

**#2001-72**

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

IN THE MATTER OF:	)
	)
	)
SINCLAIR NATIONAL BANK	)
GRAVETTE, ARKANSAS	)

**PROMPT CORRECTIVE ACTION DIRECTIVE**

WHEREAS, Sinclair National Bank, Gravette, Arkansas ("Bank") is a critically undercapitalized bank pursuant to 12 U.S.C. § 1831o and 12 C.F.R. Part 6; and

WHEREAS, the Office of the Comptroller of the Currency ("OCC") is authorized pursuant to 12 U.S.C. § 1831o to take certain supervisory actions against critically undercapitalized banks; and

WHEREAS, the OCC finds it necessary in order to carry out the purposes of 12 U.S.C. § 1831o to issue this Prompt Corrective Action Directive ("Directive") pursuant to 12 C.F.R. § 6.21(a)(2); and

WHEREAS, the OCC finds it necessary to take certain discretionary actions against the Bank ordering certain affirmative actions and prohibiting certain activities, because the absence of these actions, or the continuation of the prohibited activities pose excessive risk to the Bank;

The Bank is DIRECTED to take such prompt corrective action as set forth below.

## **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, as defined in 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 RESTORATION PLAN**

- (1) Within ten (10) days, the Bank shall provide to OCC’s Director for Special Supervision/Fraud (“Director”) an acceptable Capital Restoration Plan for achieving and thereafter maintaining the following minimum capital levels (as defined in 12 C.F.R. Part 3):
  - (a) Tier 1 capital at least equal to twelve percent (12%) of risk-weighted assets; and
  - (b) Tier 1 capital at least equal to eight percent (8%) 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 Bank's subprime and prime loan portfolios; and
- (e) The types and levels of activities in which the Bank will prospectively engage.

(3) The Capital Restoration Plan will not be deemed acceptable unless it also satisfactorily addresses the following additional criteria:

- (a) Achievement and maintenance of an Allowance for Loan and Lease Losses that adequately provides for the estimated credit risk in the Bank's subprime and prime loan portfolios;
- (b) Implementation and maintenance of accurate and reliable management information systems;
- (c) Maintenance of adequate liquidity while complying with restrictions against asset growth in 12 U.S.C. § 1831o and against brokered deposits in 12 C.F.R. § 337.6; and
- (d) Ensuring competent management that is capable of correcting unsafe and unsound conditions and practices and ensuring safe and sound operations.

(4) The Bank shall adhere to the provisions of the acceptable Capital Restoration Plan until it receives written notice from the OCC that it no longer needs to.

### **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. § 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. § 6).

### **ARTICLE IV**

#### **REQUIREMENTS, RESTRICTIONS OF SUBPRIME LENDING ACTIVITIES**

(1) Effective immediately, the Bank shall not originate or purchase any subprime loan or pool of loans unless such purchase or origination is consistent with the growth restrictions provided in 12 U.S.C. § 1831o, and the Bank complies with paragraphs 2 through 4, inclusive, of this Article IV.

(2) Prior to the origination or purchase of any subprime loans, the Board shall revise the Bank's written loan policy as it applies to: (i) the origination or purchase of subprime loans, and (ii) the modification of subprime debt presently on the Bank's books, or hereinafter purchased or originated by the Bank. The Board shall make the Bank's loan policy consistent with applicable OCC guidance, including, but not limited to the Loan Portfolio Management section (A-LPM) of the Comptroller's Handbook, the Interagency Guidance on Subprime Lending attached to OCC Bulletin 99-10, the OCC's additional guidance on Subprime Lending in OCC Bulletin 99-15, OCC Bulletin 2000-20 ("Uniform Classification of Credit and Account Management Policy"), OCC Bulletin 2001-6 ("Expanded Guidance for Subprime Lending Programs"), and Banking Circular 255 ("Troubled Loan Workouts and Loans to Borrowers in Troubled Industries"). The Board shall approve the revised loan policy and, upon approval,

submit a copy to the Director. The Bank shall implement the revised loan policy immediately upon, but not before, receipt of written notice from the OCC that it has no supervisory objection to the policy or its implementation.

(3) Prior to the origination or purchase of any subprime loans, the Board shall approve and implement written loan policies including: (i) for each type of credit product purchased or originated by the Bank, a policy limiting the dollar amount of such loans that include or reflect underwriting policy exceptions to no more than ten percent (10%) of the total dollar amount of such loans purchased or originated by the Bank, and (ii) a written policy to require that Bank management properly approves and documents all underwriting policy exceptions.

(4) Within thirty (30) days, the Board shall ensure that the Bank has timely, consistent and accurate management information systems ("MIS") in place so that the Board can effectively monitor the Bank's progress in meeting its obligations under this Directive. Specifically, within thirty (30) days, the Bank shall develop and implement:

- (a) MIS to track the performance of its subprime loans by credit grade or segment, by vintage, product, source and by exceptions. The Bank shall generate monthly reports from this and other information to analyze asset quality in terms of trends in volumes, delinquencies (including roll rates), prepayments, charge-offs, collections, and other appropriate areas;
- (b) MIS to monitor and track underwriting policy exceptions by type, dollar amount, credit grade or segment, vintage, product, source and performance; and

(c) MIS to monitor liquidity and adherence to the Bank's Liquidity Plan. At a minimum, the Bank shall establish MIS to monitor the Bank's reliance and use of each source of funding and compliance with limits established for the volumes, volatility, and concentrations of funding sources.

