

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)
Bay Savings Bank)
West Palm Beach, Florida)

Re: Resolution No. ATL-91-18

Dated: June 24 , 1991

ORDER TO CEASE AND DESIST

WHEREAS, Bay Savings Bank, OTS Docket Number 8281, ("Bay" 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, Bay, 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. Section 1818(b).

NOW THEREFORE, IT IS ORDERED THAT:

Growth

1. The Institution shall not increase its consolidated total assets as reported on it's quarterly thrift financial report, without the prior approval of the Regional Director or his designee ("Regional Director").

Capital Distributions

2. The Institution shall not make any capital distributions.

Expenditures Relating to Compensation, Benefits, and FF&E

3. (a) The Institution shall not provide any compensation or other direct or indirect benefits to executive officers and directors beyond those determined reasonable and prudent for a capital deficient institution. Such compensation for directors, executive officers and other employees shall be in compliance with 12 C.F.R. Sections

563.39 and 563.161 as they may be amended and Regulatory Bulletins, Thrift Bulletins or other bulletins or policy statements issued in writing by the OTS ("OTS Guidance"). In no event shall the Institution increase the compensation of any executive officer, either directly or indirectly, in excess of 5% per year.

(b) The Institution shall incur no compensation expense in excess of \$1,000 per individual per year that is not part of an individual's salary and benefit package adopted above, except amounts used for employee training. Amounts expended for employee training shall be reasonable and in the best economic interests of the Institution and provide direct educational benefit.

(c) The Institution shall not purchase or pay for an item or service, intended for the benefit of any officer or director that does not have an immediate, direct relationship to the performance of the officer's or director's duties or is not available to all Institution staff.

Operating Provisions

4. Except as provided in Paragraph 5 of this Order and except for legally binding commitments existing as of the effective date of this Order and in accordance with OTS Regulatory Bulletin 3a-1 ("RB 3a-1"), dated January 9, 1990, as it may be amended or any other guidance or restriction for an institution "Subject to Greater Restrictions" as that term is used in RB 3a-1, without providing a minimum of 30 days prior written notice of the transaction to the Regional Director and receiving a written notice of no objection from the Regional Director, the Institution shall not:

(a) make, invest in, purchase, sell, refinance, extend or otherwise modify or commit to make, invest in, purchase, sell, refinance, extend, or otherwise modify:

(i) 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) any commercial loans, letters of credit, participations therein, or any set of such loans, letters of credit, or participations, and

(iii) any consumer or education loans, except for loans fully secured by the customer's deposits at the Institution that are within market rates;

(b) 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 that loan has been paid in full or when the Institution makes a documented determination that such release is necessary to resolve a troubled loan with the least potential for loss to the Institution;

(c) 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 in this Order;

(d) 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. Section 563.98, or any subsidiary of a service corporation, except as otherwise provided in this Order;

(e) enter into any joint venture or limited partnership agreement;

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

(g) 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 which includes the sale of repossessed assets;

(h) 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 which includes the sale of real estate owned;

(i) 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. Section 566.2;

(j) encumber any of its property or other assets, except as otherwise provided for in this Order;

(k) make any material change in accounting method;

(l) incur any material obligation or contingent liability, except as otherwise permitted by this Order;

(m) enter into any material transaction, except as

otherwise permitted by this Order;

(n) 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 by this Order;

(o) 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 Order;

(p) 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. Section 563.39 as it may be amended or OTS Guidance; enter into or amend or renew any collective bargaining agreement, pension or profit sharing plan, bonus plan, severance plan, retirement plan, fringe benefit plan (except medical insurance and life insurance plans as to which there have been no increases in benefits which require increased premiums unless such increased benefits are mandated by law), 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;

(q) enter into any agreement to merge, consolidate, or otherwise be acquired, or enter into any agreement to reorganize or for management services, except in connection with a plan of combination or reorganization or a management services contract recommended by the OTS or its designee;

(r) amend or permit to be amended its charter or bylaws, except as directed by the Regional Director;

(s) accept any non-cash capital contribution;

(t) open any branch office, loan production office or agency; or

(u) issue common or preferred stock except as expressly approved in advance by OTS or its designee.

