

OFFICE OF THRIFT SUPERVISION

Approval of Holding Company Applications, Rebuttal of Control Filing and Related Filings

Order No.: 2006-11

Date: March 30, 2006

OTS Nos.: 14594, H-2905, H-2906,
H-2907, H-4270, H-4271,
H-4272

Two Ukrop family trusts, described in more detail below, and Markel Corporation, Glen Allen, Virginia (Corporation), (collectively, Applicants) have applied to the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1467a(e), and 12 C.F.R. § 574.3, to acquire control of First Market Bank, FSB, Richmond, Virginia (Savings Bank), a federal stock savings bank, as part of a proposed reorganization. Ariel Capital Management, LLC, Chicago, Illinois (Ariel Capital) and certain related parties, which hold, directly or indirectly, more than ten percent of the Corporation's common stock, have filed a rebuttal of control under 12 C.F.R. § 574.4 (Rebuttal), regarding the Corporation and the Savings Bank. Also, the Savings Bank has requested a waiver of 12 C.F.R. § 552.3 to the extent necessary to enable the Savings Bank to amend its charter and bylaws to provide for two classes of common stock. In addition, the Savings Bank has filed a notice of a proposed capital distribution. Collectively, the foregoing filings are referred to herein as the Applications.

Background

The Savings Bank is a Savings Association Insurance Fund (SAIF)-insured, federally chartered stock savings bank. The Savings Bank is considered "well capitalized" pursuant to the OTS Prompt Corrective Action (PCA) regulation.

Currently, three parties own all of the Savings Bank's common stock. Ukrop's Thrift Holdings, Inc., Richmond, Virginia (Holdings), owns 49 percent; Ukrop's Services, L.C., Richmond, Virginia (Services), owns 2 percent; and Sun Trust Banks, Inc., Atlanta, Georgia (STI), a bank holding company, owns the remaining 49 percent.

Holdings is a wholly owned subsidiary of Ukrop's Super Markets, Inc. (USM). The current shareholders of USM are James E. Ukrop, who holds 49.657 percent of USM's voting common stock (as well as shares of non-voting common stock), Robert S. Ukrop, who also holds 49.675 percent of USM's voting common stock (as well as shares of non-voting common stock); the children of James and Robert Ukrop, who collectively hold 0.65 percent of USM's voting common stock (as well as shares of non-voting common stock); and trusts for the benefit of the children of Robert Ukrop, which hold only non-voting common stock of USM.

Services owns 2 percent of the Savings Bank's common stock. James E. Ukrop and Robert S. Ukrop each own 50 percent of Services' common stock.

Holdings, USM, and Services (collectively, Ukrop Entities), have been savings and loan holding companies since October 23, 1997. James E. Ukrop and Robert S. Ukrop have been control persons of the Ukrop Entities since such date.

The two Ukrop family trusts that are Applicants are: (i) the Second Amended & Restated James Edward Ukrop Revocable Trust u/a 1/19/04, Richmond, Virginia (James Ukrop Trust); and (ii) the Amended & Restated Robert Stephen Ukrop Revocable Trust u/a 8/25/04, Richmond, Virginia (Robert Ukrop Trust). The James Ukrop Trust and the Robert Ukrop Trust (collectively, the Trusts) are revocable inter-vivos trusts that were established in 1997 for estate planning purposes.

The Corporation is an insurance holding company. The Corporation and its subsidiaries engage in the property and casualty insurance business and the investment advisory business.

Ariel Capital, a Delaware limited liability company, provides investment management services to a variety of investment accounts. Ariel Capital's sole managing member is Ariel Capital Management Holdings, Inc., Chicago, Illinois (Ariel Holdings), which owns 94.3 percent of Ariel Capital's outstanding units. As of December 31, 2005, Mr. John W. Rogers owned a controlling interest of 57.1 percent of the common stock of Ariel Holdings. Ariel Capital, Ariel Holdings, and Mr. Rogers, are referred to collectively as the Ariel Group.

The Proposed Transaction

All steps of the proposed reorganization are contingent upon each other and will be consummated on the same day. In the first part of the reorganization, the Savings Bank's charter and bylaws will be amended and restated. The charter restatement will create two classes of common stock, Class A and Class B, and a new series of preferred stock, Series A 9% Non-Cumulative Preferred Stock (Series A Preferred Stock). In the proposed reorganization, Services and STI's common stock of the Savings Bank will be converted into shares of Class A Common Stock on a one-for-one basis. Holdings' existing common stock of the Savings Bank will be converted into shares of Class B Common Stock on a one-for-one basis. The Class B Common Stock will have the right to elect at least 80 percent of the directors of the Savings Bank. When transferred to holders other than the Ukrop Entities, the Trusts, and certain other of their affiliates as defined in the charter, the shares of Class B Common Stock convert to shares of Class A Common Stock. Any amendments of the restated charter and any significant transactions must be approved by separate votes of the Class A Common Stock and the Class B Common Stock. The Series A Preferred Stock will have the right to elect one director of the Savings Bank and will generally vote with the Series A Common Stock as a single class, except for the election of directors and under certain conditions indicated in the charter.