(5) The Board shall thereafter review, at least monthly, reports summarizing the MIS set for above in subparagraphs (a) through (c), and the Bank shall forward copies of these reports to the Director.

## **ARTICLE V**

### **PROHIBITION AGAINST THE DESTRUCTION, ALTERATION, OR REMOVAL OF DOCUMENTS, BOOKS AND RECORDS**

(1) The Bank is directed to immediately cease and desist from destroying, altering or removing from the Bank's premises any Bank documents, books or records whatsoever until further written notice by the Director. For purposes of this paragraph, "documents, books and records" shall have the broadest possible meaning reasonably imaginable and shall include, without limitation, paper and electronic records of all kinds, reports, notes, calendars, phone logs, financial instruments and tapes.

## **ARTICLE VI**

### **RESTRICTIONS APPLICABLE TO CRITICALLY UNDERCAPITALIZED BANK**

(1) The Bank shall be subject immediately to the mandatory restrictions in 12 U.S.C. § 1831o, 12 C.F.R. Parts 6.6, 325.105 and 337.6 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 depository institution 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 not engage in the sale of any Bank assets or pool of assets exceeding a fair market value of \$250,000 (two hundred and fifty thousand dollars) without obtaining a written determination of no supervisory objection from the OCC. When seeking such a determination, the Bank shall provide documents satisfying the Director that:

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

## ARTICLE VII

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

(1) The Bank shall obtain a prior written determination from the Director that the OCC has no supervisory objection 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 affiliates, as defined in 12 U.S.C. § 371c, or (except for salaries and benefits paid pursuant to written contracts, permissible by law and this Directive) current or former Bank directors, shareholders, senior executive officers, or their respective family members;
- (b) 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 of the following entities or individuals:
  - (i) Stevens Financial Group, Inc., its subsidiaries or affiliates, and current or former directors, shareholders, senior executive officers or employees, or their respective family members; and
  - (ii) Stevens Management Services, Inc., including current or former directors, shareholders, senior executive officers or employees, or their respective family members; or



(c) Purchasing, selling, exchanging or otherwise transferring to any third party any substandard, doubtful, or loss assets or loans, or any loans or assets past due more than ninety (90) days.

(2) The Bank is directed to immediately, and until further notice by the Director, 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 which demonstrate that the contracts or agreements represent arm's length transactions 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.

(3) The Bank shall within thirty (30) days review all existing contracts and agreements, written or otherwise, with third parties to determine whether each contract or agreement represents an arm's length transaction whose terms and conditions are fair and reasonable to the Bank. The Bank shall document its conclusions from each review and shall complete reviews of all transactions and the documentation thereof within thirty (30) days of the effective date of this Directive. The Bank shall rescind, within forty (40) days of the effective date of this Directive, all contracts or agreements not reached on an arm's length basis and shall similarly rescind all contracts or agreements whose terms and conditions are not demonstrably fair and reasonable to the Bank.

## **ARTICLE VIII**

### **SERVICING ACTIVITIES**

(1) Effective ten (10) days after the effective date of this Directive, the Bank shall not permit any other company, entity, or person to provide any servicing activities to the Bank, except pursuant to an acceptable written contract, approved in advance by the Board. Not later than ten (10) days after the effective date of this Directive, the Bank shall secure the return of all of its books and records from any company, entity or person which provides or has provided services to the Bank in any manner inconsistent with the provisions of this Article.

- (2) To be acceptable, a contract regarding servicing activities must, at a minimum:
- (a) Be in writing and made a part of the Bank's books and records; identify the company, entity or person providing the services ("servicer"); and specify all services to be provided;
  - (b) Clearly define the rights, obligations, and responsibilities of both parties to the contract;
  - (c) Specify the beginning and ending dates of the contract, including any renewal options;
  - (d) Specify and itemize the price to be paid by the Bank for the services, and require a reasonable price to be paid by the Bank;
  - (e) Set reasonable standards for quality of services provided by the servicer;
  - (f) Provide the Bank effective remedies in the event of a default, failure of the servicer to meet the quality standards, or failure of the servicer to comply with any other material provision of the contract;
  - (g) Require the servicer to provide the Bank with annual financial statements;

- (h) Require the servicer to comply with all applicable laws and regulations, including, but not limited to laws and regulations governing collection methods and the examination authority of the OCC;
- (i) Require the servicer to carry appropriate casualty insurance;
- (j) Require the servicer to maintain appropriate, reliable, and accurate books and records and management information systems; and
- (k) Require the servicer to grant the Bank, Bank auditors, and the OCC immediate access to the servicer's books and records.

