

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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In the Matter of	)	
	)	
	)	AMENDED NOTICE OF
	)	CHARGES
	)	AND OF HEARING
SYNERGY BANK, S.S.B.	)	
MCKINNEY, TEXAS	)	
	)	
	)	FDIC-10-235b
(Insured State Savings Bank)	)	
_____	)	

The Federal Deposit Insurance Corporation (“FDIC”), having determined that Synergy Bank, S.S.B., McKinney, Texas (“Bank”), has engaged in unsafe or unsound banking practices, institutes this proceeding to determine whether an appropriate order should be issued against the Bank under the provisions of section 8(b)(1) of the Federal Deposit Insurance Act (“Act”), 12 U.S.C. § 1818(b)(1). The FDIC hereby issues this AMENDED NOTICE OF CHARGES AND OF HEARING (“NOTICE”) pursuant to 12 C.F.R. § 308.20(a), amending the Notice of Charges and of Hearing issued on July 23, 2010, pursuant to the provisions of the Act, 12 U.S.C. §§ 1811-1831aa, and the FDIC Rules of Practice and Procedures, 12 C.F.R. Part 308, and alleges as follows:

**JURISDICTION**

1. The Bank is a corporation existing and doing business under the laws of the State of Texas and has its headquarters in McKinney, Texas. At all times pertinent to the charges herein, the Bank is and has been an insured state savings bank within the meaning of section 3(g)

of the Act, 12 U.S.C. § 1813(g), an insured depository institution within the meaning of section 3(c)(2) of the Act, 12 U.S.C. § 1813(c)(2), and subject to the Act, 12 U.S.C. §§ 1811-1831aa, the Rules and Regulations of the FDIC, 12 C.F.R. Chapter III (“Rules”), and the laws of the State of Texas.

2. The FDIC has jurisdiction over the Bank, institution-affiliated parties of the Bank, and the subject matter of this proceeding.

### **2010 EXAMINATION**

3. The FDIC and the Texas Department of Savings and Mortgage Lending conducted a joint examination of the Bank with a start date of January 19, 2010 (“2010 Report of Examination” or “2010 ROE”), and utilized financial information as of September 30, 2009, unless otherwise stated, that detailed the following:

- (a) Tier 1 Leverage Capital Ratio, as of December 31, 2009, was 8.54%;
- (b) Total Assets were \$158,678,000;
- (c) Average Total Assets were \$158,622,000;
- (d) Adjusted Average Total Assets were \$154,131,000;
- (e) Total Risk Weighted Assets were \$103,648,000;
- (f) Total Adversely Classified Assets were \$17,032,000;
- (g) Total Adversely Classified Assets to Total Assets were 10.73%;
- (h) Total Assets Classified as Substandard were \$16,657,000;
- (i) Total Assets Classified as Loss were \$375,000;
- (j) Adversely Classified Other Real Estate (“ORE”) was \$9,053,000;
- (k) Total Adversely Classified Assets represented 126.4% of Tier 1 Capital plus Allowance for Loan and Lease Losses (“ALLL”);

- (l) Total Non-Accrual Loans were \$7,262,000;
- (m) Net Income was a negative \$503,000 or a negative 0.42%;
- (n) Net Income, as of December 31, 2009, was a negative \$1,386,000;
- (o) Return on Average Assets was a negative 0.88% as of December 31, 2009;
- (p) Net Interest Margin was 2.63%;
- (q) Commercial Real Estate portfolio including unfunded commitments was 461% of Tier 1 Capital;
- (r) Commercial Land Development Loans secured by single family lots, acreage and other raw land was 270% of Tier 1 Capital;
- (s) Commercial Real Estate Construction Loans was 66% of Tier 1 Capital;
- (t) Residential Construction Loans was 63% of Tier 1 Capital;
- (u) Non-Owner Occupied Commercial Real Estate Loans was 62% of Tier 1 Capital; and
- (v) Net Non-Core Funding Dependence Ratio was 28.64%.