In the second part of the reorganization, the Savings Bank will issue subordinated debt securities (Subordinated Debt). The Subordinated Debt sale is presently scheduled to close on the same date as the closing for the rest of the proposed transaction.

In the third part of the reorganization, pursuant to stock subscription agreements, the Savings Bank will raise capital by the sale of: (i) a total of 490 shares of Class A Common Stock to the Corporation and to James E. Ukrop and Robert S. Ukrop; and (ii) 100 shares of Series A Preferred Stock to the Corporation.

In the fourth part of the reorganization, the Savings Bank will repurchase STI's Class A Common Stock. In addition, STI's option to purchase 1.0 percent of the Savings Bank's equity from Holdings or Services will be cancelled. The repurchased shares of Class A Common Stock will be cancelled and will become authorized but unissued shares reserved for issuance upon any conversion of the shares of the Class B Common Stock.

As a result of the previous transactions, the Savings Bank will have the following capital structure: (i) 1,000 authorized and issued shares of Class A Common Stock, held as follows: Services, 20 shares; the Corporation, 400.91 shares; James E. Ukrop, 44.545 shares; Robert S. Ukrop, 44.545 shares; (ii) 490 authorized and issued shares of Class B Common Stock, all owned by Holdings; and (iii) 100 shares of Series A Preferred Stock, all owned by the Corporation.

Furthermore, immediately following the transactions described above, James E. Ukrop proposes to transfer all of his voting and non-voting common stock of USM to the James Ukrop Trust. James E. Ukrop will be the trustee and primary beneficiary of the James Ukrop Trust. Similarly, Robert S. Ukrop proposes to transfer all of his voting and non-voting common stock of USM to the Robert Ukrop Trust. Robert S. Ukrop will be the trustee and primary beneficiary of the Robert Ukrop Trust.

In connection with the proposed reorganization, the Savings Bank's board of directors will be increased from 10 to 12 members, ten to be designated by the Ukrop Entities and two by the Corporation. Upon the closing of the proposed transaction the five of the current directors associated with STI will resign from the Savings Bank's board of directors. The Corporation will designate two persons as new Savings Bank directors. Holdings will designate six persons as additional directors of the Savings Bank. Four of the current directors will remain as members of the Savings Bank's board.

Holding Company Applications

Section 10(e)(1)(B) of the Home Owners' Loan Act and the Acquisition of Control Regulations (Control Regulations) thereunder provide that OTS must approve a proposed acquisition of a savings association by a company, other than a savings and loan holding company, unless OTS finds that the financial and managerial resources and future prospects of the company and association involved would be detrimental to the association or the insurance risk of the SAIF. OTS must also consider the impact of the acquisition on competition. Finally, OTS must take into

account assessments under the Community Reinvestment Act (CRA) when considering holding company applications.

With respect to managerial resources, OTS has reviewed the background of each of the Corporation's directors and senior executive officers, including the two persons who have been designated by the Corporation as proposed directors of the Savings Bank. OTS has found no material adverse information regarding any of these persons. In addition, OTS's review of the Corporation has revealed no material adverse information.

James E. Ukrop will be the trustee and primary beneficiary of the James Ukrop Trust. Similarly, Robert S. Ukrop will be the trustee and primary beneficiary of the Robert Ukrop Trust. James E. Ukrop and Robert S. Ukrop have been previously approved as control persons of the Ukrop Entities and the Savings Bank, and are well known to OTS. In addition, the Savings Bank will retain all of its current senior executive officers.

The Trusts and the Ukrop Entities have recently identified six other proposed directors of the Savings Bank. One of these six persons was recently appointed to the USM board of directors and another is the current President of the Savings Bank. Because biographical information for these six persons is to be provided and because background investigations are not completed, the Savings Bank, Holdings, Services, and the Corporation, have provided a commitment to have any of these persons resign or be removed from the Savings Bank's board, promptly upon the OTS objection to such person's continued service on the Savings Bank's board of directors if the background investigation reveals adverse information concerning such person.

OTS has reviewed, or is otherwise familiar with the competence, experience and integrity of the majority of the Savings Bank's proposed directors, and concludes that their qualifications are consistent with approval.

Based on its review and the commitment provided, OTS concludes that the managerial resources of the Applicants and the Savings Bank are consistent with approval.

