

95229

SUPERVISORY AGREEMENT

This Supervisory Agreement ("Agreement") is made and is effective this 16th day of December, 1991, by and between First Trade Union Savings Bank, FSB, Boston, Massachusetts (OTS No. 08433) ("First Trade Union" or the "Institution"), for itself and the Office of Thrift Supervision ("OTS") through the Regional Deputy Director for the Boston District Office ("Regional Deputy Director"). This Agreement has been duly authorized, executed, and delivered, and constitutes, in accordance with its terms, a valid and binding obligation of the Institution. It is understood and agreed that this Agreement is a "written agreement" entered into with the OTS within the meaning of 12 U.S.C. § 1818(b)(1) and (i)(2).

WHEREAS, as evidenced by the Report of Examination ("ROE") dated February 19, 1991, the OTS is of the opinion that the Institution has not complied with certain rules and regulations to which it is subject, thereby providing the grounds for the initiation of a proceeding against the Institution pursuant to Section 8(b) of the Federal Deposit Insurance Act, 12 U.S.C. § 1818(b) ("FDIA"); and

WHEREAS, the OTS is willing to forbear from the initiation of a proceeding against the Institution pursuant to Section 8(b) of the FDIA on the subjects covered by this Agreement for so long as the Institution is in compliance with the provisions of this Agreement; and

WHEREAS, the Institution, without admitting or denying that grounds exist to initiate such a proceeding against the Institution, in the interest of regulatory compliance and cooperation, is willing to enter into this Agreement to avoid the initiation of such

a proceeding;

NOW, THEREFORE, based upon consideration of the circumstances recited above, it is agreed among the parties hereto as follows:

A. Management

1. Within sixty (60) days from the effective date of this Agreement, the Board of Directors ("Board") shall submit to the Regional Deputy Director a written analysis and assessment of the Institution's management and staffing needs ("Management Plan") which shall include, at a minimum:

- a. identification of both the type and number of officer positions needed to properly manage and supervise the affairs of the Institution;
- b. evaluation of the members of senior management to determine whether such individuals possess the ability, experience and other qualifications required to perform present and anticipated duties, including adherence to applicable regulatory provisions and the Institution's established policies and practices, and maintenance of the Institution in a safe and sound condition;
- c. an analysis of management's strengths and weaknesses, including an assessment of current compensation and organizational structure;
- d. an assessment of senior management staff's ability to effectively manage and resolve current problems confronting the Institution;
- e. a plan of action to recruit and hire any additional or replacement personnel with the ability, experience, and

other qualifications which the Board determines are necessary to fill Institution officer and senior management positions; and

f. a requirement that the Board provide supervision over the lending, investment and operating policies of the Institution sufficient to ensure that the Institution complies with the terms of this Agreement.

2. The Board shall approve the Management Plan, and such approval shall be recorded in the Board minutes. Any modification shall become effective when approved by the Board, and such approval shall be recorded in the Board minutes. The Board shall notify the Regional Deputy Director of all material modifications to the Management Plan. The Institution, its directors, officers and employees shall implement and follow the written Management Plan and/or any subsequent modification thereto.

B. Board of Directors and Committees

3. Within sixty (60) days from the effective date of this Agreement, the Board shall submit to the Regional Deputy Director a written analysis and assessment of the Institution's operating committee needs ("Committee Plan") which shall include, at a minimum:

- a. identification of the operating committees needed to properly guide and oversee the affairs of the Institution and active management;
- b. identification of the functions, responsibilities and frequency of meetings of each operating committee; and
- c. identification of the membership of each operating committee.

4. The Board shall approve the written Committee Plan, and such approval shall be recorded in the Board minutes. Any modification shall become effective when approved by the Board, and such approval shall be recorded in the Board minutes. The Board shall notify the Regional Deputy Director of all material modifications to the Committee Plan. The Institution, its directors, and officers shall implement and follow the written Committee Plan and/or any subsequent modification thereto.

5. Each operating committee of the Institution shall establish and maintain formal minutes of its meetings. Committee minutes shall be reviewed and approved by the Board, and such review and approval shall be recorded in the Board minutes.

6. The Board shall meet at least monthly. Management shall prepare in advance, and the Board shall follow, a detailed agenda at each meeting. At a minimum, the agenda shall include consideration of the actions of any operating committees, ratification and approval of loans pursuant to the Loan Policy required by paragraph 13 of this Agreement, and a detailed report of delinquent loans and troubled assets. Nothing in the foregoing sentence shall preclude the Board from considering matters other than those in the agenda.

