

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY**

EA#2000-29

In the Matter of:)
JAMES A. BARRINGTON, FORMER PRESIDENT,)
FIRST NATIONAL BANK OF NEWTON,)
NEWTON, TEXAS)

STIPULATION AND CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (AComptroller@) intends to initiate cease and desist order proceedings against James A. Barrington (ARespondent@) pursuant to 12 U.S.C. ' 1818(b), for certain actions, omissions, and violations of law of Respondent while serving as president of the First National Bank of Newton, Newton, Texas (ABank@), as described in a letter from the OCC to Respondent dated January 13, 2000;

WHEREAS, in the interest of cooperation and to avoid the costs associated with administrative and judicial proceedings with respect to this matter, the Comptroller and Respondent desire to enter into this Stipulation and Consent Order (AOrder@);

NOW, THEREFORE, the Comptroller, through his duly authorized representative, and Respondent, who neither admits nor denies the grounds for such proceedings but does expressly admit the statements and conclusions in Article I regarding jurisdiction, stipulate and agree to the following:

**ARTICLE I
JURISDICTION**

(1) The Bank is a national banking association, chartered and examined by the Comptroller, pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. ' 1 *et seq.* Accordingly, the Bank is an insured depository institution as that term is defined in 12 U.S.C. ' 1813(c)(2).

(2) Respondent was president of the Bank and an institution-affiliated party of the Bank as that term is defined in 12 U.S.C. ' 1813(u), having served in such capacity within six (6) years from the date hereof, *see* 12 U.S.C. ' 1818(i)(3).

(3) Pursuant to 12 U.S.C. ' 1813(q), the Comptroller is the appropriate Federal banking agency to maintain an enforcement proceeding against institution-affiliated parties. Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain cease and desist order proceedings against him pursuant to 12 U.S.C. ' 1818(b).

ARTICLE II

RESPONDENT'S ACTIONS

- (4) While serving as an institution-affiliated party of an insured depository institution:
- (a) Respondent shall at all times comply with applicable laws and regulations establishing lending limits or limits on extensions of credit to one borrower, including (for national banks) 12 U.S.C. ' 84 and 12 C.F.R. ' 32, and other similar laws and regulations for other types of insured depository institutions (legal lending limits).
 - (b) Respondent shall not cause, participate in, assist, aid or abet any violation of the legal lending limits.
 - (c) Respondent shall consult legal counsel for the insured depository

institution with which he is affiliated if he becomes aware of reasonably reliable information that, or if he has any questions or concerns that, any proposed, pending, or outstanding extension of credit or commitment to extend credit by the insured depository institution with which he is affiliated might not comply with the legal lending limits. Respondent shall comply with the legal advice rendered in response to his request and shall ensure that the substance of the legal advice is recorded in the books and records of the institution.

- (d) Respondent shall not arrange, approve, or counsel the use of nominee borrowers, regardless of any agreement the nominee may have with the recipient of proceeds of the extension of credit to repay the nominee.
- (e) Respondent shall ensure that any extensions of credit or commitments to extend credit that he approves or originates at the insured depository institution with which he is affiliated shall accurately state, to the best of his knowledge, the purpose of the extension of credit. Respondent shall not approve or originate any extension of credit or commitment to extend credit without reasonably reliable documentation supporting the purpose of the extension of credit and Respondent shall ensure that such documentation supporting the purpose is made a part of the institution's loan file or similar books and records.
- (f) Respondent shall not participate in the underwriting, origination or approval of any extension of credit or commitment to extend funds to any

person who serves as an officer or director of, or who owns more than ten percent (10%) of any class of voting shares of, the insured depository institution with which Respondent is affiliated, or any person who has served in such capacity or has owned such stock at any time during the five years prior to the extension of credit or commitment to extend credit.

(g) Respondent shall act at all times within his authority as defined by the policies of the insured depository institution with which he is affiliated. Respondent shall at all times follow the procedures established by such policies, including but not limited to obtaining board approval for transactions when required. If Respondent has any question about the extent of his authority or proper procedures under such policies, he shall raise them promptly with appropriate senior management, the board of directors, or legal counsel of the institution. If Respondent becomes aware of reasonably reliable information that his actions have been in noncompliance with such policies, he shall promptly report such noncompliance to senior management or the board of directors of the institution.

