

## OFFICE OF THRIFT SUPERVISION

### Receivership of a Federal Savings Bank

**Date:** October 15, 2010  
**Order No.:** 2010-61  
**OTS No.:** 06084

The Acting Director of the Office of Thrift Supervision (OTS), or his designee, in cooperation with the Federal Deposit Insurance Corporation (FDIC), has determined to appoint the FDIC as receiver of Security Savings Bank, FSB, Olathe, Kansas (Savings Bank).

#### GROUNDS FOR APPOINTMENT OF FDIC AS RECEIVER FOR THE SAVINGS BANK

The Acting Director, or his designee, based upon the administrative record, finds and determines the following:

- (i) The Savings Bank, by resolution of its board of directors, has consented to the appointment of a receiver;
- (ii) The Savings Bank is undercapitalized, as defined in section 38(b) of the Federal Deposit Insurance Act (FDIA), and has no reasonable prospect of becoming adequately capitalized; and
- (iii) The Savings Bank is undercapitalized, as defined in section 38(b) of the FDIA, and failed to submit a capital restoration plan acceptable to OTS within the time prescribed under 12 U.S.C. § 1831o(e)(2)(D).

The Savings Bank is a Deposit Insurance Fund-insured, federally chartered stock savings bank, headquartered in Olathe, Kansas. The Savings Bank operates eight branches located in suburban Kansas City, Wichita and Salina, Kansas. The Savings Bank is a wholly owned subsidiary of Brittany Savings Corporation (Holding Company) of Olathe, Kansas. The Holding Company's securities are not publicly traded.

The Savings Bank's June 30, 2010 Thrift Financial Report (TFR) reported that the Savings Bank had approximately \$508.4 million in assets, \$491.7 million in liabilities, and \$16.7 million in equity capital as of June 30, 2010. The Savings Bank reported net losses totaling \$21.4 million for calendar year 2009, and additional net losses of \$14.0 million for the two quarters ended June 30, 2010. In its June 30, 2010, TFR the Savings Bank reported tier 1(core) and total risk-based capital of 2.98 percent and 5.40 percent, respectively. Based on the capital

ratios in the Savings Bank's June 30, 2010, TFR, the Savings Bank is significantly undercapitalized under OTS's Prompt Corrective Action (PCA) regulation.

### **DISCUSSION OF GROUNDS FOR APPOINTMENT OF A RECEIVER FOR THE SAVINGS BANK**

Section 5(d)(2)(A) of the Home Owners' Loan Act (HOLA), 12 U.S.C. § 1464(d)(2)(A), provides that OTS may appoint a receiver for any insured savings association if OTS determines that one or more grounds specified in section 11(c)(5) of the FDIA, 12 U.S.C. § 1821(c)(5), exist.

#### **Consent**

Under section 11(c)(5)(I) of the FDIA, OTS may appoint a receiver for a savings association if it, by resolution of its board of directors, consents to the appointment. The Acting Director, or his designee, finds that the board of directors of the Savings Bank, by resolution dated September 28, 2010, consented to the appointment of a conservator or receiver by OTS.

#### **Undercapitalized and No Reasonable Prospect of Becoming Adequately Capitalized**

Under section 11(c)(5)(K)(i) of the FDIA, OTS may appoint a receiver if a savings association is undercapitalized as defined in 12 U.S.C. § 1831o(b) and has no reasonable prospect of becoming adequately capitalized. Under section 1831o(b) an institution is undercapitalized if it fails to meet any required minimum capital level. OTS has determined that a savings association is undercapitalized on the basis of its total risk-based capital ratio if such ratio is less than 8 percent, and that a savings association is undercapitalized on the basis of its tier 1 (core) capital ratio, if, for a savings association that is not "1" rated, the tier 1 (core) capital ratio is less than 4 percent.<sup>1</sup>

The Savings Bank reported that, as of June 30, 2010, it had tier 1 (core) and total risk-based capital ratios of 2.98 percent and 5.40 percent, respectively. Later financial information provided by the Savings Bank indicates that the Savings Bank's tier 1 (core) and total risk-based capital ratios were 3.29 percent and 5.52 percent, respectively, on August 31, 2010. Therefore, the Savings Bank is undercapitalized.

