

e. Fidelity knowingly allowed an individual with no lending authority to approve the payment of substantial overdrafts on a corporate demand/investment account, thereby resulting in violations of 12 C.F.R. Section 563.93 and board-established policy.

f. Fidelity knowingly accepted nonsufficient funds (NSF) checks for loan payments, thus concealing a customer's delinquency status from the board of directors, resulting in a potential violation of 18 U.S.C. § 1344 and further resulting in known associated losses totaling \$21,366.

Fidelity desires to cooperate with the OTS and to avoid the time and expense of such administrative proceedings 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 proceedings against Fidelity with respect to the matters covered in the accompanying Order to Cease and Desist ("Order").

2. Jurisdiction.

(a) Fidelity 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 of 1933, as amended by FIRREA, 12 U.S.C. § 1462(4). Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, as amended by FIRREA, 12 U.S.C. Section 1813(c).

(b) Pursuant to Section 3(q) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1813(q), the Director of OTS is the "appropriate Federal Banking agency" to maintain an enforcement proceeding against such a savings association. Therefore, Fidelity 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, as amended by FIRREA, 12 U.S.C. Section 1818(b).

3. Consent.

Fidelity 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, as amended by FIRREA, 12 U.S.C. Section 1818(b). Upon its issuance by the Regional Director for the Southeast 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, as amended by FIRREA, 12 U.S.C. Section 1818(i).

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)
)
)
)

Fidelity Federal Savings Bank)
Dalton, Georgia)
_____)

Re: Resolution No. ATL-92-85

Dated: October 27, 1992

ORDER TO CEASE AND DESIST

WHEREAS, Fidelity Federal Savings Bank, Dalton, Georgia, OTS Docket Number 7112, ("Fidelity" or "Institution"), through its directors, has executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist ("Stipulation"), which is incorporated herein by reference and is accepted and approved by the Office of Thrift Supervision ("OTS"), acting through its Regional Director for the Southeast Region ("Regional Director"); and

WHEREAS, Fidelity, 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"), as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C. § 1818(b) (1988 and Supp. I 1989).

NOW THEREFORE, IT IS ORDERED that Fidelity 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:

- a) 12 C.F.R. § 563.93
- b) 12 C.F.R. § 563.170
- c) 12 C.F.R. § 563.160
- d) 12 C.F.R. Part 564

IT IS FURTHER ORDERED THAT:

Affiliated Persons

1. Fidelity shall continuously maintain for review by federal examiners a list of all Fidelity's affiliated persons, as defined at 12 C.F.R. § 561.5.
2. The board of directors shall continue to review all loans made by Fidelity to its affiliated persons to

determine whether such loans violate applicable regulations. Within ninety days of the effective date of this Order, the board shall identify those loans found to be in violation of the regulations and develop a written plan to correct the violations. The plan should detail efforts to be taken by the Institution to restructure the term loans or single pay notes into amortizing loans and obtain security for unsecured loans or unsecured portions of loans. Thereafter, the board shall undertake a similar review at least quarterly and initiate immediate corrective action for any loans found to be in violation of the regulations.

3. Fidelity shall not originate, extend, modify or refinance unsecured or term loans to any of its affiliated persons except in accordance with the Institution's policies and procedures. Such policies and procedures shall be no less stringent than applicable regulations and the requirements of this Order.
4. The board shall ensure that Fidelity's loan and/or conflict of interest policies require, at a minimum, that all loans to affiliated persons, including modifications, refinancings and extensions, comply with regulatory requirements and Fidelity's loan policies. Loan files shall document that such compliance has been reviewed and confirmed by the board.
5. Fidelity shall continue to seek to obtain reimbursement from affiliated persons for loans (including modifications, refinancings, extensions and loans that have been repaid) received by them that contained prohibited preferential terms. The reimbursement amounts shall be the difference between the preferential terms actually provided and the then applicable market terms, including, but not limited to, such factors as interest rates and fees.
6. The board shall adopt policies and ensure the implementation of procedures regarding affiliated person overdrafts. Such policies and procedures shall be consistent with Regulation O, 12 C.F.R. Part 215, and any other applicable regulations.

Bonus Plan

7. The board shall submit any bonus plan approved by the directorate to OTS for review and notice of no objection before any bonuses are paid under the plan. In addition, such a plan shall provide that: a) bonuses be based upon individual performance; and b) all bonus recommendations and supporting documentation be reviewed and approved by the board of directors and not objected

to by OTS prior to any payment of bonuses under the plan; and c) all subsequent modifications to the plan must be submitted to OTS for review and notice of no objection before any bonuses are paid under the modified plan.

