

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

<b>In the Matter of:</b>	)	
	)	
<b>ERNST &amp; YOUNG LLP</b>	)	<b>OTS Order No. 2004-60</b>
	)	
<b>Former Outside Auditor of Superior Bank, FSB Oakbrook Terrace, Illinois</b>	)	<b>Date: December 24, 2004</b>
	)	
<b>OTS No. 08566</b>	)	

**STIPULATION AND CONSENT TO  
ISSUANCE OF CONSENT ORDER**

**WHEREAS**, the Office of Thrift Supervision (“OTS”), based upon information derived from the exercise of its regulatory responsibilities, is of the opinion that grounds exist to initiate administrative proceedings against Ernst & Young LLP (“Ernst & Young”) with respect to work performed for Superior Bank, FSB, Oakbrook Terrace, Illinois (“Superior”),<sup>1</sup> and

**WHEREAS**, Ernst & Young, desiring to cooperate with the OTS and to avoid the time and expense of such administrative proceedings, and without admitting or denying (1) that such grounds exist; (2) the statements contained in paragraph 2 below; or (3) that any of its conduct with respect to Superior did not comply with professional standards, but admitting the conclusions in paragraph 1 below pertaining to the jurisdiction of the OTS, hereby stipulates and agrees to the following terms:

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<sup>1</sup> All references in this Stipulation and Consent to Issuance of Consent Order (“Stipulation”) and in the Consent Order (“Order”) are to the United States Code, as amended.

**1. Jurisdiction.**

(a) Superior, at all times relevant hereto, was a “savings association” within the meaning of 12 U.S.C. 1813(b) and 12 U.S.C. 1462(4). Accordingly, Superior was an “insured depository institution” as that term is defined in 12 U.S.C. 1813(c).

(b) During the period 1999 to 2000, Ernst & Young provided auditing and accounting services to Superior. Ernst & Young served as Superior’s independent auditor and conducted the annual audits of Superior’s financial statements for the years ending 1999 and 2000. As an independent contractor providing auditing and other services to Superior, Ernst & Young is subject to the OTS’s jurisdiction.

(c) Pursuant to 12 U.S.C. 1813(q), the OTS is the “appropriate Federal banking agency” with jurisdiction to take action with respect to Ernst & Young.

**2. Background.**

As a result of its audits of Superior’s financial statements for Superior’s fiscal years ended 1999 and 2000, Ernst & Young reported upon Superior’s financial statements. In those reports, Ernst & Young did not take exception to Superior’s improper valuation of residual interests held by Superior and reflected on those financial statements as a result of Superior’s securitizations of subprime mortgages. During this period, Ernst & Young issued unqualified audit reports on Superior’s financial statements. Superior was later declared insolvent and was placed into receivership by the OTS in July 2001.

**3. Consent.**

Ernst & Young consents to the issuance by the OTS of the accompanying Consent Order. Ernst & Young further agrees to comply with its terms upon issuance and stipulates that the Order complies with all requirements of law.

**4. Finality.**

Upon its issuance by the Director or his designee, the Order shall be a final order, effective and fully enforceable by the OTS.

**5. Waivers.**

Ernst & Young waives the following:

- (a) the right to be served with a written notice of any charges;
- (b) the right to an administrative hearing; and
- (c) the right to seek judicial review of the Order or otherwise to challenge the validity of the Order.

**6. Other Actions.**

Ernst & Young acknowledges and agrees that except as set forth in the Order its consent to the issuance of the Order does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of Ernst & Young.

**7. Miscellaneous.**

- (a) The laws of the United States of America shall govern the construction and validity of the Stipulation and of the Order.
- (b) All references to the OTS in this Stipulation and the Order shall also mean any of OTS's predecessors, successors, and assigns.

(c) The section and paragraph headings in this Stipulation and the Order are for convenience only, and such headings shall not affect the interpretation of this Stipulation or the Order.

