

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:) Chapter 11
)
) Case No. 10-26881
CORUS BANKSHARES, INC.,)
)
) Honorable Pamela S. Hollis
Debtor.)
)
_____) **Hearing Date: July 28, 2011 at 10:30 a.m.**

**NOTICE OF FILING OF OBJECTION TO DISCLOSURE STATEMENT FOR THE
DEBTOR'S AMENDED PLAN OF REORGANIZATION**

PLEASE TAKE NOTICE that on the 27th day of July 2011, the Federal Deposit Insurance Corporation, as Receiver for Corus Bank, N.A., by and through its counsel, DLA Piper LLP (US), caused to be filed with the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division at 219 S. Dearborn Street, Chicago, Illinois 60604, the *Objection of the Federal Deposit Insurance Corporation, as Receiver for Corus Bank, N.A., to Disclosure Statement for the Debtor's Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code*, a copy of which is attached hereto.

Dated: Chicago, Illinois
July 27, 2011

Respectfully submitted,

/s/ Alan P. Solow

Alan P. Solow (IL ARDC # 3125199)
Oksana Koltko (IL ARDC # 6303739)
DLA Piper LLP (US)
203 North LaSalle Street, Suite 1900
Chicago, IL 60601
(312) 368-4000

and

Kathryn R. Norcross, Senior Counsel
Nicholas Katsonis, Counsel
Federal Deposit Insurance Corporation
Legal Division
3501 Fairfax Drive, VS-D-7092
Arlington, Virginia 22226

*Attorneys for the Federal Deposit Insurance
Corporation, as Receiver for Corus Bank, N.A.*

CERTIFICATE OF SERVICE

Oksana Koltko, an attorney, hereby certifies that on July 27, 2011, she caused a true and correct copy of the foregoing *Objection of the Federal Deposit Insurance Corporation, as Receiver for Corus Bank, N.A., to Disclosure Statement for the Debtor's Amended Plan of Reorganization under Chapter 11 of the Bankruptcy Code* to be filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

/s/ Oksana Koltko

Alan P. Solow (ARDC# 3125199)
Oksana Koltko (ARDC# 6303739)
DLA Piper LLP (US)
203 North LaSalle Street
Suite 1900
Chicago, IL 60601
(312) 368-4000

and

Kathryn R. Norcross, Senior Counsel
Nicholas Katsonis, Counsel
Federal Deposit Insurance Corporation
Legal Division
3501 Fairfax Drive, VS-D-7092
Arlington, Virginia 22226

*Attorneys for the Federal Deposit
Insurance Corporation, as Receiver for
Corus Bank, N.A.*

Bartlett Hackett Feinberg PC

Frank F. McGinn Esq.
155 Federal Street, 9th Street
Boston, MA 02110
ffm@bostonbusinesslaw.com

Duane Morris LP

G Catalanello
J. Vincequerra
1540 Broadway
New York, NY 10036
gcatalanello@duanemorris.com

Kaye Scholer LLC

M. Messersmith
J. Ben
1540 Broadway
New York, NY 10036
mmessersmith@kayescholer.com
jben@kayescholer.com

Loeb & Loeb LLP

Blair R. Zanzig
321 North Clark Street
Suite 2300
Chicago, IL 60654
bzanzig@loeb.com

Lowenstein Sandler PC

M. Etkin
W. Jung
S. Quigley
65 Livingston Avenue
Roseland, NJ 07068
metkin@lowenstein.com
squigley@lowenstein.com
wjung@lowenstein.com

Neal Gerber & Eisenberg LLP

Mark Berkoff
Deborah Gutfeld
Nicholas M. Miller
Kevin G. Schneider
Two North LaSalle Street, Suite 1700
Chicago, IL 60602-3801
mberkoff@ngelaw.com
dgutfeld@ngelaw.com
nmiller@ngelaw.com
kschneider@ngelaw.com

Duane Morris LLP

John Robert Weiss
190 South LaSalle, Street 3700
Chicago, IL 60603-3433
jrweiss@duanemorris.com

Kilpatrick Townsend & Stockton LLP

Todd Meyers
Robbin S. Rahman
1100 Peachtree Street NE
Ste. 2800
Atlanta, GA 30309-4530
tmeyers@kilpatricktownsend.com
rrahman@kilpatricktownsend.com

