

OFFICE OF THRIFT SUPERVISION

Approval of Application by a Federal Credit Union to Convert to a Federal Mutual Savings Association, Bank Merger Act Application and Related Applications

Order No.: 2006-38

Date: October 20, 2006

Re: OTS Nos. 15220, H-3993, H-3994

Marcy Federal Credit Union, Marcy, New York, (Credit Union) seeks approval of the Office of Thrift Supervision (OTS) pursuant to 12 C.F.R. §§ 543.8 and 543.9 to convert to a federal mutual savings association, Marcy Interim Federal Savings Association (Marcy FSA). Beacon Federal, East Syracuse, New York (Savings Bank), seeks OTS' permission to acquire Marcy FSA in a merger transaction pursuant to 12 U.S.C. § 1828(c) (the Bank Merger Act), and 12 C.F.R. §§ 546.2 and 563.22. The Savings Bank and its holding companies, Beacon Federal Financial Services, M.H.C. (MHC), a federal mutual holding company, and Beacon Federal Financial Services, Inc. (Mid-Tier), a federal stock corporation, seek OTS' approval of the various steps of the reorganization of the MHC, the Mid-Tier and the Savings Bank into a single mutual savings association under the Bank Merger Act and under 12 C.F.R. §§ 552.2-2, 552.13 and 563.22(a). (The foregoing are referred to as the Applications.)

The Proposed Transactions

In the proposed reorganization of the Savings Bank, the MHC and the Mid-Tier, the MHC and the Mid-Tier will cease to exist, and the Savings Bank will become a federal mutual savings association. The Credit Union will convert directly from a federal credit union to Marcy FSA, a Deposit Insurance Fund (DIF)-insured, federal mutual savings association. Immediately thereafter, Marcy FSA will merge with and into the Savings Bank, with the Savings Bank being the surviving entity. After the proposed transactions, the Credit Union's members' interests in the Savings Bank will be identical in amount and in interest to their share and other accounts in the Credit Union. It is intended that all of the proposed transactions occur contemporaneously, and each transaction is contingent on the completion of the other transactions.

Reorganization of Mutual Holding Company Structure

The Board of Directors of the MHC and the Mid-Tier have adopted a Plan of Remutualization (Plan), pursuant to which the MHC and the Mid-Tier will cease to exist, and the Savings Bank will be organized as a federal mutual savings association. The Savings Bank will be the surviving institution and continue as a mutual savings association.

In order to accomplish the proposed reorganization, the MHC will exchange its federal mutual holding company charter for an interim federal stock savings bank charter and become Beacon Federal Interim 1 (Interim 1). The Mid-Tier will exchange its federal stock holding company charter for an interim federal stock savings bank charter and become Beacon Federal Interim 2 (Interim 2). Interim 2 will merge with and into the Savings Bank, with the Savings Bank being the surviving association (Mid-Tier Merger). Immediately after the Mid-Tier Merger, Interim 1 will merge with and into the Savings Bank, with the Savings Bank being the surviving association (MHC Merger). Immediately after this merger, the Savings Bank will convert from stock form to mutual form by exchanging its charter for a mutual savings association charter. In the transaction, each MHC member's equity interest in the MHC will be exchanged for a similar equity interest in the Savings Bank, and each member of the MHC will become a member of the Savings Bank, with all the rights and interests of membership therein.

The remutualization requires OTS approval of the formation of Interim 1 and Interim 2 pursuant to 12 C.F.R. § 552.2-2. OTS must condition approval of an application to organize an interim federal stock savings association on approval of an application to merge the interim federal savings association, or upon OTS approval of another transaction that the interim savings association was designed to facilitate. In addition, OTS must consider the purpose for which the interim savings association is organized, the form of the proposed transaction involving the savings association, and certain other enumerated factors.

The Plan contemplates the merger of the Interim 1 and Interim 2 into the Savings Bank. OTS is acting on the mergers at the same time that it is acting on the applications to form the interim savings associations. We conclude that the proposed formation of the interim savings associations is consistent with 12 C.F.R. § 552.2-2.

The Savings Bank and Interim 1 and Interim 2 have the authority under 12 C.F.R. § 552.13 to engage in the proposed mergers. Section 552.13(c) provides that, subject to certain restrictions that would be met in this instance, federal savings associations may combine with any "depository institution."

The proposed mergers of Interim 1 and Interim 2 into the Savings Bank require OTS approval under the Bank Merger Act, and the OTS regulations thereunder.¹ The Bank Merger Act and OTS regulations require OTS to consider the effect of the transaction on the capital of the resulting association; the financial and managerial resources of the constituent institutions; the future prospects of the constituent institutions; the effect of the transaction on competition; the convenience and needs of the community; conformance to applicable law, regulation, and supervisory policy; and factors relating to fairness of and disclosure concerning the transaction.² Also, the Bank Merger Act requires OTS to consider, in its evaluation of the application, the effectiveness of any insured depository institution in combating money-laundering

1 12 U.S.C. § 1828(c) and 12 C.F.R. §§ 552.13 and 563.22(2006).

