

OFFICE OF THRIFT SUPERVISION

Approval of Holding Company Application

Order No.: 2005-58

Date: December 29, 2005

Docket Nos.: 14961 and H-4192, H-4193,
H-4194, H-4195, H-4249,
H-4250, H-4251, H-4252,
H-4253, H-4254, H-4255

FFS Holdings, Inc., Falmouth, Maine (Holding Company), and other entities identified in Appendix A (collectively, the Applicants) have applied to the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1467a(e)(1)(B) and 12 C.F.R. § 574.3, for permission to acquire Forethought Federal Savings Bank, Batesville, Indiana (Savings Bank). In addition, the proposed transaction requires OTS approval under 12 U.S.C. § 1467a(e)(4)(A) and 12 C.F.R. § 574.3, for Mr. William R. Berkley to, upon consummation of the proposed transaction, be a director of the Holding Company, while controlling another savings association that is not a subsidiary of the Holding Company.

Background

The Holding Company was organized by five individuals. The Holding Company, through its subsidiaries, provides insurance and trust services related to funeral planning. Based on the current shareholdings of the Holding Company, two of the Principals, Mr. Robert Devlin and his affiliated persons and entities and the Estate of Mr. Douglas Schair and affiliated persons and entities, control the Holding Company.

The Savings Bank is a federally chartered savings association, with deposits insured by the Savings Association Insurance Fund (SAIF). The Savings Bank is a trust-only institution that provides fiduciary services related to funeral planning.

In the proposed transaction, the Applicants propose to acquire control of the Savings Bank, and to cause the Savings Bank to become a wholly owned subsidiary of the Holding Company's wholly owned subsidiary, Forethought Financial Services, Inc. (Financial Services).

Holding Company Application

Acquisition Under Section 10(e)(1)(B) of the HOLA

Section 10(e)(1)(B) of the Home Owners' Loan Act (HOLA) and the OTS Acquisition of Control Regulations (Control Regulations) provide that OTS must approve a holding company application seeking permission to acquire one savings association by a company other than a savings and loan holding company unless OTS finds the financial and managerial resources and

future prospects of the company and association involved to be such that the acquisition would be detrimental to the savings association or to the insurance risk of the SAIF. Also, OTS must consider the impact of any acquisition on competition.¹ Further, 12 C.F.R. § 563e.29(a) requires that OTS take into account assessments under the Community Reinvestment Act (CRA) when approving savings and loan holding company acquisitions.

With respect to managerial resources, OTS has conducted background checks of the Applicants, including, where applicable, the Applicants' officers and directors or trustees, and has reviewed the relevant information submitted in the application. The officers of the Holding Company, and the individual Applicants, have extensive financial and insurance industry experience. The control persons of the other Applicants have the appropriate experience with respect to the particular Applicant. Because two stockholders were not identified sufficiently early to permit background checks to be completed, approval is being conditioned on the stockholders submitting such background information and certifications as directed by the Regional Director and taking such action as directed by the Regional Director if the background investigation of the individual reveals adverse information. The application materials indicate that the Holding Company's board of directors possesses experience in various business endeavors. Based on the relevant information, OTS concludes that the managerial resources of the relevant persons and companies are consistent with approval of the application.

With respect to financial resources, OTS has considered the Applicants' financial positions, and the Savings Bank's capitalization. The Holding Company demonstrated adequate cash resources and appears financially successful and stable. There is no information to suggest that this favorable financial performance will not continue. The financial resources of the other Applicants are sufficient in light of their purposes. The Savings Bank meets all of its capital requirements and is "well-capitalized" under the OTS Prompt Corrective Action regulation and is expected to remain well capitalized. OTS concludes that the Applicants' and the Savings Bank's financial resources are consistent with approval of the application.

With respect to future prospects, OTS has considered the financial and managerial resources, and the character and responsibility of the Applicants and the Savings Bank. The Holding Company proposes a tax sharing agreement between the Savings Bank and Financial Services. OTS is imposing condition 7 to ensure that the Savings Bank is not adversely affected as a result of the tax sharing agreement, and, accordingly, that the acquisition of the Savings Bank by the Applicants is not detrimental to the financial resources or future prospects of the Savings Bank. In addition, OTS is imposing conditions 5 and 6 to ensure that the Savings Bank's board of directors and its senior officers are sufficiently independent of affiliates that engage in securities related activities for trust accounts maintained by the Savings Bank. Therefore, OTS concludes that the future prospects of the Savings Bank and the Applicants are consistent with approval provided that the Applicants comply with the conditions set forth herein.

¹ 12 U.S.C. § 1467a(e)(2) and 12 C.F.R. § 574.7(c)(2) (2005).

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.

As for the CRA, none of the Applicants other than Financial Services has previously controlled a depository institution, and although Financial Services has previously controlled the Savings Bank, the Savings Bank, as a trust-only institution, has not been subject to the CRA.

Accordingly, OTS concludes that there is no basis for objection to the Applicants' acquisition of the Savings Bank on CRA grounds.

