

**Donald R. Meyer**

**Commissioner of Financial Institutions of the State of California  
As Liquidator of the California Property and Business of  
P.T. Bank Dagang Nasional Indonesia  
Robb Evans, Special Deputy Commissioner**

**December 16, 2003**

P.T. Bank Dagang Nasional Indonesia, an institution formed under the laws of the Republic of Indonesia ("BDNI Indonesia"), was licensed by the Commissioner of Financial Institutions of the State of California ("the Commissioner") to maintain a "depository agency," as defined by Section 1700(e) of the California Financial Code,<sup>1</sup> in Los Angeles.

In August 1998, the Republic of Indonesia froze the operations of BDNI Indonesia, and on August 21, 1998, the Commissioner took possession of the California property and business of BDNI Indonesia ("BDNI"). Thereafter, on September 3, 1998, the Commissioner ordered that BDNI be liquidated. The Commissioner is the liquidator of BDNI ("the Liquidator"). The Commissioner took those actions pursuant to his exclusive authority under Section 1785.

Section 1785(a) provides that the Commissioner may immediately take possession of the property and business of a bank governed by Division 1, Chapter 13.5, of the Code "for the protection of the interests of the creditors of such bank's business in this state or for the protection of the public interest. . . ."

Pursuant to the terms of the Certificate of Appointment and an Appointment Agreement by and between the Liquidator and me, the undersigned was appointed as a Special Deputy Commissioner of Financial Institutions to, among other things, liquidate and distribute the assets of BDNI. Pursuant to the terms of appointment, I am serving in the capacity of Chief Executive Officer of the Liquidation, with the title of Chief Liquidator ("the Chief Liquidator").

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<sup>1</sup> Unless otherwise noted, all references to statutes are to the California Financial Code (the "Code").

## **Assets and Liabilities as of August 21, 1998 and initial developments:**

Details of specific assets and liabilities were discussed in prior reports. Following is an overview of assets, liabilities and other matters important to the liquidation effort.

### ***Assets***

Total gross loans outstanding as of the date of closure were \$46,695,333. The reserve for loan losses was \$1,664,390. Initial analysis indicated that many of the loans were sub-standard; some were doubtful and that the reserves held were inadequate. Other assets totaled \$2,513,929, which primarily consisted of accrued loan interest receivable, prepaid expenses and letters of credit for commercial customers.

### ***Liabilities***

Within weeks of seizure, a \$30 million note and a \$10 million note, the primary sources of funds for the agency's operations, were tendered to Bank Indonesia for payment and the tender was accepted. This relieved BDNI from any obligation to pay either loan.

### ***Loan Sales & Servicing***

Work on performing loans focused on immediate sale at par value to assist the borrowers continue their business operations with as little interruption as possible. Simultaneously, possibilities for the sale of the entire portfolio to maximize the likelihood of obtaining par value for all loans were explored. It soon became clear that, in view of the substandard nature of a significant percentage of the portfolio, a bulk sale was not feasible without a discount of 30% to 40%.

BDNI had a loan servicing arrangement, which was not appropriate or cost-effective in the context of "Liquidation". Termination of the servicing agreement was negotiated and a full release from the vendor obtained.

### ***Premises, Fixed Assets, Automobiles and Computer System etc.***

The books and records of BDNI were moved from the bank's premises to less expensive facilities in Sun Valley by September 30, 1998.

As required by Section 3115, an inventory of estate assets was completed and filed. Bids and offers were obtained from appraisers and liquidators to dispose of the

furniture and office equipment that remained on the bank's premises. An offer was also received from the building's owner to purchase the furniture and office equipment. The furniture and equipment were sold at or above the appraised value by November 20, 1998 and the lease on the premises was terminated. The bank had several leased vehicles and early termination of the leases was arranged.

