Office of the Comptroller of the Currency

Interpretations - Corporate Decision #96-37

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DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY

ON THE APPLICATIONS TO CHARTER

TCF BANK MINNESOTA, N.A., MINNEAPOLIS, MINNESOTA

TCF BANK ILLINOIS, N.A., OAK BROOK, ILLINOIS

TCF BANK WISCONSIN, N.A., MILWAUKEE, WISCONSIN

GREAT LAKES BANK MICHIGAN, N.A., ANN ARBOR, MICHIGAN

July 18, 1996

I. INTRODUCTION

TCF Financial Corporation, Minneapolis, Minnesota ("TCF" or "the Applicant"), a savings and loan holding company, has filed applications to charter four de novo national banks. The proposed banks are: TCF Bank Minnesota, N.A.; TCF Bank Illinois, N.A.; TCF Bank Wisconsin, N.A.; and Great Lakes Bank Michigan, N.A. ("the Banks"). The initial applications were filed in the OCC's Midwestern District Office on March 13, 1995, and have been supplemented from time to time with additional or amended information. The American Bankers Association ("ABA") and others filed comments opposing one or more of these applications. Most of the protestants voiced similar concerns, although the ABA's comments were the most extensive. <**NOTE:** In addition to the ABA, comments were received from Bremer Financial Services, St. Paul, Minnesota; Citizens Independent Bank, St. Louis Park, Minnesota; the Fair Lending Coalition, Milwaukee, Wisconsin; First Citizens State Bank, Whitewater, Wisconsin; Riverside Bank, Minneapolis, Minnesota; Union Bancorp, Ottawa, Illinois; and United Bank, Grand Rapids, Michigan. The Fair Lending Coalition raised community reinvestment concerns, while the others focused on deposit conversion and competitive harm to existing banks.>

Each Bank will be a wholly-owned (except for directors' qualifying shares), direct subsidiary of TCF. TCF is a savings and loan holding company under the Home Owners Loan Act, 12 U.S.C. 1461 *et seq*. It presently owns TCF Bank Minnesota fsb, TCF Bank Illinois fsb, TCF Bank Wisconsin fsb, and Great Lakes Bancorp, A Federal Savings Bank ("the Thrifts"). These thrift institutions will therefore be affiliates of the Banks. Each thrift has branches only in its namesake state except for Great Lakes Bancorp, which has branches in both Michigan and Ohio. <**NOTE:**TCF will need to obtain Federal Reserve approval to become a bank holding company pursuant to the Bank Holding Company Act ("BHC Act"), 12 U.S.C. 1841 *et* *seq.*, and the Banks must apply to the Federal Deposit Insurance Corporation ("FDIC") for deposit insurance under the Federal Deposit Insurance Act ("FDI Act"), 12 U.S.C. 1811 *et seq.*>

TCF has indicated in its applications that by establishing these four BIF-insured national banks, it will be able to reduce deposit insurance expenses while still keeping the deposits within the corporate group as deposits voluntarily migrate to Bank products that are more favorably priced due to the current premium differential between the Savings Association Insurance Fund ("SAIF") and the Bank Insurance Fund ("BIF"). <**NOTE:**The minimum insurance premium for SAIF-insured institutions is 23 cents per hundred dollars of deposits, while most BIF-insured institutions currently pay a flat rate of $2000 per year. 61 Fed. Reg. 26078, 26083 (1996).> TCF's applications outline a plan whereby its Thrifts and Banks will co-exist into the future, providing alternatives for customers and enabling TCF to remain competitive with its BIF-insured competitors.

Each Bank will operate in a similar fashion. Each will have a separate main office (the exact locations will be identified during the in-organization period), while all branch offices will share the premises of existing branches of the Thrift affiliate in that state. <**NOTE:**However, due to interstate branching restrictions, Great Lakes Bank Michigan, N.A. will not share Great Lakes Bancorp branches in Ohio.> The Banks will share the Thrift employees at those locations. The Banks will initially enter into a series of service and correspondent arrangements with the Thrifts to provide back office and operational support to the Banks. These arrangements will include: 1) financial and account processing and record keeping; 2) vault access; 3) other correspondent relationships; and 4) human resources and personnel management.