5. The Institution is authorized by the Regional Director, to make the following types of investments, including the sale of loans described in subparagraphs (a), (b), (c), (d), and (e) below and the refinance or modification of loans described in subparagraphs (a), (b), (c), (d), and (e) of this Paragraph 5, within the growth limitations set forth in Paragraph 1 of this Order without any further requirement for the prior written approval of the Regional Director:

(a) first and second mortgage permanent loans, non-speculative first mortgage construction loans, and home equity loans which:

(i) are fully secured by 1-4 family dwellings,

(ii) have loan to value ratios not exceeding 90 percent (when aggregated with the first lien, as applicable) and otherwise meet the Institution's loan underwriting standards,

(iii) have that portion of the loan in excess of 80 percent of the appraised value of the security property insured/guaranteed by a private mortgage insurance company which FHLMC has determined to be a "qualified private insurer,"

(iv) are made at market terms and interest rates,

(v) do not exceed \$250,000 in the aggregate to one borrower, and

(vi) in the case of first mortgage construction loans, the builder has a contract of sale for the completed dwellings.

(b) first mortgage permanent loans with FHA or VA insurance;

(c) consumer loans which:

(i) meet the Institution's loan underwriting standards,

(ii) are made at market terms and interest rates, and

(iii) do not exceed \$20,000 if fully secured or \$5,000 if not secured, in the aggregate to any one borrower;

(d) overdraft lines of credit which:

(i) meet the Institution's loan underwriting standards,

(ii) are made at market terms and interest rates, and

(iii) do not exceed \$5,000 in the aggregate to one borrower;

(e) the refinance, extension, or modification of loans

outstanding or legally committed to as of the date of this Order which the Institution is not otherwise authorized to make under this Order, provided that:

- (i) the Institution uses its best efforts to first have the loan repaid and the loan file is documented to this effect,
 - (ii) the loan complies with prudent loan underwriting standards,
 - (iii) the loan is at market terms and rates,
 - (iv) such renewals, modifications, or extensions are approved by the board of directors or a designated committee thereof after a documented determination (to be included in the loan file) that the renewal, modification or extension is in the Institution's best interests, and
 - (v) new funds may be advanced under this subparagraph if such funds are necessary to protect the Institution's interest in the credit;
- (f) advances to pay property taxes and insurance premiums for properties owned by the Institution or which are the subject of an Institution lien;
- (g) purchase of property at foreclosure or bankruptcy sale which is already subject to the Institution's first lien position, and purchase of superior liens at foreclosure where necessary to protect the Institution's second lien position and where the resultant exposure to the Institution does not exceed 80 percent of the appraised value as supported by a recent and acceptable appraisal report;
- (h) investments in liquid assets defined by 12 C.F.R. Sections 566.1(g)(1)-(8), subject to the board of directors' documented consideration of other reinvestment alternatives, including the retirement of existing debt; except for investments in liquid asset mutual funds whose assets consist of commercial paper and corporate debt securities and which do not meet the rating and marketability restrictions of 12 C.F.R. Sections 545.75(b)(1) and (2);
- (i) reasonable levels of disbursements (but excluding additional development of real estate owned, except as otherwise provided in this Order) necessary to repair or replace equipment, make serviceable existing plant, or otherwise protect assets which are owned by the Institution;

(j) reasonable and supportable levels of investments to complete foreclosed 1-4 family dwellings which are at least 90 percent complete; and

(k) the accrual of interest on negative amortization loans.

6. The following are permissible unless otherwise restricted by law, rule, or regulation, e.g., loans to one borrower:

(a) loans in connection with certain workouts where the principal amount of the loan is not increased, such as: conversion of construction loans to permanent loans pursuant to a legally binding commitment, restructuring of debt, and advances under legally binding commitments;

(b) the assumption of troubled credits by a third party where the credit is already booked as an asset on the balance sheet of the Institution; and

(c) accepting a purchase money note or mortgage in connection with the sale of repossessed assets or real estate owned.

