

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)
)
GUARANTY BANK)
)
Austin, Texas)
OTS No. 08534)
)

Order No. WN-09-025

Effective Date: August 19, 2009

PROMPT CORRECTIVE ACTION DIRECTIVE

WHEREAS, Guaranty Bank, Austin, Texas (OTS Docket No. 08534) (Institution), is a federally chartered savings association that is regulated by the Office of Thrift Supervision (OTS); and

WHEREAS, Section 38 of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. §1831o, and Part 565 of the OTS Regulations thereunder, 12 C.F.R. Part 565, require institutions that are undercapitalized to file a capital restoration plan specifying the steps the institution will take to become at least adequately capitalized; and

WHEREAS, Section 565.7 of the OTS Regulation, 12 C.F.R. § 565.7, provides for the issuance by the OTS of directives to take prompt corrective action to resolve the problems of insured depository institutions and to restore their capital; and

WHEREAS, the OTS, on July 10, 2009, notified the Institution that it was critically undercapitalized for purposes of the prompt corrective action (PCA) provisions of Section 38 of the FDIA, 12 U.S.C. § 1831o; and

WHEREAS, on July 17, 2009, the Institution reported leverage and total risk-based capital ratios on its amended Thrift Financial Report for quarter ending March 31, 2009, that indicated the Institution was critically undercapitalized for purposes of the prompt corrective action (PCA) provisions of Section 38 of the FDIA, 12 U.S.C. § 1831o; and

WHEREAS, the Institution also is not in compliance with the capital standards required by Section 5(t) of the Home Owners' Loan Act (HOLA), 12 U.S.C. § 1464(t); and

WHEREAS, Section 5(t)(6)(B)(ii) of the HOLA, 12 U.S.C. § 1464(t)(6)(B)(ii), requires any savings association not in compliance with the capital standards to comply with a capital directive issued by the OTS; and

WHEREAS, the OTS issued a Notice of Intent to Issue this Prompt Corrective Action Directive (PCA Directive) on August 17, 2009; has considered the Institution's response dated August 18, 2009; and has determined to issue this PCA Directive in order to carry out the purposes of Section 38 of FDIA, 12 U.S.C. § 1831o, to resolve the Institution's capital deficiency at the least long-term loss to the depository insurance fund; and

WHEREAS, the Institution has indicated that it can not submit a capital restoration plan that is acceptable under Section 567.10 of the OTS Regulations, 12 C.F.R. § 567.10, and Section 38(e)(2) of FDIA, 12 U.S.C. § 1831o(e)(2), and

WHEREAS, the Institution and its Board of Directors, by execution of the attached Stipulation to the issuance of this PCA Directive, the terms of which are incorporated herein by this reference, have stipulated and consented to the issuance of the PCA Directive; and

WHEREAS, the OTS, having issued a Notice of Intent to issue this PCA Directive on August 17, 2009 and having considered the response thereto filed by the Institution, finds it necessary in order to carry out the purposes of Section 38 of the FDIA, 12 U.S.C. § 1831o, to issue this PCA Directive requiring the Institution immediately take certain actions, to continue taking certain actions, and to follow certain proscriptions, thereby effectuating the purpose of Section 38 of FDIA, 12 U.S.C. § 1831o.

NOW, THEREFORE, pursuant to Section 38 of FDIA, 12 U.S.C. § 1831o, including but not limited to subsection (f) thereof, Section 5(t)(6)(B)(ii) of HOLA, 12 U.S.C. § 1464(t)(6)(B)(ii), and Section 565.7 of the OTS Regulations, 12 C.F.R. § 565.7, the OTS directs the Institution and its Board of Directors to do the following:¹

Section 1.1 Required Recapitalization.

Pursuant to 12 U.S.C. § 1831o(f)(2)(A) and (f)(2)(J) and (e)(5), and subject to subsection (B) of this Section 1.1, and all applicable laws and regulations, the Institution is directed to undertake efforts to do one or more of the following by a date acceptable to the OTS:

- A. raise capital in an amount causing it to become, at a minimum, "adequately capitalized" by issuing shares of equity securities (e.g., common or preferred stock through a public offering or private placement); or
- B. enter into a written agreement with another federally insured depository institution or holding company thereof, providing for the Institution to be acquired by or merged with such other party by a date acceptable to the OTS.

¹ The OTS must impose one or more of the presumptive restrictions set forth in 12 U.S.C. § 1831o(f), especially 12 U.S.C. § 1831o(f)(3) and (4) if (1) the institution is significantly or critically undercapitalized, (2) is undercapitalized and did not submit an acceptable capital restoration plan or (3) the institution fails to implement an approved plan. Critically undercapitalized are also subject to restrictions in 12 U.S.C. § 1831o(i).

Section 1.2 Prior Notice Required; Change in Status.