Although there will be a sharing of facilities and employees, the Banks and Thrifts will be separate and distinct institutions. Each Bank will have its own outside directors, president, cashier, and chief credit officer, who will be different from those of the affiliate Thrift in that state. The chief credit officer for each Bank will independently evaluate the credit quality, price, terms, and conditions of the loans being offered to ensure that they meet the respective Bank's credit standards. The Banks will each employ their own lending officers, and will have their own books of account, forms, stationery, and checks. In addition, each Bank will have its own capital, surplus, undivided profits, and lending limit.

TCF contemplates that each Bank will offer a full range of banking products and services for both individuals and businesses. This will include transaction and term accounts, and loan products. It is anticipated that the mix will be approximately one-third commercial and two-thirds consumer. It is expected that each Bank will engage in substantial direct lending and will rely very little on participations and purchases of assets, for it is anticipated that the volume of direct lending originated at each office will be substantially sufficient to utilize the deposits generated at that location. In the event that there are excess deposits, the Banks may acquire loans or participations from the Thrifts and/or other sources, in arm's length transactions and in accordance with OCC supervisory policies.

The Banks expect to be able to offer deposit products that are more competitive and profitable than the terms under which the Thrifts could offer such products, due to the BIF-SAIF premium differential. Each Bank will market its products and services both to customers of its affiliate Thrift in that particular state, and the public at large. Accordingly, the Banks would expect that Thrift customers as well as others may decide independently to deposit their funds with the Banks. However, customers will be able to remain with the Thrifts if they so choose. The Banks will not purchase or assume any deposit liabilities of the Thrifts.

For the reasons discussed below, the OCC has concluded that the statutory and licensing factors have been satisfactorily met and, accordingly, the OCC approves these applications.

II. LEGAL ANALYSIS

A. <u>National Bank Act Standards</u>

The statutory requirements for chartering a national bank under the National Bank Act are relatively few: articles of association and an organization certificate must be drafted and filed with the OCC, 12 U.S.C. 21-23; the required amount of capital must be paid in, 12 U.S.C. 53; certain requirements relating to directors must be satisfied, 12 U.S.C. 71-73; and the OCC must be notified when these things have been accomplished, 12 U.S.C. 26. Normally, most of these requirements are satisfied after the OCC grants preliminary approval for a charter.

Once they are completed, the OCC must issue the charter if the bank "is lawfully entitled to commence the business of banking." However, "the Comptroller may withhold from an association his certificate authorizing the commencement of business, whenever he has reason tosuppose that the shareholders have formed the same for any other than the legitimate objects contemplated by this chapter" (*i.e.*, the National Bank Act). 12 U.S.C. 27(a).

1. "Legitimate Objects" Requirement

The "legitimate objects" provision of 12 U.S.C. 27 originated in section 12 of the National Bank Act, ch. 106, 13 Stat. 99, 103 (1864). There is very little guidance in either legislative history or case law to help us interpret this phrase. However, the statutory language suggests something more serious than merely an unusual or unconventional business plan. "Legitimate" is defined as "that which is lawful, legal, recognized by law, or according to law." Black's Law Dictionary 901 (6th ed. 1990). Therefore, "legitimate objects" may be construed to mean lawful activities, and a bank that is being chartered to engage in lawful activities satisfies the "legitimate objects" test. <**NOTE:**By the same token, a bank chartered to facilitate illegal activities would be formed for "other than legitimate objects." The legislative history of this provision, although brief, supports such an interpretation. The discussion in the debates focused on the fear that the Comptroller was being vested with too much power, and might deny a charter based on personal animus. It was suggested that "[i]f [banks] do other than a legitimate business, the courts will lay their hands upon them and stop them. The courts see to it that they do a legitimate business, and that is the proper way to control these associations." Cong. Globe, 38th Cong., 1st Sess. 1270 (1864). >

