

OFFICE OF THRIFT SUPERVISION

Approval of Applications to Form Operating Subsidiaries

Order No.: 2010-07
Date: January 29, 2010
Docket Nos.: 15115, H-4188

EverBank, Jacksonville, Florida (Savings Bank), a Deposit Insurance Fund insured federal stock savings bank, has filed applications with the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1828(m) and 12 C.F.R. § 559.11, to establish a first-tier operating subsidiary, Tygris Commercial Finance Group, Inc. (TCFGI), three second-tier operating subsidiaries, Tygris Vendor Finance, Inc. (TVFI), Tygris Asset Finance Inc. (TAFI), and Tygris Corporate Finance, Inc. (TCFI), and three third-tier operating subsidiaries, USXL Funding I, LLC (USXL Funding I), USXL Funding II, LLC (USXL Funding II), and TAF Funding I, LLC (TAF Funding I). Collectively, the seven operating subsidiaries are hereinafter referred to as the Operating Subsidiaries.

Background

The Savings Bank is a wholly owned, first-tier subsidiary of EverBank Financial Corp., Jacksonville, Florida (Holding Company). TCFGI, a Delaware corporation, headquartered in Parsippany, New Jersey, provides certain administrative services, including operations, finance, risk management, legal, human resources, and benefits, for its subsidiaries, which are engaged in commercial equipment leasing and vendor financing activities. TCFGI has three direct subsidiaries, TVFI, TAFI, and TCFI, and three indirect subsidiaries, USXL Funding I, USXL Funding II, and TAF Funding I. TAFI owns all of the membership interests of TAF Funding I and TVFI owns all of the membership interests of USXL Funding I and USXL Funding II.

Operating Subsidiary Applications

Generally, a federal savings association may invest in an operating subsidiary only if: (1) the subsidiary engages only in activities permissible for federal savings associations to engage in directly; (2) the federal savings 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 savings association exercises effective operating control over the operating subsidiary.¹ In addition, OTS may, at any time, limit a federal 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.²

With regard to the requirement that the operating subsidiary engage only in activities permissible for federal savings associations to engage in directly, the proposed activities of the Operating Subsidiaries are permissible for a federal savings association.

¹ 12 C.F.R. § 559.3(c)(1), and (e)(1) (2009).

² 12 C.F.R. § 559.1(a) (2009).

With regard to the requirement that the federal savings association own, directly or indirectly, more than 50 percent of the voting shares of the operating subsidiary, the Savings Bank proposes to own, directly or indirectly, all of the voting securities of each of the Operating Subsidiaries.

With regard to the requirement that no person or entity other than the federal savings association exercise effective operating control over the proposed operating subsidiary, the Savings Bank proposes to own, directly or indirectly, all of the voting securities of each of the Operating Subsidiaries and the information provided in the application indicates that no person or entity other than the federal savings association will have a role in managing the operations of the Operating Subsidiaries.

The Subordinate Organization regulation, at 12 C.F.R. § 559.3(c)(1) refers to “voting shares.” Certain of the Operating Subsidiaries will be organized as limited liability companies. The preamble to the OTS Subordinate Organization regulations addresses whether an operating subsidiary may be structured other than as a general corporation. The preamble states that OTS will provide flexibility for structuring savings associations’ operations and will determine on a case-by-case basis if an operating subsidiary satisfies the basic requirements of majority ownership, limited liability, and effective operating control.³ In this case, OTS has determined that all three elements are comparable to those found in corporations. Moreover, there are no supervisory concerns with the organizational form of the Operating Subsidiaries that will be organized as limited liability companies.

OTS has no supervisory objections regarding compliance by the Savings Bank and the Operating Subsidiaries with the corporate separateness requirements set forth in 12 C.F.R. § 559.10.

With regard to supervisory considerations, in order to ensure that the Operating Subsidiaries operate safely and do not raise supervisory concerns, OTS is imposing conditions 5, 6, and 7, below.

Conclusion

Based on the foregoing, OTS concludes that the applications to establish the Operating Subsidiaries satisfy all applicable approval standards and criteria, provided that the following conditions are complied with in a manner satisfactory to the Southeast Regional Director, or his designee (Regional Director). Accordingly, the applications are hereby approved, subject to the following conditions:

1. Prior to the date of consummation of the proposed transaction, the Savings Bank must receive all required regulatory approvals and submit copies of all such approvals to the Regional Director;

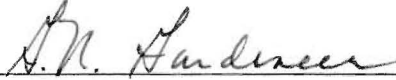
³ See 61 Fed. Reg. 66561, at 66564 (Dec. 18, 1996).

2. The proposed transaction must be consummated within 120 calendar days from the date of this Order;
3. Prior to the date of consummation of the proposed transaction, the chief financial officers of the Savings Bank and TCFGI, respectively, must certify in writing to the Regional Director that no material adverse events or material adverse changes have occurred with respect to the financial condition or operations of the Savings Bank and TCFGI, 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 Savings Bank, TCFGI, or OTS since the date of the financial statements submitted with the applications, 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. Within five calendar days after the effective date of the proposed transaction, the Savings Bank must: (a) advise the Regional Director in writing of the effective date of the transaction; and (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;
5. The Savings Bank must operate within the parameters of the business plan submitted with the applications, including the maintenance of projected capital levels, during the first year following consummation of the transaction. The Savings Bank must submit any proposed major deviations or material changes from the business 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 no later than 60 calendar days prior to the desired implementation date;
6. No later than 60 calendar days prior to the end of the first year following consummation of the proposed transaction, the Savings Bank must submit to the Regional Director an updated, comprehensive business plan, including quarterly financial projections, for the following two years for the prior, written non-objection of the Regional Director; and
7. For three years following the date of 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 deviations.

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

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

January 29, 2010.



Grovetta N. Gardineer
Managing Director
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