

as principal, knowingly to sell any security to the company. Section 2(a)(3) of the Act defines "affiliated person" of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person directly or indirectly controlling, controlled by, or under common control with the other person, or (c) if the other person is an investment company, any investment adviser of that person.

2. The Trust and the Global Fund are controlled by Old Mutual and share a common investment adviser. Thus, the Trust and the Global Fund are affiliated persons within the meaning of section 2(a)(3) of the Act, and the sale of the DataTec Shares by the Global Fund to the Trust is prohibited by section 17(a) of the Act.

3. Section 17(b) of the Act provides that the SEC may exempt a transaction from the prohibitions of section 17(a) if the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

4. Applicants submit that the requested relief meets the standards set forth in section 17(b). Applicants state that, while the Adviser utilizes analysts employed by Old Mutual, the decision to purchase the DataTec Shares was an independent decision made by the Adviser solely in the interests of the Trust and was not improperly influenced by Old Mutual or its personnel. Applicants further state that the board of trustees of the Trust, including a majority of the trustees who are not interested persons of the Trust (the "Board"), approved the Trust's purchase of the DataTec Shares. In evaluating the terms of the proposed transaction, the Board considered the fact that the Trust Purchase Price will include reimbursement of the carrying costs.

5. Applicants state that the transaction will comply with the requirements of rule 17a-7 under the Act, except that (i) the Trust Purchase Price will be below the current market price, and (ii) the Trust and the Global Fund are affiliated persons by reason other than having a common investment adviser, common directors, and/or officers. Applicants further represent that the Trust will not purchase the DataTec Shares if on the Trust Purchase Date the market price of the DataTec

Shares falls below the Trust Purchase Price. Thus, applicants believe that the terms of the proposed transaction, including the consideration to be paid, are fair and reasonable.

6. Applicants believe that the transaction does not involve overreaching on the part of any person concerned. Applicants state that, although under section 2(a)(9) of the Act, the Old Mutual Group presumptively controls DataTec through ownership of 28.34% of DataTec's voting securities, the Old Mutual Group does not exercise any control over the management or day-to-day operations of DataTec. Applicants state that Old Mutual Group's holdings in DataTec include approximately 6.0% of the total outstanding shares of DataTec held by accounts managed by Old Mutual for external clients, such as pension funds for charitable organizations and publicly traded companies. Old Mutual seeks instructions from these external clients regarding the voting of DataTec shares on non-routine matters, including the election of directors other than the nominees of DataTec management.

7. Applicants represent that the Old Mutual Group holds DataTec shares for investment purposes as a passive investor. None of the officers or directors of DataTec are officers or directors of any entity within the Old Mutual Group; the Old Mutual Group has never sought to elect its nominees to the board of directors of DataTec and has always either abstained from voting or voted for the nominees of DataTec management. Applicants state that, according to independent research reports, the directors of DataTec own approximately 24.70% of DataTec's ordinary shares and are the controlling shareholders of DataTec.

8. Applicants further represent that, other than the ownership of the DataTec ordinary shares, the Old Mutual Group does not have any ownership, investment or lending relationship with DataTec. Finally, applicants represent that the Old Mutual Group has no ownership, investment or lending relationship with Logical Networks or Blue Sky.

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 98-14404 Filed 5-29-98; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

### Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business

Administration by the Final Order of the United States District Court for the Central District of California dated April 21st, 1993, and filed April 23, 1993, the United States Small Business Administration hereby revokes the license of Business Equity & Development Corporation, a California corporation, to function as a small business investment company under Small Business Investment Company License No. 09/12-5151 issued to Business Equity & Development Corporation on March 19, 1970 and said license is hereby declared null and void as of April 23, 1993.

Dated: May 20, 1998.

Small Business Administration.

**Harry E. Haskins,**

*Acting Associate Administrator for Investment.*

[FR Doc. 98-14328 Filed 5-29-98; 8:45 am]

BILLING CODE 8025-01-P

## SMALL BUSINESS ADMINISTRATION

### Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Middle District of Louisiana dated April 5, 1995, the United States Small Business Administration hereby revokes the license of First Southern Capital Corporation, a Louisiana corporation, to function as a small business investment company under Small Business Investment Company License No. 01/12-0023 issued to First Southern Capital Corporation on May 11, 1961 and said license is hereby declared null and void as of April 5, 1995.

Dated: May 20, 1998.

Small Business Administration.

