

OFFICE OF THRIFT SUPERVISION

Approval of Voluntary Supervisory Conversion and Holding Company Application

Order No.: 2010-23
Date: May 7, 2010
Docket Nos.: H-4709 and 06947

Savings Bank of Maine, MHC (MHC) and Savings Bank of Maine, Gardiner, Maine (Savings Bank) seek the Office of Thrift Supervision's (OTS) approval to undertake a voluntary supervisory conversion, pursuant to sections 5(i), 5(p) and 10(o) of the Home Owners' Loan Act (HOLA), OTS's Mutual Holding Company Regulations (MHC Regulations),¹ and the voluntary supervisory conversion provisions of the OTS Mutual-to-Stock Conversion Regulations (Conversion Regulations).² In addition, SBM Financial, Inc., Gardiner, Maine (Holding Company) seeks OTS approval to acquire the Savings Bank, pursuant to section 10(e) of the HOLA and 12 C.F.R. § 574.3, in connection with the MHC's voluntary supervisory conversion.

The Parties

The Savings Bank is a Deposit Insurance Fund (DIF)-insured, federally chartered stock savings bank. The Savings Bank is the wholly owned subsidiary of Savings Bank of Maine Bancorp, a federal mid-tier mutual holding company (Mid-Tier). The Mid-tier is the wholly owned subsidiary of the MHC. The Savings Bank had total assets of approximately \$929.1 million as of March 31, 2010. The Savings Bank is adequately capitalized within the scope of the prompt corrective action provisions of the Federal Deposit Insurance Act and OTS's Prompt Corrective Action (PCA) Regulations.³

As of December 31, 2009, the Savings Bank was "undercapitalized" under the definitions set forth in the PCA Regulations. The Savings Bank is subject to a Prompt Corrective Action Directive and a Cease and Desist order (C&D Order), which, respectively, require the Savings Bank to become at least adequately capitalized by June 30, 2010, and have and maintain core and total risk-based capital ratios of at least 10.76 percent and 13.78 percent, respectively, by September 30, 2010.

In connection with an acquisition in September 2008, the Mid-Tier borrowed several million dollars from a third party. The loan is secured by all of the stock of the Savings Bank. The Mid-Tier has defaulted on the loan. Accordingly, the entire principal amount of the loan is due, as well as accrued interest and penalties.

¹ 12 C.F.R. Part 575 (2009).

² 12 C.F.R. Part 563b, Subpart B (2009).

³ 12 U.S.C. § 1831o and 12 C.F.R. Part 565 (2009).

The Holding Company, a Maryland-chartered corporation, was formed in March 2010 for the sole purpose of acquiring the Savings Bank in the proposed transaction. The Holding Company is engaging in a private placement of its common stock to fund this transaction. Upon completion of the private placement, no one shareholder (or group acting in concert) will own more than 9.9 percent of the Holding Company's common stock.

The Proposed Transaction

In the proposed transaction, the MHC will merge into the Mid-Tier with the Mid-Tier as the survivor. Immediately thereafter, the Mid-Tier will merge into the Holding Company, with the Holding Company as the survivor. In connection with the merger of the Mid-Tier into the Holding Company, the Holding Company will acquire all of the Savings Bank's common stock currently held by the Mid-Tier, and infuse most of the net proceeds from the private placement into the Savings Bank.

With respect to the Mid-Tier's loan default, the lender has agreed, upon consummation of the proposed transaction, to revise the loan to reduce the principal amount substantially, and to eliminate the accrued interest and penalties. The amended loan will be secured by 18 percent of the stock of the Holding Company.

Upon consummation of the voluntary supervisory conversion, the Savings Bank will be "well capitalized," as defined under OTS's PCA Regulations, and the Savings Bank's capital will exceed the levels required under the C&D Order.

As part of the proposed transaction, the Holding Company and the Savings Bank will establish liquidation accounts based on the Savings Bank's regulatory capital immediately prior to the voluntary supervisory conversion.

Voluntary Supervisory Conversion

Pursuant to the MHC Regulations, a mutual holding company may convert to stock form in accordance with Part 563b of OTS regulations.⁴ Under 12 C.F.R. Part 563b, a savings association is eligible to engage in a voluntary supervisory conversion if severe financial conditions threaten the savings association's stability, and a conversion is likely to improve the association's financial condition.⁵

The Mid-Tier is currently in default with regard to an outstanding loan. Under the terms of the loan addressing default, the Mid-Tier currently is under an immediate obligation to pay several million dollars to the lender. Neither the Mid-Tier nor its parent company, the MHC, has the resources to pay the amount that is due under the loan. If the

⁴ 12 C.F.R. § 575.12(a) (2009).

⁵ 12 C.F.R. § 563b.625(a)(2) (2009). The Conversion Regulations set forth additional circumstances under which a voluntary supervisory conversion may be approved.