### ***Loan Collections and Sales***

Within the first six months, most of the borrowers with trade finance facilities were assisted in efforts to find alternate lenders. During that same period, motions filed with the Court to approve the sale of several loans, at par, to different California banks were approved. By the end of March 1999, most of the loans were collected with interest. The remaining loans, substantially to two major commercial borrowing groups, were poorly collateralized. An unsecured loan-participation purchased for \$5,000,000 had an outstanding balance of \$4,605,992, and was found to be of little value in view of questionable recourse. Of the commercial loans, which were considered substandard or doubtful, BDNI had sold the secured portions of those loans as participations to two California banks. These banks filed claims against the Liquidator for priority payment or preferential treatment. One of the balance sheet items under Other Assets, Accrued Loan Interest Receivable, for \$2,178,912 was considered unrecoverable in view of the claim filed by the borrowers threatening litigation for alleged lender liability.

Each of those problem loans was explained in detail in prior reports.

### **Claims Administration**

Commencing on October 20, 1998, there was published a notice to all potential claimants that any claim against BDNI should be filed on or before February 23, 1999. The total of all claims presented by the February 23, 1999 bar date, together with all booked bank deposits, aggregated to \$191,727,777.87. During April 1999, notifications were sent to all claimants who had filed claims, either conveying approval or rejection or advising that their claims were under further review. On July 7, 1999, a petition for payment of a dividend relating to deposits at BDNI and to certain priority and de minimis claims against the assets of BDNI was approved by the Court. The claims of the depositors identified in the petition were paid as priority claims pursuant to Section 3119.5 (a)(3). All other approved claims were paid in full pursuant to the Court's order. The total of all claims paid pursuant to the July 1999 motion was \$ 37,559.23.

Thereafter, on September 19, 2000, the Court granted my petition for an order approving the payment of a second and final dividend on all claims against BDNI that had been approved, constituting payment in full of such claims as approved. By that petition, with the exception of a single claim, the Liquidator resolved all then remaining claims against BDNI. The total of all claims paid pursuant to the September 2000 motion was \$816,159.09.

### **Resolution of Litigation**

In one matter, an international fashion designer, manufacturer and retailer was obligated to BDNI for a term loan of \$9.6 million, with another \$1.4 million revolving loan participated pro rata to another bank. The collateral was inadequate to support the obligations, and under the terms of an Inter Creditor Agreement with the borrower's Factor, BDNI had subordinated its interest in all business assets and agreed not to seek recovery of any business assets. The borrower and its guarantors filed claims aggregating to about \$11 million, alleging damages caused by the closure of BDNI.

After months of negotiation, the co-lender objected to the proposed workout arrangement. As a result, in addition to seeking Court approval of the compromise of debt and settlement of claims, the Court was asked to order the division of the debt and collateral, according to the respective shares of BDNI and its co-lender, so that the other lender would not impede the settlement and an Order was obtained. The borrower and the guarantors performed as agreed, under the court-approved workout arrangement and paid a total of \$8,156,189.99 over a period of three years, which included an interest payment of \$918,689.99 and \$237,500 in fees and expenses.

In another matter, BDNI and two co-lenders had made a series of loans to a seafood importer, wholesaler and retailer, totaling in excess of \$15,000,000. After BDNI's closure, the borrowers and their principals filed claims with the Liquidator aggregating to about \$163 million alleging damages caused by the closure of BDNI. Except for the small deposit balances of the borrowers, all of the borrowers' claims were rejected. The borrowers filed lawsuits disputing the claim rejections. After several months of negotiations, a settlement was arranged with the borrowers and the two co-lenders. Upon Court approval of the settlement, BDNI was released from all claims by the borrowers, their principals and co-lenders. As part of the settlement, the borrowers obtained new financing, which enabled them to satisfy a portion of their obligations. In addition, BDNI received two new Promissory Notes and a Subordinated Debenture, which will be cancelled if the new notes are paid as agreed. The borrowers are performing on their obligations as per the Court-approved workout.

