



Office of Thrift Supervision  
 Department of Treasury  
 et. al. Washington, D.C. 20522-628

Timothy Ryan  
 Director

# RESCINDED

Any attachments to this document are rescinded only as they relate to national banks and federal savings associations.

November 18, 1992

TO THE CHIEF EXECUTIVE OFFICER

The Office of Thrift Supervision has become concerned that misperceptions of enforcement actions by federal regulators may be discouraging savings associations from making sound loans and may be deterring qualified individuals from serving on the boards of these institutions.

In order to clarify our views on what we expect of directors and officers of savings institutions, we are today releasing the enclosed Statement Concerning the Responsibilities of Directors and Officers of Insured Depository Institutions. This Statement explains the duties of loyalty and care that directors and officers owe to their institutions.

We hope that this Statement may remove uncertainty that may exist in connection with our enforcement approach to the conduct of directors and officers. I would appreciate it if you would provide a copy of this document to all of your directors and officers.

Sincerely,

Timothy Ryan



Office of Thrift Supervision  
Department of the Treasury

1700 G Street, N.W., Washington, D.C. 20552 • (202) 906-6000

**Statement Concerning the Responsibilities of  
Directors and Officers of  
Insured Depository Institutions**

Representatives of the banking and thrift industries and others have expressed concerns regarding the litigation risks to those who serve as directors or officers of federally insured depository institutions.

This statement addresses this important issue from the standpoint of the Office of Thrift Supervision.

Duties of Directors and Officers

Service as a director or officer of a federally-insured savings institution represents an important business assignment that carries with it commensurate duties and responsibilities.<sup>1</sup>

All thrifts need to be able to attract and to retain experienced and conscientious directors and officers. When an institution becomes troubled, it is especially important that it have the benefit of the advice and direction of business persons whose experience enables them to exercise sound and prudent judgment.

Directors and officers of savings institutions have obligations to discharge duties owed to shareholders and creditors of the institutions they serve, and to comply with federal and state statutes, rules, and regulations. Similar to the responsibilities owed by directors and officers of all business corporations, these duties include the duties of loyalty and care.

The duty of loyalty requires directors and officers to

1. The regulatory agencies and others have produced guides that provide useful advice on ways directors can meet their duties to their institutions. These include the Pocket Guide for Directors (FDIC, 1988), The Director's Book (OCC, 1987), and FHLBB, Memorandum No. R 62, reprinted at 52 Fed. Reg. 22,682, 22,683 (1987). See also The Director's Guide: The Role and Responsibilities of a Savings Institution Director (FHLB-SF, 1988).

administer the affairs of the institution with candor, personal honesty and integrity. They are prohibited from advancing their own personal or business interests, or those of others, at the expense of the institution.

The duty of care requires directors and officers to act as prudent and diligent business persons in conducting the affairs of the institution.

This means that directors are responsible for selecting, monitoring, and evaluating competent management; establishing business strategies and policies; monitoring and assessing the progress of business operations; establishing and monitoring adherence to policies and procedures required by statute, regulation, and principles of safety and soundness; and for making business decisions on the basis of fully informed and meaningful deliberation.

Officers are responsible for implementing the policies and business objectives set by the board and for running the day to day operations of the institution consistent with those policies and objectives and in compliance with applicable laws, rules, regulations and the principles of safety and soundness. Directors must require and management must provide the directors with timely and ample information to discharge board responsibilities.

Directors also are responsible for requiring management to respond promptly to supervisory criticisms. Open and honest communication between the board and management of the institution and the regulators is extremely important.

#### Procedures Followed to Institute Claims

The OTS will not bring civil claims against directors and officers who fulfill their responsibilities, including the duties of loyalty and care, and who make business judgments on a fully informed basis and after proper deliberation.

Claims against directors and officers of thrifts are made following a detailed investigation. Contested claims are asserted only with the concurrence of the Deputy Director for Regional Operations and the Chief Counsel. Suits by the agency are not brought lightly or in haste.

The filing of such claims is authorized only after a rigorous review of the factual circumstances. Preliminary findings and recommendations are subject to review by senior supervisory and legal representatives of the agency.

In most cases, the OTS attempts to alert proposed defendants in advance of filing claims in order to permit them

to respond to proposed charges informally and to discuss the prospect of prefiling resolution of the proposed claims.

### Nature of Claims Filed

The numerous civil and administrative cases that have been brought in recent years are premised on the established legal principles that govern the conduct of directors and officers.

Claims against former directors and officers of failed savings institutions result from a demonstrated failure to satisfy the duties of loyalty and care. Most claims involve evidence falling into at least one of the following categories:

- \* Cases where the director or officer engaged in dishonest conduct or approved or condoned abusive transactions with insiders.
- \* Cases where a director or officer was responsible for the failure of an institution to adhere to its own policies, an agreement with a supervisory authority, or where the director or officer otherwise participated in a safety or soundness violation.
- \* Cases where the director or officer failed to take reasonable steps to respond either to criticisms or directions of the regulatory authority or to advice from professional advisors to the institution.

One factor considered in determining whether to bring an action against a director is the distinction between inside and outside directors. An inside director generally has greater knowledge of and direct day-to-day responsibility for the management of the institution. Inside directors may include, as examples, officers and members of the control group of the institution.

By contrast, outside directors generally do not participate in the conduct of the day-to-day business operations of the institution. The most common claims brought against outside directors either involve insider abuse or situations where the directors were on notice of circumstances existing at the institution that required correction and failed to take steps to implement corrective measures after receiving such notice.

###