- A. The Institution shall not issue any securities; enter into any agreement or understanding to merge, consolidate, sell all or substantially all of its assets and liabilities; or enter into any agreement of understanding to reorganize; or otherwise be acquired unless (i) the Institution has provided the OTS with prior written notice of its intention to take such action, and (ii) following such notice, the OTS has provided the Institution with prior written notice of its non-objection to the proposed action by the Institution.
- B. The Institution will cooperate fully with the Federal Deposit Insurance Corporation (FDIC) efforts to avoid a loss or otherwise minimize exposure to the insurance fund. Such cooperation includes, but is not limited to, responding to requests for information, providing full access to personnel, agents and service providers, accommodating on-site visits, and permitting the FDIC to provide otherwise confidential information to third parties to facilitate the liquidation or other resolution of the Institution in anticipation of the possible appointment of the FDIC as conservator, receiver, or other legal custodian. Nothing herein shall be interpreted to preclude such cooperation with the FDIC at any time prior to such time, as the Institution may become “critically undercapitalized.”
- C. The OTS directs these actions pursuant to 12 U.S.C. § 1831o(f)(2)(J) or (e)(5) and based upon a determination by the OTS that such action will better carry out the purposes of 12 U.S.C. § 1831o.

Section 1.3 Efforts to Obtain Capital.

The Board of Directors of the Institution shall cause the Institution to comply with Sections 1.1 and 1.2 and shall undertake the following:

- A. authorize and direct appropriate Institution officers to take appropriate actions consistent with the Institution’s obligations under Section 1.1 and 1.2 which include, but are not limited to, taking all reasonably practicable steps to remove impediments to increasing capital;
- B. cause the Institution to hire such professionals as are necessary and appropriate to fulfill the Institution’s obligations under Section 1.1;
- C. cause the Institution to share appropriate information about itself with potential acquirers, merger partners or purchasers, including, but not limited to, any such potential acquirers, merger partner or purchaser identified or referred to the Institution by the OTS or the FDIC; and
- D. inform the OTS and the FDIC, in writing, of (i) all efforts the Institution has made to seek capital and (ii) all expressions of interest by prospective investors, acquirers, or merger candidates, including referrals from the OTS or the FDIC by close of business each calendar Friday following the Effective Date of the PCA Directive.

The OTS requires this action, pursuant to 12 U.S.C. § 1831o(f)(2)(J) or (e)(5), having determined that such actions will better carry out the purposes of 12 U.S.C. § 1831o.

Section 1.4 OTS Marketing Efforts.

In accordance with Paragraph 5 of the accompanying Stipulation, the Institution agrees to the following in connection with the OTS's efforts to assist in the possible merger, acquisition or sale of the Institution by or to qualified parties, upon notification that the Institution is "critically undercapitalized":

- A. The OTS, acting through its authorized representatives, is hereby authorized to market the Institution to prospective acquirers, merger partners or buyers (hereinafter, buyers) using the OTS's marketing procedures and to receive and evaluate all offers submitted for acquisition of the Institution;
- B. The Board of Directors shall direct the Institution and its agents and employees to take all reasonable steps to assist the OTS in marketing the Institution. Such assistance shall include, but not be limited to, preparing an updated marketing package and assisting eligible buyers in conducting due diligence examinations of the Institution;
- C. The OTS, acting through its authorized representatives, is permitted to negotiate a plan of merger, consolidation, transfer of the Institution's assets and liabilities, reorganization, acquisition or capital infusion (Plan of Combination or Reorganization) on behalf of the Institution, and to draft proposed documents for any such Plan of Combination or Reorganization;
- D. The Board of Directors shall immediately take under consideration any reasonable offer to enter into a Plan of Combination or Reorganization (hereinafter collectively, Offer) that is forwarded and recommended to the Board of Directors by the OTS, and shall promptly approve any such Offer that protects the interests of the depositors, creditors and borrowers of the Institution;
- E. The Board of Directors shall recommend to the shareholders of the Institution any Offer approved by the Board of Directors pursuant to subparagraph (D) above, if approval of the Offer by the shareholders, or any portion thereof, is legally required; and
- F. Upon receipt of any necessary approvals pursuant to subparagraphs (D) and (E) above and at the direction of the OTS, the Institution shall take all corporate actions necessary to accept the Offer and consummate the Plan of Combination or Reorganization.

The OTS is imposing these provisions pursuant to 12 U.S.C. § 1831o(f)(2)(J) or (e)(5) based on its determination that these provisions will better carry out the purposes of 12 U.S.C. § 1831o.

Section 1.5 OTS Determination and FDIC Concurrence Required.

If the Institution remains critically undercapitalized for more than 90 days, any timeframes required under Section 1.1 and related reports required under Section 1.2 are subject to a

determination by the OTS and concurrence by the FDIC under the standards of 12 U.S.C. § 1831o(h)(3), provided, however, that such timeframes remain in full force and effect until further notice by the OTS.

Section 1.6 Reports of Compliance.

