

OFFICE OF THRIFT SUPERVISION

APPROVAL OF HOLDING COMPANY, MERGER AND POST-CONVERSION ACQUISITION APPLICATIONS AND RELATED FILINGS

Order No.: 2002-60

Date: December 13, 2002

**Re: Docket Nos.: H-3915, 17945,
07874**

New First Niagara Financial Group, Inc. (Holding Company), and First Niagara Bank (Savings Bank), both of Lockport, New York (collectively, Applicants), have filed several applications (collectively, Applications) seeking approval of the Office of Thrift Supervision (OTS) under section 10(e) of the Home Owners' Loan Act (HOLA), sections 5(d) and 18(m) of the Federal Deposit Insurance Act (FDIA), the OTS Acquisition of Control Regulations, Merger Regulations, Post-Conversion Acquisition Regulations, and other relevant regulations, of the steps of a multi-step transaction in which the Holding Company will: (i) acquire the Savings Bank in connection with the Savings Bank's conversion from the mutual form to the stock form of organization; and (ii) acquire Savings Bank of the Finger Lakes, FSB, Geneva, New York (Association), a federal savings association that converted to the stock form of organization in November 2000, and merge the Association into the Savings Bank. OTS approved on November 14, 2002, the Savings Bank's application to convert from mutual to stock form.

The proposed transactions will occur in a series of steps. The Savings Bank currently is the wholly owned subsidiary of First Niagara Financial Group, Inc. (Mid-Tier), a subsidiary mutual holding company and a majority owned subsidiary of First Niagara Financial Group, MHC (MHC), a mutual holding company. In the proposed transaction, the Savings Bank will form the Holding Company as a Delaware-chartered corporation, and organize an interim federal savings association (Interim C) as a wholly owned subsidiary of the Holding Company. The MHC and the Mid-Tier will then convert to interim federal savings associations (Interim A and Interim B) and then merge with and into the Savings Bank. Immediately thereafter, Interim C and the Savings Bank will merge, with the Savings Bank as the surviving entity.

Either contemporaneously with the transactions described above, or shortly thereafter, the Holding Company will acquire Finger Lakes Bancorp, Inc. (Target Company), and merge the Target Company's wholly owned subsidiary, the Association, into the Savings Bank.

OTS has considered the Applications under the standards set forth in 12 U.S.C. §§ 1464, 1467a(e), 1467a(o), 1815(d) and 1828(c), and in 12 C.F.R. §§ 552.2-2, 552.13, 563.22(d), 563b.525, 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 examinations by federal banking regulators and materials filed by the Applicants, who have provided the information that OTS has requested.

Holding Company Applications

The Holding Company has requested OTS approval to acquire the Savings Bank, the Association, and Interim C. Section 10(e)(2) of HOLA and the Acquisition of Control Regulations thereunder, at 12 C.F.R. Part 574, provide that in reviewing the proposed acquisition of more than one savings association by a company, OTS must consider the financial and managerial resources and future prospects of the company and the associations involved, the effect of the acquisition on the associations, the insurance risk to the Bank Insurance Fund (BIF) and the Savings Association Insurance Fund (SAIF), and the convenience and needs of the community. OTS must deny a holding company application, however, if the transaction would have certain anticompetitive effects. In addition, 12 C.F.R. § 563e.29 requires that OTS take into account assessments under the CRA when approving savings and loan holding company applications.

The Holding Company's management will be made up of persons who also serve as managers of the Savings Bank. The Savings Bank's management will not change as a result of the acquisition of the Association or the merger with Interim C. OTS has considered the prior examinations of the Savings Bank and the Association by federal banking regulators, evaluated the condition of the Savings Bank and the Association, notes that they both received Satisfactory CRA ratings, and concludes based upon this review that the managerial resources of the Holding Company, the Savings Bank, the Association and Interim C are consistent with approval.

With respect to financial resources, OTS has considered the financial condition and operations of the Holding Company, the Savings Bank and the Association. The Association is well capitalized. The Savings Bank is well-capitalized, and will remain so after the proposed transactions. Upon the conversion of the Savings Bank from mutual to stock form, the Holding Company will retain approximately 50% of the net conversion proceeds. OTS has considered the amount of the conversion proceeds that will be transferred to the Savings Bank, and does not object. The Interim federal savings association is a shell organization that will not undertake any operations. Based on the foregoing, OTS concludes that the financial resources of the Holding Company, the Savings Bank, the Association and Interim C are consistent with approval.

