OFFICE OF THRIFT SUPERVISION

Approval of Application for Transfer of Assets

Order No.: 2010-67
Date: November 29, 2010
Docket No.: 06069

Aurora Bank FSB, Wilmington, Delaware (Savings Bank) has applied to the Office of Thrift Supervision (OTS), pursuant to 12 C.F.R. § 563.22(c), to acquire certain assets and liabilities from its holding company, Lehman Brothers Holdings, Inc. (LBHI), in connection with the settlement of claims that the Savings Bank and its wholly owned subsidiary, Aurora Loan Services LLC (ALS), have previously asserted against LBHI in its ongoing bankruptcy proceedings.

Background

The Savings Bank, a Deposit Insurance Fund insured federal stock savings bank, is a wholly owned direct subsidiary of Lehman Brothers Bancorp, Inc. (LBBI), and LBBI is a wholly owned direct subsidiary of LBHI.

On September 15, 2008, LBHI filed a Chapter 11 petition for bankruptcy in the United States Bankruptcy Court, Southern District of New York. Prior to the commencement of LBHI's bankruptcy proceedings, the Savings Bank and ALS had entered into certain arrangements with LBHI (and certain of its subsidiaries) that addressed, among other things, LBHI's purchase of the Savings Bank's loans pursuant to a Master Forward Agreement dated January 1, 2008 (MFA). (Collectively, the claims made by the Savings Bank and ALS are referred to as the Inter-Company Arrangements).

On January 6, 2009, the Savings Bank filed a proof of claim in LBHI's bankruptcy proceedings with respect to the MFA. On September 22, 2009, the Savings Bank and ALS each filed proof of claims related to other claims against LBHI, based on the Inter-Company Arrangements other than the MFA. (Collectively, the January 6, 2009 proof of claim and September 22, 2009 proofs of claims are referred to as the Intercompany Claims.)

LBHI, the Savings Bank and ALS negotiated a settlement of the Intercompany Claims that is memorialized in a Settlement Agreement transmitted to OTS on July 6, 2010 (Settlement Agreement). The Settlement Agreement is subject to approval by OTS and the Bankruptcy Court. The transactions contemplated by the Settlement Agreement are hereinafter referred to as the Settlement. On September 23, 2010, the United States Bankruptcy Court for the Southern District of New York authorized LBHI to take all actions necessary to consummate the Settlement. The Settlement Agreement requires, among other things, that LBHI enter into a Capital Maintenance Agreement (CMA) with OTS, under which LBHI would agree to, among

other things: (i) maintain the Savings Bank's Tier 1 (Core) Capital ratio at 11 percent; and (ii) maintain the Savings Bank's Total Risk-Based Capital ratio at 15 percent. The form of the CMA is attached to this Order.

Transfer of Assets Application

Consummation of the Settlement would resolve the Savings Bank's Intercompany Claims, some of which were recorded as receivables on its books, and result, among other things, in the transfer of at least $850 million in cash and noncash assets from LBHI to the Savings Bank. Accordingly, the Savings Bank has sought OTS's approval to engage in the transactions necessary to effect the Settlement pursuant to 12 C.F.R. § 563.22(c) (the Application).

OTS regulations, at 12 C.F.R. § 563.22(d), require OTS, in determining whether to approve a transfer of assets application, to consider: (i) the impact of the transaction on the savings association's capital level; (ii) the financial and managerial resources of the savings association; (iii) the future prospects of the savings association; (iv) the convenience and needs of the communities to be served; (v) the conformity of the transaction to applicable law, regulation, and supervisory policies; and (vi) the fairness of and disclosure concerning the transaction.

With regard to the Savings Bank's capital level, consummation of the Settlement would immediately cause the Savings Bank's Tier 1 (Core) Capital and Total Risk-Based Capital ratios to increase. Furthermore, for so long as LBHI controls the Savings Bank, the CMA would obligate LBHI to maintain the Savings Bank's Tier 1 (Core) capital ratio at 11 percent and its Total Risk-Based Capital ratio at 15 percent. OTS concludes that the Savings Bank's capital levels at consummation of the transaction are consistent with approval.

