

UNITED STATES OF AMERICA  
BEFORE THE  
OFFICE OF THRIFT SUPERVISION

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In The Matter Of: )  
)

Plaistow Co-Operative Bank, )  
Plaistow, New Hampshire )

OTS No. 05626 )  
\_\_\_\_\_ )

Re: Resolution No. BOS 91-8  
Date: June 17, 1991

STIPULATION AND CONSENT TO ISSUANCE  
OF ORDER TO CEASE AND DESIST

The Office of Thrift Supervision ("OTS"), by and through its Regional Deputy Director for the Boston District Office ("Deputy Director") and Plaistow Co-Operative Bank, Plaistow, New Hampshire ("Plaistow" or the "Institution"), hereby 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 Plaistow pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. 1818(b). Plaistow, desiring to cooperate with the OTS and to avoid the time and expense of such administrative proceedings or litigation, hereby stipulates and agrees to the following terms in consideration of the forbearance by the OTS from initiating such administrative cease and desist proceedings or litigation against Plaistow with respect to the matters covered in the accompanying Order to Cease and Desist ("Order").

2. Jurisdiction

Plaistow 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 in Section 3(c)(2) of the FDIA, 12 U.S.C. 1813(c)(2). Pursuant to Section 3(q)(4) of the FDIA, 12 U.S.C. 1813(q)(4), the Director of OTS is the "appropriate Federal banking agency" to maintain an enforcement proceeding against such a savings association. Therefore, Plaistow 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).

3. Consent

Plaistow 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), and upon its issuance, shall be a final order, effective and fully enforceable by the OTS under Section 8(i) of the FDIA, 12 U.S.C. 1818(i).

5. Waivers

Plaistow waives its right to a notice of charges and the administrative hearing provided by Section 8(b)(1) of the FDIA, 12 U.S.C. 1818(b)(1), and further waives any right to



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ORDER TO CEASE AND DESIST

WHEREAS, Plaistow Co-Operative Bank, Plaistow, New Hampshire, ("Plaistow" or the "Institution"), through its Board of Directors ("Board"), has executed a Stipulation and Consent to Issuance of 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 Deputy Director for the Boston District Office ("Regional Deputy Director"); and

WHEREAS, the Institution, 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"), 12 U.S.C. 1818(b);

NOW THEREFORE, IT IS ORDERED that:

I. CEASE AND DESIST PROVISIONS

A. Plaistow shall forthwith cease and desist from violating the following statutes and regulations, and from aiding and abetting the same:

- 1) 12 C.F.R. 563.170, regarding establishment and maintenance of records;
- 2) Sections 22(h), 23A and 23B of the Federal Reserve Act, 12 U.S.C. 375b, 371c, and 371c-1, and 12 C.F.R. 563.41 and 563.43, regarding conflicts of interest;
- 3) 12 C.F.R. 561.60, regarding classifications of assets;
- 4) 12 C.F.R. Part 564 and 12 C.F.R. 563.170(c)(1)(iv) regarding real property appraisals;
- 5) 12 U.S.C. 84 and 12 C.F.R. 563.93, regarding loans to one borrower;
- 6) 12 C.F.R. 563.176, regarding interest rate risk management;
- 7) 12 C.F.R. 563.180, regarding filing of criminal referrals; and
- 8) Title I of the Consumer Protection Act, 15 U.S.C. 1601 et seq. (the "Truth in Lending Act") and 12 C.F.R. Part 226 (Federal Reserve "Regulation Z").

B. Plaistow shall forthwith cease and desist from engaging in the following unsafe or unsound practices, and from aiding and abetting the same:

- 1) operating without an adequate business plan;
- 2) operating without an adequate lending policy;
- 3) operating without an adequate policy governing conflicts of interest;
- 4) operating without an adequate policy for classification of assets; and
- 5) operating with inadequate internal controls.

## II. AFFIRMATIVE CORRECTIVE ACTION

Plaistow shall forthwith take affirmative corrective action as follows:

### A. Lending Policy

1. Plaistow shall not make or commit to make, or purchase or commit to purchase, any loan secured by real property (other than loans not exceeding \$250,000 secured by 1 to 4 family, owner-occupied residential properties and having a loan to value ratio of not more than 80 percent), or any commercial or construction loan, or any unsecured loan, or sell all or any portion of any loan to any Federally insured depository institution, until it has developed a written policy to govern its lending activities (the "Lending Policy"). The Lending Policy shall include, at a minimum:

