

OFFICE OF THRIFT SUPERVISION

Approval of Application for Permission to Organize a Federal Savings Bank, Holding Company Application, and Related Filings

Order No.: 2006-10
Date: February 28, 2006
Docket Nos.: 18018, 08551,
H-2352, and H-1461

Washington Mutual, Inc., Seattle, Washington (WMI), and New American Capital, Inc., Seattle, Washington (NACI), (jointly, the Applicant) have applied for approval of the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. §§ 1464(e) and 1467a(e), and 12 C.F.R. §§ 552.2-1 and 574.3, for permission to organize and to acquire WM Interim 2006 Federal SLA, Henderson, Nevada (Intermediate FSLA). WMI will capitalize Intermediate FSLA by contributing to Intermediate FSLA all of the stock of WMI's subsidiary, Long Beach Mortgage Company (Mortgage Company). In addition, the Applicant seeks the approval for the merger of Intermediate FSLA with and into Washington Mutual Bank, Henderson, Nevada (WMB) pursuant to 12 U.S.C. 1828(c) and 12 C.F.R. § 563.22. Also, WMB has applied for approval under 12 C.F.R. Part 559 to hold the Mortgage Company as a first tier operating subsidiary of WMB and to hold three wholly owned subsidiaries of the Mortgage Company as second-tier operating subsidiaries. Collectively, the foregoing filings are referred to herein as the Applications.

The Parties

WMI and NACI are savings and loan holding companies. WMI, through NACI, owns two subsidiary federal stock savings banks, WMB and Washington Mutual Bank FSB, Salt Lake City, Utah (WMBFSB). WMI directly owns all of the stock of the Mortgage Company, which is engaged in mortgage lending in the communities it serves. The Mortgage Company has three wholly owned subsidiaries, Long Beach Asset Holdings Corp., Long Beach Securities Corp., and Strand Capital LLC (Strand) (collectively, the Subsidiaries).

The Proposed Transaction

In the proposed transaction, WMI will organize Intermediate FSLA as a federally chartered stock savings association. Intermediate FSLA's business will be limited to holding the Mortgage Company and its subsidiaries. Intermediate FSLA will exist only for an instant in time prior to its merger into WMB. WMI will capitalize Intermediate FSLA by contributing all the stock of the Mortgage Company in exchange for all the stock of Intermediate FSLA. As a result of the contribution, the Mortgage Company will become a first-tier operating subsidiary of Intermediate FSLA and the Subsidiaries will become second-tier operating subsidiaries of Intermediate FSLA. WMI will immediately contribute the stock of Intermediate FSLA to NACI and then merge Intermediate FSLA into WMB. Upon consummation, the Mortgage Company will become a first-tier

operating subsidiary of WMB and the Subsidiaries will become second-tier operating subsidiaries of WMB.

Permission to Organize Application

The Home Owners' Loan Act (HOLA) provides that OTS may grant a federal savings association charter only: (i) to persons of good character and responsibility; (ii) if, in OTS' judgment, a necessity exists for such association in the community to be served; (iii) if there is a reasonable probability of the association's usefulness and success; and (iv) if the association can be established without undue injury to properly conducted existing local thrift and home financing institutions. OTS regulations implementing the HOLA include the same standards, with the additional requirement that OTS consider whether the association will promote credit for housing consistent with the safe and sound operation of a federal savings association.

In addition, OTS regulations regarding the establishment of de novo federal savings associations set forth standards OTS considers in granting a de novo federal charter, regarding: (i) initial capitalization of a federal association; and (ii) the residence and composition of an association's board of directors.

Further, 12 C.F.R. § 563e.29(b) provides that an applicant for a federal thrift charter must submit with its application a description of how it will meet its Community Reinvestment Act (CRA) objectives. OTS takes this description into account when considering an application and may deny an application or condition approval on CRA grounds.

OTS is familiar with the character and responsibility of the proposed directors and senior officers of Intermediate FSLA. Those persons are presently officers or employees of WMB and/or WMI. These individuals are well known to OTS, and have a positive supervisory track record and have extensive experience in the banking industry. In addition, OTS has reviewed the performance of WMI, and NACI, and has concluded that the character and responsibility of the senior officers and directors of those entities are consistent with approval. Based on the relevant information, OTS concludes that the character and responsibility of the organizers of Intermediate FSLA are consistent with approval.

With respect to the necessity for Intermediate FSLA in the community, Intermediate FSLA's operations will be those of the Mortgage Company and the Subsidiaries. Given that the Mortgage Company is a substantial entity, with extensive operations, and has generally operated profitably, OTS concludes that there is a necessity in the community for Intermediate FSLA.

