

OFFICE OF THRIFT SUPERVISION

Approval of an Application to Establish a Savings Bank, Holding Company Application, Bank Merger Act Application, Application for Trust Powers, Rebuttal of Control and Application to Modify a Business Plan

Order No.: 2006-02
Date: February 6, 2006
Re: OTS Nos. 18013, 15648 and H-4248

Ameriprise Financial, Inc., Minneapolis, Minnesota, (Holding Company) has applied to the Office of Thrift Supervision (OTS), pursuant to §§ 5(e) and 10(e) of the Home Owners' Loan Act (HOLA), 12 U.S.C. §§ 1464(e) and 1467a(e), and 12 C.F.R. §§ 552.2-1 and 574.3 thereunder, for permission to organize and acquire Ameriprise Bank, FSB, New York, New York (Savings Bank). The Savings Bank will be a federally chartered, Savings Association Insurance Fund (SAIF)-insured, savings association subsidiary of the Holding Company after the transaction. In connection with the Holding Company's applications, the Savings Bank seeks approval pursuant to Section 18(c) of the Federal Deposit Insurance Act (Bank Merger Act or BMA) to acquire insured deposits and certain other assets and liabilities from American Express Bank, FSB, Salt Lake City, Utah (AEB-FSB) and has applied for certain trust powers. OTS is also considering a rebuttal of control application (Rebuttal) filed by Berkshire Hathaway, Inc., and related parties (the Berkshire Group). In conjunction with the foregoing applications, OTS is also considering a request by AEB-FSB for permission to modify its business plan. Collectively, the foregoing filings are referred to herein as the Applications.

The Proposed Transaction

In the proposed transaction, the Holding Company will organize the Savings Bank as a wholly owned direct subsidiary of the Holding Company. The Holding Company will purchase 500,000 shares of the Savings Bank's common stock and will contribute sufficient additional capital to ensure the Savings Bank has a minimum of 8 percent tangible capital during the first three years of its operations. In addition, AEB-FSB will transfer its trust business and its consumer banking business to the Savings Bank. The Savings Bank will purchase certain mortgage loans and other loan receivables, rights to certain fiduciary instruments and assets currently managed by AEB-FSB's trust department, and certain deposit liabilities and other obligations of AEB-FSB.

The proposed transaction requires OTS approval of: (i) the organization of the Savings Bank, a federal stock savings bank, pursuant to 12 U.S.C. § 1464(e) and 12 C.F.R. § 552.2-1; (ii) the acquisition of the Savings Bank by the Holding Company, pursuant to 12 U.S.C. § 1467a(e) and 12 C.F.R. § 574.3; (iii) the approval of the transfer

of certain assets and certain deposits and other liabilities of AEB-FSB to the Savings Bank, pursuant to the Bank Merger Act and 12 C.F.R. §§ 552.13 and 563.22; (iv) the Savings Bank's application for trust powers, pursuant to 12 U.S.C. § 1464(n) and 12 C.F.R. § 550.100; (v) a Rebuttal submitted by the Berkshire Group pursuant to 12 C.F.R. § 574.4; and (vi) approval of the modification of the AEB-FSB business plan.

An application was filed with the Federal Deposit Insurance Corporation (FDIC) for SAIF insurance of accounts. The FDIC is currently processing the application.

Permission to Organize Application

The HOLA provides that OTS may grant a federal savings association charter only: (i) to persons of good character and responsibility; (ii) if, in OTS' judgment, a necessity for such savings association exists in the community to be served; (iii) if there is reasonable probability of the association's usefulness and success; and (iv) if the association can be established without undue injury to properly conducted existing local thrift and home financing institutions.¹ OTS regulations implementing the HOLA include the same standards, with the additional requirement that OTS consider whether the association will promote credit for housing consistent with the safe and sound operation of a federal savings association.²

In addition, OTS regulations regarding the establishment of de novo federal savings associations set forth standards that OTS considers in granting a de novo federal charter, regarding: (i) initial capitalization of a federal association; and (ii) the residence and composition of an association's board of directors.³

Furthermore, OTS regulations provide that an applicant for a federal thrift charter shall submit with its application a description of how it will meet its Community Reinvestment Act (CRA) objectives.⁴ OTS takes this description into account when considering the application and may deny the application or condition approval on CRA grounds.

