

## OFFICE OF THRIFT SUPERVISION

### Receivership Of A Federal Savings Association

**Date:** September 19, 2008  
**Order No.:** 2008-33  
**OTS No.:** 14177

The 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 Ameribank, Northfork, West Virginia (Savings Bank).

#### **GROUND FOR APPOINTMENT OF FDIC AS RECEIVER FOR THE SAVINGS BANK**

The Director, or his designee, based upon the administrative record finds and determines the following:

- (i) The Savings Bank has incurred substantial dissipation of its assets due to certain unsafe or unsound practices;
- (ii) The Savings Bank is in an unsafe and unsound condition to transact business;
- (iii) The Savings Bank has incurred losses that have depleted substantially all of its equity capital, and there is no reasonable prospect for the Savings Bank to become adequately capitalized without Federal assistance;
- (iv) The Savings Bank is in an unsafe or unsound condition and has conducted unsafe or unsound practices that are likely to cause insolvency or substantial dissipation of assets or earnings, weaken its condition, or otherwise seriously prejudice the interests of its depositors or the Deposit Insurance Fund (DIF);
- (v) The Savings Bank has consented to the appointment of a receiver;
- (vi) 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, has failed to become adequately capitalized when required to do so, and has failed to submit an acceptable capital restoration plan within the time prescribed; and

- (vii) The Savings Bank is critically undercapitalized as defined in section 38(b) of the FDIA, and has substantially insufficient capital.

The Savings Bank is a Federally chartered savings bank, the accounts of which are insured by the DIF. The Savings Bank has its home office in Northfork, West Virginia. As of June 30, 2008, the Savings Bank reported total assets of \$104 million.

### **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 the Director may appoint a receiver for any insured savings association if the Director determines that one or more grounds specified in section 11(c)(5) of the FDIA, 12 U.S.C. § 1821(c)(5), exist.

Under section 11(c)(5)(B) of the FDIA, the Director may appoint a receiver if a savings association has experienced substantial dissipation of its assets or earnings due to any unsafe or unsound practice. The Director finds that the Savings Bank has suffered substantial dissipation of its assets and earnings due to its excessive concentration of assets in high risk construction, rehabilitation loans generated by one entity. The concentration, approximately 50 percent of assets, in high risk construction, rehabilitation loans generated through a single provider placed the Savings Bank's operations in jeopardy and constituted an unsafe and unsound practice. That practice has resulted in losses amounting to approximately \$17.7 million since 2007, which we find to be substantial.

Under section 11(c)(5)(C) of the FDIA, the Director may appoint a receiver if a savings association is in an unsafe and unsound condition to transact business. The Director finds that the Savings Bank is in an unsafe and unsound condition due to its capital deficiency, lack of core profitability, and very poor asset quality. Over the past two years the Savings Bank has experienced significant losses due in part to required provisions for the allowance for loan losses, asset valuation adjustments and write-downs, and operating losses. These losses have significantly depleted capital resulting in the Savings Bank being critically undercapitalized. Additional declinations in asset values are likely, thereby, further depleting capital and jeopardizing the Savings Bank's operations. Therefore, the Director concludes that the Savings Bank is in an unsafe and unsound condition.

Under section 11(c)(5)(G) of the FDIA, the Director may appoint a receiver if a savings association has incurred, or is likely to incur, losses that have or will deplete all or substantially all of its capital, and there is no reasonable prospect for it to become adequately capitalized, as defined in section 12 U.S.C. § 1831o(b), without Federal assistance. The Savings Bank already has incurred losses that have depleted substantially all of its capital. As a result of the losses already suffered, the Savings Bank currently is critically undercapitalized. The Director has determined that: (i) the Savings Bank will

likely continue to suffer additional losses, in part because its assets are likely to continue to decline in value; (ii) the Savings Bank's holding companies and its principal owner have declined to recapitalize the Savings Bank; (iii) it appears unlikely that a recent proposal to acquire the Savings Bank will be consummated in the foreseeable future; and (iv) the Savings Bank has chosen not to file an acceptable capital plan. Therefore, the Director concludes that it is unlikely that any reasonable proposal to recapitalize the Savings Bank will be forthcoming from the Savings Bank, its holding companies or their principal owner or a third party. Therefore, the Director concludes that the Savings Bank has incurred losses that depleted substantially all of its capital and is likely to incur further losses, and there is no reasonable prospect for it to become adequately capitalized, as defined in section 12 U.S.C. § 1831o(b), without Federal assistance.

