

OFFICE OF THRIFT SUPERVISION

Approval of Rebuttals of Control and Concerted Action

Order No.: 2008-35
Date: September 24, 2008
Docket Nos.: H-2868, 14460

Temasek Holdings (Private) Limited (Acquiror) and related entities (Temasek Group), Singapore, (listed in Attachment I) have filed a Rebuttal of Control, pursuant to 12 C.F.R. § 574.4(e) regarding Merrill Lynch & Co., Inc., New York, New York (Holding Company), and Merrill Lynch Bank & Trust Co., FSB, New York, New York (Savings Bank). In addition, Ms. Belinda Chan, a management official of the Acquiror, has filed a rebuttal of concerted action, pursuant to 12 C.F.R. 574.4(e), to rebut the presumption that she is acting in concert with the Acquiror.

The Proposed Transaction

The Temasek Group seeks to acquire up to 25 percent of the Holding Company's common stock, which would result in the Temasek Group becoming subject to a rebuttable presumption of control pursuant to 12 C.F.R. § 574.4(b)(1)(i). The Rebuttal of Control asserts that the Temasek Group will not directly or indirectly acquire control of the Holding Company as a result of the Temasek Group acquiring securities and that it is acquiring the securities solely for investment purposes. In support of the Rebuttal of Control, the Temasek Group has submitted a draft Rebuttal of Control Agreement. In addition, Ms. Belinda Chan has filed a concerted action rebuttal pursuant to 12 C.F.R. § 574.4(e).

Rebuttal of Control Submission

The 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

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.

¹ The definition of "savings association" includes savings and loan holding companies. See 12 C.F.R. § 574.2(p) (2008).

² 12 C.F.R. § 574.4(b)(1)(i) and 574.4(c) (2008).

The Office of Thrift Supervision (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, 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 Temasek Group has filed a written submission setting forth facts and circumstances in support of its contention that no control relationship exists, or will exist, between the Temasek Group and the Holding Company. The Temasek Group represents that it will acquire the Holding Company's shares for investment purposes only, and not for the purpose, or with the effect, of changing or influencing control of the Holding Company, the Savings Bank, the Holding Company's board of directors, management or policies, or the Savings Bank's board of directors, management or policies. The Temasek Group would not acquire more than 25 percent of any class of the Holding Company's voting securities.

The standard rebuttal agreement, set forth at 12 C.F.R. § 574.100, provides that a rebutting party will not engage in any intercompany transactions with the entity for which it is rebutting control, or any of that entity's affiliates, or be a party to any agreements with that entity or its affiliates. The Temasek Group has requested that OTS accept a rebuttal agreement that provides that it may enter into transactions involving: (i) the Temasek Group's rights under certain agreements and as shareholders of the Holding Company; and (ii) arm's length, ordinary course of business transactions between the Temasek Group companies and the Holding Company and its affiliates to the extent such transactions in the aggregate represent less than a specified dollar amount of revenue for the Temasek Group and the same dollar amount of revenue for the Holding Company in any calendar year.

The purpose of permitting the first type of transaction is to enable the Temasek Group to maintain its interest in the Holding Company, in the event the Holding Company offers securities for sale or engages in other transactions, such as a rights offering, public sale of stock, or a dividend reinvestment option. The second type of transaction would be in the ordinary course of business, in an amount that OTS concludes would not raise concerns that the Temasek Group would have the ability to control or influence the Holding Company and its affiliates.

In addition, the proposed rebuttal agreement provides that the Holding Company may disclose to the Temasek Group information related to the Holding Company's future plans to raise capital to the extent that those plans may impact the Temasek Group's shareholdings in the Holding Company or require support of the Temasek Group, and is also subject to a non-disclosure agreement between the Temasek Group and the Holding Company. Further, the Temasek Group and the Holding Company may exchange information necessary to comply with regulatory reporting requirements in certain jurisdictions (such as information regarding holdings of equity securities of issuers whose securities are listed in certain jurisdictions).

The purpose of this provision is to permit the Temasek Group to have access to information in the event the Holding Company offers securities for sale or engages in other transactions, such as a rights offering, public sale of stock, or a dividend reinvestment option. OTS concludes that the Temasek Group's access to such information concerning potential transactions by the Holding Company would not contravene the purpose of the rebuttal agreement because information about future offerings would not provide the Temasek Group with the ability to control such offerings. OTS observes that the standard rebuttal of control agreement permits an acquiror to have no more than one representative on the savings association's (or holding company's) board of directors. Such a board representative, under the standard rebuttal agreement, would have access to information concerning potential transactions. OTS concludes that providing the Temasek Group with such information would not give the Temasek Group a means to exert influence or control over the Holding Company.

OTS further concludes that sharing of information for the specific purpose of complying with regulatory reporting requirements is not inconsistent with the rebuttal agreement because the information to be shared is limited to that information necessary to comply with prescribed reporting requirements. This exception to the general prohibition on seeking or accepting non-public information should not provide the Temasek Group with access to material information that would permit the Temasek Group to influence the Holding Company's and its affiliates' policies, procedures, and operations.

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

Rebuttal of Concerted Action Submission

The Control Regulations state, *inter alia*, that a company will be presumed to be acting in concert with a management official of the company if both own stock in the savings association.³ Section 574.4(e)(2) requires parties seeking to rebut concerted action to file a submission setting forth facts and circumstances supporting the party's contention that no action in concert exists.

Ms. Chan is a director of a department within the Acquiror's organization. Ms. Chan disclaims any policy making or other role in the investment management operations of the Acquiror, and asserts that she does not seek to influence the day-to-day investment management operations of the Acquiror. Ms. Chan represents that her limited investment in the Holding Company's common stock was made based upon her independent judgment of the appropriateness of an investment in the Holding Company's common stock. She represents that her investment is not part of a joint activity, parallel action, or any implicit or explicit contract, agreement, or arrangement to control the Holding Company. Based on OTS's review, Ms. Chan's position, and her independent limited investment decision, OTS concludes that Ms. Chan is not acting in concert with the Acquiror to control the Holding Company.

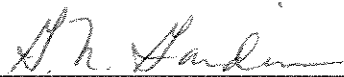
³ 12 C.F.R. § 574.4(d)(1)(i) (2008).

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

Conclusion

Based on the foregoing analysis, the Rebuttals of Control and Concerted Action are hereby accepted.

By order of the Director of the Office of Thrift Supervision, or his designee, effective September 24, 2008.



Grovetta N. Gardineer
Managing Director
Corporate and International
Activities

Attachment I

Rebuttal Entities

Temasek Capital (Private) Limited
Fullerton Management Pte Ltd.
Cairnhill Investments (Mauritius) Pte Ltd.
Crescent Investments (Mauritius) Pte Ltd.
Centaura Investments (Mauritius) Pte Ltd.
Clover Investments (Mauritius) Pte Ltd.
Faber Investments (Mauritius) Pte Ltd.
Henderson Investments (Mauritius) Pte Ltd.
Springwood Investments (Mauritius) Pte Ltd.
Tomlinson (Mauritius) Pte Ltd.
Charlton (Mauritius) Pte Ltd.
Amberwood Investments (Mauritius) Pte Ltd.
Tannery Investments (Mauritius) Pte Ltd.