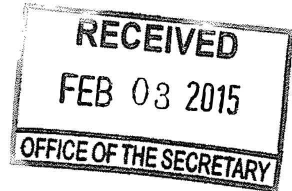

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of THOMAS A. NEELY, JR. Respondent.	**Admin. Pro. File No. 3-15945**

RESPONDENT THOMAS A. NEELY, JR.'S
DISCLOSURES REGARDING EXPERT WITNESS JOHN C. HAM

Pursuant to the Court's January 7, 2015 Order, Respondent Thomas A. Neely, Jr. hereby files the expert report of John C. Ham and makes the following disclosures related thereto:

(1) **Final Expert Report**

Mr. Ham's "Report of Expert" is attached hereto.

(2) **Name and Address of Expert**

John C. ("Jack") Ham

(3) **Statement of Qualifications**

Mr. Ham's résumé is attached as Exhibit 13 to his Report of Expert.

(4) **Prior Expert Testimony**

A list of Mr. Ham's prior expert testimony is attached as Exhibit 14 to his Report of Expert.

(5) **List of Publications Authored or Co-Authored**

Mr. Ham has not authored or co-authored any published articles.

(6) **Summary of Expert's Opinions**

The decision of whether to classify a loan as accruing or non-accruing is "inevitably imprecise," and experienced and informed decision makers can reasonably differ in their judgments. The consistently applied approach used by Regions Bank, in accordance with its policies and procedures and generally accepted, publicly available guidelines, resulted in reasonable decisions as of March 31, 2009, for the 15 loans identified in the SEC's Cease and Desist Order. With respect to those 15 loans, individually, Mr. Ham agreed with the Bank's classification, as of March 31, 2009, for 11 of the loans, and he disagreed on 3 loans. The 15th loan was classified as non-accruing as of March 31, 2009, and therefore should not have been included in the SEC's order.

(7) **Bases of Expert's Opinions**

The bases for Mr. Ham's opinions include his education, training, and experience, as well as the documents/materials he received in connection with this case. Mr. Ham's analysis and the Regions Bank loan files and financial data he considered in arriving at his opinions are included in his report.

Respectfully submitted,

/s/ **Katherine R. Brown**
Augusta S. Dowd (ASB-5274-D58A)
J. Mark White (ASB-5029-H66J)
William M. Bowen, Jr. (ASB-1285-E66W)
Linda G. Flippo (ASB-0358-F66L)
Rebecca G. DePalma (ASB-4105-D57R)
Katherine Rogers Brown (ASB-4963-N77R)

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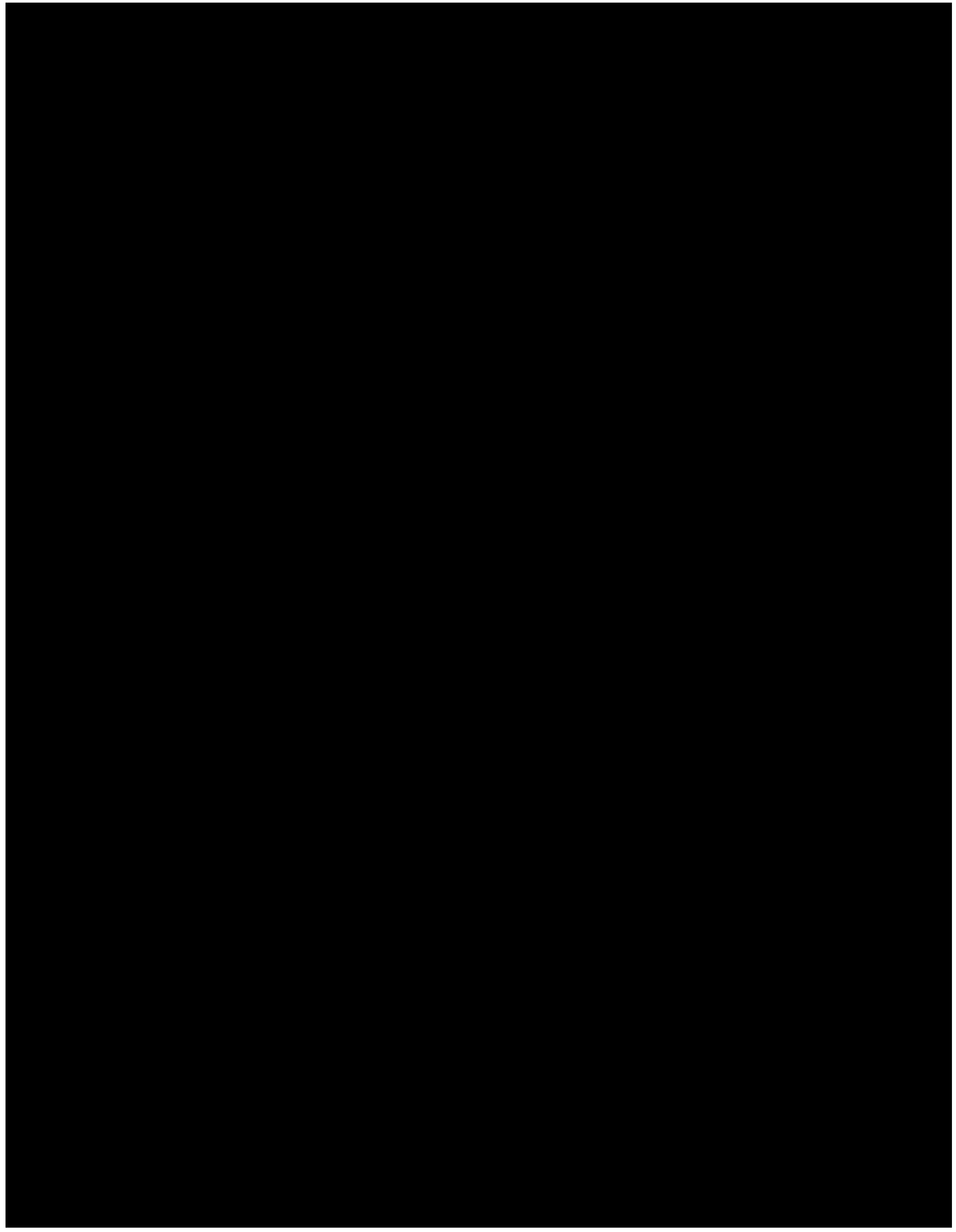

Report of Expert

John C. Ham, B.S.B.A., MBA, J.D.
2/2/2015

A review of the applicable accounting standards and their application to fifteen identified commercial loans held by Regions Bank as of March 31, 2009.

Report of Expert John C. Ham

I have reviewed a large volume of documents, including the policies and procedures of Regions Bank and loan-specific information, related to the decisions made, as of March 31, 2009, regarding the accrual status of fifteen identified commercial loans, totaling approximately $168 million. I have also provided my own opinions regarding those accrual status decisions based on my education, training, and experience and from the available Regions Bank information I have reviewed.

This report and my opinions are provided to attorneys representing Thomas A. Neely, Jr., former executive vice president of Regions Bank, for the purpose of assisting those attorneys in the preparation of Mr. Neely's defense to charges brought by the U. S. Securities and Exchange Commission ("the SEC") regarding the accrual status decisions made by Regions Bank during the quarter ended on March 31, 2009. The primary allegation brought by the SEC is that each of the identified loans should have been, but was not, placed in a non-accrual of interest status as of March 31, 2009.

In addition, the SEC also alleges that Mr. Neely should have designated one of the identified loans as being "available for sale," rather than "held for investment," which designation would also have required, under GAAP, a reduction in that loan's carrying value from its "cost" to its "estimated fair value," since the loan's estimated fair value would have represented the lower of those two value estimates.

Over the last approximately thirty years, there has been considerable accounting and regulatory guidance respecting the adequacy and appropriateness of financial institutions' ALLL. From time to time over this period, accounting standards promulgated by the Financial Accounting Standards Board ("the FASB") and accounting guidance provided by the SEC and various bank regulatory agencies have created seeming inconsistency between the goals of those bodies related to the accuracy, consistency, and transparency of the financial statements of financial institutions and the goal of bank regulators to assure the safety and soundness of the nation's banking system. In an attempt to reconcile these potentially conflicting goals, the financial regulatory agencies, the FASB, the American Institute of Certified Public Accountants ("the AICPA") and the SEC formed a joint task force in 1999 to address these objectives and the related issues and to provide accounting guidance to financial institutions respecting the estimation of inherent credit losses in their loan portfolios. This effort began with the issuance of two joint interagency letters to financial institutions announcing the formation in March, 1999 of a joint task force and outlining the process by which the forthcoming ALLL guidance would be developed and issued. The joint letters made the following points which remain relevant to the consideration of the charges brought by the SEC in this action against Mr. Neely (emphasis added).

> The Agencies have agreed on the following important aspects of loan loss allowance practices:
>
> • Arriving at an appropriate allowance **involves a high degree of management judgment** and results in a range of estimated losses;
>
> • Prudent, conservative, but not excessive, loan loss allowances that fall within an acceptable **range of estimated losses** are appropriate. In accordance with GAAP, an institution should record its best estimate within the range of credit losses, including when management's best estimate is at the high end of the range;
>
> • Determining the allowance for loan losses is **inevitably imprecise**, and an appropriate allowance falls within a range of estimated losses;

- An "unallocated" loan loss allowance is appropriate when it reflects an estimate of probable losses, determined in accordance with GAAP, and is properly supported;

- Allowance estimates should be based on a comprehensive, well-documented, and **consistently applied analysis of the loan portfolio**; and

- The loan loss allowance should take into consideration **all available information existing as of the financial statement date**, including environmental factors such as industry, geographical, economic, and political factors.

The full text of the joint letter of March 10, 1999 is attached as Exhibit 1.
The full text of the joint letter of July 12, 1999 is attached as Exhibit 2.

The most recent and complete guidance to financial institutions was jointly issued by the members of the Federal Financial Institutions Examining Council (the FFIEC") in 2005 for application to 2006 financial statements: the Interagency Policy Statement on the Allowance for Loan and Lease Losses ("ALLL"), Exhibit 3. Among the many points emphasized in this policy statement is one regarding the role of a financial institutions' management. "The determination of the amounts of the ALLL . . . should be based on management's current judgments about the credit quality of the loan portfolio, and should consider all known relevant internal and external factors that affect loan collectability as of the evaluation date. An institution's process for determining an appropriate level for the ALLL [should be] based on a comprehensive, well-documented, and **consistently applied** analysis of its loan portfolio."

Generally Accepted Accounting Principles (GAAP) establish a methodology by which an institution may determine its ALLL by segmenting its loan portfolio into pools of loans with similar risks characteristics and by applying historical loss experience related to those loan pools (adjusted for current economic conditions and other factors which bear directly on the collectability of these loans). In addition to pools of loans with similar risk characteristics, an institution must also identify and evaluate on a loan-by-loan basis certain loans which are determined to be "impaired." The accounting and regulatory definition of an impaired loan is one which is unlikely to perform according to its specific terms as to the specified timing or amount of payments scheduled under the note.

Among the loans defined to be impaired are those loans with risk characteristics that make it doubtful that the creditor will be able to collect all of the loan's outstanding principal and accrued (but yet to be collected) interest as of the date of evaluation. Since it is doubtful that all amounts owed--both principal and interest--will be collected, GAAP proscribes the recognition of accruing interest as revenue on these receivables until such time as that doubt has been removed. In banking parlance these are known as non-accrual loans and as mentioned in the 1999 joint letters to financial institutions as well as in the 2006 Interagency Policy Statement, a determination, at any point in time, that it is doubtful that all principal and accrued interest on a loan will be collected "involves a high degree of management judgment" and represents "an inevitably imprecise" exercise in judgment.

GAAP attempts to handle the difficulties which arise in making the non-accrual judgment by requiring a consistently applied methodology and by setting a bright-line but rebuttable presumption that any loan which is delinquent (as to payment or maturity) for ninety (90) or more days should not be considered as fully collectible and thus should be treated as a non-accruing loan. As mention above, a non-accruing loan is by definition an impaired loan since it is doubtful that all principal and interest will ultimately be collected.

The significance of a non-accrual, or any impaired loan (above a defined minimum level), is that each such loan must be individually evaluated to determine the amount of its impairment. GAAP provides three methodologies for measuring the impairment of a loan: the discounted cash flow method; the market price determination method; and, for all loans wholly dependent upon the note's collateral for payment, the measurement of the collateral's "fair value."

At the heart of the SEC's claims is that Regions Bank's managers did not exercise a normal degree of management judgment, described as "inevitably imprecise" in the 1999 joint agency letters, when making the determinations during the first quarter of 2009 that certain loans might be fully collected. In fact, the SEC's allegations use the words "intentional" and "misleading" to characterize that exercise of judgment.