**Harry E. Haskins,**

*Acting Associate Administrator for Investment.*

[FR Doc. 98-14329 Filed 5-29-98; 8:45 am]

BILLING CODE 8025-01-P

## SMALL BUSINESS ADMINISTRATION

### Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Eastern District of New York dated July 22, 1993, the United States Small Business Administration hereby revokes the license of ODA Capital Corporation, a New York corporation, to function as

a small business investment company under Small Business Investment Company License No. 02/02-5307 issued to ODA Capital Corporation on January 25, 1977 and said license is hereby declared null and void as of July 22, 1993.

Dated: May 20, 1998.

Small Business Administration.

**Harry E. Haskins,**

*Acting Associate Administrator for Investment.*

[FR Doc. 98-14327 Filed 5-29-98; 8:45 am]

BILLING CODE 8025-01-P

## SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 98-3(6)]

### **Dennard v. Secretary of Health and Human Services; Effect of A Prior Finding of the Demands of Past Work on Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act—Titles II and XVI of the Social Security Act**

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Social Security Acquiescence Ruling.

**SUMMARY:** In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 98-3(6).

**EFFECTIVE DATE:** June 1, 1998.

#### **FOR FURTHER INFORMATION CONTACT:**

Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1695.

**SUPPLEMENTARY INFORMATION:** Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals' decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Sixth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on

or after June 1, 1998. If we made a determination or decision on your application for benefits between April 10, 1990, the date of the Court of Appeals' decision, and June 1, 1998, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b) or 416.1485(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security - Disability Insurance; 96.002 Social Security - Retirement Insurance; 96.004 Social Security - Survivors Insurance; 96.005 - Special Benefits for Disabled Coal Miners; 96.006 - Supplemental Security Income.)

Dated: April 10, 1998.

**Kenneth S. Apfel,**

*Commissioner of Social Security.*

### **Acquiescence Ruling 98-3(6)**

*Dennard v. Secretary of Health and Human Services*, 907 F.2d 598 (6th Cir. 1990)—Effect of A Prior Finding of the Demands of Past Work on Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act—Titles II and XVI of the Social Security Act.

**Issue:** Whether, in making a disability determination or decision on a subsequent disability claim with respect to an unadjudicated period, where the claim arises under the same title of the Social Security Act (the Act) as a prior claim on which there has been a final decision by an Administrative Law Judge (ALJ) or the Appeals Council, the Social Security Administration (SSA)<sup>1</sup> must adopt a finding of the demands of a claimant's past relevant work, made in

the final decision by the ALJ or the Appeals Council on the prior disability claim.<sup>2</sup>

**Statute/Regulation/Ruling Citation:** Sections 205(a) and (h) and 702(a)(5) of the Social Security Act (42 U.S.C. 405 (a) and (h) and 902(a)(5)), 20 CFR 404.900, 404.957(c)(1), 416.1400, 416.1457(c)(1).

**Circuit:** Sixth (Kentucky, Michigan, Ohio, Tennessee)

*Dennard v. Secretary of Health and Human Services*, 907 F.2d 598 (6th Cir. 1990).

**Applicability of Ruling:** This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, ALJ hearing and Appeals Council).

**Description of Case:** Donald Dennard filed an application for Social Security disability insurance benefits in 1981, claiming a disability which began on July 7, 1981. The application was denied initially and upon reconsideration. After a hearing held on September 28, 1982, an ALJ decided that Mr. Dennard was capable of performing sedentary work, that he had transferable skills, and that he was not disabled. This decision became the final decision of SSA and was affirmed by the district court.

Mr. Dennard filed a subsequent application on March 25, 1985, alleging an onset of disability of September 29, 1982. This application was also denied initially and upon reconsideration. At a hearing a vocational expert testified that Mr. Dennard's past relevant work as a resident care aide supervisor was light and semi-skilled, which provided him with skills transferable to other jobs in the supervisory field. The ALJ found that, despite his impairments, Mr. Dennard could "perform the requirements of work except for prolonged standing or walking, manipulation of more than 10 pounds, heavy or extensive bending, or prolonged sitting that would not allow him an opportunity to stand occasionally to alleviate perceptions of discomfort ...." While the ALJ determined that the claimant was unable to perform his past relevant work, he did determine that Mr. Dennard could perform sedentary work and, thereupon, found that he was not disabled. The Appeals Council denied review, and the claimant then appealed to district court. The case was remanded for a new hearing to obtain and develop the medical evidence and to obtain additional vocational testimony.

<sup>1</sup> Under the Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, effective March 31, 1995, SSA became an independent Agency in the Executive Branch of the United States Government and was provided ultimate responsibility for administering the Social Security and Supplemental Security Income programs under titles II and XVI of the Act. Prior to March 31, 1995, the Secretary of Health and Human Services had such responsibility.

<sup>2</sup> Although *Dennard* was a title II case, similar principles also apply to title XVI. Therefore, this Ruling extends to both title II and title XVI disability claims.