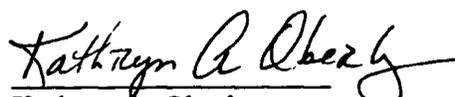
(d) The terms of this Stipulation and of the Order represent the final written agreement of the parties with respect to the subject matters hereof, and constitute the sole agreement of the parties with respect to such subject matters.

(e) Except as otherwise provided in the Order, this Stipulation and the Order shall remain in effect for five (5) years following the date of issuance, unless earlier suspended or terminated in writing by the OTS, acting through its authorized representatives.

**WHEREFORE**, Ernst & Young executes this Stipulation and Consent to Issuance of Consent Order, intending to be legally bound thereby.

By:

Ernst & Young LLP

  
Kathryn A. Oberly  
Vice Chair and General Counsel

Date: 12/24/04

Accepted by:

Office of Thrift Supervision

  
James E. Gilleran  
Director

Date: 12.22.2004

**UNITED STATES OF AMERICA**  
**Before The**  
**OFFICE OF THRIFT SUPERVISION**  
**DEPARTMENT OF THE TREASURY**

<b>In the Matter of:</b>	)	
<b>ERNST &amp; YOUNG LLP</b>	)	<b>OTS Order No. 2004-60</b>
<b>Former Outside Auditor of</b>	)	
<b>Superior Bank, FSB,</b>	)	<b>Date: December 24, 2004</b>
<b>Oakbrook Terrace, IL</b>	)	
<b>OTS No. 08566</b>	)	

**CONSENT ORDER**

WHEREAS, Ernst & Young LLP (“Ernst & Young” or “E&Y”) has submitted a Stipulation and Consent to Issuance of Consent Order (“Stipulation”) to the Director of the Office of Thrift Supervision (“OTS”), dated December , 2004, and the OTS having executed the Stipulation; and

WHEREAS, Ernst & Young, by its execution of the Stipulation, and without any adjudication on the merits, and without admitting or denying any wrongdoing of any nature whatsoever, has consented and agreed to the issuance of this Consent Order (“Order”).<sup>1</sup>

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<sup>1</sup> The Stipulation and the Order, or the relief consented to by virtue of the Stipulation and the Order, shall not be used for any purpose other than to enforce the terms thereof, and shall be subject to the provisions of

NOW, THEREFORE, IT IS ORDERED THAT:

I. ERNST & YOUNG'S ACCOUNTING POLICIES  
AND PRACTICES

1. Conduct. Ernst & Young shall not commit any violation of 12 U.S.C. § 1831m or § 1831n, or 12 C.F.R. Part 562, in the performance of any audit or attestation services for a savings association.

2. Auditing Services. Ernst & Young shall provide auditing services to savings associations for five (5) years from the date of this Order in accordance with the provisions of paragraphs 4 through 13 below. The provisions of paragraphs 3 through 13 shall apply to audits for fiscal years ending after December 31, 2004, and to new savings association clients obtained after December 31, 2004. To the extent that this Order addresses matters included within Ernst & Young's present policies, E&Y shall continue to require adherence to those policies consistent with the terms of this Order.

3. Annual Report and Meeting. Ernst & Young shall prepare an annual report, as of December 31 of each calendar year in which this Order shall be in force, summarizing each audit of a savings association commencing with an annual report for the calendar year ending December 31, 2005. The annual report shall provide the following information with respect to each audit of each savings association client of E&Y whose fiscal year ended within the calendar year reported on:

a. Identify the partner in charge of the audit, the independent review partner, other audit partners, and the most senior manager on each audit;

b. List, as identified by the members of the engagement team set forth in paragraph 3a, all critical accounting policies and, as described in AU 380.07, the

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Rules 408 and 410 of the Federal Rules of Evidence. All references to the United States Code (U.S.C.) in the Stipulation and the Order are as amended, unless otherwise indicated.

methods used to account for significant unusual transactions and the effect of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus; and

c. Identify each instance, and the issue involved, in which a member of the engagement team set forth in paragraph 3a of this Order consulted with a member of the Review Group (as defined in paragraph 4 of this Order) or individuals identified by the Review Group as experts in a particular accounting area of topic in accordance with the requirements of paragraph 11 of this Order.

