

UNITED STATES OF AMERICA  
Before the  
OFFICE OF THRIFT SUPERVISION

In the Matter of )  
 )  
Imperial Savings and Loan )  
Association, )  
San Diego, California, )  
and )  
Its Service Corporations )  
and Subsidiaries Thereof )

RE: ERC Resolution  
No. 90 - 33

DATED: February 22, 1990

TEMPORARY ORDER TO CEASE AND DESIST

On February 22, 1990, the Office of Thrift Supervision ("OTS") issued a Notice of Charges and Hearing ("Notice") against Imperial Savings Association, a California state-chartered savings and loan association ("Imperial"), San Diego, California, and its service corporations and subsidiaries thereof ("Subsidiaries") pursuant to the authority of 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. 101-73, 103 Stat. 183 ("FIRREA"), codified at 12 U.S.C. § 1818(b).

Upon review of the Notice, and of the entire record herein, the OTS, acting through its Enforcement Review Committee, has determined that the expected unsafe or unsound practices of

Imperial and/or its Subsidiaries, as enumerated in the Notice, are likely to weaken the condition of Imperial or prejudice the interest of depositors prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (b) of Section 8 of the FDIA, as amended by FIRREA, codified at 12 U.S.C. § 1818(b).

THEREFORE, by the authority of Section 8(c) of the FDIA, as amended by FIRREA, codified at 12 U.S.C. § 1818(c), IT IS ORDERED:

1. Without the prior written approval of the District Director of the Eleventh District, Office of Thrift Supervision, neither Imperial nor any of its Subsidiaries, including but not limited to American-Pacific Service Corporation, ICA Insurance Company, Ltd., A.S.L. Service Corporation, ICA Financial Corporation, ISA Equity Corporation, ISA Mortgage Securities, Inc., Imperial Realty Securities, Inc., First Financial Equities Corporation, ISA Financial Corporation, ISA Development Corporation, and Placer, Inc., shall not take or permit, or attempt to take or permit any action of any kind whatsoever which interferes with or potentially may interfere with the sale, transfer, or any other disposition whatsoever, of any assets of Imperial or any of its Subsidiaries.

2. Without the prior written approval of the District Director of the Eleventh District, Office of Thrift Supervision, neither Imperial nor any of its Subsidiaries, including but not limited to American-Pacific Service Corporation, ICA Insurance Company, Ltd., A.S.L. Service Corporation, ICA Financial

4. (a) As an insured institution, Imperial and its Subsidiaries were at all times prior to August 9, 1989, subject in all respects to the Insurance Regulations pursuant to Section 403(b) of the NHA, 12 U.S.C. § 1726(b).

(b) As a state savings association, Imperial and its Subsidiaries have at all times since August 9, 1989, been subject in all respects to the Insurance Regulations pursuant to Section 401(h) of FIRREA and the determination published pursuant thereto at 54 Fed. Reg. 34637 (August 21, 1989).

5. As a state savings association, Imperial and its Subsidiaries are subject to OTS's authority to maintain a proceeding to determine whether an order to cease and desist should issue pursuant to Section 8(b) of FDIA, as amended by FIRREA.

B. SUBSIDIARIES

6. American-Pacific Service Corporation, A.S.L. Service Corporation, ICA Financial Corporation, ISA Mortgage Securities, Inc., Imperial Realty Securities, Inc., ISA Financial Corporation, and ISA Development Corporation are corporations chartered under the laws of the State of California, with their respective principal places of business located at 9275 Sky Park Court, 4th Floor, San Diego, California 92123.

7. Imperial owns 100 percent of the outstanding stock of each of the corporations listed in Paragraph 6 above, and by virtue of this ownership and their business activities, each of such corporations is a "service corporation" of Imperial within the meaning of 12 C.F.R. Sections 561.45 and 545.74.

8. ICA Insurance Company, Ltd. is a foreign corporation chartered under the laws of Bermuda, with its principal place of business located at Penthouse Masters Building, Reid Street, Hamilton, Bermuda, HM.

9. American-Pacific Service Corporation owns 100 percent of the outstanding stock of ICA Insurance Company, Ltd., and by virtue of this ownership and the latter's business activities, ICA Insurance Company, Ltd. is a "subsidiary of a service corporation" of Imperial within the meaning of 12 C.F.R. Sections 561.45 and 545.74.

10. ISA Equity Corporation and Placer, Inc. are corporations chartered under the laws of the State of California, with their respective principal places of business at 9275 Sky Park Court, 4th Floor, San Diego, California 92123. First Financial Equities Corporation is a corporation chartered under the laws of the State of Colorado, with its principal place of business located at 1800 Grand Street, Suite 200, Denver, Colorado 80202, and with an office located at 9325 Sky Park Court, San Diego, California 92123. ISA Financial Corporation owns 100 percent of each of the corporations listed in this Paragraph 10, making each of such corporations a "subsidiary of a service corporation" of Imperial within the meaning of 12 C.F.R. Sections 561.45 and 545.74.

