Office of Inspector General

Office of Evaluations
Report No. EVAL-10-004

Evaluation of the Timeliness and Factors Considered in Closing Broadway Bank, Chicago, Illinois

August 2010

Office of Inspector General

Executive Summary

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Why We Did This Evaluation

On April 23, 2010, the Illinois Department of Financial and Professional Regulation (IDFPR), Division of Banking, closed Broadway Bank, Chicago, Illinois, (Broadway) and appointed the FDIC as receiver. On May 6, 2010, the Ranking Minority Member of the Committee on Oversight and Government Reform raised concerns that politics may have played a role in the timing of Broadway's closure and requested that we expedite our material loss review (MLR) of Broadway so that the report would be completed before a November 2010 U.S. Senate election. Specifically, he was concerned because a former Broadway Senior Vice President is currently a U.S. Senate candidate.

We informed the Ranking Member that we would plan and conduct the MLR consistent with our standard MLR work program and time frames, but to address his concern, we initiated an evaluation to review the timeliness and factors considered in closing Broadway. Specifically, we determined:

- The timeline of events leading to the closing of the bank.
- The factors that the FDIC considered in scheduling the bank closing.
- Whether the timing of the closing of Broadway was consistent with Prompt Corrective Action (PCA) provisions.
- Whether there was any indication of political or inappropriate influence associated with the closing.

Evaluation Results

The FDIC and IDFPR could have reviewed, processed, and delivered a joint, IDFPR-led April 2009 examination and a January 2010 formal enforcement action to Broadway in a more timely fashion; however, we did not see any evidence that the examination or enforcement action were delayed for political reasons or that the timeliness of the examination or enforcement action impacted Broadway's closing date. Instead, we concluded that delays in processing the examination and issuing the enforcement action resulted from the complexity and condition of Broadway, the increased regulatory workload from the rise in bank failures, and the need for coordination between the FDIC and IDFPR.

Broadway was a state-chartered bank; therefore, the IDFPR was responsible for closing the bank. The primary factor that prompted the IDFPR's decision to close Broadway was the bank's capital level. Shortly after receiving December 31, 2009 Call Report information showing that Broadway was *Significantly Undercapitalized*, IDFPR issued an order requiring Broadway to become *Well Capitalized* and correct other conditions or face closure in 60 days. This order effectively began the bank closing, or resolution process, for the FDIC. Broadway was closed 63 days after IDFPR issued the state order. We concluded that the FDIC's resolution of Broadway was timely and ahead of the Corporation's preferred 90-day closing time frame.

With respect to PCA provisions, the FDIC notified Broadway that the bank had become *Undercapitalized* in July 2009 and required Broadway to submit a capital restoration plan. The FDIC should have notified Broadway in writing that its capital restoration plan was insufficient, in addition to the verbal notification provided. It would also have been prudent to notify Broadway management that, as a result of submitting an unacceptable capital restoration plan, Broadway was subject to the restrictions applicable to *Significantly Undercapitalized* institutions. Instead, FDIC officials focused on establishing a definitive value for certain Broadway investments in order to determine the bank's capital requirements and understand the bank's true financial condition. The FDIC concluded these investments had declined in value during the April 2009 examination. However, Broadway was reluctant to realize a loss in its financial statements and Call Reports. Broadway sold the investments at a significant loss in December 2009. The FDIC became aware of the impact of the loss on Broadway's capital position during a visitation in late January 2010 and the FDIC notified Broadway that it was *Significantly Undercapitalized* in February 2010. It does not appear that notifying Broadway earlier that it was subject to the provisions for *Significantly Undercapitalized* institutions would have affected Broadway's closing date. The FDIC is generally required by the Federal Deposit Insurance Act to appoint a receiver or conservator for a *Critically Undercapitalized* institution within 90 days. However, Broadway was not *Critically Undercapitalized* prior to its failure.

