

**#2003-136**

**UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
OFFICE OF THE COMPTROLLER OF THE CURRENCY**

\_\_\_\_\_  
In the Matter of: )  
Security Trust Company, N.A. )  
Phoenix, Arizona )

AA-EC-03-32

**CONSENT ORDER**

The Comptroller of the Currency of the United States of America (Comptroller or OCC), through his National Bank Examiner, has examined Security Trust Company, N.A., Phoenix, Arizona (Bank).

The Comptroller issued a Notice of Charges for an Order to Cease and Desist against the Bank on October 29, 2003.

The Bank, by and through its duly authorized representative of the Board of Directors (Board), has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated October 29, 2003, that is accepted by the Comptroller. By this Stipulation and Consent, that is incorporated by reference, the Bank has consented to the issuance of this Consent Order (Order) by the Comptroller.

Pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818(b), the Comptroller hereby orders that:

## **ARTICLE I**

### **MUTUAL FUND TRANSACTIONS**

(1) Effective immediately, the Bank shall cease and desist from assisting or participating in any of the following activities or practices (as defined in Article IX of this Order):

- (a) Market-Timing or Timing in connection with trades of mutual fund shares;
- (b) Piggy-Backing or other activity designed to facilitate Market-Timing; and
- (c) Late Trading in connection with trades of mutual fund shares.

(2) Effective immediately, the Bank shall cease and desist from engaging in or participating in any transactions or business with any person or entity that engages in any of the three (3) prohibited activities detailed in Paragraph (1) of this Article.

(3) The Bank shall not, without the prior written supervisory non-objection of the OCC, engage or participate in any transactions or business with the Canary Entities (as defined in Article IX), and/or Samaritan Asset Management.

## **ARTICLE II**

### **PRESERVATION OF ASSETS**

(1) The Bank shall immediately, and until further notice by the OCC, cease and desist from declaring or paying any dividends, or making any redemption or repurchase of common or preferred shares, if any, or making any other capital distributions, and shall rescind board authorization with respect to all declared but unpaid dividends.

(2) The Bank shall not, without the prior written determination of supervisory non-

objection of the Director of the OCC's Division of Special Supervision (Director) sell, divest, encumber or transfer any of its assets valued at more than twenty-five thousand dollars (\$25,000). The Bank may provide one or more lists of recurring expenditures for prior review and a blanket determination of supervisory non-objection.

(3) The Bank shall, on a daily basis, continue to provide the OCC with a report, substantially in the form provided to the OCC, reflecting the Bank's Daily Balances of Equity Related Accounts.

(4) The Bank shall immediately, and until further notice by the OCC, cease and desist from the payment of any bonuses, commissions, severance benefits, golden parachutes, excessive compensation or similar obligations, except as reviewed by the OCC and as to which a determination of supervisory non-objection has been made. In addition, the Bank shall not make a payment or incur any obligation to any third party (including affiliates), unless the funds are paid out or the obligation is incurred pursuant to a written agreement or contract that is documented in the books and records of the Bank and supported by documentation in the books and records of the Bank which demonstrates that the contract or agreement represents an arm's length transaction.

(5) The Bank shall immediately, and until further notice by the OCC, cease and desist from the performance of services of any kind for, or on behalf of, any of its affiliate companies unless the services are performed pursuant to written agreements or contracts that are documented in the books and records of the Bank and supported by documentation in the books and records of the Bank which demonstrate that the contracts or agreements represent arm's length transactions.

(6) Effective immediately, any new contract or agreement, including employment contracts, entered into between the Bank and any third party for the sale or purchase of products or the performance of services shall be in writing, documented in the books and records of the Bank, and supported by documentation that demonstrates the contract or agreement represents an arm's length transaction. Until further notice by the OCC, any new contract or agreement between the Bank and any third party involving the sale or purchase of products or the performance of services valued at more than twenty-five thousand dollars (\$25,000) shall be subject to the prior review and supervisory non-objection of the Director.

