

OFFICE OF THRIFT SUPERVISION

Receivership of a Federal Savings Bank

Date: December 18, 2009
Order No.: 2009-64
Docket No.: 08083

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 New South Federal Savings Bank, Irondale, Alabama (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, by resolution of its board of directors, has consented to the appointment of a receiver;
- (iv) The Savings Bank is critically undercapitalized; and
- (v) The Savings Bank has substantially insufficient capital.

The Savings Bank is a Federally chartered savings bank, the accounts of which are insured by the FDIC's Deposit Insurance Fund (DIF). The Savings Bank's home office is in Irondale, Alabama. The Savings Bank is wholly owned by New South Bancshares, Inc. (Holding Company). As of September 30, 2009, the Savings Bank reported in its Thrift Financial Report (TFR) that it had approximately \$1.464 billion in assets, \$1.462 billion in liabilities, and \$4.111 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 of 0.28 percent, 0.28 percent, 0.48 percent, and 0.97 percent, respectively. The Savings Bank's September 30, 2009 TFR indicates that the Savings Bank is "critically undercapitalized." The Savings Bank experienced a net loss for the fiscal year ended December 31, 2008, of approximately \$26 million. Net losses for the nine months ended September 30, 2009, are \$110.061 million, including a net loss for the three months ended September 30, 2009, of approximately \$40.648

million. These losses have depleted substantially all of the Savings Bank's equity and regulatory capital. In addition, on December 1, 2009, the Savings Bank reported to OTS that stockholders' equity was negative \$8.57 million. The Savings Bank's efforts to raise additional capital have been unsuccessful.

The recent financial conditions in the United States and in significant portions of the Savings Bank's market, and the resulting foreclosures and delinquencies on loans in those markets, have resulted in the Savings Bank incurring significant losses. 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. Classified assets increased from \$235.1 million at December 31, 2008 to \$295.7 million at September 30, 2009. The Savings Bank's loan portfolio continues to experience a high amount of delinquent loans that will likely require additional provisions for loan losses. As of September 30, 2009, the Savings Bank reported delinquent loans of approximately \$285.5 million, of total loans of \$1.091 billion, or a 26.16 percent delinquency rate.

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.

The Savings Bank's Assets are Less Than the Savings Bank's Obligations to its Creditors and Others

Under section 11(c)(5)(A), OTS may appoint a receiver for a savings association if a savings association's assets are less than its obligations to its creditors and others. The Savings Bank reported to OTS that as of December 1, 2009, its equity capital was negative \$8.57 million. As a result the Savings Bank's assets are less than its obligations to its creditors and others. Therefore, OTS may appoint a receiver for the Savings Bank under this standard.

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 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).

As summarized above, based on the Institution's deteriorating asset quality, continuing significant operating losses, and critically undercapitalized capital position with all efforts to

raise additional capital unsuccessful, the Savings Bank is in an unsafe and unsound condition to transact business.

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

Consent

Under section 11(c)(5)(I), OTS may appoint a receiver for an association if the association's board of directors, by resolution, has consented to such an appointment. The board of directors of the Savings Bank, by resolution dated November 9, 2009, agreed to the appointment of a conservator or receiver. Therefore, the Acting Director, or his designee, concludes that a receiver may be appointed on the basis of the Savings Bank's consent.

Critically Undercapitalized

Under section 11(c)(5)(L)(i), OTS may appoint a receiver for a savings association if an institution 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 September 30, 2009, the Savings Bank reported a tangible capital ratio of 0.28 percent. Therefore, the Acting Director, or his designee, concludes that the Savings Bank is critically undercapitalized.

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 and all savings associations to maintain a minimum 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 "one" rated and has a leverage capital ratio of 0.28 percent. The Savings Bank's risk-based capital ratio is 0.97 percent. Accordingly, the Savings Bank's leverage 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 for a receiver for the Savings Bank exist under section 5(d)(2) of the HOLA, and sections 11(c)(5)(A), (C), (I), (L)(i) and (L)(ii) of the FDIA, 12 U.S.C. §§ 1821(c)(5)(A), (C), (I), (L)(i) and (L)(ii).

ACTIONS ORDERED OR APPROVED

Appointment of a Receiver

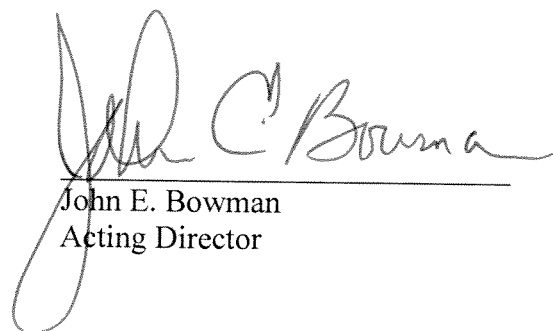
The Acting Director, or his designee, hereby appoints the FDIC as receiver for the Savings Bank, for the purpose of liquidation or winding up the affairs of the Savings Bank, pursuant to section 5(d)(2) of the HOLA, 12 U.S.C. § 1464(d)(2), and section 11(c)(6)(B) of the FDIA, 12 U.S.C. § 1821(c)(6)(B).

DELEGATION OF AUTHORITY TO ACT FOR OTS

The Acting Director, or his designee, hereby authorizes: (i) the OTS Southeast 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 18th day of December, 2009.



John E. Bowman
Acting Director