

OFFICE OF THRIFT SUPERVISION

APPROVAL OF APPLICATIONS FOR CONVERSION TO A FEDERAL SAVINGS ASSOCIATION, MERGER, TRUST POWERS, CONVERSION TO FEDERAL MUTUAL HOLDING COMPANIES, AND HOLDING COMPANY ACQUISITION

Order No.: 2002-50

Date: November 1, 2002

**Re: Docket Nos. H-3888, H-3889,
17945**

First Niagara Financial Group, MHC (MHC), First Niagara Financial Group, Inc. (Mid-Tier Holding Company), and First Niagara Bank (Institution), all of Lockport, New York (collectively, the Applicants), have submitted applications for the following: the conversion of the Institution from a New York chartered stock savings bank to a federally chartered stock savings association, under 12 U.S.C. § 1464 and 12 C.F.R. § 552.2-6; the merger of Cortland Savings Bank, Cortland, New York (Savings Bank) and Cayuga Bank, Auburn, New York (Commercial Bank) with and into the converted Institution, under 12 U.S.C. § 1828(c) and 12 C.F.R. § 563.22; for Trust Powers for the converted Institution under 12 U.S.C. § 1464(n) and 12 C.F.R. § 550.100; the conversion of the MHC and the Mid-Tier Holding Company from a New York chartered mutual holding company and a Delaware chartered mid-tier holding company to federally chartered mutual holding companies under 12 U.S.C. § 1467a(o) and 12 C.F.R. Part 575; and the acquisition by the converted MHC and converted Mid-Tier Holding Company of the Institution under 12 U.S.C. § 1467a(e) and 12 C.F.R. Part 574. (The foregoing are collectively referred to herein as the Applications.)

The proposed transaction will occur in a series of steps that are largely contemporaneous. First, the Institution will directly convert from a New York state stock savings bank charter to a federal stock savings association charter. Second, immediately following the charter conversion of the Institution, the Savings Bank and the Commercial Bank will merge with and into the Institution. Third, following the merger, the MHC and the Mid-Tier Holding Company will directly convert from their respective New York and Delaware charters to federal mutual holding companies. Each of the constituent depository institutions is a member of the Bank Insurance Fund (BIF) and the converted Institution will continue to be a member of the BIF.

OTS has considered the Applications under the standards set forth in 12 U.S.C. §§ 1464, 1467a(e), 1467a(o), and 1828(c), and in 12 C.F.R. §§ 550.100, 552.2-6, 563.22(d), and 574.7, and Part 575. Also, OTS has considered the Applications under the Community Reinvestment Act (CRA), 12 U.S.C. §§ 2901, *et seq.*, and OTS regulations thereunder, 12 C.F.R. Part 563e. In addition, OTS has considered the materials filed by the Applicants, who have provided the information that OTS has requested.

Section 552.2-6 of OTS' regulations addresses conversions of any stock depository institution to a federal stock charter. The proposed conversion of the Institution to a federal savings association charter satisfies the requirements of Section 552.2-6 of the OTS regulations.

The Institution is a New York chartered stock savings bank. Under 12 C.F.R. § 552.13(b)(4), a "depository institution" is defined to include any savings bank, chartered in the United States and having its principal office in the United States. The Institution is a member of the Federal Home Loan Bank of New York. The Institution's deposits are insured by the BIF. The constituent institutions hold certain securities that are impermissible investments for federal savings associations. In addition, the Institution has certain subsidiaries that may be engaged in activities that are not necessarily permissible for service corporations of federal associations. Therefore, we are imposing conditions requiring that the Institution obtain OTS approval for the activities or terminate them within two years and that it divest the impermissible securities investments within one year.

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 for 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. Furthermore, OTS takes into account an applicant's description of how it will meet CRA objectives when considering the application.

