

including a sale of the entire institution. But, after an exhaustive marketing effort, no bid without Government assistance was received; and

WHEREAS, based upon the above, grounds exist for the appointment of a conservator or receiver for Great American; and

WHEREAS, in May 1990, Great American and its investment banker decided to seek acquirors of its California branch franchise and the resulting proposal of Wells Fargo was the highest bid; and

WHEREAS, Great American considers the current proposal to sell the entire California branch franchise to Wells Fargo as the only alternative to continue its operations without Government assistance.

Based upon the above, grounds exist to initiate an administrative cease and desist proceeding against Great American 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, Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA") (to be codified at 12 U.S.C. § 1818(b)). Great American desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation and hereby stipulates and agrees with the above in consideration of the forbearance by the OTS from initiating such administrative cease-and-desist litigation against Great American with respect to the matters covered in the accompanying Order to Cease and Desist ("Order").

2. Jurisdiction.

(a) Great American 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, as amended by FIRREA (to be codified at 12 U.S.C. § 1813(c)).

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

3. Consent. Great American 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 (to be codified at 12 U.S.C. § 1818(b)). Upon its issuance by the OTS Regional Director for the West Region, 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 (to be codified at 12 U.S.C. § 1818(i)).

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of) Resolution SF-91-019 _____
)
GREAT AMERICAN BANK,) Date: May 3, 1991
A FEDERAL SAVINGS BANK)
San Diego, California)
_____)

ORDER TO CEASE AND DESIST

WHEREAS, Great American Bank, a Federal Savings Bank, San Diego, California ("GAB" or "Institution"), through its directors, has executed the accompanying Stipulation and Consent to Issuance of Order to Cease and Desist, which is incorporated by reference ("Stipulation") and is accepted and approved by the Office of Thrift Supervision ("OTS"), acting through its Regional Director for the Western Region ("Regional Director"); and

WHEREAS, GAB, 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, as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA") 12 U.S.C. § 1818(b).

NOW THEREFORE, IT IS ORDERED that GAB shall comply and shall require its directors, officers, employees, agents and subsidiaries to take all necessary actions to cause GAB to comply with all the numerical, procedural or qualitative projections or statements of the capital plan submitted to the OTS on October 2,

1990, as amended and approved by the OTS on November 29, 1990 ("Capital Plan"). A material failure to comply with the capital plan without the prior written approval of the Regional Director is an unsafe and unsound practice (Section 5(t)(6)(E) of the HOLA as amended by FIRREA, 103 Stat. 183, 308 (to be codified at 12 U.S.C. § 1464(t)(6)(E)). A determination that a material violation has occurred may result in action including, but not limited to, termination of the Capital Plan's approval, or the appointment of a conservator or receiver.

IT IS FURTHER ORDERED THAT:

1. The institution shall engage only in those types of activities specified in the Capital Plan to the extent contemplated in the Capital Plan or as otherwise approved in writing by the Regional Director or his designee in advance.

A material violation of Part 1 of this Order will occur when the Institution: (a) engages in any type of activity inconsistent with its Capital Plan and has not received the Regional Director's or his designee's prior written approval; (b) exceeds the level of any activity contemplated in its Capital Plan by more than 5 percent of the projected level of that activity without the Regional Director's prior written approval; (c) engages in any activity giving rise to a statutory or regulatory violation; or (d) engages in any type of activity in an unsafe or unsound manner.

2. The Institution shall not, without the prior written approval of the Regional Director or his designee, fail to meet

the quarterly interim capital targets as set forth in its Capital Plan.

