

THE BUSINESS REPORT | BUSINESS STARTS ON 10B

BANKING

Judge ruled out previous deal

• BANKATLANTIC, FROM 10B

Kissel, which represents Wells Fargo as trustee for two trusts that hold securities. “We think that is what the operative documents called for in the first place, and we’re pleased to see that the trust preferred securities are being assumed by BB&T.”

Most other aspects of the first deal remain the same, including the total of \$10 million in non-compete agreement payments and severance for Levan, BankAtlantic Bancorp Vice Chairman Jack Abdo, and Levan’s son, BankAtlantic Chief Executive Jarett Levan, which were revealed in the judge’s order.

Under the original agreement, BankAtlantic Bancorp would have retained about \$623.6 million in assets, including non-performing loans, real estate and reserves, as well as the debt.

Now, BB&T will get repaid for assuming the \$285 million through a new limited liability company, owned by BB&T and BankAtlantic Bancorp.

BankAtlantic Bancorp will put \$411 million of loans and real estate into the LLC, which will have a life of seven years, Levan said. BB&T will hold a 95 percent inter-

est in the LLC; BankAtlantic Bancorp, a 5 percent interest. As the \$411 million is turned into cash, it will be used to pay back the \$285 million. After that, 100 percent of the remainder will go back to BankAtlantic Bancorp.

“This is just really theoretically a loan with collateral, and the collateral is \$411 million, which needs to be utilized to pay back the \$285 million,” Levan said. “Instead of in the form of a loan, it’s in the form of an investment in the LLC.”

BankAtlantic Bancorp also will now retain \$175 million of loans and real estate, that it plans to turn into cash as the market improves.

The bank expects the sale to BB&T to be completed by the end of June, subject to regulatory approval. In the meantime, the bank will continue to operate as normal.

For BB&T, the purchase will elevate it to No. 6 in market share in South Florida.

“BankAtlantic remains a compelling strategic expansion that meets all of BB&T’s acquisition criteria,” said BB&T Chairman and Chief Executive Kelly S. King, in a statement. “Following our November announcement, we visited all 78 branches and met the as-

sociates. We feel even more excited about the quality of the franchise and want to warmly welcome our new clients and associates to BB&T.”

The new deal effectively eliminates Delaware Chancery Court Judge J. Travis Laster’s basis for barring the original sale. His 42-page opinion had said debt holders would be hurt financially if the sale were to go through. The suit had claimed that their documents prohibited BankAtlantic Bancorp from selling “all or substantially all” of its assets unless the acquirer assumes the debt.

“The evidence at trial established that [BankAtlantic] Bancorp is selling substantially all of its assets, and BB&T has not agreed to assume the debt,” the judge wrote. That condition would leave BankAtlantic Bancorp unable to repay its debt holders in full, as required by contract, he said.

BankAtlantic, founded in 1952, experienced rough times during the recession, including financial losses, cease-and-desist orders from federal banking regulators, an SEC investigation and other lawsuits. In the past year, it sold 19 Tampa branches, and in the second quarter of 2011, the bank posted its first profit since

the same period of 2007. The bank has not yet filed its year-end results.

In January, the SEC filed a civil lawsuit against BankAtlantic Bancorp and Levan, claiming that they misled investors in 2007 about growing problems in a critical loan portfolio.

The suit, filed in federal court in Miami, alleges that BankAtlantic Bancorp and Levan made misleading statements in public filings and earnings calls in order to hide the deteriorating state of the bank’s commercial residential real-estate portfolio in 2007. BankAtlantic and Levan then committed accounting fraud when they schemed to minimize BankAtlantic’s losses on their books by improperly recording loans they were trying to sell from that portfolio in late 2007, the SEC said.

Levan had called the SEC’s suit “ridiculous,” saying the same issues were vetted in a prior securities litigation trial that the bank won.

Now, he said he feels “terrific” about the revised deal with BB&T. BankAtlantic shares rose 88 percent on Tuesday, to close at \$3.63.

“The judge’s order was a stumbling block,” Levan said. “But creative minds figured it out.”

FLORIDA BRIEFS

• RESTAURANTS

Benihana to ‘explore strategic alternatives’

Benihana said Tuesday that its board of directors has decided to “explore strategic alternatives,” which could include the sale of the company.

