

UNITED STATES OF AMERICA
Before The
DEPARTMENT OF THE TREASURY
OFFICE OF THRIFT SUPERVISION

In the Matter of:)	OTS No. CN-07-01
Home Federal Savings Bank)	OTS Order No. AP 2010-02
Detroit, Michigan)	Dated: March 24, 2010

DECISION

I. Introduction and Summary of Conclusions

This is an administrative proceeding pursuant to Section 8(b) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1818(b), in which the Office of Thrift Supervision (OTS) seeks an order against Home Federal Savings Bank, Detroit, Michigan (Home FSB) to cease and desist from violations of laws, regulations, written agreements, and unsafe and unsound practices, and to take affirmative action to correct conditions resulting from such violations or practices.

Based upon a review of the record in this matter, the OTS Acting Director issues this Final Decision adopting, except in one respect, the Recommended Decision of the Administrative Law Judge, C. Richard Miserendino (ALJ). The Acting Director concludes in this Decision that the record in this case establishes that Home FSB violated specified laws, regulations, and written agreements, and engaged in unsafe and unsound banking practices.

II. Background

A. Summary of Administrative Proceedings

On October 9, 2007, the OTS issued a Notice of Charges and Hearing (Notice) alleging that Respondent Home FSB had engaged in numerous unsafe and unsound banking practices and seeking, pursuant to Section 8(b)(1) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1818(b)(1), an order to cease and desist and for affirmative action. The Notice was based on information obtained in a Comprehensive Federal Regular Examination commenced on August 13, 2007 (2007 Examination) and alleged, among other things, that Home FSB failed to maintain complete, accurate, and balanced books and records, operated with management whose policies were detrimental to the institution, and failed to provide adequate supervision over the institution's affairs. Home FSB filed an Answer to the Notice.

On June 20, 2008, the OTS issued an Amended Notice of Charges and Hearing for Cease and Desist Order for Affirmative Relief (Amended Notice) pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b). The Amended Notice, also based on information obtained in connection with the 2007 Examination, alleged that Home FSB violated (1) numerous specified laws and regulations; (2) a July 16, 2004 Consent Order to Cease and Desist (2004 Consent C&D Order); (3) an April 23, 2007 Supervisory Agreement (2007 Supervisory Agreement); and (4) an October 9, 2007 Temporary Order to Cease and Desist (2007 Temporary C&D Order). The Amended Notice also alleged that by its conduct, Home FSB engaged in unsafe and unsound practices and breaches of fiduciary duty.

In response to the Amended Notice, Home FSB filed an Answer and a Supplemental Answer on, respectively, July 10, 2008 and August 20, 2008, denying the allegations. ALJ Miserendino conducted a hearing on January 26-29, 2009 in Detroit, Michigan. During the hearing evidence was presented, and witnesses were examined and cross-examined. Thereafter, the parties filed post-hearing briefs, proposed findings of fact and conclusions of law, and reply briefs.

ALJ Miserendino issued a Recommended Decision, including Findings of Fact and Conclusions of Law (collectively, Rec. Dec.) and a Proposed Order on August 28, 2009. The Rec. Dec. recommends that Home FSB be subject to an order to cease and desist from violations and from unsafe or unsound practices as determined by the ALJ, and that Home FSB take specified affirmative corrective action. On September 28, 2009, OTS Enforcement Counsel filed Exceptions to one portion of the ALJ's Rec. Dec. On November 6, 2009, the OTS appointed the Federal Deposit Insurance Corporation as receiver for Home FSB.¹ On November 29, 2009, the parties were notified that the Rec. Dec. had been submitted for the Acting Director's final decision. On February 22, 2010, the Acting Director issued an Order extending the time for issuance of the Final Decision to March 24, 2010.²

B. Summary of the Facts

The facts of this case establish a detailed timeline that describes the enforcement actions taken by the OTS against Home FSB beginning as early as 1991. The Acting Director adopts, and incorporates by reference, the "Summary of Facts" in the Rec. Dec.³

C. The ALJ's Recommended Decision

In the Rec. Dec. the ALJ found numerous operational performance deficiencies and compliance deficiencies with respect to Home FSB. The Rec. Dec. concludes, among other things, that:

¹ OTS Order No. 2009 – 57 (November 6, 2009).

² OTS Order No. AP 2010-1 (February 22, 2010).

³ The "Summary of Facts" is set forth in section II. of the Rec. Dec. at pages 1 through 7.

1. Home FSB violated OTS regulation 12 C.F.R. § 563.170(c) by failing to maintain complete and accurate books and records to enable OTS to conduct the 2007 Examination, violated the 2007 Temporary C&D Order by failing to have complete and accurate books and records within 50 days of the effective date of the Order and failing to have written documentation of corrections available for regulatory review, and that such failures constituted unsafe or unsound practices;
2. Home FSB failed to timely submit Thrift Financial Reports (TFRs) to OTS in violation of 12 U.S.C. §§ 1464(v) and 1817(a)(3), and 12 C.F.R. § 563.180(a), and that such failure constituted an unsafe or unsound practice;
3. In violation of the requirements of the 2007 Supervisory Agreement, Home FSB failed to timely develop, submit, and implement a revised Operational and Capital Plan, and that Home FSB's failure to take adequate measures to improve earnings or reduce operating expenses to improve its deteriorating capital condition constituted an unsafe or unsound practice;
4. With respect to interest rate risk (IRR), Home FSB violated 12 C.F.R. § 563.176(b), (c) and (d) and the 2007 Supervisory Agreement by allowing its IRR to exceed the Moderate Risk category and by other acts and omissions, and that Home FSB's failure to adequately manage its IRR constituted an unsafe or unsound practice;
5. Home FSB failed to take adequate, timely measures to correct deficiencies underlying the less-than-satisfactory ratings it received for Asset Quality, Management, and Earnings in the Report of Examination (ROE) issued in connection with the 2007 Examination and such failure warranted OTS's determination that Home FSB had engaged in an unsafe or unsound practice under 12 U.S.C. §1818(b)(8);
6. Home FSB violated Equal Credit Opportunity Act (ECOA) regulation 12 C.F.R. § 202.7(d) and the 2007 Supervisory Agreement by failing to obtain evidence from mortgage loan applicants at the time of application of their intent to be a joint applicant;
7. Home FSB violated the Fair Credit Reporting Act, as amended by the Fair and Accurate Credit Transaction Act, 15 U.S.C. § 1681g(g) (FCRA) and the 2007 Supervisory Agreement by failing to disclose or retain records of disclosures made to mortgage loan applicants of credit scores relied on by Home FSB in the application and of credit-score related information;
8. Home FSB violated the Expedited Funds Availability Act, 15 U.S.C. §§ 4001 *et seq.* (EFAA) and its implementing regulations, 12 C.F.R. §§ 229.10(c)(1), 229.12(b), 229.13(b), and 229.19(f), and the 2007 Supervisory Agreement by failing to make available funds deposited by customers within prescribed regulatory time limits, and by failing to provide EFAA compliance procedures and training to its employees;

9. Home FSB violated provisions of the 2007 Supervisory Agreement by failing to maintain a compliance program designed to ensure compliance with ECOA, the FCRA, the EFAA and their respective regulations, and that such failures constituted unsafe and unsound banking practices;

10. Home FSB violated 12 C.F.R. § 563.180(d)(3)(iv)(B) by failing to identify suspicious activities and file Suspicious Activity Reports as required where circumstances indicated possible attempts by a customer to evade Bank Secrecy Act (BSA) regulations and possible tax evasion;

11. Home FSB violated 12 C.F.R. § 563.177(c)(1) and the 2004 Consent C&D Order by failing to have a system of internal controls to adequately and consistently monitor currency transactions for structural and other unusual or suspicious activity, violated § 563.177(b)(2) by failing to adhere to its own customer identification program for new accounts and loans, and violated § 563.177(c)(2) and the 2004 Consent C&D Order by failing to conduct independent reviews of Home's compliance with BSA requirements;

12. Home FSB violated the 2004 Consent C&D Order by failing to implement and maintain adequate records pertaining to the scope, attendance, frequency, and adequacy of a comprehensive BSA training program for appropriate personnel of Home FSB, and Home FSB engaged in unsafe and unsound banking practices by failing to have an adequate BSA compliance program, including repeated violations of BSA regulations, and deficiencies in BSA oversight, recordkeeping, internal control and training;

13. Home FSB violated the 2004 Consent C&D Order by failing to timely respond to certain FinCEN information sharing requests under 31 C.F.R. §103.122, failing to maintain a system to ensure required independent and timely OFAC checks, and failing to complete OFAC checks in a timely manner;

14. Home FSB's failure to establish and maintain procedures reasonably designed to assure and monitor compliance with the BSA and its implementing regulations warrant issuance of a cease and desist order by OTS under 12 U.S.C. § 1818(b) and (c); and

15. Home FSB's violations of final and effective enforcement actions, and engaging in unsafe and unsound practices in conducting the affairs of the institution, provides a statutory basis for the OTS to issue Orders to Cease and Desist pursuant to 12 § U.S.C. 1818(b);

The ALJ declined to find that Home FSB had violated 12 C.F.R. § 563.177(c)(4), which requires savings associations to provide BSA training for appropriate personnel, finding instead that "the evidence shows that [Home FSB] did provide training; albeit the training was incomplete and not comprehensive." Rec. Dec. at 30, n. 13. OTS Enforcement Counsel filed Exceptions regarding the portion of the Rec. Dec. in which the ALJ declined to find a violation of § 563.177(c)(4).

The Rec. Dec., pursuant to section 8(b) of the FDIA, 12 U.S.C. § 1818(b), recommends that a proposed order (Appendix B to the Rec. Dec.) be issued to Home FSB to cease and desist from the violations and unsafe and unsound practices determined and delineated by the ALJ in the Rec. Dec., and to take affirmative corrective action as set forth in the proposed order.

III. Discussion

Under section 8(b)(1) of the FDIA, 12 U.S.C. § 1818(b)(1), the OTS may issue a cease and desist order if an insured depository institution has engaged in proscribed activities including engaging in an unsafe or unsound practice⁴ in conducting the business of the institution, or violating a law, rule, or regulation, or any condition imposed in writing by a Federal banking agency, or any written agreement with the agency. The OTS may require an institution to cease and desist from a violation or practice, take affirmative action to correct conditions resulting from violations or practices, and take such other action as OTS determines to be appropriate. 12 U.S.C. § 1818(b)(1) and (6).

The Acting Director has reviewed the record in this proceeding. Except as discussed hereinafter, the Acting Director finds that the ALJ's findings of fact and conclusions of law are correct as to the violations of laws, regulations, and agreements, and the unsafe and unsound practices engaged in by Home FSB. As the ALJ provided a very detailed and well-reasoned Rec. Dec. with citations to the record to support his findings and conclusions, the Acting Director finds it unnecessary to reiterate in this Decision the full contents of the Rec. Dec.⁵ Therefore, in accordance with 12 C.F.R. § 509.40(c)(1), the Acting Director will limit the issues to be reviewed to those findings and conclusions to which exceptions have been filed.

The ALJ declined to find that Home FSB violated 12 C.F.R. § 563.177(c)(4), which requires savings associations to provide training to "appropriate personnel" as part of a BSA compliance program. Rec. Dec. at 30, n. 15. OTS Enforcement Counsel filed Exceptions to that portion of the Rec. Dec. Section 563.177(c)(4) is part of OTS's regulation governing procedures for monitoring BSA compliance, 12 C.F.R. § 563.177. The stated purpose of the regulation is to require savings associations "to establish and maintain procedures reasonably designed to assure and monitor compliance with" the

⁴ For purposes of issuance of a cease and desist order, an "unsafe or unsound practice" involves conduct, including any action or lack of action that is contrary to generally accepted standards of prudent operation of a financial institution, the possible consequences of which, if continued, would be abnormal risk, or loss, or damage to the institution, its shareholders or the federal deposit insurance fund. See *First National Bank of Eden v. Dept. of the Treasury*, 568 F.2d 610, 611 n. 2 (8th Cir. 1978); *In the Matter of Tom Rapp*, OTS Order No. 92-148, at 48, n. 54 (December 4, 1992), *aff'd Rapp v. Dept. of Treasury*, 52 F.2d 1510 (10th Cir. 1995); *In the Matter of Jess T. Simpson*, OTS Order No. AP 92-123, at 15 n. 16 (November 18, 1992), *aff'd, Simpson v. OTS*, 29 F.3d 1418 (9th Cir. 1994), *cert. denied*, 513 U. S. 1148 (1995).

⁵ The Rec. Dec. provides detailed citations to the record, which includes the transcript of the hearing conducted by the ALJ and related exhibits including, among other things, the 2007 Report of Examination, the 2007 Supervisory Agreement, the 2007 Temporary C&D Order, the 2004 Consent C&D Order, Thrift Financial Reports, policies, reports, correspondence, and numerous other exhibits.

requirements of the BSA and its implementing regulations. 12 C.F.R. § 563.177(a). The regulation requires savings associations to “develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the recordkeeping requirements” of the BSA and its regulations; the compliance program must be written, approved by the association’s board of directors, and reflected in the association’s minutes. § 563.177(b)(1). The regulation also requires that a customer identification program be implemented as part of the association’s BSA compliance program.⁶ § 563.177(b)(2). The regulation further requires that an association’s BSA compliance program, at a minimum, provide for a system of internal controls to assure compliance; provide for independent testing for compliance; designate individuals responsible for coordinating and monitoring day-to-day compliance; and provide “training for appropriate personnel.” § 563.177(c)(1), (2), (3), and (4).

The ALJ concluded that Home FSB failed to maintain “adequate records to reflect the scope, attendance, frequency and adequacy of a comprehensive BSA training program for appropriate [Home FSB] personnel” in violation of the 2004 Consent C&D Order. Rec. Dec. at 34, ¶28. The ALJ also concluded that by failing to have an adequate BSA compliance program, including repeated violations of BSA regulations and “other deficiencies in BSA oversight, recordkeeping, and internal control and training” Home FSB engaged in unsafe or unsound banking practices. Rec. Dec. at 35, ¶ 31. The Rec. Dec. indicates that although Home FSB’s management and staff were scheduled for BSA and OFAC training in 2007, the evidence reflected that only four employees completed BSA training and one employee completed OFAC training. Rec. Dec. at 29 – 30. The ALJ nevertheless declined to find that Home FSB violated 12 C.F.R. § 563.177(c)(4). The Rec. Dec. states, “the evidence shows that [Home FSB] did provide training; albeit the training was incomplete and not comprehensive.” Rec. Dec. at 30 n 13.

For the reasons explained below, the Acting Director is persuaded by, and finds that the evidence supports, OTS Enforcement Counsel’s Exceptions.

The evidence presented at the hearing included testimony that Home FSB utilized a computerized “Digital University” training system and Home produced documentary evidence to support that assertion. Hearing Transcript (Tr.) at 1095-1096; Home Exhibits H005-001 and H014-001. The evidence showed that one Home FSB employee passed a Digital University course “Compliance Training: Bank Secrecy Act” in August 2007. Tr. at 1095; Ex. H014-001. The evidence also established that four of 11 Home FSB employees completed BSA training in 2007 and one employee completed Office of Foreign Assets Control training in 2007. Joint Exhibit J002-001 – J002-002.

A witness, an OTS Compliance Examiner, testified that during the 2007 Examination, she was unable to locate documentation of a formal BSA training program. Tr. at 477 – 479. This witness also testified that Home FSB did not have an effective compliance program given the numerous BSA violations that were found during the 2007 Examination. Tr. at 472; OTS Exhibit G001-036 - G001-037. The 2007 Examination

⁶ The regulation incorporates by reference the customer identification requirements of 31 U.S.C. § 5318(l) and its implementing regulation, 31 C.F.R. § 103.121.

also found failures in management's administration of the BSA program. Ex. G001-032 - G001-033.

There was no evidence establishing that the few Home FSB employees who received the BSA "training" that the ALJ characterized as "incomplete and not comprehensive" were the only "appropriate personnel" at Home FSB for whom BSA training needed to be provided. Moreover, providing inadequate training does not satisfy the regulatory requirement to provide a compliance program designed to "assure and monitor compliance" with BSA requirements. Failure to meet the regulation's minimum requirements violates the regulation.

The ALJ's finding that Home FSB did not violate § 563.177(c)(4) because Home FSB provided "incomplete and not comprehensive" training is inconsistent with the stated purpose of the rule, ignores the requirement that adequate training be provided for "appropriate personnel" and is an improperly narrow interpretation of the requirements of the regulation. The Rec. Dec. implies that any minimal BSA training provided by a savings association is sufficient for compliance with § 563.177(c)(4), regardless of the quantity or quality of the training. This reading of the regulation is counter to the purpose of the regulation and is contrary to OTS guidance.⁷ The proper interpretation of the regulation is that it requires complete and comprehensive BSA training for all appropriate savings association personnel.

The appropriate methodology for interpreting a regulation is to look at the "common sense" of the regulation, to its purpose, and to the practical consequences of suggested interpretations. *New York State Com. on Cable Television v. Federal Communications Com.*, 571 F.2d 95, 98 (2d Cir.1978). The stated purpose of 12 C.F.R. § 563.177 is to "require savings associations...to establish and maintain procedures reasonably designed to assure and monitor compliance" with BSA laws. 12 C.F.R. 563.177(a). Allowing any type of compliance with 12 C.F.R. 563.177(c)(4) - however inadequate it might be - does not further the purposes of regulation. To the contrary, it undermines the regulation's purpose.

Based on the evidence, the Acting Director finds that Home FSB violated 12 C.F.R. § 563.177(c)(4) by failing to provide adequate BSA training for appropriate personnel. The Acting Director rejects the portion of the Rec. Dec. that finds Home FSB did not violate such regulation.

