

UNITED STATES OF AMERICA
BEFORE THE
OFFICE OF THRIFT SUPERVISION

In The Matter Of:)

THE WINTER HILL FEDERAL SAVINGS BANK)
Somerville, Massachusetts)

OTS NO. 01149)

Re: Resolution No. BOS 91-3
Date: March 21, 1991

STIPULATION AND CONSENT TO ISSUANCE
OF ORDER TO CEASE AND DESIST

The Office of Thrift Supervision ("OTS"), by and through its Regional Deputy Director for the Boston District Office ("Regional Deputy Director"), and Winter Hill Federal Savings Bank, Somerville, Massachusetts ("Winter Hill" or the "Institution"), stipulate and agree as follows:

1. Consideration

The OTS, based upon information reported to it, is of the opinion that grounds exist to initiate an administrative cease and desist proceeding against Winter Hill pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. 1818(b). Winter Hill desires to cooperate with the OTS and to avoid the time and expense of such administrative proceedings or litigation and, without admitting or denying that such grounds exist, hereby stipulates and agrees to the following terms in consideration of the Forbearance by the OTS from initiating such administrative cease and desist proceedings or litigation against Winter Hill with respect to the matters covered in the accompanying Order to Cease and

Desist ("Order").

2. Jurisdiction

Winter Hill is a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. 1813(b), and Section 2(4) of the Home Owners' Loan Act, 12 U.S.C. 1462(4). Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c)(2) of the FDIA, 12 U.S.C. 1813(c)(2). Pursuant to Section 3(q)(4) of the FDIA, 12 U.S.C. 1813(q)(4), the Director of OTS is the "appropriate Federal banking agency" to maintain an enforcement proceeding against such a savings association. Therefore, Winter Hill 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, 12 U.S.C. 1818(b).

3. Consent

Winter Hill consents to the issuance by the OTS of the Order. It further agrees to comply with the terms of the Order upon issuance.

4. Finality

The Order is issued under Section 8(b) of the FDIA, 12 U.S.C. 1818(b). Upon its issuance by the OTS, it shall be a final order, effective and fully enforceable by the OTS under Section 8(i) of the FDIA, 12 U.S.C. 1818(i).

5. Waivers

Winter Hill waives its right to the notice of charges and the administrative hearing provided by Section 8(b)(1) of the FDIA, 12 U.S.C. 1818(b)(1), and further waives any right

to seek judicial review of the Order, including any such right provided in Section 8(h) of the FDIA, 12 U.S.C. 1818(h), or otherwise to challenge the validity of the Order.

WHEREFORE, in consideration of the foregoing, the OTS and Winter Hill, by a majority of its board of directors, execute this Stipulation and Consent to Issuance of Order to Cease and Desist.

OFFICE OF THRIFT SUPERVISION

WINTER HILL FEDERAL SAVINGS BANK
By a majority of its
Board of Directors:

By:

/S/
Ralph W. Grinley
Regional Deputy Director
Boston District Office

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ORDER TO CEASE AND DESIST

WHEREAS, Winter Hill Federal Savings Bank, Somerville, Massachusetts ("Winter Hill" or the "Institution"), 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 Regional Deputy Director for the Boston District Office ("Deputy Director"); and

WHEREAS, the Institution, 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 ("FDIA"), 12 U.S.C. 1818(b);

NOW THEREFORE, IT IS ORDERED that:

- I. The Institution and its directors, officers, employees, agents, successors, assigns and other persons participating in the conduct and affairs of the Institution, and its service

corporations, shall cease and desist from:

(A) engaging in any of the following unsafe and unsound banking practices and/or violations of law, and from aiding and abetting in the same:

- (1) failing to use best efforts to avoid operating in an unsound and unsafe financial condition as evidenced by poor financial operating ratios, substantial operating losses, dissipation of capital and significant deterioration of asset quality;
- (2) operating without a Board-approved business plan;
- (3) operating without an investment policy;
- (4) failing to maintain appropriate internal controls;
- (5) failing to implement a loan review and asset classification system; and
- (6) failing to establish and maintain adequate general loss reserves;

(B) violating the following regulations, and from aiding and abetting in the same:

- (1) 12 C.F.R. 563.161, regarding management and financial policies;
- (2) 12 C.F.R. 563.40, regarding restrictions on loans procurement fees including affiliated persons;
- (3) 12 C.F.R. 563.160, regarding internal classification of assets and reserves.
- (4) 12 C.F.R. 563.170(c)(1)(iv) and 12 C.F.R. Part 564, regarding appraisals; and
- (5) 12 C.F.R. 563.176, regarding interest rate risk.

II. IT IS FURTHER ORDERED THAT the Institution, its directors, officers, employees, agents, successors, assigns, and other persons participating in the conduct of the affairs of the Institution, take affirmative corrective action as follows:

A. Management

1. Within sixty (60) days from the effective date of this Order, the Board of Directors shall develop and 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. identification and establishment of Institution committees needed to provide guidance and oversight to active management;
- c. evaluation of each Institution officer and senior staff member to determine whether these individuals possess the ability, experience and other qualifications required to perform present and anticipated duties, including adherence to applicable Federal and State regulatory provisions and the Institution's established policies and practices, and maintenance of the Institution in a safe and sound condition;
- d. an analysis of management's strengths and weaknesses, including an assessment of current compensation and organizational structure;

- e. an assessment of senior management staff's ability to effectively manage and resolve current problems confronting the Institution;
- f. a plan of action to recruit and hire any additional or replacement personnel with the ability, experience and other qualifications, if the Board of Directors determines such actions are necessary to fill Institution officer and senior staff member positions; and
- g. a requirement that the Board of Directors (or a committee thereof, a majority of whom are outside directors) provide supervision over the lending, investment and operating policies of the Institution sufficient to ensure that the Institution complies with the terms of this Order.

