

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

In re  
SOUTHEAST BANKING CORPORATION,  
Debtor.

Case No. 91-14561-BKC-PGH  
Chapter 7

**TRUSTEE'S MOTION TO CONVERT CASE TO CHAPTER 11**

Jeffrey H. Beck, as Trustee (the "Trustee") for the Chapter 7 estate (the "Estate") of Southeast Banking Corporation ("SEBC"), by and through his undersigned counsel and pursuant to 11 U.S.C. § 706(b) and Fed. R. Bank. P. 1017(f), moves for entry of an Order converting this Chapter 7 case to a case under Chapter 11 of the Bankruptcy Code. In support of the requested relief, the Trustee would show the Court as follows:<sup>1</sup>

**PRELIMINARY STATEMENT**

1. Over the past several months the Trustee and his professionals have been exploring the possibility of a transaction that would serve as the basis to convert this case to a case under Chapter 11. The purpose of conversion would be to propose and seek confirmation of a Chapter 11 plan that would attract an infusion of equity, continue the existence of SEBC (or a successor entity created under the plan) in the financial services industry, allow SEBC to utilize certain of its remaining assets (including certain tax attributes), and create a modest amount of additional value not only for bondholders and other creditors, but also for the holders of SEBC Preferred and Common Stock. Those efforts now appear to have come to fruition, with the

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<sup>1</sup> All capitalized terms used but not otherwise defined in this Motion have the respective meanings ascribed to them in the Global Settlement Order, defined in paragraph 12 below.

emergence of a qualified institutional investor having expressed concrete interest in making a significant equity infusion in SEBC through a Chapter 11 plan.

2. The Trustee has entered into a non-binding term sheet with a prospective investor on a confidential basis, and circulated that term sheet and other relevant information to certain of the major parties in interest who have executed and returned confidentiality letters.<sup>2</sup> The term sheet has been approved by the requisite authorities within the prospective investor's organization, subject to completion of final documentation and due diligence. The nature of the proposal, although not entirely finalized, will require that a Chapter 11 plan of reorganization be the vehicle for implementation of the transaction. Thus, the particulars, including the identity of the investor and the structure of the transaction and how SEBC will be reorganized, will be disclosed and be subject to approval by the SEBC constituencies in the form of a proposed Chapter 11 plan.

3. The prospective investor has indicated that it wishes to move this matter expeditiously to a successful conclusion. In order to further the negotiations and be prepared to proceed upon agreement as to terms, the Trustee seeks now to convert this Chapter 7 case to a case under Chapter 11 of the Bankruptcy Code, as a vehicle through which the proposed transaction may be consummated and additional value may be realized for the Estate.<sup>3</sup>

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<sup>2</sup> In addition, the Trustee and his undersigned counsel have circulated drafts to and conferred or communicated with counsel for those parties in interest regarding the filing of this Motion, and confirmed that without waiving their right to object or seek further information or clarification, these parties support or do not oppose the filing.

<sup>3</sup> In seeking the requested relief, the Trustee is aware that one effect of conversion is to terminate his service as trustee under 11 U.S.C. §348(e). In order to ensure the continuity in the Chapter 11 process that is necessary for the proposed equity infusion transaction to proceed, the Trustee intends prior to the hearing on this Motion to consult with the Office of the United States Trustee and with the principal stakeholders in the case regarding the appointment of a Chapter 11 Trustee or designation of a "responsible person" to act on behalf of the Estate immediately upon conversion of the case. See 11 U.S.C. §1104.

## **JURISDICTION AND VENUE**

4. The Court has jurisdiction to consider this motion pursuant to 28 U.S.C. §§ 157(b) and 1334(b). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

## **FACTUAL BACKGROUND**

5. This case, easily the largest Chapter 7 liquidation in the history of this District, arises out of the “early intervention” and regulatory seizure by federal regulators of SEBC’s principal banking subsidiary, Southeast Bank, N.A. (“SEBNA”), and the related intervention and seizure by state regulators of SEBNA’s sister institution, Southeast Bank of West Florida (“SEBWF”), on September 19, 1991, and the appointment of the Federal Deposit Insurance Corporation (“FDIC”) as their receiver. On the following day, September 20, 1991, SEBC’s board of directors voted to authorize the filing of the Chapter 7 petition, and then promptly resigned along with all of SEBC’s officers.