A material violation of Part 2 of this Order occurs whenever:

(a) the actual level of tangible, core and/or core plus supplemental capital so reported, when expressed as a percentage of the applicable capital requirement calculated pursuant to 12 C.F.R. Part 567 (as republished in 54 Fed. Reg. 49411, 49649-49662 (November 30, 1989)), or its successor, is not within 10 percent of the quarterly projected improvement in the level of such capital expressed as a percentage of the applicable requirement or within 10 percent of the annual projected improvement of the level of such capital expressed as a percentage of the applicable requirement set forth in the Capital Plan or

(b) if no improvement or a decrease in the actual level of tangible, core and/or core plus supplemental capital so reported is projected, any negative variance from the projected level;

(c) notwithstanding paragraphs (a) and (b) above, the Institution fails to achieve full compliance with each of its applicable capital requirements by December 31, 1994; and

(d) notwithstanding paragraphs (a) and (b) above, an improvement in the reported level of tangible, core and/or core plus supplemental capital that is not within 10 percent of the quarterly projected improvement, or a decrease in the reported

level of tangible, core and/or core plus supplemental capital, shall not constitute a material violation of Part 2 of this Order if the Institution meets or exceeds the quarterly interim capital targets set forth in its Capital Plan.

3. As of the date of this Order, the Institution shall not increase its total assets¹ in excess of the amount set forth in its Capital Plan, but in no event, shall the Institution increase its total assets during any quarter in excess of the level allowed under the most current OTS policy.

A material violation of Part 3 of the Order will occur whenever the Institution's actual total asset growth for two consecutive quarters exceeds the amount projected in its Capital Plan by two percent of total assets.

4. The Board of Directors of the Institution shall review the Capital Plan not less frequently than quarterly (including but not limited to the interim capital targets and levels and types of activities) and the compliance of the Institution with its Capital Plan and the conditions set forth in this Order. At the sole discretion of the Regional Director or his designee, the findings of the Board of Directors shall be submitted to the Regional Director or his designee in accordance with Part 5 below.

¹ As used in this Part, "total assets" means consolidated total assets determined in accordance with Generally Accepted Accounting Principles as reported on the Institution's quarterly thrift financial report.

Failure to conduct the required review or to fail to submit the requested findings will be considered a material violation of this Order.

5. The Institution shall submit to the Regional Director or his designee reports on a quarterly basis (or more frequently if requested by the Regional Director or his designee), including but not limited to: (a) variance reports for activities, capital targets, and asset growth (Parts 1, 2 and 3 above) in a format acceptable to the Regional Director or his designee, that compare actual types and levels of activities, actual progress toward meeting capital requirements (if any) and actual asset growth to the projections established in its Capital Plan; (b) Board of Director reports in accordance with Part 4 above; and (c) any other report requested by the Regional Director, his designee or any other representative of the OTS.

A material violation of this condition will occur if the reports are not filed within 30 calendar days after the end of each calendar quarter or within any shorter time period established pursuant to a request of the Regional Director or his designee.

6. Additionally, a "material violation" of the Order shall be deemed to have occurred if, without the prior written approval of the Regional Director or his designee, any of the following events occur:

(a) GAB is unable to consummate either or both phases of the sale of 130 branch offices of GAB to Wells Fargo.

(b) There is any decrease in the level of involvement of Chief Executive Officer Robert Kemper, or any successor approved by the Regional Director, in the day to day activities of GAB or a decrease in the overall quality of management of GAB.

(c) GAB exceeds projected brokered deposit levels for two (2) consecutive months.

(d) GAB hires new personnel with the rank of Senior Vice President or above.

(e) Any new employee of GAB is hired with annual compensation in the form of salary, bonuses, or commission in excess of one hundred thousand dollars (\$100,000) or the compensation of any existing employee presently earning such amount is increased by more than five percent (5 percent).

(f) GAB enters into any covered transaction with an affiliate as such transactions are defined pursuant to 23a and 23b of the Federal Reserve Act ("FRA") or enters into any transaction with an affiliated person pursuant to 22(h) of the FRA.

(g) GAB makes any form of capital distribution, including but not limited to cash dividends or the redemption of debt capital instruments.

(h) GAB management and directors operate GAB in a manner determined by the Regional Director or his designee to create an inappropriate risk of loss to the Savings Association Insurance Fund ("SAIF") from the standpoint of credit, interest rate or basis risk.

