

BEFORE THE UNITED STATES OF AMERICA
OFFICE OF THRIFT SUPERVISION
DEPARTMENT OF THE TREASURY

)	RE: OTS No. <u>CHI-93-16</u>
)	
In the Matter of)	Dated: July 13 , 1993
)	
RONALD E. SCHERER,)	
Director of JEFFERSON)	STIPULATION AND CONSENT TO
SAVINGS BANK,)	ENTRY OF CONSENT ORDER
West Jefferson, Ohio)	TO CEASE AND DESIST
)	DIRECTING AFFIRMATIVE RELIEF
)	

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 an administrative proceeding against certain institution-affiliated parties of Jefferson Savings Bank, West Jefferson, Ohio ("Jefferson") pursuant to the Federal Deposit Insurance Act ("FDIA"), § 8(b), 12 U.S.C. § 1818(b) (West 1989 & Supp. 1992).

WHEREAS, Ronald E. Scherer ("Scherer") director and controlling shareholder of Jefferson, desires to cooperate with the OTS and to avoid the time and expense of any such possible administrative litigation and, without either admitting or denying the conclusions reached by OTS or that such grounds against any institution-affiliated party exist, hereby stipulates and agrees to the following terms:

1. Jurisdiction

(a) Jefferson is a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. 1813(b) and Section 2(4) of

the Home Owners' Loan Act, 12 U.S.C. 1462(4). Accordingly, it is an "insured depository institution" as that term is defined by 12 U.S.C. § 1813(u).

(b) Scherer is a Director of Jefferson and is an institution-affiliated party as defined by 12 U.S.C. § 1813(u).

(c) Pursuant to Section 3(q) of the FDIA, 12 U.S.C. 1813(q), the Director of the OTS is the "appropriate Federal Banking agency" to maintain administrative proceedings against any institution-affiliated party of Jefferson. Therefore, Scherer is subject to the jurisdiction of the OTS to initiate and maintain an administrative proceeding against him pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b).

2. Consent. Scherer consents to the jurisdiction of the OTS and to issuance by the OTS of the accompanying Consent Order to Cease and Desist Directing Affirmative Action, attached hereto as Exhibit A (the "Order"). Scherer agrees to comply with the terms of the Order upon issuance and forever waives any objections to the form or substance of the Order.

3. Finality. The Order is issued under Section 8(b) of the FDIA, 12 U.S.C. § 1818(b). Upon its issuance by the Regional Director of OTS, it shall be a final order, effective and fully enforceable by the OTS under the applicable provisions of the FDIA, as amended by FIRREA, including but not limited to the provisions of 12 U.S.C. § 1818(1)(1).

4. Waivers. Scherer waives his right to a notice of charges and the administrative hearing provided by Section 8(b) of the FDIA, 12 U.S.C. § 1818(b), and waives any right to seek judicial review of this Stipulation and the Order or to seek any post-

hearing procedures, including any such right provided by Section 8(h) of the FDIA, 12 U.S.C. § 1818(h), and further waives any other right to challenge the validity of the Order.

5. No Limitations.

(a) This Stipulation and the Order are not intended to limit, compromise, settle, dismiss, resolve, preclude or in any way affect, nor shall they have the effect of limiting, compromising, settling, dismissing, resolving, precluding or in any way affecting, (i) the right or authority of any other governmental agency to initiate or pursue any other proceeding or action, civil or otherwise, against Scherer or (ii) the liability of Scherer that may arise pursuant to any such proceeding or action; nor shall this Stipulation and the Order limit the right or authority of OTS in its sole discretion to initiate or prosecute any other proceeding or action, civil or otherwise, or to take any other regulatory action, against Jefferson or any institution-affiliated party of Jefferson, other than Scherer.

(b) This Stipulation and the Order are for the purpose of resolving this administrative action concerning Scherer relating to matters known or discovered by the OTS during the course of its Formal Investigation of Jefferson Savings Bank OTS Resolution No. ERC_89-29 dated April 17, 1989 up to the date of the entry of the Order.

(c) Scherer agrees that he will not assert that the payment of any monies or providing any other financial relief as contemplated by the Order as the basis for a claim of double jeopardy in any pending or future proceedings brought by the United States Department of Justice or any other governmental entity.

6. Indemnification. Scherer shall neither cause nor permit Jefferson or any subsidiary thereof to incur, directly or indirectly, any expense for the amount of the restitution under the Order or any legal or other professional expenses incurred relative to the negotiation and issuance of the Order, nor obtain any indemnification or other reimbursement from Jefferson or any subsidiary thereof with respect to such amounts. Any payments received by or on behalf of Scherer in connection with this action shall be returned to Jefferson.