- A. By close of business each calendar Friday after the Effective Date, Management of the Institution shall prepare, and the Board of Directors of the Institution shall review, a written report concerning the Institution's compliance with the requirements of this PCA Directive during the preceding week. The report and review shall include verification of the Institution's prompt corrective action capital category and confirmation that the Institution is in compliance with: (i) all restrictions that apply automatically to an institution in that category, and (ii) with the other restrictions and requirements contained in this PCA Directive. The Institution shall document this review in the minutes of the meeting of the Board of Directors. All documentation considered by the Board of Directors in performing its review shall be explicitly referenced in the minutes of the meeting at which the review was undertaken.
- B. By no later than five (5) days after each monthly Board of Directors meeting, the Institution shall submit the following documents to the OTS in a format acceptable to the OTS, which may include reports to and responses from the Board of Directors documented in the Board of Directors meeting minutes:
1. variance reports for: (a) activities established by Sections 1.1 and 1.2, and (b) each of the operating restrictions imposed in Part II of this PCA Directive
 2. confirmation of the Institution's compliance with this PCA Directive or a description of any instance of noncompliance with any of the Institution's obligations under this PCA Directive and the specific measures undertaken to cure such noncompliance; and
 3. if requested, copies of the minutes of the Institution's Board of Directors supporting actions taken to comply with Sections 1.1, 1.2, 1.3 and 1.4 of this PCA Directive.
- C. The OTS directs the actions required by this Section 1.6 pursuant to 12 U.S.C. § 1831o(f)(2)(J) or (e)(5), and based upon a determination by the OTS that such action will better carry out the purposes of 12 U.S.C. § 1831o.

Section 1.7 Adequate Progress.

If the OTS, in its sole discretion, determines that the Institution is failing to make adequate progress toward achieving the requirements set forth in Sections 1.1 and 1.2 above, the OTS may take such further supervisory, enforcement, or resolution action as it deems appropriate.

PART II – OPERATING RESTRICTIONS

Section 2.1 Compliance with Mandatory Restrictions.

- A. The Institution shall comply with all of the mandatory prompt corrective action provisions set forth in 12 U.S.C. § 1831o and 12 C.F.R. § 565.6 that automatically apply to the Institution based upon the Institution's prompt corrective action capital category. These provisions are set forth as follows:
1. No capital distributions may be made without the prior written approval of the OTS if: (a) the Institution is not adequately capitalized, or (b) after making the distribution, the Institution would be undercapitalized. 12 U.S.C. § 1831o(d)(1); 12 C.F.R. §§ 565.6(a)(1) and (a)(2)(i).
 2. No management fees may be paid to any person having control of the Institution if: (a) the Institution is not adequately capitalized, or (b) after making the payment, the Institution would be undercapitalized. 12 U.S.C. § 1831o(d)(2); 12 C.F.R. §§ 565.6(a)(1) and (a)(2)(i).
 3. The Institution may not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding quarter unless (a) the OTS has accepted the Institution's capital restoration plan, (b) the increase in assets is consistent with the plan, and (c) the Institution's ratio of tangible equity to assets increases during the calendar quarter at a rate sufficient to enable the Institution to become adequately capitalized within a reasonable time. 12 U.S.C. § 1831o(e)(3); 12 C.F.R. § 565.6(a)(2)(iv).
 4. The Institution may not, directly or indirectly, acquire any interest in any company or insured depository institution, establish or acquire any additional branch office, or engage in any new line of business, unless (a) the OTS has accepted the Institution's capital restoration plan, the Institution is in compliance with the plan, and the OTS determines that the action is consistent with, and will further achievement of the plan, or (b) the FDIC's Board of Directors approves the action. 12 U.S.C. § 1831o(e)(4); 12 C.F.R. § 565.6(a)(2)(v).
 5. The Institution may not accept, renew or roll over any brokered deposit. 12 U.S.C. § 1831f(a); 12 C.F.R. § 337.6(b)(3). The Institution shall make disclosures to all employee benefit plan depositors within ten business days of the date that it is deemed to have notice of its PCA capital category. The disclosure must state that new, rolled-over, or renewed plan deposits are ineligible for pass-through FDIC deposit insurance for as long as the Institution remains undercapitalized, or fails to obtain a brokered-deposit waiver upon becoming adequately capitalized. 12 C.F.R. § 330.14(h).
 6. The Institution shall file a capital restoration plan pursuant to 12 U.S.C. § 1831o(e)(2) and 12 C.F.R. § 565.5.

7. The Institution shall monitor its compliance with the applicable requirements of 12 U.S.C. § 1831o(e) and 12 C.F.R. Part 565.
 8. The Institution may not: (i) pay any bonus to any senior executive officer, or (ii) provide compensation to any senior executive officer exceeding that officer's average rate of compensation (excluding bonuses, stock options, and profit-sharing) during the 12 calendar months preceding the calendar month in which the Institution became undercapitalized without the OTS's prior written approval. 12 U.S.C. § 1831o(f)(4); 12 C.F.R. § 565.6(a)(3).
 9. The Institution may not make any payment of principal or interest on its subordinated debt beginning 60 days after the Institution becomes critically undercapitalized. 12 U.S.C. § 1831o(h)(2)(A); 12 C.F.R. § 565.6(a)(4)(ii).
 10. Without the FDIC's prior written approval, as required by 12 U.S.C. §§ 1831o(h)(1) and (i)(2); 12 C.F.R. § 565.6(a)(4)(i), the Institution may not:
 - (a) enter into any material transaction other than in the usual course of business, including any investment, expansion, acquisition, sale of assets, or similar action with respect to which the Institution is required to give notice to the OTS;
 - (b) extend credit for any highly leveraged transaction;
 - (c) amend the Institution's charter or bylaws, except to the extent necessary to carry out any other requirement of any law, regulation or order;
 - (d) make any material change in accounting methods;
 - (e) engage in any "covered transaction" with an affiliate, as defined in 12 U.S.C. § 371c(b);
 - (f) pay excessive compensation or bonuses; or
 - (g) pay interest on new or renewed liabilities at a rate that would increase the Institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the Institution's normal market area.
- B. If the Institution's PCA capital category deteriorates to a lower level, the Institution shall comply with the above restrictions, as well as all of the additional mandatory prompt corrective action provisions applicable to its lower PCA capital category.
- C. If the Institution should improve from a lower to a higher PCA capital category, it must continue to comply with the previously applicable mandatory sanctions of the lower

