



## **ARTICLE I**

### **JURISDICTION AND PARTIES**

(1) The Bank is a national banking association chartered and examined by the OCC pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1, *et seq.*

(2) The Bank is an "insured depository institution" within the meaning of 12 U.S.C. § 1831o.

(3) The OCC is a bureau of the United States Department of the Treasury, and "the appropriate Federal banking agency" regarding the Bank, pursuant to 12 U.S.C. § 1813(q) and for the purposes of 12 U.S.C. § 1831o.

(4) This Directive constitutes a final order under 12 U.S.C. § 1831o and is enforceable under 12 U.S.C. § 1818(i).

## **ARTICLE II**

### **CAPITAL PLAN**

(1) Within five (5) days, the Bank shall provide to the OCC's Director for Special Supervision for approval an acceptable Capital Restoration Plan setting forth the Bank's plan to achieve and thereafter maintain the following capital levels (as defined in 12 C.F.R. Part 3):

(a) Tier 1 capital at least equal to ten percent (10%) of risk-weighted assets;

and

(b) Tier 1 capital at least equal to seven percent (7%) of actual adjusted total assets.

(2) The Capital Restoration Plan shall specify:

(a) the steps the Bank will take to become adequately capitalized;

- (b) the capital levels to be attained each year in which the plan will be in effect;
- (c) how the Bank will comply with the restrictions or requirements set forth in this Directive and 12 U.S.C. § 1831o;
- (d) the establishment of a reserve to cover anticipated losses in the installment loan portfolio; and
- (e) the types and levels of activities in which the Bank will prospectively engage.

### **ARTICLE III**

#### **RESTRICTION ON CAPITAL DISTRIBUTION**

(1) The Bank shall make no capital distributions if, after making the distribution, the Bank would be undercapitalized (as defined in 12 C.F.R. Part 6).

(2) The Bank shall pay no management fee to any person having control of the Bank if, after making the payment, the Bank would be undercapitalized (as defined in 12 C.F.R. Part 6).

### **ARTICLE IV**

#### **LENDING PROHIBITION**

(1) Effective immediately, the Bank shall not extend, endorse, guarantee, or in any manner provide any extension of credit whatsoever, to or for, or purchase or acquire in any manner any extension of credit from, any of the following:

- (a) Jim's Auto Sales, Jordan, Minnesota;
- (b) Gene's Auto, Inc., Jordan, Minnesota;
- (c) Shakopee Used Cars & Trucks, Inc., Shakopee, Minnesota;

- (d) Eugene Miller;
- (e) David Miller;
- (f) Scott Ferrozzo;
- (g) any relative, whether by blood or by marriage, of the above named individual(s), including, but not limited to, spouse, sons, daughters, sons-in-law, daughters-in-law, and parents; and
- (h) any corporation, partnership, joint enterprise, or other enterprise or undertaking whatsoever, controlled by or operated substantially in the interest of any of the above named entities or individuals; where "control" shall be defined as ownership, whether direct or indirect, of ten percent (10%) or more of the stock or other evidence of capital or equity ownership of any such organization; and where "substantial interest" shall be defined as derivation, in any manner whatsoever, of income amounting to more than ten thousand dollars (\$10,000) per annum as a result of the operation of any such organization.

## **ARTICLE V**

### **EXTERNAL AUDIT**

(1) Within thirty (30) days, the Bank shall retain the services of a qualified and independent Certified Public Accountant to render an opinion on the Bank's December 31, 2000 Statement of Condition and its Income Statement for year 2000 and for each subsequent year-end Statement of Condition and Income Statement during the term of this Directive.

(2) A copy of the Bank's proposed "Engagement Letter" with this independent Certified Public Accountant, and any amendments thereto, shall be submitted to the Director of

Special Supervision who shall have the power to veto any candidate proposed by the Bank. However, failure to exercise such veto power shall not constitute an approval or endorsement of the candidate.

(3) The requirement to submit information and the prior veto provisions of this Article are based on the authority of 12 U.S.C. § 1831o(f)(2)(J) and do not require the Comptroller to complete his review and act on any such information or authority within ninety (90) days.

## **ARTICLE VI**

### **DIRECT AND INDIRECT AUTOMOBILE LENDING**

(1) Within twenty (20) days, the Bank shall conduct direct verification of all direct and indirect automobile loans on the Bank's books.