(h) If Respondent becomes aware of reasonably reliable information indicating that the creditworthiness of a borrower or person to whom the insured depository institution has committed to extend credit has materially weakened since the institution's extension of credit or commitment to extend credit, Respondent shall report the information to

the board of directors of the institution at or before its next regularly scheduled meeting, where the institution has extensions of credit and/or commitments to extend credit to the borrower or person totaling more than \$50,000 (fifty thousand dollars).

- (i) If senior management or the board of directors of the insured depository institution with which Respondent is affiliated ever instructs Respondent to act in a way contrary to the institution's policies or beyond Respondent's authority under the institution's policies, Respondent shall ensure that such instructions are made a part of the books and records of the institution and shall make all reasonable attempts to ensure that such instructions are recorded in the minutes of the appropriate meeting of the board of directors of the institution.
- (j) Respondent shall make all reasonable efforts to ensure that the reports of condition filed by the insured depository institution with any banking regulatory agency accurately and completely reflect the financial condition of the institution.

ARTICLE III

NOTICE TO INSURED DEPOSITORY INSTITUTIONS AND THE OCC

- (5) Prior to accepting any position as an institution-affiliated party, Respondent shall provide a copy of this Order to the board of directors of the insured depository institution with which Respondent is to be affiliated.
- (6) Respondent shall provide the OCC and the appropriate Federal banking agency

with written notice within ten (10) days after his acceptance of any position that would cause him to become an institution-affiliated party. This notice shall include a written certification that Respondent has complied with Article III, paragraph (5).

(7) If, on the date of execution of this Order, Respondent serves as an institution-affiliated party, Respondent shall provide a copy of this Order to the board of directors of the insured depository institution with which Respondent is affiliated within ten (10) days of the execution of this Order, and promptly thereafter Respondent shall provide to the OCC written certification that he has complied with this paragraph.

ARTICLE IV

RESPONDENT-S WAIVERS

- (8) By consenting to the execution of this Order, Respondent hereby waives:
- (a) all rights to the issuance of a Notice of Charges, a hearing, and a final agency decision pursuant to 12 U.S.C. ' 1818(b), and 12 C.F.R. Part 19;
 - (b) all rights to seek judicial review of this Order;
 - (c) all rights in any way to contest the validity of this Order;
 - (d) any and all claims for fees, costs or expenses against the Comptroller, or any of his agents or employees, related in any way to this enforcement matter and/or the Order, whether arising under common law or under the terms of any statute, including but not limited to, the Equal Access to Justice Act, 5 U.S.C. ' 504 and 28 U.S.C. ' 2412; and
 - (e) all rights to assert a double jeopardy claim in the event of a criminal

prosecution brought by the Department of Justice for the acts which form the basis for issuance of this Order.

(9) Respondent shall not cause, participate in, or authorize the Bank (or any subsidiary or affiliate thereof) to incur, directly or indirectly, any expense for the payment of any legal (or other professional) expense relative to the negotiation and issuance of this Order. In accordance with 12 C.F.R. ' ' 7.2014 and 359, Respondent shall not, directly or indirectly, obtain or accept any indemnification (or other reimbursement) from the Bank (or any subsidiary or affiliate thereof) with respect to such amounts.

ARTICLE V

RESPONDENT-S ACKNOWLEDGMENTS

(10) Respondent acknowledges that he has read and understands the premises and obligations of this Order and declares that no separate promise or inducement of any kind has been made, by the Comptroller, his agents or employees to cause or induce the Respondent to agree to consent to the issuance of this Order.

(11) Respondent understands and agrees that this Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. ' 1818(b) (as amended).

ARTICLE VI

RELEASE OF CLAIMS

(12) It is hereby agreed that the provisions of this Order constitute a settlement of the actions contemplated by the Comptroller as described in the letter dated January 13, 2000. The Comptroller agrees not to institute proceedings for the specific acts, omissions, or violations

described in the letter unless such acts, omissions, or violations reoccur.

(13) It is further agreed that the provisions of this Order shall not be construed as an adjudication on the merits and, except as set forth above, shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any action affecting the Respondent if, at any time, he deems it appropriate to do so to fulfill the responsibilities placed upon him by the several laws of the United States of America.

(14) Respondent understands and agrees that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Order, and that nothing herein constitutes, nor shall Respondent contend that it constitutes, a waiver of any right, power, or authority of any other representatives of the United States or agencies thereof, including the Department of Justice, to bring other actions deemed appropriate.

IN TESTIMONY WHEREOF, the undersigned have hereunto set their hands.

Leann G. Britton
Senior Deputy Comptroller
for Bank Supervision Operations

Date February 24, 2000

James A. Barrington

Date February 15, 2000