OFFICE OF THRIFT SUPERVISION

Approval of Charter Conversion, Notice of Mutual Holding Company Reorganization, Holding Company Application, and Related Applications

Order No.: 2004-01
Date: January 16, 2004
Docket Nos.: 17967, H-4001, H-4002

United Co-operative Bank, West Springfield, Massachusetts (Bank), has filed with the Office of Thrift Supervision (OTS) an application to convert (Charter Conversion) to a federal mutual savings association (Association), pursuant to 12 U.S.C. § 1464 and 12 C.F.R. §§ 543.8 and 543.9. In addition, the Bank, on behalf of the Association, has filed a notice of its intent to reorganize into a federally chartered mutual holding company (Notice), to be known as United Mutual Holding Company, West Springfield, Massachusetts (Mutual Holding Company), pursuant to 12 U.S.C. § 1467a(o), and 12 C.F.R. § 575.3. Further, United Financial Bancorp, Inc., West Springfield, Massachusetts (Applicant), seeks approval from OTS, pursuant to 12 U.S.C. §§ 1467a(e) and 1467a(o) and 12 C.F.R. §§ 574.3 and 575.14, to acquire the Association. The Association also seeks OTS approval to make a capital distribution under 12 C.F.R. § 563.143. The various filings (collectively, the Applications) together seek OTS approval of the Charter Conversion and the Association's reorganization into a mutual holding company structure, along with all of the constituent elements of the reorganization.

The Proposed Transaction

The Bank, a Massachusetts-chartered, Bank Insurance Fund (BIF) insured, mutual cooperative bank, proposes to convert directly to a federal mutual savings association, and immediately thereafter, to reorganize into a three-tier mutual holding company structure in a multi-step transaction described in detail in the Notice. Upon completion of the reorganization, the Association will be a wholly owned federally chartered stock savings association subsidiary of the Applicant, a federally chartered subsidiary holding company, and the Applicant will be a wholly owned subsidiary of the Mutual Holding Company, a federally chartered mutual holding company.

Charter Conversion Application

Under 12 C.F.R. § 543.8, any mutual depository institution may convert to a federal mutual association, provided that the depository institution has deposits insured by the Federal Deposit Insurance Corporation, complies with all applicable statutes and regulations, including without limitation, section 5(c) of the Home Owners' Loan Act (HOLA), and obtains all necessary regulatory and member approvals.[1]

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[1] 12 C.F.R. § 543.8 (2003).

The proposed conversion conforms with the requirements of section 543.8. The Bank is, and the Association will remain, BIF-insured. Section 552.13(b)(4) defines "depository institution" to include a state-chartered cooperative bank, such as the Bank. The Bank does not have any investments or assets that would be impermissible for a federal association. The Bank has stated that it will obtain all necessary regulatory approvals.

OTS may grant a federal savings association charter only: (1) to persons of good character and responsibility; (2) if, in OTS' judgment, a necessity exists for such association in the community to be served; (3) if there is a reasonable probability of the association's usefulness and success; and (4) if the association can be established without undue injury to properly conducted existing local thrift and home financing institutions. In addition, OTS regulations require that OTS consider whether the association will promote credit for housing consistent with the safe and sound operation of a federal savings association. OTS also takes into account an applicant's description of how it will meet Community Reinvestment Act (CRA) objectives when considering the application.

The OTS's review of the background of the Bank's officers and directors disclosed no adverse information. The Association's board of directors will be identical to the Bank's board of directors. OTS has considered the Bank's prior examination reports, and has evaluated the Bank's condition. Based on the foregoing information, OTS concludes that the character and responsibility of the Association's organizers are consistent with approval of the Charter Conversion.

As for the necessity for the Association in the community, and undue injury to properly conducted existing local thrift and home financing institutions, the Association will continue the Bank's present business activities. Accordingly, based on the Bank's existing operations, OTS concludes that there is a necessity in the community for the Association, and that the existence of the federal association will not result in harm to existing institutions.

Based on a review of the Association's business plan, its proposed capital levels, and the competence of management, OTS concludes that the Association has the ability to operate successfully, and that there is a reasonable probability of the Association's usefulness and success.

The Association will continue the Bank's focus on mortgage lending, and OTS has not identified concerns regarding the Association's lending policies or procedures. The Association will continue to meet the qualified thrift lender test. Accordingly, OTS concludes that the Association will provide credit for housing consistent with the safe and sound operation of a federal savings association.

The Association intends to adopt a charter and bylaws in compliance with the model charter and bylaws for a federal savings institution.

The Bank's current CRA rating is "Outstanding." There will be no decrease in services as a result of the Charter Conversion, and there is no indication that the conversion will have an adverse impact on the Association's ability to meet the credit needs of its community in a satisfactory manner. Therefore, OTS concludes that the CRA standard has been satisfied.

