

ORDER DENYING REQUEST FOR A STAY OF AN APPROVAL ORDER

The Exchange Bank, Skiatook, Oklahoma, seeks a stay pending judicial review of that portion of Office of Thrift Supervision ("OTS") Order 98-20, dated February 25, 1998 ("Order 98-20"), which grants permission for American Bank of Oklahoma, Collinsville, Oklahoma ("Savings Bank") to establish a branch office pursuant to section 5(e) of the Home Owners' Loan Act ("HOLA"), 12 U.S.C. 1464(e), and OTS regulations thereunder, including 12 C.F.R. §§ 545.92 and 552.2-1. The remainder of Order 98-20 grants permission for the organization of the Savings Bank. For the reasons set forth below, the request is denied.

1. Legal Standard

OTS previously has considered whether to stay an order approving an application on only one previous occasion, involving the approval of a holding company application submitted by U.S. Trust Company. In that instance, we adopted the criteria of the federal courts of appeals. See OTS Order No. 95-169 (Aug. 31, 1995).

A party seeking a stay of an administrative order pending judicial review has the burden of demonstrating that four criteria have been met before a stay will be entered. First, the party must make a strong showing that the movant is likely to prevail on the merits of its appeal. Second, the party must show irreparable injury absent a stay. Third, the party must show that granting a stay would not substantially harm the other party. Fourth, the party must show that granting a stay is not **harmful** to the public interest. *Hamlin Testing Laboratories, Inc. v. Atomic Energy Commission*, 337 F.2d 221 (6th Cir. 1964); *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F.2d 921 (D.C. Cir. 1958). We believe that these standards may be appropriately employed here.

2. Stay Request

The Exchange Bank has not made the requisite showings. The Exchange Bank does not assert that it is likely to prevail on the merits of the case upon judicial review. The Exchange Bank filed comments on the Savings Bank's application, which OTS considered but ultimately determined did not warrant denial of the application. Our review of the record on the applications persuades us that its judicial challenge is not likely to succeed.

With respect to the requirement of showing irreparable injury, The Exchange Bank speculates that the Savings Bank's branch office in Skiatook, Oklahoma, will cause it irreparable injury. This is not a self-evident proposition, however, and The Exchange

Bank does not explain how it would suffer irreparable injury. We understand that the Skiatook branch may open on April 2, 1998. The effect of the opening will be to increase the competition for the banking business in Skiatook. The Exchange Bank has not demonstrated that it will be unable to compete. If the Savings Bank branch compels The Exchange Bank to step up its competitive efforts, such an increased effort does not constitute irreparable injury. Moreover, the statute governing the establishment of the Skiatook branch bars only those new institutions that would cause "undue injury" to existing institutions. See 12 U.S.C. § 1464(e)(4). The Exchange Bank has not demonstrated injury, let alone undue injury.

The Exchange Bank also has not addressed the third and fourth criteria, which are prejudice to the other party and the public interest. A stay would impede the planned business activity of the Savings Bank and therefore cause identifiable injury. A stay will delay the Savings Bank's ability to earn a return on this investment. In addition, there has been no showing that injury to The Exchange Bank would outweigh the imposition on the Savings Bank. Further, in light of our approval of the applications, we believe that consummation of the proposed transaction, rather than a stay, is in the public interest.

* * *

Upon consideration of the request,

IT IS HEREBY ORDERED that The Exchange Bank's request for a stay of Order 98-20 is denied.

THE OFFICE OF THRIFT SUPERVISION

DATE :

3/23/98

By:



John E. Ryan

Acting Executive Director, Supervision