

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

IN THE MATTER OF  
FIRST FEDERAL SAVINGS BANK,  
SAN ANTONIO, TEXAS

RESOLUTION NO. DAL-91-62

DATED: June 19, 1991

STIPULATION AND CONSENT TO ISSUANCE  
OF ORDER TO CEASE AND DESIST

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Midwest Regional Office of OTS, Dallas, Texas and First Federal Savings Bank, San Antonio, Texas ("First Federal Savings Bank"), 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 Federal Savings Bank pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b) (1988 & Supp. I 1989), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA"). First Federal Savings Bank 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 First Federal Savings Bank with respect to the matters covered in the accompanying Order to Cease and Desist ("Order").

2. JURISDICTION.

(a) First Federal Savings Bank is a "savings association" within the meaning of Section 3 of the FDIA and Section 2(4) of the Home Owners' Loan Act, 12 U.S.C. § 1462(4) (Supp. I 1989). 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(q) of the FDIA, as amended by Section 204 of FIRREA, (to be codified at 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, First Federal Savings Bank 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 & Supp. I 1989).

3. CONSENT.

First Federal Savings Bank 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.



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ORDER TO CEASE AND DESIST

WHEREAS, First Federal Savings Bank, San Antonio, Texas ("Institution"), through its directors, has executed a Stipulation and Consent to Issuance of an Order to Cease and Desist, which is incorporated herein by reference ("Stipulation") and is accepted and approved by the Office of Thrift Supervision ("OTS"), acting through its Regional Director for the Midwest Regional Office in Dallas Texas; 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) (1988 & Supp. I 1989), as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA").

NOW THEREFORE, IT IS ORDERED that the Institution and its directors, officers, employees, and agents shall cease and desist from engaging in any unsafe or unsound practices or breaches of fiduciary duty, as further described in the Report of Examination of April 2, 1991, or violations of 12 C.F.R. §§ 563.93, 563.161(a), 563.170(c), 563.176, 571.3, and 571.7, (1990), and 12 U.S.C. § 1831i as added by Section 914 of FIRREA:

IT IS FURTHER ORDERED that:

CONFLICTS OF INTEREST AND AFFILIATED PERSONS TRANSACTION

1. (a) Without the prior written approval of the Regional Director, the

Institution shall not make any payments or make any loans or extend any credit to any affiliate as defined in 23A and 23B of the Federal Reserve Act ("FRA"), 12 U.S.C. § 371c and 371c-1 or to any affiliated person as defined in 12 C.F.R. § 561.5 or any related interest of such person as defined in § 215.2, except for compensation paid to the officers and directors of the Institution in conformance with the provisions of Paragraph 4 of this Order and except for compensation paid to salaried officers existing as of May 24, 1991.

- (b) The Board of Directors shall review and familiarize themselves with the following regulatory and statutory provisions: 12 C.F.R. §§ 561.5, 563.40, 563.41, 563.43 (1990); OTS Statements of Policy set forth at 12 C.F.R. §§ 571.7 and 571.9 (1990); Section 11(a) of the Home Owners' Loan Act ("HOLA"), 12 U.S.C. § 1468 (Supp. I 1989); Section 22(h) of the FRA, 12 U.S.C. § 375b, and its implementing regulations, 12 C.F.R. §§ 215.2, 215.4 and 215.7 (1990); and Sections 23A and 23B of the FRA, 12 U.S.C. §§ 371c and 371c-1.
- (c) Within 30 days of the date of this Order, the Institution and the Board of Directors shall submit to the Regional Director for review, a conflicts policy which provides, at a minimum, guidelines for directors' responsibilities, business ethics, and conflicts of interest for the Institution which are in accordance with the regulations, statutes, and policies referenced in Paragraph 1(b) above.
- (d) Within 30 days of the date of this Order, the Board of Directors shall develop and implement a system to monitor compliance with the Conflicts Policy on a continuing basis. Such system shall

provide for the Institution to submit a report to the Board of Directors and to the Regional Director no later than the last day of every month.

- (e) Within 30 days of the date of this Order, the Institution shall submit to the Regional Director for prior review and concurrence a written plan for correcting any outstanding violations identified in the Institution's Report of Examination dated, April 2, 1991. Upon approval by the Regional Director, the Institution shall implement the plan. The Institution shall comply with the plan as approved and shall make any modifications to the plan as directed by the Regional Director.

