

OFFICE OF THRIFT SUPERVISION

Receivership of a Federal Savings Bank

Date: July 16, 2010
Order No.: 2010-43
Docket No.: 08087

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 Turnberry Bank, Aventura, Florida (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 is in an unsafe and unsound condition to transact business;
- (ii) The Savings Bank, by resolution of its board of directors, has consented to the appointment of a receiver;
- (iii) 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
- (iv) The Savings Bank is undercapitalized as defined in 12 U.S.C. § 1831o(b), and failed to submit a capital restoration plan acceptable to the Office of Thrift Supervision (OTS) within the time prescribed under 12 U.S.C. § 1831o(e)(2)(D).

The Savings Bank is a federally chartered savings bank, the accounts of which are insured by the FDIC's Deposit Insurance Fund. The Savings Bank's home office is in Aventura, Florida. The Savings Bank operates three additional full service branch offices. The Savings Bank is a wholly owned subsidiary of Turnberry Financial Services, Inc.

The Savings Bank's March 31, 2010, Thrift Financial Report (TFR) reported approximately \$264 million in assets, approximately \$255 million in liabilities, approximately \$9 million in stockholders' equity, and a net loss for the quarter ended March 31, 2010 of \$1.3 million. The Savings Bank reported a net loss for the year ended December 31, 2009, of

approximately \$13.13 million. At March 31, 2010, the Savings Bank reported tier 1 (core) and total risk-based capital of 3.38 percent and 6.76 percent, respectively. The Savings Bank's March 31, 2010, TFR indicates that the Savings Bank is "undercapitalized" under OTS's Prompt Corrective Action (PCA) regulation.

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.

Unsafe or Unsound Condition to Transact Business

Under section 11(c)(5)(C), OTS may appoint a receiver for a savings association if a savings association is in an unsafe and unsound condition to transact business. An unsafe or unsound condition has been identified as one where an institution 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 Savings Bank is in an unsafe and unsound condition due to its capital deficiency, lack of core profitability, and poor asset quality. At March 31, 2010, the Savings Bank reported tier 1 (core) and total risk-based capital of 3.38 percent and 6.76 percent, respectively. Furthermore, the Savings Bank's tier 1 (core) and total risk-based capital ratios were 3.23 percent and 6.41 percent, respectively, as of May 31, 2010. The Savings Bank's March 31, 2010 TFR indicates that the Savings Bank is undercapitalized. The Savings Bank experienced a net loss for the quarter ended March 31, 2010 of \$1.32 million, and a net loss for the year ended December 31, 2009, of approximately \$13.13 million.

As of March 31, 2010, total adversely classified assets equaled approximately 301.59 percent of tier 1 (core) capital plus allowances for loan and lease losses (ALLL), and delinquent loans and repossessed assets (nonperforming assets) equaled approximately 271.7 percent of tier 1 capital plus ALLL.

Therefore, the Acting Director, or his designee, concludes that the Savings Bank 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 for a savings association if the association's board of directors, by resolution, has consented to such an appointment. The board of directors of the Savings Bank, by resolution dated July 1, 2010, consented to the appointment of the FDIC as conservator or receiver, and on July 1, 2010, the

Savings Bank entered into a Stipulation and Consent Agreement which included provision for such an appointment by OTS. Therefore, the Acting Director, or his designee, concludes that OTS may appoint the FDIC as receiver on the basis of the consent of the Savings Bank's board of directors.

Undercapitalized and No Reasonable Prospect of Becoming Adequately Capitalized

Under section 11(c)(5)(K)(i) of the FDIA, OTS 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. Under section 1831o(b) an institution is undercapitalized if it fails to meet any required minimum capital level. OTS has determined that a savings association is undercapitalized on the basis of its total risk-based capital ratio if such ratio is less than 8 percent, and that a savings association is undercapitalized on the basis of its tier 1 (core) capital ratio, if, for a savings association that is not "1" rated, the tier 1 (core) capital ratio is less than 4 percent.¹

The Savings Bank reported that, as of March 31, 2010, it had a total risk-based capital ratio of 6.76 percent and a tier 1 (core) capital ratio of 3.38 percent. In addition, the Savings Bank remained undercapitalized as of May 31, 2010, with a total risk-based capital ratio of 6.41 percent and a tier 1 (core) capital ratio of 3.23 percent.

Notwithstanding its attempt to do so over several months, the Savings Bank has been unable to attract additional investors to recapitalize the Savings Bank. While several parties have expressed an interest in the Savings Bank, none of the parties has demonstrated the financial capacity to execute a recapitalization transaction or has otherwise been approvable by OTS as a merger candidate. The Savings Bank is unable to return to adequately capitalized status through internal means such as through generation of earnings, asset sales, or shrinkage.

Therefore, the Acting Director, or his designee, concludes that the Savings Bank is undercapitalized and that it has no reasonable prospect of becoming adequately capitalized.

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. 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.

¹ A leverage ratio of 3 percent is permissible if the institution has a CAMELS composite rating of "1" The Savings Bank is not "1" rated.

The Savings Bank reported that, as of March 31, 2010, it had a tier 1 (core) capital ratio of 3.38 percent, and a total risk-based capital ratio of 6.76 percent. In addition, the Savings Bank remained undercapitalized as of May 31, 2010, with a tier 1 (core) capital ratio of 3.23 percent and a total risk-based capital ratio of 6.41 percent.

The Savings Bank submitted its capital restoration plan on March 17, 2010. OTS reviewed the capital restoration plan and concluded that the plan was not acceptable because the financial projections did not indicate a capital infusion would occur timely, it failed to specify the capital levels to be achieved during the period of the Capital Restoration Plan, and it failed to specify Tier 1/Leverage Capital numbers and appropriate PCA ratios. OTS denied the capital restoration plan on May 26, 2010. Therefore, the Acting Director, or his designee, concludes that the Savings Bank failed to timely submit an acceptable capital restoration plan.

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), (I), (K)(i), and (K)(iii) of the FDIA, 12 U.S.C. §§ 1821(c)(5)(C), (I), (K)(i), and (K)(iii).

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 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 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 (iv) perform such other actions 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. Further, the Acting Director, or his designee, 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: (i) as to the above matters regarding the delegation of authority, immediately upon signature; and (ii) 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 16th day of July, 2010.



John E. Bowman
Acting Director