# OFFICE OF THRIFT SUPERVISION

## **Approval of Holding Company Application**

Order No.: 2009-03

Date: January 15, 2009 Docket Nos.: 15909 and H-4572

The Phoenix Companies, Inc., Hartford, Connecticut (Phoenix), has applied to the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1467a(e)(1)(B) and 12 C.F.R. § 574.3, for permission to acquire American Sterling Bank (Savings Bank), Sugar Creek, Missouri.

## Background

Phoenix is an insurance and financial services company. The Savings Bank is a Deposit Insurance Fund (DIF)-insured, federally chartered stock savings bank with its home office in Sugar Creek, Missouri. The Savings Bank offers deposit products and mortgages through its five offices. The Savings Bank is the wholly owned savings association subsidiary of American Sterling Corporation (Holding Company).

In the proposed transaction, Phoenix proposes to acquire all of the outstanding common stock of the Savings Bank from the Holding Company, and thereby, acquire control of the Savings Bank. Phoenix proposes to inject a significant amount of capital into the Savings Bank to re-capitalize the Savings Bank.

### **Holding Company Application**

Section 10(e)(1)(B) of the Home Owners' Loan Act (HOLA) and the OTS Acquisition of Control Regulations (Control Regulations) provide that OTS must approve a holding company application seeking permission to acquire one savings association by a company other than a savings and loan holding company unless OTS finds the financial and managerial resources and future prospects of the company and association involved to be such that the acquisition would be detrimental to the savings association or to the insurance risk of the DIF. Also, OTS must consider the impact of any acquisition on competition. Further, 12 C.F.R. § 563e.29(a) requires that OTS take into account assessments under the Community Reinvestment Act (CRA) when approving savings and loan holding company acquisitions.

Phoenix has requested that OTS waive the public notice and comment requirements of 12 C.F.R. § 574.6(d) and (e). OTS grants the requested waiver of these requirements due to the supervisory nature of the proposed transaction.

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With respect to managerial resources, OTS has reviewed the backgrounds of certain of Phoenix's officers and directors, and has reviewed the relevant information submitted in the application. The application materials indicate that the members of Phoenix's board of directors and its officers possess experience in various business endeavors and have extensive financial and insurance industry experience. OTS also has consulted with Phoenix's insurance regulators. Background information has not been submitted for all of Phoenix's senior officers and directors, and therefore, background reviews have not been conducted for these persons. OTS is imposing condition 7 to help ensure that the managerial resources of Phoenix's senior officers and directors are consistent with approval of the application.

Phoenix proposes to replace all of the Savings Bank's board of directors with five new members and will replace certain members of the Savings Bank's senior management. OTS has considered background information regarding the persons who have been identified, and has concluded that their managerial resources are consistent with approval. In order to ensure that Phoenix will promptly replace the chief executive officer and chief financial officer, OTS is imposing condition 8. In order to ensure that the Savings Bank's managerial resources are acceptable, OTS is imposing condition 9.

Based on the foregoing, OTS concludes that the managerial resources of Phoenix and the Savings Bank are consistent with approval of the application, subject to imposition of the conditions.

With respect to financial resources, OTS has considered Phoenix's financial resources and the Savings Bank's proposed capitalization. Phoenix has demonstrated adequate resources and appears financially successful and stable. Upon consummation of the transaction, the Savings Bank will be well capitalized under the OTS Prompt Corrective Action regulation, as a result of the proposed capital infusion into the Savings Bank. OTS concludes that Phoenix's and the Savings Bank's financial resources are consistent with approval of the application.

With respect to future prospects and the insurance risk to the DIF, OTS has considered the financial and managerial resources of Phoenix and the Savings Bank. OTS is imposing condition 4 to help ensure that the Savings Bank operates pursuant to an acceptable business plan and changes to and from such a business plan are not detrimental to the Savings Bank. To help ensure that the Savings Bank's future prospects are consistent with approval, OTS is also imposing conditions 5 and 6 to enable OTS to confirm that the Savings Bank is being operated properly. In addition, OTS is imposing condition 10 to help ensure that any new employment or retention contracts are consistent with OTS's policies and are not detrimental to the Savings Bank.

Because the Savings Bank will be controlled by Phoenix and because the Savings Bank may have a number of ongoing interrelationships with Phoenix's affiliates, OTS is imposing conditions 11 and 12, which reflect OTS's concerns about captive boards in the context of holding company structures where the Savings Bank is likely to have transactions with its affiliates and market products through affiliates. The conditions are designed to ensure that the Savings Bank's future prospects are consistent with approval.