Character and Responsibility

OTS has reviewed information concerning the directors and senior officers of the Holding Company and the proposed directors and officers of the Savings Bank. Many of those officers and directors have been employed by AEB-FSB, the Holding Company or its former parent company, which are or have been regulated by OTS, and OTS is therefore familiar with their character and responsibility. The persons who will become the Chief Executive Officer and President, Chief Financial Officer, and Chairman of the

¹ Section 5(e) of the HOLA, 12 U.S.C. § 1464(e).

² 12 C.F.R. § 552.2-1(b)(1) (2005).

³ 12 C.F.R. § 543.3 (2005).

⁴ 12 C.F.R. § 563e.29(b) (2005).

Board of the Savings Bank have extensive financial industry experience. The remaining members of the Savings Bank's proposed board of directors possess extensive experience in the operations of financial institutions and other business endeavors. In addition, routine background checks were made, and disclosed no material adverse information. The Holding Company has settled a number of enforcement proceedings against it brought by the U.S. Securities and Exchange Commission (SEC), the National Association of Securities Dealers (NASD) and the State of Minnesota. Without admitting or denying wrongdoing, the Holding Company has settled these actions. The Holding Company has taken steps to ensure there are no future occurrences of the alleged violations. None of the officers or directors of the Holding Company or the proposed officers or directors of the Savings Bank has been personally found responsible for the alleged violations.

We conclude that the character and responsibility of the Holding Company, its directors and senior officers, and Savings Bank's proposed directors and senior officers are consistent with approval.

Necessity in the Community; No Undue Injury

As for the necessity for the Savings Bank in the community, the Savings Bank will assume the retail banking and trust business currently being conducted by AEB-FSB and will market its products nationwide, replacing AEB-FSB in the national market for those products. Because AEB-FSB already engages in these activities, we conclude that there is a necessity in the community for these services.

With respect to undue injury to local thrift and home financing institutions, most of the deposits of the Savings Bank will be transfers of existing deposits from AEB-FSB. There is no evidence to indicate that there would be any injury to existing local thrift and home financing institutions by the establishment of the Savings Bank. The Savings Bank projects that its deposits by the end of its third year of operations will amount to less than a tenth of a percent of the total deposits in the United States as of June 2005. OTS received no comments opposing the permission to organize application. Therefore, we conclude that the impact on local thrift and home financing institutions is consistent with approval of the application.

Usefulness and Success

The Savings Bank plans to be well-capitalized throughout the first three years of operations. The permission to organize application indicates that the Savings Bank is expected to be profitable immediately. We believe that the Savings Bank's business plan is reasonable. The Savings Bank's proposed officers and directors and have the requisite character and experience. In addition, approval of the application will be subject to various conditions, set forth below, intended to ensure that the Savings Bank maintains safe and sound operations.

We are imposing conditions 5 and 13 below to enable OTS to confirm that the Savings Bank will be operated properly and by qualified personnel. We are imposing conditions 6 and 7 below to help ensure that changes to or from the business plan included in the application are not detrimental to the Savings Bank.

We are also imposing condition 8 below relating to the composition of the Savings Bank's board of directors, because the Savings Bank will share certain management officials with the Holding Company, and the Savings Bank will market services through advisors associated with the Holding Company. This condition reflects agency concerns about captive boards in the context of holding company structures where the savings association is likely to have transactions with its affiliates and is designed to help ensure that the Savings Bank's probability of usefulness and success is consistent with approval. Similarly, because of the extensive transactions between affiliates that are projected to occur as a result of interactions between the Savings Bank and the Holding Company and its affiliates, we are imposing condition number 9 below. This condition also helps to ensure that the Savings Bank's probability of usefulness and success is consistent with approval.

