

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

\_\_\_\_\_) )  
In the Matter of ) )  
 ) )  
HOME TRUST SAVINGS AND LOAN ) )  
ASSOCIATION ) )  
Vermillion, South Dakota ) )  
\_\_\_\_\_)

Re: Resolution No. DM 92-13

Dated: June 5, 1992

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 Home Trust Savings and Loan Association, Vermillion, South Dakota ("Home Trust" 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 Home Trust pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA") (12 U.S.C. § 1818(b) (1988 and Supp. I 1989)). Home Trust 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 Home Trust with respect to the matters covered in the accompanying Order to Cease and Desist ("Order").

2. Jurisdiction.

(a) Home Trust 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. § 1813(c) (1988 and Supp. I 1989)).

(b) Pursuant to Section 3 of the FDIA as amended by FIRREA, the Director of OTS is the "appropriate Federal Banking agency" to maintain enforcement proceedings against such a savings association. Therefore, Home Trust 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. § 1818(b) (1988 and Supp. I 1989)).

(c) In the opinion of the OTS, a basis exists for initiating an administrative cease and desist proceeding against Home Trust as a result of violations of conflict of interest and loan documentation regulations and unsafe unsound levels of classified assets.

3. Consent. Home Trust 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. § 1818(b) (1988 and Supp. I 1989)). 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. § 1818(i) (1988 and Supp. I 1989)).





Regional Deputy Director. The Institution shall provide OTS with a monthly written report during this ninety (90) day period summarizing its progress in developing the plan to retain qualified management. At a minimum, such management shall include a Chief Executive Officer ("CEO") with proven ability in managing an Institution of comparable size and experience in upgrading a low quality loan portfolio. Such CEO shall be provided the necessary written authority to implement measures designed to improve the quality of the loan portfolio and to assure compliance with applicable laws and regulations and the Institution's policies and procedures. The qualifications of management shall be assessed on their ability to, among other things, (i) comply with the requirements of this Order, (ii) operate the Institution in a safe and sound manner, (iii) comply with applicable laws and regulations, and (iv) maintain all aspects of the Institution in a safe and sound condition, including asset quality, capital adequacy, earnings, management effectiveness, and liquidity. During the life of this Order, the Institution shall notify the Regional Deputy Director in writing of any changes in the officer noted above. The notification must include all information required to be submitted pursuant to the requirements of 12 U.S.C. Section 1831i and any OTS regulations or guidelines or bulletins issued pursuant thereto and must be provided prior to the individual assuming the new position.

2. Full Time Management.

Except with the prior approval of OTS, all executive officer positions shall be full time, on-site positions.

3. Board of Director Involvement.

- a. Reports to the Board. Reports to the Board of Directors must be sufficiently detailed so as to fully inform each director of the condition of the association and of all material activities and transactions.
- b. Audit Committee. Within thirty (30) days of the date of this Order, the board shall shall form an audit committee consisting of outside directors. The audit committee shall select the audit firm and discuss the scope and results of the audit. It shall also select and employ a compliance officer who shall be under the direction and control of the audit committee. The duties of the compliance officer shall include monitoring all institution business transactions to ensure their compliance with regulatory provisions, association policies and procedures, and safety and soundness. The compliance officer shall be granted the means and independence necessary to carry out his/her duties.
- c. Board Oversight. The association or any subsidiary shall not engage in any material transaction without the prior approval of the board of directors. Further, at least one outside director not affiliated with any Robert E. Fishback controlled entity shall be in attendance at any meeting approving such transaction. For purposes of this paragraph 3, a "material transaction" means to (i) invest in or transfer any asset or liability in an amount greater than \$100,000, (ii) make any extension of credit to or engage in any business dealing with or involving an executive officer, director, or principal shareholder or any related interest

thereof, or (iii) make any expenditure in an amount greater than \$25,000 that is both within the control of the association and not within the ordinary course of business.

- d. Minutes. The minutes of meetings of the board of directors shall fully and clearly set forth the deliberations and decisions of the board, especially with respect to material transactions.

