

"AN ORDER ALWAYS HAS TO BE IN PLACE"

Will inflexible bureaucrats drive off would-be bank investors?

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Sometimes I wonder what the FDIC representatives are really thinking. They are very protective of the FDIC's Deposit Insurance Fund, as they should be. Unfortunately, what the troops on the ground view as being protective of the Fund, if it was viewed at a higher level, Chairman Bair would probably say, "This is a ridiculous position you are taking. You will cost the Fund \$100 million due to the inflexibility of your position."

Let me put some context around this discussion. I recently had the opportunity to meet with FDIC and state regulatory representatives in connection with a state-chartered, non-member bank. The purpose of the meeting was to review the opportunity for the bank to be recapitalized through an investor group. Present at the meeting were representatives of the investor group (including one investor who was going to write a check for \$10 million), their adviser, three or four directors of the bank, and me.

The bottom line of all this was that the investors wanted to put in their money, which would restore the bank to a well-capitalized position. However, they only wanted to do so if once the money went in, they would not be subject to a Consent Order with the FDIC and the State which would prohibit them from implementing their business plan to return the organization to profitability.

The FDIC regulator in charge basically took this position: "No, this bank is poorly rated, has poor asset quality, and needs to have an Order in place." I suggested that perhaps FDIC could, instead of putting an Order in place, put conditions on the investment and change in control by the new group. That got nowhere. The regulators insisted that an Order be in place, even if it killed the deal, because for a troubled bank of this type, an Order "always has to be in place."

After the investors left, I suggested to the regulators that their insistence on "doing things the way we have always done things" could result in this bank failing and costing the Fund between \$75 and \$100 million. I pointed out that, if they could exhibit a little bit of flexibility or creativity, they could get \$15 or \$20 million in new capital and the bank would be open ten years from now.

Unfortunately, the troops on the ground "know what they know" and that is all.

They are stuck in the mode where they will always do what they have always done.

Wouldn't you think that in the current situation with the economy and the fact they are dealing with a community bank would dictate some flexibility?

Frankly, the only way this is going to get resolved is the same way the shift at FDIC from Cease and Desist Orders to Consent Orders (affectionately known as the "Gerrish Order") occurred. It is going to require an FDIC top-down realistic analysis by the Chairman to say, "Yes, we will take capital if it means saving the bank, even though we may have to

agree to some things we normally would not in good times."

What is wrong with that approach?

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