

UNITED STATES OF AMERICA
BEFORE THE
OFFICE OF THRIFT SUPERVISION

In the Matter of)
)
EVERGREEN FEDERAL SAVINGS BANK)
)
Charleston, West Virginia)
)
)

RE: Enforcement Review Committee
Resolution No. ERC 89-120

Dated: October 23, 1989

STIPULATION AND CONSENT TO
ISSUANCE OF ORDER TO CEASE AND DESIST

The Office of Thrift Supervision ("OTS"), by and through its Enforcement Review Committee ("ERC"), and EVERGREEN FEDERAL SAVINGS BANK, Charleston, West Virginia ("EVERGREEN"), stipulate and agree as follows:

1. Consideration. The OTS, based upon information reported to it, is of the opinion that the grounds exist to initiate an administrative cease and desist proceeding against EVERGREEN pursuant to 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. No. 101-73, 103 Stat. 183 ("FIRREA") (to be codified at 12 U.S.C. § 1818(b)). EVERGREEN desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation and, without admitting or denying the truth of the facts, 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 EVERGREEN with respect to the matters covered in the accompanying Order to Cease and Desist ("Order").

2. Jurisdiction.

(a) EVERGREEN is a "savings association" within the meaning of Section 3 of the FDIA and Section 2 of the Home Owners' Loan Act of 1933, as amended by FIRREA. 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 of the FDIA, as amended by FIRREA, the Director of OTS is the "appropriate Federal Banking agency" to maintain an enforcement proceeding against such a savings association. Therefore, EVERGREEN 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, as amended by FIRREA (to be codified at 12 U.S.C. § 1818(b)).

3. Consent. EVERGREEN 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, as amended by FIRREA (to be codified at 12 U.S.C. § 1818(b)). Upon its issuance by the ERC, it shall be a final order, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, as amended by FIRREA (to be codified at 12 U.S.C. § 1818(i)).

5. Waivers. EVERGREEN waives its right to a notice of charges and the administrative hearing provided by Section 8(b) of the FDIA, as amended by FIRREA (to be codified at 12 U.S.C. § 1818(b)), and further waives any right to

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ORDER TO CEASE AND DESIST

WHEREAS, EVERGREEN Federal Savings Bank, Charleston, West Virginia ("EVERGREEN") through its directors has executed a Stipulation and Consent to Issuance of 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 Enforcement Review Committee; and

WHEREAS, EVERGREEN, 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, as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA") (to be codified at 12 U.S.C. § 1818(b)).

NOW THEREFORE, IT IS ORDERED that EVERGREEN, and its directors, officers, employees, agents and service corporations shall cease and desist from any violation of, or the aiding and abetting of any violation of:

1. Section 561.16c(c)(2) and (3) of the Insurance Regulations (12 C.F.R. Sections 561.16c(c)(2) and (3) (1987));
2. Section 563.9-3(c) of the Insurance Regulations (12 C.F.R. Section 563.9-3 (c)(1987));
3. Section 563.17-1(c) of the Insurance Regulations (12 C.F.R. Section 563.17-1(c)(1987));
4. Section 563.17-6 of the Insurance Regulations (12 C.F.R. Section 563.17-6(1987));
5. Section 563.18(a) of the Insurance Regulations (12 C.F.R. Section 563.18(a)(1987));
6. Section 563.43 of the Insurance Regulations (12 C.F.R. Section 563.43 (1987));
7. Section 523.29(c) of the Rules and Regulations for the Federal Home Loan Bank System (12 C.F.R. Section 523.29(c)(1987)); and
8. Section 528.6(c) of the Rules and Regulations for the Federal Home Loan Bank System (12 C.F.R. Section 528.6(c)(1987)).

IT IS FURTHER ORDERED THAT:

9. Within thirty (30) days of the date of this ORDER, all loans currently held by officers, directors and affiliated persons that are in violation of Section 563.43, 563.17-1 and/or in contravention with EVERGREEN's policy regarding loans to officers, directors and affiliated persons shall be brought into compliance with the above cited Insurance Regulations and EVERGREEN's policy. Within ten (10) days following this initial thirty (30) day period EVERGREEN is unable to bring any loan(s) into compliance, it shall remove that loan(s) from the books of EVERGREEN at no loss to the institution and provide the Supervisory Agent a listing of all loans that have been removed.
10. Unless legally obligated in writing to do so, as of the date this ORDER is issued, EVERGREEN shall not make or commit to make, purchase or commit to

purchase, refinance or commit to refinance, disburse or commit to disburse, all or any part of any loan to any officer, director and affiliated person of EVERGREEN, with the exception of loans secured by savings accounts.

