

**UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION  
DEPARTMENT OF THE TREASURY**

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<b>In the Matter of:</b> )	
)	
<b>CENTURY BANK, A FEDERAL )</b>	<b>No.: AP-09-02</b>
<b>SAVINGS BANK</b> )	
)	
<b>Sarasota, Florida</b> )	<b>Effective Date: March 3, 2009</b>
)	
<b>OTS Docket No. 08071</b> )	
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**NOTICE OF CHARGES AND HEARING FOR  
CEASE AND DESIST ORDER FOR AFFIRMATIVE RELIEF**

**I. PRELIMINARY STATEMENT**

1. The Director of the Office of Thrift Supervision (OTS), pursuant to Section 8(b) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1818(b), issues this Notice of Charges and Hearing for Cease and Desist Order for Affirmative Relief (Notice). By issuing this Notice, OTS commences administrative adjudicatory proceedings against Century Bank, a Federal Savings Bank, Sarasota, Florida (Century or Association), OTS Docket No. 08071.

2. OTS charges that Century has engaged in unsafe or unsound practices including, but not limited to:

- (a) Pursuing an aggressive land loan growth strategy without adequate and appropriate risk management and credit administration and documentation practices, and failure to comply with internal loan rating guidelines established by the Association's Board of Directors (Board).

- (b) Maintaining excessive concentration levels in higher risk loans without adequate identification and monitoring of the risks.
- (c) Failing to timely and accurately identify and classify problem loans and assets and operating with excessive and increasing levels of classified assets.
- (d) Utilizing an inappropriate and nonconforming allowance for loan and lease loss (ALLL) methodology and failing to establish and maintain adequate ALLL relative to Century's risk profile and level of classified assets.
- (e) Failing to maintain appropriate funds management policies, practices and procedures and failing to ensure that the Association maintains adequate liquidity sources.
- (f) Failing to establish and maintain adequate capital levels relative to Century's risk profile, classified asset levels, ALLL, and current market conditions.
- (g) Failing to (i) conduct adequate and appropriate compliance related self-assessments and (ii) maintain an effective compliance management and oversight program.

3. OTS charges that Century has engaged in violations of law or regulation

including, but not limited to, violations of:

- (a) 42 U.S.C. §§ 4001-4129 (National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973), as implemented by Part 572 of the OTS's Rules and Regulations, 12 C.F.R. Part 572 (collectively, FDPA Laws and Regulations); and
- (b) 15 U.S.C. § 1601 et seq. (Truth in Lending Act (TILA)) and 12 C.F.R. Part 226 (Regulation Z).

4. OTS charges that grounds exist to require Century to cease and desist from violations of law and regulation and unsafe or unsound practices, and to take other affirmative corrective action pursuant to 12 U.S.C. § 1818(b).

## **II. JURISDICTION**

5. Century is, and at all relevant times has been, a stock form federal savings association with a charter issued under the Home Owners' Loan Act (the HOLA), 12 U.S.C. §§ 1461 *et seq.* Century maintains its home office in Sarasota, Florida. Among other banking services, Century accepts deposits, and such deposits are insured by the Federal Deposit Insurance Corporation (FDIC). *See* 12 U.S.C. §§ 1811 *et seq.* Century is, and at all relevant times has been, a “savings association” (as defined by 12 U.S.C. §§ 1462(4) and 1813(b)) and an “insured depository institution” (as defined by 12 U.S.C. § 1813(c)(1)).

6. Pursuant to Sections 4 and 5 of the HOLA, 12 U.S.C. §§ 1463 and 1464, Century is and has been subject to examination, supervision, and regulation by OTS.

7. OTS is the “appropriate Federal banking agency” to initiate cease-and-desist proceedings against Century pursuant to 12 U.S.C. § 1818(b). *See* 12 U.S.C. §§ 1813(q)(4) and 1464(d)(1)(A).

## **III. FACTUAL ALLEGATIONS AND CHARGES**

### **A. Background**

7. OTS commenced a comprehensive, risk-focused safety and soundness and compliance examination of Century on May 19, 2008, which was completed on August 27, 2008 (2008 Examination). The 2008 Examination included a review and evaluation of capital adequacy, asset quality, management effectiveness, earnings performance, liquidity, asset/liability management, sensitivity to market risk and compliance with law and regulation.

