

TESTIMONY OF

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ON

THE RESOLUTION OF FREEDOM NATIONAL BANK

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

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ARONOW THEATRE
CITY COLLEGE OF NEW YORK
NEW YORK, NEW YORK

Mr. Chairman, members of the subcommittee, I am Steven Seelig, Director of the FDIC's Division of Liquidation. With me this morning are Thomas Beshara, Regional Director of the division's New York Region, and Roger Hood, Assistant General Counsel from our Washington Office. We are pleased to appear this morning to explain the FDIC's role in the resolution of Freedom National Bank.

Any bank closing is a traumatic and unfortunate occurrence that affects depositors, borrowers, bank employees, stockholders and the community that the institution serves. The insolvency and closing of Freedom National Bank is all the more unfortunate because of its unique role in its community.

As with all failing banks, the FDIC attempted to find a resolution that would meet the statutory test of limiting the cost to the insurance fund as well as minimizing disruption to the community. Unfortunately, in the case of Freedom National we were unable to find a buyer, or even a paying agent, and had to resort to a deposit payoff. We believe that this payoff has been handled in as expeditious a manner as possible, and the FDIC has attempted to provide all insured depositors access to their funds as quickly and conveniently as feasible.

Let me briefly describe the FDIC's involvement with the resolution of failing banks, and Freedom National in particular,

and describe the receivership process as it relates to both the claims and the assets.

The FDIC as insurer of deposits of \$100,000 or less is obligated to provide protection to insured depositors at the time a bank is declared insolvent by its chartering body. The FDIC will attempt to arrange a transaction where another institution assumes the liabilities of the failed bank and purchases some of the assets. The FDIC will make up with cash the shortfall between liabilities assumed and assets purchased, less any premium paid. While this type of transaction provides protection to all depositors, it is only entered into when the Board of Directors of the FDIC has determined that it is less costly to the FDIC than an insured deposit payout.

Prior to the closing of a bank, the FDIC contacts potential bidders and offers various bidding structures. These would include the option of a whole bank deal where the prospective purchaser will bid on the entire bank with the FDIC providing cash to cover the losses on the assets. In these cases, the purchaser is allowed to perform a "due diligence" review of the failed bank prior to bidding.

Turning to Freedom National, the FDIC was informed by the Office of the Comptroller of the Currency early this year that the bank was likely to fail and, at the request of the OCC, Bid

Package preparation began on April 3, 1990. In June, staff from the FDIC's Division of Supervision and the OCC met with Freedom National representatives to discuss the mechanics of open bank assistance and the FDIC Statement of Policy on the Encouragement and Preservation of Minority Ownership of Financial Institutions.

At the beginning of July, a joint FDIC/OCC team of examiners verified that the bank was insolvent. During the summer Freedom National Bank's board of directors tried to raise new capital. At a meeting on September 7, they notified the FDIC and the OCC that they had been unsuccessful. Throughout the fall they continued to try to fashion an assistance transaction under Section 13(c) of the FDI Act. Section 13(c) permits the FDIC to provide assistance to an institution as long as the Corporation finds that providing assistance is less costly than a liquidation. On September 25 the Bank's board passed a resolution authorizing the FDIC to invite prospective bidders on site for the purpose of performing due diligence in order to formulate a possible bid to the FDIC.

The FDIC invited over 60 institutions and interested parties to a bid meeting scheduled for October 24. In an effort to obtain a minority purchaser for Freedom National, the FDIC contacted the National Bankers Association, a bank trade association with a substantial minority bank membership, and a minority thrift in New York thought to have the financial capability and potential interest. However, despite these efforts only four bidders showed up at the bid meeting and only

one performed on-site due diligence. Bids were requested by November 7 and none were received. The FDIC then attempted to arrange an insured deposit transfer by contacting five major local financial institutions. However, none were interested.

On Friday, November 9, 1990 the OCC declared Freedom National Bank insolvent and appointed the FDIC receiver of the failed institution. The FDIC assumed the responsibility for the closing and immediately began preparation to honor its insurance obligations as well as those of receiver for the estate of the failed bank. Because no paying agent could be found, the FDIC prepared for an insured deposit payoff that was scheduled to begin at 9:00 a.m. on Tuesday, November 13.

During the weekend we were aware that attempts were being made to assemble a group to capitalize a new bank for the purpose of assuming the liabilities and acquiring assets from the receivership of Freedom National. The FDIC was prepared to facilitate such a transaction if an investor group could satisfy a bank chartering agency that it had evidence of sufficient capital and qualified for a charter. The FDIC agreed to delay the start of the payoff if the OCC informed us that they were prepared to grant a charter. In order to calm anxious depositors about the availability of their funds, Congressman Rangel offered to help explain the reasons for such a delay. Unfortunately, none of these efforts came to fruition and the payoff began shortly after 9:00 a.m. at the main office in Harlem and at one of the Brooklyn branches.

