

FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

| | | |
|--------------------------|---|----------------------|
| |) | |
| |) | |
| EVANSVILLE COMMERCE BANK |) | ORDER CONDITIONALLY |
| EVANSVILLE, INDIANA |) | GRANTING APPROVAL |
| |) | FOR WAIVER OF CROSS- |
| |) | GUARANTEE LIABILITY |
| |) | |
| |) | FDIC-11-068kk |
| |) | |

WHEREAS, on November 20, 2009, Commerce Bank of Southwest Florida, Fort Myers, Florida (Commerce) failed and caused a loss to the Federal Deposit Insurance Corporation (FDIC); and

WHEREAS, at the time of its failure, Commerce was controlled by Capitol Bancorp, Ltd., Lansing, Michigan, a bank holding company (BHC); and

WHEREAS, at the time of Commerce's failure, BHC also controlled Evansville Commerce Bank, Evansville, Indiana (Bank); and

WHEREAS, pursuant to 12 U.S.C. § 1815(e)(8), Bank and Commerce were commonly controlled at the time of the failure of Commerce; and

WHEREAS, pursuant to 12 U.S.C. § 1815(e)(1)(A), at the time of Commerce's failure, Bank incurred a cross-guarantee liability to the FDIC in connection with the FDIC's actual and anticipated losses in connection with Commerce's failure; and

WHEREAS, BHC and the Bank neither admit nor deny the FDIC's findings in this Order;

WHEREAS, on October 22, 2010, BHC entered into an agreement with Bank to redeem 421,005 shares of Bank's common stock owned by BHC and its second-tier holding company; and

WHEREAS, immediately after the redemption of Bank's common stock, BHC will inject the proceeds of the redemption into the capital accounts of other troubled subsidiary banks controlled by BHC; and

WHEREAS, the redemption is conditioned on receipt of a waiver of any cross-guarantee liability arising from Bank's affiliation with Commerce or BHC; and

WHEREAS, BHC and Bank have filed applications with the FDIC pursuant to 12 U.S.C. § 1815(e)(5)(A) requesting the FDIC's consent to grant a conditional waiver of the Bank's cross-guarantee liability on the condition that all the proceeds from the redemption of the shares of Bank that BHC or its second-tier holding company receives are invested in other insured depository institutions that BHC controls; and

WHEREAS, BHC shall only use such redemption proceeds to invest in other insured depository institutions controlled by BHC as permitted by prior, written non-objection from the Division of Risk Management Supervision (RMS) Chicago Regional Director or his designee;

BE ADVISED, the Board of Directors (Board) of the FDIC has fully considered the facts and information relating to the conditional waiver of cross-guarantee liability and has concluded that approval of such application will be in the best interests of the Deposit Insurance Fund and should be granted by FDIC staff, subject to certain conditions and restrictions.

IT IS THEREFORE ORDERED THAT:

1. This ORDER CONDITIONALLY GRANTING APPROVAL FOR WAIVER OF CROSS GUARANTEE LIABILITY (ORDER) will become effective only upon the redemption of all shares of Bank stock owned by BHC and its second-tier holding company. Absent such redemption within 120 days from the date of issuance of the ORDER, the ORDER would become null and void unless, upon the written request of Bank and BHC, the FDIC, in its discretion, grants an extension of that time period with a subsequent order issued by the Director of RMS.
2. The exemption granted by the ORDER may not be conveyed to a third party or otherwise transferred.
3. Concurrent with the redemption contemplated herein, all redemption proceeds shall be paid by BHC to an escrow agent on behalf of BHC and its second-tier holding company, and the escrow agent shall immediately transfer (i) transaction expense payments to the accounts of documented recipients after receiving written non-objection from the FDIC for payment of such expenses and (ii) all net redemption proceeds due BHC and its second-tier holding company to the capital accounts of other insured depository institutions controlled by BHC as directed by BHC and specifically agreed to in writing by the FDIC Chicago Regional Director or his designee.
4. In the event that one or more other insured institutions commonly controlled by BHC fails prior to the consummation of the redemption of Bank stock owned by BHC and its second-tier holding company, the escrow agent shall immediately transfer all net redemption proceeds due BHC and its second-tier holding company directly to the

FDIC as satisfaction of Bank's cross-guarantee liability associated with such failure, unless specifically agreed to in writing by the FDIC Chicago Regional Director or his designee.

5. Immediately following consummation of the transaction, BHC shall provide evidence to the FDIC Chicago Regional Director that all of the redemption proceeds were used consistent with Condition 3.
6. No proceeds from the transaction may be paid to any shareholder of BHC or any second-tier holding company controlled by BHC except payments in accordance with Condition 3.
7. Proceeds from the transaction may be used only as explicitly permitted in Condition 3 and may not otherwise be used for payment of operating or other expenses of BHC or any of its second-tier holding companies.
8. BHC and Bank shall inform the FDIC within one business day of any material changes to the proposed transaction, including the redemption price and estimates of net proceeds.
9. The waiver granted by this ORDER may not be revoked after consummation of the redemption contemplated herein.

Dated at Washington, D.C. this 23rd day of September, 2011.

/s/
Sandra L. Thompson
Director, Division of Risk Management Supervision