

## OFFICE OF THRIFT SUPERVISION

### APPROVAL OF REQUEST FOR PARTIAL WAIVER OF OTS CONTROL REGULATIONS

**Order No.:** 2007-45  
**Date:** October 2, 2007  
**Docket No.:** H-4242

The Legacy Banks Foundation, Pittsfield, Massachusetts (Applicant), has requested that the Office of Thrift Supervision (OTS) waive the requirement that the Applicant file a holding company application or a rebuttal of control submission pursuant to 12 C.F.R. §§ 574.3 or 574.4(e), in connection with the Applicant's acquisition of up to 20 percent of the outstanding common stock of Legacy Bancorp, Inc., Pittsfield, Massachusetts (Holding Company), (OTS No. H-4242). The Holding Company is the savings and loan holding company of Legacy Banks, Pittsfield, Massachusetts (Savings Bank), a Massachusetts-chartered, stock savings bank that has been deemed by OTS to be a savings association under 12 U.S.C. § 1467a(l). (The foregoing is referred to as the Application.)

The requested waiver would apply to acquisitions by the Applicant of up to 20 percent of the Holding Company's common stock. The Application states that any increases in the Applicant's current percentage ownership of the Holding Company's common stock would not result from purchases by the Applicant of the Holding Company's common stock, but would result from, among other things, stock repurchases by the Holding Company. In addition, the Applicant represents that the continued ownership of the common stock by the Applicant and its officers and directors will not exceed 20 percent of the Holding Company's outstanding common stock, in order to avoid triggering certain tax consequences.

The Applicant also seeks to have its directors treated as trustees of (or persons serving in a similar capacity with) tax-qualified employee stock benefit plans, as defined in 12 C.F.R. § 563b.25 (Company Plan), under 12 C.F.R. § 574.4(d)(6). Section 574.4(d)(1) provides that a company is presumed to act in concert with a trustee or management official if both own stock in a savings association or holding company. In addition, 12 C.F.R. § 574.4(d)(6) generally provides that a trustee or person serving in a similar capacity is presumed to act in concert with the trust. However, 12 C.F.R. § 574.4(d)(6) provides that a tax-qualified employee stock benefit plan as defined in 12 C.F.R. § 563b.2(a)(39) [now § 563b.25] shall not be presumed to be acting in concert with its trustee or person acting in a similar capacity solely for the purpose of determining whether to combine the holdings of the plan and its fiduciary.

In pertinent part, 12 C.F.R. § 500.30(a) provides that the "Director may, for good cause and to the extent permitted by statute, waive the applicability of any provision of [Chapter V of 12 C.F.R.]." No statute requires that the Applicant file either a holding company application

under 12 C.F.R. § 574.3 or a rebuttal of control under 12 C.F.R. § 574.4(e), for an acquisition of up to 20 percent of the Holding Company's common stock.

In considering whether good cause exists to justify the requested waiver, OTS has determined that there are substantial similarities between the Applicant and a savings association's or holding company's Company Plan. Under 12 C.F.R. § 574.3(c)(1)(vii), a Company Plan's acquisitions of up to 25 percent of a class of stock are exempted from the control filing requirements.

Like Company Plans, the Applicant was initially sponsored and funded by the Savings Bank and the Holding Company. Like Company Plans, the Applicant was formed to pursue certain goals of the Savings Bank (in this case, community recognition, among other purposes), and performs a function that is viewed as valuable to the Savings Bank and the Holding Company. In addition, as is the case with Company Plans, directors or officers of the Savings Bank involved with the Applicant generally have become involved as a result of their position with the Savings Bank, not as part of an effort to acquire control of the Savings Bank or Holding Company.

OTS recognizes that there are differences between the Applicant and Company Plans, and therefore believes it is appropriate that the Applicant be subject to certain additional requirements, in order to ensure that the Applicant does not exercise control over the Holding Company or the Savings Bank, and to ensure that OTS has adequate oversight regarding the Applicant. In this regard, the Applicant has provided certain commitments in the Application that mirror certain of the requirements for foundations contained in 12 C.F.R. Part 563b. The commitments provide that the Applicant will: (i) vote its shares of Holding Company stock in the same ratio as all other shares voted on all proposals considered by the stockholders of the Holding Company; (ii) be subject to examination by OTS at the Applicant's own expense; (iii) comply with all supervisory directives imposed by OTS; (iv) provide annual reports to OTS; and (v) have the stock certificates for any shares of voting stock of the Holding Company contributed to the Applicant or otherwise acquired by the Applicant bear a legend with the pro rata voting requirement.

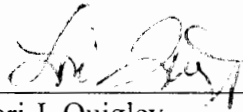
Based on the foregoing, OTS has concluded that approval of the Application is consistent with 12 C.F.R. § 500.30(a), and, in particular, that there is good cause to grant the waiver, provided that the Applicant complies with the commitments it has made to OTS in connection with the Application.

Accordingly, OTS hereby approves the Application, and hereby waives the concerted action presumptions at 12 C.F.R. §§ 574.4(d)(1)(i) and 574.4(d)(6) to the extent that OTS will consider the directors of the Applicant to be "trustees or persons acting in a similar fiduciary capacity, with

respect to a tax-qualified employee stock benefit plan,” as described in 12 C.F.R. § 563b.25, in their roles as directors of the Applicant, provided that the Applicant complies with the commitments it has made to OTS in connection with the Application.

By Order of the Director of the Office of Thrift Supervision, or his designee, effective

October 2, 2007.



---

Lori J. Quigley  
Managing Director  
Examinations and Supervision - Operations