(7) Within sixty (60) days from the effective date of this Order, the Bank shall review all existing contracts and agreements with any of its current or former officers or directors, or any of its affiliates, to determine whether each contract or agreement represents an arm's length transaction whose terms and conditions are fair and reasonable to the Bank. The Bank shall document its conclusions from each review and shall provide a copy of each review to the Director. The Bank shall terminate, within ninety (90) days from the effective date of this Order, all such contracts or agreements not reached on an arm's length basis and shall similarly terminate all such contracts or agreements whose terms and conditions are not demonstrably fair and reasonable to the Bank. In addition, within seven (7) days from the effective date of this Order, the Bank shall terminate or rescind any obligation of the Bank owed to Grant Seeger or William Kenyon arising by virtue of contract or otherwise.

### **ARTICLE III**

#### **CAPITAL AND LIQUIDITY MAINTENANCE**

(1) The Bank shall at all times maintain a minimum of three million dollars

(\$3,000,000) in Tier 1 capital, after excluding the book value amounts attributable to the two non-conforming real estate parcels owned by the Bank.

(2) If, at any time, the Bank fails to maintain Tier 1 capital in the amount of three million dollars (\$3,000,000), excluding the book value amounts attributable to the two non-conforming real estate parcels owned by the Bank, the Bank shall be deemed “undercapitalized,” for the purposes of 12 U.S.C. § 1831o and 12 C.F.R. § 6, and the OCC shall have the authority to take any action authorized under all provisions of 12 U.S.C. § 1831o and 12 C.F.R. § 6 applicable to an undercapitalized national bank. For purposes of section 1831o(e)(5), an action “necessary to carry out the purpose of this section” shall include restoration of the Bank’s capital so that it is not undercapitalized, and any other action deemed advisable by the OCC to address the Bank’s capital deficiency or the safety and soundness of its operations.

(3) The Bank shall at all times maintain a minimum of \$2 million in Working Capital, as defined in Article IX. At all times, at least 25% of Working Capital shall be comprised of Liquid Assets to meet the daily liquidity needs of the Bank. Commencing five (5) days from the effective date of this Order, the Bank shall prepare a daily liquidity report reflecting the amount of expenses and other liabilities coming due in the next ninety (90) days, together with any unfunded commitments, and the level of Liquid Assets available for payment of these expenses and other liabilities and commitments.

(4) Within five (5) days from the effective date of this Order, the Bank shall execute a Capital Assurances and Liquidity Maintenance Agreement (“CALMA”) with CMIH, in a form which the OCC has no supervisory objection, that: (i) ensures the maintenance of capital in accordance with paragraph (1) of this Article; (ii) ensures the maintenance of liquidity in

accordance with paragraph (3) of this Article; and (iii) provides a general pledge of assets to the Bank, in an amount and type acceptable to the Bank and to which the OCC does not have a supervisory objection, to guaranty the performance of CMIH's obligations under the CALMA. The CALMA shall terminate on March 31, 2004.

(5) Within ten (10) days from the effective date of this Order, the Bank shall provide the OCC with: (i) the fully executed CALMA entered into by and between the Bank and CMIH; (ii) the resolutions adopted by the Boards of the Bank and CMIH evidencing the respective Boards' approvals and authorizations to enter into and be bound by the CALMA; and (iii) a certification from CMIH that the pledge requirement in the CALMA has been satisfied.

(6) The Bank shall take all actions to exercise its rights and enforce the terms of the CALMA, if and when necessary. The Bank shall not modify, amend or terminate, or agree or consent to a modification, amendment or termination of the CALMA without the prior written supervisory non-objection of the OCC. Within one (1) calendar day following the Bank's demand or request to CMIH for compliance with the CALMA, the Bank shall provide the OCC with a copy of the Bank's written demand or request.

