

## OFFICE OF THRIFT SUPERVISION

### Non-Disapproval of Notice of Change In Control and Approval of Post-Conversion Acquisition Application

**Order No.: 2003-09**

**Date: March 11, 2003**

**Docket Nos.: H-3725 and 14544**

On September 26, 2002, Mr. Garry J. Graham (the Applicant) filed a notice of change in control (Notice), pursuant to the Change in Bank Control Act (Control Act), 12 U.S.C. § 1817(j), and § 574.3(b) of the Office of Thrift Supervision (OTS) Acquisition of Control Regulations (Control Regulations), and a related application pursuant to 12 C.F.R. § 563b.3(i)(3) (Section 563b.3(i)(3) Application), to acquire up to 20 percent of the outstanding common stock of BancAffiliated, Inc., Bedford, Texas (Holding Company), which is the savings and loan holding company of Affiliated Bank, Bedford, Texas (Savings Bank). (The Notice and the Section 563b.3(i)(3) Application are jointly referred to herein as the Application.)

#### **The Parties**

The Applicant is a director, President and CEO of both the Holding Company and the Savings Bank. As of November 8, 2002, the Applicant controlled 26,425 shares of the Holding Company's outstanding common stock, which represents 9.84 percent of the Holding Company's 268,500 shares.

The Holding Company is a Maryland corporation, headquartered in Bedford, Texas. The Holding Company directly owns all of the Savings Bank's outstanding common stock. As of June 30, 2002, the Holding Company had 87 shareholders of record.

The Savings Bank is a federally chartered stock savings bank located in Bedford, Texas. The Savings Bank converted from a federally chartered credit union to a mutual federal savings association on June 1, 1998. The Savings Bank completed a mutual to stock conversion and was acquired by the Holding Company on May 25, 2001.

#### **The Transaction**

The Applicant proposes to acquire up to 20 percent of the outstanding common stock of the Holding Company. In the Application, the Applicant has provided the following commitments, which would be in effect for three years after the effective date of the Savings Bank's mutual to stock conversion, which was May 25, 2001: (a) the Applicant will not vote any shares of the Holding Company in excess of 10 percent of the outstanding voting stock of the Holding Company; (b) the Applicant will not solicit the purchase of any shares of the voting stock of the Holding Company; and (c) the

Applicant will only acquire shares in compliance with the applicable limitations on acquisitions by officers, directors, or their associates, in 12 C.F.R. § 563b.3(c)(9). In addition, the Applicant has committed that approximately 725 shares of Holding Company common stock owned by certain family members who are not parties to the Application will be transferred to the Applicant's direct ownership within 60 days after OTS action on the Application.

The Applicant has requested that he be approved for one year to acquire Holding Company common stock other than pursuant to the exercise of an option granted pursuant to the Holding Company's stock option plan, and for 5 years to acquire Holding Company common stock pursuant to options granted under a stock option plan of the Holding Company.

### **The Notice**

The Applicant's proposed acquisition is subject to the Control Act and the Control Regulations, which generally prohibit the acquisition of control of a savings association by a person or persons without prior written notice to OTS.<sup>1</sup>

OTS may disapprove a change of control notice if: (i) the proposed acquisition would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the banking business in any part of the United States; (ii) the proposed acquisition would lessen competition, create a monopoly, or restrain trade, and have anticompetitive effects which are not outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served; (iii) the financial condition of any acquiring person is such as might jeopardize the financial stability of the association or prejudice the interests of the depositors of the association; (iv) the competence, experience, or integrity of any acquiring person or any of the proposed management personnel indicates that it would not be in the interests of the depositors of the association, OTS, or the public to permit such person to control the association; (v) the acquiring person fails or refuses to furnish information requested by OTS; or (vi) OTS determines that the proposed acquisition would have an adverse effect on the Savings Association Insurance Fund (SAIF).<sup>2</sup>

With respect to competitive factors, the proposed acquisition would have no anticompetitive effects, because the Applicant does not control or hold any position with another depository institution. Accordingly, OTS concludes that the first two criteria set forth above do not provide a basis for disapproval of the Notice.

