

FEDERAL HOUSING FINANCE BOARD

BOARD OF DIRECTORS MEETING

OPEN SESSION

Washington, D.C.

Wednesday, June 11, 2008

ANDERSON COURT REPORTING  
706 Duke Street, Suite 100  
Alexandria, VA 22314  
Phone (703) 519-7180 Fax (703) 519-7190

1 PARTICIPANTS:

2 Board Members

3 RONALD A. ROSENFELD, Chairman

4 ROY A. BERNARDI, Director

5 GEOFFREY BACINO, Director

6 ALICIA R. CASTANEDA, Director

7 ALLAN I. MENDELOWITZ, Director

8 SHELIA WILLIS, Secretary

9 Also Present

10 CHRISTOPHER CURTIS

11 STEPHEN M. CROSS

12 THOMAS HEARN

13 MICHAEL POWERS

14 ANDRE GALEANO

15 JIM SHANNON

16 DUANE CREEL

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P R O C E E D I N G S

(10:00 a.m.)

CHAIRMAN ROSENFELD: Let me begin by sharing an experience I had yesterday morning which I think may be helpful and encouraging to those of us whose tenure on this Board may be limited. I went to New York yesterday, a personal day, and on the flight up, I happened to sit next to former Secretary of Defense Rumsfeld, and we began to chat, and it was very pleasant, and he pointed out - he was aware of my situation either by chairman or legislations before me, but he pointed out that there's life after government. He was in good spirits and said, don't worry about it, something will -- you'll be able to go on, so I say that to all of you who are similarly situated with me.

In any event, good morning, everyone. I call this meeting of the Board of Directors of the Federal Housing Finance Board to order. Today we will have an Open Session, followed immediately by a Closed Session, where the Board will receive

1 updates of examination and supervisory findings.

2 We now need to vote to approve the  
3 closing of the latter portion of today's meeting  
4 as required by the Sunshine Act and Finance Board  
5 Regulations. And since the closed portion of  
6 today's meeting will contain sensitive and  
7 confidential bank examination information, I would  
8 ask for a motion to seal the transcript of this  
9 portion of the meeting. Director Bacino.

10 DIRECTOR BACINO: Mr. Chairman, I vote  
11 to close the portion of today's meeting in which  
12 we will receive updates of examination and  
13 supervisory findings, and further, that we  
14 determine that the record and transcript of this  
15 closed portion of the meeting be kept  
16 confidential.

17 CHAIRMAN ROSENFELD: Thank you for the  
18 motion. Is there a discussion of the motion; any  
19 discussion? Do I have a second?

20 DIRECTOR MENDELOWITZ: Second.

21 CHAIRMAN ROSENFELD: Thank you, Director  
22 Mendelowitz. Secretary, please call the roll.

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1 MS. WILLIS: On the item before the  
2 Board, Director Bacino, how do you vote?

3 DIRECTOR BACINO: Yes.

4 MS. WILLIS: Director Castaneda?

5 DIRECTOR CASTANEDA: Yes.

6 MS. WILLIS: Director Mendelowitz?

7 DIRECTOR MENDELOWITZ: Yes.

8 MS. WILLIS: Director Bernardi?

9 DIRECTOR BERNARDI: Yes.

10 MS. WILLIS: Chairman Rosenfeld?

11 CHAIRMAN ROSENFELD: Yes; the motion is  
12 carried and the subsequent portion of our meeting  
13 will be closed and the transcript will remain  
14 closed and confidential. Thank you. Let's now  
15 turn to the public portion of today's meeting. We  
16 will be discussing the proposed amendments of the  
17 Capital Plan of the Federal Home Loan Bank of  
18 Dallas. Who will be making a presentation?

19 MR. HEARN: I will. Good morning, Mr.  
20 Chairman, and members of the Board. I would like  
21 to describe to you the sole matter before you  
22 today, the approval of an amendment to the Dallas

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1 Bank Capital Plan. Each bank is required to have in  
2 place a Capital Structure Plan that sets out how  
3 the bank will comply with capital requirements  
4 established by the Federal Home Loan Bank Act and  
5 Finance Board Regulations. A bank's plan and any  
6 amendment to a bank's plan must be adopted by the  
7 bank's Board of Directors and approved by the  
8 Finance Board's Board of Directors.

9 Under the Dallas Bank's current plan,  
10 the bank satisfies its overall capital  
11 requirements by issuing to its members Class B  
12 stock. Each member is required to own stock to  
13 satisfy two parts of the stock requirement, one,  
14 membership stock, which is a percentage of the  
15 member's assets, and two, activity stock, which is  
16 a percentage of outstanding activity, such as  
17 advances that the member has with the bank.