By providing a separate expert's opinion, I believe that I will demonstrate that the consistently applied approach employed by Regions Bank fits well within the realm of reasonableness in spite of its admittedly imprecise nature. In providing bankers with guidance in the 2006 Interagency Policy Statement on the ALLL, the constituent members of the Federal Financial Institutions Examining Council referred to the Financial Accounting Standards Board's Emerging Issues Task Force Exhibit DC-80A on the subject of the Allowance for Loan Losses. It is a very good guide but it wisely cautions against "Monday-morning quarterbacking." That document is attached as Exhibit 4.

I will now review the fifteen loans selected by the SEC as examples of intentional misjudgments made by Regions Bank.

Loan # 1. Designer's Choice Cabinetry, Inc. and R J Properties, LLC

This was a loan of $5,019,000 secured by a manufacturing-warehouse facility appraised by a qualified appraiser selected from Regions' list of approved appraisers whose appraisal was reviewed by a qualified review appraiser in Regions' Real Estate Valuation Services (REVS) group, under Regions' loan policies, the final arbiter of collateral values for all loan underwriting and accounting purposes (see Exhibit 5). As of March 31, 2009, the loan was 46 days past due. As described in the Regions March 31, 2009 Problem Loan Report ("PLR") , attached as Exhibit 6, the owner of the borrowers had employed a Regions-approved crisis manager to assist in the management of the manufacturing operations and had also become involved in discussions with a qualified potential investor in this large regional supplier of cabinets to the residential renovation market. The Regions' Commercial Loan Policy regarding the non-accrual of interest on problem loans, indicating a collateral value of $5,950,000, is also attached as Exhibit 7. It is my opinion that as of March 31, 2009, it was reasonable for Regions to believe it would collect all principal and all accrued interest on the loan because of the cushion provided by the collateral's value, in excess of $900,000 at that date, and because the borrowers' owner was taking the appropriate steps to assure the continuing viability of the borrowers. It was, therefore, Regions' reasonable judgment that this loan not be placed in non-accrual status as of March 31, 2009.

Loan # 2: Eighteen Investments, Inc.

This credit was represented by a series of approximately sixty loans secured by single-family rental properties, one of which had reached a delinquency of 90 days as of March 31, 2009. As described in Regions' Commercial Non-accrual Policy (Exhibit 7), the entire account of a borrower with a single loan reaching a delinquency of 90 days must be placed in non-accrual status. In general this policy, which mirrors federal regulatory guidance respecting the accrual status of delinquent loans, removes the

decision maker's judgment with respect to the assessment of likelihood that all accrued interest and principal will be collected as of the date of measurement. The exception to this general rule provided by regulation and by Regions' non-accrual policy is that accrual of interest on the account's loans may continue if both of two conditions are true: first, that the loan or loans are well secured and second, that the loan is in the process of collection. Those conditions were established by the collateral's March 2009 value of $7,558,000, reflected in the March 31 PLR (Exhibit 8), and by the actions Regions had taken, with the cooperation of the borrower, to install a receiver to collect the rental payments, pay operating expenses, and send the balance of the operating income for application to the notes. As of March 31, the receiver had been able to improve the delinquency status of some notes and was expecting to be able to continue that improvement in the immediate future, thus satisfying the requirement that the action taken was likely to result in returning the loans to a non-delinquent status or in their full collection. In this particular instance both conditions were met and it is my opinion that the loans should have remained on accrual as of March 31, 2009.

Loan# 3. First West Cutler Gardens, LLC

This was a loan Regions made to purchase and renovate a 198-unit apartment complex in Miami-Dade County, Florida. Following the renovation of the apartment units, the principals of the borrower began selling apartment units as condominium units to individuals. The way the principals were able to accomplish this, in spite of Regions' first deed of trust position on the units, was because the principals of the borrower also owned the title agency that obtained the lenders title policy insuring Regions' deed of trust and that also closed the individual unit purchaser's sales. By issuing fraudulently prepared title policies to unit purchasers and their lenders (if any) which did not disclose the existence of Regions Bank's first lien position, these fraudulent transactions were enabled. Forty-nine units were fraudulently "sold," and Regions did not receive any of the sales proceeds. As of March 31, 2009, the loan was 54 days delinquent and Regions Bank had initiated foreclosure proceedings on its mortgage, which of course, covered the forty-nine units fraudulently transferred to third parties. At this point, Regions' collateral consisted of a 198-unit apartment complex in the process of foreclosure and claims against all the defrauding parties, any guarantors who did not participate in the fraud, and importantly, a claim against the title insurer for its damages. Prior to the initiation of judicial foreclosure proceedings, Regions had the 149-unit apartment complex appraised for $8,300,000 and the REVS appraiser adjusted the value to $11,500,000 to represent the value of the entire 198-unit property. The 3/31/2009 PLR, attached as Exhibit 9, indicated that the proceeds of the fraudulently sold units approximated $6,000,000. Thus Regions' claim against the title insurer was the greater of $3,200,000 (the difference between $11,500,000 and $8,300,000) or the proceeds of the unit sales, reportedly approximately $6,000,000.

Upon foreclosure, Regions would own a 198-unit apartment complex valued at $11,500,000 or if it so chose, a 149-unit apartment complex valued at $8,300,000 plus a claim against the title insurer for the net proceeds of the "sale" (as condominium units) of 49-units, reported to be approximately $6,000,000, for a total value of collateral of approximately $14,300,000. As of March 31, under either scenario, the collateral value well-secured the outstanding loan of $10,982,542 and Regions had clearly placed the loan in the process of collection. Therefore, it was appropriate to leave this loan in an accruing status as of March 31, 2009.

Loan #4. Glove Factory Land Holdings, LLC

This was Regions' construction loan on a high-rise Tennessee River-front condominium project that suffered significant construction delays and cost overruns. Regions held two deeds of trust ("DOT") on the project, the first priority DOT and a junior priority DOT securing a "mezzanine" loan of $2,600,000. At the time the loan was in default, Regions estimated that the cost to complete the project was $6,543,000 (Exhibit 10). However, after removing the funds budgeted for construction period interest accrual, interest reserve, operating reserves, and contingency, the actual hard costs estimated to complete the project was $5,758,000. The principal balance of the first DOT loan on March 31, 2009 was $22,134,000 and the REVS review of the "as completed" value of the project was $26,410,000. In any case, I believe that Regions should have recognized a full loss of its $2,000,000 mezzanine loan (and a reversal of all accrued but uncollected interest, if any) since it clearly held a junior lien position which would be terminated upon the foreclosure of Regions' first priority Deed of Trust. Adding the $5,758,000 in estimated cost of completion to the March 31, 2009 principal balance of $22,123,634 the first DOT note yields a total anticipated outstanding balance of $28,227,505. Comparing that total to the most current REVS estimated value of $26,410,000 leads me to believe that, although it was a close judgment, Regions should have placed this loan in non-accrual status as of March 31, 2009.

A second charge concerning this loan has been made by the SEC. That charge is that because Mr. Neely was having discussions with potential note purchasers (or their agents) concerning a possible sale of this note, which discussions included ranges of possible prices at which the note and collateral documents could be purchased, that Mr. Neely was under obligation to classify the note as one Regions "held for sale" as of March 31, 2009. As of March 31, 2009, there had been no formal offer and acceptance for the purchase of the note and no documentation, including a standard, non-binding first-step-toward-purchase letter of intent, had been executed (or even drafted). In its agreement with Fifth Third Bank and that bank's former Chief Financial Officer, the SEC acknowledged that the appropriate standard under GAAP for placement of loans in the held for sale category requires much more formality than mere oral discussions about the possible purchase of a note within a range of prices. The judgment reflecting that agreement is attached as Exhibit 11. Because there was no formalized agreement in place respecting the purchase and sale of the Glove Factory Land Holdings, LLC note and collateral documentation as of March 31, 2009, this loan should not have been listed among Regions' inventory of notes held for sale as of that date.

Loan #5. Jones & Jones Investments, LLC

This credit exposure, in the amount of $1,956,852, is inclusive of a $156,982 standby letter of credit, provided to Greenville County, South Carolina to assure final completion of this subdivision phase's infrastructure, and was sixty (60) days delinquent as of March 31, 2009. The appraised value of the subdivision, including 38 developed lots and approximately 39 acres of additional, yet-to-be-developed land, was $1,855,000 as of September 9, 2008. As of March 31, 2009, the borrower had sold 17 lots to a single builder which had discontinued purchasing lots in the subdivision in April of 2008. Under these circumstances, with credit exposure in excess of the collateral value and no reported sales in nearly a year, my judgment, as of March 31, 2009, would likely have been that it was doubtful that all of the principal and accrued interest on this loan ultimately would be collected. Therefore, my opinion is that the loan should have been placed in non-accrual status as of that date.

Loan #6. Kicklighter Custom Homes, Inc.

This principal credit exposure, in the amount of $2,568,880, was comprised of ten (10) separate loans secured by five single-family residences and by five additional residential lots. Nine of the ten notes were delinquent from ten (10) to seventy-nine (79) days as of March 31, 2009. Although updated appraisals reviewed by Regions' REVS in March, 2009 reflected a significantly lower appraised value of $1,593,000, the March Problem Loan Report did not reflect knowledge of those appraisals and listed the year-old collateral values of $2,739,000. Employing the values reported in the 2008 appraisals, given the delinquency status of nine of the ten notes and their monthly interest accrual rates, the guarantor's reported reluctance to use retirement liquidity to pay accrued interest, and the well reported trend of declining Florida real estate values, I would likely have judged the prospects for full collection of all principal and accrued interest to be doubtful as of March 31, 2009. My opinion, therefore, is that these loans should have been placed in non-accrual status as of that date.

Loan #7. McCar Homes, Inc. et al.

This was Regions' 12% participation in a Wachovia Bank-led secured, revolving builder's line of credit. Because its size exceeded $20 million and was funded by three or more regulated institutions, the credit facility was considered a shared national credit ("SNC"). As of March 31, 2009, loan advances were from 0-36 days delinquent and the agent bank was negotiating a forbearance agreement which would put in place a Chief Liquidation Officer to manage an orderly liquidation of the collateral and the company. The Problem Loan Report of that date reported that collateral advances were within loan agreement margins. Although a preliminary liquidation budget forecasted a bank group loss of principal, the budget was still in negotiation as of March 31, 2009 and the most current balance sheet of the consolidated entity reflected a net worth of $74 million. As a shared national credit, preliminary results of the regulatory examination were due in May (see Exhibit 12). Because that program's primary objective is the maintenance of consistent risk ratings by all SNC participants, under these particular circumstances, it was reasonable for Regions to await the soon-to-be released preliminary examination results before making a decision concerning the continuing accrual of interest on this credit facility. In an e-mail message to regional managers dated March 16, 2009, Jeff Kuehr, the head of Regions' Special Asset Department, expressed this judgment. Therefore, leaving this loan participation on accrual was reasonable as of March 31, 2009.

Loan #8. Oak Ridge Land Company, LLC

This credit facility was comprised of seven (7) different advances under an approved Officer's Guidance Line of Credit for the acquisition of land (1,400 acres), the development of a large residential community known as Rarity Ridge in eastern Tennessee near Oak Ridge, and the construction of to-be-sold single-family residences and commercial facilities, and common area improvements within the development. On March 31, 2009, the outstanding balance of the seven advances was $15,723,602 and each advance was 80 days delinquent on interest payments. In addition, Regions had issued standby letters of credit providing assurance of completion of certain infrastructure in a total amount of approximately $3,408,000. The advances and letters of credit were secured by a "master" deed of trust on all of the land, developed residential and commercial lots, and constructed single-family residences built for resale to the public. According to the Regions' REVS review completed on June 24, 2008 of the appraisal performed as of June 15, 2008, and after certain adjustments reducing the total estimated value of the

commercial facilities, the security for the advances were valued at $32,455,000, providing an exposure-to-collateral value ratio of 59%.

Although well secured by the collateral, the guarantor's liquidity had been depleted from the reduction in sales velocity in this and seven additional large residential developments, leading to the delinquencies Regions was experiencing as of March 31, 2009. Under Regions' non-accrual policy, the primary test for non-accrual status is doubt that all principal and all interest will be collected. In view of the collateral coverage of the credit exposure, based on appraisals prepared in the previous nine months, Regions' judgments that the collection of all principal and accrued interest remained likely, and the recognition of accrued interest as revenue was reasonable. Therefore, these advances should not have been placed in non-accrual status as of March 31, 2009.

Loan #9. Paramount Saturn, Ltd.

This loan was among those identified by the SEC as being intentionally withheld from non-accrual status as of March 31, 2009. From the records I reviewed, it appears that the loan was, in fact, placed in non-accrual status on March 27, 2009. Therefore, I have not analyzed the non-accrual status decision made for this loan.

