

**UNITED STATES OF AMERICA**  
**Before The**  
**OFFICE OF THRIFT SUPERVISION**

_____	)	OTS Order No.: WN-10-007
In the Matter of	)	
	)	
<b>HERBERT M. KOHN</b>	)	Effective Date: 03/17/2010
	)	
Former Director and	)	
Institution-Affiliated Party of	)	
	)	
American Sterling Bank	)	
Sugar Creek, Missouri	)	
OTS Docket No. 15909	)	
_____	)	

**ORDER TO CEASE AND DESIST**

**WHEREAS**, the Office of Thrift Supervision (OTS) is of the opinion that grounds exist to initiate an administrative cease and desist proceeding against **Herbert M. Kohn (Kohn)**, former director at American Sterling Bank, Sugar Creek, Missouri, OTS Docket No. 15909 (Association); and

**WHEREAS, Kohn** has executed a Stipulation and Consent to Issuance of Order to Cease and Desist (Stipulation); and

**WHEREAS, Kohn**, by execution of the Stipulation, has consented and agreed to the issuance of this Order to Cease and Desist (Order) by the OTS pursuant to 12 U.S.C. § 1818(b); and

**WHEREAS**, pursuant to delegated authority, the OTS Regional Director for the Western Region (Regional Director) is authorized to issue Orders to Cease and Desist where an institution-affiliated party (IAP)<sup>1</sup> has consented to the issuance of an order.

**NOW THEREFORE, IT IS ORDERED that:**

**Cease and Desist.**

1. **Kohn**, while at any time an IAP of an insured depository institution,<sup>2</sup> shall not engage in, participate in, counsel, or aid or abet any violation of law and/or regulation, unsafe or unsound practice, and/or breach any fiduciary duty.

**Corrective Actions.**

2. Within one-hundred and eighty (180) days or prior to accepting any position as an IAP of any institution or agency specified in 12 U.S.C. § 1818(e)(7)(A), whichever occurs first, **Kohn** shall successfully complete at least forty (40) hours of training or credit hour equivalents targeted to financial institution officers and directors. Such training shall be conducted by third-party vendors acceptable to the Regional Director and shall specifically include the fiduciary duties and obligations of officers and directors, accounting and/or ethics, and unsafe or unsound practices.

3. Within ten (10) days of completion of the training required in Paragraph 2, **Kohn** shall provide the Regional Director with copies of certificates of completion issued by the third-party vendors of the training required in Paragraph 2, along with documentation of the credit hours completed.

**Notifications.**

4. While this Order is in effect, **Kohn** shall, prior to accepting any position as an IAP of any

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<sup>1</sup> The term “institution-affiliated party” is defined at within the meaning of 12 U.S.C. § 1813(u).

institution or agency specified in 12 U.S.C. § 1818(e)(7)(A), provide the chief executive officer and the board of directors of such institution or agency with a copy of this Order.

5. Within ten (10) days after his acceptance of any position from an institution or agency specified in 12 U.S.C. § 1818(e)(7)(A), **Kohn** shall provide written notice of such acceptance to the Regional Director, together with a written certification of his compliance with paragraph 4 of this Order.

**Compliance.**

6. **Kohn** shall promptly respond to any request from the OTS for documents to demonstrate compliance with this Order.

**Effective Date, Incorporation of Stipulation.**

7. This Order is effective as of the Effective Date as shown on the first page. The Stipulation is made a part hereof and is incorporated herein by this reference.

**Duration.**

8. This Order shall remain in effect until terminated, modified, or suspended by written notice of such action by the OTS, acting by and through its authorized representatives.

**Time Calculations.**

9. Calculation of time limitations for compliance with the terms of this Order run from the Effective Date and shall be based on calendar days, unless otherwise noted.

10. The Regional Director, or an OTS authorized representative, may extend any of the deadlines set forth in the provisions of this Order upon written request by **Kohn** that includes reasons in support for any such extension. Any OTS extension shall be made in writing.

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<sup>2</sup> The term “insured depository institution” is defined at 12 U.S.C. § 1813(c)(2).

**Submissions and Notices.**

11. All submissions, including any certifications and notices, to the OTS that are required by or contemplated by this Order shall be submitted within the specified timeframes.

12. Except as otherwise provided herein, all submissions, requests, communications, consents or other documents relating to this Order shall be in writing and sent by first class U.S. mail (or by reputable overnight carrier, electronic facsimile transmission or hand delivery by messenger) addressed as follows:

(a) To the OTS:

C.K. Lee  
Western Regional Director  
Office of Thrift Supervision  
225 East John Carpenter Freeway, Suite 500  
Irving, TX 75062-2326

(b) To **Kohn**:

c/o Charles W. German, Esq.  
ROUSE HENDRICKS GERMAN MAY PC  
One Petticoat Lane Building  
1010 Walnut, Suite 400  
Kansas City, MO 64106

**No Violations Authorized.**

13. Nothing in this Order or the Stipulation shall be construed as allowing **Kohn** to violate any law, rule, or regulation.