18 The Dallas Bank's amendment would effect  
19 the bank's repurchase of stock held to satisfy the  
20 membership investment requirement of a member at  
21 the time the member is placed into receivership.  
22 When a member fails and a receiver is appointed, a

1 common event in the years before the enactment of  
2 the Gramm-Leach-Bliley amendments to the Bank Act,  
3 but uncommon since then, the receiver has  
4 typically pre-paid the member's advances from the  
5 bank, and the bank has cancelled and paid the par  
6 value of its capital stock held by the failed  
7 member.

8 This was consistent with the Bank Act  
9 provisions in effect from 1932 to 1999. However,  
10 the Gramm-Leach-Bliley Act amended the Bank Act in  
11 a way that raises a question whether a bank can  
12 follow the same procedures now. First, Section 6D  
13 of the Act provides for termination of membership,  
14 either voluntarily through a notice of withdrawal,  
15 or involuntarily, by action of the bank's Board of  
16 Directors in response to a number of events,  
17 including that the member has been determined to  
18 be insolvent or otherwise subject to the  
19 appointment of a receiver. Second, Section 6E  
20 defines excess stock, a stock in excess of a  
21 member's minimum required stock investment, and  
22 authorizes the bank to repurchase that excess

1 stock in its discretion, but also provide that  
2 shares of stock held by a member shall not be  
3 deemed excess stock for purposes of this section  
4 by virtue of a member's submission of a notice of  
5 intent to withdraw from membership or termination  
6 of its membership in any other manner.

7           These provisions of the act taken  
8 together could be read to indicate that the  
9 failure of a member and the appointment of a  
10 receiver for it does not automatically render  
11 capital stock held to satisfy a membership  
12 investment requirement excess and subject to  
13 repurchase before its term; additional elements  
14 are required.

15           The Dallas Bank has proposed that those  
16 elements be, A, the termination of membership by  
17 the bank, and B, provision in the bank's capital  
18 plan that a failed member in receivership whose  
19 membership has been terminated has no membership  
20 investment requirement, thereby, making the stock  
21 held in the receivership for purposes of meeting  
22 that requirement excess and subject to repurchase.



1 Stock held to satisfy a failed member's activity  
2 based investment requirement would not become  
3 excess stock, and thus, not eligible for  
4 repurchase until the receiver had liquidated the  
5 obligations associated with the related activity.

6 We have reviewed the circumstances  
7 surrounding the enactment of Section 6D and 6C of  
8 the Act and found no indication that the solution  
9 proposed by the bank is inconsistent with it. The  
10 Finance Board's staff and the Office of General  
11 Counsel and the Office of Supervision believe that  
12 this amendment is permitted under the Bank Act and  
13 Finance Board Regulations and poses no safety and  
14 soundness concern to the bank or to the bank's  
15 system as a whole. I would be happy to answer any  
16 questions you may have.

17 CHAIRMAN ROSENFELD: Any questions?

18 DIRECTOR CASTANEDA: Tom, I just wanted  
19 to clarify one thing. Any repurchase by the bank  
20 of the stock made excess, following the  
21 appointment of the receiver for members, we have  
22 -- would continue to be subject to the Federal

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1 Home Loan Bank capital requirements.

2 MR. HEARN: That is so. No stock can be  
3 repurchased, even the stock held by a receiver, if  
4 repurchasing that stock would cause the bank to  
5 fall below its -- the bank's capital -- minimum  
6 investment capital requirement.

7 DIRECTOR CASTANEDA: Okay. And I think  
8 when you give a presentation, you mention one of  
9 the things the Finance Board is going to be doing  
10 going forward is to, as the banks review their  
11 capital plans to see if this is going to be  
12 applicable, it may be applicable.

13 MR. HEARN: That's right. We're going  
14 to review the other banks capital plans, and as  
15 banks come in to amend their capital plans, we'll  
16 point out an area -- if this is an area that needs  
17 to be -- needs further attention.

18 DIRECTOR CASTANEDA: I just read, you  
19 know, that we get a bi-weekly update of Federal  
20 Home Loan Bank activity, then one of the Federal  
21 Home Loan Banks -- another Federal Home Loan Bank  
22 just reported in one of their -- its members was

1 closed by the OCC, so they may be facing the same  
2 issue. Thank you.

3 CHAIRMAN ROSENFELD: Anything else?

4 DIRECTOR MENDELOWITZ: I just wanted a  
5 couple clarifications. One is, if the bank enters  
6 into receivership and the advances aren't paid off  
7 immediately, is the membership stock still  
8 considered excess?

