

OFFICE OF THRIFT SUPERVISION

Receivership Of A Federal Savings Bank

Date: June 4, 2010
Order No.: 2010-25
OTS No.: 03309

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 TierOne Bank, Lincoln, Nebraska (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 12 U.S.C. § 1831o(b), and failed to submit a capital restoration plan acceptable to OTS within the time prescribed under 12 U.S.C. § 1831o(e)(2)(D); and
- (iii) The Savings Bank has substantially insufficient capital.

The Savings Bank is a Deposit Insurance Fund-insured, federally chartered stock savings bank based in Lincoln, Nebraska. The Savings Bank's home office is in Lincoln, Nebraska, and it has 68 branches, located in Nebraska, Iowa and Kansas.

As of March 31, 2010, the Savings Bank reported in its Thrift Financial Report (TFR) that it had approximately \$2.825 billion in assets, \$2.745 billion in liabilities, and \$79.6 million in equity capital. The Savings Bank recorded operating losses for the fiscal years ended December 31, 2008 and December 31, 2009, of approximately \$74.757 million and \$200.354 million, respectively. In its March 31, 2010, TFR, the Savings Bank reported tangible, tier one (core), tier one risk-based, and total risk-based capital of 2.6598 percent, 2.6598 percent, 3.58 percent and 4.86 percent, respectively. Based on the capital ratios in the Savings Bank's March 31, 2010, TFR, the Savings Bank is significantly undercapitalized.

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 June 2, 2010, consented to the appointment of a conservator or receiver by OTS, and on the same date entered into an agreement and consent with OTS for such an appointment.

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 for a savings association if it is undercapitalized, as defined in 12 U.S.C. § 1831o(b), and fails to submit a capital restoration plan acceptable to OTS within the time period 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 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 November 13, 2009, OTS notified the Savings Bank that it was "Undercapitalized" pursuant to the PCA requirements as a result of the Savings Bank's September 30, 2009 TFR and required the Savings Bank's board of directors to submit a Capital Restoration Plan (CRP) no later than December 28, 2009. The CRP was filed with OTS on December 23, 2009, and supplemented on February 16, 2010. OTS denied the CRP because it was not likely to succeed in restoring the Savings Bank to adequately capitalized status upon consummation and for the four consecutive quarters thereafter.

The Savings Bank has been undercapitalized continuously since the November 13, 2009, notification, and the Savings Bank has failed to submit an acceptable capital restoration plan within the time prescribed by 12 U.S.C. § 1831o(e)(2)(D).

Thus, the Acting Director, or his designee, concludes that the Savings Bank is undercapitalized, and has failed to submit an acceptable capital restoration plan within the statutory timeframe.

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 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 had a total risk-based capital ratio of 4.91 percent as of April 30, 2010. Accordingly, the Savings Bank's total risk-based capital ratio is less than two-thirds of the 8 percent total risk-based capital requirement. Therefore, 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)(iii) and (L)(ii) of the FDIA, 12 U.S.C. §§ 1821(c)(5)(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).

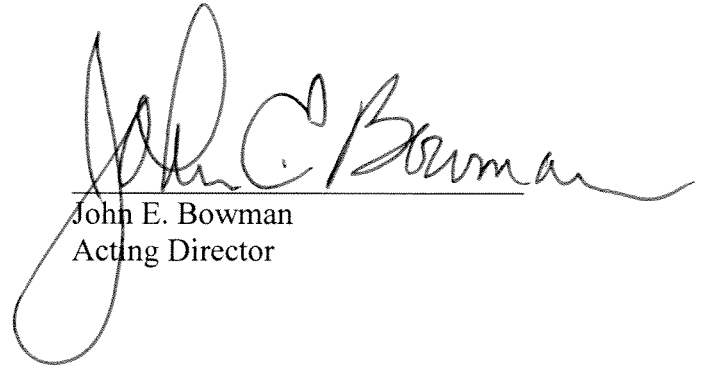
Delegation of Authority to Act for OTS

The Acting Director, or his designee, hereby authorizes the OTS Central 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 4th day of June, 2010.



John E. Bowman
Acting Director