IV. Conclusion

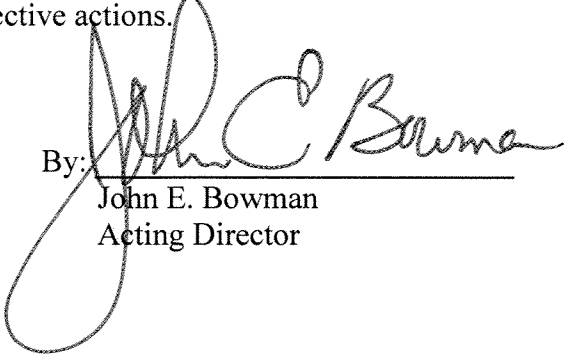
For the reasons set forth herein, the Acting Director affirms the Rec. Dec. except as to the finding that Home FSB did not violate 12 C.F.R. § 563.177(c)(4). The Acting Director finds and concludes that Home FSB violated 12 C.F.R. § 563.177(c)(4), and that by violating such regulation, Home FSB engaged in an unsafe and unsound practice. The

⁷ See OTS Examination Handbook § 1400, which incorporates by reference the Federal Financial Institutions Examination Council's Bank Secrecy Act/Anti-Money Laundering Examination Manual (2006), at 33. See also, *id.* at 38.

Acting Director further concludes that grounds existed, and it would have been appropriate, to issue an order directing Home FSB to cease and desist from the violations of laws, regulations and written agreements, and from unsafe and unsound practices as determined hereinabove, and to take corrective actions.

Date: March 24, 2010

By:

A handwritten signature in black ink, appearing to read "John E. Bowman". The signature is written in a cursive style with a large, looping initial "J".

John E. Bowman
Acting Director

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of March, 2010, a copy of the foregoing Final Decision was served on the following:

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Sandra E. Evans
Secretary for Adjudicatory Proceedings
Office of Thrift Supervision

UNITED STATES OF AMERICA
Before The
DEPARTMENT OF THE TREASURY
OFFICE OF THRIFT SUPERVISION

IN THE MATTER OF)	
)	
Home Federal Savings Bank)	OTS No. CN-07-01
)	
Detroit, Michigan)	
)	
OTS Docket No. 05171)	
)	

RECOMMENDED DECISION

I. Statement of the Case

C. RICHARD MISERENDINO, Administrative Law Judge. This case was tried before me in Detroit, Michigan, on January 26-29, 2009, with both sides appearing through counsel. On October 9, 2007, a Notice of Charges and Hearing seeking a cease and desist order was issued by the Office of Thrift Supervision (“OTS”) pursuant to Section 8(b) of the Federal Deposit Insurance Act, 12 U.S.C. § 1818(b). On June 20, 2008, an Amended Notice was issued alleging that the Respondent, Home Federal Savings Bank (“Home FSB” or “Bank”) violated (1) certain laws and regulations; (2) a Consent Order to Cease and Desist, dated July 16, 2004, (“2004 Order”); (3) a Supervisory Agreement, dated April 23, 2007, (“2007 Agreement”), and (4) a Temporary Order to Cease and Desist, dated October 9, 2007, (“Temporary Order”). The amended notice also alleges that by its conduct, the Respondent engaged in certain unsafe or unsound practices.

The Respondent filed a timely answer denying the material allegations of the amended notice. The parties have been afforded a full opportunity to appear, present evidence, examine and cross-examine witnesses, and file post-hearing and reply briefs. On the entire record of the proceeding, and after considering the post-hearing briefs and reply briefs filed by both parties, I issue this decision recommending the issuance of a cease and desist order against Home FSB, for the reasons stated below.

II. Summary of Facts¹

Home FSB is a small, federally chartered mutual institution, headquartered in Detroit, Michigan. A minority-owned association, founded in 1947, the Bank has proudly served a predominately African-American community of Detroit for 62 years. Its

¹ The complete “Findings of Fact” is appended hereto as Appendix “A” and incorporated by reference herein.

vision and mission has been to empower a community that encountered financial barriers and segregation with financial security and independence.

A. Past and Pending OTS Enforcement Actions

Home FSB is familiar with OTS enforcement actions. In 1991, the Bank was required by OTS to develop guidelines for reconciling accounts, preparing Thrift Financial Reports (“TFRs”), charging off non-reconciled cash accounts, and procedures to ensure compliance with various regulatory requirements. More recently, the 2004 Order addressed specific compliance deficiencies and directed the Bank’s board of directors (“Board”) to:

cease and desist from engaging in any conduct which violated the Currency and Foreign Transactions Reporting Act, as amended by the USA Patriot Act and other laws (the “Bank Secrecy Act” or “BSA”), 31 U.S.C. §§ 5311 et seq., and the regulations issued thereunder by the U.S. Department of the Treasury (“DOT”), 31 C.F.R. §§ 103.11 et seq.;

immediately ensure that the Bank has a system in place to verify that all customer records are reviewed against the Office of Foreign Assets Control (OFAC) list of specially designated nationals and the DOTs 314(a) list pursuant to the USA Patriot Act of 2001, and to immediately maintain documentation of independent testing of the Bank’s compliance with all BSA laws and regulations; and

within sixty (60) days of the Order, develop, implement, document and adhere to a **comprehensive training program** for all appropriate operational and supervisory personnel to ensure their awareness of their responsibility for compliance with the requirements of BSA law and regulations, and **which includes mandatory attendance, the frequency of training, procedures and timing for updating training programs and materials including a thorough review of previously identified violations and deficiencies and the method for delivering training.**

(OTS Exh. 4 at 7-8.)²

In short, the 2004 cease and desist order, which was in effect at all times material herein, required the Bank to develop, implement, and maintain a system to ensure compliance with OFAC, the Patriot Act, and BSA laws and regulations. It also required the Bank to develop, implement, and maintain a comprehensive BSA training program for its employees.

² OTS exhibits are referenced herein as “OTS Exh. ____;” Home FSB exhibits are referenced herein as “Resp. Exh. ____;” Joint exhibits are referenced herein as “Jt. Exh. ____;” Joint stipulations of fact are referenced herein as “Jt. Stip. ____;” and transcript citations are referenced herein as “Tr. ____.”

B. The 2006 Examination

Having undergone numerous OTS examinations, Home FSB is also familiar with the OTS examination process, which typically requires the Bank to complete a pre-examiner response kit (“PERK”) in advance of the examination. The PERK essentially lists all the information that a bank needs to collect, prepare, and make available to the OTS in order for the examiners to begin their review.³

The 2006 OTS examination of Home FSB commenced on May 29, 2006, covering a 15-month period ending March 31, 2006. The examination itself was completed on August 3, 2006. The Bank received a composite performance rating of “4” due to serious concerns about its “interest rate risk position, weak earnings, loan administration deficiencies and continuing noncompliance with regulatory enforcement documents....” In a sharply critical evaluation of the Bank’s Board, the 2006 examination report stated that:

Board guidance has been ineffective, as evidenced by the deteriorating financial condition of Home. The Board’s response to regulatory concerns has been extremely lacking with inadequate action taken on numerous corrective actions contained in prior Reports of Examination. Noncompliance was noted with various provisions of outstanding enforcement actions between Home and the OTS.

(OTS Exh. 5 at 006.)

There were many matters specified in the report requiring the Board’s attention by October 31, 2006. The following are particularly pertinent to the instant case:

- Develop a capital plan in conjunction with a balance sheet restructuring plan detailing how the bank will curtail the erosion of capital.
- Develop a comprehensive balance sheet and operational restructuring plan. The plan must address management strategies to restructure Home’s balance sheet and operations in order to restore profitability, maintain its capital position, and preserve liquidity levels.
- Assure the BSA Officer is excluded from all aspects of the independent BSA review.
- Ensure TFR errors pertaining to investment securities are corrected on the next TFR filing.
- Submit a formal plan for the reduction of interest rate risk in conjunction with a balance sheet restructuring plan. The plan must address specific strategies and timetables for implementation.
- Submit a revised IRR Policy, addressing Policy exceptions noted in this Report.

³ In 2006, the OTS required all institutions to provide PERK kit documentation electronically.

- Print and retain the results of all OFAC checks. Perform the checks on all parties to wires, and all new accounts. Increase frequency of the customer database comparison to at least quarterly.

Thus, the 2006 Examination Report put the Board on notice that it needed to act quickly to address significant operational and compliance problems.

C. The 2007 Agreement

Prompted by unresolved deficiencies identified in the 2006 examination which were reported 11-months earlier, and dissatisfied with the Bank Board's inaction in addressing many of these issues, the OTS initiated and entered into the 2007 Agreement with the Bank.⁴ Of particular significance here, the Agreement required the Bank Board to submit to the OTS Regional Director within 30 days of April 23, 2007, an operational and capital plan ("Operational Plan") organized on a quarterly basis through at least December 31, 2007, which at minimum contained:

- a budget, with quarterly projections of earnings, balance sheet items, and capital ratios;
- detailed strategies to improve the Bank's core earnings;
- specific timetables for implementation of these strategies;
- loan volume projections;
- overall funding and liquidity management strategies;
- specific operation expenses to be reduced or eliminated, including a thorough review of staffing and compensation;
- support for projections for additional fees or other non-interest income; and
- alternative action plans if the Operational Plan projections were not achieved for two consecutive quarters.

The Operational Plan, if approved by the Regional Director, had to be implemented immediately. The Bank Board also was directed to review, document, and report on the Bank's compliance with the Operational Plan at least once each calendar quarter. The unmistakable import of this part of the 2007 Agreement is that the Bank Board needed to take immediate, definitive, detailed, and effective action to pull back a financially fragile institution from the precipice of financial uncertainty.

The 2007 Agreement also directed the Bank's Board to review and revise the Bank's interest rate risk ("IRR") policy to address the deficiencies noted in the 2006 examination; to develop and implement an IRR management plan, which met specified requirements; to implement such a plan; and for the Bank's management to report compliance to the Bank Board on a quarterly basis.

⁴ In order to simplify the administration of prior pending administrative enforcement actions, the 2007 Agreement incorporated substantial portions of a 1991 Supervisory Agreement and a 2001 Supervisory Agreement, both of which were then terminated.

Finally, among the other components of the Agreement, the Board was given very detailed and specific directives with respect to the design and maintenance of a compliance program to address weak areas noted in the 2006 examination.

D. The 2007 Examination Commences

Four months later, on August 13, 2007, the OTS commenced its 2007 examination. At the time, the Bank was subject to two formal enforcement actions: the 2004 Order and the 2007 Agreement. Jason A. Jones was the examiner-in-charge (“EIC”). He was responsible for the operational performance review of the Bank. Janice Balber was the lead compliance examiner. In addition, Federal Deposit Insurance Corporation (“FDIC”) examiner Jeanne McLaughlin participated in the 2007 examination. FDIC examiners typically do not participate in an OTS examination unless the bank is in troubled condition. McLaughlin’s participated in the 2007 examination because Home FSB’s 2006 composite rating was “4” and because the Bank subsequently was subject to a formal enforcement action addressing its financial condition, i.e., the 2007 Agreement.

EIC Jones testified that he encountered difficulties from the outset of the examination. According to his unrebutted testimony, the PERK was poorly prepared. The information requested was not complete nor comprehensive. The information pertaining to the general ledger was hand-written and difficult to read. To make matters worse, the Bank’s controller and vice-president, Hattie Graham, was having difficulty balancing the Bank’s general ledger.⁵

On August 16, three days after the examination commenced, Graham informed Jones that she would be out of the bank for two-weeks on a pre-planned vacation, returning on September 4. In her absence, Jones worked with Bank President, Thomas Williams, who attempted to provide whatever information he could locate, but lacked the “hands-on” knowledge of Graham to answer certain questions. Adding to the problem, Williams informed Jones that the Bank’s external auditors, George Johnson & Company, were scheduled to be on-site within the next two weeks.

1. The examination is cancelled

The Bank was given until September 24, 2007, to completely reconcile its books and records, which it failed to do. As a result, in an unprecedented move, EIC Jones cancelled the examination. On October 9, 2007, the OTS issued a Temporary Cease and Desist Order (“Temporary Order”) that required the Bank:

- To hire an independent, qualified accounting firm within 10-days to reconcile its books and records within 45 days of the Order;

⁵ In May 2007, the Bank converted its computer system from an in-house to an external system provider. Since that time, Graham had difficulty compiling information for the thrift financial report (“TFR”) and balancing the Bank’s general ledger.

- To have complete and accurate books and records within 50 days of the Order and to maintain those books and records; and
- To establish a compliance committee comprised of at least four directors who are not officers of the Bank, who shall meet weekly and maintain detailed written minutes of the meetings, and monitor compliance.

The OTS examiners compiled a list of 64 items that needed to be reconciled, along with the general ledger page. On October 9, 2007, the OTS also issued a Notice of Charges seeking a cease and desist order, which effectively alleged that the Bank's books and records were so incomplete or inaccurate that the OTS was unable, through the normal supervisory process, to accurately determine the financial condition of the Bank or to determine the details of a substantial number of transactions which may materially effect the Bank's financial condition.

2. Karl Haiser is retained

On October 23, 2007, the Bank retained Karl Haiser, a forensic accountant and CPA, to reconcile its books and records. Haiser approached the task as a forensic accountant, rather than as a CPA. As he explained, a forensic accounting approach requires the inspection of actual supporting documents for an account entry (e.g., the cancelled check, the actual invoice) in order to verify and reconcile the account. In contrast, a CPA could rely on representations made by the client or corroborated by summary to support an account entry. The former therefore requires more time than the latter.

Haiser began his review at the end of October 2007. It took him 60 days to complete the documentation review and to record his recommended adjustments. He issued a first report on December 24, 2007, a revised report on January 4, 2008,⁶ and a final report on February 1, 2008. Haiser testified that of the 64 items that he reviewed approximately half of those were "minor" adjustments and the other half were time-consuming adjustments involving fixed assets. The most significant adjustment that he recommended involved a \$150,000 entry, which resulted from an undetected error recorded in 1974. Haiser opined that the Bank's general ledger was complex and that he devoted a great amount of time and effort to reconstruct the fixed asset entries. According to his testimony, Haiser's "major" recommendation was for the Bank to use a new format for bank reconciliation because the format or system that was being used made it hard for the examiners to determine whether or not there was support for general ledger accounts.
(Tr. 1458-1459.)

⁶ Prompted in part by the accounting adjustments identified in Haiser's report, as well as a rapid decline in the level of the Bank's capital position, on January 31, 2008, the OTS issued a Supervisory Directive limiting the Bank's lending and investment activities, and directing the Bank to promptly record the recommended adjustments and update its most recent TFR.

F. The 2007 Examination Concludes

The 2007 examination was completed on April 4, 2008. It disclosed several uncorrected deficiencies that were previously identified in the 2006 examination, as well as reflected in the 2007 Agreement. With respect to operating performance deficiencies, it was reported that, among other things, the Bank's books and records were incomplete and inaccurate; its operational and capital plan was inadequate; its TFRs were repeatedly late and inaccurate; and its IRR policy and plan still needed to be revised; and that there were significant problems with asset quality, management, earnings, and liquidity. With respect to compliance deficiencies, it was reported that, among other things, the Bank was placing improper "holds" on account deposits; that the Board was not properly reviewing and monitoring compliance administration by its internal audit committee; that proper forms and documentation were not being used and distributed in real estate loan transactions; and that Bank management had failed to develop and implement a comprehensive BSA staff training program.

Home FSB was assigned an overall composite rating of "5," which was a downgrade from the 2006 examination composite rating of "4." The compliance rating for the 2007 examination also was a "5."

On May 8, 2008, a copy of the examination report was mailed to the Bank's Board. A follow-up meeting between OTS and the Board was scheduled for May 22 in Chicago, Illinois, but at the request of the Board it was rescheduled for June 5 at a location outside Detroit, Michigan. Phillip Gerbick, OTS Assistant Director – Central Regional Office, testified that the examination findings were reviewed with the Board and potential merger candidates were discussed. (Tr. 918-919.) The Bank's Board was presented a proposed Consent Cease and Desist Order, which it declined to sign.

On June 20, 2008, an Amended Notice of Charges was issued enumerating nine alleged statutory/regulatory violations or unsafe or unsound practices.

III. Analysis and Findings

A. Operational Performance Deficiencies

1. Incomplete and inaccurate books and records

The amended notice alleges that for an extended period of time, beginning on or before June 30, 2007, the Bank's books and records were incomplete and inaccurate due to its failure to reconcile outstanding transactions or maintain documentation to support transactions. (Amended Notice, paras. 27-32.) As a result, during the 2007 examination the OTS was unable to determine the Bank's overall financial condition and the purpose or details of numerous transactions. It further alleges that in contravention of the Temporary Order, the Bank failed to reconcile its books and records within 50 days of the

date of the Order, to maintain complete and accurate books and records, and to demonstrate that it had complied with these requirements.

In order to facilitate an OTS examination, 12 C.F.R. §563.170(c) requires banks to “establish and maintain such accounting and other records as will provide an accurate and complete record of all business it transacts ...” and at all times have such records available for an examination wherever those records are kept. It is not gainsaid that accurate books and records are essential in order for the OTS to conduct periodic examinations in order to evaluate accurately a bank’s financial condition and transactions. *Franklin Sav. Ass’n v. Director, Office of Thrift Supervision*, 934 F.2d 1127, 1140 (10th Cir. 1991).

The un rebutted evidence shows that when the 2007 examination commenced, the Bank’s Vice President Hattie Graham could not balance the Banks books. Efforts by the OTS examiner were likewise unsuccessful. Documentation supporting the various general ledger accounts was not available. To make matters worse, the format used by the Bank for reconciling its accounts made it very hard for the OTS examiners to see whether or not there was support for a general ledger entry. Indeed, the Respondent’s expert witness, Forensic Accountant Karl Haiser, testified that a major recommendation that he made to the Bank’s Board was to use a different format for bank reconciliation because the system or format the Bank had been using hindered the examination process. (Tr. 1459.) Thus, the evidence shows that there was a reasonable basis for the issuance of the October 9, 2007 Temporary Order.