11. Unless legally obligated in writing to do so, as of the date of this ORDER, EVERGREEN shall not make or commit to make, purchase or commit to purchase, refinance or commit to refinance, disburse or commit to disburse, all or any part of any loan, with the exception of the following type loans:

(i) Loans secured by one-to-four family dwellings not to exceed \$350,000 to any one borrower provided, the appropriate underwriting is performed and documentation obtained.

(ii) For loans granted where proposed construction or repairs of one-to-four family dwellings is the purpose, EVERGREEN agrees that there shall be no loan disbursement without the receipt of a duly signed and dated inspection report prepared by a qualified inspector detailing that the necessary work has been completed.

(iii) Loans secured by savings accounts.

(iv) Consumer loans granted under Section 561.38 of the Insurance Regulations not to exceed \$25,000 to any one borrower provided loans are fully secured or \$5,000 to any one borrower if unsecured.

Within ten (10) days of the date this ORDER is issued, EVERGREEN will submit to the Supervisory Agent a listing of all legally binding commitments or

obligations outstanding as of that time, which require the institution to provide financing not permitted by this paragraph. This restriction on EVERGREEN's lending shall continue until the Supervisory Agent determines that EVERGREEN is in full compliance with Section 563.17-1(c) of the Insurance Regulations.

12. EVERGREEN shall adhere to the policy statement guidelines set forth in Section 571.7 of the Insurance Regulations concerning conflicts of interest and usurpation of corporate opportunity. EVERGREEN shall further comply with the Plan for avoidance of conflicts of interest ("Plan") as submitted to the Supervisory Agent on April 17, 1989 and shall not deviate from or amend that Plan without the written approval of the Supervisory Agent.
13. EVERGREEN's board of directors shall establish and submit to the Supervisory Agent, for review and approval, a revised Internal Loan Review policy as required by Section 561.16c(c)(2) of the Insurance Regulations, within sixty (60) days of the issuance of this ORDER.
14. EVERGREEN's Internal Loan Review officer shall determine full adherence to the Association's Internal Loan Review Program on at least a quarterly basis, submitting his or her written findings to the full board of directors. The board minutes shall fully document their review of the reviewer's findings.
15. EVERGREEN shall comply with the written loan underwriting policies and procedures ("Underwriting policies") as submitted to the Supervisory Agent on April 17, 1989 and shall not deviate from or amend that plan without the written approval of the Supervisory Agent.

- a. All appraisal reports shall reflect market value as defined in Section 563.17-1a(b)(2) of the Insurance Regulations, and shall contain sufficient data to support the market value of the security property described in the report.
 - b. Further, EVERGREEN's board of directors shall by resolution designate (an) institution officer(s), director(s) or other qualified person(s) to be responsible for the review of all appraisal reports submitted to the institution. The institution's loan files shall contain documentation of this individual's analysis and no loan shall be dispersed prior to a satisfactory report from such individual regarding the value of the security property offered for such loan.
16. Within ninety (90) days of the date of this ORDER, EVERGREEN shall develop and adopt a written comprehensive plan of management depth and succession satisfactory to the Supervisory Agent. Such plan shall have as its major goals the strengthening and enhancement of senior and middle management, especially in the areas of strategic and policy planning, asset/liability and risk management, lending, and savings, and for the supplementation of existing senior and middle management with new officers with experience and knowledge of the savings and loan business. The plan shall contain an organization chart of the proposed management of EVERGREEN, including the names of the proposed officers, a description of their respective responsibilities, and the specific qualification of each of the proposed officers.

