

## OFFICE OF THRIFT SUPERVISION

### Approval of Holding Company Application and Capital Distribution Application

**Order No.:** 2007-17  
**Date:** April 13, 2007  
**Docket Nos.:** 08051, H-4381,  
and H-4382

FA Capital, LLC, Midlothian, Virginia (FAC), and Community Bank Investors of America, LP, Richmond, Virginia (CBIA), (collectively, the 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 initially acquire voting control, as described in the application, of all the common stock of Bay Financial Savings Bank, F.S.B., Tampa, Florida (Savings Bank), and also acquire with their control persons approximately 40 percent of the Savings Bank's outstanding common stock. In addition, the Savings Bank requests OTS approval, pursuant to 12 C.F.R. § 563.143(a)(2), to make a capital distribution to the current owner of the Savings Bank's stock. (Collectively, the foregoing are referred to herein as the Applications.)

#### **Background**

FAC is a Delaware limited liability company. It has one class of limited liability company interests. Laurence Fentriss and Timothy Anonick are the managing members of FAC and each owns a 50 percent interest in FAC. FAC is the sole general partner and manager of CBIA and controls CBIA.

CBIA, a Delaware limited partnership organized in June 2006, is a private equity fund headquartered in Richmond, Virginia. As a result of a private placement of CBIA's limited partnership interests in 2006, CBIA issued limited partnership interests to approximately seventy investors. FAC, Laurence Fentriss, Timothy Anonick, and Jeffrey Anonick currently control CBIA. The Applicants' counsel represents that, upon consummation of the proposed transaction, none of the other investors in CBIA will own more than 9.9 percent of the limited partnership interests of CBIA or will have contributed more than 9.9 percent of the total GAAP equity capital of CBIA.

The Savings Bank is a Federal Deposit Insurance Corporation (FDIC)-insured, federally chartered stock savings bank. Its one office is in Tampa, Florida. As of December 31, 2006, the Savings Bank was "well capitalized" pursuant to the OTS Prompt Corrective Action (PCA) regulation. One person (Seller) currently owns all of the Savings Bank's outstanding shares of common stock.

### **The Proposed Transaction**

Under the purchase agreement between CBIA and the Seller, CBIA will purchase from the Seller 345,795 shares of the Savings Bank's common stock and assign the rights to acquire the remaining currently outstanding shares to other purchasers.<sup>1</sup> In addition, 203,226 shares of the Savings Bank's authorized and unissued common stock will be acquired by purchasers other than CBIA. Using limited proxies obtained from the other purchasers, the Applicants will make changes to the Savings Bank's board of directors. After the closing of the proposed transaction, the Applicants and their control persons will own approximately 40 percent of the Savings Bank's outstanding common stock.<sup>2</sup>

### **Holding Company Application**

Section 10(e)(1)(B) of the Home Owners' Loan Act provides that OTS must approve a holding company application proposing the acquisition of 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 the insurance risk to the FDIC deposit insurance fund.<sup>3</sup> Consideration of the managerial resources of a company or savings association must include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or savings association.<sup>4</sup> Also, OTS must consider the impact of any acquisition on competition.<sup>5</sup> Further, 12 C.F.R. § 563e.29 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, except as described below, completed its review of the background of the Applicants and the proposed new directors of the Savings Bank, and has found no material adverse information. The managing members of FAC have substantial banking and investment banking experience. The Savings Bank's proposed board of directors will include persons with considerable business experience, including experience in banking. Because the background investigation has not yet been completed for one of the Applicants' control persons, OTS is imposing condition number 5.

Based on its review, OTS concludes that the managerial resources of the Applicants and the Savings Bank are consistent with approval, subject to the imposition of the condition, which is intended to ensure that the Applicants' and the Savings Bank's managerial resources are consistent with approval.

---

<sup>1</sup> Prior to the purchase, the Savings Bank will declare a special dividend.

<sup>2</sup> Counsel for the Applicants represents that, upon consummation of the proposed transaction, none of the investors other than the Applicants will own more than 9.9 percent of the Savings Bank's outstanding common stock or will have contributed more than 9.9 percent of the total GAAP equity capital of the Savings Bank.

<sup>3</sup> 12 U.S.C. § 1467a(e)(1)(B).

<sup>4</sup> *Id.*

<sup>5</sup> 12 U.S.C. § 1467a(e)(2).

With regard to financial resources, OTS has reviewed the Applicants' financial position and the Savings Bank's proposed capitalization and business plan. The Applicants have demonstrated adequate financial resources. OTS concludes that the Savings Bank's business plan is consistent with approval. The application projects that the Savings Bank will meet all of its capital requirements and will be "well capitalized" under the PCA regulation throughout the first three years of operation. Based on the foregoing, OTS concludes that the financial resources of the Applicants 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, their proposed capitalization, and the Savings Bank's proposed capital distribution, stock issuance, and business plan. In addition, OTS has considered the proposed transaction and whether it is detrimental to the Savings Bank or the insurance risk to the FDIC's deposit insurance fund.

In order to help ensure that the Savings Bank has adequate management and thereby enhance the future prospects of the Savings Bank, OTS is imposing condition number 6.

Based on the factors considered in the above, OTS concludes that the future prospects of the Applicants and the Savings Bank are consistent with approval, and will not pose undue risk to the FDIC's deposit insurance fund, subject to the imposition of the above recommended conditions.

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. Accordingly, OTS concludes that there is not any basis for objection to the holding company application based on CRA grounds.

### **Capital Distribution Notice**

The Savings Bank proposes to make a special dividend to the Seller, immediately prior to the Applicants' purchase of the Seller's shares. This proposed special dividend will include both cash and other assets. The proposed special dividend is a capital distribution that requires OTS approval, pursuant to 12 C.F.R. § 563.143(a)(2).

OTS's 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.<sup>6</sup> OTS has reviewed the proposed capital distribution and has determined

---

<sup>6</sup> 12 C.F.R. § 563.146 (2006).

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 approvals prior to the closing of the proposed transaction with copies of all such approvals provided to the Regional Director;
2. The closing of the proposed transaction must be consummated within 120 calendar days after 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 application is brought to the attention of the Applicants, the Savings Bank, or OTS, since the date of the financial statements and information submitted with the Applications, the closing 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 closing;
4. The Applicants and the Savings Bank must, within five 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; and (b) advise the Regional Director in writing that the proposed transaction was consummated in accordance with all applicable laws and regulations, the Applications, all representations made by the Applicants and their counsel in connection with OTS review of the proposed transaction, and this Order;
5. The Applicants and the Savings Bank must submit all information requested by the Regional Director for the completion of the remaining individual’s background investigation, and the Applicants and the Savings Bank must have that individual divest all ownership interests in the Applicants and the Savings Bank within 60

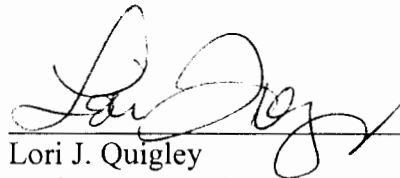
calendar days after the Regional Director's objection to such person's continued control, if the background investigation reveals material adverse information concerning such person; and

6. For 18 months following consummation of the proposed transaction, the Savings Bank must submit any proposed new directors or senior executive officers of the Savings Bank, or any significant change in responsibilities of any senior executive officer of the Savings Bank, to the Regional Director and receive his prior written non-objection for such person before that person becomes a member of the board of directors or a senior executive officer, and before there is a significant change in the responsibilities of a senior executive officer.

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

4/13/07



Lori J. Quigley  
Assistant Managing Director  
Examinations and Supervision -  
Operations