

OFFICE OF THRIFT SUPERVISION

Approval of Holding Company Application

Order No.: 2002-32
Date: August 5, 2002
Docket Nos.: H-2943, H-2944 and 04837

Oritani Financial Corp., MHC (Holding Company) and Oritani Financial Corp. (Subsidiary Holding Company), Hackensack, New Jersey (jointly, the Holding Companies), have filed an application seeking the approval of the Office of Thrift Supervision (OTS) to acquire Hamilton Savings Bank, Union City, New Jersey (Savings Bank), under § 10(e) of the Home Owners' Loan Act (HOLA), 12 U.S.C. § 1467a(e), and 12 C.F.R. § 574.3 (the Application). The Savings Bank is a SAIF-insured, federal stock savings bank wholly owned by a mid-tier federal mutual holding company that is in turn wholly owned by a federal mutual holding company.

The Holding Companies entered into an Agreement with the mutual holding company parents of the Savings Bank (Agreement), which provides for the acquisition by the Holding Companies of the Savings Bank's parent mutual holding companies and thereby all of the stock of the Savings Bank. In connection with the transaction, the Savings Bank will merge into the Holding Companies' wholly owned state savings bank subsidiary, Oritani Savings Bank (Bank). The Bank previously elected, pursuant to section 10(l) of the HOLA, to be treated as a savings association for purposes of section 10 of the HOLA.

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In the proposed transaction, the Holding Companies would acquire the Savings Bank. Accordingly, the transaction requires OTS approval under Section 10(e) of the HOLA and under 12 C.F.R. Part 574 (Control Regulations).

Section 10(e)(2) of the HOLA and the Control Regulations provide that OTS must consider the financial and managerial resources and future prospects of the holding companies and the association involved, the effect of the acquisition on the association, the insurance risk to the SAIF or BIF, and the convenience and needs of the community to be served.¹ Furthermore, OTS may not approve a holding company application seeking permission to acquire another savings association which would create a monopoly or the effect of which may be to substantially lessen competition in any section of the country or if the company fails to provide adequate assurances that it will make

¹ 12 U.S.C. § 1467a(e)(2). See also 12 C.F.R. § 574.7(c) (2002).

available such information as OTS determines is appropriate.² In addition, 12 C.F.R. § 563e.29(a) requires that OTS take into account assessments under the CRA when approving savings and loan holding company acquisitions.

OTS had considered the materials filed by the Holding Companies in support of the application, reports of examinations for the Holding Companies, the Bank and the Savings Bank, and financial reports filed by the Savings Bank and the Bank.

With respect to the financial and managerial resources and future prospects of the Holding Companies and the institution involved, the effect of the acquisition on the institution, the insurance risk to the SAIF or BIF, and the convenience and needs of the community to be served, OTS has considered the background, experience, and regulatory and supervisory history of the Holding Companies' and the Bank's officers and directors, along with those of the Savings Bank. The management of the Holding Company, the Subsidiary Holding Company, the Bank and the Savings Bank have demonstrated the ability to operate the respective entities profitably, safely and soundly. Most of the current board of the Savings Bank will provide assistance to the acquirors through an advisory board, and the Chairman of the Board of the Savings Bank, who is also the acting Chief Executive of the Savings Bank, will serve as a consultant to the acquirors. In addition, both the Savings Bank and the Bank are, and will remain, well capitalized after the transaction. With respect to the convenience and needs of the communities to be served, the Holding Companies and the Bank intend to keep open all of the existing offices of both institutions and continue to offer the products currently offered. With respect to the CRA, both the Savings Bank and the Bank were assigned "Satisfactory" ratings at their most recent examinations. OTS received no comments objecting to the proposed transaction.

With respect to the competitive effects of the merger, the proposed transaction contemplates only a very small increase in the market share of the Holding Companies. The Department of Justice has been notified about the proposed transaction so that it could consider its competitive effects and the Department has stated that it does not object.

OTS is satisfied that it has received from the Holding Companies such information as OTS determined was appropriate in the past and OTS has received sufficient assurances that it will continue to receive such information in the future.

Section 575.10 of OTS's regulations provides authority for the transaction.³ The regulation explicitly authorizes the Holding Company's acquisition of the Savings Bank's holding companies. In substance, the Holding Company is acquiring both of the Savings Bank's holding companies. While, in form, the Holding Company is not directly acquiring the Savings Bank's mid-tier holding company, OTS attempts to avoid elevating

² 12 U.S.C. § 1467a(e)(2).

³ 12 C.F.R. § 575.10(a)(3) (2002)

form over substance. Moreover, the regulation was intended to prevent a diminution of the interests of the depositor members of a mutual holding company by preventing such a company from being acquired by a mid-tier holding company owned by stockholders. In this case there will not be any diminution of the interests of the depositor members of the Savings Bank's first tier holding company because, consistent with 12 C.F.R. § 575.5(a)(2), they will have the same rights in the Holding Company as they would have had if their deposits had been made in the Bank. Therefore, the intent of the regulation is achieved here.

Conclusions

Based on the foregoing analysis, OTS concludes that the Application meets the applicable approval criteria. Accordingly, the Application is hereby approved, provided that the following conditions are complied with in a manner satisfactory to the OTS Northeast Regional Director, or his designee (Regional Director):

1. The Holding Companies must consummate the transactions described in the Application (the transactions) in accordance with the Agreement and Plan of Merger dated October 18, 2001, as amended on June 18, 2002, between the Holding Companies and the parent holding companies of the Savings Bank within 120 calendar days from the date of this Order;
2. Prior to the date of consummation of the transactions, the Holding Companies, the Bank, and the Savings Bank and its holding companies must receive all required approvals and submit satisfactory evidence of those approvals to the Regional Director;
3. On the business day prior to the date of consummation of the transactions, the chief executive officers of the Holding Companies, the Bank, the Savings Bank and its holding companies 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 operations of the respective entities since the date of the financial statements submitted with the Application. If additional information having an adverse bearing on any feature of the Application is brought to the attention of the Holding Companies, the Bank, the Savings Bank or its holding companies, or OTS since the date of the financial statements submitted with the Application, 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 transaction;
4. The Holding Companies and the Savings Bank must file a written certification of their legal counsel with the Regional Director within five calendar days after the effective date of the proposed transactions: (a) of the effective date of the transactions; and (b) that the transactions were consummated in accordance with the provisions of the Agreement, all applicable laws and regulations, the Application and this Order.

Any time period set forth herein may be extended for up to 120 calendar days, for good cause, by the Regional Director.

By order of the Director of the Office of Thrift Supervision, or his designee, effective August 5, 2002.


Scott M. Albinson
Managing Director
Office of Supervision