category, until such time as approval to cease compliance with the lower category sanctions is requested of, and received from the OTS.

- D. To the degree that any restriction contained in any subsequent Section of this PCA Directive indicates that it is imposed pursuant to 12 U.S.C. § 1831o(f)(2), the OTS hereby imposes that restriction pursuant to 12 U.S.C. § 1831o(e)(5), based upon the determination that the restriction is necessary to carry out the purpose of 12 U.S.C. § 1831o.

Section 2.2 Restrictions on Interest Rates; Brokered Deposits.

- A. The Institution shall restrict the rates it pays on deposits to the prevailing rates of interest on deposits of comparable amounts and maturities in the Institution's normal market area. Nothing herein shall be construed as requiring a reduction of rates paid on outstanding time deposits prior to their renewal. The OTS is imposing this restriction pursuant to 12 U.S.C. § 1831o(f)(2)(C).
- B. Notwithstanding the foregoing restrictions, the Institution may pay interest rates that exceed the interest rates that would be permitted under the foregoing restrictions provided that: (i) the interest rates are within the limitations of 12 C.F.R. § 337.6; and (ii) the interest rates are necessary to most effectively manage the Institution's weighted average cost of funds, giving consideration to the Institution's liquidity requirements.
- C. Pursuant to 12 U.S.C. §§ 1831o(f)(5) and (i)(2)(G) and 12 C.F.R. § 337.6, based upon a determination by the OTS that the action is necessary to carry out the purpose of 12 U.S.C. § 1831o, the Institution may not pay interest on new or renewed liabilities at a rate that would increase the Institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the Institution's normal market areas.

Section 2.3 Growth Restrictions.

Pursuant to 12 U.S.C. § 1831o(e)(3), the Institution shall not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding quarter unless: (a) the OTS has accepted the Institution's Capital Plan; (b) any increase in total assets is consistent with such Capital Plan; and (c) the Institution's ratio of tangible equity to assets increases during the quarter at a rate sufficient to make the Institution adequately capitalized within twenty (20) days. The OTS is imposing this restriction pursuant to 12 U.S.C. § 1831o(e)(3).

Section 2.4 Action to Reduce Expenses.

- A. The Institution shall substantially reduce its general and administrative expenses by all available means. In furtherance of this requirement, the Institution, with twenty (20) days from the Effective Date, shall submit a written plan to the OTS to reduce general and administrative expenses.
- B. If the Regional Director determines that: (i) the plan submitted pursuant to Section 2.4(B) is unacceptable, or (ii) the Institution is not adhering to the plan, the Institution shall reduce expenses to levels consistent with its peer group in accordance with instructions received

from the OTS at such time.

- C. The OTS directs the actions required by this Section 2.4 pursuant to 12 U.S.C. § 1831o(f)(2)(J) and based upon a determination by the OTS that such action will better carry out the purposes of 12 U.S.C. § 1831o.

Section 2.5 Restrictions on Activities Posing Excessive Risk.

- A. The Institution's activities are restricted as provided by this Section 2.5. The OTS imposes these restrictions pursuant to 12 U.S.C. §§ 1831o(f)(2)(E) and (J), having determined that those activities not permitted pose excessive risk to the Institution in view of its deteriorating financial condition and based upon a determination by the OTS that the following action will better carry out the purposes of 12 U.S.C. § 1831o(f), than any other discretionary restrictions.
- B. Restricted Activities. Except as permitted by subsection (d) of this Section 2.5, or as may be required by legally binding written commitments of the Institution outstanding on August 17, 2009 the Institution shall not directly or indirectly do the following:
1. make, invest in, purchase, sell, refinance, extend, deal in (including loan brokering) or otherwise modify, or commit to make, invest in, purchase, sell, refinance, extend, deal in (including loan brokering) or otherwise modify any loan secured by real estate or any participation therein or any real estate investment (including, but not limited to, any loan to finance the acquisition, development and/or construction of real property), or any set of such loans, participations, or investments;
 2. make, invest in, purchase, sell, refinance, extend, or otherwise modify, or commit to make, invest in, purchase, sell, refinance, extend, or otherwise modify any commercial loans, letters of credit, participations therein, or any set of such loans, letters of credit, or participations;
 3. make, invest in, purchase, sell, refinance, extend, or otherwise modify, or commit to make, invest in, purchase, sell, refinance, extend, or otherwise modify any consumer or education loans;
 4. release any borrower or guarantor from personal or corporate liability on any loan or extension of credit granted by the Institution, except when the outstanding balance of the loan and other outstanding loans to the borrower or guarantor have been paid in full;
 5. 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 may be required pursuant to legally binding commitments, existing, as of August 17, 2009;
 6. make, or commit to make, any investment in any service corporation, finance

subsidiary, or operating subsidiary, or any subsidiary of a service corporation in real estate or equity securities;

