

## OFFICE OF THRIFT SUPERVISION

### Approval of Application to Expand Services and Branching Application

**Order No.: 2011-32**

**Date: May 3, 2011**

**OTS No.: 15850**

Auto Club Trust, FSB, Dearborn, Michigan (Savings Bank), a trust-only federal savings association, has applied for approval of the Office of Thrift Supervision (OTS) to expand its services beyond trust services authorized under section 5(n) of the Home Owners' Loan Act (HOLA).<sup>1</sup> In connection with expanding its business operations, the Savings Bank requests approval under 12 C.F.R. § 545.93 to establish two branch offices in Omaha, Nebraska.

In approving the organization of the Savings Bank in 1999, OTS imposed a condition in the approval order (Order) requiring that, prior to engaging in any business other than trust activities authorized pursuant to section 5(n) of the HOLA, the Savings Bank apply to OTS and receive approval to engage in any such activity.<sup>2</sup> Based on this approval requirement, the Savings Bank seeks OTS approval to expand its business beyond trust services authorized under HOLA section 5(n), by offering deposit and loan products to the public. The Order provides that OTS will consider any application to engage in additional activities under the standards of HOLA section 5(e) and the OTS's regulations thereunder, and under the Community Reinvestment Act (CRA) and OTS's regulations thereunder.

Section 5(e) of HOLA provides that OTS may grant a federal savings association charter only: (i) to persons of good character and responsibility; (ii) if, in OTS's judgment, a necessity for such savings association exists in the community to be served; (iii) if there is reasonable probability of the association's usefulness and success; and (iv) if the association can be established without undue injury to properly conducted existing local thrift and home financing institutions.<sup>3</sup> OTS regulations include the same standards, with the additional requirement that OTS consider whether the association will promote credit for housing consistent with the safe and sound operation of a federal savings association.<sup>4</sup> Also, OTS regulations regarding the establishment of a *de novo* federal savings associations set forth standards that OTS considers in granting a *de novo* federal charter, regarding: (i) initial capitalization of a federal association; and (ii) the residence and composition of the association's board of directors.<sup>5</sup>

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<sup>1</sup> 12 U.S.C. § 1464(n).

<sup>2</sup> OTS Order No. 99-37 (June 25, 1999) (Order), Condition 8.

<sup>3</sup> 12 U.S.C. § 1464(e).

<sup>4</sup> 12 C.F.R. § 552.2-1(b)(1) (2011).

<sup>5</sup> 12 C.F.R. § 543.3 (2011).

The OTS CRA regulations provide that an applicant for a federal thrift charter shall submit with its application a description of how it will meet its CRA objectives.<sup>6</sup> OTS takes this description into account in considering the application and may deny the application or condition approval on CRA grounds.

With respect to character and responsibility, OTS is familiar with the management of the Savings Bank. However, the Savings Bank will add certain new senior officers, and will add an additional individual to its board of directors. OTS has reviewed the background of these new individuals, and has found no adverse information. Thus, OTS finds that the character and responsibility of the management of the Savings Bank is consistent with approval of the application.

With respect to the necessity for the Savings Bank, OTS has considered recent growth in deposits in Omaha, Nebraska, where the Savings Bank's two new branches will be located, and in Dearborn, Michigan, where the Savings Bank's home office is located. Based on its analysis of deposit growth in these markets, OTS concludes that a necessity exists for the Savings Bank's proposed expansion of activities.

With respect to undue injury to properly conducted existing local thrift and home financing institutions, OTS has considered the projected amount of deposits in the Omaha market and the Dearborn market, in relation to the size of the markets and their recent growth. OTS received no comments objecting to the application. Based on these considerations, OTS concludes that the Savings Bank will not cause undue injury to any local thrift and home financing institutions.

With respect to the probability of the Savings Bank's usefulness and success, the Savings Bank will be well capitalized. The Savings Bank's business plan projects that it will remain well capitalized throughout the three-year duration of the plan, and will become profitable within its first three years of operations. The Savings Bank's directors and management have the requisite experience. OTS is imposing conditions 4, 5, 6, and 7 to ensure that the Savings Bank complies with regulatory restrictions and maintains safe and sound operations. OTS concludes that there is a reasonable probability of the Savings Bank's usefulness and success, provided that the Savings Bank complies with the conditions set forth below.

With respect to promotion of credit for housing consistent with the safe and sound operation of a federal savings association, the Savings Bank proposes to satisfy this requirement by originating mortgages. The Savings Bank meets, and is projected to continue to meet its qualified thrift lender requirements. As discussed above, the Savings Bank's management is consistent with approval. Accordingly, OTS concludes that this approval criterion has been satisfied.

With respect to the CRA and OTS's CRA regulations, the Savings Bank has submitted a CRA plan focusing on the communities surrounding its offices in Omaha, Nebraska and

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<sup>6</sup> 12 C.F.R. § 563e.29(b) (2011).

Dearborn, Michigan. OTS has reviewed the CRA plan and has concluded that the CRA plan is acceptable. OTS received no comments objecting to the application on CRA grounds.

The Savings Bank's charter and bylaws are consistent with OTS regulations. The Savings Bank's capitalization is consistent with approval.

OTS regulations require that a majority of a *de novo* federal association's board of directors be "representative" of the state in which the association is located. Because a majority of the Savings Bank's directors live or work in Michigan, the Savings Bank will satisfy the requirement that a majority of the board be representative of the state where the association is located.