4. Internal Loan Review and Monitoring.

- a. Policy. Within thirty (30) days of the effective date of this Order, the Institution shall develop policies and procedures to provide for an internal loan review of all commercial and commercial real estate loans and other high risk assets to be conducted at least annually. Such review shall include, but not be limited to, analysis of current borrower financial statements and a review and analysis of relevant information on security properties such as operating statements, rent rolls, and cash flow information. The board of directors shall approve such policies and procedures, which approval shall be recorded in the minutes of the meeting of the board of directors. Thereafter, the Institution and its directors, officers, and employees shall implement and follow such policies and procedures.
- b. Review of Existing Credits. The Institution shall make a good faith effort to obtain current financial statements on all existing commercial borrowers and relevant information on all properties securing existing commercial real estate loans, which efforts shall be documented in the Institution's loan files. The Institution

shall conduct an internal review promptly upon receipt of any such information to ensure the proper classification of such credits.

- c. Installment Loans. The Institution shall develop a system to monitor hazard and other appropriate insurance coverage on installment loans. The board of directors shall approve such system, which approval shall be recorded in the minutes of the meeting of the board of directors. Thereafter, the Institution and its directors, officers, and employees shall implement and follow such system.

5. Commercial Overdrafts.

The Institution shall not allow overdrafts of commercial checking accounts.

6. Reduction of Problem Assets.

- a. Reduction Plan. Within thirty (30) days of the effective date of this Order, the Institution shall develop a written plan to reduce Classified Assets and Assets Subject to Special Mention ("Adversely Classified Assets") with gross book values exceeding \$100,000 and groups of adversely classified assets, such as loans to one borrower, with aggregate gross book values exceeding \$100,000 as of April 30, 1992. At a minimum, the plan shall include:

- (1) A schedule providing semi-annual goals to reduce the remaining adversely classified assets as of April 30, 1992, to levels representing not more than a specified percentage of core capital as reported each September 30 and March 31 by the Institution in its Thrift Financial Report and shall include no less than four consecutive semi-annual target dates;

- (2) An explanation showing the complete rationale used by the Institution in constructing the reduction schedule;
- (3) Specific strategies and time frames for resolution of each adversely classified asset; and,
- (4) A provision requiring, at a minimum, quarterly reviews by the Institution's Board of Directors whereby the extent of the Institution's compliance with the plan is expressly addressed with the results of each review to be recorded in the corporate minutes of the board.

b. Board Approval. The written plan, and any subsequent modifications thereto, shall be approved by the Board of Directors, which approval shall be recorded in the minutes of the meeting of the Board of Directors. Thereafter, the Institution and its directors, officers, and employees shall implement and follow such plan and any modifications thereto.

c. Reports to OTS. The Board of Directors shall provide the Regional Deputy Director with a copy of its quarterly or more frequent review of the Institution's compliance with the plan within ten (10) days of such review.

7. Transactions with Affiliates.

The Institution and its subsidiaries shall not enter into any transaction permissible under 12 C.F.R. 563.41 or 563.42 with any affiliate as defined thereunder or grant any extension of credit permissible under § 22(h) of the FRA as amended by the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102-242 (to be codified at 12 U.S.C. § 375b) as made applicable to savings

associations pursuant to 12 U.S.C. § 1468(b)(1) (Supp. I 1989) without the prior written approval of the Regional Deputy Director.

8. Limitations on Lending.

Except for existing legally binding commitments, without prior written approval of the Regional Deputy Director, the Institution shall not and shall not allow any wholly owned or majority owned subsidiary of the Institution to invest in any loans or contracts except for:

- a. residential real estate loans to finance the bona fide purchase of one-to-four family owner-occupied dwellings secured by first liens on such homes in an amount not to exceed \$250,000,
- b. residential real estate loans to refinance loans on existing owner-occupied homes secured by first liens on such homes in an amount not to exceed \$250,000, or
- c. consumer, education, second mortgage, or home improvement loans which do not exceed \$25,000.

9. Valuation of Assets.

The Institution shall perform net realizable value calculations at least quarterly for its real estate owned and for its troubled debt restructurings. In substance foreclosures shall be accounted for according to Generally Accepted Accounting Principles.