The evidence further shows that the Bank’s books and records were not accurate. Haiser was engaged to audit a list of 64 account entries, as well as the general ledger, which resulted in total adjustments in the amount of \$260,000. He testified that of the 64 items, roughly half or 32 were minor adjustments. The other half were fixed asset adjustments, which required significantly more time to verify with supporting documentation.

OTS Regional Accountant Cynthia Piech disagreed with Haiser’s assessment of what constitutes a “minor” versus “major” adjustment. For example, she disputed his characterization of a \$4,750 adjustment as “minor.” As Piech explained, even though this particular adjustment increased the Bank’s capital, it was still a “misstated” account, which was “material” given the Bank’s small size. More significantly, Piech testified that whether minor or not, from a regulatory view an adjustment is a “misstated” account which has to be corrected or “adjusted.” (Tr. 1502.)

With respect to the 32 fixed asset adjustments, Haiser opined that only one of these was a “major” adjustment in the amount of \$150,000 concerning an incorrect entry that was made many years earlier by a former accounting firm. He did not explain, nor was he asked to explain, how he would characterize the remaining 31 fixed asset items. Haiser stated that at the time he commenced his review, the Bank gave him documentation that enabled him to recommend 32 minor adjustments. However, he had

to conduct a more time-consuming and laborious search of the Bank's records in order to identify documents supporting the 32 fixed asset adjustments, major and otherwise.

In this connection, Regional Accountant, Cynthia Piech, explained that an OTS examiner is not responsible for searching through a bank's records in order to find documentation to support a ledger entry. It is the bank's responsibility to make that information available for the examiner's review. Unlike Karl Haiser, who took two months to review all 64 items and the general ledger, and another month to record his findings and recommended adjustments, a bank examiner has at best two weeks to conduct the entire examination.

To summarize, the evidence viewed as a whole shows that the Bank's books and records (1) were formatted in a fashion that made it difficult for the OTS examiners to determine whether documentation existed to support its ledger entries, (2) were inaccurate requiring numerous adjustments both major and minor, and (3) were incomplete requiring "a great deal of time and effort" by an outside forensic accountant to reconstruct the fixed asset account entries. On this basis, I find that Home FSB violated 12 C.F.R. §563.170(c). Also, by failing to maintain and make available accurate and complete books and records, the Bank engaged in an unsafe or unsound practice that delayed an expeditious examination and prevented the OTS examiners from accurately assessing the financial condition of a financially distressed bank.

In addition, the evidence discloses that the Bank violated the Temporary Order. First, the undisputed evidence shows that none of the established time limits of the Temporary Order were met. Haiser did not complete his review until late December 2007 and did not issue a final report until early February 2008. Second, the Bank has not established that its books and records were complete and accurate. The evidence falls short of showing if and when all the recommended adjustments were made. Haiser testified that he did not know if his recommended adjustments were made because it was not within the scope of his engagement to ensure that the changes occurred. Vice President Hattie Graham testified that the Bank was entering corrections before and after Haiser issued his report and it was still making entries in April 2008. (Tr. 1050.) She conceded that some of the corrections may have been posted after April 2008, but could not recall when specific adjustments were made. (Tr. 1041.)

Nor did the Respondent introduce any documentary evidence showing when each entry was made as required by the Order. Paragraph 3 of the Temporary Order expressly states "[a]ll written documentation of the correction or reconciliation of any of Home's books or records shall be retained for future regulatory review." There is no evidence that the Bank kept such a log which would have been dispositive of the issue.

Finally, paragraph 4 of the Temporary Order required the Bank to establish a compliance committee comprised of at least four directors who were not officers of the Bank, who would meet weekly, maintain detailed minutes of their meetings, and monitor compliance with the Temporary Order. On a weekly basis, the committee was required to

submit a written report to the Regional Director. There is no evidence, oral or otherwise, showing compliance with these requirements of the Temporary Order.

Based on the totality of the evidence, I find that the Bank failed to comply with the Temporary Order. I further find that the inability of the Bank to demonstrate the completeness and accuracy of its books and records as required by the Temporary Order is an unsafe and unsound practice.

2. Untimely filing of TFRs

Pursuant to 12 U.S.C. §§1464(v) and 1817(a)(3) and § 563.180, OTS regulated banks, like Home FSB, are required to file reports of condition (i.e., TFRs) with the OTS Director in the form established by the Director within 30 days after the end of a quarter. The TFR is an important regulatory and supervisory tool which enables the OTS to identify key changes in a bank's financial condition in between examinations. The evidence shows that OTS regularly publishes and disseminates to OTS regulated banks TFR information requirements and filing deadline schedules.

The amended notice alleges, and the undisputed evidence shows, that Home FSB failed to file in a timely manner TFRs for five consecutive quarter periods between March 31, 2007 through March 31, 2008. Specifically, the Bank failed to file timely TFRs for the quarters ending March 31, 2007, June 30, 2007, September 30, 2007, December 31, 2007, and March 31, 2008. The un rebutted testimony of EIC Jason Jones was that the Bank failed to have the June 30, 2007 TFR available for the examiners at the start of the 2007 examination, which was unprecedented and which impeded the examination process.

Bank President Thomas Williams conceded that the TFRs were untimely filed. He stated, however, that these reports were filed late because Vice President Hattie Graham, who prepares the Bank's TFRs, did not have the necessary figures to file the report. (Tr. 1220.) From the Bank's perception, it was better to file accurate reports late, than to file inaccurate reports on time. For this reason, the Bank "perceived" it had an extension of time to file the TFRs. The explanation is unpersuasive. There is no evidence to support the Bank's assertion that the OTS granted the Bank an extension of time to file late.

Based on the evidence viewed as a whole, I find that Home FSB violated 12 U.S.C. §§1464(v) and 1817(a)(3) and § 563.180. By failing to file the TFRs in a timely manner during precarious financial circumstances, the Bank hindered the OTS' ability to assess and react to changing condition, and engaged in an unsafe or unsound practice.

3. Failure to develop and implement an Operational and Capital Plan

The amended notice further alleges that Home FSB violated the 2007 Agreement by failing to develop and implement an operational and capital plan to improve earnings, identify funding and liquidity management strategies, identify operating expenses to be reduced or eliminated, and provide for alternative plans if the Bank failed to achieve the

goals set forth in the operational and capital plan. The amended notice asserts that the Bank's capital had continuously declined over time to the point where it would become undercapitalized very soon, if immediate action was not taken to curtail operating losses and improve earnings. It also alleges that Home FSB's failure to take the necessary measures mandated by the 2007 Agreement constitutes an unsafe or unsound practice.

The 2007 Agreement expressly states that the Bank shall provide to the OTS Regional Director by no later than May 23, 2007, an Operational Plan which, at minimum, satisfied several specific requirements. The 2007 Agreement further mandates that the Bank's Board shall review and document the Bank's compliance with the Operational Plan at least once each calendar, thereafter reporting to the Regional Director any significant variance from the quarterly projections. Finally, it mandates that the Bank shall revise the Operational Plan by November 30, 2007, and by the same date of each year thereafter, for the following year. The evidence discloses that the Bank met none of these specifically mandated requirements.

First, Home FSB failed to submit a plan by May 23, 2007. Rather, it produced a plan on June 26, 2007, over one month late, even though time was of the essence. The evidence shows that the Bank was and, at all times material herein, had been slipping toward the brink of financial uncertainty. In the 2006 Examination Report, the OTS examiners made clear that "quick and decisive action" by Home FSB's Board was necessary to prevent the deterioration of its capital position by addressing its high operating costs and negative earnings. The evidence further shows, and the Bank does not deny, that during the 2007 examination, the Bank's earnings declined significantly, thereby further eroding its capital. Indeed, consistent with this evidence, the 2007 Examination Report noted that "[a]bsent any significant change in Home's total assets, continuation of operating losses at the current level will result in the bank falling to 'undercapitalized' per FDICIA PCA standards in the second calendar quarter of 2008." (OTS Exh. 1 at 6-7.) Thus, the requirement that the Bank act quickly and decisively to address these significant concerns was not an over reaction by OTS.

Next, the plan submitted by the Bank was simply inadequate. It is a terse, 1 ½ page document, which contains a general discussion of anticipated asset growth opportunities and a list of expense reductions. (Resp. Exh. 15.) For example, the plan states that the Bank is "anticipating the following asset growth opportunities:"

- Increase Mortgages by \$2,000,000. The efforts will include, but not limited, to 'in-house' promotions and calling on real estate brokers and developer.
- HFSB will aggressively promote short term home improvement loans. Management is considering partnering with home improvement contractors in the area to promote our home improvement efforts.
- Attract younger customers. HFSB has upgraded its IT Program in order to be more competitive.

With respect actions to reduce operational expenses, the plan identified seven action items that it would take, including, but not limited to, reducing Board member fees and eliminating committee fees, monitoring office maintenance and daily operating expenses, and freezing salaries and hiring.

Significantly, the Bank's plan does not contain:

- a budget, with quarterly projections of earnings, balance sheet items, and capital ratios as required by ¶ 6(a)
- specific timetables for implementing the strategies as required by ¶ 6(c)
- overall funding and liquidity management strategies as required by ¶ 6(e)
- projections of additional fees and other non-interest income as required by ¶ 6(g)
- alternative plans, if the Operational Plan projections are not achieved for two consecutive quarters as required by ¶ 6(h).

In defense of its Operational Plan, the Bank asserts that at no time did OTS comment on, criticize or condemn the plan after it was submitted. As Respondent's very learned counsel well knows, "silence does not equal acceptance." More to the point, there was no need to comment. In my view, and in legal parlance, "the document speaks for itself." It is inconceivable that the Bank Board or anyone else reviewing Respondent's Exhibit 15 juxtaposed with OTS Exhibit 2 could reasonably conclude that the former satisfies or meets the specific requirements of the latter. To be sure, the action needed and contemplated by the 2007 Agreement was for the Bank quickly to develop and implement a detailed plan of strategic assessment, i.e., a plan that analyzes and provides for detailed action to assist a troubled bank. The plan submitted by the Bank did not achieve that objective.

In addition, and to make matters worse, there is no evidence that the Bank submitted a revised plan on November 27, 2007, or quarterly reassessments based on revised projections, even though extant circumstances warranted such reevaluation. The evidence shows, as more fully discussed at pages 15-20, *infra*, that the overall condition of the Bank continued to deteriorate during the 2007 examination period. The Bank Board's inaction, on this basis alone, constitutes an unsafe or unsound practice.

For the above reasons, and based on the evidence as a whole, I find that the Bank failed to file an Operational Plan in compliance with the specific requirements of the 2007 Agreement and that its failure to take adequate action to improve its earnings or reduce its operating expenses constituted an unsafe or unsound practice. Based on the totality of circumstances, I further find based on this evidence that a cease and desist order under 12 U.S.C. § 1818(b)(1) is warranted.

4. Failure to revise and implement Interest Rate Risk Policy and Management Plan

Paragraphs 44 – 49 of the amended notice allege that the Bank violated 12 C.F.R. § 563.176, the 2007 Agreement, and engaged in unsafe or unsound practices by failing to

revise, implement, and report compliance with its Interest Rate Risk Policy “(IRR”) and IRR Management Plan.

The undisputed evidence shows that up until January 2008, the Bank’s interest rate risk was unsatisfactory.⁷ Since 2003, the Bank’s IRR position has been in a “significant” or “high” risk category. As a result, the OTS repeatedly directed the Bank’s Board to revise its IRR Policy⁸ and to develop an IRR Management Plan. For example, in the 2006 Examination Report, the OTS examiners concluded that “[m]anagement has again failed to revise IRR policies and procedures pursuant to examiner requests at previous examinations, and there have been no material actions pursued and no effective strategies realized impacting the structural imbalances of the bank’s balance sheet.” (OTS Exh. 5 at 30.) As corrective actions, the report stated that the “Board and Management must submit a formal plan for the reduction of interest rate risk in conjunction with a balance sheet restructuring plan ... [and] a revised IRR Policy, correcting the Policy exceptions noted in this Report.”

For reasons unknown, the Bank Board failed to take action. The OTS therefore initiated the 2007 Supervisory Agreement, which in great detail stated the following with respect to interest rate risk:

- The Board shall review and revise the Institution’s interest rate risk policy (IRR Policy) to address the deficiencies noted in the 2006 Examination
- The IRR Policy shall require management to develop and implement an interest rate risk management plan ... which shall be submitted to the Regional Director for review and non-objection within 90 days of the Effective Date [of the Agreement].
- The Board shall take all necessary steps necessary to ensure that the IRR Policy required by Paragraph 2 [requiring review and revision of the IRR Policy] is implemented and thereafter adhered to by Management and staff of the Institution.
- Beginning September 30, 2007, Management shall submit quarterly reports to the Board addressing compliance with the

⁷ In the 2007 Examination Report, the OTS examiners opined that the sale of the U.S. Agency bonds on December 21, 2007, “in all likelihood, significantly reduced the bank’s sensitivity to interest rate changes; however, it is uncertain how this action has changed the bank’s overall interest rate risk profile.” They further opined that “[a]s a result of the losses from normal operations, the independent audit and the sale of securities, Home’s capital levels have quickly fallen to a level of great concern. This decline in capital has contributed to the decline in economic capital (pre-shock NPV). Consequently, in spite of the anticipated decline in sensitivity, Home’s IRR position remains a significant concern given the bank’s perceived pre- and post-shock NPV.” (OTS Exh. 1 at 33-34.)

⁸ The undisputed evidence also shows that the Bank’s IRR Policy was revised last in August 2004. (Jt. Exh. 1.)

IRR Policy and the IRR Management Plan [which the Board shall review] and adopt specific corrective actions as are necessary and appropriate ... [to be] documented in the minutes of the appropriate Board meeting ... [and thereafter the quarterly report and minutes shall be sent to the Regional Director].

The undisputed evidence shows that the Board did not review and revise the IRR Policy. Rather, during the 2007 examination, Bank President Thomas Williams gave EIC Jones a copy of the very same IRR Policy, last revised in August 2004, that was the subject of the 2006 Examination Report. (Tr. 297-298, 1134-1135.) The undisputed evidence further shows that the Board did not develop or implement an IRR Management Plan, even though it was granted an extension of time to submit such a plan to the Regional Director. In addition, there is no evidence that the Bank's IRR Committee sought to comply with the interest rate risk requirements of the 2007 Agreement in any way, shape or form.

The Respondent argues, and its evidence shows, that the IRR Committee met on January 15, 2008, nine months after the effective date of the Agreement. Notably, Board Chairman Helen Coleman, Board Secretary and member Dr. Bettye Arrington, Bank President Thomas Williams, and Bank Vice President Hattie Graham were among the IRR Committee members, who attended the meeting. However, the minutes of the meeting do not reflect any discussion about compliance with the Bank's IRR Policy or developing an IRR Management Plan or submitting quarterly review reports to the Board as required by the 2007 Agreement. Instead, the minutes state, in relevant part:

The Committee spent a lengthy amount of time discussing the importance of the Interest Rate Risk exposure Summary and how Home Federal Savings Bank, compared to the Industry. The Committee agreed that every effort must be made by the Bank to reduce the risk and continue to improve the Bank's sensitivity.

The Committee reviewed the Interest Rate Risk Policy for 2007 and made some technical changes for 2008.

The Committee agreed to recommend to the Board of Directors that it continue to not pay committee meeting fees until the Bank begins to increase income.

There being no further business the Interest Rate Risk Committee meeting was adjourned.

(Resp. Exh. 9 at 1.)

Nine months later, on July 15, 2008, the Bank's IRR Committee met again. Board Chairman Helen Coleman, Board Secretary and member Dr. Bettye Arrington, Bank President Thomas Williams, and Bank Vice President Hattie Graham again were among the IRR Committee members, who attended. The meeting minutes do not reflect any discussion about changes that were made or would be made to comply with the interest rate risk requirements of the 2007 Agreement. (Resp. Exh. 9 at 2.) This is particularly noteworthy because the July 15 meeting occurred approximately one month after OTS met with the Bank Board to review the 2007 EXAMINATION REPORT.

Thus, the Respondent has not presented any evidence showing that the Bank's IRR Committee, the Bank Board and/or Bank management complied with, attempted to comply with or considered complying with the interest rate risk requirements of the 2007 Agreement.

Enforcement Counsel also argues that through its inaction, the Bank Board and/or Bank management failed to comply with 12 C.F.R. § 563.176, which, among other things, requires the Board to (1) ensure that its IRR Policy is successfully implemented;⁹ (2) receive periodic reports on IRR; and (3) make "appropriate" adjustments to the Bank's IRR Policy. The evidence does not show that the Board complied with any of these requirements.

Based on the evidence viewed as whole, I find that the Bank's acts and omissions with respect to its IRR Policy, its failure to develop and implement an IRR Management Policy, and its failure to monitor and report on its IRR position, violated the 2007 Agreement and 12 C.F.R. § 563.176(b), (c), and (d). In addition, I find that by these acts and omissions the Bank also engaged in unsafe and unsound practices.

5. Unsatisfactory asset quality, management, earnings or liquidity

Paragraphs 21 – 23 of the amended notice allege that based on the less-than-satisfactory ratings for Asset Quality, Management, Earnings, and Liquidity, as reflected in the 2007 Examination Report, Home FSB continues to engage in unsafe or unsound practices within the meaning 12 U.S.C. § 1818(b)(8), thereby warranting a cease and desist order.