Mutual Holding Company Reorganization

Section 10(o) of the HOLA and 12 C.F.R. Part 575 (MHC Regulations) require a savings association that proposes to reorganize into a mutual holding company structure to file prior notice of the reorganization with OTS. The HOLA and the MHC Regulations provide that OTS may disapprove a proposed mutual holding company reorganization under certain circumstances.[2]

Based on OTS' review of the most recent report of examination of the Bank, its capital and income levels, and the proposed capitalization of the Mutual Holding Company and the Applicant, we conclude that the Notice meets the criteria set forth at 12 C.F.R. § 575.4(a)(1)-(3). The Bank has provided the information required by OTS, and the proposed transaction, if carried out in conformity with the description contained in the Notice, will not violate any provision of law. Accordingly, the Notice satisfies the remaining approval criteria in § 575.4(a).

Approval of the reorganization as structured requires that OTS waive two regulatory provisions, 12 C.F.R. §§ 575.6(a) and 575.6(b). OTS has routinely waived these two regulatory provisions, pursuant to 12 C.F.R. § 575.1(b), in reorganizations structured as proposed in the Notice, and accordingly, concludes that there is good cause to waive the two provisions in connection with the proposed reorganization.

Establishment of the Applicant as a Subsidiary Holding Company

The formation of the Applicant is consistent with the MHC regulations. The Applicant will have a federal charter, as required by 12 C.F.R. § 575.14. The Applicant's proposed federal charter is consistent with 12 C.F.R. § 575.14(c). The Applicant proposes to hold all of the common stock of the Association, as required under 12 C.F.R. § 575.14(a).

Formation of Interim Associations

The Association must receive OTS approval under 12 C.F.R. § 552.2-2 to form two interim federal savings associations. The establishment of, and transactions involving, the two interim federal savings associations are consistent with previous transactions OTS has approved, and are consistent with 12 C.F.R. § 552.2-2.[3]

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[2] 12 U.S.C. § 1467a(o)(3); 12 C.F.R. § 575.4(a) (2003).

[3] See, for example, the letter approving Enfield Federal Savings and Loan Association's mutual holding reorganization (April 17, 2002).

Holding Company Applications

In the proposed reorganization, the Association would acquire two interim savings associations, and, subsequently, the Applicant would acquire the Association. Accordingly, the transaction requires OTS approval under § 10(e) of the HOLA, and the OTS regulations thereunder (Control Regulations).

Section 10(e)(2) and the Control Regulations provide that in reviewing the proposed acquisition of a savings association by a company, such as the Association, 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 BIF or Savings Association Insurance Fund (SAIF), and the convenience and needs of the community to be served.[4] Section 10(e)(1)(B) of the HOLA provides that OTS must approve a holding company application proposing the acquisition of one savings association by a company other than a savings and loan holding company, such as the Applicant, 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 BIF or SAIF.[5] In both cases, OTS must consider the impact of any acquisition on competition. Also, 12 C.F.R. § 563e.29 requires that OTS take into account assessments under the CRA when approving holding company acquisitions.

As for managerial resources, based on a review of the report of examination and an evaluation of the overall condition of the Bank, and because the board of directors and the executive officers of the Applicant will consist of the present directors and the executive officers of the Bank, OTS concludes that the managerial resources of the Applicant and the Association are consistent with approval.

As for financial resources, OTS has reviewed the Bank's financial resources. As of September 30, 2003, the Bank's core, tier one risk based and total risk based capital ratios were 7.97%, 12.23% and 13.36%, respectively. The capitalization of the Applicant and the Mutual Holding Company will not materially change the Association's capital. The only activity of the Mutual Holding Company will be its ownership of the stock of the Applicant, and the only activity of the Applicant will be ownership of the stock of the Association. Accordingly, OTS concludes that the financial resources of the Applicant and the Association are consistent with approval.

After considering the financial and managerial resources of the Applicant and the Association, we conclude that the future prospects of the Applicant and the Association, and risks to the BIF and SAIF, are consistent with approval.

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4 12 U.S.C. § 1467a(e)(2); 12 C.F.R. § 574.7 (2003).

5 12 U.S.C. § 1467a(e)(1)(B).

The proposed acquisition will not cause the Association to become affiliated with any other operating depository institution. Accordingly, the transaction is not objectionable on competitive grounds.

As for the CRA, and convenience and needs of the community, the Bank currently has an "Outstanding" CRA rating. The Applicant, as a newly formed entity, has no CRA experience. OTS has received no comments objecting to the proposed transaction. The Association does not propose to reduce its services after the transaction. Accordingly, we conclude that approval of the holding company acquisitions is consistent with the CRA and with the convenience and needs standard.