17. Within sixty (60) days of the effective date of this ORDER, EVERGREEN's board of directors shall submit to the Supervisory Agent for review and approval, a plan for restructuring the board of directors ("Restructuring Plan"). The objective of the Restructuring Plan will be to enhance the board of directors and to obtain individuals with knowledge of and experience in the savings and loan industry or with public companies. Thereafter, the board of directors shall submit to the Supervisory Agent, on a monthly basis, a written report outlining the steps it has taken to obtain qualified individuals to serve on the Board as set forth in the Restructuring Plan. In addition, the board of directors shall provide the Supervisory Agent with the resumes of all individuals under consideration to be appointed to EVERGREEN's board of directors for his or her review. No individual shall be appointed to EVERGREEN's board of directors without the prior written approval of the Supervisory Agent. The Supervisory Agent shall act promptly in reviewing such appointments. After two years, if EVERGREEN's board of directors has been restructured in accordance with the Restructuring Plan, the Supervisory Agent may, in his or her sole discretion, upon written request of a majority of EVERGREEN's board of directors, suspend the prior approval requirement of this Section 17 with regard to appointing new directors.

18. Within thirty (30) days of the effective date of this ORDER, EVERGREEN's board of directors shall establish policies and procedures to be followed in maintaining allowances for loan losses which are adequate to cover all anticipated loan losses. These policies and procedures shall cover all

loan types within the loan portfolio and shall establish a risk analysis methodology which is in accordance with generally accepted accounting principles and Federal Home Loan Bank Board requirements. Each quarter EVERGREEN shall document and retain in its permanent files, workpapers showing how it determined the allowances for loan losses for that quarter.

19. EVERGREEN shall within thirty (30) days of the effective date of this ORDER, establish specific loss reserves as a result of assets classified as Loss, within the January 5, 1989 Examination Report pursuant to Section 561.16c of the Insurance Regulations. The specific reserve and/or charge off must be maintained until such time as the assets are disposed of or sufficient information is made available to the Supervisory Agent that would preclude a Loss classification.

20. EVERGREEN shall provide to the Supervisory Agent a monthly status report relative to all institution loans that are listed as criticized assets in the Report of Examination dated January 5, 1989. This would include all assets classified as Substandard, Doubtful, and Loss as well as assets subject to Special Mention. Said status reports shall be submitted to the Supervisory Agent within twenty (20) days of the close of each calendar month, beginning with the calendar month following the effective date of this ORDER. Said status reports shall contain the following information:

(a) Name and/or identification number of each loan;

(b) Current principal balance of each loan;

- (c) Contractual payment status of each loan; and
- (d) An explanation of collection efforts for each loan that may become delinquent.
21. Within thirty (30) days of the date of this ORDER, EVERGREEN shall submit revised collection policies and procedures for all types of lending to the Supervisory Agent for review and approval. An Association officer shall be appointed to regularly review compliance with the collection policy including the documented collection efforts.
22. Within ninety (90) days of the effective date of this ORDER, EVERGREEN shall file with the Supervisory Agent, a board approved budget for the remainder of fiscal year 1989 and comprehensive updated business plan of at least three (3) years duration, setting forth specific goals, objectives, and strategies as to the Association's future course of operations and to assure its competitive capability. Said business plan shall also include a definition of the Association's business; an evaluation of the Association's strengths and weaknesses; and identification of the targeted markets and the effect of competitors; an evaluation of the Association's expertise to provide services; time frames for review and revision of the business plan on at least an annual basis; and an identification of the particular goals to be accomplished for the term of the business plan. Furthermore, on a quarterly basis coinciding with the Association's own fiscal year and within twenty (20) days of the close of each quarter, the board of directors shall file with the Supervisory Agent a written report documenting its review of

the Association's operating results for the quarter just ended and year-to-date. Such report shall include a comparison of actual results against the projections in the budget and the business plan. A written explanation of any deviation in the projections will be included in the report along with a specific description of the measures that have been implemented or proposed to correct, abate, or improve any such deficiencies.

23. The board of directors shall within thirty (30) days, adopt and file with the Supervisory Agent for his review and approval, a policy for management of the association's interest rate risk to comply with Thrift Bulletin 13.
24. The board of directors of EVERGREEN shall take whatever steps are necessary to ensure full compliance by EVERGREEN with the requirements of this ORDER.
25. 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.

OFFICE OF SUPERVISOR

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Rosemary Stewart
Secretary, Enforcement Review
Committee and Director of
Enforcement