Loeb & Loeb LLP

W. Curchack
V. Rubinstein
345 Park Avenue
New York, NY 10145
wchurchack@loeb.com
vrubinstein@loeb.com

Miller Law LLC

M. Miller
L. Fanning
115 South LaSalle Street, Ste. 2910
Chicago, IL 60603
MMiller@MillerLawLLC.com
LFanning@MillerLawLLC.com

Robbins Geller Rudman & Dowd LLP

J. Rice
R Llorens
S. Holloway
100 Pine Street, Ste. 2600
San Francisco, CA 94111
jrice@rgrdlaw.com
sholloway@rgrdlaw.com
ryanl@rgrdlaw.com

**Werner E. Ament &
Lea A. Ament**

3470 North Lake Shore Drive
Apt. 19B
Chicago, IL 60657-2877
W_Amentbbc@att.net

Securities & Exchange Commission

Sonia Chae
175 West Jackson Blvd.
Suite 900
Chicago, IL 60604
chaes@sec.gov

United States Trustee's Office

Patrick S. Layng
Gretchen Silver
219 South Dearborn Street
Suite 873
Chicago, IL 60604
gretchen.silver@usdoj.gov

Kirkland & Ellis LLP

James H.M. Sprayregen
Jeffrey W. Gettleman
David R. Seligman
Sameer K. Kappor
300 North LaSalle Street
Chicago, IL 60654
james.sprayregen@kirkland.com
david.seligman@kirkland.com
jeffrey.gettleman@kirkland.com
sameer.kappor@kirkland.com

Wilmington Trust Company

Steven Cimalore
1100 North Market Street
Rodney Square North
Wilmington, DE 19890-1615
sscimalore@wilmingtontrust.com

US Bank NA

James H. Byrnes
Corp. Trust Div., 3rd Floor
1 Federal Street
Boston, MA 02110
James.byrnes@usbank.com

Wells Fargo Bank NA

James R. Lewis
45 Broadway, 17th Floor
New York, NY 10006
james.r.lewis@wellsfargo.com

FTI Consulting Inc.

Samuel Star
3 Times Square, 9th Floor
New York, NY 10036
samuel.star@fticonsulting.com

BNY Mellon

J. Chris Matthews
601 Travis, 16th Floor
Houston, TX 77002
j.chris.matthews@bnymellon.com

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	
)	Chapter 11
)	
CORUS BANKSHARES, INC.,)	Case No. 10-26881
)	
Debtor.)	Honorable Pamela S. Hollis
)	

**OBJECTION OF THE FEDERAL DEPOSIT INSURANCE CORPORATION,
AS RECEIVER FOR CORUS BANK, N.A., TO DISCLOSURE STATEMENT
FOR THE DEBTOR’S AMENDED PLAN OF REORGANIZATION
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

The Federal Deposit Insurance Corporation, as Receiver for Corus Bank, N.A. (the “FDIC-R”), by and through its counsel, DLA Piper LLP (US), hereby objects to the proposed *Disclosure Statement for the Debtor’s Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the “Disclosure Statement”) filed on June 29, 2011.¹ In support of its Objection, the FDIC-R respectfully states as follows:

1. The FDIC-R became the Receiver for Corus Bank, N.A., (“Corus Bank”) in accordance with Title 12 of the United States Code on September 11, 2009. This bankruptcy case was filed by Corus Bankshares, Inc. (the “Debtor”) on June 15, 2010.

2. The FDIC-R filed its proof of claim (the “Claim”) in this case on December 13, 2010. This Claim is in an unstated amount because future developments, including the resolution of certain pending litigation concerning the ownership of tax refunds, must be resolved before an actual amount, if any, owed to the FDIC-R, is determined. If the FDIC-R prevails in that litigation, it will have either no claim or a diminished claim in this bankruptcy proceeding, but it

¹ This Objection is to the proposed Disclosure Statement as originally filed (Docket No. 514). Given the objection deadline, the FDIC-R has not had the opportunity to assess the changes proposed in the revised disclosure statement filed during the evening of July 26, 2011.

nevertheless files this Objection to protect its interests should it have a claim to assert when the litigation is fully resolved.

3. A prior plan filed by the Debtor essentially sought to liquidate the Debtor's assets for the benefit of its creditors. That plan was not approved by creditors.