This is the second time in less than two years the Miami-based company has gone down this path. Benihana cautioned there is no assurance that any transaction will occur or — if one does — the terms or timing. Last time the company went through this process, there was no deal announced.

Benihana announced it has engaged Jefferies & Co to serve as its financial advisor in connection with any possible sale.

Richard Stockinger, the company’s chairman, president and chief executive, said the board is “enthused” with the financial and operational improvements Benihana has made over the past year. “While the Board remains focused on the company’s future and the goal of continuing the momentum in our business, it also believes that it is in the best interests of shareholders for the Board to consider strategic alternatives at this time,” he said in a statement.

Benihana does not intend to disclose developments of the strategic review process, unless a transaction is approved or the board deems disclosure “appropriate.”

ELAINE WALKER

• Lower Miami commercial vacancy rates predicted: The National Association of Realtors predicts Miami’s commercial vacancy rates for the first quarter will be lower than the national average in all top four sectors.

Miami’s office, industrial, retail and multifamily vacancies are all expected to be lower than the average of the other 73 markets tracked in the February Commercial Real Estate Outlook. The associations points to Miami’s:

• 7.6 percent industrial vacancy, more than four points below the national average of 11.7 percent for the category;

• 7.3 percent retail vacancy, more than 4.5 points lower than the national rate of 11.9 percent for the category.

Overall the National Association of Realtors predicts lower vacancy rates nationally in 2013, driven by an improving economy.

ELAINE WALKER

JOBS

S. Florida continues its hiring rebound

• REBOUND, FROM 10B

Interestingly, the January report included some particularly good news for Miami-Dade. Using new census data, government analysts dialed back their view of just how bad the Great Recession was for Miami-Dade. Instead of unemployment hitting a record 13.5 percent in June, the federal

Bureau of Labor Statistics says the jobless rate topped out at 12.6 percent in April. That’s actually a bit lower than the 13 percent rates hit during the early 1980s recession.

Employers added 4,200 jobs in Broward in January, following a year that saw between 1,000 and 10,000 jobs created each month. Miami-Dade employers added al-

most 20,000 jobs in January. That would have put the start of 2012 well ahead of any month in 2011 except for the roughly 30,000 jobs that employers added in December, thanks to a revision in government statistics.

Behind the December surge: a stunning 20 percent increase in jobs at department stores and other large retailers. While the posi-

tions weren’t permanent, retail hiring remains higher in Broward and Miami-Dade than a year ago. But public payrolls are under strain: government accounted for a third of all lost jobs in Miami-Dade and about 13 percent of the lost jobs in Broward.

Sean Snaith, an economist at the University of Central Florida, said South Florida appears to be doing better than the rest of Florida. Statewide, the unemployment rate dropped from 9.9 percent to 9.6 percent, the lowest since March 2009. But Florida also lost 38,000 jobs since December, the worst performance in the country.

Snaith dismissed the bad month for Florida, since the Sunshine State has posted healthy job gains throughout much of 2011. He sees the latest numbers confirming a trend of steady but slow improvement.

“Nothing in this report really changed my outlook,” he said. “This is a recovery that is continuing.”

CRUISE SHIPS

New ships announced Tuesday

BY HANNAH SAMPSON
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Cruise companies often use Cruise Shipping Miami as a high-profile venue for announcements.

Here are some items from Tuesday:

• American Cruise Lines said it has ordered a third riverboat to operate in the U.S.; construction has already started.

The vessel will be slightly larger than the 150-passenger Queen of the Mississippi, which is almost finished at a shipyard in Maryland. Itineraries have not yet been announced for the new riverboat.

• MSC Cruises said it had signed a contract to take over a ship, which will be called MSC Preziosa, after the agreement was terminated with the original owner.

The 3,502-passenger ship, first ordered by the Libyan government, is 45 percent completed and will launch in March 2013.

It will be a sister ship to the MSC Divina, which is scheduled for a May 2012 christening.

NATIONAL/INTERNATIONAL

Stocks post biggest gains of the year

Bank stocks turbocharged what was already a big market rally Tuesday, and all three major stock indexes posted their biggest gains of the year.

The Dow rose 218 points, closing at 13,177.68, its highest point since December 2007. The close put the Dow within 1,000 points of its all-time record, 14,164, set Oct. 9, 2007.

The Nasdaq composite index rose 56.22 points Tuesday, or 1.9 percent, to 3,039.88, its first close above 3,000 since months after the bubble in dot-com stocks burst.

