

## OFFICE OF THRIFT SUPERVISION

### Order Approving Applications To Establish Operating Subsidiaries And Service Corporations

Order No.: 2003-65  
Date: December 18, 2003  
Docket No. 15115

First Alliance Bank, Jacksonville, Florida (Savings Bank), a federal savings bank, has filed applications with the Office of Thrift Supervision (OTS) under 12 U.S.C. § 1828(m) and 12 C.F.R. Part 559, requesting approval to establish two operating subsidiaries and two service corporations. The Savings Bank would acquire the four companies from its holding company, Alliance Capital Partners, L.P. (Holding Company), which proposes to contribute the companies to the Savings Bank. In addition, the Savings Bank has provided notice of changes to its charter and bylaws to change its name to EverBank.

#### The Proposed Transactions

As part of a corporate reorganization, the Holding Company proposes to contribute four companies to the Savings Bank. The Savings Bank proposes that two of the companies become operating subsidiaries, and that two become service corporations. AMC Acquisition, Inc. (Acquisition), a shell company that is wholly owned by the Holding Company, would become a first-tier operating subsidiary of the Savings Bank. Acquisition's direct, wholly owned mortgage company subsidiary, Alliance Mortgage Company (Mortgage Company), would become a second-tier operating subsidiary. Elite Lender Services, Inc. (Services) and EverInsurance, Inc. (Insurance Company), both of which are, and will remain, wholly owned first-tier subsidiaries of the Mortgage Company, would become service corporations.

The Mortgage Company is a Florida corporation that originates first and junior-lien residential mortgages, engages in secondary marketing activities, and sub-services and services mortgage loans. Services is a Florida corporation that engages principally in the title agency business, and also provides services to unrelated third parties by entering title insurance information into databases, monitoring and managing the issuance of title insurance policies, obtaining documents to cure title impediments, and coordinating mortgage loan closings. The Insurance Company is a Florida corporation that: (i) acts as agent for the issuance of forced-place hazard and flood insurance for the benefit of the Mortgage Company; (ii) coordinates the procurement and payment of tax and other payment services; and (iii) markets insurance and other products and services to parties whose loans are serviced by the Mortgage Company.

### **Operating Subsidiary Application**

A federal savings association generally may invest in an operating subsidiary only if: (1) the operating subsidiary engages only in activities permissible for federal associations to engage in directly; (2) the federal association owns, directly or indirectly, more than 50 percent of the voting shares of the operating subsidiary; and (3) no person or entity other than the federal association exercises operating control over the operating subsidiary. In addition, OTS may, at any time, limit a savings association's investment in an operating subsidiary, or may limit or refuse to permit any activities of an operating subsidiary, for supervisory, legal, or safety and soundness reasons.

With respect to the specific regulatory criteria, the Savings Bank will hold all of the common stock of Acquisition and indirectly, through Acquisition, hold all of the stock of the Mortgage Company. There is no information suggesting that the Savings Bank will not have sole operating control of Acquisition and the Mortgage Company. Acquisition engages in no business activities other than holding the stock of the Mortgage Company directly, and, through the Mortgage Company, holding the stock of Services and the Insurance Company. Moreover, the Mortgage Company's mortgage banking activities are permissible for federal savings associations.

Based on its regulatory experience with the Holding Company and the Savings Bank, OTS concludes that the Savings Bank has the requisite experience and expertise to manage the Mortgage Company.

### **Service Corporation Application**

In considering whether a proposed investment in a service corporation by a federal savings association is permissible, OTS must consider whether the activity is permissible, whether the amount of the investment is permissible, the state of incorporation of the proposed service corporation and the nature of the investors, and whether there are any supervisory or safety and soundness reasons to limit or to refuse to permit the investment.

Section 5(c)(4)(B) of the Home Owners' Loan Act (HOLA), which authorizes federal savings associations to invest in service corporations, does not specify the types of activities in which service corporations may engage. Section 559.3(e)(2)(i) of the OTS Subordinate Organization Regulations states that a federal association may request approval for a service corporation to engage in any activity that is "reasonably related to the activities of financial institutions" by filing an application with OTS. There are no specific criteria for determining whether an activity meets the "reasonably related" standard. The regulations list several activities that are preapproved for service corporations.

