

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

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

HEARTLAND SAVINGS BANK, F.S.B. )  
St. Louis, Missouri )  
\_\_\_\_\_ )

Re: Resolution No. KC 93-04  
Dated: May 20, 1993

STIPULATION AND CONSENT TO THE ENTRY  
OF A CEASE AND DESIST ORDER

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Midwest Regional Office, OTS, and Heartland Savings Bank, F.S.B., St. Louis, Missouri ("Heartland" or "Institution"), stipulate and agree as follows:

1. Consideration. The OTS, based upon information reported to it, is of the opinion that the grounds exist to initiate an administrative cease and desist proceeding against Heartland pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA") (12 U.S.C.A. § 1818(b) (West 1992)). Heartland desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation and, without admitting or denying that such grounds exist, hereby stipulates and agrees to the following terms in consideration of the forbearance by the OTS from initiating such administrative cease-and-desist litigation against Heartland with respect to the matters covered in the accompanying Order to Cease and Desist ("Order").

2. Jurisdiction.

(a) Heartland Savings Bank, F.S.B., St. Louis, Missouri, is a "savings association" within the meaning of Section 3 of the FDIA and Section 2 of the Home Owners' Loan Act, as amended by FIRREA. Accordingly, it is an "insured

depository institution" as that term is defined in Section 3(c) of the FDIA (12 U.S.C.A. § 1813(c) (West 1992)).

(b) Pursuant to section 8(b) of the FDIA, 12 U.S.C.A. § 1818(b) (West 1992), the appropriate Federal banking agency may issue a cease and desist order against any insured depository institution that engages in unsafe or unsound practices in conducting its business and/or violates a rule or regulation.

(c) Pursuant to Section 3(q) of the FDIA (12 U.S.C.A. § 1813(q) (West 1992)) the Director of OTS is the "appropriate Federal Banking agency" to maintain enforcement proceedings against such a savings association. Therefore, Heartland is subject to the authority of the OTS to initiate and maintain a cease and desist proceeding against it pursuant to Section 8(b) of the FDIA (12 U.S.C.A. § 1818(b) (West 1992)).

(d) In the opinion of the OTS, a basis exists for initiating an administrative cease and desist proceeding against Heartland as a result of an unsafe or unsound practice and breach of fiduciary duty related to an investment by a wholly-owned subsidiary of Heartland in a property leased to an entity controlled by institution-affiliated parties.

3. Consent. Heartland consents to the issuance by the OTS of the Order. It further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

4. Finality. The Order is issued under Section 8(b) of the FDIA (12 U.S.C.A. § 1818(b) (West 1992)). Upon its issuance by the Regional Director for the Midwest Regional Office, OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA (12 U.S.C.A. § 1818(i) (West 1992)).



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

\_\_\_\_\_  
In the Matter of )  
 )  
**HEARTLAND SAVINGS BANK, F.S.B.** )  
**St. Louis, Missouri** )  
\_\_\_\_\_ )

Re: Resolution No. KC 93-04  
Dated: May 20, 1993

**ORDER TO CEASE AND DESIST**

**WHEREAS**, Heartland Savings Bank, F.S.B., St. Louis, Missouri, Docket No. 2165 ("Institution" or "Heartland"), through its directors, has executed a Stipulation and Consent to Issuance of Order to Cease and Desist, which is incorporated herein by reference ("Stipulation") and is accepted and approved by the Office of Thrift Supervision ("OTS") acting through its Regional Director for the Midwest Regional Office; and

**WHEREAS**, Heartland, in the Stipulation, has consented and agreed to the issuance of this Order to Cease and Desist ("Order") pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), codified at 12 U.S.C.A. § 1818(b) (West 1992));

**NOW THEREFORE, IT IS ORDERED** that Heartland and its directors, officers, employees, agents and service corporations shall cease and desist from any violation of, or the aiding and abetting of any violation of 12 C.F.R. § 563.43 (1992), 12 U.S.C.A. §§ 371c, 371c-1, and 375b (West 1992) as made applicable to Heartland by 12 U.S.C.A. § 1468(b)(1) (West 1992).

**IT IS FURTHER ORDERED THAT:**

1. Neither the Institution nor any of its subsidiaries shall, without the prior written approval of the Regional Deputy Director:

- a. enter into or renew any transaction permissible under 12 C.F.R. § 563.41 or 563.42 (1992) with any affiliate as defined thereunder; or
  - b. grant any extension of credit to any director, executive officer, or principal shareholder or their related interests, except for the granting, renewal or modification of loans secured by a person's principal residence and overdraft protection for up to five thousand dollars (\$5,000) in amount per person that otherwise comply with applicable law and regulation; or
  - c. enter into or renew any business dealing with or involving an executive officer, director, or principal shareholder of the Institution or their related interests, it being understood that this provision does not restrict deposits of funds into Heartland or the payment of salaries, directors' fees and expenses incurred in the ordinary course of business.
2. Heartland and its subsidiaries shall continue to invest in real estate only in accordance with subparagraph 2.c. of Heartland's Supervisory Agreement with OTS, dated January 2, 1991, for so long as such agreement remains in effect. It is understood that this paragraph does not restrict the transfer of real estate owned into the service corporation formed by Heartland to hold real estate owned, provided that such transfer complies with applicable regulations.
3. Definitions.
- a. For all purposes of this Order, except as otherwise expressly provided or unless the context otherwise requires: (i) the terms used in this Order have the meanings assigned to them in this Paragraph 3; (ii) all accounting terms not otherwise defined have the meanings assigned to