2 12 U.S.C. § 1828(c)(5)(B); 12 C.F.R. § 563.22(d) (2006).

activities.³ Under 12 C.F.R. § 563e.29, OTS must consider the constituent savings associations' record of performance under the Community Reinvestment Act (CRA).

Given that Interim 1 and Interim 2 would be essentially shell entities, the mergers would have no material effect on the Savings Bank's managerial and financial resources and future prospects. The Savings Bank is and will continue to be "well-capitalized" when the transaction is consummated. Also, because, immediately prior to the acquisitions, Interim 1 and Interim 2 will be affiliates of the Savings Bank, the mergers will have no effect on competition. The Savings Bank has a "Satisfactory" CRA rating and will continue to provide the services it is presently providing. In addition, OTS received no comments objecting to the transaction. Accordingly, OTS concludes that the merger applications satisfy the convenience and needs and CRA criteria.

Furthermore, OTS has reviewed the compliance record of the Savings Bank, which involves an evaluation of the Savings Bank's compliance with anti-money laundering provisions, and concludes that the Savings Bank's effectiveness in combating money-laundering activities is consistent with approval. The two mergers are part of an internal reorganization that must be approved by the MHC's members, and there are no issues as to whether they are equitable to all concerned, whether disclosure of agreements have been adequate, or that the transaction is objectionable on compensation grounds. Finally, the Savings Bank and its holding companies have provided the information requested by OTS in connection with the Applications. Therefore, OTS concludes that the standards for approval contained in the Bank Merger Act and OTS regulations have been met.

Conversion Application

The proposed conversion of the Credit Union to a federal mutual savings association requires OTS approval under 12 C.F.R. §§ 543.8 and 543.9. Section 543.8 allows a depository institution, as defined in section 552.13, that is in mutual form, to convert into a federal mutual savings association, provided that: (i) the depository institution, upon conversion, will have its deposits insured by the Federal Deposit Insurance Corporation (FDIC); (ii) the depository institution, in accomplishing the conversion, complies with all applicable state and federal statutes and regulations, and OTS policies, and obtains all necessary regulatory and member approvals; and (iii) the resulting federal mutual association conforms, within the time prescribed by OTS, to the requirements of section 5(c) of the Home Owners' Loan Act (HOLA).⁴

The Credit Union is a "depository institution" within the meaning of section 552.13. The Credit Union applied to the FDIC for DIF insurance of accounts for Marcy FSA, and received FDIC approval of the application on July 26, 2006. In order for the transaction to occur, the Credit Union's members must approve the conversion.

3 12 U.S.C. § 1828(c)(11).

4 12 C.F.R. § 543.8(a) (2006).

With regard to the third requirement, conformity with the requirements of section 5(c) of the HOLA, based on the representations in the Credit Union's charter conversion application, we conclude that Marcy FSA will comply with the lending and investment limitations contained in section 5(c) of the HOLA.

Accordingly, OTS concludes that the requirements under section 543.8 have been satisfied.

Section 543.9 of OTS' regulations adopts the approval standards of section 5(e) of the HOLA and section 543.2(g)(1). The 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 for such savings association exists in the community to be served; (iii) if there is 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.⁵ OTS regulations implementing this statute set forth the same standards, and, in addition, require OTS to consider whether the association will promote credit for housing consistent with the safe and sound operation of a federal savings association.

In addition, OTS' CRA regulations provide that an applicant for a federal thrift charter must submit with its application a description of how it will meet its CRA objectives.⁶ OTS takes the description into account when considering the application and may deny the application on that basis.

As to character and responsibility, the Credit Union's management has received ratings that are consistent with approval, and accordingly, OTS concludes that this approval criterion has been satisfied.

With respect to the probability of usefulness and success, the Credit Union has been operating profitably and will be "well-capitalized" upon consummation of the conversion. Accordingly, OTS concludes that this approval criterion has been satisfied.

OTS concludes that there is a necessity for the institution in the community, based on the Credit Union's existing operations. In addition, OTS concludes that the conversion of the Credit Union to a federal mutual savings bank will not cause undue injury to local thrifts and home financing institutions, in light of the Credit Union's existing operations.

As for the provision of credit for housing, the Credit Union has provided mortgage loans, and Marcy FSA's assets will be those formerly held by the Credit Union. As for the compliance with the CRA, the Credit Union was not subject to the CRA and under the circumstances we believe the application provides appropriate treatment of Marcy FSA's CRA obligations. Accordingly, OTS concludes that approval of the charter conversion application is consistent with these standards.