With regard to financial resources, OTS has reviewed the Applicants' financial position and the Savings Bank's proposed recapitalization and business plan. OTS concludes that the Corporation has demonstrated adequate financial resources and that the Trusts have adequate financial resources for their purposes. In addition, OTS concludes that the Savings Bank's proposed recapitalization is consistent with approval. The Applications indicate that the Savings Bank will meet all of its capital requirements and will be well capitalized under the PCA regulation throughout the next three years. Based on the foregoing, OTS concludes that the financial resources of the Applicant and the Savings Bank are consistent with approval of the holding company application.

With regard to future prospects, OTS has considered the financial and managerial resources of the Applicants and the Savings Bank's proposed recapitalization and business plan. Based on the factors considered in the above discussions regarding managerial and financial

resources, OTS concludes that the future prospects of the Applicant and the Savings Bank are consistent with approval, and will not pose undue risk to the SAIF.

The transaction will not result in any currently operating, unaffiliated depository institutions becoming affiliated. Accordingly, OTS finds no basis for objection to the transaction on anti-competitive grounds.

With respect to the Applicants performance under the CRA, the Applicants have not controlled any entities that have been subject to the CRA. At the Savings Bank's CRA examination, dated October 30, 2003, it received a CRA rating of "Satisfactory." OTS did not receive any comments on the holding company applications. Accordingly, OTS concludes that there is not any basis for objection to the holding company application based on CRA grounds.

Rebuttal of Control by Ariel Group

The Ariel Group has the power to vote more than 10 percent of the voting stock of the Corporation, and is the Corporation's largest shareholder. Under 12 C.F.R. § 574.4(b), the Ariel Group will be in rebuttable control of the Corporation and the Savings Bank, upon consummation of the proposed transaction. As a result, the Ariel Group has submitted a rebuttal of control filing, pursuant to 12 C.F.R. § 574.4(e).

The Control Regulations, at 12 C.F.R. § 574.4(e), provide that the OTS may reject any rebuttal of control which is inconsistent with the facts and circumstances known to the OTS or which does not clearly and convincingly refute the rebuttable determination of control under 12 C.F. R. § 574.4. In addition, an acquiror that is in conclusive control of a savings association may not rebut control.

OTS has concluded that the Ariel Group, which holds on behalf of its clients approximately 14.69 percent of the outstanding shares of the Corporation, and has sole voting power with respect to 12.31 percent of the Corporation's outstanding shares, does not have conclusive control of the Corporation or the Savings Bank, and that the Ariel Group would not be in conclusive control of the Corporation or the Savings Bank if they acquired up to 20 percent of the Corporation's common stock, which is the maximum amount proposed in the Rebuttal.

In addition, the Ariel Group has submitted a statement of rebuttal that represents that it is a passive investor and that the members of the Ariel Group will not act, directly or indirectly, to control the Corporation or the Savings Bank. The Ariel Group has submitted an acceptable rebuttal of control agreement.

Based on the information presented and available information, OTS concludes that the Ariel Group has clearly and convincingly rebutted the rebuttable control determination under § 574.4(b).

Charter and Bylaw Amendments; Waiver

The Savings Bank has filed an application to amend and restate its charter and bylaws, in order to create two classes of common stock, Class A and Class B. There will be significant differences in the rights of the two classes of stock. The Class B Common Stock will have the right to elect at least 80 percent of the directors of the Savings Bank.

The requirements for the Savings Bank's charter and bylaws are set forth under 12 C.F.R. Part 552. Under 12 C.F.R. § 552.3, the charters of federal stock savings banks are required to be in the form of the model federal stock charter. Section 5 of the model federal stock charter requires, in part, that "Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock." In order for the Savings Bank to proceed as it proposes, the Savings Bank has requested that OTS waive the requirements of 12 C.F.R. § 552.3 to the extent necessary to enable the Savings Bank to amend its charter and bylaws to provide for two classes of common stock.

OTS may, for good cause, and to the extent permitted by statute, waive any of its regulations.¹ There is no statutory requirement that federal stock association have only one class of common stock. Accordingly, OTS may waive the statute if it concludes that good cause for the waiver exists.

The model charter requires Savings Bank to have only one class of common stock in order to ensure that the rights and economic interests of its common stockholders are consistent. The regulation reflects concerns that if parties with a relatively small economic interest (and therefore a relatively small risk) in a savings association are able to control that institution, they may be inclined to cause the institution to take actions that are riskier than would otherwise be the case. In addition, the regulatory restriction recognizes that future capital raising efforts may be more difficult if the voting rights are concentrated in a few parties.

It is not clear that the purposes of the restriction would be disserved in the context of the proposed transaction. The Ukrop Entities holding the Class B Common Stock have a substantial economic interest in the Savings Bank, so the concern regarding disproportionate voting power and risk are not applicable. In addition, the Corporation, a large, sophisticated investor, has negotiated the proposed structure with the Ukrop Entities.