11. As service corporations and subsidiaries of service corporations of Imperial, each of such corporations listed above in Paragraphs 6 through 10, inclusive, together with any other service corporation or subsidiary of a service corporation of

Imperial is subject to OTS's authority to maintain a proceeding to determine whether a cease-and-desist order should issue against it pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b).

II. PERTINENT STATUTORY AND REGULATORY AUTHORITY

A. FEDERAL DEPOSIT INSURANCE ACT, SECTION 8(c)

12. Section 8(c) of the FDIA, as amended by FIRREA and codified at 12 U.S.C. Section 1818(c) (1989), provides in pertinent part:

If, in the opinion of the appropriate Federal banking agency, any insured depository institution . . . is engaging or has engaged, or the agency has reasonable cause to believe that the depository institution or any institution affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of such depository institution, or is violating or has violated or the agency has reasonable cause to believe that the depository institution or any institution affiliated party is about to violate a law, rule, or regulation, or any condition imposed in writing by the agency in connection with the granting of any application or other request by the depository institution or any written agreement entered into with the agency, the agency may issue and serve upon the depository institution or such party, a notice of charges in respect thereof . . . .

12 U.S.C. § 1818(b)(1) (1989)

13. The phrase "unsafe or unsound practice," as used in section 8(c) of the FDIA and its predecessor, section 5(d)(2) of the HOLA, 12 U.S.C. § 1464(d)(2), embraces any action or lack of action which is contrary to generally accepted standards of

prudent operation, the possible consequences of which, if continued, would be abnormal risk of loss or damage to an insured institution, its shareholders, or the agencies administering the federal insurance funds. Financial Institutions Supervisory Act of 1966, Hearing on § 3158 before House Comm. on Banking and Currency, 89th Cong., 2d Sess. 49 (1966) (memorandum supplied by John E. Horne, Chairman, Bank Board).

14. The provisions of section 8(b) of the FDIA apply to Imperial's Subsidiaries in the same manner as they apply to insured institutions. 12 U.S.C. § 1818(b)(8) (1989).

## B. APPLICABLE INSURANCE REGULATIONS

### 1. Regulatory Capital Requirement

15. Imperial is subject to the capital requirements of 12 C.F.R. Section 567.1 et seq., which provides in pertinent part as follows:

To meet its regulatory capital requirement a savings association must satisfy each of the following capital standards:

#### (1) Risk-based capital requirement.

(i) A savings association's minimum risk-based capital requirement shall be an amount equal to 6% of its risk-weighted assets as measured pursuant to § 507.8 of this part plus 2% of its risk-weighted assets as measured pursuant to that section.

(ii) A savings association may not use supplementary capital to satisfy this requirement in an amount greater than 100% of its core capital as defined in § 587.5 of this part.

#### (2) Leverage ratio requirement.

(i) A savings association's minimum leverage ratio requirement shall be in an amount equal to at least 3.0% of adjusted assets.

(ii) A savings association must satisfy this requirement with core capital in an amount not less than 3% of its adjusted total assets.

(3) Tangible capital requirement.

(i) A savings association's minimum tangible capital requirement shall be in an amount equal to at least 1.5 percent of adjusted total assets.

(ii) A savings association must satisfy this requirement with tangible capital as defined in § 567.9 in an amount not less than 1.5% of its adjusted total assets.

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(c) Savings associations are expected to maintain compliance with all of these standards at all times.

12 C.F.R. Section 567.1 et seq. (1989).

2. Management and Financial Policies

16. Imperial is subject to the requirements of 12 C.F.R. Section 563.17, which provides in pertinent part as follows:

(a) For the protection of its insured members and other insured institutions, each insured institution and service corporation thereof shall maintain safe and sound management and shall pursue financial policies that are safe and consistent with economical home financing and the purposes of insurance of accounts and are appropriate to their respective types of operations . . . .

12 C.F.R. Section 563.17 (1988)

III. GROUND'S FOR ISSUANCE OF CEASE AND DESIST ORDER

A. IMPERIAL'S CAPITAL AND FINANCIAL CONDITION

17. Imperial is a wholly owned subsidiary of Imperial Corporation of America ("ICA"), a publicly-held financial services company. As of December 31, 1989, Imperial reported total assets of \$9.7 billion, which represented almost 100 percent of the consolidated assets of ICA.

