

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

IN THE MATTER OF:)
HEARTLAND BANK, N.A.)
JEWELL, KANSAS)

STIPULATION AND CONSENT TO THE ISSUANCE
OF A CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (Comptroller) intends to initiate cease and desist proceedings against Heartland Bank, N.A., Jewell, Kansas (Bank), pursuant to 12 U.S.C. § 1818(b); and

WHEREAS, the Bank, in the interest of compliance and cooperation, consents to the issuance of a Consent Order, dated May 18, 1998 (Order);

NOW THEREFORE, in consideration of the above premises, the Comptroller, through her authorized representative, and the Bank, through its duly elected and acting Board of Directors (Board), hereby stipulate and agree to the following:

ARTICLE I

(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.

(2) The Comptroller is "the appropriate Federal banking agency" regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(b).

(3) The Bank is an "insured depository institution" within the meaning of 12 U.S.C.

§ 1818(b)(1).

ARTICLE II

(1) The Bank, without admitting or denying any wrongdoing, hereby consents and agrees to the issuance of the Order by the Comptroller. The Bank further agrees that said Order shall be deemed an "order issued with the consent of the depository institution" as defined in 12 U.S.C. § 1818(h)(2), and consents and agrees that said Order shall become effective upon its execution by the Board and shall be fully enforceable by the Comptroller under the provisions of 12 U.S.C. § 1818(i).

ARTICLE III

- (1) The Bank, by signing this Stipulation and Consent, hereby waives:
- (a) the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(b);
 - (b) any and all procedural rights available in connection with the issuance of the Order;
 - (c) all rights to seek any type of administrative or judicial review of the Order; and
 - (d) any and all rights to challenge or contest the validity of the Order.

ARTICLE IV

(1) The Bank agrees that the provisions of this Stipulation and Consent shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting

the Bank if, at any time, she deems it appropriate to do so to fulfill the responsibilities placed upon her by the several laws of the United States of America.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller as her representative, has hereunto set her hand on behalf of the Comptroller.

/s/
Jerilyn Gilland
Deputy Comptroller
Midwestern District

05-18-98
Date

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of the Bank, have hereunto set their hands on behalf of the Bank.

/s/
Michael V. Berlau

05-18-98
Date

Dale C. Berlau

Date

/s/
C.W. Clevenger

05-18-98
Date

/s/
James E. Thiessen

05-18-98
Date

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

IN THE MATTER OF:)
HEARTLAND BANK, N.A.)
JEWELL, KANSAS)

CONSENT ORDER

The Comptroller of the Currency of the United States of America (Comptroller) has determined through the examination process that Heartland Bank, N.A., Jewell, Kansas (Bank) has violated a law, rule, or regulation; violated conditions imposed in writing by the Comptroller; and that certain practices of the Bank are unsafe or unsound within the meaning of the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818(b).

The Bank, by and through its duly elected and acting Board of Directors (Board), has executed a "Stipulation and Consent to the Issuance of a Consent Order," dated May 18, 1998, which is accepted by the Comptroller. By this Stipulation and Consent, which is incorporated herein by reference as if fully set forth herein, the Bank has consented to the issuance of this Consent Order (Order) by the Comptroller.

Pursuant to the authority vested in her by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818(b), the Comptroller hereby orders that:

ARTICLE I

(1) Effective immediately, the Board shall prohibit Executive Vice President Gerald W. Clevenger from exercising any supervisory, administrative, or managerial role in the

Bank's lending functions, including, but not limited to, decisions affecting loans generated at the Bank's loan production offices. At a minimum, such prohibition shall encompass engaging in the following on behalf of the Bank: approving extensions of credit or approving requests to renew, refinance, or restructure preexisting loans; making recommendations to extend credit and/or recommendations regarding requests to renew, refinance, or restructure preexisting loans; and/or making decisions or recommendations regarding the sale or participation of loans.

ARTICLE II

(1) The Bank may enter into a Business Transaction with an Insider only if the Business Transaction is:

- (a) made on terms and under circumstances that are substantially the same, or at least as favorable to the Bank, as those prevailing at the time for comparable transactions with or involving other companies or individuals not covered by this Order or, in the absence of comparable transactions, on reasonable commercial terms entered into in good faith and reflecting comparable fees payable to similarly situated service providers;
- (b) preceded by a certification in the Board's minutes that the Business Transaction is in the best interests of the Bank; and
- (c) approved in advance by a majority of the entire Board, not merely a quorum thereof, with any interested Insider abstaining from voting and participating directly or indirectly in the deliberations regarding the

approval.

(2) The Board shall maintain adequate, centralized records of all Business Transactions subject to this Order in a form and manner that will enable ready, independent review. These records shall identify Insiders involved in each Business Transaction and shall also: (a) specify the names of the parties to the transaction other than the Bank; (b) state the relationship of the parties to the Bank; (c) provide a brief description of the transaction and its terms; and (d) provide a notation of the approval of the transaction by the Board including the vote of each director and the bases for any dissenting or abstaining votes.