C. Conflict of Interest Policy

7. Within ninety (90) days of the effective date of this Agreement, the Board shall submit to the Regional Deputy Director for review, a written conflict of interest policy (the "Conflicts Policy"), which shall require, at a minimum, compliance with the provisions of 12 C.F.R. §§ 563.40, 563.41, and 563.43, as interpreted and clarified by the OTS policy statements regarding conflicts of

interest and corporate opportunity, 12 C.F.R. §§ 571.7 and 571.9, as well as Sections 22(h), 23A, and 23B of the Federal Reserve Act, 12 U.S.C. §§ 375b, 371c, and 371c-1, as made applicable to savings associations by Section 11 of the Home Owners' Loan Act, 12 U.S.C. § 1468. The Conflicts Policy shall also establish internal review procedures to be followed with respect to any transaction entered into by an "affiliated person" of the Institution, as defined by 12 C.F.R. 561.5. which might have the appearance of being a potential conflict of interest. The Conflicts Policy shall be distributed to all directors and officers of the Institution and its subsidiaries. The Institution, its directors, officers and employees shall implement and follow the written Conflicts Policy and/or any subsequent modification thereto.

D. Asset Quality and Review

8. Within thirty (30) days from the effective date of this Agreement, the Institution shall charge off or establish specific reserves for all assets classified "loss" in the ROE.

9. Within sixty (60) days from the effective date of this Agreement, the Board shall adopt and submit to the Regional Deputy Director for review, an internal classification of assets policy ("Classification Policy") consistent with the provisions of 12 C.F.R. § 563.160 as interpreted and clarified by the OTS policy statement regarding classification of assets, 12 C.F.R. § 571.26. The Classification Policy shall include:

- a. identification of the individuals responsible for the review, the frequency of reviews, the method of loan selection, the scope and depth of the review, and

follow-up reporting procedures, some of which individuals shall be independent of the lending function;

- b. a provision that classified assets shall be reviewed and approved by the Board; and
- c. a provision to ensure that all classified assets are reported as required on Thrift Financial Reports ("TFRs") submitted to the OTS.

10. The Institution shall review its assets for potential classification and its general loss reserve for adequacy on at least a quarterly basis. Adjustments to the reserve shall be made within fifteen (15) days following each such quarterly review. Such reviews and supporting analysis for the adequacy of the general loss reserve shall be documented within the Board minutes of the meeting at which considered.

11. Upon acquisition of real estate through foreclosure, deed in lieu of foreclosure, or any acquisition deemed to be an "in substance foreclosure" in accordance with the guidelines established by Securities and Exchange Commission Financial Reporting Release No. 28 (collectively "real estate owned" or "REO"), the property shall be appraised in accordance with 12 C.F.R. § 563.172. All such REO of the Institution and its subsidiaries shall be carried at the lower of book value or fair market value in accordance with 12 C.F.R. § 571.18(h). If the fair market value is less than the book value upon acquisition, the Institution shall charge off or establish a specific reserve immediately to account for the loss.

12. Within thirty (30) days following the effective date of this

Agreement, the Institution shall provide the Regional Deputy Director with a detailed update on each borrower with outstanding loans or extensions of credit aggregating more than \$500,000 and each parcel of REO with a balance in excess of \$250,000 classified or subject to special mention in the ROE. Such reports shall include the balance as of the reporting date, past due status and a summary of efforts taken to alleviate the credit deficiency. Thereafter, said reports shall be required as of the end of each calendar quarter and shall be due within thirty (30) days following the end of each calendar quarter. Said reports may be discontinued only upon the written release of the Regional Deputy Director.

E. Lending Policies and Procedures

13. Within sixty (60) days from the effective date of this Agreement, the Board shall submit to the Regional Deputy Director a revised written loan underwriting policy (the "Loan Policy"). The Loan Policy shall ensure that the loan documentation provided is in compliance with the requirements of 12 C.F.R. § 563.170(c)(1). At a minimum the lending policy shall include:

- a. the individual lending authority of each loan officer;
- b. the lending authority of a loan or executive committee, if any;
- c. the responsibility of the Board in reviewing, ratifying and approving loans, extensions or modifications;
- d. underwriting guidelines for the each type of credit offered by the Institution;
- e. a requirement that updated financial information be obtained at least annually from all borrowers and

guarantors with speculative and/or commercial real estate loans in excess of \$250,000 in the aggregate. In addition, operating statements on properties securing such speculative and/or commercial real estate loans shall be obtained at least annually from such borrowers and guarantors. All such requests, responses and subsequent analysis shall be maintained as loan file documentation;

- f. a provision addressing the capitalization of unpaid interest, taxes, insurance and legal fees on loans, extensions and modifications;
- g. a procedure for identifying nonaccrual loans; and
- h. recordkeeping requirements regarding loan discussions at both Board and committee levels.

14. The Board shall approve the Loan Policy, and such approval shall be recorded in the Board minutes. The Institution, its directors, officers, and employees shall implement and follow the Loan Policy and/or any subsequent modification(s) thereto.

15. Within sixty (60) days from the effective date of this Agreement, the Board shall submit to the Regional Deputy Director a revised appraisal policy to include at a minimum:

- a. a requirement that all appraisal reports comply with the requirements of 12 C.F.R. Part 564;
- b. the guidelines for obtaining appraisals on all types of properties on which the Institution extends credit;
- c. specific procedures for management to follow in reviewing appraisals for content and compliance with regulatory and

- internal requirements;
- d. the responsibility of the Board to review, ratify and approve appraisers on at least an annual basis;
 - e. a requirement that appraisals shall only be accepted from appraisers who have been approved by the Board;
 - f. procedures for the Board review and approval process for appraisers; and
 - g. a requirement that supporting conclusions reached in the Board review and approval process for appraisers shall be documented in the Board's minutes.