With respect to the reasonable probability of Intermediate FSLA's usefulness and success, Intermediate FSLA, through the Mortgage Company and the Subsidiaries, will be immediately profitable. The pro forma financial statements provided with the

application reflect that the Mortgage Company will continue to be profitable and successful. Also, the application includes certain commitments regarding, among other things, assurances with respect to payment of certain potential liabilities. In addition, the conditions below help ensure that there is a reasonable probability of Intermediate FSLA's usefulness and success. Therefore, OTS concludes that Intermediate FSLA will be useful and successful and meets this approval criterion.

With respect to whether Intermediate FSLA will be established without undue injury to other local thrift and home-financing institutions, the Mortgage Company would continue to compete with other financial institutions for mortgage lending, regardless of whether it remained under WMI or under Intermediate FSLA and, ultimately, WMB as proposed. Accordingly, OTS concludes that Intermediate FSLA will meet this approval criterion.

Intermediate FSLA, through the Mortgage Company and the Subsidiaries, will hold a substantial amount of housing related loans. In addition, the Mortgage Company's operations do not raise any safety and soundness concerns. Accordingly, OTS concludes that Intermediate FSLA will provide credit for housing consistent with the safe and sound operation of a federal savings association.

With respect to the CRA, Intermediate FSLA's operations will exist solely in the Mortgage Company and the Subsidiaries. The Applications indicate that Intermediate FSLA, through the Mortgage Company and the Subsidiaries, will help meet the existing and anticipated credit needs of all of the communities it serves, including low- and moderate-income borrowers and neighborhoods. In considering the application for a charter, the OTS has taken into account the description in the Applications of how Intermediate FSLA will meet its CRA objectives. OTS received no public comments objecting to the application or raising any CRA concerns. Accordingly, OTS concludes that Intermediate FSLA satisfies the requirements for the CRA and OTS' implementing regulations.

Intermediate FSLA will have a federal charter and bylaws that conform to the model charter and bylaws for a federal stock savings association. Intermediate FSLA will have an initial capitalization that exceeds the minimum regulatory requirement.

OTS regulations, at 12 C.F.R. § 543.3(d)(1), require that a majority of the thrift's directors be representative of the state in which the savings association is located. Although Intermediate FSLA's home office is Henderson, Nevada, all of the directors reside or work in Seattle. Because Intermediate FSLA's sole operations will consist of the Mortgage Company, which engages in mortgage lending on a national basis, OTS has determined that there is good cause to waive this requirement of § 543.3(d)(1).

In addition, 12 C.F.R. § 543.3(d)(2) requires that the board be diversified and composed of individuals with varied business and professional experience. Further, except in the case of a de novo institution that is wholly owned by a holding company, no

more than one-third of the thrift's directors may be in closely related businesses. If the holding company does not have substantial independent economic substance, the latter requirement applies to its board of directors. The proposed directors of Intermediate FSLA have diverse skills and expertise that will facilitate meeting their responsibilities as directors of Intermediate FSLA. Intermediate FSLA will be wholly owned by WMI and NACI, companies with substantial independent economic substance. Therefore, because Intermediate FSLA will be owned by holding companies that have substantial independent economic significance, there is no limitation on the percentage of board members who are in closely related businesses.

Holding Company Application

Section 10(e)(2) of the HOLA and the OTS Acquisition of Control Regulations provide that in reviewing the proposed acquisition of a savings association by a savings and loan holding company, OTS must consider the managerial and financial resources and future prospects of the company and associations involved, the effect of the acquisition on the associations, the insurance risk to the Savings Association Insurance Fund (SAIF), and the convenience and needs of the community to be served.¹ Consideration of the managerial resources of a 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.² OTS must consider the impact of any acquisition on competition.³ Also, 12 C.F.R. § 563e.29 requires that OTS take into account assessments under the CRA when approving holding company acquisitions.

For the reasons set forth above, OTS concludes that the managerial resources of WMI, NACI, and Intermediate FSLA are satisfactory. OTS, as the regulator of WMB and WMBFSB, is familiar with their managerial resources, and concludes that their managerial resources meet the standards for approval.

With regard to financial resources and future prospects, OTS reviewed the financial positions of WMI, NACI, WMB, WMBFSB, and Intermediate FSLA's proposed capitalization and earnings. WMI, NACI, and WMB have demonstrated adequate financial resources. The formation and acquisition of Intermediate FSLA will not have a significant impact on the financial resources of WMI, NACI, WMB, or WMBFSB, because WMI already owns Mortgage Company and the Subsidiaries. In addition, Mortgage Company and the Subsidiaries are projected to maintain profitability. The formation of Intermediate FSLA will have no effect on WMB or WMBFSB. Based on the foregoing, OTS concludes that the financial resources and future prospects of WMI, NACI, WMB, WMBFSB, and Intermediate FSLA, are consistent with approval of the holding company application.

