

OFFICE OF THRIFT SUPERVISION

Receivership of a Federal Savings Bank

Date: December 4, 2009
Order No.: 2009-61
Docket No.: 04072

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 AmTrust Bank, Cleveland, Ohio (Savings Bank).

GROUND FOR APPOINTMENT OF THE 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 or unsound condition to transact business;
- (ii) The Savings Bank has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the Savings Bank to become adequately capitalized (as defined in 12 U.S.C. § 1831o(b)) without Federal assistance;
- (iii) The Savings Bank, by resolution of its board of directors, has consented to the appointment of a receiver; and
- (iv) The Savings Bank has substantially insufficient capital.

The Savings Bank is a Federally chartered savings bank, the accounts of which are insured by the Deposit Insurance Fund. The Savings Bank's home office is in Cleveland, Ohio. The Savings Bank engaged in a nationwide wholesale mortgage banking operation, a multi-state land acquisition, development, and construction (ADC) lending operation, and portfolio lending secured by one- to four-family dwellings. The Savings Bank's loan portfolio includes substantial amounts of low documentation and no documentation mortgages (high risk mortgages) that are experiencing significant delinquencies and foreclosures. In addition, the Savings Bank is experiencing a high cost of funds based on its reliance on certificates of deposit and Federal Home Loan Bank advances as its main sources of funds.

The Savings Bank is wholly owned by AmTrust Financial Corporation (Holding Company). The Holding Company filed a bankruptcy petition on November 30, 2009.

The Savings Bank's Thrift Financial Report (TFR) for the period ending September 30, 2009, reported approximately \$11.43 billion in assets, approximately \$11.16 billion in liabilities, and approximately \$276.46 million in stockholders' equity. At September 30, 2009, the Savings Bank reported tangible, tier one (core), tier one risk-based, and total risk-based capital ratios of 2.47 percent, 2.47 percent, 4.15 percent, and 5.44 percent, respectively.¹ The Savings Bank experienced a net loss for the fiscal year ended December 31, 2008, of approximately \$513.44 million, and additional losses of approximately \$482.33 million in the first three quarters of 2009, which losses have depleted its equity and regulatory capital.

The recent financial conditions in the United States and in the Savings Bank's lending markets, and the Savings Bank's concentration of ADC loans (approximately \$975 million, or 12.58 percent of total loans at September 30, 2009) and high risk mortgages have resulted in the Savings Bank incurring significant losses. Provisions for loan losses totaled approximately \$152.87 million, and approximately \$814.55 million for the years ended December 31, 2007 and 2008, respectively. The first three quarters of 2009 losses included approximately \$412.38 million in additional loan loss provisions. The Savings Bank's loan portfolio continues to experience a high amount of delinquent loans that will likely require additional provisions for loan losses.

On November 12, 2008, the Savings Bank's board of directors consented to the entry of a Cease and Desist Order that became effective on November 19, 2008. The Cease and Desist Order requires the Savings Bank to achieve and maintain 7 percent core, and 12 percent total risk-based, capital ratios. The Savings Bank has failed to meet those capital requirements. The C&D Order further required that the Savings Bank submit a risk reduction plan. The Savings Bank submitted such a plan, but has not complied with the plan.

Over the past nine months, the Savings Bank has experienced a significant increase in mortgage lending volume and has sold these mortgage loans with servicing retained. This activity substantially increased the mortgage servicing rights (MSR) asset. As a result, the Savings Bank is experiencing a significant concentration in MSR, which places a strain on the Savings Bank's liquidity and capital.

The Savings Bank's liquidity position declined significantly between November 18, 2009, and November 23, 2009. On November 20, 2009, the Federal Home Loan Bank of Cincinnati (FHLB) imposed a higher collateralization requirement, which had the effect of reducing the Savings Bank's borrowing capacity by approximately \$300 million. In October 2009, the Federal Reserve Bank of Cleveland had reduced the Savings Bank's borrowing capacity by approximately \$100 million. These two actions alone have reduced the Savings

¹ The Savings Bank could eventually receive approximately \$128 million as a result of passage of the Worker, Homeownership, and Business Assistance Act of 2009. However, the bankruptcy of the Holding Company has placed in doubt whether the Savings Bank will receive any such funds and, even if it does receive any such funds, when and how much it will receive. Thus, the possibility of receiving those funds does not currently affect Savings Bank's capital ratios.

