OFFICE OF THRIFT SUPERVISION

Denial of a Transfer Application by a Savings Bank for the Sale of Certain Branch Offices under 12 C.F.R. § 563.22(c)

Order No.:	**2010-17**
Date:	**April 30, 2010**
Docket Nos.:	**03309, H-3867**

TierOne Bank, Lincoln, Nebraska (Savings Bank), has filed with the Office of Thrift Supervision (OTS) an application under 12 C.F.R. § 563.22(c) (Application), for the Savings Bank's proposed sale of 32 branch offices.

Background

The Savings Bank is a Deposit Insurance Fund (DIF) insured federal stock savings bank. Its home office is located in Lincoln, Nebraska, and it operates 68 full service branch offices located in Nebraska, Iowa and Kansas. As of December 31, 2009, the Savings Bank had approximately $2.88 billion in assets, $2.78 billion in liabilities, and $99.17 million in equity capital. In addition, for the year ended December 31, 2009, the Savings Bank reported net losses of approximately $200.4 million. As of December 31, 2009, the Savings Bank was significantly undercapitalized under OTS' Prompt Corrective Action (PCA) regulations, and reported tangible, core, and risk-based capital ratios of 3.28 percent, 3.28 percent, and 5.41 percent, respectively.

The Savings Bank's board of directors executed a supervisory agreement, effective January 15, 2009 (Supervisory Agreement). The Supervisory Agreement requires the Savings Bank to, among other things, maintain a core capital ratio of 8.50 percent and a total risk-based capital ratio of 11.00 percent. The Savings Bank is presently in non-compliance with these requirements. The Savings Bank is subject to a PCA Directive dated March 31, 2010.

The Savings Bank is a wholly owned subsidiary of TierOne Corporation (Holding Company). The Holding Company's investment in the Savings Bank represented approximately 97 percent of its total unconsolidated assets as of December 31, 2009.

Proposed Transaction

The Savings Bank proposes to sell 32 of its branch offices. As proposed, the Savings Bank would transfer between approximately $1.0 billion and $1.1 billion of deposit liabilities associated with the 32 branches.

Discussion

The Savings Bank has applied under 12 C.F.R. § 563.22(c) for OTS approval of the proposed branch sale transaction. 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.

OTS has concluded that the proposed transaction does not meet the financial resources and future prospects criteria under 12 C.F.R § 563.22(d).

The Application projects that, upon consummation of the proposed transaction, the Savings Bank would have a tier 1 core capital ratio of 6.79 percent and a total risk-based capital ratio of 8.93 percent. Accordingly, the proposed transaction will not enable the Savings Bank to satisfy the Supervisory Agreement's requirements to maintain a core capital ratio of 8.50 percent and a total risk-based capital ratio of 11.00 percent.

In addition, although the Savings Bank would be adequately capitalized for purposes of the PCA regulations upon consummation of the proposed transaction, the Application projects losses following the transaction that will result in the Savings Bank becoming undercapitalized again by the end of 2010. The Savings Bank's projections for the remainder of the period covered by the business plan submitted with the Application indicate that the Savings Bank will be "undercapitalized" thereafter. After consummation of the proposed transaction, the Application projects that the Savings Bank will remain unprofitable through the second quarter of 2011.

In addition, after the transaction, the Savings Bank's level of classified assets and nonperforming assets would be at unacceptably high levels and the sale would be detrimental to the Savings Bank's liquidity.

The Holding Company does not currently have the financial capacity to support the Savings Bank and the proposed transaction does not contemplate a related transaction to raise additional capital for either the Holding Company or the Savings Bank. [1] There are presently no known entities or individuals that have provided a definitive agreement to make a capital investment to cause the Savings Bank to meet the capital requirements of the Supervisory Agreement or to maintain PCA adequately capitalized status

[1] On April 25, 2010, the Holding Company reported that its independent auditors submitted their resignation effective April 23, 2010. In addition, the independent auditors informed the Holding Company's audit committee that it has withdrawn its audit opinion and internal control assessment relating to the Holding Company's financial statements at and for the year ended December 31, 2008, as well as its review of the Holding Company's financial statements at and for the three months ended March 31, 2009. In addition, the independent auditors indicated to the Holding Company that those financial statements contain material misstatements and should not be relied upon by investors. As a result, OTS has concerns regarding the Savings Bank's financial statements and financial projections provided for the proposed transaction.

continuously over the three years following the proposed transaction, or to acquire the Savings Bank.

Conclusion

Based on the foregoing, OTS concludes that financial resources and future prospects considerations are not consistent with approval of the Application. Accordingly, the Application is hereby denied.

By order of the Acting Director of the Office of Thrift Supervision, or his designee, effective April 30, 2010.

G. N. Gardineer

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