

## OFFICE OF THRIFT SUPERVISION

### Approval of Holding Company Application

**Order No.:** 2009-06

**Date:** January 29, 2009

**Docket Nos.:** 8412 and H-4586

MP Thrift Investments L.P. and others, Wilmington, Delaware (collectively, Applicants), have applied to the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1467a(e)(1)(B) and 12 C.F.R. § 574.3, for permission to acquire Flagstar Bank, FSB (Savings Bank), Troy, Michigan (Application).

#### Background

The Applicants include eight newly formed limited partnerships or limited liability companies: MP Thrift Investments L.P.; MPGOP III AV-I L.P.; MPGOP (Cayman) III Thrift AV-I L.P.; MP (Thrift) Global Partners III LLC; MP (Thrift) LLC; MP (Thrift) Asset Management LLC; MP (Thrift) Global Opportunities Investments III L.P.; and MP (Thrift) Global Opportunities (Special) III L.P. All of the Applicants are directly or indirectly controlled by David Matlin and Mark Patterson.<sup>1</sup> The investments will be made primarily through two new funds structured as limited partnerships, MPGOP III Thrift AV-I L.P. and MPGOP (Cayman) III Thrift AV-I L.P. No single investor will own more than 9.9 percent of the limited partnership interests of either of the new funds.

The Savings Bank is a Deposit Insurance Fund (DIF)-insured, federally chartered stock savings bank with its home office in Troy, Michigan. The Savings Bank offers deposit products and mortgages through 173 offices in Michigan, Indiana and Georgia. The Savings Bank is the wholly owned savings association subsidiary of Flagstar Bancorp, Inc. (Holding Company).

In the proposed transaction, the Applicants propose to acquire up to 70 percent of the common stock of the Holding Company. As a result of the proposed transaction, the Applicants will have the ability to elect up to 9 of the 13 directors of the Holding Company, proportional to the Applicants' ownership interest in the Holding Company. As a result of the proposed transaction, the Applicants will become savings and loan holding companies.

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<sup>1</sup> Certain other entities controlled by Messrs. Matlin and Patterson have provided written commitments to OTS that such entities will not: (i) exercise, or attempt to exercise, directly or indirectly, control or a controlling influence over the management, policies, or business operations of the Applicants, the Savings Bank, or the Savings Bank's immediate holding company (collectively, the Thrift Entities); (ii) acquire or hold any securities of any of the Thrift Entities; or (iii) engage in any transactions with any of the Thrift Entities. Based on the relevant facts, including these commitments, OTS concludes that no entities controlled by Messrs. Matlin and Patterson, other than the Applicants, are required to join the Application.

### **Holding Company Application**

Section 10(e)(1)(B) of the Home Owners' Loan Act and the OTS Acquisition of Control Regulations provide that OTS must approve a holding company application seeking permission to acquire one savings association by a company other than a savings and loan holding company unless OTS finds the financial and managerial resources and future prospects of the company and association involved to be such that the acquisition would be detrimental to the savings association or to the insurance risk of the DIF. Also, OTS must consider the impact of any acquisition on competition. Further, 12 C.F.R. § 563e.29(a) requires that OTS take into account assessments under the Community Reinvestment Act (CRA) when approving savings and loan holding company acquisitions.

With respect to managerial resources, OTS has reviewed the backgrounds of the Applicants' two principal partners and three senior officers, and subject to a satisfactory completion of the background checks, does not object to the Applicants' managerial resources. The Application materials indicate that the individuals proposed as management for the Applicants' boards of directors and its officers possess experience in various business endeavors and have extensive financial industry experience. In the absence of completed background checks, OTS is including condition 8 below, to ensure that the managerial resources meet the standards for approval and to ensure the safe and sound operation of the Savings Bank.

With respect to financial resources, OTS has considered the Applicants' financial resources and the Savings Bank's proposed capitalization. The Applicants have demonstrated adequate resources to undertake the acquisition. The Savings Bank will meet all of its capital requirements and will be well capitalized, and will remain well capitalized under the OTS Prompt Corrective Action regulation based on the proposed capital infusion into the Savings Bank. OTS concludes that the Applicant's and the Savings Bank's financial resources are consistent with approval of the Application.

