

OFFICE OF THRIFT SUPERVISION

Receivership of a Federal Savings Association

Date: April 15, 2011

Order No.: 2011-29

OTS No.: 18010

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 Superior Bank, Birmingham, Alabama (Institution).

GROUNDS 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 is in an unsafe and unsound condition to transact business;
- (ii) The Institution, by resolution of its board of directors, has consented to the appointment of a receiver;
- (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. The Institution's home office is in Birmingham, Alabama, and the Institution has seventy-three branches, located in Alabama and Florida. The Institution is a wholly owned subsidiary of Superior Bancorp (Holding Company).

The Institution's Thrift Financial Report (TFR) for December 31, 2010, reported approximately \$3.04 billion in assets, \$2.99 billion in liabilities, and a net loss for calendar year 2010 of approximately \$232.2 million. At December 31, 2010, the Institution reported tangible, tier 1 (core), and total risk-based capital of 1.41 percent, 1.41 percent, and 3.49 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.¹

¹ 12 C.F.R. § 565.4(b)(5) (2011).

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.

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 it is in an unsafe or unsound condition to transact business. An unsafe or unsound condition has been identified as one where a savings association is operated in a manner that causes an unacceptable risk to its depositors' funds. See Franklin Savings Association v. Director, OTS, 934 F.2d 1127, 1145 (10th Cir. 1991), cert. denied, 503 U.S. 937 (1992).

The Institution is in an unsafe and unsound condition due to its capital deficiency, asset quality problems, and significant losses. As of December 31, 2010, the Institution reported tangible, tier 1 (core) and total risk-based capital of 1.41 percent, 1.41 percent and 3.49 percent, respectively. The Institution is therefore critically undercapitalized as defined in OTS's PCA Regulations. The Institution has significant asset quality problems. As of December 31, 2010, total adversely classified assets equaled \$605 million, or 19.92 percent of total assets, and 589.8 percent of tier 1 (core) capital plus the allowance for loan and lease losses (ALLL). The Institution's ratio of classified assets to tier 1 (core) capital plus ALLL is the highest among all currently existing OTS-regulated savings associations. The Institution continues to have a high concentration of high-risk assets located in geographic areas severely impacted by declining real estate prices. Additional declines in asset values are likely, thereby further depleting capital and jeopardizing the Institution's operations. Further, the Institution's deteriorating loan portfolio has materially affected the Institution's earnings, resulting in operating losses. Losses for calendar years 2008, 2009 and 2010 totaled approximately \$161.7 million, \$15.3 million and \$232.2 million. Preliminary reports indicate that for the two months ended February 28, 2011, the Institution lost approximately \$7.4 million.

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

Consent

Under section 11(c)(5)(I) of the FDIA, OTS may appoint a receiver if a savings association, by resolution of its board of directors, consents to the appointment. The Acting Director, or his designee, finds that the board of directors of the Institution, by resolution dated April 13, 2011, consented to the appointment of a conservator or receiver by OTS and, on April 13, 2011, the Institution entered into a Consent agreement with OTS for such an appointment.

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 1.41 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 minimum 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 savings association’s risk-based assets, as defined. 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 1.41 percent and 3.49 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)(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

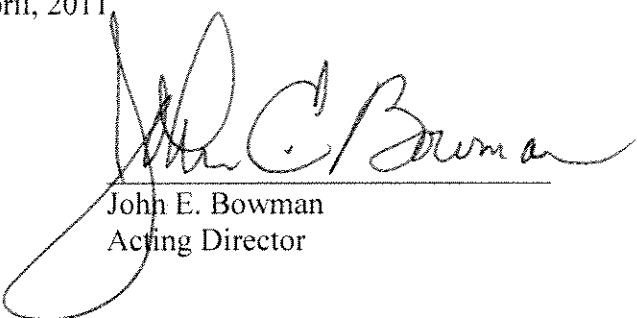
The Acting Director, or his designee, hereby appoints the FDIC as receiver for the Institution, for the purpose of liquidation or winding up the affairs of the Institution, pursuant to section 5(d)(2) of the HOLA, 12 U.S.C. § 1464(d)(2), and section 11(c)(6)(B) of the FDIA, 12 U.S.C. § 1821(c)(6)(B).

Delegation of Authority to Act for OTS

The Acting Director, or his designee, hereby authorizes the OTS Southeast 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 15th day of April, 2011.



John E. Bowman
Acting Director