

PD7000114577

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

PICK-UP WAIT MAIL

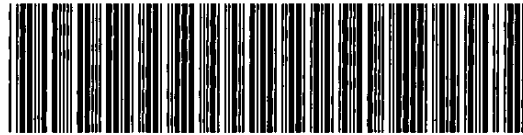
(Business Entity Name)

(Document Number)

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12/17/07--01065--001 **70.00

EFFECTIVE DATE

12/31/07

FILED
07 DEC 28 PM 3:50
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Share Exchange

12/28/07



CAPITOL BANCORP
LIMITED

Capitol Bancorp Center
200 Washington Square North
Lansing, MI 48933
tel: 517.487.6555
fax: 517.374.2576
www.capitolbancorp.com

December 27, 2007

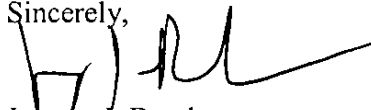
Florida Department of State
Division of Corporations
2661 Executive Center Circle
Tallahassee, FL 32301

Re: P07000114577

To Whom It May Concern:

Enclosed please find re-submitted Articles of Share Exchange. Article II indicates the provisions of the Plan of Share Exchange, but I have also enclosed a copy of the Plan of Share Exchange to be attached. Please contact me should you have any questions.

Sincerely,



Jeremy J. Burchman



FLORIDA DEPARTMENT OF STATE
Division of Corporations

December 19, 2007

J.J. BURCHMAN
CAPITOL BANCORP
200 N. WASHINGTON SQUARE
LANSING, MI 48933

SUBJECT: FLORIDA COMMERCE BANCORP, INC.
Ref. Number: P07000114577

We have received your document for FLORIDA COMMERCE BANCORP, INC. and check(s) totaling \$70.00. However, the enclosed document has not been filed and is being returned to you for the following reason(s):

The articles of merger must contain the provisions of the plan of merger or the plan of merger must be attached.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 245-6905.

Thelma Lewis
Document Specialist Supervisor

Letter Number: 007A00070804

2007 DEC 28 AM 9:00
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

COVER LETTER

TO: Amendment Section
Division of Corporations

SUBJECT: Florida Commerce Bancorp, Inc.
(Name of Surviving Corporation)

The enclosed Articles of Merger and fee are submitted for filing.

Please return all correspondence concerning this matter to following:

J.J. Burchman
(Contact Person)

Capitol Bancorp
(Firm/Company)

200 N. Washington Sq.
(Address)

Lansing, MI 48933
(City/State and Zip Code)

For further information concerning this matter, please call:

J.J. Burchman At (517) 372-8058
(Name of Contact Person) (Area Code & Daytime Telephone Number)

Certified copy (optional) \$8.75 (Please send an additional copy of your document if a certified copy is requested)

STREET ADDRESS:
Amendment Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, Florida 32301

MAILING ADDRESS:
Amendment Section
Division of Corporations
P.O. Box 6327
Tallahassee, Florida 32314

ARTICLES OF SHARE EXCHANGE

Pursuant to Section 607.1105 of the Florida Business Corporations Act (the "Act"), the undersigned corporations execute the following Articles:

Article I

The name of the corporation whose shares will be acquired and its identification number is: Commerce Bank of Southwest Florida; P05000102031. The name of the acquiring corporation and its identification number is: Florida Commerce Bancorp, Inc.; P07000114577.

Article II

Pursuant to the approval by a majority of shareholders at the special shareholder meeting of Commerce Bank of Southwest Florida held December 14, 2007, each shareholder of Commerce Bank of Southwest Florida will receive one (1) share of Florida Commerce Bancorp, Inc. for every share of Commerce Bank of Southwest Florida.

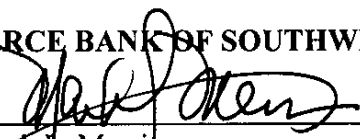
Article III

The share exchange shall be effective on the 31st day of December, 2007.

Article IV

The plan of share exchange has been adopted by the Board of Directors of each domestic constituent corporation in accordance with Section 607.1102 of the Act.

COMMERCE BANK OF SOUTHWEST FLORIDA

By: 
Mark L. Morris
Its: President

Dated: 12/14/07

FLORIDA COMMERCE BANCORP, INC.

By: 
Joseph D. Reid
Its: Chief Executive Officer

Dated: 12/14/07

EFFECTIVE DATE
12/31/07

FILED
07 DEC 28 PM 3:50
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

PLAN OF SHARE EXCHANGE

THIS PLAN OF SHARE EXCHANGE (this "*Plan of Share Exchange*") is entered into and made effective as of November 1, 2007 by and between FLORIDA COMMERCE BANCORP, INC., a Florida corporation ("*FCB*"), and COMMERCE BANK OF SOUTHWEST FLORIDA, a Florida state banking corporation ("*CBSWF*").