- a) the lending authority of each loan officer;
- b) the lending authority of any loan or executive committee;
- c) the responsibility of the Board in reviewing, ratifying and approving loans;
- d) the guidelines under which unsecured loans will be granted;
- e) the guidelines for rates of interest and terms of repayment for secured and unsecured loans;
- f) with regard to secured loans: (1) limitations on the amount advanced in relation to the value of the collateral; and (2) the documentation required for each type of secured loan, both at time of origination and on an ongoing basis;
- g) the maintenance and review of complete and current credit files on each borrower;
- h) specific collection procedures, including, but not limited to, the actions to be taken against borrowers who fail to

- make timely payments;
- i) limitations on extensions of credit through overdrafts and cash items;
  - j) the determination and documentation of sources and terms of loan repayment;
  - k) retention of lien searches and appraisals covering personal property and liens on real estate;
  - l) maintenance of written individual loan file comments by officers;
  - m) provisions addressing the capitalization of accrued and unpaid interest on loans;
  - n) procedures for designating non-accrual loans;
  - o) procedures for identifying, supervising, and collecting problem loans; and
  - p) periodic review by the Board of overdue, problem and/or adversely classified or special mention loans to monitor management's administration of such distressed credits, and to provide guidance to management in doing so.

2. The Board of Directors shall approve the Lending Policy, and shall record such approval in its minutes. Subsequent material modifications to the Lending Policy shall require notification to the Regional Deputy Director and the Banking Commissioner of the State of New Hampshire ("Commissioner"). No such modification shall become effective until approved by the Board, and such approval shall be recorded in the Board's minutes. The Institution, its directors, officers and employees shall follow the Lending Policy and/or any subsequent modification thereto.

B. Management and Board Review

3. Within forty-five (45) days of the effective date of this Order, the Board shall make an independent review and evaluation of each member of the Institution's senior management and the Board. The review shall include the directors' assessment of the present condition of the Institution and remedial action to be taken in response to issues addressed in this Order and shall include, at a minimum:

- a) identification of both the type and number of officer positions needed to properly manage and supervise the affairs of the Institution;
- b) identification and establishment of Board committees needed to provide active guidance and oversight to management;
- c) evaluation of each Institution officer and senior staff member to determine whether these individuals possess the ability, experience and other qualifications required to perform present and anticipated duties, including adherence to the Institution's established policies and practices, and maintenance of the Institution in a safe and sound condition;
- d) an analysis of management's strengths and weaknesses, including an assessment of current compensation and organizational structure;
- e) an assessment of senior management staff's ability to effectively manage and resolve current problems confronting the Institution;
- f) a plan of action to recruit and hire any additional or replacement personnel with the ability, experience and other qualifications, which the Board of Directors determines are

necessary to fill Institution officer and senior staff member positions. Any additions to senior management or the Board of Directors shall be subject to the requirements of 12 U.S.C. 1831i;

- g) a requirement that the Board of Directors (or a committee thereof consisting of outside directors comprising not less than a majority of the Board) provide supervision over the lending, investment and operating policies of the Institution sufficient to ensure that the Institution complies with the terms of this Order; and
- h) a review of the Board's own capabilities in light of the existing problems of the Institution and an assessment of the need to add additional directors having qualifications necessary to address such problems.

C. Business Plan

4. Within ninety (90) days from the effective date of this Order, Plaistow shall develop a written business plan ("Business Plan") acceptable to the Regional Deputy Director, establishing goals and strategies for improving the earnings of the Institution. The Business Plan shall include, at a minimum:

- a) identification of the major areas in, and means by which, the Board will seek to improve the Institution's operating performance;
- b) realistic and comprehensive budgets;
- c) a budget review process to monitor the income and expenses of the Institution and to compare actual figures with budgetary projections;
- d) a description of the operating assumptions that form the

basis for, and adequately support, major projected income and expense components; and

- e) a capital enhancement plan to address capital shortfalls should they occur.

5. The Board shall approve the Business Plan, and such approval shall be recorded in the Board's minutes. A copy shall also be furnished to the Commissioner. Subsequent written modifications to the Business Plan shall require notification to the Regional Deputy Director, with a copy of such notice to the Commissioner. No such modification shall become effective until approved by the Board, and such approval shall be recorded in the Board's minutes. The Institution, its directors, officers, and employees shall follow the Business Plan and/or any subsequent modification thereto.