In addition, in order to protect the Savings Bank's operations from the risks posed by the Holding Company's securities activities, we are imposing conditions 10 and 11 below. These conditions are designed to ensure that the Savings Bank's probability of usefulness and success are consistent with approval.

Based on the foregoing, we conclude that there is a reasonable probability of the Savings Bank's usefulness and success.

Provision of Credit for Housing

The Savings Bank anticipates that the majority of its assets will consist of residential mortgages. In addition, at least 65 percent of its assets will be invested in qualified thrift investments, as defined at 12 U.S.C. § 1467a(m)(4)(C). The Savings Bank will have experienced management. Accordingly, we conclude that the Savings Bank will perform a role of providing credit for housing consistent with safety and soundness standards.

Community Reinvestment Act

As required by 12 C.F.R. § 563e.29(b), the Holding Company has submitted with the permission to organize application a description of how the Savings Bank will meet its CRA objectives. The Savings Bank has designated the New York-Northern New Jersey-Long Island, NY-NJ-PA Metropolitan Statistical Area as its assessment area. We reviewed the manner in which the Savings Bank plans to meet its CRA objectives and found the description to be reasonable. The Savings Bank's assessment area meets the CRA regulation requirements, and the Savings Bank's management has represented that the Savings Bank will be making loans to low-to-moderate income individuals within the

assessment area. Accordingly, in our opinion, there is an adequate legal basis for approval under the OTS CRA regulations.

Charter and Bylaws

The Savings Bank intends to adopt a charter and bylaws that conform to the model charter and bylaws for a federal stock institution. Accordingly, we have no objection to the proposed organization of the Savings Bank based on the charter and bylaws.

Capitalization of the Savings Bank

The Holding Company proposes to capitalize the Savings Bank with more than the \$2 million minimum requirement set forth in 12 C.F.R. § 543.3(b). In addition, the Savings Bank will be well capitalized. Accordingly, we conclude that the permission to organize application satisfies this approval standard.

Composition of the Savings Bank's Board of Directors

The regulations, at 12 C.F.R. § 543.3(d), require that a majority of a de novo association's board of directors be "representative" of the state in which the association is located, and that OTS generally will consider a director to be "representative" of the state if such director resides, works, or maintains a place of business in the state or Consolidated Metropolitan Statistical Area (CMSA) in which the association is located.⁵ In addition, section 543.3(d)(2) requires that a de novo federal association's board of directors be diversified and composed of individuals with varied business and professional experience, and that, except in the case of a de novo association that is wholly owned by a holding company, no more than one-third of a de novo association's board of directors may be in closely related businesses. If the holding company does not have substantial independent economic substance, the latter requirement applies to the holding company.

The proposed board of directors of the Savings Bank satisfies the "representative" requirement set forth in 12 C.F.R. § 543.3(d)(1). The Savings Bank will be located in the New York-Newark-Bridgeport, NY-NJ-CT-PA area and the majority of the proposed directors live or work in that CMSA. In addition, the directors have varied business and professional experience. Because the Savings Bank will be a wholly owned subsidiary of the Holding Company, a holding company that has substantial independent economic substance, there is no limitation on the percentage of board members who may be in closely related businesses and no requirement that the Holding Company's board of directors meet the composition requirements of 12 C.F.R. § 543.3(d). Accordingly, we conclude that the proposed composition of the board of directors of the Savings Bank and the Holding Company complies with 12 C.F.R. § 543.3(d).

⁵ 12 C.F.R. § 543.3(d)(1) (2005).

Holding Company Application

In the proposed transaction, the Holding Company will acquire control of the Savings Bank. Accordingly, the transaction requires OTS approval under Section 10(e) of the HOLA and under 12 C.F.R. Part 574 (Control Regulations).