We also performed evaluation steps to identify evidence of political or inappropriate influence associated with any examination or enforcement activities or the closing of Broadway. These steps included reviewing selected officials' e-mail and calendar entries related to Broadway or meetings with the Administration or Congressional officials and reviewing telephone records. Nothing came to our attention to suggest that FDIC officials or the FDIC examination, enforcement action, or closing processes were subject to any political or inappropriate influence.

Management Response

We provided a draft version of this report for the FDIC's review. Because the report contained no recommendations, a written management response was not required. The Division of Supervision and Consumer Protection elected to provide a written response dated August 4, 2010. The response is included in its entirety in Appendix II.

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ACRONYMS IN THE REPORT

ALLL	Allowance for Loan and Lease Losses
CDO	Collateralized Debt Obligation
CMO	Collateralized Mortgage Obligation
DRR	Division of Resolutions and Receiverships
DSC	Division of Supervision and Consumer Protection
FDI Act	Federal Deposit Insurance Act
IDFPR	Illinois Department of Financial and Professional Regulation
LLC	Limited Liability Company
MLR	Material Loss Review
OTTI	other than temporary impairment
PCA	Prompt Corrective Action

FDIC
Federal Deposit Insurance Corporation
3501 Fairfax Drive, Arlington, VA 22226
Office of Inspector General

DATE: August 5, 2010

MEMORANDUM TO: Sheila C. Bair
Chairman, FDIC

/Signed/
FROM: Jon T. Rymer
Inspector General

SUBJECT: *Evaluation of the Timeliness and Factors Considered in Closing Broadway Bank, Chicago, Illinois*
(Report No. EVAL-10-004)

On April 23, 2010, the Illinois Department of Financial and Professional Regulation (IDFPR), Division of Banking, closed Broadway Bank, Chicago, Illinois, (Broadway) and appointed the FDIC as receiver. On May 6, 2010, the Ranking Minority Member of the Committee on Oversight and Government Reform requested that our office expedite our material loss review (MLR) of Broadway so that the report would be completed by October 23, 2010. The Ranking Member's request was grounded in a concern that politics may have played a role in the timing of Broadway's closure, and that the FDIC may have waited longer than necessary to close the bank, inconsistent with Prompt Corrective Action (PCA) provisions. Specifically, he was concerned because a former Broadway Senior Vice President is currently a U.S. Senate candidate.

On May 21, 2010, we informed the Ranking Member that we would plan and conduct the MLR consistent with our standard MLR work program and time frames and that we would issue our final MLR report on or before the November 14, 2010 due date. However, to address his concern, we initiated an evaluation of the factors considered in closing Broadway to ensure that the closure was timely, consistent with PCA requirements, and free of any political influence.

EVALUATION OBJECTIVE

The overall objective of our evaluation was to review the timeliness and factors considered in closing Broadway. Specifically, we determined:

- The timeline of events leading to the closing of the bank.
- The factors that the FDIC considered in scheduling the bank closing.
- Whether the timing of the closing of Broadway was consistent with PCA provisions.
- Whether there was any indication of political or inappropriate influence associated with the closing.

Appendix I presents additional information on our objective, scope, and methodology.

BACKGROUND

Broadway was a state nonmember bank established in 1979. Broadway was wholly-owned by Broadway Bancorp, Inc., Chicago, Illinois, a one-bank holding company. As of December 31, 2009, Broadway had approximately $1.2 billion in total assets and $1.1 billion in total deposits. Broadway operated four branch locations in the greater Chicago area. The FDIC's Chicago Field and Regional Office and the IDFPR supervised Broadway and conducted joint examinations of Broadway during 2008 and 2009, with the IDFPR responsible for processing the 2009 examination.

EVALUATION RESULTS

Timeline of Events Leading to Broadway's Closure

The FDIC and IDFPR could have reviewed, processed, and delivered a joint, IDFPR-led April 2009 examination and a January 2010 formal enforcement action to Broadway in a more timely fashion; however, we did not see any evidence that the examination or enforcement action were delayed for political reasons or that the timeliness of the examination or enforcement action impacted Broadway's closing date. Instead, we concluded that delays in processing the examination and issuing the enforcement action resulted from the complexity and condition of Broadway, the increased regulatory workload from the rise in bank failures, and the need for coordination between the FDIC and IDFPR.

