

FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

| | | |
|----------------------------------|---|---------------------|
| |) | |
| |) | |
| BANK OF SAN FRANCISCO |) | ORDER CONDITIONALLY |
| SAN FRANCISCO, CALIFORNIA |) | GRANTING APPROVAL |
| (INSURED DEPOSITORY INSTITUTION) |) | FOR WAIVER OF CROSS |
| |) | GUARANTEE LIABILITY |
| |) | |
| |) | FDIC-10-696kk |
| |) | |

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 Bank of San Francisco, San Francisco, California (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 Bank neither admit nor deny the FDIC's findings in this Order; and

WHEREAS, on May 28, 2010, BHC and Bank entered into an agreement where Bank will sell BHC's shares through an offering circular to new and existing shareholders; 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 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, BHC's sale of the shares of Bank is conditioned upon the FDIC, pursuant to 12 U.S.C. § 1815(e)(5)(A), granting a waiver of the cross guarantee liability against Bank as described herein; and

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 an 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 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

sale of Bank's stock owned by Capitol. Absent such sale within one hundred twenty (120) 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 Division of Supervision and Consumer Protection.

2. The exemption granted by the ORDER may not be conveyed to a third party or otherwise transferred.
3. Concurrent with the sale of the Bank stock owned by Capitol, all sales proceeds shall be paid to an escrow agent on behalf of Capitol, 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 sales proceeds due Capitol 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 the Bank shall inform the FDIC within one (1) 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. the 27th day of September, 2010.

/s/
Sandra L. Thompson
Director, Division of Supervision and Consumer Protection