D. Conflict of Interest Policy

6. Within thirty (30) days of the effective date of this Order, Plaistow shall adopt a written policy to address disclosure requirements regarding interactions and relationships that may involve potential conflicts of interest (the "Conflicts Policy"). The Conflicts Policy shall require compliance with the provisions of 12 C.F.R. 563.41 and 563.43, as interpreted and clarified by the OTS policy statement regarding conflicts of interest, 12 C.F.R. 571.7, as well as Sections 22(h), 23A and 23B of The Federal Reserve Act, 12 U.S.C. 375b, 371c, and 371c-1 and shall be developed by a committee of outside directors as approved by the Regional Deputy Director. The Conflicts Policy shall include, but not be limited to:

- a) a provision requiring full disclosure to and affirmative written approval by the Board for loans and other transactions involving the Board or management with parties

of common interest. As utilized in this Order, the term "parties of common interest" shall mean any person or entity with whom any Board member or management official is involved as a principal, partner, or investor in any partnership, joint venture, trust or non-publicly traded corporation and who is or has been a creditor, guarantor or principal of an entity which is or has been a creditor of the Institution;

- b) a requirement that Board members abstain from voting on loans and transactions that involve parties of common interest with them;
- c) an annual statement from all senior management, Board members, and key employees in sensitive positions certifying their compliance with the Conflicts Policy; and
- d) a requirement that the Institution's General Counsel shall not perform legal work pertaining to his own loans and loans involving parties of common interest with him.

7. The Policy shall be subject to the approval of the Regional Deputy Director. A copy shall also be furnished to the Commissioner. The Board shall also review the Institution's business relationship with its General Counsel and document this review in its minutes.

E. Asset Review/Self-Classification

8. Within sixty (60) days after the effective date of this Order, Plaistow shall submit to the Regional Deputy Director and the Commissioner an asset review and classification policy, which shall be reviewed and approved by the Board and shall comply with the provisions of 12 C.F.R. 561.160 as interpreted and clarified by the OTS policy statement regarding classification of assets, 12 C.F.R. 571.26.

9. The Institution shall review its assets for potential classification and its general loss reserve for adequacy on at least a quarterly basis. Adjustments to the reserve shall be made promptly following each such quarterly review. Such reviews and supporting analysis for the adequacy of the general loss reserve shall be documented within Board minutes.

10. The Institution shall accurately report all classified assets on its Thrift Financial Reports submitted to the OTS.

F. Lending to Borrowers with Classified or Criticized Loans

11. Plaistow shall not knowingly extend credit, directly or indirectly, to or for the benefit of any borrower who has a loan or other extension of credit with the Institution that has been charged off or classified, in whole or in part, "Loss," "Doubtful," or "Substandard," or subject to Special Mention and is uncollected, unless a majority of the Board first determines that such advance is in the best interest of the Institution. A written record of the Board's determination and approval under the terms of this Paragraph shall be maintained in the credit file of the affected borrower(s) as well as the Board's minutes. The requirements of this Paragraph do not prohibit the Institution from renewing any credit already extended to a borrower.

G. Payments of Interest with New Loans

12. No interest payments on loans or extensions of credit shall be made from proceeds of new loans or extensions of credit unless the income to the Institution is offset by a corresponding credit to a deferral credit account or valuation reserve. The net effect of such transaction shall be to proportionally recognize such deferred income as the principal of the loan is paid down in cash. Any request to

loan funds or extend credit to make interest payments on other loans or extensions of credit shall be based on full written disclosure to, and require the prior affirmative approval by, the Board. Each request shall include:

- a) the number and principal amounts of all credit outstanding to the borrower(s) and affiliates of the borrower(s);
- b) the last date upon which payment was made and next date payment is due on each loan to such borrower;
- c) the reason that the borrower was unable to make the required interest payment from conventional sources; and
- d) a full explanation of how the Institution's position has been improved by additional collateral. This disclosure and a record of the votes of each Director shall become part of the Board's minutes.

#### H. Appraisals

13. Plaistow shall make no loans secured by real property without first obtaining an appraisal report complying the requirements of 12 C.F.R. Part 564 and 12 C.F.R. 563.170(c)(1)(iv). A market value appraisal shall be obtained for any property that the Institution acquires through or as a result of foreclosure, deed in lieu of foreclosure, or "in substance" foreclosure ("real estate owned" or "REO"), as required by 12 C.F.R. 563.172(a).

14. Within thirty (30) days of the effective date of this Order, Plaistow shall revise its appraisal policy to include, at a minimum:

- a) a requirement that a market value appraisal be obtained pursuant to 12 C.F.R. 563.170(c)(1)(iv) prior to granting or purchasing any loan or extension of credit secured by real property;

- b) a requirement that all appraisal reports comply with the requirements of 12 C.F.R. Part 564;
- c) the guidelines for obtaining appraisals on all types of properties on which the Institution extends credit;
- d) specific procedures for management to follow in reviewing appraisals for content and compliance with regulatory and internal requirements;
- e) the responsibility of the Board to review, ratify and approve appraisers on at least an annual basis; and
- f) the Board review and approval process for appraisers, which shall provide detailed documentation supporting conclusions reached and shall become part of the Board's minutes.