The FDIC and the IDFPR conducted a joint examination of Broadway beginning in April 2009 and initiated a joint formal enforcement action against Broadway in January 2010. The FDIC and the IDFPR alternate taking the lead to process examinations and draft enforcement actions for joint agency review efforts. The IDFPR was the lead agency for the 2009 examination and 2010 enforcement action and, as such, IDFPR was responsible for the initial drafting and quality control review of the examination report and recommendations as well as the initial draft and review of the formal enforcement action provisions. The FDIC was responsible for reviewing, and adjusting where necessary, the language of the IDFPR draft examination report and formal enforcement action provisions.

Table 1 presents information about the timeliness of the examination report and enforcement action. Appendix III includes a timeline showing key supervisory events.

Table 1: Timeliness of Supervisory Processes

Supervisory Process	Broadway Elapsed Days	Chicago 2009 Average	Comments
Examination Completion: Elapsed Days from Examination Start Date to Examination Completion.	121	64[a]	Two examinations had longer processing times than Broadway.
Regional Office Report Review: Elapsed Days from Examination Completion Date to Examination Report Delivery to Broadway.	110	70[a]	Five examinations had regional office review times equal or longer than Broadway.
Enforcement Action Completion: Elapsed Days from Examination Completion Date to Consent Order Delivery to Broadway.	160	179[b]	Six enforcement actions had longer processing times than Broadway.

Source: DSC and Legal Division interviews and DSC documents.
[a] Average examination completion and regional office review timeframes for the 19 "4-rated" and the 16 "5-rated" institutions in the Chicago Region during 2009.
[b] Average cease and desist order completion timeframe for the six "4-rated" and the four "5-rated" institutions in the Chicago Region during 2009.

April 2009 Examination: The FDIC's Chicago Field Office and the IDFPR initiated a joint examination of Broadway as of March 31, 2009. The examination began on April 20, 2009 and was completed 121 days later on August 19, 2009. Subsequently, it took the regulators 110 days to review, process, and deliver the examination report to Broadway. DSC Chicago officials we interviewed noted that the examination timeframe was reasonable for a complex bank like Broadway with a Safety and Soundness Composite Rating of "5" (signifying an extremely high, immediate or near-term probability of failure) and that problem banks, by nature, take longer to examine. Further, DSC officials noted that examination and report review timeframes were modestly impacted by the increased regulatory workload associated with the rise in bank failures and the need for coordination between the FDIC and IDFPR.

As discussed later, the DSC Chicago staff stated that they did not delay the examination or examination review process for political reasons. We noted that the examination was started before the former Broadway Senior Vice President announced his Senate candidacy on July 26, 2009, and the examination was completed 24 days after the announcement.

January 2010 Enforcement Action: The FDIC and IDFPR issued a joint Consent Order (Order) to Broadway on January 26, 2010.[1] Among other things, the Order required the bank to improve its capital position, improve bank management, restrict dividends, increase the bank's allowance for loan and lease losses (ALLL), and revise the bank's investment policy. It took the FDIC and IDFPR 160 days from the completion of the examination to issue the Order to Broadway.

The IDFPR was the lead agency in drafting the Order. FDIC Chicago Legal Division officials received the first draft of the Order from the IDFPR on October 6, 2009. The officials stated that provisions related to the investment policy portion of the Order and updated references to codification changes in financial accounting standards added to the time that it took the state and

[1] Formal enforcement action authorized under Section 8(b) of the Federal Deposit Insurance Act.

the FDIC to develop the Order. The state provided a draft of the Order to Broadway for review in December 2009 and received comments from Broadway on January 6, 2010. FDIC Legal Division officials told us that it is common practice to share the draft enforcement action with the bank. The FDIC and IDFPR presented the Order to Broadway's Board of Directors on January 25, 2010 and Broadway's Board signed the order on the same day. The Order became effective on January 26, 2010. FDIC Legal Division officials told us there was no effort on the part of the FDIC or IDFPR to delay completion of the Order for political purposes.