12 U.S.C. § 1818(b)(8) states:

If an insured depository institution receives, in its most recent report of examination, a less-than-satisfactory rating for assets quality, management, earnings, or liquidity, the appropriate Federal banking agency may (if the deficiency is not corrected) deem the institution to be engaging in an unsafe or unsound practice for purposes of this subsection.

⁹ The Policy states that it will be the Bank's goal "to maintain an IRR position of no worse than Moderate Risk...." The un rebutted evidence shows that the Bank nevertheless had been in a "significant" or "high" risk category through December 30, 2007, with little or no action by the Board or IRR Committee to address the risk and noncompliance with its own Policy. (OTS Exh. 1 at 34.)

A CAMELS component rating of “3” or greater is considered an adverse or unsatisfactory rating. The 2007 Examination Report gave the Bank less-than-satisfactory component ratings in assets quality, management, earnings, and liquidity. (Jt. Stip. 12.) The specific component ratings assigned to the Bank were as follows: asset quality – 3; management – 5; earnings – 5; and liquidity – 3.

The 2007 Examination Report contains a detailed explanation of the basis for each of these ratings, which need not be repeated here. (See OTS Exh. 1 at pages 15-31.) More pertinent to an analysis of the evidence is the unrebutted testimony of the OTS’ witnesses, expert and otherwise, which amplifies the justification for each rating. Notably, the two overarching considerations affecting all of these component ratings are the Bank’s relatively small size and its changing capital position during the 2007 examination period.

a. *Asset quality – “3”*

OTS Field Manager Mark Payne explained that the Bank’s overall less than satisfactory asset quality was attributable to three factors: increasing dollar volume of classified assets; decreasing core capital; and increasing non-accrual loans. (Tr. 698-699.) As the evidence discloses, between September 30, 2004, and December 31, 2007, the level of classified assets (basically substandard or “troubled” loans) increased from \$39,000 to \$172,000. (OTS Exh. 1 at 15.) At the same time, there was a substantial decline in core capital and a significant increase in non-accrual loans (i.e., loans more than 90 days past due that would likely be difficult to collect). Payne testified that the combination of these factors made it difficult for the Bank to take on credit risk.

In addition, the evidences shows that asset quality did not improve during the 2007 examination period. To the contrary, between March through June 2008, the level of nonaccrual loans increased from \$145,000 to \$286,000. (Compare March 2008 TFR to June 2008 TFR, OTS Exhibit 23 at 13 and OTS Exhibit 24 at 13, respectively.) The declining asset quality required an increase in Allowance for Loan and Lease Losses (“ALLL”) which the evidence shows hastened the Bank’s declining capital position. Thus, the unrebutted evidence supports an asset quality rating of “3.”

b. *Earnings – “5”*

EIC Jones testified that the Bank’s earnings were the “most troubling” component because they had eroded considerably since the 2006 examination. (Tr. 108.) Jones explained that there is an inverse relationship between decreasing earnings and increasing operating expenses resulting in large operating losses, which adversely affects core capital. He further explained that the 2006 Examination Report identified large operating expenses as a factor contributing to losses and that operating expenses had increased disproportionately since that time. More specifically, Jones testified that “net operating losses for calendar 2007 were nearly five and a half times greater than those reported for 2006 and were the principle reason [the Bank] dropped below well-capitalized.”(Tr. 108.)

Under these circumstances, the OTS felt compelled to issue the 2007 Agreement, requiring the Bank Board to develop an Operational Plan, which among other things, required a strategy and plan for increasing earnings and controlling operating expenses.

In response, the Bank argues that it addressed the earnings and operating losses in its Operating Plan that was submitted on June 26, 2007. It also asserts that it took adequate measures to improve earnings and reduce operating expenses in order to improve its capital position. The evidence as a whole does not support these assertions.

To begin with, the Bank's Operational Plan did not provide specific details about strategies to improve the Bank's core earnings. (*See* Resp. Exh. 15.) With respect to curtailing operating expenses, the evidence discloses that the Bank's efforts, as outlined in the plan, at best were modestly successful. The TFR for the quarter ending September 2007 shows the Bank had non-interest expenses of \$297,000. (OTS Exh. 21 at 5.) The TFR for the quarter ending December 2007 shows the Bank had non-interest expenses of \$314,000. (OTS Exh. 22 at 5.) The TFR for the quarter ending March 2008 shows the Bank had non-interest expenses of \$303,000. (OTS Exh. 23 at 5.) The TFR for the quarter ending June 2008 shows the Bank had non-interest expenses of \$292,000. (OTS Exh. 24 at 5.)

On the other hand, operating losses for the same quarters did not steadily decline and instead remained problematic:

<u>Quarter End</u>	<u>Operating Losses</u>
September 2007	\$119,000
December 2007	\$ 274,000
March 2008	\$ 87,000
June 2008	\$ 213,000

(*See* OTS Exhs. 21 at 6, 22 at 6, 23 at 6, and 24 at 6.)

Notwithstanding the modest decrease in expenses prompted by the measures taken by the Bank, the evidence shows there was no positive effect on core capital during the same quarters. Rather, core capital continued to decline:

<u>Quarter End</u>	<u>Core Capital</u>
September 2007	\$1,448,000
December 2007	\$ 988,000
March 2008	\$ 910,000
June 2008	\$ 716,000

(*See* OTS Exh. 21 at 24, 22 at 24, 23 at 24 and 24 at 24.)

Thus, while the steps taken by the Bank may have had a modest effect on curtailing expenses, the effort was largely unsuccessful in reducing operating losses and more importantly did nothing to stem the rapid decline in core capital.

With respect to the latter, the Bank asserts that its core capital declined because it relied on and followed the advice of OTS. The evidence shows that in early February 2007, OTS Field Manager Mark Payne met with the Bank's Board ostensibly to review the proposed 2007 Supervisory Agreement and to discuss the OTS' concerns with the Bank's interest rate risk position, which was extremely high. (Tr. 661.) Payne had prepared a spreadsheet showing how interest rate risk would be affected by selling some or all of the Bank's security portfolio of U.S. Agency bonds and investing the proceeds in short-term U.S. Treasury securities. (OTS Exh. 93.) The analysis was based on the value of the securities as of December 31, 2006. (Tr. 669.) According to Payne, he explained to the Board that the values were "time-sensitive," which meant that as interest rates changed over time so would the values, along with the premises and conclusions of his analysis.

Eleven months later, on December 21, 2007, the Bank sold all of its U.S. Agency bonds. The OTS determined that these "held-to-maturity" bonds had to be reclassified as "available-for-sale" in order for the Bank to realize any substantive liquidity from the sale. The reclassification necessitated a large accounting adjustment resulting in a \$150,000 loss, which increased the Bank's operating losses and adversely affected its capital position. (See OTS Exh. 1 at 13.)

The Bank asserts that it interpreted the OTS' recommendations as a "directive" to sell their U.S. Agency bonds. It also asserts that OTS did not explain the downside of the accounting adjustment that was required, even though EIC Jones noted the potential problem during the 2006 examination. (Resp. Exh. 21.) In addition, the Bank argues that OTS did not advise the Board that in lieu of selling these bonds the Bank could have borrowed against a credit line with the Federal Home Loan Bank in order to address liquidity issues. The arguments are unpersuasive for several reasons.

First, the OTS did not recommend any specific action for the Bank's consideration. Rather, the evidence shows that four options were presented for consideration, including "Do Nothing." (OTS Exh. 93.) Next, the fact that the Board waited ten months before taking any action undercuts its argument that it acted on a "directive" from the OTS to sell its bonds. Third, the work paper that the Bank relies upon to argue that OTS knew that the sale of the bonds would adversely affect the Bank's core capital is evidence of the fact that the Bank's Board was advised beforehand of the ramifications of selling the bonds. Indeed, the evidence discloses that the entire content of Jones' working paper (Resp. Exh. 21) is contained word-for-word in the 2006 Examination Report, copies of which were given to the Board and explained to them in the exit meeting less than a year earlier. (See OTS Exh. 5 at 30-31.) Finally, and contrary to the Respondent's assertions, the Board also was advised in the same section of the 2006 Examination Report that credit for liquidity purposes was available to the Bank through the Federal Home Loan Bank. (See OTS Exh. 5 at 31.) Thus, the evidence viewed as a whole shows that the Bank Board knew or should have known about the ramifications of the bond sale and the availability of credit.

Regardless of why the Bank sold its U.S. Agency bonds in December 2007, the fact is that during the 2007 examination period, the Bank's earnings decreased, its operating losses increased, and its capital significantly eroded. Based on all of the evidence, it is more likely, than not, that even if the U.S. Agency bonds had not been sold, earnings would still have decreased, operating losses would still have increased, and capital still would have eroded, albeit perhaps not to the same extent. In other words, the sale of the U.S. Agency bonds simply hastened a downward spiral of losses and capital that began three years earlier. Under these circumstances, I find that the Earnings rating of "5" was warranted.

c. Management – "5"

It is not gainsaid that the Bank's Board of Directors has the ultimate responsibility for the Bank's operational activities and financial condition. This responsibility includes making sure that core capital is adequate, interest rate risk is carefully monitored, the books and records are accurate and accessible, and there is compliance with all laws and regulations, including BSA and consumer protection laws. (Tr. 923.) The evidence discloses that in conducting the 2007 examination, the OTS took a longitudinal view of the Board's efforts to respond to numerous concerns raised in prior examination reports and formal enforcement actions.

The evidence shows that in 2006, continuing through May 2008, the Bank was in a financial tailspin. Operating losses were increasing, core capital was decreasing, yet the Board still had not come up with an effective comprehensive strategic plan for alleviating these problems. A case in point is the Bank's Operational Plan submitted late on June 26, 2007, in response to the 2007 Agreement. The document was woefully inadequate as explained above. It did not meet the detailed requirements of the 2007 Agreement. Without a written comprehensive blueprint to follow, it was inconceivable that the Board would be able to return the Bank to a solid and secure financial standing.

In addition, the evidence shows that the Board failed to provide effective oversight of the day-to-day operations of the Bank. The Bank's books and records were neither complete nor accurate. TFRs were not filed on time.

Finally, since 1991, the OTS has directed the Board to correct specific compliance deficiencies, to develop procedures to ensure compliance, and to provide comprehensive staff training to ensure regulatory compliance. As reflected in the 2007 examination, and as more fully discussed below, the Board also failed to fulfill its responsibility in the compliance area.

At the hearing, and in its post-hearing brief, the Respondent implied that some of the OTS examiners harbored harsh feelings toward the Bank Board and staff which may have influenced the 2007 examination. The evidence viewed as a whole falls short of showing that personal dynamics interfered with or influenced the examination results.

In addition, the Respondent argues that OTS failed to offer technical assistance to the Board in accordance with the OTS Policy on Minority Depository Institutions. (Resp. Exh. 1.) Dr. Bettye Arrington, Board member and Board Secretary, testified that at the June 5, 2008 meeting to review the 2007 Examination Report, she complained to the Regional Director that OTS did not help the Bank. She stated that the Board “asked for help” prior to that time, but did not receive it. (Tr. 1265.) Her testimony regarding prior requests for help was short on specifics. She did not state when the Board asked for help, what type of help was requested, or to whom the request was directed. Although she testified that she also wrote to the OTS asking for help, the Respondent did not submit any documentary evidence to support her testimony. In contrast, the evidence shows that over the years the OTS provided technical assistance to Bank management and staff with respect to preparing PERK data (Tr. 239-241, 247-248); providing copies of regulations and procedures, as well as websites for training (Tr. 514-515, 516); and implementing policies. (Tr. 1069-1070, 1080, 1113.) Thus, I am skeptical of Dr. Arrington’s generalized testimony that the Bank sought, but did not receive technical assistance.

Regardless of when and what type of assistance the Bank received from the OTS, it is the Board of Directors’ responsibility to develop, plan, and implement strategies and procedures to ensure the financial well-being of the Bank and to ensure compliance with regulatory rules and law. Where, as here, the Board fails to fulfill its management responsibilities, it constitutes an unsafe or unsound practice. Based on all of the evidence, I find that the assignment of a component rating of “5” for Management was appropriate.

d. Liquidity – “3”

In the 2006 Examination Report, the Bank’s Liquidity component rating was “2.” There it was concluded that “[l]iquid assets were maintained at sufficient levels throughout the review period in order to meet the cash flow needs of the bank; however, the current balance sheet structure and operating results pose a risk to future liquidity levels.” (OTS Exh. 5 at 30.)

In the 2007 Examination Report, the liquidity component rating was downgraded to “3.” When Field Manager Mark Payne was asked on direct examination why he gave the Bank a Liquidity rating of “3,” he stated:

The bank had acquired new liquidity with the sale of securities. So actually liquidity had improved somewhat during the time from the start of the examination to completion of the examination. Home also has a preponderance of depositors – they had several large depositors so that if those funds would leave the bank, that would cause some concern. And primarily due to that, we – I assigned a liquidity rating of 3.

(Tr. 704.)

The 2007 Examination Report, however, shows that the Bank's liquidity position improved more than "somewhat" because of the sale of the U.S. Agency bonds. The report states that "[t]he liquidity position at Home improved considerably during this extended examination"¹⁰ (Emphasis added.) (OTS Exh. 1 at 28.) It further states that the sale of the bonds "served to greatly increase the level of liquid assets." (Emphasis added.) (OTS Exh. 1 at 28.) Thus, contrary to the impression that Payne sought to foster, the evidence shows that the sale of the securities significantly improved the Bank's liquid position.

Nor does the 2007 Examination Report support Payne's assertion that the OTS was particularly concerned that the Bank's liquidity might be insufficient if one or more large depositors withdrew funds. To the contrary, at page 28 of OTS Exhibit 1, the report states that "[t]he significant increase in liquid assets has lessened concerns with the bank's ability to fund maturing or outgoing deposits." (Emphasis added.) (OTS Exh. 1 at 28.) It also states at page 29 of the exhibit that "[t]he bank's liquidity is presently sufficient to fund a large outflow of deposits."

OTS Enforcement Counsel nevertheless argues at page 38 of its post-hearing brief that the Bank's "rapidly deteriorating capital position severely limits the Bank's access to funding sources should the Bank require liquidity." (Citing, OTS Exh. 1 at 28.) In this connection, it asserts that although the bank's liquidity position is presently sufficient to fund a large outflow of deposits, in the future it may be difficult for the Bank to borrow funds from the Federal Home Loan Bank to shore up liquidity, given the Bank's overall financial condition. On cross-examination, however, Payne did not offer a similarly pessimistic assessment of the Bank's ability to borrow funds, if needed. Rather, he acknowledged that the Bank had a line of credit with the Federal Home Loan Bank, which actually improved its liquidity position. (Tr. 754-755.)

The evidence presented by the OTS, viewed as a whole, shows that the sale of the U.S. Agency bonds greatly improved the Bank's liquidity position; that at the end of the 2007 examination the Bank had sufficient liquidity to fund a large outflow of deposits; that the significant increase in liquid assets had lessened OTS' concerns about the Bank's ability to fund maturing or outgoing deposits; and that even though the Bank had a line of credit with the Federal Home Loan Bank, which further improved its liquidity position, the OTS had some reservations about the Bank's ability to draw upon that credit line if necessary in the future, given its poor capital position. In my view, the evidence as whole shows that the Bank's liquidity position improved since the 2006 examination. The evidence does not show nor has the OTS adequately explained why the Bank's liquidity rating was downgraded from a "2" to a "3."

More importantly, the OTS has not adequately explained why, based on the above findings and conclusions of the 2007 Examination Report, it determined that the Bank engaged in unsafe or unsound practices with regard to liquidity. At the hearing, Assistant Regional Director Phillip Gerbick opined that, based on his position and review of the OTS 2007 Examination Report's findings and conclusions, the Bank engaged in unsafe

¹⁰ The Bank's large depositors were largely unchanged from one year to the next.

or unsound practices with regard to liquidity. (Tr. 921.) That was the sum and substance of his testimony on liquidity. He did not identify the findings and conclusions in the report upon which he relied. Nor did he explain the basis for his opinion, which is contradicted by the evidence as a whole.

The OTS nevertheless argues that a rating of “3” is justified by the Bank’s failure to identify overall funding and liquidity management strategies in its Operational Plan and to file a modified Operational Plan in June 2008 addressing these deficiencies. The argument is not persuasive.

First, there is no evidence that either Payne nor Gerbick relied on these deficiencies in forming their opinions. Second, there is no showing that the Bank’s liquidity position was adversely affected by its failure to present overall funding and liquidity management strategies or by its failure to revise its Liquidity Management Policy. Rather, the evidence shows that the Bank’s liquidity position significantly improved despite the Bank’s failure to correct these deficiencies.

Based on all of the evidence viewed as a whole, I find that the OTS has failed to show that the downgrading of the Liquidity component rating from a “2” to a “3” was warranted or that its determination that the Bank engaged in unsafe or unsound practice was appropriate.

e. Unsafe or unsound practice

Because the Board failed to take adequate measures to correct the deficiencies which gave rise to the less-than-satisfactory component ratings for asset quality, earnings, and management, the OTS’ determination was warranted that the Bank had engaged in an unsafe or unsound practice as provided by Section 8(b)(8) of the FDIA, 12 U.S.C. § 1818(b)(8).

