

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of

Lehman Brothers Bank, FSB
Wilmington, Delaware
OTS No.: 06069

OTS Order No. NE-09-03

Dated: February 4, 2009

PROMPT CORRECTIVE ACTION DIRECTIVE

WHEREAS, Lehman Brothers Bank, FSB, Wilmington, Delaware (Association) is a federally chartered savings association that is regulated by the Office of Thrift Supervision (OTS); and

WHEREAS, Section 38 of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1831o, and Part 565 of the OTS Regulations thereunder, 12 C.F.R. Part 565, require institutions that are undercapitalized to file a capital restoration plan specifying the steps the institution will take to become at least adequately capitalized; and

WHEREAS, Section 38 of the FDIA, 12 U.S.C. § 1831o, requires the OTS to take prompt corrective action (PCA) to resolve the problems of insured savings associations at the least possible long-term loss to the deposit insurance fund; and

WHEREAS, Section 565.7 of the OTS Regulations, 12 C.F.R. § 565.7, provides for the issuance by the OTS of directives to take prompt corrective action to resolve the problems of insured depository institutions and to restore their capital; and

WHEREAS, on January 14, 2009 the OTS notified the Association: (i) that it was undercapitalized for purposes of the prompt corrective action provisions of Section 38 of the FDIA, 12 U.S.C. § 1831o, (ii) of the requirement to file a Capital Restoration Plan no later than February 13, 2009, (iii) of the restrictions and requirements imposed upon the Association as a result of its undercapitalized status and (iv) of OTS's intent to issue a Prompt Corrective Action Directive; and

WHEREAS, OTS hereby provides notice, pursuant to 12 C.F.R. § 565.3(c)(2), that the Association is "significantly undercapitalized" for purposes of the prompt corrective action provisions of Section 38 of the FDIA, 12 U.S.C. § 1831o, based on information previously supplied by the Association pursuant to 12 C.F.R. § 565.3(c)(1); and

WHEREAS, the Association also is not in compliance with the capital standards required by Section 5(t) of the Home Owners' Loan Act (HOLA), 12 U.S.C. § 1464(t); and

WHEREAS, Section 5(t)(6)(B)(ii) of the HOLA, 12 U.S.C. § 1464(t)(6)(B)(ii), requires any savings association not in compliance with capital standards to comply with a capital directive issued by the OTS; and

WHEREAS, the OTS, having issued a Notice of Intent to issue a Directive on January 14, 2009, and having considered the response thereto filed by the Association on January 23, 2009, has determined to issue this Prompt Corrective Action Directive (Directive) in order to resolve the Association's problems at the least long term cost to the deposit insurance fund, thereby effectuating the purpose of Section 38 of the FDIA; and

WHEREAS, the OTS finds it necessary in order to carry out the purposes of Section 38 of the FDIA, 12 U.S.C. § 1831o, to issue this Directive requiring the Association immediately to take certain actions and to follow certain proscriptions.

NOW THEREFORE, pursuant to Section 38 of FDIA, 12 U.S.C. § 1831o, including but not limited to subsection (f) thereof, Section 5(t)(6)(B)(ii) of HOLA, 12 U.S.C. § 1464(t)(6)(B)(ii), and Section 565.7 of the OTS Regulations, 12 C.F.R. § 565.7, OTS directs the Association and its Board of Directors to do the following:

PART I - IMPROVING CAPITAL

Section 1.1. Required Capital Plan/Recapitalization

(a) Pursuant to 12 U.S.C. § 1831o(e)(2) and 12 C.F.R. § 565.5, and in accordance with the guidance supplied in the letter from OTS dated January 14, 2009, the Association must submit an acceptable capital restoration plan (Capital Plan) to OTS no later than February 13, 2009 with copies to Federal Deposit Insurance Corporation (FDIC). To be acceptable, the Plan must provide that, by no later than February 28, 2009, the Association shall achieve adequately capitalized status, as defined in 12 C.F.R. § 565.4(b)(2) by:

- (i) A contribution of cash capital by the shareholders of the Association;
- (ii) A recovery of amounts due and owing to the Association from the Association's parent holding company, Lehman Brothers Holdings Inc. (LBHI), pursuant to LBHI's obligations under the Master Forward Agreement dated January 1, 2008;
- (iii) Any other means acceptable to the Regional Director; or
- (iv) Any combination of the above means.

(b) In the event the Association does not achieve adequately capitalized status in accordance with Section 1.1(a), the Association shall immediately take any necessary action to result in the Association's: (i) acquisition by another depository institution holding company, (ii) merger with another depository institution, or (iii) such other transaction(s) that OTS may approve pursuant to a plan of voluntary dissolution.

