

OFFICE OF THRIFT SUPERVISION

Receivership Of A Federal Savings Association

Date: September 27, 2007
Order No.: 2007-43
OTS No.: 8475

The 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 NetBank, Alpharetta, Georgia (Savings Bank).

GROUND FOR APPOINTMENT OF FDIC AS RECEIVER FOR THE SAVINGS BANK

The Director, or his designee, has considered a September 27, 2007, memorandum and attachments, a resolution by the Savings Bank's board of directors consenting to the appointment of a conservator or receiver, Thrift Financial Reports filed by the Savings Bank from 2005 through 2007, and other information and finds and determines the following:

- (i) The Savings Bank is in an unsafe and unsound condition to transact business;
- (ii) The Savings Bank has incurred losses that have depleted substantially all of its equity capital, and there is no reasonable prospect for the Savings Bank to become adequately capitalized without Federal assistance;
- (iii) The Savings Bank has consented to the appointment of a conservator or receiver;
- (iv) 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 has failed to submit an acceptable capital restoration plan within the time prescribed by 12 C.F.R. § 565.5(a); and
- (v) 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 (DIF). The Savings Bank has its home office in Alpharetta, Georgia. As of June 30, 2007, the Savings Bank reported total assets of \$2.474 billion.

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 the Director may appoint a receiver for any insured savings association if the Director determines that one or more grounds specified in section 11(c)(5) of the FDIA, 12 U.S.C. § 1821(c)(5), exist.

Under section 11(c)(5)(C) of the FDIA, the Director may appoint a receiver if a savings association is in an unsafe and unsound condition to transact business. The Director finds that the Savings Bank is in an unsafe and unsound condition due to its capital deficiency, lack of core profitability, extreme vulnerability to market risk, and very poor asset quality. Over the past two years the Savings Bank has experienced significant losses due in part to required provisions for the allowance for loan losses, asset valuation adjustments and write-downs, and operating losses. These losses have significantly depleted capital resulting in the Savings Bank being significantly undercapitalized. Further, certain of the Savings Bank's mortgage and loan servicing portfolios have declined significantly in value and have resulted in write-downs. Such write-downs have substantially depleted capital. Additional declinations in asset values are likely, thereby, further depleting capital and jeopardizing the Savings Bank's operations.

In addition, the Savings Bank lacks core profitability and its operations are extremely vulnerable to market risk due to significantly decreased demand for sub-prime mortgages and the Savings Bank has experienced a flattening yield curve and interest rate compression. The narrowing interest rate spread, when combined with the relatively higher general and administrative expenses of the Savings Bank, has resulted in losses on core operations during the past two years. The Savings Bank has been unable to reverse these trends. Moreover, the Savings Bank has ceased to operate some businesses and would have significant difficulty reviving those operations. The Savings Bank's earning capacity is insufficient to replenish capital to the required regulatory levels in the foreseeable future. Therefore, the Director concludes that the Savings Bank is in an unsafe and unsound condition.

Under section 11(c)(5)(G) of the FDIA, the Director may appoint a receiver if a savings association has incurred, or is likely to incur, losses that have or will deplete all or substantially all of its capital, and there is no reasonable prospect for it to become adequately capitalized, as defined in section 12 U.S.C. § 1831o(b), without Federal assistance. The Savings Bank already has incurred losses that have depleted substantially all of its capital. As a result of the losses already suffered, the Savings Bank currently has insufficient capital. The Director has determined that: (i) the Savings Bank will likely continue to suffer additional losses, in part because its assets are likely to continue to decline in value, it has a high level of general and administrative expenses, and it is experiencing narrowing interest rate spreads; (ii) the Savings Bank's holding company

does not have, and has been unable to access, the funds necessary to recapitalize the Savings Bank; (iii) a proposed transaction to sell the Savings Bank has failed to materialize and no other potential acquirers presently exist; and (iv) the Savings Bank has withdrawn its plan to restore its capital. Therefore, the Director concludes that it is unlikely that any reasonable proposal to recapitalize the Savings Bank will be forthcoming from the Savings Bank, its holding company or a third party. Therefore, the Director concludes that the Savings Bank has incurred losses that depleted substantially all of its capital and is likely to incur further losses, and there is no reasonable prospect for it to become adequately capitalized, as defined in section 12 U.S.C. § 1831o(b), without Federal assistance.