7. Requests to make loans or investments other than those permitted above must be accompanied by a resolution of the Board of Directors or committee thereof, signed by each individual member of the board or committee voting in favor of the resolution, addressing whether: (a) management is capable of underwriting and administering the loans or investments in a safe and sound manner, (b) the Board has adopted policies and procedures to ensure that the loans or investments are prudently underwritten and administered, (c) internal controls measuring compliance with the policies and procedures are in place, (d) the Institution has not experienced significant losses within the past year in connection with similar loans or investments, and (e) the loans or investments contemplated are necessary to preserve the Institution's franchise value and will not cause an increase in total assets. All documentation considered by the Board in adopting the resolution shall be explicitly referenced in the minutes of the meeting at which the resolution was adopted and shall be made available to the Regional Director upon his request.

Criticized Assets

8. The Institution shall, on a continuing basis, identify and classify its problem assets in accordance with the provisions of 12 C.F.R. Section 563.160 and the guidelines set forth in 12 C.F.R. Section 571.26.

9. Within forty-five (45) days of the effective date of this Order, the Institution shall develop, adopt and implement a written plan to reduce classified and special mention assets

("Criticized Assets"). The plan shall include specific targets and timeframes for the reduction of the Institution's Criticized Assets. The plan shall also include separate action plans for each Criticized Asset exceeding \$500,000, which 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 Directors shall review management's progress in meeting the targets of the plan at least quarterly.

General Valuation Allowances

10. The Institution shall adhere to a general valuation allowance policy which complies with the requirements of 12 C.F.R. Section 563.160(d) and the guidance set forth in Section 261 of the Thrift Activities Handbook. The policy shall take into consideration, at a minimum, the risk of loss inherent in the Institution's assets classified substandard or doubtful, or designated special mention in accordance with 12 C.F.R. Section 563.160, and all other loans and investments held by the Institution.

Lending Provisions

11. Prior to granting, extending, renewing, altering or restructuring any loan or other extension of credit the Institution shall obtain and analyze current and satisfactory credit information and take steps necessary to perfect its lien on collateral, where applicable.

12. Prior to granting, extending, renewing, altering or restructuring any loan or other extension of credit, the Institution shall have in its possession written documentation evidencing its compliance with the requirements of its loan underwriting policies, 12 C.F.R. Section 563.170(c), and Paragraph 11 of this Order.

Books, Records, and Internal Controls

13. Within forty-five (45) days of the effective date of this Order, the Institution shall develop and implement, and thereafter maintain, accounting systems, records, and controls as necessary to provide an accurate and complete record of all business transactions as well as its past and present financial condition. The Institution shall submit complete and accurate Thrift Financial Reports to the OTS in a timely manner.

Liquidity

14. Within forty-five (45) days of the effective date of this Order, the Institution shall develop, adopt, implement, and thereafter adhere to written policies and procedures which will ensure that liquid assets are maintained at a level in compliance with 12 C.F.R. Section 566.2. The Institution shall

comply with such written liquidity policies and procedures and maintain liquid assets in accordance with 12 C.F.R. Section 566.2.

Requested Information

15. Within twenty (20) days of the effective date this Order, the Institution shall provide to the Regional Director the information requested in Attachment "A" to this Order and, thereafter, provide to the Regional Director, within twenty (20) days of the close of each calendar month, updates of the information submitted.

Pending Litigation

16. Within twenty (20) days of the effective date of this Order, the Institution shall provide a list of all material pending litigation involving the Institution to the Regional Director. Such list shall include: (a) the name of the parties involved; (b) a description of the transaction(s) which form the basis of the litigation; (c) the name of the law firm and attorneys representing the Institution; (d) the status of the litigation; and (e) an estimate of the Institution's potential liability. The Institution shall provide to the Regional Director, within twenty (20) days of the close of each calendar month, updates of the information submitted. All fee arrangements between the Institution and its attorneys shall require the submission of monthly invoices to the Institution specifying the amounts claimed and providing a complete description of the services provided.