9 MR. HEARN: I believe that the  
10 membership stock would be considered excess, but  
11 that does not mandate that it be repurchased, it  
12 merely gives the bank the discretion to repurchase  
13 the stock. The bank -- if there are activity  
14 still outstanding and the bank felt that the  
15 activity stock it was holding was inadequate and  
16 the collateral it was holding was inadequate to  
17 cover that obligation, it would have the  
18 discretion to delay repurchasing the stock until  
19 all obligations had been --

20 DIRECTOR MENDELOWITZ: Right; so I mean  
21 I anticipated under this provision a bank would  
22 only repurchase membership stock after all

1 obligations between the bank and the member had  
2 been liquidated, so that all the advances had been  
3 paid off, all the pre-payment penalties that are  
4 associated with those advances be paid off, and  
5 once all of that is resolved, then you can  
6 repurchase the membership stock on the failed  
7 institution.

8 MR. HEARN: That certainly is the way  
9 the plan and the law requires the activity stock  
10 to be processed. While the bank would have the  
11 discretion to repurchase membership stock before  
12 that time, I'm not sure as a matter of practice  
13 that they will not --- that they won't - that  
14 they'll choose to repurchase it while there's  
15 still unresolved activity and obligations.

16 DIRECTOR MENDELOWITZ: Okay. Well, I  
17 think that guidance to the bank should be pretty  
18 clear, and I can't see how any bank would  
19 repurchase membership stock until all the other  
20 obligations were liquidated. And hopefully when  
21 you communicate with the banks, you'll make that  
22 position clear. Secondly, we spoke in

1       generalities.  Invariably, the receiver for  
2       virtually all the members, not all, but virtually  
3       all the members is the FDIC, and basically the  
4       pattern in the past has been a member fails, the  
5       FDIC steps up to resolve the failed institution,  
6       takes over the responsibility for it in order to  
7       efficiently and at minimum cost resolve the  
8       institution that wants to get all the collateral,  
9       pays off the Home Loan Bank advances, and proceeds  
10      to expeditiously resolve the institution.

11                 In those circumstances, I think it is  
12      more than appropriate for the Home Loan Bank to  
13      expeditiously repurchase the capital that's  
14      categorized as membership capital.  I think that  
15      the Home Loan Bank benefits from the traditional  
16      way in which the FDIC has resolved failed  
17      institutions, and I think it's more than  
18      appropriate the Home Loan Bank to reciprocate by  
19      promptly providing for the repurchase of the  
20      membership stock of the failed institution so that  
21      the FDIC has all, in fact, the liquid assets it  
22      can possibly get a hold of with respect to the

1 institution.

2                   And I hope that all the Home Loan Banks  
3 will look carefully at their capital plans and  
4 resolve whether, in fact, they're in the position  
5 to do what Dallas can do for a failed institution,  
6 in the circumstance of a failed institution as  
7 provided for the in Dallas plan. If other Home  
8 Loan Banks are not in that position, I would  
9 strongly encourage all of them to bring forward  
10 modification to their capital plan so that, from a  
11 public policy perspective, we treat the FDIC as  
12 fairly as the FDIC is treating the Home Loan  
13 Banks.

14                   CHAIRMAN ROSENFELD: Okay. Anybody  
15 else? If there's nothing else, I'll accept the  
16 motion and approve the amendment to the Capital  
17 Plan of the Federal Home Loan Bank of Dallas. Do  
18 I have a second?

19                   DIRECTOR MENDELOWITZ: Second.

20                   CHAIRMAN ROSENFELD: Thank you, Director  
21 Mendelowitz. Would the Secretary please call the  
22 roll?

1 MS. WILLIS: On the item before the  
2 Board, Director Bacino, how do you vote?

3 DIRECTOR BACINO: Yes.

4 MS. WILLIS: Director Castaneda?

5 DIRECTOR CASTANEDA: Yes.

6 MS. WILLIS: Director Mendelowitz?

7 DIRECTOR MENDELOWITZ: Yes.

8 MS. WILLIS: Director Bernardi?

9 DIRECTOR BERNARDI: Yes.

10 MS. WILLIS: Chairman Rosenfeld?

11 CHAIRMAN ROSENFELD: Yes; the motion is  
12 adopted. This ends the Open Session of the  
13 meeting. We will reconvene the Closed Session in  
14 two minutes.

15 (Whereupon, at 10:14 a.m., the  
16 PROCEEDINGS were adjourned.)

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