**B. Century's Unsafe or Unsound Practices.**

**1. Unsafe and Unsound Land Loan Growth Strategy and Practices**

10. During the 2008 Examination, OTS determined that Century engaged in an unsafe and unsound practice by pursuing an aggressive land loan growth from June 30, 2005 to June 30 2008 that was conducted without adequate and appropriate risk management and credit administration functions, policies, practices and procedures.

11. As of June 30, 2008, Century's total dollar amount of land loans equaled \$113.2 million. This amount represents a 336% increase in the total dollar amount of land loans from \$33.7 million at June 30, 2005, or 179% of Tier 1 capital plus the ALLL.

12. At the 2008 Examination, OTS identified numerous credit weaknesses, administration and monitoring deficiencies, and documentation deficiencies within the land loan portfolio.

13. As of the 2008 Examination, Century failed to maintain a centralized credit function to identify and manage credit risk and loan underwriting.

14. As of the 2008 Examination, Century failed to employ a senior credit officer to oversee, monitor and manage the aggressive growth in land loans and corresponding credit risks presented by such loans.

15. As of the 2008 Examination, Century's documentation and analysis in originating land loans was inadequate, inappropriate and an unsafe and unsound practice.

16. As of the 2008 Examination, Century failed to periodically update and document the liquidity and/or cash flow positions of borrowers and guarantors and the status of the underlying land loan projects.

17. As of the 2008 Examination, Century failed to grade its land loans consistent with the internal loan rating policies, procedures and guidelines established by the Board.

18. Accordingly, during the 2008 Examination, OTS determined that Century engaged in unsafe and unsound practices by pursuing an aggressive land loan growth strategy without: (a) a centralized credit function and senior credit officer; (b) identifying and analyzing all repayment sources, including guarantors, (c) evaluating the liquidity and cash flow positions of all identified repayment sources, (d) fully documenting the Association's analysis and the current status of projects in the corresponding loan files, (e) periodic updating of the liquidity and cash flow positions of identified repayment sources and the current status of the underlying projects, and (f) grading and classifying loans consistent with the Association's internal loan rating policies, procedures and guidelines.

**2. Maintaining excessive concentration levels in higher risk loans without adequate identification and monitoring of the risks.**

19. During the 2008 Examination, OTS determined that Century failed to implement and adhere to appropriate policies, procedures, systems and practices to adequately identify, monitor and manage the risks associated with concentrations in certain types of higher risk loan categories.

20. OTS considers an asset concentration to exist when the total dollar amount of such asset exceeds 25% of Tier 1 Capital plus the ALLL. The term "higher risk loan" is used to describe a loan that presents greater overall risk than a conventional 1-4 family mortgage loan.

21. As of the 2008 Examination, Century maintained concentrations in several higher risk loan categories. These categories include home equity line of credit (HELOC) loans, nonresidential loans, non-conventional 1-4 family mortgage loans (also referred to as non-traditional mortgage loans), construction loans and land loans.

22. The charts below depict the concentration levels Century maintained in each of these loan categories as of March 31, 2008 and December 31, 2008.

Loan Category	03/31/2008	
	(\$000s)	% Capital/ALLL
HELOC	126,270	210.5%
Non-residential	100,075	166.8%
Construction	76,635	127.8%
Land	115,690	192.9%
NTM – All interest only	111,896	186.5%
<b>Total Assets of Century</b>	929,123	
<b>Tier 1 Capital + ALLL</b>	59,989	

Loan Category	12/31/2008	
	(\$000s)	% Capital/ALLL
HELOC	118,311	185.0%
Non-residential	98,269	153.6%
Construction	53,657	84.2%
Land	99,686	155.8%
NTM – All interest only	115,798	181.0%
<b>Total Assets</b>	921,391	
<b>Tier 1 Capital + ALLL</b>	63,967	

23. As of the 2008 Examination, Century failed to implement and adhere to appropriate stratification and risk management analyses that adequately identify and monitor sub-concentrations and imbedded layers of risks within each loan category identified in the charts above.