Loan #10. Resorts Construction, LLC

The outstanding balance on this account of $21,154,750 was comprised of two separate construction loans to build ninety-six (96) townhome condominiums for retail sale in the Orlando, Florida area. By March 31, 2009, the maturity date of both notes, the borrower was 59 days delinquent on interest payments on both notes. It was evident that construction was behind schedule and the project was over its original budget. The original loan commitments and the appraisals supporting the transactions reflected the significant benefit of 56 pre-construction contracts to purchase the to-be-constructed units upon their completion. Those appraisals reflected an "as completed" value for the 56 pre-sold units at $40,000,000 and the 40 to-be-marketed units at $24,000,000 for a total collateral value of $64,000,000.

Regions Bank's construction loans were only part of the overall structure arranged to provide the financing to develop the entire subdivision. The subdivision infrastructure was financed by the issuance of bonds by the subdivision's community development district, a common practice in Florida and other resort destinations, and there was apparently also a subordinated, mezzanine lender. Before March 31, 2009, the community development district bonds had fallen into default due to the delay in construction of portions of the subdivision's common area facilities. Liens had been filed on the units and Regions Bank had quantified the costs remaining to complete the construction of the townhomes at approximately $5,000,000. The file does not reflect precisely why there was such a major discrepancy between the original commitment amounts and the amount of funding then required to complete the units. As of March 31, 2009 the collateral consisted of 29 completed units—11 of which were under contract for sale—40 partially completed units, and building pads for the remaining 27 units.

A quick calculation made by adding the costs to complete to the then outstanding balances yielded a total credit exposure of $26,154,720, still considerably less that the originally anticipated (two years earlier) value of $64,000,000. Although it was clear that the value of the units were negatively affected by the failure of the developer to complete some of the infrastructure critical to marketing the units, including a water theme-park in the adjacent subdivision, it was by no means doubtful as of March 31, 2009, that the value of the units upon completion would be insufficient to repay all of the bank's

principal and interest. Therefore, the placement of these loans in non-accrual status, as of March 31, 2009, would not have been appropriate.

Loan #11. Richland Investments, LLC

Richland Investments, LLC was a single-member Florida limited liability company, owned by John H. "Jack" Bray, a long-time and highly successful customer of one of Region's legacy institutions, AmSouth Bank. Although Bray moved his operations and reoriented his investments to California in 2003, Regions continued to lead a two-bank funded revolving borrowing-base land acquisition and development line of credit margined at 60% of appraised values. Richland's economic model was to buy well located large tracts of undeveloped and at times, un-entitled land during economic downturns from institutional owners that acquired the land via foreclosure (or from other owners with significant motivation to sell their non-income producing assets) and to hold, entitle, develop, subdivide, and resell the constituent parcels upon the return of normalized economic conditions. An example of one such seller was the U. S. government-owned Resolution Trust Corporation.

In July of 2007, Regions increased Richland's participated revolving line of credit from $60 million to $80 million and added a third funding bank to the lending group, causing the credit facility to fall within the Shared National Credits Program. The collateral pool was comprised entirely of California real estate, in ten major tracts, still margined at 60% of value (although near 100% of distressed purchase prices), and Regions retained its 56.25% participation in the facility scheduled to mature in June of 2009. As of March 31, 2009, Regions Bank's share of the outstanding advances was $41,852,606. During the first quarter of 2009, Regions began the process of updating its appraisals of the California tracts, presumably in anticipation of the upcoming maturity. Upon completion of the appraisal and appraisal review process in June of 2009, the indicated change in values was staggering: total appraised values of the ten tracts declined from $126,246,000 to $41,015,000 over the approximate two-year period between appraisals, resulting in a change in collateral margins from 47 ½ %, well below regulatory LTV guidelines for unimproved land, to 102%.

The dramatic reduction in California real estate sales activity which began in late 2007 severely reduced Richland's sole source of cash flow and substantially depleted its balance sheet liquidity by year-end 2008. As a result, Regions had downgraded the credit facility to Substandard/Accruing (RR70) by 12/31/2008. The absence of revenues from Richland property sales and the pressure on its liquidity were manifested in the 59-day delinquency status of the line's interest billings as of 3/31/2009.

During the first quarter of 2009, as mentioned above, the reappraisal process was started and the mostly January-dated appraisals, prior to Regions REVS's reviews, estimated the collateral values at $72,915,000, representing a 42% drop from their values of approximately 22 months earlier. Even though the drop was substantial, these values continued to support the conclusion that it remained a reasonable expectation that Regions would collect all of its principal and interest. The lenders and the borrower proceeded accordingly through negotiations which eventually led to a one-year forbearance agreement and the posting of a one-year interest reserve. Under these circumstances, in spite of the delinquency status of the loan on March 31, 2009, it was reasonable for Regions Bank to expect to collect all of its principal and interest and to continue to recognize accruing interest as revenue as of that date.

Loan #12. River Glen, LLC

This credit facility, which was closed in January of 2005, began as an $8,500,000 revolving term loan for the purpose of land acquisition and residential lot development of approximately 210 acres in Nassau County, Florida. At the time of the loan commitment, 258 of the anticipated 278 developed lots were under lot purchase contracts with three residential builders which posted non-refundable deposits and standby letters of credit in the combined amount of$930,000, representing approximately 8% of the lot purchase prices. Required principal payments were matched to the take-down requirements of the builders' purchase contracts. Due to the factors enumerated above which occurred after the loan was closed—Florida overbuilding leading to significant price reductions, long-term disruption in the national and local residential mortgage and construction finance markets, the extended length and severe depth of the 2008 national recession, and the impact on consumer and business confidence and investment decisions of the so-called financial crisis in which many of the largest American financial firms required federal government support for their survival—the originally scheduled lot purchases did not occur as envisioned and only one of the three residential contractors remained in business at the end of 2008. As a result, the original development loan agreement was modified twice in 2007.

As of March 31, 2009, the remaining outstanding balance on the loan was $3,836,162 and the borrower was 70 days delinquent in paying interest. The individual guarantors had earlier notified the account officer that they did not have sufficient liquidity to bring the interest current, nor to meet the scheduled April 9, 2009 principal and interest payment on the Community Development District's $10,000,000 infrastructure bonds. At the time of that notification in January, 2009, the account was downgraded to RR 70 (Substandard/Accruing) and transferred to the Special Assets Department for management. The Regions Problem Loan Report of March 31, 2009 appropriately noted that the collateral value as of that date was $4,470,000, reflecting the REVS appraiser's reductions in value because 11 lots had been sold since the appraisal was performed in June, 2008 and to reflect the 10% annual decline in lot values in the Jacksonville MSA reflected in then-current market data. This reduction resulted in an increase in the loan-to-collateral value ratio to 86% with indicated valuation equity of $633,838 as of March, 2009. Therefore, I believe that the decision to allow this loan to continue to accrue interest represented a reasonable judgment as of the end of March, 2009.

Loan #13. Seahaven Finance, LLC

This was a Regions Bank led Shared National Credit originated in April of 2006 in the total amount of $73,000,000 for the purpose of constructing a 280-unit high-rise residential condominium in Panama City Beach, Florida. The funding commitment was contingent upon the borrower obtaining sufficient pre-construction sales contracts, supported by escrowed cash deposits of 10% of the purchase amount, to repay the total loan. Half of the escrowed funds were available to be used by the developer as a funding source for the project. The developer, a single-asset entity owned equally by four locally resident brothers, obtained the required number of pre-construction sales contracts and the Regions-led bank group—Regions held a 41% ownership interest in the loan—began funding the construction loan shortly after loan closing. The construction was completed in November of 2007 and the developer closed on the sale of 144 of the completed units reducing the loan to $16,549,425 (Regions' share was $6,801,113) as of March 31, 2009.

Approximately 136 of the pre-construction contracts were breached when the purchasers did not close upon completion, presumably because of the oversupply of Gulf Coast condominium units (and other economic factors previously discussed) and the resulting significant reductions in unit values. After

litigation determined that the borrower was entitled to keep the balance of the escrowed deposits as liquidated damages, the developers were left with a large number of unsold condominium units in a very distressed market. Regions engaged an appraisal of the remaining 136 units and common areas of the development in January of 2009, coinciding with the original loan maturity date. After its review in mid-March by the REVS appraiser, the final appraised value (after adjusting for seven unit sales closed in March) was $17,192,000 versus the remaining loan balance of $16,549,425.

The loan, which had been renewed at maturity until January of 2010, was not delinquent on March 31, 2009. As of that date the loan was fully secured by the real estate collateral and the most recently completed financial statements of the guarantors, dated as of October, 2008 reflected combined guarantor net worth of $127 million , including liquid assets of $3.9 million, representing approximately one-year's accrual of interest at the note's interest rate.

Just prior to completion of construction in September of 2007, one of the four members of the borrower, Clark Bennett, died. Because Mr. Clark Bennett's personal financial statement reflected ownership of the majority of the combined liquid assets, Regions' attorney filed the appropriate process to protect its right to file a claim in Mr. Bennett's estate, when probated. Given the collateral's appraised value and the considerable combined net worth and liquidity of the guarantors—Clark Bennett's decedent's estate was in the process of being probated as of March 31, 2009—my judgment at that time would have been that the ultimate full collection of the outstanding principal and interest was likely. Therefore, the decision to leave the loan in accruing status was a reasonable judgment under the facts and circumstances known at that time.

Loan #14. Waters Edge One, LLC

This loan represented Regions Bank's 22% participation in a 2005 Wachovia Bank-led Shared National Credit syndication of a $90,000,000 condominium construction loan to a single-asset affiliate of a large national real estate development company, Opus South Corporation. The borrower developed 152 residential units at Clearwater, Florida. As a condition to funding the construction loan, the borrower was required to obtain a sufficient number of pre-construction sales to represent 80% of the loan amount. These contracts were supported by escrowed deposits representing 20% of the purchase price of each unit. As the project approached completion in the fall of 2007, market conditions had changed significantly so that the contract purchase prices were substantially above the then-current market price of residential condominium units offered for sale. Brought to light by purchaser-initiated litigation, the contract language contained a fatal flaw of some nature that allowed the purchasers to rescind their contracts for up to three years after completion of construction if they so desired. The law firm responsible for drafting the contracts admitted its error and the absence of a meaningful solution, given the extant economic and market conditions. An appraisal of the project was engaged and the appraiser provided January, 2008 value estimates for three scenarios. Because of the changes in general economic and local real estate market conditions Region's review appraiser selected the worst case of the three scenarios as the most likely to occur. The market value estimate for that scenario, as of January 31, 2008 was a total value of $67,700,000 versus the loan commitment of $90,000,000, a 133% loan-to-collateral value ratio ("LTV").

The bank group and the borrower entered negotiations for a loan modification and came to terms that reduced the outstanding loan balance by 10%, provided the bank group with additional collateral and required quarterly curtailments designed to bring the LTV back to 70% over a period of approximately one year. The borrower continued to pay interest as due and made curtailments required through

December, 2008, reducing the loan to 80% of the January, 2008 appraised value. The modified loan became delinquent when the borrower failed to make its February, 2009 interest payment and the loan was 50 days delinquent as of March 31, 2009. At that time, based on the most recent appraisal, the loan was well secured (80% LTV). Failed attempts by the ultimate parent to negotiate the release of its commitment to fund the borrower led to the filing of the borrower's bankruptcy petition on April 22, 2009. A significant asset of the borrower (and the debtor-in-possession) was its clearly demonstrated claim for legal malpractice against the contract drafting law firm. Given the significance of the damages arising from the admitted malpractice and the recent improvement in the bank group's collateral position, I believe that it was an exercise of reasonable judgment to defer placing its participation interest in non-accrual status as of March 31, 2009.

Loan #15. Wilval, LLC

This loan, in the amount of $5,248,141 as of March 31, 2009, began as a 2005 land acquisition and development loan for residential lots in Henrico County, Virginia. The lots were to be taken down by a single contractor which contributed $2,000,000 of the purchase price of the to-be-developed land. In 2006 the contractor reversed its decision to build and sell houses at this location and no development funds were ever advanced. The borrower attempted to secure other contractors to purchase the lots once developed but market conditions were unfavorable and until the first quarter of 2009 those efforts were unsuccessful. The 2007 appraisal valued the land at $9,600,000 under a development scenario.

Although interest was 59 days delinquent on March 31, 2009, the guarantors had agreed to provide additional collateral of sufficient value to support a one-year interest reserve. The borrower had reached an informal agreement with Ryan Homes, a large national homebuilder with plans to build in this location beginning in late 2010, to develop the lots for its use. Because the primary collateral well secured the outstanding principal balances, because of the provision of additional collateral and the establishment of a one-year interest reserve, and the informal plans with a reputable national homebuilder to reinstate the original primary source of repayment of the loan, the ultimate collection of the principal and any accrued but unpaid interest did not appear in doubt as of March 31, 2009. Therefore, placement of the loan in non-accrual status at that time was not warranted in my judgment.

CONCLUSION

In conclusion, this exercise of reviewing Regions' decisions based on documented information available at the time the decisions were made demonstrates the imprecise nature of these judgments. This is especially true of judgments made based on subjective probabilities of the occurrence of future events, including the evaluation of the likelihood that a creditor will be able to collect all of its principal and interest. Each person's judgment is informed, and to some degree biased, by his personal experiences; therefore, reasonable judgments can and do differ given the same information available to different decision makers. The same decision maker may reasonably reach different judgments based on similar information at different times because of changes in outlook.