E&Y shall submit a copy of the annual report required by this paragraph 3 to the Chief Accountant of the OTS within one hundred fifty (150) days after December 31 of the year that is the subject of the report. If any audit that is required to be reported has not been completed prior to submission of the report, E&Y shall note that the audit has not been completed and shall file a supplemental report within thirty (30) days of its completion. The annual report shall be treated by OTS as confidential supervisory information. Within sixty (60) days of the submission of the annual report, the Chief Accountant of the OTS and a senior member of the Review Group shall meet to discuss any matters raised by the annual report. During this meeting, the Chief Accountant of the OTS and the senior member of the Review Group shall also discuss any matters that have arisen with regard to audit methodology, accounting matters, and best practices during the prior year.

4. Review Group. As part of its quality control program, Ernst & Young shall establish a group within its national office that shall be responsible for the supervision of all audits of all savings associations (“Review Group”). The group shall

be managed by an E&Y partner who shall be responsible for overseeing assignment, performance, and training of E&Y personnel who participate in the audits of savings associations. Under the management and supervision of the E&Y partner so assigned, this group shall:

a. Identify emerging areas of concern that might have a material effect on audits of savings associations, and issue written guidance (or determine that E&Y's National Professional Practice department has issued written guidance) to engagement teams conducting audits of savings associations with respect to such areas of concern;

b. Approve the assignment of the partner in charge of the audit and the independent review partners to each audit of a savings association, giving special consideration to each partner's experience and knowledge of any area, including emerging areas, of concern that might arise in the audit of the savings association;

c. Establish and disseminate (or determine that E&Y's National Professional Practice department has established and disseminated) procedures for each audit of a savings association, where the audit is required by the rules of the federal banking agencies or the Securities and Exchange Commission ("SEC"), to provide that the audit working papers contain adequate analysis and competent evidential material to support the conclusions reached in the working papers;

d. Monitor training of E&Y personnel, including partners, who participate in audits of savings associations, in accordance with the requirements of paragraph 13 of this Order; and

e. Provide consultation services in accordance with paragraph 11 of this Order.

5. Personnel Rotation. For audits of savings associations where audits are required by the rules of the federal banking agencies or the SEC, Ernst & Young shall rotate the partner in charge of the audit (or lead audit partner) and the independent review partner after no more than five (5) consecutive years in such roles with a five (5) year “time out” period. Other audit partners on the audit engagement team shall rotate after no more than seven (7) consecutive years with a two (2) year “time out” period.

Notwithstanding the provisions of the first two sentences of this paragraph 5, the rotation requirements will be the same as the requirements and provisions of the auditor independence rules of the SEC and will apply to audit partners as defined therein.

6. New Savings Association Clients. Prior to agreeing to provide audit services for the first time to a savings association audit client, Ernst & Young shall:

a. Document and retain the reasons for the change in auditors, including the specific nature of disputes, if any, between the predecessor auditor and the prospective audit client;

b. Document and retain a preliminary assessment of audit risks and hours of work required to perform the audit in light of these risks; and

c. Document and retain whether the necessary technical expertise is available within Ernst & Young to perform the audit services. If the necessary expertise is not available at a given local office, arrangements shall be made to utilize resources from other offices and thereby make available the necessary technical expertise. If the

necessary technical expertise is still not available, then Ernst & Young shall decline the engagement.

7. Required Procedures. Ernst & Young shall cause the partner in charge of the audit and the independent review partner to perform the following procedures with respect to each savings association audit engagement undertaken by E&Y:

a. The Partner In Charge of the Audit. The partner in charge of the audit shall review and approve the audit strategies memorandum before any significant audit procedures are performed. The audit strategies memorandum shall be completed after performing an assessment of the risks associated with the client and a preliminary evaluation of the effectiveness of the client's internal controls. The partner in charge of the audit shall determine that the audit is conducted in accordance with generally accepted auditing standards ("GAAS") and with the audit strategies memorandum, and shall determine that the audit is conducted with an independence in mental attitude and due professional care as required by AU § 150.02. The partner in charge of the audit shall determine that sufficient competent evidential matter is obtained and retained in the working papers to afford a reasonable basis for an opinion regarding the financial statements under audit as required by AU § 150.02 and § 339.