6. **The Chapter 7 Trustees.** On September 23, 1991 Jules I. Bagdan was appointed Interim Trustee, and served until his resignation was accepted by the United States Trustee on April 10, 1992. Upon acceptance of Mr. Bagdan’s resignation, the U.S. Trustee appointed James S. Feltman as Interim Trustee. Mr. Feltman served as Interim Trustee until William A. Brandt, Jr. was elected as Trustee at the reconvened meeting of creditors on April 14, 1992.

7. Mr. Brandt served as Trustee until his resignation on April 1, 1998, at which time Jeffrey H. Beck was appointed as the fourth Trustee in the case. Mr. Beck continues to serve as the duly qualified and appointed Trustee of the Estate, as well as Successor Agent to the FDIC for the SEBNA Receivership.

8. **The Business of the Estate.** SEBC was the holding company of SEBNA and SEBWF (collectively, the “Banks”), and the direct or indirect parent of a number of subsidiary

corporations and affiliates, active and inactive, which at various times conducted substantial business throughout the State of Florida and beyond. The businesses of SEBC and its affiliates consisted of banking, real estate investment and development, insurance, mortgage banking, venture capital, and asset investment.

9. Immediately upon its appointment as Receiver for the Banks on September 19, 1991, the FDIC sold substantially all of their assets to First Union National Bank of Florida (“First Union”). As a consequence of the seizure of the Banks, the sale of their assets and the resulting Chapter 7 filing, all of the officers and directors of SEBC and the Banks resigned or were terminated. Many of these individuals left the community or were hired by First Union (n/k/a Wachovia) or other banks, and have been required to devote their attention to the business affairs of their new employers. As a result, the Trustees and their attorneys were required to marshal an overwhelming number of assets of all types with little assistance from the former officials having most knowledge of those assets. The difficulties of this task were exacerbated by a series of adversary proceedings commenced by various parties.

10. Over the course of the nearly sixteen years that this Chapter 7 case has been pending, the respective Trustees and their counsel have been involved in a myriad of matters before this Court, in a series of related adversary proceedings, lawsuits and appeals in the U.S. District Court in this District, the Court of Appeals for the Eleventh Circuit, the United States Supreme Court, and the New York State Court of Appeals. Overall, this case has involved proceedings before at least twenty different judges and magistrates of the state and federal courts in Florida, as well as more than twenty separate appeals. In addition, the Trustees, through Court approved actions conducted largely through non-debtor subsidiaries of SEBC, the FDIC as Receiver of SEBNA and Trustee Beck as Successor Agent to the FDIC as Receiver of SEBNA,

continued the business activities of SEBC, including financial asset investment and disposition, real estate development and disposition, and disposition of mortgages and other SEBC assets. Indeed, some of those activities continue to today.

11. **The Interim Distributions.** Through these and other efforts to date, the FDIC as Receiver and Beck as Successor Agent as Receiver of SEBNA have paid the creditors of the SEBNA Receivership in full with interest. In addition, the Court has authorized Trustees Beck and Brandt to make nine Interim Distributions in the SEBC Chapter 7 case, as a result of which creditors and bondholders have received more than \$420 million in cash, representing a return of 100% of the principal amount of allowed general unsecured claims, plus several payments of post-petition interest. *See* Orders dated April 15, June 25, and September 3, 1993, authorizing the First Interim Distribution; Order dated March 14, 1995, authorizing the Second Interim Distribution; Orders dated July 22 and September 30, 1997, authorizing the Third Interim Distribution; Order dated September 3, 1998, authorizing the Fourth Interim Distribution; Order dated June 17, 1999, authorizing the Fifth Interim Distribution; Order dated July 30, 2001, authorizing the Sixth Interim Distribution; Order dated October 8, 2003, authorizing the Seventh Interim Distribution; Order dated November 3, 2003, authorizing the Eighth Interim Distribution; and Order dated March 16, 2005, authorizing the Ninth Interim Distribution.