¹ 12 U.S.C. § 1467a(e)(2); 12 C.F.R. § 574.7 (2005).

² Id.

³ Id.

Based on the factors considered in the above discussions regarding the managerial and financial resources of WMI, NACI, WMB, WMBFSB, and Intermediate FSLA, OTS concludes that the future prospects of WMI, NACI, WMB, WMBFSB, and Intermediate FSLA are consistent with approval, and will not pose undue risk to the SAIF.

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

With regard to the convenience and needs of the community to be served, Intermediate FSLA's operations will primarily consist of the operations of the Mortgage Company and the Subsidiaries. The Mortgage Company, as an existing entity, currently serves the community, and Intermediate FSLA does not propose to terminate such services. OTS received no comments objecting to the holding company acquisition. Therefore, OTS concludes that convenience and needs considerations are consistent with approval.

With respect to performance under the CRA, WMB and WMBFSB have "Outstanding" CRA ratings. OTS did not receive any comments objecting to the application on CRA grounds. Accordingly, OTS concludes that there is not any basis for objection to the holding company application based on CRA grounds.

Bank Merger Act Application

In addition, WMB seeks OTS approval for the merger of Intermediate FSLA with and into WMB, pursuant to 12 U.S.C. 1828(c) (BMA) and the OTS Merger Regulations, 12 C.F.R. § 563.22.

In evaluating a BMA application, and in evaluating an application under 12 C.F.R. § 563.22(a), OTS considers the effect on the capital of the resulting association; the financial and managerial resources of the constituent institutions; the future prospects of the constituent institutions; the convenience and needs of the community; conformance of the transaction to applicable law, regulation, and supervisory policy; and factors relating to fairness of and disclosure concerning the transaction. In addition, in evaluating a BMA application, OTS considers the effect of the proposed transaction on competition, and the effectiveness of the depository institutions in combating money-laundering activities. OTS also considers the constituent savings associations' record of performance under the CRA.

As for capital, the Applications indicate that WMB will be well capitalized and will remain well capitalized after the merger of Intermediate FSLA with and into WMB.

As for managerial resources, the proposed transaction will not result in any changes to WMB's management. For the reasons discussed above we conclude that the

managerial resources of the resulting savings association, WMB, are consistent with approval.

As for financial resources and future prospects, the Applications indicate that the transaction will not have an adverse impact on the financial resources or future prospects of WMB. The merger will enhance the financial resources and future prospects of WMB by enabling WMB, through the Mortgage Company, to offer additional home mortgage loans in the communities currently served by the Mortgage Company. Accordingly, OTS concludes that following the merger, WMB's financial resources and future prospects are consistent with approval.

As for convenience and needs of the community, the proposed acquisition of Intermediate FSLA and its subsidiaries will enhance WMB's ability to meet the convenience and needs of its community, by providing home mortgage loans to those communities currently served by the Mortgage Company. Based on the foregoing, OTS concludes that convenience and needs considerations are consistent with approval of the proposed merger transaction.

As for the CRA, OTS has considered WMB's record of performance under the CRA in assessing the proposed transaction. WMB has an "Outstanding" CRA rating. Intermediate FSLA is newly organized and has no CRA history. OTS received no adverse comments regarding the Applications. Based on the foregoing, OTS concludes that approval of the proposed transaction is consistent with the CRA.

As for conformance to law, regulation and supervisory policy, OTS' review of the Applications did not indicate any violation of law or regulations, or non-compliance with supervisory policies, in connection with the proposed transaction. Based on the foregoing, OTS concludes that approval of the proposed transaction is not objectionable based on conformity of the proposed transaction to applicable law, regulations, and supervisory policies.

As for compliance with anti-money laundering statutes and regulations, OTS has reviewed the compliance records of WMB, which involves an evaluation of their anti-money laundering practices and compliance with anti-money laundering provisions. On the basis of the foregoing, OTS concludes that WMB's effectiveness in combating money-laundering activities is consistent with approval. Intermediate FSLA, a newly organized entity, has no record with respect to combating money laundering activities. Accordingly, OTS concludes that anti-money laundering considerations are consistent with approval.

As for factors regarding equitable treatment and disclosure, employment contracts, and advisory boards, OTS' review of the Applications provided no evidence that the proposed transaction would not be equitable to all concerned. Notice of the proposed transaction was published for WMB and Intermediate FSLA, and OTS received no comments from the public. On the basis of the foregoing, OTS concludes that

approval of the proposed transaction is not objectionable based on equitable treatment, disclosure, or compensation issues.