B. Compliance Deficiencies

1. Consumer protection laws and regulations
and the 2007 Agreement

In addition to the detailed requirements pertaining to operational performance and interest rate risk, the 2007 Agreement contained specific provisions to ensure compliance with certain consumer protection laws and regulations, to wit: 12 C.F.R. Part 202 (Regulation B, Implementing the Equal Credit Opportunity Act (“ECOA”)); 12 C.F.R. Part 229 (Regulation CC, Implementing the Expedited Funds Availability Act (“EFAA”)); and 15 U.S.C. § 1681 *et seq.* (Fair Credit Reporting Act). The amended notice alleges that by its acts or omissions the Bank engaged in unsafe or unsound practices in violation of each of these consumer protection laws and regulations, as well as the 2007 Agreement.

a. Regulation B – ECOA - noncompliance

Paragraphs 33 – 36 of the amended notices alleges that the Bank used outdated loan application forms and failed to obtain affirmation of a person’s intent to be a joint applicant in violation of Regulation B. In short, when the OTS examiners reviewed a small sample of loan files for proper documentation, they found that in half of the files the Bank had used outdated loan application forms which did not have a space for a joint applicant’ signature indicating his/her intent to be a joint applicant. The evidence shows that this issue was raised in the 2006 Examination Report and that the Bank sought to rectify the problem by obtaining new loan application forms. For reasons unknown, the Bank staff continued using the old forms, as well as the new forms. The Respondent does not deny that the Bank’s staff continued to use the outdated forms. There is no evidence that all of the old forms were collected and destroyed. By continuing to use the outdated loan application forms, which did not have a separate signature line for a joint application, the Bank violated 12 C.F.R. § 202.7(d) and paragraphs 1(a) of the 2007 Agreement.

b. Fair Credit Reporting Act - nondisclosure

15 U.S.C. § 1681g(g) of the Fair Credit Reporting Act (“FCRA”), as amended, requires a home mortgage lender to make credit score disclosures in writing to all loan applicants, regardless of the outcome of the loan application. The statute contains a prototype “Notice To The Home Loan Applicant” that the lender must provide to the applicant along with the credit score and the key factors affecting the credit score. Paragraph 1(c) of the 2007 Agreement mandates that the Board, Bank management and Bank employees shall take all and necessary actions to comply with this law.

In reviewing the sample of loan files mentioned above, the OTS examiners also noted that none of the loan files contained any documentation confirming that the required credit score disclosures were made to the loan applicants. At the hearing, Bank President Williams testified that the Bank uses a checklist form to make sure that various documents are provided to the loan applicant, including credit scores. (Tr. 1084-1087, 1218.) In support of his testimony, the Respondent put into evidence a blank checklist purportedly used by the Respondent in home loan transactions. (Resp. Exh. 8.)

The testimony and documentation submitted by the Respondent falls short of showing that the Bank complied with the FCRA or the 2007 Agreement. First, Respondent’s Exhibit 8 is a blank copy of the checklist. The Respondent did not submit signed and dated copies of the checklist to show that it was actually being used. Second, the checklist does not contain the disclosure information required by 15 U.S.C. § 1681g(g). Specifically, it does not include (1) the current or most recent credit score of the loan applicant; (2) the range of possible credit score; (3) all of the key factors that adversely affected the credit score; (4) the date on which the credit score was created; and (5) the notice to home loan application contained in the statute. *See* 15 U.S.C. § 1681g(f)

and g(g). Third, the Respondent did not submit any documentary evidence showing the actual notice used by the Bank. Finally, the Respondent does not dispute that the loan files reviewed by the OTS examiners did not contain the proper written notification to the loan applicants.

The un rebutted evidence, therefore, shows that during the 2007 examination at least six loan files reviewed by the OTS examiners did not contain documentation reflecting that the loan applicant received the credit score disclosures required by 15 U.S.C. § 1681g(g). The failure to provide such notification violated the FCRA, as well as paragraph 1(c) of the 2007 Agreement.

c. Improper funds availability disclosures

The Expedited Funds Availability Act (“EFAA”), 15 U.S.C. §§ 4001 *et seq.* and its regulations, 12 C.F.R. Part 229, prohibits banks from placing excessive holds on check funds. The regulations provide “funds availability schedules” for local and non-local checks, as well as limited exceptions to standard regulatory hold periods established therein. In addition, a bank must advise depositors in writing when their funds will be available and keep a record of each notice of withholding. Paragraph 1(b) of the 2007 Agreement mandates that the Board, Bank management and Bank employees shall take all and necessary actions to comply with this law.

During the 2007 examination, Compliance Examiner Janice Balber reviewed six checks associated with “holds” placed during the review period.¹¹ In each instance, the Bank placed a hold on the check in excess of the maximum deposit hold allowed under 12 C.F.R. Part 229. For each of these checks, however, the Respondent submitted in evidence an “Exception Hold Form,” signed by the customer, indicating, among other things, the reason for the longer hold. (Resp. Exhs. 4, 29-32.) It is the Respondent’s position that a customer can agree to have an extended hold placed on his/her account and therefore the Bank was authorized to do so.

The Respondent does not cite any statute, regulation or judicial decision in support of its position. Nor am I aware of any statutory or regulatory exception or judicial decision stating that two parties can agree to ignore the law or regulations, unless of course one party knowingly waives his/her rights under the law. In the instant case, a plain reading of the “Exception Hold Form” shows that the document falls short of establishing a knowing waiver or even an agreement by the customer to extend the maximum hold period. The Bank’s form does not (1) advise the customer of the maximum deposit “hold” allowed by law; (2) state that by signing the document the customer acknowledges that the “hold” exceeds the maximum deposit hold allowed by law; or (3) state that by signing the form the customer agrees to extend the maximum deposit hold period. (*See* Resp. Exh. 4.) Moreover, the Respondent does not argue, nor does the evidence show, that any of these factors are verbally explained to the customer at the time the form is presented for signature.

¹¹ According to the 2007 Examination Report, Balber requested 12 checks, but the Bank could provide only six because of an equipment failure. (OTS Exh. 1 at 40.)

In addition, there is no evidence that the customer has the option to decline to agree to a longer hold period, which further undercuts the Respondent's argument that by signing the form the customer voluntarily authorizes the Bank to impose a hold greater than that allowed by the regulations. To be sure, when Bank President Williams was asked on direct examination whether a longer hold would be imposed if the customer did not agree, he evaded the question.

Q. If the customer doesn't agree, then do you hold it for a longer period of time?

A. If the customer does not agree, let's say for a deposit of \$680, since I've been there I don't recall a customer disagreeing, because we very seldom use this. We probably used this probably, probably four times in 2007.

(Tr. 1101.)

One might think that the Bank's President could answer this "Yes or No" question based on Bank policy alone. His inability or unwillingness to do so draws into question whether the act of signing the form is an action "required" of the customer in order to process the check, rather than a "voluntary" action by the customer authorizing the Bank to impose a longer hold.

A more plausible explanation for the form itself, and the customer's signature, is to record compliance with the notice and disclosure requirements contained in 12 C.F.R. §§ 229.13(g), 229.15(a) and 229.16. Specifically, § 229.21(g) requires the Bank to retain evidence of compliance with these provisions, as well as the exceptions relied upon under § 229.13(a)-(e).

In this connection, Bank President Williams testified that during the 2006 examination, Balber suggested that he augment the Bank's hold-form to list all of the exceptions relied upon by the Bank. (Tr. 1106.) He stated that he followed her advice and created a longer form. (Resp. Exh. 4.) Ironically, one of the forms submitted into evidence by the Respondent at the end of the hearing was a copy of the much shorter "old" form, with a date of "12-22-06." The evidence therefore shows that even though a new longer form was being used, not all of the old forms were removed and destroyed, and more significantly, the Bank staff was still using the old forms long after the 2006 Examination Report was issued.

Other evidence likewise reflects a lack of understanding, knowledge and training of the Bank's staff concerning the limitations on the durations of allowable holds, as well as the regulations in general. For example, Respondent's Exhibit. 4 depicts a 15 business day hold placed on a \$9,680.00 check by the Bank under the "reasonable cause to doubt collectibility" exception, i.e., § 229.13(e), because it was a "Canadian Check." The un rebutted testimony of the Compliance Examiner Balber, however, was that the check

was drawn on an account of a Canadian Company at a local domestic bank. (Tr. 492.) In other words, it was a “local” check not a check drawn on an account at a Canadian bank. Therefore, there was no justification for a 15 business day hold. Rather, full withdrawal of the funds should have been allowed on the second business day.

The evidence shows that similar excessive holds were placed on the other checks reviewed by Balber. (Resp. Exhs. 29-32.) When Bank President Williams was given the opportunity on direct examination to explain the circumstances surrounding each of these holds, he speculated about the underlying reason for the hold. (Tr. 1103-1110.) Without seeing the actual checks or the actual Exception Hold Forms, Bank President Williams expressed difficulty in explaining why the “holds” were placed. Respondent counsel was therefore allowed an accommodation of the recalling Williams after rebuttal to present checks and explain the holds placed on them, but even then he did not elaborate on the reasons for the holds. (Tr. 1543-1556.)

For all of these reasons, I am unpersuaded that the Exception Hold Form itself represents a customer’s voluntary agreement, or that it authorized the Bank to place a hold on a check for longer than required by law.

Finally, in response to Balber’s assertion that staff training in this particular area and others has been insufficient, the evidence shows that the Bank employees can access on-site computerized training programs called “Digital University.” (Resp. Exh. 5 and 14.) While the evidence shows that this computer training is available and that at least two staff members have completed a course online, the Respondent did not submit the complete training records of its managers and staff showing with specificity the dates and names of compliance courses taken by other employees. Absent such evidence, I am unconvinced that the Bank’s managers and staff have fully availed themselves of the training opportunities offered by the Bank.

For all of these reasons, I find that the Bank violated the EFAA, its implementing regulations, 12 C.F.R. Part 229, and paragraph 1(b) of the 2007 Agreement by placing longer than required holds on customers checks and by failing to train its employees on EFAA compliance.

2. Noncompliance with Bank Secrecy Act requirements, and the 2004 Order

Paragraphs 19 – 20 of the amended notice allege that the Bank failed to comply with eight specifically identified aspects of Bank Secrecy Act (“BSA”) laws and regulations in violation of the 2004 Order, and as more specifically alleged in paragraph 9 of the amended notice. The OTS asserts that the following acts and omissions taken as a whole constitute an unsafe or unsound practice for which a cease and desist order should be issued.

a. Failure to monitor currency transactions

12 C.F.R. § 563.177 (c) requires the Bank to develop and maintain a Bank Secrecy Act (“BSA”) compliance program consisting of reports, procedures and oversight by the Bank Board and management in order to effectively monitor transactions for unusual or suspicious activity (e.g., money laundering, tax evasion, mortgage fraud, etc.) Paragraph 1 of the 2004 Order mandates that Bank comply with this cease and desist order.

Compliance Examiner Balber testified that her review disclosed that the Bank was not reviewing a report needed to monitor customers’ cash activity. (Tr. 457-458.) She explained that the reports that the Bank was reviewing did not capture all of the deposit and withdrawal activity necessary to discern suspicious activity. Balber stated that she showed Bank President Williams the report that the Bank should have been using. (Tr. 459.)

Williams did not deny that the Bank had been using the wrong reports. Instead, he testified that the new computer system generated a number of reports, including the one that Balber brought to his attention. He further stated that he used all of these reports to identify suspicious activity. (Tr. 1122.) Williams did not testify that he explained to Balber that he had been using the correct form in addition to the other forms and he did not explain at the hearing why he failed to make this important point to Balber when he had the opportunity to do so. His testimony is dubious. I therefore credit Balber’s version of the occurrence as further depicted in the 2007 Examination Report. (OTS Exh. 1 at 37.) Accordingly, I find that the evidence shows that the Bank failed to monitor properly its cash transactions for suspicious activity in violation of 12 C.F.R. § 563.177(c) and paragraph 1 of the 2004 Order.

b. Failure to file timely SARs

12 C.F.R. § 563.180(d) requires the Bank to file a SAR when it detects a known or suspected violation of federal law, suspected money laundering transaction, or violation of BSA. Balber referenced three examples in which the Bank failed to file SARs, all three of which she discussed with Bank President Williams during the course of the examination. (Tr. 536-537.) The first involved a customer who repeatedly made deposits of approximately \$9000. (Tr. 537.) Balber testified that these particular deposits were made between May through August 2007, when the Bank was not monitoring suspicious activity. She stated that she discussed the situation with Bank President Williams, who agreed with her that a SAR should have been filed.

Williams did not dispute Balber’s recollection of the facts. Rather, he stated that a long time customer was involved, which is probably why suspicion was not aroused. (Tr. 1118.) As Balber testified, “[i]t doesn’t matter if he’d been a loyal 25-year customer. If you’re conducting --- if you’re structuring transactions, the bank has to file a SAR.” (Tr. 541.)

The second incident involved a series of \$5000 cash deposits made by a customer instead of one \$25,000 deposit which would have required the filing of a cash transaction report. Balber testified that she read about the incident in the Board's minutes, but could not find a copy of a SAR.

Williams testified that he reported the incident to the Board's audit committee and also filed a SAR. (Tr. 1115-1116.) He also testified that he provided a copy of the SAR to Balber. (Tr. 1116.) His testimony regarding this occurrence is corroborated by the 2007 Examination Report. (OTS Exh. 1 at 34.) I credit his testimony that he filed the report on a timely basis.

The third incident referenced by Balber involved another long time customer who was taking large amounts of cash under \$9000 from his businesses and depositing them into a personal account. Although Williams eventually filed a SAR at Balber's suggestion, he testified that because a long time customer was involved it was not readily apparent that a SAR should be filed. (Tr. 1120-1122.) The evidence therefore discloses that the Bank did not file a timely SAR in this instance.

Based on the evidence concerning the first and third incidents described above, I find that the Bank failed to identify suspicious activities and failed to file SARs in violation of 12 C.F.R. § 563.180(d)(3)(iv)(B).

c. Missing Customer Identification Documentation

12 C.F.R. § 563.177(b)(2) requires a bank to implement a customer identification program ("CIP") as part of its BSA compliance program. OTS Enforcement Counsel asserts that during the 2007 examination customer identification information was missing from eight deposit account files and five loan account files that were reviewed by the examiners. It further asserts that these omissions violate the Bank's own customer identification policy, as well as regulatory law.

Compliance Examiner Balber testified that as reported to her by another examiner, Edwin DeBerry, the required documentation was not where it was supposed to be, and because of time constraints and the condition of the Bank's records, a manual search was not feasible. (Tr. 459-461.) In light of the latter, however, she determined that the Bank was in violation of its own CIP policy, but stopped short of citing the Bank for any other BSA violation. (Tr. 566-570.)

In his testimony, Bank President Williams explained the normal procedures followed by the Bank for recording customer identification information. He testified, however, that he did not know the circumstances surrounding the customer accounts that were reviewed by the examiner. (Tr. 1129, 1210-1214.) He therefore was not in a position to rebut Balber's testimony. Based on this evidence, I find specifically that the Bank failed to comply with its own CIP policy, as well as 12 C.F.R. § 563.177(b)(2).

d. Inadequate Independent Review of BSA Compliance

12 C.F.R § 563.177(c)(2) and paragraph 2(b) of the 2004 Order require the Board to “maintain documentation of independent testing [i.e. review] of the Bank’s compliance with all BSA Laws and Regulations.” (OTS Exh. 4 at 8.) The un rebutted evidence shows that in prior examinations the OTS expressed concern about the inadequacy of documentation reflecting internal BSA audits. (OTS Exh. 5 at 23 and 37; OTS Exh. 1 at 37.) That notwithstanding, the evidence discloses that the minutes of the Bank’s Audit Committee meetings reviewed during the 2007 examination were limited in scope and detail. The minutes therefore did not satisfy the requirements of 12 C.F.R § 563.177(c)(2) or paragraph 2(b) of the 2004 Order.

The evidence also shows that Bank President Williams is the designated BSA Officer, which the OTS concedes is not unusual for a small bank, like Home FSB, that cannot afford to retain an outside independent BSA Officer. The designation of the Bank’s President, nevertheless, gives rise to a heightened concern about the “independence” of the BSA review process. In this connection, the minutes of the audit committee show that Bank President Williams was present at the audit committee meetings, which raises additional concerns. Williams testified that he is present at the beginning and end of the meetings to provide information to the audit committee and to receive follow-up instructions from them. (Tr. 1207-1208.) He further testified that he was not present nor did he participate in review process. I credit his un rebutted testimony on this point.

Accordingly, I find that by failing to improve the documentation of its compliance audit review the Bank violated paragraph 2(b) of the 2004 Order and 12 C.F.R § 563.177(c)(2).

e. Inadequate BSA training

Paragraph 19(h) of the amended notice alleges that the Bank failed to “develop, implement, document, and ensure adherence to a comprehensive training program,” which was mandated by paragraph 3 of the 2004 Order. The un rebutted evidence shows that during the 2007 examination, documentation reflecting a comprehensive training program was requested, but none was provided. At the hearing, however, Bank President Williams testified that the Bank utilizes a computerized “Digital University” training system and the Respondent submitted documentation to corroborate the assertion. (Resp. Exhs. 5 and 14; Jt. Exh. 2.)¹² Williams did not deny that training documentation was not provided during the 2007 examination nor did he explain why.

Significantly, the documentation, all which was provided for the first time at the hearing, falls short of showing that the Bank developed, implemented, and maintained a comprehensive training program. For example, although Joint Exhibit 2 at 1 shows that all of the Bank’s management and staff were “scheduled” for BSA and OFAC training in

¹² It should be noted that Resp. Exh. 14 at 2 specifically was not offered nor admitted into evidence. (Tr. 1097.)

August 2007, Joint Exhibit 2 at 2 shows that only four out of a total of 11 employees actually “completed” BSA training and only one out of 11 employees completed OFAC training. In other words, the Respondent’s own evidence shows that the training was “incomplete,” and was not comprehensive.