7. Entire Agreement. This Stipulation and the Order constitute the entire agreement of the parties hereto and shall be governed by and construed in accordance with the laws of the United States.

WHEREFORE, in consideration of the foregoing, the OTS and Scherer execute this Stipulation.

Office of Thrift Supervision

/S/

Ronald N. Karr
Regional Director
Central Region

Date: 7-15-93

/S/

Ronald E. Scherer

Date: June 16, 1993

BEFORE THE UNITED STATES OF AMERICA
OFFICE OF THRIFT SUPERVISION
DEPARTMENT OF THE TREASURY

_____)
In the Matter of)
RONALD E. SCHERER,)
Director of JEFFERSON)
SAVINGS BANK,)
West Jefferson, Ohio)
_____)

RE: OTS No. CHI-93-16
Dated: July 13, 1993
CONSENT ORDER TO
CEASE AND DESIST
DIRECTING AFFIRMATIVE ACTION

WHEREAS, the Office of Thrift Supervision ("OTS") has conducted an investigation pursuant to Resolution ERC-89-29 dated April 17, 1989, into Jefferson Savings Bank, West Jefferson, Ohio ("Jefferson") and, as a result of that investigation, has concluded that:

1. On May 12, 1987, Ronald E. Scherer ("Scherer") filed a Notice of Change in Control (the "Notice") for the purpose of acquiring a controlling interest in Jefferson. The Notice contained a May 1987 Business Plan for the conduct of Jefferson for the next three years. The May 1987 Business Plan was a "no growth" plan; no growth in deposits, savings, assets or liabilities was projected by Jefferson over the three-year life of this plan.

2. On November 6, 1987, the Principal Supervisory Agent for the Federal Home Loan Bank Board (the "FHLBB") sent a Non-Disapproval Letter pursuant to 12 C.F.R. § 574.8(a)(1)(1988) stating that the FHLBB did not intend to disapprove the proposed acquisition of Jefferson by Scherer provided that eight conditions (the "Change of Control Conditions") are complied with "in a manner

satisfactory to the Supervisory Agent at the Federal Home Loan Bank of Cincinnati."

3. Condition 4 of the Non-Disapproval Letter provided:

[F]or a period of three years following the date of acquisition of Jefferson, Jefferson will operate within the constraints of the business plan; ... and material deviations from the plan, such as but not limited to asset mix, growth in liabilities, or operating strategies, shall require written notice to and prior approval by the supervisory agent.

4. The Jefferson Board of Directors agreed to the Change of Control Conditions on March 1, 1988, and Scherer became the majority stockholder of Jefferson and Chairman of the Board of Directors.

5. In October, 1988, Jefferson acquired the Maxster property, a 118-acre undeveloped parcel in Dublin, Ohio, for \$3,544,800 and acquired the Erwin property, a 123-acre undeveloped parcel in Dublin, Ohio, for \$4,300,000. The acquisitions were material deviations from the May 1987 Business Plan. Nevertheless, Jefferson acquired the properties without giving prior notice to the FHLBB or obtaining prior approval from the FHLBB in disregard of the requirements of the Non-Disapproval Letter. In September 1992, Jefferson sold the Maxster and Erwin properties for a loss in excess of \$3,000,000.

WHEREAS, Scherer neither admits nor denies the conclusions arising from the OTS investigation; and

WHEREAS, Scherer has executed a Stipulation between Scherer and OTS attached hereto and incorporated herein by reference (the "Stipulation"); and

NOW THEREFORE, the Regional Director of OTS, pursuant to Section 8 of the Federal Deposit Insurance Act ("FDIA"), as amended, and in accordance with the terms of the Stipulation

HEREBY ORDERS as follows:

1. Scherer shall resign as a member of the Jefferson Board of Directors on or before September 1, 1993.

2. Scherer shall pay to Jefferson \$300,000 (Three Hundred Thousand Dollars) without acceptance or receipt of anything of value in return from Jefferson according to the following schedule:

a. Scherer shall pay \$100,000 (One Hundred Thousand Dollars) to Jefferson immediately upon execution of the Stipulation and upon entry of this Order;

b. Scherer shall pay \$100,000 (One Hundred Thousand Dollars) to Jefferson on December 31, 1993;

c. Scherer shall pay \$100,000 (One Hundred Thousand Dollars) to Jefferson on March 1, 1994;

Scherer shall have the right to make any of these payments in advance of the deadlines established in the schedule.

3. Scherer shall pay to OTS \$50,000 (Fifty Thousand Dollars) on or before March 1, 1994 as reimbursement of a portion of the cost of OTS's investigation of Jefferson. All payments to OTS shall be by cashier's check or certified check payable to the "Office of Thrift Supervision" delivered to P. Stacy Powers, Esq., Regional Counsel, Office of Thrift Supervision, Department of the Treasury, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601.

a. Scherer shall place all of his Jefferson stock in one or more trusts established pursuant to 26 U.S.C. § 671 et. seq.