12. The Ninth Interim Distribution authorized the Trustee to pay \$10,454,158 as a second installment of post-petition interest to creditors holding qualified claims, a second \$10,454,158 payment to the Subordinated Indenture Trustees arising from the Reallocated FDIC Distribution contemplated under the *Order Approving and Implementing Global Settlement of Issues Affecting Calculation and Payment of Post Petition Interest and Attorneys' Fees and Related Priority and Subordination Issues, and Procedure for Interim Distributions of Post*

*Petition Interest on Negative Notice without Hearing* (the “Global Settlement Order”) dated November 3, 2003, and \$617,451 from the 48% Guaranty Reserve created pursuant to that Global Settlement Order. As a result, additional distributions and payments in the total amount of \$21,525,767 were made to creditors and bondholders.

### **THE INTENDED EQUITY INFUSION TRANSACTION**

13. While the pre-petition claims of creditors of SEBC have been paid in full through the series of Interim Distributions, post-petition interest of more than \$130 million on those claims accrued prior to the payment in full. Of that amount, approximately \$50 million of interest has been paid, while over \$70 million of post-petition interest remains unpaid to creditors of SEBC.

14. In the present posture of the case, it does not appear that the Chapter 7 Estate has sufficient assets from which to pay the remainder of the interest due to bondholders and other creditors in full. Because the unpaid interest due to creditors and bondholders has not been paid in full, the absolute priority rule effectively precludes any distribution to equity holders other than through a consensual Chapter 11 plan. At the time of the bankruptcy filing SEBC had outstanding two series of preferred stock, each of which, in the absence of such a consensual Chapter 11 plan, is similarly entitled to priority in payment or other distribution from the Estate ahead of common stock.

15. The remaining tangible assets of SEBC consist of land holdings in Jacksonville, Florida. Although tremendous progress has been made in securing the regulatory and other permissions needed to maximize the value of these properties, the value of these holdings is uncertain, and remains dependent upon the outcome of various permit and other applications now pending and/or remaining to be applied for before regulatory agencies, as well as the result of sales efforts which will occur upon receipt of any remaining required permits. It is certain,

however, that the liquidation proceeds from the remaining land holdings will not be sufficient to pay the remaining interest due to creditors or the amounts which would be due to satisfy preferred shareholders' entitlements. Thus, there is little or no likelihood of any recovery for common and preferred shareholders and the remaining recoveries for creditors would be limited to the disposition of the remaining assets if this case remains pending under Chapter 7 and the remaining assets are liquidated.

16. With the proposed equity infusion transaction the Trustee believes that the Estate may be able to generate modest additional value, such that bondholders and other creditors, aside from receiving the benefits of disposition of the remaining assets, may receive additional consideration in respect of their remaining claims for post-petition interest, with modest consideration available for distribution to the holders of SEBC Preferred and Common Stock under a plan.

17. For that reason, the Trustee recently sought and obtained approval of the Bankruptcy Court to retain an investment banker, Structured Capital Solutions, LLC ("SCS"), to determine whether it may be possible to enter into a business transaction with an investor willing to invest new equity which, if accomplished, would facilitate the reorganization of SEBC to engage in some of the financial service industry activities (not including banking) in which SEBC and its affiliates historically participated. The accomplishment of this objective would create additional value for creditors and shareholders not available in Chapter 7. SCS holds considerable experience in transactions of this type, and has been in contact with a number of potential investors known to be financially capable of entering into such a transaction.

18. Through the efforts of SCS and undersigned counsel, the Trustee has entered into a non-binding term sheet with a well-financed and legitimate institutional investor to pursue such

a transaction. The investor already has undertaken significant due diligence, and is prepared to move forward to begin the draft of definitive documents and complete final due diligence. Although the final form, substance and economic structure of the transaction remains subject to further review, negotiation and due diligence, the implementation of this or any similar transaction will first require that this case be converted to a case under Chapter 11.

### **RELIEF REQUESTED**

19. By way of this Motion, the Trustee therefore seeks entry of an Order converting this case to a case under Chapter 11 of the Bankruptcy Code, in order to enable the Estate to negotiate and enter into an equity infusion transaction that is intended to generate modest additional value not only for bondholders and other creditors, but also for the holders of SEBC Preferred and Common Stock. The decision to seek conversion of the case has been made by the Trustee in the exercise of his business judgment, after consultation with his professionals and certain of the parties in interest who have participated in the case over the past several years. For the reasons set forth above the Trustee believes that conversion of this case to a case under Chapter 11 would be in the best interests of the Estate and all parties in interest, to pave the way for proposal of a Chapter 11 plan providing for entry into an equity infusion transaction that will realize additional value for the Estate.