**DIVIDENDS**

2. Without the prior written approval of the Regional Director, the Institution shall not pay any dividends, or make any capital distributions.

**TRANSACTIONS WITH CERTAIN INDIVIDUALS AND THEIR RELATED INTERESTS**

3. (a) With respect to Hugo E. Pimienta and/or Daniel De La Garza, or any of their related interests as defined in 12 C.F.R. § 215.2 (1990), except that directors fees may be paid to Director Maria Antonieta Silva de Pimienta, in accordance with Paragraph 4(a) of this Order, without the prior written approval of the Regional Director, the Institution shall not, directly or indirectly:
- (i) purchase or lease from, jointly own with, sell or lease to, or commit to purchase or lease from, jointly own with, or sell or lease to such Hugo E. Pimienta and Daniel De La Garza or their "related interests" as defined in 12 C.F.R. § 215.2 (1990), an

- interest in real or personal property, including shares of stock in any company;
- (ii) pay any fees, commissions or remuneration of any form, to such Hugo E. Pimienta and/or Daniel De La Garza, or any related interest of such individuals;
  - (iii) make or purchase a loan, or commit to make or purchase a loan for which Hugo E. Pimienta and/or Daniel De La Garza, or one of their related interest, is an obligor or guarantor; or
  - (iv) make or purchase a loan, or commit to make or purchase a loan to any third party on the security of real or personal property purchased from such Hugo E. Pimienta and/or Daniel De LaGarza; or any related interest of such individuals.

COMPENSATION

4. (a) Within 30 days of the date of this Order, the Board of Directors shall prepare, adopt and submit to the Regional Director for approval:
- (i) a written policy regarding officer and director compensation. As used in this Paragraph, the term "compensation" includes remuneration such as salary, pension, profit sharing, bonus, severance pay or fees for serving as director or committee member, as well as any other fringe benefit such as club membership or automobile use; and
  - (ii) a detailed justification for the level of

compensation paid to each officer and director, including a full description of duties and responsibilities, and a resume of past experience and education. For purposes of this Paragraph, the term "officer" means the definition contained in 12 C.F.R. § 561.35.

- (b) Without the approval of the Regional Director, the Institution shall not pay any bonus, or increase the salary or fees of any officer or director; except that until the compensation policy submitted pursuant to this Paragraph is approved by the Regional Director, reasonable travel expenses may be paid for directors attending board and committee meetings.

PROPOSED ADDITION OF DIRECTORS AND SENIOR EXECUTIVE OFFICERS

5. (a) Within 30 days of the date of this order, the board of directors shall submit to the Regional Director, a plan to reorganize the board and replace members, at the earliest possible time, with qualified independent individuals in conformance with 12 C.F.R. § 563.33 and Paragraph 5(b) of this Order.
- (b) The Institution shall not add or replace any director or senior executive officer without the prior written approval of the Regional Director pursuant to the requirements of 12 U.S.C. § 1831i as added by Section 914 of FIRREA or Thrift Bulletin 45.
- (c) For purposes of this Paragraph 5, any consultant or other individual who actually performs the functions of a senior executive officer such as exercising significant influence over, or participating in major policy-making decisions of the Institution without regard to title, salary or compensation will be deemed to be subject to the requirements of Section 914 and TB 45.
- (d) For purposes of this Paragraph 5, the term "independent" shall be

defined to mean a person who is not employed nor has ever been employed by or otherwise performs or has performed services for any officer, director, or shareholder or related interest thereof as defined in 12 C.F.R. § 215.2(k), of the Institution, its holding company, or any affiliate of the Institution as defined in Sections 23A and 23B of the FRA, 12 U.S.C. §§ 371c and 371c-1.

**BOOKS AND RECORDS**

6. (a) The Institution shall maintain such accounting systems, records, documents, files, minutes of the Board of Directors' meetings and Directors' committee meetings, and controls, (collectively referred to as "records") and shall provide an accurate and complete record of all business transactions and disclosures, as well as its past and present financial condition. The Institution's records shall be developed and prepared in accordance with generally accepted accounting principles, except as the applicable regulations permit variation therefrom; shall document that the Institution is being operated in a safe and sound manner; and that the Institution shall continue to use its best efforts to comply fully with all applicable laws and statutes, regulations, policy statements, memoranda, guidelines, and instructions administered by or under the purview of the OTS, including, but not limited to, 12 C.F.R. §§ 563.170, and 571.19 (1990).