them in accordance with generally accepted accounting principles, except, that if such terms are defined in the Rules and Regulations of the OTS, such regulatory definitions shall control; (iii) all terms not otherwise defined herein that are defined in the HOLA, the FDIA, and FIRREA, the Rules and Regulations of the OTS (including, without limitation, 12 C.F.R. §§ 500.1 et seq., 541.1, et seq., and 561.1, et seq. (1992)) or its publicly available Bulletins and Advisory Memoranda shall have the meanings assigned to them in such statutes, rules and regulations, Bulletins, and Advisory Memoranda; and (iv) all technical words or terms not subject to a definition in this Order shall have the meanings that accord with the best custom and usage in the thrift and banking industries.

b. As used in this Agreement:

- (1) "Make" means to enter into a binding obligation to provide loan funds.
- (2) The terms "director," "executive officer," "principal shareholder," and "related interest" shall have the same meaning as set out at 57 Fed. Reg. 21199 (1992) (to be codified at 12 C.F.R. § 215.2).
- (3) "HOLA" means the Home Owners' Loan Act, as amended, 12 U.S.C.A. § 1464, et seq. (West 1992).
- (4) "FDIA" means the Federal Deposit Insurance Act, as amended.
- (5) "FIRREA" means the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183.
- (6) "Invest in" means to make, purchase, acquire, guarantee, modify, or to commit to do any of these.

- (7) "Bulletins" refers to, inter alia, Regulatory Bulletins, Thrift Bulletins, and PA Bulletins, issued by the staff (or agents) of the OTS (or its predecessors in interest).
- (8) "Subsidiary" or "Subsidiaries" shall be defined in 12 C.F.R. § 567.1(dd).
- (9) "Transfer" means to sell, assign, pledge, exchange, or to commit to do any of these.
- (10) "Extension of credit" shall have the same meaning as set out in 12 C.F.R. § 215.3 (1992), as amended by 57 Fed. Reg. 21199 (1992).
- (11) "Business dealing" means:
- (a) the sale, purchase, or other conveyance of assets, goods, or services to or from a savings association or any of its subsidiaries;
  - (b) the use of a savings association's or any of its subsidiaries' facilities, real or personal property, or personnel;
  - (c) the lease of property, equipment, or other assets to or from a savings association or any of its subsidiaries;
  - (d) the payment by a savings association or any of its subsidiaries of commissions or fees, including but not limited to brokerage commissions and management, consultant, architectural, and legal fees;
  - (e) the payment by a savings association of interest on deposits to the extent that the rate of such interest exceeds the rate paid to other depositors on similar deposits with the savings association; and

(f) service agreements.

4. Board of Director Responsibility.

- a. Each member of the Board of Directors owes fiduciary duties to the Institution and its depositors and stockholders. Notwithstanding that certain provisions of this Order require the Board of Directors to submit various matters to an authorized Regional OTS official for the purpose of receiving approval, notice of acceptability or non-objection, such regulatory oversight does not derogate or supplant the fiduciary duties owed by the members of the Board of Directors of the Institution. The Board of Directors, at all times, shall have the ultimate responsibility for overseeing the safe and sound operation of the Institution.
- b. In connection with its oversight of the Institution, the Board of Directors shall obtain and consider all applicable information suggested in the Director Information Guidelines, published by the OTS in December 1989 and document such considerations, as appropriate, in its board of director minutes.
- c. The Board of Directors of the Institution shall take immediate action for the purposes of causing the Institution to comply with this Order.

5. Board Review of Compliance With Order.

The Board of Directors shall, at each regular meeting, formally resolve that, to the best of its knowledge and belief, and based on a prudent review, during the previous calendar quarter the Institution and its subsidiaries complied with each provision of this Order currently in effect, except as otherwise stated. The resolution shall specify in detail how, if at all, full compliance was not accomplished. The resolution

further shall set forth any exceptions to any requirements of this Order approved by the Regional Deputy Director. This resolution shall then be made a part of Heartland's minutes and available for review by the OTS examiners.

6. Violation Not Condoned.

Nothing in this Order shall be construed as allowing the Institution to violate any law, rule, regulation, or policy statement to which it is subject.

7. Effect of FDICIA.

To the extent that any provision of the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102-242, 105 Stat. 2236 (Dec. 19, 1991) ("FDICIA") or any regulation(s) promulgated thereunder imposes more restrictive requirements than any provision contained in this Order (either expressly or through OTS interpretative Bulletins or policy statements), such provision(s) of the FDICIA or such regulation(s) shall be controlling.

8. Severability.

In case any provision in this Order 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 the Regional Director, in his or her sole discretion, determines otherwise.

9. Termination.

The provisions of this Order are effective upon issuance of this Order by the OTS, through its authorized representative whose signature appears

