

## OFFICE OF THRIFT SUPERVISION

### Acceptance of Control Rebuttal

**Order No.:** 2010-73  
**Date:** December 22, 2010  
**OTS Docket No.:** H-4465

Patriot Financial Partners, L.P., and Patriot Financial Partners Parallel, L.P., their controlling parties, and related entities (collectively, the Patriot 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 Patriot Group will not control, directly or indirectly, Cape Bancorp, Inc. (Holding Company), or its subsidiary, Cape Savings Bank (Bank), both of Cape May Court House, New Jersey, as a result of the Patriot Group acquiring up to 19.9 percent of the Holding Company's common stock for investment purposes only. By acquiring approximately 19.9 percent of the Holding Company's common stock, the Patriot Group would become one of the Holding Company's two largest shareholders, and would become subject to a rebuttable determination of control under section 574.4(b). The Patriot Group presently holds less than 10 percent of the Holding Company's common stock. The members of the Patriot Group are listed in Attachment A.

The Bank is a Federal Deposit Insurance Corporation-insured, New Jersey-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.

#### **The Proposed Transaction**

The Patriot Group seeks to acquire in the open market or in privately negotiated transactions, on a passive basis, up to 19.9 percent of the Holding Company's common stock, which would result in the Patriot Group becoming one of the two largest shareholders of the Holding Company, and subject to a control factor, as described in section 574.4(c).<sup>1</sup> The Patriot Group seeks to rebut the presumption that it will acquire control of the Holding Company or the Bank.

#### **Rebuttal of Control**

OTS's Acquisition of Control Regulations (Control Regulations) 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

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<sup>1</sup> 12 C.F.R. § 574.4(b)(1)(i) and § 574.4(c) (2010).

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>2</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 or holding company may not rebut control. An acquiror is in conclusive control of a savings association or holding company 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 an entity's capital.<sup>3</sup>

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

The Patriot 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.

### **Conclusion**

Based on the foregoing analysis, OTS concludes that the rebuttal of control by the Patriot Group meets the applicable criteria. Accordingly, the rebuttal of control is hereby accepted.

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<sup>2</sup> 12 C.F.R. § 574.4(b)(1)(i) and 574.4(c) (2010).

<sup>3</sup> See 12 C.F.R. § 574.4(a) (2010). The section lists additional conclusive control criteria, but it is clear that the criteria are inapplicable in this case.

By order of the Acting Director of the Office of Thrift Supervision, or his  
designee, effective December 22, 2010.



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Grovetta N. Gardineer  
Managing Director  
Corporate & International Activities

**ATTACHMENT A**

**PATRIOT GROUP:**

Patriot Financial Partners GP, L.P.

Patriot Financial Partners, L.P.

Patriot Financial Partners Parallel, L.P.

Patriot Financial Partners GP, LLC

Patriot Financial Managers, L.P.

Patriot Financial Managers, LLC

Ira M. Lubert

W. Kirk Wycoff

James J. Lynch