



BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON, D. C. 20551

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

November 6, 2012

Richard K. Kim, Esq.  
Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019

Dear Mr. Kim:

This is in response to your letter dated March 5, 2012, on behalf of Castle Creek Advisors LLC and related entities (collectively, "Castle Creek")<sup>1</sup> for relief from one of the commitments it provided to the Board in connection with certain purchases of shares of the following bank holding companies from Castle Creek Capital Partners III, LP ("Fund III"): Atlanta Bancorporation, Inc. ("Atlanta Bancorporation"), Atlanta, Georgia; Guaranty Bancorp ("Guaranty"), Denver, Colorado; and The BANKshares, Inc. ("BANKshares"), Winter Park, Florida (collectively, the "Portfolio Companies"). The share purchases were part of an effort by Castle Creek to divest control of the Portfolio Companies. The requested relief would permit Castle Creek to continue to have one representative serve on the board of directors of each of the Portfolio Companies beyond July 30, 2012.<sup>2</sup>

In connection with the sale of Castle Creek's interests in Guaranty and BANKshares from Fund III to Fund IV and the transfer of shares of Atlanta Bancorporation to Fund III's shareholders, Castle Creek and Fund IV entered into commitments with the Board that provided, among other matters, that a Castle Creek representative could serve as a director on the board of each Portfolio

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<sup>1</sup> Castle Creek Capital IV LLC; Castle Creek Capital Partners IV LP ("Fund IV"); and Castle Creek Advisors IV LLC.

<sup>2</sup> The Director of the Division of Banking Supervision and Regulation, after consulting with the General Counsel, has delegated authority to approve requests for modification of commitments under the Board's Rules Regarding Delegation of Authority. 12 CFR 265.7(a)(2).

Company until July 30, 2012.<sup>3</sup> Castle Creek requests that the commitments be modified to permit Castle Creek to continue to have one representative serve on the board of directors of each Portfolio Company by removing the commitment's termination date for representation on their boards.

For purposes of the Bank Holding Company Act ("BHC Act"), a company has control over another company if the first company (i) directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company; (ii) controls in any manner the election of a majority of the directors of the other company; or (iii) directly or indirectly exercises a controlling influence over the management or policies of the other company.<sup>4</sup> The Board's Regulation Y also sets forth certain rebuttable presumptions of control.<sup>5</sup> The BHC Act and Regulation Y presume that any company that directly or indirectly owns, controls, or has the power to vote less than 5 percent of any class of voting securities of a bank or other company does not control the bank or other company.<sup>6</sup>

Fund III previously controlled more than of 25 percent of the voting shares of each of the Portfolio Companies. The shares of Atlanta Bancorporation were distributed to Fund III's limited partners. The limited partners, whose ownership interests are attributed to Fund IV, currently control 1.4 percent of the voting shares of Atlanta Bancorporation. Fund III transferred shares of Guaranty and BANKshares to Fund IV, and Fund IV currently owns 9.9 percent of the voting shares of each company.

Additional structural changes were made to ensure that Castle Creek would not control the Portfolio Companies. The changes included terminating business relationships with, and having Castle Creek's representative resign as chairman of the board of directors of, each Portfolio Company. Castle Creek was permitted to have a representative serve on the board of each Portfolio Company, although service by the representative was limited to two years.

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<sup>3</sup> The General Counsel permitted Castle Creek to have its director representatives continue to serve on the boards of directors of the Portfolio Companies for an additional 90 days, until October 28, 2012.

<sup>4</sup> 12 U.S.C. § 1841(a)(2); 12 CFR 225.2(e).

<sup>5</sup> See 12 CFR 225.31(d).

<sup>6</sup> See 12 U.S.C. § 1841(a)(3); 12 CFR 225.31(e).