2. The Board of Directors ("Board") shall approve the written 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 Plan. The Institution, its directors, officers and employees shall implement and follow the written Management Plan and/or any subsequent modification thereto.

B. Conflict of Interest Policy

3. Within ninety (90) days of the effective date of this Order, the Board shall develop and submit to the Regional Deputy Director a Board approved 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 the written Conflicts Policy and/or any subsequent modification thereto and monitor for compliance with the same.

C. Asset Quality

4. Within thirty (30) days from the effective date of this Order, the Institution shall charge off or establish specific reserves for all assets classified "loss" in the OTS Report of Examination ("ROE") dated September 17, 1990. In addition, the Institution shall establish a general loss reserve equal to \$4.5 million.

5. Within thirty (30) days from the effective date of this Order, the Institution shall implement its Board approved written internal classification policy.

6. 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 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 such adjustments are considered.

7. Within thirty (30) days following the calendar quarter ended June 30, 1991, 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 \$250,000 and each parcel of real estate acquired through foreclosure, deed in lieu of foreclosure, or "in substance" foreclōsure ("Real Estate Owned" or "REO"), with a balance in excess of \$250,000 classified or subject to special mention in the ROE. Such reports shall include the balance of each separate asset as of the date of examination, the balance as of the reporting date, identification of past due status and a summary of efforts taken to alleviate the credit deficiency. Similar reports shall be submitted to the Regional Deputy Director within thirty (30) days following the end of each calendar quarter, and may be discontinued only upon the written release by the Regional Deputy Director.

8. (a) The Institution shall not knowingly 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 written approval of the Board of Directors. Such approval shall include approval of each advance individually or approval of a schedule or project budget with which each advance is consistent. A written record of the Board's 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 in the Board minutes.

D. Appraisals

9. (a) Winter Hill shall make no loans secured by real property without first obtaining an appraisal report complying the requirements of 12 C.F.R. Part 564 and 12 C.F.R. 563.170(c)(1)(iv).

(b) Winter Hill shall obtain a market value appraisal for any REO property that it acquires, as required by 12 C.F.R. 563.172(a).

(c) Within thirty (30) days from the effective date of this Order, Winter Hill shall implement its Board approved appraisal policy. This policy and any subsequent appraisal policy shall require that: (1) specific procedures be established for management to follow in reviewing appraisals for content and compliance with regulatory and internal requirements and (2) the Board of Directors will review, ratify and approve appraisers on at least an annual basis pursuant to an established process (set forth in the policy) for such review and approval;

E. Interest Rate Risk Management

10. Within sixty (60) days of the effective date of this Order, the Board of Directors of the Institution shall establish and adopt an interest rate risk policy complying with the requirements of 12 C.F.R. 563.176 as interpreted and clarified by 12 C.F.R. 571.3 and Thrift Bulletin 13. Such policy shall contain interest rate risk exposure limitations which shall be based on earnings and capital capacity. Such limits shall serve as goals for the Institution's

exposure to interest rate risk. Such adoptions shall be documented in the Board minutes. In addition, a comparison of actual interest rate risk exposure to the adopted limits shall be made on at least a quarterly basis and the comparison shall be documented in the Board minutes.

F. Investment Policy

11. Within thirty (30) days of the effective date of this Order, Winter Hill shall develop and implement an investment policy following the guidelines the OTS policy statement on investment policy, 12 C.F.R. 571.19.

G. Business Plan

12. Within sixty (60) days from the effective date of this Order, Winter Hill shall develop a written business plan ("Business Plan") acceptable to the Regional Deputy Director consisting of goals and strategies for improving the earnings and capital of the Institution, which plan shall include, at a minimum:

- a. identification of the major areas in which the Board of Directors will seek to improve the Institution's operating performance, and the means by which such improvement will be achieved;
- b. realistic and comprehensive budgets;
- c. a budget review process to monitor the income and expenses of the Institution and to compare actual figures with budgetary projections; and
- d. a description of the operating assumptions that form the basis for, and adequately support, major projected income and expense components.

13. The Board of Directors shall approve the Business Plan, and such approval shall be recorded in the minutes of the Board of Directors. Subsequent modifications to the Business Plan shall require notification to the Regional Deputy Director. No such modification shall become effective until approved by the Board of Directors, and such approval shall be recorded in the minutes of the Board of Directors. The Institution, its directors, officers, and employees shall follow the Business Plan and/or any subsequent modification thereto and shall use their best efforts to meet its goals.

H. Progress Reports

14. Within thirty (30) days of the effective date of this Order, 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 secure compliance with this Order and the results thereof. Such quarterly reports shall also include the most recent profit and loss statements and balance sheet of the Institution. Additionally, loan reviews, status and balance reports on all criticized assets, including assets listed for Special Mention, over \$250,000 detailed in the September 17, 1990 ROE shall be provided, along with any other information that may be requested by the Regional Deputy Director. Said reports may be discontinued only when the corrections required under this Order have been accomplished, and the Regional Deputy Director has, in writing, released the Board from making further reports. All status reports and other written submissions pursuant to this Order shall be reviewed by the Board of

Directors and made a part of the Board minutes.

I. Effective Date and Effect of Order

15. This Order shall become effective upon execution by the Regional Deputy Director, and shall remain effective and enforceable until such time as any provisions thereof shall have been modified, terminated, suspended, and or set aside by the Regional Deputy Director.

THE OFFICE OF THRIFT SUPERVISION

/S/

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