We verified that the FDIC followed its normal process of publicly announcing the Broadway Order and posting the Order on the FDIC public Web site. The FDIC's practice is to publicly announce formal enforcement actions at the end of the month following the effective date of the enforcement action. Thus, in Broadway's case, the enforcement action was effective in January 2010 and publicly released and placed on the FDIC's Web site on February 26, 2010. FDIC officials told us that the IDFPR actually made the Order public earlier than usual to avoid potential criticisms that the IDFPR delayed announcing the Order until after the Illinois primary election. The primary election for the Illinois U.S. Senate seat was held on February 2, 2010. FDIC officials indicated that it normally takes IDFPR 7 to 8 days to obtain approval signatures and to publicly post an Order. In the case of Broadway, the IDFPR collected approval signatures from the FDIC and IDFPR on January 26, 2010 and publicly posted the Order to its Web site on the same day.

Factors Considered in Scheduling the Bank Closing Date

Broadway was a state-chartered bank; therefore, the IDFPR was responsible for closing the bank. The primary factor that prompted the IDFPR's decision to close Broadway was the bank's capital level. As discussed later, Broadway suffered significant losses when it sold certain devalued investments in December 2009. Broadway reflected these losses, totaling $18 million, in its December 31, 2009 Call Report, which the FDIC and IDFPR obtained in late January 2010. The losses decreased Broadway's tier 1 leverage capital ratio to 2.86 percent, making Broadway *Significantly Undercapitalized* for PCA purposes.

Several DSC officials told us that once a bank's tier 1 leverage or tier 1 risk-based capital ratios drop below 3 percent, the IDFPR no longer considers the bank to be a going concern. An IDFPR official confirmed that the agency closely evaluates banks with a tier 1 leverage or tier 1 risk-based capital ratio lower than 3 percent to ensure the bank's capital level is sufficient for the institution's risk profile. On February 3, 2010, the IDFPR discussed with Broadway its ability to continue as a going concern and on February 19, 2010, the IDFPR issued a Section 51 Order.[2] The Section 51 Order required Broadway to become *Well Capitalized* and correct other unsafe and unsound conditions no later than 60 days from the date of the Order or face closure by the IDFPR and liquidation through receivership.

Concurrent with the Section 51 Order, the FDIC's Division of Resolutions and Receiverships (DRR) began preparing to close Broadway, known as the resolution process. Normally, DRR prefers to have 90 days to plan for a resolution. In the case of Broadway, DRR only had about 60 days consistent with the Section 51 Order. Table 2 presents

[2] Pursuant to Section 51 of the Illinois Banking Act, 205 ILCS 5/51. Section 51 provides that, among other things, if a state bank's capital is impaired or it is otherwise in unsound condition, the IDFPR may give the bank at least 60, but no more than 180 days, to correct the situation or face liquidation through receivership.

selected dates from the resolution planning process for Broadway.

Table 2: Resolution Planning Dates and Actions

Date	Action
February 12, 2010	DSC and IDFPR meet with Broadway Board of Directors to begin the resolution process.
February 22, 2010	DRR orders a deposit download from the bank to plan for the bank closing.
March 2, 2010	FDIC opens the Interlinks secured due diligence Internet site to potential bidders.
March 4, 2010	DRR deploys a resolution planning official and an Information Package/Asset Valuation Review team on site at Broadway to value Broadway's assets.
April 13, 2010	FDIC Board approves Broadway failing bank case.
April 19, 2010	Final date for interested parties to submit a bid for Broadway.
April 23, 2010	Broadway is closed.

Source: DRR interviews and DRR resolution documents.

We concluded that DRR's resolution of Broadway was timely and ahead of DRR's preferred 90-day closing time frame.