#### **ARTICLE IV**

##### **FIDUCIARY ACCOUNTS**

(1) The Bank shall immediately, and until further notice by the OCC, cease and desist from acquiring any new fiduciary accounts for personal trust services. The Bank shall not enter into any new such contracts or agreements in which it agrees or is obligated to perform the duties, responsibilities or role of a fiduciary or trustee, without the Director's prior written determination of supervisory non-objection.

(2) Not later than thirty (30) calendar days after the effective date of this Order, the Bank shall submit a plan to the Director for a written determination of supervisory non-objection deficiencies in the Bank's fiduciary accounts for personal trust services, and to transfer such accounts to a successor fiduciary(ies) or trustee(s) (Fiduciary Plan). The Fiduciary Plan submitted to the Director shall include the Bank's plans (including specific time frames) to:

- (a) secure an opinion of independent counsel to determine:
  - (i) which accounts currently serviced by the Bank are fiduciary accounts;
  - (ii) which accounts require the Bank to act in a fiduciary capacity; and
  - (iii) what steps are necessary to ensure the proper transfer of the Bank's fiduciary accounts in a way that ensures proper fiduciary succession.

(b) conduct a full-scale audit of the Bank's fiduciary relationships by an independent firm to determine if any deficiencies or other problems exist requiring corrective measures;

(c) correct any deficiencies or other problems pertaining to the fiduciary accounts; and

(d) take actions to transfer all fiduciary accounts to a successor fiduciary(ies) or trustee(s).

(3) The Bank shall not implement the Fiduciary Plan unless and until it has received a written determination of supervisory non-objection from the Director. Upon receipt of the Director's determination of supervisory non-objection, the Bank shall implement the Fiduciary Plan and shall ensure that all fiduciary assets are transferred to a

successor trustee within sixty (60) days after the Bank's receipt of supervisory non-objection.

(4) Within thirty (30) days from the effective date of this Order, the Bank shall submit to the Director for a written determination of supervisory non-objection, an action plan to address how the Bank will eliminate the fiduciary services from the Bank's retirement services business. Such plan shall require the elimination of such fiduciary services within ninety (90) days from the Bank's receipt of supervisory non-objection.

## **ARTICLE V**

### **STRATEGIC PLAN**

(1) Within forty-five (45) days from the effective date of this Order, the Bank shall submit to the Director for a written determination of no supervisory objection, a Strategic Plan for the Bank covering at least a three-year period. After securing the OCC's supervisory non-objection to the Strategic Plan, the Board of the Bank shall immediately adopt, implement, and thereafter ensure adherence to the Strategic Plan.

(2) The Strategic Plan shall establish objectives for the Bank's overall risk profile, earnings performance, growth, off-balance sheet activities, fiduciary activities, cash flow, liabilities, capital adequacy, product line development and market segments that the Bank intends to promote or develop, together with strategies to achieve those objectives and, at a minimum, shall include:

- (a) a mission statement that forms the framework for the establishment of strategic goals and objectives;
- (b) an assessment of the Bank's present and future operating environment;



(c) the development of strategic goals and objectives to be accomplished over the short and long term;

(d) specific earnings and profit goals;

(e) time frames for the specific earnings and profit goals;

(f) an action plan to improve the Bank's earnings, and to accomplish identified strategic goals and objectives. The action plan shall address, inter alia, individual responsibilities, accountability, and specific time frames for achievement of goals and objectives;

(g) a financial forecast over the period covered by the strategic plan;

(h) an identification of the Bank's present and future product lines that will be used, and market segments that will be developed, so as to accomplish the Bank's strategic goals and objectives;

(i) an evaluation of the Bank's internal operations, staffing requirements, board and management information systems and policies and procedures for their adequacy and contribution to the accomplishment of the goals and objectives developed under this Article;

(j) control systems to mitigate risks associated with planned new products, growth, or any proposed changes in the Bank's operating environment;

(k) specific plans to establish responsibilities and accountability for the strategic planning process, new products, growth goals, or proposed changes in the Bank's operating environment; and

(l) systems to monitor the Bank's progress in meeting the plan's goals and

objectives; and

(m) provision for a CALMA in a form acceptable to the OCC.