With regard to financial and managerial resources, consummation of the Settlement would result in a strengthened capital position and would also improve the Savings Bank's asset quality, earnings and liquidity position. OTS is imposing condition 3 to help ensure that the updated valuations of non-cash assets to be received from LBHI are consistent with the valuations provided as part of the Application, and that financial resources considerations are consistent with approval. Following the Settlement, the Savings Bank's management team will remain in place. OTS is familiar with the Savings Bank's management. Based on the foregoing, OTS concludes that the managerial and financial resources considerations are consistent with approval, subject to imposition of the condition.

Based on its consideration of the managerial and financial resources of Savings Bank, and OTS's review of the Savings Bank's business plan and projected operations after the transfer, OTS concludes that the future prospects of the Savings Bank are consistent with approval. OTS is imposing condition 8 to help ensure that the Savings Bank operates pursuant to its business plan and that changes to and from the business plan are not detrimental to the Savings Bank. OTS is also imposing condition 9, to enable OTS to confirm that the Savings Bank is being operated in accordance with the business plan. The conditions are intended to ensure that the Savings Bank's future prospects are consistent with approval.

With regard to the convenience and needs of the communities to be served, the Settlement would improve the Savings Bank's earning capacity, asset quality and liquidity, thereby facilitating the Savings Bank's ability to meet the convenience and needs of its community. Accordingly, OTS concludes that convenience and needs considerations are consistent with approval.

With regard to the conformity of the transaction to applicable law, regulation and supervisory policies, OTS concludes that the transaction is consistent with applicable laws, regulations, and supervisory policies and consistent with approval.

As for factors regarding equitable treatment and disclosure, OTS's review of the Application indicates that the proposed transaction was adequately disclosed and appears to be equitable to all concerned. The transfer was negotiated at arms-length between the parties, all of which were represented by counsel.

Conclusion

Based on the foregoing analysis, OTS concludes that the Application satisfies all applicable approval standards and criteria, provided that the following conditions are complied with in a manner satisfactory to the Northeast Regional Director, or his designee (Regional Director). Accordingly, the Application is hereby approved, subject to the following conditions:

1. Prior to the consummation of the proposed transaction, the Savings Bank must receive all required approvals and submit copies of all such approvals to the Regional Director;

2. The proposed transaction must be consummated within 120 calendar days from the date of this Order;

3. Prior to the consummation of the proposed transaction, the Savings Bank must submit to OTS updated independent valuations of the noncash assets to be transferred to the Savings Bank in connection with the proposed transaction, together with evidence that such valuations have been reviewed and found to be acceptable by the Savings Bank's Special Committee of Independent Directors, and receive the Regional Director's written non-objection regarding such submission;

4. On the business day prior to the date of consummation of the proposed transaction, the chief financial officer of the Savings Bank must certify in writing to the Regional Director that no material adverse events or material adverse changes have occurred with respect to the financial condition or operations of the Savings Bank, as disclosed in the Application. If additional information having a material adverse bearing on any feature of the Application is brought to the attention of Savings Bank or OTS

since the date of the financial statements submitted with the Application, the transaction must not be consummated unless the information is presented to the Regional Director, and the Regional Director provides written non-objection to consummation of the transaction;

5. Immediately following the execution of the Settlement Agreement, the Savings Bank must electronically submit a copy of the executed Settlement Agreement to the Regional Director;

6. Within five calendar days after the effective date of the proposed transaction, the Savings Bank must advise the Regional Director in writing: (a) of the effective date of the transaction and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the Application and this Order;

7. No later than 30 calendar days after the date of consummation of the proposed transaction, the Savings Bank must file with OTS a final balance sheet and regulatory capital ratios (Tangible Equity, Tier 1 (Core), Tier 1 Risk-Based, and Total Risk-Based) before and after the transaction, with adjusting entries and footnotes explaining each adjustment, along with an accounting opinion confirming that the transaction was accounted for in accordance with generally accepted accounting principles;

8. The Savings Bank must operate within the parameters of the November 22, 2010 business plan submitted as part of the Application. The Savings Bank must: (a) submit any proposed material modifications to the business plan to the Regional Director, at least 45 calendar days prior to implementation; and (b) obtain the prior written non-objection of the Regional Director for any such material modifications; and

9. Within 20 calendar days after the end of each month following the date of consummation of the proposed transaction, the Savings Bank must submit to the Regional Director a business plan variance report detailing: (a) the Savings Bank's compliance with the business plan; (b) an explanation of any material variances; and (c) the measures taken or to be taken to address the identified material variances.

