

STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION
DIVISION OF FINANCIAL INSTITUTIONS

IN RE:

APPLICATION FOR AUTHORITY TO)
ACQUIRE A CONTROLLING INTEREST)
IN COMMUNITY BANK OF MANATEE)
_____)

Administrative Proceeding
No. 0641-FI-06/09

REPORT OF PUBLIC HEARING

Pursuant to Section 120.80(3)(a), Florida Statutes, a public hearing was held in the above-styled cause on July 13, 2009, by video conferencing with sites in Tallahassee and Miami, Florida, before Robert D. Hayes, a duly designated Hearing Officer of the Florida Office of Financial Regulation (the "OFR").

APPEARANCES

Counsel for the Applicants,
Trevor R. Burgess and Marcelo Lima

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STATEMENT OF THE ISSUES

The purpose of the public hearing (the "Hearing") was to review, in accordance with Florida law, the pending Application by Trevor R. Burgess and Marcelo Lima for Authority to Acquire a Controlling Interest in Community Bank of Manatee (the "Application"), including

(1) The requirement under Section 120.80(3)(a)4., Florida Statutes, that any foreign national person seeking to acquire a controlling interest in a state bank appear personally at such a public hearing; and

(2) The criteria established by Section 658.28(1), Florida Statutes, on the basis of which the OFR is required to base its determination whether or not the Application should be approved.

PRELIMINARY STATEMENT

These matters began on June 8, 2009, when Trevor R. Burgess and Marcelo Lima (collectively, the "Applicants") submitted an application to the OFR for approval to acquire a controlling interest in Community Bank of Manatee, Bradenton, Manatee County, Florida (the "Bank"). The OFR published notice of its receipt of the Application in the *Florida Administrative Weekly* on June 19, 2009.

As reflected in his biographical report which accompanied the Application, Mr. Lima is a citizen of the Federative Republic of Brazil. Consequently, the OFR was required by Section 120.80(3)(a)4., Florida Statutes, to request that the Hearing be conducted. The Applicants and the OFR (collectively "the Parties") agreed to the OFR appointing a Hearing Officer instead of requesting the appointment of an administrative law judge by the Division of Administrative Hearings. Accordingly, on June 11, 2009, the OFR issued an order requiring that the Hearing be held and appointing Robert D. Hayes, Chief of the OFR's Bureau of Credit Unions, to act as the Hearing Officer. No other person requested a hearing with respect to the Application. The OFR has the authority to administer hearings under the provisions of the Florida Administrative Procedure Act, Chapter 120, Florida Statutes, and has jurisdiction over this matter pursuant to Chapter 658, Florida Statutes, and Chapter 69U, Florida Administrative Code.

In accordance with the requirements of Section 69U-105.105, Florida Administrative Code, the Applicants published notice of the Hearing in the *Bradenton Herald*, a newspaper of

general circulation in the community in which the principal office of the Bank is located, on June 28, 2009. The OFR placed notice of the Hearing on its website on June 28, 2009 and caused notice of the Hearing to be published in the *Florida Administrative Weekly* on July 10, 2009.

Prior to the Hearing, the Parties filed a Joint Prehearing Stipulation which was entered into evidence. In addition, the Parties introduced and had admitted the following exhibits: (1) Office Exhibit 1 containing a true and correct copy of the public portions of the Application, the proof of publication of the Notice of Public Hearing published in the *Bradenton Herald*, and the OFR's Notice of Public Hearing as published in the *Florida Administrative Weekly*. (2) Office Exhibit 2 containing a true and correct copy of the transcript of a public hearing held on October 3, 2008 with regard to the Applicants' previous application for approval to acquire a controlling interest in Riverside Bank of the Gulf Coast, Cape Coral, Florida, and the resultant Report of Hearing. The transcript and Report of Hearing are incorporated into this record in their entirety. (3) Confidential Office Exhibit A containing a true and correct copy of the confidential portions of the Application was also entered into evidence. Each of the exhibits was certified by the OFR's Financial Administrator for Licensing.

After publication of the notices to the public, the Hearing was conducted by video teleconference on July 13, 2009, from offices located at 1500 Mahan Drive, Suite 140, Tallahassee, Florida 32308 and 201 South Biscayne Boulevard, 28th Floor, Miami, Florida 33131. The Applicants appeared personally at the Hearing in Miami and presented their oral testimony under oath. No member of the public appeared at either hearing site.

