

## OFFICE OF THRIFT SUPERVISION

### Acceptance of Rebuttal of Control

**Order No.:** 2009-04  
**Date:** January 27, 2009  
**Docket No.:** H-2342

Robert J. Salmon (Applicant) has filed a Rebuttal of Control (Rebuttal), pursuant to 12 C.F.R. § 574.4(e), regarding his proposed acquisition of more than 10 percent, and up to 24.9 percent, of the common stock of SouthFirst Bancshares, Inc., Sylacauga, Alabama (Holding Company). Upon the Applicant's acquisition of more than 10 percent of the voting stock of the Holding Company, the Applicant will be subject to a rebuttable control determination under the Office of Thrift Supervision's (OTS) Acquisition of Control Regulations (Control Regulations).<sup>1</sup>

#### Background

The Applicant currently owns 70,128 shares (9.9 percent) of the outstanding stock of the Holding Company, and is currently one of its two largest shareholders. The Holding Company, a Delaware corporation, is a savings and loan holding company that owns all of the outstanding common stock of SouthFirst Bank, Sylacauga, Alabama (Savings Bank). The Savings Bank is a Deposit Insurance Fund-insured federally chartered stock savings bank.

The Applicant proposes to acquire more than 10 percent, but less than 25 percent of the outstanding common stock of the Holding Company, through open market purchases. The Rebuttal asserts that the Applicant will not directly or indirectly acquire control of the Holding Company, and acquire securities solely for investment purposes. In support of the Rebuttal, the Applicant has submitted a draft rebuttal of control agreement.

The Holding Company submitted a letter to OTS objecting to the Rebuttal and asserting that accepting the Rebuttal would not be in the best interests of the Holding Company, its shareholders or the community served by the Holding Company and the Savings Bank. Specifically, the Holding Company objected to the Applicant's character, and asserted that he may be acting in concert with others and is surreptitiously seeking control of the Holding Company and the Savings Bank.

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<sup>1</sup> See 12 C.F.R. §§ 574.4(b)(1)(i) and 574.4(c)(1) (2008).

## Discussion

The Control Regulations state that an acquiror is deemed, subject to rebuttal, to have acquired control of a savings association<sup>2</sup> 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).<sup>3</sup>

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 of that savings association.

The Applicant has filed a written submission setting forth facts and circumstances in support of his contention that no control relationship would exist if the Applicant acquires more than 10 percent, and no more than 25 percent, of the Holding Company's outstanding common stock. The Applicant represents that he will acquire 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 or their boards of directors, management or policies. The Applicant commits that he will not acquire more than 25 percent of the Holding Company's common stock, and has submitted a rebuttal of control agreement, which conforms to 12 C.F.R. § 574.100.

OTS has reviewed the Holding Company's objections and the Applicant's response to the Holding Company's objections. OTS has not found facts demonstrating that the Applicant is acting in concert with other parties. In addition, with respect to the Holding Company's allegation regarding the Applicant's motivations, the Applicant has submitted a standard rebuttal of control agreement, and we are aware of no information demonstrating that the Applicant will not comply with the agreement. Based on its review, OTS concludes that the Holding Company's objections do not provide a basis for rejection of the Rebuttal.

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<sup>2</sup> The definition of "savings association" includes savings and loan holding companies. See 12 C.F.R. § 574.2(p) (2008).


<sup>3</sup> 12 C.F.R. §§ 574.4(b)(1)(i) and 574.4(c)(1) (2008).

OTS's acceptance of the Rebuttal is conditioned on the Applicant advising the Southeast Regional Director in writing within 5 calendar days after the date the Applicant's shareholdings exceed 10 percent of the outstanding stock of the Holding Company: (a) of the effective date of the acquisition; and (b) that the acquisition of all shares held by the Applicant was effected in accordance with all applicable laws and regulations, including federal securities law, the Rebuttal and this Order. The condition is designed to help provide documentation that the Applicant complies with relevant laws and regulations.

**Conclusion**

Based on the foregoing analysis, the Rebuttal is hereby accepted, subject to the condition set forth above.

By order of the Director of the Office of Thrift Supervision, or his designee,  
effective Jan. 27, 2009.

  
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Grovetta N. Gardineer  
Managing Director,  
Corporate & International Activities