(b) At all times such records shall be maintained at the Institution's home office in San Antonio, Texas, and shall be available for review by examiners of the OTS.

**POLICIES AND PROCEDURES**

7. (a) The Board of Directors shall immediately appoint a committee,

composed of a majority of outside directors (who are not salaried officers), to formulate the Institution's written policies and procedures in conformance with the statutes and regulations governing the Institution's operations, and which provide adequate guidance and internal controls, including, but not limited to ensuring that all obligations of the Institution are duly authorized in accordance with the Institution's charter and bylaws and officially documented in the minutes of the board of directors or committee thereof. At a minimum, those policies and procedures should address:

(i) underwriting standards and practices to be used by the Institution for all commitments and loans made and participations purchased ("Underwriting Standards"). These Underwriting Standards shall outline objectives and lending philosophies of the Institution, and shall include the following:

(A) a requirement that prior to making or purchasing, or committing to make or purchase any loan, other extension of credit, or investment, the Institution must have obtained, as appropriate, each of the items listed in 12 C.F.R. § 563.170(c) (1990);

(B) a delineation of lending authority for the Board of Directors, officers and committees;

(C) acceptable minimum and maximum loan amounts, borrower credit criteria, and loan to value ratios; and

- (D) a method of monitoring and ensuring compliance with applicable regulations, including but not limited to those in 12 C.F.R. §§ 545.32-53, 563.93 and 563.170 (1990);
- (ii) investment policies which shall comply with 12 C.F.R. § 571.19 (1990) and Thrift Bulletin 41 and which shall address at a minimum;
- (A) the investment policy and strategies in both a rising interest rate and falling interest rate environment;
  - (B) the Institution's intent to purchase and originate securities for investment, sale and/or trading;
  - (C) the liquidity considerations of the Institution;
  - (D) the Institution's desired return on investments;
  - (E) the Institution's desired degree of interest rate risk;
  - (F) the Institution's desired asset/liability position;
  - (G) the use of hedging techniques, if any;
  - (H) the types of products to be originated and/or purchased;
  - (I) the intent of the Institution to build a mortgage-servicing portfolio;

(J) the Institution's plan for reinvestment of proceeds from sales; and

(K) the characteristics of the investments originated or purchased.

(iii) appraisal policies ensuring that appraisals reflect values upon which the Institution may rely in making lending decisions as required by 12 C.F.R. §§ 563.170(b), 564.8 (1990) (as amended by the interim common rule which was effective January 30, 1991, and published in 55 Fed. Reg. 53610 (1990));

(b) Within 30 days of the date of this Order, the committee shall submit to the Board of Directors for review and adoption the proposed written policies.

(c) Within 30 days after adoption by the Board of Directors, the Institution shall submit the policies to the Regional Director for review. The Institution shall make any modifications or changes to those policies as directed by the Regional Director and shall comply with those policies as modified. Further modification shall not be made without prior notification to the Regional Director.

(d) Within 30 days after adoption of the policies by the Board of Directors, the committee shall submit written procedures to the Board of Directors that provide for the implementation of the policies.

(e) On a quarterly basis, the committee shall review the Institution's operations to assess the Institution's compliance with the established written policies and procedures and provide a report of such review to the Board of Directors for adoption.

BUSINESS PLAN

8. (a) Within thirty (30) days of response from the Regional Director or his designee, the Institution shall submit a revised three-year business plan for the operations of the Institution that outlines the manner in which the Institution can maintain and improve its regulatory capital levels set forth in Section 5(t) of HOLA, 12 U.S.C. § 1464(t) (Supp. I 1989), and 12 C.F.R. Part 567 (1990) ("Business Plan").
- (b) The Business Plan shall contain, at a minimum, the following components:
- (i) Financial projections for 3 years on a quarterly basis, including major balance sheet and income statement components and a budget with respect to the overall operations of the Institution;
  - (ii) A narrative description of the strategy to be implemented to manage the Institution in such manner to maintain its profitability, and that show the interest-rate risk assumptions upon which the Business Plan is based;
  - (iii) An evaluation of the adequacy of management with regard to achieving the goals of the Business Plan;
  - (iv) An evaluation of operations including staffing, goals, income, expenses, and objectives;
  - (v) A plan for asset and liability management; and
  - (vi) A capital compliance/maintenance plan.
- (c) The Board of Directors hereby agrees to make all revisions to the Business Plan that are reasonably requested by the Regional Director and to comply with the Business Plan, provided that any

material revisions be subject to prior written review and approval by the Regional Director.

