addition, 12 C.F.R. § 563e.29 requires that OTS take into account assessments under the CRA when approving savings and loan holding company applications.

As for managerial resources, OTS, in its role as the Savings Association's regulator, is familiar with the Savings Association's managerial resources. The board of directors of the Holding Company will consist of the present directors of the Savings Association, and the executive officers of the Holding Company will consist of executive officers of the Savings Association. OTS has found the present management of the Savings Association to be satisfactory. Therefore, OTS concludes that the managerial resources of the Savings Association and the Holding Company are consistent with approval.

As for financial resources, OTS is familiar with the Savings Association's financial resources. As of December 31, 2003, the Savings Association's core and tangible capital ratios were 9.04 percent and the Savings Association's total risk-based capital ratio was 21.03 percent. The Holding Company will infuse 50 percent of the net offering proceeds of the related stock offering into the Savings Association. The only activity of the Holding Company will be its ownership of the stock of the Savings Association. Accordingly, we conclude that the financial resources of the Holding Company and the Savings Association are consistent with approval.

At the present time the Savings Association does not have employment or change-in-control agreements with its officers or directors. However, it has indicated that such agreements may be entered into in the future by it or the Holding Company. Accordingly, OTS is requiring the Savings Association and the Holding Company, during the first 18 months after the conversion, to submit to the Regional Director for his nonobjection any such proposed agreements prior to their being executed. This condition will help ensure that the future prospects of the Savings Association and the Holding Company meet the conditions for approval. After considering the financial and managerial resources of the Holding Company and the Savings Association, and the materials provided by the applicant pertaining to the stock offering, we conclude that the future prospects of the Holding Company and the Savings Association, and risks to the SAIF, are consistent with approval, provided that the conditions set forth below are satisfied.

² 12 U.S.C. § 1467a(e)(1)(B).

³ See, 12 U.S.C. § 1467a(e)(2).

The proposed acquisition will not cause the Savings Association to become affiliated with any other operating depository institution. Accordingly, the transaction is not objectionable on competitive grounds.

As for the CRA, OTS does not impute the CRA performance of a converting savings association to a new entity, such as the Holding Company. OTS has received no comments objecting to the proposed transaction. Accordingly, we conclude that approval of the holding company application is consistent with the CRA.

Based on the foregoing, OTS has concluded that the proposed holding company transaction complies with all of the applicable standards and criteria, provided the conditions set forth below are satisfied.

This Order does not constitute clearance of the proxy soliciting material included under Items 3 and 4 of the application, or the stock offering materials included under Item 3 and Exhibit 2(b) of the application.

Conclusions

Based on the foregoing analysis, OTS concludes that the conversion application meets the applicable approval criteria. Accordingly, the conversion of the Savings Association is hereby approved, provided that the following conditions are complied with in a manner satisfactory to the Northeast Regional Director, or his designee (Regional Director):

1. Promptly after the completion of the sale of all the shares of capital stock to be sold in connection with the Conversion, the Savings Association must submit: (a) seven executed copies of the proposed amendments to the Savings Association's charter, the appropriate form of bylaws as prescribed by 12 C.F.R. § 552.5 and a certification by the Savings Association's secretary that the copies are in conformity with the proposal of the board of directors adopted by the Savings Association's members; and (b) a statement by the Savings Association's independent appraiser that, to the best of his/her knowledge and judgment, nothing of a material nature has occurred (taking into account all of the relevant factors including those which would be involved in a change in the maximum subscription price) which would cause him/her to conclude that the sale price was not compatible with his/her estimate of the Holding Company's and the Savings Association's total pro forma market value at the time of sale;
2. The following general principles of conversion contained in 12 C.F.R. Part 563b apply to the Holding Company, and if applicable, any successor corporation, subsequent to the Conversion as if they were the converting association:

563b.500, 563b.505, 563b.510, 563b.515, 563b.520, 563b.525 and 563b.530;

3. For three years following the completion of the Conversion, neither the Holding Company nor the Savings Association may, without prior written consent of the Director, Supervision Policy, or her designee, take any action with a view toward a transaction which would require stockholder approval under 12 C.F.R. § 552.13(h);
4. The Holding Company must not take any action that would prevent its stock from being listed on a national or regional securities exchange or from being quoted or reported on the NASDAQ system;
5. For three years following completion of the stock issuance, the Savings Association must have a charter that subjects it to OTS jurisdiction; and
6. Promptly after the completion of the sale of all the shares of capital stock to be sold in connection with the offering, the Holding Company must submit a certification by its chief executive officer stating that all the shares proposed to be sold have been sold, the price at which they were sold, and the date of completion of the offering.

In addition, based on the forgoing analysis, OTS concludes that the holding company application meets the applicable approval criteria. Accordingly, the holding company application is hereby approved, provided that the following conditions are complied with in a manner satisfactory to the Regional Director:

1. The proposed acquisition must be consummated within 120 calendar days after the date of this Order;
2. The Holding Company must comply with each of the conditions, and must submit each of the certifications, as specified in 12 C.F.R. § 574.7(a)(2) and (3), within the timeframes specified therein;
3. If, during the first eighteen months after the Conversion is consummated, either the Savings Association or the Holding Company proposes to enter into employment or change-in-control agreements with any of their officers or directors, such proposed agreements must be submitted to the Regional Director and receive his nonobjection prior to their being executed; and

4. The Holding Company and the Savings Association must operate within the parameters of the business plan over the three-year business plan period. Any proposed major deviations or material changes from the plan must be submitted at least 30 calendar days before the change for the prior written approval of the Regional Director.

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 March 15, 2004.



Scott M. Albinson
Managing Director, Examinations,
Supervision and Consumer Protection