FINDINGS OF FACT

- (1) On June 8, 2009, Trevor R. Burgess and Marcelo Lima submitted an application to the OFR seeking the OFR's approval their proposed acquisition of a controlling interest in the Bank.
- (2) The requisite filing fee and the Applicants' respective Interagency Biographical and Financial Reports ("IBFR") were submitted with the Application.
- (3) The Applicants submitted a written request for OFR to appoint a Hearing Officer with the Application and IBFRs.
- (4) On June 11, 2009, the OFR issued an order directing that a public hearing be conducted pursuant to Chapters 120, 655, and 658, Florida Statutes, and the relevant rules promulgated thereunder, and appointing Robert D. Hayes, Chief of the Bureau of Credit Unions in the OFR's Division of Financial Institutions to act as the Hearing Officer.
- (5) On June 19, 2009, the OFR caused notice of its receipt of the Application to be published in the *Florida Administrative Weekly*. This published notice met the requirements of Rule 69U-105.103(1), Florida Administrative Code. No person requested a hearing within the twenty-one (21) day notice period pursuant to the notice.
- (6) On June 25, 2009, the Hearing Officer issued a Notice of Hearing setting the public hearing on the Application to be held at 2:00 p.m. on Monday, July 13, 2009, by video teleconference from offices located at 1500 Mahan Drive, Suite 140, Tallahassee, Florida 32308, and 201 South Biscayne Boulevard, 28th Floor, Miami, Florida 33131.
- (7) The Applicants caused notice of the Hearing to be published in the *Bradenton Herald*, a newspaper of general circulation in Manatee County, Florida, including Bradenton, the

community in which the Bank principally conducts its business, on June 28, 2009. The published notice met the requirements of Rule 69U-105.105(1), Florida Administrative Code.

(8) The OFR caused notice of the Hearing to be published on its website on June 28, 2009 and in the *Florida Administrative Weekly* on July 10, 2009.

(9) No other person requested a hearing, no member of the public appeared at the public hearing, and no one spoke in opposition to the Application.

(10) The Applicants propose to acquire a controlling interest in the Bank through CBM Florida Holding Company, a proposed bank holding company ("CBM"). Upon completion of the proposed transaction, Community Bank of Manatee will continue to exist under its current Florida charter.

(11) The Applicants, together with certain other investors, propose to acquire all of the issued and outstanding shares of CBM which will, in turn, acquire newly-issued shares of the voting common stock of the Bank representing 51% of the then-outstanding shares of the Bank's capital stock (the "Acquisition").

(12) The Applicants were approved in October 2008 to acquire control of Riverside Bank of the Gulf Coast after completing the necessary application forms and participating in a public hearing. The transaction was not consummated for non-regulatory reasons. The Applicants' legal and financial circumstances have remained substantially unchanged since October 2008.

(13) Mr. Trevor Burgess is a principal and manager of an investment management firm, Artesia Capital Management USA, LLC. For almost 10 years, he was an investment banker with Morgan Stanley, one of the major U.S. investment banks. At Morgan Stanley, he served as a Managing Director and head of debt and equity execution in Europe, the Middle East

and Africa. He also served as the chairperson of Morgan Stanley's equity underwriting committee, responsible for all underwriting commitments made by the firm in his area and was responsible for raising over US \$50 billion in capital for over 100 governments and global companies, including the governments of Brazil, Colombia, The Dominican Republic, Jamaica, Peru and Uruguay and such entities as Banco Minas Gerais, E*Trade, IndyMac Bancorp, Danske Bank, Greek Postal Savings Bank, Pireaus Bank, Chicago Mercantile Exchange, International Securities Exchange and AON. Prior to his tenure with Morgan Stanley, Mr. Burgess was a management consultant for three years at Monitor Company in Cambridge, Massachusetts.

As a major investment bank, Morgan Stanley is subject to extensive supervision and regulation by both state and federal government agencies, including the United States Securities and Exchange Commission, the Financial Industry Regulatory Authority (formerly the NASD). Accordingly, as an investment banker at Morgan Stanley, Mr. Burgess was subject to licensure by the NASD/FINRA and held a Series 7 license which required examination and continuing education. He was also a registered representative with the Financial Services Authority in the United Kingdom, and, in connection with his securities license, he was subject to disclosure and reporting requirements similar to, but more frequent than, those applicable to officers and directors of commercial banks.

Mr. Burgess testified that neither he nor, to his knowledge, any of the companies in which he has been involved, has ever been the subject of any investigation, civil charges or penalties imposed by any governmental or administrative agency, made a filing in any bankruptcy or similar proceeding, failed to pay any judgment or other debt which he or it was lawfully obligated to pay, or been convicted of, or pled guilty or no contest to, any charge of fraud, money laundering or other financial crime.

(14) The OFR conducted a background investigation with respect to Mr. Burgess and discovered no negative information that would reflect adversely on his qualifications to own, control, and operate the Bank in a legal and proper manner.