20. Section 706(b) of the Bankruptcy Code authorizes the Court to convert a Chapter 7 case to a case under Chapter 11 “at any time,” “[o]n request of a party in interest and after notice and a hearing.” 11 U.S.C. § 706(b). The Trustee is a party in interest with standing under Section 706(b) to move for the conversion of the case to Chapter 11. *In re Kutner*, 3 B.R. 422, 427-28 (Bankr. N.D. Tex. 1980); 6-706 Alan N Resnick & Henry J. Sommer, *Collier on Bankruptcy*, ¶ 706.03 (15<sup>th</sup> ed. rev.). Likewise, SEBC is eligible to be a debtor under Chapter 11 of the Bankruptcy Code. *See* 11 U.S.C. §§ 109(d), 706(d).



21. “The decision whether to convert is left in the sound discretion of the court, based on what will most inure to the benefit of all parties in interest. ” S. Rep. No. 95-989, at 94 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5880; *see also* H.R. Rep. No. 95-595, at 380 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6336. Here, for the reasons set forth above, the Trustee believes that it would be in the best interests of all parties in interest – including bondholders and other creditors as well as the holders of SEBC Preferred and Common Stock – to convert this case to Chapter 11.

22. Because the intended equity infusion transaction could result in a distribution to common stockholders and holders of certain bearer notes, the identities and/or addresses of which are presently unknown, by separate *ex parte* motion the Trustee has requested authority to serve notice of the hearing on this motion by publication, both on the [www.sebcglobalsettlement.com](http://www.sebcglobalsettlement.com) website, and through publication in various newspapers in both the United States and Europe.<sup>4</sup>

23. Should the Court grant this motion and convert this case to Chapter 11, the Trustee will proceed at the appropriate time to propose a Chapter 11 plan calling for SEBC to enter into an equity infusion transaction and attempt to realize additional value for all parties in interest. The more specific details of any such transaction will be disclosed in a plan and disclosure statement to be filed in due course after conversion.

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<sup>4</sup> Two floating rate notes held by certain creditors are bearer instruments, such that there is no record of ownership. Notice by publication is therefore desirable and practical to afford notice to the holders of these claims. In addition, the last known shareholder list compiled by or for SEBC is dated February 4, 1989. One of the prior bankruptcy trustees for SEBC determined that there was no benefit to the Estate from continuing to pay the fees typically charged by a stock transfer agent, and accordingly there has been no transfer agent for several years. The prior trustee did, however, seek and obtain a Trading Injunction Order from the Bankruptcy Court on July 7, 1994, prohibiting and enjoining the sale, trade or transfer of SEBC common and Series E Preferred Stock by any person or entity that owned, or would own after such sale, trade or transfer, 5% of the issued and outstanding shares of SEBC common stock or any amount of shares of the Series E Preferred Stock. At the direction of the Court, the Order was published in major metropolitan newspapers throughout the country.

## CONCLUSION

24. The results of this Chapter 7 case have been nothing short of astounding to date – payment of all allowed claims in full, with two additional distributions of post-petition interest. If this case were to remain in Chapter 7 and be closed tomorrow it would still stand as an outstanding success. Through the diligent efforts of the Trustee and his professionals, however, the SEBC Estate is now in a position to realize even further value not only for bondholders and other creditors, but also at least a modest amount of value for the holders of Preferred and Common Stock. The first step toward achieving that end – and making an astounding result even more extraordinary – is the conversion of this Chapter 7 case to a case under Chapter 11 of the Bankruptcy Code.

25. Accordingly, the Trustee respectfully requests that the Court grant this motion and convert this case to Chapter 11.

WHEREFORE, the Trustee respectfully requests the entry of an Order converting this Chapter 7 case to a case under Chapter 11 of the Bankruptcy Code, and granting such further relief as justice and equity require.

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this Court set forth in Local Rule 2090-1(A).

Dated: August 16, 2007.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing motion was served via electronic transmission on all CM/ECF registered users, and via first class U.S. mail, postage prepaid, on all other parties identified on the Service List attached to the original hereof, this 16<sup>th</sup> day of August, 2007.

\_\_\_\_\_  
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