

OFFICE OF THRIFT SUPERVISION

Acceptance of Control Rebuttal and Approval of an Application to Acquire and Retain a Non-Controlling Interest in a Savings Association

Order No.: 2010-59
Date: September 29, 2010
OTS Nos.: 16115, H-4371, H-4642, H-4740, H-4741

Hovde Private Equity Advisors, LLC, Hovde Acquisition I, LLC, and Financial Services Partners Fund I LLC (collectively, the Applicants), all of Washington, DC, and the related parties listed in Attachment 1 (collectively, the Hovde Group) 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 Hovde Group will not control, directly or indirectly, FirstAtlantic Financial Holdings, Inc., Jacksonville, Florida (Holdings), or its savings association subsidiary, FirstAtlantic Bank, Jacksonville, Florida (Bank), as a result of the Hovde Group acquiring up to 24.99 percent of Holdings' common stock. The Bank is a Federal Deposit Insurance Corporation-insured, federal stock savings bank. The Applicants are savings and loan holding companies based on their control of Bay Bank FSB, Lutherville, Maryland (Bay Bank).¹

In addition, the Applicants have filed an application seeking OTS approval to acquire and retain up to 24.99 percent of Holdings' outstanding common stock under section 10(e)(1)(A)(iii) of the Home Owners' Loan Act (HOLA) and 12 C.F.R. § 584.4 (Application).

The Proposed Transaction

The Hovde Group seeks to acquire, on a passive basis, up to 24.99 percent of Holdings' common stock, which would result in the Hovde Group becoming one of the two largest shareholders of Holdings, and subject to a control factor, as described in 12 C.F.R. § 574.4(c).² The Hovde Group seeks to rebut the presumption that it will acquire control of Holdings and the Bank.

Rebuttal of Control

OTS's Acquisition of Control Regulations³ 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 savings association or

¹ OTS approved the Applicants' organization and acquisition of Bay Bank in July 2010. See, OTS Order No. 2010-40 (July 9, 2010).

² 12 C.F.R. §§ 574.4(b)(1)(i) and 574.4(c) (2010).

³ 12 C.F.R. Part 574 (2010).

a savings and loan holding company and is subject to any control factor, as described in 12 C.F.R. § 574.4(c).⁴

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 and loan holding company if, among other things, it acquires more than 25 percent of any class of the entity's voting stock, or it has contributed more than 25 percent of the entity's capital.⁵ The rebuttal filing demonstrates that the Hovde Group will not acquire more than 25 percent of a class of Holdings' voting stock, and will not contribute more than 25 percent of Holdings' capital in connection with the proposed transaction.

The Hovde Group has filed a written submission setting forth facts and circumstances in support of its contention that no control relationship will exist between the Hovde Group and either Holdings or the Bank. The Hovde Group represents that it will acquire Holdings' 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 Holdings or the Bank.

The Hovde Group has submitted a rebuttal of control agreement that conforms to the standard rebuttal agreement, set forth at 12 C.F.R. § 574.100.

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

Application Under 12 C.F.R. § 584.4

The Applicants' acquisition and retention of up to 24.99 percent of Holdings' outstanding common stock requires OTS approval pursuant to section 10(e)(1)(A)(iii) of the HOLA, and 12 C.F.R. § 584.4. In considering applications under this section, OTS considers the managerial and financial resources and future prospects of the acquiring savings and loan holding company and any subsidiary savings association, and those of the savings association whose stock is to be acquired, as well as the risks to the Deposit Insurance Fund (DIF), and the convenience and

⁴ 12 C.F.R. §§ 574.4(b)(1)(i) and 574.4(c) (2010).

⁵ See 12 C.F.R. § 574.4(a) (2010). The section lists additional conclusive control criteria, but it is clear that those criteria do not apply in this case.

needs of the community. OTS also must consider the impact of the acquisition on competition. OTS also considers the application under the Community Reinvestment Act (CRA) and OTS's regulations thereunder.⁶

With respect to managerial resources, upon consummation of the transaction, the board of directors and the executive officers of the Applicants and the Bank will consist of the present directors and executive officers of the Applicants and the Bank, respectively. OTS is familiar with the managerial resources of the Applicants and the Bank. OTS also is familiar with Holdings' managerial resources. But for the appointment of a single director to Holdings' board by the Applicants, the management of Holdings will not change as a result of the proposed transaction. Under the circumstances described, the Applicants' investment in Holdings is unlikely to have any effect on the managerial resources of Bay Bank or its savings and loan holding company, Jefferson Bancorp, Inc. (Jefferson). Accordingly, OTS concludes that the managerial resources of the Applicants, Holdings, Jefferson, Bay Bank and the Bank are consistent with approval.