24. As of the 2008 Examination, Century failed to maintain an appropriate frequency of internal asset reviews for income properties, construction, and development loans, particularly loans or group of loans with additional risk characteristics (i.e., located in a deteriorating real estate market, borrower has other problem loans with institution, etc.).

25. During the 2008 Examination, OTS determined that Century engaged in an unsafe and unsound practice by maintaining excessive concentration levels of higher risk loans without (i) implementing and adhering to appropriate policies, procedures, systems and practices, (ii) implementing and adhering to appropriate stratification and risk analyses, and (iii) conducting periodic monitoring and review, including obtaining updated financial and other information, of income property loans, construction loans, and development loans.

**3. Failing to timely and accurately identify and classify assets.**

26. During the 2008 Examination, OTS determined that Century engaged in an unsafe and unsound practice by failing to adequately and appropriately monitor, identify and classify its problem loans and assets and by operating with an excessive and increasing level of classified assets.

27. As of the 2008 Examination, Century failed to appropriately risk rate and classify 14 loan relationships and various troubled debt restructurings totaling \$39 million (including \$1.1 million of unreserved losses).

28. As of June 30, 2008, total classified assets had increased \$86.1 million or 1,610% during the 18 month period beginning December 31, 2006.

29. At June 30, 2008, total classified assets were \$91.8 million or 145% of core capital plus the ALLL. At December 31, 2008, total classified assets equaled \$119.5 million, or 206% of core capital plus the ALLL.

30. At June 30, 2008, loans designated special mention totaled \$31.7 million and represented 50.1% of core capital plus the ALLL. Six months later, at December 31, 2008, loans designated special mention had increased 92% to \$61.1 million, and represented 100.3% of Tier 1 capital plus the ALLL.

31. At June 30, 2008, Century's nonperforming loans (90+ days past due, on non-accrual status, or real estate owned (REO)) totaled \$54.8 million or 59.7% of total classified assets). As of June 30, 2008, nonperforming assets represented 86.8% of core capital plus the ALLL.

32. At December 31, 2008, Century's level of nonperforming assets had increased to approximately \$83.1 million or 70% of Century's total classified assets. As of December 31, 2008, nonperforming assets represented 129.9% of Tier 1 capital plus the ALLL.

33. As of the 2008 Examination, Century incurred \$10.1 million of losses (specific reserves and charge-offs) in its HELOC portfolio during the 12 months ended June 30, 2008. During the 6 month period from July 1, 2008 to December 31, 2008, Century incurred another \$2.4 million of losses in its HELOC portfolio.

34. During the 2008 Examination, OTS determined that Century failure to adequately and appropriately monitor, identify and classify its problem assets had resulted in other unsafe and unsound practices, such as failing to maintain sufficient ALLL and capital relative to the dramatic increase in and excessive levels of classified and criticized assets.

**4. Utilizing an inappropriate and ineffective ALLL methodology and failing to establish and maintain an adequate ALLL level.**

35. During the 2008 Examination, OTS determined that Century's ALLL methodology failed to: (i) conform to the December 13, 2006 Interagency Policy Statement and Guidelines on ALLL (Interagency ALLL Guidelines); (ii) incorporate a qualitative analysis; and (iii) improperly discounted actual 12 month and year to date loss experiences without providing any documentation to support such discounts.

36. As of June 30, 2008, Century's residential portfolio had a 12-month and six-month year-to-date actual loss experience of 2.03% and 1.27%, respectively. However, Century

discounted these loss experiences to 0.75% for purposes of calculating and establishing ALLL. Further, as of June 30, 2008, Century's HELOC portfolio had a 12-month and six-month year to date loss experience of 9.96% and 7.99%, respectively. However, Century discounted these loss experiences to 5.50% for purposes of calculating and establishing ALLL.

37. As of the 2008 Examination, Century used discounted loss experience percentages in determining and establishing an appropriate ALLL level that differed from actual loss experience percentages.

38. As of March 31, 2008, OTS determined that Century's ALLL level was deficient by an amount between \$5 million and \$9 million.

