

FEDERAL RESERVE SYSTEM

Great Southern Bancorp, Inc.
Springfield, Missouri

Order Approving the Acquisition of Shares of a Thrift Holding Company

Great Southern Bancorp, Inc. (“Great Southern”), a financial holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act (12 U.S.C. §§ 1843(c)(8) and 1843(j)) and section 225.24 of the Board’s Regulation Y (12 C.F.R. 225.24) to own up to 20 percent of the voting shares of Guaranty Federal Bancshares, Inc., Springfield, Missouri (“Guaranty”). Guaranty controls Guaranty Federal Savings Bank, a federal savings bank. Great Southern expects that the percentage of its ownership interest in Guaranty will increase largely as the result of the repurchase by Guaranty of shares owned by other shareholders.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (65 Federal Register 71,322 (2000)), and the time for filing comments has expired. The Board has considered the notice and all comments received in light of the factors set forth in section 4(j)(2) of the BHC Act.

Great Southern, with total consolidated assets of \$1.1 billion, operates the 12th largest depository institution in Missouri, controlling deposits of approximately \$436.3 million, representing less than 1 percent of total

deposits in depository institutions in the state.¹ Guaranty controls the 67th largest depository institution in Missouri, which has deposits of \$70.4 million.

The Board previously has determined by regulation that the ownership of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.²

Guaranty has objected to the increase in percentage ownership interest by Great Southern. Guaranty has adopted anti-takeover provisions designed to discourage a takeover attempt not approved by Guaranty's board of directors.³

¹ Asset and state deposit data are as of June 30, 1999. In this context, depository institutions include commercial banks, savings banks, and savings associations.

² 12 C.F.R. 225.28(b)(4).

³ Guaranty states that the current ownership interest by Great Southern violates Guaranty's articles of incorporation, which Guaranty asserts would prohibit any person from acquiring more than 10 percent of Guaranty's shares, before December 2002. Guaranty's articles of incorporation recognize shareholdings in excess of 10 percent under certain circumstances, and impose restrictions on the voting rights of shareholders with more than a 10-percent ownership interest. The courts have indicated that the Board must analyze all the proposals under the BHC Act in light of the factors enumerated in the BHC Act and may consider matters related to shareholders' rights only to the extent those matters relate to the factors enumerated in the BHC Act. See Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973). The questions whether the ownership of more than 10 percent of the shares of Guaranty may be prohibited by its articles of incorporation or whether the ownership of shares is permissible and voting rights associated with those shares are restricted are questions of state corporate law, as is the question whether Great Southern can be placed in violation of the articles of incorporation by stock

Great Southern seeks the Board's approval to allow the percentage of outstanding shares of Guaranty owned by Great Southern to increase primarily as the result of stock repurchases by Guaranty. Great Southern has indicated that it does not intend to exercise control over Guaranty for purposes of the BHC Act, and, in this connection, has agreed to abide by certain commitments that the Board has relied on in other cases to determine that an investing bank holding company would not be able to exercise a controlling influence over a depository institution for purposes of the BHC Act.⁴

Based on these commitments and all other facts of record, it is the Board's judgment that Great Southern would not acquire control of Guaranty for purposes of the BHC Act through consummation of this proposal.

The Board is required by section 4(j)(2)(A) of the BHC Act to determine that the proposal "can reasonably be expected to produce benefits to the public...that outweigh possible adverse effects, such as undue

redemptions made by Guaranty. The Board has analyzed this proposal under the factors that the Board is required to consider under the BHC Act.

