

FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

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)	
OHIO COMMERCE BANK)	ORDER CONDITIONALLY
BEACHWOOD, OHIO)	GRANTING APPROVAL
(INSURED DEPOSITORY INSTITUTION))	FOR WAIVER OF CROSS
)	GUARANTEE LIABILITY
)	FDIC-10-372kk
_____)	

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 Ohio Commerce Bank, Beachwood, Ohio (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, on December 11, 2009, BHC and Bank entered into a definitive stock redemption agreement by which BHC agreed to sell to Bank shares of Bank held by BHC; and

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

WHEREAS, BHC and Bank have filed an application 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 remainder of the Bank's cross-guarantee liability on the condition that all the proceeds from the sale of the shares of Bank that BHC receives are invested in other insured depository institutions that BHC controls; and

WHEREAS, BHC shall only use such sales proceeds to invest in other insured depository institutions controlled by BHC as permitted by prior, written non-objection from the Division of Supervision and Consumer Protection (DSC) Chicago Regional Director; and

WHEREAS, the Bank and Capitol have requested a waiver of cross guarantee liability against the bank;

BE ADVISED that the Board of Directors of the FDIC, having fully considered the facts and information relating to the foregoing request, has concluded that granting the request for a waiver of cross-guarantee liability is in the best interests of the Deposit Insurance Fund and that approval of the request should be and hereby is grant, subject to the conditions and restrictions set forth below.

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 the Bank stock owned by Captiol's second-tier holding company. Absent such redemption within 90 days from the date of issuance of this ORDER, the ORDER would become null and void unless, upon the written request of Bank and Capitol, the FDIC, in its discretion, grants an extension of that time period with a subsequent order issued by the Director of DSC.

2. The exemption granted by this ORDER may not be conveyed to a third party or otherwise transferred.
3. Concurrent with the redemption of the Bank stock owned by Capitol's second-tier holding company, all sales proceeds shall be paid by Bank to an escrow agent on behalf of Capitol 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 FDIC for payment of such expenses and (ii) all net sales proceeds due Capitol and its second-tier holding company to the capital accounts of other insured depository institutions controlled by Capitol as directed by Capitol and specifically agreed to in writing by the FDIC Chicago Regional Director or his designee.
4. Immediately following consummation of the transaction, Capitol shall provide evidence to the FDIC Chicago Regional Director that all of the sales proceeds were used consistent with Condition 3.
5. No proceeds from the transaction may be paid to any shareholder of Capitol or any second-tier holding company controlled by Capitol except payments in accordance with Condition 3.
6. 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 Capitol or any of its second-tier holding companies.
7. Capitol and Bank shall inform the FDIC within one business day of any material changes to the proposed transaction, including the sales price and estimates of net proceeds.
8. Capitol shall comply with the February 25, 2010, letter agreement with the FDIC.

Dated at Washington, D.C. this 28th day of June, 2010.

/s/ _____

Sandra L. Thompson

Director, Division of Supervision and Consumer Protection