(3) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of, and adherence to, the Strategic Plan developed pursuant to this Article.

(4) Prior to making any changes that may have a material impact on the Strategic Plan adopted pursuant to this Article, the Bank shall give the OCC thirty (30) days advance written notice of such changes, and shall not implement such changes without receiving supervisory non-objection from the OCC. The Bank expressly acknowledges that if the OCC issues a written determination of no objection, the Bank still must comply with the obligations and conditions detailed in this Order, as well as any other additional obligations and conditions that the OCC deems appropriate. For purposes of this paragraph, changes that may have a material impact on the strategic plan include, but are not limited to, any material changes to:

- (a) marketing strategies, marketing partners, or acquisition channels;
- (b) standards for account acquisition (including custodial, administrative or fiduciary);
- (c) account management strategies;
- (d) fee structure or incentive payment methods;
- (e) accounting processes and practices;
- (f) the current business focus, including entering into or exiting from a business segment;
- (g) any other changes in personnel, operations or external factors that may

have a material impact on the Bank's operations or financial performance; and

(h) funding strategies and capital maintenance.

(5) The Bank shall provide the OCC, on a monthly basis, a copy of the monthly board package of information provided to each Bank director, which package shall include, at a minimum, a report detailing: (i) the Bank's profit and loss information; and (ii) Board and Audit Committee minutes, including all attachments.

(6) In the event the OCC determines, in its sole discretion, that the Bank has: (i) failed to submit an acceptable Strategic Plan as required by this Article, (ii) failed to adequately implement or adhere to a Strategic Plan for which the OCC has taken no supervisory objection, (iii) significantly deviated from such Strategic Plan as defined in Article IX of this Order, or (iv) otherwise materially failed to comply with this Order, then, within thirty (30) days of receiving written notice from the OCC of such fact, the Bank shall develop and shall submit to the OCC for its review and prior determination of no supervisory objection a Contingency Plan, which shall detail the Board's proposal (with specific time frames) to either: (i) sell, (ii) merge or (iii) liquidate the Bank in conformance with 12 U.S.C. § 181 et seq. In the event the Contingency Plan submitted by the Bank outlines a sale or merger of the Bank, the written Plan, at a minimum, shall address the steps that will be taken to ensure that the sale or merger occurs not later than thirty (30) calendar days after the issuance of the OCC's written determination of supervisory non-objection and all necessary regulatory approvals.

(7) After the OCC has advised the Bank in writing that it does not take supervisory objection to the Contingency Plan, the Bank shall immediately implement, and shall thereafter ensure adherence to, the terms of the Contingency Plan.

## **ARTICLE VI**

### **BOOKS AND RECORDS**

(1) Effective immediately, the Bank shall not destroy, alter or remove from the Bank's premises any Bank documents or books and records whatsoever until further written notice by the OCC. For purposes of this paragraph, "documents or books and records" shall have the broadest meaning and shall include, without limitation, paper and electronic records of all kinds, notes, calendars, phone logs, financial instruments and tapes.

(2) Within fifteen (15) days, the Bank shall submit to the Director an action plan detailing how the Board intends to assure that the Bank's books, records and MIS are in a complete and accurate condition, setting forth a timetable for implementing the plan. In the event the Director recommends changes to the action plan, the Board shall immediately incorporate those changes into the plan. The Bank's plan shall be subject to a written determination of supervisory non-objection by the Director. Upon receipt of such non-objection, the Bank shall immediately implement and thereafter ensure adherence to the action plan.