The detailed collaborative process employed by Regions Bank each month resulting in accrual status decisions reflected a consensus of judgments. While I may have made different judgments based on the same information available to decision makers at the time, this exercise demonstrates that as of March 31, 2009, experienced and informed decision makers can reasonably differ in their judgments.

The exhibits referred to in this report are attached.

Exhibit 1—March 10, 1999 Joint Interagency Letter to Financial Institutions
Exhibit 2—July 12, 1999 Joint Interagency Letter to Financial Institutions
Exhibit 3—Interagency Policy Statement on the Allowance for Loan and Lease Losses
Exhibit 4—May 21, 1999 Memorandum to Domestic Banking Organizations Supervised by the Federal Reserve (with Exhibit DC-80A: Application of FASB Statements 5 and 114 to a Loan Portfolio)
Exhibit 5—Regions Bank Loan Policy Section 500-8
Exhibit 6—Regions Bank 3/31/2009 Problem Loan Report (Designers Choice Cabinetry)
Exhibit 7—Regions Bank Non-accrual on Problem Loans Policy
Exhibit 8—Regions Bank 3/31/2009 Problem Loan Report (Eighteen Investments, Inc.)
Exhibit 9—Regions 3/31/2009 Problem Loan Report (First West Cutler Gardens, LLC)
Exhibit 10—Forecast Cost to Complete (Glove Factory Land Holdings, LLC)
Exhibit 11—Order Instituting Public Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Orders and Penalties, *SEC vs. Fifth Third Bank*, File No. 3-15635
Exhibit 12—OCC Bulletin 1998-21 (Shared National Credit Program)
Exhibit 13—Summary of Professional Experience
Exhibit 14—Prior Expert Testimony

EXHIBIT 1

Joint Press Release

Washington, D.C.
March 10, 1999

JOINT PRESS RELEASE

The Securities and Exchange Commission, Federal Deposit Insurance Corporation, Federal Reserve Board, Office of the Comptroller of the Currency and Office of Thrift Supervision have jointly issued the attached letter to financial institutions on the allowance for loan losses.

Securities and Exchange Commission
Federal Deposit Insurance Corporation
Federal Reserve Board
Office of the Comptroller of the Currency
Office of Thrift Supervision

JOINT INTERAGENCY LETTER TO FINANCIAL INSTITUTIONS

Last November, the Securities and Exchange Commission, Federal Deposit Insurance Corporation, Federal Reserve Board, Office of the Comptroller of the Currency, and Office of Thrift Supervision (the Agencies) issued a Joint Interagency Statement in which they reaffirmed the importance of credible financial statements and meaningful disclosure to investors and to a safe and sound financial system. The Joint Interagency Statement underscored the requirement that depository institutions record and report their allowance for loan and lease losses in accordance with generally accepted accounting principles (GAAP). We stress and continue to emphasize the importance of depository institutions having prudent, conservative, but not excessive, loan loss allowances that fall within an acceptable range of estimated losses. We recognize that today instability in certain global markets, for example, is likely to increase loss inherent in affected institutions' portfolios and consequently require higher allowances for credit losses than were appropriate in more stable times.

Despite the issuance of the November Joint Interagency Statement, there is continued uncertainty among financial institutions as to the expectations of the banking and securities regulators on the appropriate amount, disclosure, and documentation of the allowance for credit losses. The Agencies now announce additional measures designed to address this

continued uncertainty. These measures are consistent with the Agencies' mutual objective of, and focus on, addressing prospectively, where feasible, issues related to improving the documentation, disclosure, and reporting of loan loss allowances of financial institutions.

- The Agencies are establishing a Joint Working Group, comprised of policy representatives from each of the Agencies, to gain a better understanding of the procedures and processes, including "sound practices," used generally by banking organizations to determine the allowance for credit losses. An important aspect of the Joint Working Group's activities will be to receive input from representatives of the banking industry and the accounting profession on these matters, and will not involve joint examinations of institutions. The common base of knowledge that results will facilitate the joint and individual efforts of the Agencies to provide improved guidance on appropriate procedures, documentation, and disclosures to the banking industry. This will assist the banking community in complying with GAAP and will improve comparability among financial statements of depository and other lending institutions. The Joint Working Group will also share information and insights concerning issues of mutual concern that may arise.
- Using information gathered through the Joint Working Group and from representatives of the accounting profession and the banking industry, the Agencies will work together to issue parallel guidance, on a timely basis, and within a year on the first two items listed below, in the following key areas regarding credit loss allowances:
  - *Appropriate Methodologies and Supporting Documentation.* The Agencies intend to issue guidance that will suggest procedures and processes necessary for a reasoned assessment of losses inherent in a portfolio and discuss ways to ensure that documentation supports the reported allowance.
  - *Enhanced Disclosures.* This guidance will address appropriate disclosures of allowances for credit losses and the credit quality of institutions' portfolios by identifying key areas for enhanced disclosures, including the need for institutions to disclose changes in risk factors and asset quality that affect allowances for credit losses. The enhanced disclosures would contribute to better understanding by investors and the public of the risk profile of banking institutions and improve market discipline.
- The Agencies will work together to encourage and support the Financial Accounting Standards Board's process of providing additional guidance regarding accounting for allowances for loan losses. The Agencies emphasize that GAAP requires that management's determination be based on a comprehensive, adequately documented, and consistently applied analysis of the particular institution's exposures, the effects of its lending and collection policies, and its own loss experience under comparable conditions.
- In addition, the Agencies will support and encourage the task force of the American Institute of Certified Public Accountants (AICPA) that is developing more specific guidance on the accounting for allowances for credit losses and the techniques of measuring the credit loss inherent in a portfolio at a particular date. In particular, the AICPA task force will focus on providing guidance on how best to distinguish probable losses inherent in the portfolio as of the balance sheet date -- the guidepost

agreed to by the Agencies for reporting allowances in accordance with GAAP -- from possible or future losses not inherent in the balance sheet as of that date. Additionally, the Agencies will ask the AICPA task force to consider recently developed portfolio credit risk measurement and management techniques that are consistent with GAAP as part of this effort. The AICPA project already has been initiated and will include representatives from the accounting profession and the banking industry, as well as observers from the SEC and the banking agencies.

- Senior staff of the Agencies will continue to meet to discuss banking industry accounting and financial disclosure policy issues of interest that affect the transparency of financial reporting and bank safety and soundness. These discussions will address progress in the application of accounting and disclosure standards by banking institutions, including those impacting the allowance for credit losses, with particular focus on recently identified issues and trends. The meetings also will be used to coordinate projects of the Agencies in areas of mutual interest. The first of these meetings was held on January 27.

The Agencies believe that the actions announced above will promote a better and clearer understanding among financial institutions of the appropriate procedures and processes for determining credit losses in accordance with GAAP. The Agencies intend that these steps will enhance the transparency of financial information and improve market discipline, consistent with safety and soundness objectives. In recognition of the specialized regulatory nature of the banking industry and in order to resolve ongoing uncertainties in the industry, with the announcement of these initiatives, the Agencies' focus, in so far as feasible, will be on enhancing allowance practices going forward.

EXHIBIT 2

Joint Release

Securities and Exchange Commission

Federal Deposit Insurance Corporation

Federal Reserve Board

Office of the Comptroller of the Currency

Office of Thrift Supervision

Washington, D.C.
July 12, 1999
NR-99-65
Media Contact: Robert M. Garsson

JOINT PRESS RELEASE

The Securities and Exchange Commission, Federal Deposit Insurance Corporation, Federal Reserve Board, Office of the Comptroller of the Currency and Office of Thrift Supervision have jointly issued the attached letter to financial institutions on the allowance for loan losses.

Securities and Exchange Commission
Federal Deposit Insurance Corporation
Federal Reserve Board
Office of the Comptroller of the Currency
Office of Thrift Supervision

JOINT INTERAGENCY LETTER TO FINANCIAL INSTITUTIONS
July 12, 1999

Over the past several months, the banking regulators and the Securities and Exchange Commission ("SEC") (jointly as the "Agencies") have worked together to provide a consistent message on the allowance for loan losses. In a March 10, 1999 Joint Interagency Letter to Financial Institutions, the Agencies stated, "We recognize that today instability in certain global markets, for example, is likely to increase loss inherent in affected institutions' portfolios and consequently require higher allowances for credit losses than were appropriate in more stable times." On May 19, 1999, SEC Chairman Arthur Levitt reiterated this message and added, "Some have interpreted our efforts on bank reserves to suggest that the SEC thinks reserves are too high and should be lowered. That couldn't be further from the truth. . . I want to emphasize -- it is not our policy that institutions artificially lower reserves or ever have inadequate reserves."

As announced in the March 10, 1999 joint letter, efforts are ongoing to provide the banking industry and accounting profession with enhanced guidance on appropriate methodologies, disclosures, and supporting documentation for loan loss allowances. The Agencies have agreed to support and encourage the FASB process and the AICPA Allowance for Loan Losses Task Force in clarifying certain aspects of generally accepted accounting principles ("GAAP") related to loan loss allowances. In this regard, FASB Emerging Issues Task Force Topic D-80 includes guidance on certain loan loss accounting issues. In addition, the Joint Working Group of the Agencies (as described in the March 10, 1999 joint letter) is seeking input and guidance from the banking industry and accounting profession in providing additional disclosure and documentation guidance. This interagency letter, building on the prior interagency joint statements, is intended to reaffirm fundamental principles concerning the loan loss allowance and to highlight the future work of the Agencies in this area.

The Agencies have agreed on the following important aspects of loan loss allowance practices:

- Arriving at an appropriate allowance involves a high degree of management judgment and results in a range of estimated losses;
- Prudent, conservative, but not excessive, loan loss allowances that fall within an acceptable range of estimated losses are appropriate. In accordance with GAAP, an institution should record its best estimate within the range of credit losses, including when management's best estimate is at the high end of the range;
- Determining the allowance for loan losses is inevitably imprecise, and an appropriate allowance falls within a range of estimated losses;
- An "unallocated" loan loss allowance is appropriate when it reflects an estimate of probable losses, determined in accordance with GAAP, and is properly supported;
- Allowance estimates should be based on a comprehensive, well-documented, and consistently applied analysis of the loan portfolio; and
- The loan loss allowance should take into consideration all available information existing as of the financial statement date, including environmental factors such as industry, geographical, economic, and political factors.

The Agencies will continue to cooperate and communicate with respect to significant issues of policy through their Chief Accountants' meetings. In addition, the SEC staff will consult with the appropriate banking regulators as part of the SEC's process in determining whether to take a significant action in their review of the accounting for a financial institution's loan loss allowance.

As set forth in the March 10, 1999 joint letter, the Agencies agreed to provide by March 2000 additional guidance regarding documentation and disclosure issues. In addition, as indicated in that joint letter, certain other accounting issues will be addressed over the next two years through the efforts of the AICPA Allowance for Loan Losses Task Force. While this guidance is under development, financial institutions should follow GAAP, including the concepts set forth herein and the guidance included with Topic D-80, as they establish their loan loss allowances for financial reporting purposes.

EXHIBIT 3

Office of the Comptroller of the Currency
Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
National Credit Union Administration
Office of Thrift Supervision

Interagency Policy Statement on the Allowance for Loan and Lease Losses[1]

Purpose

The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, jointly with the National Credit Union Administration, have revised the banking agencies' 1993 policy statement on the allowance for loan and lease losses (ALLL) to ensure consistency with generally accepted accounting principles (GAAP) and more recent supervisory guidance. The banking agencies originally issued the 1993 policy statement to describe the responsibilities of the boards of directors and management of banks and savings associations and of examiners regarding the ALLL. This revision replaces the 1993 policy statement and also makes it applicable to credit unions. In addition, the agencies are issuing the attached frequently asked questions (FAQs) to assist institutions in complying with GAAP and ALLL supervisory guidance.

Background

This policy statement reiterates key concepts and requirements included in GAAP and existing ALLL supervisory guidance.[2]

The principal sources of guidance on accounting for impairment in a loan portfolio under GAAP are Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies* (FAS 5), and Statement of Financial Accounting Standards No. 114, *Accounting by Creditors for Impairment of a Loan* (FAS 114). In addition, the Financial Accounting Standards Board *Viewpoints* article that is included in Emerging Issues Task Force Topic D-80 (EITF D-80), *Application of FASB Statements No. 5 and No. 114 to a Loan Portfolio*, presents questions and answers that provide specific guidance on the interaction between these two FASB statements and may be helpful in applying them.

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[1] This policy statement applies to all depository institutions (institutions), except U.S. branches and agencies of foreign banks, supervised by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision (the "banking agencies") and to institutions insured and supervised by the National Credit Union Administration (NCUA) (collectively, the "agencies"). U.S. branches and agencies of foreign banks continue to be subject to any separate guidance that has been issued by their primary supervisory agency.

