

OFFICE OF THRIFT SUPERVISION

Acceptance of Rebuttal of Control and Approval of Application Requesting an Exemption Under the Management Official Interlocks Regulations

Order No.: 2011-42
Date: July 14, 2011
Docket No.: H-3509

Hilltop Holdings Inc. and the related parties listed in Attachment A (collectively, the Acquirors) request that the Office of Thrift Supervision (OTS) accept their Rebuttal of Control, filed pursuant to 12 C.F.R. § 574.4(e), which asserts that the Acquirors will not control, directly or indirectly, SWS Group, Inc., Dallas, Texas (SWS), a savings and loan holding company, and its wholly owned subsidiary, Southwest Securities, FSB, Dallas, Texas (Savings Bank), as a result of the Acquirors acquiring up to 24.9 percent of SWS's common stock, for investment purposes only. The Savings Bank is a Deposit Insurance Fund (DIF)-insured, federally chartered stock savings.

In addition, SWS has filed an application requesting an exemption under the OTS Management Official Interlocks Regulations (Interlocks Regulations) for the service of Gerald J. Ford (Individual), as a member of the board of directors of SWS, and as a director of Pacific Capital Bancorp, Santa Barbara, California (BHC) and Santa Barbara Bank & Trust, National Association, Santa Barbara, California (Bank) (Application).

The Proposed Transaction

SWS, as part of its recapitalization efforts, has entered into a funding arrangement with the Acquirors. As part of the funding arrangement, the Acquirors will extend a senior unsecured loan to SWS, and receive warrants to purchase 8,695,652 shares of SWS common stock at an exercise price of \$5.75, subject to certain adjustments. The Acquirors may fund the exercise of some or all of their warrants by reducing the aggregate principal amount of the Acquirors' loan to SWS. Because the warrants will be immediately exercisable without the payment of additional consideration, the warrants constitute common stock of SWS for purposes of OTS's Acquisition of Control Regulations (Control Regulations).¹

Rebuttal of Control

The Control Regulations state that an acquiror is deemed, subject to rebuttal, to have acquired control of a savings association if the acquiror, directly or indirectly, or through one or more subsidiaries or transactions or acting in concert with one or more persons or companies, acquires more than 10 percent of any class of voting stock of a

¹ See 12 C.F.R. § 574.2(u)(3) (2011).

savings association and is subject to any control factor, as described in 12 C.F.R. § 574.4(c).²

As a result of their acquisition of the warrants, the Acquirors will acquire more than 10 percent of SWS's common stock, and will be one of SWS's two largest shareholders. Section 574.4(c)(1) provides that the two largest shareholders of any class of voting stock of a savings association are subject to a control factor. Accordingly, the Acquirors have filed the Rebuttal of Control.

Parties attempting to rebut control are required to file a submission setting forth facts and circumstances supporting their contention that no control relationship would exist after the proposed acquisition. In addition, such parties must file a rebuttal of control agreement.

OTS may reject any control rebuttal that is inconsistent with the facts and circumstances known to it, or which does not clearly and convincingly rebut the presumption of control. If OTS concludes that it would be injudicious to rely on an acquiror's representations, based on past activities of the acquiror, or other concerns, OTS may conclude that the acquiror has not clearly and convincingly rebutted a determination of control. In addition, an acquiror that is in conclusive control of a savings association may not rebut control.

An acquiror is in conclusive control of a savings association if, among other things, it has more than 25 percent of any class of the entity's voting stock, or it has contributed more than 25 percent of a holding company's capital.³ The rebuttal filing demonstrates that the Acquirors will not acquire more than 25 percent of a class of SWS's voting stock, and will not contribute more than 25 percent of SWS's capital in connection with the proposed transaction.

The Acquirors have filed a written submission setting forth facts and circumstances in support of their contention that no control relationship will exist between the Acquirors, SWS and the Savings Bank. The Acquirors represent that they will acquire SWS's securities for investment purposes only, and not for the purpose, or with the effect, of controlling, directly or indirectly, the management, policies, or business operations of SWS and the Savings Bank.

The Acquirors have submitted a rebuttal of control agreement that materially conforms to the standard rebuttal agreement, set forth at 12 C.F.R. § 574.100, and have committed to require their proposed non-voting board observer to enter into a confidentiality agreement with SWS, as represented in the Rebuttal of Control.

