

UNITED STATES OF AMERICA
before the
OFFICE OF THRIFT SUPERVISION

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In the Matter of)	
)	Resolution No.: CIN 91-10
First Trust Savings Bank, F.S.B.)	Dated: March 15, 1991
Jacksonville, Florida)	
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_____)	

STIPULATION AND CONSENT TO ISSUANCE OF
ORDER TO CEASE AND DESIST

The Office of Thrift Supervision ("OTS") by and through its Deputy Regional Director for the Cincinnati District Office, and First Trust Savings Bank, F.S.B., Jacksonville, Florida ("First Trust"), stipulate and agree as follows:

1. Consideration. The OTS, based upon information reported to it, is of the opinion that grounds exist to initiate an administrative cease and desist proceeding against First Trust pursuant to the Federal Deposit Insurance Act, § 8(b), 12 U.S.C.A. § 1818(b) (West 1989). First Trust desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation and, without admitting 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 First Trust with respect to the matters covered in the accompanying Order to Cease and Desist ("Order").

2. Jurisdiction.

(a) First Trust is a "savings association" and an "insured depository institution" as defined by 12 U.S.C.A. §§ 1462 and 1813 (West 1989 and Supp. 1990).

(b) The Director of OTS is the "appropriate Federal Banking agency" to maintain a cease and desist proceeding against such savings association, pursuant to 12 U.S.C.A. §§ 1813 and 1818(b) (West 1989), therefore, First Trust is subject to the authority of the OTS to initiate and maintain a cease and desist proceeding against it.

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

4. Finality. The Order is issued under 12 U.S.C.A. § 1818(b) (West 1989). Upon its issuance by the Cincinnati District Office, OTS, it shall be a final Order, effective and fully enforceable by the OTS under the provisions of 12 U.S.C.A. § 1818(i) (West 1989).

5. Waivers. First Trust waives its right to a notice of charges and the administrative hearing provided by 12 U.S.C.A. § 1818(b) (West 1989), and further waives its right to seek judicial review of the Order, including any such right provided by 12 U.S.C.A. § 1818(h) (West 1989), or otherwise to challenge the validity of the Order.

WHEREFORE, in consideration of the foregoing, the OTS, by and through its Deputy Regional Director for the Cincinnati District Office, OTS, and First Trust, by a majority of its directors, execute this Stipulation and Consent to Issuance of Order to Cease and Desist.

OFFICE OF THRIFT SUPERVISION

FIRST TRUST SAVINGS BANK, F.S.B.
JACKSONVILLE, FLORIDA
by a majority of its directors

/S/

Thomas A. Hamilton
Deputy Regional Director
Cincinnati District Office
Office of Thrift Supervision

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Resolution No.: CIN 91-10
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ORDER TO CEASE AND DESIST

WHEREAS, First Trust Savings Bank, F.S.B., Jacksonville, Florida ("First Trust") through its directors, has executed a Stipulation and Consent to Issuance of Order to Cease and Desist ("Stipulation") that is accepted and approved by the Office of Thrift Supervision ("OTS") acting through its Deputy Regional Director for the Cincinnati District and is incorporated herein by reference; and

WHEREAS, First Trust, in the Stipulation, has consented and agreed to the issuance of this Order to Cease and Desist ("Order") pursuant to the Federal Deposit Insurance Act § 8(b), 12 U.S.C.A. § 1818(b) (West 1989).

NOW THEREFORE, IT IS ORDERED that First Trust and its directors, officers, employees, agents, and service corporations shall comply with the following provisions of this Order to Cease and Desist:

1. First Trust and its subsidiaries must cease all lending and extension of credit to Dayton Partners Limited Partnership, its principals thereof (i.e., L. Keith Brunner, David Bart, Arthur Millonig, William Seal, David Shafer, and Richard Tipton), and related persons as defined in 12 C.F.R. § 32.2 (1990), which is applicable to savings associations pursuant to the Loans-To-One-Borrower Limitations, 55 Fed. Reg. 28, 144 (1990), for which they do not have legally binding

written commitments. This prohibition includes modification of terms, restructurings, refinancings, extensions, workouts, and other similar arrangements, unless the prior written approval of the Deputy Regional Director or designee has been obtained.