The FDIC's Implementation of PCA Provisions

With respect to PCA provisions, the FDIC notified Broadway that the bank had become *Undercapitalized* in July 2009 and required Broadway to submit a capital restoration plan. The FDIC should have notified Broadway in writing that its capital restoration plan was insufficient, in addition to the verbal notification provided. It would also have been prudent to notify Broadway management that, as a result of submitting an unacceptable capital restoration plan, Broadway was subject to the restrictions applicable to *Significantly Undercapitalized* institutions. Instead, FDIC officials focused on establishing a definitive value for certain Broadway investments in order to determine the bank's capital requirements and understand the bank's true financial condition. Broadway sold the investments at a significant loss in December 2009. The FDIC became aware of the impact of the loss on Broadway's capital position during a visitation in late January 2010, and the FDIC notified Broadway that it was *Significantly Undercapitalized* in February 2010. It does not appear that notifying Broadway earlier that it was subject to the provisions for *Significantly Undercapitalized* institutions would have affected Broadway's closing date. The FDIC is generally required by the Federal Deposit Insurance Act (FDI Act) to appoint a receiver or conservator for a *Critically Undercapitalized* institution within 90 days. However, Broadway was not *Critically Undercapitalized* prior to its failure.

Section 38, *Prompt Corrective Action*, of the FDI Act establishes a framework of mandatory and discretionary supervisory actions pertaining to all insured depository institutions. The section requires that regulators take progressively more severe actions, known as "prompt corrective actions," as an institution's capital level deteriorates. The purpose of section 38 is to resolve problems of insured depository institutions at the least possible long-term cost to the Deposit Insurance Fund. Section 38 requires the appropriate federal regulatory agency to take one of the following actions no later than 90 days after an institution becomes *Critically Undercapitalized*:

- Appoint a receiver or conservator.

- Take other action (with FDIC concurrence) that the agency determines will better achieve the purpose of PCA.

Table 3 provides Broadway's capital ratios and corresponding FDIC prompt corrective actions.

Table 3: Broadway's Capital Ratios and the FDIC's PCA Actions

Period Ended	Tier 1 Leverage Capital	Tier 1 Risk Based Capital	Total Risk Based Capital	PCA Capital Category/Actions
PCA Threshold	5% or more	6% or more	10% or more	*Well Capitalized*
Dec 2005	12.20%	13.07%	14.23%	*Well Capitalized*
Dec 2006	12.50%	13.56%	14.70%	*Well Capitalized*
Dec 2007	12.94%	13.87%	15.04%	*Well Capitalized*
Dec 2008	8.70%	9.87%	11.13%	*Well Capitalized*
PCA Threshold	Less than 4%*	Less than 4%	Less than 8%	*Undercapitalized*
Based on the April 2009 Examination	5.94%	5.78%	7.06%	*Undercapitalized* PCA letter sent July 20, 2009.
PCA Threshold	Less than 3%	Less than 3%	Less than 6%	*Significantly Undercapitalized*
Dec 2009	2.86%	3.27%	4.53%	*Significantly Undercapitalized* PCA letter sent February 4, 2010.
PCA Threshold	The ratio of tangible equity to total assets is 2 percent or less regardless of other capital ratios.			*Critically Undercapitalized*

Source: DSC examination reports and Broadway Call Reports.
* Tier 1 Leverage Capital Ratio less than 3 percent if bank is rated composite 1.

The FDIC first notified Broadway that it was *Undercapitalized* on July 20, 2009 based on the FDIC's examination of Broadway that started on April 20, 2009. During that examination, the FDIC reviewed the value assigned to two collateralized debt obligations (CDOs) and four collateralized mortgage obligations (CMOs) held by Broadway and determined they were overvalued. The FDIC concluded that a portion of the CDO and CMO value was doubtful and therefore included a corresponding $11.7 million reduction to Broadway's tier 1 capital level. This reduction in capital resulted in Broadway being *Undercapitalized* for PCA purposes. The July 20, 2009 PCA letter communicated to Broadway the mandatory restrictions of Section 38 related to restricting asset growth; acquisitions, new activities and branches; and payment of dividends or any other capital distribution or management fees. The letter also restricted Broadway's use of brokered deposits.

