

OFFICE OF THRIFT SUPERVISION

Approval of Holding Company Application

Order No.: 2011-43
Date: July 13, 2011
Docket Nos.: H-3608 and H-4242

Berkshire Hills Bancorp, Inc., Pittsfield, Massachusetts (Applicant) has applied to the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1467a(e) and 12 C.F.R. § 574.3, to acquire Legacy Bancorp, Inc., Pittsfield, Massachusetts (LBI) and Legacy Banks, Pittsfield, Massachusetts (LBank) (Application).

The Parties

The Applicant, a Delaware corporation, owns all of the outstanding shares of Berkshire Bank, Pittsfield, Massachusetts (Bank). The Bank, a Federal Deposit Insurance Corporation (FDIC)-insured, Massachusetts-chartered stock savings bank, has elected to be treated as a savings association for purposes of section 10 of the Home Owners' Loan Act (HOLA), pursuant to section 10(l) of the HOLA. The Bank is regulated by the FDIC and the Massachusetts Division of Banks (State Regulator).

LBI, a Delaware corporation, owns all of the outstanding shares of LBank. LBank, a FDIC-insured, Massachusetts-chartered stock savings bank, has elected to be treated as a savings association for purposes of section 10 of the HOLA, pursuant to section 10(l) of the HOLA. LBank is regulated by the FDIC and the State Regulator.

The Proposed Transaction

In the proposed transaction, LBI will merge with and into the Applicant, with the Applicant as the surviving corporation. Immediately after the merger of LBI into the Applicant, the Applicant will cause LBank to merge into the Bank, with the Bank as the surviving entity.

Holding Company Application

Section 10(e)(2) of the HOLA provides that in reviewing the proposed acquisition of a savings association by a savings and loan holding company, OTS must consider the managerial and financial resources and future prospects of the companies and associations involved, the effect of the acquisition on the associations, the insurance risk to the Deposit Insurance Fund (DIF), and the convenience and needs of the community to be served.¹ Consideration of the managerial resources of a company or savings association must include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the

¹ 12 U.S.C. § 1467a(e)(2).

company or savings association.² Similarly, the statute requires that OTS consider the impact of any acquisition on competition.³ Also, 12 C.F.R. § 563e.29 requires that OTS take into account assessments under the CRA when approving holding company acquisitions.

With respect to managerial resources, OTS, as the regulator of the Applicant, has considered this approval criterion and has concluded that the managerial resources of the Applicant, the Bank and LBank are consistent with approval. The Applicant's board of directors will be expanded to include two current directors of LBI. Other officers and employees of LBI and LBank will become employees of the Applicant and the Bank.

With respect to financial resources, OTS has considered the Applicant's financial position. The Applicant has sufficient capital to effect the acquisition. The Bank and LBank are well capitalized, and the Bank will remain well capitalized after the transaction. OTS concludes that the financial resources of the Applicant, the Bank and LBank are consistent with approval.

With respect to future prospects, and risks to the DIF, based on its review of the financial and managerial resources of the Applicant, the Bank and LBank, OTS concludes that the future prospects of the Applicant, the Bank and LBank, and the risk to the DIF are consistent with approval. OTS is imposing Conditions 5 and 6 below, requiring the Applicant to obtain prior written non-objection of the OTS of an additional director, not yet identified, who will become a member of the Applicant's board of directors, and to submit final federal and state tax opinions, in order to help ensure that the Applicant and the Bank operate safely and soundly and that the future prospects of the Applicant and the Bank are consistent with approval.

With respect to the competitive impact of the transaction, OTS has carefully considered the competitive effects of the proposed transaction, and has submitted a competitive factors request to the U.S. Department of Justice, Antitrust Division (DOJ). The DOJ determined that the merger of LBank into the Bank, as originally proposed, raised competitive factors issues. On May 13, 2011, the Applicant, LBI and the DOJ entered into a letter of agreement (Letter of Agreement) regarding the divestiture of four branch offices in the Pittsfield, Massachusetts market that the Applicant and the Bank will make in conjunction with this Application. The DOJ has advised OTS that, in light of the proposed divestitures, pursuant to the Letter of Agreement, the consummation of the proposed transaction will not likely have a significant adverse effect on competition in any relevant banking market, pursuant to 12 U.S.C. § 1467a(e)(2). OTS is imposing Conditions 7 and 8 in order to ensure that the proposed transaction does not raise anti-competitive concerns.

OTS considered other markets in which the Bank and LBank compete and concludes that the proposed transaction will have no significant effect on competition in those markets. Accordingly, OTS concludes that competitive factors considerations are consistent with approval, provided the Applicant complies with the conditions imposed below.

² Id.

³ 12 U.S.C. § 1467a(e)(2).