[2] As discussed more fully in the "Nature and Purpose of the ALLL" section below, this policy statement and the ALLL generally do not address loans carried at fair value or loans held for sale. In addition, this policy statement provides only limited guidance on "purchased impaired loans."

In July 1999, the banking agencies and the Securities and Exchange Commission (SEC) issued a Joint Interagency Letter to Financial Institutions. The letter stated that the banking agencies and the SEC agreed on the following important aspects of loan loss allowance practices:

- Arriving at an appropriate allowance involves a high degree of management judgment and results in a range of estimated losses;
- Prudent, conservative, but not excessive, loan loss allowances that fall within an acceptable range of estimated losses are appropriate. In accordance with GAAP, an institution should record its best estimate within the range of credit losses, including when management's best estimate is at the high end of the range;
- Determining the allowance for loan losses is inevitably imprecise, and an appropriate allowance falls within a range of estimated losses;
- An "unallocated" loan loss allowance is appropriate when it reflects an estimate of probable losses, determined in accordance with GAAP, and is properly supported;
- Allowance estimates should be based on a comprehensive, well-documented, and consistently applied analysis of the loan portfolio; and
- The loan loss allowance should take into consideration all available information existing as of the financial statement date, including environmental factors such as industry, geographical, economic, and political factors.

In July 2001, the banking agencies issued a *Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions* (2001 Policy Statement). It is designed to assist institutions in establishing a sound process for determining an appropriate ALLL and documenting that process in accordance with GAAP.[3] The guidance in the 2001 Policy Statement was substantially adopted by the NCUA through its Interpretative Ruling and Policy Statement 02-3, *Allowance for Loan and Lease Losses Methodologies and Documentation for Federally Insured Credit Unions* in May 2002 (NCUA's 2002 IRPS).

In March 2004, the agencies issued an *Update on Accounting for Loan and Lease Losses*. This guidance provided reminders of longstanding supervisory guidance as well as a listing of the existing allowance guidance that institutions should continue to apply.

Nature and Purpose of the ALLL

The ALLL represents one of the most significant estimates in an institution's financial statements and regulatory reports. Because of its significance, each institution has a

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[3] The 2001 Policy Statement and the 2002 NCUA IRPS are available on the agencies' Web sites. In addition, the SEC staff issued parallel guidance in July 2001 in Staff Accounting Bulletin No. 102 – *Selected Loan Loss Allowance Methodology and Documentation Issues* (SAB 102), which has been codified as Topic 6.L. in the SEC's Codification of Staff Accounting Bulletins. Both SAB 102 and the Codification are available on the SEC's Web site.

responsibility for developing, maintaining, and documenting a comprehensive, systematic, and consistently applied process for determining the amounts of the ALLL and the provision for loan and lease losses (PLLL). To fulfill this responsibility, each institution should ensure controls are in place to consistently determine the ALLL in accordance with GAAP, the institution's stated policies and procedures, management's best judgment and relevant supervisory guidance.

As of the end of each quarter, or more frequently if warranted, each institution must analyze the collectibility of its loans and leases held for investment[4] (hereafter referred to as "loans") and maintain an ALLL at a level that is appropriate and determined in accordance with GAAP. An appropriate ALLL covers estimated credit losses on individually evaluated loans that are determined to be impaired as well as estimated credit losses inherent in the remainder of the loan and lease portfolio. The ALLL does not apply, however, to loans carried at fair value, loans held for sale,[5] off-balance sheet credit exposures[6] (e.g. financial instruments such as off-balance sheet loan commitments, standby letters of credit, and guarantees), or general or unspecified business risks.

For purposes of this policy statement, the term "estimated credit losses" means an estimate of the current amount of loans that it is probable the institution will be unable to collect given facts and circumstances as of the evaluation date. Thus, estimated credit losses represent net charge-offs that are likely to be realized for a loan or group of loans. These estimated credit losses should meet the criteria for accrual of a loss contingency (i.e., through a provision to the ALLL) set forth in GAAP.[7] When available information confirms that specific loans, or portions thereof, are uncollectible, these amounts should be promptly charged off against the ALLL.

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[4] Consistent with the American Institute of Certified Public Accountants' (AICPA) Statement of Position 01-6, *Accounting by Certain Entities (Including Entities With Trade Receivables) That Lend to or Finance the Activities of Others*, loans and leases held for investment are those loans and leases that the institution has the intent and ability to hold for the foreseeable future or until maturity or payoff.

[5] Refer to the "Interagency Guidance on Certain Loans Held for Sale" (March 26, 2001) for the appropriate accounting and reporting treatment for certain loans that are sold directly from the loan portfolio or transferred to a held-for-sale account. Loans held for sale are reported at the lower of cost or fair value. Declines in value occurring after the transfer of a loan to the held-for-sale portfolio are accounted for as adjustments to a valuation allowance for held-for-sale loans and not as adjustments to the ALLL.

[6] Credit losses on off-balance sheet credit exposures should be estimated in accordance with FAS 5. Any allowance for credit losses on off-balance sheet exposures should be reported on the balance sheet as an "Other Liability," not as part of the ALLL.

[7] FAS 5 requires the accrual of a loss contingency when information available prior to the issuance of the financial statements indicates it is probable that an asset has been impaired at the date of the financial statements and the amount of loss can be reasonably estimated. These conditions may be considered in relation to individual loans or in relation to groups of similar types of loans. If the conditions are met, accrual should be made even though the particular loans that are uncollectible may not be identifiable. Under FAS 114, an individual loan is impaired when, based on current information and events, it is probable that a creditor will be unable to collect all amounts due according to the contractual terms of the loan agreement. It is implicit in these conditions that it must be probable that one or more future events will occur confirming the fact of the loss. Thus, under GAAP, the purpose of the ALLL is not to absorb all of the risk in the loan portfolio, but to cover probable credit losses that have already been incurred.

For "purchased impaired loans,"[8] GAAP prohibits "carrying over" or creating an ALLL in the initial recording of these loans. However, if, upon evaluation subsequent to acquisition, it is probable that the institution will be unable to collect all cash flows expected at acquisition on a purchased impaired loan (an estimate that considers both timing and amount), the loan should be considered impaired for purposes of applying the measurement and other provisions of FAS 5 or, if applicable, FAS 114.

Estimates of credit losses should reflect consideration of all significant factors that affect the collectibility of the portfolio as of the evaluation date. For loans within the scope of FAS 114 that are individually evaluated and determined to be impaired,[9] these estimates should reflect consideration of one of the standard's three impairment measurement methods as of the evaluation date: (1) the present value of expected future cash flows discounted at the loan's effective interest rate,[10] (2) the loan's observable market price, or (3) the fair value of the collateral if the loan is collateral dependent.

An institution may choose the appropriate FAS 114 measurement method on a loan-by-loan basis for an individually impaired loan, except for an impaired collateral-dependent loan. The agencies require impairment of a collateral-dependent loan to be measured using the fair value of collateral method. As defined in FAS 114, a loan is collateral dependent if repayment of the loan is expected to be provided solely by the underlying collateral. In general, any portion of the recorded investment in a collateral-dependent loan (including any capitalized accrued interest, net deferred loan fees or costs, and unamortized premium or discount) in excess of the fair value of the collateral that can be identified as uncollectible, and is therefore deemed a confirmed loss, should be promptly charged off against the ALLL.[11]

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[8] A "purchased impaired loan" is defined as a loan that an institution has purchased, including a loan acquired in a purchase business combination, that has evidence of deterioration of credit quality since its origination and for which it is probable, at the purchase date, that the institution will be unable to collect all contractually required payments. When reviewing the appropriateness of the reported ALLL of an institution with purchased impaired loans, examiners should consider the credit losses factored into the initial investment in these loans when determining whether further deterioration, e.g., decreases in cash flows expected to be collected, has occurred since the loans were purchased. The agencies' regulatory reports and disclosures in financial statements may provide useful information for examiners in reviewing these loans. Refer to the AICPA's Statement of Position 03-3, *Accounting for Certain Loans or Debt Securities Acquired in a Transfer,* for further guidance on the appropriate accounting.

[9] FAS 114 does not specify how an institution should identify loans that are to be evaluated for collectibility nor does it specify how an institution should determine that a loan is impaired. An institution should apply its normal loan review procedures in making those judgments. Refer to the FAQs for further guidance.

[10] The effective interest rate on a loan is the rate of return implicit in the loan (that is, the contractual interest rate adjusted for any net deferred loan fees or costs and any premium or discount existing at the origination or acquisition of the loan).

[11] For further information, banks and savings associations should refer to the Illustration in Appendix B of the 2001 Policy Statement. Credit unions should refer to the section heading "Application of GAAP" in the NCUA's 2002 IRPS.

All other loans, including individually evaluated loans determined not to be impaired under FAS 114, should be included in a group of loans that is evaluated for impairment under FAS 5. [12] While an institution may segment its loan portfolio into groups of loans based on a variety of factors, the loans within each group should have similar risk characteristics. For example, a loan that is fully collateralized with risk-free assets should not be grouped with uncollateralized loans. When estimating credit losses on each group of loans with similar risk characteristics, an institution should consider its historical loss experience on the group, *adjusted for changes in trends, conditions, and other relevant factors* that affect repayment of the loans as of the evaluation date.

For analytical purposes, an institution should attribute portions of the ALLL to loans that it evaluates and determines to be impaired under FAS 114 and to groups of loans that it evaluates collectively under FAS 5. However, the ALLL is available to cover all charge-offs that arise from the loan portfolio.

Responsibilities of the Board of Directors and Management

Appropriate ALLL Level

Each institution's management is responsible for maintaining the ALLL at an appropriate level and for documenting its analysis according to the standards set forth in the 2001 Policy Statement or the NCUA's 2002 IRPS, as applicable. Thus, management should evaluate the ALLL reported on the balance sheet as of the end of each quarter (and for credit unions, prior to paying dividends), or more frequently if warranted, and charge or credit the PLLL to bring the ALLL to an appropriate level as of each evaluation date. The determination of the amounts of the ALLL and the PLLL should be based on management's current judgments about the credit quality of the loan portfolio, and should consider all known relevant internal and external factors that affect loan collectibility as of the evaluation date. Management's evaluation is subject to review by examiners. An institution's failure to analyze the collectibility of the loan portfolio and maintain and support an appropriate ALLL in accordance with GAAP and supervisory guidance is generally an unsafe and unsound practice.

In carrying out its responsibility for maintaining an appropriate ALLL, management is expected to adopt and adhere to written policies and procedures that are appropriate to the size of the institution and the nature, scope, and risk of its lending activities. At a minimum, these policies and procedures should ensure that:

- The institution's process for determining an appropriate level for the ALLL is based on a comprehensive, well-documented, and consistently applied analysis of its loan portfolio. [13] The analysis should consider all significant factors that affect the

[12] An individually evaluated loan that is determined not to be impaired under FAS 114 should be evaluated under FAS 5 when specific characteristics of the loan indicate that it is probable there would be estimated credit losses in a group of loans with those characteristics. Refer to the FAQs for further guidance.

[13] As noted in the 2001 Policy Statement and the NCUA's 2002 IRPS, an institution with less complex lending activities and products may find it more efficient to combine a number of procedures while continuing to ensure that the institution has a consistent and appropriate ALLL methodology. Thus, much of the supporting documentation

collectibility of the portfolio and should support the credit losses estimated by this process.

- The institution has an effective loan review system and controls (including an effective loan classification or credit grading system) that identify, monitor, and address asset quality problems in an accurate and timely manner.[14] To be effective, the institution's loan review system and controls must be responsive to changes in internal and external factors affecting the level of credit risk in the portfolio.

- The institution has adequate data capture and reporting systems to supply the information necessary to support and document its estimate of an appropriate ALLL.

- The institution evaluates any loss estimation models before they are employed and modifies the models' assumptions, as needed, to ensure that the resulting loss estimates are consistent with GAAP. To demonstrate this consistency, the institution should document its evaluations and conclusions regarding the appropriateness of estimating credit losses with the models or other estimation tools. The institution should also document and support any adjustments made to the models or to the output of the models in determining the estimated credit losses.

- The institution promptly charges off loans, or portions of loans, that available information confirms to be uncollectible.

- The institution periodically validates the ALLL methodology. This validation process should include procedures for a review, by a party who is independent of the institution's credit approval and ALLL estimation processes, of the ALLL methodology and its application in order to confirm its effectiveness. A party who is independent of these processes could be the internal audit staff, a risk management unit of the institution, an external auditor (subject to applicable auditor independence standards), or another contracted third party from outside the institution. One party need not perform the entire analysis as the validation can be divided among various independent parties.

The board of directors is responsible for overseeing management's significant judgments and estimates pertaining to the determination of an appropriate ALLL. This oversight should include but is not limited to:

- Reviewing and approving the institution's written ALLL policies and procedures at least annually.