(3) The Board shall ensure that the Bank's books, records and MIS are maintained in a complete and accurate condition and shall further ensure that the Bank's files contain all records and information necessary to allow the Comptroller to determine the details or purposes of each of the Bank's transactions. Within thirty (30) days from the effective date of this Order, the Bank shall develop policies, procedures, systems and controls to ensure that, on an on-going basis, the books and records of the Bank:

- (a) accurately reflect the transactions and activities in every account;
- (b) accurately reflect all of the Bank's transactions, activities, assets,

liabilities, capital, income and expenses of the Bank in accordance with Generally Accepted Accounting Principles (“GAAP”);

(c) provide references from the general ledger to the journal entries and, in turn, reference to the supporting source documents for all transactions and activities;

(d) reflect readily available documentation to adequately support all transactions and activities and general ledger entries;

(e) reflect approval of all transactions and activities and general ledger entries by an appropriate supervisor before being recorded in the books and records;

(f) include account analyses and/or reconciliations where appropriate or useful to evaluate or understand amounts recorded in the account;

(g) readily reflect that the Bank has complied with all affiliate transaction laws; and

(h) accurately reflect the nature of each account and relationship in the Bank and, specifically indicate whether the account or relationship is custodial, fiduciary or purely administrative and that there are sufficient and accurate records to support that determination.

(4) Prior to implementation of these policies and procedures, the Bank shall submit them to the Director for review and determination of no supervisory objection, and shall not materially alter or amend the implemented policies and procedures without prior OCC review and determination of no supervisory objection.

(5) The Bank shall provide OCC personnel with prompt and unrestricted access to the books, records and staff of the Bank and its affiliates, and the Bank shall provide full and

complete details or purposes of the transactions by and between the Bank and its affiliates, including CMIH, to OCC personnel upon inquiry.

(6) The Bank shall maintain on file on its premises current financial information on the parent company (e.g., audited financial reports, quarterly financial statement, 10-K and 10-Q reports as appropriate). The financial information must be provided to the OCC's supervisory office as it becomes available.

## **ARTICLE VII**

### **BANK SERVICES OR PRODUCTS**

(1) The Bank shall within fifteen (15) days provide an action plan to the Director for prior determination of supervisory non-objection to review all contractual relationships to identify those where the Bank is providing any services or products to any individuals or entities, including Third Party Administrators (TPAs), that, as of the date of this Order's execution, do not have a written contractual relationship with the Bank. Upon receipt of the determination of supervisory non-objection, the Bank shall, within thirty (30) days thereafter, obtain written contracts with such parties or terminate providing those products and services.

(2) Prior to providing any new services or products to existing customers, or any service or product to new customers, the Bank shall seek and obtain the prior written supervisory non-objection of the Director. Any such submission to the Director shall include evidence that: (i) Article VI of this Order has been fully complied with; (ii) the Bank has appropriate policies, procedures, systems and controls to offer the service or product; and (iii) the Bank's Strategic Plan has received supervisory non-objection and the product or service is consistent with the Strategic Plan.

## **ARTICLE VIII**

### **CLAIMS**

(1) Within ninety (90) days from the effective date of this Order, with the assistance of independent legal counsel, the Bank shall make a written determination as to whether it has any claims for damages, restitution, indemnification or other monetary claims against: (i) any hedge fund or other customer, including any of the Canary Entities or Samaritan Asset Management; (ii) any current or former officer or director; and (iii) any affiliate. The Bank shall take all actions necessary to exercise its rights and claims, and may prioritize its prosecution of such rights and claims upon receipt of the Director's determination of supervisory non-objection. Upon completion of the review, the Bank shall provide a copy to the Director, along with a report detailing the steps the Bank intends to take to file claims or seek recoveries from appropriate parties.

## **ARTICLE IX**

### **DEFINITIONS**

(1) The term "Late Trading" is intended to mean the illegal trading of mutual fund shares after the market closes at that day's Net Asset Value, so as to exploit knowledge of events that may move the market, but have not yet been reflected in the price paid for a fund's shares.

(2) The terms "Timing" or "Market-timing" are intended to mean the short-term entering (buying into) and exiting (selling off) of mutual fund shares so as to obtain a short-term profit.

(3) The term "Piggy-backing" is intended to mean a process of avoiding the detection of "timing" activities in trades of mutual fund shares by hiding such trades through other clients'

accounts.

