

## OFFICE OF THRIFT SUPERVISION

### Receivership of a Federal Savings Association

**Date:** February 18, 2011  
**Order No.:** 2011-14  
**OTS No.:** 15051

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 San Luis Trust Bank, FSB, San Luis Obispo, California (Institution).

#### GROUND FOR APPOINTMENT OF FDIC AS RECEIVER FOR THE INSTITUTION

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

- (i) The Institution's assets are less than the Institution's obligations to its creditors and others;
- (ii) The Institution is undercapitalized, as defined in 12 U.S.C. § 1831o(b), and failed to submit a capital restoration plan acceptable to the OTS within the time prescribed under 12 U.S.C. § 1831o(e)(2)(D);
- (iii) The Institution is critically undercapitalized; and
- (iv) The Institution has substantially insufficient capital.

The Institution is a federally chartered stock savings association, the accounts of which are insured by the Deposit Insurance Fund (DIF). The Institution has a single office, located in San Luis Obispo, California.

The Institution's Thrift Financial Report (TFR) for December 31, 2010, reported approximately \$332.6 million in assets, \$334.5 million in liabilities, and a net loss for 2010 of approximately \$27.55 million. At December 31, 2010, the Institution reported tangible, tier 1 (core), and total risk-based capital of negative 0.56 percent, negative 0.56 percent, and negative 0.85 percent, respectively. Based on the tangible capital ratio in the Institution's December 31, 2010, TFR, the Institution is critically undercapitalized under OTS's Prompt Corrective Action (PCA) regulation.

## **DISCUSSION OF GROUNDS FOR APPOINTMENT OF A RECEIVER FOR THE INSTITUTION**

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.

### **The Institution's Assets are Less Than the Institution's Obligations to its Creditors and Others**

Under section 11(c)(5)(A) of the FDIA, OTS may appoint a receiver for a savings association if the savings association's assets are less than its obligations to its creditors and others. The Institution reported to OTS that as of December 31, 2010, its equity capital was negative \$1.86 million. As a result, the Institution's assets are less than its obligations to its creditors and others. Therefore, OTS may appoint a receiver for the Institution under this standard.

### **Failure of an Undercapitalized Institution to Submit an Acceptable Capital Restoration Plan Within the Time Prescribed**

Under section 11(c)(5)(K)(iii) of the FDIA, OTS may appoint a receiver for an undercapitalized savings association if that institution 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.<sup>1</sup> OTS promulgated such a regulation. See 12 C.F.R. § 565.5(a)(1). Section 1831o(e)(2)(C)(i)(II) provides that OTS may 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 Institution reported that, as of December 31, 2010, it had a tier 1 (core) capital ratio of negative 0.56 percent, and a total risk-based capital ratio of negative 0.85 percent. Accordingly, the Institution is undercapitalized under OTS's PCA regulations.

The Institution submitted its capital restoration plan on December 9, 2010. OTS reviewed the capital restoration plan and concluded that the plan was not acceptable because, among other things, the plan failed to identify definitive sources of new capital. The financial projections unrealistically provided for a \$10 million capital infusion in December 2010 without basis or support for the infusion, and the plan did not identify any specific investors or acquisition candidates as a source of the funds. The plan

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<sup>1</sup> OTS shortened the Institution's time to file a capital restoration plan due to the Institution's condition. 12 C.F.R. § 565.7(c).

reflected an additional capital infusion in April 2011, but did not identify any specific source of funds for the April capital infusion. Accordingly, OTS denied the capital restoration plan on January 6, 2011.

Therefore, the Acting Director, or his designee, concludes that the Institution is undercapitalized and that the Institution failed to timely submit an acceptable capital restoration plan.

### **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), a depository 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 a savings association 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 December 31, 2010, the Institution reported a tangible capital ratio of negative 0.56 percent. Thus, the Acting Director, or his designee, concludes that the Institution is critically undercapitalized.

### **Substantially Insufficient Capital**

Under section 11(c)(5)(L)(ii) of the FDIA, OTS may appoint a receiver for a savings association 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, OTS has promulgated 12 C.F.R. Part 567, requiring all savings associations that are not “1” rated to maintain a tier 1 (core) capital ratio of 4 percent and all savings associations to maintain a minimum total risk-based capital ratio of 8 percent of the institution’s risk-based assets. OTS has concluded previously 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 12 U.S.C. § 1821(c)(5)(L)(ii). See, *e.g.*, OTS Orders No. 2009-21 (April 17, 2009) and No. 2008-33 (September 19, 2008).

The Institution is not “1” rated and had a tier 1 (core) capital ratio and a total risk-based capital ratio of negative 0.56 percent and negative 0.85 percent, respectively, as of December 31, 2010. Accordingly, the Institution’s tier 1 (core) capital ratio and total risk-based capital ratio both are less than two-thirds of the applicable capital requirements. Therefore, the Acting Director, or his designee, concludes that the Institution has substantially insufficient capital.

The Acting Director, or his designee, therefore, has determined that grounds for the appointment of a receiver for the Institution exist under section 5(d)(2) of the HOLA,

and sections 11(c)(5)(A), (K)(iii), (L)(i), and (L)(ii) of the FDIA, 12 U.S.C. §§ 1821(c)(5)(A), (K)(iii), (L)(i), and (L)(ii).

### **ACTIONS ORDERED OR APPROVED**

#### **Appointment of a Receiver**

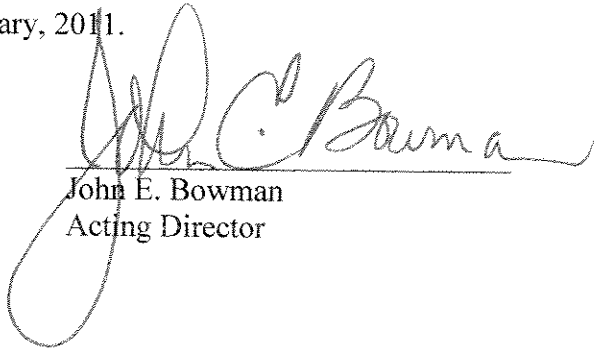
The Acting Director, or his designee, hereby appoints the FDIC as receiver for the Institution, for the purpose of liquidation or winding up the affairs of the Institution, pursuant to section 5(d)(2) of the HOLA, 12 U.S.C. § 1464(d)(2), and section 11(c)(6)(B) of the FDIA, 12 U.S.C. § 1821(c)(6)(B).

#### **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 Institution and serve the Institution 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 Institution.

Executed this 18th day of February, 2011.

  
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John E. Bowman  
Acting Director