2. First Trust and its subsidiaries shall not declare or pay any dividends or make any capital distributions without the prior written approval of the Deputy Regional Director or designee.
3. Within 60 days from the date of this Order, the board of directors shall evaluate, enhance, and improve, where appropriate, specific written loan policies and procedures ("underwriting standards"), setting standards for all lending and investment in commercial loans, commercial real estate, loans, land acquisition, development and construction loans, letters of credit, lines of credit, residential real estate, consumer loans, and any other type of loans to be offered by the institution. The standards shall contain specific guidelines for loans to affiliated persons and other related entities, taking into consideration the limitations and prohibitions set forth in the Federal Reserve Act, § 22(h), 12 U.S.C.A. § 375(b) (West 1989), and all other applicable laws and regulations. Moreover, weaknesses noted as a result of the most recent OTS and FDIC Reports of Examination shall be addressed and corrected in the enhanced underwriting standards. Such underwriting standards shall be submitted within 60 days from the date of this Order in a form satisfactory to the Deputy Regional Director or designee and shall be reviewed and approved by the board of directors on at least an annual basis.
4. Prior to First Trust and its subsidiaries granting or committing to make any loan or set of loans, or purchasing or committing to purchase

any loan or set of loans, the institution shall have in its possession documentary evidence that each and every requirement of its loan underwriting standards applicable to a particular loan has been complied with in all material respects. As appropriate for the type of loan proposed to be made, such documentary evidence shall include but not be limited to:

- a. A written application signed by the borrowers and guarantors stating the purpose of the loan;
- b. Financial statements of borrowers and guarantors certified by such borrowers or guarantors as true and correct. (Financial statements of prospective borrowers and guarantors for loans in excess of \$100,000 shall be prepared in accordance with guidelines published by the American Institute of Certified Public Accountants);
- c. Current credit reports for all borrowers and/or guarantors together with a written report signed by the responsible employee evaluating any outstanding negative items contained in any such report;
- d. A document, signed by the officer or employee responsible, evidencing that material items in the borrower/guarantor financial statements have been verified and analyzed to insure that the borrower/guarantor has sufficient assets and cash flow to retire the loan under the terms of the note and/or guarantee;
- e. An appraisal report performed for First Trust or its agent prior to the approval of a loan and/or disbursement of funds which satisfies the requirements of 12 C.F.R. § 563.171 (1990) for loans secured or partially secured by real estate;
- f. In the case of a loan secured by property or an instrument other

than real estate, an appropriate statement of value of the security property or assessment of collectibility of said instrument prepared by a qualified person, a verification of the lien status of the security property current through the date of loan closing, and where appropriate, documents evidencing verification of the existence of the proposed security property or instrument and that it is owned and/or title is in the name of the proposed borrower or will be as of the date of loan closing;

- g. Documentary evidence that the borrower has invested cash or another form of equity, as appropriate, in the security property as may be required by the underwriting standards;
- h. Written cost estimates and breakdowns, where appropriate for the type of loan required by the underwriting standards, prepared by a qualified engineer, architect or other person qualified to prepare such an estimate;
- i. Written market or feasibility studies, where appropriate to the proposed loan required by the loan underwriting standards, prepared by a qualified professional, and which demonstrate that the project securing the loan can be sold in a period of time and at a sufficient price to provide for repayment of the loan according to its terms and conditions; and
- j. Approval of the disbursement of funds by the majority of the board of directors and minutes of the board of directors reflecting that the board has reviewed the loan file for the presence of documentary evidence required by 3 through 5 herein, and the underwriting standards applicable to the decision to grant the loan or enter into the transaction.

Notwithstanding the documentation requirements set forth herein, First

Trust and its subsidiaries shall comply with the loan documentation requirements specified in 12 C.F.R. § 563.170(c) (1990), as presently constituted or hereafter amended by the OTS.

5. Beginning on the date First Trust executes this Order and continuing until such time as First Trust has complied with paragraph 3 herein, including the receipt of approval of the Deputy Regional Director or designee, First Trust will comply with paragraph 4 herein, as if such items were currently a part of the underwriting standards.
6. First Trust and its subsidiaries, without the prior written approval of the Deputy Regional Director or designee, shall not fund, commit to fund, purchase, or commit to purchase, directly or indirectly, any loan, except for the following types:
 - a. Loans in an amount of \$250,000 or less, which are secured by single-family homes located within 50 miles of the institution's main office or any branch office;
 - b. Consumer loans which, in aggregate, total no more than \$25,000 to one borrower;
 - c. Mortgage loans, participations, or mortgage-backed securities insured by the United States Government; or
 - d. Loans which are fully secured by the borrower's savings deposits.In addition, at any time that First Trust is not in compliance with any applicable capital standard, it shall not make any loans or investments except as provided by Regulatory Bulletin 3a-1.
7. First Trust and its subsidiaries will not purchase, directly or indirectly, from any other financial institution, any loans, bankers acceptances, leases, obligations, other assets, or any participations therein, which have been adversely classified at the originating or selling institution by a federal or state bank examiner; it shall be

the obligation of First Trust to determine whether such loans or other assets have been so classified and to maintain records of its findings in this respect.