Under section 11(c)(5)(H) of the FDIA, the Director may appoint a receiver if the Savings Bank is in an unsafe or unsound condition or has conducted unsafe or unsound practices that are likely to cause insolvency or substantial dissipation of assets or earnings, weaken its condition, or otherwise seriously prejudice the interests of its depositors or the DIF. As discussed above, the Savings Bank is in an unsafe and unsound condition which is likely to cause insolvency and the Savings Bank has incurred substantial dissipation of its assets due to certain unsafe or unsound practices. Therefore, the Director concludes that the Savings Bank is in an unsafe or unsound condition and has engaged in unsafe or unsound practices that are likely to cause insolvency or substantial dissipation of assets or earnings, weaken its condition, or otherwise seriously prejudice the interests of its depositors or the DIF.

Under section 11(c)(5)(I) of the FDIA, the Director may appoint a receiver if the institution, by resolution of its board of directors, consents to the appointment. The Director finds that the board of directors of the Savings Bank by resolution dated August 18, 2008, consented to the appointment of a conservator or receiver by the Director and on August 25, 2008, the Savings Bank entered into a Stipulation and Consent agreement with OTS for such an appointment.

Under section 11(c)(5)(K) of the FDIA, the Director 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, fails to become adequately capitalized when required to do so under 12 U.S.C. § 1831o(f)(2)(A), or fails to submit an acceptable capital restoration plan under 12 U.S.C. § 1831o(e)(2)(D). 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>1</sup> The Savings Bank reported that as of June 30, 2008, it had a leverage capital ratio of 2.14 percent and a total risk-based capital ratio of 4.19 percent.

---

<sup>1</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.

As discussed above, there is no reasonable prospect of the Savings Bank becoming adequately capitalized without Federal assistance. Therefore, the Director concludes that the Savings Bank is undercapitalized and that it has no reasonable prospect of becoming adequately capitalized. In addition, the Director concludes that the Savings Bank has failed to become adequately capitalized when required to do so and has not submitted an acceptable capital restoration plan within the time prescribed.

Under section 11(c)(5)(L) of the FDIA, the Director may appoint a receiver if a savings association is critically undercapitalized as defined in section 1831o(b) of the FDIA or otherwise has substantially insufficient capital. Under OTS regulations implementing section 1831o an institution is critically undercapitalized if it has a ratio of tangible equity to total assets that is equal to or less than two percent. See 12 C.F.R. § 565.4(b)(5). As of July 31, 2008, the Savings Bank had a ratio of equity capital to total assets of 1.95 percent.

In addition, pursuant to the authority granted in sections 5(t)(1)(A)(i) and 5(t)(2)(A) of the HOLA, the Director has promulgated 12 C.F.R. Part 567. The Director has previously concluded 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 FDIA. See OTS Order 2007-43 (September 27, 2007).

The Savings Bank is not “one” rated and has reported a leverage capital ratio of 2.14 percent, less than two thirds of the required 4 percent, as of June 30, 2008. Therefore, the Director concludes that the Savings Bank has substantially insufficient capital.

In addition, OTS has prescribed that the minimum risk-based capital amount must be 8 percent of the institution’s risk-based assets, as defined. As of June 30, 2008, July 31, 2008, and August 31, 2008, the Savings Bank’s risk-based capital ratios were 4.19 percent, 3.89 percent and 2.08 percent, respectively. Thus, the Director concludes that the Savings Bank has substantially insufficient capital.

The 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)(B), (C), (G), (H), (I), (K), and (L) of the FDIA, 12 U.S.C. §§ 1821(c)(5)(B), (C), (G), (H), (I), (K), and (L).

**ACTIONS ORDERED OR APPROVED**

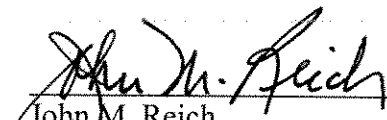
**Appointment of a Receiver**

The Director, or his designee, hereby appoints the FDIC as receiver for the Savings Bank, for the purpose of liquidation, pursuant to section 5(d)(2) of the HOLA, 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 Director, or his designee, hereby authorizes the OTS Northeast Regional Director, or his designee, and the Deputy Chief Counsel for the Business Transactions Division 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 Director, or his designee, hereby authorizes the Deputy Chief Counsel for the Business Transactions Division of the Chief Counsel's office, 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 Director of OTS, effective September 19, 2008.

  
\_\_\_\_\_  
John M. Reich  
Director