In a third matter, a seafood importer and wholesaler filed a claim against BDNI after signing a release in favor of BDNI at the time it paid off its indebtedness. BDNI also released the liens it had on the borrower's assets. This claim was filed after the Court expressly approved the transaction shortly following the closure of BDNI. After prevailing on a motion for summary judgment enforcing the terms of the release, BDNI and the borrower reached a settlement on favorable terms to BDNI to avoid the delay and expense of the borrower's appeal.

### **Loan Participation Purchased**

Prior to closure, BDNI was a participant in a loan to another Indonesian bank. This loan was deemed to be uncollectible. BDNI, before closure of the bank, had already classified this asset to be a doubtful asset. The Liquidator decided to charge it off as a bad debt after an internal review and based on counsel's advice of the complexity of pursuing a claim on Bank Niaga who sold the participation. As part of its mandate to liquidate banks and recover assets, IBRA took control of that bank, and, apparently liquidated its assets or transferred them to a newly formed bank. That newly created bank indicated a desire to purchase BDNI's participation interest. After a year of negotiations with the negotiators for the new bank, an agreement was reached by which BDNI sold the participation to that bank for U.S. \$2,349,056.00. On October 31, 2003, the Court approved that settlement. Settlement funds of \$2,349,056.00 were received on November 10, 2003.

### ***BDNI, Bank Indonesia and Indonesian Bank Restructuring Agency***

Within a few weeks of the seizure, efforts commenced to determine the involvement of the Indonesian Bank Restructuring Agency ("IBRA") in the liquidation of BDNI Indonesia. It was discovered that IBRA had stepped in to the shoes of BDNI Indonesia. Additional investigation revealed that IBRA owned or controlled the stock of BDNI Indonesia, and therefore owned BDNI, and was consequently entitled to the surplus assets of BDNI.

By September of 2003, it was clear that the liquidation of BDNI would result in a substantial surplus. In order to be certain that the surplus should be turned over to IBRA as the appropriate beneficiary, an expert in Indonesian law was engaged who confirmed that IBRA was the proper beneficiary of the liquidation surplus. As a result, and in conformance with the Code, based on my recommendation, the Liquidator proposed to the Court turning over the surplus, with the exception of certain reserves for possible tax liabilities and unanticipated expenses, to IBRA.

While taxes have been regularly paid since the Liquidator assumed control of BDNI, the Commissioner remained concerned that taxes may ultimately remain owing. IBRA, therefore, agreed to form a trust in California and to deposit into the trust sufficient reserves to cover any possible demand for back taxes. Pursuant to agreements reached between and among IBRA, the Commissioner/Liquidator and me, the Liquidator petitioned the Court for authority to turn over the surplus to me as Trustee for the Trust, which IBRA agreed to create.

Based on my recommendations as Chief Liquidator, the Court approved the Liquidator's recommendations for transfer of surplus assets to the trust to be formed under the aegis of IBRA. This amounted to \$50,146,325 as of November 18, 2003 and included \$47,804,107 in cash and the rest in other assets including performing loans. By an agreement that was approved by the Court, concurrently with the transfer of the surplus to IBRA, \$5,000,000 was placed in the new trust as a "reserve" for the payment of taxes, and \$1,000,000 maintained in a "general" reserve for additional expenses. IBRA and the Commissioner agreed that the "reserves" would remain in place until the Trustee is assured that all taxes have been paid. The balance of the Surplus assets, \$44,146,325, was turned over to IBRA on November 18, 2003.

### **Discharge of the Liquidator**

The Liquidator has completed performance of his duties as described herein. All that remains to be accomplished is the filing with the Court of an Application for Discharge and Termination of the Liquidation by which the Liquidator will seek to pay all accrued expenses, close his accounts and transfer any remaining sums to the Trust. The Liquidator will simultaneously seek the termination of the Court proceedings, after which the Commissioner will revoke the appointments of the Special Deputy Commissioners.

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Robb Evans  
Special Deputy Commissioner and  
Chief Liquidator