

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 OMNIBUS *EX PARTE* MOTION FOR ENTRY OF AN ORDER:
(I) AUTHORIZING SUPPLEMENTAL NOTICE BY PUBLICATION OF
HEARING ON TRUSTEE'S MOTION TO CONVERT CASE TO CHAPTER 11,
HEARING ON APPROVAL OF DISCLOSURE STATEMENT, CONFIRMATION
HEARING, AND ANY OTHER NOTICES REQUIRED TO BE SERVED ON ALL
CREDITORS AND EQUITY HOLDERS; (II) SHORTENING TIME FOR NOTICE
BY PUBLICATION; AND (III) AUTHORIZING PAYMENT OF COSTS
THEREOF AS AN ADMINISTRATIVE EXPENSE**

Jeffrey H. Beck, as Trustee (the “Trustee”) for the Chapter 7 estate (the “Estate”) of Southeast Banking Corporation (“SEBC”), through his undersigned counsel and pursuant to 11 U.S.C. §§ 105(a) and 503(b), Federal Rules of Bankruptcy Procedure 2002(d), 2002(l), 2002(m) and 9006(c)(1), and Local Rule 9013-1(C), respectfully moves this Court for entry of an Order granting the following relief on an *ex parte* basis, in conjunction with the *Trustee's Motion to Convert Case to Chapter 11* (the “Conversion Motion”) being filed herewith:

- Authority to serve supplemental notice by publication of the Conversion Motion;
- Authority to serve supplemental notice by publication of the time fixed for filing objections to and the hearing to consider approval of a disclosure statement;
- Authority to serve supplemental notice by publication of the time fixed for filing objections to and the hearing to consider confirmation of a Chapter 11 plan;
- Authority to serve supplemental notice by publication of any other notices required to be served on all creditors and equity holders;
- Shortening time for notice by publication; and
- Authorizing the Trustee to incur and pay, as administrative expenses of the Estate, the costs of such notice by publication.

In support of the requested relief, the Trustee would show the Court as follows:

PRELIMINARY STATEMENT

1. As set forth in much greater detail in the Conversion Motion, after sixteen years of this case pending as a Chapter 7 case, the Trustee now seeks to convert this case to Chapter 11 in order to propose and seek confirmation of a 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, and create modest additional value not only for bondholders and other creditors, but also for the holders of SEBC Preferred and Common Stock (the “**Transaction**”).

2. Notice of the hearing on the Conversion Motion, notice of the time fixed for filing objections to and hearings to consider approval of a disclosure statement and confirmation of a Chapter 11 plan, as well as certain other matters, must be served on all creditors and other parties in interest, including equity holders who may stand to benefit from the Transaction.

3. In order to satisfy his obligations to serve notice on these parties, the Trustee is requesting authority to serve supplemental notice by publication, in order to provide notice to holders of certain bearer instruments (as to which there is no record of ownership) and to the holders of common stock (as to which the last known shareholder list compiled by or for SEBC is dated February 4, 1989). The Trustee also requests authority to serve supplemental notice by publication on the www.sebcglobalsettlement.com website.

4. The leading interested investor for the Transaction may require that the Transaction be closed within a certain time-frame that may be of rather short duration. In order to meet these anticipated time constraints and still provide appropriate notice to those interested parties whose identity and/or address may be unknown (the “Unknown Parties”), the Trustee is therefore requesting that the Court approve, as a supplement to such notice as is required to be

make by mail to interested parties whose identity and address is known to the Trustee (the “Known Parties”), notice by publication not only of the hearing on the Conversion Motion, but also of the hearings on approval of a disclosure statement and confirmation of a plan, and any other notices that are required to be served on all creditors and equity holders. For the same reason, the Trustee is likewise requesting that the Court shorten the time for the notice by publication, such that service to Known Parties of notice by mail pursuant to Federal Rules of Bankruptcy Procedure 2002(a) and (b) shall constitute good and sufficient service, as supplemented by notice by publication to Unknown Parties on the www.sebcglobalsettlement.com website and in the newspapers listed below, provided that the notice by publication is posted on the www.sebcglobalsettlement.com website and is transmitted to the newspapers and other publications listed below within three business days of service by mail on all other parties.¹

5. Finally, due to the anticipated time constraints to complete and close the Transaction, the Trustee also requests authority to incur and pay the expenses of publication in the amount of \$72,000 per notice, not to exceed \$360,000 in total for publication of up to five intended notices (including notice of the Conversion Motion, the disclosure statement hearing, and the confirmation hearing), without further order of the Court.