There appears to be only one case construing the "legitimate objects" provision of 12 U.S.C. 27. In 1977, the federal district court in New Jersey ruled that the OCC had violated 12 U.S.C. 27 in granting a charter to City Trust Services, N.A., Elizabeth, New Jersey, a national bank limited to trust powers. The court reasoned that since City Trust would exercise only trust powers under 12 U.S.C. 92a (not originally part of the National Bank Act) and not the banking powers granted under 12 U.S.C. 24(Seventh), it was not formed for the legitimate objects of "this chapter," the National Bank Act. Although it is uncertain how much weight should be accorded to this decision, <**NOTE:**The decision was reversed on appeal because 12 U.S.C. 27 had been amended to retroactively validate City Trust's charter. Since the case was now moot, the appeals court declined to decide whether the trial court's decision had been correct at the time. *National State Bank of Elizabeth, New Jersey v. Smith,* No. 76-1479, (D.N.J. Sept. 16, 1977), *rev'd,* 591 F.2d 223, 231-32 (3d Cir. 1979).> in any event, it is not an impediment to approving the present applications for the Banks here would meet the court's standard. In contrast to City Trust, the present Banks will have full charters and be full service institutions engaged in receiving deposits, making loans, and generally carrying on the business of banking -- all lawful activities that are encompassed by "this chapter." <**NOTE:**There is one other case where this provision was raised. A decade ago, OCC preliminary approvals of certain applications to charter nonbank banks were challenged in court, where one of the arguments made by the plaintiffs was that such banks were not chartered for legitimate objects under the National Bank Act because they were intended as an evasion of the BHC Act. However, the court declined to rule on that contention. *Independent Bankers Ass'n of America v. Conover*, [1984-1985 Transfer Binder] Fed. Banking L. Rep. (CCH) 86,178 at 90,537 n.7 (M.D. Fla. Feb. 15, 1985) (order granting preliminary injunction).>

2. Impact of the Deposit Conversion Moratorium

In protests that were filed with the OCC, the ABA and other protestants contended that migrating deposits out of SAIF-insured thrift institutions violates the SAIF conversion moratorium contained in section 5(d) of the FDI Act, 12 U.S.C. 1815(d)(2)(A), and that chartering a bank for this purpose is not a legitimate object under the National Bank Act. *See, e.g.,* letter from Edward L. Yingling, ABA, to Robert Klinzing, Deputy Comptroller, Midwestern District (April 12, 1995); Memorandum of Law In Support of Comments of the ABA (May 2, 1995).

Briefly, section 5(d) imposes a moratorium, until the SAIF is fully capitalized, on certain transactions involving the transfer of insured deposits from the SAIF to the BIF. The statutory moratorium applies to the following "conversion transactions:"

- The change in status of an insured depository institution from a BIF member to a SAIF member or vice versa;
- The merger or consolidation of a BIF member and a SAIF member;
- The assumption of any liability by a BIF member to pay any deposits of a SAIF member or vice versa;
- The transfer of any assets of a SAIF member to a BIF member in consideration of the assumption of liabilities for any portion of the deposits of the BIF member or vice versa; or
- The transfer of deposits from a BIF member to a SAIF member or vice versa, by the receiver of a failed institution.

12 U.S.C. 1815(d)(2)(B). Deposit migration as proposed by TCF, wherein the Banks would offer products and services designed to encourage depositors to voluntarily transfer their funds from SAIF-insured institutions to BIF-insured institutions, is not covered by the actual language of the conversion moratorium. Nevertheless, the ABA argues strenuously that deposit migration violates the moratorium because such an "evasion" violates the spirit or intent of the moratorium. ABA Memorandum of Law, *supra*; ABA Supplemental Comments (July 24, 1995).

The FDIC recently considered and rejected this argument in approving deposit insurance for two newly-chartered, BIF-insured state savings banks: First Financial Savings Bank, S.S.B., Stevens Point, Wisconsin, and MidAm Bank, S.B., Clarendon Hills, Illinois, both decided June 28, 1996. Both institutions were sponsored by thrift holding companies with existing, SAIF-insured thrift institutions.