Bank's borrowing capacity by approximately \$400 million since October 2009. Further, on November 20, 2009, Fannie Mae sought an additional pledge of \$54 million to be placed in a correspondent deposit account. The higher collateralization requirement and pledge further reduced the Savings Bank's liquidity. The recent actions of the FHLB and Fannie Mae have weakened substantially the Savings Bank's liquidity and cash management position.

The Holding Company has been attempting to raise capital from external sources since May 2008. However, after soliciting offers and negotiating with various investors, the Holding Company has been unable to finalize a deal. The likelihood of receiving additional funds has diminished, as the Savings Bank's asset quality and earnings have deteriorated and continued to deplete capital.

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 or unsound condition to transact business.

As described above, as of September 30, 2009, the Savings Bank reported tangible, tier one (core), tier one risk-based, and total risk-based capital of 2.47 percent, 2.47 percent, 4.15 percent, and 5.44 percent, respectively. The Savings Bank's operations have suffered due to the declining values of its loan portfolio caused by loan delinquencies that required significant provisions for loan losses. The Savings Bank experienced a net loss for the year ended December 31, 2008, of approximately \$513.44 million, and additional losses of \$482.33 million in the first three quarters of 2009. These losses have depleted its equity and regulatory capital. The Savings Bank's loan portfolio continues to experience a high amount of delinquent loans and will likely require additional provisions for loan losses. In addition, the Savings Bank is experiencing a high cost of funds based on its reliance on certificates of deposit and Federal Home Loan Bank advances as its main sources of funds. The Savings Bank is experiencing a weakened liquidity position.

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

Losses

Under section 11(c)(5)(G), OTS may appoint a receiver for a savings association if the savings association has incurred 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 engaged in ADC and high risk mortgage lending. As the U.S. economy has experienced difficulties, the Savings Bank's ADC and high risk mortgages portfolios have experienced increased delinquencies and foreclosures that have caused significant losses, and such losses have depleted substantially all of the Savings Bank's equity and regulatory capital. Based on the current level of loan delinquencies and existing economic conditions, additional loan loss provisions are anticipated that will further deplete equity and regulatory capital. Attempts to raise capital from investors or locate an acquiror have been unsuccessful.

The Acting Director, or his designee, concludes that the Savings Bank has incurred losses that have depleted substantially all of the Savings Bank's capital, and it will likely incur additional losses that will further deplete its capital, and that the Savings Bank has no reasonable prospect of becoming 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 December 1, 2009, consented to the appointment of a conservator or receiver by the Acting Director, or his designee. Therefore, the Acting Director, or his designee, concludes that a receiver may be appointed on the basis of the consent of the Savings Bank's board of directors.

Substantially Insufficient Capital

Under section 11(c)(5)(L)(ii), 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 "one" rated to maintain a leverage capital ratio of 4 percent. 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 "one" rated and has a leverage capital ratio of 2.47 percent. Accordingly, the Savings Bank's leverage capital ratio is less than two-thirds of the applicable capital requirement. 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 for a receiver for the Savings Bank exist under section 5(d)(2) of the HOLA, and sections 11(c)(5)(C), (G), (I), and (L)(ii) of the FDIA, 12 U.S.C. §§ 1821(c)(5)(C), (G), (I), and (L)(ii).

ACTIONS ORDERED OR APPROVED

Appointment of a Receiver

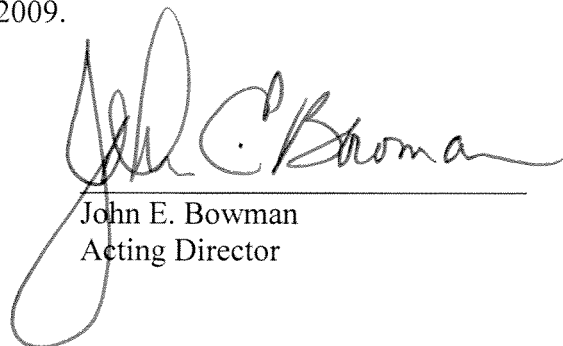
The Acting Director, or his designee, hereby appoints the FDIC as receiver for the Savings Bank, for the purpose of liquidation or winding up the affairs of the Savings Bank, pursuant to section 5(d)(2) of the HOLA, 12 U.S.C. § 1464(d)(2), and section 11(c)(6)(B) of the FDIA, 12 U.S.C. § 1821(c)(6)(B).

DELEGATION OF AUTHORITY TO ACT FOR OTS

The Acting Director, or his designee, hereby authorizes (i) the OTS Central Regional Director, or his designee, or (ii) the Deputy Chief Counsel for Business Transactions 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 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: (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 4th day of December, 2009.



John E. Bowman
Acting Director