BACKGROUND

CBSWF is a Florida state banking corporation with its principal office and place of business located in Fort Myers, Florida. FCB is a newly formed Florida corporation.

FCB and CBSWF have agreed that it is in their mutual best interests and in the best interests of their respective shareholders for FCB and CBSWF to consummate a share exchange whereby each of the outstanding shares of CBSWF's common stock (the "*CBSWF Common Stock*") would be exchanged for shares of FCB's common stock (the "*FCB Common Stock*").

To effectuate the foregoing, FCB and CBSWF desire to adopt this Plan of Share Exchange as a plan of reorganization in accordance with the provisions of Section 368(a)(1)(B) of the Internal Revenue Code of 1986, as amended (the "*Code*").

The Boards of Directors of FCB and CBSWF have adopted this Plan of Share Exchange and determined that it is advisable, desirable and in the best interests of the parties for FCB to acquire CBSWF through a share exchange (the "*Share Exchange*") as provided by Section 607.1102 of the Florida Business Corporation Act, as amended (the "*Act*").

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set forth herein, the parties hereby agree as follows:

TERMS AND CONDITIONS

ARTICLE 1 - SHARE EXCHANGE

1.1 SHARE EXCHANGE. Upon the terms and subject to the conditions set forth in this Plan of Share Exchange, at the Effective Time (as defined in Section 1.2 hereof), FCB will acquire all of the shares of the CBSWF Common Stock issued and outstanding immediately prior to the Effective Time pursuant to the provisions of, and with the effect provided for, in Sections 607.1102, 607.1105 and 607.1106 of the Act and Section 658.30 of the Florida Banking Code.

1.2 EFFECTIVE TIME. The Share Exchange shall be consummated by the filing by the Articles of Share Exchange with the Florida Department of State Division of Corporations, in the form required by and executed in accordance with the relevant provisions of the Act. The date of such issuance and filing or such other time and date as may be specified in the Articles of Share Exchange shall be the "*Effective Time*."

1.3 EFFECT OF THE SHARE EXCHANGE. Upon the terms and subject to the conditions set forth in this Plan of Share Exchange, at the Effective Time, FCB will acquire all of the shares of the CBSWF Common Stock issued and outstanding immediately prior to the Effective Time and the Share Exchange shall have the effects set forth in Section 607.1106(2) of the Act.

1.4 CONVERSION OF SHARES.

(a) Each share of the CBSWF Common Stock issued and outstanding immediately prior to the Effective Time shall, by virtue of the Share Exchange and without any action on the part of the holder thereof, be converted into and represent the right to receive the one share of the FCB Common Stock (the "*Share Exchange Consideration*") to the holders of record thereof, without interest thereon.

(b) Each share of the FCB Common Stock issued and outstanding immediately prior thereto shall be canceled and returned to the status of authorized but unissued shares of the FCB Common Stock.

(c) Immediately after the Effective Time, the stock transfer ledger of CBSWF shall be closed and there shall be no transfers on the stock transfer books of CBSWF of shares of the CBSWF Common Stock that were outstanding immediately prior to such time of filing.

1.5 **CLOSING.** Upon the terms and subject to the conditions hereof, a closing (the "*Closing*") shall take place within 10 business days after the satisfaction or waiver, if permissible, of the conditions set forth in Article 3 hereof, unless otherwise agreed in writing, at the office of CBSWF (or in such other place or manner as the parties may agree), to effect the transactions provided for in this Plan of Share Exchange and all such other and further actions as may be required by law to make the Share Exchange effective.

1.6 CLOSING DELIVERABLES.

(a) At the Closing, CBSWF shall deliver to FCB:

(i) the minute books, stock books and corporate seals of CBSWF;

(ii) executed Articles of Share Exchange;

(iii) a list, dated as of the Closing, showing (A) the name of each bank or institution where CBSWF has accounts or safe deposit boxes, (B) the name(s) in which such accounts or boxes are held and (C) the name of each person authorized to draw thereon or have access thereto;

(iv) all consents as are required to enable FCB to continue to enjoy the benefit of any governmental authorization, lease, license, permit, contract or other agreement or instrument to or of which CBSWF is a party or a beneficiary; and

(v) such other documents, including certificates, as may be required by this Plan of Share Exchange or reasonably requested by FCB.

