

**UNITED STATES OF AMERICA**  
**Before The**  
**OFFICE OF THRIFT SUPERVISION**

In the Matter of: \_\_\_\_\_ )

Sobieski Bank )

South Bend, IN )

OTS Docket No. 03889 )

OTS Order No.: ATL-2004-19

Dated: July 12, 2004

**STIPULATION AND CONSENT TO**  
**PROMPT CORRECTIVE ACTION DIRECTIVE**

1. The Office of Thrift Supervision (OTS) has informed Sobieski Bank, South Bend, IN (Institution) OTS No. 03389, based upon information reported to OTS, that grounds exist to issue a Prompt Corrective Action Directive (PCA Directive) pursuant to Section 38 of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1831o, and Section 565.7 of the OTS Regulations, 12 C.F.R. § 565.7, against the Institution. The Institution, in the interest of cooperation and to avoid the time and expense of pursuing further OTS administrative procedures for the issuance of a PCA Directive, stipulates and consents to the terms set forth in this Stipulation and Consent.
2. The Institution stipulates it is a federal savings association subject to the supervision and regulation by OTS. The Institution is a "savings association" as that term is used in the Home Owners' Loan Act (HOLA), 12 U.S.C. §§ 1461 et seq., and an "insured depository institution" as defined in 12 U.S.C. §§ 1813(b) and 1813(c)(2). The Institution stipulates, as such, it is subject to OTS's authority to issue a directive to take prompt corrective action pursuant to Section 38 of FDIA, 12 U.S.C. § 1831o, and Section 565.7 of the OTS Regulations, 12 C.F.R. § 565.7.
3. Institution consents, by execution of the Stipulation and Consent, to OTS's issuance of the accompanying PCA Directive. The Institution further agrees to comply with the terms of the PCA Directive.
4. The attached PCA Directive is effective upon issuance. The Institution acknowledges that the PCA Directive is enforceable pursuant to Section 5(d) of HOLA, 12 U.S.C. § 1464(d), and Section 8 of FDIA, 12 U.S.C. § 1818.
5. The Institution hereby waives the following:
  - (i) its rights to pursue OTS's administrative process for issuance of the accompanying PCA Directive pursuant to 12 C.F.R. § 565.7;

- (ii) any and all rights it might otherwise have pursuant to federal law or regulations (including, but not limited to, 12 U.S.C. § 1831o and 12 C.F.R. § 565.7) in connection with issuance of the PCA Directive;
- (iii) its right to seek judicial review of the PCA Directive, including, but not limited to, any such right provided by Section 8(h) of FDIA, 12 U.S.C. § 1818(h); and
- (iv) its right to challenge or contest in any manner the basis, issuance, validity or enforceability of the PCA Directive or any provision thereof.

9. The Supervisory Agreement dated May 16, 2003 remains in effect.

10. (a) The laws of the United States of America shall govern the construction and validity of this Stipulation and Consent and the Directive.

(b) All references to OTS in this Stipulation and Consent and the Directive also shall mean any of the OTS's predecessors, successors, and assigns.

(c) To the extent this Stipulation and Consent and Directive may be deemed an agreement, the written terms herein and in the accompanying Directive represent the final and sole binding written terms of such agreement with respect to the subject matters addressed therein.

11. Each Director signing this Stipulation attests that he voted in favor of the resolution authorizing the execution of the Stipulation.

**Sobieski Bank**  
South Bend, IN

By: *Richard J. Culla*

By: *Rout J. Lubanski*

By: *Joseph A. Lunny*

By: *Joseph F. Nagay*

By: *Lal J. Dobosiewicz*

Accepted By:

**Office of Thrift Supervision**

By: *John E. Ryan*  
John E. Ryan  
Southeast Regional Director

Date: *7/12/04*

**UNITED STATES OF AMERICA**  
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OTS Docket No. 03889	)	Dated: July 12, 2004
	)	

**PROMPT CORRECTIVE ACTION DIRECTIVE**

**WHEREAS**, Sobieski Bank (Institution), is a federally chartered savings Institution that is regulated by the Office of Thrift Supervision (OTS); and

**WHEREAS**, Section 38 of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1831o, and Part 565 of the OTS Regulations, 12 C.F.R. Part 565, require institutions that are undercapitalized to file a capital restoration plan specifying the steps the institution will take to become at least adequately capitalized; and

**WHEREAS**, Section 38 of FDIA, 12 U.S.C. § 1831o, requires OTS to take prompt corrective action to resolve the problems of insured depository institutions at the least possible long-term loss to the deposit insurance fund; and