18. As of December 31, 1989, Imperial's capital is negative \$60.1 million under each of the three capital standards mandated by section 5(t) of the Home Owners' Loan Act ("HOLA") as amended by FIRREA, and 12 C.F.R. Section 567.1 et seq. Imperial fails its tangible capital requirement by \$203.7 million, its core capital requirement by \$347.3 million, and its risk-based capital requirement by \$497.2 million, as of December 31, 1989.

19. Imperial recorded a net loss of \$259.1 million for the year ended December 31, 1989, down substantially from its net earnings of \$14.9 million for the year ended December 1988, and \$51.3 million for the year ended December 1987.

#### B. ASSET QUALITY

20. Imperial's overall asset quality has deteriorated sharply since 1988, primarily as a result of increased levels of nonperforming or fraudulent consumer loans, nonperforming mortgage loans and nonperforming or reclassified high yield, corporate debt securities not of investment grade ("junk bonds"). From September 1988 through September 1989, Imperial's non-accruing loans increased 177.1 percent, non-accruing junk bonds increased 13.9 percent, restructured loans increased 138.1 percent, real estate acquired through foreclosure increased 58.5 percent, and allowance for credit losses increased 45.3 percent.

21. As of December 31, 1989, Imperial's consumer loan portfolio totaled \$960.0 million or 10.0 percent of total assets. Imperial's consumer loan portfolio includes a few, large groups of bulk-purchased loans with an inordinately high rate of default (e.g., sixty-five percent projected over the life of a \$66.0

million portfolio and seventy percent projected over the life of a \$124.1 million portfolio) due to poor quality loans or outright fraud by the portfolios' sellers.

Reserves established against this portfolio during 1989 totaled \$146.2 million or 15.2 percent of the total portfolio. Imperial forecasts, in its capital plan dated January 8, 1990 ("Capital Plan"), an additional \$26.9 million in losses in its consumer portfolio by year-end 1990. A Capital Plan revision dated January 20, 1990, forecasts an additional \$18.0 million in consumer loan portfolio losses over the next four years, in addition to the \$26.9 million already projected for 1990.

22. FIRREA amended the FDIA, Section 28(d) to prohibit a savings association from acquiring or retaining (beyond July 1, 1994) junk bonds. Therefore, Imperial was required to reclassify its junk bonds currently held for investment as held for sale; Imperial adjusted its carrying value for the bonds to the lower of cost or current market value. Imperial sustained a loss of \$276.4 million, or 26.6 percent, on its junk bond portfolio for the year ended December 31, 1989, with approximately \$209.0 million of that total directly related to lower of cost or market adjustments.

#### IV. UNSAFE AND UNSOUND PRACTICES

23. In light of the condition of Imperial described above, any actions by Imperial and/or its Subsidiaries to:

- (a) transfer, sell, or dispose of any of their assets to ICA and/or any other entity or individual, or
- (b) impair, reduce, or facilitate the reduction of the value of any assets of Imperial and/or its Subsidiaries.

without the prior written approval of the District Director of the Eleventh District of the OTS, would constitute an unsafe or unsound practice within the meaning and intent of FDIA section 8(b), codified as 12 U.S.C. § 1818(b), because Imperial is currently insolvent on a tangible capital basis by negative \$60.1 million. Due to Imperial's seriously impaired capital position, any actions by Imperial and/or its Subsidiaries to transfer or otherwise dispose of assets or lessen their value could cause abnormal risk of loss or damage to Imperial or the federal deposit insurance fund, and result in further depletion of Imperial's seriously impaired capital.

#### V. NOTICE OF HEARING

Notice is hereby given that, pursuant to Section 8(b) of the FDIA, as amended by FIRREA, codified at 12 U.S.C. § 1818(b), an administrative hearing will be held to determine whether an order to cease and desist should be issued against Imperial. The hearing will be held in San Diego, California and will commence on April 22, 1990, the exact time of day and location to be announced at a later time. The hearing will be conducted by an Administrative Law Judge in accordance with the adjudicatory provisions of the Administrative Procedure Act, 5 U.S.C. §§ 554-

557 (1982), and the Rules of Practice and Procedure of the Office of Thrift Supervision, 12 C.F.R. Section 509 et seq. (1989), republished at 54 Fed. Reg. 49411 (November 30, 1989) ("Rules").

Imperial and its Subsidiaries are hereby directed to file an Answer to this Notice within 20 days after receiving service. The requirements of the Answer and the consequences of failure to file an Answer are set forth in the Rules. Imperial and its Subsidiaries are also directed, at the same time such Answer is filed, to submit their views as to whether the hearing should be public or private.

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Michael Patriarca  
District Director, Eleventh District  
Office of Thrift Supervision