

OFFICE OF THRIFT SUPERVISION

Approval of Bank Merger Act Application

Order No.: 2003-22

Date: June 13, 2003

**Docket Nos.: H-3715, H-3356,
02319, H-3152, H-3153, 04684**

Kearny MHC, Kearny, New Jersey (MHC-1) and Kearny Financial Corp., Kearny, New Jersey (Holding Company) (collectively, Applicants) have applied pursuant to 12 U.S.C. § 1467a(e) and 12 C.F.R. § 574.3, for approval of the Office of Thrift Supervision (OTS) to acquire West Essex Bank, Caldwell, New Jersey (Association). In addition, Kearny Federal Savings Bank, Kearny, New Jersey (Savings Bank) and the Association have applied pursuant to 12 U.S.C. § 1828(c) and 12 C.F.R. §§ 552.13 and 563.22(a), for OTS approval of the merger of the Association into the Savings Bank (the bank merger transaction). The Savings Bank and the Association have applied to OTS to make capital distributions under the OTS Capital Distribution Regulations. This Order addresses only the application under 12 U.S.C. § 1828(c) and 12 C.F.R. §§ 552.13 and 563.22(a), for OTS approval of the bank merger transaction. A subsequent Order will address the remaining applications.

The Applications

MHC-1, the top tier holding company in a federally chartered mutual holding company structure, wholly owns the Holding Company, a federally chartered subsidiary mutual holding company, which owns all of the common stock of the Savings Bank. The Applicants propose to purchase the outstanding shares of West Essex Bancorp, Inc., Caldwell, New Jersey (Mid-Tier), a federally chartered, subsidiary mutual holding company, held in part by shareholders (Minority Shareholders) other than the Mid-Tier's controlling mutual holding company, West Essex Bancorp, M.H.C., Caldwell, New Jersey (MHC-2). In order to consummate the acquisition, the Holding Company will organize Kearny Financial Merger Sub, Inc., as a wholly owned subsidiary, to merge with and into Mid-Tier, with Mid-Tier being the resulting entity; MHC-2 will merge with and into MHC-1, with MHC-1 being the resulting entity (MHC Merger); Mid-Tier will merge with and into the Holding Company, with the Holding Company being the resulting entity; and the Association will merge with and into the Savings Bank, with the Savings Bank being the resulting institution. Pursuant to the Merger Agreement, each share of Mid-Tier common stock held by Minority Shareholders will be converted into the right to receive \$35.10 in cash. The outstanding shares of Mid-Tier held by MHC-2 will be canceled upon or immediately after the MHC merger. As a result of the mergers, the interests of the Association's depositors as members of MHC-2 will cease to exist and will be converted into interests of the same nature in MHC-1.

Bank Merger Act Application

The merger of the Association into the Savings Bank requires OTS approval under section 18(c) of the Federal Deposit Insurance Act (FDIA) (Bank Merger Act or BMA), and 12 C.F.R. §§ 552.13 and 563.22(a).

The Bank Merger Act and OTS's regulations thereunder require that OTS consider the financial and managerial resources and future prospects of the Savings Bank and the Association, the effect of the acquisition on the savings associations and the convenience and needs of the communities to be served.¹ Also, the Bank Merger Act requires OTS to consider, in its evaluation of the BMA application, the effectiveness of the insured depository institutions in combating money laundering activities. In addition, OTS must consider whether the transaction is equitable to all concerned, whether full disclosure has been provided regarding written or oral agreements through which any person will receive anything of value in connection with the transaction, and whether compensation to officers, directors, and controlling persons of the disappearing association is reasonable.² The CRA requires, in the context of the bank merger transaction, that the OTS consider the CRA performance of the institutions.³

As for managerial resources, OTS, in its role as the regulator of the Savings Bank and the Association, is familiar with their managerial resources. Upon consummation of the acquisition of the Association, the board of directors and the executive officers of the Savings Bank will consist of the present directors and executive officers of the Savings Bank with the addition of one director who is now a director, the President and Chief Executive Officer of Association. The remaining members of the Association's current board of directors will serve as advisory directors of the Savings Bank for one year, renewable annually for two more years. Based on its experience with the managerial resources of the Savings Bank and the Association, OTS concludes that the Applicants' and the Association's managerial resources are consistent with approval.