GENERAL FACTUAL BACKGROUND

6. 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

¹ The various newspapers and periodicals listed in paragraph 12, *infra*, have different lead times and deadlines for publication, such that the actual publication dates may vary even when the notices are sent contemporaneously. Accordingly, the proposed form Order contains a finding that irrespective of the actual date of publication, the supplemental notice shall be deemed good and sufficient so long as the form of notice is transmitted for publication within three business days of service by mail on the Known Parties.

seizure by state regulators of SEBNA's sister institution, Southeast Bank of West Florida, 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.

7. 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.

8. 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.

9. Concurrently with the filing of this motion, the Trustee is filing the Conversion Motion.

REQUESTED RELIEF

10. In addition to service by mail on Known Parties as required by Federal Rules of Bankruptcy Procedure 2002(a) and (b), the Trustee is requesting authority to serve supplemental notice by publication to Unknown Parties of the hearing on the Conversion Motion, notice of the time fixed for filing objections to and the hearings to consider approval of a disclosure statement and confirmation of a Chapter 11 plan, as well as any other pleadings or notices that must be

served on all creditors and other parties in interest, including equity holders who may stand to benefit from the Transaction.

11. In particular, the two subordinated floating rate notes issued in Europe (the “**Euro Notes**”) are bearer instruments, such that there is no record of ownership. As in the case of the interim distributions made by the Trustee and his predecessors, notice by publication in Europe is necessary and essential to afford notice of the conversion and plan proceedings to the holders of these notes. 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 the cost of continuing to pay the fees typically charged by a stock transfer agent significantly outweighed the associated benefit of maintaining the list at that time, 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, that Order was published in major metropolitan newspapers throughout the country. It is in these same newspapers that the Trustee proposes to publish supplemental notice designed and intended to reach the holders of the common stock.

12. As set forth in more detail in the Conversion Motion, which is incorporated herein by reference, because the Transaction could result in a distribution to unknown common stockholders and unknown holders of the Euro Notes, the Trustee respectfully requests authority to serve supplemental notice of the hearing on the Conversion Motion by publication of a single notice pursuant to Federal Rule of Bankruptcy Procedure 2002(I), both on the

www.sebcglobalsettlement.com website, and in each of the following major newspapers and other business publications in the United States and Europe:

- The Wall Street Journal (national edition);
- The New York Times;
- The Miami Herald;
- The Tampa Tribune;
- The St. Petersburg Times;
- The Orlando Sentinel;
- The Florida Times Union;
- The Charlotte Observer;
- The Los Angeles Times;
- Investors Business Daily;
- London Financial Times;
- Luxembourg Wort;

and any other publications that the Court deems appropriate under the circumstances.

13. In the interests of expediency and judicial economy, the Trustee also requests authority to serve supplemental notice of the time fixed for filing objections to and the hearings to consider approval of a disclosure statement and confirmation of a Chapter 11 plan, and notice of any other pleadings or hearings that must be served on all creditors and equity holders, by publication of a single notice pursuant to Federal Rule of Bankruptcy Procedure 2002(*l*), both on the www.sebcglobalsettlement.com website, and in each of the newspapers and business publications listed in paragraph 12 above.

14. The Trustee further requests that he be authorized to publish a copy of the Court's Notice(s) of Hearing or other orders setting hearings and deadlines for objections, as applicable, without prior approval of such notice, provided that such notice contains substantially the same language and information as the Court's Notice of Hearing, but with the following additional information (to the extent not already stated on the Court's Notice of Hearing or other order):

Copies of the [title of applicable pleading] are available by contacting counsel for the Trustee at (305) 789-5428, or on the www.sebcglobalsettlement.com website.