The Standard & Poor’s 500 index rose 24.86 points, or 1.8 percent, to 1,395.95. The S&P 500 has already gained 11 percent this year, more than its average for a full calendar year.

ASSOCIATED PRESS

• **Fed sees signs of improving economy:** The Federal Reserve sketched a more upbeat view of the economy Tuesday after a burst of hiring since its last meeting in January. It took no further steps to aid the recovery and repeated its plan to keep short-term interest rates near zero through 2014.

After a one-day policy meeting, the Fed said unemployment should continue to decline gradually as the economy expands moderately. It noted consumer spending and business investment have picked up.

The policymakers cautioned that rising oil and gas prices will raise inflation temporarily. But they said longer-term inflation should remain stable.

ASSOCIATED PRESS

• **Regions announces TARP moves:** Regions Financial, based in Birmingham, Ala., said Tuesday that it will launch a public offering of \$900 million in common stock as part of its plan to repurchase the \$3.5 billion of Series A Preferred Stock issued to the U.S. Treasury Department under the Troubled Asset Relief Program’s (TARP) Capital Purchase Program.

The move is part of Regions’ capital plan, which was submitted to the Federal Reserve in January, the bank said. The Federal Reserve has completed its review of the plan and told Regions that it had no objections.

“We appreciate the U.S. Treasury’s investment in Regions during the financial crisis and are proud that these steps will result in the full return of the taxpayers’ \$3.5 billion preferred investment as well as the previous payment of \$593 million in dividends,” Grayson Hall, Regions’ president and chief executive, said in a statement.

INA PAIVA CORDLE

DIVIDENDS

IRREGULAR	Pe- riod	Stk rate	of record	pay- able	SPECIAL SUN	REGULAR	Q	.12	3-22	3-31
CSR plc z	*	.284	5-11	6-1	Bon-Ton Stores	Q	.05	4-13	5-1	
Capstead Mort	Q	.43	3-30	4-20	Chatham Ldging Tr	Q	.175	3-30	4-27	
GpoArprtCntNtr z	*	1.566	4-13	4-26	Computer Scincs	Q	.20	3-23	4-16	
Philippine LngDis	S	2.603	3-19	4-27	Discover Financil	Q	.10	4-5	4-19	
Vimpelcom Ltd z	S	.35	6-1	6-30	Encore Wire	Q	.02	4-6	4-20	
z-Approx. amount per ADR or ADS.					Equity Resid	Q	.3375	3-23	4-13	
STOCK					Fst Business Fin	Q	.07	4-1	4-15	
Copart Inc	x	*	3-23	3-28	Flexsteel Inds	Q	.10	3-23	4-6	
2 for 1 split.					Frisc’s Restaur	Q	.16	3-27	4-10	
INCREASED					General Mills	Q	.305	4-10	5-1	
BB&T Corp	Q	.20	4-9	5-1	H.J. Heinz	Q	.48	3-23	4-10	
Cliffs Nat Res	Q	.625	4-29	6-1	HCC Insurance	Q	.155	4-2	4-16	
Cohn & Sters Inc	Q	.18	3-29	3-13	Kensley Nash	Q	.25	4-30	5-31	
J.P.Morgan Chase	Q	.30	4-5	4-30	Lawson Pdts	Q	.12	4-3	4-17	
Kennedy-Wilson	Q	.05	3-30	4-6	Regions Financial	Q	.01	3-16	4-2	
U.S. Bancorp	Q	.195	3-30	4-16	SkyWest	Q	.04	3-31	4-6	
Xilinx	Q	.22	5-16	6-6	USB Bancorp	Q	.06	3-23	4-2	
EXTRA					Valmont Inds	Q	.18	3-30	4-16	
Wells Fargo & Co	x	.10	3-26	3-30	Waddell & Reed	Q	.25	4-10	5-1	
x- Additional amount to already declared Q1 dividend of .12 boosts Q rate to .22.					Whole Foods Mkt	Q	.14	4-5	4-17	
					g- Payable in Canadian Funds.					

top 100

MINORITY BUSINESS AWARDS

Thursday March 22
11:30 a.m.-1:30 p.m.
Jungle Island

1111 Parrot Jungle Trail, Miami, *Treetop Ballroom*

Master of Ceremonies
Shannon Hori, Anchor, CBS Miami

Registration
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