² 12 C.F.R. §§ 574.4(b)(1)(i) and 574.4(c) (2011). The Control Regulations define the term "savings association" to include a savings and loan holding company. See 12 C.F.R. § 574.2(p) (2011).

³ See 12 C.F.R. § 574.4(a) (2011). The section lists additional conclusive control criteria, but it is clear that none of those criteria are applicable in this case.

On the basis of the facts presented, OTS concludes that the Rebuttal of Control meets the applicable standards for acceptance.

The Management Interlock

The Individual has served as a director of the BHC for years. Upon closing of this transaction, SWS proposes to appoint the Individual to serve as a director of SWS. The Depository Institution Management Interlocks Act (Act) and section 563f.3(c) of the Interlocks Regulations generally prohibit a management official of a depository organization (or any affiliate of such organization) with total assets exceeding \$2.5 billion from serving at the same time as a management official of an unaffiliated depository organization with total assets exceeding \$1.5 billion (or any affiliate of such organization) if the depository organization in question (or a depository institution affiliate thereof), regardless of the location of the two depository organizations.⁴ Both SWS and the BHC have total assets exceeding the above noted thresholds, with total assets of \$4.42 billion and \$5.94 billion, respectively.

The Interlocks Regulations, at 12 C.F.R. § 563f.6(a), provide an exemption from the interlocks prohibitions for the dual service of a director of depository organizations which would otherwise be prohibited under the Act and the Interlocks Regulations. OTS may by agency order exempt an interlock from the prohibition of § 563f.3 if OTS finds that the interlock would not result in a monopoly or substantial lessening of competition in financial services in any part of the United States, and would not present safety and soundness concerns.

In analyzing the competitive effects of the proposed interlock, OTS considers the entities' geographic locations and deposit market areas to determine whether the firms are substantial competitors. The respective banking operations of the Savings Bank and the Bank do not overlap in any local banking market. All of the Bank's branches are in California; all of the Savings Bank's branches are in Texas and New Mexico. A hypothetical merger of SWS and BHC would result in the Herfindahl-Hirschman Index increase of less than 1 point in the national market. Accordingly, even if the market shares of deposits of the Savings Bank and the Bank were aggregated as a result of the interlock, there would be no significant increase in the Savings Bank's and the Bank's market share.

Based on the foregoing, OTS concludes that the proposed interlock will not cause a substantial lessening of competition or a monopoly in any part of the United States.

In connection with OTS's review of the Individual's proposed service, OTS has concluded that the proposed service would not present safety and soundness concerns. The Individual has extensive banking experience and has a successful record.

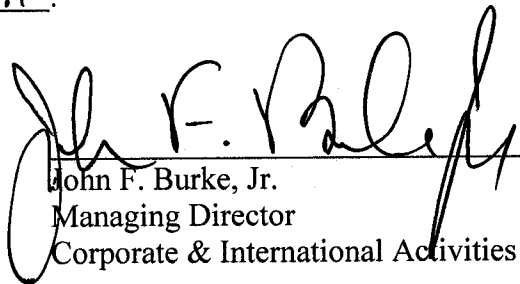
⁴ See 12 U.S.C. § 3202 and 12 C.F.R. § 563f.3(c) (2011).

Based on the foregoing, OTS concludes that the proposed interlock will not present safety and soundness concerns.

Conclusion

Based on the foregoing analysis, OTS concludes that the Rebuttal of Control and the Application meet the applicable approval criteria. Accordingly, the Rebuttal of Control is hereby accepted, and the Application is hereby approved.

By order of the Acting Director of the Office of Thrift Supervision, or his designee⁵, effective JULY 14, 2011.



John F. Burke, Jr.
Managing Director
Corporate & International Activities

⁵ Following the Transfer Date, *see* Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. No. 111-203, § 311, 124 Stat. 1520-21 (2010), all submissions, requests, communications, consents or other documents relating to this Order shall be directed to the Comptroller of the Currency, or to the Federal Reserve System (Board of Governors), as appropriate, or to the individual, division, or office designated by the Comptroller of the Currency or the Board of Governors.

ATTACHMENT A

ACQUIRORS:

Hilltop Holdings, Inc.
Diamond A Financial, L.P.
2009 Hunter's Glen/Ford Trust
2009 Ford Daughter's Trust
Gerald J. Ford
Jeremy B. Ford
Jordan C. Ford
Amy F. Prestidge
Maegan L. Ford
Carl B. Webb, Trustee of 2009 Hunter's Glen/Ford Trust and 2009 Ford Daughter's Trust