As for the competitive effects of the proposed transaction, the proposed transaction involves the merger of two savings associations that will be wholly owned by the same holding company. Accordingly, the proposed transaction is competitively neutral. Neither the Department of Justice nor the other banking regulators objected to the proposed transaction on competitive grounds. Based on the foregoing, OTS concludes that the competitive considerations are consistent with approval.

For purposes of 12 U.S.C. § 23A and §23B of the Federal Reserve Act and the OTS Transactions with Affiliate Regulations, 12 C.F.R. § 563.41, the proposed non-cash contribution of Mortgage Company to Intermediate FSLA results in a transfer of liabilities to Intermediate FSLA.

OTS has reviewed WMI's proposed contribution of the Mortgage Company and the Subsidiaries to Intermediate FSLA, a de novo federal savings association. OTS has conducted a detailed review of the transaction, and has concluded that the transaction is consistent with safe and sound banking practices. Accordingly, OTS hereby approves Intermediate FSLA's acquisition of the Mortgage Company and the Subsidiaries, pursuant to 12 C.F.R. § 223.42(i).

Operating Subsidiary Notices

As a result of the proposed transactions, the Mortgage Company will become a first-tier operating subsidiary of WMB, and the Subsidiaries will become second-tier operating subsidiaries of WMB.

An operating subsidiary must engage only in activities permissible for a federal savings association to engage in directly, the federal savings association must own, directly or indirectly, more than 50 percent of the voting shares of the operating subsidiary, and no person or entity other than the federal savings association may exercise operating control over the operating subsidiary. In addition, OTS may, at any time, limit or refuse to permit any activities of an operating subsidiary, for supervisory, legal, or safety or soundness reasons.

The Mortgage Company is a mortgage lender and engages only in activities that are permissible for a federal savings association. The Subsidiaries engage only in activities that are permissible for a federal savings association. WMB will own all of the Mortgage Company's voting securities, and no party other than WMB will have operating control of the Mortgage Company and the Subsidiaries.

The Subordinate Organization regulation, at 12 C.F.R. § 559.3(c)(1), refers to "voting shares." Strand is organized as a limited liability company. The preamble to the OTS Subordinate Organization regulations addresses whether an operating subsidiary

may be structured other than as a general corporation. The preamble states that OTS will provide flexibility for structuring savings associations' operations and will determine on a case-by-case basis if an operating subsidiary satisfies the basic requirements of majority ownership, limited liability, and effective operating control.⁴

In this case, OTS has determined that all three elements are comparable to those found in corporations. Moreover, there are no supervisory concerns with the organizational form of the second-tier subsidiary that will be a limited liability company.

The Applications adequately indicate that the corporate separateness requirements set forth in 12 C.F.R. § 559.10 will be complied with.

OTS concludes that the proposed establishment of the Mortgage Company and the Subsidiaries as operating subsidiaries of WMB is consistent with 12 C.F.R. Part 559.

Conclusion

OTS concludes that the Applications satisfy the applicable approval standards, provided the following conditions are complied with in a manner satisfactory to the West Regional Director, or his designee (Regional Director). Accordingly, the Applications are hereby approved, and the requirements of 12 C.F.R. § 543.3(d)(1) are waived, subject to the following conditions:

1. WMI, NACI, WMB, and Intermediate FSLA must receive all required regulatory approvals, and submit copies of all such approvals to the Regional Director, prior to consummation of the proposed transaction;
2. The proposed transactions must be consummated within 120 calendar days from the date of this Order;
3. On the business day prior to the consummation of the proposed transactions, the chief financial officers of WMI, NACI, WMB, Intermediate FSLA, and the Mortgage Company, must certify in writing to the Regional Director that no material adverse changes have occurred with respect to the financial condition or operation of WMI, NACI, WMB, Intermediate FSLA, or the Mortgage Company, as disclosed in the Applications or otherwise. If additional information having a material adverse bearing on any feature of the Applications is brought to the attention of WMI, NACI, WMB, Intermediate FSLA, the Mortgage Company, or OTS, since the date of the financial statements submitted with the Applications, 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; and

⁴ See 61 Fed. Reg. 66561, at 66564 (Dec. 18, 1996).

4. WMI and WMB 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 transactions; and (b) advise the Regional Director in writing that the transaction was consummated in accordance with all applicable laws and regulations, the Applications, all commitments and representations, and this Order.

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 February 28, 2006.



Scott M. Albinson
Managing Director
Office of Examinations, Supervision,
and Consumer Protection