### **UNSAFE OR UNSOUND PRACTICES**

#### **INADEQUATE CAPITAL**

4. The Bank has engaged in unsafe or unsound practices of operating with an inadequate level of capital protection for the kind and quality of assets held by the Bank as demonstrated by the following:

- (a) As of December 31, 2009, Tier 1 Leverage Capital Ratio, accounting for \$3,600,000 capital infusion for calendar year 2009 and an additional provision of \$600,000 to the Allowance for Loan and Lease Losses (“ALLL”), was 8.54%;

(b) As of December 31, 2009, the Bank had significant loan losses as indicated by a net operating loss, before taxes, of \$1,386,000 and a negative 0.88% return on average assets; and

(c) A high level of non- performing loans and ORE caused, in part, by concentrations in construction and real estate loans.

### **EXCESSIVE LEVEL OF POOR QUALITY AND ADVERSELY CLASSIFIED ASSETS**

5. The Bank received a less than satisfactory Asset Quality rating in the 2010 Report of Examination.

6. The Bank has engaged in unsafe or unsound practices by operating with an excessive level of poor quality and adversely classified assets as demonstrated by the following:

(a) As of September 30, 2009, the Bank had a total of \$17,032,000 of adversely classified assets, an increase of \$4,612,000 since the September 30, 2008 examination;

(b) As of September 30, 2009, total adversely classified items represented 126.4% of Tier 1 Capital plus ALLL;

(c) As of September 30, 2009, ORE comprised 53% of Classified Assets;

(d) As of September 30, 2009, adversely classified ORE totaled \$9,053,000, a \$5,200,000 increase from the September 30, 2008 examination;

(e) As of September 30, 2009, total Adversely Classified Assets to Total Assets were 10.73%, as compared to 8.58% as of September 30, 2008, and as compared to 3.66% as of March 31, 2007; and

(f) As of December 31, 2009, ALLL to Total Loans and Leases was 0.91%, before an additional provision to the ALLL of \$600,000 increased the ALLL to Total

Loans and Leases to 1.34%.

### **HAZARDOUS LENDING PRACTICES**

7. The Bank has engaged in hazardous lending practices as reflected by the following:

- (a) Management's inability to properly administer the concentration risk associated with the construction and development credits;
- (b) Weak underwriting standards;
- (c) Weak loan administration;
- (d) Gaps in the Bank's financial analysis at the underwriting stage and continuing throughout the life of CRE loans;
- (e) Failure to emphasize the repayment capacity of the borrower during loan underwriting process; and
- (f) Inadequate cash flow analysis.

### **EXCESSIVE CONCENTRATIONS OF CREDIT**

8. The Bank has engaged in unsafe and unsound practices by creating excessive concentrations of credit as demonstrated by the following:

- (a) As of September 30, 2009, the Bank's CRE funded loan concentration was approximately 399% of Total Capital;
- (b) As of September 30, 2009, the Bank's CRE portfolio, including unfunded commitments, was 461% of Tier 1 Capital;
- (c) As of September 30, 2009, the Bank's land development and construction loan portfolio, including unfunded commitments, was 399% of Tier 1 Capital consisting

of:

- (i) Land development loans of 270% of Tier 1 Capital;
- (ii) Commercial real estate construction loan portfolio, including unfunded commitments, was 66% of Tier 1 Capital; and
- (iii) Residential construction loan portfolio, including unfunded commitments, was 63% of Tier 1 Capital.

### **INADEQUATE EARNINGS**

9. The Bank received a less than satisfactory Earnings rating in the 2010 Report of Examination.

10. The Bank has engaged in unsafe or unsound practices by operating with inadequate earnings to support operations, augment capital and maintain an appropriate ALLL as demonstrated by the following:

- (a) High levels of non-accrual loans, ORE expenses and disposal losses, loan loss provisions, and operating expenses coupled with a decreased net interest margin have caused operational losses at the Bank;
- (b) As of September 30, 2009, a loss of \$503,000 and a negative 0.42% return on Average Assets, despite recognition of a \$242,000 gain from the sale of securities;
- (c) A net operating loss before taxes of \$1,386,000, as of December 31, 2009, resulting in a negative 0.88% return on Average Assets;
- (d) As of September 30, 2009, non accrual loans and ORE comprised over 9% of the Bank's Total Assets;
- (e) As of September 30, 2009, Net Interest Margin declined to 2.63% from 3.60% as of the September 30, 2008 examination; and

(f) A significant portion of the net operating loss during the final quarter of 2009 was primarily attributed to:

- (i) ORE write downs;
- (ii) Holding expenses associated with ORE; and
- (iii) Necessary additional provisions to the ALLL.