Based on all of this evidence, I find that the Respondent failed to comply with paragraph 3 of the 2004 Order.¹³

f. Missing and untimely §314(a) requests

The Federal Crimes Enforcement Network (“FinCEN”), a bureau of the U.S. Treasury Department, gathers information requests from law enforcement agencies concerning the financial activity of certain persons under investigation for money laundering or terrorist activity. Section 314(a) of the USA Patriot Act of 2001 provides for the sharing of this information among government entities and financial associations in order to combat terrorism and money laundering. Every two weeks FinCEN distributes to banks a list of names of individuals under investigation in connection with terrorism or money laundry, which the banks must cross-check against their customer accounts or records. If a bank has an account on record for a customer on the 314(a) list, it must report this fact back to FinCEN within 14 days.

Paragraph 2(a) of the 2004 Order requires the Bank to develop, implement and maintain a system to ensure compliance with § 314 (a) requests. The un rebutted testimonial and documentary evidence shows that during the 2007 examination, two § 314(a) requests were missing from the Bank’s files, and three requests were responded to late. (Tr. 461-463; 570-571; OTS Exh. 62.) Bank President Williams did not dispute this evidence. Rather, he elaborated on what the Bank’s policy is and what typically occurs with these requests.

Based on the evidence viewed as a whole, I find that by failing to respond to certain §314(a) requests by FinCEN the Bank failed to comply with the paragraph 2(a) of the 2004 Order.

g. OFAC internal controls

Paragraph 2(a) of the 2004 Order also requires the Bank Board to ensure that there is a system in place to verify that all customer records are reviewed against the Office of Foreign Assets Control (“OFAC”) list of specifically designated nationals to make sure they cannot conduct financial transactions. Compliance Examiner Balber testified that the Bank had inadequate internal controls to prevent transactions from being conducted by anyone on the list. She explained that small banks are required to conduct a search of the OFAC list on at least a quarterly basis. The Bank did not document that

¹³ Although OTS Enforcement Counsel argues that the Respondent also violated 12 C.F.R. § 563.177(c)(4) which requires a bank to “provide training for appropriate personnel,” I decline to find a violation. Rather, the evidence shows that the Bank did provide training: albeit the training was incomplete and not comprehensive.

such a search was conducted during the examination period. (Tr. 467-469.) When she brought this deficiency to the attention of Bank President Williams, the Bank conducted a search after the fact on August 22, 2007.

Bank President Williams testified that the Balber did not bring the problem to his attention. (Tr. 1123.) He stated that the OFAC search records were so voluminous that the Bank kept them in a separate binder, which the OTS never asked to see. (Tr. 1123-1124, 1216-1217.) He further stated that if Balber had asked him about the OFAC search records, he would have shown them to her. Williams' testimony on this point is unconvincing. First, it defies common sense that the Bank would not make the OFAC records available, if they existed, without being asked to do so, given the pending formal Order. Second, the Respondent did not proffer a copy of its OFAC binder or any pages of the binder to corroborate Williams' testimony that such records actually were kept during the pendency of the 2007 examination. I therefore do not credit his testimony on this point.

In addition, Balber testified that her review disclosed that with respect to wire transfers the Bank was relying on correspondent banks to complete the OFAC checks. Williams denied that other banks were doing OFAC checks for Home FSB. (Tr. 1214-1216.) He stated that the Bank conducts its own OFAC search on wire transfers, but again the Respondent did not submit any documentation to corroborate his testimony. I therefore credit Balber's testimony on this point.

For these reasons, I find that by failing to maintain a system of OFAC checks and by relying on correspondent banks to conduct OFAC checks on wire transfers the Bank violated paragraph 2(a) of the 2004 Order.

3. Unsafe or unsound compliance practices

Based on the totality of circumstances, as reflected in III (B) (1) (a)-(c) and (2)(a)-(g) above, the evidence viewed as whole shows that Home FSB, its Board, Bank management, and Bank staff, engaged in unsafe or unsound practices by failing to identify, correct and ensure compliance, including effective training and policies, with the ECOA, FCRA, and EFAA, and their implementing regulations and by failing to maintain adequate BSA oversight, recordkeeping, internal control, training, and compliance.

Conclusions of Law

1. Home FSB is, and at all relevant times has been a "savings association" (as defined by 12 U.S.C. §§ 1462(4) and 12813(b)) and an "insured depository institution" (as defined by 12 U.S.C. § 1813(c)(1)).
2. Pursuant to Sections 4 and 5 of the Home Owners Loan Act ("HOLA"), 12 U.S.C. §1463 and 1464, Home FSB is subject to examination, supervision, and regulation by OTS.

3. OTS is the “appropriate Federal banking agency” to initiate cease and desist proceedings against Home pursuant to 12 U.S.C. § 1818(b).
4. As a federally chartered, mutually organized savings association, Home FSB must comply with Equal Credit Opportunity Act (“ECOA”), the Fair Credit Reporting Act (“FCRA”), the Expedited Funds Availability Act (“EFAA”), and regulations implementing these statutes. 15 U.S.C. § 1691(a)(1); 12 C.F.R. §§202.1(a); 202.2(1) and 202.16; 15 U.S.C. 1681g(g); 15 U.S.C. §4001 and 4009; 12 C.F.R. §§ 229.1(a); 229.2(e)(6) and 229.3.
5. OTS is authorized to examine for and enforce compliance with ECOA, the FCRA and EFAA by savings associations using its enforcement authority of Section 8 of the FDIA, 12 U.S.C. § 1818. 15 U.S.C. §§ 1691-1691f and 12 C.F.R. § 202.16; 15 U.S.C. § 1681g(g); 12 U.S.C. §4009 and 12 C.F.R. § 202.16; 15 U.S.C. §1681f(a); 12 U.S.C. §4009 and 12 C.F.R. § 229.3.
6. OTS is also authorized to take enforcement action, including the issuance of a cease and desist order, if an association is violating, has violated, or the OTS has reason to believe that association is about to violate a law, rule or regulation, or such association has engaged in a past or ongoing violation “of any written agreement entered into with the agency.” 12 U.S.C. § 1818(b).
7. Home FSB’s failure to maintain complete and accurate records, and to have its records available to enable OTS to conduct its 2007 Examination is a violation of 12 C.F.R. § 563.170(c).
8. Home FSB violated the Temporary Order by failing to have complete and accurate books and records within 50 days of the effective date of the Order and by failing to maintain written documentation of any corrections or reconciliations of its books and records for regulatory review.
9. Home FSB’s failure to maintain complete and accurate books and records is an unsafe or unsound practice.
10. Home FSB’s untimely submission of TFRs to OTS violated 12 U.S.C. §§ 1464(v) and 1817(a)(3), and 12 C.F.R. § 563.180(a).
11. Home FSB’s untimely submission of TFRs to OTS is an unsafe or unsound practice.
12. Home FSB violated the 2007 Supervisory Agreement by failing to comply with the following requirements: submit a revised Operational and Capital Plan to the OTS by the deadline; develop a revised Operational and Capital Plan that met the specified requirements; and implement the plan in the manner required.

13. Home FSB's failure to take adequate measures to improve earnings and effectively eliminate or reduce operating expenses in order to improve its deteriorating capital position constituted an unsafe or unsound practice.
14. Home FSB violated 12 C.F.R. § 563.176(b) by allowing its IRR to exceed the Moderate Risk category during the examination period contrary to its own policy.
15. Home FSB violated 12 C.F.R. § 563.176(c) and (d) because its Board failed to receive periodic reports on IRR, failed to review the bank's operations quarterly with regard to IRR, and failed to make appropriate adjustments to the Bank's IRR policy.
16. Home FSB violated the 2007 Supervisory Agreement by failing to review and revise its IRR policy; by failing to develop an IRR Management Plan; by failing to ensure that the IRR Policy and IRR Management Plan were implemented; by failing to have its management submit Quarterly IRR Review Reports to its Board within 80 days of the end of each quarter; by failing to ensure that the Board's review of the report and actions taken as a result of reports are documented in the minutes of the Board meeting; and by failing to submit a copy of the Quarterly IRR Review Report and the minutes of the Board meeting to the Regional Director within 20 days of the meetings.
17. Home FSB's failure to adequately manage its IRR is an unsafe or unsound practice.
18. Home FSB's failure to take adequate measures by June 20, 2008, to correct the deficiencies underlying the less-than-satisfactory ratings it received for asset quality, management, and earnings in the 2007 Report of Examination warranted the OTS' determination that Home FSB had engaged in an unsafe or unsound practice as provided by 12 U.S.C. § 1818(b)(8).
19. Home FSB violated 12 C.F.R. § 202.7(d) and ¶1(a) of the 2007 Supervisory Agreement by failing to obtain evidence from mortgage loan applicants of their intent, at the time of application, to be a joint applicant.
20. Home FSB violated the Fair Credit Reporting Act, as amended by the Fair and Accurate Credit Transactions Act, 15 U.S.C. § 1681g(g), and violated ¶1(c) of the 2007 Supervisory Agreement, by failing to make disclosures, or retain records of any disclosures that Home FSB made, to mortgage loan applicants of the credit scores relied on by Home FSB in the application and of credit score-related information as required by law.
21. Home FSB violated EFAA, and its implementing regulations, and 12 C.F.R. §§ 229.10(c)(1)l 229.12(b); 229.13(b); 229.119(f) and ¶1(b) of the 2007 Agreement by failing to make available, within prescribed regulatory time limits, funds

deposited by customers, and by failing to provide EFAA compliance procedures or to train Home FSB employees for EFAA compliance.

22. Home FSB violated ¶¶13(b)(c)(d)(e) and (g) of the 2007 Supervisory Agreement by failing to maintain a compliance program designed to ensure compliance with ECOA and its regulations, the Fair Credit Reporting act and the EFAA and its regulations, including the failure to (i) provide for or keep records of the scope and findings of internal or external reviews, transactional testing and correctional action, (ii) failing to provide effective Board oversight, and (iii) failing to provide procedures to promptly amend the compliance program to address changes in these laws or regulations.
23. The failure by Home FSB, its Board, Bank management, and employees to identify, correct and ensure compliance with ECOA, the Fair Credit Reporting Act, and EFAA and their implementing regulations, including the failure to have effective training and policies, procedures, oversight, recordkeeping, and other internal controls constituted unsafe or unsound banking practices by Home FSB.
24. Home FSB violated 12 C.F.R. §563.180(d)(3)(iv)(B) by failing to identify suspicious activities and file SARs as required in instances where facts and circumstances indicated (i) possible structuring by a customer to evade BSA regulations, and (ii) possible tax evasion by a Home FSB customer.
25. Home FSB violated 12 C.F.R. § 563.177(c)(1) and ¶1 of the 2004 Order by failing to have a system of internal controls, including reports, training and oversight, to adequately and consistently monitor currency transactions conducted through Home FSB for structuring and other unusual or suspicious activity.
26. Home FSB violated 12 C.F.R. § 563.177(b)(2) by failing to adhere to its own customer identification program with respect to new customer accounts and loans.
27. Home FSB violated 12 C.F.R. §563.177(c)(2) and ¶2(b) of the 2004 Order by failing to conduct independent reviews of Home FSB's compliance with BSA requirements.
28. Home FSB violated ¶3 of the 2004 Order by failing to implement and to maintain adequate records to reflect the scope, attendance, frequency and adequacy of a comprehensive BSA training program for appropriate Bank personnel.
29. Home FSB violated ¶2(a) of the 2004 BSA Order by failing to respond to certain Section 314(a) information sharing requests by FinCEN, to Home FSB pursuant to 31 C.F.R. §103.122, within required time frames.
30. Home FSB violated ¶2(a) of the 2004 Order by: (1) failing to maintain a system, including oversight, training, and recordkeeping, to assure independent and timely OFAC checks by Home FSB as required by 31 C.F.R. §§ 501.601-606 and 505,

relying instead on correspondent banks to conduct OFAC checks on incoming wire transfers of funds rather than conducting such checks itself; and (2) failing to complete certain OFAC checks in a timely manner.

31. Home FSB engaged in unsafe or unsound banking practices by its failure to have an adequate BSA compliance program, consistent with the evidence adduced at hearing and the findings of the 2007 Examination Report, including repeated violations of BSA regulations, and other deficiencies in BSA oversight, recordkeeping, and internal control and training.
32. Home FSB's failure to establish and maintain procedures reasonably designed to assure and monitor its compliance with the BSA and its implementing regulations warranted the issuance of a cease and desist order by OTS. 12 U.S.C. §§ 1818(b) and (c).
33. Home FSB's violations of final and effective enforcement actions, as well as engaging in unsafe or unsound practices in conducting formal enforcement actions, as well as engaging in unsafe or unsound practices in conducting the affairs of the Bank, provides a statutory basis for the OTS to issue Orders to Cease and Desist. 12 U.S.C. § 1818(b).

Recommended Order

Pursuant to the provisions of section 8 (b), and more specifically 8(b)(6) and (7), of the Federal Deposit Insurance Act, 12 U.S.C. §§ 1818(b) and 1818(b)(6) and (7), the undersigned recommends that the proposed order, attached hereto as Appendix "B," be issued to Home FSB to cease and desist from the violations and unsafe or unsound practices as determined above and as delineated therein, and to take affirmative corrective action within the limitations imposed in the proposed order.

SO ORDERED.

Dated: August 28, 2009



C. Richard Miserendino
Administrative Law Judge

Appendix A

FINDINGS OF FACT

1. Home Federal Savings Bank, OTS Docket No. 05171, is, and at all relevant times, has been a mutual form federal savings bank with a charter issued under the Home Owners' Loan Act ("HOLA"), 12 U.S.C. §§ 1461 *et seq.* (Jt. Stip. 1).
2. Home FSB maintains its home office in Detroit, Michigan. (Jt. Stip. 1).
3. Among other banking services, Home FSB accepts deposits, and such deposits are insured by the Federal Deposit Insurance Corporation (FDIC). 12 U.S.C. §§ 1811 *et. seq.* (Jt. Stip. 1).
4. Home FSB is, and at all relevant times has been a "savings association" (as defined by 12 U.S.C. §§ 1462(4) and 1813(b)) and an "insured depository institution" (as defined by 12 U.S.C. 1813(c)(1)). (Stip 1).
5. Pursuant to Sections 4 and 5 of HOLA, 12 U.S.C. § 1463 and 1464, Home FSB is, and at all relevant times has been, subject to examination, supervision, and regulation by the Office of Thrift Supervision (OTS), (Jt. Stip. 2).
6. OTS is the "appropriate Federal banking agency" to initiate cease and desist proceedings against Home FSB pursuant to 12 U.S.C. § 1818(b). 12 U.S.C. §§ 1813(q)(4) and 1464(d)(1). (Jt. Stip. 3).
7. Home FSB is currently subject to a Consent Order to Cease and Desist for Affirmative Relief, Order No. ATL-2004-20, dated July 16, 2004 (2004 Order) that requires Home FSB to comply with certain laws and regulations, including the Bank Secrecy Act (BSA), and regulations issued thereunder by the U.S. Department of the Treasury (Treasury), 31 C.F.R. §§ 103.11 *et. seq.*, and the OTS, 12 C.F.R. § 563.177, and requires Home FSB to establish an effective Anti-Money Laundering/BSA Compliance Program, including: (a) establishment of a system for the effective review by Home FSB of its customer records against the Office of Foreign Assets Control (OFAC) list of specifically designated nationals and Treasury's list pursuant to Section 314(a) of the USA PATRIOT Act amendments to the BSA; (b) documentation by Home FSB of independent testing of BSA compliance; and (c) development of comprehensive training for appropriate operational and supervisory personnel. (Jt. Stip. 6; OTS Exh. 4 at 1).
8. Home FSB is also currently subject to a Supervisory Agreement with OTS dated April 23, 2007 (2007 Agreement) that incorporates and supersedes substantial portions of a 1991 Supervisory Agreement and the 2001 Supervisory Agreement, simplifying the requirements placed on Home FSB. The 2007 Agreement contains requirements addressing the areas of operational and capital planning and strategy; interest rate risk (IRR) policy, monitoring and compliance with Thrift

- Bulletin 13a; earnings; funding and liquidity management; operating expenses; lending; and compliance with certain laws and regulations, including the Equal Credit Opportunity Act, the Expedited Funds Availability Act, the Fair Credit Reporting Act, and the Bank Secrecy Act. (Jt. Stip. 7; OTS Exh. 2 at 1-10; Tr. 871:3-872:18 (Gerbick).)
9. Home FSB is also subject to a Temporary Cease and Desist Order issued on October 9, 2007 by OTS (Temporary Order). (Jt. Stip. 9; OTS Exh. 3 at 1-3.)
 10. The 2007 Agreement requires Home FSB to develop and implement a revised Operational and Capital Plan to address its problems with high operating costs, poor earnings, and declining capital. (Jt. Stip. 10; OTS Exh. 2 at 3-4.)
 11. Under the 2007 Agreement, Home FSB is required to adopt a new budget; develop detailed strategies to address its earnings problems with timetables for implementation; provide loan volume projections; identify its sources of liquidity and funding; perform a thorough review of staffing and compensation and identify specific expenses to be reduced or eliminated, provide specific support for additional fees or other projected income; and provide alternative action plans if Home FSB's projections were not achieved. (Jt. Stip. 7, 10; OTS Exh. 2 at 3, ¶6a-h; Tr. 715:20-716:6 (Payne).)
 12. The 2007 Agreement also required Home FSB's Board of Directors to closely monitor the Bank's performance in implementing the Operational and Capital Plan. Home FSB's Board was required to conduct "at least" quarterly reviews of the Bank's compliance with the Plan. Home FSB also was required to maintain records of its compliance with the Plan, including explanations of significant variances from its quarterly projections. In addition, Home FSB's Board was required to submit documentation of its review of the Bank's compliance with the Plan to OTS. (OTS Exh. 2 at 4, ¶8; Tr. 154:2-8 (Jones), 716:2-6 (Payne).)
 13. Home FSB failed to develop and implement a revised Operational and Capital Plan that complied with the 2007 Agreement. (OTS Exh. 1 at 12-14, 20-26; and 52-53.)
 14. The Operational and Capital Plan that Home FSB submitted to OTS provided no strategy at all in some areas, and in other areas, provided insufficient detail to be meaningful. (OTS Exh. 2 at 3, ¶6; Resp. Exh. 15 at 1-2; Tr. 717:8 – 721:3 (Payne).)
 15. Home FSB provided no documentation to the OTS that it had performed the quarterly reviews of the implementation of its Operational and Capital Plan, as was required by the 2007 Agreement. (Tr. 157:7-160:1 (Jones); OTS Exh. 1 at 53.)

