

OFFICE OF THRIFT SUPERVISION

Approval of Applications for Conversion to a Federal Savings Bank, Fiduciary Powers, and Holding Company Acquisition

Order No.: 2004-2

Date: January 27, 2004

OTS No.: 17965 and H-3999

Independence Trust Company, Franklin, Tennessee (Institution) has applied to the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1464(e) and 12 C.F.R. § 552.2-6 to convert directly to a federal savings bank. Independence Holding Company, Franklin, Tennessee (Holding Company), has applied to OTS, pursuant to 12 U.S.C. § 1467a(e) and 12 C.F.R. § 574.3, to acquire the Institution. Also, the Institution has applied, pursuant to 12 U.S.C. § 1464(n) and 12 C.F.R. Part 550, to exercise fiduciary powers as described in the application. (The foregoing are collectively referred to herein as the "Applications.")

The Proposed Transaction

In the proposed transaction, the Institution will convert directly from a Tennessee-chartered trust company to a federal savings bank. At the time of the charter conversion, the Institution will be a wholly owned subsidiary of the Holding Company. In connection with the proposed transaction, the Holding Company is conducting a private placement offering (Offering) of shares of its Class B common stock. The Holding Company expects to contribute the majority of the proceeds to the Institution upon completion of the Offering. After completion of the charter conversion, the Institution intends to continue its trust operations, and to operate as a trust-only federal savings bank offering personal fiduciary services and cemetery trusts.

Conversion Application

Section 552.2-6 of the OTS regulations addresses conversions of any stock depository institution, such as the Institution, to a federal stock charter. Specifically, section 552.2-6 provides that with OTS approval, any stock depository institution that is, or is eligible to become, a member of a Federal Home Loan Bank, may convert to a federal stock savings association, provided that the depository institution, at the time of conversion, has deposits insured by the Federal Deposit Insurance Corporation (FDIC); the depository institution, in accomplishing the conversion, complies with all applicable statutes and regulations; and the resulting institution will comply with section 5(d) of the Federal Deposit Insurance Act. The resulting federal savings association must comply within the time prescribed by the OTS to the requirements of section 5(c) of the Home Owners' Loan Act (HOLA).

The Institution is a state-chartered trust company. Section 552.13(b)(4) defines "depository institution" to include a trust company. In addition, the Institution has filed an application for insurance of accounts by the Savings Association Insurance Fund (SAIF) with the FDIC. The proposed conversion of the Institution conforms to the requirements of § 552.2-6, subject to the condition that requires approval of the FDIC insurance of accounts application.

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 of 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. OTS also takes into account an applicant's description of how it will meet Community Reinvestment Act (CRA) objectives when considering the application.

With respect to character and responsibility, a review of the backgrounds of the officers and directors of the Holding Company and the Institution conducted by OTS revealed no adverse information. OTS considered the backgrounds and experience of proposed management, and concludes that the officers and directors of the Institution have the experience to operate a trust-only savings association. Thus, OTS concludes that this approval criterion is satisfied.

As for the necessity for the Institution in the community, the Institution will continue and expand its existing trust business. Given that these operations are currently being conducted, and numerous customers avail themselves of these services, OTS concludes that this approval criterion is satisfied.

As for undue injury to properly conducted existing local thrift and home financing institutions, the Institution will not directly provide home financing. The Institution will not compete for savings accounts and will not directly engage in mortgage lending. Accordingly, the Institution will have little, if any, impact on home financing institutions in any geographic area where the Institution's customers are to be located. OTS concludes that this approval criterion is satisfied.

With respect to the reasonable probability of usefulness and success, OTS reviewed the Institution's financial condition, business plan, proposed capital levels, and the competence of proposed management. The Institution projects being well capitalized for the duration of the business plan submitted with the application. OTS has concluded that the Institution's business plan is acceptable. OTS' review revealed no negative information on the Institution's directors and proposed officers. Based on its review, OTS concludes that the probability of the Institution's usefulness and success is consistent with approval, provided that the Institution complies with the conditions set forth below, which are intended to help ensure that the Institution operates in a safe and sound manner.

With respect to the provision of credit for housing, the Institution will not directly extend credit for housing, but would indirectly extend credit for housing by purchasing mortgage-backed securities. The purchase of such mortgage-backed securities will enable the Institution to satisfy the qualified thrift lender test. It is not required that an application for a federal charter be denied if the proposed association does not intend to engage in home lending to a significant extent, but OTS must consider, among other things, whether the association will perform a role of providing credit for housing in a safe and sound manner. OTS concludes that, when an applicant for a federal charter satisfies the other approval criteria, the lack of direct home lending does not compel OTS to deny the application.

With respect to compliance with the CRA, OTS' CRA regulations establish an exception from the CRA for special purpose savings associations. The Institution will satisfy the requirements for the exception because the Institution will not perform retail banking services, will not offer any non-trust deposit accounts, and will provide only trust services. Thus, OTS concludes that the Institution will be exempt from the CRA and the approval standard in OTS' CRA regulations is not applicable to the proposed transaction.

Holding Company Application

Section 10(e)(1)(B) of the HOLA and the Acquisition of Control Regulations thereunder provide that OTS must approve a proposed acquisition of a savings association by a company, other than a savings and loan holding company, unless OTS finds that the financial and managerial resources and future prospects of the company and association involved would be detrimental to the association or the insurance risk of the SAIF. OTS must also consider the impact of the acquisition on competition. Finally, OTS must take into account assessments under the CRA when considering holding company applications.

For the reasons set forth above, OTS concludes that the managerial resources of the Holding Company and the Institution are adequate.