(2) The Bank shall not originate, acquire or purchase any new direct or indirect automobile loans until:

- (a) the Board has developed and adopted revised direct and indirect automobile lending policies and procedures which include, at a minimum:
  - (i) a description of acceptable types of direct and indirect loans;
  - (ii) a provision that current and satisfactory credit information will be obtained on each borrower and reviewed prior to loan origination or purchase;
  - (iii) a maturity schedule related to the anticipated source of repayment, and the useful life of the collateral;

- (iv) a maximum ratio of loan value (including any add-ons such as credit life, credit disability, force placed insurance and service contracts) to asset value;
- (v) collection procedures, to include follow-up efforts that are systematically and progressively stronger;
- (vi) charge-off of all direct and indirect automobile loans which are past due one hundred twenty (120) days or more;
- (vii) a prohibition on the renewal or extension of any loans without the written approval of the senior loan officer, who shall review the borrower's past repayment history and current ability to repay and then document how the extension will enhance the collectibility of the credit;
- (viii) disposition policies and procedures for repossessed automobiles;
- (ix) a limitation on aggregate outstanding direct and indirect automobile loans in relation to other balance sheet accounts or per dealer;
- (x) guidelines and limitations on concentrations of credit;
- (xi) guidelines to insure that the Bank's direct and indirect automobile loans are written in compliance with all applicable laws, rules and regulations; and
- (xii) the OCC's Director of Special Supervision has approved the Bank's written direct and indirect automobile lending policies.

(3) Thereafter the Bank shall implement and adhere to the policies and procedures developed pursuant to this Article. The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the policies developed pursuant to this Article.

## **ARTICLE VII**

### **ALLOWANCE FOR LOAN AND LEASE LOSSES**

(1) The Bank shall immediately increase its Allowance for Loan and Lease Losses ("Allowance") to \$2,768,000.

(2) The Bank shall thereafter maintain an Allowance adequate to reserve for the inherent loss exposure in the Bank's loan portfolio.

## **ARTICLE VIII**

### **NEW PRESIDENT AND NEW SENIOR LOAN OFFICER**

(1) Within thirty (30) days, the Board shall appoint a new, capable president who shall be vested with sufficient executive authority to fulfill the duties and responsibilities of the position and ensure the safe and sound operation of the Bank.

(2) Within thirty (30) days, the Board shall appoint a new, capable senior loan officer who shall be vested with sufficient executive authority to fulfill the duties and responsibilities of the position and ensure the safe and sound operation of the Bank.

(3) Prior to the appointment of any individual to the position of president or to the senior loan officer position, the Board shall submit to the OCC's Director for Special Supervision the following information:

- (a) the information sought in the "Changes in Directors and Senior Executive Officers" booklet of the Comptroller's Corporate Manual, together with a legible fingerprint card for the proposed individual;
- (b) a written statement of the Board's reasons for selecting the proposed officer; and
- (c) a written description of the proposed officer's duties and responsibilities.

(4) The Director of Special Supervision shall have the power of veto over the employment of the proposed president and the proposed senior loan officer. However, the failure to exercise such veto power shall not constitute an approval or endorsement of the proposed officers.

(5) The requirement to submit information and the prior veto provisions of this Article are based on the authority of 12 U.S.C. § 1831o(f)(2)(J) and do not require the Comptroller to complete his review and act on any such information or authority within ninety (90) days.

## **ARTICLE IX**

### **COLLECTION PROCEDURES**

(1) Within thirty (30) days, the Bank shall develop, implement and thereafter adhere to a written program designed to improve and strengthen collection efforts. The program shall include specific plans to:

- (a) reduce delinquent loans; and
- (b) improve recovery of charged-off assets.

(2) Upon completion, a copy of the program shall be forwarded to the OCC's Director of Special Supervision.



(3) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the program developed pursuant to this Article.

## **ARTICLE X**

### **NONACCRUAL LOANS**

(1) The Bank shall immediately reverse or charge off all interest that has been accrued contrary to the requirements contained in the Instructions for Preparation of Consolidated Reports of Condition and Income ("Call Report Instructions") governing nonaccrual loans. Further, the Bank shall immediately reverse or charge off that portion of the remaining accrued interest on such loans that, when combined with principal, is not protected by sound collateral values.

(2) Within sixty (60) days, the Board shall adopt and implement written policies and procedures governing the supervision and control of nonaccrual loans. Such policies and procedures shall:

- (a) be consistent with the accounting requirements contained in the Call Report Instructions;
- (b) address the circumstances under which accrued interest due on a loan may be added to the outstanding principal amount when the loan is renewed or restructured; and
- (c) require the monthly presentation to the Board of all loans meeting any of the nonaccrual criteria.

(3) Upon adoption, a copy of the written policies and procedures shall be forwarded to the Director of Special Supervision and the Board shall thereafter ensure Bank adherence to all policies and procedures developed pursuant to this Article.

## **ARTICLE XI**

### **BROKERED DEPOSITS**

(1) Effective immediately, the Bank shall cease accepting or renewing brokered deposits, as defined by 12 C.F.R. Part 337.6.

## **ARTICLE XII**

### **RESTRICTIONS APPLICABLE TO CRITICALLY UNDERCAPITALIZED BANKS**

(1) The Bank shall be subject immediately to the mandatory restrictions in 12 U.S.C. § 1831o and 12 C.F.R. Parts 6.6 and 325.105 applicable to critically undercapitalized banks.