In addition, the partner in charge of the audit shall participate directly in the performance of audit procedures to obtain an understanding of the client's valuation of significant assets or liabilities (whether on or off the client's balance sheet). The partner in charge of the audit shall review the reasonableness of the assumptions underlying the client's valuation of significant assets or liabilities, including all supporting documentation, which may include data from or relating to third parties holding or

creating similar assets or liabilities, in order to determine whether the engagement team has obtained sufficient competent evidential matter to support its conclusion. When the supporting documentation includes such data, the partner in charge of the audit shall specifically determine whether the assets or liabilities of such third parties are sufficiently comparable to the assets or liabilities of the client, and whether the valuation assumptions used by such third parties are affected by facts or circumstances that may not apply to the Ernst & Young audit client. Whenever the valuation of a significant asset or liability depends on a particular transactional structure, the partner in charge of the audit shall review appropriate transactional documentation sufficient to demonstrate that the facts concerning such transactional structure are set forth accurately in the key working papers; provided, however, that in the event that such significant assets or liabilities are created pursuant to continuing, repetitive transactions of similar structure, the partner in charge of the engagement may satisfy the requirements of this subparagraph by reviewing a representative sample of transactional documentation.

Further, the partner in charge of the audit shall review and approve the following: (i) the key working papers (including appropriate planning documents) relating to critical accounting policies and other high risk and sensitive audit areas; (ii) the Summary Review Memorandum; (iii) important working papers, including related consultation memoranda, in technically difficult or highly judgmental areas; and (iv) other working papers the partner in charge of the audit considers necessary to obtain a clear understanding of the accounting, auditing, and reporting matters discussed in the Summary Review Memorandum. The partner in charge of the audit shall determine that, if previously unknown facts existing at the date of E&Y's audit report are discovered

subsequent to such report, E&Y shall consider and perform, as appropriate, the procedures described in AU § 561.

The partner in charge of the audit shall document the review by manually or electronically initialing or signing the working papers reviewed.

b. The Independent Review Partner. The independent review partner shall: (i) discuss with the senior members of the engagement team the nature, timing, and extent of the audit procedures performed, the persons who performed the procedures, and the findings and conclusions from performing procedures as to the client's valuation of significant assets or liabilities (whether on or off the client's balance sheet); (ii) review and concur with the conclusions in the key working papers (including appropriate planning documents) relating to other high risk and sensitive audit areas; (iii) review and concur with the conclusions in the Summary Review Memorandum after discussing with the engagement team any significant and/or unusual accounting, auditing, or reporting matters to obtain a sufficient understanding of them; and (iv) review and concur with the conclusions in additional working papers considered necessary by the independent review partner based upon the reviews described in (i), (ii) and (iii) above.

In addition, the independent review partner shall determine that appropriate consultation has taken place with respect to issues that were of sufficient importance to have warranted consultation, and shall determine through discussion with the engagement team that all significant consultations have been documented. Further, the independent review partner shall read the consultation memoranda, discuss the issues therein with the engagement team and, where appropriate, the person(s) consulted, and shall review the relevant working papers to determine that those individual(s) consulted were informed of

all the relevant facts and circumstances and that the conclusions are reasonable and consistent with professional standards.

For each audit of a savings association designated by Ernst & Young for close monitoring, the independent review partner shall: (i) review and concur with the conclusions in the audit strategies memorandum and, as considered necessary, any additional audit planning working papers before significant portions of the field work are performed; (ii) review and concur with the conclusions in key working papers relating to significant accounting, auditing, and reporting matters, as considered appropriate, and to those areas that are the basis for classifying the engagement as close-monitoring; and (iii) read the prior period's Summary Review Memorandum, financial statements and auditor's report and become familiar with the significant accounting, auditing, and reporting matters through discussions with the partner in charge of the audit.