7. enter into any joint venture or limited partnership agreement, directly or indirectly;
 8. engage in any forward commitment (except for firm commitments not exceeding 60 days for the purchase of securities of Federal Home Loan Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), and Government National Mortgage Association (GNMA)), futures transaction, or financial options transaction;
 9. enter into any contract or agreement for the purchase, sale, or lease of goods, materials, equipment, supplies, services or capital assets, except, however, that this restriction does not apply to contracts or agreements to be entered into in the ordinary course of business where the amount of each contract or agreement does not exceed \$50,000;
 10. enter into any lease or contract for the purchase or sale of real estate or of any interest therein, except, however, that this restriction does not apply to such leases and contracts to be entered into in the ordinary course of business (including but not limited to contracts for the sale of real estate owned due to foreclosure), where the consideration for the lease or contract does not exceed \$100,000;
 11. encumber any of its property or other assets, except, however that the Institution may pledge its assets in connection with borrowings necessary to meet liquidity needs;
 12. incur any material obligation or contingent liability, except as otherwise permitted by this PCA Directive;
 13. establish any loan production or agency office;
 14. accept any non-cash capital contribution; or
 15. purchase or commit to purchase mortgage-backed securities.
- C. All marketing and advertising related to loans not permitted herein, including Subprime Loans, shall be immediately discontinued.
- D. Permitted Activities. The Institution is permitted to engage in the following lending (including origination) and investment activities, provided that (i) such activities do not cause the Institution to increase its level of total assets to an amount that would violate Sections 2.1, 2.3, and 2.5(B) hereof, and (ii) the Institution engages in such activities in a prudent manner:

1. Qualifying Mortgage Loans. Origination of Qualifying Mortgage Loans, as defined in 12 C.F.R. § 567.1, underwritten in accordance with criteria established for residential loans eligible for purchase by the FHLMC or the FNMA, but excluding any Subprime Lending programs;.
2. Savings Account Loans: Loans fully secured by savings or time deposit accounts over which the Institution establishes proper collateral controls;
3. Guaranteed Loans: Advancement of funds evidenced by notes guaranteed by state or Federal Government guarantees;
4. Lines of Credit on Checking and NOW Accounts: Lines of credit of no more than \$20,000 underwritten in accordance with all applicable OTS regulations, with overdrafts on checking accounts permitted consistent with customary and prudent banking practice;
5. Consumer Loans: Unsecured consumer loans not exceeding \$50,000 underwritten in accordance with all applicable regulations and consistent with customary and prudent banking practice;
6. Secondary Marketing Sales: Sale of Qualifying Mortgage Loans (within the meaning of Subsection (d)(1) above) in the secondary market without recourse and prudently managed forward commitments in connection therewith;
7. Salvage Power Activities: Acquisition of property in satisfaction of debt previously contracted in connection with the exercise of the Institution's salvage powers, provided that the Institution may release a guarantor/borrower from personal liability in order to obtain title to real property only if it is able to document that: (a) the current appraised value of the property equals or exceeds the book value of the loan; or (b) the net value to be gained from further pursuing the borrower/guarantor is de minimus, considering costs of legal action and possible value to be obtained. Any such transactions involving the release of guarantor or borrower from an obligation that results in a deficiency are subject to prior notice to, and opportunity to object, by the OTS; and
8. Liquid Assets: Investments in cash and such other liquid instruments and investments.

Section 2.6 Other Restrictions Imposed Pursuant to 12 U.S.C. § 1831o(f)(5).

Pursuant to 12 U.S.C. § 1831o(f)(5), and based upon a determination by the OTS that the imposition of certain restrictions described in 12 U.S.C. § 1831o(i), is necessary to carry out the purposes of Section 38 of FDIA, the Institution is hereby prohibited from doing any of the following without the OTS's prior written consent:

- A. entering into any material transaction other than in the usual course of business, including

any investment, expansion, acquisition, sale of assets, or other similar action with respect to which the Institution is required to provide prior notice to the OTS;

- B. extending credit for any highly leveraged transaction;
- C. amending the Institution's charter or bylaws, except to the extent necessary to carry out any other requirement of any law, regulation, or order;
- D. making any material change in accounting methods;
- E. engaging in any covered transaction (as defined in 12 U.S.C. § 371c(b)(7));
- F. paying excessive compensation or bonuses; and
- G. paying interest on new or renewed liabilities at a rate that would increase the Institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the Institution's normal market areas.

