

OFFICE OF THRIFT SUPERVISION

Approval of Application for Permission to Organize a Federal Savings Bank

Order No.: 2006-09
Date: February 24, 2006
OTS No.: 18006

Several individuals (Organizers) have applied for approval of the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1464(e) and 12 C.F.R. § 552.2-1, for permission to organize Esquire Bank, Brooklyn, New York (Savings Bank) (Application).

The Parties

The Savings Bank is proposed to be organized by ten people: Kenneth Breslin, Richard J. Greene, Thomas H. Henderson, Jr., Salvatore Ianuzzi, Angelicque Moreno, Gary B. Pillersdorf, Richard T. Powers, Dennis Shields, Kevin C. Waterhouse, and Selig Zises.

The Savings Bank will be organized as a federally chartered, Savings Association Insurance Fund -insured, full service stock savings bank.

The Proposed Transaction

In the proposed transaction, the Organizers will organize the Savings Bank. The Organizers propose to sell between 1,500,000 and 1,800,000 shares of common stock at \$10 per share to investors in a private placement. The Savings Bank will be capitalized with the proceeds from the Savings Bank's stock offering.

Statutory and Regulatory Standards

The Home Owners' Loan Act (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 exists for such association in the community to be served; (iii) if there is a reasonable probability for 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. OTS regulations implementing the HOLA 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.

In addition, OTS regulations regarding the establishment of de novo federal savings associations set forth standards OTS considers in granting a de novo federal

charter, regarding: (i) initial capitalization of a federal savings association; and (ii) the residence and composition of an association's board of directors.

Further, 12 C.F.R. § 563e.29(b) provides that an applicant for a federal thrift charter must submit with its application a description of how it will meet its Community Reinvestment Act (CRA) objectives. OTS takes this description into account when considering an application and may deny an application or condition approval on CRA grounds.

With respect to character and responsibility, OTS has reviewed the backgrounds of the Organizers, and the identified officers and directors of the Savings Bank. OTS has concluded that the Organizers' character and responsibility are consistent with approval. In addition, based on OTS' review of the proposed officers and directors of the Savings Bank, OTS concludes that the character and responsibility of the directors and officers are consistent with approval. OTS is imposing condition 14 below because two of the Organizers, Messrs. Zises and Shields (Founding Organizers) and parties with whom the Founding Organizers are presumed to be acting in concert under the OTS Acquisition of Control Regulations (Control Group), plan to purchase up to 19.9 percent of the Savings Bank's stock. Because the Founding Organizers have not yet identified all members of the Control Group, OTS is unable to ascertain whether all of the persons in the Control Group have the requisite character and responsibility. OTS concludes that this approval criterion is satisfied, subject to the imposition of condition 14, which is intended to help ensure that the members of the Control Group have the requisite character and responsibility.

As for the necessity for the Savings Bank in the community, the Savings Bank will focus its deposit taking in its local community surrounding its home office in Brooklyn, New York. Deposits in the Savings Bank's proposed market area have increased approximately 100 percent, from approximately \$1.5 billion, to approximately \$3.0 billion, between June 2001 and June 2005, and deposits in the primary market area are expected to continue to grow. Therefore, OTS concludes that this criterion is satisfied.

With respect to undue injury to properly conducted existing 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. The Savings Bank's projected level of deposits in its first three years of operations will constitute approximately 1.6 percent of the deposits in its primary market area initially, and 3.7 percent of the deposits after three years. OTS received no comments opposing the Application in response to the public notice. Accordingly, OTS concludes that the Savings Bank will not cause undue injury to properly conducted existing local thrift and home financing institutions.

With respect to the reasonable probability of the Savings Bank's usefulness and success, OTS reviewed the Savings Bank's business plan, proposed capital levels, and the

competence and experience of proposed management. OTS concludes that the business plan is reasonable, that the Savings Bank will have adequate capital, and that the Savings Bank's managerial and financial resources are consistent with a reasonable probability of success. Conditions 5 through 7 below are designed to help ensure compliance with the business plan included in the Application, that changes to or from that plan, including any proposed new stock benefit plan not yet submitted to OTS, would not be detrimental to the Savings Bank, and that the Savings Bank operates pursuant to appropriate policies and procedures. OTS is imposing conditions 8 and 16 below to ensure compliance with regulatory provisions and policies concerning affiliates, affiliated persons or related entities and to ensure that the Savings Bank is operated in a safe and sound manner. OTS is imposing conditions 9, 11 and 12 below to enable OTS to help ensure that the Savings Bank will be operated properly and by qualified personnel and pursuant to employment contracts that conform to OTS' policies. OTS is imposing condition 10 below to ensure that the Savings Bank has appropriate policies, procedures, and internal controls in several areas. OTS is imposing condition 13 below to help ensure that the Savings Bank has appropriate arrangements with third parties for the safe and sound operation of outsourced functions. Also, OTS is imposing condition 17 below to ensure compliance with regulatory requirements and to ensure that the Savings Bank is operated in a safe and sound manner. In addition, the Savings Bank is considering entering into an agreement with an asset management company that would offer mutual funds and other non-deposit investment products. In order to monitor this activity, OTS is imposing condition 15 below.

Based on the foregoing analysis, OTS concludes that the probability of the Savings Bank's usefulness and success is consistent with approval, subject to the imposition of the conditions, which are intended to help ensure the probability of the Savings Bank's usefulness and success.

The Savings Bank's business plan projects substantial residential mortgage lending and that the Savings Bank will meet Qualified Thrift Lender requirements. The Savings Bank will have experienced management, and appropriate procedures regarding lending will be in place. Accordingly, we conclude that the Savings Bank will provide credit for housing consistent with the safe and sound operation of a federal savings association.