(2) The Bank shall not, without first obtaining prior written approval from the Federal Deposit Insurance Corporation:

- (a) enter into any material transaction other than in the usual course of business, including any investment, expansion, acquisition, sale of assets, or other similar action with respect to which the Bank is required to provide notice to the appropriate Federal banking agency;
- (b) extend credit for any highly leveraged transaction;
- (c) amend the Bank's charter or bylaws, except to the extent necessary to carry out any other requirement of any law, regulation, or order;
- (d) make any material change in accounting methods;
- (e) engage in any covered transaction (as defined in 12 U.S.C. § 371c(b));
- (f) pay excessive compensation or bonuses; and

- (g) pay interest on new or renewed liabilities at a rate that would increase the Bank's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the Bank's normal market areas.

(3) The Bank shall obtain the prior written approval of the Director of Special Supervision before engaging in the sale of any Bank assets and shall submit to the OCC written documents satisfying the Director of Special Supervision that:

- (a) the sale is made pursuant to a written contract;
- (b) the sale proceeds are of highly liquid assets (e.g., cash, U.S. Treasury notes) paid entirely and directly to the Bank from the purchaser without use of any intermediary;
- (c) the sale is not subject to recourse; and
- (d) the sale is conducted in an arm's length transaction for fair market value.

### **ARTICLE XIII**

#### **RESTRICTIONS ON THE TRANSFER OF FUNDS OR BENEFITS**

(1) The Bank shall obtain prior written approval from the Director of Special Supervision before:

- (a) engaging in any transactions for the transfer of funds, the extension of credit, acceptance or transference of risk and/or the conferring of any other type of benefit, directly or indirectly, involving any Bank affiliate, as defined in 12 U.S.C. § 371c, or any institution-affiliated party, as defined in 12 U.S.C. § 1813(u); and

(b) purchasing, selling, exchanging or otherwise transferring any substandard, doubtful, or loss assets or loans, or any loans or assets past due more than 90 days.

(2) The Bank shall immediately, and until further notice by the Director of Special Supervision, cease and desist from the payment of all fees, commissions or funds of any kind to any party, other than withdrawal of deposits, unless the funds are paid out pursuant to written agreements or contracts that are, as of the effective date of this Directive, documented in the books and records of the Bank and supported by documentation in the books and records of the Bank which demonstrates that the contract or agreement represents an arm's length transaction on terms and conditions fair and reasonable to the Bank. Provided, however, that nothing in this paragraph is intended to or shall be construed to have the effect of authorizing any transaction or activity prohibited elsewhere in this Directive.

#### **ARTICLE XIV**

##### **RESTRICTIONS ON NEW BUSINESS AND ACTIVITIES**

(1) The Bank is directed to immediately, and until further notice by the Director of Special Supervision, cease and desist from introduction of any new products or services without accompanying sound policies and procedures that have been specifically reviewed and approved in advance by the OCC. Such policies and procedures must, at a minimum, provide for appropriate risk management systems, internal control systems, compliance management systems, audit and quality assurance systems, profitability analysis, accounting systems, underwriting controls, collection procedures, control over independent contractors, allowances for loan and lease losses, management information systems, and data processing systems.

(2) The Bank is directed to immediately, and until further notice by the Director of Special Supervision, cease and desist from entering into any new agreements or contracts, written or otherwise, to offer new products or services without first complying with the requirements set forth in the paragraph immediately above.

(3) The Bank shall not acquire any interest in any company or insured depository institution, or establish or acquire any additional branch offices unless the OCC has approved the Bank's Capital Restoration Plan, the Bank is fully implementing the Plan, and the OCC determines that the acquisition or establishment is consistent with the Plan.

## **ARTICLE XV**

### **EFFECTIVE DATE**

(1) This Directive is enforceable under 12 U.S.C. § 1818(i). Each provision of this Directive shall be binding upon the Bank, its directors, officers, employees, agents, successors, assigns, and other persons participating in the affairs of the Bank.

(2) It is expressly and clearly understood that if, at any time, the OCC deems it appropriate in fulfilling the responsibilities placed upon it by the several laws of the United States of America to undertake any action affecting the Bank, nothing in this Directive shall in any way inhibit, estop, bar or otherwise prevent the OCC from so doing.

(3) Any notice or approval required to be made by the OCC or the Director of Special Supervision shall be provided to:

Ronald G. Schneck  
Director, Special Supervision/Fraud  
Office of the Comptroller of the Currency  
250 E Street, SW  
Washington, DC 20219  
(202) 874-4450  
(202) 874-5214

(4) Any time limitations imposed by this Directive shall begin to run from the effective date of this Directive. Such time limitations may be extended by the OCC for good cause upon written application by the Bank's board of directors.

(5) The provisions of this Directive are effective upon issuance of this Directive by the OCC, through the Deputy Comptroller whose hand appears below, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Directive shall have been amended, suspended, waived, or terminated by the OCC.

(6) The Bank may submit a written appeal of this Directive to the OCC. Such an appeal must be received by the OCC within 14 calendar days of the issuance of this Directive. If an appeal is filed in a timely manner, the OCC shall consider the appeal within 60 days of receiving the appeal. During such period of review, this Directive shall remain in effect.

IT IS SO ORDERED, this 20th day of December, 2000.

/s/

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Ann F. Jaedicke  
Deputy Comptroller for Supervision Support