Contingent Liabilities

17. Within twenty (20) days of the effective date of this Order, the Institution shall submit to the Regional Director, a list of the material contingent liabilities of the Institution (e.g., standby Letters of credit, loans or participations sold with recourse, buy-back agreements). 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; and (c) the date and the nature of the expected resolution or the termination of the contingent liability. The Institution shall provide to the Regional Director, within twenty (20) days of the close of each calendar month, updates of the information submitted.

Budget

18. Within forty-five (45) days of the effective date of this Order, and annually thereafter, the Board of Directors shall prepare and submit to the Regional Director, a detailed written one year budget which will include a quarterly balance sheet and income statement in the format of the quarterly Thrift Financial Report. Procedures also shall be established

to monitor the Institution's actual results against the projections in the budget and to provide for appropriate adjustments to the budget. All significant variances and adjustments to the budget shall be reported to the Regional Director within twenty (20) days of the close of each calendar quarter.

Board of Director Responsibility

19. (a) Each member of the Board of Directors owes fiduciary duties to the Institution, depositors and stockholders. Notwithstanding that certain provisions of this Order require the Board of Directors to submit various matters to the Regional Director for the purpose of receiving approval, notice of acceptability or non-objection, such regulatory oversight does not derogate or supplant the fiduciary duties owed by the members of the Board of Directors of the Institution. The Board of Directors, at all times, shall have the ultimate responsibility for overseeing the safe and sound operation of the Institution.

(b) The Board of Directors of the Institution shall take immediate action for the purpose of causing the Institution to comply with this Order.

Board Review of Compliance with Order

20. The Board of Directors shall, at each regular meeting, formally resolve that, to the best of its knowledge and belief, and based on a prudent review, during the previous calendar month the Institution and all its subsidiaries complied with each provision of this Order currently in effect, except as otherwise stated. The resolution shall specify in detail how, if at all, full compliance was found to be lacking. The resolution further shall set forth any exceptions to any provision of this Order approved by the Regional Director. Within twenty (20) days of each regular Board of Directors' meeting, the Institution shall submit to the Regional Director a copy of the minutes of each Board of Directors' meeting, and the minutes of Board of Directors' committee(s) meetings, and the aforementioned resolution. Each director shall at such time either provide the Regional Director with certification that, to the best of his or her knowledge and belief, and based upon a prudent review, the above-referenced resolution is accurate or provide the Regional Director with a written statement providing in detail the reason(s) for disagreement with the resolution.

Violation Not Condoned

21. Nothing in this Order shall be construed as allowing the Institution to violate any law, rule, regulation, or policy statement to which it is subject.

Miscellaneous

22. (a) The terms and provisions of this Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest.

(b) In case any provision in this Order shall be declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(c) 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, HOLA, or FDIA. Any such technical words or terms used in this Order and undefined in said Code of Federal Regulations, HOLA, FDIA, or OTS Memoranda shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.

Successor Regulations, Guidance, Amendments

23. Reference in this Order to provisions of statutes, regulations, and OTS Memoranda shall be deemed to include references to all amendments to such provisions as have been made as of the effective date of this Order and references to successor provisions as they become applicable.

Notices

24. Except as otherwise noted, any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Order to be made upon, given or furnished to, delivered to, or filed with either OTS, the Regional Director, shall be in writing and mailed, first class, or physically delivered, or telecopied, telexed or sent by other means of electronic transmission and confirmed by mail, first class, or physically delivered and addressed to the Regional Director, Office of Thrift Supervision, Post Office Box 105217, 1475 Peachtree Street, N.E., Atlanta, Georgia 30348-5217. If to the Institution, delivery should be made at 4698 Forest Hill Boulevard, West Palm Beach, Florida 33406.

Termination, Modification or Suspension

25. This Order shall remain in effect until terminated, modified or suspended by the OTS, acting through the Regional Director or his designee. The Regional Director or his designee may terminate or suspend, in his or her sole discretion, any or all provisions of this Order, and shall reasonably consider written requests for termination of all or