The Regional Director may, for good cause, extend for up to 120 calendar days any time period set forth herein.

By order of the Acting Director of the Office of Thrift Supervision, or his designee, effective November 29, 2010.

G. N. Gardineer

Grovetta N. Gardineer
Managing Director,
Corporate & International Activities

CAPITAL MAINTENANCE AGREEMENT

THIS CAPITAL MAINTENANCE AGREEMENT ("Agreement") is entered into the 30th day of November, 2010 (to be effective as provided in Article IV below as of the "Effective Date"); by and among AURORA BANK FSB (the "FSB"), a federal savings association with its home office in Wilmington, Delaware; LEHMAN BROTHERS BANCORP (the "Parent"), a Delaware corporation with its principal place of business in New York, New York; LEHMAN BROTHERS HOLDINGS, INC. (the "Ultimate Parent"), a Delaware corporation with its principal place of business in New York, New York; and the OFFICE OF THRIFT SUPERVISION (the "OTS").

RECITALS

WHEREAS, the FSB is a wholly-owned subsidiary of the Parent, and an indirect wholly-owned subsidiary of the Ultimate Parent;

WHEREAS, the Ultimate Parent is a debtor in possession in a case under chapter 11 of title 11 of the U.S. Code (the "Bankruptcy Code") pending in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), wherein there are also pending chapter 11 cases of certain subsidiaries of Ultimate Parent, which cases of Ultimate Parent and its subsidiaries have been consolidated for administrative purposes only;

WHEREAS, the Ultimate Parent, Parent and the FSB have determined that it is in the best interests of the Ultimate Parent, the Parent and the FSB to ensure that the FSB is able to continue to operate, safely and soundly and in accordance with all applicable laws, regulations and regulatory requirements, as a going concern;

WHEREAS, in order to meet all regulatory capital requirements and carry out its business plans, the FSB may need additional capital from time to time;

WHEREAS, the OTS seeks to ensure that the FSB complies with all of its capital requirements and that the FSB operates in a safe and sound manner; and

WHEREAS, the Ultimate Parent and the Parent may realize the benefits of contributions to the equity capital of the FSB through continued ownership of the Parent's equity interest in the FSB.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration the sufficiency of which is hereby acknowledged, the OTS, the Ultimate Parent, the Parent and the FSB, intending to be legally bound, do hereby agree as follows:

ARTICLES

I. CONSTRUCTION OF AGREEMENT.

A. As this Agreement applies to FSB and Parent, it shall constitute a binding and enforceable "written agreement" entered into with an agency within the meaning and for purposes of Section 8 of the Federal Deposit Insurance Act ("FDIA"), as amended (12 USC §1818). As this Agreement applies to the Ultimate Parent, it shall not constitute such a "written agreement" and shall not be enforceable pursuant to Section 8 of the FDIA, but shall (when effective in accordance with Article IV below) constitute a binding post-petition agreement and obligation of Ultimate Parent, enforceable as a Section 507(a)(2) claim in a proceeding under Chapter 11 of the Bankruptcy Code and as a priority claim in a Chapter 7 proceeding, should there be a conversion from Chapter 11 of the Bankruptcy Code.

B. This Agreement shall not be construed as a "written agreement, order, capital directive or prompt corrective action directive issued by OTS" requiring the FSB "to meet and maintain a specific capital level" for purposes of 12 C.F.R. § 565.4.