Like TCF's plan, both of these applications contemplate voluntary deposit migration of different degrees from existing thrifts to new, BIF-insured affiliates. According to a statement issued by the FDIC Board of Directors accompanying its order in *First Financial Savings Bank, SSB*, the new, BIF-insured institution will initially operate out of one office that will share an existing office of its SAIF-insured thrift affiliate. Customers of the thrift may be encouraged through various pricing and marketing incentives to move maturing deposits to the Savings Bank, because the latter will be able to offer more competitive rates than the thrift.

In a statement accompanying its order in *MidAm Bank, SB*, the FDIC Board noted that the new bank will be located "in a building owned by" its affiliated thrift, but the bank "does not intend to operate shared facilities to solicit" thrift customers. Nevertheless, the bank indicated that thrift customers "may choose to voluntarily move their accounts to [the bank] as a result of [its] ability to offer more competitive pricing due to the lower deposit insurance premium assessment expense at the BIF-insured institution."

The ABA as well as the Wisconsin Bankers Association filed formal objections in *First Financial*, making the same argument about the SAIF conversion moratorium that has been made here against TCF. <**NOTE:**No protests were filed against the MidAm application.> In the statements accompanying each order, the FDIC analyzed this question and concluded that voluntary deposit migration is not prohibited by the SAIF conversion moratorium:

> Nothing in the FDI Act specifically prohibits affiliated SAIF and BIF institutions from adopting a voluntary customer migration strategy of offering more favorable interest rates at the BIF affiliate and advising new customers or existing customers of the SAIF affiliate that more favorable interest rates can be obtained by placing deposits at the BIF affiliate in the ordinary course of affairs. While section 5(d) of the FDI Act establishes a definition of a "conversion transaction" and, subject to exceptions not relevant here, places a moratorium on such transactions, such a voluntary customer migration is not within the statutory definition.

The Board then listed the five specific conversion transactions contained in section 5(d) of the FDI Act (page 5, *supra*) and found that voluntary customer migration between affiliated institutions is not encompassed by any of them. It further concluded that the moratorium was not intended to apply to all shifting of funds between BIF- and SAIF-insured institutions, but only to the transactions specified in the statute:

> Neither the language of the conversion transaction definition nor its legislative history indicates that the definition is merely a representative listing, or that the definition encompasses every arrangement that results in a shift of deposits between affiliated BIF and SAIF institutions. Indeed, the language of the definition says that a conversion transaction 'means' the five specified items. Additionally, the fact that Congress took action to add a new transaction to the definition after the original version was enacted as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, covering a transaction that had a result similar to the existing transactions, indicates that Congress views the definition as an exclusive list. Moreover, the original definition as reported to the House contained a provision that would have covered any annual "transfer" of deposits exceeding ten percent of an institution's deposit base; however, Congress adopted the Senate version instead, which did not include the transfer of deposits provision. H.R. 1278, 206, H.R. Rep. 101-54 Part 1, 101st Cong. 1st Sess. 14-15 (1989).

The FDIC is the agency with primary responsibility for interpreting the SAIF conversion moratorium provisions of the FDI Act. The FDIC has decided that voluntary deposit migration between affiliated institutions does not violate the moratorium. Accordingly, we believe that the fact that the Banks will offer products that are designed to encourage customers of the Thrifts to shift deposits to the Banks does not mean that the Banks will be chartered for "other than legitimate objects" under 12 U.S.C. 27.

3. Shell Bank Objection

The ABA has also argued that the Banks would not be chartered for "legitimate objects" under 12 U.S.C. 27 because, due to the extensive tandem operations, they would not be bona fide banks, but merely shell institutions. Letter of April 3, 1995, *supra*. It has recently reiterated its concerns that "separate identities, management and structure for the thrifts and the *de novo* banks" should be maintained, and that "marketing practices and programs truly target the general public and not be mere schemes to lure deposits from the thrift to the bank." Letter from Edward L. Yingling, ABA, to Troy L. Dixon, Director for Corporate Activity, July 11, 1996.

Despite the extent to which they will be sharing facilities and employees, the Banks here will be separate institutions, independent of the Thrifts. As mentioned earlier, each Bank's outside directors, president, cashier, and chief credit officer will be different from those of the Thrift in that state. Each Bank, as well as each Thrift, will have its own capital, surplus, undivided profits, and lending limit. The Banks and Thrifts will maintain separate books of account and forms, and have their own stationery and checks. Obviously, the Banks and Thrifts will have different regulators and be subject to different statutes and regulations.