4. Subsequently, the Debtor has entered into discussions with Tricadia, an organization that purportedly owns a substantial amount of certain debentures that are labeled in the Plan as TOPrS. The result is the current proposed Disclosure Statement and attached Plan of Reorganization (the "Plan"). This new Disclosure Statement describes the Plan that purports to reorganize and carry on business into the future in order to invest money, but it also provides an option to creditors to opt out of such future activities and, instead, receive a flow of cash payments which allegedly are the equivalent (or perhaps superior) to what such electing creditors would receive in a liquidation.

5. The FDIC-R's objections to the proposed Disclosure Statement fall into three categories. First, the Plan provides for priority of certain indebtedness as equal to the obligations owed to the FDIC-R when, as a matter of law, such indebtedness is structurally junior. Second, there are certain matters as to which there has been inadequate disclosure. Finally, the proposed Disclosure Statement contains inaccurate disclosures.

6. To be approved, a disclosure statement must contain adequate information, which is defined as "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records,. . . and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan. . . ." 11 U.S.C. § 1125(a). Because disclosure statements are intended by Congress to be

“the primary source of information upon which creditors and shareholders could rely” when making a judgment as to a reorganization plan, a disclosure statement should contain all facts known to the debtor that may impact the success or failure of the plan. *In re Scioto Valley Mortgage Co.*, 88 B.R. 168, 170 (Bankr. S.D. Ohio 1988); *see also In re Egan*, 33 B.R. 672, 675-76 (Bankr. N.D. Ill. 1983). Thus, a disclosure statement must “clearly and succinctly inform the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution.” *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991). Furthermore, if the proposed plan is not confirmable, the supporting disclosure statement cannot be approved. *In re Highlands of Montour Run, LLC*, No. 10-21678, 2011 WL 2258628, at *2 (Bankr. N.D. Ill. June 8, 2011); *In re Amigoni*, 109 B.R. 341, 341-42 (Bankr. N.D. Ill. 1989).

7. The proposed Plan, as described in the proposed Disclosure Statement, violates the absolute priority rule in the following respects and therefore is unconfirmable in the absence of consent from the FDIC-R:

- The proposed Plan pays the fees of Indenture Trustees and certain fees of Tricadia prior to the position of the FDIC-R. These are not administrative claims and are, at best, *pari passu* with those of the FDIC-R. In fact, Tricadia has no basis for a direct claim for its fees against the Debtor.
- TOPrS indentures, of which there are 13, provide that they are junior in priority to the payment of what is generally referred to as senior debt. Senior debt includes money borrowed. Although the FDIC-R believes that it is the owner of the tax refunds, the Debtor, in the adversary proceedings described in the proposed Disclosure Statement, is arguing that it owns the refunds but has an obligation to repay them to the FDIC-R as

successor to Corus Bank. The Debtor's position is that this is the equivalent of a borrowing from Corus Bank, which is to be repaid as an unsecured obligation. Under the Debtor's theory, the FDIC-R's debt is a general unsecured claim that is senior to and must be paid prior to the claims of the holders of the TOPrS.

8. Further, there are multiple instances where the proposed Disclosure Statement fails to provide adequate information for the FDIC-R to make a judgment as to how to vote on the proposed Plan. They include:

- The Disclosure Statement as filed does not reveal who will be members of the management of the Reorganized Debtor. If the FDIC-R has the option of deciding whether to accept a cash option or to accept equity in the Reorganized Debtor, and the business of the Debtor is to invest money under very broad guidelines, the identity of those making the investment decisions would seem to be critical in arriving at such a decision.
- There is no liquidation analysis appended to the Disclosure Statement. FDIC-R believes there is a substantial question as to whether the proposed Plan will, in fact, be superior to any liquidation, especially given the load of expenses that appear to reduce the amount that will be paid to those who select the cash option. Although the Debtor has indicated it will provide a supplement, including the liquidation analysis, the adequacy of the proposed Disclosure Statement and the confirmability of the proposed Plan cannot be evaluated until it is supplied.
- Those who select the cash option, rather than equity in the Reorganized Debtor, are to receive a pro rata share of "Net Free Cash." This term, although defined in the proposed Plan, is discussed not at all in the proposed Disclosure Statement. The definition is