16. The Institution shall not extend or renew, directly or indirectly, any additional credit to any borrower whose loans have been classified or listed for special mention in the aforementioned ROE without the prior approval of the Board. Such approval shall include approval of each advance individually or of a project budget with which each advance is consistent. A written record of the Board's prior approval of any advance under the terms of this provision shall be maintained in the credit file of the affected borrower(s) as well as the Board minutes.

17. Within sixty (60) days of the effective date of this Agreement, the Institution shall develop, and thereafter shall maintain a comprehensive borrower credit ledger. At a minimum, the ledger shall provide an accurate record of total borrower credit in all loan types, including direct liability (including liability as maker, co-maker, partner, and any other kind of direct liability), and indirect liability (including liability as endorser, guarantor, and any other kind of indirect or contingent liability). Such ledger

shall be maintained in a current status for all borrowers with other than one-to-four family owner-occupied residential loans and/or consumer loans. In addition, recordkeeping with respect to loans to one borrower shall be maintained in accordance with 12 C.F.R. § 563.93(f)(2).

F. Business Plans

18. Within sixty (60) days from the effective date of this Agreement, the Board shall adopt and submit to the Regional Deputy Director for review and approval, a business plan for 1992. In addition, a business plan for 1993 shall be adopted and submitted to the Regional Deputy Director for review and approval, prior to November 15, 1992. The plans shall include at a minimum:

- a. a mission statement of the basic business, scope, activities, and purpose of the Institution;
- b. goals that the Institution desires to achieve;
- c. objectives providing specific quantitative measures consistent with each goal;
- d. strategies regarding the courses of action the Institution will take to achieve its goals; and
- e. proforma financial statements and budgets that reflect the existing position of the Institution and the anticipated position demonstrating the impact of its goals, objectives, and strategies on its existing position.

19. Within the Business Plan, the Institution shall include a capital enhancement plan ("Capital Plan"). The Capital Plan shall include a specific plan of action to increase and maintain capital at

a level which is commensurate with the risk profile of the Institution.

G. Interest Rate Risk Management

20. Within sixty (60) days from the effective date of this Agreement, the Board shall adopt and submit to the Regional Deputy Director for review, a revised interest rate risk management policy that meets the requirements of 12 C.F.R. § 563.176 as interpreted and clarified by the OTS policy statement regarding interest rate risk, 12 C.F.R. § 571.3, and Thrift Bulletin No. 13. The policy shall reflect current interest rate risk exposure, shall take into consideration interest rate caps on adjustable rate mortgage loans and the effect of nonperforming assets, and shall include implications and strategies with respect to the mortgage-backed securities portfolio. The forecasted results and projections of the policy shall be consistent with business plans submitted to the Regional Deputy Director.

H. Investment Policy

21. Within sixty (60) days from the effective date of this Agreement, the Board shall adopt and submit to the Regional Deputy Director for review, a revised investment policy that meets the guidelines of 12 C.F.R. § 571.19(b). At a minimum, the policy shall include:

- a. identification of investment activities and strategies;
- b. guidelines for ongoing monitoring of the investment portfolio;
- c. guidelines with respect to mortgage-backed securities relating to accounting issues and recordkeeping,

regarding pool characteristics and prepayment assumptions;

- d. a requirement that investments in federal funds shall not exceed the limitations of 12 C.F.R. § 563.96;
- e. a requirement that written safekeeping agreements be executed with any entities that maintain physical possession or control of any investments held on behalf of the Institution.

I. Thrift Financial Reports

22. The Institution shall submit all Thrift Financial Reports to the OTS within OTS prescribed time frames. The reports shall be completed accurately in accordance with OTS reporting instructions, which shall be certified to by an officer of the Institution.

J. Progress Reports

23. By January 31, 1992, and, thereafter, within thirty (30) days of the end of each calendar quarter, the Institution shall furnish written status reports to the Regional Deputy Director detailing the actions which have been taken to achieve or maintain compliance with this Agreement and the results thereof. Said reports may be discontinued only when the provisions of this Agreement have been met, and the Regional Deputy Director has, in writing, released the Institution from making further reports.

IN WITNESS WHEREOF, the parties have executed this Supervisory Agreement.

THE OFFICE OF THRIFT SUPERVISION

FIRST TRADE UNION SAVINGS BANK, PSB, by a majority of its Board of Directors

15/

~~Ralph W. Gridley~~
Regional Deputy Director
Boston District Office

15/

15/
15/
15/

Concur:

15/
15/

FEDERAL DEPOSIT INSURANCE CORPORATION

15/
15/
15/
15/
15/

By: *15/*

Paul H. Wiechman
Regional Director

09
