

OFFICE OF THRIFT SUPERVISION

Approval of Service Corporation Application

Order No.: 2004-14
Date: April 6, 2004
Docket No. 15115

EverBank, Jacksonville, Florida (Savings Bank), a federal savings bank, has applied to the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1828(m) and 12 C.F.R. Part 559, to establish a first-tier Florida-chartered service corporation, EB Insurance Holdings (Holding), and a second-tier service corporation, EB Reinsurance Corporation (Reinsurance Corporation), a Hawaii-chartered reinsurance company. Holding will be a shell corporation, and the Reinsurance Corporation will reinsure private mortgage insurance (PMI) on residential loans originated by the Savings Bank and its subsidiaries, as described in more detail in the application. Additionally, the Savings Bank has applied for permission to have Reinsurance Corporation hold an equity interest in Radian Reinsurance Company (Third-tier) as a third-tier service corporation within the scope of 12 C.F.R. Part 559.

OTS regulations, at 12 C.F.R. § 559.3(e)(2), provide that a service corporation of a federal association may, subject to OTS approval, engage in an "activity reasonably related to the activities of financial institutions." Holding's only proposed activity is to hold the stock of the Reinsurance Corporation. With respect to the Reinsurance Corporation's proposed activities, OTS has previously determined that a service corporation of a federal association may reinsure private mortgage insurance issued by third parties for loans originated or purchased by the association, its mortgage lending subsidiaries, or its mortgage lending affiliates.¹ The application proposes that the Reinsurance Corporation utilize three different structures for engaging in PMI reinsurance, all of which have previously been found to be permissible by OTS.²

With respect to Third-tier's activities, Third-tier will be engaged exclusively in mortgage reinsurance activities, pursuant to discrete agreements with each participating lender, which will be substantially identical to the agreements governing the Reinsurance Corporation's participation in Third-tier's program. A separate trust, and a separate class of stock will be created for each participant. The stock investment of each participating institution will be nominal. Based on the foregoing, it is clear that one participant's exposure to losses incurred by another participant will be minimal. Third-tier's primary role in these arrangements is establishing and administering the relationship with the relevant participant. OTS concludes that Third-tier's activities are permissible for service corporations.

¹ See, Op. C.C. (Nov. 2, 1998).

² See, OTS Order No. 2000-77 (September 1, 2000); OTS Order Nos. 2002-13 (April 29, 2002); 2002-14 (April 29, 2002); and 2002-29 (August 5, 2002); OTS Order No. 2003-10 (April 4, 2003).

Section 5(c)(4)(B) of the Home Owners' Loan Act provides that a federal association may make investments in the capital stock, obligations, or other securities of any corporation organized under the laws of the State in which a federal savings association's home office is located, if such corporation's entire capital stock may be purchased only by savings associations of such state and federal associations with their home office in the state. Holding is chartered under Florida law. The Savings Bank's home office is located in Florida, and the Savings Bank owns all of Holding's stock. OTS regulations, at 12 C.F.R. § 559.3(f)(2), state that a service corporation may invest in a lower-tier entity, without the requirements that the lower-tier entity be incorporated in the same state or be owned solely by savings associations, if the lower-tier entity engages solely in activities that are permissible for a service corporation. Holding's direct investment in the Reinsurance Corporation and indirect investment in Third-tier is consistent with the regulation. Accordingly, the application meets these Section 5(c)(4)(B) requirements.

Federal savings associations may invest up to three percent of assets in service corporations, provided that any investment in excess of two percent of assets must serve primarily community, inner city, or community development purposes.³ In addition, OTS may, at any time, limit a savings association's investment in a service corporation, or may limit or refuse to permit any activities of a service corporation, for supervisory, legal, or safety and soundness reasons.

The Savings Bank's total investment in service corporations will be within the statutory and regulatory limits. Based on the application, OTS concludes that the establishment of, and investment in, Holding, the Reinsurance Corporation, and Third-tier, is not objectionable on safety and soundness or supervisory grounds, provided that the Savings Bank and the Reinsurance Corporation satisfy the conditions set forth below, which are intended to ensure that the proposed activities do not raise supervisory concerns.

Based on the foregoing analysis, OTS concludes that the application meets the applicable approval criteria, provided that the following conditions are imposed. Accordingly, the application is 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 proposed transaction must be consummated, and the Reinsurance Corporation must commence the activities proposed in the application within 120 calendar days from the date of this Order. This time period may be extended for up to 120 calendar days, for good cause, by the Regional Director;
2. The Savings Bank must obtain written clearance from the Regional Director prior to taking any action that would result in a material deviation from the activities, facts, representations or level of investment described in the application;

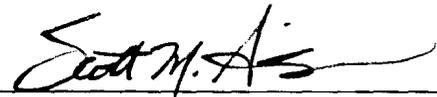
³

12 C.F.R. § 559.5.

3. While the Reinsurance Corporation is a subsidiary of the Savings Bank, the portion of reinsurance risk assumed by the Reinsurance Corporation attributable to the Savings Bank must be considered: (i) in determining the loan-to-value ratio for loans on the Savings Bank's books for purposes of determining whether such loans exceed the Supervisory Loan-to-Value Limits set forth in the Appendix to 12 C.F.R. § 560.101, and (ii) in determining whether such loans are "Qualifying Mortgage Loans" for risk-weighting purposes set forth in 12 C.F.R. Part 567; and
4. For purposes of calculating its regulatory capital as provided in 12 C.F.R. § 567.6(a)(2)(i)(C), the Savings Bank must treat the amount of the Reinsurance Corporation's maximum reinsurance obligation on any loan that the Savings Bank has sold as a loan sold with recourse.

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

April 6, 2004



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