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OTS concludes that the future prospects of Phoenix and the Savings Bank, and the risks to the DIF, are consistent with approval provided that Phoenix and the Savings Bank comply with the conditions set forth herein.

The transaction will not result in any currently operating, unaffiliated insured depository institutions becoming affiliated. Accordingly, OTS finds no basis for objection to the transaction on anti-competitive grounds.

As for the CRA, Phoenix has not previously controlled an insured depository institution, and therefore, has never been subject to the CRA. The Savings Bank has a "Needs to Improve" CRA rating. OTS is imposing condition 13 to help ensure that the Savings Bank will meet its community reinvestment obligations. Accordingly, OTS concludes that there is no basis for objection to Phoenix's acquisition of the Savings Bank on CRA grounds provided that the Savings Bank complies with the condition set forth herein.

#### **Conclusions**

Based on the foregoing analysis, OTS concludes that the holding company application meets the applicable approval criteria. Accordingly, the holding company application is hereby approved, subject to the following conditions:

- 1. The proposed transaction must be consummated within 30 calendar days from the date of this Order;
- 2. On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of Phoenix and 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 Phoenix, and the Savings Bank, respectively, 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 Phoenix, the Holding Company, the Savings Bank, or OTS since the date of the financial statements submitted with the application, the transaction must not be consummated unless the information is presented to the Midwest Regional Director or his designee (Regional Director), and the Regional Director provides written non-objection to consummation of the transaction;
- 3. Phoenix and the Savings Bank must, within 5 calendar days after the effective date of the proposed transaction: (a) advise the Regional Director in writing of the effective date of the proposed transaction; (b) advise the Regional Director in writing that the transaction was consummated in accordance with all applicable laws and regulations, the application, and this Order; and (c) provide a reconciliation of the Savings Bank's capital to the Regional Director;

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4. The Savings Bank must file with OTS, for the prior written non-objection of the Regional Director, a revised three-year business plan within 60 days after the consummation of the proposed transaction. The Savings Bank must operate within the parameters of its revised three-year business plan. The Savings Bank must submit any proposed major deviations or material changes from the plan (including those initiated by Phoenix) for the prior, written non-objection of the Regional Director. The request for change must be submitted no later than 60 calendar days prior to the desired implementation date;

- 5. For three years following consummation of the proposed transaction, 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 material deviations;
- 6. The Savings Bank must submit independent audit reports to the Regional Director for its first three fiscal years. These reports must be in compliance with the audit rules set forth at 12 C.F.R. § 562.4;
- 7. For the senior officers and directors of Phoenix for whom the background information has not been submitted or background reviews have not been completed, such person must promptly take such action as directed by the Regional Director in the event the Regional Director objects to such person's service based on material derogatory information learned in the respective background investigations;
- 8. Within 30 calendar days after consummation of the proposed transaction, Phoenix must identify and receive the Regional Director's prior written non-objection for a qualified Chief Executive Officer and a qualified Chief Financial Officer for the Savings Bank;
- 9. For two years after consummation of the proposed transaction, the Savings Bank 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;
- 10. For one year following consummation of the proposed transaction, the Savings Bank must receive the prior written non-objection of the Regional Director for any new employment or retention agreements for senior executive officers,
- 11. At least 40 percent of the Savings Bank's board of directors must be individuals who are not officers or employees of Phoenix or affiliates thereof, and who have not otherwise been determined by the Regional Director to lack sufficient independence. At least one member of the Savings Bank's board of directors must be an individual who is not an officer, director or employee of Phoenix or any

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affiliate, and who is not an officer or employee of the Savings Bank, and who has not otherwise been determined by the Regional Director to lack sufficient independence. At least 50 percent of any audit committee established by the Savings Bank must be directors who are not officers or employees of the Savings Bank, Phoenix, or any affiliates, and who have not otherwise been determined by the Regional Director to lack sufficient independence;

- 12. For eighteen months following the consummation of the proposed transaction, any contracts or agreements not yet submitted for review pertaining to transactions with affiliates and related interests of affiliated persons, as defined in 12 C.F.R. § 561.5(d), of Phoenix and the Savings Bank must be provided to the Regional Director at least 30 days prior to their planned execution and receive the Regional Director's written non-objection prior to implementation of the contract or agreement, and
- 13. Within 60 calendar days following the consummation of the proposed transaction, the Savings Bank must submit a revised CRA plan that must receive the prior written non-objection of the Regional Director before its implementation.

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

Grovetta N. Gardineer

Managing Director

Corporate & International Activities