- (d) Beginning with the end of the quarter following the submission of the Business Plan, the Institution shall provide to the Regional Director, quarterly progress reports comparing the actual performance to the projections set forth in the Business Plan detailing all material variances.
- (e) The Institution shall update the three-year Business Plan on a semiannual basis and submit it to the Regional Director for review 30 days after the end of the six-month period.
- (f) Until the three year business plan has been deemed satisfactory by the Regional Director, the Institution shall only engage in the following transactions unless the Regional Director otherwise grants approval, provided that the loans or investments do not significantly increase the risk profile of the Institution, and the loans or investments comply with the applicable regulations:
  - (i) Making single-family, owner-occupied loans in the Institution's immediate local market area not to exceed \$250,000.00, provided that the loans meet the following conditions:
    - (A) the yield on the loan must exceed the Institution's marginal cost of funds,
    - (B) the Institution must minimize and appropriately manage its interest-rate risk by, at a minimum, holding only adjustable-rate mortgage loans in its portfolio and selling forward fixed rate

loans, except that the Institution may sell forward fixed rate loans up to an aggregate of \$5 million,

(C) the terms may not lead the market after taking into consideration both rates and fees, and

(D) all loans should be properly underwritten in accordance with all applicable regulations including, but not limited to, 12 C.F.R. § 563.170(c) (1990);

(ii) Making home improvement loans that do not exceed \$50,000.00, provided that the loan is secured by a lien on the owner-occupied residence and the Institution is the holder of the first lien;

(iii) Making consumer and education loans not to exceed \$25,000.00; or

(iv) Making fully collateralized share loans; or

(v) Making short term liquid investments in high quality investment grade securities or other similar investments.

G. Without the prior written approval of the Regional Director, the Institution shall not engage in any foreign investments until the Business Plan has been deemed satisfactory by the Regional Director.

#### CONTINGENT LIABILITIES

9. Within 15 days of the date of this Order, the Institution shall submit a list of the contingent liabilities of the Institution (e.g., standby letters of credit, loans or participations sold with recourse, buy-back agreements, commitments and pending litigation). Such list shall include:

(a) the name of the parties involved; (b) a description of the transaction(s) which form the basis for the contingent liabilities of the

Institution; and (c) the date and the nature of the expected resolution or the termination of the contingent liability. The Institution shall provide an updated list to the Regional Director upon the request of the Regional Director.

ATTORNEYS AND CONSULTANTS

10. (a) Within 30 days of the date of this Order, the Institution shall prepare and submit to the Regional Director a list of all attorneys and consultants to whom the Institution has paid or is paying fees or who have been retained to represent the Institution or retained by the Institution on behalf of any of its directors, officers, employees, stockholders or consultants, during calendar year 1991 and the amount of compensation paid or to be paid by the Institution to such persons or entities during calendar year 1991. Upon the request of the Regional Director, the Institution shall submit a copy of any contractual agreement which may be in effect with respect to such services.

(b) The Institution shall not enter into, renew, or revise any contractual or fee arrangement with any consultant or attorney without the prior written notice to the Regional Director. The notice shall specify the proposed terms and conditions of the arrangement, including, but not limited to, a description of the services to be performed and the fees to be paid. Such requests shall also include an analysis by the Board of Directors that proposed fees are reasonable and commensurate with industry norms.

GENERAL PROVISIONS

11. (a) The Board shall use its best efforts to ensure full compliance by the Institution with the requirements of this Order.

- (b) 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 Code of Federal Regulations, and 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.
- (c) The term "making" means to make, originate, purchase, acquire, guarantee, refinance, modify, extend, renew, or to commit to do any of these.
- (d) Any request for modification of this Order must be submitted in writing to the Regional Director or his designee and the Regional Director may, in writing, at his sole discretion, modify or suspend the requirements of this Order.
- (e) Upon execution of this Order, the Directive issued by this office on March 15, 1991, to the Board of Directors, will be terminated.

THE OFFICE OF THRIFT SUPERVISION

BY           /S/            
BILLY C. WOOD  
REGIONAL DIRECTOR  
MIDWEST REGIONAL OFFICE  
DALLAS, TEXAS