



# PRESS RELEASE

Federal Deposit Insurance Corporation

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## **ORDERS AND ACCOMPANYING STATEMENTS ISSUED BY THE FDIC IN APPROVING FEDERAL DEPOSIT INSURANCE**

FOR IMMEDIATE RELEASE

Attached are the orders and accompanying statements issued by the FDIC in approving federal deposit insurance applications filed by MidAm Bank, SB., Clarendon Hills, Ill., and First Financial Savings Bank SSB, Stevens Point, Wis.



Congress created the Federal Deposit Insurance Corporation in 1933 to restore public confidence in the nation's banking system. It promotes the safety and soundness of these institutions by identifying, monitoring and addressing risks to which they are exposed. The FDIC receives no federal tax dollars — insured financial institutions fund its operations.

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FEDERAL DEPOSIT INSURANCE CORPORATION

IN RE:

MidAm Bank, SB  
(Proposed New State Nonmember Savings Bank)  
Clarendon Hills, Dupage County, Illinois

Application for Federal Deposit Insurance  
(Bank Insurance Fund)

ORDER

The Board of Directors of the Federal Deposit Insurance Corporation has fully considered all available facts and information relevant to the factors of Section 6 of the Federal Deposit Insurance Act and relating to the application for federal deposit insurance, with membership in the Bank Insurance Fund, filed on behalf of MidAm Bank, SB, a proposed new state chartered nonmember savings bank, to be located at 115 W. 55th Street, Clarendon Hills, Dupage County, Illinois, and has concluded that the application should be approved.

Accordingly, it is hereby ORDERED, for the reasons set forth in the attached Statement, that the application submitted on behalf of MidAm Bank, SB, for federal deposit insurance be and the same hereby is approved subject to the following conditions:

- That beginning paid-in capital funds of not less than \$4,500,000 be provided, of which not less than \$2,250,000 shall be allocated to common stock;
- That the Tier 1 capital to assets ratio, as defined in Part 325 of the Corporation's Rules and Regulations at the time of application, be maintained at not less than 8 percent during the first three years of operation;
- That any changes in proposed management or proposed ownership (10 percent or more of stock), including new acquisitions of or subscriptions to 10 percent or more of the stock, will render this commitment null and void unless such proposal is approved by the Corporation prior to opening of the bank;
- That an accrual accounting system be adopted for maintaining the bank's books;
- That adequate blanket bond coverage be obtained;
- That the bank obtain an audit of financial statements by an independent public accountant annually for at least the first five years after deposit insurance is effective, furnish a copy of any reports by the independent auditor (including any management letters) to the appropriate FDIC Regional Director within 15 days after their receipt by the bank and notify the appropriate FDIC Regional Director

within 15 days when a change in its independent auditor occurs;

- That MAF Bancorp, Inc., Clarendon Hills, Illinois, a thrift holding company, obtain approval of the Office of Thrift Supervision to acquire voting stock control of the proposed bank prior to its opening;
- That federal deposit insurance shall not become effective unless and until the applicant has been established as a state savings bank (not a member of the Federal Reserve System), that it has authority to conduct a banking business, and that its establishment and operation as a bank have been fully approved by the appropriate state authority;
- That, until the conditional commitment herein granted becomes effective, the Corporation shall have the right to alter, suspend, or withdraw said commitment should any interim development be deemed to warrant such action; and
- That if federal deposit insurance has not become effective within twelve months from the date of this ORDER, or unless, in the meantime, a request for an extension of time has been approved by the Corporation, the consent granted shall expire at the end of said twelve-month period.

Dated at Washington, D. C., this 28th day of June, 1996.

BY ORDER OF THE BOARD OF DIRECTORS  
Robert E. Feldman  
Deputy Executive Secretary

FEDERAL DEPOSIT INSURANCE CORPORATION

IN RE:

MidAm Bank, SB  
(Proposed New State Nonmember Savings Bank)  
Clarendon Hills, Dupage County, Illinois

Application for Federal Deposit Insurance  
(Bank Insurance Fund)

STATEMENT

Pursuant to the provisions of Section 5 of the Federal Deposit Insurance Act ("FDI Act")(12 U.S.C. § 1815), an application for federal deposit insurance has been filed on behalf of MidAm Bank, SB ("MidAm"), a proposed new state chartered nonmember savings bank with membership in the Bank Insurance Fund ("BIF"), to be located at 115 W. 55th Street, Clarendon Hills, Dupage County, Illinois.