However, the proposed charter and bylaw amendments providing for two classes of the Savings Bank's common stock may make it more difficult for the Savings Bank to engage in subsequent equity securities offerings. In addition, concerns may arise if the Savings Bank issues additional Class A Common Stock to other entities, so that the Ukrop Entities' economic interest and voting power are more disproportionate. Accordingly, OTS has determined to impose a condition requiring the Savings Bank to obtain OTS approval prior to engaging in certain offers of equity securities at any time that the Savings Bank has more than one class of common stock.

¹ 12 C.F.R. § 500.30(a)(2006).

Based on the foregoing, OTS concludes that there is an adequate basis to grant the waiver needed to have two classes of common stock, pursuant to 12 C.F.R. § 500.30(a), subject to the condition discussed herein.

Capital Distribution Notice

The Savings Bank proposes to repurchase 490 shares of its Class A Common Stock from STI. The proposed repurchase is a capital distribution that requires OTS approval, pursuant to 12 C.F.R. § 563.143(a)(2). The Savings Bank proposes to raise sufficient proceeds from the transactions described herein to fund substantially all of the stock repurchase.

OTS' regulations provide that a capital distribution notice may be denied if, generally, the proposed capital distribution would: (i) cause the institution to become undercapitalized; (ii) raise safety and soundness concerns; or (iii) violate any statute, regulation, agreement with OTS or condition of approval.² OTS has reviewed the proposed capital distribution and has determined that: the Savings Bank will continue to be well-capitalized after the distribution; the distribution does not raise any safety and soundness concerns; and the distribution will not violate any prohibition contained in law, agreement with OTS, or condition of approval. Accordingly, OTS concludes that the Savings Bank's proposed capital distribution satisfies the criteria for approval.

Conclusion

Based on the foregoing, OTS concludes that the Applications satisfy the applicable approval standards, provided that the following conditions are complied with in a manner satisfactory to the Southeast Regional Director, or his designee (Regional Director). Accordingly, the Applications are hereby approved, subject to the following conditions:

1. The Applicants and the Savings Bank must receive all required regulatory and shareholder approvals for the proposed transaction and submit copies of all such approvals to the Regional Director prior to consummation of the proposed transaction;
2. The Applicants and the Savings Bank must consummate the proposed transaction within one hundred and twenty (120) calendar days from the date of this Order;
3. Prior to the date of consummation of the proposed transaction, the chief financial officers of the Corporation, Holdings and the Savings Bank and the trustees of the Trusts must certify in writing to the Regional Director that no material adverse events or material adverse changes have occurred with respect to the financial condition or operation of the Corporation, Holdings, the Trusts, and the Savings Bank, as disclosed in the Applications. If additional information having a material adverse bearing on any feature of the Applications are brought to the attention of the Corporation, the Trusts, the Savings Bank, or OTS, since the date of the financial statements submitted with the Applications, the transactions must not be consummated unless the information is presented to the Regional

² 12 C.F.R. § 563.146 (2006).

Director, and the Regional Director provides written non-objection to consummation of the transaction.

4. The Applicants and the Savings Bank must advise the Regional Director in writing within five (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, the commitments and representations provided during the review of the Applications, and this Order.

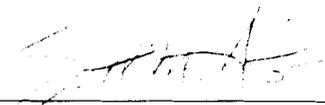
Further, based on the foregoing, OTS concludes that there is good cause to waive the requirements of 12 C.F.R. § 552.3 to the extent necessary to permit the Savings Bank to amend its charter and bylaws to provide for two classes of stock and to restate its charter and bylaws as proposed. Accordingly, the Savings Bank's requested waiver of § 552.3 is hereby approved, pursuant to 12 C.F.R. § 500.30(a), and the Savings Bank's proposed restated charter and bylaws are hereby approved, subject to the following condition:

1. At any time that the Savings Bank has more than one class of common stock authorized and outstanding, the Savings Bank must obtain the written approval of the OTS Chief Counsel, or his designee, prior to:
 - (a) Engaging in a public offering of the Savings Bank's equity securities; or
 - (b) Engaging in an offering of the Savings Bank's equity securities that will result in the Savings Bank's equity securities being owned by more than ten investors who are neither: (i) accredited investors as defined in 17 C.F.R. § 230.501(a), nor (ii) members of a group that has been approved by OTS to acquire direct or indirect control of the Savings Bank.

The Regional Director may, for good cause, extend any time period set forth herein for up to 120 calendar days.

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

April 20, 2006.



Scott M. Albinson
Managing Director
Office of Examinations, Supervision,
and Consumer Protection