The Banks and the Thrifts will remain separate in the future. Although the ABA argued in its letter of April 12, 1995, that the planned tandem operations amount to a de facto merger between the Banks and the Thrifts, TCF's applications do not indicate that the Thrifts will "wither away" once the Banks are established. On the contrary, the applications reflect that the percentage of the Banks' business derived from present customers of the Thrifts will decline over time, and that even after several years, the Banks will have fewer deposits than the Thrifts have now. Moreover, the FDIC found in *First Financial Savings Bank* and *MidAm Bank* that a similar arrangement was not "the factual equivalent of a merger, consolidation, or other transaction constituting a conversion." There is nothing improper in a holding company owning both banks and thrifts, for this has been specifically authorized by Congress. 12 U.S.C. 1843(i).

Just as there are now many national banks that engage only in specialized activities, the fact that a proposed bank will have an unconventional structure is not, alone, a reason to deny a charter application on "legitimate objects" grounds. Use of shared facilities such as TCF proposes is not a reason to find a bank to be "illegitimate" under 12 U.S.C. 27.

B. <u>Consistency With The Purposes of the FDI Act</u>

The ABA, in its legal memorandum of May 2, 1995, also argues that the OCC chartering regulation, 12 C.F.R. 5.20, requires the OCC to consider whether a proposed bank's corporate powers are consistent with the purposes of the FDI Act. It argues that the proposed Banks do not meet that test, since they are designed to evade the SAIF conversion moratorium, and therefore the charters should be denied. It further argues in its Supplemental Comments of July 24, 1995, that, aside from the SAIF conversion moratorium, this standard requires an assessment of risks to the insurance funds.

The OCC was formerly required to consider factors listed in section 6 of the FDI Act, 12 U.S.C. 1816, including the risk to the BIF and SAIF and whether a proposed bank's corporate powers would be consistent with the purposes of the FDI Act, when granting a new bank charter. *See* 12 U.S.C. 1814(b) (amended 1991). However, that requirement was eliminated in 1991 when section 1814 was rewritten by the Federal Deposit Insurance Corporation Improvement Act, Pub. L. No. 102-242, 115(b), 105 Stat. 2236, 2249 (1991). <**NOTE:**The OCC has proposed to revise its chartering regulation to reflect this statutory change. 59 Fed. Reg. 61034, 61050 (1994) (to be codified at 12 C.F.R. 5.20) (proposed Nov. 29, 1994). >

Nevertheless, the OCC extensively evaluates the viability and prospective safety and soundness of the banks it charters, and that review has been performed with respect to the proposed Banks. TCF has committed to maintaining an eight percent capital level in the Banks over their first three years, and their operating plans do not indicate an intention to engage in risky activities. The SAIF conversion moratorium has already been discussed in section A.2., above. Therefore, there does not appear to be any reason to conclude that the Banks would present a risk to the insurance funds. Moreover, the FDIC will consider risk to the funds and the other statutory factors when it reviews the Banks' applications for deposit insurance. Further discussion of supervisory issues is contained in Section III of this decision.

C. Tandem Operations

1. Shared Branches and Employees

The applications contemplate the sharing of virtually all facilities other than the Banks' main offices. According to TCF, the proposed Banks will share branches at substantially all metropolitan locations of the Thrifts. This would constitute 52 shared branch locations (76 percent of all Thrift locations) in Minnesota, 22 shared branch locations (81 percent of all Thrift locations) in Wisconsin, 25 shared branch locations (89 percent of all Thrift locations) in Illinois, and 40 shared branch locations (76 percent of all Thrift locations) in Michigan. As stated earlier, no branches would be shared in Ohio.