Acquisition Under Section 10(e)(4)(A) of the HOLA

OTS, in evaluating a filing under section 10(e)(4)(A) of the HOLA and 12 C.F.R. § 574.3, considers the managerial and financial resources and future prospects of the acquiror and the associations involved, the impact of the transaction on the SAIF, the impact of the transaction on competition, and the convenience and needs of the community to be served.²

OTS is familiar with Mr. Berkley's managerial and financial resources as a result of his control of W.R. Berkley Corporation, a savings and loan holding company. In addition, OTS reviewed information pertaining to Mr. Berkley that was submitted with the subject applications. OTS concludes that Mr. Berkley's managerial and financial resources are consistent with approval. As discussed above, OTS has analyzed the Savings Bank's managerial and financial resources and has concluded that they are acceptable. Further, the proposed transaction does not involve the savings association that Mr. Berkley indirectly controls, InsurBanc, Farmington, Connecticut, and accordingly, the transaction will not have a detrimental effect on the managerial and financial resources of that savings association. As for future prospects, as discussed above, OTS has concluded that the Savings Bank's future prospects are acceptable. The transaction does not involve InsurBanc, and, accordingly, its future prospects will not be affected by the transaction.

With respect to competitive factors, although Mr. Berkley is a director of the Holding Company, he does not control the Holding Company, or any of its subsidiaries, under the Control Regulations. Accordingly, the proposed transaction will not result in the affiliation of any operating depository institutions within the scope of the Control Regulations. Accordingly, we conclude that approval is consistent with this review criterion.

With respect to the convenience and needs of the community to be served, both the Savings Bank and InsurBanc will continue their current operations upon consummation of the proposed transaction, and neither institution plans to reduce the scope of its operations. The Savings Bank is excepted from the CRA and InsurBanc is not involved in the proposed transaction. Based on the foregoing, OTS concludes that convenience and needs considerations are consistent with approval.

² See, 12 C.F.R. § 574.7(b) (2005).

Conclusions

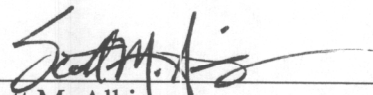
Based on the foregoing analysis, OTS concludes that the holding company applications meet the applicable approval criteria. Accordingly, the applications are hereby approved, subject to the following conditions:

1. The Applicants and the Savings Bank must receive all required regulatory approvals prior to consummation of the proposed transaction with copies of all such approvals provided to the Regional Director;
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 Applicants and the Savings Bank 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 Applicants and the Savings Bank, respectively, 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 Applicants, the Savings Bank, or OTS since the date of the financial statements 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 Applicants and the Savings Bank must, within 5 calendar days after the effective date of the proposed transaction: (a) advise the Regional Director in writing of the effective date of the proposed transaction; (b) advise the Regional Director in writing that the transaction was consummated in accordance with all applicable laws and regulations, the applications, and this Order; and (c) provide a reconciliation of the Savings Bank's capital to the Regional Director;
5. A majority of the Savings Bank's board of directors must not be comprised of individuals who are directors or employees of any affiliate of the Savings Bank that engages in securities brokerage, securities dealing, investment company, or investment advisor activities (Securities Affiliates);
6. The Savings Bank is prohibited from sharing common officers with any Securities Affiliate unless prior written approval is obtained from the Regional Director, which shall be based on criteria such as regulatory compliance, experience, character, integrity and the ability to perform both duties;
7. Within 30 calendar days after the date of approval, the proposed tax sharing agreement between the Savings Bank and Financial Services must be submitted for the review and approval of the Regional Director; and

8. The two recently identified stockholders must submit such background information and certifications as directed by the Regional Director and must take such action as directed by the Regional Director if the background investigation of the individual reveals adverse information.

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

December 29, 2005.



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

Appendix A

THE APPLICANTS

FFS Holdings, Inc., Falmouth, Maine (OTS No. H-4194)

Forethought Financial Services, Inc., Batesville, Indiana (OTS No. H-4195)

Robert M. Devlin

- Matthew B. Devlin
- Michael H. Devlin, II
- Robert M. Devlin Investment Trust (Robert and Katharine Devlin, Co-Trustees)
 - New York, New York (OTS No. H-4249)
- Curragh Capital Partners II, LP
 - New York, New York (OTS No. H-4192)

Estate of Douglas M. Schair

- Douglas M. Schair 1997 Family Trust (Leslie N. Cohen, Trustee)
 - Whitman, Massachusetts (OTS No. H-4250)
- Schair 2002 Grandchildren Trust (Leslie N. Cohen, Trustee)
 - Whitman, Massachusetts (OTS No. H-4251)
- DS 2004 Investment Trust (Leslie N. Cohen, Trustee)
 - Whitman, Massachusetts (OTS No. H-4252)
- DS Forethought, LP
 - Falmouth, Maine (OTS No. H-4193)

Rodney A. Hawes, Jr.

Michael J. and Mary Poulos

- Michael J. Poulos 2004 Descendants Trust (Denise Poulos, Trustee)
 - Houston, Texas (OTS No. H-4253)
- Mary K. Poulos 2004 Children Trust (Carol Ann Buckner, Trustee)
 - Houston, Texas (OTS No. H-4254)
- Mary K. Poulos 2004 Grandchildren Trust (Carol Ann Buckner, Trustee)
 - Houston, Texas (OTS No. H-4255)