(i) GAB engages in any device designed to circumvent the restrictions of the Order or Capital Plan.

7. Any material violation of the Order shall immediately subject GAB to the following:

(a) The appointment of a conservator or receiver by OTS.

(b) The OTS, represented by the Regional Director (for the purposes of this Order the term "Regional Director" shall include any designee of the Regional Director), is authorized to negotiate a plan of merger, consolidation, transfer of the Institution's assets and liabilities, reorganization, acquisition of, or capital infusion for the Institution ("plan of combination or reorganization"), or management services agreement, and to draft proposed documents for any such plan of combination or reorganization or management services agreement.

(c) The Board of Directors of GAB shall within 10 days from the date of receipt approve any management service agreement or plan of combination or reorganization forwarded and recommended to the Board of Directors by the Regional Director unless a written objection based upon reasonable cause and consistent with the fiduciary duties of the Board of Directors is submitted to and accepted by the Regional Director. The Regional Director shall determine in his or her sole discretion whether such an objection shall be acceptable.

(d) Thereafter, at the sole direction of the OTS, the Institution shall take all corporate actions necessary to effect a plan of combination or reorganization approved by the OTS or to

provide for the management of its day to day operations in accordance with a management services agreement approved by the OTS. The Regional Director may execute, on behalf of the Institution, any necessary or appropriate documents effecting such management services agreement or plan of combination or reorganization.

(e) The Institution shall take all reasonable steps to assist the Regional Director in any plan or combination or reorganization, and shall pay for the marketing costs of such activity, including, but not limited to, the costs of having an independent auditing firm, selected by the Regional Director, or examiners or other agents of the OTS or the Federal Deposit Insurance Corporation ("FDIC") review GAB's books and records and prepare bid packages.

(f) Upon the request of the Regional Director, and subject to the execution of customary confidentiality agreements, the books and records of the Institution shall be made available to the representatives of any institution, person, or entity negotiating with the OTS concerning a Management Services Agreement or a plan of combination or reorganization.

(g) The Institution shall use its best efforts to reject the acceptance or renewal of any uninsured deposit.

(h) The Board of Directors and each director of the Institution resolves and agrees to fill any vacancy in the directorate or management of the Institution by electing as director or officer a person recommended or approved by the

Regional Director; and the Board of Directors shall immediately take into consideration any such recommendation by the Regional Director and take action thereon.

(i) The Board of Directors shall take any steps necessary to amend the bylaws of the Institution to provide for such number of directors as the Regional Director shall recommend or to effect the election of any person to the Board of Directors who is recommended by the Regional Director.

(j) Notwithstanding any other provision of this Order, the Institution agrees not to increase its total liabilities above the level existing as of the date that Part 7 of this Agreement is put into effect, except as may be necessary to maintain liquidity in an amount sufficient to fund obligations of the Institution and to comply with 12 C.F.R. 523.11 or is otherwise approved in writing by the Regional Director.

(k) Notify OTS of all terms of sales of assets and liabilities greater than ten million dollars (\$10,000,000), including the business justification thereof.

(l) GAB must give OTS 10 days' prior written notice of all the terms and conditions and the business justification for the restructuring of any asset greater than ten million dollars (\$10,000,000).

(m) Except for existing legally binding commitments, or investments that qualify as liquid assets pursuant to Section 6 of the Home Owner's Loan Act ("HOLA"), 12 U.S.C. § 1465, GAB, shall not do or agree to do, and shall not allow any subsidiary

or affiliate of GAB to do or agree to do any of the following if GAB receives an objection from the Regional Director after providing the Regional Director with the required written notice thereof:

i) make, invest in, purchase, sell, refinance, extend or otherwise modify or commit to make, invest in, purchase, sell, refinance, extend, or otherwise modify any loan secured by real estate or any participation therein (including any acquisition, development and construction loan) or any real estate investment, or any set of such loans, participations, or investments;