Broadway disagreed with the FDIC's valuation of CMOs and CDOs and continued to report a more favorable valuation in its June 30, 2009 and September 30, 2009 Call Reports. Essentially, Broadway's capital level was dependent upon the methodology used to value the CDOs and CMOs as there was no established market price. Accordingly, while the FDIC had notified Broadway that it was *Undercapitalized*, Broadway's Call Reports continued to show the bank as *Adequately Capitalized*.

The July 20, 2009 PCA letter required Broadway to file a written capital restoration plan by August 16, 2009. Broadway submitted a proposal on August 14, 2009 for the FDIC's consideration that involved transferring bank-owned loans and potentially other securities to a newly created Limited Liability Company (LLC) subsidiary in exchange for the common stock of the subsidiary. The LLC would, in turn, market the loans, issue preferred stock to third-party investors, and transfer cash from the sale of the loans to Broadway. This transaction would create a minority interest in the subsidiary, which, when consolidated, would be included in Broadway's tier 1 capital. The FDIC rejected the proposal because the FDIC did not believe the transaction provided meaningful capital support to Broadway.[3]

12 CFR Part 325.104 requires the FDIC to provide written notice within 60 days of receiving a capital restoration plan as to whether the plan has been approved. If the FDIC does not approve the capital restoration plan, the bank shall submit a revised capital restoration plan within the time specified by the FDIC. Upon receiving notice that its capital restoration plan has not been approved, any undercapitalized bank shall be subject to all of the provisions of section 38 of the FDI Act applicable to *Significantly Undercapitalized* institutions.

The DSC case manager stated that he orally communicated to Broadway management on several occasions that the capital restoration plan was unacceptable. However, DSC did not communicate its decision to Broadway in writing. The case manager drafted a letter, dated November 18, 2009, informing Broadway that because of its failure to submit an acceptable capital restoration plan, the bank was subject to the restrictions applicable to *Significantly Undercapitalized* institutions. The letter explained the additional restrictions related to executive compensation, affiliate transactions, interest rates paid on deposits, and the requirement to recapitalize or sell Broadway. The letter also discussed Call Reporting inaccuracies and the FDIC's authority to assess civil money penalties for the bank's failure to provide an acceptable capital restoration plan and to file accurate Call Reports.

According to DSC regional management, the draft letter was never sent to Broadway for a number of reasons. First, the examination report that initially challenged the value of the CDOs and CMOs and placed Broadway into an *Undercapitalized* position was still in draft and the region was working with the FDIC Capital Markets group in Washington to review the assumptions underlying the value calculations but had not come up with an agreed-upon value. Without additional clarity with respect to the value of the CDOs and CMOs, it was difficult to determine appropriate capital requirements. Additionally, the region was in the process of drafting a formal enforcement action that would broadly address all of the issues at Broadway, including capital requirements.

A Chicago regional official noted that imposing the *Significantly Undercapitalized* restrictions prior to the results of the year-end Call Report would not have accelerated the bank's resolution and that DSC was already monitoring Broadway as if it were *Significantly Undercapitalized*. For example, the official stated that DSC had already placed limits on Broadway's use of brokered deposits, the FDIC was monitoring Broadway's executive compensation practice, and Broadway had no transactions with affiliates. Still, the FDIC should have notified Broadway

[3] DSC issued Regional Director Memorandum 6000, dated February 26, 2010, *Minority Interests in Tier 1 Capital*, that provided guidance to examination staff about including minority interests in tier 1 capital, the concept of meaningful capital support, and the expectation that voting common equity should be the dominant form of tier 1 capital. In the case of the Broadway proposal, DSC concluded that Broadway would be taking on more risk with a lower rate of return than the third-party investors.

management in writing that its capital restoration plan was insufficient or extended the period of time to submit a new plan. It would also have been prudent for the FDIC to notify Broadway management that the bank was subject to the restrictions applicable to *Significantly Undercapitalized* institutions because the bank had not submitted an acceptable capital restoration plan.[4] However, it does not appear that notifying Broadway earlier that it was subject to the provisions for *Significantly Undercapitalized* institutions would have affected its closing date.

