



Office of Thrift Supervision

Department of the Treasury

1700 G Street, N.W., Washington, DC 20552 • (202) 906-6000

April 7, 2010

John A. Buchman, Esq.
General Counsel
E*TRADE Bank
Ballston Tower
671 North Glebe Road
Arlington, VA 22203-2120

Re: Management Interlocks Exemption Request (Application) for Joseph M. Velli to Serve as a Director of E*TRADE Financial Corporation (ETFC), New York, New York and E*TRADE Bank (Bank), Arlington, Virginia, While Serving as a Director and Chief Executive Officer (CEO) of ConvergEx, New York, New York, a Subsidiary of The Bank of New York Mellon Corporation (Corporation) New York, New York

Dear Mr. Buchman:

The Application requests that the Office of Thrift Supervision (OTS) grant an exemption under the Depository Institution Management Interlocks Act (DIMIA)¹ and the OTS Management Interlocks Regulations (Interlocks Regulations),² pursuant to 12 C.F.R. § 563f.6(a), to permit Mr. Joseph M. Velli (Individual) to join the boards of directors of ETFC and the Bank, while continuing to serve as a director and CEO of ConvergEx. ETFC is a savings and loan holding company that controls the Bank. The Corporation controls The Bank of New York Mellon (Bank Mellon) and holds a controlling interest in ConvergEx. The Corporation and ETFC each has total assets in excess of \$2.5 billion. Absent an exemption, the interlock is prohibited under the “major assets” prohibition set forth in the DIMIA and the Interlocks Regulations.³

BACKGROUND

ETFC directly owns all of the outstanding stock of the Bank. As of December 31, 2009, ETFC had total assets of approximately \$47.37 billion, and the Bank had total assets of approximately \$45 billion and deposits of approximately \$30.56 billion. The Bank’s only publicly accessible office is in Arlington, Virginia.

¹ 12 U.S.C. §§ 3201 *et seq.*

² 12 C.F.R. Part 563f (2009).

³ 12 U.S.C. § 3203 and 12 C.F.R. § 563f.3(c) (2009).

As of December 31, 2009, the Corporation had total assets of approximately \$212.22 billion. As of the same date, Bank Mellon had total assets of approximately \$164.28 billion, and deposits of approximately \$60.99 billion in its domestic branches. Bank Mellon has branches in New York, Pennsylvania, and Massachusetts, but has no branches in Virginia. Because the Corporation holds more than 25 percent of the common stock of ConvergEx, it is an affiliate of Bank Mellon for the purposes of the relevant restrictions of the Interlocks Regulations.

DISCUSSION

Under the major assets prohibition of the DIMIA and the Interlocks Regulations, a management official of a depository holding company with total assets exceeding \$2.5 billion, or of any affiliate thereof, may not serve as a management official of any other nonaffiliated depository holding company having total assets exceeding \$1.5 billion (or any affiliate of such other depository holding company).⁴ Both ETFC and the Corporation have total assets in excess of \$2.5 billion. The Individual is a management official of an affiliate of the Corporation, and proposes to serve as a management official of ETFC and the Bank as well. Therefore, the proposed interlock is impermissible unless an exemption is granted.

ETFC and the Bank have filed the Application, pursuant to 12 C.F.R. § 563f.6(a), requesting an exemption for the proposed interlock. Section 563f.6(a) provides that OTS may exempt an interlock from the prohibitions of the Interlocks Regulations if OTS finds that the interlock would not result in a monopoly or substantial lessening of competition and would not raise safety and soundness concerns.

Because the potential diminution in competition that may result from interlocking management is similar to that associated with horizontal mergers (mergers of direct competitors) OTS's practice in reviewing interlock exemption applications has been to evaluate competition between the entities using an analysis that is similar to the analysis OTS would apply to a merger between the depository organizations or institutions. That analysis includes consideration of the effect of combining the subject firms' respective shares of deposits in any relevant geographic markets under guidelines established by the Department of Justice, which employ the Herfindahl-Hirschman Index (HHI) to measure market concentration (DOJ Guidelines).⁵

The Bank offers deposit products nationally, and its sole "brick and mortar" office generates an insignificant portion of its deposits. Bank Mellon's domestic deposits are attributable mostly to "brick and mortar" branches located in New York, Boston, and Pittsburgh.

⁴ 12 U.S.C. § 3203 and 12 C.F.R. § 563f.3(c) (2009).

⁵ See 1992 Horizontal Merger Guidelines [with April 8, 1997, Revisions to Section 4 on Efficiencies] (<http://www.ftc.gov/bc/docs/horizmer.htm>).

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OTS has considered the competitive effects of the proposed interlock, based on the parties' deposit shares in New York, Boston, and Pittsburgh, as well as on a nationwide basis, and has concluded that the proposed interlock is not likely to have an adverse effect on competition for deposit products in any geographic market in the United States.

In addition, based on our review of the Application, and our supervisory experience with respect to EFTC and the Bank, we conclude that the proposed management interlock does not present supervisory concerns.

OTS concludes that the Application satisfies the applicable approval criteria. Accordingly, the Application is hereby approved.

Sincerely,

_____/s/_____
Donald W. Dwyer
Director, Applications
Corporate & International Activities

_____/s/_____
Kevin A. Corcoran
Deputy Chief Counsel for
Business Transactions

cc: Regional Director
Regional Counsel
Valarina Oliver-Dumont
Southeast Regional Office
Virgie Grant-Brooks, CIA