Bank Merger Act Application

The proposed merger of the interim federal savings association into the Association requires OTS approval under 12 U.S.C. § 1828(c)(Bank Merger Act) and 12 C.F.R. §§ 552.13 and 563.22(a). The approval standards for the merger are similar to the approval standards set forth under § 10(e) of the HOLA, which have been discussed previously.[6] In addition, the Bank Merger Act requires that OTS consider the effectiveness of any insured depository institution in combating money laundering activities.[7] Also, § 563.22(d) requires OTS to consider whether the transaction conforms to applicable laws, regulatory policies, and factors relating to fairness and disclosure. The CRA requires that OTS consider the CRA record of the Association in evaluating the merger application. Because the Association will be BIF-insured, and the interim associations will be SAIF-insured, OTS must review the merger of the Association and the interim association under 12 U.S.C. § 1815(d)(3).

The merging interim association will be a shell entity. Accordingly, the merger would have no material effect on the Association's managerial and financial resources and future prospects, and no effect on competition. OTS' review of compliance activities did not provide grounds for objection under 12 U.S.C. § 1828(c) based on the Bank's anti-money laundering activities. The transaction, an internal reorganization that was disclosed to the Bank's members, is not objectionable on fairness or disclosure grounds, and we are aware of no information indicating that the proposed transaction is inconsistent with any other law or regulation. For the reasons stated in connection with the holding company applications, OTS concludes that the merger application satisfies the convenience and needs and CRA criteria.

With respect to the criteria applicable under 12 U.S.C. § 1815(d)(3), the Bank has provided the information that OTS has required, the proposed merger will not result in the transfer of any insured depository institution's deposit insurance from one insurance fund to the other, and the Association will meet all applicable capital requirements upon consummation of the transaction. Accordingly, OTS concludes that approval of the

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6 12 U.S.C. § 1828(c)(5), and 12 C.F.R. § 563.22(d) (2003).

7 12 U.S.C. § 1828(c)(11).

merger is consistent with 12 U.S.C. § 1815(d)(3).

Capital Distribution Notice

The Bank, on behalf of the Association, has requested OTS approval, pursuant to 12 C.F.R. § 563.143(a)(2), to make a capital distribution. The Association proposes to make a capital distribution of $300,000 to capitalize the Mutual Holding Company and the Applicant. The Association will remain well-capitalized after the dividend and the distribution will not materially reduce the Association's capital. Accordingly, we conclude that the Association's capital distribution is consistent with approval.

Conclusion

Based on the foregoing analysis, the Charter Conversion, the Notice, the Capital Distribution Notice and the accompanying holding company applications, application to form interim associations, applications for federal charters for the Mutual Holding Company and the Applicant, and other component steps of the mutual holding company reorganization are hereby approved, pursuant to delegated authority, provided that the following conditions are complied with in a manner satisfactory to the Northeast Regional Director, or his designee (Regional Director):

1. The Mutual Holding Company, the Applicant and the Bank must receive all required regulatory approvals and submit copies of all such approvals to the Regional Director prior to consummation of the transactions;

2. The transactions must be consummated within 120 calendar days from the date of this Order;

3. Prior to consummation of the transactions, the Bank must submit to the Regional Director a certification stating that the transactions have been approved at the special meeting of members of the Bank called to vote on the transactions;

4. On the business day prior to the date of consummation of the transactions, the chief financial officers of the Mutual Holding Company, the Applicant, and the Bank must certify in writing to the Regional Director that no material adverse events or material adverse changes have occurred with respect to the financial condition or operation of the Mutual Holding Company, the Applicant, or the Bank, 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 Mutual Holding Company, the Applicant, the Bank, or OTS since the date of the financial statements submitted with the Applications, the transactions 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 transactions;

5. Upon completion of the organization of the interim federal savings associations, the board of directors of the interim federal savings associations, the Mutual Holding Company, the Applicant, and the Association must ratify the Plan of Reorganization;

6. No later than five calendar days from the date of consummation of the transactions, the Mutual Holding Company, the Applicant, and the Association must file with the Regional Director a certification by legal counsel stating: (i) the effective date of the transactions; (ii) the exact number of shares of stock of the Association acquired by the Applicant; (iii) the exact number of shares of the Applicant acquired by the Mutual Holding Company; (iv) the respective initial capitalizations for the Mutual Holding Company and the Applicant; (v) that the interim federal savings associations did not open for business; and (vi) that the transactions were consummated in accordance with all applicable laws and regulations, the Notice, the related applications, the Plan of Reorganization, and all representations made by the Bank and its counsel in connection with OTS' review of the proposed transactions, and this Order;

7. No later than 30 calendar days after consummation of the transactions, the Association must submit to the Regional Director an accounting opinion confirming the proper accounting for the transactions; and

8. No later than 60 calendar days after consummation of the transactions, the Association must submit to the Regional Director an executed Tax Allocation Agreement.

Pursuant to 12 C.F.R. § 575.1(b), OTS hereby waives the applicability of 12 C.F.R. §§ 575.6(a) and 575.6(b).

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

By order of the Director of the Office of Thrift Supervision, or his designee, effective January 16, 2004.

Scott M. Albinson
Managing Director
Office of Supervision