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required for an institution with more complex products or portfolios may be combined into fewer supporting documents in an institution with less complex products or portfolios.

[14] Loan review and loan classification or credit grading systems are discussed in Attachment 1. In addition, banks and savings associations should refer to the asset quality standards in the Interagency Guidelines Establishing Standards for Safety and Soundness adopted by their primary federal regulator, as follows: for national banks, Appendix A to Part 30; for state member banks, Appendix D-1 to Part 208; for state nonmember banks, Appendix A to Part 364; and for savings associations, Appendix A to Part 570.

- Reviewing management's assessment and justification that the loan review system is sound and appropriate for the size and complexity of the institution.
- Reviewing management's assessment and justification for the amounts estimated and reported each period for the PLLL and the ALLL.
- Requiring management to periodically validate and, when appropriate, revise the ALLL methodology.

For purposes of the Reports of Condition and Income (Call Report), the Thrift Financial Report (TFR), and the NCUA Call Report (5300) an appropriate ALLL (after deducting all loans and portions of loans confirmed loss) should consist only of the following components (as applicable),[15] the amounts of which take into account <u>*all relevant facts and circumstances as of the evaluation date*</u>:

- For loans within the scope of FAS 114 that are individually evaluated and found to be impaired, the associated ALLL should be based upon one of the three impairment measurement methods specified in FAS 114.[16]
- For all other loans, including individually evaluated loans determined not to be impaired under FAS 114,[17] the associated ALLL should be measured under FAS 5 and should provide for all estimated credit losses that have been incurred on groups of loans with similar risk characteristics.
- For estimated credit losses from transfer risk on cross-border loans, the impact to the ALLL should be evaluated individually for impaired loans under FAS 114 or evaluated on a group basis under FAS 5. See Attachment 2 for further guidance on considerations of transfer risk on cross-border loans.
- For estimated credit losses on accrued interest and fees on loans that have been reported as part of the respective loan balances on the institution's balance sheet, the associated ALLL should be evaluated under FAS 114 or FAS 5 as appropriate, if not already included in one of the preceding components.

Because deposit accounts that are overdrawn (i.e. overdrafts) must be reclassified as loans on the balance sheet, overdrawn accounts should be included in one of the first two components above, as appropriate, and evaluated for estimated credit losses.

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[15] A component of the ALLL that is labeled "unallocated" is appropriate when it reflects estimated credit losses determined in accordance with GAAP and is properly supported and documented.

[16] As previously noted, the use of the fair value of collateral method is required for an individually evaluated loan that is impaired if the loan is collateral dependent.

[17] See footnote 12.

Determining the appropriate level for the ALLL is inevitably imprecise and requires a high degree of management judgment. Management's analysis should reflect a prudent, conservative, but not excessive ALLL that falls within an acceptable range of estimated credit losses. When a range of losses is determined, institutions should maintain appropriate documentation to support the identified range and the rationale used for determining the best estimate from within the range of loan losses.

As discussed more fully in Attachment 1, it is essential that institutions maintain effective loan review systems. An effective loan review system should work to ensure the accuracy of internal credit classification or grading systems and, thus, the quality of the information used to assess the appropriateness of the ALLL. The complexity and scope of an institution's ALLL evaluation process, loan review system, and other relevant controls should be appropriate for the size of the institution and the nature of its lending activities. The evaluation process should also provide for sufficient flexibility to respond to changes in the factors that affect the collectibility of the portfolio.

Credit losses that arise from the transfer risk associated with an institution's cross-border lending activities require special consideration. In particular, for banks with cross-border lending exposure, management should determine that the ALLL is appropriate to cover estimated losses from transfer risk associated with this exposure over and above any minimum amount that the Interagency Country Exposure Review Committee requires to be provided in the Allocated Transfer Risk Reserve (or charged off against the ALLL). These estimated losses should meet the criteria for accrual of a loss contingency set forth in GAAP. (See Attachment 2 for factors to consider.)

Factors to Consider in the Estimation of Credit Losses

Estimated credit losses should reflect consideration of all significant factors that affect the collectibility of the portfolio as of the evaluation date. Normally, an institution should determine the historical loss rate for each group of loans with similar risk characteristics in its portfolio based on its own loss experience for loans in that group. While historical loss experience provides a reasonable starting point for the institution's analysis, historical losses, or even recent trends in losses, do not by themselves form a sufficient basis to determine the appropriate level for the ALLL. Management should also consider those qualitative or environmental factors that are likely to cause estimated credit losses associated with the institution's existing portfolio to differ from historical loss experience, including but not limited to:

- Changes in lending policies and procedures, including changes in underwriting standards and collection, charge-off, and recovery practices not considered elsewhere in estimating credit losses.

- Changes in international, national, regional, and local economic and business conditions and developments that affect the collectibility of the portfolio, including the condition of various market segments.[18]

- Changes in the nature and volume of the portfolio and in the terms of loans.

- Changes in the experience, ability, and depth of lending management and other relevant staff.

- Changes in the volume and severity of past due loans, the volume of nonaccrual loans, and the volume and severity of adversely classified or graded loans.[19]

- Changes in the quality of the institution's loan review system.

- Changes in the value of underlying collateral for collateral-dependent loans.

- The existence and effect of any concentrations of credit, and changes in the level of such concentrations.

- The effect of other external factors such as competition and legal and regulatory requirements on the level of estimated credit losses in the institution's existing portfolio.

In addition, changes in the level of the ALLL should be directionally consistent with changes in the factors, taken as a whole, that evidence credit losses, keeping in mind the characteristics of an institution's loan portfolio. For example, if declining credit quality trends relevant to the types of loans in an institution's portfolio are evident, the ALLL level as a percentage of the portfolio should generally increase, barring unusual charge-off activity. Similarly, if improving credit quality trends are evident, the ALLL level as a percentage of the portfolio should generally decrease.

Measurement of Estimated Credit Losses

FAS 5

When measuring estimated credit losses on groups of loans with similar risk characteristics in accordance with FAS 5, a widely used method is based on each group's historical net charge-off rate adjusted for the effects of the qualitative or environmental factors discussed previously. As

[18] Credit loss and recovery experience may vary significantly depending upon the stage of the business cycle. For example, an over reliance on credit loss experience during a period of economic growth will not result in realistic estimates of credit losses during a period of economic downturn.

[19] For banks and savings associations, adversely classified or graded loans are loans rated "Substandard" (or its equivalent) or worse under the institution's loan classification system. For credit unions, adversely graded loans are loans included in the more severely graded categories under the institution's credit grading system, i.e., those loans that tend to be included in the credit union's "watch lists."

the first step in applying this method, management generally bases the historical net charge-off rates on the "annualized" historical gross loan charge-offs, less recoveries, recorded by the institution on loans in each group.

Methodologies for determining the historical net charge-off rate on a group of loans with similar risk characteristics under FAS 5 can range from the simple average of, or a determination of the range of, an institution's annual net charge-off experience to more complex techniques, such as migration analysis and models that estimate credit losses.[20] Generally, institutions should use at least an "annualized" or 12-month average net charge-off rate that will be applied to the groups of loans when estimating credit losses. However, this rate could vary. For example, loans with effective lives longer than 12 months often have workout periods over an extended period of time, which may indicate that the estimated credit losses should be greater than that calculated based solely on the annualized net charge-off rate for such loans. These groups may include certain commercial loans as well as groups of adversely classified loans. Other groups of loans may have effective lives shorter than 12 months, which may indicate that the estimated credit losses should be less than that calculated based on the annualized net charge-off rate.

Regardless of the method used, institutions should maintain supporting documentation for the techniques used to develop the historical loss rate for each group of loans. If a range of historical loss rates is developed instead for a group of loans, institutions should maintain documentation to support the identified range and the rationale for determining which rate is the best estimate within the range of loss rates. The rationale should be based on management's assessment of which rate is most reflective of the estimated credit losses in the current loan portfolio.

After determining the appropriate historical loss rate for each group of loans with similar risk characteristics, management should consider those current qualitative or environmental factors that are likely to cause estimated credit losses as of the evaluation date to differ from the group's historical loss experience. Institutions typically reflect the overall effect of these factors on a loan group as an adjustment that, as appropriate, increases or decreases the historical loss rate applied to the loan group. Alternatively, the effect of these factors may be reflected through separate standalone adjustments within the FAS 5 component of the ALLL.[21] Both methods are consistent with GAAP provided the adjustments for qualitative or environmental factors are

[20] Annual charge-off rates are calculated over a specified time period (e.g., three years or five years), which can vary based on a number of factors including the relevance of past periods' experience to the current period or point in the credit cycle. Also, some institutions remove loans that become adversely classified or graded from a group of nonclassified or nongraded loans with similar risk characteristics in order to evaluate the removed loans individually under FAS 114 (if deemed impaired) or collectively in a group of adversely classified or graded loans with similar risk characteristics under FAS 5. In this situation, the net charge-off experience on the adversely classified or graded loans that have been removed from the group of nonclassified or nongraded loans should be included in the historical loss rates for that group of loans. Even though the net charge-off experience on adversely classified or graded loans is included in the estimation of the historical loss rates that will be applied to the group of nonclassified or nongraded loans, the adversely classified or graded loans themselves are no longer included in that group for purposes of estimating credit losses on the group.

[21] An overall adjustment to a portion of the ALLL that is not attributed to specific segments of the loan portfolio is often labeled "unallocated." Regardless of what a component of the ALLL is labeled, it is appropriate when it reflects estimated credit losses determined in accordance with GAAP and is properly supported.

reasonably and consistently determined, are adequately documented, and represent estimated credit losses. For each group of loans, an institution should apply its adjusted historical loss rate, or its historical loss rate and separate standalone adjustments, to the recorded investment in the group when determining its estimated credit losses.

Management must exercise significant judgment when evaluating the effect of qualitative factors on the amount of the ALLL because data may not be reasonably available or directly applicable for management to determine the precise impact of a factor on the collectibility of the institution's loan portfolio as of the evaluation date. Accordingly, institutions should support adjustments to historical loss rates and explain how the adjustments reflect current information, events, circumstances, and conditions in the loss measurements. Management should maintain reasonable documentation to support which factors affected the analysis and the impact of those factors on the loss measurement. Support and documentation includes descriptions of each factor, management's analysis of how each factor has changed over time, which loan groups' loss rates have been adjusted, the amount by which loss estimates have been adjusted for changes in conditions, an explanation of how management estimated the impact, and other available data that supports the reasonableness of the adjustments. Examples of underlying supporting evidence could include, but are not limited to, relevant articles from newspapers and other publications that describe economic events affecting a particular geographic area, economic reports and data, and notes from discussions with borrowers.

There may be times when an institution does not have its own historical loss experience upon which to base its estimate of the credit losses in a group of loans with similar risk characteristics. This may occur when an institution offers a new loan product or in the case of a newly established (i.e., de novo) institution. If an institution has no experience of its own for a loan group, reference to the experience of other enterprises in the same lending business may be appropriate, provided the institution demonstrates that the attributes of the group of loans in its portfolio are similar to those of the loan group in the portfolio providing the loss experience. An institution should only use another enterprise's experience on a short-term basis until it has developed its own loss experience for a particular group of loans.

FAS 114

When determining the FAS 114 component of the ALLL for an individually impaired loan,[22] an institution should consider estimated costs to sell the loan's collateral, if any, on a discounted basis, in the measurement of impairment if those costs are expected to reduce the cash flows available to repay or otherwise satisfy the loan. If the institution bases its measure of loan impairment on the present value of expected future cash flows discounted at the loan's effective interest rate, the estimates of these cash flows should be the institution's best estimate based on reasonable and supportable assumptions and projections. All available evidence should be considered in developing the estimate of expected future cash flows. The weight given to the

[22] As noted in FAS 114, some individually impaired loans have risk characteristics that are unique to an individual borrower and the institution will apply the measurement methods on a loan-by-loan basis. However, some impaired loans may have risk characteristics in common with other impaired loans. An institution may aggregate those loans and may use historical statistics, such as average recovery period and average amount recovered, along with a composite effective interest rate as a means of measuring impairment of those loans.

evidence should be commensurate with the extent to which the evidence can be verified objectively. The likelihood of the possible outcomes should be considered in determining the best estimate of expected future cash flows.

Analyzing the Overall Measurement of the ALLL

Institutions are also encouraged to use ratio analysis as a supplemental tool for evaluating the overall reasonableness of the ALLL. Ratio analysis can be useful in identifying divergent trends (compared with an institution's peer group and its own historical experience) in the relationship of the ALLL to adversely classified or graded loans, past due and nonaccrual loans, total loans, and historical gross and net charge-offs. Based on such analysis, an institution may identify additional issues or factors that previously had not been considered in the ALLL estimation process, which may warrant adjustments to estimated credit losses. Such adjustments should be appropriately supported and documented.