OTS received no comments objecting to the Application. In addition, OTS has reviewed the Savings Bank's CRA plan and has found it to be acceptable. The Savings Bank's CRA assessment area includes portions of Brooklyn and Manhattan, New York. We find that the Savings Bank has made a satisfactory showing that it will satisfy the requirements of the CRA and OTS' implementing regulations.

The Savings Bank intends to adopt a federal charter and bylaws that conform to the model charter and bylaws for a federal stock institution. The Savings Bank will have an initial capitalization that exceeds the minimum regulatory requirement. In addition, the composition of the Savings Bank's board of directors will comply with 12 C.F.R. §

543.3(d), because: (i) a majority of the Savings Bank's directors live or work in New York; (ii) the Savings Bank's board of directors will be made up of persons with varied backgrounds; and (iii) no more than one-third of the Savings Bank's directors are in related businesses.

Conclusion

OTS has considered the Application under the standards set forth in 12 U.S.C. § 1464(e) and 12 C.F.R. §§ 543.3 and 552.2-1(b), and under the CRA, 12 U.S.C. §§ 2901, *et seq.*, and the OTS regulations thereunder, 12 C.F.R. Part 563e. OTS finds that the Application satisfies the applicable approval standards, provided the following conditions are complied with in a manner satisfactory to the Northeast Regional Director, or his designee (Regional Director). Accordingly, the Application is hereby approved, subject to the following conditions:

1. The Savings 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 transaction must be consummated within 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 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 Organizers, the Savings Bank or OTS since the date of the financial statements submitted with the Application, the transaction must 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 Savings Bank must, within 5 calendar days after the effective date of the proposed transaction: (a) advise the Regional Director in writing of the effective date of the proposed transaction and of the Savings Bank's insurance of accounts; (b) advise the Regional Director in writing that the transaction was consummated in accordance with all applicable laws and regulations, the Application and all materials submitted during the application process, and this Order; and (c) provide a reconciliation of the Savings Bank's capital to the Regional Director;
5. The Savings Bank must submit independent audit reports to the Regional Director for its first three fiscal years of operations. These reports must be in compliance with the audit rules set forth at 12 C.F.R. § 562.4;

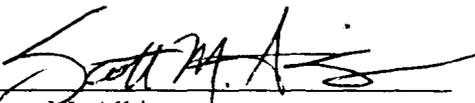
6. The Savings Bank must operate within the parameters of its three-year business plan, and must submit for the prior, written non-objection of the Regional Director, any proposed major deviations or material changes from the plan, including but not limited to, any proposed new stock benefit plan not yet submitted to OTS. The request for change must be submitted a minimum of 60 calendar days prior to the desired implementation date, with a copy sent to the FDIC Regional Office;
7. For three years following the Savings Bank's commencement of operations, 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 material deviations;
8. For eighteen months following the Savings Bank's commencement of operations, any contracts or agreements pertaining to transactions with affiliates, affiliated persons or related interests, as defined in 12 C.F.R. § 561.5(d), not yet submitted to the OTS for review, or any material changes to previously submitted contracts or agreements, must be provided to the Regional Director for his written non-objection at least 30 calendar days prior to their execution and implementation;
9. For two years following the Savings Bank's commencement of operations, the Savings Bank must receive the prior written non-objection of the Regional Director for any proposed new directors or senior executive officers not already reviewed by OTS, or any significant change in responsibilities of any senior executive officer;
10. At least 30 calendar days prior to commencing operations, the Savings Bank must develop and submit to the Regional Director for his review and written non-objection a final board approved Compliance Policy, an interest rate risk management policy, a liquidity risk policy, and policies, procedures and internal controls for Fair Lending, Privacy of Consumer Financial Information, safeguarding confidential information, business conduct, and conflicts of interest;
11. At least 30 calendar days prior to commencing operations, the Savings Bank must identify the proposed Chief Lending Officer, and submit his or her biographical and financial report, Applicant Certification, and fingerprint card to the Regional Office, for prior written non-objection of the Regional Director;
12. For two years following the Savings Bank's commencement of operations, the Savings Bank must receive the prior written non-objection of the Regional Director for any presently anticipated or proposed new employment agreements;
13. At least 30 calendar days prior to commencing operations, the Savings Bank must submit to the Regional Director a report identifying each function it is outsourcing to a third party vendor, including the name of the service provider, and a copy of the related agreement. During the first three years of operation, the Savings Bank must

inform the Regional Director of any significant changes in outsourcing as represented in this report at least 30 calendar days prior to such change;

14. Prior to the close of the stock offering, the Savings Bank must provide to the Regional Director a list of shareholders, including names, addresses, number of shares owned, and the percentage of total shares owned. Members of the Control Group other than the Founding Organizers must provide to the Regional Director such information as the Regional Director may require, and obtain the Regional Director's written non-objection, prior to the close of the stock offering;
15. The Savings Bank must receive the written non-objection of the Regional Director prior to entering into any agreement to offer non-deposit investment products to customers of the Savings Bank;
16. At least 30 calendar days prior to commencing operations at the administrative office, the Savings Bank must identify the location of the proposed administrative office and submit a copy of the lease agreement for the prior written non-objection of the Regional Director; and
17. At least 30 calendar days prior to establishing a transactional website, the Savings Bank must file with the Regional Office a transactional web site notification pursuant to 12 C.F.R. § 555.310(a), including a Transactional Web Site Questionnaire, for the prior written non-objection of the Regional Director.

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 February 24, 2006.



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