Board Packages

8. The board shall address the concerns contained in the May 4, 1992 Report of Examination regarding the deficiencies of the comprehensive information packets ("board packages"). Said board packages shall be submitted to each of the directors at least 24 hours prior to regularly scheduled monthly board meetings. The board packages shall, at a minimum consist of information and reports prescribed by the OTS Director Information Guidelines. The reports shall be prepared on a GAAP basis. In addition, Fidelity shall immediately adopt and implement as policy that deliberate attempts to alter bank records mislead the board, or make such records materially inaccurate, shall be grounds for dismissal with cause.

Internal Audit

9. Within ninety (90) days of the effective date of this Order, Fidelity shall retain qualified internal audit staff or make provision for performance of the internal audit function by qualified outside entities in accordance with Fidelity's internal audit plan. Documentation evidencing the actions taken the board in this area shall be submitted to the Regional Director within 120 days of the effective date of this Order.
10. Within ninety (90) days of the effective date of this Order, Fidelity shall develop an internal audit plan, which, at a minimum, identifies Institution areas and functions to be audited, the frequency with which the audits should be performed and the scope of the audits. The board also shall require the staff or entity performing the internal audits to report directly to a committee of the board composed of outside (non-management) directors.
11. The internal audit committee shall review findings, including suggested corrective actions, contained in the audits at least quarterly and report its findings to the full board. The internal audit committee shall review the internal audit plan and programs at least annually.

Underwriting

12. The board shall establish any procedures that are deemed necessary to ensure compliance with the Institution's

written loan underwriting policies and procedures, which shall be sufficient to fulfill the requirements of 12 C.F.R. § 563.170. Any exceptions to these written policies and procedures shall be thoroughly documented and reviewed by the board on an ongoing basis.

Asset Classification

13. Fidelity shall continue to maintain written policies and procedures for the review and classification of problem assets in accordance with the requirements of 12 C.F.R. § 563.160 and the guidelines set forth at 12 C.F.R. § 571.26, as well as the applicable sections of the Thrift Activities Handbook. The board shall continue to review and approve asset classifications at least quarterly.
14. Fidelity shall develop, adopt and implement a written plan to reduce the risk of loss from each classified secured loan or other asset with a book value in excess of \$250,000 and each classified unsecured loan with a book value in excess of \$100,000. The plan also shall include separate action plans for each asset that describe the steps to be taken to dispose of the asset, to restore it to earning status, and/or to otherwise eliminate the basis for criticism of the asset. The board shall review management's progress in meeting the targets of the plan at least quarterly.
15. Within 180 days of the effective date of this Order, Fidelity shall complete and document a review of all short term non-amortizing loans for compliance with Fidelity's policies and procedures and regulatory requirements. Fidelity shall develop a plan and timetable in which to implement corrective action for any noncompliant short term non-amortizing loans. All non-amortizing loans that have been renewed or extended more than twice, or for more than 18 months beyond the origination date, are presumed to be workout loans requiring classification. All possible efforts should be made by Fidelity to place these assets on an amortizing basis.
16. Fidelity shall develop, and commence a review, where applicable, of its loan policies and procedures relating to non-mortgage commercial, commercial mortgage, acquisition, development, and construction, and consumer lending to ascertain compliance with applicable regulations as well as safe and sound banking practices.
17. Until the procedures required in Provisions 15 and 16 of this Order have been completed, and notification of said completion has been submitted to the Regional Director, Fidelity shall not originate or renew any consumer or commercial term loans.

18. Within 120 days of the effective date of this Order, Fidelity shall complete and document a review of all loans currently reported as one-to-four family loans on its Thrift Financial Reports to determine proper reporting and risk-weighting. Any corrections will be submitted as amended Thrift Financial Reports beginning with the quarter ended March 31, 1992.
19. Fidelity shall develop and implement a written policy that addresses the pricing of loans, including the consideration of risk in various loan categories and repayment terms. The written policy shall also address the various criteria used to identify prime-rate borrowers.
20. The board shall review on at least a monthly basis: 1) all loan relationships equal to or greater than five percent of tangible capital; 2) all loans with irregular payment schedules that do not adhere to institution-established repayment plans; 3) all renewals and extensions; and 4) management's efforts to correct the documentation and underwriting deficiencies noted in the Asset Quality section of the Report of Examination dated May 4, 1992.

General Valuation Allowances

21. Fidelity shall maintain, at a minimum, the level of general valuation allowances ("GVA") recommended in the May 4, 1992, Report of Examination, until after receipt of the Institution's next regular examination report or receiving the prior written approval of the Regional Director to change GVAs.
22. Fidelity shall continue to review its GVA policy for compliance with 12 C.F.R. § 563.160 and the considerations set forth in Section 261 of the Thrift Activities Handbook. The revised GVA policy shall be applied by the Institution on a quarterly basis. As a result of said review and application, Fidelity also shall make any necessary additions to its GVAs prior to filing its quarterly Thrift Financial Reports.