(b) As soon as practicable after the Effective Time (but in any event no later than the second business day after the Effective Time), FCB shall deliver to each holder of the FCB Common Stock, the Share Exchange Consideration as set forth in Section 1.4.

1.7 **STOCK PLANS.** After the Effective Time, FCB shall assume all obligations of CBSWF under any and all stock plans in effect as of such date. After the Effective Time, FCB shall

adopt and continue in effect all such stock plans upon the same terms and conditions as were in effect immediately prior to the Share Exchange.

1.8 TAX CONSEQUENCES; ACCOUNTING TREATMENT. It is intended that the Share Exchange shall constitute a reorganization within the meaning of Section 368(a) of the Code, and this Plan of Share Exchange shall constitute a "plan of reorganization" for the purposes of Section 368 of the Code.

ARTICLE 2 - MANNER OF EXCHANGING SHARES

2.1 MANNER OF THE EXCHANGE. As promptly as practicable after the Effective Time, FCB will send to each former shareholder of record of CBSWF immediately prior to the Effective Time transmittal materials for use in exchanging such shareholder's certificates representing shares of the CBSWF Common Stock for the Share Exchange Consideration. Any dividends paid on any shares of the FCB Common Stock that such shareholder shall be entitled to receive prior to the delivery to FCB of such shareholder's certificates representing all of such shareholder's shares of the CBSWF Common Stock will be delivered to such shareholder only upon delivery to FCB of the certificates representing all of such shares (or indemnity satisfactory to FCB, in its judgment, if any of such certificates are lost, stolen or destroyed). No interest will be paid on any such dividends to which the holder of such shares shall be entitled to receive upon such delivery.

2.2 NO FRACTIONAL SHARES. No certificates for fractional shares of the FCB Common Stock will be issued.

ARTICLE 3 - CONDITIONS PRECEDENT

3.1 CONDITIONS TO THE PARTIES' OBLIGATIONS. The respective obligation of each party to effect the Share Exchange shall be subject to the satisfaction at or prior to the Effective Time of the following conditions:

(a) this Plan of Share Exchange shall have been approved by CBSWF, as sole shareholder of FCB, in accordance with the applicable provisions of the Act;

(b) this Plan of Share Exchange shall have been approved by the shareholders of CBSWF in accordance with applicable provisions of the Florida Banking Code; and

(c) the Federal Reserve Board and the State of Florida Office of Financial Services shall have approved FCB's application to become a bank holding company and acquire all of the outstanding shares of the CBSWF Common Stock pursuant to the terms and conditions of this Plan of Share Exchange without any conditions or stipulations that, in FCB's judgment, would be unduly burdensome.

ARTICLE 4 - MISCELLANEOUS

4.1 AMENDMENT. At any time before or after approval by the shareholders of CBSWF, this Plan of Share Exchange may be amended in any manner (except that, after the approval of this Plan of Share Exchange by the shareholders of CBSWF, the principle terms may not be amended without the further approval of the shareholders of CBSWF) by CBSWF and

FCB as necessary, desirable, or expedient in order to clarify the intention of the parties hereto or to effect or facilitate the purpose and intent of this Plan of Share Exchange.

4.2 ABANDONMENT OR DEFERRAL. Notwithstanding the approval of this Plan of Share Exchange by the shareholders of CBSWF or by the sole shareholder of FCB, at any time before the Effective Time, (a) this Plan of Share Exchange may be terminated and the Share Exchange may be abandoned by the Board of Directors of either CBSWF or FCB or both for any reason, or (b) the consummation of the Share Exchange may be deferred for a reasonable period of time if, in the opinion of the Boards of Directors of CBSWF and FCB, such action would be in the best interests of such corporations. In the event of termination of this Plan of Share Exchange, this Plan of Share Exchange shall become void and of no effect and there shall be no liability on the part of either CBSWF or FCB or their respective Board of Directors or shareholders with respect thereto.

4.3 COUNTERPARTS. In order to facilitate the filing and recording of this Plan of Share Exchange, this Plan of Share Exchange may be executed in any number of counterparts, each of which shall be an original and all of which taken together shall constitute one original.

IN WITNESS WHEREOF, FCB and CBSWF and have caused this Plan of Share Exchange to be executed by their respective officers thereunto duly authorized as of the date first above written.

FCB:

FLORIDA COMMERCE BANCORP, INC.

By: 

Name: Joseph D. Reid

Title: Chief Executive Officer

CBSWF:

COMMERCE BANK OF SOUTHWEST FLORIDA

By: 

Name: Mark L. Morris

Title: President