(15) Mr. Marcelo Lima attended the Pontificia Universidade Católica in Rio de Janeiro, where he earned a degree in economics. He holds a professional enrollment in the Regional Council of Economists in Sao Paulo. He is principally engaged in the active oversight of a wide variety of investments, primarily through his service as a director of several investment companies and other holding companies.

Most of Mr. Lima's investments are made through Turquoise Capital, C.V., which is his principal holding company. In addition to brokerage and deposit accounts in a number of banking institutions, it has significant interests in several industrial firms, including both public and privately held companies, involved in such disparate lines of business as commercial refrigeration, fertilizer and retail. As a result of his investments, Mr. Lima is actively involved in 17 different companies and has served as an executive officer of at least 7 of those companies and as a director of four of them, including service as Chairman of the Board of two of those companies.

With regard to direct bank experience, from 1989 to 1996 Mr. Lima worked for ABN Amro Bank both in Brazil and in Chicago, serving initially as a fund manager in Brazil and, subsequently, as chief economist of ABN Amro in Brazil advising the bank's Asset-Liability Committee. He then served in the corporate banking area, mainly in commercial relations with some significant clients in Brazil, such as Panasonic, Volkswagen and General Motors. He also served as regional manager for the bank in Campinas, Brazil, where he was responsible for,

among other things, commercial banking, retail banking and trade-related and financing activities. During this period he also chaired the bank's regional Credit Committee.

During his tenure in Chicago, Mr. Lima was primarily engaged in project finance banking and was responsible for analyzing new projects and reviewing credit related matters of several ongoing projects related to power generation in states such as New Hampshire, Pennsylvania, Hawaii and Connecticut, sponsored by companies such as Tractebel AES and Interger. From 1996 to 1998, he worked for Banco Garantia in Brazil, serving in the capital markets and M&A areas, advising customers such as Florida Power and Light, Pacific Corp. and National Power of U.K. From 1998 to 2000, he worked for the investment bank, Donaldson, Lufkin & Jenrette in Brazil, serving mainly in the corporate finance and mergers and acquisitions areas.

Mr. Lima testified that, with the exception of ordinary course disputes, claims, and lawsuits in Brazil involving his various business interests in Brazil, including matters related to employment, tax, environmental, and other business disputes, neither he nor, to his knowledge, any of the companies in which he has been involved, has ever been the subject of any investigation, civil charges, or penalties imposed by any governmental or administrative agency, made a filing in any bankruptcy or similar proceeding, failed to pay any judgment or other debt which he or they were lawfully obligated to pay, or been convicted of, or pled guilty or no contest to, any charge of fraud, money laundering or other financial crime. Additionally, he testified that he has not been named personally in any such actions involving companies in which he is involved and that no such actions have been brought before any courts or governmental entities in the United States of America.

(16) The OFR conducted a background investigation with respect to Mr. Lima and discovered no negative information that would reflect adversely on his qualifications to own, control, and operate the Bank in a legal and proper manner.

(17) The Applicants and the other prospective investors have strong financial positions and are able to provide the capital presently needed by the Bank from their own available resources. Although Mr. Burgess will utilize funds lent to him by Mr. Lima to make his investment, none of the other investors will be relying on borrowed funds to invest in the Bank.

(18) The Applicants plan to join the Bank's board of directors following the Acquisition and will retain all of the Bank's present directors following the Acquisition. The Applicants also plan to retain the Bank's present senior executive officers, including the Chief Executive Officer, the President, the Chief Financial Officer, and the Chief Lending Officer. The continuing board members and management will play an important role in preserving and building on the goodwill the Bank has established with its customers and the community.

(19) The capital to be contributed to the Bank by the Applicants and other investors will enable the Bank to achieve a more prominent role in the community, better serving existing customers, and growing the core deposits needed to support renewed lending activity as the economy recovers.

CONCLUSIONS OF LAW

(1) The OFR is the duly designated Florida agency vested with the responsibility for processing and approving or disapproving a proposed acquisition of a controlling interest in a state bank or trust company pursuant to Section 658.28, Florida Statutes.

(2) The statutory criteria set forth in Section 658.28, Florida Statutes, are the standards which govern the Applicants' proposed acquisition of a controlling interest in the Bank.

(3) Chapter 69U-105, Florida Administrative Code, contains the procedural rules for processing an application for approval to acquire a controlling interest in a state bank or trust company.

(4) When an application for approval of the acquisition of a controlling interest in a state bank or trust company is filed with the OFR, it is the applicants' responsibility to prove that the minimum requirements set forth in Section 658.28, Florida Statutes, and Chapter 69U-105, Florida Administrative Code, have been met. It is the responsibility of the OFR to evaluate whether the applicants have satisfied the criteria and requirements listed therein, and then to approve or disapprove the application.