The independent review partner shall document the review by manually or electronically initialing or signing the working papers reviewed.

c. Before the issuance of an opinion by Ernst & Young, the partner in charge of the audit and the independent review partner shall sign the E&Y Review and Approval Summary for Audit Engagements. Their completion of this form supplements the documentation of the performance of E&Y's review procedures, documenting their overall conclusions. It indicates that the partner in charge of the audit has concluded that (i) the audit was performed in accordance with GAAS and concurs in the issuance of E&Y's report opinion on the financial statements, and (ii) the audit was performed in compliance with the terms of this Order, in all respects material to the financial statements. Completion of the form also indicates that the independent review partner

concurr in the application of GAAP to significant and/or unusual accounting, auditing, or reporting matters and approves of the issuance of E&Y's report on the financial statements and concurs that the audit was performed in compliance with the terms of this Order, in all respects material to the financial statements.

8. Audit Procedures. Ernst & Young shall perform audits of savings associations in accordance with GAAS, including:

a. Applying an appropriate level of auditor skepticism, AU § 230.07 - .09, in conducting such audits;

b. Planning such audits properly, AU §§ 311, 312, 319, 322 and 329, including calculating an appropriate "planning materiality" threshold to determine the scope of each audit, appropriately incorporating risk factors in its analytical review, and appropriately considering regulatory criticisms;

c. Obtaining and retaining in the audit work papers sufficient competent evidential materials, AU §§ 326 and 339, to support the conclusions reached in such audits;

d. Conducting an adequate review, and retaining adequate documentation thereof in the working papers, of transactional documents in order to acquire an accurate and complete understanding of transactions by the audit client, AU §§ 326 and 329;

e. Following SAS 73 and AU § 336 by consulting a specialist (internal or external) when the complexity, risks, and materiality of such matters require such consultation, and

f. Following SAS 59 and AU § 341 by evaluating whether there is substantial doubt about the entity's ability to continue as a going concern for a reasonable period of time.

Ernst & Young shall conduct audit procedures related to the transactions and matters set forth in paragraphs 4 through 13 of this Order to obtain sufficient competent evidential matter through independent inspection, observation, confirmation, and written representations, to afford a reasonable basis for an opinion regarding the financial statements under audit, as required by GAAS (AU § 326.01). Ernst & Young shall, in accordance with GAAS, document and retain the underlying facts of the transactions and matters set forth in paragraphs 4 through 13 of this Order, and shall retain a summary of the applicable sources of GAAP and their application, the results of the audit procedures performed, the nature of the evidential matter obtained, and E&Y's conclusions as set forth in AU § 339.

9. Qualified Opinion. When Ernst & Young determines, during the course of an audit of a savings association, that:

a. there is a lack of sufficient competent evidential matter or there are restrictions on the scope of the audit that have led E&Y to conclude that it cannot express an unqualified opinion, or

b. the financial statements reflect a material departure from GAAP, E&Y shall issue a qualified opinion (or, as appropriate, a disclaimer for a scope limitation or an adverse opinion for a GAAP departure) disclosing all of the substantive reasons in one or more separate explanatory paragraphs preceding the opinion paragraph of its

report. Ernst & Young shall also include, in the opinion paragraph, the appropriate qualifying language and a reference to the explanatory paragraph.

10. Going Concern. When Ernst & Young concludes, during the course of an audit of a savings association, that substantial doubt exists about the entity's ability to continue as a going concern for a reasonable period of time, E&Y shall include an explanatory paragraph in its audit report, which paragraph shall include the terms "substantial doubt" and "going concern."

11. Consultation. Ernst & Young shall direct personnel on engagements for savings associations to consult with the E&Y individuals in the Review Group established pursuant to paragraph 4 of this Order or individuals identified by the Review Group as experts in a particular accounting area or topic whenever the applicable GAAP literature relating to a significant matter is unclear or non-existent.