The OCC has long permitted national banks to share premises and employees with other businesses, including financial institutions. The OCC has recently revised its interpretive ruling on sharing of space and employees, to better ensure that customers are adequately informed about the institution with which they are dealing. The new ruling requires that:

> (1) The other business is conspicuously, accurately, and separately identified;
>
> (2) Shared employees clearly and fully disclose the nature of their agency relationship to customers of the bank and of the other businesses so that customers will know the identity of the bank or business that is providing the product or service;
>
> (3) The arrangement does not constitute a joint venture or partnership with the other business under applicable state law;
>
> (4) All aspects of the relationship between the bank and the other business are conducted at arm's length . . . .
>
> (5) Security issues arising from the activities of the other business on the premises are addressed;
>
> (6) The activities of the other business do not adversely affect the safety and soundness of the bank;
>
> (7) The shared employees or the entity for which they perform services are duly licensed or meet qualification requirements of applicable statutes and regulations pertaining to agents or employees of such other business; and
>
> (8) The assets and records of the parties are segregated.

Interpretive Ruling 7.3001(c), 61 Fed. Reg. 4849, 4869 (1996) (to be codified at 12 C.F.R. 7.3001(c)).

TCF has committed that operations of the Banks will comply with the applicable requirements of this interpretive ruling:

> With reference to the Part 7 restrictions (12 C.F.R. 7.3001), we will comply with the applicable

> requirements state [sic] in that section. Specifically, in order to ensure that national bank and savings association customers are not misled at such branch offices, all account and product information will contain conspicuous and plain disclosure of the financial institution offering the product. We anticipate a disclosure which would prominently state the name of the financial institution, the chartering authority, and the relationship between TCF Financial Corporation [and the relevant Thrift and Bank]. We will take all appropriate steps to ensure that customers understand the separate entities, and the corporate relationship, including appropriate training of all personnel. All personnel will be instructed to orally disclose to each customer making a deposit to the National Bank, prior to purchase, that the product is being offered by TCF National bank, which is a national banking organization, and not TCF Bank fsb, which is a savings association. This will be followed by the written disclosures described above.

Letter from Gregory J. Pulles, Vice Chairman and General Counsel, TCF (June 27, 1996). As part of its ongoing supervisory oversight, the OCC will review the Banks' operations for compliance with their representations and OCC requirements. Compliance with existing and future agency guidance on this subject is expected. <**NOTE:**The federal bank regulatory agencies are planning to issue interagency guidance on this subject in the near future. >Of course, the affiliate Thrifts also would need to comply with any applicable OTS requirements.

2. Facility Banking

In its April 3, 1995, letter, the ABA raised the issue that TCF and other thrift holding company charter applicants planned to make significant use of facility banking in ways that went considerably beyond OCC precedent on this subject. TCF subsequently indicated that it now plans to make little, if any, use of facility banking arrangements. Instead, the Banks will have shared branches at most branches of the Thrifts. Any accommodation services offered at the remaining Thrift branches will be limited to activities consistent with safety and soundness guidelines set forth in existing OCC precedents. Due to interstate branching restrictions, the Michigan Bank will be unable to share branches of Great Lakes Bancorp in Ohio. Therefore, TCF does not plan to conduct any Bank operations in Ohio at this time. If Ohio operations become desirable in the future, TCF expects to charter a separate institution there. Consequently, the applications no longer raise issues concerning the expansion of the OCC's facility banking precedents.

D. <u>FIRREA Cross-Guarantee Liability</u>

Another issue that is raised by these applications is that of potential cross-guarantee liability. Under section 206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 1815(e)(1), an insured depository institution is liable for any loss incurred by the FDIC from open bank assistance to, or the default of, a "commonly controlled insured depository institution." The ABA has suggested that the thrift institutions associated with thrift holding company-sponsored banks will be forced to liquidate assets in order to pay the deposits that will be withdrawn. Memorandum from Office of the General Counsel, ABA, on the "Great Western" Issue (March 29, 1995, attached to letter to Congresswoman Marge Roukema, March 28, 1995). The Banks' business plans indicate, however, that their operations will not be dependent on draining business from the Thrifts. Accordingly, this factor is not a reason to deny the charter applications.