II. CAPITAL ASSURANCES AND DISPOSITION OF FSB.

A. Subject to the required approval referred to in Article IV, during the term of this Agreement and except as otherwise provided herein, the Ultimate Parent and Parent commit and promise to make such capital contributions as may be necessary from time to time to ensure that the FSB has sufficient "core capital" (or "Tier 1 capital") and "total risk based capital," as computed in accordance with the rules and regulations of the OTS at 12 C.F.R. Part 567 ("Capital"); so that the FSB maintains: (i) a "Tier 1 (Core) capital" or leverage ratio of at least 11% and (ii) a total risk-based capital ratio of at least 15% (hereinafter the "Minimum Capital Requirement") during the term of this Agreement.

B. Subject to the required approval referred to in Article IV, the Ultimate Parent and the Parent agree that if, at any time during the term of this Agreement, the FSB's Capital level falls below the Minimum Capital Requirement (a "Capital Deficiency"), then the Ultimate Parent and Parent will, within five (5) business days after any of the events referred to in 12 C.F.R. § 565.3(b)(1) or (2) occurs with respect to such Capital Deficiency, contribute additional Capital, in cash, in an amount sufficient to cause the FSB's Capital to meet the Minimum Capital Requirement; provided that such time period for compliance may be extended, or an alternate form of the capital contribution may be approved, by the appropriate Regional Director of the OTS in the sole discretion of the OTS; and further provided that, in the event the FSB is less than wholly-owned by the Parent or Ultimate Parent, then the Parent shall be entitled, upon its contribution of such additional Capital, to receive from the FSB additional shares of common stock of the FSB having a value equal to the Capital contributed by the Parent at a price per share mutually agreed upon by the Parent and the FSB so as to prevent dilution of the Parent's interest in the FSB. The Parent and the FSB hereby agree to use reasonable efforts to promptly obtain or provide all corporate, regulatory and other approvals necessary to authorize the issuance of such common stock to Parent.

C. The Ultimate Parent, the Parent, and FSB agree to market, including through one or more investment banking firms, the FSB for sale to close by the end of the eighteen (18) month period following the last day of the month in which the Effective Date occurs (the "Eighteen Month Date"), to an unaffiliated third party whether by stock purchase, merger or a purchase of substantially all assets and assumption of all deposit liabilities ("Disposition Transaction"). If a Disposition Transaction has not been consummated by the Eighteen Month Date, and unless the FSB: (i) is subject to a definitive agreement to consummate a Disposition Transaction with an acquirer that has filed all necessary applications with the appropriate federal banking agency(ies) and is awaiting final approval, and (ii) has sought and obtained a written extension of time beyond the Eighteen Month Date to consummate the Disposition Transaction ("OTS Extension"), then Ultimate Parent and Parent shall within five (5) business days after the Eighteen Month Date, purchase all of the FSB's assets, other than cash and Cash Equivalents[1], in exchange for cash or Cash Equivalents at a price that is equal to the greater of (i) 111% of FSB's total book liabilities (based on mark-to-market accounting pursuant to FAS 159) less the amount of the FSB's cash and Cash Equivalents that are not purchased or (ii) the book value (based on mark-to-

[1] "Cash Equivalents" means any of the following, to the extent owned by the FSB, Parent or Ultimate Parent free and clear of all liens and having a maturity of not greater than 90 days from the date of issuance thereof: (i) federal funds sold that are reportable on Line SC125 of the Thrift Financial Report (ii) readily marketable direct obligations of the Government of the United States or any agency or instrumentality thereof or obligations unconditionally guaranteed by the full faith and credit of the Government of the United States, and (iii) insured demand deposits in any FDIC-insured depository institution.

market accounting pursuant to FAS 159) of the assets purchased. OTS may grant or deny a request for an OTS Extension in its sole discretion. Any OTS Extension will establish a revised deadline date by which, if a Disposition Transaction has not been consummated, Ultimate Parent and Parent must purchase the FSB's assets pursuant to the formula above, and such deadline shall be binding upon and enforceable against Ultimate Parent and Parent as part of this Agreement.