39. During the 2008 Examination, OTS determined that Century has engaged in an unsafe and unsound practice by using an ALLL methodology that does not conform to Interagency ALLL Guidelines, failing to incorporate a qualitative analysis, and improperly discounting actual loss experiences without explanation or support. Century also has engaged in an unsafe and unsound practice by establishing an ALLL level that is inadequate for the Association's risk profile, capital levels, and classified asset levels.

**5. Failing to maintain appropriate funds management policies, practices and procedures and ensure that the Association maintains adequate liquidity sources.**

40. During the 2008 Examination, OTS determined that Century failed to implement and adhere to adequate and appropriate liquidity management policies, practices, and procedures and that Century's liquidity is inadequate given Century's high concentration of shorter term certificates of deposit (CDs) and excessive level of brokered deposits.

41. Liquidity concerns are magnified because of Century's deteriorating financial condition and deteriorating capital levels, which could have a further negative impact on all

available funding sources. As of December 31, 2008, Century had fallen to adequately capitalized status as defined at 12 C.F.R. § 565.4(b)(2) and was immediately restricted from obtaining or renewing any brokered deposits absent an FDIC waiver.

42. As of December 31, 2008, Century has approximately \$581.9 million of CDs. Approximately \$495 million (85%) of these CDs mature within the next twelve months. CDs maturing within the next three months total \$225.1 million, representing 38.7% of total CDs.

43. As of December 31, 2008, Century's brokered CDs totaled \$75.5 million or 15.4% of total CDs. At December 31, 2008, deposit accounts with balances over \$100,000 (CDs and non-maturity accounts, excluding retirement accounts) totaled \$172.4 million.

44. As of December 31, 2008, Century's total advances on its existing lines of credit were \$147 million with \$71 million remaining available.

45. As of December 31, 2008, OTS has determined that the \$71 million availability on Century's existing credit lines is inadequate to meet Century's potential liquidity needs in the event of increased deposit outflows.

46. Accordingly, OTS determined in the 2008 Examination that Century has engaged in an unsafe and unsound practice by failing to maintain adequate and appropriate sources of funds to meet the Association's present and anticipated liquidity needs.

**6. Failing to establish and maintain adequate capital levels.**

47. As of June 30, 2008, total classified assets had increased \$86.1 million or 1,610% during the 18 month period beginning December 31, 2006.

48. At June 30, 2008, total classified assets were \$91.8 million or 145% of core capital plus the ALLL. At December 31, 2008, total classified assets equaled \$119.5 million, or 206% of core capital plus the ALLL.

49. At December 31, 2008, Century's level of nonperforming assets had increased to approximately \$83.1 million or 70% of Century's total classified assets. As of December 31, 2008, nonperforming assets represented 129.9% of Tier 1 capital plus the ALLL.

50. As of March 31, 2008, OTS determined that Century's ALLL level was deficient by an amount between \$5 million and \$9 million.

51. As of June 30, 2008, Century incurred losses of \$12.1 million for the preceding 6 month time period.

52. As of December 31, 2008, Century's concentrations in 5 higher risk loan categories (HELOC loans, nonresidential loans, non-conventional 1-4 family mortgage loans, construction loans and land loans) totaled \$485 million or 745% of core capital plus the ALLL.

53. As of December 31, 2008, Century had total risk based capital of \$63.9 million or 9.91% of total risk weighted assets and core capital of \$44.8 million or 4.85% of adjusted tangible assets.

54. As of December 31, 2008, OTS has determined that Century's current capital levels are inadequate considering the Association's concentrations in higher risk loan categories, increasing level of classified assets, increasing level of nonperforming assets, inadequate ALLL level, and increasing losses.

55. As of December 31, 2008, OTS has determined that Century engaged in an unsafe and unsound practice by failing to take adequate and appropriate steps and measures to improve earnings and address the continued deterioration in the Association's capital levels.

56. OTS has determined that significant additional capital will be required to meet anticipated declines in the Bank's asset quality, additional projected losses, and additional necessary provisions to ALLL.

57. OTS has determined that Century's holding company, CFGI, has inadequate resources to supplement the Association's capital.

**7. Failing to conduct adequate and appropriate compliance related self-assessments and maintain an effective compliance management and oversight program.**

58. As of the 2008 Examination, Century failed to conduct a fair lending pattern analysis and prepare a fair lending risk assessment establishing appropriate risk factors and identifying areas of risk of potential disparate treatment.