(c) In furtherance of its obligations hereunder, the Board of Directors, *inter alia*, shall:

- (i) authorize and direct appropriate Association officers to take appropriate actions consistent with the Association's obligations under said subsections (a) and (b);
- (ii) cause the Association to hire such professionals as are necessary and appropriate to enable the Association to engage in a securities issuance and/or a merger or other appropriate business combination; and
- (iii) cause the Association to share appropriate information about itself with potential investors, acquirors, and/or merger partners, including, but not limited to, any potential investor, acquiror or merger partner identified or referred to the Association by the OTS.

(d) The Association shall not issue any securities or enter into any agreement or understanding to merge, consolidate, or otherwise be acquired, or enter into any agreement or understanding to reorganize unless (i) the Association has provided the OTS with prior written notice of its intention to take such action (of issuing securities or entering into such an agreement), and (ii) following such notice the OTS has provided the Association with prior written notice of its non-objection to the proposed action by the Association.

The OTS directs the actions required by this Section 1.1 pursuant to 12 U.S.C. §§ 1831o(e)(2), 1831o(f)(2)(A) and 1831o(f)(2)(J), and based upon a determination by the OTS that such action will better carry out the purposes of Section 38 of the FDIA.

Section 1.2. Reports of Compliance

(a) No later than ten (10) days following the end of each month, management of the Association shall prepare, and the Board of Directors of the Association shall review, a written report concerning the Association's compliance with each of the requirements of this Directive during the preceding month. The report and review shall include verification of the Association's prompt corrective action capital category and confirmation that the Association is in compliance with: (i) all restrictions that apply automatically to an institution in that category, and (ii) with the other restrictions and requirements contained in this Directive. The report and review shall be documented in the minutes of the meeting of the Board. All documentation considered by the Board in performing its review shall be explicitly referenced in the minutes of the meeting at which the review was undertaken.

(b) By the fifteenth (15th) day of each month, the Association shall submit the following documents to the OTS in a format acceptable to the OTS:

- (i) a variance report, in Thrift Financial Report format, comparing capital levels/targets projected in the Capital Plan with actual results;
- (ii) a summary of actions taken, during the immediately preceding month, by the

Association and its Board of Directors and executive officers in furtherance of the Association's efforts to increase its capital ratios and engage in a securities issuance, merger/acquisition, or other transaction as required by subparagraphs (a) and (b) of Section 1.1, including descriptions of any material discussions with potential investor(s), acquiror(s) or merger partner(s), any letters of intent entered into with potential investor(s), acquiror(s) or merger partner(s) and any due diligence performed by potential investor(s), acquiror(s) or merger partner(s);

- (iii) confirmation of the Association's compliance with this Directive or a description of any instance of noncompliance with any of the Association's obligations under this Directive and the specific measures undertaken to cure such noncompliance; and
- (iv) if requested, copies of the minutes of the Association's Board of Directors supporting actions taken to comply with this Directive.

The OTS directs the actions required by this Section 1.2 pursuant to 12 U.S.C. § 1831o(f)(2)(J) and based upon a determination by the OTS that such action will better carry out the purposes of Section 38 of the FDIA, 12 U.S.C. § 1831o.

PART II - OPERATING RESTRICTIONS & REQUIREMENTS

Section 2.1. Compliance with Mandatory Restrictions.

The Association shall comply with all of the mandatory prompt corrective action provisions contained in Section 38 of FDIA, 12 U.S.C. § 1831o, that automatically apply to the Association based upon the Association's prompt corrective action capital category. These provisions are set forth at 12 U.S.C. §§ 1831o(d)(1) (capital distributions restriction), (d)(2) (management fees restriction), (e)(3) (asset growth restriction), (e)(4) (restrictions on acquisitions, branching, and new lines of business), (f)(4) (senior executive officers' compensation restriction), (h)(2) (prohibition on payment of subordinated debt), and (i) (restrictions on activities). However, if the Association should improve from a lower to a higher PCA capital category, it must continue to comply with the previously applicable mandatory sanctions of the lower category, until such time as approval to cease compliance with the lower category sanctions is requested of and received from the OTS.

Section 2.2. Restriction on Transactions with Affiliates

(a) The Association shall not engage in any "covered transactions" as defined in 12 U.S.C. § 371c(b).

(b) The OTS is imposing the restrictions of Section 2.2, pursuant to 12 U.S.C. §§ 1831o(f)(2)(B) & (J) and 1831o(f)(5) based upon a determination by the OTS that this restriction is necessary to carry out the purpose of Section 38 of the FDIA, 12 U.S.C. § 1831o.

Section 2.3. Restrictions on Brokered Deposits and Interest Rates Paid on Deposits.