With respect to financial resources and future prospects, OTS is familiar with the financial resources and future prospects of the Applicants, Jefferson, Bay Bank, Holdings and the Bank. The Bank and Bay Bank are both "well capitalized" pursuant to the OTS Prompt Corrective Action regulation⁷. The Applicants propose to acquire newly issued shares of Holdings' common stock, which will have a positive impact on Holdings' capital. In addition, the Applicants are parties to the rebuttal of control agreement, which provides that the Applicants' investment in Holdings will be passive. Also, the proposed transaction will not involve the Applicants' holdings of Jefferson's stock. Accordingly, the Applicants' investment in Holdings is unlikely to have any adverse effect on the financial resources and future prospects of Holdings, Jefferson, Bay Bank or the Bank. Accordingly, OTS concludes that the effects of the proposed investment on the financial resources and future prospects of the Applicants, Jefferson, Bay Bank, Holdings and the Bank are consistent with approval, and that the proposed transaction will not increase the insurance risk of the DIF.

As for the competitive impact of the transaction, the Bank operates its branches in the Jacksonville area of Florida. Bay Bank is located in Lutherville, Maryland. The two savings banks operate in distinctly different geographic locations and do not compete for business. Accordingly, OTS concludes that the proposed transaction will have no adverse effect on competition in any thrift or banking market and that anti-competitive considerations are consistent with approval.

With respect to convenience and needs, the Bank will maintain its present operations. In addition, the Applicants' proposed acquisition and retention of up to 24.99 percent of Holdings' shares will not affect the operations of either Bay Bank or the Bank. Accordingly, OTS concludes that approval of the transaction is not objectionable based on convenience and needs considerations.

⁶ See, 12 C.F.R. § 563e.29(a) (2010).

⁷ 12 C.F.R. Part 565 (2010).

With respect to the CRA, the Bank's most recent CRA rating is "Satisfactory." Further, the Application reveals that no changes are planned for the Bank's CRA statement. The Applicants recently organized and acquired Bay Bank, and submitted an acceptable CRA plan in connection with the acquisition. No comments objecting to the Application have been filed. Accordingly, OTS concludes that approval of the transaction is consistent with the CRA.

Conclusion

Based on the foregoing analysis, OTS concludes that the Rebuttal of Control by the Hovde Group and the Application by the Applicants meet the applicable approval criteria. Accordingly, the Rebuttal of Control is hereby accepted, and the Application is hereby approved, provided that the following conditions are complied with in a manner satisfactory to the Southeast Regional Director, or his designee (Regional Director):

1. The Applicants and Holdings must receive all required regulatory and stockholder approvals for the proposed transaction and submit copies of all such approvals to the Regional Director prior to the consummation of the proposed transaction;
2. The proposed transaction must be consummated no later than 120 calendar days from 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, Jefferson, Bay Bank, Holdings and the Bank 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 operations of their respective entities, as disclosed in the Application. If additional information having a material adverse bearing on any feature of the Application is brought to the attention of the Applicants, Holdings or the Bank, or OTS since the date of the financial statements of a similar date as the Application, the transaction 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 transaction; and
4. The Applicants, Holdings and the Bank must advise the Regional Director in writing within five calendar days after the effective date of the proposed transaction: (a) of the effective date of the transaction; and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the Application and this Order.

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

By order of the Acting Director of the Office of Thrift Supervision, or his designee,
effective September 29, 2010.



Grovetta N. Gardineer
Managing Director
Corporate & International Activities

ATTACHMENT 1

Hovde Group:

Eric Hovde
Steven Hovde
Richard Perry
Joseph Thomas
Irving Beimler
Jeffrey Kashdin