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April 28, 2010

The Honorable Sheila Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Dear Chairman Bair:

As you know, the FDIC took receivership of seven failed banks in Illinois on April 23, 2010.[1] Among them was Broadway Bank, a closely-held community bank owned by the family of Illinois State Treasurer Alexander ("Alexi") Giannoulias. According to the FDIC's own estimate, the cost of Broadway's failure to the Deposit Insurance Fund (DIF) will be $394.3 million.[2]

I am sensitive to the fact that the ongoing mortgage crisis has caused a spike in the number of failed banks. Since January 1, 2009, the FDIC has taken receivership of 197 distressed banks, nearly four times as many as in the nine preceding years combined.[3] Still, the takeover of Broadway Bank requires an additional level of scrutiny because of the unique circumstances surrounding the FDIC's action.

On January 26, 2010, Broadway Bank entered into a consent order with the FDIC and the Illinois Division of Banking requiring the bank to raise tens of millions in capital.[4] The consent order served as a warning to Broadway and Mr. Giannoulias that the bank was on the verge of collapse. Weeks later, on or about March 9, 2010, a meeting took place at the White House between Senior Advisor to the President David Axelrod and Mr. Giannoulias, who is a candidate for the U.S. Senate from Illinois.

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[1] FDIC Failed Bank List, available at http://www.fdic.gov/bank/individual/failed/banklist.html (last visited Apr. 26, 2010) [hereinafter the Failed Bank List].

[2] FDIC Press Release PR-085-2010, Apr. 23, 2010, available at http://www.fdic.gov/news/news/press/2010/pr10085.html (last visited Apr. 26, 2010) [hereinafter FDIC Press Release].

[3] Failed Bank List.

[4] Steve Daniels, *Regulators Clamp Down on Giannoulias' Broadway Bank*, CRAIN'S CHICAGO BUSINESS, Jan. 27, 2010.

The fact that senior White House officials such as David Axelrod are meeting with Mr. Giannoulias at the time the FDIC is covering hundreds of millions in losses at Broadway Bank raised a red flag.

The details of the FDIC's losses on the Broadway transaction raised additional concerns. As early as the end of 2008, there were signs that Broadway bank was in serious trouble. The ratio used to determine the health of banks is a widely used industry metric called the Texas ratio.[5] Banks with a Texas ratio above 50 percent are considered in need of additional capital. Broadway Bank had a Texas ratio of 94 percent at the end of 2008.[6] The Bank's profits had likewise decreased by more than 94 percent from 2007 to 2008.[7]

As of December 31, 2009, Broadway Bank had approximately $1.2 billion in total assets and $1.1 billion in total deposits.[8] The FDIC took notice of Broadway's problems at least as early as January 2010, when the consent order between the Corporation and the bank was being negotiated.

Nearly four months after the consent order was reached, the FDIC took receivership of Broadway. The $394.3 million cost of taking over Broadway represents a loss of approximately 36 percent to the FDIC. The amount of the Broadway loss, both in dollars and as a percentage of total deposits, is significantly higher than those figures for the other six Illinois banks closed on April 23, 2010.[9] These figures suggest that the FDIC may have waited longer than it should have to act to prevent foreseeable losses in the case of Broadway Bank.

Prompt corrective action in cases where a bank has become critically undercapitalized is mandated by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). The FDICIA mandates action by banking agencies such as the FDIC within ninety days of a bank becoming critically undercapitalized, with the act containing a bias toward receivership or conservatorship.[10] Under the FDICIA, any bank having a tangible equity-capital-to-total-assets ratio of less than two percent is classified as critically undercapitalized.