Section 2.7 Restrictions on Affiliate Transactions and Insiders Loans.

- A. The Institution shall not engage in any "covered transactions" as defined in 12 U.S.C. § 371c(b)(7). The OTS is imposing this restriction, pursuant to 12 U.S.C. §§ 1831o(f)(5) and (i)(2)(E), based upon the OTS's determination that the restriction is necessary to carry out the purpose of 12 U.S.C. § 1831o.
- B. The Institution shall provide 30-days prior notice, and opportunity to object, to the OTS of any and all proposed transactions with affiliates not otherwise prohibited by Section 2.7. The OTS is imposing this restriction pursuant to 12 U.S.C. § 1831o(f)(2)(B) and 12 C.F.R. § 563.41(e)(3) based upon the OTS's determination that the restriction is necessary to carry out the purpose of 12 U.S.C. § 1831o.
- C. The assets, facilities, and staff of the Institution shall only be used for the benefit of the Institution and shall not be shared or otherwise used, directly or indirectly, for the benefit of any affiliate or other company unless the Regional Director grants a written notice of non-objection. The OTS is imposing this restriction pursuant to the authority at 12 U.S.C. § 1831o(f)(2)(B).
- D. The Institution shall not extend any credit to executive officers, directors and principal shareholders. The OTS directs this action pursuant to 12 U.S.C. § 1831o(f)(2)(J) and based upon a determination by the OTS that such action will better carry out the purposes of 12 U.S.C. § 1831o.

Section 2.8. Imposition of Restrictions/Requirements on Subsidiaries.

Pursuant to 12 U.S.C. § 1831o(f)(2)(E), the Institution shall cause all subsidiaries in which the Institution owns a majority of the stock to abide by the restrictions, limitations or requirements

imposed on the Institution by this PCA Directive. The Institution shall also vote its shares, use its influence and otherwise use its best efforts to impose the same restriction on any subsidiary of which the Institution owns a minority of the stock. The Institution shall immediately notify the OTS in the event that the actions of any subsidiary would contravene the restrictions, limitations or requirements of this PCA Directive if undertaken directly by the Institution.

Section 2.9 Limits On Deposits From Correspondent Banks.

Pursuant to 12 U.S.C. § 1831o(f)(2)(G), the Institution shall not accept deposits, or renewals or roll-overs of prior deposits, from correspondent depository institutions without the OTS's prior written approval.

Section 2.10 Process for Exemptions from Restrictions.

- A. The Institution may submit written requests to the OTS, requesting the OTS to issue a notice of non-objection for the purpose of either relieving the Institution from certain restrictions hereunder, or requesting the OTS to provide notice of supervisory non-objection with respect to a particular specifically identified transaction, loan, or investment.
- B. Requests for written notice of the OTS's non-objection to make loans or investments must be accompanied by a resolution of the Board, signed by each individual member of the Board voting in favor of the resolution, finding as follows:
 - 1. Management is capable of underwriting and administering the loans or investments in a safe and sound manner;
 - 2. The Board has adopted policies and procedures to ensure that the loans or investments are prudently underwritten and administered;
 - 3. Internal controls measuring compliance with such policies and procedures are in place;
 - 4. During the preceding twelve (12) months, the Institution has not experienced significant losses in connection with similar loans or investments; and
 - 5. The loans or investments contemplated are necessary to preserve the Institution's franchise value.

All documentation considered by the Board in adopting each such resolution shall be explicitly referenced in the minutes of the meeting at which the resolution was adopted and shall be made available to the OTS representatives upon request.

Section 2.11 Limits on Compensation and Benefits.

Pursuant to 12 U.S.C. §§ 1831o(f)(2)(J), (f)(4), and (f)(5), based upon a determination by the OTS that the following restrictions will better carry out the purpose of 12 U.S.C. § 1831o, the Institution is hereby directed:

- A. not to provide any compensation or other direct or indirect benefits to directors (which shall include directors emeritus or honorary directors for purposes of this Section), officers or employees beyond those determined reasonable and prudent for a capital deficient institution; such compensation for directors and other employees shall be in accordance with 12 C.F.R. § 563.161(b), Appendix A to 12 C.F.R. Part 570, and current OTS guidance;
- B. not to enter into, modify, or renew any agreement or employment contract with or increase the compensation of or severance pay for any senior executive officer or director of the Institution without the OTS's prior written approval;
- C. not to incur any compensation or benefit expense for items or services that do not have an immediate, direct relationship to the performance of any individual's duties; except for expenses incurred for employee pension/profit sharing/retirement plans and health and medical plans in existence as of the effective date of this PCA Directive;
- D. not to make any "golden parachute payment" as that term is defined in 12 U.S.C. § 1828(k) and 12 C.F.R. Part 359, except in accordance with that statute and regulation; and
- E. not to purchase any bank owned life insurance without the Regional Director's prior written approval.

The requirements of this Section 2.11 are imposed in addition to the mandatory restrictions imposed in senior executive officers' compensation set forth in Section 2.1.

Section 2.12 Restrictions on Third Party Contracts.

