



Office of Thrift Supervision
Department of the Treasury

John M. Reich
Director

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December 21, 2008

Mr. Eric M. Thorson
Inspector General
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Room 4436
Washington, D.C. 20220

Dear Eric:

Thank you for taking the time to meet with my staff and me Saturday morning. I appreciate your honest and direct approach to addressing this situation. I agree with your assessment that the Treasury Department is stronger when the Inspector General and Bureau Heads work together in a collegial fashion to identify and address potential problems.

I would like to memorialize in this letter some of the views we shared with you today regarding the contents of your December 18, 2008 Information Memorandum for Secretary Paulson ("Information Memorandum"), which is titled "Information Requested Relating to a Capital Infusion to IndyMac Bank, F.S.B. (OIG-CA-09-004)." We plan to share this letter with the Secretary and hope that you will present our views when you discuss the Information Memorandum with Members of Congress and their staff.

It may be helpful first to identify the timeline of events as we understand them from the information supplied by the Treasury OIG on December 18, 2008:

- IndyMac Bank, F.S.B. ("IndyMac or Bank") reported in its December 31, 2007 Thrift Financial Report ("TFR") that its risk-based capital exceeded 10% and it was in a Well Capitalized position
- March 31, 2008 – the holding company injected \$70 million into IndyMac to ensure that the risk-based capital ratio remained above 10%
- IndyMac's external auditors, Ernst & Young ("E&Y"), advised IndyMac management of some adjustments to the 4Q2007 financial statements. E&Y determined the adjustments were not material since, if taken, they would not have resulted in a change from the Well Capitalized position
- May 1, 2008 – IndyMac filed its March 31, 2008 TFR, reporting the capital position as Well Capitalized with a risk-based capital ratio of **10.15%**
- May 5, 2008 (during the week) - Bank management and E&Y discussed some adjustments to the 1Q2008 financial statements. These adjustments, together with the E&Y 4Q2007 adjustments, would have resulted in a revised capital ratio of **9.98%**

(or 2 basis points below the 10% Well Capitalized threshold) if they had been recorded

- May 9, 2008 – IndyMac management agreed that the adjustments were appropriate
- May 9, 2008 – IndyMac management, E&Y, and OTS Regional Director Darrel Dochow (“Dochow”) discussed whether an immediate \$18 million capital injection could be recorded as an intercompany receivable for March 31, 2008 TFR purposes. This injection would maintain the bank’s capital above 10% and therefore at a Well Capitalized level. Dochow agreed.
- May 10, 2008 – E&Y met with the IndyMac Board’s Audit Committee to explain the transaction. The Audit Committee approved the transaction.
- May 12, 2008 – IndyMac filed an amended TFR for March 31, 2008, reporting the capital position as Well Capitalized with a risk-based capital ratio of 10.26%.
- E&Y determined its 1Q2008 adjustments were not material since, if taken, they would not have resulted in a change to the reported Well Capitalized status
- E&Y later informed the Treasury OIG that they were comfortable with the transaction because, when consolidated, the holding company and bank would have sufficient capital.
- E&Y reported to Treasury OIG that “what was done was not inconsistent with GAAP.” The intercompany receivable was liquidated (funded) by the holding company prior to release of the company’s 1Q2008 10Q report.

As we discussed, if IndyMac had filed an amended TFR on May 12 that incorporated both the E&Y 4Q2007 audit adjustments and 1Q2008 audit adjustments, but did not include the \$18 million capital injection that occurred on May 9, 2008, the resultant Risk Based Capital Ratio would have been 9.98%. We recognize that such a ratio is below the 10% threshold and therefore the Bank would have been deemed Adequately Capitalized. From a timing perspective, though, on the same day that IndyMac filed its amended TFR it would have informed OTS that it had completed an \$18 million capital contribution, which for regulatory purposes could have immediately returned the Bank to a Well Capitalized position.

Institutions that are deemed Adequately Capitalized must apply for a Brokered Deposit Waiver from the Federal Deposit Insurance Corporation. Had IndyMac submitted an amended TFR on May 12, 2008, with a 9.98% capital ratio, it would have been required to submit such an application if it wished to continue its brokered deposit activity. As we discussed at today’s meeting, IndyMac’s aggregate brokered deposit activity was actually declining during this time, from \$6.3 billion on May 11, 2008, to \$5.2 billion on June 27, 2008.

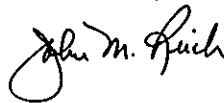
While we believe that the above information shows that the \$18 million capital contribution issue is a relatively small factor in the events leading to the failure of IndyMac, we also recognize that we must take certain actions to ensure that OTS remains

a well managed regulatory agency. As a result, I would like to inform you of the actions I will take as a result of this meeting:

1. I have directed Tim Ward, our Deputy Director in charge of Examinations, to provide written communication to all of our examination staff reminding them of the proper regulatory and accounting reporting expectations associated with intercompany receivables relating to capital contributions.
2. I have removed Darrel Dochow from his current responsibilities as Regional Director. He will instead report directly to Scott Polakoff, our Chief Operating Officer, to handle special projects and administrative issues. This assignment will last until we have more information from the "separate inquiry" that was mentioned in the penultimate paragraph of the Information Memorandum.

Again, I'd like to thank you for taking the time to meet with us today. Please don't hesitate to call me if I can be of assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "John M. Guich".

cc: The Honorable Henry M. Paulson, Jr., Secretary of the Treasury
cc: Robert Hoyt, General Counsel
cc: Jim Wilkinson, Chief of Staff