

OFFICE OF THRIFT SUPERVISION

Order Approving Application To Establish Operating Subsidiaries

Order No.: 2004-19
Date: April 22, 2004
Docket Nos. 06069, H-3463, H-3497

Lehman Brothers Bank, FSB, Wilmington, Delaware (Savings Bank), a federal stock savings bank, has filed an application with the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1828(m) and 12 C.F.R. § 559.11, requesting approval to establish four operating subsidiaries. The Savings Bank proposes to acquire the following four companies from its parent holding company: ALS Holding Inc., Aurora, Colorado (ALS Holding), and its subsidiary, Aurora Loan Services, Inc., Aurora, Colorado (Aurora), and BNC Holdings, Inc., Irvine, California (BNC Holdings), and its subsidiary, BNC Mortgage, Inc., Irvine, California (BNC) (collectively, the Operating Subsidiaries). In addition, the Savings Bank has provided notice to OTS of the proposed transaction in order to claim the internal corporate reorganization exemption, set forth at 12 C.F.R. § 223.41, from certain transactions with affiliate restrictions.

Background

The Savings Bank is a wholly owned, direct subsidiary of Lehman Brothers Bancorp Inc. (Bancorp), which is a wholly owned direct subsidiary of Lehman Brothers Holdings Inc. (Holding Company). As of December 31, 2003, the Savings Bank had total assets of \$14.2 billion, total liabilities of \$13.0 billion, and total equity capital of \$1.2 billion. As of such date, the Savings Bank was well capitalized, under OTS regulations,¹ with a tangible capital ratio of 8.35 percent and a total risk-based capital ratio of 13.07 percent.

The Holding Company currently owns all of ALS Holding's outstanding stock. ALS Holding, a Delaware corporation, is a shell holding company that engages in no activities other than holding all of Aurora's stock. Aurora, a Delaware corporation located in Aurora, Colorado, is a mortgage banking company.

The Holding Company currently owns 87.5 percent of BNC Holdings' stock. BNCM Acquisition Company, LCC (BNCMAC), whose members are the senior management of BNC Holdings, holds the remaining 12.5 percent. BNC Holdings, a Delaware corporation, is a shell holding company that engages in no activities other than holding all of the common stock of BNC. BNC, a Delaware corporation located in Irvine, California, is a mortgage banking company.

¹ 12 C.F.R. § 565.4(b)(1) (2003).

The Proposed Transaction

In the proposed transaction, the Holding Company will contribute the stock that it owns in ALS Holding and BNC Holdings to Bancorp, which will immediately thereafter transfer the stock to the Savings Bank. Upon consummation, the Savings Bank will own all of the common stock of ALS Holding, which will be a first-tier operating subsidiary of the Savings Bank. ALS Holding will continue to own all of the common stock of Aurora, which will be a second-tier operating subsidiary of the Savings Bank. Also, the Savings Bank will own 87.5 percent of the common stock of BNC Holdings, which will be a first-tier operating subsidiary of the Savings Bank. BNC Holdings will continue to own all of the common stock of BNC, which will be a second-tier operating subsidiary of the Savings Bank.

Operating Subsidiary Application

Generally, a federal savings association may invest in an operating subsidiary only if: (1) the subsidiary engages only in activities permissible for federal associations to engage in directly; (2) the federal association owns, directly or indirectly, more than 50 percent of the voting shares of the operating subsidiary; and (3) no person or entity other than the federal association exercises operating control over the operating subsidiary.² In addition, OTS may, at any time, limit a savings association's investment in operating subsidiaries, or may limit or refuse to permit any activities of an operating subsidiary, for supervisory, legal, or safety and soundness reasons.³

With regard to the requirement that the subsidiary may engage only in activities permissible for federal associations to engage in directly, ALS Holding and BNC Holdings engage in no business activities other than holding the stock of their respective subsidiaries, Aurora and BNC. Aurora and BNC will engage in mortgage loan origination and servicing activities, which are permissible for federal savings associations. Accordingly, OTS concludes that the Operating Subsidiaries' proposed activities are permissible for a federal association.

With regard to the requirement that the federal association own, directly or indirectly, more than 50 percent of the voting shares of the operating subsidiary, the application indicates that each of the Operating Subsidiaries will satisfy this requirement. The Savings Bank will hold all of the common stock of ALS Holding and indirectly, through ALS Holding, own all of the stock of Aurora. In addition, the Savings Bank will hold 87.5 percent of the common stock of BNC Holdings, which owns all of the stock of BNC. OTS concludes that the Savings Bank will own, directly or indirectly, more than 50 percent of the voting shares of each of the Operating Subsidiaries. With regard to the requirement that no person or entity other than the federal association exercises operating control over the operating subsidiary, the application indicates that no other party will have operating control over the Operating Subsidiaries.