The applicant is being organized as a savings bank serving a market area identified as encompassing the area within a circle with a one and one-half mile radius from the proposed location in Clarendon Hills, a residential community approximately ten miles west of the city of Chicago. The proposed new bank will be located in a building owned by the affiliated Mid America Federal Savings Bank, Clarendon Hills, Illinois, a member of the Savings Association Insurance Fund ("SAIF"). MAF Bancorp, Inc., Clarendon Hills, Illinois, a thrift holding company, will be the sole shareholder of the institution.

For the purposes of this proposal, the investment in fixed assets is reasonable, capital is adequate, future earnings prospects are favorable, and management is considered to be satisfactory. The proposal would not increase the risk to BIF. No objections to this application have been filed. A review of MidAm's Community Reinvestment Act Statement and other available information indicates no apparent inconsistencies with the purpose of that Act.

MidAm will be able to offer more competitive rates than Mid America Federal Savings Bank due to the lower deposit insurance premium assessment expense at the BIF-insured institution. Although MidAm indicates that it does not intend to operate shared facilities to solicit Mid America Federal Savings Bank customers, MidAm indicates that Mid America Federal Savings Bank customers may choose to voluntarily move their accounts to MidAm as a result of MidAm's ability to offer more competitive pricing due to the lower deposit insurance premium assessment expense at the BIF-insured institution. Such voluntary customer migration raises questions about the impact that such movement, if widespread, could have on SAIF.

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 in order to induce new or existing customers to place 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.

Section 5(d)(2)(A) of the FDI Act prohibits any insured depository institution from engaging in a "conversion transaction" without the approval of the FDIC and, subject to limited exceptions, prohibits the FDIC from approving a conversion transaction before SAIF reaches its designated reserve ratio. The statutory definition of a conversion transaction in section 5(d)(2)(B) of the FDI Act is limited to five specific items. These are (i) any change in membership of an insured depository institution from one insurance fund to the other, (ii) the merger of a BIF and SAIF member, (iii) the assumption of deposit liabilities by a BIF or SAIF member from a member of the other insurance fund, (iv) the transfer of assets from a member of one insurance fund to a member of the other in consideration of the assumption of deposit liabilities and (v) the transfer of deposits from a member of one insurance fund to a member of the other in the case of a failed insured depository institution. A voluntary customer migration between affiliated institutions is not encompassed by any of these five specific items.

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 concerned with the use of BIF affiliates of SAIF member institutions for the purpose of evading the statutory moratorium on insurance fund conversions. To the extent that business strategies -- as outlined in insurance applications or as carried out in practice at institutions with existing BIF/SAIF affiliations -- amount to the factual equivalent of a merger, consolidation, or other transaction constituting a conversion, the FDIC will take appropriate steps to stop such practices. However, after careful consideration of the facts presented by this application and the pertinent legal standard, the Board has concluded that this is not such a case.

The Board is also required to review all deposit insurance applications in light of the statutory factors under section 6 of the FDI Act (12 U.S.C. § 1816). Given that MidAm's proposed business plan is not otherwise prohibited by law, and that the applicants'

proposal otherwise complies with the specified financial, management, and community needs factors under section 6, the application satisfies these factors.

Although MidAm does not currently propose to solicit Mid America Federal Savings Bank deposit customers through agent relationships with Mid America Federal Savings Bank branches or through shared facilities, the Board of Directors is concerned that customer confusion could arise to the extent that it later chose to do so. The Board of Directors is also concerned that each institution be operated on a fully separate basis. The applicant has committed to take specified steps to address these matters. Compliance with existing and future agency guidance in this area is expected.

Accordingly, based upon a careful evaluation of all available facts and information, the Board of Directors has concluded that approval of the application is warranted.