12. Audit Working Papers. Ernst & Young shall require that the working papers for each audit report:

- a. Specify the planning and materiality thresholds used in the audit;
- b. Include a written statement signed by the partner in charge of the audit and the most senior manager for each such audit that each of them reviewed the most recently delivered Report of Examination for such savings association prior to issuance of the audit report, and conducted appropriate procedures to determine that the institution's accounting associated with issues or areas of supervisory concern identified in the most recently delivered Report of Examination was in compliance with GAAP;
- c. Identify and describe all matters in which individuals in the Review Group, as established pursuant to paragraph 4 of this Order, or individuals

recognized or designated as experts in a particular audit or accounting area or topic (including individuals in E&Y's National Professional Practice department), were consulted concerning any significant aspect of the audit; and

d. Contain adequate analysis and competent evidential material to support the conclusions reached in the audit working papers.

13. Training and Experience. Ernst & Young shall require, in connection with audits of savings associations, that:

a. Each audit partner and manager assigned to such audits shall possess the requisite background and experience with respect to insured depository institutions to perform their duties competently and professionally.

b. Each audit partner and manager assigned to such audits, shall:

(i) has completed twenty-four (24) hours of an E&Y professional development audit course relevant to insured depository institutions, including training in the specific duties of the partner in charge of the audit and independent review partner, as well as the obligations of the entire engagement team to conduct audits with professional skepticism and to determine that the working papers contain adequate analysis and sufficient competent evidential matter to support the conclusions reached in the engagement;

(ii) undergo training totaling twenty (20) hours per year in one or more subjects relevant to audits of insured depository institutions; and

(iii) for each auditor with responsibilities for performing audit procedures in the area of securitization of assets accounted for as sales, have completed a minimum of eight (8) hours of training on the valuation of retained interests in securitized

assets, including residual interests, and the appropriate accounting treatment for such assets.

c. The partner in charge of the audit, collectively with the other audit partners, managers and most senior manager assigned to each such audit, shall have had at least 300 chargeable hours in connection with insured depository institution audits during the immediate preceding three (3) year period.

d. For audits of savings associations where the audits are required by the rules of the federal banking agencies or the SEC, the partner in charge of the audit, collectively with the other audit partners, managers, and most senior manager assigned to each such audit, shall have had a total of at least 1,000 chargeable hours of relevant audit experience during the immediately preceding three (3) year period, of which 300 hours are on the audits of depository institutions. For the purposes of this Order, “relevant audit experience” may have been obtained in connection with audits of depository institutions and their non-diversified holding companies and any subsidiary companies whose principal business involves utilizing funds obtained from and held for the public.

14. Compliance. a. Ernst & Young shall undertake all necessary actions to effect the requirements of paragraphs 4 through 13 of this Order within one hundred twenty (120) days of the date of issuance of this Order.

b. Within one hundred twenty (120) days of the date of this Order, Ernst & Young shall provide the Chief Counsel and the Chief Accountant of the OTS with copies of its current savings association training materials and its current auditing and policy manual sections relating to any of the matters discussed in this Order.

Thereafter, Ernst & Young shall submit to the Chief Counsel and the Chief Accountant of

the OTS a description of any modifications of the training materials referred to in the first sentence of this paragraph.

c. Ernst & Young shall provide the Chief Counsel and the Chief Accountant of the OTS, within one hundred twenty (120) days of the effective date of this Order, a letter setting forth in detail the changes made to its internal policies and procedures applicable to (i) auditor partner rotation related to savings association audit clients, and (ii) knowledge and understanding of E&Y personnel throughout the firm concerning the valuation of retained beneficial interests in securitized financial assets, including residual interests, and accounting treatment thereof. The letter shall also describe in detail the manner and form in which Ernst & Young will comply with paragraphs 4 through 13 of this Order.

## II. RESTITUTION

15. Restitution. Ernst & Young shall pay restitution in the amount of \$85 million dollars (\$85,000,000.00), which shall be paid within seven (7) days of the date of this Order. All of the monies paid by Ernst & Young pursuant to this paragraph shall be transferred to the FDIC as receiver of Superior. Such amount shall be paid by wire transfer of immediate available funds to the OTS' account at the Federal Reserve Bank of New York.

