

**OFFICE OF THRIFT SUPERVISION**

**Receivership of a Federal Savings Bank**

Date: August 21, 2009  
Order No.: 2009-44  
Docket No.: 08534

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 Guaranty Bank, Austin, Texas (Savings Bank).

**GROUND FOR APPOINTMENT OF FDIC AS  
RECEIVER FOR THE SAVINGS BANK**

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

- (i) The Savings Bank's assets are less than the Savings Bank's obligations to its creditors and others;
- (ii) The Savings Bank is in an unsafe and unsound condition to transact business;
- (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 (DIF). The Savings Bank's home office is in Austin, Texas. As of June 30, 2009, the Savings Bank reported in its amended Thrift Financial Report (TFR) that it had approximately \$13.464 billion in assets, \$13.845 billion in liabilities, negative \$381 million in stockholders' equity, and a net loss for the six months ended June 30, 2009, of approximately \$1.983 billion. At June 30, 2009, the Institution reported tangible, tier one (core), tier one risk-based, and total risk-based capital of negative 7.11 percent, negative 7.11 percent, negative 7.35 percent, and negative 7.36 percent, respectively. The Savings Bank's June 30, 2009, Thrift Financial Report indicates that the Institution is "critically undercapitalized." The Savings Bank experienced a net loss for the fiscal year ended December 31, 2008, of approximately \$427.07 million. The Savings Bank is indirectly wholly owned by Guaranty Financial Group, Inc. (Holding Company). The Holding Company wholly owns all of the outstanding common stock of Guaranty Holdings, Inc., which directly owns the Savings Bank.

**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.

Assets Insufficient for Obligations

Under section 11(c)(5)(A) of the FDIA, OTS may appoint a receiver if a savings association's assets are less than its obligations to its creditors and others.

As of June 30, 2009, the Savings Bank reported negative equity capital of \$381 million. Thus, the Savings Bank's liabilities exceed its assets, and the Savings Bank is unable to meet all of its obligations to its creditors and others.

Therefore, the Acting Director, or his designee, concludes that the Savings Bank's assets are less than its obligations to its creditors and others.

Unsafe or Unsound Condition to Transact Business

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

At June 30, 2009, the Savings Bank reported tangible, tier one (core), tier one risk-based, and total risk-based capital of negative 7.11 percent, negative 7.11 percent, negative 7.35 percent, and negative 7.36 percent, respectively. The Savings Bank's June 30, 2009, TFR indicates that the Savings Bank is "critically undercapitalized." The Savings Bank experienced a net loss for the fiscal year ended December 31, 2008, of approximately \$427.07 million, and additional losses of \$1.983 billion in the first and second quarters of 2009, which losses have depleted its equity and regulatory capital.

The Savings Bank's operations have suffered due to the declining values of its loan portfolio, due to loan delinquencies that required significant provisions for loan losses. Provisions for loan loss totaled \$514 million for fiscal 2008. First and second quarter 2009 losses included \$84 million in additional loss provisions.

Declining values of its non-agency mortgage backed securities (MBS) due to delinquencies in the underlying mortgages have required the Institution to recognize other than temporary impairments (OTTI) of these securities. The Savings Bank has recorded OTTI loss provisions of approximately \$194 million in fiscal 2008 and \$2.418 billion in the first and second quarters of 2009. The Savings Bank invested in a significant amount of MBS of which approximately 70 percent of the underlying mortgages are Option adjustable rate mortgages (Option ARM) on California residences resulting in an inappropriate regional concentration of

MBS investment. In addition, many of the underlying mortgages were made on the basis of stated income or reduced documentation.

Therefore, the Acting Director, or his designee, concludes that the Savings Bank is in an unsafe and unsound condition to transact business.

#### 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 negative 7.11 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, 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 “one” rated to maintain a leverage capital ratio of 4 percent and all savings associations to maintain a minimum risk-based capital ratio of 8 percent of the institution’s risk-based assets, as defined. OTS has concluded 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 12 U.S.C. § 1821(c)(5)(L)(ii).

The Savings Bank is not “one” rated and has a leverage capital ratio of negative 7.35 percent. The Savings Bank’s risk-based capital is negative 7.36 percent. Accordingly, the Savings Bank’s leverage capital ratio and risk-based capital ratio both are less than two-thirds of the applicable capital requirements. Accordingly, 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)(A), (C), (L)(i) and (L)(ii) of the FDIA, 12 U.S.C. §§ 1821(c)(5)(A), (C), (L)(i) and (L)(ii).

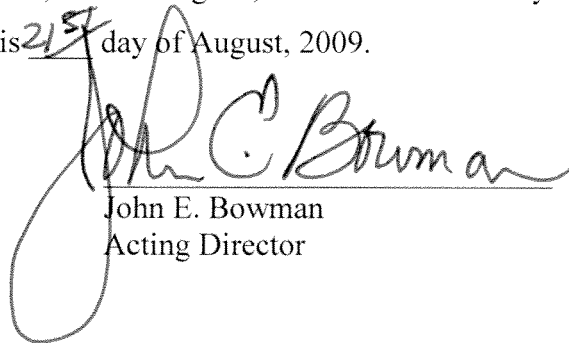
**ACTIONS ORDERED OR APPROVED****Appointment of a Receiver**

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).

**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 Assistant Chief Counsel in the Business Transactions Division of the Chief Counsel's Office, or his designee, to: (1) certify orders; (2) sign, execute, attest or certify other documents of OTS issued or authorized by this Order; (3) designate the person 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 (4) perform such other actions of OTS necessary or appropriate for the implementation of such Orders. 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. Further, the Acting Director, or his designee, authorizes the Assistant Chief Counsel in the Business Transactions Division, 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 immediately upon service of this Order on the Savings Bank this 21<sup>st</sup> day of August, 2009.



John E. Bowman  
Acting Director