

OFFICE OF THRIFT SUPERVISION

Approval of Rebuttal of Control

Order No.: 2008-02
Date: January 18, 2008
Docket No.: H-4361

Legg Mason Capital Management, Inc. and LMM, LLC, Baltimore, Maryland (Acquirors) have filed a Rebuttal of Control, pursuant to 12 C.F.R. § 574.4(e), regarding Countrywide Financial Corporation, Calabasas, California (Holding Company), and its subsidiary savings association, Countrywide Bank, FSB, Alexandria, Virginia (Association).

Background

On September 26, 2003, the Office of Thrift Supervision (OTS) approved a Rebuttal of Control and related Rebuttals of Concerted Action filed on behalf of Legg Mason, Inc., Baltimore, Maryland (Parent) and certain of its investment advisory subsidiaries (Rebutting Subsidiaries) permitting the Parent and the Rebutting Subsidiaries, in the aggregate, to acquire, on a passive basis, more than 10 percent, but less than 25 percent, of any savings and loan holding company's or savings association's (Savings Association) voting stock, subject to certain conditions.¹ One of the conditions requires that "[p]rior to acquiring more than ten percent of any class of voting stock of a Saving Association, any individual Rebutting Subsidiary, or in the case of a Subgroup, the Subgroup, must submit and receive OTS approval of the relevant filing under OTS Acquisition of Control Regulations."²

The Acquirors are a Subgroup as defined in the OTS Order, and they seek to acquire more than 10 percent of the Holding Company's voting stock, which would result in the Acquirors, as a group, becoming one of the two largest shareholders of the Holding Company. The Rebuttal of Control asserts that the Acquirors will not directly or indirectly acquire control of the Holding Company, as a result of the Acquirors acquiring securities solely for investment purposes. In support of the Rebuttal of Control, the Acquirors have submitted a Rebuttal of Control Agreement.

Regulatory Framework

OTS's Acquisition of Control Regulations state that an acquiror is deemed, subject to rebuttal, to have acquired control of a savings association³ if the acquiror, directly or indirectly, or through one or more subsidiaries or transactions or acting in

¹ See OTS Order No. 2003-49 (September 26, 2003) (OTS Order).

² See OTS Order at page 4.

³ The definition of "savings association" includes savings and loan holding companies. See 12 C.F.R. § 574.2(p) (2007).

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).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.

The Rebuttal Filing

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 and the Holding Company. The Acquirors represent that they will acquire the Holding Company shares for investment purposes only, and not for the purpose, or with the effect, of changing or influencing control of the Holding Company, the Holding Company's board of directors, management or policies. The Acquirors would not, when aggregated with the holdings of the Parent and the Rebutting Subsidiaries, acquire more than 25 percent of any class of the Holding Company's voting securities.

The Acquirors have submitted a rebuttal of control agreement that includes several material differences from the standard rebuttal agreement set forth at 12 C.F.R. § 574.100. First, the rebuttal agreement incorporates by reference the terms of the OTS Order, including the rebuttal agreement entered into by the Parent. Second, the rebuttal agreement provides that the Acquirors will not seek or accept any representation on the board of directors of the Holding Company (as opposed to one representative permitted under the standard rebuttal agreement). Third, the rebuttal agreement specifically provides that the Acquirors have agreed not to take any action causing the Holding Company or its subsidiaries to become subsidiaries of the Acquirors or dispose or threaten to dispose of shares, of the Holding Company in any manner as a condition of specific action or non-action by the Holding Company.

OTS has no objection to these modifications, which ensure that the Acquiror's rebuttal agreement is consistent with the terms of the OTS Order.⁵ Further, the latter two

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

modifications help ensure that the Acquirors will not control the Holding Company or the Association.

In addition to the above-described modifications, the rebuttal agreement has been revised to allow the Acquirors to engage in arms' length transactions in the ordinary course of business, at market terms and rates: (i) in which the Holding Company or its affiliates provide banking or other financial services or (ii) in which the Acquirors provide investment advisory services to the Holding Company or its affiliates with regard to their employee or director benefit or retirement plans.

The standard rebuttal agreement does not permit transactions between an acquiror (and its affiliates) and a savings association for which the acquiror proposes to rebut control (or the savings association's affiliates). However, with respect to the Holding Company or its affiliates providing banking or other financial services, OTS does not believe that the type of transactions proposed, which enable the Acquirors to obtain customary banking and financial services without regard to their holdings, would enable the Acquirors to influence or control the Holding Company or its affiliates.

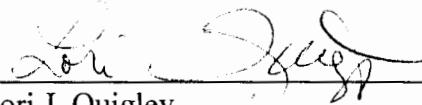
With respect to the Acquirors providing investment advisory services to the Holding Company or its affiliates, the Acquirors are in the business of advising retirement plans. This revision is inconsistent with the standard rebuttal agreement, but OTS believes that the type of transactions proposed would not enable the Acquirors to influence or control the Holding Company. Under any such arrangement, the Acquirors would be subject to fiduciary obligations in the provision of such services. Moreover, any such transaction would be a source of revenue for the Acquirors, rather than for the Holding Company. In addition, there are numerous other parties who would be capable of providing the same services. The existence of active competition among numerous other parties capable of providing the same services suggests that the provision of such services would not enable the Acquirors to influence or control the Holding Company. Finally, the Acquirors have represented that any such services would be provided at market rates and on market terms. Accordingly, OTS concludes that the revisions regarding the transactions described above are not inconsistent with the purpose of the standard rebuttal of control agreement.

⁵ See OTS Order.

Conclusion

Based on the foregoing analysis, the Rebuttal of Control is hereby accepted.

By order of the Director of the Office of Thrift Supervision, or his designee,
effective JANUARY 18, 2008



Lori J. Quigley
Managing Director
Examinations and Supervision - Operations