III. LICENSING FACTORS

In addition to the statutory requirements in the National Bank Act, charter applicants must satisfy OCC supervisory standards. These requirements, as well as the OCC's general policy on the chartering of new national banks, are contained in OCC regulations at 12 C.F.R. 5.20. In evaluating an application to establish a national bank, the OCC considers whether the proposed bank: (1) Has organizers who are aware of and understand national banking laws and regulations, and safe and sound banking operations and practices; (2) Has competent management, including the board of directors, with ability and experience relevant to the types of services to be provided; (3) Has capitalization that is sufficient to support the projected volume and type of business; (4) Can reasonably be expected to achieve and maintain profitability; and (5) Will help meet the credit needs of its entire community, including low-and moderate-income neighborhoods, consistent with safe and sound operations of the bank.

TCF's management is aware of and understands national banking laws and regulations, and safe and sound banking operations and practices. TCF has a good record of regulatory compliance, and several of its current executive officers have national bank experience. TCF and its existing federal savings banks have been operated in a satisfactory manner. Due to the proposed operation of Bank branches at existing Thrift branch offices, TCF has committed to take necessary steps to minimize customer confusion. In this regard, the Banks will comply with the OCC requirements for the sharing of space and employees as set forth in 12 C.F.R. 7.3001 and with any future agency guidelines that may be issued.

The Banks will have competent management, including boards of directors, with abilities and experience relevant to the types of services that they will provide. The Banks' officers and directors will come primarily from within the TCF organization. Over the past several years, TCF has shifted its business focus towards that of a bank, and has gained significant commercial and consumer lending expertise. Each Bank will have an experienced president, chief credit officer, and cashier separate from that of the Thrifts.

The proposed Banks' capital plans are sufficient to support the projected volume and type of business. Consistent with its existing policy, the parent company will provide initial and subsequent capital injections to the Banks to maintain "well capitalized" institutions. The Tier 1 leverage ratio for each Bank is projected to exceed eight percent throughout the first three years of operation. TCF has the financial capacity to provide additional capital, as needed.

The proposed Banks have reasonable prospects to achieve and maintain profitability. The Banks are expected to become profitable within the first year of operation. Unlike most *de novo* banks, these new Banks will benefit from their affiliation with established financial institutions, which will provide immediate access to deposits and loans. While this source is available, the Banks plan to market directly to the general public, and do not plan to rely on participations or purchases of loans from the affiliated Thrifts. In addition, the Banks will benefit from economies of scale stemming from the sharing of branch and back office operations with the Thrifts. The financial projections show conservative growth and migration of deposits. Should management develop the Banks in accordance with the operating plans, the Banks should not have a significantly adverse impact on the affiliated Thrifts. As proposed, the affiliated Thrifts will remain viable financial institutions and continue to be major providers of mortgages and other loan and deposit products and services in the communities they serve.

The Banks' plans indicate that they will help meet the credit needs of their entire communities, including low-and moderate-income neighborhoods, consistent with safe and sound operations. The Community Reinvestment Act ("CRA") programs for the proposed Banks are substantially similar to those of the Thrifts. TCF's thrift subsidiaries have a satisfactory record of performance under the CRA, and nothing has come to the attention of the OCC as part of this application process that would indicate that this satisfactory level of performance will not be continued at the proposed Banks. In conclusion, the OCC finds that the proposed Banks can be adequately supervised using established examination procedures, and that the Banks have reasonable prospects for success. All supervisory requirements therefore are met.

IV. CONCLUSION

The organizers have complied with applicable requirements of the National Bank Act. The present applications are lawful, as there is no evidence to suggest that TCF does not intend to conduct a legitimate banking business. The Banks represent that they will be full service institutions, making loans as well as receiving deposits. The FDIC has found voluntary deposit migration not to violate the conversion moratorium provisions of the FDI Act. The tandem operations planned are not impermissible, but their scale will make it necessary that steps be taken to avoid customer confusion, which the Banks have agreed to undertake. In sum, there appears to be no basis to conclude that the proposed Banks are being formed "for any other than the legitimate objects contemplated by" the National Bank Act. The OCC therefore grants preliminary approval to these charter applications.

/s/
Julie L. Williams
Chief Counsel

Date: 07-18-96

95-MW-01-0005, 95-MW-01-0006, 95-MW-01-0007, 95-MW-01-0008