**WHEREAS**, Section 565.7 of the OTS Regulations, 12 C.F.R. § 565.7, provides for OTS's issuance of directives to take prompt corrective action to resolve the problems of insured depository institutions and to restore their capital; and

**WHEREAS**, OTS, on February 18, 2004, notified the Institution that it was undercapitalized for purposes of the prompt corrective action provisions of Section 38 of FDIA, 12 U.S.C. § 1831o; and

**WHEREAS**, the Institution also is not in compliance with the capital standards required by Section 5(t) of the Home Owners' Loan Act (HOLA), 12 U.S.C. § 1464(t); and

**WHEREAS**, Section 5(t)(6)(B)(ii) of HOLA, 12 U.S.C. § 1464(t)(6)(B)(ii), requires any institution not in compliance with the capital standards to comply with a capital directive issued by OTS; and

**WHEREAS**, on April 1, 2004 the Institution submitted to OTS a capital restoration plan (Capital Plan); and

**WHEREAS**, OTS has considered the Institution's capital deficiency, the Capital Plan, in accordance with Section 567.10 of the OTS Regulations, 12 C.F.R. § 567.10, and Section 38(e)(2) of FDIA, 12 U.S.C. § 1831o(e)(2) and approved the Capital Plan as set forth in a letter to the Institution, dated May 26, 2004; and

**WHEREAS**, the Institution and its Board of Directors, by execution of the attached Stipulation and Consent (Stipulation) to the issuance of this Directive, the terms of which are incorporated herein by this reference, have stipulated and consented to the issuance of the Directive; and

**WHEREAS**, OTS having issued a Notice of Intent to issue this Directive on July 6, 2004, and having considered that no response thereto was filed by the Institution, has determined to issue this Directive in order to resolve the Institution's problems at the least long term cost to the deposit insurance fund, thereby effectuating the purpose of Section 38 of FDIA, 12 U.S.C. § 1831o;

**NOW THEREFORE**, pursuant to Section 38 of FDIA, 12 U.S.C. § 1831o, including but not limited to subsection (f) thereof, Section 5(t)(6)(B)(ii) of HOLA, 12 U.S.C. § 1464(t)(6)(B)(ii), and Section 565.7 of the OTS Regulations, 12 C.F.R. § 565.7, OTS directs the Institution and its Board of Directors to do the following:<sup>1</sup>

## **PART I – IMPROVING CAPITAL**

### Section 1.1 Capital Plan.

The Institution shall comply with the terms of its Capital Plan, including any amendments thereto approved by the Southeast Regional Director of OTS (Regional Director).

### Section 1.2 Adequate Progress.

If OTS, in its sole discretion, determines that the Institution is failing to make adequate progress toward achieving the requirements set forth in Sections 1.1, OTS may take such further supervisory, enforcement, or resolution action as it deems appropriate.

## **PART II – OPERATING RESTRICTIONS**

### **MANDATORY RESTRICTIONS**

### Section 2 Compliance with Mandatory Restrictions.

- A. The Institution shall comply with all of the mandatory prompt corrective action provisions contained in 12 U.S.C. § 1831o, that automatically apply to the Institution

<sup>1</sup> OTS must impose one or more of the presumptive restrictions set forth in 12 U.S.C. § 1831o(f), especially 12 U.S.C. § 1831o(f)(3) and (4) if (1) the institution is significantly or critically undercapitalized, (2) is undercapitalized and did not submit an acceptable capital restoration plan or (3) the institution fails to implement an approved plan. Critically undercapitalized are also subject to restrictions in 12 U.S.C. § 1831o(i).

based upon the Institution's prompt corrective action capital category. These provisions are set forth as follows: (i) capital distributions restriction, 12 U.S.C. § 1831o(d)(1), 12 C.F.R. §§ 565.6(a)(1) and (a)(2)(i); (ii) management fees restriction, 12 U.S.C. § 1831o(d)(2), 12 C.F.R. §§ 565.6(a)(1) and (a)(2)(i); (iii) asset growth restriction, 12 U.S.C. § 1831o(e)(3), 12 C.F.R. § 565.6(a)(2)(iv); (iv) restrictions on acquisitions, branching, and new lines of business, 12 U.S.C. § 1831o(e)(4), 12 C.F.R. § 565.6(a)(2)(v); (v) senior executive officers' compensation restriction, 12 U.S.C. § 1831o(f)(4), 12 C.F.R. § 565.6(a)(3); and (vi) restrictions on activities, 12 U.S.C. § 1831o(i), 12 C.F.R. § 565.6(a)(4);

- B. If the Institution's PCA capital category deteriorates to a lower level, the Institution shall comply with the above restrictions, as well as all of the additional mandatory prompt corrective action provisions applicable to its lower PCA capital category; and
- C. If the Institution should improve from a lower to a higher PCA capital category, it must continue to comply with the previously applicable mandatory sanctions of the lower category, until such time as approval to cease compliance with the lower category sanctions is requested of, and received from OTS.