On December 28, 2009, Broadway sold the two CDOs for $260,000 and realized a loss of $18 million. According to CFR Part 325.102, *Notice of Capital Category*, a bank should provide written notification to the FDIC Regional Director that an adjustment to the bank's capital category may have occurred no later than 15 calendar days following the date of a material event that would cause the bank to be placed in a lower capital category. We confirmed with DSC that Broadway notified DSC of the sale during a January 25, 2010 meeting to discuss the Order.

During the January 26, 2010, visitation, the FDIC obtained Broadway's December 31, 2009 Call Report information, which reflected the loss on the sale and which included capital ratios showing that Broadway was *Significantly Undercapitalized*. On February 4, 2010, the FDIC sent a letter to Broadway notifying the Broadway Board of Directors that the bank was *Significantly Undercapitalized*. In addition to the restrictions on growth, acquisitions, dividends, and capital distributions, the FDIC imposed restrictions on affiliate transactions and interest rates on deposits, and required either the recapitalization or sale of the bank.[5] The FDIC once again required Broadway to submit a written capital restoration plan. Broadway submitted a capital restoration plan dated March 17, 2010. The FDIC notified Broadway that the plan was unacceptable in a letter dated March 31, 2010.

The FDIC issued a Supervisory PCA Directive to Broadway on April 19, 2010, due to the need for an immediate capital infusion and the lack of a viable capital restoration plan. The directive required Broadway to sell voting shares or obligations to become adequately capitalized or accept an offer to be acquired by a depository institution holding company or to combine with another insured depository institution. The directive also reiterated the restrictions on the use of brokered deposits and other PCA-related restrictions. Broadway failed on April 23, 2010, before submitting an acceptable capital restoration plan and before filing its March 31, 2010 Call Report. At no point was Broadway considered to be *Critically Undercapitalized* for PCA purposes prior to its failure.

Political or Inappropriate Influence Associated with the Closing

We performed evaluation steps to identify evidence of political or inappropriate influence associated with any examination or enforcement activities or the closing of Broadway. Nothing came to our attention to suggest that FDIC officials or the closing process were subject to political or inappropriate influence.

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[4] 12 CFR Part 325.104 (a) and (e).

[5] The above-mentioned January 26, 2010, Order also included discretionary PCA provisions such as reducing substandard assets and conducting a management study to include recruiting qualified management.

To meet this objective, we interviewed selected DSC officials involved in supervising Broadway, Legal Division officials, an IDFPR representative, and DRR officials involved in planning the resolution. We also reviewed e-mail correspondence related to Broadway for selected officials. In addition, we interviewed selected senior level officials to ensure they were not subject to political influence and reviewed those individuals' e-mails and calendar entries related to Broadway or meetings with Administration or Congressional officials, and telephone calls to the White House. Nothing came to our attention to suggest that FDIC officials or the FDIC supervisory, enforcement action, or closing processes were subject to any political or inappropriate influence.

CORPORATION COMMENTS AND OIG EVALUATION

DSC management provided a written response, dated August 3, 2010, to a draft of this report. The response is presented in its entirety in Appendix III. DSC acknowledged that the time period required to review, process, and deliver the Report of Examination and draft the enforcement action was extended but was considered within reason because Broadway had become a complex, problem institution. DSC also noted that while written notification of the insufficiency of Broadway's capital restoration plan would have been appropriate, the circumstances surrounding the value of Broadway's investments made this case somewhat unique.

DRR elected not to provide a written response. Because our report contained no recommendations a management response was not required.

