

## OFFICE OF THRIFT SUPERVISION

### Approval of Voluntary Supervisory Conversion and Holding Company Application

**Order No.:** 2009-01  
**Date:** January 08, 2009  
**Docket Nos.:** H-4566 and 0373

Newton County Loan & Savings, FSB, Goodland, Indiana (Savings Bank) seeks the Office of Thrift Supervision's (OTS) approval to convert from a federally chartered mutual savings bank to a federally chartered stock savings bank in a voluntary supervisory conversion, pursuant to sections 5(i) and (p) of the Home Owners' Loan Act (HOLA), and the voluntary supervisory conversion provisions of the OTS Mutual-to-Stock Conversion Regulations (Conversion Regulations), 12 C.F.R. Part 563b, Subpart B. In addition, Lincoln National Corporation, Radnor, Pennsylvania (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 Savings Bank's voluntary supervisory conversion.

#### **The Parties**

The Savings Bank is a Deposit Insurance Fund (DIF)-insured, federal mutual savings bank. The Savings Bank is experiencing severe financial conditions relating to high levels of classified assets and non-performing assets.

The Holding Company, an Indiana corporation headquartered in Radnor, Pennsylvania, is a publicly held, full-service financial services holding company, which operates multiple insurance and investment management businesses through subsidiary companies.

#### **The Proposed Transactions**

The Savings Bank proposes to convert from a federally chartered mutual savings bank to a federally chartered stock savings association. In the voluntary supervisory conversion, the Holding Company will acquire all of the Savings Bank's common stock. The Holding Company proposes to hold the Savings Bank as a separate subsidiary. Upon consummation of the voluntary supervisory conversion, the Savings Bank will be well capitalized.

#### **Voluntary Supervisory Conversion**

Pursuant to 12 C.F.R. § 563b.625, an insured savings association is eligible to convert to a federal stock savings bank in a voluntary supervisory conversion if severe

financial conditions threaten the savings bank's stability and the voluntary supervisory conversion is likely to improve the savings bank's financial condition.<sup>1</sup>

Based on the difficulties the Savings Bank is experiencing, relating to the high levels of classified assets and non-performing assets, declining earnings, and insufficient capital, and the likelihood that the Savings Bank's capital condition will continue to deteriorate, OTS has determined that severe financial conditions exist that threaten the stability of the Savings Bank.

The proposed transaction will 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. In addition, the level of capital infusion will be sufficient to offset the anticipated losses from the current asset problems at the Savings Bank.

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.

Accordingly, 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.<sup>2</sup> 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.<sup>3</sup> OTS must also consider the impact of the acquisition on competition.<sup>4</sup> 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

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<sup>1</sup> 12 C.F.R. § 563b.625(a)(2). This standard is consistent with section 5(p)(2)(A) of the HOLA.

<sup>2</sup> 12 U.S.C. § 1467a(e)(1)(B); see also 12 C.F.R. § 574.7(c) (2008).

<sup>3</sup> 12 U.S.C. § 1467a(e)(1)(B).

<sup>4</sup> 12 U.S.C. § 1467a(e)(2) and 12 C.F.R. § 574.7(c)(2) (2008).

senior officers, and the proposed members of the board of directors of the Savings Bank, and has found no material adverse information. OTS also has consulted with the Holding Company's insurance regulators.

The background checks for the proposed President/CEO and Chief Financial Officer (CFO), of the Savings Bank, and a proposed interim consultant for the Savings Bank's operations are pending, and the Holding Company has not yet identified the Chief Credit Officer for the Savings Bank. Therefore, OTS is imposing condition 10 to ensure that the persons operating the Savings Bank have the requisite character and experience. Additionally, OTS is imposing conditions 9 and 13 to ensure that the Savings Bank has adequate personnel to operate safely and soundly.

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 has significant capital. 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 offset any asset losses. Accordingly, OTS concludes that the financial resources of the Holding Company and the Savings Bank are consistent with approval.

With respect to future prospects, the proposed acquisition will have little impact on the Holding Company, due to the small size of the Savings Bank. The proposed acquisition will greatly improve the future prospects of the Savings Bank, because the Savings Bank is in a severely troubled financial condition, and the proposed transaction will recapitalize the Savings Bank. In order to ensure that the Holding Company and the Savings Bank have addressed concerns raised in connection with the application process, OTS is imposing conditions 4, 5, 6, 7, 8, 14 and 15 which will help OTS oversee the operations of the Savings Bank, help ensure that the Savings Bank complies with relevant statutes and regulations, and help ensure that the Savings Bank operates safely and soundly and that the future prospects of the Savings Bank are consistent with approval.

