

## OFFICE OF THRIFT SUPERVISION

### Receivership Of A Federal Savings Bank

**Date:** January 22, 2010  
**Order No.:** 2010-04  
**OTS No.:** 08337

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 Charter Bank, Santa Fe, New Mexico (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 is in an unsafe and unsound condition to transact business;
- (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; and
- (iii) The Savings Bank is undercapitalized as defined in section 38(b) of the FDIA and has failed to submit an acceptable capital restoration plan within the time prescribed.

The Savings Bank is a Deposit Insurance Fund-insured, federally chartered stock savings bank headquartered in Santa Fe, New Mexico, operating eight offices principally located within the Albuquerque and Santa Fe, New Mexico areas.

As of September 30, 2009, the Savings Bank reported in its Thrift Financial Report (TFR) that it had approximately \$1.25 billion in assets, \$1.23 billion in liabilities, \$26.6 million in stockholders' equity and a net loss for the nine months that ended September 30, 2009, of approximately \$57.7 million. In its September 30, 2009, TFR the Savings Bank reported tangible, tier one (core), tier one risk-based, and total risk-based capital of 0.63 percent, 0.63 percent, 0.97 percent and 1.98 percent, respectively. Based

on the capital ratios in the Savings Bank's September 30, 2009, TFR, the Savings Bank is critically undercapitalized.

The Savings Bank's board of directors and management assert that the reported capital levels are not correct, and that an adjustment to the Savings Bank's allowance for loan and lease losses (ALLL) that OTS required in the third quarter of 2009 was too large. The Savings Bank has stated that it took the reduction to capital under protest. The Savings Bank's management has asserted that if their proposed ALLL adjustment had been taken, the Savings Bank would not be critically undercapitalized, but would nevertheless be, under the most favorable assumptions, undercapitalized, with core capital of 3.63 percent.<sup>1</sup>

### **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 FDIA, 12 U.S.C. § 1821(c)(5), exist.

#### **Unsafe and Unsound Condition to Transact Business**

Under section 11(c)(5)(C) of the FDIA, OTS may appoint a receiver for a savings association if it is in an unsafe and unsound condition to transact business. An unsafe or unsound condition has been identified as one where an institution is operated in a manner that causes an unacceptable risk to its depositors' funds. See Franklin Savings Association v. Director, OTS, 934 F.2d 1127, 1145 (10th Cir. 1991), cert. denied, 503 U.S. 937 (1992).

The Savings Bank is in an unsafe and unsound condition due to its capital deficiency, lack of core profitability, and poor asset quality. Over the past year the Savings Bank has experienced significant losses due in part to required provisions for ALLL, asset valuation adjustments and write-downs, and operating losses. These losses and write-downs have significantly depleted capital. Additional declines in asset values are likely, thereby further depleting capital and jeopardizing the Savings Bank's operations. Therefore, the Acting Director, or his designee, concludes that the Savings Bank is in an unsafe and unsound condition to transact business.

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<sup>1</sup> The Savings Bank contends that its own analysis and an analysis conducted by a third party more accurately reflect the appropriate ALLL for the Savings Bank. OTS has concluded that the third party report was not adequately supported, and was not based on a loan review that was as extensive as the review that OTS undertook.

### **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 an institution is undercapitalized if it has a total risk-based capital ratio that is less than 8 percent or, if the institution is not “one” rated, a leverage ratio that is less than 4 percent.<sup>2</sup>

The Savings Bank reported that as of September 30, 2000, it had leverage (core) capital ratio of .63 percent, tier one risk based capital ratio of .97 percent and total risk-based capital ratio of 1.99 percent. As discussed above, the Savings Bank has reported in its TFR that it is critically undercapitalized. While the Savings Bank disputes that it is critically undercapitalized, the Savings Bank is, at best, undercapitalized.

During the past year, the Savings Bank has attempted to raise additional capital through various sources, and the Savings Bank continues to explore opportunities and alternatives 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 capital 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.

In addition, management is continuing to sell assets and market its mortgage servicing rights and its mortgage production platform. The Savings Bank has sold certain assets, and has entered into a letter of intent to sell certain other assets to a third party. However, anticipated proceeds from the sales will be less than originally anticipated.

Moreover, given 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 sales of existing assets or otherwise. 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 an acceptable capital restoration plan under 12 U.S.C. § 1831o(e)(2)(D).

As discussed above, OTS has determined that the Savings Bank is

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<sup>2</sup> A leverage ratio of 3 percent is permissible if the institution has a CAMELS composite rating of one. The Savings Bank is not “one” rated.

undercapitalized. In addition, on October 23 and 29, 2009, OTS notified the Savings Bank that it was required to file a Capital Restoration Plan by November 9, 2009. On November 9, 2009, the Savings Bank submitted a Capital Restoration Plan; however, on November 24, 2009, OTS notified the Savings Bank that it had failed to submit an acceptable Capital Restoration Plan. OTS concluded that the Capital Restoration Plan was not acceptable because it contained unsupported and unrealistic assumptions regarding proposed actions that, if taken, would not result in the Savings Bank becoming adequately capitalized within a reasonable period of time. Therefore, the Acting Director, or his designee, concludes that the Savings Bank is undercapitalized and that the Savings Bank has failed to submit an acceptable Capital Restoration Plan within the time prescribed in 12 C.F.R. § 565.5(a).

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)(C), (K)(i) and (K)(iii) of the FDIA, 12 U.S.C. §§ 1821(c)(5)(C), (K)(i) and (K)(iii).

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## **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 Western 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 22 day of January, 2010.

  
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John E. Bowman  
Acting Director