(a) The Association shall restrict the rates it pays on deposits to the prevailing rates of interest on deposits of comparable amounts and maturities in the Association's normal market area, and shall comply fully with the restrictions set forth in the FDIC's brokered deposit regulation, 12 C.F.R. § 337.6. Nothing herein shall be construed as requiring a reduction of rates paid on outstanding time deposits prior to their renewal.

(b) The OTS is imposing the restriction in this section pursuant to the authority at 12 U.S.C. § 1831o(f)(2)(C).

Section 2.4. Imposition of Restrictions/Requirements On Subsidiaries.

The Association (including its Board and officers) shall ensure that each of its Subsidiaries complies with the requirements of this Directive.

The OTS is imposing the restrictions and requirements of this Section 2.4 pursuant to 12 U.S.C. § 1831o(f)(2)(J), based upon a determination by the OTS that these restrictions and requirements are necessary to carry out the purpose of Section 38 of the FDIA, 12 U.S.C. § 1831o.

PART III - GENERAL PROVISIONS

Section 3.1. Definitions.

(a) General. All technical words or terms used in this Directive for which meanings are not specified or otherwise provided by the provisions of this Directive shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, the Home Owners' Loan Act (HOLA), the Federal Deposit Insurance Act (FDIA), OTS Memoranda or other published OTS guidance. Any such technical words or terms used in this Directive and undefined in said Code of Federal Regulations, the HOLA, the FDIA, or OTS Memoranda/guidance shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.

(b) For purposes of this Directive the terms referenced below have the meanings as set out below:

- (i) Regional Director. "Regional Director" means the OTS Regional Director for the Northeast Region, and includes any OTS official designated by him to act on his behalf with respect to matters relating to this Directive.
- (ii) Senior Executive Officer. "Senior Executive Officer" shall have the meaning set forth in 12 C.F.R. § 563.555.
- (iii) Subsidiary. "Subsidiary" has the meaning set forth in 12 C.F.R. § 559.2.

Section 3.2. Successor Statutes, Regulations, Guidance Amendments.

Reference in this Directive to provisions of statutes and regulations shall be deemed to include references to all amendments to such provisions as have been made as of the effective date hereof and references to successor provisions as they become applicable.

Section 3.3. Notices.

Except as otherwise provided herein, any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by the Directive to be made upon, given or furnished to, delivered to, or filed with the OTS or the Association shall be in writing and sent by first class U.S. mail (or by reputable overnight courier, electronic facsimile transmission, or hand delivery via messenger) addressed as follows:

To the OTS:	To the Association:
Regional Director Office of Thrift Supervision Harborside Financial Center Plaza Five Suite 1600 Jersey City, NJ 07311	Lehman Brothers Bank, FSB Attention: Board of Directors c/o Theodore Janulis, Chairman 1271 Avenue of the Americas, 46 th Floor New York, NY 10019

Section 3.4. Duration, Termination or Suspension of the Directive.

(a) The terms and provisions of this Directive shall be binding upon the Association and its successors in interest.

(b) The Directive shall remain in effect until terminated, modified or suspended in writing by the OTS.

(c) The OTS, in its discretion, may, by written notice, suspend any or all provisions of the Directive, except for Section 2.1.

Section 3.5. Effect of Headings.

The Part and Section headings herein are for convenience only and shall not affect the construction hereof.

Section 3.6. Separability Clause.

In case any provision in this Directive is ruled to be invalid, illegal or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby unless the OTS, in its sole discretion, determines otherwise.

Section 3.7. No Violations Authorized; Consequences of Directive

Nothing in this Directive, including, without limitation, any of the time-frames for actions set forth in Part I, shall be construed as: (i) allowing the Association to violate any law, rule, regulation, or policy statement to which it is subject or (ii) restricting the OTS from taking such actions as are appropriate in fulfilling the responsibilities placed upon it by law, including, without limitation, actions pursuant to Section 38 of the FDIA, 12 U.S.C. § 1831o, or taking any other type of supervisory, enforcement, or resolution action that the OTS determines to be appropriate.

Section 3.8. Other Enforcement Documents.

The Order to Cease and Desist (OTS Order NE-09-02, dated January 26, 2009) remains in effect and fully enforceable. Nothing in this Directive shall affect or limit OTS's ability to take enforcement action in connection with any violation of OTS Order NE-09-02.

Section 3.9. Effective Date of this Directive

This Directive (including all the requirements and limitations herein) is effective immediately on the date of issuance of the Directive (Effective Date), which date is indicated below.

IT IS SO ORDERED.

OFFICE OF THRIFT SUPERVISION
By:

Date: February 4, 2009

_____/s/_____
Michael E. Finn
Regional Director