

OFFICE OF THRIFT SUPERVISION

Approval Of A Mutual Holding Company Activity Application And Notice Of Pass-through Investment

Order No.: 2007-35
Date: August 15, 2007
Docket Nos.: H-4307, H-4308,
02563

Fox Chase MHC and its subsidiary, Fox Chase Bancorp, Inc. (collectively, Applicants) have filed an application seeking approval from the Office of Thrift Supervision (OTS), pursuant to 12 C.F.R. § 575.11(a), to acquire shares of the common stock of Philadelphia Mortgage Advisors, Inc. (Mortgage). Fox Chase Bank, Hatboro, Pennsylvania (Savings Bank) has sought approval from OTS, pursuant to 12 C.F.R. § 560.32, to make a pass-through investment in Mortgage.

The Applicants are federally chartered mutual holding companies. Mortgage is a Pennsylvania corporation, which engages in activities that federal savings associations may engage in directly and in which the Savings Bank will acquire a non-controlling interest.

Pass-through Investment

Pass-through investments may be made without prior notice or application to OTS if the following conditions in 12 C.F.R. § 560.32(b) are met: (i) the savings association does not invest more than 15 percent of its capital in one company; (ii) the book value of the savings association's pass through investments does not exceed 50 percent of the savings association's capital after making the investment; (iii) the investment would not give the savings association direct or indirect control of the company; (iv) the savings association's liability is limited to its investment; and (v) the company is a limited partnership, open-end mutual fund, closed-end investment trust, limited liability company or an entity in which the savings association is investing primarily to use its services.

The proposed investment meets the first four standards. The proposed stock investment in Mortgage is less than 15 percent of the Savings Bank's capital, and when aggregated with other pass-through investments, is less than 50 percent of its capital. The Savings Bank's liability is limited to the amount of its investment.

With respect to control, the Savings Bank does not have the power to vote, directly or indirectly, 25 percent or more of any class of Mortgage's voting securities, the ability to control in any manner the election of a majority of Mortgage's directors or trustees, or the ability to exercise a controlling influence over the management and policies of Mortgage.

Under these circumstances, OTS concludes that the Savings Bank will not control Mortgage for the purposes of § 560.32(b)(3).

With respect to the fifth criterion under § 560.32(b), the proposed investment does not qualify. Mortgage is not organized in a manner prescribed in that section nor is the Savings Bank investing in Mortgage primarily to be able to use its services. Section 560.32(c) provides, however, that OTS may approve pass-through investments that do not meet all the § 560.32(b) criteria.

OTS has stated that § 560.32 codifies certain incidental powers of federal savings associations to enhance “access to this investment option.”¹ While the proposed investment does not meet the requirements of § 560.32(b)(5), it is similar to investments permitted under § 560.32(b)(5). Section 560.32(b)(5) permits investments made primarily to use a company’s services. Here the investment is proposed to enhance an existing business relationship where both entities obtain some services from the other party. Based on these facts, OTS concludes that the proposed investment is permissible under § 560.32(c). In addition, OTS has found no supervisory or safety and soundness concerns with respect to the proposed investment.

Mutual Holding Company Activities

Section 575.11(a) of the OTS mutual holding company regulations specifies that a mutual holding company may engage in activities specified by §§ 10(c)(2) or (c)(9)(A)(ii) of the Home Owners’ Loan Act (HOLA),² and activities described in 12 C.F.R § 575.10(a)(6). Section 575.10(a)(6) implements § 10(o)(5)(D) of the HOLA³ by providing that a mutual holding company may acquire control of, and make non-controlling investments in the stock of, any corporation other than a savings association or savings and loan holding company if, among other things, the corporation's stock would be a permissible investment for a federal savings association under Part 559. In addition, § 575.10(a)(6)(ii) provides that the corporation may not be controlled, directly or indirectly, by a savings association subsidiary of the mutual holding company.

With respect to the first criterion, Mortgage will engage in activities permitted by §§ 575.11(a) and 575.10(a)(6)(i) because it will conduct mortgage banking activities that are permissible for subsidiaries of federal savings associations under 12 C.F.R. Part 559.

With respect to the second criterion, § 575.10(a)(6)(ii) provides that corporations in which a mutual holding company invests under the authority of 12 C.F.R. § 575.10(a)(6) must not be controlled, directly or indirectly, by a savings association subsidiary of the mutual holding company. OTS has previously determined that § 575.10(a)(6)(ii) prohibits a mutual holding company from directly or indirectly holding investments in subsidiaries of its savings association subsidiary other than through the

¹ 61 Fed. Reg. 66561, 66567 (December 18, 1996).

² 12 U.S.C. § 1467a(c)(2) and § 1467a(c)(9)(A)(ii).

³ 12 U.S.C. § 1467a(o)(5)(D).

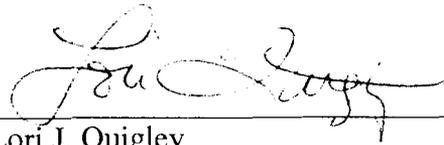
savings association itself. Accordingly, because the Applicants' indirect investment in Mortgage is exclusively through the Savings Bank, it is permissible under the mutual holding company regulations.

OTS has reviewed the application and has no supervisory objection to the proposed investment in Mortgage. Based on the foregoing, OTS concludes that the Applicants' investment in Mortgage is consistent with § 10(o)(5)(D) of the HOLA and 12 C.F.R. § 575.11(a).

Conclusion

Based on the foregoing, the pass-through investment notice and mutual holding company activity application are hereby approved, provided that the transactions proposed must occur within 120 calendar days of this approval. The Northeast Regional Director, or his designee, may extend this time period for up to 120 calendar days.

By order of the Director of the Office of Thrift Supervision, or his designee, effective August 15, 2007.



Lori J. Quigley
Managing Director
Examinations and Supervision - Operations