59. As of the 2008 Examination, Century failed to conduct adequate and appropriate fair lending self assessments and reviews to identify and manage fair lending risks, and failing to adhere to the Interagency guidelines regarding such assessments and reviews as contained in the FFIEC Fair Lending Examination Procedures.

60. As of the 2008 Examination, OTS determined that Century engaged in systemic violations of Regulation Z concerning its HELOC loans. Regulation Z allows a creditor to change certain terms of a HELOC agreement, including restricting or suspending future advances, under specified circumstances including (i) any period in which the value of the dwelling that secures the HELOC declines significantly below the property's appraised value, (ii) when the creditor reasonably believes that the consumer will be unable to fulfill the repayment obligations under the plan because of a material change in the consumer's financial circumstances, or (iii) the consumer is in default of any material obligation under the agreement.

61. The Official Staff Commentary to Regulation Z defines a "significant decline" to exist when the value of the collateral property declines to an amount where the initial difference

between the credit limit and the available equity (based on the property's appraised value for purposes of the plan) is reduced by 50%.<sup>1</sup>

62. On February 25, 2008, Century mailed a “Notice of Suspension of Future Advances” to 1,328 of its approximately 1,400 HELOC customers. The Notice stated that the Association had suspended any future advances on the line, because “one or more” of the conditions enumerated by Regulation Z had been met. The letter did not specify which condition had been met and did not include any supporting information.

63. During the 2008 Examination, OTS determined that Century’s suspension of advances on a majority of its 1,400 outstanding HELOC loans without making the required determinations and notifications to borrowers is a systemic violation of Regulation Z.

64. During the 2008 Examination, OTS determined that the Association’s compliance management oversight program is ineffective as it failed to prevent a systemic violation of Regulation Z and ensure that appropriate fair lending assessments, reviews and monitoring for disparate treatment were conducted. Century has engaged in an unsafe and unsound practice by failing to maintain an effective compliance oversight program.

### **C. Century’s Violations of Law and Regulation.**

65. The 2008 Examination cited Century for its failure to comply with the following laws or regulations.

#### **a. Violations of TILA and Regulation Z.**

66. On February 25, 2008, Century mailed a “Notice of Suspension of Future Advances” to 1,328 of its 1,400 HELOC customers. The notice stated that the Association had

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<sup>1</sup> For example, on a house that is appraised for \$100,000 and has a first mortgage of \$50,000, the available credit limit would be \$30,000. The difference between the credit limit (\$30,000) and the available equity (\$50,000) is \$20,000, half of which is \$10,000. Therefore, the creditor could prohibit further advances or reduce the credit limit if the value of the property declines in value from \$100,000 to \$90,000.

suspended any future advances on the line, because “one or more” of the conditions provided in 12 C.F.R. § 226.5b(f)(3)(vi)(A), (B) or (C) had been met. The letter did not specify which condition had been met and did not include any supporting information.

67. Section 226.5b(f)(3)(vi)(A), (B) and (C) identify three scenarios under which a lender may change the terms of an outstanding HELOC, including suspending further advances on the HELOC. A lender availing itself of these scenarios must notify the borrower, identify the specific provision or provisions met, and provides documentation to support the lender’s position.

68. Century violated Section 226.5b(f)(3)(vi) by sending the February 25, 2008 letter that did not identify the provision met and being used by Century to alter a customer’s HELOC and failed to include documentation to support Century’s claim. Further, given that the violation involved almost all of the Association’s HELOC customers (94.85%), Century’s violation of Regulation Z is considered a systemic violation and occurred 1,328 times.

**b. Violations of the Flood Laws and Regulations.**

69. 12 C.F.R. § 572.9(c) requires savings associations to notify borrowers within a reasonable time prior to loan closing that the collateral property is located in a special flood hazard area and to retain documentation that the required notification has been made.

70. During the 2008 Examination, OTS determined that Century violated 12 C.F.R. § 572.9(c) by failing to provide such notifications and retain such documentation.

