

## OFFICE OF THRIFT SUPERVISION

### Approval of Service Corporation Applications

**Order No. 2007-53**

**Date: November 7, 2007**

**Re: Docket No. 16782**

ING Bank, fsb, Wilmington, Delaware, a federal savings bank (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 three wholly owned service corporations (collectively, Service Corporations): (i) ShareBuilder Corporation (SBC), a second-tier service corporation that will hold the stock of the other Service Corporations; (ii) ShareBuilder Securities Corporation (Securities), a third-tier service corporation that will engage in securities brokerage and activities incident thereto, and also engage in margin lending and options trading; and (iii) ShareBuilder Advisors, LLC (Advisor), a third-tier service corporation that will offer 401(k) plans to employers.

The OTS Subordinate Organization Regulations set forth certain requirements for service corporations of federal savings associations. Service corporations generally may engage in activities that are reasonably related to the activities of financial institutions.<sup>1</sup> The Subordinate Organization Regulations, however, set forth certain activities that are preapproved for service corporations.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

Securities' primary activity, securities brokerage, is preapproved for service corporations.<sup>5</sup> As described more fully in the applications, Securities' customers are able to purchase any amount of a stock or exchange-traded mutual fund (ETF), including fractional interests. In connection with this brokerage service, Securities may hold shares of stock or ETFs as a result of the acquisition of fractional shares or the remainder of a round lot of securities that it has acquired for customers, or the acquisition of fractional

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<sup>1</sup> 12 C.F.R. § 559.3(e)(2)(2007).

<sup>2</sup> 12 C.F.R. § 559.4(2007)

<sup>3</sup> 12 C.F.R. § 559.5 (2007).

<sup>4</sup> 12 C.F.R. § 559.1(a)(2007). In addition, first-tier service corporations must be organized in the state in which the parent savings association's home office is located, and must be owned solely by savings associations with home offices in such state. See, 12 U.S.C. § 1464(c)(4)(B) and 12 C.F.R. §§ 559.3(b)(2) and 559.3(d)(2). These requirements do not apply to lower-tier entities, such as the Service Corporations. See, 12 C.F.R. § 559.3(f)(2).

<sup>5</sup> 12 C.F.R. §§ 559.4(f) and 559.4(i) (2007).

shares in connection with a customer's sale of securities. Securities also may acquire stock index options, solely to hedge the risk of holding stock or ETFs in connection with its brokerage business. Securities has procedures in place to ensure that the amount of stock or ETFs that it holds are acquired solely in connection with brokerage activities, and that stock held is subject to significant limitations. Based on the facts set forth in the applications, OTS concludes that Securities' holdings of stock or ETFs as principal, and the acquisition of stock index options to reduce the risks of its shareholdings, are incidental to Securities' securities brokerage activities, and are therefore preapproved under 12 C.F.R. § 559.4(j). Securities' margin lending activities are permissible for federal savings associations, and are therefore preapproved for service corporations under 12 C.F.R. § 559.4(a). Securities' options trading activities are not conducted on an "as principal" basis, and are therefore preapproved for service corporations under 12 C.F.R. § 559.4(i).

The Advisor offers 401(k) plans online. Employers are able to choose from an array of possible 401(k) plans, which differ based on the ETFs in which the 401(k) plan may invest. The Advisor's activities are preapproved for service corporations under 12 C.F.R. § 559.4(b).

SBC does not do business directly with the public, but holds stock of Securities and the Advisor, which engage in preapproved activities. Accordingly, SBC's activities are permissible under 12 C.F.R. § 559.4.

The Savings Bank's total investment in service corporations will be well within the statutory and regulatory limits. Based on the applications, OTS concludes that the establishment of, and investment in, the Service Corporations is not objectionable on safety and soundness or supervisory grounds, provided that the Savings Bank satisfies the conditions set forth below, which are intended to ensure that the proposed activities do not raise supervisory concerns.

For the reasons set forth above, OTS has determined that the applications satisfy all applicable approval standards and criteria, provided that the following conditions are complied with in a manner satisfactory to the Northeast Regional Director, or his designee (Regional Director). Accordingly, the applications are hereby approved, subject to the following conditions:

1. The proposed transaction must be consummated 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; and

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 applications.

By order of the Director of the Office of Thrift Supervision, or his designee,  
effective November 7, 2007.



Lori J. Quigley  
Managing Director  
Examinations and Supervision -Operations