(collectively, the "Trust"), the beneficiaries of which shall be his three children: Amie Christine Scherer, born on June 4, 1972; Ronald Earl Scherer, Jr., born on February 21, 1974; and Patricia Jo Scherer, born on April 9, 1977. Scherer shall not purchase any additional stock of Jefferson without the approval of OTS after this Order is entered; in the event that Scherer purchases any additional stock of Jefferson after this Order is entered with the approval of OTS, such stock shall likewise be placed in the Trust.

b. OTS has approved all of the trust instruments with the Trustees being National City Bank, The Fifth Third Bank and The Huntington Trust Company, N.A. (collectively, the "Trust Instrument") establishing the Trust submitted to the OTS on June 15, 1993.

c. Scherer shall place all of his Jefferson stock in the Trust within 10 days of approval of all necessary OTS Change of Control, rebuttable presumptions of control or other applicable applications.

d. The name of any successor Trustee shall also be submitted to OTS for its approval prior to appointment of such successor Trustee.

e. The Trust Instrument shall provide that, in performing his duties, the Trustee shall be completely independent of Scherer; the Trust Instrument shall further provide that Scherer shall not directly or indirectly consult with, advise or direct the Trustee nor shall the Trustee directly or indirectly consult with or take advice or direction from Scherer, with respect to any power of administration, as that term is defined in 16 U.S.C. § 675, on any decision concerning the operation of the Trust or of any matter

with respect to Jefferson including but not limited to (i) any decision to convey, sell or otherwise dispose of the Jefferson stock or the implementation or effectuation of such conveyance, sale or other disposition and (ii) the exercise of any voting rights or any appointments to the Jefferson Board of Directors or any hirings or promotions by Jefferson. The Trust Instrument shall provide that the Trust shall not be revocable by Scherer. Notwithstanding any provision to the contrary, the Trust Instrument may authorize Scherer to direct the distribution of shares of the Trust allocable to Scherer's children upon Scherer's death and the manner in which estate and gift taxes are to be paid under the Trust Instrument.

f. The Trust Instrument shall further provide that, prior to April 9, 1998, the date that the youngest of the three children reaches the age of twenty one, the three beneficiaries likewise shall not directly or indirectly consult with, advise or direct the Trustee, nor shall the Trustee directly or indirectly consult with or take advice or direction from any of the beneficiaries, on any matter or in any respect that Scherer is precluded from consulting, advising or directing the Trustee. The Trust Instrument may provide that, upon the date that the youngest child becomes twenty-one, these restrictions on the beneficiaries contained in this subparagraph expire and that each child may thereafter have such rights and powers as are provided to him or her by the terms of the Trust Instrument establishing the Trust.

g. The Trustee shall exercise any Voting Rights associated with the Trust or with any Trust Assets in a manner he

believes in good faith to be consistent with the safety and soundness of Jefferson and with applicable law and regulations.

h. The Trust Instrument shall further provide that the Trustee, the Trust and the three beneficiaries shall fully comply with all statutes and regulations relating to acquisitions and changes in control of savings associations, including the provisions of 12 C.F.R. § 574.1 et seq. Nothing in this Order shall be deemed to be a waiver of any change in control requirement or to constitute any change in control approval by OTS.

4. Scherer shall fully comply with all statutes and regulations relating to acquisitions and changes in control of savings associations, including the provisions of 12 C.F.R. § 574.1 et. seq.

5. a. The obligations of Scherer in paragraphs 1, 2 and 3 shall be separate and independent of each other and neither the failure of Scherer to perform, either in whole or in part, his obligation under one paragraph nor any dispute between the parties with respect to one paragraph shall reduce, alter or modify his obligation under another paragraph.

b. The Trust Instrument shall provide that the Trust Instrument may be subsequently amended in a manner mutually agreed to by Scherer and OTS in writing.

c. In the event that Scherer shall fail to make any payment provided for in this Order within 10 days of its due date, then the entire balance of the payments provided for in the Order shall become immediately due and payable and such acceleration of payment shall be without limitation on the exercise by the OTS of

6. Indemnification. Scherer shall neither cause nor permit Jefferson or any subsidiary thereof to incur, directly or indirectly, any expense for the amount of the restitution under the Order or any legal or other professional expenses incurred relative to the negotiation and issuance of the Order, nor obtain any indemnification or other reimbursement from Jefferson or any subsidiary thereof with respect to such amounts. Any payments received by or on behalf of Scherer in connection with this action shall be returned to Jefferson.

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Office of Thrift Supervision

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Ronald N. Karr
Regional Director
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