



**ORDERED in the Southern District of Florida on February 09, 2009.**

A handwritten signature in black ink that reads "Paul G. Hyman". The signature is written in a cursive style and is positioned above a horizontal line.

**Paul G. Hyman, Chief Judge  
United States Bankruptcy Court**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re

SOUTHEAST BANKING CORPORATION,

Debtor.

Case No. 91-14561-BKC-PGH

Chapter 11

**ORDER GRANTING TRUSTEE'S MOTION FOR ENTRY OF AN ORDER  
GOVERNING SOLICITATION OF BALLOTS FOR TRUSTEE'S CHAPTER 11 PLAN**

THIS CAUSE came before the Court for hearing in West Palm Beach, Florida on February 9, 2009, at 9:30 a.m., for consideration of the *Trustee's Motion for Entry of an Order Governing Solicitation of Ballots for Trustee's Chapter 11 Plan* (DE # 5451) (the "**Solicitation Motion**"), filed by Jeffrey H. Beck, Chapter 11 Trustee (the "**Trustee**") for the estate (the "**Estate**") of Southeast Banking Corporation ("**SEBC**").

On December 10, 2008, the Trustee filed the *Trustee's First Amended Chapter 11 Plan of Reorganization* (DE #5448) (the "**Plan**"),<sup>1</sup> along with a *Disclosure Statement with Respect to*

<sup>1</sup> Capitalized terms used and not otherwise defined herein shall have the meaning set forth in the Plan.

*Trustee's First Amended Chapter 11 Plan of Reorganization* (DE #5449) (the “**Disclosure Statement**”).<sup>2</sup> By way of the Solicitation Motion, the Trustee seeks entry of an Order governing the solicitation of ballots for the Plan and, in particular, deeming the class of Old SEBC Common Stock Interests (“**SEBC Common Shareholders**”), denominated as Class 6 in the Plan, to have rejected the Plan, thereby eliminating the need to solicit their votes with respect to the Plan.

The Trustee states that the purpose of the requested relief is not to deny the SEBC Common Shareholders the opportunity to appear and participate in the Plan confirmation process, but rather to proceed efficiently with that process in a manner intended to generate additional value for all Classes of Claims and Interests, specifically including the SEBC Common Shareholders. In short, the Trustee seeks to assume rejection of the Plan by the SEBC Common Shareholders without necessity of a formal ballot and undertake the burden of confirming the Plan over that rejection under the cramdown provisions of Section 1129(b) of the Bankruptcy Code, while affording the SEBC Common Shareholders the broadest possible notice and opportunity to appear and participate in the confirmation process.

Upon consideration of the Solicitation Motion, the record in this case, and the proffers, arguments, and representations of counsel for the Trustee, the Court finds that cause exists to deem the SEBC Common Shareholders to have rejected the Plan and to dispense with the formality of voting by Class 6. The Court further finds that the interests of the SEBC Common Shareholders are adequately protected by a combination of (a) the cramdown requirements under Section 1129(b) of the Bankruptcy Code, (b) the prior appointment and ongoing participation of

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<sup>2</sup> On February 9, 2009 the Trustee filed an Amended Disclosure Statement accompanied by a Third Amended Plan of Reorganization. References to the Plan and Disclosure Statement in this Order shall be deemed to refer to the Third Amended Plan and the Amended Disclosure Statement, the latter in the form approved by separate Order entered by the Court of even date herewith.

a Legal Representative for Holders of SEBC Common Stock (the “**Legal Representative**”), and the Legal Representative’s engagement of a financial advisor, all at the expense of the Estate, (c) the actual notice to be afforded to known or suspected SEBC Common Shareholders, and (d) the supplemental publication initially approved and budgeted pursuant to the Order granting the Trustee’s *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* (the “**Publication Order**”) (DE# 4968), as implemented through the *Trustee’s Motion for Entry of an Order Approving Form, Manner and Method of Supplemental Notice of Significant Plan Events to Common Shareholders and Parties in Interest by Publication* (DE # 5452)(the “**Notice Motion**”) and corresponding *Order Approving Form, Manner and Method of Supplemental Notice by Publication of Hearing and Related Deadlines on Approval of Disclosure Statement, Break-Up Fee Motion, and Solicitation Motion* (the “**Notice Order**”) (DE # 5494).

The Court finds that the foregoing safeguards preserve the right of SEBC Common Shareholders of the Bankruptcy Code to appear and be heard pursuant to Section 1109(b) -- whether personally or through the Legal Representative -- on all issues relating to confirmation of the Plan. The Court further finds that the last known shareholder list compiled by or for SEBC is almost twenty years old, as a result of which there is no record currently available to the Estate to reflect transfers or current holdings of SEBC Common Shareholders. To compile such a record in order to mail notice of the Confirmation Hearing and other Plan events to all SEBC

Common Shareholders would take a lengthy period of time and involve considerable expense to the Estate.

Finally, upon the representation of counsel for the Trustee that in addition to the Master Service List the Notice of the Solicitation and Notice Motions, the Disclosure Statement Hearing, and Administrative Claims Bar Date (collectively, the “**Disclosure Materials**”), was mailed to 813 addresses of shareholders, creditors and other interested parties, that 547 of those mailings were returned as undeliverable with no forwarding address provided, and that 11 of the mailings were returned with a forwarding address, the Court finds that cause exists to excuse the Trustee from the requirement to serve notice of the Confirmation Hearing and related Plan events to the extent provided in this Order.

Accordingly, pursuant to 11 U.S.C. §§ 105(a), 1126(g) and 1129(b), it is

**ORDERED** that:

1. The Solicitation Motion is GRANTED.
2. The SEBC Common Shareholders are deemed to have rejected the Plan, thereby eliminating the need for formal solicitation of their votes to accept or reject the Plan.
3. For purposes of providing notice of the Confirmation Hearing and other Plan events, the Trustee shall have no responsibility to ascertain the identities or addresses of the SEBC Common Shareholders, other than from the information reflected by the list of SEBC Common Shareholders or the Proofs of Interest filed in this case; provided, however, that the Trustee shall have no responsibility to serve notice of the Confirmation Hearing or other Plan events upon any shareholder to which the Disclosure Materials served by mail were returned as undeliverable with no forwarding address, but shall serve notice of the Confirmation Hearing and related Plan events by mail to any forwarding address received.

4. Other than governing the solicitation of ballots as set forth herein, the Court makes no judgment or determination at this time with respect to the Plan.

5. The Court retains jurisdiction to construe, interpret, and enforce the provisions of this Order.

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Submitted by:

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*(Attorney Bloom shall serve a conformed copy of this Order upon all interested parties and shall file a certificate of service.)*

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