71. 12 C.F.R. § 572.3(a) requires savings associations to obtain and maintain adequate amounts of flood insurance on collateral properties that are located in special flood hazard areas (SFHA).

72. During the 2008 Examination, OTS determined that Century violated 12 C.F.R. § 572.3(a) by failing to obtain and maintain adequate flood insurance on collateral properties located in an SFHA on 5 of 12 loans reviewed, or 41.6% of the loans sampled.

#### **IV. STATUTORY CHARGES UNDER 12 U.S.C. § 1818(b)**

72. As alleged above, Century (i) has engaged in unsafe or unsound practices and (ii) violated statutes and regulations.

73. OTS charges that grounds exist for the issuance to Century of a cease-and-desist order with affirmative corrective action provisions and provisions imposing limitations on activities, pursuant to 12 U.S.C. § 1818(b) (including paragraphs (b)(6) and (b)(7)).

#### **V. REQUESTED RELIEF and NOTICE OF HEARING**

74. Notice is hereby given that a hearing will be held in or near Sarasota, Florida, for the purpose of taking evidence on the charges specified above in order to determine whether an appropriate order to cease and desist should be issued under section 8(b) of the FDIA, 12 U.S.C. § 1818(b), to require Century to cease and desist from the violations and unsafe or unsound practices charged above in this Notice and whether such an order should include:

- (a) Affirmative corrective action provisions under 12 U.S.C. § 1818(b)(6); and
- (b) The imposition of limitations on the activities or functions of Century pursuant to 12 U.S.C. § 1818(b)(7).

#### **VI. PROCEDURES GENERALLY**

75. OTS hereby appoints Administrative Law Judge C. Richard Miserendino (the ALJ) of the Office of Financial Institution Adjudication to preside over the hearing for the cease-and-desist order referred to above (in Part V) of this Notice. Unless otherwise set by the ALJ or by agreement of the parties, the hearing should commence on or before the sixtieth day following

service of this Notice. The exact time of day and any change in location will be announced at a later time by the ALJ. The hearing will be conducted before the ALJ in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 554-557, as made applicable by 12 U.S.C. § 1818(h) and 12 C.F.R. Part 509.

76. Century is directed to file an Answer to this Notice within twenty (20) days of service. The requirements of the Answer and the consequences of failing to file an Answer are set forth at 12 C.F.R. § 509.19.

77. Section 509.10 of the OTS rules, 12 C.F.R. § 509.10, governs the filing of papers in this proceeding. Except as otherwise provided by that rule, any papers required to be filed shall be filed with Office of Financial Institution Adjudication, Attn: Honorable C. Richard Miserendino, ALJ, 3501 North Fairfax Drive, Suite D8116, Arlington, VA 22226.

78. Century also shall serve a copy of each and every of its filings on: Susan L. Chomicz, Deputy Chief Counsel – Enforcement, Office of Thrift Supervision, 1700 G. Street, N.W. Washington, D.C. 20552, and Alan H. Faircloth, Regional Enforcement Counsel – Southeast Region, Office of Thrift Supervision, 1475 Peachtree St., N.E., Atlanta, Georgia 30309.

79. Within twenty (20) days after service of this Notice, Century may file a written request for a private hearing. Section 509.23 of the OTS rules, 12 C.F.R. § 509.23, sets out the requirements for any such request and any replies thereto. The evidentiary hearing of this matter before the presiding Administrative Law Judge will be open to the public, unless the Director of OTS, in his sole discretion, determines that an open hearing will be contrary to the public interest. *See* 12 U.S.C. § 1818(u)(2). The Director (or a duly authorized representative) will rule on any request filed under Section 509.23(a), and copies of any such request should be sent to

the Director of OTS, c/o Ms. Sandra Evans, Secretary for Adjudicatory Proceedings, Office of Thrift Supervision, 1700 G Street, N.W. – Fifth Floor, M2, Washington, DC 20552.

The Office of Thrift Supervision, by its Director (or his duly authorized designee), issues this Notice on this \_\_3rd\_\_ day of March 2009.

**OFFICE OF THRIFT SUPERVISION**

By: \_\_\_\_\_/s/\_\_\_\_\_  
Name: Scott M. Polakoff  
Title: Acting Director