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of our evaluation was to review the timeliness and factors considered in closing Broadway. Specifically, we determined:

- The timeline of events leading to the closing of the bank.
- The factors that the FDIC considered in scheduling the bank closing.
- Whether the timing of the closing of Broadway was consistent with PCA provisions.
- Whether there was any indication of political or inappropriate influence associated with the closing.

We interviewed DSC staff in the Chicago Regional and Chicago Field Office, and Legal Division staff in the Chicago Regional Office regarding the supervision and Consent Order that was placed on Broadway. We also interviewed an IDFPR representative. To understand factors associated with and the timing of the resolution, we interviewed DRR headquarters and field officials responsible for planning the closing of Broadway. Finally, we interviewed selected FDIC senior executives, including the Chairman, Vice Chairman, General Counsel, and Deputy Director for External Affairs to ensure they were not subject to political influence. We asked all interviewees whether they were aware of any attempts to delay federal supervisory action or resolution decisions related to Broadway Bank. We did not perform any evaluation work to determine whether IDFPR was subject to political influence, and we have no reason to believe that such influence occurred.

To answer our objectives, we reviewed:

- DSC's supervisory history, examination reports, field and regional office file correspondence, and e-mail correspondence.
- The January 26, 2010 Consent Order and related documents.
- FDIC PCA letters, the April 19, 2010 Supervisory PCA Directive, and other related documents.
- The FDIC's failing bank case, strategic resolution plan, and other resolution documents.

In addition to asking interviewees whether they were subject to political or inappropriate influence, we reviewed FDIC senior executives' e-mail and calendar entries for information related to Broadway or meetings with Administration or Congressional officials. We also reviewed phone records for calls to the White House and followed up on selected calls with FDIC senior level officials.[6]

We performed our evaluation during May and June 2010 in accordance with the *Quality Standards for Inspections*.

[6] We were only able to identify telephone calls from the FDIC network to the White House. FDIC systems could not isolate telephone calls originating from the White House to the FDIC network.

CORPORATION COMMENTS

FDIC

Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990 Division of Supervision and Consumer Protection

August 3, 2010

TO: Jon T. Rymer
Inspector General

/Signed/
FROM: Sandra L. Thompson
Director

SUBJECT: FDIC Response to the Draft Evaluation Report Entitled *Evaluation of the Timeliness and Factors Considered in Closing Broadway Bank, Chicago, Illinois* (Assignment No. 2010-057)

Thank you for the opportunity to review and comment on your evaluation report of the circumstances related to the closure of Broadway Bank entitled *Evaluation of the Timeliness and Factors Considered in Closing Broadway Bank, Chicago, Illinois* (Assignment No. 2010-057). We are pleased your report states you did not see any evidence that the timing of the examination or completion of the enforcement action was delayed or impacted Broadway Bank's closing date for reasons of political influence. We agree with your finding that a lengthy time period was required to process the Report of Examination and the enforcement action; however, the reasons for the timeliness issues were not politically motivated.

The Report notes the FDIC and Illinois Department of Financial and Professional Regulation could have reviewed, processed, and presented the April 2009 Report of Examination and January 2010 formal enforcement action in a more timely fashion. The FDIC is sensitive to the timely review and processing of Reports of Examination and effective coordination with our State bank regulatory counterparts. The time period required to review, process, and deliver the Report of Examination and draft the enforcement action was extended, but considered within reason because Broadway had become a complex, problem institution.

The report also states FDIC should have provided written notification to Broadway Bank in November 2009 of its failure to submit an acceptable capital restoration plan under the requirements of 12 CFR Part 325.104. The FDIC continued to communicate verbally with Broadway Bank. Written notification was sent once the value for complex investments in Broadway Bank's portfolio had been determined. The extenuating circumstances surrounding the value of Broadway Bank's investments, which had experienced significant market devaluation, and the effect on proposed provisions in the capital restoration plan make this case somewhat unique. Overall, we agree written notification of the insufficiency of a capital restoration plan is appropriate.

Thank you again for the opportunity to review and comment on your Report.

Broadway Bank -- Timeline of Events