5 Section 5(e) of the HOLA, 12 U.S.C. § 1464(e).

6 12 C.F.R. § 563e.29(b) (2006).

Accordingly, OTS concludes that the requirements under section 543.9 have been satisfied.

Bank Merger Act Application

The proposed merger of Marcy FSA into the Savings Bank requires OTS approval, pursuant to 12 U.S.C. § 1828(c), and 12 C.F.R. §§ 546.2 and 563.22(a).

As to financial resources and capital, the Savings Bank is “well-capitalized,” and will continue to be “well-capitalized” after the proposed transaction. With respect to managerial resources, as the Savings Bank’s regulator, OTS is familiar with the Savings Bank’s management and concludes that its management resources are consistent with approval. Senior management of the Savings Bank will not change as a result of the proposed merger. Accordingly, OTS concludes that the financial and managerial resources and capital levels are consistent with approval of the application.

As to the future prospects of the Savings Bank, the Savings Bank’s managerial resources are consistent with approval and the Savings Bank is expected to remain “well-capitalized” and have adequate earnings. Accordingly, OTS concludes that the future prospects of the Savings Bank are consistent with approval.

As to the convenience and needs of the community, the business of the Credit Union will continue as part of the Savings Bank. The Credit Union’s former offices will continue to operate in Marcy and Rome, New York for at least a year after the transaction is consummated and will be open to the public. The offices will offer the services offered by the Savings Bank’s other branch offices. Accordingly, OTS concludes that convenience and needs considerations are consistent with approval of the transaction.

As to the competitive impact of the transaction, the proposed transaction will have no significant impact on competition because the two depository institutions do not operate branches in the same geographic market areas. The Department of Justice and the other banking agencies were notified of the transaction and raised no objections. In addition, no comments objecting to the transaction were received from the public. Based on the foregoing, OTS concludes that the competitive considerations are consistent with approval.

As for the conformity with laws and regulations, approval will be conditioned on the applicants obtaining any necessary approvals and providing evidence thereof before the transaction is consummated.

As for equitable treatment, full disclosure, employment considerations and advisory boards, the transaction was negotiated at arms’ length. The transaction does not involve any payment of consideration because the merging associations are both mutual institutions. All agreements and understandings have been disclosed. The Savings Bank has invited the Credit Union’s directors to establish an advisory board whose members

will not be compensated. There are no issues under the provisions of section 563.22(d) pertaining to employment contracts. Accordingly, OTS concludes that approval of the transaction is not objectionable based on equitable treatment, full disclosure, and compensation of officers and directors, and advisory boards.

As for compliance with money laundering statutes and regulations, OTS examines savings associations for compliance with such statutes and regulations. OTS has reviewed the compliance records of the Savings Bank and Marcy FSA's predecessor, the Credit Union, which involves an evaluation of the institutions' compliance with anti-money laundering provisions. OTS' review did not reveal any significant violations of the Bank Secrecy Act by the Savings Bank or the Credit Union. OTS concludes that the Savings Bank's and Marcy FSA's effectiveness in combating money-laundering activities is consistent with approval.

As for compliance with the CRA, the Savings Bank has a CRA rating of "Satisfactory." The Credit Union was not subject to the CRA and Marcy FSA will not have operated as a savings association prior to the merger. No adverse comments were received concerning the merger. Accordingly, OTS concludes that approval of the transaction is consistent with the CRA.

For the reasons set forth above, OTS finds that the Applications satisfy the applicable approval standards, provided that the following conditions are complied with in a manner satisfactory to the Northeast Regional Director, or his designee (Regional Director). Accordingly, the Applications are hereby approved, subject to the following conditions:

1. The Savings Bank and the Credit Union must receive all required member and regulatory approvals prior to consummation of the proposed transactions with copies of all such approvals provided to the Regional Director;
2. The merger of Marcy FSA into the Savings Bank must be consummated no earlier than fifteen (15) calendar days and no later than 120 calendar days from the date of this Order;
3. On the business day prior to the date of consummation of the proposed transactions, the chief financial officers of the Savings Bank and the Credit Union 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 Savings Bank and the Credit Union 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 Savings Bank, the Credit Union, 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 the consummation of the transaction;

4. The Savings Bank must advise the Regional Director in writing within five (5) calendar days after the effective date of the proposed transactions: (a) of the effective date of the proposed transactions; and (b) that the transactions were consummated in accordance with all applicable laws and regulations, the Applications and this Order; and
5. No later than 30 calendar days after the merger of Marcy FSA with and into the Savings Bank, the Savings Bank shall advise each accountholder, whose withdrawable accounts in the Savings Bank would increase above \$100,000 as a result of the merger, or whose uninsured balance would increase as a result of the merger, of the effect of the transaction on deposit insurance coverage, and submit a copy of such notice to the Regional Director.

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 October 20, 2006.



Scott M. Albinson
Managing Director
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and Consumer Protection