With respect to the convenience and needs of the community, the Applicant has stated that the merger is not expected to result in any significant changes in services or products. The types of products and services offered by the Bank will be largely similar to those currently offered by the Bank and LBank, except that duplicative products and services will be eliminated and the Bank will also make available to LBank's customers certain products and services that LBank does not presently offer. Accordingly, OTS concludes that approval of the Application is consistent with the convenience and needs of the communities to be served.

As for the CRA, both the Bank and LBank have "Satisfactory" CRA ratings. OTS has received no comments from the public objecting to the proposed transaction on CRA grounds. Accordingly, OTS concludes that approval of the proposed acquisition of LBank by the Applicant is consistent with the CRA.

Conclusion

Based on the Application and the foregoing analysis, OTS concludes that the Application satisfies the applicable approval standards, provided that the following conditions are complied with in a manner satisfactory to the OTS Northeast Regional Director, or his designee (Regional Director).⁴ Accordingly, the Application is hereby approved, subject to the following conditions:

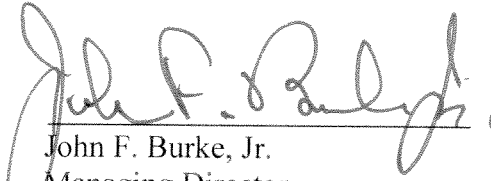
1. The Applicant must receive all required regulatory approvals and submit copies of all such approvals to the Regional Director prior to the consummation of the proposed transaction;
2. The proposed transaction must be consummated within 120 calendar days from the date of this Order;
3. Prior to the consummation of the proposed transaction, the chief financial officers of the Applicant and LBI 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 Applicant, LBI, the Bank and LBank, 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 the Applicant, LBI 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 Regional Director, and the Regional Director provides written non-objection to consummation of the transaction;

⁴ Following the Transfer Date, *see* Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 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 Federal Reserve System (Board of Governors), as appropriate, or to the individual, division, or office designated by the Comptroller of the Currency or the Board of Governors.

4. The Applicant must, within five 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; 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. Prior to the proposed appointment of an additional board member to the Applicant's board of directors as described in the Application, the Applicant must obtain the prior written non-objection of the Regional Director;
6. Prior to the consummation of the proposed transaction, the Applicant must submit to OTS, final federal and state tax opinions consistent with the representations made in the draft federal and state tax opinions submitted on May 24, 2011 and June 17, 2011, respectively;
7. The Applicant must comply with all commitments and representations made to the DOJ in connection with the Applicant's acquisition of LBI and LBank, pursuant to Letter of Agreement (Attached hereto as Attachment A) and comply with all conditions imposed by the DOJ in the Letter of Agreement; and
8. The Applicant must submit for the prior, written non-objection of OTS any proposed material deviations or material changes from the commitments and representations made to the DOJ, in connection with the Letter of Agreement.

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

By order of the Acting Director of the Office of Thrift Supervision, or his designee,
effective July 13, 2011.


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

ATTACHMENT A



U.S. Department of Justice

Antitrust Division

Liberty Square Building

*450 5th Street, N.W.
Washington, DC 20001*

May 13, 2011

David S. Neill
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019

Michael K. Krebs
Nutter, McClennen & Fish LLP
Seaport West
155 Seaport Boulevard
Boston, MA 02210

RE: Proposed Acquisition of Legacy Bancorp, Inc. by Berkshire Hills Bancorp, Inc. DOJ File No. 60-551112-0001

Dear Messrs. Neill and Krebs:

This letter is to confirm the agreement reached between the U.S. Department of Justice, Antitrust Division ("Department") and Berkshire Hills Bancorp, Inc. ("Berkshire") and Legacy Bancorp, Inc. ("Legacy") (hereinafter referred to as "the parties") regarding the divestitures that the parties will make in conjunction with the above-referenced merger transaction ("subject transaction"). The terms of the agreement as specified below will be referred to collectively as the "Letter of Agreement."

1. The parties agree to divest the four branches listed in Appendix A ("Divestiture Branches") to a competitively suitable purchaser or purchasers ("Divestiture Buyer") as determined by the Department. The parties shall present the proposed Divestiture Buyer to the Department for approval, and if the parties propose to divest to more than one Divestiture Buyer, the parties shall present all proposed divestitures to the Department simultaneously for approval of both the proposed buyers and the proposed packages of divestiture assets.
2. The parties agree to divest the entire customer relationships, i.e., all deposits and loans, associated with the Divestiture Branches, other than those relationships excepted by agreement with the Department.