## III. MISCELLANEOUS

16. Ernst & Young shall require each audit partner, senior manager, and manager, at the time he or she is assigned to an audit or an audit quality review of a savings association, to read a copy of this Order and acknowledge in writing that he or she has done so. A copy of this Order also is to be provided to the Public Company

Accounting Oversight Board and to the firm that performs any form of the peer review work for E&Y beginning after the date of this Order.

17. Ernst & Young shall promptly respond to any request from the OTS, without the need for subpoena, for internal E&Y documents that the OTS reasonably requires to demonstrate compliance with this Order and provide copies at E&Y's expense.

18. Ernst & Young shall retain all working papers for audit engagements relating to savings associations and administrative papers relating to acceptance and continuance of savings association audit clients for at least five (5) years following their creation. With regard to audits completed prior to the date of this Order, this requirement shall not apply to documents previously discarded.

19. Ernst & Young shall retain (a) all working papers for audit engagements of former savings association clients as of the date of this Order for at least five (5) years following their creation and (b) administrative papers relating to their acceptance for at least five (5) years following their creation. With regard to audits completed prior to the date of this Order, this requirement shall not apply to documents previously discarded.

20. Ernst & Young shall retain all training materials and internal audit procedures manuals relating to audits of savings associations for at least five (5) years following their creation.

21. Ernst & Young shall not take any action that would interfere with the OTS in connection with the investigation and prosecution of claims against individuals or entities other than Ernst & Young, and Ernst & Young shall respond to any subpoena issued by the OTS as required by law. It is expressly understood that nothing in this

paragraph shall limit the OTS's ability to obtain information pursuant to any statute, regulation, rule, or any other provision of this order or other legal process.

#### IV. DEFINITIONS

22. Definitions. For the purposes of this Order:

a. "Retained interest in securitized assets" means the right to receive all or portions of specified cash inflows to a trust or other entity, that have been retained in connection with the securitization of financial assets.

b. "Audit" or "audit engagement" means an audit of financial statements performed in accordance with GAAS "Audit and attestation services" means those services subject to the applicable professional standards of the AICPA and the Public Company Accounting Oversight Board ("PCAOB").

c. "Independent Review Partner" means the partner or other employee or agent of E&Y charged with the responsibilities of the Independent Review Partner set forth in paragraph 7(b) above, whether or not so denominated by E&Y.

d. "Partner in Charge of the Audit" means the partner or other employee of E&Y charged with the responsibilities of the Partner in Charge of the Audit set forth in paragraph 7(a) above, whether or not so denominated by E&Y.

e. "Other audit partner" means any engagement team partners who provide more than ten hours of audit, review or attest services in connection with an audit engagement.

f. "Most senior manager" means the individual staff member on the engagement team immediately below the partner level.

- g. “FAS” means a Statement of Financial Accounting Standards promulgated by the Financial Accounting Standards Board.
- h. “GAAP” means generally accepted accounting principles, as described and defined in SAS No. 69.
- i. “GAAS” means generally accepted auditing standards as defined and described in AU § 150, or, for audits of SEC issuers, as promulgated by the Public Company Accounting Oversight Board.
- j. “Insured depository institution” shall have the meaning set forth in 12 U.S.C. § 1813(c)(2) and (c)(3).
- k. “Savings association” shall have the meaning set forth in 12 U.S.C. § 1813(b)(1).
- l. “Superior Bank FSB” or “Superior” means Superior Savings FSB, Coast to Coast Financial Corporation, Superior Federal Bank FSB and Superior Holdings, Inc., and/or any subsidiaries, affiliates, or successors of any or all of them;
- m. “Federal banking agency” means each of the following: the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, and the National Credit Union Administration; and
- n. “Ernst & Young Parties” means Ernst & Young, and its present and past assigns, successors, predecessors, subsidiaries, affiliates, insurers, officers, partners, principals, directors, agents, employees, servants, attorneys, and other representatives.
- o. “Consent Order” means an Order issued pursuant to 12 U.S.C.

