

## OFFICE OF THRIFT SUPERVISION

### Receivership Of A Federal Savings Bank

**Date:** November 6, 2009  
**Order No.:** 2009-57  
**OTS No.:** 05171

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 Home Federal Savings Bank, Detroit, Michigan (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 is undercapitalized, as defined in 12 U.S.C. § 1831o(b), and failed to submit a capital restoration plan within the time prescribed under 12 U.S.C. § 1831o(e)(2)(D) acceptable to OTS;
- (iii) The Savings Bank is critically undercapitalized as defined in section 38(b) of the Federal Deposit Insurance Act (FDIA); and
- (iv) The Savings Bank has substantially insufficient capital.

The Savings Bank is a federally chartered mutual savings bank, with its accounts insured by the FDIC's Deposit Insurance Fund. The Savings Bank has its home office and a branch office located in Detroit, Michigan. As of September 30, 2009, the Savings Bank reported in its Thrift Financial Report (TFR) that it had approximately \$12.994 million in assets, \$12.857 million in liabilities, and \$137,000 of tangible capital. At September 30, 2009, the Savings Bank reported tangible, tier one (core), tier one risk-based, and total risk-based capital of 1.06 percent, 1.06 percent, 2.17 percent, and 4.11 percent, respectively. The Savings Bank experienced a net loss for the year ended December 31, 2007, of approximately \$550,000; a net loss for the year ended December 31, 2008, of approximately \$508,000; and additional losses for the nine month period ended September 30, 2009, of approximately \$395,000, which losses have reduced its equity and regulatory capital. As of September 30, 2009, the Savings Bank's TFR

indicates that the Savings Bank is critically undercapitalized. Additional losses are anticipated and the Savings Bank has not developed a plan to operate profitably.

The Savings Bank has no prospect for a return to profitability absent growth in the volume of its interest-earning asset base. Current capitalization levels are insufficient to support asset growth. While the Savings Bank's board of directors (Board) is currently discussing the possibilities of increasing the Savings Bank's regulatory capital through a pledged deposit in a nonwithdrawable account, a supervisory stock conversion, and a subsequent outside merger or acquisition partner, no documentation of any such pledged deposit and no application for a proposed supervisory conversion, merger or acquisition, has been submitted to OTS.<sup>1</sup>

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

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.

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

Under § 11(c)(5)(C) of the FDIA, OTS may appoint a receiver if a savings association is in an unsafe or unsound condition to transact business.

The Savings Bank is in an unsafe and unsound condition, due to the Savings Bank's inadequate books and records, poor internal controls, deteriorating capital position, deteriorating asset quality, continued negative earnings, insufficient capital position with no realistic prospects for generating capital internally, lack of an acceptable business plan, and inadequate management. In particular, over the past two and one-half years, the Savings Bank has recorded significant losses. These losses have significantly depleted capital. Therefore, the Acting Director, or his designee, concludes that the Savings Bank is in an unsafe and unsound condition to continue to conduct business.

#### **Undercapitalized and Fails to Timely Submit an Acceptable Capital Restoration Plan**

Under § 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

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<sup>1</sup> On October 22, 2009, a potential acquiror, who had been approved by the Board, met with the OTS Central Region staff and indicated that he would not put his funds at risk with a pledged deposit on behalf of the Savings Bank unless he received positive feedback from OTS concerning his plans to acquire the Savings Bank. Following this meeting, the potential acquiror submitted some information to OTS, including a draft business plan. On November 3, 2009, OTS conferred with the potential acquiror, advising him of significant supervisory concerns in connection with the potential acquiror's plans.

capital restoration plan within the time prescribed under 12 U.S.C. § 1831o(e)(2)(D) acceptable to OTS.

As of November 21, 2008, the Savings Bank was found to be undercapitalized, as defined in 12 U.S.C. § 1831o(b). The Savings Bank was required to file a capital restoration plan with OTS by January 5, 2009. While the Savings Bank initially asserted that it was not undercapitalized, by January 20, 2009, it had conceded that it was, in fact, undercapitalized. The Savings Bank did not file a capital restoration plan with OTS by January 5, 2009.