Pursuant to 12 U.S.C. § 1831o(f)(2)(E), in order to reduce excessive risk posed to the Institution by certain third party contracts outside the normal course of business, the Institution is hereby prohibited from entering into any third party contracts, as set forth in Section 310 of OTS Examination Handbook, without the prior written approval of the OTS.

Section 2.13 Process for Exemptions from Restrictions.

- A. The Institution may submit written requests to the OTS, requesting the OTS to issue a notice of non-objection for the purpose of either relieving the Institution from certain restrictions hereunder, or requesting the OTS to provide notice of supervisory non-objection with respect to a particular specifically identified transaction, loan, or investment.
- B. Requests for written notice of the OTS's non-objection pursuant to subsection (A) above must be accompanied by a resolution of the Board, signed by each individual member of the Board voting in favor of the resolution. All documentation considered by the Board in adopting each such resolution shall be explicitly referenced in the minutes of the meeting at which the resolution was adopted and shall be made available to the OTS representatives upon request.

PART III - GENERAL PROVISIONS

Section 3.1 Jurisdiction.

This PCA Directive constitutes a final order under 12 U.S.C. § 1831o and is enforceable under 12 U.S.C. § 1818(i).

Section 3.2 Definitions.

All technical words or terms used in this Directive, for which meanings are not specified or otherwise provided by the provisions of this Directive, shall, insofar as applicable, have meaning as defined in Chapter V of Title 12 of the Code of Federal Regulations, HOLA, FDIA or OTS Publications. Any such technical words or terms used in this Directive 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.

Section 3.3 Successor Statutes, Regulations, and Guidance Amendments.

Reference in this Directive to provisions of statutes and regulations shall be deemed to include references to all amendments to such provisions as have been made as of the Effective Date hereof, and references to successor provisions as they become applicable.

Section 3.4 Notices.

Except as otherwise provided herein, any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by the Directive to be made upon, given or furnished to, delivered to, or filed with the OTS or the Institution shall be in writing and sent by first class U.S. mail (or by reputable overnight courier, electronic facsimile transmission, or hand delivery via messenger) addressed as follows:

To the OTS:	To the Institution:
Office of Thrift Supervision Regional Director - Western Region 225 E. John Carpenter Freeway Suite 500 Irving, TX 75062-2326 Fax: (972) 277-9630	Guaranty Bank Attention: Board of Directors 8333 Douglas Avenue Dallas, Texas 75225 Fax: (214) 360-8963

Section 3.5 Duration, Termination, or Suspension of the Directive.

A. The terms and provisions of this Directive shall be binding upon the Institution and its successors in interest.

B. The Directive shall remain in effect until terminated, modified or suspended in writing by the OTS.

C. The OTS, in its discretion, may by written notice suspend any or all provisions of the Directive, except for Section 1.1.

Section 3.6 Effect of Headings.

The Part and Section headings herein are for convenience only and shall not affect the construction hereof.

Section 3.7 Separability Clause.

In case any provision in this Directive is ruled to be invalid, illegal or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby unless the OTS, in its sole discretion, determines otherwise.

Section 3.8 No Violations Authorized; Consequences of Directive.

Nothing in this Directive, including, without limitation, any of the time frames for actions set forth in Part I, shall be construed as: (a) allowing the Institution to violate any law, rule, regulation, or policy statement to which it is subject, or (b) restricting the OTS from taking such actions as are appropriate in fulfilling the responsibilities placed upon it by law, including, without limitation, actions pursuant to Section 38 of the FDIA, 12 U.S.C. § 1831o, or taking any other type of supervisory, enforcement, or resolution action that the OTS determines to be appropriate.

Section 3.9 Other Enforcement Documents.

- A. The Order to Cease and Desist and its accompanying Stipulation and Consent to the issuance by the OTS (OTS Order No. WN-09-01) (Order) against the Institution on April 6, 2009, remains in effect.
- B. Nothing contained in this PCA Directive shall affect or limit the OTS's ability to take enforcement action in connection with any violation of the Order.

Section 3.10 Incorporation of Stipulation.

The Stipulation is made a part hereof and is incorporated herein by this reference.

Section 3.11 Effective Date of this PCA Directive.

This PCA Directive (including all the requirements and limitations herein) is effective immediately on the date of issuance of the Directive (the Effective Date), which date is indicated below.

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

_____)	
In the Matter of:)	
)	
GUARANTY BANK)	OTS Order No.: WN-09-025
)	
Austin, Texas)	Effective Date: August 19, 2009
OTS Docket No. 08534)	
)	
_____)	