D. OTS shall monitor the progress of the disposition efforts required by Article II.C. If at any time after the fifteenth (15^{th}) month following the Effective Date, OTS determines Disposition Transaction is not likely to be consummated by the Eighteen Month Date, it may direct the FSB to file, and FSB shall file with the OTS within fifteen (15) days of delivery of that direction, a plan of dissolution in accordance with 12 C.F.R. § 546.4 and Part 460 of the OTS' Application Processing Handbook (the "Plan of Dissolution"). The Plan of Dissolution shall detail the FSB's plans to, inter alia, (i) sell all of its assets to the Parent or Ultimate Parent, other than cash and Cash Equivalents, in exchange for cash or Cash Equivalents, at a price that is equal to the greater of (a) 111% of FSB's total book liabilities (based on mark-to-market accounting pursuant to FAS 159) less the amount of the FSB's cash and Cash Equivalents that are not purchased or (b) the book value (based on mark-to-market accounting pursuant to FAS 159) of the assets purchased, by no later than five (5) business days following the Eighteen Month Date (which would be automatically extended to the deadline date established in any OTS Extension), (ii) pay off all of its deposit liabilities by no later than ten (10) business days following the Eighteen Month Date (which pay off would be automatically extended to five (5) business days following the deadline date established in any OTS Extension), (iii) terminate its federal deposit insurance, and (iv) return its charter to the OTS. Upon approval of the Plan of Dissolution by the OTS, the FSB shall, and the Ultimate Parent and Parent shall cause the FSB to, promptly comply with the plan.

III. TERM AND TERMINATION OF AGREEMENT.

A. The term of this Agreement shall commence on the Effective Date (as defined below) and shall terminate upon the first to occur of (i) the earlier of (A) the time when the Parent no longer has control as herein defined of the FSB or (B) the time following Ultimate Parent's purchase of all of the FSB's assets, when FSB has no deposit liabilities (ii) upon the conversion of the FSB to another form of depository institution charter other than a "savings association" within the meaning of Section 2(4) of the Home Owners Loan Act, as amended (the "HOLA"), or (iii) with the written consent of the parties hereto. For purposes of this Agreement, "control" shall have the meaning set forth at Section 10(a)(2) of the HOLA (12 USC § 1467a(a)(2)), and 12 C.F.R. § 574.4. Without limiting the generality of the foregoing, for the avoidance of doubt, the Parent shall be deemed to control the FSB if the OTS may presume that the Parent controls the FSB pursuant to 12 C.F.R. § 574.4(b), unless the OTS shall have accepted a rebuttal of control submission made by the Parent using the standards set forth in 12 C.F.R. § 574.4(e) to establish an absence of such control.

B. During the term of this Agreement, without obtaining the prior written approval or non-objection of the OTS, the Parent may not transfer or dispose of voting stock or other securities of the FSB if such transaction would cause the Parent to no longer control the FSB as defined above, and consequently, result in the termination of this Agreement.

IV. **REQUIRED APPROVALS.** Each of the Ultimate Parent, Parent and the FSB represent to each other and to OTS that it has obtained all corporate approvals necessary for it to enter into and perform this Agreement. The obligations of the parties hereto to effectuate this Agreement are subject to the approval by the Bankruptcy Court of the performance by Ultimate Parent of this Agreement in connection with the approval by the Bankruptcy Court of the performance by the Ultimate Parent and its subsidiaries that are debtors in possession in the Chapter 11 Cases of the settlement and related

transactions between the FSB and its subsidiaries and the Ultimate Parent and its subsidiaries contemplated by the application of FSB to the OTS submitted in accordance with 12 C.F.R. § 563.22 on December 24, 2009 (the "Settlement") and approved by the OTS, of which Settlement this Agreement is a part. Ultimate Parent, Parent and the FSB shall each use their reasonable best efforts to obtain Bankruptcy Court approval of the Settlement, including this Agreement, and the consummation of the transactions contemplated by the Settlement. This Agreement shall become effective on the day the Bankruptcy Court Order approving the Agreement and Settlement becomes final and nonappealable (the "Effective Date"). On the day the Bankruptcy Court Order approving the Agreement and Settlement becomes final and nonappealable, LBHI's counsel shall so certify in a letter to the Parent, FSB and OTS, which shall be transmitted via electronic and overnight mail.