### **PART III - GENERAL PROVISIONS**

#### **Section 3.1 Jurisdiction.**

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

#### **Section 3.2 Definitions.**

- A. All technical words or terms used in this Directive, for which meanings are not specified or otherwise provided by the provisions of this Directive, shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, HOLA, FDIA, OTS Bulletins, or OTS Thrift Activities Handbook. Any such technical words or terms used in this Directive and undefined in Code of Federal Regulations, HOLA, FDIA, OTS Bulletins or OTS Thrift Activities Handbook shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.
- B. The term "Effective Date" has the meaning set forth in Section 3.11 of this Directive.

#### **Section 3.3 Successor Statutes, Regulations, Guidance Amendments.**

Reference in this Directive to provisions of statutes and regulations shall be deemed to include references to all amendments to such provisions as have been made as of the effective

date hereof and references to successor provisions as they become applicable.

#### Section 3.4 Notices.

Except as otherwise provided herein, any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by the Directive to be made upon, given or furnished to, delivered to, or filed with OTS or the Institution shall be in writing and sent by first class U.S. mail (or by reputable overnight courier, electronic facsimile transmission, or hand delivery via messenger) addressed as follows:

OTS: Southeast Region  
Regional Deputy Director Daniel McKee  
1 South Wacker Drive #2000  
Chicago, IL 60606

Institution: Sobieski Bank  
Attn: Board of Directors  
2930 Cleveland Road  
South Bend, Indiana 46628

#### Section 3.5 Duration, Termination or Suspension of the Directive.

- A. The terms and provisions of this Directive shall be binding upon the Institution and its successors in interest.
- B. The Directive shall remain in effect until terminated, modified or suspended in writing by OTS.
- C. OTS, in its discretion, may, by written notice, suspend any or all provisions of the Directive, except for Section 2 (Mandatory Restrictions).

#### Section 3.6 Effect of Headings.

The Part and Section headings herein are for convenience only and shall not affect the construction hereof.

#### Section 3.7 Separability Clause.

In case any provision in this Directive is ruled to be invalid, illegal or unenforceable by the decision of any court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby unless OTS, in its sole discretion, determines otherwise.

#### Section 3.8 No Violations Authorized; Consequences of Directive.

- A. Nothing in this Directive, including, without limitation, any of the timeframes for actions set forth in Part I, shall be construed as: (i) allowing the Institution to violate any law, rule, regulation, or policy statement to which it is subject or (ii) restricting OTS from taking such actions as are appropriate in fulfilling the responsibilities placed upon it by law, including, without limitation, actions pursuant to 12 U.S.C. § 1831o, or taking any other type of supervisory, enforcement, or resolution action that OTS

determines to be appropriate.

- B. OTS's conditional approval of the Capital Plan does not (i) constitute approval of contemplated actions or transactions for which a separate application, filing or notification is required prior to engaging in an activity contemplated by the Capital Plan; (ii) prevent the revocation of conditional approval of the Capital Plan upon the discovery of other or additional facts that OTS determines warrants such action, including, but not limited to, any material adverse findings disclosed in any examination of the institution or any material change in the assumptions underlying the Plan; (iii) indicate adoption of the institution's assumptions or predictions underlying or set forth in the Capital Plan, nor do such assumptions or predictions bind OTS; or (iv) prohibit OTS from requiring modifications and/or amendments of the Capital Plan as OTS determines necessary.

Section 3.9 Other Enforcement Documents.

The Supervisory Agreement issued by OTS against the Institution on May 16, 2003 remains in effect.

Nothing contained in this Directive shall affect or limit OTS's ability to take enforcement action in connection with any violation of the May 16, 2003 Supervisory Agreement.

Section 3.10 Incorporation of Stipulation.

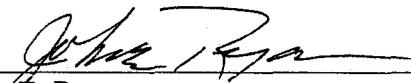
The Stipulation is made a part hereof and is incorporated herein by this reference.

Section 3.11 Effective Date of This Directive.

This Directive (including all the requirements and limitations is effective immediately on the date of issuance of the Directive (Effective Date), which is the date indicated below.

**IT IS SO ORDERED.**

**OFFICE OF THRIFT SUPERVISION**

By:   
John E. Ryan  
Southeast Regional Director

Dated: 7/12/04