STIPULATION AND CONSENT TO
PROMPT CORRECTIVE ACTION DIRECTIVE

1. The Office of Thrift Supervision (OTS) has informed Guaranty Bank, Austin, Texas, (Guaranty or Institution), OTS No. 08534, based upon information reported to the OTS, that grounds exist to issue a Prompt Corrective Action Directive (PCA Directive) pursuant to Section 38 of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1831o, and Section 565.7 of the OTS Regulations, 12 C.F.R. § 565.7, against the Institution. The Institution, in the interest of cooperation and to avoid the time and expense of pursuing further OTS administrative procedures for the issuance of a PCA Directive, stipulates and consents to the terms set forth in this Stipulation and Consent.
2. The Institution stipulates it is a federal savings association subject to the supervision and regulation by the OTS. The Institution is a “savings association” as that term is used in the Home Owners’ Loan Act (HOLA), 12 U.S.C. §§ 1461 *et seq.*, and an “insured depository institution” as defined in 12 U.S.C. §§ 1813(b) and 1813(c)(2). The Institution stipulates, as such, it is subject to the OTS’s authority to issue a directive to take prompt corrective action pursuant to Section 38 of FDIA, 12 U.S.C. § 1831o, and Section 565.7 of the OTS Regulations, 12 C.F.R. § 565.7.
3. The Institution consents, by execution of the Stipulation and Consent, to the OTS’s issuance by of the accompanying PCA Directive. The Institution further agrees to comply with the terms of the PCA Directive.
4. The Institution consents, by execution of this Stipulation and Consent, to the OTS’s appointment of a conservator or receiver or other legal custodian for the Institution at any time that the Institution is “significantly undercapitalized” or “critically undercapitalized” and until such time as the Institution becomes “adequately capitalized” as determined pursuant to Section 38 of FDIA, 12 U.S.C. § 1831o, and Section 565.4 of the OTS Regulations, 12 C.F.R. § 565.4. The Institution hereby waives its rights to seek judicial review of such appointment.

5. The Institution, by execution of this Stipulation and Consent, authorizes the OTS to provide otherwise confidential information about the Institution to third parties to facilitate the possible acquisition of the Institution by a qualified buyer, sale of the Institution's assets or the purchase of the Institution's branches, or the possible merger of the Institution with a qualified merger partner.
6. The Institution, by execution of this Stipulation and Consent, authorizes the Federal Deposit Insurance Corporation (FDIC) to provide otherwise confidential information to third parties to facilitate the liquidation or other resolution of the Institution in anticipation of the possible appointment of FDIC as conservator, receiver, or other legal custodian. The Institution hereby agrees that upon notification that it is "critically undercapitalized" pursuant to Section 565.3 of the OTS Regulations, 12 C.F.R. § 565.3, the Institution will cooperate fully with FDIC to avoid a loss or otherwise minimize exposure to the insurance fund. Such cooperation includes, but is not limited to, responding to requests for information, providing full access to personnel, agents and service providers, and accommodating on-site visits. Nothing herein shall be interpreted to preclude such cooperation with FDIC at any time prior to such time as the Institution may be notified that it is "critically undercapitalized".
7. The attached PCA Directive is effective upon issuance. The Institution acknowledges that the PCA Directive is enforceable pursuant to Section 5(d) of HOLA, 12 U.S.C. § 1464(d), and Section 8 of FDIA, 12 U.S.C. § 1818.
8. The Institution hereby waives the following:
 - (a) its rights to pursue the OTS's administrative process for issuance of the accompanying PCA Directive pursuant to 12 C.F.R. § 565.7;
 - (b) any and all rights it might otherwise have pursuant to federal law or regulations (including, but not limited to, 12 U.S.C. § 1831o and 12 C.F.R. § 565.7) in connection with issuance of the PCA Directive;
 - (c) its right to seek judicial review of the PCA Directive, including, but not limited to, any such right provided by Section 8(h) of FDIA, 12 U.S.C. § 1818(h); and
 - (d) its right to challenge or contest in any manner the basis, issuance, validity or enforceability of the PCA Directive or any provision thereof.
9. The Order to Cease and Desist issued against Guaranty Bank (OTS Order No. WN-09-01, dated April 6, 2009), remains in effect.
10. (a) The laws of the United States of America shall govern the construction and validity of this Stipulation and Consent and the PCA Directive.
 - (b) All references to the OTS in this Stipulation and Consent and the PCA Directive also shall mean any of the OTS's predecessors, successors, and assigns.

(c) To the extent this Stipulation and Consent and PCA Directive may be deemed an agreement, the written terms herein and in the accompanying PCA Directive represent the final and sole binding written terms of such agreement with respect to the subject matters addressed therein.

11. Each Director signing this Stipulation attests that he voted in favor of the resolution authorizing the execution of the Stipulation.

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WHEREFORE, the Institution, by and through its Board of Directors, hereby executes this Stipulation and Consent intending to be legally bound hereby.

GUARANTY BANK, AUSTIN, TEXAS

By: _____ /s/
Kevin J. Hanigan, Chairman and Chief
Executive Officer

By: _____ /s/
Robert B. Rowling, Director

By: _____ /s/
David W. Biegler, Director

By: _____ /s/
John T. Stuart III, Director

By: _____ /s/
Dr. Larry R. Faulkner, Director

By: _____ /s/
Larry E. Temple, Director

By: _____ /s/
Edward R. McPherson, Director

By: _____ /s/
James J. Unger, Director

By: _____ /s/
Robert McTeer, Director

Accepted By:

OFFICE OF THRIFT SUPERVISION

By: _____ /s/
C.K. Lee
Western Region

Date: See Effective Date on Page 1