Further, because the Savings Bank will share certain management officials with the Holding Company and its affiliates, OTS is imposing conditions 11 and 12. These conditions are designed to ensure that management has the necessary competence, addresses agency concerns about captive boards in the context of holding company structures where the savings association is likely to have transactions with affiliates, and is designed to help ensure that the Savings Bank's future prospects are consistent with approval.

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.

With respect to the CRA, the Holding Company has not previously controlled any financial institution subject to CRA requirements. The Savings Bank has a "Needs to Improve" CRA rating. The Holding Company has indicated that the Savings Bank's CRA performance will be enhanced. Accordingly, OTS concludes that approval of the holding company application is consistent with the CRA.

### **Public Comment Provisions**

The Control Regulations generally require that a holding company that proposes to acquire a savings association publish notice of the acquisition, and that there be a public comment period regarding the transaction.<sup>5</sup> However, 12 C.F.R. § 574.6(g) provides that these requirements may be waived in a transaction approved by OTS for supervisory reasons. In addition, the parties have requested that the proposed transaction not be subject to the publication requirement of 12 C.F.R. § 563b.180. OTS Regulations, at 12 C.F.R. § 500.30(a), provide that OTS may, for good cause and to the extent permitted by statute, waive its regulations. The publication requirement at 12 C.F.R. § 563b.180 is not required under any statute. Here the transaction needs to be completed expeditiously because the Savings Bank is experiencing severe financial conditions that threaten its stability. Based on the severe financial condition of the Savings Bank, OTS hereby waives 12 C.F.R. §§ 574.6(d), 574.6(e) and 563b.180, in connection with the proposed acquisition.

### **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 Central Regional Director (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

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<sup>5</sup> 12 C.F.R. §§ 574.6(d) and 574.6(e) (2008).

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. Within 60 calendar days after the effective date of the Proposed Transaction, the Holding Company must submit to the OTS, for the prior, written non-objection of the Regional Director, a revised business plan (including a revised CRA Plan) for the Savings Bank covering a three-year period. The Savings Bank must operate within the parameters of the business plan submitted with the applications or an approved, amended business plan 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), and in particular, those pertaining to cross-marketing of products or services by the Savings Bank and its affiliates, and any changes in the proposed delivery system of the Savings Bank's products, 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 business plan must be maintained separately from the business plans of the Holding Company and its affiliated entities. Further, the Savings Bank's Board of Directors must ensure that its senior executive officers are delegated reasonable authority to implement the plans independently of the Holding Company and its affiliated entities, and that the Savings Bank's management, staff, and other resources are adequate to carry out the Savings Bank's business plan in a safe and sound manner and independently of the activities of the Holding Company and its affiliated entities;

7. 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;
8. 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;
9. 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;
10. With respect to any proposed director, senior executive officer or any other person identified by the Regional Office as an individual who exercises significant influence over, or participates in, major policymaking decisions, for whom background checks have not been completed, the 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. Should OTS determine that any employee acting in dual roles with respect to the Holding Company or its affiliates, and the Savings Bank is having a detrimental effect upon the Savings Bank, OTS may require the elimination of such dual roles;
12. Within 60 calendar days after the effective date of the Proposed Transaction, at least 40 percent of the Savings Bank's board of directors must be individuals who are not officers or employees of the Holding Company or its affiliates and who have not otherwise been determined by the Regional Director to lack sufficient independence; and 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 Holding Company or its affiliates and who is not an officer or employee of the Savings Bank, and 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 Holding Company or its affiliates and have not otherwise been determined by the Regional Director to lack sufficient independence;

13. Within 60 calendar days after the effective date of the Proposed Transaction, the Savings Bank must identify a proposed chief credit officer and obtain the Regional Director's non-objection prior to that person's appointment;
14. For one year following the date of consummation of the Proposed Transaction, the Savings Bank must receive the prior written non-objection of the Regional Director for all employment contracts prior to their execution and implementation;
15. No later than 60 calendar days after the consummation of the Proposed Transaction, the Savings Bank shall provide to the Regional Director for his review and non-objection, such new or revised policies and procedures of operations of the Savings Bank, as the Regional Director may request, and the Savings Bank shall also provide to the Regional Director a resolution of its board of directors that indicates the directorate has reviewed and approved such policies and procedures;

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 January 8, 2009.

  
Grovetta N. Gardineer  
Managing Director  
Corporate & International Activities