3. The parties agree that they will take all steps necessary to preserve, maintain, and continue to operate and manage the Divestiture Branches as ongoing, economically viable competitive business. The parties agree to use all reasonable efforts to maintain the customer relationships at the Divestiture Branches and to take no action that would cause a run off of customer relationships at the Divestiture Branches.
4. Until the sale of the Divestiture Branches, the parties agree that branch managers and loan officers assigned to the Divestiture Branches shall not be transferred or reassigned to other areas within the parties' business and shall not be dismissed except for cause. The parties will provide the Department ten (10) days' advance notice of any such dismissal.
5. The parties agree that they will execute an agreement(s) with a Divestiture Buyer(s) for the sale of the Divestiture Branches prior to the consummation of the subject transaction. The parties further agree that the consummation of the sale of the Divestiture Branches and purchase and assumption of the associated deposits and loans outlined above will be made within 180 days of the consummation of the subject transaction. In the event that the parties are unsuccessful in completing the sale of the Divestiture Branches within 180 days of the consummation of the subject transaction, the Divestiture Branches will be transferred to an independent trustee for sale.
6. The parties also agree that they will suspend the operation of any existing non-compete agreement, and will not enter into any new non-compete agreement, with any current loan officer or branch manager located in Berkshire County, Massachusetts, effective from the signing of the Letter of Agreement and for a period of 180 days following the consummation of the subject transaction.
7. If the parties decide to close a branch of either Berkshire or Legacy located in Berkshire County, Massachusetts, at any time within two years of consummation of the subject transaction, the parties agree to sell or lease such branch to an Federal Deposit Insurance Corporation ("FDIC") insured institution offering deposit and credit services to small businesses, to the extent the parties have the legal authority to do so. For purposes of this provision, the term "branch closing" means the discontinuation of retail banking services at a branch facility. The parties will notify the Department in writing of the proposed closing not later than 90 days prior to the date proposed for the closing of the branch. The parties agree to use the following procedures in selling or leasing the branch:
 - (A) For a period of 60 days prior to the closing of a branch, the parties will issue a notice of sale or lease of the branch on a weekly or biweekly basis in a relevant industry publication(s), or any other publication, subject to prior approval by the Department; and
 - (B) The parties will sell or lease the branch proposed for closing to an FDIC-insured institution offering deposit and credit services to small businesses, unless the parties obtain prior approval from the Department to sell or lease the branch to a nonbank

bidder. In addition, the parties will not impose any condition in deeds or lease that would preclude the future use of the closed branch by an FDIC-insured institution offering deposit and credit services to small businesses.

8. The parties agree that they will publish a notice summarizing the terms of the Letter of Agreement on each party's website immediately following execution of the Letter of Agreement by the parties and the Department. The parties agree to provide telephone and e-mail contact information on each party's website to enable customers to reach them with questions about the divestiture. The parties also agree to post the telephone and e-mail contact information in each Divestiture Branch to enable customers to reach them with questions about the divestiture.

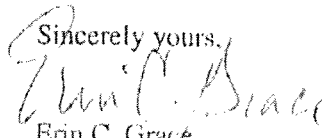
9. The parties agree that they will provide to the Department a copy of any offering memorandum for the sale of the Divestiture Branches that they or their agent(s) make available to potential purchasers. The parties also agree that they will provide to the Department a copy of the executed sales agreement.

10. The parties agree that they will include compliance with the Letter of Agreement as one of the commitments made to the Office of Thrift Supervision ("OTS") in connection with the application filed on the subject transaction.

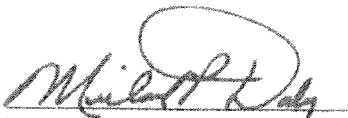
11. The Department agrees that it will advise the OTS that if the divestitures are made as specified above, it believes that this transaction will not have a significantly adverse effect on competition pursuant to 12 U.S.C. § 1467(a)(e)(2).

Please have the appropriate officers of Berkshire and Legacy sign, date, and return a copy of this letter to confirm this agreement.

Sincerely yours,

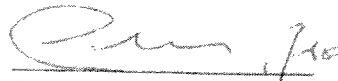


Erin C. Grace
Attorney
Litigation II Section



Berkshire Hills Bancorp, Inc.
Title: Michael P. Daly
Date: President and CEO

May 17, 2011



Legacy Bancorp, Inc.
Title: President
Date: May 17, 2011

Attachment A
Divestiture Branches

Bank	State	County	Address	City	Zip	Deposits as of June 30, 2010 (000s)
Legacy	MA	Berkshire	331 State Road	N. Adams	01247	\$18,365
Legacy	MA	Berkshire	609 Merrill Road	Pittsfield	01201	\$45,760
Legacy	MA	Berkshire	76 Park Street	Lee	01238	\$48,179
Legacy	MA	Berkshire	700 Main Street	Great Barrington	01230	\$45,822