Services' title insurance agency activities are preapproved activities pursuant to section 559.4(i), which preapproves service corporation activities conducted on behalf of a customer on

a basis other than as principal. In addition, Services' other activities are data processing and clerical activities within the scope of 12 C.F.R. § 559.4(b)(3) and (b)(6).

The Insurance Company's agency activities regarding issuance of forced-place hazard and flood insurance are preapproved under section 559.4(i). The various payment services are preapproved under sections 559.4(b)(3), (b)(6) and (b)(7) for clerical services, data processing and data storage facilities operations, and related services. With respect to the marketing of insurance and other products, these activities are preapproved pursuant to sections 559.4(i) and 559.4(j) for insurance brokerage activities, or activities reasonably incident thereto.

Both service corporations are Florida corporations. Section 5(c)(4)(B) of the HOLA authorizes "[i]nvestments in the capital stock, obligations, or other securities of any corporation organized under the laws of the State in which the Federal savings association's home office is located . . . ." The Savings Bank's home office is located in Florida. Accordingly, the applications are consistent with this requirement.

Section 5(c)(4)(B) also requires that only savings associations with home offices in the Savings Bank's home state may have an ownership interest in a first-tier service corporation. The Mortgage Company, a second-tier operating subsidiary of the Savings Bank, which is considered a savings association for purposes of OTS regulations, will own all of the stock of the proposed service corporations. Accordingly, the applications meet this requirement.

Based on the Savings Bank's total assets of approximately \$1.5 billion as of September 30, 2003, the amount of permissible service corporation investments (not including investments that serve primarily community, inner city, or community development purposes) is two percent of assets, or approximately \$30 million. The projected investment in the two new service corporations is approximately \$2.66 million. The projected level of investment in all service corporations upon completion of the transaction will be approximately \$15.56 million. This level of investment is well within the two percent limitation on service corporation investments of this type, under section 5(c)(4)(B) of the HOLA and 12 C.F.R. § 559.5(a). Therefore, the proposed investment in the service corporations meets this requirement.

OTS concludes that the application presents sufficient information to conclude that the service corporations will comply with the separate corporate identity requirements of 12 C.F.R. § 559.10. OTS finds no basis to object to the proposed transaction based on safety and soundness concerns.

## **Charter and Bylaw Amendments**

The Savings Bank has complied with the requirements of 12 C.F.R. §§ 552.4(b)(1) and 552.5(b)(2) and with the provisions of its charter and bylaws in connection with the proposed amendments to reflect a name change to EverBank. Thus, OTS has no objection to the proposed name change.

## **Conclusions**

Based on the foregoing analysis, OTS concludes that the operating subsidiary and service corporation applications meet the applicable approval criteria, provided that the following conditions are imposed. Accordingly, the applications are hereby approved, provided that the following conditions are complied with in a manner satisfactory to the OTS Southeast Regional Director, or his designee (Regional Director):

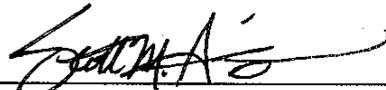
1. The Savings Bank and the Holding Company must receive all required regulatory approvals and submit copies of all such approvals to the Regional Director prior to consummation of the proposed transaction;
2. The proposed transaction must be consummated within 120 calendar days from the date of this Order;
3. On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of the Savings Bank and the Holding Company 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 Savings Bank, Holding Company, Acquisition, the Mortgage Company, Services, or the Insurance Company as disclosed in the applications. If additional information having a material adverse bearing on any feature of the applications is brought to the attention of the Savings Bank, the Holding Company, or the OTS since the date of the financial information submitted with the applications, 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. The Savings Bank and the Holding Company must advise the Regional Director in writing within 5 calendar days after the effective date of the proposed transaction: (a) of the effective date of the proposed transaction; and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the applications, and this Order; and

5. The operating subsidiaries and the service corporations must not deviate materially from any of the activities, facts or representations described in the applications, except with the prior written non-objection of the Regional Director, or his designee.

Any time specified herein may be extended by the Regional Director, for good cause, for up to 120 calendar days.

By Order of the Director of the Office of Thrift Supervision, or his designee, effective

December 18, 2003



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Scott M. Albinson  
Managing Director  
Office of Supervision