I. Loans to One Borrower

15. The Institution shall make no loans in excess of the limitations on loans to one borrower, 12 U.S.C. 84 and 12 C.F.R. 563.93.

16. Within ninety (90) days of the effective date of this Order, the Institution shall develop an accurate and comprehensive borrower liability ledger. Such ledger shall accurately record total borrower liability in all loan/credit areas of the Institution and shall include both direct liability (whether as maker, co-maker, partner, or any other type of direct liability) and contingent liabilities (as endorser, guarantor and any other type of contingent liability). Such ledger shall be maintained in a current, accurate and comprehensive status for all borrowers with other than 1 to 4 family owner-occupied residential loans and consumer installment credit with the understanding that the Institution is limited to originating 1 to 4 family owner-occupied residential loans until such central

liability ledger is in place. The Institution shall also adopt a review process to ascertain that paying overdrafts does not lead to violations of the limitations on loans to one borrower, 12 U.S.C. 84 and 12 C.F.R. 563.93.

17. Within thirty (30) days following the end of each calendar quarter, the Institution shall provide the Regional Deputy Director and the Commissioner with a detailed update on each major borrower with outstanding loans or extensions of credit aggregating more than \$500,000 and each parcel of REO with a balance in excess of \$250,000 classified or subject to special mention in the OTS Report of Examination now in progress of completion. Such reports shall include the balance of each separate asset as of the date of the examination, the balance as of the reporting date, past due status, and a summary of efforts taken to alleviate the credit deficiency. In addition, any additional assets or credit lines in excess of \$250,000 which become nonperforming and/or internally classified in the future shall be included. Said reports may be discontinued only upon the written release of the Regional Deputy Director and the Commissioner.

J. Interest Rate Risk Management

18. Within sixty (60) days of the effective date of this Order, the Institution shall establish and adopt an interest rate risk policy complying with the requirements of 12 C.F.R. 563.176, as interpreted and clarified by the OTS policy statement on interest rate risk management, 12 C.F.R. 571.3, and OTS Thrift Bulletin 13. Such policy shall contain interest rate risk exposure limitations, which shall be based on earnings and capital capacity. Such limits shall serve as goals for the Institution's exposure to interest rate

risk. Such adoption shall be documented in the Board minutes. In addition, a comparison of actual interest rate risk exposure to the adopted limits shall be made on at least a quarterly basis and the comparison shall be documented in the Board minutes.

K. Criminal Referrals

19. The Institution shall file criminal referrals on OTS Form 366 within fourteen (14) business days of discovery of any known or suspected criminal act regarding the Institution, as required by 12 C.F.R. 563.180(d).

L. Internal Controls

20. Within sixty (60) days of the effective date of this Order, the Institution's Board shall address all of the issues detailed in the independent auditors' management letter as a result of the December 31, 1990 audit, and shall formulate written policies and procedures to correct any deficiencies noted therein.

M. Truth In Lending

21. The Institution shall comply with the provisions of the Truth in Lending Act, which is contained in Title I of the Consumer Protection Act, 15 U.S.C. 1601 et seq., and 12 C.F.R. Part 226 (Federal Reserve "Regulation Z"). If the Institution offers a discounted rate of interest initially on closed end credit, the truth-in-lending disclosure payment stream shall reflect the composite rate on the discounted rate in effect during the initial period and the rate that is the basis of the variable-rate feature for the remainder of the term, as required by 12 C.F.R. 226.17(c)(1).

22. Within ninety (90) days from the effective date of this Order, the Board of Directors shall develop and submit to the Regional Deputy Director and the Commissioner a formal written

compliance program which encompasses the policies and procedures that the Institution will follow in order to comply with all compliance related laws and regulations, including all pertinent nondiscrimination laws and regulations, consumer interest laws, and public interest laws, including, but not limited to, Regulation Z.

N. Progress Reports

23. Within thirty (30) days of the effective date of this Order, and, thereafter, within thirty (30) days from the end of each calendar quarter, the Institution shall furnish written status reports to the Regional Deputy Director and the Commissioner detailing what action has been taken to secure compliance with this Order and the results thereof. In addition, the Institution shall furnish such reports on request of either the Regional Deputy Director or the Commissioner. All status reports and other written responses to this Order shall be reviewed by the Board and made a part of the Board's minutes.

O. Effective Date and Effect of Order

24. This Order shall become effective upon execution by the Regional Deputy Director, and shall remain effective and enforceable until such time as any provisions thereof shall have been modified, terminated, suspended, and or set aside by the Regional Deputy Director.

THE OFFICE OF TRUST SUPERVISION

/S/

~~Ralph W. Gidley  
Regional Deputy Director  
Boston District Office~~