Savings Bank were to pay a dividend to the Mid-Tier in order to enable the Mid-Tier to pay the amount due, the Savings Bank would become undercapitalized. In light of the Savings Bank's current condition, the payment by the Savings Bank of a dividend sufficient to pay off the loan, and in fact, the payment of any significant dividend, is prohibited under 12 U.S.C. § 1831o, which states, in relevant part, that an "insured depository institution shall make no capital distribution if, after making the distribution, the institution would be undercapitalized."⁶

OTS concludes that the fact that the Mid-Tier is currently in default on the loan, and does not have the resources to pay the amount due on the loan, constitutes severe financial circumstances for the Mid-Tier, and also for its shell holding company, the MHC, for purposes of 12 C.F.R. § 563b.625(a)(2).

Under 12 U.S.C. § 1467a(o)(9)(A), a foreclosure on a pledge by a mutual holding company of stock of the subsidiary savings association provides a basis for the appointment of a trustee as receiver for the mutual holding company. The loan is collateralized by a pledge of all of the Savings Bank's common stock. OTS concludes that the possibility of foreclosure threatens the stability of the Mid-Tier and the MHC, because it raises the possibility that a trustee may be required to be appointed as a receiver for such entities.⁷

In addition, OTS concludes that the proposed voluntary supervisory conversion is likely to improve the Savings Bank's financial condition. Upon consummation of the transaction, including the Holding Company's infusion of capital into the Savings Bank, the Savings Bank will be "well capitalized," and have core and risk-based capital ratios that exceed the levels required by the C&D Order. Furthermore, OTS has reviewed the proposed business plan for the Savings Bank, and has concluded that the business plan is acceptable.

Accordingly, OTS concludes that the Savings Bank is eligible for a supervisory conversion by virtue of 12 C.F.R. § 563b.625(a)(2).

Furthermore, the structure of the proposed transaction, in which the Holding Company will acquire all of the Savings Bank's common stock in the voluntary supervisory conversion, is consistent with the Conversion Regulations. Section 563b.605(c) provides that a converting institution may sell its shares directly to an acquiror, who may be, among other things, a company.

The Savings Bank's establishment of a liquidation account is consistent with 12 C.F.R. § 563b.610, which provides that, although members of a savings association

⁶ 12 U.S.C. § 1831o(d)(1)(A). The statute includes certain exceptions, none of which is applicable here. See 12 U.S.C. § 1831o(d)(1)(B).

⁷ Both the MHC and the Mid-Tier are mutual holding companies for this purpose. See 12 C.F.R. § 575.2(h)(2009).

undertaking a voluntary supervisory conversion do not have the right to approve or participate in the conversion, they may have interests in a liquidation account, if one is established. In addition, based on the terms of the liquidation accounts proposed to be established at the Savings Bank and the Holding Company, OTS concludes that the establishment of the liquidation accounts is consistent with the Conversion Regulations.

Based on the foregoing, OTS concludes that the proposed voluntary supervisory conversion of the Savings Bank meets the applicable statutory and regulatory standards for approval.

Holding Company Application

Section 10(e)(1)(B) of the HOLA provides that OTS must approve a proposed acquisition of a 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 the insurance risk of the DIF.⁸ Consideration of the managerial resources of an acquiring company or savings association must include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or savings association.⁹ OTS must also consider the impact of the acquisition on competition.¹⁰ Further, 12 C.F.R. § 563e.29 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 information submitted by the Holding Company with respect to the Holding Company's directors and senior officers, and the proposed members of the board of directors of the Savings Bank, and has found no material adverse information. However, two proposed board members have not submitted biographical and financial information. In addition, background checks for certain of the proposed directors and officers are not complete. Therefore, OTS is imposing conditions 9 and 10 to ensure that the persons operating the Savings Bank and the Holding Company have the requisite character and experience.

Based on the above, OTS concludes that the managerial resources of the Holding Company and the Savings Bank are consistent with approval, subject to the recommended conditions.

With respect to financial resources, the Holding Company will infuse capital into the Savings Bank to cause the Savings Bank to be well capitalized upon consummation of the voluntary supervisory conversion, and to meet the capital levels required under the C&D Order. The Holding Company will retain sufficient capital from the private

⁸ 12 U.S.C. § 1467a(e)(1)(B); see also 12 C.F.R. § 574.7(c) (2009).

⁹ 12 U.S.C. § 1467a(e)(1)(B).

¹⁰ 12 U.S.C. § 1467a(e)(2) and 12 C.F.R. § 574.7(c)(2) (2009).

placement to service the debt on the newly renegotiated loan. Accordingly, OTS concludes that the financial resources of the Holding Company and the Savings Bank are consistent with approval.