Section 10(e)(1)(B) of the HOLA and the 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.⁶ Further, 12 C.F.R. § 563e.29(a) requires that OTS take into account assessments under the CRA when approving savings and loan holding company acquisitions.

Managerial Resources

As discussed above, the Holding Company settled certain enforcement proceedings brought by the SEC, NASD, and the State of Minnesota. These actions are presumptive disqualifiers under 12 C.F.R. § 574.7(g)(1)(i). Ameriprise has taken corrective actions to address the subjects of the enforcement proceedings and we believe those actions are sufficient to prevent reoccurrence of the problems that led to the enforcement proceedings. For the reasons set forth above in the discussion of character and responsibility in the permission to organize application and herein, we conclude that the managerial resources of the Savings Bank and the Holding Company are consistent with approval.

Financial Resources

The Holding Company has over \$8 billion in tangible capital. The Savings Bank's business plan indicates that it should be profitable from inception and that it will remain "well capitalized" throughout its first three years of operations. We conclude that the financial resources of the Savings Bank and the Holding Company are consistent with approval.

Future Prospects

Based on the discussions above regarding the probability of the Savings Bank's usefulness and success, the character and responsibility of the proposed management, and the financial and managerial resources of the Holding Company and the Savings Bank, we conclude that this approval criterion has been satisfied.

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

Competitive Impact

The proposed acquisition will not cause the Savings Bank to become affiliated with any other operating depository institution. Accordingly, the transaction is not objectionable on anti-competitive grounds.

Community Reinvestment Act

As for the CRA, during the time that the Holding Company controlled AEB-FSB, that institution was a trust-only thrift, and was not subject to the CRA. OTS has received no comments from the public objecting to the proposed transaction. Accordingly, we are not aware of any basis for objection to the holding company applications based on CRA grounds.

Bank Merger Act Application

The Savings Bank proposes to acquire insured deposits, as well as certain assets and non-deposit liabilities of AEB-FSB. The BMA, 12 U.S.C. § 1828(c), and OTS regulations impose approval standards that are substantially similar to the approval standards set forth under section 10(e) of the HOLA, which have been discussed previously. The BMA also requires that OTS consider the convenience and needs of the community and that OTS review the Savings Bank's and AEB-FSB's records of compliance with anti-money laundering statutes in analyzing the BMA transaction. In addition, OTS must consider the CRA record of the Savings Bank in evaluating the BMA application, and must also consider whether the transaction conforms to applicable laws, regulatory policies, and factors relating to fairness and disclosure.

For the reasons discussed above, we conclude that the Savings Bank's managerial and financial resources and future prospects are consistent with approval. AEB-FSB is well-capitalized, and it and its management and trust operations are well-rated. AEB-FSB will function primarily as a credit card bank once the transaction is completed. Moreover, AEB-FSB is expected to remain well-capitalized after the transaction is consummated. Accordingly, we conclude that the managerial and financial resources and future prospects of AEB-FSB are also consistent with approval. For the reasons discussed above, the proposed transaction will have no effect on competition. Further, as discussed above, we do not object to the Savings Bank's CRA plan and OTS has not received comments objecting to the proposed transaction. With respect to convenience and needs of the community, the Savings Bank will have an office that the public may access in New York City. While the consumer banking operations office in Salt Lake City, Utah will no longer be publicly accessible, it was not readily accessible to the public while part of AEB-FSB. The primary interaction with members of the public has been through the Internet and telephonic communications. Such access will be available to the public after the merger is consummated. In effect, the lack of public access to the Salt Lake City office will not significantly affect the convenience and needs of the public. We conclude that the proposed transaction meets the convenience and needs of the

community and is consistent with the CRA. Because, in essence, the transaction is an internal corporate reorganization, we are aware of no basis for objection regarding fairness and disclosure.