V. **MODIFICATION OR AMENDMENT OF AGREEMENT.** This Agreement may be modified or amended only by the mutual written consent of the Ultimate Parent, Parent and the FSB and with the prior written approval or non-objection of the OTS.

VI. **ASSIGNABILITY OF AGREEMENT.** This Agreement shall not be assigned without the written consent of the Ultimate Parent, the Parent and the FSB and the prior written approval or non- objection of the OTS.

VII. **SUCCESSORS IN INTEREST; THIRD PARTY BENEFICIARIES.** This Agreement shall remain in full force and effect against any successors in interest to the Parent and shall inure to the benefit of: (i) the Federal Deposit Insurance Corporation, in the event that it is appointed as conservator or receiver for FSB and (ii) any regulatory successor of the OTS. This Agreement is not intended to, and nothing in this Agreement shall create or be deemed to create, any third party beneficiary rights in any person or entity.

VIII. **NOTICES.** All notices or other communications required hereunder shall be in writing and shall be made by facsimile transmission, with a copy sent via overnight courier to the following persons addressed as follows:

if to the Ultimate Parent, to:

Lehman Brothers Holdings, Inc.
1270 Avenue of the America
New York, New York 10019
Facsimile: (646) 285-9320
Attn: Corporate Secretary

with a copy to:

Attn.: Douglas Lambert
Facsimile: (646) 285-9320

if to the Parent, to

Lehman Brothers Bancorp
1270 Avenue of the Americas
New York, New York 10019
Facsimile: (646) 285-9320
Attn: Corporate Secretary

if to the FSB, to:	Aurora Bank FSB 1270 Avenue of the Americas New York, New York 10019 Facsimile: (866) 923-1589 Attn: Chief Executive Officer
if to the OTS, to:	Office of Thrift Supervision Department of the Treasury Harborside Financial Center, Plaza 5 Jersey City, New Jersey 07311 Facsimile: (201) 413-7543 Attn: Michael Finn, Regional Director

Such notice or communication shall be deemed to have been given or made as of the date that the notice or communication was sent via facsimile transmission.

IX. **COMMITMENT TO THE OTS.** As of the Effective Date, the undertakings of the Ultimate Parent and the Parent in this Capital Maintenance Agreement constitute a commitment by the Ultimate Parent and the Parent to the OTS (and any regulatory successors to the OTS) that the Ultimate Parent and Parent will maintain the Capital of the FSB as provided in this Agreement.

X. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof, and all prior agreements, arrangements, and negotiations between the parties, whether oral or written, with respect to this Agreement are deemed to be merged herein.

XI. **GOVERNING LAW; CONSENT TO JURISDICTION.** To the extent that Federal law does not control, this Agreement shall be governed, construed and controlled by the laws of the State of New York without reference to conflicts of laws principles thereof that would otherwise result in the application of the laws of another jurisdiction. Each party, without limiting any party's right to appeal to final decision any order of the Bankruptcy Court, irrevocably and unconditionally submits, until such time as a transfer of ownership and control of FSB shall have become effective, either pursuant to an approved Plan of Reorganization for Ultimate Parent, or otherwise, or, if no such transfer shall have occurred, until the Chapter 11 case of the Ultimate Parent has been closed, to the exclusive jurisdiction of the Bankruptcy Court to enforce the terms of this Agreement against Ultimate Parent.

XII. **SEVERABILITY.** If any portion of this Agreement shall be held by a court of competent jurisdiction to be invalid or inoperative, then, so far as is reasonable and possible, the remainder of this Agreement shall be considered valid and operative, and effect will be given to the intent manifested by the portion held invalid or inoperative.

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IN WITNESS WHEREOF, the parties have executed this Agreement.

Lehman Brothers Holdings, Inc.

By: /s/
Name: Douglas Lambert
Title: SVP

Lehman Brothers Bancorp

By: /s/
Name: Douglas Lambert
Title: SVP

Aurora Bank FSB

By: /s/
Name: Theodore Janulis
Title: CEO

Office of Thrift Supervision

By: /s/
Name: Michael E. Finn
Title: Northeast Regional Director