OTS has reviewed the Savings Bank's business plan and has concluded that the business plan is satisfactory. The financial and managerial resources of the Holding Company and the three savings associations are consistent with approval. Based on the foregoing, OTS concludes that the future prospects of the Holding Company, the Savings Bank, the Association and Interim C, and insurance risks to the SAIF and BIF, are consistent with approval, provided the Savings Bank and the Holding Company satisfy the conditions set forth below, which are intended to ensure that the Savings Bank's future prospects are consistent with approval.

With regard to anticompetitive effects, the Holding Company's acquisitions of the Savings Bank and Interim C will not cause any new affiliations among operating depository institutions and, therefore, are competitively neutral. OTS has considered the competitive effects of the acquisition of the Association based upon the Herfindahl-Hirschman index, and concludes that the Holding Company's acquisition of the Association will have only a minimal effect on competition

in the three New York markets where both the Savings Bank and the Association compete. OTS requested competitive factors reports from the Department of Justice and other federal banking agencies, and no anticompetitive issues were raised. No commenter objected to the transaction. Accordingly, we conclude that the competitive factors considerations are consistent with approval.

With respect to the convenience and needs of the community, the Savings Bank plans to continue operations in the same manner and offer the same products and services as it did prior to the transaction and will offer those services to the customers of the Association as well. Those products and services are either similar to the ones now offered by the Association or represent additional products and services to those presently offered by the Association. All but one of the Association's branches will be maintained by the Savings Bank after the acquisition is consummated. According to the Holding Company, the one branch that will be closed is across the street from an existing branch of the Savings Bank and, therefore, its closing will not result in any diminution in service to the branch's customers. Therefore, we conclude that convenience and needs considerations are consistent with approval.

The Holding Company, as a newly chartered corporation with no operating history, provides no basis upon which to evaluate CRA performance. OTS does not impute the CRA performance of a converting savings association to a new entity. No adverse comments have been filed regarding the holding company application. Accordingly, we conclude that approval of the holding company applications is consistent with the CRA.

Formation of Interim Federal Savings Associations

The formation of the Interim federal savings associations requires approval under 12 C.F.R. § 552.2-2. OTS has consistently concluded that the formation of interim federal savings associations in the manner proposed in the subject transaction meets the relevant regulatory criteria. We conclude that formation of the Interim federal savings associations is appropriate here.

Bank Merger Act Applications and Related Matters

The proposed mergers of Interim A, Interim B, Interim C, and the Association into the Savings Bank require OTS approval under 12 U.S.C. § 1828(e), and the OTS regulations thereunder. Those provisions require OTS to consider the financial and managerial resources and future prospects of the institutions involved in the transaction, the convenience and needs of the communities to be served, and the competitive effects of the transaction. In addition, OTS must consider the effectiveness of any merging insured depository institution in combating money-laundering activities. OTS regulations require us to consider whether the transaction is equitable to all concerned, whether full disclosure has been provided regarding agreements through which anyone will receive anything of value in the transaction, and certain compensation issues. The CRA also requires that OTS consider the CRA record of the Savings Bank and the Association in evaluating the merger applications. Further, because the Interim federal savings associations and the Association are SAIF insured, and the Savings Bank is BIF insured, OTS must also approve the application under 12 U.S.C. § 1815(d). That provision requires OTS to consider whether the

applicants provided all requested information and whether the acquiring institution will meet all capital requirements after the transaction is consummated. In addition, the statute contemplates that no transaction would be approved that results in a transfer of any insured depository institution's federal deposit insurance from one insurance fund to the other.

The Savings Bank, the Interim federal savings associations and the Association have the authority under 12 C.F.R. § 552.13 to engage in the proposed mergers. We have already discussed the relevant managerial and financial resources, future prospects, convenience and needs and competitive factors standards regarding the aspects of the transactions other than the mergers of Interim A and Interim B into the Savings Bank. Interim A and Interim B will be shell entities and therefore their merger into the Savings Bank will not have any material effect on the Savings Bank's managerial and financial resources and future prospects, nor will the two mergers have any impact on competition, or the convenience and needs of the communities involved.

The Savings Bank and the Association both have Satisfactory CRA ratings, the three Interim federal savings associations are not operating entities, and OTS has received no comments objecting to the proposed transactions on CRA grounds. We therefore conclude that CRA considerations are consistent with approval.

OTS has reviewed the compliance records of the Savings Bank and the Association, which involves an evaluation of the Savings Bank's and the Association's compliance with anti-money laundering provisions. On the basis of that review, we conclude that the Savings Bank's and the Association's effectiveness in combating money-laundering activities is consistent with approval of the transactions.