Finally, in connection with its most recent examination of AEB-FSB, the Regional Office concluded that AEB-FSB's compliance with the Bank Secrecy Act (BSA) and anti-money laundering practices were adequate. The Savings Bank will adopt BSA policies and procedures that are identical to those of AEB-FSB. Accordingly, the Regional Office has concluded that there is no reason to believe the Savings Bank will fail to comply with the BSA and anti-money laundering requirements once it opens. Therefore, we conclude that the criteria for approval under the BMA have been met.

Application for Trust Powers

The Savings Bank has filed an application for approval to provide personal trust services for individuals, and in doing so, to act as executor and administrator, trustee, guardian, conservator, or investment advisor. The Savings Bank also seeks approval to provide trust services for employee benefit plans, acting as trustee, custodian and investment manager. In sum, the Savings Bank seeks approval to conduct the same trust activities as are currently being conducted by AEB-FSB.

In reviewing a trust application, OTS must consider: (i) the financial condition of the applicant; (ii) the capital of the applicant and whether it is sufficient under the circumstances; (iii) the applicant's overall performance; (iv) the fiduciary powers proposed to be exercised; (v) the proposed supervision of the fiduciary powers; (vi) the availability of legal counsel; (vii) the needs of the community to be served; and (viii) any other factors OTS considers proper.⁷

With respect to the first three criteria, the Savings Bank will be well-capitalized. The Savings Bank's plan regarding the provision of trust services is reasonable, and therefore we conclude that the first three criteria have been satisfied. As for the fourth criterion, AEB-FSB has previously been conducting the trust powers in question in accordance with OTS's prior approval of AEB-FSB's trust powers application. As for the Savings Bank's supervision of the fiduciary powers, the trust operations of AEB-FSB have been well-rated and the Savings Bank will be continuing the existing business of AEB-FSB using the same management. We believe that they have sufficient experience in the proposed fiduciary activities to be conducted. With respect to the availability of legal counsel, the Savings Bank will obtain legal counsel from the same firm that previously provided trust counsel to AEB-FSB. With respect to the needs of the community to be served, the Savings Bank will continue to offer the trust services that had been offered by AEB-FSB. Accordingly, we conclude that the standards for approval of the trust powers application have been satisfied.

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See 12 C.F.R. § 550.100 (2005).

Rebuttal of Control

As a result of the spin-off of Ameriprise from American Express Company, the Berkshire Group owns 12.17 percent of the Holding Company. Pursuant to the OTS Control Regulations,⁸ an acquiror is deemed to have acquired control of a savings and loan holding company, subject to rebuttal, if the acquiror acquires, directly or indirectly, more than 10 percent of the stock of the entity and is subject to any control factor. The Berkshire Group has acquired more than ten percent of the Holding Company's stock, and, as one of the two largest holders of the Holding Company's stock, is subject to the control factor set forth at 12 C.F.R. § 574.4(c)(1).

The Berkshire Group has been subject to a rebuttal of control regarding American Express Company for several years, and OTS is not aware of any activities that have been inconsistent with that rebuttal. The Berkshire Group acquired the stock of the Holding Company in the spin-off transaction, rather than through any affirmative action on their part. The rebuttal agreement includes certain non-standard provisions that are designed to permit continuing transactions between the companies in the normal course of their respective businesses. These transactions primarily involve the provision of trust services and reinsurance and represent less than five percent of the revenues of or insurance premiums paid by the Savings Bank's affiliates. We have reviewed these non-standard provisions, and have concluded that they are not objectionable. Therefore, we have determined to accept the rebuttal of control.

Modification of Business Plan

OTS conditioned its approval of AEB-FSB's application to become a full service savings association on AEB-FSB's operating in accordance with the business plan it had submitted and obtaining OTS approval of any material change to that plan.⁹ The transfer of the trust business and the consumer banking business to the Savings Bank requires OTS approval of the requisite changes in AEB-FSB's business plan. Because the approval is required by a condition in a prior OTS order and not by a statute or regulation, OTS may exercise its discretion when deciding whether or not to approve AEB-FSB's request.