The Director finds that the board of directors of the Savings Bank by resolution dated September 26, 2007, consented to the appointment of a conservator or receiver by the Director and the Savings Bank entered into a consent agreement with OTS for such an appointment. Under section 11(c)(5)(I) of the FDIA, that resolution by the board of directors provides a sufficient grounds for the appointment of a receiver.

Under section 11(c)(5)(K) of the FDIA, the Director 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 or fails to submit a capital restoration plan under 12 U.S.C. § 1831o(e)(2). Under section 1831o(b) an institution is undercapitalized if it fails to meet any required minimum capital level. OTS has determined that an institution is significantly undercapitalized if it has a leverage ratio that is less than three percent or a total risk-based capital ratio that is less than six percent. The Savings Bank has a leverage (core) capital ratio of 2.55 percent and a total risk-based capital ratio of 4.42 percent.

As discussed above, there is no reasonable prospect of the Savings Bank becoming adequately capitalized without Federal assistance. Therefore, the Director concludes that the Savings Bank is undercapitalized and that it has no reasonable prospect of becoming adequately capitalized. In addition, the Savings Bank has withdrawn the capital restoration plan it had submitted to OTS effectively negating that submission. Therefore, the Director also concludes that the Savings Bank has failed to submit a capital restoration plan within the time prescribed in 12 C.F.R. § 565.5(a).

Under section 11(c)(5)(L)(ii) of the FDIA, the Director may appoint a receiver if a savings association has substantially insufficient capital. Pursuant to the authority granted in sections 5(t)(1)(A)(i) and 5(t)(2)(A) of the HOLA, the Director has promulgated 12 C.F.R. § 567.8(b) requiring all savings associations that are not "one" rated to maintain a leverage capital ratio of 4 percent. The Director concludes that failure to maintain at least two thirds of the leverage capital required by section 567.8(b) of OTS's regulations constitutes a substantial capital insufficiency within the meaning of the FDIA. The Savings Bank is not "one" rated and has a leverage capital ratio of only 2.55 percent. Therefore, the Director concludes that the Savings Bank has substantially insufficient capital. In addition, section 5(t)(2)(C) of the HOLA 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 8 percent of the institution's risk-based assets, as defined. The Director has concluded that failure to maintain at least two thirds of the risk-based capital required by section 567.2(a)(1) of OTS's regulations constitutes a substantial capital insufficiency within the meaning of the FDIA. The Savings Bank's risk-based capital is 4.42 percent. Thus, the Director concludes that the Savings Bank has substantially insufficient capital.

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

ACTIONS ORDERED OR APPROVED

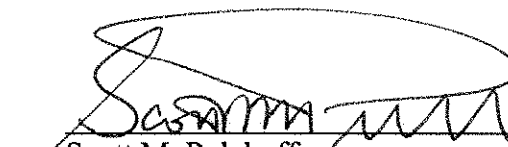
Appointment of a Receiver

The Director, or his designee, hereby appoints the FDIC as receiver for the Savings Bank, for the purpose of liquidation, pursuant to section 5(d)(2) of the HOLA, and section 11(c)(6)(B) of the FDIA.

Delegation of Authority to Act for OTS

The Director, or his designee, hereby authorizes the OTS Southeast Regional Director, or his designee, and/or the Deputy Chief Counsel for Business Transactions, or his designee, to: (i) certify orders; (ii) sign, execute, attest, or certify other documents of OTS issued or authorized by this Order; (iii) deliver or accept delivery of any notice from or to OTS regarding the Savings Bank; and (iv) perform such other functions of OTS necessary or appropriate for the implementation of such 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 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 Director of OTS, effective when a copy of this Order is delivered to the Savings Bank.


Scott M. Polakoff
Senior Deputy Director and
Chief Operating Officer