10. Specific Valuation Allowances.

The Institution and any service corporation or subsidiary thereof shall make adjustments to the book value of any loan or repossessed asset in the amount and at such time as directed by an authorized Regional OTS official. Such adjustment, unless otherwise directed by an authorized

Regional OTS official, shall be made by establishing and maintaining a specific valuation allowance.

11. Reports.

The Institution shall file all financial reports required by the OTS, including monthly and quarterly reports, on the required date, and such other reports requested by an authorized Regional OTS official on the requested date.

12. Definitions.

For all purposes of this Order, except as otherwise expressly provided or unless the context otherwise requires: (a) the terms used in this Order have the meanings assigned to them in this Paragraph 12; (b) 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; (c) 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. (1991)) 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 (d) 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. As used in this Agreement:

- a. "Make" means to enter into a binding obligation to provide loan funds.

- b. The terms "director," "executive officer," "principal shareholder," and "related interest" shall have the same meaning as set out at 12 C.F.R. § 215.2.
- c. "HOLA" means the Home Owners' Loan Act, as amended, 12 U.S.C. § 1464, et seq. (Supp. I 1989).
- d. "FDIA" means the Federal Deposit Insurance Act, as amended.
- e. "FIRREA" means the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183.
- f. "Invest in" means to make, purchase, acquire, guarantee, modify, or to commit to do any of these.
- g. "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).
- h. "Subsidiary" or "Subsidiaries" shall be defined in 12 C.F.R. § 567.1(dd).
- i. "Transfer" means to sell, assign, pledge, exchange, or to commit to do any of these.
- j. "Extension of credit" shall have the same meaning as set out in 12 C.F.R. § 215.3.
- k. "Business dealing" means:
- (1) the sale, purchase, or other conveyance of assets, goods, or services to or from a savings association;
  - (2) the use of a savings association's facilities, real or personal property, or its personnel;
  - (3) the lease of property, equipment, or other assets to or from a savings association;

- (4) the payment by a savings association of commissions or fees, including but not limited to brokerage commissions and management, consultant, architectural, and legal fees;
- (5) 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
- (6) service agreements.

13. 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. The Institution shall make such information available to the Regional Deputy Director upon request.

c. The Board of Directors of the Institution shall take immediate action for the purposes of causing the Institution to comply with this Order.

14. 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 believe, and based on a prudent review, during the previous calendar month 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 found not to exist. The resolution further shall set forth any exceptions to any requirements of this Order approved by the Regional Deputy Director. Within twenty (20) days of each regular Board of Directors' meeting, the Institution shall submit to the Regional Deputy Director a copy of the minutes of each Board of Directors' meeting, and the minutes of each Board of Directors' committee(s) meeting(s), and the aforementioned resolution. Each director shall at such time either provide the Regional Deputy Director with certification that, to the best of his or her knowledge and belief, and based upon a prudent review, the above-referenced resolution is accurate or provide the Regional Deputy Director with a written statement providing in detail the reason(s) for disagreement with the resolution.

15. 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.

16. Notices.

Except as otherwise noted, any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted by the Order to be made upon, given or furnished to, delivered to, or filed with either OTS, the Regional Deputy Director, or the Institution, shall be in writing and mailed first class, airmail postage prepared, or physically delivered, or telecopied, telexed, or sent by other means of electronic transmission and confirmed by first class mail, airmail postage prepaid, or physically delivered and addressed to: if to OTS, to the Regional Deputy Director at Office of Thrift Supervision, Regency West 2, Suite 300, 1401 West 50th Street, West Des Moines, Iowa 50265-5924; or if to the Institution, to Home Trust Savings and Loan Association, 20 East Main Street, Vermillion, South Dakota 57069-2199.

17. Termination.

The provisions of this Order are effective upon issuance of this Order by the OTS, through its authorized representative whose hand appears below. This Order shall remain in effect until terminated, modified, or suspended by the OTS, acting through the Regional Director or his designee.

THE OFFICE OF THRIFT SUPERVISION

By: \_\_\_\_\_ /S/  
Frederick R. Casteel  
Interim Regional Director  
Midwest Region