In its 2008 policy statement on equity investments in banks and bank holding companies (“Policy Statement”),<sup>7</sup> the Board stated that a minority investor generally should be able to have a single representative on the board of directors of a banking organization without acquiring a controlling influence over the management or policies of the banking organization.<sup>8</sup> However, the Board previously has also expressed concern that a company that controlled another company for a significant period may be able to exert a controlling influence over the company even after a substantial divestiture.<sup>9</sup> In such a circumstance, the Board generally has required that a minority investor have fewer ties with the banking organization than otherwise might be permissible under the Policy Statement in order to ensure that it cannot continue to exercise a controlling influence over the organization after divestiture. Termination of representation on each of the boards of directors in this case after two years (in combination with the other measures, noted above, that were intended to reduce the ties between Castle Creek and the Portfolio Companies) was intended to ensure that Castle Creek would no longer be able to exert a controlling influence over the Portfolio Companies while providing the Portfolio Companies’ boards of directors with a transition period to use the assistance of the Castle Creek representative on each board.

Circumstances surrounding Castle Creek’s relationship with Atlanta Bancorporation suggest that Castle Creek is unlikely to have a continuing influence over the company even with a director interlock. As noted above, Castle Creek distributed all the shares of Atlanta Bancorporation that were held by Fund III’s limited partners, and the Castle Creek principals hold in the aggregate only 1.4 percent of the common stock (and total equity) of Atlanta Bancorporation. Regulation Y sets forth a presumption that any company that controls less than 5 percent of the outstanding shares of the voting securities of a company does not have control over that company.<sup>10</sup> Castle Creek owns no shares of Atlanta Bancorporation, and the amount of shares owned by the principals of Castle Creek

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<sup>7</sup> 12 CFR 225.144 at <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20080922b1.pdf>.

<sup>8</sup> 12 CFR 225.144(c)(1).

<sup>9</sup> See e.g., “Statement of policy concerning divestitures by bank holding companies,” 12 CFR 225.138.

<sup>10</sup> See 12 CFR 225.31.

is within the presumption of noncontrol. Castle Creek does not have any business relationships with Atlanta Bancorporation, and there are no other facts suggesting a controlling influence by Castle Creek over the company.

The facts and circumstances of Castle Creek's investment in, and relationships with, Guaranty and BANKshares since Fund IV was established similarly indicate that Castle Creek would not have the ability to exercise a controlling influence over these companies even with a director interlock. Fund IV holds 9.9 percent of the common stock of Guaranty and 11.37 percent of Guaranty's total equity. Other than Fund IV's small percentage of equity ownership, there are no relationships between Castle Creek and Guaranty. In addition, since Fund IV acquired shares of Guaranty, Guaranty has replaced management so that its management is not the same as when Castle Creek controlled the banking organization.

In the case of BANKshares, a bank holding company owns more shares of BANKshares than Castle Creek. Fund IV holds 9.9 percent of the common stock of BANKshares and 16.98 percent of BANKshares' total equity. Other than Fund IV's small percentage of equity ownership, there are no relationships between Castle Creek and BANKshares. CAPGen Capital Group has become a bank holding company with respect to BANKshares and controls more than 40 percent of its voting shares. The Policy Statement recognizes that control of a banking organization by a larger shareholder that is a bank holding company lessens the influence that an investor's equity ownership and director representation provides.<sup>11</sup>

Based on the foregoing and all the facts of record, the Director of the Division of Banking Supervision and Regulation, in consultation with the General Counsel and acting pursuant to authority delegated by the Board,<sup>12</sup> has granted relief from the commitments to permit Castle Creek to have a director on the boards of the Portfolio Companies by removing the commitment's termination date for representation on their boards. All other commitments entered into by Castle Creek and Fund IV will remain in place.

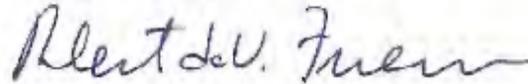
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<sup>11</sup> The Policy Statement generally permits an investor to appoint a second director representative if there exists a larger shareholder that is a bank holding company with respect to that banking organization.

<sup>12</sup> See 12 CFR 265.7(a)(2).

This action is based on the representations and commitments set forth in your correspondence. Any change in the facts presented could result in a different conclusion and should be reported to Board staff immediately. This action should not be construed as granting relief from any other conditions or commitments to which Castle Creek and Fund IV may be subject.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Robert deV. Frierson".

Robert deV. Frierson  
Secretary of the Board

cc: Cynthia Goodwin, Vice President  
Federal Reserve Bank of Atlanta  
Dennis Denny, Assistant Vice President  
Federal Reserve Bank of Kansas City  
Kenneth Binning, Vice President  
Federal Reserve Bank of San Francisco