sufficiently vague, so that the FDIC-R cannot tell for certain what is included and what is excluded. Arguably, Net Free Cash will be reduced by fees paid to a wide variety of individuals and entities described in the proposed Plan, including the Creditors' Designee, the Creditors' Designee's attorney, the trustee of the Litigation Trust and his or her professionals, the new board and its officers and, perhaps, the employees of the Reorganized Debtor as well as the Plan Committee and its Professionals. In addition, the definition of Net Free Cash seems to include a deduction for fees paid to the Indenture Trustees for the TOPrS and Tricadia, neither of which is entitled to a priority or administrative claim under the Bankruptcy Code and neither of which is contractually superior to any amounts owed to the FDIC-R. The foregoing is particularly troubling because it appears that the Debtor wishes to argue that the cash option available to creditors under the proposed Plan is the equivalent of a liquidation. The expenses described herein would not be absorbed in this fashion in a liquidation.

- The proposed Plan authorizes the Debtor to issue common stock, in lieu of cash, for the pro rata share of proceeds from the FDIC-R litigation to creditors who elect the cash option. According to Article IV, Section E1, such shares would be issued “pursuant to redemption upon the terms set forth in the Reorganized Debtor’s charter” What the redemption rights will be is neither specified in the proposed Plan nor explained in the Disclosure Statement.
- The Plan should expressly provide that there are no injunctions applicable to either of the Adversary Proceedings with the FDIC-R pending before Judge Hibbler, namely, *Corus Bankshares, Inc. v. Federal Deposit Insurance Corp.*, Case No. 10-05654 (N.D. Ill.) and *Corus Bankshares, Inc. v. Federal Deposit Insurance Corp.*, Case No. 11-00053 (N.D.

Ill.) (collectively, the “Adversary Proceedings”) and that the parties shall have available to them all claims, defenses, and counterclaims after confirmation.

9. Finally, there are multiple instances where the proposed Disclosure Statement is inaccurate. In making this Objection, the FDIC-R does not agree to the accuracy of any particular assertions in the proposed Disclosure Statement upon which it is not commenting. Examples of inaccurate representations include:

- The description of the Adversary Proceedings commencing on page 36 of the proposed Disclosure Statement fails to adequately inform those voting on the Plan of the true nature of the litigation. In the proposed Disclosure Statement, the Debtor describes a tax sharing agreement between the Debtor and its affiliated group. There is in fact no agreement, but merely a board resolution of the Debtor that is not enforceable against the FDIC-R.
- The Debtor, on page 35 of the proposed Disclosure Statement, further asserts that a substantial amount of the refunds that are the subject of litigation with the FDIC-R arises from its assertion of a worthless stock deduction. There is no evidence to support this conclusion, and, in fact, the FDIC-R believes that the Internal Revenue Service will reject claims based on such a purported deduction. To not disclose this is misleading because it creates the impression that the potential FDIC-R’s claim is substantially lower than it will in fact be if the FDIC-R does not prevail in the Adversary Proceedings.
- On page 26 of the proposed Disclosure Statement, the Debtor asserts that it is entitled to a reversionary interest in certain insurance premiums. Again, the FDIC-R contests the legal accuracy of this assertion.

10. The foregoing problems with the Disclosure Statement all require correction. The Debtor should be required to provide essential information not yet disclosed in order to correct inaccurate or misleading statements and make certain that the proposed Plan described in the proposed Disclosure Statement is confirmable.

WHEREFORE, the FDIC-R prays that the Court deny approval of the proposed Disclosure Statement.

Dated: Chicago, Illinois
July 27, 2011

Respectfully submitted,

/s/ Alan P. Solow
Alan P. Solow (IL ARDC # 3125199)
Oksana Koltko (IL ARDC # 6303739)
DLA Piper LLP (US)
203 North LaSalle Street, Suite 1900
Chicago, IL 60601
(312) 368-4000
alan.solow@dlapiper.com
oksana.koltko@dlapiper.com

and

Kathryn R. Norcross, Senior Counsel
Nicholas Katsonis, Counsel
Federal Deposit Insurance Corporation
Legal Division
3501 Fairfax Drive, VS-D-7092
Arlington, Virginia 22226

*Attorneys for the
Federal Deposit Insurance Corporation,
as Receiver for Corus Bank, N.A.*