AEB-FSB submitted pro forma financial statements for its business plan showing the effect of the transfer of deposits and loans to the Savings Bank. AEB-FSB will remain a viable entity with a credit card focused operation and projected capital ratios over the course of the business plan that leave it well-capitalized. As discussed above, the proposed transaction meets the applicable approval standards under 12 C.F.R. § 563.22(d) as they relate to AEB-FSB. AEB-FSB will continue to meet QTL requirements. Because AEB-FSB has not submitted a revised business plan for its remaining operations, we are imposing condition number 12, below. With that condition

⁸ 12 C.F.R. § 574.4 (2005).

⁹ See OTS Order No. 2003-61, condition number 6 (Dec. 3, 2003).

imposed we have determined to exercise our discretion and approve the business plan modification.

Conclusion

For the reasons set forth above, OTS finds that the Applications satisfy the applicable approval standards, provided that the following conditions are complied with in a manner satisfactory to the West Regional Director, or his designee (Regional Director). Accordingly, the Applications are hereby approved, subject to the following conditions:

1. The Holding Company and the Savings Bank must receive all required approvals prior to consummation of the proposed transactions with copies of all such approvals provided to the Regional Director;
2. The proposed transactions must be consummated no later than 120 calendar days after the date of this Order;
3. On the business day prior to the date of consummation of the proposed transactions, the chief financial officers of the Holding Company, the Savings Bank and AEB-FSB 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 Holding Company, the Savings Bank and AEB-FSB, 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 Holding Company, the Savings Bank, AEB-FSB, 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 Director, and the Regional Director provides written non-objection to the consummation of the transactions;
4. The Holding Company and the Savings Bank must advise the Regional Director in writing within 5 calendar days after the effective date of the proposed transactions: (a) of the effective date of the proposed transactions; and (b) that the transactions were consummated in accordance with all applicable laws and regulations, the Applications and this Order;
5. For two years following the date it commences operation as a federal savings association, the Savings Bank must receive the prior written non-objection of the Regional Director for any proposed new directors or senior executive officers or any significant changes in responsibilities of any senior executive officer;
6. The Savings Bank must operate within the parameters of its three-year business plan. The Savings Bank must submit any proposed major deviations or material changes from the plan (including, but not limited to, plans to market or distribute

Savings Bank's products through affiliate distribution channels), for the prior, written non-objection of the Regional Director. The request for change must be submitted no later than 60 calendar days prior to the desired implementation date with a copy sent to the FDIC Regional Office;

7. For three years following the charter conversion, the Savings Bank must submit to the Regional Director within 30 calendar days after the end of each calendar quarter, a business plan variance report detailing the Savings Bank's compliance with the business plan and an explanation of any deviations;
8. At least 40 percent of the Savings Bank's board of directors must be individuals who are not officers or employees of the Holding Company or its affiliates and who have not otherwise been determined by the Regional Director to lack sufficient independence; and at least one member of the Savings Bank's board of directors must be an individual who is not an officer, director or employee of the Holding Company or its affiliates and who is not an officer or employee of the Savings Bank, and has not otherwise been determined by the Regional Director to lack sufficient independence. At least 50 percent of any audit and trust committee established by the Savings Bank must be directors who are not officers or employees of the Savings Bank, the Holding Company or its affiliates and have not otherwise been determined by the Regional Director to lack sufficient independence;
9. For the first eighteen months following consummation of the transaction, any contracts or agreements pertaining to transactions with affiliates, not yet submitted to the OTS for review, must be provided to the Regional Director, at least 30 calendar days prior to execution and must receive the Regional Director's written non-objection prior to implementation.
10. 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);
11. 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;
12. AEB-FSB must provide the Regional Director with a new business plan for review and non-objection by June 30, 2006; and

13. The Savings Bank must submit independent audit reports to the Regional Director for its first three years of operations. These reports must be in compliance with the audit rules set forth at 12 C.F.R. § 562.4.

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

By order of the Director of the Office of Thrift Supervision, or his designee, effective February 6, 2006.



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