With respect to future prospects and the risks to the DIF, as discussed above, the managerial and financial resources of the Holding Company and the Savings Bank are consistent with approval. The Savings Bank will be well capitalized, with capital ratios described above, upon consummation of the proposed transaction. The proposed acquisition will improve the future prospects of the Savings Bank, because the Savings Bank will be well capitalized and meet the capital levels required under the C&D Order, and the proposed transaction will resolve the default on the loan. In order to help ensure that the future prospects of the Holding Company and the Savings Bank are consistent with approval, OTS is imposing conditions 4, 5, 6, 7 and 8, regarding adherence to the proposed business plan, monitoring of the business plan, independent audits, transactions with certain parties, and the addition of new executive officers or directors. Those conditions are designed to ensure that the Savings Bank operates pursuant to its business plan and that changes to and from the business plan are not detrimental to the Savings Bank. In addition, these conditions address the submission of variance and audit reports to ensure compliance with the business plan, address possible transactions with affiliates and related parties, and address possible future management to ensure that management has the necessary competence to contribute to the Savings Bank's future prospects and ensure the Savings Bank's future prospects are consistent with approval.

In addition, OTS is imposing condition 11, requiring the prior written non-objection of the Northeast Regional Director (Regional Director), for compensation arrangements between the Savings Bank or the Holding Company for proposed officers and directors, and for deferred compensation arrangements involving the current management of the Savings Bank or its holding companies. This condition is designed to ensure that such compensation arrangements are consistent with applicable statutes and regulations, and that such compensation arrangements are not detrimental to the future prospects of the Savings Bank or the Holding Company.

Finally, OTS is imposing condition 12, requiring a list of the investors and a certification from each regarding OTS Control Regulations,¹¹ to ensure no investor acquires control in the absence of written approval from OTS. Accordingly, OTS concludes that the future prospects of the Holding Company and the Savings Bank, and the risks to the DIF, are consistent with approval, subject to the recommended conditions.

With respect to competitive considerations, the proposed transaction will not cause the Savings Bank to become affiliated with any other insured financial institution. Accordingly, the proposed transaction will not result in a monopoly or lessen competition. Based on the foregoing, OTS concludes that the competitive effects of the acquisition are consistent with approval.

¹¹ 12 C.F.R. Part 574 (2009).

With respect to the CRA, the Holding Company has not previously controlled any institution that is subject to the CRA. Accordingly, OTS concludes that approval of the holding company application is consistent with the CRA.

Conclusion

Based on the applications and the foregoing analysis, OTS concludes that the applications satisfy the applicable approval standards, provided that the following conditions are complied with in a manner satisfactory to the Regional Director . Accordingly, the applications are hereby approved, subject to the following conditions:

1. The proposed supervisory conversion and holding company acquisition (Proposed Transaction) must be consummated within 30 calendar days from the date of this Order;
2. On the business day prior to the date of the Proposed Transaction, the chief financial officers of 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 Holding Company and the Savings Bank, respectively, 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 Holding Company, the Savings Bank, or OTS since the date of the financial statements submitted with the applications, the Proposed Transaction must not be consummated unless the information is presented to the Regional Director, and the Regional Director provides written non-objection to the consummation of the Proposed Transaction;
3. The Holding Company 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; (b) advise the Regional Director in writing that the Proposed Transaction was consummated in accordance with all applicable laws and regulations, the applications 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 applications, for three years after consummation of the transaction. During that period, any proposed major deviations or material changes from the plan, (including changes resulting from decisions made by the Holding Company), must be submitted 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;
5. For three years following the date of 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 deviations;

6. The Savings Bank must submit independent audit reports to the Regional Director for three years after the date of consummation of the Proposed Transaction. These reports must be in compliance with the audit rules set forth at 12 C.F.R. § 562.4;
7. For the two years following the date of consummation of the Proposed Transaction, any contracts or agreements pertaining to transactions with affiliates and related interests of affiliated persons as defined in 12 C.F.R. § 561.5(d) of the Holding Company and the Savings Bank, not yet submitted to OTS for review, must be provided to the Regional Director at least 30 calendar days prior to their planned execution and receive his written non-objection prior to their implementation;
8. For the two years following the date of 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 executive officers or any significant change in responsibilities of any executive officer;
9. With respect to the proposed directors who have not submitted biographical and financial information, Interagency Biographical and Financial Reports on OTS Form 1623, Applicant Certifications on OTS Form 1606, fingerprint cards, and Oath of Savings Association Director must be submitted to the Regional Director, and the proposed directors must take such action as is required by the Regional Director after such submission;
10. With respect to any proposed director or executive officer for whom background checks have not been completed, the Holding Company or Savings Bank 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;
11. Compensation arrangements between the Savings Bank or the Holding Company and their proposed officers and directors, and deferred compensation arrangements between the Savings Bank or its holding companies and their current officers and directors, must receive the prior written non-objection of the Regional Director; and
12. No later than 30 calendar days after the date of consummation of the transaction, the Holding Company must submit to the Regional Director a final list of investors with a written certification from each investor that the investor has read

and is familiar with the Control Regulations, and will not acquire control of the Holding Company or Savings Bank as a result of the purchase of Holding Company stock.

The Regional Director may, for good cause, extend any time period herein for up to 120 days.

By order of the Director of the Office of Thrift Supervision, or his designee, effective May 7th, 2010.



Grovetta N. Gardineer
Managing Director
Corporate & International Activities