With regard to financial resources, OTS reviewed the Holding Company's financial position, both before and after completion of the Offering, and the Institution's proposed capitalization and business plan. The Holding Company will retain sufficient funds from the Offering in order to meet its obligations. The Institution's pro forma financial statements project that the Institution will meet all of its capital requirements and will be "well-capitalized" under the OTS prompt corrective action regulation throughout the first three years following the charter conversion. Based on the foregoing, OTS concludes that approval criteria regarding the financial resources of the Holding Company and the Institution are consistent with approval of the holding company application.

Based on the factors discussed above regarding the managerial and financial resources of the Institution and the Holding Company, the character and responsibility of the officers and directors, the probability of the Institution's usefulness and success, and the composition of the Holding Company's and the Institution's board of directors, OTS concludes that the future

prospects of the Holding Company and the Institution are consistent with approval and that this approval criteria is satisfied, subject to the imposition of the recommended conditions.

The transaction will not result in any currently operating, unaffiliated depository institutions becoming affiliated. Accordingly, OTS finds no basis for objection to the transaction on anti-competitive grounds. With respect to the Holding Company's performance under the CRA, the Holding Company has not been subject to the CRA. Accordingly, OTS concludes that there is not any basis for objection to the holding company application based on CRA grounds.

Trust Application

Section 5(n) of the HOLA authorizes OTS to grant federal savings associations the power to act as trustee, executor, administrator, guardian or in any other fiduciary capacity permitted for State banks, trust companies, or other corporations which compete with such associations in the state where the federal association is located.

OTS regulations set forth the factors that OTS considers in reviewing trust powers applications: (1) the association's financial condition; (2) the association's capital and whether that 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 those powers; (6) the availability of legal counsel; (7) the needs of the community to be served; and (8) any other facts or circumstances that OTS considers proper.

With respect to the financial condition, capital sufficiency and performance of the Institution, OTS concludes that the Institution will meet all regulatory capital requirements, will be well capitalized, and that the Institution's proposed capital levels are acceptable. The HOLA requires that the Institution meet the capital requirements applicable to Tennessee-chartered trust companies, and OTS concludes that the Institution's proposed capital level exceeds the Tennessee requirements. Based on the Institution's financial performance to date and OTS's review of the business plan, OTS concludes that the Institution's financial condition and capital will be sufficient, and that the Institution's overall financial condition is consistent with approval. As to the fiduciary services to be offered, which include cemetery trusts and personal fiduciary services involving investment management and custody services, OTS concludes that the Institution's proposed trust activities are authorized by Tennessee law for Tennessee-chartered corporate fiduciaries.

The Institution will supervise its trust activities using methods currently used to supervise the Institution's operations and the Institution's management will not change as a result of the charter conversion. Accordingly, OTS concludes that the Institution's management's supervision of trust powers will be consistent with approval. The Institution will retain experienced trust counsel to advise it with respect to fiduciary matters.

For the reasons discussed in connection with our review of the application for a federal charter, OTS concludes that there is need in the community for the Institution's trust services. OTS has not identified any other facts and circumstances relevant to the trust application, which should be considered in approving the application.

Conclusion

OTS has considered the Applications under the standards set forth in 12 U.S.C. §§ 1464(e), 1464(n), and 1467a(e), and 12 C.F.R. §§ 552.2-6 and 574.7 and Part 550, and under the CRA, 12 U.S.C. §§ 2901, et seq., and the OTS regulations thereunder, 12 C.F.R. Part 563e. OTS finds that the Applications satisfy the applicable approval standards, provided that the following conditions are complied with in a manner satisfactory to the Midwest Regional Director, or his designee (Regional Director). Accordingly, the Applications are hereby approved, subject to the following conditions:

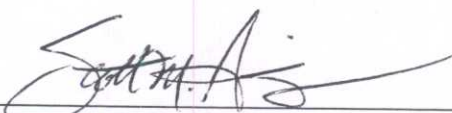
1. The Holding Company and the Institution must receive all required regulatory approvals and submit copies of all such approvals to the Regional Director prior to consummation of the proposed transaction;
2. The proposed transaction must be consummated within 120 calendar days from the date of this Order;
3. On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of the Holding Company and the Institution 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 Holding Company or the Institution 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 Holding Company, the Institution, or OTS since the date of the financial statements submitted with the Applications, the transaction shall 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 Holding Company and the Institution 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 of the Institution's insurance of accounts; and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the Applications and this Order; and must provide a reconciliation of the Institution's capital;
5. The Institution must submit independent audit reports to the Regional Office for the first three fiscal years following consummation of the charter conversion. These reports must be in compliance with the audit rules set forth at 12 C.F.R. § 562.4;

6. The Institution must operate within the parameters of its three-year business plan. The Institution must submit any proposed major deviations or material changes from the plan (including those initiated by the Holding Company) for the prior written non-objection of the Regional Director. The request for change must be submitted a minimum of 60 calendar days before the desired implementation date with a copy sent to the FDIC Regional Office;
7. For three years following consummation of the charter conversion, the Institution must submit to the Regional Director, within 45 calendar days after the end of each calendar quarter, a business plan variance report detailing the Institution's compliance with the business plan and an explanation of any material deviations;
8. For three years following consummation of the charter conversion, the Institution must receive the prior written non-objection of the Regional Director for any proposed new directors or senior executive officers or any significant changes in responsibilities of any senior executive officer; and
9. During the first 18 months of operations following the charter conversion, any contracts or agreements pertaining to transactions with affiliates, not yet submitted to the OTS for review, must be provided to the Regional Director at least 30 calendar days prior to execution and must receive his written non-objection prior to implementation.

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

January 27, 2004.



Scott M. Albinson
Managing Director
Office of Supervision