THE BOARD OF DIRECTORS FEDERAL DEPOSIT INSURANCE CORPORATION

FEDERAL DEPOSIT INSURANCE CORPORATION

IN RE:

First Financial Savings Bank, SSB  
(Proposed New State Nonmember Savings Bank)  
Stevens Point, Portage County, Wisconsin

Application for Federal Deposit Insurance  
(Bank Insurance Fund)

ORDER

The Board of Directors has fully considered all available facts and information relevant to the factors of Section 6 of the Federal Deposit Insurance Act and relating to the application for federal deposit insurance, with membership in the Bank Insurance Fund, filed on behalf of First Financial Savings Bank, SSB, a proposed new state chartered nonmember savings bank to be located at 1325 Church Street, Stevens Point, Portage County, Wisconsin, and has concluded that the application should be approved.

Accordingly, it is hereby ORDERED, for the reasons set forth in the attached Statement, that the application submitted on behalf of First Financial Savings Bank, SSB for federal deposit insurance be and the same is hereby approved, subject to the following conditions:

- That beginning paid-in capital funds of not less than \$5,000,000 be provided, of which not less than \$2,000 shall be allocated to common stock;
- That the Tier 1 capital to assets ratio, as defined in Part 325 of the Corporation's Rules and Regulations at the time of application, be maintained at not less than eight percent during the first three years of operation;
- That any changes in proposed management or proposed ownership (10 percent or more of stock), including acquisitions of or subscriptions to 10 percent or more of the stock, will render this commitment null and void unless such proposal is approved by the Corporation prior to opening of the bank;
- That an accrual accounting system be adopted for maintaining the bank's books;
- That adequate blanket bond coverage be obtained;
- That the bank obtain an audit of financial statements by an independent public accountant annually for at least the first five years after deposit insurance is effective, furnish a copy of any reports by the independent auditor (including any management letters) to the appropriate FDIC Regional Director within 15 days after their receipt by the bank and notify the appropriate FDIC Regional Director

within 15 days when a change in its independent auditor occurs;

- That First Financial Corporation, Stevens Point, Wisconsin, a thrift holding company, obtain approval of the Office of Thrift Supervision to acquire voting stock control of the proposed bank prior to its opening;
- That federal deposit insurance shall not become effective unless and until the applicant has been established as a state savings bank (not a member of the Federal Reserve System), that it has authority to conduct a banking business, and that its establishment and operation as a bank have been fully approved by the appropriate state authority;
- That, until the conditional approval herein granted becomes effective, the Corporation shall have the right to alter, suspend, or withdraw said approval should any interim development be deemed to warrant such action; and
- That if federal deposit insurance has not become effective within twelve months from the date of this Order, or unless, in the meantime, a request for an extension of time has been approved by the Corporation, the consent granted shall expire at the end of said twelve-month period.

Dated at Washington, D. C., this 28th day of June, 1996.

BY ORDER OF THE BOARD OF DIRECTORS

Robert E. Feldman  
Deputy Executive Secretary



IN RE:

First Financial Savings Bank, SSB  
(Proposed New State Nonmember Savings Bank)  
Stevens Point, Portage County, Wisconsin

Application for Federal Deposit Insurance  
(Bank Insurance Fund)

## STATEMENT

Pursuant to the provisions of Section 5 of the Federal Deposit Insurance Act ("FDI Act")(12 U.S.C. § 1815), an application for federal deposit insurance with membership in the Bank Insurance Fund ("BIF") has been filed on behalf of First Financial Savings Bank, SSB ("Savings Bank"), a proposed new state nonmember savings bank to be located at 1325 Church Street, Stevens Point, Portage County, Wisconsin.

Savings Bank is being organized as a wholly-owned subsidiary of First Financial Corporation, Stevens Point, Wisconsin, a thrift holding company and parent of First Financial Bank, FSB, Stevens Point, Wisconsin, a member of the Savings Association Insurance Fund ("SAIF"). The proposed new bank will initially operate out of one office which will share quarters with an existing office of First Financial Bank, FSB. The designated market area is defined as the city of Stevens Point and most of the northern half of Portage County. This area, with a population of approximately 75,000, has a strong agricultural sector as well as a broad industrial and services base. The competitive environment is strong with several of the competitors representing, or affiliated with, large financial institutions. The proposed bank would have no apparent adverse effect on the competitive environment. A review of the proposed bank's Community Reinvestment Act Statement and other available information indicates no apparent inconsistencies with the purposes of that Act.