With respect to the financial condition of the Applicant, OTS reviewed the Applicant's financial position and background and found no material adverse information

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<sup>1</sup> 12 U.S.C. § 1817(j)(1) and 12 C.F.R. § 574.3(b) (2002).

<sup>2</sup> 12 U.S.C. § 1817(j)(17); 12 C.F.R. § 574.7(d) (2002).

regarding the Applicant from its background investigation. Accordingly, OTS concludes that the Applicant's financial position would not jeopardize the financial stability of the Savings Bank or prejudice the interests of the Savings Bank's depositors, and is consistent with non-disapproval.

With respect to competence, experience, and integrity, OTS has extensive experience regarding the Applicant based on his performance as the President and CEO of the Holding Company and the Savings Bank since the Savings Bank's mutual to stock conversion. In addition, OTS's background investigation revealed no material adverse information regarding the Applicant. Accordingly, OTS concludes that it has no objection to the Notice based on the Applicant's competence, experience, and integrity.

With respect to failure to furnish information requested by OTS, the Applicant has supplied all the information required by OTS in connection with the Notice.

With respect to the effect on the SAIF, the Applicant's proposed acquisition of up to 20 percent of the Holding Company's outstanding voting stock will not affect the current management of the Holding Company and the Savings Bank and will not affect the Savings Bank's current business plan. The Savings Bank currently is well capitalized and complies with all its capital requirements. Accordingly, OTS concludes that the proposed transaction should not have an adverse effect on the SAIF.

#### **The Section 563b.3(i)(3) Application**

Section 563b.3(i)(3) provides, in part, that for three years following the date of the completion of a mutual to stock conversion, no person shall, directly or indirectly, offer to acquire or acquire the beneficial ownership of more than ten percent of any class of equity security of a savings association converted in accordance with the provisions of Part 563b, without prior OTS approval. The Applicant has requested approval under § 563b.3(i)(3) to acquire up to 20 percent of the Holding Company's outstanding stock.

Section 563b.3(i)(5) provides that OTS may deny an application filed under § 563b.3(i)(3), if OTS finds that the proposed transaction: (a) frustrates the purpose of the conversion regulations; (b) is manipulative or deceptive; (c) subverts the fairness of the conversion; (d) is likely to result in injury to the association; (e) is not consistent with economical home financing; (f) is otherwise violative of law or regulation; or (g) would not contribute to the prudent deployment of the association's conversion proceeds. Even if OTS were to find that some of the criteria contained in 12 C.F.R. § 563b.3(i)(5) have been met, OTS is not required to deny the application.

With regard to the first criterion, OTS concludes that the proposed acquisition would not frustrate the purposes of the conversion regulations. The proposed acquisition will not circumvent the rules regarding acquisition of stock in a conversion, limitations on stock repurchases, or limitations on dividends. There will be no effect on the Savings

Bank's liquidation account. In addition, the Application indicates that for three years from the date of the Savings Bank's mutual to stock conversion: (a) the Applicant will not vote any shares of the Holding Company or the Savings Bank in excess of 10 percent of the outstanding voting stock of the Holding Company or the Savings Bank; (b) the Applicant will not solicit the purchase of any shares of the voting stock of the Holding Company or the Savings Bank; and (c) the Applicant will only acquire shares in compliance with the applicable limitations on acquisitions by officers, directors, or their associates, in 12 C.F.R. § 563b.3(c)(9).

As to the second criterion, OTS concludes that the proposed acquisition would not be manipulative or deceptive. The Application indicates that the Applicant will acquire the shares either pursuant to a stock benefit plan of the Holding Company, in privately negotiated transactions (which will involve more than 1 percent of the Holding Company's outstanding common stock during the three year period after the conversion); or in a brokerage transaction (which will not be initiated by the Applicant during the three year period after the conversion). In addition, the Holding Company's common stock is registered under the Securities Exchange Act of 1934, at the Securities and Exchange Commission, and the Holding Company's periodic reports are available to proposed sellers to the Applicant. Further, the Application indicates that all purchases of stock will be made in compliance with applicable federal securities laws.