8. (a) First Trust shall establish the specific and general valuation allowances set forth in the May 17, 1990 OTS Report of Examination.
 - (b) First Trust shall calculate the fair value of the collateral for the five \$400,000 loans to Messrs. Millonig, Bart, Brunner, Shafer, and Tipton and submit the fair value calculations to the Deputy Regional Director or designee for approval no later than March 30, 1990. First Trust shall also establish loss reserves for the five \$400,000 loans referenced above based on the approved fair value calculations. In the absence of approved valuations, First Trust shall fully reserve the loans to Messrs. Millonig, Bart, Brunner, Shafer, and Tipton.
 - (c) Within 60 days from the date of this Order, the board of directors shall submit to the Deputy Regional Director or designee an analysis of all classified assets with balances equal to or exceeding \$250,000 which include a plan as to how each asset will be monitored and collected by First Trust.
 - (d) The board of directors shall submit quarterly reports to the District Director or designee advising of the status of the above monitoring and collection efforts for classified assets with balances equal to or exceeding \$250,000.
9. Within 60 days of the date of this Order, First Trust shall submit a detailed business plan acceptable to the Deputy Regional Director or designee. The plan must contain comprehensive narrative discussions of each significant activity and strategy to be used by First Trust and must, at minimum, provide for the following:

- a. Correction of deficiencies regarding classified or criticized assets and reduction of classified assets to an acceptable level;
- b. Policies regarding an acceptable level of credit concentration;
- c. Establishment and maintenance of general valuation allowances which are commensurate with the volume, quality, and risk of the institution's assets, to be reviewed for adequacy by the board of directors on at least a quarterly basis;
- d. Reduction of loans outstanding to Dayton Partners Limited Partnership and related persons as defined in 12 C.F.R. 32.2 (1990), which is applicable to savings associations, pursuant to the Loans-To-One-Borrower Limitations, 55 Fed. Reg. 28, 144 (1990), to within First Trust's legal lending limit;
- e. Correction of the violations of law and/or regulation discussed in the most recent OTS and FDIC examination reports and implementation of procedures to assure future compliance; and
- f. Detailed strategies designed to improve earnings, net interest margin, net operating margin, and liquidity, within acceptable risk parameters.

Detailed quarterly schedules showing actual and planned asset and liability mixes, yield and cost data, and capital positions must be supplied and projected operating results by quarter for a three-year period for First Trust and its subsidiaries must also be submitted with the business plan. On a quarterly basis, First Trust's board shall compare actual operating results to projected amounts and provide detailed written variance analyses to the Deputy Regional Director or designee within 45 days of the close of each quarter. First Trust shall not implement changes to the activities and strategies outlined in the business plan without the prior written

approval of the Deputy Regional Director or designee.

10. The board of directors shall meet on a regular (not less frequently than one time in each calendar month) basis to review the prior month's operations, consider loan applications as required, consider the need for policy changes, evaluate management's compliance with existing board policies and procedures, and take other actions normal for an effective, active, and independent board of directors. Such actions must also include a review of the quality and credit risk associated with the various types of loans originated. Minutes of board and committee meetings shall fully document all significant deliberations, actions and decisions. The board of directors will submit a draft of such minutes to the Deputy Regional Director or designee within one week from the date of each such meeting.
11. Within 60 days of the date of this Order, the board of directors shall develop a written policy which addresses the minimum activities and duties which the board believes constitutes adequate fulfillment of a director's fiduciary responsibilities. Such policy shall be in a form acceptable to the Deputy Regional Director or designee. Directors who do not meet the requirements of this policy shall be required to resign.

The OTS shall not take additional supervisory action against the institution on matters specifically covered by this order. However, this order does not preclude the OTS from pursuing enforcement actions, such as removal and prohibition or civil money penalties, against any individuals. 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, Home Owners' Loan Act, or the Federal Deposit Insurance Act, and any such technical words or terms used in this Order, and undefined by said statutes, rules and regulations or OTS Memoranda, shall have meanings that accord with the best custom and usage in the savings and loan industry.

OFFICE OF THRIFT SUPERVISION

/S/

Thomas A. Hamilton
Deputy Regional Director
Cincinnati District Office
Office of Thrift Supervision