As for financial resources, OTS is familiar with the financial resources of the Savings Bank and the Association. As of December 31, 2002, the Savings Bank's Tier 1, Tier 1 Risk-Based and Total Risk-Based capital ratios were 13.26%, 41.27%, and 43.32%, respectively. The Association's Tier 1, Tier 1 Risk-Based and Total Risk-Based capital ratios were 12.05%, 35.43%, and 36.46%, respectively as of December 31, 2002. Upon consummation of the transaction, the Savings Bank will remain "well capitalized" pursuant to the OTS Prompt Corrective Action (PCA) regulation. Based on the foregoing, OTS concludes that the financial resources of the Savings Bank and the Association are consistent with approval.

Based on its consideration of the managerial and financial resources of the Savings Bank and the Association, OTS concludes that their future prospects, and the

¹ 12 U.S.C. § 1828(c)(5)(B); 12 C.F.R. § 563.22(d) (2003).

² 12 C.F.R. § 563.22(d)(1)(vi) (2003).

³ See 12 C.F.R. § 563e.29(a)(2003).

effect of the bank merger transaction on the SAIF are consistent with approval, provided that OTS imposes the conditions set forth below.

As for the competitive impact of the bank merger transaction, there is only a slight diminution of competition in the three New Jersey counties where the Savings Bank and the Association both have branches. The application indicates that in Bergen County, New Jersey, there will be a one point increase in the Herfindahl-Hirschman index (HHI) from 1,283.2 to 1,284.2 upon consummation of the transaction. Moreover, the Savings Bank will be only the thirteenth largest of 47 depository institutions in that market. Therefore, the effect on competition in Bergen County is negligible. Similarly, in Essex County, New Jersey, the HHI will increase less than one point from 784.5 to 784.9 and the Savings Bank will be the twentieth largest of 34 institutions in that market. In Morris County, New Jersey, the effect on competition is also negligible, with the HHI increasing less than one point from 1016.9 to 1,017.2 and the Savings Bank being the nineteenth largest of 33 institutions. The Department of Justice's competitive factors report has not objected to the transaction. Accordingly, OTS concludes that the BMA application is not objectionable on competitive grounds.

As for convenience and needs, the Savings Bank will be assuming the operations of the Association's existing offices and providing continuing services to the offices' customers and communities. Accordingly, OTS concludes that approval of the BMA application is not objectionable based on convenience and needs.

As for CRA, the Savings Bank's and the Association's most recent CRA ratings are "Satisfactory." No comments objecting to the bank merger transaction have been filed. Accordingly, OTS concludes that approval of the BMA application is consistent with the CRA.

As for equitable treatment, full disclosure, compensation of officers and directors, and advisory boards, the Applications indicate that the transaction was negotiated at arms'-length, both the Association and the Savings Bank obtained fairness opinions reflecting that the transactions are fair to Minority Shareholders and MHC-2's members, and MHC-1's members, respectively, full disclosure has been provided regarding written or oral agreements or understandings through which any person or company will receive anything of value in connection with the proposed transaction, and compensation to directors and officers, and proposed advisory directors is consistent with the regulations. Accordingly, OTS concludes that the transaction may be approved with regard to the standards for equitable treatment, full disclosure, 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, and has not noted concerns in this area with respect to the Savings Bank or the Association.

Conclusions

Based on the foregoing analysis, OTS concludes that the bank merger application meets the applicable approval criteria. Accordingly, the merger of the Savings Bank and the Association is 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, the Savings Bank, MHC-2, Mid-Tier and the Association must receive all required regulatory and shareholder approvals for the proposed bank merger transaction and submit copies of such approvals to the Regional Director prior to the consummation of the proposed transaction;
2. The proposed bank merger transaction must be consummated no earlier than 15 calendar days and no later than 120 days from the date of this Order;
3. On the business day prior to the date of consummation of the proposed bank merger transaction, the chief financial officers of the Applicants, the Savings Bank, MHC-2, Mid-Tier 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 operations of their respective entities, since the date of the financial statements submitted with the applications. If additional information having a material adverse bearing on any feature of the applications is brought to the attention of the Applicants, the Savings Bank, MHC-2, Mid-Tier, the Association 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 and the Savings Bank must advise the Regional Director in writing within five calendar days after the effective date of the proposed bank merger transaction (a) of the effective date of the transaction and (b) that the transaction was consummated in accordance with all applicable

laws, regulations, the Applications and this Order; and

5. The Savings Bank shall advise each accountholder whose withdrawable accounts would increase above \$100,000 as a result of the transaction, or whose uninsured balance would increase as a result of the transaction, of the effect on their insurance coverage no later than 30 days after the effective date, and provide a copy of this notice to the Regional Director.

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 June 13, 2003.



Scott M. Albinson
Managing Director
Office of Supervision