(3) The Bank shall not execute any contract regarding servicing activities unless the contract has been approved in advance by the Board. The Board shall not approve any such contract unless the Board has:

- (a) Determined that execution of the contract is in the best interests of the Bank;
- (b) Determined that the contract complies with the requirements of paragraph (2) above; and
- (c) Reviewed appropriate analysis and documentation supporting these determinations prior to approval of the contract.

(4) The Board shall immediately forward any proposed contract it has approved, along with copies of the determinations, analysis, and documentation required in paragraph (3) to the Director. The Bank may execute the contract immediately upon, but not before, receipt of written notice from the OCC that it has no supervisory objection to the contract or its implementation.

## **ARTICLE IX**

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

(1) Effective immediately, the Bank is directed to cease and desist from the introduction of any new products or services without accompanying sound policies and procedures that have been specifically reviewed by the OCC, and the OCC has issued a written determination of no supervisory objection. 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, controls over independent contractors, allowances for loan and lease losses, management information systems, and data processing systems.

(2) Effective immediately, 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 issued a written determination of no supervisory objection to the 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 X**

### **BOARD SUPERVISION AND MANAGEMENT**

(1) Pursuant to 12 U.S.C. § 481, the Board shall ensure that the Bank, its officers, agents, employees and affiliates immediately comply with all existing and future requests for information and documentation made by the OCC.

(2) The Board shall meet at least monthly and review all information necessary to appropriately carry out its duties. The Board shall ensure that minutes of its meetings are

prepared and reviewed in a timely manner, and maintained in the Bank's books and records, which minutes will detail the matters presented to the Board, the discussion of those matters, and the decisions that the Board reached. The minutes shall reflect how each of the Board members in attendance at a specific meeting voted regarding the matters presented to them for decision. In this regard, "prepared and reviewed in a timely manner" means minutes of Board meetings shall be prepared and reviewed no later than thirty (30) days after the date of the meeting for which such minutes were prepared.

## **ARTICLE XI**

### **DEFINITIONS**

(1) For purposes of this Directive, the terms described below shall have the following meaning:

- (a) "Affiliate" shall have the meaning ascribed to it pursuant to 12 U.S.C. § 371c;
- (b) "Concentration of credit" is as defined in Section 216 of the Comptroller's Handbook for National Bank Examiners;
- (c) "Control" shall have the meaning ascribed to it pursuant to 12 U.S.C. § 371c;
- (d) "Servicing activities" shall mean all services described by the Bank Service Corporation Act, 12 U.S.C. §§ 1861 to 1867, including but not limited to loan receiving and posting customer loan payments, preparation of reports, and collection activities;
- (e) "Family member" shall be defined to include members of an individual's immediate family, such as spouse, child or step-child, sibling, brother or

sister-in-law, and parent or parent-in-law, and shall additionally include a former spouse; and

- (f) “Subprime” lending shall mean, consistent with OCC guidance, lending to borrowers who exhibit credit characteristics indicating a higher risk of default than traditional bank lending customers.

## **ARTICLE XII**

### **CLOSING PROVISION**

(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. Moreover, nothing herein constitutes a waiver of any right, power or authority of any other representative of the United States, or agencies thereof, to bring other actions deemed appropriate.

(3) Neither any review by the Director of any material required to be submitted nor any decision not to raise supervisory objections constitute approval by the Director and the Board has ultimate responsibility for proper and sound management of the Bank.

(4) In each instance in this Directive in which the Board is required to ensure adherence to, and undertake to perform certain obligations of the Bank, it is intended to mean that the Board will: (i) authorize and adopt such actions on behalf of the Bank as may be necessary for the Bank to perform its obligations and undertakings under the terms of this

Directive; (ii) require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Directive; (iii) follow-up on any non-compliance with such actions in a timely and appropriate manner; and (iv) require corrective action be taken in a timely manner of any non-compliance with such actions.

(5) Any notice or non-objection required to be made to or by the OCC or the Director shall be provided to:

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

(6) 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.

(7) The provisions of this Directive are effective upon issuance of this Directive by the OCC, through the Senior 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.

(8) If the Bank contends that compliance with any paragraph(s) of this Directive not required by law or regulation would cause undue hardship to the Bank, it may make application to the undersigned Senior Deputy Comptroller for relief from such paragraph(s), supported by relevant documentation and a sworn affidavit setting forth such other facts thought to be pertinent. Such application shall be delivered to the undersigned, Office of the Comptroller of the Currency, Washington, DC 20219, with a copy to Enforcement Counsel. Upon receipt of

such an application, Enforcement Counsel shall have up to five (5) days to object or otherwise respond to the Bank's application, prior to any decision on such application by the undersigned.

(9) 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 unless the OCC, in its sole discretion, stays the effectiveness of the Directive.

IT IS SO ORDERED, this 8<sup>th</sup> day of August, 2001.

/s/  
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Leann G. Britton  
Senior Deputy Comptroller  
for Bank Supervision Operations