

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

In the Matter of )  
 )  
FIRSTSTATE FINANCIAL, A )  
SAVINGS BANK )  
 )  
Orlando, Florida )

Re: Resolution No. ATL-91-37

Date: August 1, 199

STIPULATION AND CONSENT TO ISSUANCE  
OF ORDER TO CEASE AND DESIST

The Office of Thrift Supervision ("the OTS"), by and through its Regional Director for the Southeast Region, and Firststate Financial, A Savings Bank, Orlando, Florida ("Firststate" or "Institution") stipulate and agree as follows:

1. Consideration

The OTS, based upon information derived from the exercise of its supervisory and regulatory powers, is of the opinion that grounds exist to initiate administrative cease and desist proceedings against Firststate pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), as amended, 12 U.S.C. Section 1818(b). The grounds include unsafe and unsound practices in conducting the business of Firststate, as follows:

- a. During two examination cycles, the Institution has violated 12 C.F.R. Section 563.160 and the guidance provided by the Statement of Policy at 12 C.F.R. Section 571.26 by failing to monitor with an effective asset classification procedure the significant risk in its portfolio. Such failure caused the Institution to materially under report its level of classified assets;
- b. During two examination cycles, the Institution also violated 12 C.F.R. Section 563.160 and the guidance provided by the Statement of Policy at 12 C.F.R. Section 571.26 by failing to set aside prudent valuation allowances for loan losses as required by these provisions;
- c. The Institution has pursued high risk lending and investment strategies by making large land acquisition and real estate acquisition and development loans and by trading in equity securities.

These strategies have left the Institution with a high degree of credit risk because of the concentration of such assets in its portfolio. Such strategies have been criticized by the OTS and its predecessor regulatory office and constitute violations of the safe and sound management and financial policies requirements of 12 C.F.R. Section 563.161 and

- d. The Institution is in violation of 12 C.F.R. Section 567.2 by failing to meet all three of its minimum regulatory capital requirements.

Firststate desires to cooperate with the OTS and to avoid the time and expense of such administrative cease and desist proceedings and, without admitting or denying that such grounds exist, hereby stipulates and agrees to the following terms.

The OTS is willing to forbear from the initiation of cease and desist proceedings against Firststate to require the actions which the Institution must undertake or refrain from undertaking pursuant to the accompanying Order to Cease and Desist ("Order") for so long as the Institution is in compliance with the provisions of the Order.

## 2. Jurisdiction

(a) Firststate is a "savings association" within the meaning of Section 3(b)(1) of the FDIA, as amended, 12 U.S.C. Section 1813(b)(1). The Institution is an "insured depository institution" as that term is defined in Section 3(c)(2) of the FDIA, as amended, 12 U.S.C. Section 1813(c)(2).

(b) Pursuant to Section 8(b)(1) of the FDIA, as amended, 12 U.S.C. Section 1818(b)(1), the appropriate Federal banking agency may issue a cease and desist order against any insured depository institution which engages in unsafe and unsound practices in conducting its business and/or violates a rule or regulation.

(c) Pursuant to Section 3(q)(4) of the FDIA, as amended, 12 U.S.C. Section 1813(q)(4), the Director of the OTS is the "appropriate Federal banking agency" in the case of any savings association. Therefore, Firststate 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.

## 3. Consent

Firststate consents to the issuance by the OTS of the accompanying 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.



UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

\_\_\_\_\_  
In the Matter of )  
 )  
FIRSTSTATE FINANCIAL, )  
A SAVINGS BANK )  
 )  
Orlando, Florida )  
\_\_\_\_\_ )

Re: Resolution No. ATL-91-37

Date: August 1, 1991

ORDER TO CEASE AND DESIST

WHEREAS, Firststate Financial, a Savings Bank, Orlando, Florida ("Firststate" 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, Firststate, 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 Firststate and its directors, officers, employees, agents and service corporations shall cease and desist from any unsafe or unsound practices in conducting the business of the Institution and further, shall cease and desist from any violation of, or the aiding and abetting of any violation of, 12 C.F.R. Section 563.160, 12 C.F.R. Section 563.161, and 12 C.F.R. Section 567.2, and from any noncompliance with, or the aiding and abetting of any noncompliance with, 12 C.F.R. Section 571.26.

IT IS FURTHER ORDERED that:

CAPITAL

1. Within 60 days of the effective date of this Order, the Board of Directors shall develop, adopt and submit to the Regional Director for his approval, a capital plan which satisfies all of the requirements set forth in paragraphs (a)(2)(i) through (a)(2)(vi) of 12 C.F.R. Section 567.10.

MANAGEMENT

2. Within 45 days of the effective date of this Order, the Board of Directors shall review present management and shall formulate and submit to the Regional Director a management plan which shall contain:

(i) An organizational structure which delineates lines of authority, responsibilities, and job descriptions for each "senior executive officer", as defined in OTS Thrift Bulletin 45, dated April 25, 1990; and

(ii) A review of each existing officer's performance, abilities, background and assignments to positions within the organizational structure. If the existing personnel do not meet the Institution's needs, the plan shall identify and establish those positions which require employment of personnel from outside the Institution.