² 12 C.F.R. § 559.2, 559.3(c)(1), and (e)(1) (2003).

³ 12 C.F.R. § 559.1(a) (2003).

Based on its regulatory experience with the Holding Company and the Savings Bank, OTS concludes that the Savings Bank has the requisite experience and expertise to manage the Operating Subsidiaries, and OTS concludes that it has no supervisory objections to the proposed transaction, provided the conditions set forth below are satisfied.

Transaction With Affiliates Notice

Because the proposed transfer of the stock of the Operating Subsidiaries to the Savings Bank is a covered transaction pursuant to § 23A of the Federal Reserve Act and 12 C.F.R. § 563.41, which incorporates certain provisions of the Federal Reserve Board's Regulation W, 12 C.F.R. Part 223, the application provides notice to OTS that the proposed transaction will satisfy the internal corporate reorganization exemption requirements of 12 C.F.R. § 223.41(d) and will therefore be exempt from the quantitative limits set forth at 12 C.F.R. §§ 223.11 and 223.12 and the collateral requirements set forth at 12 C.F.R. § 223.14.

The notice indicates that the proposed transaction satisfies the seven requirements for claiming the exemption, which are set forth at 12 C.F.R. § 223.4(d)(1)-(d)(7). The proposed transaction is part of an internal corporate reorganization of the Holding Company and involves the transfer of all or substantially all of the shares of the Operating Subsidiaries, which are currently affiliates, to the Savings Bank. The Savings Bank has provided written notice to OTS, before consummation of the proposed transaction, and has provided a description of the proposed business activities of the Operating Subsidiaries and the proposed date of the transaction. The Holding Company has provided a written commitment stating that it commits to either: (i) make quarterly cash contributions to the Savings Bank for two years, equal to the book value plus any write-downs on assets that become low quality during the quarter, or (ii) to repurchase on a quarterly basis for two years at a price equal to the book value plus any write-downs on assets that become low quality during the quarter. The Savings Bank's board of directors has reviewed and approved the proposed transaction.

Furthermore, based on the materials provided with the application and other materials available to OTS, OTS concludes that the value of the proposed transaction represents less than 10 percent of the Savings Bank's capital stock and surplus. The Savings Bank has not previously claimed the corporate reorganization exemption. Finally, based on its regulatory experience with the Holding Company, Bancorp, and the Savings Bank, OTS concludes that these entities are well-capitalized and well-managed and would remain well-capitalized and well-managed upon consummation of the proposed transaction. Based on the foregoing, OTS concludes that the proposed transaction satisfies the requirements for the internal corporate reorganization exemption, under 12 C.F.R. Part 563.41 and § 223.41(d).

Conclusions

Based on the foregoing analysis and the commitments provided in the application, OTS concludes that the application meets the applicable approval criteria, provided that the following

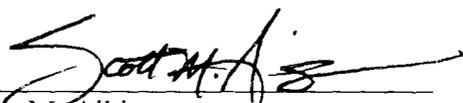
conditions are imposed. Accordingly, the application is hereby approved, provided that the following conditions are complied with in a manner satisfactory to the OTS Northeast Regional Director, or his designee (Regional Director):

1. The Savings Bank and the Holding Company must receive all required regulatory approvals 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 six months 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 Savings Bank and the Holding Company must certify in writing to the Regional Director that no material adverse changes have occurred with respect to the financial condition or operations of the Savings Bank, ALS Holding, Aurora, BNC Holdings, and BNC, as disclosed in the application. If additional information having a material adverse bearing on any feature of the application is brought to the attention of the Savings Bank, the Holding Company, or OTS since the date of the financial information submitted with the application, 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 Savings Bank and the Holding Company must advise the Regional Director in writing within 5 calendar days after the effective date of the proposed transaction: (a) of the effective date of the proposed transaction; and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the application, and this Order; and
5. The Operating Subsidiaries must not deviate materially from any of the activities, facts, representations or commitments described in the application, except with the prior written non-objection of the Regional Director.

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

By Order of the Director of the Office of Thrift Supervision, or his designee, effective

April 22, 2004



Scott M. Albinson
Managing Director
Examination, Supervision and Consumer Protection