(4) The term “Net Asset Value (NAV)” is intended to mean the per share price of a mutual fund, which is determined once each business day, as of 4:00 p.m. Eastern time.

(5) The term “Canary Entities” includes Canary Capital, Inc., Canary Management, LLC, Canary Investment Management, LLC, Goldfinch Capital Partners, Ltd., Finch Capital Partners, LTD, Canary Alternative Strategies Holding Ltd., Canary Alternative Holding Strategies Ltd. Bermuda, Canary Alternative Strategies Plus Ltd., Paradise Point Associates LLC, Stern Investment Holdings Bermuda, Hartz Group, Inc., Hartz Trading, Plaza Drive, Tripod, LLC, Nichols Point Associates, Nicholas Point Associates, Aurora Capital, Inc., CAS Master Fund Ltd., CAS Plus Master Fund Ltd., Cockatoo Capital, LLC, and Cockatiel Capital, LLC, and their respective predecessors or successors or any of the affiliates of the foregoing.

(6) The term “Working Capital” shall be the same as the term is used under Generally Accepted Accounting Principles (GAAP).

(7) The term “Liquid Assets” shall include only: (i) cash deposits; (ii) investment securities listed in 12 C.F.R. § 1.2 to which the OCC has no prior supervisory objection; and (iii) such other assets as the OCC has no prior supervisory objection. The term Liquid Assets shall not include encumbered or pledged assets by lien, right of set off, preference or otherwise; nor any other asset pledged as security in any financial transaction with the Bank or any affiliate, related party, or institution-affiliated party of the Bank.

(8) The term “affiliate” shall be defined as set forth in 12 U.S.C. § 371c(b)(1).

(9) The term “related party” shall be defined as: (i) any person holding an ownership interest in the Bank; and (ii) any person, or group of persons acting in concert, that controls, is



controlled by, or is under common control with the Bank.

(10) The terms “significant deviation” and “material impact” shall mean a material variance from the Bank’s Strategic Plan submitted pursuant to this Order, as the term “significant deviation” is further described in PPM 5400-9, Appendix B, or any variance in net earnings by more than ten percent (10%) for two consecutive calendar quarters from the projections contained in the Bank's Strategic Plan.

(11) The term “fiduciary account” shall mean an account for which the Bank acts in a “fiduciary capacity” as defined in 12 C.F.R. § 9.2(e).

(12) The term “mutual fund” shall mean a registered investment company under the Investment Company Act of 1940.

## **ARTICLE XI**

### **PROGRESS REPORTS**

(1) Within thirty (30) days of the effective date of this Order, and every month thereafter, the Board of the Bank shall submit a written progress report to the Director setting forth in detail: (i) actions taken to comply with each Article of this Order; and (ii) the results of those actions.

## **ARTICLE XII**

### **REQUIRED NOTICES**

(1) Any notice, report or request for supervisory non-objection required to be made to the OCC by this Order shall be provided in writing to:

Ronald G. Schneck  
Director, Special Supervision Division  
Office of the Comptroller of the Currency  
250 E Street, S.W.; Mail Stop 6-4  
Washington, DC 20219

202-874-4450  
202-874-5214 (fax)

with a copy sent to the OCC's Phoenix Field Office at:

9633 South 48<sup>th</sup> Street, Suite 265  
Phoenix, AZ 85044-8629

### **ARTICLE XIII**

#### **CLOSING**

(1) Although the Board is by this Order required to submit certain proposed actions and programs for the review or prior determination of no supervisory objection of the Director, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him/her by the several laws of the United States of America to undertake any action affecting the Bank, nothing in this Order shall in any way inhibit, estop, bar or otherwise prevent the Comptroller from so doing.

(3) Any time limitations imposed by this Order shall begin to run from the effective date of this Order. Such time limitations may be extended in writing by the Director for good cause upon written application by the Board.

(4) The provisions of this Order are effective upon issuance of this Order by the Comptroller (the effective date of the Order), through his authorized representative whose hand appears below, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the Comptroller.