⁴ For example, Great Southern has committed not to exercise or attempt to exercise a controlling influence over the management or policies of Guaranty or any of its subsidiaries, and not to have any employees or representatives of Great Southern serve as an officer, employee, or agent of Guaranty. Great Southern also has committed not to attempt to influence the dividend policies, loan decisions, or operations of Guaranty or any of its subsidiaries. These commitments were made in connection with the Federal Reserve System's approval of Great Southern's request in April 1999 to acquire up to 15 percent of the voting shares of Guaranty and are incorporated by reference.

concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.”⁵

Competitive Considerations

As part of its consideration of the public interest factors under section 4 of the BHC Act, the Board has considered carefully the competitive effects of the proposal in light of all the facts of record.⁶ Great Southern and Guaranty compete directly in the Springfield, Missouri, banking market (“Springfield banking market”).⁷ If this proposal were considered an acquisition of control of Guaranty by Great Southern, Great Southern would control the second largest depository institution in the Springfield banking market, representing approximately 14.4 percent of total deposits in depository institutions in the market (“market deposits”).⁸ The Herfindahl-

⁵ 12 U.S.C. 1843(j)(2)(A).

⁶ See First Hawaiian, Inc., 79 Federal Reserve Bulletin 966 (1993).

⁷ The Springfield banking market consists of Christian, Green, and Webster Counties, all in Missouri.

⁸ Market share data are as of June 30, 1999, and are based on calculations in which the deposits of thrift institutions are included at 50 percent before consummation. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See WM Bancorp, 76 Federal Reserve Bulletin 788 (1990); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Because the Board has analyzed the competitive factors in this case as if Great Southern and Guaranty were a combined entity, the deposits of Guaranty are included at 100 percent in the calculation of Great Southern’s post-consummation share of market deposits. See Norwest Corporation, 78 Federal Reserve Bulletin 452 (1992); First Banks, Inc., 76 Federal Reserve Bulletin 669 (1990).

Hirschman Index (“HHI”) would increase by 57 points to 952, and the market would remain unconcentrated.⁹ Based on these and all other facts of record, the Board concludes that consummation of the proposal would not result in any significantly adverse effects on competition or on the concentration of banking resources in the Springfield banking market or any other relevant banking market.

Financial, Managerial, and Supervisory Considerations

The Board also has carefully reviewed the financial and managerial resources of Great Southern and Guaranty and their respective subsidiaries and the effect the transaction would have on such resources in light of all the facts of record.

The Board has reviewed, among other things, confidential reports of examination and other supervisory information received from the primary federal supervisors of the organizations. The Board has also considered the limited relationship Great Southern proposes to have with Guaranty and the matters raised by Guaranty to the extent they bear on the managerial resources of Great Southern. In reviewing managerial resources, the Board consulted with the OTS, which is the appropriate federal banking agency for

⁹ Under the revised Department of Justice Merger Guidelines, 49 Federal Register 26,823 (June 29, 1984), a market in which the post-merger HHI is less than 1000 points is considered to be unconcentrated. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The DOJ has stated that the higher than normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

Guaranty. The OTS has indicated no objection to Board approval of this notice. Based on all the facts of record, the Board concludes that the financial and managerial resources of the organizations involved in the proposal are consistent with approval.

This proposal is designed to ensure that Great Southern's interest in Guaranty remains in compliance with the BHC Act after Guaranty repurchases its shares, and consummation of the proposal would have minimal adverse effects on concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. Based on the foregoing and all the facts of record, including consultations with OTS staff, and commitments made by Great Southern that prevent it from exercising control over Guaranty, the Board has determined that consummation of the proposal can reasonably be expected to produce benefits to the public that outweigh any potential adverse effects of the proposal under the standard of section 4(j)(2) of the BHC Act.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the notice should be, and hereby is, approved. The Board's approval of the proposal is specifically conditioned on compliance by Great Southern with the commitments made in connection with this notice. The Board's determination also is subject to the Board's authority to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, or to prevent evasion of, the provisions and purposes of the BHC Act and the Board's regulations and orders issued thereunder. The commitments relied on by the Board in reaching this decision are deemed to be conditions imposed in writing by the Board in connection with its findings and

decisions and, as such, may be enforced in proceedings under applicable law.

This transaction shall not be consummated later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of St. Louis, acting pursuant to delegated authority.

By order of the Board of Governors,¹⁰ effective February 26, 2001.

(signed)

Robert deV. Frierson
Associate Secretary of the Board

¹⁰ Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Meyer and Gramlich. Absent and not voting: Governor Kelley.