

OFFICE OF THRIFT SUPERVISION

Approval of Rebuttal of Control

Order No.: 2008-08
Date: April 7, 2008
Docket No.: H-2352

TPG Partners VI, L.P., Olympic Investment Partners, L.P., and the related entities listed in Attachment 1 (collectively, the TPG Group), have filed a Rebuttal of Control, pursuant to 12 C.F.R. § 574.4(e) regarding Washington Mutual, Inc., Seattle, Washington (Holding Company) and Washington Mutual Bank, Hendersonville, Nevada (Savings Association).

The Proposed Transaction

The TPG Group has filed a Rebuttal of Control with respect to the acquisition of up to 25 percent of the Holding Company's common stock (Common Stock). The TPG Group initially would acquire preferred stock (Preferred Stock) of the Holding Company, as well as Common Stock representing less than 0.1 percent of the outstanding Common Stock. In addition, the TPG Group would acquire certain warrants to acquire shares of Common Stock. The Preferred Stock would be mandatorily convertible into Common Stock upon the occurrence of certain events, which are expected to occur within less than three months after the initial acquisition. As a result of the proposed acquisition, the TPG Group would become the largest shareholder of the Common Stock.

The Rebuttal of Control asserts that the TPG Group will not directly or indirectly acquire control of the Holding Company, as a result of the TPG Group acquiring securities solely for investment purposes. In support of the Rebuttal of Control, the TPG Group has submitted a Rebuttal of Control Agreement.

Rebuttal of Control Submission

The OTS Acquisition of Control Regulations state that an acquiror is deemed, subject to rebuttal, to have acquired control of a savings association¹ 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 and is subject to any control factor, as described in 12 C.F.R. § 574.4(c).²

¹ The definition of "savings association" includes savings and loan holding companies. See 12 C.F.R. § 574.2(p) (2007).

² 12 C.F.R. § 574.4(b)(1)(i) and 574.4(c) (2007).

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 application demonstrates that the TPG Group will not acquire more than 25 percent of a class of the Holding Company's voting stock, and will not have contributed more than 25 percent of the Holding Company's capital in connection with the proposed transaction.


The TPG Group has filed a written submission setting forth facts and circumstances in support of its contention that no control relationship will exist between the TPG Group and the Holding Company or the Savings Association. The TPG Group represents that it will acquire Holding Company 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 the Holding Company. The TPG Group would not acquire more than 25 percent of any class of the Holding Company's voting securities.

The TPG Group has submitted a rebuttal of control agreement that conforms to the standard rebuttal agreement, set forth at 12 C.F.R. § 574.100. However, the terms of the transaction provide that the TPG Group may have, in addition to one representative on the Holding Company's board of directors, an observer attend the Holding Company's board meetings. The observer would neither speak nor vote at such meetings. OTS has reviewed the relevant facts and has concluded that the presence of an observer at the board meetings does not provide the TPG Group with the ability to influence or control the Holding Company, and therefore, does not contravene the purposes of a rebuttal of control.

³ See 12 C.F.R. § 574.4(a) (2007). The section lists additional conclusive control criteria, but it is clear that none of those criteria are applicable in this case.

Based on the foregoing analysis, OTS concludes that the Rebuttal of Control meets the applicable approval standards, and the Rebuttal of Control is hereby accepted.

By order of the Director of the Office of Thrift Supervision, or his designee,
effective April 7, 2008.



Lori J. Quigley
Managing Director
Examination and Supervision - Operations

Attachment 1

Rebutting Parties

David Bonderman
James Coulter
TPG Olympic Advisors, Inc.
TPG Olympic GenPar, L.P.
TPG Advisors V, Inc.
TPG GenPar V, L.P.
TPG Partners V, L.P.
TPG FOF V-A, L.P.
TPG FOF V-B, L.P.
TPG Advisors VI, Inc.
TPG GenPar VI, L.P.
TPG Partners VI, L.P.
TPG Olympic AIV, L.P.
TPG Capital, L.P.
Tarrant Capital, LLC
Tarrant Capital Advisors, Inc.
Bondco, Inc.
Coulco, Inc.
Olympic Investment Partners, L.P.
TPG-Axon Capital Management L.P.
TPG-Axon Partners, L.P.
TPG-Axon Partners (Offshore), Ltd.
TPG-Axon Partners GP, L.P.
TPG-Axon GP, LLC
Dinakar Singh LLC
Dinakar Singh