**IT IS SO ORDERED.**

**OFFICE OF THRIFT SUPERVISION**

By: \_\_\_\_\_ /s/  
C.K. Lee  
Regional Director, Western Region

Date: See Effective Date on page 1

**UNITED STATES OF AMERICA**  
**Before The**  
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<b>HERBERT M. KOHN</b> )	Effective Date: 03/17/2010
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Former Director and )	
Institution-Affiliated Party of )	
)	
American Sterling Bank )	
Sugar Creek, Missouri )	
OTS Docket No. 15909 )	
_____ )	

**STIPULATION AND CONSENT TO THE ISSUANCE OF AN**  
**ORDER TO CEASE AND DESIST**

**WHEREAS**, the Office of Thrift Supervision (OTS), acting by and through its Regional Director for the Western Region (Regional Director), and based upon information derived from the exercise of its regulatory and supervisory responsibilities, has informed **Herbert M. Kohn (Kohn)**, a former director of American Sterling Bank, Sugar Creek, Missouri, OTS Docket No. 15909 (Association), that grounds exist to initiate an administrative prohibition proceeding against him pursuant to 12 U.S.C. § 1818(b); and

**WHEREAS**, the Regional Director, pursuant to delegated authority, is authorized to issue an Order to Cease and Desist where the individual has consented to the issuance of an order; and

**WHEREAS, Kohn** desires to cooperate with the OTS and to avoid the time and expense of such administrative cease and desist proceeding by entering into this Stipulation and Consent to the Issuance of an Order to Cease and Desist (Stipulation) and, without admitting or denying that such grounds exist, or the Findings of Fact or opinions and conclusions of the OTS, but only admitting the statements and conclusions in Paragraphs 1 - 3 below concerning Jurisdiction, hereby stipulates and agrees to the following:

**Jurisdiction.**

1. The Association was a “savings association” within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, the Association was an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c).
2. **Kohn** is a former director of the Association and is an “institution-affiliated party” as defined in 12 U.S.C. § 1813(u) and served in such capacity within six (6) years of the Effective Date as shown on the first page (see 12 U.S.C. § 1818(i)(3)).
3. Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the “appropriate Federal banking agency” with jurisdiction to maintain an administrative prohibition proceeding against savings associations and institution-affiliated parties. Therefore, **Kohn** is subject to the jurisdiction of the OTS to initiate and maintain an administrative cease and desist proceeding against him pursuant to 12 U.S.C. § 1818(b).

**OTS Findings of Fact.**

4. **Kohn** was a director of the Association at all times pertinent to the events described herein. The OTS finds that **Kohn** engaged in unsafe or unsound practices by failing to exercise appropriate oversight of the Association's management, which resulted in the Association filing false thrift financial reports (TFRs) with the OTS and recording four (4) fictitious capital contributions in violation of 12 C.F.R. §§ 562.1, 562.2, and 563.161.

5. Accordingly, pursuant to 12 U.S.C. § 1818(b), **Kohn** has engaged in unsafe or unsound practices in conducting the affairs of an insured depository institution; and/or has violated a law, rule, or regulation.

**Consent.**

6. **Kohn** consents to the issuance by the OTS of the accompanying Order to Cease and Desist (Order). **Kohn** further agrees to comply with the terms of the Order upon the Effective Date of the Order and stipulates that the Order complies with all requirements of law.

**Finality.**

7. The Order is issued by the OTS under 12 U.S.C. § 1818(b). Upon the Effective Date it shall be a final order, effective and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

**Waivers.**

8. **Kohn** waives the following:

- (a) the right to be served with a written notice of the OTS's charges against him as provided by 12 U.S.C. § 1818(b) and 12 C.F.R. Part 509;

- (b) the right to an administrative hearing of the OTS's charges against him as provided by 12 U.S.C. § 1818(b) and 12 C.F.R. Part 509;
- (c) the right to seek judicial review of the Order, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order; and
- (d) any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs or expenses related to this enforcement matter and/or the Order, whether arising under common law, federal statutes or otherwise.

**OTS Authority Not Affected.**

9. Nothing in this Stipulation or accompanying Order shall inhibit, estop, bar, or otherwise prevent the OTS from taking any other action affecting **Kohn** if, at any time, the OTS deems it appropriate to do so to fulfill the responsibilities placed upon the OTS by law.

**Other Governmental Actions Not Affected.**

10. **Kohn** acknowledges and agrees that his consent to the issuance of the Order is solely for the purpose of resolving the matters addressed herein, consistent with Paragraph 9 above, and does not otherwise release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of **Kohn** that arise pursuant to this action or otherwise, and that may be or have been brought by any governmental entity other than the OTS.

**Miscellaneous.**

11. The laws of the United States of America shall govern the construction and validity of this Stipulation and the Order.

12. If any provision of this Stipulation and/or the Order 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 Regional Director in his or her sole discretion determines otherwise.

13. All references to the OTS in this Stipulation and the Order shall also mean any of the OTS's predecessors, successors, and assigns.

14. The section and paragraph headings in this Stipulation and the Order are for convenience only and shall not affect the interpretation of this Stipulation or the Order.

15. The terms of this Stipulation and the Order represent the final agreement of the parties with respect to the subject matters hereof, and constitute the sole agreement of the parties with respect to such subject matters.

16. This Stipulation and the Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Regional Director, or other authorized representative.

**WHEREFORE, Kohn** executes this Stipulation.

Accepted by:

**HERBERT M. KOHN**

**OFFICE OF THRIFT SUPERVISION**

By: \_\_\_\_\_/s/\_\_\_\_\_  
Herbert M. Kohn

By: \_\_\_\_\_/s/\_\_\_\_\_  
C.K. Lee  
Regional Director, Western Region

Date: See Effective Date on page 1