

## OFFICE OF THRIFT SUPERVISION

### Receivership of a Federal Savings Bank

**Date:** July 30, 2010  
**Order No.:** 2010-47  
**OTS No.:** 17957

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 Bayside Savings Bank, Port St. Joe, Florida (Savings Bank).

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

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

- (i) The Savings Bank, by resolution of its board of directors, has consented to the appointment of a receiver;
- (ii) 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;
- (iii) 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); and
- (iv) The Savings Bank has substantially insufficient capital.

The Savings Bank is a Deposit Insurance Fund-insured, federally chartered stock savings bank headquartered in Port St. Joe, Florida. The Savings Bank operates one branch located in Mexico Beach, Florida, and is a wholly owned subsidiary of Coastal Community Investments, Inc. As of March 31, 2010, the Savings Bank reported in its Thrift Financial Report (TFR) that it had approximately \$66.1 million in assets, \$63.6 million in liabilities, \$2.5 million in stockholders' equity and incurred a net loss for the quarter ended March 31, 2010, of approximately \$1.06 million. The Savings Bank reported a net loss for the year ended December 31, 2009, of approximately \$6.6 million. In its March 31, 2010, TFR the Savings Bank reported tier one (core) and total risk-based capital of 3.35 percent and 6.66 percent, respectively. Based

on the capital ratios in the Savings Bank's March 31, 2010, TFR, 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.

#### **Consent**

Under section 11(c)(5)(I) of the FDIA, OTS may appoint a receiver if the institution, 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 Savings Bank, by resolution dated July 15, 2010, consented to the appointment of a conservator or receiver by OTS and, on July 15, 2010, the Savings Bank entered into an Agreement and Consent to the Appointment of a Conservator or Receiver, which provides consent for such an appointment by OTS.

#### **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.<sup>1</sup>

The Savings Bank reported that, as of March 31, 2010, it had tier 1 (core) and total risk-based capital ratios of 3.35 percent and 6.66 percent, respectively. As discussed above, the Savings Bank has reported in its TFR that it is undercapitalized. The Savings Bank's capital levels have declined since March 31, 2010, and accordingly, the Savings Bank remains undercapitalized.

During the past year, the Savings Bank has attempted to raise additional capital through various sources, and the Savings Bank has attempted to recapitalize, sell or merge the Savings Bank. At present, no investor or investors have been identified that are willing and able to acquire the Savings Bank. Given the Savings Bank's lack of success in raising sufficient capital

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<sup>1</sup> A tier 1 (core) ratio of 3 percent is permissible if the institution has a CAMELS composite rating of one. The Savings Bank is not "one" rated.

over the past year, and the Savings Bank's deteriorating financial position, it is unlikely that the Savings Bank will be able to raise additional capital through outside sources.

Also, in light of the Savings Bank's operations and assets, it is not likely that the Savings Bank will be able to achieve adequately capitalized status through internal means, such as profitable operations or sales of existing assets. 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.

### **Undercapitalized and Failed to Submit an Acceptable Capital Restoration Plan**

Under section 11(c)(5)(K)(iii) of the FDIA, OTS may appoint a receiver if a savings association is undercapitalized as defined in 12 U.S.C. § 1831o(b) and 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 shall 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.

On April 30, 2010, OTS notified the Savings Bank that it had become undercapitalized as of March 31, 2010, and required the Savings Bank to submit a capital restoration plan by May 14, 2010. The Savings Bank submitted its capital restoration plan on May 14, 2010. OTS reviewed the capital restoration plan, and concluded that the plan was not acceptable because it was based on unrealistic assumptions regarding: (i) a recapitalization of the Savings Bank by outside investors; (ii) increasing assets and engaging in new activities that would increase the risk exposure of the Savings Bank; and (iii) overly optimistic projections of significant declines in allowances for loan and lease losses provision expenses and loss rates on problem assets. OTS denied the capital restoration plan on June 14, 2010. The Savings Bank submitted revised capital restoration plans on two occasions, and OTS denied such revised capital restoration plans for the same or substantially similar reasons that OTS denied the original capital restoration plan.

Therefore, the Acting Director, or his designee, concludes that the Savings Bank is undercapitalized and that the Savings Bank has failed to timely submit an acceptable capital restoration plan within the time prescribed in 12 C.F.R. § 565.5(a).

### **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 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 institution'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 the 12 U.S.C. § 1821(c)(5)(L)(ii).

The Savings Bank is not “1” rated and had a tier 1 (core) capital ratio and a total risk-based capital ratio of 1.90 percent and 4.49 percent, respectively, as of June 30, 2010. Accordingly, the Savings Bank’s tier 1 (core) 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 of a receiver for the Savings Bank exist under section 5(d)(2) of the HOLA, and sections 11(c)(5) (I), (K)(i), (K)(iii) and (L)(ii) of the FDIA, 12 U.S.C. §§ 1821(c)(5)(I), (K)(i), (K)(iii), 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).

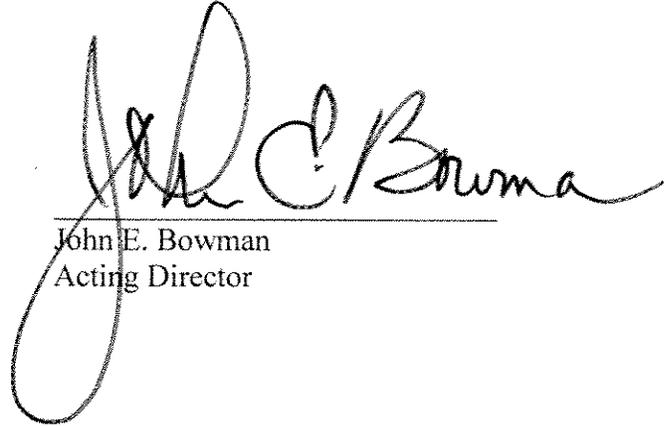
#### **Delegation of Authority to Act for OTS**

The Acting Director, or his designee, hereby authorizes the OTS 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 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 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 Savings Bank.

Executed this 30th day of July, 2010.



John E. Bowman  
Acting Director