Real Estate Owned

23. Fidelity shall revise its policies and procedures for treatment of Real Estate Owned ("REO") to account for REO in accordance with Generally Accepted Accounting Principles ("GAAP").

Appraisal Policy

24. Within sixty (60) days of the effective date of this Order, Fidelity shall revise and thereafter adhere to appraisal policies and procedures sufficient to fulfill the requirements of 12 C.F.R. Part 564 and to address the concerns noted in the May 4, 1992 Examination.

Interest Rate Risk

25. Fidelity shall adhere to its policy for the reduction of interest rate risk. Such policy shall be consistent with the guidance provided in Thrift Bulletins 13, 13-1 and 13-2. The policy also shall include specific targets for the reduction of interest rate risk. The board shall document its review of the Institution's progress in reducing its interest rate risk at least quarterly.
26. Within 90 days of the effective date of this Order, Fidelity shall develop specific policies that address desired levels of commitment fee expenses and interest-rate risk borne as a result of mortgage commitments and pipeline coverage. Fidelity's mortgage banking policy shall be revised to address forward coverage guidelines and hedging strategies, as well as the disposition of warehouse inventory regardless of gain or loss.

Wire Transfers

27. Within sixty (60) days of the effective date of this Order, Fidelity shall modify, and thereafter adhere to, its policies, procedures and controls regarding wire transfers. Such modifications should address the deficiencies noted in the May 4, 1992 Report of Examination.

EDP Policies

28. Within sixty (60) days of the effective date of this Order, Fidelity shall implement corrective actions to address the deficiencies noted within the Electronic Data Processing operation, as cited in the May 4, 1992 Report of Examination.

Compliance

29. The board shall maintain a Compliance Committee, consisting of at least three (3) directors; the majority of whom are not officers of the Institution. The Compliance Committee shall be responsible for monitoring and coordinating the Institution's adherence to the provisions of this Order. On a continuing basis, and

within 30 days after the end of each calendar quarter, the Compliance Committee shall submit a written progress report to the full board setting forth in detail: a) actions taken to comply with each provision of this Order; and b) the results of those actions. The board shall forward to the Regional Director a copy of the Compliance Committee's report, with any additional comments by the board.

Operations/Deposits

30. Within 90 days of the date of this Order, Fidelity shall complete and document a review of the assumptions used in computing imputed gains/losses arising from the sale of mortgage loans during fiscal 1991 and 1992. In addition, Fidelity shall determine if fee income has been over/understated, and if so, make the appropriate adjustments to retained earnings. The board shall direct management to review and implement the requirements of Thrift Bulletin 43 in this regard.
31. Fidelity shall revise its policy regarding the issuance and pricing of "jumbo" certificates of deposit ("CDs") to establish specific approval requirements for those CDs priced in excess of the rates established by the asset/liability committee. In addition, Fidelity shall implement appropriate controls to monitor the level and cost of "jumbo" CDs.
32. Fidelity shall take whatever steps are deemed necessary to ensure compliance with board-established overdraft approval policies and procedures. These procedures shall include, but not be limited to, a detailing of the overdraft approval process and authority, appropriate methods of covering or clearing overdrafts, reporting systems, and audit coverage.
33. Within 120 days of the effective date of this Order, Fidelity shall implement controls necessary to minimize the risk posed to the institution from check kiting activities. These controls shall include the development and review of a check kiting suspect report, an immediate investigation of suspected check kiting activity, and established limits on the disbursement of uncollected funds, along with approval and exception authority, if any.
34. Fidelity shall take whatever steps are deemed necessary to ensure the integrity of the accounts payable function, including appropriate lines of authority and payment authorizations, and internal audit review.

Other

35. Fidelity shall take whatever steps are considered necessary to ensure the accuracy of its Thrift Financial Reports.
36. Within 120 days of the effective date of this Order, Fidelity will submit to the Regional Director its strategy to attain status as a qualified thrift lender, 12 C.F.R. § 563.50.
37. Fidelity shall take whatever steps are deemed necessary to correct all deficiencies noted in the May 22, 1992 report of examination. In addition, the board shall, no less frequently than quarterly, review all steps taken to ensure compliance with this Order.
38. Upon the effective date of this Order, the Cease and Desist Order issued by OTS on August 6, 1991, shall be terminated.

All technical words or terms used in this Order for which meanings are not specified or otherwise provided by the provisions of this Order, shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations. Any such technical words or terms used in this Order and undefined in said Code of Federal Regulations shall have meanings that accord with the best custom and usage in the savings and loan industry. For purposes of this Order, references to regulations, bulletins, memoranda and publications shall include any successor provisions mandated by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

THE OFFICE OF THRIFT SUPERVISION

By: _____ /s/
John E. Ryan
Regional Director
Southeast Region