The Applications disclosed no information indicating that the current management of the Institution, the Mid-Tier Holding Company and the MHC are not of good character and responsibility. The Applicants' current regulators have found the Applicants' management to be acceptable. However, background checks on four officers and directors who recently joined the Institution have not been completed. In order to ensure that the Application meets the standards for approval we are imposing a condition relating to the completion of the background checks regarding those four individuals. We conclude that, subject to the condition, the Application demonstrates that persons involved are of good character and responsibility.

Because the Institution will continue its current business activities, we conclude that there is a necessity for the Institution, and that the Institution will not cause undue injury to existing institutions. The Institution is profitable and well capitalized, and OTS has reviewed the Institution's business plan and has found it to be acceptable. Accordingly, OTS concludes that the Institution's probability of usefulness and success is consistent with approval. Because the Institution originates both fixed rate and adjustable rate 1-4 family permanent mortgage loans and plans to continue such lending, meets the Qualified Thrift Lender test, and its lending activities have not raised supervisory concerns, we conclude that it will provide credit for housing consistent with the safe and sound operation of a federal savings association. Finally, the Institution's current federal regulator has examined the Institution's CRA performance and found it to be satisfactory. The Applications indicate that such satisfactory CRA performance will continue in the future.

In evaluating a merger application, the OTS considers the effect on the capital of the resulting association; the financial and managerial resources of the constituent institutions; the

future prospects of the constituent institutions; 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, the effect on competition, the effectiveness of the depository institutions involved in combating money laundering activities and the constituent institutions' CRA performance.

The Institution, the Savings Bank and the Commercial Bank are well capitalized, and after the merger, the Institution will continue to be well capitalized. Management of the Institution appears to be satisfactory and will continue to manage the Institution after the merger is consummated. OTS has reviewed the Institution's business plan, and has not objected. Accordingly, OTS concludes that the capital, financial and managerial resources, and future prospects considerations are consistent with approval. The merger is competitively neutral because all of the constituent institutions are owned by the same holding company.

The Institution does not plan to close any of the branches it acquires in the acquisition and will continue to offer the services it had offered previously and add trust services provided by one of the institutions being acquired. We are not aware of any violations of law or policy by the constituent institutions and the terms of the transaction appear to be fair. OTS however has not yet approved one of the proposed employment contracts related to the transaction, and is imposing a condition requiring prior non-objection to the contract to ensure it complies with regulatory policy and that it does not raise supervisory concern. The constituent institutions all have performed satisfactorily under the CRA. The current regulator for the three institutions have not identified any deficiencies in anti-money laundering activities. Accordingly, OTS concludes that convenience and needs, CRA, anti-money laundering, and other considerations are consistent with approval of the merger.

In reviewing an application for trust powers OTS considers: (1) the association's financial condition; (2) the association's capital and whether the capital is sufficient under the circumstances; (3) the association's overall performance; (4) the fiduciary powers the association proposes to exercise; (5) the association's proposed supervision of its fiduciary powers; (6) whether the association has legal counsel available to advise and pass on fiduciary matters as necessary; (7) the needs of the community to be served; and (8) any other facts or circumstances that the OTS considers proper.

The Institution is well-capitalized, and will remain well-capitalized after the merger, with sufficient capital to engage in the proposed trust activities. In addition, the Institution is well-rated. Accordingly, we conclude that the first three approval criteria have been satisfied. The Institution will continue the trust business of one of the acquired institutions, utilizing the same employees, investment advisor, and practices and procedures that have been employed by that entity. Its current federal regulator has concluded that the administration of fiduciary activities has been fundamentally sound. The trust activities in question are permissible under New York state law. Accordingly, the proposed fiduciary powers and the Institution's proposed supervision of the fiduciary powers are consistent with approval. The Institution has legal counsel available. Given that the trust services in question have been offered in the community for several years, we conclude that the Institution's provision of the proposed fiduciary activities is consistent with the

needs of the community. However, to ensure that the trust operations are conducted safely and soundly, because investment advisory services will be provided by a subsidiary of the Institution, we are imposing a condition requiring the Institution to provide the Regional Office with a copy of the trust brochure to be provided to trust customers at the beginning of a trust relationship.