OTS regulations also require that a *de novo* federal association's board of directors be diversified and composed of individuals with varied business and professional experience. The Savings Bank's board of directors includes individuals with diverse skills and expertise. OTS concludes that these persons have sufficiently varied business and professional experiences to meet the regulatory standard.

OTS regulations provide that, except in the case of a *de novo* federal association that is wholly owned by a holding company, no more than one-third of a *de novo* federal association's board of directors may be in closely related businesses. When the holding company does not have substantial independent economic substance, OTS applies the related business criterion to the holding company's board of directors. The Savings Bank's holding companies have substantial independent economic substance, and accordingly, this requirement is not applicable.

The Savings Bank requests approval to establish two branch offices in Omaha, Nebraska. Establishment of the branch office requires OTS approval under 12 C.F.R. §§ 545.93 and 545.95. 12 C.F.R. § 545.95(b)(1) provides that OTS shall approve a branching application only if the overall policies, condition and operations of the savings association afford no basis for supervisory objection and the proposed branch will open within twelve months of approval. Furthermore, OTS will evaluate the federal savings association's CRA record.<sup>7</sup> The Savings Bank will be well capitalized upon consummation of the transaction. OTS has not objected to the Savings Bank's business plan. The OTS's evaluation of the CRA plan indicates that the Savings Bank will fulfill its obligation of meeting the credit needs of its entire community, including low- and moderate- income neighborhoods.

The proposed new branches are located in Nebraska, and the Savings Bank's home office (and sole currently existing office) is in Michigan. Accordingly, the establishment of the two branches must be consistent with section 5(r) of the HOLA.<sup>8</sup> Section 5(r) provides, subject to certain exceptions, that for a federal savings association to branch outside of the state in which its home office is located: (i) the savings association must qualify as a qualified thrift lender or as a domestic building and loan association; and (ii) the assets of the federal savings association in the state in which the out-of-state branch is located must qualify the federal savings association

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<sup>7</sup> 12 C.F.R. § 545.95(b)(1)(ii) (2011).

<sup>8</sup> 12 U.S.C. § 1464(r).

as a qualified thrift lender or as a domestic building and loan association. The Savings Bank currently meets the qualified thrift lender test, and projects meeting the test throughout the term of its business plan. Counsel for the Savings Bank has represented that with respect to assets located in Nebraska, such assets will meet the qualified thrift lender test.

Thus, OTS does not object to the proposed branching, and has determined that the Savings Bank's managerial and financial resources and future prospects are consistent with approval of the application. Based on the foregoing, OTS concludes that the proposed branching is consistent with applicable statutes and regulations.

Based on the foregoing analysis, OTS concludes that the applications meet the applicable approval criteria, and are hereby approved, provided that the following conditions are complied with in a manner satisfactory to the Central Regional Director, or his designee, or his successor (Regional Director)<sup>9</sup>:

1. The proposed expansion of services must be initiated within 120 calendar days from the date of this Order;
2. On the business day prior to initiating the proposed expansion of services, the chief financial officer of the Savings Bank must certify in writing to the Regional Director that no material adverse changes have occurred with respect to the financial condition or operation of the Savings Bank as disclosed in the applications. If additional information having a material adverse bearing on any feature of the applications is brought to the attention of the Savings Bank or OTS since the date of the financial statements submitted with the applications, the expansion of services must not be initiated unless the information is presented to the Regional Director, and the Regional Director provides written non-objection to the initiation of the expansion of services;
3. The Savings Bank must advise the Regional Director in writing within 5 calendar days after the effective date of the proposed expansion of services: (a) of the effective date of the expansion of services; and (b) that the expansion of services was initiated in accordance with all applicable laws and regulations, the applications, and this Order;
4. For two years following commencement of full-service operations, the Savings Bank must receive the prior written non-objection of the Regional Director for any proposed new directors or senior executive officers and for any significant changes in responsibilities of any senior executive officer;
5. For three years following commencement of full-service operations, the Savings Bank must submit independently audited financial reports;

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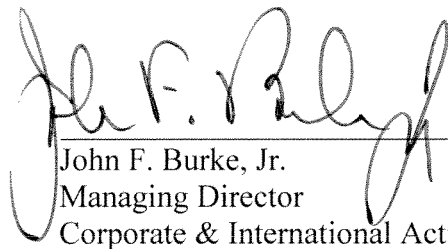
<sup>9</sup> Following the Transfer Date, see Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. Law No. 111-203, § 311, 124 Stat. 1520-21 (2010), all submissions, requests, communications, consents or other documents relating to this Order shall be directed to the Comptroller of the Currency, or to the individual, division, or office designated by the Comptroller of the Currency.

6. The Savings Bank must operate within the parameters of its three-year business plan. The Savings Bank must submit any proposed major deviations or material changes from the plan for the prior, written non-objection of the Regional Director. The request for change must be submitted no later than 30 calendar days prior to the desired implementation date; and
7. For three years following commencement of full-service operations, the Savings Bank must submit to the Regional Director within 45 calendar days after the end of each calendar quarter, a business plan variance report detailing the Savings Bank's compliance with the business plan and an explanation of any deviations.

In addition, OTS Order No. 99-37 (June 25, 1999) remains in full force and effect.

The Regional Director may, for good cause, extend any time period set forth herein for up to 120 calendar days.

By order of the Director of the Office of Thrift Supervision, or his designee,  
effective May 3, 2011.

  
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John F. Burke, Jr.  
Managing Director  
Corporate & International Activities