3. The position of Chief Executive Officer shall be filled by a person who shall serve in a full-time capacity at the Institution and who shall be given specific written authority by the Board of Directors for implementing lending, investing, funds management and operating policies in accordance with sound practices, and who shall be the senior officer responsible for the daily management of the Institution. Within 45 days of the effective date of this Order, an application for the candidate for the position of Chief Executive Officer shall be submitted to the Regional Director pursuant to Section 32 of the FDIA, 12 U.S.C. Section 1831i.

LENDING

4. With the exception of legally binding commitments existing as of the effective date of this Order, and/or loans to refinance, extend or modify existing loans and/or loans to facilitate the sale of real estate owned, and subject to the provisions of Paragraph 9 of this Order, the Institution shall restrict its lending to:

(a) First and second mortgage permanent loans and home equity loans which are fully secured by 1-4 family, owner occupied dwellings which are underwritten to meet secondary market standards, and

(b) Fully secured consumer loans not to exceed \$35,000 to one borrower.

5. As of the effective date of this Order, no additional credit shall be made to any borrower whose indebtedness was wholly or

partially classified as Loss or Doubtful in the OTS Report of Examination made as of October 1, 1990, or in any subsequent examination by the OTS or any other regulatory or insuring agency, or classified by the institution, without the prior written approval of the Regional Director, unless the failure to make such additional credit would be detrimental to the best interests of the Institution, and unless such additional credit is made only after obtaining additional collateral or other protection, which in the opinion of the Board of Directors, substantially improves the position of the Institution and complies with the loans to one borrower limitations of 12 C.F.R. Section 563.93. In any event, no such additional credit shall be made without the prior approval of at least 75 percent of the Board of Directors, with the reasons for the additional credit clearly documented in the minutes of the meeting at which the additional credit is approved. No additional credit shall be made to any borrower whose indebtedness was classified as Substandard in the OTS Report of Examination made as of October 1, 1990, or any subsequent examination by the OTS or any other regulatory or insuring agency without the prior approval of at least 75 percent of the Board of Directors. 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 principle amount of the loan is not increased, such as: conversion of construction loans to permanent loans pursuant to 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) legally binding commitments in existence as of the effective date of this Order.

#### LOAN ADMINISTRATION

6. Within 45 days of the effective date of this Order, the Board shall develop, adopt and implement a plan for an adequately staffed loan administration department which shall be responsible for asset classifications, new lending, and the disposition of real estate owned; which shall provide input as to the recommended level of general and specific valuation allowances; and which shall monitor, collect, administer and resolve all loans that are 60 days or more contractually delinquent.

7. The loan administration department shall be headed by a qualified individual who is not a current or past officer, director or employee of Firststate and shall be a "senior executive officer" as defined in OTS Thrift Bulletin 45, dated April 25, 1990. Within 45 days of the effective date of this Order, an application for the candidate for the position of the head of the loan administration department shall be submitted to the Regional Director pursuant to Section 32 of the FDIA, 12 U.S.C. Section 1831i.

Firststate Financial, a Savings Bank  
Orlando, Florida  
Cease and Desist Order (7/91)  
Page 4 of 7

8. Within 45 days of the effective date of this Order, the Board of Directors shall appoint a special three member committee to monitor the effectiveness of the loan administration department at least monthly.

9. Within 45 days of the effective date of this Order, the Board of Directors shall adopt and direct management to follow specific underwriting policies and procedures regarding:

(i) Loans made to facilitate the sale of real estate owned and other assets acquired in foreclosure or through a deed in lieu of foreclosure, or the sale of any assets which are not permissible investments pursuant to the Financial Institutions Reform, Recovery and Enforcement Act of 1989; and

(ii) The assignment, assumption or restructuring of any troubled debt. For the purposes of this Paragraph 9 (ii), a troubled debt is any obligation due Firststate which has been subject to adverse classification in an examination of the Institution by any regulatory or insuring agency, or any obligation due Firststate for which interest or principal is more than 60 days contractually delinquent.

10. The Institution shall not deviate from the policies and procedures required by Paragraph 9 of this Order unless it can justify and document that the deviation is in the best interests of the Institution and the deviation is approved in advance by at least 75 percent of the Board of Directors.

11. Within 60 days of the effective date of this Order, the Institution shall develop, adopt and implement a written plan to correct, strengthen or otherwise reduce the risk of loss for each problem asset. At a minimum, the plan shall establish specific goals for the resolution of each problem asset within specified time frames, as well as goals for the orderly reduction in the aggregate level of problem assets within specified time frames. The plan shall be updated at least quarterly to include assets which meet the criteria in this Paragraph 11 after the effective date of this Order, and the Board of Directors shall review management's progress in meeting the goals established in the plan at least monthly. For the purposes of this Paragraph 11, problem assets shall include:

(i) All loans in excess of \$250,000 for which interest or principal payments are more than 60 days contractually delinquent;

(ii) All assets criticized as Special Mention, Substandard, Doubtful, or Loss at the OTS examination made as of October 1, 1990, or any subsequent examination by any regulatory or insuring agency; and

(iii) Real estate and other assets in excess of \$250,000 owned by Firststate and either acquired by foreclosure or by a deed in lieu of foreclosure.

