

FEDERAL RESERVE SYSTEM

Bank of Hawaii
Honolulu, Hawaii

Order Approving Merger of Banks and Establishment of Branches

Bank of Hawaii (“Bank”),¹ a state member bank, has applied under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. § 1828(c)) (“Bank Merger Act”) to merge with First Savings and Loan Association of America, Dededo, Guam (“FSLA”), a federal savings and loan association, with Bank as the surviving institution. Bank has also applied under section 9 of the Federal Reserve Act (12 U.S.C. § 321) (“FRA”) to establish branches at the former locations of FSLA.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been given in accordance with the Bank Merger Act and the Board’s Rules of Procedure (12 C.F.R. 262.3(b)). As required by the Bank Merger Act, reports on the competitive effects of the merger were requested from the United States Attorney General and the other federal banking agencies. The time for filing comments has expired, and the Board has considered the applications and all the facts of record in light of the factors set forth in the Bank Merger Act and section 9 of the FRA.

Competitive Considerations

¹ Bank and FSLA are wholly owned subsidiaries of Bank of Hawaii Corporation, also in Honolulu, which is a bank holding company within the meaning of the Bank Holding Company Act, 12 U.S.C. § 1842.

² FSLA has offices at the locations in the attached appendix.

The Bank Merger Act prohibits the Board from approving an application if the proposal would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking.³ The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of the communities to be served.⁴

The proposed merger of Bank and FSLA is a consolidation of two insured depository institutions under common ownership and, therefore, would not lessen competition in any relevant banking market. The Board has received no objections to the proposal from the Department of Justice or the other federal banking agencies. Accordingly, the Board concludes that consummation of the proposed transaction would not be likely to result in a significantly adverse effect on competition or on the concentration of banking resources in any banking market, and that competitive factors are consistent with approval.

Financial and Managerial Resources and Future Prospects

The Bank Merger Act requires the Board to consider the financial and managerial resources and future prospects of the institutions involved in this proposal. The Board has reviewed these factors in light of all the facts of record, including supervisory reports of examination assessing the financial and managerial resources of Bank and FSLA, and information provided by Bank. Based on these

³ 12 U.S.C. § 1828(c)(5)(A).

⁴ 12 U.S.C. § 1828(c)(5)(B).

and all the facts of record, the Board concludes that the financial and managerial resources and future prospects of the institutions involved are consistent with approval of the proposal.

Convenience and Needs Considerations

The Bank Merger Act requires the Board to consider the convenience and needs of the communities to be served. The Board has carefully reviewed the effect of the proposal on the convenience and needs of the communities to be served in light of all the facts of record, including the records of performance of the relevant depository institutions under the Community Reinvestment Act (“CRA”).⁵

The Board notes that Bank and FSLA received “outstanding” and “satisfactory” ratings respectively at their most recent CRA performance examinations.⁶ Based on all the facts of record, the Board concludes that considerations relating to the convenience and needs factor, including the CRA performance records of the institutions involved, are consistent with approval of the proposal.

Establishment of Branches

Bank has also applied under section 9 of the FRA to establish branches at the former locations of FSLA. Guam law on intrastate branching provides that an out-of-state bank with an existing branch in Guam may not establish additional branches in Guam until the bank engages in an interstate merger transaction with a Guam-chartered bank. The Board has reviewed the proposal by Bank to operate branches at the current FSLA offices in light of this Guam law and applicable federal law. Because Bank already lawfully operates a branch in Guam, the

⁵ 12 U.S.C. § 2901 et seq.

⁶ Bank received an "outstanding" CRA rating from the Federal Deposit Insurance Corporation, as of January 19, 2000, and FSLA received a "satisfactory" CRA rating from the Office of Thrift Supervision, as of July 2, 2001.

establishment of additional branches in Guam is governed by section 24 of the Federal Deposit Insurance Act (“FDI Act”).⁷ That section provides that a host State’s intrastate branching laws apply to a branch in the host State of the out-of-State, State-chartered bank to the same extent that those laws apply to a branch of an out-of-State national bank. Section 36(c)(2) of the National Bank Act permits an out-of-state national bank with a branch in Guam to establish additional branches in Guam to the same extent as a bank chartered in Guam. Accordingly, under section 24 of the FDI Act, an out-of-State State bank with an existing branch in Guam may also establish additional branches in Guam. The Guam Superior Court has found that this provision of federal law overrides the Guam intrastate branching statute in a situation almost identical to the facts of this case.⁸

The Guam Banking Board has found that Bank meets the requirements for establishing additional branches in Guam and has approved this proposal.⁹ In light of the specific federal statute governing branching under the facts of this case and the determination by the Guam Banking Board to approve this proposal, the Board finds that Bank may establish and operate additional branches at the locations of FSLA’s offices notwithstanding section 106601(c) of Guam’s banking statutes.¹⁰

⁷ 12 U.S.C. § 1831a(j)(1).

⁸ See, Bank of Guam v. Guam Banking Board, Civil No. SP0234-01 (Guam Sup. Ct. April 24, 2002); accord Nat’l R.R. Passenger Corp. v. Miller, 358 F. Supp. 1321 (D. Kan. 1973), aff’d, 414 U.S. 948 (1973).

⁹ On September 19, 2002, the Guam Banking Board approved Bank’s application to establish additional branches in Guam as a result of this proposal.

¹⁰ See 11 G.C.A. § 106601(c).

The Board also has considered the factors it is required to consider under section 9 of the FRA. For the reasons discussed in this order, the Board finds those factors to be consistent with approval.¹¹

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that these applications should be, and hereby are, approved. Approval of the applications is specifically conditioned on Bank's compliance with all the representations and commitments made in connection with this proposal and on its receipt of all required regulatory approvals. For purposes of this action, the representations and commitments relied on in reaching this decision are conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

The merger may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of San Francisco, acting pursuant to delegated authority.

By order of the Board of Governors,¹² effective December 12, 2002.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

¹¹ See 12 U.S.C. § 322.

¹² Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.

APPENDIX

FSLA Offices to be Acquired by Bank of Hawaii

1. 136 Kayen Chando Street
Dededo, Guam 96921
2. 140 Aspinal Street
Hagatna, Guam 96910
3. 118 Agana Shopping Center
Hagatna, Guam 96910
4. 1088 West Marine Drive
Hagatna, Guam 96910
5. 291 Farenholt Avenue
Tamuning, Guam 96911
6. 525 Chalen Ramon Haya
Yigo, Guam 96929