(5) Section 658.28(1), Florida Statutes, provides that:

(1) In any case in which a person or a group of persons, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a controlling interest in any state bank or state trust company, and thereby to change the control of that bank or trust company, each person or group of persons shall first make application to the [OFR] for a certificate of approval of such proposed change of control of the bank or trust company. The application shall contain the name and address, and such other relevant information as the commission or office requires, including information relating to other and former addresses and the reputation, character, responsibility, and business affiliations, of the proposed new owner or each of the proposed new owners of the controlling interest. The [OFR] shall issue a certificate of approval only after it has made an investigation and determined that the proposed new owner or owners of the interest are qualified by reputation, character, experience, and financial responsibility to control and operate the bank or trust company in a legal and proper manner and that the interests of the other stockholders, if any, and the depositors and creditors of the bank or trust company and the interests of the public generally will not be jeopardized by the proposed change in ownership, controlling interest, or management. No person who has been convicted of, or pled guilty or nolo contendere to, a violation of section 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896,

relating to offenses related to financial transactions; or any similar state or federal law shall be given a certificate of approval by the [OFR].

(6) Based upon the foregoing Findings of Fact and the evidence submitted at the Hearing, the Applicants meet all the requirements of Florida law as to the acquisition of a controlling interest in a state bank in that they are qualified by reputation, character, experience, and financial responsibility to control and operate the Bank in a legal and proper manner, and they have not been convicted of or pled guilty or *nolo contendere* to a violation of Section 655.50, Florida Statutes, relating to the Florida Control of Money Laundering in Financial Institutions Act, Chapter 896, Florida Statutes, relating to offenses related to financial transactions, or any similar state or federal law.

(7) Based upon the foregoing Findings of Fact and the evidence submitted at the Hearing, the Applicants' proposed acquisition of a controlling interest in the Bank will not jeopardize the interests of the Bank's stockholders or the depositors and creditors of the Bank.

(8) Based upon the foregoing Findings of Fact and the evidence submitted at the Hearing, the Applicants' proposed acquisition of a controlling interest in the Bank is not contrary to the public interest.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, and having considered the Application and the evidence presented at the Hearing, and having concluded that the Application satisfies the criteria and requirements contained in Sections 120.80(3)(a)4. and 658.28(1), Florida Statutes, it is hereby recommended that a final order be entered approving the Application subject to the following conditions:

(1) That the Board of Governors of the Federal Reserve System or its designee approves the proposed Acquisition and any related application filed with the Federal Reserve

Bank of Atlanta for Applicants to acquire, directly or indirectly, a controlling interest in the Bank.

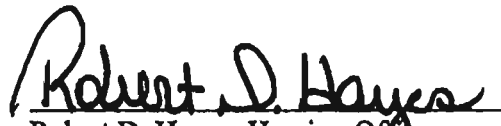
(2) That until further notice pursuant to Section 655.0385, Florida Statutes, the Bank's existing executive officers will continue to serve as executive officers of the Bank, and the Bank's directors will be: Denise L. Baker, Charles M. Brown, Trevor R. Burgess, Brian D. Burghardt, Phillip L. Burghardt, Thomas S. Downs, Thomas A. Howze, Marcelo Lima, Duane L. Moore, Kenneth L. Schermer, William H. Sedgeman, Jr., and Thomas R. Sprenger.

(3) That any and all approvals contained in any final order shall expire six (6) months from the date of the final order, unless in the meantime the OFR has granted a request for an extension of time for good cause.

(4) That before all the conditions specified above and other reasonable requirements of the OFR have been fulfilled, or if any interim development is deemed by the Commissioner of the Office of Financial Regulation to warrant such action, the Commissioner retains the right to alter, suspend, or withdraw approval of the proposed change in control of the Bank.

(5) That due to the change in control of the Bank resulting from the Acquisition, the Bank shall be required to comply with Section 655.0385, Florida Statutes, for a period of two years following the effective date of the Acquisition.

Done this day of July 22, 2009, in Tallahassee, Leon County, Florida.



Robert D. Hayes, Hearing Officer
Division of Financial Institutions
Florida Office of Financial Regulation

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this Report of Public Hearing ("Report"). Any exceptions to this Report must be filed with the OFR within ten (10) days of the date of entry of this Report.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Report of Public Hearing has been sent via U.S. Mail and electronic mail to Mr. Bowman Brown, counsel for the Applicants, at Shutts & Bowen, LLP, 1500 Miami Center, 201 South Biscayne Boulevard, Miami, FL 33131, and by hand delivery to Ms. Janet Anderson, counsel for the Office of Financial Regulation, at 200 East Gaines Street, Fletcher Building, Suite 526, Tallahassee, FL 32399-0379, this day of July 22, 2009.



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cc: Agency Clerk