While ratio analysis, when used prudently, can be helpful as a supplemental check on the reasonableness of management's assumptions and analyses, it is not a sufficient basis for determining the appropriate amount for the ALLL. In particular, because an appropriate ALLL is an institution-specific amount, such comparisons do not obviate the need for a comprehensive analysis of the loan portfolio and the factors affecting its collectibility. Furthermore, it is inappropriate for the board of directors or management to make adjustments to the ALLL when it has been properly computed and supported under the institution's methodology for the sole purpose of reporting an ALLL that corresponds to the peer group median, a target ratio, or a budgeted amount. Institutions that have high levels of risk in the loan portfolio or are uncertain about the effect of possible future events on the collectibility of the portfolio should address these concerns by maintaining higher equity capital and not by arbitrarily increasing the ALLL in excess of amounts supported under GAAP.[23]

Estimated Credit Losses in Credit Related Accounts

Typically, institutions evaluate and estimate credit losses for off-balance sheet credit exposures at the same time that they estimate credit losses for loans. While a similar process should be followed to support loss estimates related to off-balance sheet exposures, these estimated credit losses are not recorded as part of the ALLL. When the conditions for accrual of a loss under FAS 5 are met, an institution should maintain and report as a separate liability account, an allowance that is appropriate to cover estimated credit losses on off-balance sheet loan commitments, standby letters of credit, and guarantees. In addition, recourse liability accounts (that arise from recourse obligations on any transfers of loans that are reported as sales in

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[23] It is inappropriate to use a "standard percentage" as the sole determinant for the amount to be reported as the ALLL on the balance sheet. Moreover, an institution should not simply default to a peer ratio or a "standard percentage" after determining an appropriate level of ALLL under its methodology. However, there may be circumstances when an institution's ALLL methodology and credit risk identification systems are not reliable. Absent reliable data of its own, management may seek data that could be used as a short-term proxy for the unavailable information (e.g., an industry average loss rate for loans with similar risk characteristics). This is only appropriate as a short-term remedy until the institution creates a viable system for estimating credit losses within its loan portfolio.

accordance with GAAP) should be reported in regulatory reports as liabilities that are separate and distinct from both the ALLL and the allowance for credit losses on off-balance sheet credit exposures.

When accrued interest and fees are reported separately on an institution's balance sheet from the related loan balances (i.e., as other assets), the institution should maintain an appropriate valuation allowance, determined in accordance with GAAP, for amounts that are not likely to be collected unless management has placed the underlying loans in nonaccrual status and reversed previously accrued interest and fees.[24]

Responsibilities of Examiners

Examiners should assess the credit quality of an institution's loan portfolio, the appropriateness of its ALLL methodology and documentation, and the appropriateness of the reported ALLL in the institution's regulatory reports. In their review and classification or grading of the loan portfolio, examiners should consider all significant factors that affect the collectibility of the portfolio, including the value of any collateral. In reviewing the appropriateness of the ALLL, examiners should:

- Consider the effectiveness of board oversight as well as the quality of the institution's loan review system and management in identifying, monitoring, and addressing asset quality problems. This will include a review of the institution's loan review function and credit grading system. Typically, this will involve testing a sample of the institution's loans. The sample size generally varies and will depend on the nature or purpose of the examination.[25]

- Evaluate the institution's ALLL policies and procedures and assess the methodology that management uses to arrive at an overall estimate of the ALLL, including whether management's assumptions, valuations, and judgments appear reasonable and are properly supported. If a range of credit losses has been estimated by management, evaluate the reasonableness of the range and management's best estimate within the range. In making these evaluations, examiners should ensure that the institution's historical loss experience and all significant qualitative or environmental factors that affect the collectibility of the portfolio (including changes in the quality of the institution's loan review function and the other factors previously discussed) have been

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[24] Refer to the agencies' regulatory reporting instructions for the Call Report, TFR, or 5300 for further guidance on placing a loan in nonaccrual status.

[25] In an examiner's review of an institution's loan review system, the examiner's loan classifications or credit grades may differ from those of the institution's loan review system. If the examiner's evaluation of these differences indicates problems with the loan review system, especially when the loan classification or credit grades assigned by the institution are more liberal than those assigned by the examiner, the institution would be expected to make appropriate adjustments to the assignment of its loan classifications or credit grades to the loan portfolio and to its estimated credit losses. Furthermore, the institution would be expected to improve its loan review system. (Attachment 1 discusses effective loan review systems.)

appropriately considered and that management has appropriately applied GAAP, including FAS 114 and FAS 5.

- Review management's use of loss estimation models or other loss estimation tools to ensure that the resulting estimated credit losses are in conformity with GAAP.

- Review the appropriateness and reasonableness of the overall level of the ALLL. In some instances this may include a quantitative analysis (e.g., using the types of ratio analysis previously discussed) as a preliminary check on the reasonableness of the ALLL. This quantitative analysis should demonstrate whether changes in the key ratios from prior periods are reasonable based on the examiner's knowledge of the collectibility of loans at the institution and its current environment.

- Review the ALLL amount reported in the institution's regulatory reports and financial statements and ensure these amounts reconcile to its ALLL analyses. There should be no material differences between the consolidated loss estimate, as determined by the ALLL methodology, and the final ALLL balance reported in the financial statements. Inquire about reasons for any material differences between the results of the institution's ALLL analyses and the institution's reported ALLL to determine whether the differences can be satisfactorily explained.

- Review the adequacy of the documentation and controls maintained by management to support the appropriateness of the ALLL.

- Review the interest and fee income accounts associated with the lending process to ensure that the institution's net income is not materially misstated.[26]

As noted in the "Responsibilities of the Board of Directors and Management" section of this policy statement, when assessing the appropriateness of the ALLL, it is important to recognize that the related process, methodology, and underlying assumptions require a substantial degree of management judgment. Even when an institution maintains sound loan administration and collection procedures and an effective loan review system and controls, its estimate of credit losses is not a single precise amount due to the wide range of qualitative or environmental factors that must be considered.

An institution's ability to estimate credit losses on specific loans and groups of loans should improve over time as substantive information accumulates regarding the factors affecting repayment prospects. Therefore, examiners should generally accept management's estimates when they assess the appropriateness of the institution's reported ALLL, and not seek adjustments to the ALLL, when management has:

[26] As noted previously, accrued interest and fees on loans that have been reported as part of the respective loan balances on the institution's balance sheet should be evaluated for estimated credit losses. The accrual of the interest and fee income should also be considered. Refer to GAAP and the agencies' regulatory reporting instructions for further guidance on income recognition.

- Maintained effective loan review systems and controls for identifying, monitoring and addressing asset quality problems in a timely manner.

- Analyzed all significant qualitative or environmental factors that affect the collectibility of the portfolio as of the evaluation date in a reasonable manner.

- Established an acceptable ALLL evaluation process for both individual loans and groups of loans that meets the GAAP requirements for an appropriate ALLL.

- Incorporated reasonable and properly supported assumptions, valuations, and judgments into the evaluation process.

If the examiner concludes that the reported ALLL level is not appropriate or determines that the ALLL evaluation process is based on the results of an unreliable loan review system or is otherwise deficient, recommendations for correcting these deficiencies, including any examiner concerns regarding an appropriate level for the ALLL, should be noted in the report of examination. The examiner's comments should cite any departures from GAAP and any contraventions of this policy statement and the 2001 Policy Statement or the NCUA's 2002 IRPS, as applicable. Additional supervisory action may also be taken based on the magnitude of the observed shortcomings in the ALLL process, including the materiality of any error in the reported amount of the ALLL.

ALLL Level Reflected in Regulatory Reports

The agencies believe that an ALLL established in accordance with this policy statement and the 2001 Policy Statement or the NCUA's 2002 IRPS, as applicable, falls within the range of acceptable estimates determined in accordance with GAAP. When the reported amount of an institution's ALLL is not appropriate, the institution will be required to adjust its ALLL by an amount sufficient to bring the ALLL reported on its Call Report, TFR, or 5300 to an appropriate level as of the evaluation date. This adjustment should be reflected in the current period provision or through the restatement of prior period provisions, as appropriate in the circumstances.

Paperwork Reduction Act

The agencies do not intend this policy statement and the FAQs to create any new information collection requirements under the Paperwork Reduction Act. To the extent this policy statement and the FAQs involve information collection requirements, they are already required by GAAP or existing information collections for which the agencies have jointly or individually received approval.

Attachment 1

Loan Review Systems

The nature of loan review systems may vary based on an institution's size, complexity, loan types, and management practices.[27] For example, a loan review system may include components of a traditional loan review function that is independent of the lending function, or it may place some reliance on loan officers. In addition, the use of the term "loan review system" can refer to various responsibilities assigned to credit administration, loan administration, a problem loan workout group, or other areas of an institution. These responsibilities may range from administering the internal problem loan reporting process to maintaining the integrity of the loan classification or credit grading process (e.g., ensuring that timely and appropriate changes are made to the loan classifications or credit grades assigned to loans) and coordinating the gathering of the information necessary to assess the appropriateness of the ALLL. Additionally, some or all of this function may be outsourced to a qualified external loan reviewer. Regardless of the structure of the loan review system in an institution, an effective loan review system should have, at a minimum, the following objectives:

- To promptly identify loans with potential credit weaknesses.
- To appropriately grade or adversely classify loans, especially those with well-defined credit weaknesses that jeopardize repayment, so that timely action can be taken and credit losses can be minimized.
- To identify relevant trends that affect the collectibility of the portfolio and isolate segments of the portfolio that are potential problem areas.
- To assess the adequacy of and adherence to internal credit policies and loan administration procedures and to monitor compliance with relevant laws and regulations.
- To evaluate the activities of lending personnel including their compliance with lending policies and the quality of their loan approval, monitoring, and risk assessment.
- To provide senior management and the board of directors with an objective and timely assessment of the overall quality of the loan portfolio.
- To provide management with accurate and timely credit quality information for financial and regulatory reporting purposes, including the determination of an appropriate ALLL.

[27] The loan review function is not intended to be performed by an institution's internal audit function. However, as discussed in the banking agencies' March 2003 *Interagency Policy Statement on the Internal Audit Function and its Outsourcing*, some institutions seek to coordinate the internal audit function with several risk monitoring functions such as loan review. The policy statement notes that coordination of loan review with the internal audit function can facilitate the reporting of material risk and control issues to the audit committee, increase the overall effectiveness of these monitoring functions, better utilize available resources, and enhance the institution's ability to comprehensively manage risk. However, the internal audit function should maintain the ability to independently audit other risk monitoring functions, including loan review, without impairing its independence with respect to these other functions.

Loan Classification or Credit Grading Systems

The foundation for any loan review system is accurate and timely loan classification or credit grading, which involves an assessment of credit quality and leads to the identification of problem loans. An effective loan classification or credit grading system provides important information on the collectibility of the portfolio for use in the determination of an appropriate level for the ALLL.

Regardless of the type of loan review system employed, an effective loan classification or credit grading framework generally places primary reliance on the institution's lending staff to identify emerging loan problems. However, given the importance and subjective nature of loan classification or credit grading, the judgment of an institution's lending staff regarding the assignment of particular classification or grades to loans should be subject to review by: (i) peers, superiors, or loan committee(s); (ii) an independent, qualified part-time or full-time employee(s); (iii) an internal department staffed with credit review specialists; or (iv) qualified outside credit review consultants. A loan classification or credit grading review that is independent of the lending function is preferred because it typically provides a more objective assessment of credit quality. Because accurate and timely loan classification or credit grading is a critical component of an effective loan review system, each institution should ensure that its loan review system includes the following attributes:

- A formal loan classification or credit grading system in which loan classifications or credit grades reflect the risk of default and credit losses and for which a written description is maintained, including a discussion of the factors used to assign appropriate classifications or credit grades to loans.[28]

- Identification or grouping of loans that warrant the special attention of management[29] or other designated "watch lists" of loans that management is more closely monitoring.

- Documentation supporting the reasons why particular loans merit special attention or received a specific adverse classification or credit grade and management's adherence to approved work out plans.

- A mechanism for direct, periodic, and timely reporting to senior management and the board of directors on the status of loans identified as meriting special attention or adversely classified or graded and the actions taken by management.

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[28] A bank or savings association may have a loan classification or credit grading system that differs from the framework used by the banking agencies. However, each institution that maintains a loan classification or credit grading system that differs from the banking agencies' framework should maintain documentation that translates its system into the framework used by the banking agencies. This documentation should be sufficient to enable examiners to reconcile the totals for the various loan classifications or credit grades under the institution's system to the banking agencies' categories.

[29] For banks and savings associations, loans that have potential weaknesses that deserve management's close attention are designated "Special Mention" loans.

- Appropriate documentation of the institution's historical loss experience for each of the groups of loans with similar risk characteristics into which it has segmented its loan portfolio.[30]

Elements of Loan Review Systems

Each institution should have a written policy that is reviewed and approved at least annually by the board of directors to evidence its support of and commitment to maintaining an effective loan review system. The loan review policy should address the following elements which are described in more detail below: the qualifications and independence of loan review personnel; the frequency, scope and depth of reviews; the review of findings and follow-up; and workpaper and report distribution.