16. Since July 16, 2004, Home FSB has been subject to the 2004 Order, which included requirements to ensure that Home FSB comply with the Bank Secrecy Act (BSA) reporting, recordkeeping, independent testing, and training. (Jt. Stip. 6; OTS Exh. 4 at 7-10; Tr. 871:3-871:20 (Gerbick).)
17. Since April 23, 2007, Home FSB has been subject to the provisions of the 2007 Agreement. (Jt. Stip. 7; OTS Exh. 2 at 1-10.)
18. The BSA and consumer protection portion of the OTS 2007 Examination (Compliance) was led by Janice Balber, Federal Compliance Regulator (FCR), an accredited, certified and experienced Level III Compliance Examiner in OTS's Central Region. (Tr. 444:12-447:19 (Balber) and Tr. 133:9-134:17 (Jones).) Compliance Examiner Balber also led the compliance portion of the 2006 Examination of Home FSB. OTS Exh. 5 at 6; Tr.. 481 (Balber).
19. The review period for the Compliance portion of the 2007 Examination covered a 15-month period ending June 30, 2007. (OTS 1 at 8; OTS Exh. 5 at 6; Tr. 444-447; 481:3-13 and 508:2-09 (Balber); Tr. 1080:15-18 (Williams).)
20. As reflected and highlighted in the 2006 Examination Report, the 2007 Examination Report, and the 2004 BSA Order, OTS raised BSA and OFAC matters of regulatory concern to Home FSB's president and Board prior to the commencement of the 2007 Examination. (OTS Exh. 1 at 8, 37, 39; OTS Exh. 5 at 6, 37, 38; OTS Exh. 4 at 3, 7, 8; Tr. 1080:15-18 (Williams).)
21. As part of the 2007 Examination, OTS evaluated Home FSB's implementation, documentation and adherence to (a) BSA customer identification procedure (CIP) requirements and other core regulatory requirements for BSA Compliance Programs, (b) a system of internal controls, independent testing or review, (c) designation of a BSA officer, and (d) BSA training for appropriate personnel. (OTS Exh.1 at 36-39; Tr. 450-451; and 529-530 Balber.)
22. As part of the 2007 Examination, OTS also evaluated Home FSB's compliance with OTS regulations concerning suspicious activity reporting (SAR) regulations, 12 C.F.R. § 563.180. (OTS Exh. 1 at 37-38; Tr. 454:1-459:9 (Balber).)
23. As part of the 2007 Examination, OTS evaluated Home FSB's compliance with requirements of the 2004 Order during the 2007 Examination, including those pertaining to compliance with timely and independent checks of the Bank's customer base against the current OFAC List of specially designated nationals and timely searches and responses by the Bank to periodic Section 314a requests by Treasury. (OTS Exh. 1 at 57-58; Tr. 470:19-472:19 (Balber).)
24. Based on the 2007 Examination, OTS concluded that Home FSB:

- a. Failed to adequately monitor currency transactions as evidenced by Home FSB's failure to have or follow internal controls designed to detect certain unusual or suspicious currency transactions conducted through Home FSB, including failure to review appropriate and comprehensive reports on currency transactions (OTS Exh. 1 at 37-38; (Tr. 457-459 (Balber)));
- b. Failed to file SARs when facts available to Home FSB indicated possible structuring of transactions to evade BSA currency transaction reports (CTRs) by at least one Home FSB customer and possible tax evasion by another Home FSB customer (OTS Exh. 1 at 37-38);
- c. Failed to maintain a system of internal controls, including Board oversight and recordkeeping, to ensure Home FSB's ongoing compliance with Treasury and OTS regulations implementing the BSA, as evidenced by Home FSB's failure to obtain or maintain documentation (records) of:
 - i. New customer deposit accounts and loans to ensure Home FSB's compliance with customer identification procedures (CIP) requirements (OTS Exh. 1 at 38; Tr. 460:7-461:9 (Balber)); and
 - ii. The scope, findings and independence of the independent testing (review) by the Audit Committee of Home FSB's Board of Directors to ascertain Home FSB's compliance with BSA and related Treasury and OTS regulations (Tr. 457:16-461:9 and 472:1-19 (Balber));
- d. Failed to conduct independent tests or reviews of Home FSB's compliance with the BSA. However, contrary to the OTS' assertions the credited evidence shows that Home FSB's President and designated BSA Officer, Thomas Williams, did not participate in the review process nor was he present during that portion of the meeting. Rather, he was present at the beginning and end of the meeting to provide the Board with information and to receive orders from them after they had deliberated and decided a course of action. (OTS Exh. 1 at 37; Tr. 451-453; 472:1-19; 531:4-534:22 (Balber); (Tr. 1207-1208 (Williams)));
- e. Failed to implement, adhere to and maintain adequate records to reflect the scope, attendance, frequency and adequacy of a comprehensive BSA training program for appropriate personnel. (OTS Exh. 1 at 58; Tr. 477:14-479:8 and 514:8-516:16 (Balber));
- f. Failed to respond to at least three Section 314(a) requests by Financial Crimes Enforcement Network (FinCEN) (two in January 2007 and one in February 2007); failed to record the dates of Home FSB's responses to at least two FinCEN Section 314(a) requests (April 10, 2007 and April 27, 2007); and failed to maintain complete records in connection with

FinCEN's May 8, 2007 Section 314(a) request (OTS Exh. 1 at 38-39; OTS Exh. 62 at 1; Tr. 461:10-463:9 (Balber));

- g. Failed to maintain a system to assure independent and timely OFAC checks, as evidenced by (i) Home FSB's reliance on correspondent banks to conduct OFAC checks on incoming wire transfers of funds rather than conducting such checks itself, and (ii) Home FSB's failure to complete OFAC checks on all customer records, and, in a timely manner, to ascertain whether an individual or entity was subject to OFC sanctions. (OTS Exh. 1 at 39, 57-58; Tr. 466:3 – 469:10 and 579:2-580:7 (Balber)); and
- h. By virtue of the violations cited above, and with the exception noted, failed to comply with the requirement of the 2004 Order. (OTS Exh. 1 at 57-58.)

- 25. At the conclusion of the 2007 Examination, OTS assigned Home FSB a Compliance rating of "5." (OTS Exh. 1 at 6, and 64.)
- 26. The findings, conclusions and assigned ratings contained in the 2007 Examination Report, including those concerning the Compliance portion of the 2007 Examination Report, were reviewed by OTS Field Manager Mark Payne, who concurred. OTS Assistant Director Philip Gerbick also approved the final 2007 Examination Report before issuance and transmittal to Home FSB. (Tr. 708:5-13, 712:5-713:8 (Payne); Tr. 862:18 -863:3 (Gerbick).)
- 27. Based on the 2007 Examination findings, OTS concluded that Home FSB had less-than-satisfactory Asset Quality, Management, Earnings and Liquidity, in that OTS assigned ratings of "3" or worse to each of these CAMELS component areas. However, the evidence as a whole shows that the downgrade to a rating of "3" for Liquidity was not warranted. OTS Assistant Director Phillip Gerbick did not explain the reasons for his opinion on the liquidity rating nor did he identify the specific findings and conclusions concerning liquidity upon which he relied. (Jt. Stip. 12; OTS Exh. 1 at 1-6, 15, 19, 24, and 28.)
- 28. Based on 2007 Examination findings, OTS concluded that Home FSB's component areas of "Capital" and "Earnings" were deficient and declining, and due to the volume and severity of Home FSB's capital and earning problems, Home FSB would likely require imminent financial assistance to remain viable. (Jt. Stip. 11; OTS Exh. 1 at 12-14, 19, 24-26.)
- 29. Based on the 2007 Examination findings, OTS concluded:
 - a. With regard to the component area of "Earnings," Home FSB's net operating losses for calendar 2007 were nearly five times greater than those reported for 2006, thereby dropping Home FSB below "Well

Capitalized” status, 12 C.F.R. § 565.4(b)(1), and raising serious concerns as to Home FSB’s ability to remain a viable entity. (OTS Exh. at 24; Tr. 108:16-22 (Jones)); and

- b. With regard to asset quality, in the 2007 Examination, OTS found a sharp increase in the ratio of adversely classified assets to core capital plus allowance for loan and lease losses, which was illustrated within the table entitled “Asset Quality Ratios and Trends.” Specifically, Home FSB’s level of classified assets had significantly increased from approximately \$39,000 as of the September 30, 2004 OTS examination, to approximately \$172,000 as of December 31, 2007, which for a savings association the size of Home FSB was considerable. (G001-015.) In the 2007 Examination OTS also found that Home FSB’s non-accrual loans had significantly increased during the examination review period from approximately \$39,000 as of September 30, 2004, to approximately \$171,000 as of December 31, 2007, which was deemed by OTS to be significant. (OTS Exh. 1 at 15).
30. Based on the 2007 Examination findings, OTS concluded that “Home has been managed without effective oversight by the Board.” Furthermore, OTS found that Home FSB was in noncompliance with all outstanding OTS formal enforcement actions and that the Board has been deficient in its oversight duties. In addition, OTS found that Home FSB’s books and records have been incomplete and inaccurate for an extended period since June 30, 2007, and that OTS could not reasonably ascertain the accuracy of Home FSB’s books and records at the time of the 2007 Examination. Earnings performance over the last several years has been poor and deteriorating, and has resulted in an unsafe or unsound capital position. For these reasons, Home FSB was assigned a CAMELS composite “5” rating. (OTS Exh. 1 at 1, 7.)
 31. The findings and conclusions of the 2007 Examination upon which the OTS deemed Home FSB’s Asset Quality, Management, and Earnings to be less than satisfactory as reflected in the CAMELS component and composite ratings is supported by the evidence. (Jt. Stip. 12; OTS Exh. 1 at 1-6, 15, 19, 24, and 28.)
 32. The unsatisfactory conditions in the areas of Asset Quality, Management, and Earnings that led OTS to assign less-than-satisfactory ratings to these component areas in the 2007 Examination Report, were not corrected by Home FSB as of June 20, 2008, the date of the Amended Notice of Charges was issued. Tr. 108 (Jones).
 33. By law, Home FSB is required to file, in a timely manner, quarterly Thrift Financial Reports (TFRs) with OTS. (OTS Exh. 28 at 1-3, 9; 12 U.S.C. § 1464(v), 12 U.S.C. § 1817(a)(3); §§ 12 C.F.R. 562.2 and 563.180(a); Tr. 604:5-8 (O’Brien).)

34. Home FSB filed its TFRs for the quarters ended March 31, 2007, June 30, 2007, September 30, 2007, December 31, 2007, and March 31, 2008 after the required deadline. (Jt. Stip. 14; OTS Exh. 25 at 1-3; Tr. 624:1; 625:6-626:7; 626:8-627:4; 627:5-628:5; 628:6-21; and 629:14-630:2 (O'Brien); Tr. 1219:9-1219:21 (Williams).)
35. Throughout the course of the 2007 Examination, Home FSB failed to maintain complete and accurate books and records due to its failure to reconcile outstanding transactions and its failure to maintain documentation to support transactions. (OTS Exh. 1 at 21-22.)
36. At the time OTS began the 2007 Examination, due to Home FSB's incomplete and inaccurate books and records, OTS was unable to determine Home FSB's overall financial condition or to determine the details or purpose of a substantial number of transactions that may have had a material effect on the financial condition of Home FSB. (OTS Exh. 1 at 59-61.)
37. On October 9, 2007, OTS issued the Temporary Order, and suspended the 2007 Examination pending reconciliation of Home FSB's books and records. (OTS Exh. 1 at 21A; OTS Exh. 3 at 1.)
38. OTS issued the Temporary Order because it concluded that Home FSB had engaged in unsafe or unsound practices by failing to maintain complete and accurate books and records, and that the condition of its books and records were likely to cause insolvency or significant dissipation of assets or earnings, or to weaken the condition of Home FSB, without immediate action. (OTS Exh. 3 at 1-2.)
39. Paragraph 3 of the Temporary Order required that Home FSB have complete and accurate books and records within fifty days of its effective date and that Home maintain complete and accurate books and records thereafter. (Stip 15.)
40. As of June 20, 2008, Home FSB failed to provide to OTS documentation sufficient to demonstrate that it had complied with the requirements of Paragraph 3 of the Temporary order, which required Home FSB to have and maintain complete and accurate books and records, retain documentation of correction or reconciliation of Home FSB's books and records for regulatory review, and to charge off account differences or unsupported accounts in Home FSB's books and records that were not resolved within 50 days of the effective date of the Temporary Order. (OTS Exh. 59-61; OTS Exh. 3 at ¶3.)
41. As of the commencement of the 2007 Examination on August 13, 2007 and through the close of the examination on April 4, 2008, Home FSB failed to maintain complete and accurate books and records, and failed to maintain documentation that confirmed the completeness and accuracy of its books and

- records. (OTS Exh. 1 at 21a-22; OTS Exh. 10 at 1-2; OTS Exh. 38 at 1-65; Tr. 165:2-166:9 (Jones), Tr. 896:17-898-18 (Gerbick), Tr. 1453:7-19 (Haiser).)
42. Effective April 23, 2007, Home FSB has been subject to the provisions of the 2007 Agreement issued by OTS which addresses findings contained in the 2006 Examination Report and consolidated two previous Supervisory Agreements between OTS and Home FSB that had been outstanding for several years. (Jt. Stip. 7; OTS Exh. 2 at 1-10; and OTS Exh. 1 at 6; Tr. 871:3-872:18 (Gerbick).)
43. Paragraph 1 of the 2007 Agreement (OTS Exh. 2 at 1-2) requires, in part, that Home FSB take all necessary and appropriate actions to comply with the following laws and regulations:
- a. Equal Credit Opportunity Act, 12 U.S.C. §§ 1691-1691f, as implemented by 12 C.F.R. Part 202 (ECOA).
 - b. Fair Credit Reporting Act, as amended by the Fair and Accurate Credit Transactions Act, 15 U.S.C. § 1681(g) (Fair Credit Reporting Act); and
 - c. Expedited Funds Availability Act, 12 U.S.C. §§4001-4010, as implemented by 12 C.F.R. Part 229 (EFAA).
44. Paragraph 13 of the 2007 Agreement (OTS Exh. 2 at 5-6) requires Home FSB to maintain a Compliance Program that includes the following:
- a. Detailed written policies and procedures for use by Home FSB personnel, designed to ensure compliance with nondiscrimination, consumer protection, and other public interest laws and regulations;
 - b. Provisions for ongoing, periodic internal or external compliance reviews that include (i) transactional testing, and (ii) documentation of the scope, findings, exceptions, and corrective actions;
 - c. Procedures for prompt correction of exceptions (instances of noncompliance) found during the required Compliance Reviews by appropriate Home FSB personnel;
 - d. Procedures for effective oversight by Home FSB's Board.
45. OTS conducts periodic examinations of association's compliance with the BSA, OFAC regulations, and anti-discrimination and consumer protection laws and regulations, including ECOA, the Fair Credit Reporting Act and the EFAA (collectively Compliance Examination). (OTS Exh. 1 at 8, 39, 41; OTS Exh. 5 at 6, 39, and 40; Tr. 861 (Gerbick).)

