

OFFICE OF THRIFT SUPERVISION

Approval of Operating Subsidiary and Transfer of Assets Applications

Order No. 2006-13
Date: March 30, 2006
Docket Nos. 16138

FDS Bank, Mason, Ohio (Association), a federal savings association, has applied to the Office of Thrift Supervision (OTS), pursuant to 12 C.F.R. § 563.22(c), for permission to acquire assets from FACS Group, Inc. (FACS Assets) and to acquire the stock of FE Florida, Inc., Clearwater, Florida (FEFI). In addition, the Association has applied to OTS, pursuant to 12 U.S.C. § 1828(m) and 12 C.F.R. § 559.11, to establish FEFI as an operating subsidiary that will service credit card accounts.

Background

The Association is a Bank Insurance Fund (BIF)-insured federal stock savings association, which is headquartered in Mason, Ohio. The Association is a second-tier, wholly owned subsidiary of Federated Department Stores, Cincinnati, Ohio (FDS), and a wholly owned direct subsidiary of FDS Thrift Holdings, Inc., Mason, Ohio.

FDS owns FACS Group, Inc. (FACS) as a direct subsidiary. FDS owns FEFI as an indirect subsidiary. FACS and FEFI provide credit processing, collections, customer service and credit marketing services for the Association's credit card accounts, and for the credit card accounts of Department Store National Bank (DSNB), and certain other financial institutions.

The Association has applied for approval to acquire the stock of FEFI from FDS as a non-cash capital contribution, and to hold FEFI as a wholly owned subsidiary. In addition, the Association has applied for approval to acquire various assets from FACS as a non-cash capital contribution.

Transfer of Assets Application

The Association has applied to receive the FEFI stock and the FACS Assets as capital contributions from FDS. Section 563.22(d) of OTS' regulations provides that in considering a transfer application OTS will consider: (i) the capital levels of the resulting association; (ii) the financial and managerial resources of the constituent institutions; (iii) their future prospects; (iv) the convenience and needs of the communities to be served; (v) the conformity of the transaction to applicable laws, regulations and OTS policies; and (vi) whether the transaction is fair and equitable.

As for the capital levels of the resulting association, the application materials indicate that the Association is well-capitalized and will remain well-capitalized after consummation of the transfers.

As for financial and managerial resources, as the regulator of the Association, OTS is familiar with the financial and managerial resources of the Association. The Association will remain well-capitalized after the transfer transactions. After the transaction, the Association's management team will remain unchanged. OTS concludes that the Association's financial and managerial resources are consistent with approval.

Based on its consideration of the managerial and financial resources of the Association, and OTS' review of the Association's projected operations after the transfer, OTS concludes that the future prospects of the Association are consistent with approval.

As for convenience and needs, after receiving the asset transfers the Association will continue to provide service to its current customers as well as those of FACS and FEFI, and there is no indication that there will be material changes in the manner in which that business is conducted, or the types of services offered resulting from, the asset transfers. At its last examination, the Association received a "Satisfactory" Community Reinvestment Act rating. Based on the foregoing, OTS concludes that the convenience and needs of the community are consistent with approval.

As for conformance with law, regulation and supervisory policy, OTS' review of the application has not revealed any violation of law or regulations, or non-compliance with supervisory policies, in connection with the proposed transaction. Based on the foregoing, OTS concludes that approval of the proposed transaction is not objectionable based on conformity of the proposed transaction to applicable law, regulation, and supervisory policies.

As for factors regarding equitable treatment and disclosure, employment contracts, and advisory boards, the transaction is an internal corporate reorganization that does not raise concerns regarding fairness and equitable treatment.

Operating Subsidiary Application

OTS regulations, at 12 C.F.R. § 559.3(e)(1), provide that a federal savings association may establish an operating subsidiary if it owns, directly or indirectly, at least 50 percent of the voting shares of the operating subsidiary and no other party has operating control of the subsidiary. Section 559.3(e)(1) provides that an operating subsidiary of a federal savings association may engage in any activity that a federal savings association may conduct directly.

The Association will directly own all of the voting shares of FEFI, and no other party will have operating control of FEFI. FEFI will service credit cards for the

Association and DSNB, an affiliated financial institution, which is a permissible activity for a federal savings association. Accordingly, the operating subsidiary application satisfies the requirements of §§ 559.3(c)(1) and 559.3(e)(1).

In addition, § 559.1(a) provides that OTS may, at any time, limit a federal savings association's investment in an operating subsidiary, or may limit or refuse to permit any activities of an operating subsidiary, for supervisory, legal, or safety and soundness reasons. Based on the filing, OTS concludes that the proposed establishment of an operating subsidiary is not objectionable on safety and soundness or other supervisory grounds.

Conclusion

For the reasons set forth above, OTS has concluded that the transfer of assets applications and the application establish an operating subsidiary satisfy all applicable approval standards and criteria, 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 Association must receive all required regulatory approvals prior to consummation of the proposed transaction with copies of all such approvals supplied to the Regional Director;
2. The transactions described must be completed 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 transactions, the chief financial officers of the Association and FEFI 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 Association or FEFI 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 Association, FEFI 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 prior written non-objection to consummation of the proposed transactions; and
4. FEFI must not materially deviate from any of the activities, facts or representations described in the application, except with 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 March 30, 2006.



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