Sections 3(m) and 11(a) of the FDIC Act provides the basic tenants of deposit insurance coverage and the FDIC insurance regulations implement these statutory provisions. For the vast number of depositors (those with total deposits of \$100,000 or less) the claims procedure is simple. The depositor reconciles his or her accounts with the bank records, signs a claim form for that amount and receives a check from FDIC for the full amount of the insured deposit. Depositors with more than \$100,000 in the same ownership capacity receive receivership certificates for the amount of their excess deposits in addition to their \$100,000 insurance checks.

Some depositors with deposits in excess of the \$100,000 limit may be holding deposits on behalf of others or in separate ownership rights and capacities entitling them to receive insurance in an amount of more than \$100,000. To be entitled to insurance of more than \$100,000, such depositors bear the burden of showing that they have complied with the provisions of the FDIC regulations recognizing separate insured interests, and they must establish the nature of the ownership relationship, the identity of the other parties involved and the amount of their interests.

The process of determining insurance coverage for various depositors in Freedom National Bank with deposits over \$100,000 has been on-going since closing. We have identified 31 depositors that may be holding deposits on behalf of others.

These deposits represent a total of approximately \$8.6 million of which some \$3.3 million has been determined to be insured, leaving the status of \$5.3 million yet to be determined. Fourteen of these depositors have filed their claims. The remaining seventeen have neither filed a claim nor requested their \$100,000. Final determinations as to the balance, in some cases, must await the receipt of additional information from the depositors. Determinations as to the insured status of deposits for which claims have not been filed must necessarily await the filing of the claims.

The FDIC has made every effort to minimize the effects of the payoff on the local community. During the early stages of the Freedom National Bank payoff, the two paying sites opened their doors at 7:30 a.m. and remained open as late as necessary to accommodate depositors -- some nights until midnight.

Arrangements were made with nearby banks to accept the deposit insurance checks, open an account and provide the depositor with immediate cash of up to \$200. A local savings bank elected to receive the direct deposit transactions for Freedom's customers. Van service was provided for customers of the Bedford-Stuyvesant Branch to claim their deposits at the Flatbush Branch.

As receiver, the FDIC has an obligation to all creditors of the failed bank. In the case of a National Bank the FDIC as insurer stands on equal footing with the uninsured depositors and

all other general creditors. All claimants must submit evidence of their claim and if proven they receive receivership certificates. As assets are liquidated, all creditors share on a pro rata basis. Normally pro rata dividend payments occur on a regular basis over a several year period. However, in cases where a deposit payout causes a particular hardship to the community, the FDIC has chosen to declare an advance dividend and lend the receivership the funds to effectuate such dividends. On November 29, the Board of Directors of the FDIC approved a 50 percent advance dividend for all creditors of Freedom National, including the uninsured depositors. The result is that all depositors with claims in excess of \$100,000 who have filed their claims, have received \$100,000 plus 50 per cent of the amount over \$100,000. Because of this action, collections from assets will go first to reimbursing the FDIC for its advance and then to subsequent dividends.

As receiver, the FDIC will attempt to dispose of the assets in a manner designed to achieve maximum net recoveries for the receivership, recognizing the costs of collection and litigation.

The securities portfolio will be sold at market and converted to cash as quickly as possible; however, a large number of the securities were held by public units to secure their deposits. We are now meeting with these depositors to discuss release of the securities. Owned real estate, bank premises, and furniture, fixtures and equipment are currently being appraised. The FDIC will sell owned real estate through either sealed bid auctions or

local real estate brokers. Furniture, fixtures and equipment will most likely be sold through auctions. It is the FDIC's policy to market and advertise the sale of these assets.

The loan portfolio is being marketed to all qualified investors including those in the local community. We have actively sought the assistance and participation of the New York City financial community through advertisements and direct mail. We will attempt to sell the entire portfolio on a sealed bid basis, but we may also consider bids for one or more segments. Response to our advertisements has been favorable.

Any of the assets we are unable to sell from these portfolios will be handled in accordance with FDIC policies and procedures. Current borrowers will be allowed to continue to make payments according to their loan contracts. FDIC account officers will contact the borrowers and offer payment alternatives such as allowing a refinance of the obligation with consideration for appropriate discount or closing cost reimbursement. Account officers will attempt to mitigate losses on delinquent assets through work-outs or restructure. If these attempts are unsuccessful, the receivership will attempt to recover debt using legal remedies provided for in the loan agreement.

The site in Harlem will remain open as long as it is deemed necessary for the convenience of the depositors and borrowers. Consistent with its receivership responsibilities, the FDIC stands ready to work with community groups, state and city

agencies to further minimize the disruptive effects of the closing of Freedom National Bank.

Mr. Chairman, this concludes my testimony I would be pleased to answer any questions at this time.