ARTICLE III

(1) Subject to Paragraph 2 of this Article, the Bank shall cease all operations at its loan production office located in Leawood, Kansas, and at any other loan production office currently in operation. Cessation of operations includes, but is not limited to, accepting applications for credit, funding loans, participating in loans, and/or committing the Bank to lend funds in any form or capacity.

(2) The Bank may process, close, participate out, and/or sell in the secondary market any loans originated in its loan production offices if the Bank had a written commitment to lend as of May 18, 1998.

(3) Notwithstanding Paragraph 2 of this Article, loans shall not be approved or closed at the Bank's loan production offices, and loan proceeds shall not be disbursed from those locations.

ARTICLE IV

(1) The Bank shall not open or operate a new loan production office without the prior written consent of the Comptroller.

ARTICLE V

(1) All loans in excess of seventy five percent (75%) of the Bank s legal lending limit, as well as all requests for renewals, refinances, or restructuring of preexisting mortgage loans in any amount, must be approved by a majority vote of the entire Board.

(2) The Bank may not commit to lend funds in excess of its legal lending limit unless, prior to the time it commits to lend the funds, the Bank has a preexisting commitment from a party that will purchase the loan at closing, or it has a preexisting commitment from a party that will, upon closing, participate in at least that portion of the loan that is in excess of the Bank s legal lending limit. Such commitments shall include a written agreement to provide the Bank with funding of the purchase within twenty four (24) hours of closing.

ARTICLE VI

(1) All loan commissions and broker fees, including those paid to Bank employees, officers, and directors and third parties, shall be approved by a majority of the entire Board prior to payment. Such payments are not permitted unless prior to Board approval, the Board documents in its minutes the individual or entity to whom the commission and/or fee is to be paid, the amount of the commission or fee, the name of the borrower, and the terms under which credit has been extended, and the Board certifies that the commission comports with the

terms of the commission or broker agreement.

ARTICLE VII

(1) The Board shall ensure that all loan proceeds are disbursed in accordance with written terms, agreed to by the Bank and the borrower. The Board shall ensure that any deviations from the written disbursement terms referred to in this Article are effectuated only by a written amendment of the agreement by the borrower and the Bank.

ARTICLE VIII

(1) The Board shall authorize only the President and Cashier of the Bank to sign official bank checks, including, but not limited to, loan disbursement checks, escrow checks, trust account checks, commission and/or broker fee checks, and petty cash checks.

ARTICLE IX

(1) Within ten (10) days, the Board shall engage an independent, certified public accountant who shall, within thirty (30) days of engagement, determine the nature and extent of the Bank's accounting problems and provide a report to the Board reflecting those findings. Upon receipt of the accountant's report, the Bank shall immediately make necessary adjusting entries to the Bank's general ledger and thereafter ensure that the Bank's books are accurate and in accordance with generally accepted accounting principles.

ARTICLE X

(1) Within ten (10) days of its receipt of a monthly closing statement on Bank controlled accounts, the Board shall ensure that the Bank's internal accounts are reconciled and that all reconciling items are cleared to the proper general ledger account.

ARTICLE XI

(1) The Bank shall not disburse loan funds except from its main office or from a legally authorized branch of the Bank.

ARTICLE XII

(1) By June 5, 1998, and as provided for in the Bank's bylaws, the Board shall comply with 12 U.S.C. § 71a by adding a person to the Bank's Board of Directors.

ARTICLE XIII

- (1) For purposes of this Order, the following definitions shall apply:
- (a) "Insider" shall include any director, executive officer or principal shareholder (as those terms are defined at 12 C.F.R. § 215.2) of the Bank and any Related Interest of such person or entity and also shall include the spouse, children, parents or siblings of any director, officer or principal shareholder of the Bank and the Related Interests of such persons. The term also includes any person who resides with an insider, who acts on behalf of any insider, or person or entity whom the insider

has the power act on their behalf.

- (b) "Related Interest" shall have the same meaning as set forth in 12 C.F.R. § 215.2 and shall also include the term "bank".
- (c) "Business Transaction" means any transaction (including any renewal of or changes to an existing transaction) or any commitment to enter into a transaction with the Bank other than as a depositor, employee, or director, excluding Bank income tax payments and dividends lawfully paid to shareholders and the Bank's payment of salaries and benefits.

ARTICLE XIV

(1) In executing this Consent Order and the Stipulation and Consent to the Issuance of a Consent Order, the Board expressly recognizes that it has the ultimate responsibility for proper and sound management of the Bank.

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

(3) Any time limitations imposed by this Order shall begin to run from the effective date of this Order. Such time limitations may be extended by the Senior Deputy Comptroller for Bank Supervision Operations for good cause upon written application by the Board.

(4) The provisions of this Order are effective immediately upon execution by the

