

## OFFICE OF THRIFT SUPERVISION

### Receivership Of A Federal Savings Bank

**Date:** August 21, 2009  
**Order No.:** 2009-45  
**OTS No.:** 14912

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 ebank, Atlanta, Georgia (Savings Bank).

#### **GROUND 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 is in an unsafe and unsound condition to transact business;
- (ii) The Savings Bank, by resolution of its board of directors, has consented to the appointment of a receiver;
- (iii) The Savings Bank is critically undercapitalized; and
- (iv) The Savings Bank has substantially insufficient capital.

The Savings Bank is a Federally chartered savings bank, the accounts of which are insured by the Deposit Insurance Fund. The Savings Bank has its only office in Atlanta, Georgia. As of June 30, 2009, the Savings Bank reported in its Thrift Financial Report (TFR) that it had approximately \$144.7 million in assets, \$142.1 million in liabilities, \$2.6 million in stockholders' equity and a net loss for the six months ended June 30, 2009, of approximately \$3.3 million. At June 30, 2009, the Savings Bank reported tangible, tier one (core), tier one risk-based, and total risk-based capital of 1.84 percent, 1.84 percent, 2.54 percent and 3.79 percent, respectively. The Savings Bank's June 30, 2009, TFR indicates that Savings Bank is critically undercapitalized. The Savings Bank is wholly owned by ebank Financial Services, Inc. (Holding Company).

## **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 Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1821(c)(5), exist.

### **Unsafe and Unsound Condition to Transact Business**

Under section 11(c)(5)(C) of the FDIA, OTS may appoint a receiver for a savings association if it is in an unsafe and unsound condition to transact business. The Savings Bank is in an unsafe and unsound condition due to its capital deficiency, lack of core profitability, and very poor asset quality. Over the past few years the Savings Bank has experienced significant losses due in part to required provisions for the allowance for loan and lease losses, asset valuation adjustments and write-downs, and operating losses. These losses have significantly depleted capital resulting in the Savings Bank being critically undercapitalized. Additional declinations in asset values are likely, thereby further depleting capital and jeopardizing the Savings Bank's operations. Therefore, the Acting Director, or his designee, concludes that the Savings Bank is in an unsafe and unsound condition to transact business.

### **Consent**

Under section 11(c)(5)(I) of the FDIA, a resolution by the board of directors consenting to the appointment of a receiver provides a sufficient basis for such an appointment. The board of directors of the Savings Bank, by resolution dated June 30, 2009, approved the entry of a stipulation and consent agreement that included consenting to the appointment of a conservator or receiver by OTS when the Savings Bank is significantly or critically undercapitalized. The Savings Bank is critically undercapitalized. The Acting Director, or his designee, finds that, under section 11(c)(5)(I) of the FDIA, the June 30, 2009, resolution, stipulation and consent agreement provide a sufficient basis for the appointment of a receiver.

### **Critically Undercapitalized**

Under section 11(c)(5)(L)(i) of the FDIA, OTS may appoint a receiver for a savings association if it is critically undercapitalized, as defined in 12 U.S.C. § 1831o(b). Under section 1831o(b), an institution is critically undercapitalized if it fails to meet any level of capital specified under section 1831o(c)(3)(A) of the FDIA. Section 1831o(c)(3)(A) provides for the appropriate banking agency to set a ratio of tangible equity to total assets at which an institution is critically undercapitalized. OTS has promulgated 12 C.F.R. § 565.4(b)(5), which defines an institution as critically undercapitalized if it has a ratio of tangible equity to total assets that is equal to or less than two percent. As of June 30, 2009, the Savings Bank reported a tangible capital ratio

of 1.84 percent. Thus, the Acting Director, or his designee, concludes that the Savings Bank is critically undercapitalized.

### **Substantially Insufficient Capital**

Under section 11(c)(5)(L)(ii) of the FDIA, a receiver may be appointed for the Savings Bank if it has substantially insufficient capital. Pursuant to the authority granted in sections 5(t)(1)(A)(i) and 5(t)(2)(A) of the HOLA, 12 U.S.C. §§ 1464 (t)(1)(A)(i) and (2)(A), OTS promulgated 12 C.F.R. Part 567. OTS has determined that failure to maintain at least two-thirds of any capital required by 12 C.F.R. Part 567 constitutes a substantial capital insufficiency within the meaning of the FDIA.<sup>1</sup> Pursuant to 12 C.F.R. § 567.8(b), all savings associations that do not have a composite rating of “1” must maintain a leverage capital of four percent. The Savings Bank is not “1” rated and has reported a leverage capital ratio of 1.84 percent, less than two-thirds of the required four percent, as of June 30, 2009.

In addition, section 5(t)(2)(C) of the HOLA, 12 U.S.C. § 1464 (t)(2)(C), provides that OTS must require each savings association to maintain risk-based capital. OTS has prescribed that the minimum risk-based capital amount must be eight percent of the institution’s risk-based assets, as defined. See 12 C.F.R. §§ 567.2(a)(1) and 567.6. The Savings Bank reported its risk-based capital ratio of 3.79 percent, as of June 30, 2009. Based on the above, the Acting Director or his designee, concludes that the Savings Bank has substantially insufficient leverage capital and substantially insufficient risk-based capital.

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)(C), (I), (L)(i) and (L)(ii) of the FDIA, 12 U.S.C. §§ 1821(c)(5)(C), (I), (L)(i) and (L)(ii).

## **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).

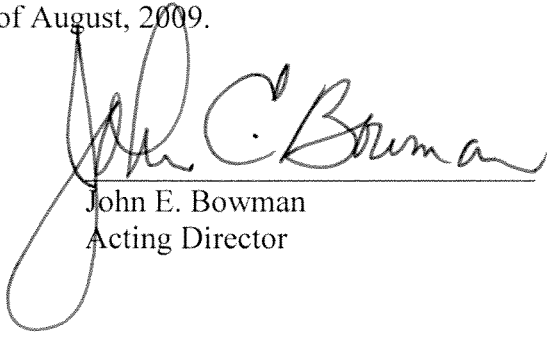
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<sup>1</sup> See e.g., OTS Order 2007-43 (September 27, 2007) and OTS Order 2009-21 (April 17, 2009).

**Delegation of Authority to Act for OTS**

The Acting Director, or his designee, hereby authorizes the OTS Southeast Regional Director, or his designee, and the Assistant Chief Counsel, Business Transactions Division 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 Assistant Chief Counsel, Business Transactions Division of the Chief Counsel's office, 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, effective immediately upon service of this Order on the Savings Bank this 21<sup>st</sup> day of August, 2009.



John E. Bowman  
Acting Director