The Applications include no materials indicating that the transactions would not be equitable to all concerned, that disclosure of agreements has been inadequate, or that the transaction is objectionable on compensation grounds. A draft fairness opinion provided with the applications indicates that the transaction is fair from a financial standpoint to the holders of stock in the Target Company. Because the fairness opinion submitted with the application was in draft form, we are conditioning approval of the acquisition of the Association on the submission of a final fairness opinion. We are not aware of any violation of law in connection with the proposed merger. In addition, the representations made in the Applications appear to be consistent with applicable regulations and supervisory policies.

With respect to the standards of section 5(d)(3) of the FDIA, the transactions will not result in the transfer of any insured depository institution's deposit insurance from one fund to the other, the Savings Bank will be well capitalized upon completion of the transaction, and the Applicants have provided the information OTS has requested. Therefore, we conclude that the section 5(d)(3) standards for approval of the mergers have been met here.

Post-Conversion Acquisition Application

The Association converted to stock form on November 13, 2000. Accordingly, the proposed acquisition is subject to the approval standards set forth in 12 C.F.R. § 563b.525. Specifically, OTS must consider whether: the proposed transaction is contrary to the purposes of the conversion regulations; is manipulative or deceptive; subverts the fairness of the conversion; is likely to injure the converted institution; is inconsistent with the converted institution's plan to meet the credit needs of its market area; otherwise violates laws or regulations; or does not prudently deploy the conversion proceeds.

All of the Target Company's shareholders, including insiders, will receive the same consideration for their shares. The transaction was negotiated at arms-length and the Target Company has received a draft fairness opinion that indicates the transaction is fair from a financial perspective. As discussed above, approval will be conditioned on receipt of a final fairness opinion to the same effect. The Savings Bank will maintain the liquidation account created in the Association's conversion. Information about the transaction is disclosed in the proxy statement and prospectus provided to the holders of the Target Company's stock. In addition, notice of the holding company and merger applications was published and the appropriate application materials were available for the public to review. The Association will be merged into another savings association, the Savings Bank, which will continue to serve the customers of the Association. The Savings Bank plans to continue providing home mortgages and other loans in the area served by the Association and include that area in its CRA assessment area. In addition, the Savings Bank received a Satisfactory CRA rating after its last CRA evaluation. Finally, we have reviewed the Applications, and other relevant information, and have concluded that the proceeds of the Association's conversion have been fully deployed. Thus, we conclude that the Savings Bank's acquisition of the Association is consistent with the relevant regulatory standards.

Conclusion

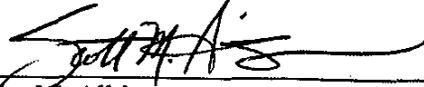
Based on the foregoing, OTS concludes that the Applications satisfy all applicable statutory and regulatory criteria. Accordingly, the Applications are hereby approved, provided that the following conditions are complied with in a manner satisfactory to the Northeast Regional Director, or his designee (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 no sooner than 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 MHC, Mid-Tier, Holding Company, Target Company, the Savings Bank and the Association 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 MHC, Mid-Tier, Holding Company, Target Company, the Savings Bank or the Association, respectively 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 MHC, Mid-Tier, Holding Company, Target Company, the Savings Bank, the Association 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;
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 transactions, stating: (a) the effective date of the transactions; (b) that the Interim federal savings associations never opened for business; and (c) that the transactions were consummated in accordance with all applicable laws and regulations, the Applications and this Order;
 5. The Savings Bank must operate within the parameters of the business plan submitted with the Applications. During the period covered by the plan, the Savings Bank must submit any proposed major deviations or material changes from the plan (including those initiated by the Holding Company) at least 30 calendar days before the change for the prior, written non-objection of the Regional Director;
 6. No later than 30 calendar days after the merger of the Association with and into the Savings Bank, the Savings Bank must advise each accountholder, whose withdrawable accounts in the Savings Bank 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. If the conversion is not consummated, the Holding Company must submit a plan for funding the acquisition of the Target Company and the Association for the Regional Director's review and receive his nonobjection prior to proceeding with the acquisition;
 8. Upon completion of the organization of the Interim federal savings associations, the boards of directors of the Savings Bank and the Interim federal savings associations must ratify the plan of conversion and reorganization and the applicable agreement of merger;
 9. Prior to their implementation, the Holding Company and the Savings Bank must submit final employment contracts for existing executive officers of the Holding Company and the Savings Bank to the Regional Director for his review and written non-objection; and
 10. Prior to consummation of the transactions involving the acquisition of the Target Company and the Association, the Holding Company and the Savings Bank must submit a final fairness opinion to the same effect as the draft fairness opinion included in the application regarding the issue of whether the transaction is fair from a financial standpoint to the shareholders of the Target Company.

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 December 13, 2002.



Scott M. Albinson
Managing Director
Office of Supervision