Any responses or objections to the [title of applicable pleading] shall be filed and served upon: (i) Jeffrey H. Beck, Trustee, J. Beck & Associates, Inc., 225 Northeast Mizner Boulevard, Suite 300, Boca Raton, FL 33432; (ii) Mark D. Bloom, Esq., general counsel for the Trustee, Greenberg Traurig, P.A., 1221 Brickell Avenue, Miami, FL 33131; (iii) the United States Trustee's Office for this District, 51 Southwest First Avenue, Room 1204, Miami, FL 33130; (iv) Stephen A. Goodwin, Esq., co-counsel for The Bank of New York, as Subordinate Indenture Trustee, Carrington, Coleman, Sloman & Blumenthal, 901 Main Street, Suite 5500, Dallas, TX 75202-3767; (v) Geoffrey S. Aaronson, Esq., co-counsel for The Bank of New York, as Subordinate Indenture Trustee, Geoffrey S. Aaronson, P.A., Bank of America Tower, 100 Southeast Second Street, 27th Floor, Miami, FL 33131; (vi) Douglas Darbut, Esq., counsel for U.S. Bank Trust, N.A., as Indenture Trustee, Holland & Knight, 701 Brickell Avenue, Miami, FL 33131; (vii) Scott L. Baena, Esq., counsel for the Ad Hoc Committee of Subordinated Bondholders, Bilzin Sumberg Baena Price & Axelrod, LLP, 2500 Wachovia Financial Center, 200 South Biscayne Boulevard, Miami, FL 33131; (viii) David Retter, Esq., counsel for The Bank of New York, as Senior Indenture Trustee, Kelley, Drye & Warren, LLP, 101 Park Avenue, New York, NY 10178; and (ix) Paul J. McMahon, Esq., counsel for Gabriel Capital, L.P., Paul J. McMahon, P.A., 2840 Southwest Third Avenue, Miami, FL 33129 by **not later than 4:30 p.m., two business days prior to the date of the hearing**. Service upon each of the foregoing persons shall be effectuated in such a manner that the responsive pleading is received by **not later than 4:30 p.m., two business days prior to the date of the hearing**.

LEGAL AUTHORITY

15. Federal Rule of Bankruptcy Procedure 2002(*m*) provides that the Court may generally regulate the manner and form of notices required to be sent to parties in interest. Federal Rule of Bankruptcy Procedure 2002(*l*) provides that the Court “may order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice.” Fed. R. Bankr. P. 2002(*l*). Additionally, Federal Rule of Bankruptcy Procedure 2002(*d*) provides that the Court shall direct the manner and form of the notices that are to be given to equity security holders in relation to case conversion and the elements of the process of Court

consideration of approval of a chapter 11 plan contemplated here. Here, notice by publication is necessary and essential to supplement the notice given by mail, in order to provide notice to the Unknown Parties, including the holders of the Euro Notes whose identities are not known to the Trustee, as well as the holders of common stock, as to which there has been no current list for almost eighteen years.

16. As noted above, due to the pace at which the leading investor desires that the Transaction proceed, the Trustee also requests authority to shorten notice for all notices served by publication, such that service of notice to Known Parties by mail pursuant to Federal Rules of Bankruptcy Procedure 2002(a) and (b) shall constitute good and sufficient service, as supplemented by notice to Unknown Parties by publication on the www.sebcglobalsettlement.com website and in the publications listed above, provided that notice by publication is posted on the www.sebcglobalsettlement.com website and is transmitted to the newspapers and other periodicals within three business days of service by mail on all other parties.

17. Federal Rule of Bankruptcy Procedure 9006(c)(1) allows the Court “for cause shown” to reduce the period of time required for notice under the Federal Rules of Bankruptcy Procedure. Here, due to the time pressures associated with the Transaction – which, if and when consummated could confer a substantial economic benefit on all parties in interest – the Trustee submits that good cause exists to shorten the required notice for all published notices.

18. Finally, the Trustee seeks authorization to incur and pay the costs of such publication, in an amount not to exceed \$72,000 per notice, up to \$360,000 in total (which will allow for notice of the Conversion Motion, a disclosure statement hearing, a confirmation hearing, and up to two other notices that may be required to be served on all creditors and equity

holders) without further order of the court, as an administrative expense of the Estate pursuant to 11 U.S.C. § 503(b).

19. Based on his business judgment, and in light of the circumstances, the Trustee believes that these costs are fair and reasonable, and that it is in the best interests of creditors and other parties in interest to incur and pay these costs.

CONCLUSION

20. The Trustee therefore respectfully requests authorization to serve notice by publication, to shorten the time for notice by publication, and to incur and pay costs of up to \$360,000 as administrative expenses of the Estate relating to such notice by publication.

21. A proposed order granting the requested relief is being submitted herewith.

WHEREFORE, the Trustee respectfully requests that this Court enter an Order authorizing notice by publication, shortening the publication notice period, authorizing payment of the costs of publication as an administrative expense pursuant to 11 U.S.C. § 503(b), and granting such other and 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 16th day of August, 2007.

/s/ Mark D. Bloom
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MIA 179605021v6 8/15/2007

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