When the Institution has completed its charter conversion to a federal stock savings association, the MHC and the Mid-Tier Holding Company become subject to section 10(o) of the HOLA; therefore, the MHC and the Mid-Tier Holding Company may not retain their state charters, and are required to obtain federal charters. Counsel for the MHC and the Mid-Tier Holding Company have opined that the proposed conversion of the MHC and the Mid-Tier Holding Company are permissible under state law. We have reviewed the proposed federal charters and bylaws of the MHC and the Mid-Tier Holding Company, and have concluded that the charters and bylaws are consistent with OTS regulations. In addition, we have reviewed the proposed mutual holding company structure, and have concluded that the proposed structure is consistent with OTS' MHC regulations.

OTS must approve a holding company application seeking permission to acquire one 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 BIF. OTS also takes into account assessments under the CRA when approving savings and loan holding company acquisitions. As discussed above, the financial and managerial resources and future prospects of the companies and the Institution are adequate, and the depository institutions controlled by the Applicants have a history of satisfactory CRA performance. In addition, because the predecessor holding companies controlled the predecessor institutions, the transaction has no effect on competition.

Therefore, OTS has determined that the Applications satisfy all applicable statutory and regulatory criteria, and the Applications are hereby approved, provided that the following conditions are complied with in a manner satisfactory to the Northeast Regional Director, or his designee (Regional Director):

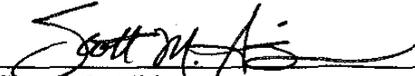
1. The Applicants must receive all required regulatory and shareholder or accountholder approvals for the proposed transaction and submit copies of all such approvals to the Regional Director prior to consummation of the proposed transaction;
2. The proposed transaction must be consummated within 120 calendar days from the date of this Order;
3. On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of the Applicants 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 Applicants as disclosed in the Applications. If additional information having an adverse bearing on any feature of the Applications is brought to the attention of the Applicants 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 consummation of the transaction;

4. The Applicants must submit a certification from their independent legal counsel to the Regional Director within five calendar days after the effective date of the transaction, regarding: (a) the effective date of the transaction and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the Applications and this Order;
5. Within 60 calendar days of the date of this Order, the Institution must provide the Regional Director with a copy of the brochure to be provided to the Institution's trust customers at the beginning of a trust relationship between them;
6. No later than 30 calendar days after the merger of the Savings Bank and the Commercial Bank with and into the Institution, the Institution must advise each accountholder whose withdrawable accounts in the resulting Institution would increase above \$100,000 as a result of the merger of the effect of the transaction on deposit insurance coverage. A copy of such notice should be submitted to the Regional Director;
7. The Institution must divest any investments not permitted under Section 5(c) of the HOLA, without material loss to the Institution, at the earliest possible date, but in any event no later than one year after the date of consummation of the transaction;
8. The Institution must file subsidiary applications and obtain OTS approval for NOVA Healthcare Administrators, Inc., Warren-Hoffman & Associates, Inc., and Allied Claims Services, Inc., to engage in the activities that the Applications evidence they are engaged in or terminate those activities within two years from the date of consummation of the transaction;
9. Prior to their implementation, all employment contracts for existing executive officers of the Institution submitted with the Applications must be submitted to the Regional Director for his review and written non-objection; and
10. If the Regional Director determines, upon the completion of the background investigations of the four senior officers and directors of the Institution for whom the investigations have not been completed by the date of this Order, that an individual is unfit to serve as a senior officer or director of the Institution, such person or persons shall immediately resign from his or her position with the Institution and, if such a person does not voluntarily resign, the Institution must terminate said person or persons, if and when directed to do so by the Regional Director.

The Regional Director, for good cause, may 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
November 1, 2002.



Scott M. Albinson
Managing Director
Office of Supervision