The proposed investment in fixed assets is reasonable, capital is adequate, future earnings prospects are reasonable, and management is considered satisfactory. The proposal does not appear to present an undue risk to BIF.

Savings Bank has indicated that customers of First Financial Bank, FSB may be encouraged through various pricing and marketing incentives to place maturing deposits from First Financial Bank, FSB into accounts at Savings Bank, because the Savings Bank will be able to offer more competitive rates than First Financial Bank, FSB due to the lower deposit insurance premium assessment expense at the BIF-insured institution. Such a voluntary customer migration strategy raises questions about the impact that such efforts, if widespread, could have on SAIF.

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.

Section 5(d)(2)(A) of the FDI Act prohibits any insured depository institution from engaging in a "conversion transaction" without the approval of the FDIC and, subject to limited exceptions, prohibits the FDIC from approving a conversion transaction before SAIF reaches its designated reserve ratio. The statutory definition of a conversion transaction in section 5(d)(2)(B) of the FDI Act is limited to five specific items. These are (i) any change in membership of an insured depository institution from one insurance fund to the other, (ii) the merger of a BIF and SAIF member, (iii) the assumption of deposit liabilities by a BIF or SAIF member from a member of the other insurance fund, (iv) the transfer of assets from a member of one insurance fund to a member of the other in consideration of the assumption of deposit liabilities and (v) the transfer of deposits from a member of one insurance fund to a member of the other in the case of a failed insured depository institution. A voluntary customer migration between affiliated institutions is not encompassed by any of these five specific items.

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 concerned with the use of BIF affiliates of SAIF member institutions for the purpose of evading the statutory moratorium on insurance fund conversions. To the extent that business strategies -- as outlined in insurance applications or as carried out in practice at institutions with existing BIF/SAIF affiliations -- amount to the factual equivalent of a merger, consolidation, or other transaction constituting a conversion, the FDIC will take appropriate steps to stop such practices. However, after careful consideration of the facts presented by this application and the pertinent legal standard, the Board has concluded that this is not such a case.

The Board is also required to review all deposit insurance applications in light of the statutory factors under section 6 of the FDI Act (12 U.S.C. § 1816). Given that Savings

Bank's proposed business plan is not otherwise prohibited by law, and that the applicants' proposal otherwise complies with the specified financial, management, and community needs factors under section 6, the application satisfies these factors.

The Board is concerned about customer confusion arising from the fact that Savings Bank and First Financial Bank, FSB will offer certain services as each other's agents or through shared branches. Institutions engaged in either tandem or agent branching are charged with the responsibility to observe scrupulously procedures sufficient to eliminate customer confusion about the separate identity of the institutions and to maintain full operational separation between the affiliates. The federal bank regulatory agencies have issued guidance about these concerns from time to time and plan to issue additional guidance in the near future. Institutions engaging in tandem or agent branching should consult with their state and federal supervisors to ensure all concerns in this area are dealt with in a satisfactory fashion. The applicant has committed to take specified steps to address these matters. Compliance with existing and future agency guidance in the area is expected.

The American Bankers Association (ABA) and the Wisconsin Bankers Association (WBA) filed formal objections to the proposal. The ABA also requested an oral hearing in connection with their objection. In a separate action, the Board has denied the hearing request because the ABA's comments consist of issues which are sufficiently addressed through their written submissions and factual issues which are sufficiently addressed by the FDIC's inquiries in connection with the application. The ABA and WBA argue that the applicant's proposal is contrary to the conversion moratorium and raises issues about customer confusion. As discussed above, the conversion moratorium does not apply to the proposed arrangement and customer confusion issues have been taken into account.

Accordingly, based upon a careful evaluation of all available relevant facts and information, including that provided by the objectors, the Board of Directors has concluded that approval of the application is warranted.

THE BOARD OF DIRECTORS FEDERAL DEPOSIT INSURANCE CORPORATION