In the Savings Bank's February 17, 2009, response to OTS's January 27, 2009, Letter of Intent to Issue a PCA Directive, the Savings Bank indicated that it had a capital restoration plan consisting of four key initiatives: operating expense control and reduction; equity infusion through the Savings Bank's wholly owned service corporation; equity infusion through the reorganization of the Savings Bank structure into a mutual holding company; and revenue enhancement through increased loan volume, to be accomplished through the purchase of mortgage-backed loans. The Savings Bank's submission provided some brief qualitative statements on each of these initiatives, but lacked substantive qualitative detail, salient quantitative information and information showing how each of these initiatives would be achieved. Accordingly, the Savings Bank's plan, if considered to be a capital restoration plan, could not be accepted by OTS. On March 5, 2009, OTS informed the Savings Bank that its response was insufficient. Thus, even if the Savings Bank's February 17, 2009, submission was deemed to be a capital restoration plan, we conclude that it was untimely and unacceptable.<sup>2</sup>

Therefore, the Acting Director, or his designee, concludes that the Savings Bank is undercapitalized, as defined in 12 U.S.C. § 1831o(b), and has failed to submit a capital restoration plan within the time prescribed under 12 U.S.C. § 1831o(e)(2)(D) acceptable to OTS.

### **Critically Undercapitalized**

Under § 11(c)(5)(L)(i) of the FDIA, OTS may appoint a receiver if a savings association is critically undercapitalized as defined in 12 U.S.C. § 1831o(b).

Under § 1831o(b) an institution is critically undercapitalized if it fails to meet any level of capital specified under 12 U.S.C. § 1831o(c)(3)(A). 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 determined that an institution is critically undercapitalized if it has a ratio of tangible equity to total assets that is equal to or less than two percent. See 12 C.F.R. § 565.4(b)(5).

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<sup>2</sup> See 12 U.S.C. §§ 1831o(e)(2)(C) and 1831o(e)(D)(i), 12 C.F.R. § 565.5(a)(1).

As of September 30, 2009, the Savings Bank reported that it had a ratio of equity capital to total assets that was less than two percent. Therefore, the Acting Director, or his designee, concludes that the Savings Bank is critically undercapitalized.

### **Substantially Insufficient Capital**

Under § 11(c)(5)(L)(ii) of the FDIA, OTS may appoint a receiver if a savings association has substantially insufficient capital.

Pursuant to the authority granted in §§ 5(t)(1)(A)(i) and 5(t)(2)(A) of the HOLA, OTS has promulgated 12 C.F.R. Part 567. OTS has determined that failure to maintain at least two-thirds of any capital requirement under 12 C.F.R. Part 567 constitutes a substantial capital insufficiency within the meaning of the FDIA. See e.g., OTS Order 2007-43 (September 27, 2007) and OTS Order 2009-21 (April 17, 2009).

Section 567.8(b) requires all savings associations that are not “1” rated to maintain a leverage capital ratio of 4 percent. The Savings Bank is not “1” rated and it reported in its June 30, 2009 TFR, a leverage capital ratio of 2.04 percent, and it reported in its September 30, 2009 TFR, a leverage capital ratio of 1.06 percent, both figures being less than two-thirds of the required 4 percent. The Savings Bank has not reported any significant increase in its capital since September 30, 2009.

Therefore, the Acting Director, or his designee, concludes that the Savings Bank has substantially insufficient capital.

The Acting Director, or his designee, therefore, has determined that grounds for the appointment for a receiver for the Savings Bank exist under section 5(d)(2) of the HOLA, and sections 11(c)(5)(C), (K)(iii), (L)(i) and (L)(ii) of the FDIA, 12 U.S.C. §§ 1821(c)(5)(C), (K)(iii), (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, and section 11(c)(6)(B) of the FDIA, 12 U.S.C. §§ 1464(d)(2) and 1821(c)(6)(B).

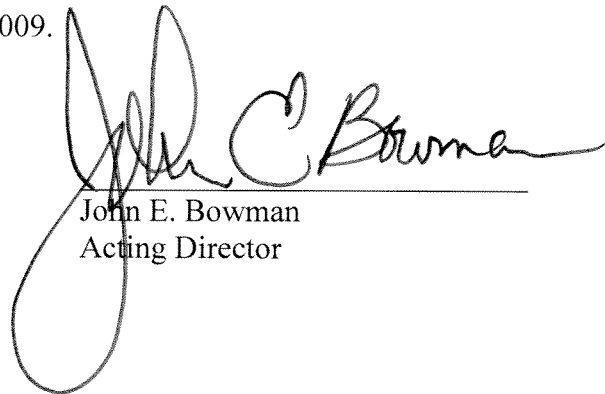
### **Delegation of Authority to Act for OTS**

The Acting Director, or his designee, hereby authorizes: (i) the OTS Central Regional Director, or his designee, or (ii) the Deputy Chief Counsel for the Business Transactions Division of the Chief Counsel’s office, or his designee, to: (a) certify orders; (b) sign, execute, attest, or certify other documents of OTS issued or authorized by this

Order; (c) 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 (d) 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 the 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: (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 6<sup>th</sup> day of November, 2009.



John E. Bowman  
Acting Director