

OFFICE OF THRIFT SUPERVISION

Receivership of a Federal Savings Bank

Date: May 21, 2009
Order No.: 2009-30
Docket No.: 8045

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 BankUnited, FSB, Coral Gables, 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'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 has incurred losses that have depleted all of its capital, and there is no reasonable prospect for the institution to become adequately capitalized (as defined in 12 U.S.C. § 1831o(b)) without Federal assistance;
- (iv) The Savings Bank, by resolution of its board of directors, has consented to the appointment of a receiver; and
- (v) The Savings Bank is critically undercapitalized.

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 Coral Gables, Florida. As of March 31, 2009, the Savings Bank reported in its Thrift Financial Report (TFR) that it had approximately \$13.111 billion in assets, \$13.618 billion in liabilities, a negative \$506.51 million in stockholders' equity, and a net loss for the three months ended March 31, 2009, of approximately \$451.54 million. At March 31, 2009, the Savings Bank reported tangible, tier one (core), tier one risk based, and total risk-based capital of -3.24 percent, -3.24 percent, -5.75 percent, and -5.75 percent, respectively. The Savings Bank's March 31, 2009, TFR indicates that the Savings Bank is critically undercapitalized. The Savings Bank is wholly owned by BankUnited Financial Corporation (Holding Company).

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 March 31, 2009, the Savings Bank reported negative equity capital of \$506.51 million. Thus, the Savings Bank's liabilities exceed its assets, and the Savings Bank is unable to meet 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 and Unsound Condition

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

The Savings Bank historically has been a residential mortgage lender and was, through fiscal year 2007, consistently profitable, with low loan delinquencies and strong capital levels. Beginning in 2004, the Savings Bank increased its origination of payment option adjustable rate mortgages (option ARMs) for its loan portfolio. The Savings Bank originated a significant portion of the option ARMs in geographic areas, such as Florida and California, which had experienced significant increases in real estate values, and investments by speculative borrowers. These geographic areas are now experiencing decreasing real estate values and significantly reduced real estate sales volumes. The Savings Bank presently is experiencing significant delinquencies and foreclosures, and option ARMs will continue re-pricing and borrowers will likely continue to be unable to afford the increased monthly payments and to sell the properties for more than their indebtedness.

Rapid deterioration in the loan portfolio, specifically, the option ARMs portfolio, during 2008 and 2009 has resulted in an increasing level of delinquent loans and large loan loss provisions. At March 31, 2008, the Savings Bank reported total delinquent loans of \$960.39 million. At March 31, 2009, the Savings Bank reported total delinquent loans of \$2.033 billion. In addition, the Savings Bank has experienced a significant increase in its real estate owned (REO) and other repossessed property. At December 31, 2008, the Savings Bank reported \$165.05 million of REO and other repossessed property. At March 31, 2009, the Savings Bank

reported \$166.64 million of REO and other repossessed property. During 2008 and 2009, the Savings Bank experienced significantly increasing losses on the disposition of its REO.

To address the increases in the delinquent loans, the Savings Bank has recognized significant provisions for its allowance for loan and lease losses. The Savings Bank recorded approximately \$1.087 billion in provisions for losses during fiscal year 2008. The provisions for losses contributed significantly to the Savings Bank reporting a net loss of approximately \$1.057 billion for fiscal year 2008. The Savings Bank recorded an additional provision for losses of approximately \$327.5 million, which contributed significantly to the reported loss of approximately \$451.54 million for the first fiscal quarter of 2009.

Presently, there is no indication that the affected real estate markets will significantly improve in the foreseeable future, therefore, OTS concludes the deterioration of the Savings Bank's loan portfolio will continue, will require additional provisions for losses, and will further deplete capital.

Therefore, the Acting Director, or his designee, based on the Savings Bank's deteriorating asset quality and continuing significant negative operating earnings, and low capital level, concludes that the Savings Bank is in an unsafe and unsound condition to transact business.

Losses That Will Deplete Capital

Under section 11(c)(5)(G) of the FDIA, the Director may appoint a receiver for a savings association if it has incurred losses or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the institution to become adequately capitalized (as defined in 12 U.S.C. § 1831o(b)) without Federal assistance.

The Savings Bank reported a net loss of \$1.057 billion in 2008, and net loss of \$451.54 million for the first fiscal quarter of 2009. The Savings Bank's March 31, 2009 TFR reported stockholders' equity of approximately negative \$506.51 million. The Savings Bank is critically undercapitalized, reporting tangible, tier one (core), tier one risk-based, and total risk-based capital of -3.24 percent, -3.24 percent, -5.75 percent, and -5.75 percent, respectively, as of March 31, 2009. Losses recognized to date have depleted the Savings Bank's regulatory and equity capital computed in accordance with Generally Accepted Accounting Principles. Further, the Acting Director concludes that the Savings Bank will likely incur additional losses as a result of continued deterioration of the Savings Bank's loan portfolio and the need for additional provisions for losses.

In 2008, the Savings Bank and the Holding Company began attempting to raise additional capital through various means and from various sources. They have continued to explore opportunities and alternatives available to recapitalize, sell, or merge the Savings Bank. However, they have been unable to raise capital and no investor or investors have been identified that are willing to acquire the Savings Bank without Federal assistance.

The Acting Director, or his designee, concludes that the Savings Bank has incurred losses that have depleted all of its capital, and there is no reasonable prospect for the Savings Bank to become adequately capitalized without Federal assistance.

Consent

Under section 11(c)(5)(I) of the FDIA, a resolution by the board of directors consenting to the appointment of a receiver provides a sufficient basis for such an appointment. The Acting Director finds that the board of directors of the Savings Bank by resolution dated April 13, 2009, consented to the appointment of a conservator or receiver by the Acting Director.

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 March 31, 2009, the Savings Bank reported a tangible capital ratio of -3.24 percent. Thus, the Acting Director concludes that the Savings Bank is critically undercapitalized.

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), (G), (I), and (L)(i) of the FDIA, 12 U.S.C. §§ 1821(c)(5)(A), (C), (G), (I), and (L)(i).

ACTIONS ORDERED OR APPROVED

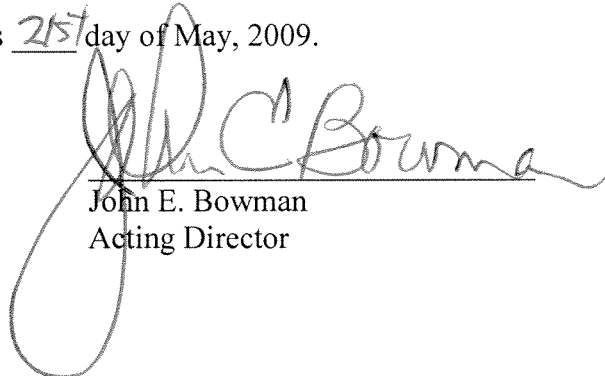
Appointment of a Receiver

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 sections 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 Acting Regional Director, or his designee, and the Deputy Chief Counsel for 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. In addition, the Acting Director, or his designee, hereby authorizes the Deputy Chief Counsel for 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 25th day of May, 2009.



John E. Bowman
Acting Director