

## OFFICE OF THRIFT SUPERVISION

### Acceptance of Control Rebuttal and Rebuttal of Concerted Action

**Order No.:** 2010-27

**Date:** June 29, 2010

HSB, LLC and the related parties listed in Attachment A (collectively, the Hanauer 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 Hanauer Group will not control, directly or indirectly, Seattle Bank, Seattle, Washington (Bank), as a result of the Hanauer Group acquiring up to 24.9 percent of the Bank's common stock, for investment purposes only. The Bank is a Federal Deposit Insurance Corporation - insured, Washington-chartered stock savings bank that has elected to be treated as a savings association for purposes of section 10 of the Home Owners' Loan Act (HOLA), pursuant to section 10(l) of the HOLA.

In addition, the Hanauer Group and Delafield Hambrecht, Inc. and the related parties listed in Attachment B (collectively, the DHI Group) have filed a Rebuttal of Concerted Action, under 12 C.F.R. § 574.4(d), seeking to rebut the presumption that the Hanauer Group and the DHI Group are acting in concert.

### The Proposed Transaction

The Bank, as part of its recapitalization efforts, is making a private offering of its common stock to accredited investors. The Hanauer Group seeks to acquire, on a passive basis, up to 24.9 percent of the Bank's common stock, which would result in the Hanauer Group becoming one of the two largest shareholders of the Bank, and subject to a control factor, as described in 12 C.F.R. § 574.4(c).<sup>1</sup> The Hanauer Group seeks to rebut the presumption that it will acquire control of the Bank.

### Rebuttals of Control

OTS's Acquisition of Control Regulations<sup>2</sup> 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 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

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<sup>1</sup> 12 C.F.R. §§ 574.4(b)(1)(i) and 574.4(c) (2009).

<sup>2</sup> 12 C.F.R. Part 574 (2009).

<sup>3</sup> 12 C.F.R. §§ 574.4(b)(1)(i) and 574.4(c) (2009).

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.<sup>4</sup> The rebuttal filing demonstrates that the DHI Group will not acquire more than 25 percent of a class of the Bank's voting stock, and will not contribute more than 25 percent of the Bank's capital in connection with the proposed transaction.

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

The Hanauer 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.

### **Rebuttal of Concerted Action**

Members of the Hanauer Group and members of the DHI Group have certain common investments and business affiliations. Because the principals of the both groups are individuals, these relationships raise a rebuttable presumption of concerted action under 12 C.F.R. § 574.4(d)(3)(i). Accordingly, the Hanauer Group and the DHI Group have filed a rebuttal of concerted action, pursuant to 12 C.F.R. § 574.4(e)(2).

Section 574.4(e)(2) requires parties seeking to rebut concerted action to file a submission setting forth facts and circumstances supporting the parties' contention that no action in concert exists. The Hanauer Group and the DHI Group have filed such

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<sup>4</sup> See 12 C.F.R. § 574.4(a) (2009). The section lists additional conclusive control criteria, but it is clear that none of those criteria are applicable in this case.

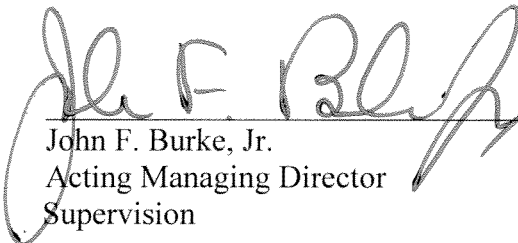
submissions. The submissions state that both the Hanauer Group and the DHI Group have no role in the other group's management. Moreover, the common investments of the Hanauer Group and the DHI Group do not represent a significant source of income or investment for either group. Further, the Hanauer Group does not have an extensive history of making common investments or engaging in business ventures with the DHI Group, and based on information provided with the application, the two groups have demonstrated a history of not always acting or investing together when opportunities to do so have arisen. Both the Hanauer Group and the DHI Group have submitted affidavits, as prescribed by 12 C.F.R. § 574.4(e)(2), in support of their representations.

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

**Conclusion**

Based on the foregoing analysis, OTS concludes that the Rebuttal of Control by the Hanauer Group and the Rebuttal of Concerted Action by the Hanauer Group and the DHI Group meet the applicable approval criteria. Accordingly, the Rebuttal of Control and the Rebuttal of Concerted Action are hereby accepted.

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

  
John F. Burke, Jr.  
Acting Managing Director  
Supervision

ATTACHMENT A

**HANAUER GROUP:**

HSB, LLC (HSB)  
Nicolas and Leslie Hanauer  
Michael B. Slade  
Frank M. "Pete" Higgins

**ATTACHMENT B**

**DHI GROUP:**

Delafield Hambrecht, Inc.  
DH Partners, LLC  
Delafield Hambrecht Partners Fund LP  
DHI/SB1, LLC  
DHI/SB1 Management, LLC  
J.D. Delafield (individually, as guardian of his minor children and trustee of Delafield Children's Trust)  
Catherine C. Delafield (minor child of J.D. Delafield)  
John S. Delafield (minor child of J.D. Delafield)  
Caroline L. Delafield (minor child of J.D. Delafield)  
Delafield Children's Trust  
Cecile H. Delafield  
J. Dennis Delafield  
J. Dennis Delafield 1992 Trust  
JoAnn Sawyer Delafield (as trustee of the J. Dennis Delafield 1992 Trust)  
James K. Thornberry  
J. Thurston Roach  
Catherine B. Roach  
John T. Waechter  
Barry Traub (individually and as trustee of M&B Traub Trust)  
Janet Traub  
Jennifer Traub  
Nancy Chirinos  
M&B Traub Trust  
Dogwood Corporation