During the past year, the Savings Bank has attempted to raise additional capital through various sources, and the Savings Bank and the Holding Company have attempted to recapitalize, sell or merge the Savings Bank. At present, no investor or investors have been identified that are willing and able to recapitalize or acquire the Savings Bank. Given the Savings Bank's lack of success in raising sufficient capital over the past year, and the Savings Bank's deteriorating financial position, it is unlikely that the Savings Bank will be able to raise additional capital through outside sources.

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<sup>1</sup> A tier 1(core) ratio of 3 percent is permissible if the institution has a CAMELS composite rating of one. The Savings Bank is not "one" rated.

The Savings Bank cannot become adequately capitalized through earnings, given its current financial distress, its poor asset quality and continuing loan losses. In light of the Savings Bank's asset quality problems and expected future losses in the near term, it is unlikely that the Savings Bank could reach adequately capitalized status through shrinkage or sales of assets.

Therefore, the Acting Director, or his designee, concludes that the Savings Bank is undercapitalized and that it has no reasonable prospect of becoming adequately capitalized.

**Undercapitalized and Failed to Submit a Capital Restoration Plan Acceptable to OTS Within the Prescribed Timeframes**

Under section 11(c)(5)(K)(iii) of the FDIA, OTS may appoint a receiver if a savings association is undercapitalized as defined in 12 U.S.C. § 1831o(b) and fails to submit a capital restoration plan that is acceptable to OTS within the time prescribed under 12 U.S.C. § 1831o(e)(2)(D). Section 1831o(e)(2)(D) provides for OTS to promulgate regulations generally requiring an institution to submit such a plan not later than 45 days after the savings association becomes undercapitalized. OTS promulgated such a regulation. See 12 C.F.R. § 565.5(a)(1). Section 1831o(e)(2)(C)(i)(II) provides that OTS shall not accept a capital restoration plan unless OTS concludes that the plan is based on realistic assumptions and is likely to succeed in restoring the institution's capital.

The Savings Bank is undercapitalized. The Savings Bank was required to submit a capital restoration plan (CRP) by May 21, 2010. On June 4, 2010, OTS denied the CRP that the Savings Bank submitted, because the CRP did not contain realistic and supported assumptions, and did not demonstrate the CRP could return the Savings Bank to adequately capitalized status within a reasonable timeframe.

Therefore, the Acting Director, or his designee, concludes that the Savings Bank is undercapitalized and that the Savings Bank has failed to submit a capital restoration plan acceptable to OTS within the prescribed timeframe.

The Acting Director, or his designee, therefore, has determined that grounds for the appointment of a receiver for the Savings Bank exist under section 5(d)(2) of the HOLA, and sections 11(c)(5)(I), (K)(i), and (K)(iii) of the FDIA, 12 U.S.C. §§ 1821(c)(5)(I), (K)(i), and (K)(iii).

**ACTIONS ORDERED OR APPROVED****Appointment of a Receiver**


The Acting Director, or his designee, hereby appoints the FDIC as receiver for the Savings Bank, for the purpose of liquidation or winding up the affairs of the Savings Bank, pursuant to section 5(d)(2) of the HOLA, 12 U.S.C. § 1464(d)(2), and section 11(c)(6)(B) of the FDIA, 12 U.S.C. § 1821(c)(6)(B).

**Delegation of Authority to Act for OTS**

The Acting Director, or his designee, hereby authorizes the OTS Western Regional Director, or his designee, and the Deputy Chief Counsel for Business Transactions of the Chief Counsel's Office, or his designee, to: (i) certify orders; (ii) sign, execute, attest, or certify other documents of OTS issued or authorized by this Order; (iii) designate the persons or entity that will give notice of the appointment of a receiver for the Savings Bank and serve the Savings Bank with a copy of this Order pursuant to 12 C.F.R. § 558.2; and (iv) perform such other functions of OTS necessary or appropriate for implementation of this Order. All documents to be issued under the authority of this Order must be first approved, in form and content, by the Chief Counsel's Office. In addition, the Acting Director, or his designee, hereby authorizes the Deputy Chief Counsel for Business Transactions, or his designee, to make any subsequent technical corrections, that might be necessary, to this Order, or any documents issued under the authority of this Order.

By Order of the Acting Director of OTS, or his designee, effective: (a) as to the above matters regarding the delegation of authority, immediately upon signature; and (b) as to the above matters regarding the appointment of the FDIC as receiver, immediately upon service of this Order on the Savings Bank.

Executed this 15th day of October, 2010.

  
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John E. Bowman  
Acting Director