46. During the 2007 Examination, OTS conducted a Compliance Examination of Home FSB, reviewing samplings of the Bank's loan files, records and other information obtained from Home FSB to evaluate whether Home FSB had complied with ECOA, Fair Credit Reporting Act and EFSA and with the Compliance related provisions of the 2007 Agreement (OTS Exh. 2 at ¶¶ 1, 12-14). (OTS Exh. 1 at 39-41, 53-55; Tr. 449:2-12, 451:5-15 (Balber).)
47. Prior to the 2007 Examination, OTS had discussed concerns with Home FSB regarding its failure to comply with ECOA, the Fair Credit Reporting Act and EFSA. (OTS Exh. 1 at 8, 36-37, 39; OTS Exh. 2 at 1, 5 and 10; Tr. 1080:15-1081:5 (Williams).)
48. During the 2007 Examination, OTS found:
- a. Based on a sampling of loan files, Home FSB used outdated loan application forms that did not include evidence of an applicant's intent to be a joint applicant (OTS Exh. 1 at 39; Tr. 481:4-14 and 499:3-11 (Balber));
 - b. Based on a sampling of loan applications, Home failed to make, or did not retain records to confirm, whether Home FSB made required disclosures to mortgage loan applicants of the credit scores relied on by Home FSB and of information on factors adversely affecting the applicant's credit score(s) (OTS Exh. 1 at 39-40; Tr. 488:5-490:12 and 499:17-22 (Balber));
 - c. Based on a sampling of deposit holds, Home FSB held funds deposited by customers in excess of regulatory time limits, and under circumstances where none of the regulatory exceptions applied. (OTS Exh. 1 at 40-41; Tr. 490:19-491:12 (Balber));
 - d. Home FSB failed to provide adequate training to its employees concerning the proper imposition of, and limitations on, holds place by Home FSB on funds deposited by its customers. (OTS Exh. 1 at 40-41; Tr. 497:4-20 (Balber).)
49. The 2007 Examination Report assigned Home FSB a Compliance rating of "5." (OTS Exh. 1 at 6, 36, and 64.)
50. The 2007 Agreement required Home FSB to take all necessary and appropriate actions to comply with the safe and sound business practices set forth in OTS Bulletin 13a with respect to Management of IRR, investment securities and derivatives activities. (Jt. Stip. 21.)
51. The 2007 Agreement required Home FSB's Board to revise its IRR Policy to comply with the requirement of 12 C.F.R. § 563.176, to develop reasonable IRR limitations, and to ensure proper management of IRR. In addition, the 2007

- Agreement required Home FSB to develop and implement an IRR Management Plan. The 2007 Agreement also required that Home FSB's management submit quarterly reports to the Board addressing compliance with the IRR Policy and the IRR Management Plan. (Jt. Stip. 22)
52. Home FSB did not review and revise its IRR Policy as it was required to do under the 2007 Agreement. The IRR Policy that Home FSB provided to OTS during the 2007 Examination had last been reviewed by Home FSB's Board almost two years prior to the 2007 Agreement. (Joint Exh. 1 at 1-3; OTS Exh. 1 at 34, 50-51; OTS Exh. 2 at 2 at ¶ 2; Tr. 160:2-160:20, and 297:5-298:6 (Jones).)
 53. Home FSB failed to develop an IRR Management Plan and submit it to the OTS as required by the 2007 Agreement. (OTS Exh. 1 at 51 ¶ 3; OTS Exh. 2 at 2 ¶3; Tr. 163:13-163:20 (Jones).)
 54. Home FSB failed to ensure that a revised IRR Policy and an IRR Management Plan were implemented as required by the 2007 Agreement. (OTS Exh. 1 at 51 ¶4; OTS Exh. 2 at 2 ¶4.)
 55. Home FSB failed to document that it had complied with its commitments under the 2007 Agreement to develop and implement a revised IRR Policy and an IRR Management Plan. Home FSB submitted no IRR Review Reports to OTS as it was required to do under the 2007 Agreement. (OTS Exh. at 51-52 ¶5; and OTS Exh. 2 at 3 ¶5.)
 56. Home FSB failed to comply with its own IRR Policy. Home FSB's IRR Policy requires it to maintain an IRR positions of no worse than Moderate Risk. (Joint Exh. 1 at 3.) However, since the time the policy was adopted in August 2004, through December 2007, Home FSB's IRR has been in either the Significant Risk of High Risk category – both higher than the Moderate Risk category – which continued into the 2007 Examination period. (OTS Exh. 1 at 34-35.)
 57. During the 2007 Examinations, examiners reviewed Home FSB Board's monthly meeting minutes and found no records that the Board either received a report from its IRR Committee or evaluated Home FSB's IRR position during the 21-month review period (i.e., the 21-month period ending December 21, 2007)(G001-006; G001-035.) Home FSB's IRR Committee met only once during the entire 21-month review period, and there were no records that the IRR Committee provided a report to the Board after that meeting. (OTS Ex. 1 at 35.)
 58. In the minutes of Home FSB's Board meetings, which were provided to OTS examiners during the 2007 Examination, there is no record of the Board receiving any report from the IRR Committee, no record of Board discussion or evaluation of Home FSB's IRR position, and no record of the Board reviewing quarterly IRR Exposure Reports. (OTS Exh. 1 at 32-35, 50-52.)
 59. The OTS assigned Home FSB a rating of "4" for the Sensitivity to Market Risk component. (OTS Exh. 1 at 32.)

Appendix “B”

UNITED STATES OF AMERICA
Before The
DEPARTMENT OF THE TREASURY
OFFICE OF THRIFT SUPERVISION

IN THE MATTER OF)	
)	
Home Federal Savings Bank)	Order No.:
)	
Detroit, Michigan)	Effective Date:
)	
OTS Docket No. 05171)	
)	

PROPOSED CEASE AND DESIST ORDER

Having determined that the Respondent, Home Federal Savings Bank, is engaging in, or has engaged in, violations of law, rule, or regulation, and is also engaging in, or has engaged in unsafe or unsound practices, the Director of the Office of Thrift Supervision, United States Department of the Treasury, pursuant to his authority under 12 U.S.C. § 1818(b), issues to Home Federal Savings Bank (“Home FSB” or “Bank”) this Order to Cease and Desist from the following.

Violations.

1. Home FSB shall cease and desist from violating:
 - a. 12 U.S.C. § 1817(a)(3) (requiring accurate certification of Thrift Financial Reports (TFRs) by officers and directors);
 - b. 12 C.F.R. § 563.170 (requiring accurate and complete books and records);
 - c. 12 C.F.R. § 563.180 (requiring certain reports);
 - d. 12 C.F.R. § 563.177 (requiring Bank Secrecy Act (BSA) compliance);
 - e. 12 C.F.R. Part 229 (Availability of Funds and Collection of Checks); and
 - f. 12 C.F.R. § 563.176 (Interest Rate Risk Management).

Capital.

2. Within 30 days of the Effective Date of this Order, Home FSB shall achieve and maintain: (i) a Tier 1 (core) Capital Ratio of at least six (6) percent, and (ii) a total risk-based capital ratio of at least ten (10) percent;
 - a. The Board of Directors and Home FSB Management shall prepare and submit to the OTS Regional Director for the Central Region (Regional Director), for review and comment, a detailed plan with specific written strategies for restoring the Bank's capital to the "well capitalized" level as defined at 12 C.F.R. § 565.4(b)(1) (Capital Restoration Plan), within 30 days of the effective date of this Order.
 - b. The Capital Restoration Plan shall provide for: (i) a detailed review of operating expenses and include a detailed listing of each expense item that will be eliminated and include a prompt date for the elimination; (ii) a monthly submission to the OTS of Home FSB's tangible, core, and risk-based capital ratios as defined at 12 C.F.R. Part 565; (iii) a detailed analysis of Home FSB's overall funding and liquidity strategies; and (iv) establishment of short timeframes to achieve objectives; and
 - c. The Board of Directors will make any changes to the Capital Restoration Plan as required by the Regional Director within ten (10) days after receipt. Thereafter, the Board of Directors shall adopt and implement the Capital Restoration Plan.

Bank Secrecy Act Policy.

3. Within sixty (60) days after the effective Date of this Order, the Board of Directors shall revise Home FSB's Bank Secrecy Act (BSA) Policy. The revised BSA Policy shall require annual independent testing of Home FSB's BSA Compliance Program by a qualified independent party. The independent party must have specialized experience with and knowledge of the Currency and Foreign Transactions Reporting Act (as amended by the USA Patriot Act of 2001 and other laws) 31 U.S.C. §§ 5311 et seq.; the related BSA regulations issued by the U.S. Department of the Treasury, 31 C.F.R. §§ 103.11 et. seq., as well as the governing OTS regulations, 12 C.F.R. § 563.177 (collectively, the BSA Laws and Regulations).
4. The Revised BSA Policy shall require:
 - a. The independent test be completed within ninety (90) days after each calendar year end and that the independent test will comprehensively review the Bank's: (i) BSA risk-assessment; (ii) internal controls for preventing money laundering and terrorism financing; (iii) customer identification procedures; (iv) compliance with the BSA Laws and Regulations; and (v)

corrective actions and enhancements noted in the most recent OTS Report of Examination;

- b. The scope of the independent test must consider and incorporate, as appropriate for the size and complexity of the Bank, the examination procedures established in Section 1400 of the OTS Examination Handbook and the Federal Financial Institutions Examination Council's Bank Secrecy Act/Anti-Money Laundering Examination Manual;
 - c. That a detailed written report of the results and findings of each annual independent test be prepared and provided to the Board of Directors for review within thirty (30) days after completion of the independent test;
 - d. That the Board of Directors shall review the independent test results, and adopt any necessary corrective actions within sixty (60) days after completion of the independent test;
 - e. That the Board of Director's review of the independent test results, and any corrective actions adopted by the Board of Directors, shall be fully detailed in the appropriate Board meeting minutes, with a copy of the written independent test report attached thereto; and
 - f. That the Board of Directors provide a copy of each annual independent test report and the Board meeting minutes (in which the independent test report is reviewed) to the Regional Director within ten (10) days after Board review.
5. The Board of Directors shall ensure that the Revised BSA Policy is fully implemented and thereafter fully adhered to by Bank Management and the staff of the Bank. The Board of Directors shall submit a copy of the Revised BSA Policy to the Regional Director within ten (10) days after adoption.
 6. Within forty-five (45) days after the Effective Date of this Order, the Board of Directors shall engage a qualified, independent, outside third party to conduct an independent test of the Bank's BSA Compliance Program, including a transaction review for the period July 1, 2007 to the Effective Date of this Order, to evaluate the Bank's compliance with the BSA Laws and Regulations. The independent test shall comply with the requirements set forth in this Order and shall be completed within ninety (90) days after the Effective Date of this Order. Within thirty (30) days after its completion, the Board of Directors shall review the findings of the independent test required by the Order and determine the appropriate corrective action required to address any deficiencies or weaknesses. The Board of Directors shall fully document its review and any corrective actions adopted in the appropriate Board meeting minutes. The Board of Directors shall ensure that Bank Management fully implements the corrective actions adopted by the Board of Directors. A copy of the independent test and the Board meeting

minutes detailing the Board's review shall be provided to the Regional Director within ten (10) days after the date of the Board meeting.

7. Effective immediately, the Board of Directors shall:
 - a. Ensure that the Bank has a system in place to verify that all customer records, including incoming and outgoing wire transfers, are reviewed against the Office of Foreign Assets Control (OFAC) list of specially designated nationals and the Department of Treasury's 314(a) list pursuant to the USA Patriot Act of 2001 at the time of the transaction;
 - b. Maintain clear accurate and timely documentation of reviews done pursuant to paragraph 7(a); and
 - c. Ensure that the Bank utilizes effective plans for monitoring of transactions, including cash deposits and withdrawals, cash sale of monetary instruments, incoming and outgoing funds transfers for suspicious or unusual activities and file appropriate Suspicious Activity Reports (SARs) or maintain documentation to explain why no SAR was filed.
8. Within sixty (60) days of the Effective Date of this Order, the Board of Director, in consultation with a qualified, outside third party, shall:
 - a. develop, implement, document, and thereafter ensure the Bank's adherence to a comprehensive detailed training program for all appropriate operational and supervisory personnel to ensure their awareness of their responsibility for compliance with the requirements of the BSA Laws and Regulations; and
 - b. The required comprehensive training program must include specific requirements for mandatory attendance, the frequency of training, procedures and timing for updating training programs and materials including a thorough review of previously identified violations and deficiencies and method for delivering training.

Accurate Books and Records.

9. Within thirty (30) days after the Effective Date of this Order, the Board of Directors shall review and amend its internal controls and information and recordkeeping systems as necessary to provide for the timely and accurate filing of all financial statements in the future (Revised Recordkeeping Systems). At a minimum, the Revised Recordkeeping Systems shall enable the Bank to:
 - a. Maintain accounting and other records that provide a complete and accurate record of all transactions involving the Bank and accurately present its current financial condition; and

- b. File accurate, timely and complete: (i) financial statements that conform to Generally Accepted Accounting Principles (except as to regulations promulgated by OTS which permit variation); (ii) operational reports; and (iii) regulatory reports, including but not limited to Thrift Financial Reports.

Lending.

- 10. Within thirty (30) days of the Effective Date of this Order, the Board of Directors shall revise the Bank's Lending Policies and Procedures Manual (Loan Policy) to comply with applicable regulations, including 12 C.F.R. Part 560; and with OTS guidance, including Section 201 of the OTS Examination Handbook.
- 11. At a minimum, the revise Loan Policy shall address the deficiencies described in the 2007 OTS Report of Examination of the Bank and shall:
 - a. Establish underwriting requirements, including documentation, analysis, confirmations, collateral, lien perfections and approvals, as required for each type of loan product offered by the Bank;
 - b. Specify requirements for exceptions to the Loan Policy, including required written justification, supporting documentation and required approvals;
 - c. Require maintenance by the Bank of a list of all loans approved as an exception to the Association's Loan Policy and the status of each such loan and quarterly reporting of any Loan Policy exceptions to the Board; and
 - d. Specify requirements for any extensions of credit to directors, officers, principal shareholders and their related interests in accordance with 12 C.F.R. § 563.43 and the Bank's ethics policies.

Interest Rate Risk.

- 12. Within thirty (30) days of the Effective Date of this Order, the Board of Directors shall review and revise the Home FSB interest rate risk policy (IRR Policy) to address, at a minimum:
 - a. Reasonable interest rate risk limitations as established by the Board of Directors which shall specify the net portfolio values (NPV) acceptable under the current interest rate environment and for sustained rate increases and decreases of 100, 200, and 300 basis points.
 - b. Proper management of interest rate risk;
 - c. Compliance with the requirements of 12 C.F.R. § 563.176; and

- d. Interest rate risk deficiencies described in the 2007 OTS Report of Examination.
13. The IRR Policy shall require Bank Management to develop and implement an interest rate risk management plan (IRR Management Plan). The IRR Management Plan shall be submitted to the Regional Director for review and non-objection within ninety (90) days of the Effective Date of this Order. At a minimum, the IRR Management Plan shall:
 - a. Address reduction of the Institution's level of interest rate risk;
 - b. Set forth the strategies to be utilized by the Bank to reduce interest rate risk;
 - c. Establish interim targets for NPV ratios, with specific timetables; and
 - d. Provide alternative action plans if the IRR Management Plan targets are not achieved.
14. The Board of Directors shall ensure that the IRR Policy required by this Order is implemented and thereafter fully adhered to by Bank Management and staff of the Bank. The Board of Directors shall submit a copy of the IRR Policy and the IRR Management Plan required by this Order to the Regional Director within ten (10) days after adoption by the Board of Directors.
15. Bank Management shall submit quarterly reports to the Board of Directors to addressing compliance with the IRR Policy and the IRR Management Plan (Quarterly IRR Review Report). The Quarterly IRR Review Report shall be submitted to the Board of Directors within eighty (80) days of the end of the calendar quarter. The Board of Directors shall review the Quarterly IRR Review Report and adopt specific corrective actions. The Board of Directors shall review and adopt corrective actions within thirty (30) days of the receipt of the Quarterly IRR Review report from Management. The Board of Director's review of each Quarterly IRR Review Report and the corrective actions adopted as a result shall be documented in the minutes of the appropriate Board meeting. The Board of Directors shall submit a copy of each Quarterly IRR Review Report and the minutes reflecting the Board of Director's review and adoption of corrective action to the Regional Director within twenty (20) days after the date of the appropriate Board meeting.

Compliance Program.

16. Within sixty (60) days of the Effective Date of this Order, the Board of Directors shall amend the Bank's Compliance Program to address the weaknesses and violations described in the 2007 Report of Examination.

Oversight Committee.

17. As of the Effective Date of this Order, the Board of Directors shall establish and maintain an Oversight Committee of the Board responsible for ensuring compliance with this Order. The members of the Oversight Committee shall be outside directors (i.e., directors who are not also officers of the Bank.) The Oversight Committee will make a detailed written report to the Board every month, and a copy of the Oversight Committee report and any discussion relating to the Oversight Committee report or the Order shall be included in the minutes of the Board meeting. Nothing contained herein shall diminish the responsibility of the entire Board of Directors to ensure compliance with the provisions of this Order.
18. The Board of Directors shall ensure full compliance by the Bank with the provisions of this Order and shall monitor and review such compliance on a monthly basis at Board meetings. Such review shall be fully reflected in the official minutes of Board meetings. A written report reviewing the Bank's compliance with this Order signed by all directors shall be submitted to the OTS by the thirtieth (30th) day of each month.

Termination of Outstanding Enforcement Actions.

19. The Temporary Cease and Desist (CN 07-01), dated October 9, 2007, Supervisory Agreement, dated April 23, 2007, and Consent Order to Cease and Desist for Affirmative Relief, dated July 16, 2004, shall be terminated upon the effective Date of this Order.

Effective Date.

20. This Order is effective on the Effective Date shown on the first page of this Order.

Duration.

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

Time Calculations.

22. Calculation of time limitations for compliance with the terms of this Order run from the Effective Date and shall be calendar-based, unless otherwise noted. The Regional Director may extend any of the deadlines set forth in the pre provisions of this Order upon written request by the Bank that includes reasons in support of any such extension. Any OTS extension shall be made in writing.

Submissions and Notices.

23. All submissions, including progress reports, to OTS, that are required or contemplated by this Order shall be submitted within the specified timeframes and, except as otherwise provided, 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 other reputable overnight carrier, electronic facsimile transmission, or hand delivery by messenger) addressed as follows:

a. Upon OTS:

Daniel McKee, Regional Director
Office of Thrift Supervision, U.S. Department of Treasury
1 South Wacker Drive, Suite 2000
Chicago, Illinois 60606
Facsimile: (312) 917-5002

b. Upon Home Federal Savings Bank:

Thomas Williams, President
Home Federal Savings Bank
9108 Woodward Avenue
Detroit, Michigan 48202
Facsimile: (313) 873-6395

No Violations Authorized.

24. Nothing in this Order shall be construed as allowing Bank, its Board, officers or employees, to violate any law, rule, or regulation.

SO ORDERED.

Date: See effective Date on page 1

OFFICE OF THRIFT SUPERVISION

By: _____
John E. Bowman
Acting Director

CERTIFICATE OF SERVICE

On August 28, 2009, I served in the above proceeding the following materials:

By personal service, the complete Administrative Record of the proceeding, including the Recommended Decision, Certified Index of Proceeding, and hearing transcripts, upon:

Sandra E. Evans, Secretary for Adjudicatory Proceedings
Office of Thrift Supervision
1700 G Street NW
Washington, DC 20552
Sandra.evans@ots.treas.gov,

And by electronic service, a copy of the Recommended Decision and Certified Index upon:

Susan L. Chomicz, Esq., V. Scott Bailey, Esq.
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Gerald J. Langan, Office of Financial Institution Adjudication