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[5] Steve Daniels, *Banks Closer to the Brink*, CRAIN'S CHICAGO BUSINESS, Feb. 16, 2009.
[6] *Id.*
[7] *Id.* In 2007, Broadway reported profits of $49.8 million. In 2008, profits shrank to $2.8 million.
[8] FDIC Press Release.
[9] FDIC failed bank press releases, available at http://www.fdic.gov/bank/individual/failed/banklist.html (last visited April 26, 2010). Wheatland Bank had $438.5 million in deposits and cost $133.5 million to the DIF (30.4 percent); Peotone Bank and Trust Company had $127.0 million in deposits and cost $31.7 million to the DIF (24.9 percent); Lincoln Park Saving Bank had $171.5 million in deposits and cost $48.4 million to the DIF (28.2 percent); New Century Bank had $492.0 million in deposits and cost $125.3 million to the DIF (25.5 percent); Citizens Bank and Trust Company of Chicago had $74.5 million in deposits and cost $20.9 million to the DIF (28.1 percent); and Amcore Bank, National Association had $3.4 billion in deposits and cost $394.3 million to the DIF (6.5 percent).
[10] P.L. 102-242, 105 Stat. 2236.

Broadway Bank's level of capitalization in the weeks and months before the FDIC took action on April 23, 2010 is unknown. Still, because one of the Bank's owners is a candidate for the United States Senate and has a relationship with the White House, and because the FDIC may have prolonged the Bank's existence at the expense of the DIF, there are unanswered questions.

I expect some answers to come from FDIC's Office of the Inspector General (OIG). Section (k)(3)(B) of the Federal Deposit Insurance Act requires FDIC's OIG to produce a report within six months of the closing of a failed bank when the Corporation has suffered a material loss, as was the case when the FDIC closed Broadway.[11] As is customary, OIG's report will consist of a review of the Corporation's supervision of the closed institutions, including the agency's implementation of FDI Act section 38, *Prompt Corrective Action*; a determination as to why the institution's problems resulted in a material loss to the DIF; and recommendations to prevent future losses. The OIG's material loss review of Broadway Bank will be released on or before October 23, 2010.

As we await the OIG report, you can provide information that will answer additional questions. So that I may fulfill my obligation as the Ranking Member of the House Committee on Oversight and Government Reform to prevent waste throughout the federal government, please provide full and complete responses to the following no later than May 3, 2010:

1. Why did the FDIC wait so long to close Broadway Bank?

2. What would the cost to the DIF have been if the FDIC closed Broadway Bank when it reached the point of less than two percent capitalization, or became "critically undercapitalized" under FDICIA's prompt corrective action standards?

3. Were any creditors benefited by the delay in closing down Broadway Bank?

4. Because the costs to the DIF and the FDIC loss expressed as a percentage of deposits on hand appears to vary widely from bank closing to bank closing, there is the appearance that the FDIC does not have a consistent set of standards to determine when to take action on a distressed bank. Please explain how the FDIC decides when to close a bank.

5. The high losses in the case of Broadway Bank suggest there may be a bias in the way the FDIC evaluates when to take action on a distressed bank. Was Mr. Giannoulias' candidacy for the United States Senate considered when the FDIC was deliberating about whether to take action on Broadway bank?

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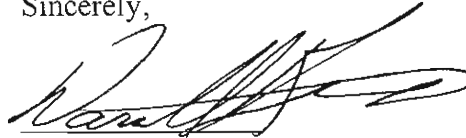
[11] As defined by section 38(k)(2)(B) of the FDI Act, a loss is material if it exceeds the greater of $25 million or two percent of an institution's total assets at the time the FDIC was appointed receiver. In Broadway's case, two percent of the value of the bank's assets at closing is $24 million. FDIC suffered a material loss because the cost to the DIF will be $394.3 million, which far exceeds the $25 million statutory threshold.

The Senate financial reform bill (the "Dodd bill") would dramatically expand the authority of the FDIC. As Congress considers the Dodd bill, it is important that the FDIC provides an honest and transparent explanation of how it presently operates with respect to distressed banks so that we may fairly evaluate the Corporation's capacity for additional responsibility.

Thank you for your cooperation as the Committee continues its investigation of the ongoing mortgage crisis. This investigation is being conducted in accordance with the Committee's role as the principal oversight committee in the House of Representatives under the broad jurisdiction set forth in House Rule X. If you have any questions about this request, please contact Steve Castor or Jonathan Skladany of the Committee Staff at 202-225-5074.

Sincerely,



Darrell Issa
Ranking Member

cc: The Honorable Edolphus Towns, Chairman