1818(b).

p. All other technical words or terms in the Stipulation or in this Order, for which meanings are not specified or otherwise provided by the provisions of the Stipulation or this Order shall, insofar as applicable, have meanings as defined in Chapter 12 of the Code of Federal Regulations, the Home Owners' Loan Act ("HOLA"), or the Federal Deposit Insurance Act ("FDIA"). Any such technical words or terms used in the Stipulation or in this Order and undefined in the Code of Federal Regulations, the HOLA, or the FDIA shall have meanings that are in accordance with the best custom and usage in the banking and thrift industry and/or within public accounting firms.

23. Reference in the Stipulation or in this Order to provision of statutes, regulations, OTS publications, and regulatory guidance shall be deemed to include reference to all amendments to such provisions as have been made as of the date of this Order. The reference to any GAAP or GAAS literature in this Order shall include subsequent amendments, modifications and changes thereto.

24. The section headings in the Stipulation and in this Order are for convenience only and shall not affect the construction thereof.

25. In case any provision of the Stipulation or this Order is ruled to be invalid, illegal, or unenforceable by decision of any court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions thereof shall not in any way be affected or impaired thereby.

26. The terms of the Stipulation shall be incorporated into this Order as if set forth separately therein. The Stipulation and this Order may be used in any proceeding brought to enforce this Order.

27. The terms and provisions of this Order shall be binding upon, and shall inure to the benefit of Ernst & Young and the OTS (“the parties hereto”) and their successors in interest. Nothing in the Stipulation or this Order, express or implied, shall give to any person or entity, other than the parties hereto, and their successors, any benefit, legal or equitable right, remedy, or claim, nor impose any legal or other restrictions or obligations upon any person or entity that it not a party to the Stipulation and this Order provided, however, that the provisions of paragraph 28 and 29 are intended to confer a benefit upon the Ernst & Young Parties.

28. The Order constitutes the final disposition of all proceedings and claims for relief that have been or could be brought by the OTS against Ernst & Young in connection with Superior. No further proceedings against Ernst & Young shall be commenced in connection with Superior by the OTS, other than to enforce the terms of this Order.

29. (a) Except as set forth in subparagraph (b) below, the OTS, for itself, its legal representatives, predecessors, successors, and assigns, and not for any other Government entity, covenants not to bring and does hereby remise, give up, quit-claim, settle, compromise, forever discharge and fully, generally and unconditionally release, acquit and forever discharge each of the Ernst & Young Parties from any and all claims, suits, controversies, accounts, covenants, promises, judgments, damages, executions, causes of action, rights, duties, debts, liabilities, demands, obligations, contracts, agreements, costs, and actions of any kind and character, at law or in equity (including claims brought under statutes and regulations of the United States), whether founded in law or fact, whether known or unknown, suspected or unsuspected, direct or indirect,

that is covered by the corrective actions set forth in paragraphs 3 through 13 of this Order.

(d) For the avoidance of doubt, the release set forth in subparagraph (a) is a complete and total release of the Ernst & Young Parties as to all matters (including but not limited to claims or rights) relating to Superior and the exceptions set forth in subparagraph (b) do not apply to any matters (including claims or rights) relating to Superior.

30. The OTS does not undertake to settle, release or relinquish any claims of the Federal Deposit Insurance Corporation, acting in any capacity, its officers, directors, agents, servants, employees, attorneys or other representatives.

31. This Order is and shall become effective on the date it is issued, as shown in the caption hereof. Unless another date is specially provided in this Order, all terms of this Order, other than those relating to the payments of funds pursuant to paragraph 15 and relating to enforcement of the Order, shall cease five (5) years from the date of this Order, unless terminated, modified, or suspended, in writing by the OTS, acting through its authorized representative, as of an earlier date.

OFFICE OF THRIFT SUPERVISION

By:   
James E. Gilleran  
Director