ii) make, invest in, purchase, sell, refinance, extend, or otherwise modify, or commit to make, invest in, purchase, sell, refinance, extend, or otherwise modify any commercial loans, letters of credit, participations therein, or any set of such loans, letters of credit, or participations;

iii) make, invest in, purchase, sell, refinance, extend or otherwise modify or commit to make, invest in, purchase, sell refinance, extend or otherwise modify any consumer or education loans in excess of Twenty Thousand Dollars (\$20,000) except for share loans fully secured by the customer's deposits that are within market rates;

iv) release any borrower or guarantor from personal liability on any loan or extension of credit granted by the Institution, except when the outstanding balance of the loan

and other outstanding loans to the borrower or guarantor have been paid in full;

v) sell, pledge, or exchange any loan secured by real estate, or participation therein, or real estate investment, security, or other asset, or any set of such loans, participations, real estate investments, or securities, or other assets, except as otherwise provided for herein;

vi) make or commit to make any investment in real estate, equity securities, service corporation, finance subsidiary, or operating subsidiary as those terms are defined in 12 C.F.R. § 563.98, or any subsidiary or a service corporation;

vii) enter into any joint venture or limited partnership agreement;

viii) engage in any forward commitment, futures transaction, or financial options transaction as defined in 12 C.F.R. §§ 563.173, 563.174, and 563.175;

ix) enter into any contract or any agreement for the purchase, sale, or lease of goods, materials, equipment, supplies, services or capital assets, except in the ordinary course of business, provided that the amount does not exceed Five Hundred Thousand Dollars (\$500,000);

x) enter into any lease or contract for the purchase or sale of real estate or of any interest therein, except in the ordinary course of business, and provided that the amount does not exceed Five Hundred Thousand Dollars (\$500,000);

xi) borrow any money, except as may be necessary to maintain liquidity in an amount sufficient to fund the Institution's obligations and to comply with 12 C.F.R. § 566.2;

xii) encumber any of its property or other assets;

xiii) make any material changes in accounting method;

xiv) incur any material obligation or contingent liability, except as otherwise permitted herein;

xv) enter into, renew or revise any contractual arrangement with any officer, director, controlling person, affiliate, affiliated person, subsidiary or agent of the Institution or any subsidiary or affiliate thereof, except for contracts otherwise permitted herein;

xvi) employ or appoint any person to serve as an officer, director, or senior manager who is not so employed or appointed as of the date of this approval;

xvii) employ any person pursuant to an agreement that is not terminable at the will of the employer and that otherwise does not comply with 12 C.F.R. § 563.39; enter into or amend or renew any collective bargaining agreement, pension or profit sharing plan, bonus plan, severance plan, retirement plan, fringe benefit plan, or other employee benefit plan, or other employment contract with any employee, director, or officer, or fund any escrow account or similar arrangement related to such an agreement or plan;

xviii) make or commit to make any increase in the salary or other compensation or pay any bonuses or other similar compensation to any of its directors or officers including any individual merit increases in accordance with its standard personnel policy adopted prior to the effective date of this approval and normal periodic employee salary and wage increase scheduled prior to the date of the approval and that comply with 12 C.F.R. § 563.170(b);

xix) enter into any agreement to merge, consolidate, or otherwise be acquired, or enter into any agreement to reorganize or for management services;

xx) amend or permit to be amended its charter or bylaws;

xxi) accept any noncash capital contributions;

xxii) open any branch office, loan production office or agency;

xxiii) renegotiate or pay interest payments on subordinated debt or other similar debts;

xxiv) accept any uninsured deposits;

xxv) issue common or preferred stock; or,

xxvi) make any form of capital distribution, including but not limited to, cash dividends or the redemption of the debt capital instruments.

8. No institution-affiliated party (as that term is defined in Section 2(u) of the Federal Deposit Insurance Act, as amended by FIRREA ("FDIA")) with respect to GAB shall be personally