(5) In each instance in this Order in which the Board is required to ensure adherence

to, and undertake to perform certain obligations of the Bank, it is intended to mean that the Board shall: (i) authorize and adopt such actions on behalf of the Bank as may be necessary for the Bank to perform its obligations and undertakings under the terms of this Order; (ii) require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Order; (iii) follow-up on any non-compliance with such actions in a timely and appropriate manner; and (iv) require corrective action be taken in a timely manner of any non-compliance with such actions.

(6) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(b), and expressly does not form, and may not be construed to form, a contract binding on the Comptroller or the United States.

(7) The terms of this Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.

IT IS SO ORDERED, this 29th day of October, 2003.

*/s/ David D. Gibbons*

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David D. Gibbons  
Deputy Comptroller  
Special Supervision Division  
Office of the Comptroller of the Currency

**UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
OFFICE OF THE COMPTROLLER OF THE CURRENCY**

**In the Matter of:**

Security Trust Company  
Phoenix, Arizona

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AA-EC-2003-32

**STIPULATION AND CONSENT TO THE ISSUANCE  
OF A CONSENT ORDER**

The Comptroller of the Currency of the United States of America (Comptroller or OCC) has initiated cease and desist proceedings against Security Trust Company, N.A., Phoenix, Arizona (Bank) pursuant to 12 U.S.C. § 1818(b).

The Bank, in the interest of compliance and cooperation, consents to the issuance of a Consent Order, dated October 29, 2003 (Order);

In consideration of the above premises, the Comptroller, through his authorized representative, and the Bank, through its authorized representative, hereby stipulate and agree to the following:

**ARTICLE I**

**JURISDICTION**

(1) The Bank is a national banking association chartered and examined by the Comptroller pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.*

(2) The Comptroller is “the appropriate Federal banking agency” regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(b).

(3) The Bank is an “insured depository institution” within the meaning of 12 U.S.C. § 1818(b)(1).

(4) By virtue of 12 U.S.C. § 1818(b)(5), all of the provisions of 12 U.S.C. § 1818 apply to the Bank.

## **ARTICLE II**

### **AGREEMENT**

(1) The Bank, without admitting or denying any wrongdoing, hereby consents and agrees to the issuance of the Order by the Comptroller.

(2) The Bank further agrees that said Order shall be deemed an “order issued with the consent of the depository institution” as defined in 12 U.S.C. § 1818(h)(2), and consents and agrees that said Order shall become effective upon its issuance and shall be fully enforceable by the Comptroller under the provisions of 12 U.S.C. § 1818(i). Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Comptroller may enforce any of the commitments or obligations herein undertaken by the Bank under its supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the Comptroller has any intention to enter into a contract.

(3) The Bank also expressly acknowledges that no officer or employee of the Office of the Comptroller of the Currency has statutory or other authority to bind the United States, the U.S. Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the Comptroller’s exercise of its supervisory responsibilities.

## **ARTICLE III**

### **WAIVERS**

(1) The Bank, by signing this Stipulation and Consent, hereby waives:

- (i) any and all procedural rights available in connection with the issuance of the Order;
- (ii) all rights to seek any type of administrative or judicial review of the Order; and
- (iv) any and all rights to challenge or contest the validity of the Order.

**ARTICLE IV**

**OTHER ACTION**

(1) The Bank agrees that the provisions of this Stipulation and Consent shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting the Bank if, at any time, he deems it appropriate to do so to fulfill the responsibilities placed upon him by the several laws of the United States of America.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller as his representative, has hereunto set his hand on behalf of the Comptroller.

*/s/ David D. Gibbons*

*October 29, 2003*

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David D. Gibbons  
Deputy Comptroller  
Special Supervision Division

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Date

IN TESTIMONY WHEREOF, the undersigned, as the duly authorized representative of the Board of Directors of the Bank, has hereunto set his hand on behalf of the Bank.

/s/ Thomas Plumb  
Thomas Plumb, Director and Chief Executive Officer

10-29-03  
Date

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