### **INADEQUATE LIQUIDITY**

11. The Bank received a less than satisfactory Liquidity rating in the 2010 Report of Examination.

12. The Bank has engaged in unsafe or unsound practices by operating without adequate liquidity in light of the Bank's asset and liability mix as demonstrated by the following:

- (a) Concentrations of credit;
- (b) Excessive levels of poor quality and adversely classified assets;
- (c) Inadequate capital protection;
- (d) Inadequate earnings;
- (e) As of September 30, 2009, liquid assets included \$1,822,000 in United States Treasury and Agency securities, \$2,722,000 in private label mortgage-backed securities ("PLMBS"), and \$4,912,000 in interest bearing bank balances;
- (f) The PLMBS are held by the Federal Home Loan Bank of Dallas ("FHLB") as collateral to secure a borrowing line;
- (g) As of September 30, 2009, the net non-core funding dependence ratio was 28.64%; and
- (h) As of September 30, 2009, the Net Loans and Leases to Total Assets ratio was 77.69%, as compared to 67.24% as of December 31, 2008.

### **SENSITIVITY TO MARKET RISK**

13. The Bank has engaged in unsafe or unsound practices by operating with inadequate risk management practices to support the risk exposure of the Bank, as demonstrated by the following:

- (a) Inadequate capital; and
- (b) Inadequate earnings.

### **INADEQUATE MANAGEMENT**

14. The Bank received a less than satisfactory Management rating in the 2010 Report of Examination.

15. By reason of the allegations in paragraphs 3 through 14, the Bank has engaged in unsafe or unsound practices by operating with management whose policies and practices are detrimental to the Bank and jeopardize the safety of its deposits.

16. By reasons of the allegations in paragraphs 3 through 15, the Bank's board of directors has engaged in unsafe or unsound practices by failing to adequately supervise management whose policies and practices are detrimental to the Bank and jeopardize the safety of its deposits.

### **OPPORTUNITY FOR HEARING**

17. Notice is hereby given that a hearing will be held in Dallas, Texas, within 60 days from the date of service of this AMENDED NOTICE on the Bank, or on such date as may be set by the Administrative Law Judge appointed to hear this matter, for the purpose of taking evidence on the above-mentioned charges in order to determine whether an Order should be issued under the Act requiring the Bank:



(a) To cease and desist from the unsafe or unsound banking practices herein specified; and/or

(b) To take affirmative action to correct the conditions resulting from such practices.

18. The hearing is to be held before an Administrative Law Judge to be appointed by the Office of Financial Institution Adjudication pursuant to 5 U.S.C. § 3105. The hearing will be open to the public, unless the FDIC shall determine that an open hearing would be contrary to the public interest, and in all respects will be conducted in compliance with the provisions of the Act and the FDIC Rules of Practice and Procedures.

19. The Respondent Bank is directed to file an answer to this AMENDED NOTICE with the Office of Financial Institution Adjudication (“OFIA”), 3501 N. Fairfax Drive, Suite VS-D8116, Arlington, VA 22226-3500; the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Room F-1058, Washington, D.C. 20429; A.T. Dill, Assistant General Counsel, Enforcement Section, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429; and Stephen C. Zachary, Regional Counsel (Supervision), Federal Deposit Insurance Corporation, Dallas Regional Office, 1601 Bryan Street, 37th Floor, Dallas, Texas 75201, within 10 days from the date of service of this AMENDED NOTICE, in accordance with 12 C.F.R. § 308.20. Pursuant to 12 C.F.R. 308.10(b)(4), all documents required to be filed, excluding documents produced in response to a discovery request pursuant to 308.25 and 308.26, shall be filed electronically with OFIA. Respondent Bank is hereby directed to file any answer electronically with OFIA at [ofia@fdic.gov](mailto:ofia@fdic.gov). Failure to answer within the 10 day time period shall constitute a waiver of the right to appear and contest the allegations contained in this AMENDED NOTICE and shall, upon the FDIC’s motion, cause the Administrative Law Judge

or the FDIC to find the facts in this AMEDNED NOTICE to be as alleged and to issue an appropriate ORDER.

Pursuant to delegated authority.

Dated at Dallas, Texas, this 25<sup>th</sup> day of January, 2011.

/s/  
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Kristie K. Elmquist  
Acting Regional Director  
Dallas Regional Office  
Federal Deposit Insurance Corporation