With respect to future prospects and the insurance risk to the DIF, OTS has considered the financial and managerial resources of the Applicants, the Holding Company and the Savings Bank. OTS is imposing condition 4 to help ensure that the Savings Bank operates pursuant to an acceptable business plan and changes to and from such a business plan are not detrimental to the Savings Bank. To help ensure that the Savings Bank's future prospects are consistent with approval, OTS is also imposing condition 5 to enable OTS to confirm that the Savings Bank is being operated properly. OTS is imposing condition 7 to help ensure the officers and directors of the Savings Bank have the requisite character and responsibility.

Because the Savings Bank will be controlled by the Applicants and because the Savings Bank may engage in transactions with affiliates (other than the affiliates that have committed not to engage in transactions with the Thrift Entities), OTS is imposing conditions 6 and 9, which reflect OTS's concerns about captive boards in the context of holding company structures where

the Savings Bank is likely to have transactions with its affiliates. The conditions are designed to ensure that the Savings Bank's future prospects are consistent with approval.

OTS concludes that the future prospects of the Applicants, the Holding Company and the Savings Bank, and the risks to the DIF, are consistent with approval provided that the Applicants and the Savings Bank comply with the conditions set forth herein.

The transaction will not result in any currently operating, unaffiliated insured depository institutions becoming affiliated. Accordingly, OTS finds no basis for objection to the transaction on anti-competitive grounds.

As for the CRA, the Applicants do not control an insured depository institution, and therefore, are not subject to the CRA. The Applicants do not intend to change the CRA plan of the Savings Bank and the Savings Bank has a "Satisfactory" CRA rating. Accordingly, OTS concludes that there is no basis for objection to the Applicants' acquisition of the Savings Bank on CRA grounds.

### **Conclusions**

Based on the foregoing analysis, OTS concludes that the holding company application meets the applicable approval criteria. Accordingly, the holding company application is hereby approved, subject to the following conditions:

1. The proposed transaction must be consummated within 120 calendar days from the date of this Order;
2. On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of the Applicants, the Holding Company and 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 Applicants, the Holding Company and the Savings Bank, respectively, 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 Applicants, the Holding Company, 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;
3. The Applicants, the Holding Company, and the Savings Bank must, within five 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; (b) advise the Regional Director in writing that the transaction was consummated in accordance with all applicable laws and regulations, the Application, and this

Order; and (c) provide a reconciliation of the Savings Bank's capital to the Regional Director;

4. The Savings Bank must operate within the parameters of the business plan submitted with the Application for three years after consummation of the transaction. The Savings Bank must submit any proposed major deviations or material changes from the plan (including those initiated by any of its holding companies) for the prior, written non-objection of the Regional Director. The request for change must be submitted no later than 60 calendar days prior to the desired implementation date;
5. For three years following consummation of the proposed transaction, 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;
6. At least 40 percent of the Savings Bank's board of directors must be individuals who are not officers or employees of the Applicants or affiliates thereof, and who have not otherwise been determined by the Regional Director to lack sufficient independence. At least one member of the Savings Bank's board of directors must be an individual who is not an officer, director or employee of the Applicants or any affiliate, and who is not an officer or employee of the Savings Bank, and who has not otherwise been determined by the Regional Director to lack sufficient independence. At least 50 percent of any audit committee established by the Savings Bank must be directors who are not officers or employees of the Savings Bank, the Applicants or any affiliates, and who have not otherwise been determined by the Regional Director to lack sufficient independence;
7. For two years following consummation of the proposed transaction, the Savings Bank must receive the prior written non-objection of the Regional Director for any proposed new directors or senior executive officers or any significant changes in responsibilities of any senior executive officer;
8. With respect to the five individuals proposed as directors and senior executive officers for whom background checks have not been completed, the Applicants and the Holding Company must take such action as required by the Regional Director, if the Regional Director objects to any such person based on information obtained during the background check; and
9. For two years following the consummation of the proposed transaction, any contracts or agreements pertaining to transactions between the Savings Bank and its affiliates or related interests of affiliated persons, as defined in 12 C.F.R. § 561.5(d), not yet submitted for review must be provided to the Regional Director at least 30 days prior to their planned execution and receive the Regional

Director's written non-objection prior to implementation of the contract or agreement.

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

Jan. 29, 2009.

G. N. Gardineer

Grovetta N. Gardineer

Managing Director

Corporate & International Activities