With respect to the third criterion, OTS concludes that the proposed acquisitions would not subvert the fairness of the conversion. First, the Application indicates that the shares will be acquired either pursuant to stock benefit plans approved by the stockholders of the Holding Company or in brokerage transactions or privately negotiated transactions, at market value and under market terms and conditions. Second, the Application indicates that the market value of the stock not acquired is not likely to be affected by the Applicant's proposed acquisition. Third, the Application indicates that the Applicant will not receive a windfall profit as a result of the proposed acquisition. Fourth, the Application indicates that there will be no expropriation of the conversion proceeds, because the Holding Company and the Bank will continue to exist.

Regarding the fourth criterion, OTS concludes that the proposed acquisition is not likely to result in injury to the Savings Bank. The Application indicates that the Applicant's proposed acquisition will have no impact on the management, business plan, or financial condition and operations of the Savings Bank. The proposed acquisition will not create pressure to increase dividends from the Savings Bank. In addition, the Application indicates that the Savings Bank will continue to be well capitalized.

With respect to the fifth criterion, OTS concludes that the proposed acquisition would not be inconsistent with economical home financing. The Application indicates that the Applicant's proposed acquisition will not have any effect on the Savings Bank's business plan or its use of the conversion proceeds. In addition, the Savings Bank's most recent compliance examination resulted in a CRA rating of "Satisfactory."

With regard to the sixth criterion, OTS concludes that the proposed acquisition would not otherwise be violative of law or regulation. The Application states that the Applicant's proposal will not violate any law or regulation. In addition, the available information indicates that the Holding Company and the Savings Bank, under the Applicant's management, have complied with the requirements of the OTS conversion regulations.

Regarding the seventh criterion, OTS concludes that the proposed acquisition would not interfere with the prudent deployment of the conversion proceeds. The Application indicates that the Holding Company and the Savings Bank will remain independent operating entities that will continue to deploy the conversion proceeds. In addition, the Applicant has committed not to vote any shares of the Holding Company's stock in excess of 10 percent of the outstanding voting stock of the Holding Company during the three years after the Savings Bank's mutual to stock conversion (that is, until May 25, 2004).

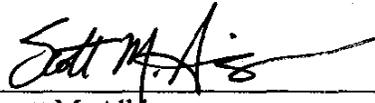
Based on the foregoing, OTS concludes that the Section 563b.3(i)(3) Application satisfies the approval standards under 12 C.F.R. §563b.3(i)(5).

#### **Conclusion**

For the reasons discussed above, OTS concludes that the Notice and the Section 563b.3(i)(3) Application meet the applicable statutory and regulatory criteria. Accordingly, OTS does not disapprove the Notice, and approves the Section 563b.3(i)(3) Application for the Applicant to acquire up to 20 percent of the Holding Company's outstanding common stock in the manner contemplated in the Application. The proposed acquisition contemplated by the Application must be consummated within one year from the date of this order, in accordance with the terms, commitments, and representations in the Notice and the Section 563b.3(i)(3) Application, except that the Applicant's proposed acquisition of Holding Company common stock pursuant to any options granted under a stock option plan of the Holding Company must be consummated within five years from the date of this Order.

In addition, any other acquisition of control of the Savings Bank, including acquisitions of stock or voting power, under circumstances materially inconsistent with, or in a manner materially different from the information and representations contained in the Notice and the Section 563b.3(i)(3) Application, requires a separate filing with OTS under 12 C.F.R. Part 574. In addition, any such material changes on or before May 25, 2004, will also require the filing of an amendment to the Section 563b.3(i)(3) Application.

By Order of the Director of the Office of Thrift Supervision, or his designee, effective March 11, 2003.



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Scott M. Albinson  
Managing Director  
Office of Supervision