12. Within 60 days of the effective date of this Order, the Institution shall develop, adopt and implement a written plan to reduce the credit risk in the loan portfolio and the exposure to borrowers with an aggregate lending relationship which as of the effective date of the Order exceeded the limits set forth in 12 C.F.R. Section 563.93. Such plan shall include specific targets and quarterly time frames for the reduction of such credit risk and exposure to large borrowers. The Board of Directors shall review management's progress in meeting the goals and targets of the plan at least monthly.

#### ASSET CLASSIFICATIONS AND VALUATION ALLOWANCES

13. Within 45 days of the effective date of this Order, the Institution shall develop, adopt, implement and adhere to asset classification policies and procedures which comply with 12 C.F.R. Section 563.160 and which incorporate factors and considerations set forth in Section 260 of the OTS Regulatory Handbook on Thrift Activities. The Board of Directors shall review asset classifications monthly to ensure that the policies and procedures adopted are followed.

14. The Institution shall immediately classify assets in accordance with 12 C.F.R. Section 563.160 and in accordance with the classifications outlined in the OTS Report of Examination of the Institution made as of October 1, 1990, or any subsequent examination by the OTS or any other regulatory or insuring agency. As has been the practice in prior examinations of Firststate, any classifications by examiners for the OTS shall be made in conformance with the procedures set forth in Item 10 of the Examination Procedures of Section 260 of the OTS Regulatory Handbook on Thrift Activities.

15. Within 45 days of the effective date of this Order, the Institution, with the assistance of its independent auditors or another third party acceptable to the OTS, shall review for classification purposes pursuant to 12 C.F.R. Section 563.160, any loan which is 60 days or more contractually delinquent, any loan or investment with a book value of \$250,000 or more, and all real estate owned.

16. Without the prior approval of the Regional Director, the Institution shall not declassify any asset unless the asset has been paid off in full by funds not directly or indirectly provided by the Institution, or the asset has been sold to a third party without recourse.

17. Within 45 days of the effective date of this Order, the Institution shall develop, adopt, implement and adhere to written general valuation policies and procedures which comply with 12 C.F.R. Section 563.160 and which incorporate factors and considerations set forth in Section 261 of the OTS Regulatory Handbook on Thrift Activities. The Board of Directors shall review the level of general valuation allowances monthly to determine whether such level of general valuation allowances is adequate and whether the policies and procedures adopted are followed.

18. The Institution shall immediately establish adequate general valuation allowances in accordance with 12 C.F.R. Section 563.160, the general valuation policy adopted pursuant to Paragraph 17 of this Order, and totaling at least \$5,150,000.

19. Within 45 days of the effective date of this Order, the Institution shall review and classify the outstanding indebtedness referred to as loan number 5i-36002 on pages A-12.1 and A-12.2 of the OTS Report of Examination made as of October 1, 1990. Such review shall include an analysis and documentation of the value and marketability of any collateral, and the establishment of appropriate specific and general valuation allowances. Such portions of the subject indebtedness to Firststate which are not supported by a documented, independent assessment of value indicating current marketability of such collateral, shall be either fully reserved or charged off.

#### DEPOSIT LIABILITIES

20. Within 45 days of the effective date of this Order, the Institution shall develop, adopt and implement a policy to ensure its compliance with Section 29 of the FDIA, 12 U.S.C. Section 1831f and 12 C.F.R. Section 337.6, and shall at all times maintain current documentation of its compliance with these laws and regulations. The policy shall specifically provide that Firststate shall not, without the prior approval of the Federal Deposit Insurance Corporation, offer or accept any deposits with rates of interest exceeding by more than 50 basis points the prevailing rate of interest offered or paid at the time for deposits of comparable or similar terms and conditions by other insured savings associations with offices located in Orange County, Florida.

#### DIVIDENDS

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

Firststate Financial, a Savings Bank  
Orlando, Florida  
Cease and Desist Order (7/91)  
Page 7 of 7

BOARD OF DIRECTORS' CERTIFICATION

22. Within 45 days following the end of each calendar quarter, the Board of Directors shall submit to the Regional Director a certification stating that the Institution has complied with all of the provisions of this Order or shall set forth those areas where compliance has not been achieved. Further, progress reports shall be provided to the OTS 90 days after the effective date of this Order and every 60 days thereafter detailing the actions taken to comply with the provisions of this Order.

OFFICE OF THRIFT SUPERVISION

ISI

By: \_\_\_\_\_

John E. Ryan  
Regional Director  
Southeast Region  
Office of Thrift Supervision