Qualifications of Loan Review Personnel

Persons involved in the loan review or credit grading function should be qualified based on their level of education, experience, and extent of formal credit training. They should be knowledgeable in both sound lending practices and the institution's lending guidelines for the types of loans offered by the institution. In addition, they should be knowledgeable of relevant laws and regulations affecting lending activities.

Independence of Loan Review Personnel

An effective loan review system uses both the initial identification of emerging problem loans by loan officers and other line staff, and the credit review of loans by individuals independent of the credit approval process. An important requirement for an effective system is to place responsibility on loan officers and line staff for continuous portfolio analysis and prompt identification and reporting of problem loans. Because of frequent contact with borrowers, loan officers and line staff can usually identify potential problems before they become apparent to others. However, institutions should be careful to avoid over-reliance upon loan officers and line staff for identification of problem loans. Institutions should ensure that loans are also reviewed by individuals who do not have control over the loans they review and who are not part of, and are not influenced by anyone associated with the loan approval process.

While larger institutions typically establish a separate department staffed with credit review specialists, cost and volume considerations may not justify such a system in smaller institutions. In some smaller institutions, an independent committee of outside directors may fill this role. Whether or not the institution has an independent loan review department, the loan review function should report *directly* to the board of directors or a committee thereof (although senior management may be responsible for appropriate administrative functions so long as they do not compromise the independence of the loan review function).

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[30] In particular, institutions with large and complex loan portfolios are encouraged to maintain records of their historical loss experience for credits in each of the categories in their loan classification or credit grading framework. For banks and savings associations, these categories should either be those used by, or should be categories that can be translated into those used by, the banking agencies.

Some institutions may choose to outsource the credit review function to an independent outside party. However, the responsibility for maintaining a sound loan review process cannot be delegated to an outside party. Therefore, institution personnel who are independent of the lending function should assess control risks, develop the credit review plan, and ensure appropriate follow-up of findings. Furthermore, the institution should be mindful of special requirements concerning independence should it consider outsourcing the credit review function to its external auditor.

Frequency of Reviews

Loan review personnel should review significant credits[31] at least annually, upon renewal, or more frequently when internal or external factors indicate a potential for deteriorating credit quality in a particular loan, loan product, or group of loans. Optimally, the loan review function can be used to provide useful continual feedback on the effectiveness of the lending process in order to identify any emerging problems. A system of ongoing or periodic portfolio reviews is particularly important to the ALLL determination process because this process is dependent on the accurate and timely identification of problem loans.

Scope of Reviews

Reviews by loan review personnel should cover all loans that are significant and other loans that meet certain criteria. Management should document the scope of its reviews and ensure that the percentage of the portfolio selected for review provides reasonable assurance that the results of the review have identified any credit quality deterioration and other unfavorable trends in the portfolio and reflect its quality as a whole. Management should also consider industry standards for loan review coverage consistent with the size and complexity of its loan portfolio and lending operations to verify that the scope of its reviews is appropriate. The institution's board of directors should approve the scope of loan reviews on an annual basis or when any significant interim changes to the scope of reviews are made. Reviews typically include:

- Loans over a predetermined size.
- A sufficient sample of smaller loans.
- Past due, nonaccrual, renewed and restructured loans.
- Loans previously adversely classified or graded and loans designated as warranting the special attention of management[32] by the institution or its examiners.
- Insider loans.
- Loans constituting concentrations of credit risk and other loans affected by common repayment factors.

[31] Significant credits in this context may or may not be loans individually evaluated for impairment under FAS 114.

[32] See footnote 29.

Depth of Reviews

Reviews should analyze a number of important aspects of the loans selected for review, including:

- Credit quality, including underwriting and borrower performance.
- Sufficiency of credit and collateral documentation.
- Proper lien perfection.
- Proper approval by the loan officer and loan committee(s).
- Adherence to any loan agreement covenants.
- Compliance with internal policies and procedures (such as aging, nonaccrual, and classification or grading policies) and laws and regulations.
- Appropriate identification of individually impaired loans, measurement of estimated loan impairment, and timeliness of charge-offs.

Furthermore, these reviews should consider the appropriateness and timeliness of the identification of problem loans by loan officers.

Review of Findings and Follow-Up

Loan review personnel should discuss all noted deficiencies and identified weaknesses and any existing or planned corrective actions, including time frames for correction, with appropriate loan officers and department managers. Loan review personnel should then review these findings and corrective actions with members of senior management. All noted deficiencies and identified weaknesses that remain unresolved beyond the scheduled time frames for correction should be promptly reported to senior management and the board of directors.

Credit classification or grading differences between loan officers and loan review personnel should be resolved according to a pre-arranged process. That process may include formal appeals procedures and arbitration by an independent party or may require default to the assigned classification or grade that indicates lower credit quality. If an outsourced credit review concludes that a borrower is less creditworthy than is perceived by the institution, the lower credit quality classification or grade should prevail unless internal parties identify additional information sufficient to obtain the concurrence of the outside reviewer or arbiter on the higher credit quality classification or grade.

Workpaper and Report Distribution

The loan review function should prepare a list of all loans reviewed (including the date of the review) and documentation (including a summary analysis) that substantiates the grades or classifications assigned to the loans reviewed. A report that summarizes the results of the loan review should be submitted to the board of directors at least quarterly.[33] In addition to reporting current credit quality findings, comparative trends can be presented to the board of directors that identify significant changes in the overall quality of the portfolio. Findings should also address the adequacy of and adherence to internal policies and procedures, as well as compliance with laws and regulations, in order to facilitate timely correction of any noted deficiencies.

[33] The board of directors should be informed more frequently than quarterly when material adverse trends are noted.

Attachment 2

International Transfer Risk Considerations

With respect to international transfer risk, an institution with cross-border exposures should support its determination of the appropriateness of its ALLL by performing an analysis of the transfer risk, commensurate with the size and composition of the institution's exposure to each country. Such analyses should take into consideration the following factors, as appropriate:

- The institution's loan portfolio mix for each country (e.g., types of borrowers, loan maturities, collateral, guarantees, special credit facilities, and other distinguishing factors).
- The institution's business strategy and its debt management plans for each country.
- Each country's balance of payments position.
- Each country's level of international reserves.
- Each country's established payment performance record and its future debt servicing prospects.
- Each country's socio-political situation and its effect on the adoption or implementation of economic reforms, in particular those affecting debt servicing capacity.
- Each country's current standing with multilateral and official creditors.
- The status of each country's relationships with other creditors, including institutions.
- The most recent evaluations distributed by the banking agencies' Interagency Country Exposure Review Committee.

EXHIBIT 4

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D.C. 20551

DIVISION OF BANKING
SUPERVISION AND REGULATION

SR 99 - 13 (SUP)
May 21, 1999

TO THE OFFICER IN CHARGE OF SUPERVISION AND APPROPRIATE SUPERVISORY AND EXAMINATION STAFF AT EACH FEDERAL RESERVE BANK AND TO DOMESTIC BANKING ORGANIZATIONS SUPERVISED BY THE FEDERAL RESERVE

SUBJECT: Recent Developments Regarding Loan Loss Allowances

Introduction

On March 10, 1999, the federal banking agencies and the Securities and Exchange Commission (SEC) issued a joint letter to financial institutions to announce new initiatives of the agencies and the accounting profession relating to the loan loss allowance. These projects are expected to result in enhanced guidance on loan loss allowance issues over a one- to two-year time horizon.

This letter addresses the allowance for loan losses in the context of existing accounting standards. As outlined in this letter and in view of the increased complexities and risks facing the banking industry in the last several years, it is expected that recent accounting developments will have only a limited impact on allowance levels in the industry. Indeed, as noted in the March 10th joint letter, the SEC and the federal banking agencies stated, "We recognize that today instability in certain global markets, for example, is likely to increase loss inherent in affected institutions' portfolios and consequently require higher allowances for credit losses than were appropriate in more stable times."

Last month, the Financial Accounting Standards Board (FASB) staff issued an article in the FASB's "Viewpoints" publication that provides guidance on certain issues regarding the allowance. Much of the guidance provided in the article is consistent with current practice and the banking agencies' policies on the allowance. The article does not purport to address comprehensively many key issues that relate to the allowance, such as what level of documentation is necessary to support allowance estimates or how to distinguish between inherent losses, the guidepost for reporting allowances under generally accepted accounting principles (GAAP), and future losses. The banking agencies, the SEC, and the American Institute of Certified Public Accountants (AICPA) intend to develop further guidance on important issues not addressed in the Viewpoints article. In addition, the article does not change

certain fundamental concepts with respect to the allowance that are discussed in this letter, including the need for institutions to maintain conservative reserve levels within a reasonable range of probable credit losses, consistent with management's best estimate. This letter includes background information on such concepts that has emerged in discussions between the SEC and the Federal Reserve.

Institutions should consider the FASB guidance and this background information in developing their allowance estimates. Moreover, in view of the information in this letter and the work underway pursuant to the March 10th joint letter, it is expected that changes in allowance levels, if any, as a result of the Viewpoints article will be substantially limited.

Discussion and Background Information

Over the last year, the topic of loan loss allowances has been an increasingly important one to the banking industry and regulators. In light of increased volatility and banking risks in recent years, the banking industry has appropriately maintained robust reserving practices and levels. From a safety and soundness perspective, the Federal Reserve and other bank regulators have expected institutions to maintain strong loan loss reserves that are conservatively measured. In carrying out its responsibilities, the SEC has emphasized the need for financial statements and reported earnings to be transparent and, therefore, for allowances to be adequate but not excessive. Enhanced transparency has also been a critical objective of bank regulators, both domestically and internationally.

The SEC and the federal banking agencies agreed to work together to provide additional guidance to the banking industry, and to that end, issued a Joint Interagency Statement on loan loss allowances in November 1998. The statement outlined certain concepts in GAAP and in SEC and banking agency guidance that would provide a foundation for further joint projects in this area. Since January, the federal banking agencies have entered into high-level dialogue with the SEC on bank allowance policy issues. This has included meetings between the principals of the SEC and the banking agencies, and meetings of their chief accountants. This dialogue has helped the SEC and the banking agencies to achieve a better understanding of how to address these issues.

These discussions also led the SEC and the banking agencies to issue a joint interagency letter to financial institutions on March 10, which announced new initiatives relating to the loan loss allowance. The joint letter discussed the agencies' plans to gain a better understanding of sound bank allowance practices and use this knowledge to develop enhanced guidance on appropriate methodologies, disclosures, and supporting documentation for loan loss allowances. In addition, the agencies also stated that they would support and encourage the processes of the accounting standards setters as they seek to clarify key loan loss allowance accounting issues.[1] Most importantly, the letter indicated that the agencies will meet together periodically to discuss

[1] This includes providing input to the FASB on allowance issues and participation in the AICPA Loan Loss Allowance Task Force as the task force seeks to clarify such concepts as probable loss, future losses, and loss triggering events. The AICPA project is expected to result in final guidance in about two years. The AICPA was also asked to consider the impact of recently developed portfolio credit risk measurement and management techniques in the determination of the allowance.

important matters that affect bank transparency and will focus on enhancing allowance practices going forward.

With the issuance of the March 10 letter, the banking agencies and the SEC formed a Joint Working Group (JWG) to oversee the interagency project to develop enhanced guidance on internal documentation and public disclosures about the allowance. The target date for the issuance of this guidance is March 2000. A key aspect of all of these efforts will be input from the banking industry and the accounting profession on allowance policy issues. Should these efforts result in changes to current policies and practices, banking organizations will be provided a reasonable transition period prior to implementation.

There are already emerging points of agreement between the SEC and the Federal Reserve on important aspects of allowance practices. For example, there is agreement that:

- Arriving at an appropriate allowance involves a high degree of management judgment and results in a range of estimated losses.

- Institutions should maintain prudent, conservative, but not excessive, loan loss allowances that fall within an acceptable range of estimated losses. Consistent with GAAP, an institution should record its best estimate within the estimated range of credit losses, including when the best estimate is at the high end of the range.

- When determining the level for the allowance, management should always ensure that the overall allowance appropriately reflects a margin for the imprecision inherent in most estimates of expected credit losses.[2]

- Simply because a portion of the allowance is designated as "unallocated," it is not thereby inconsistent with GAAP. The important consideration is whether the allowance reflects an estimate of probable losses, determined in accordance with GAAP, and is appropriately supported.

- Allowance estimates should be based on a comprehensive, well-documented, and consistently applied analysis of the loan portfolio.

FASB Viewpoints Article. Recently, in a Viewpoints article issued on April 12, 1999, the FASB staff provided guidance on certain issues regarding loan loss allowances. In particular, the article addresses the application of FASB Statements No. 5 and 114 (FAS 5 and FAS 114, respectively[3]) to a loan portfolio and how these statements interrelate. The article also provides a

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[2] More guidance, including the level of support needed for this margin for imprecision, should be forthcoming from the JWG and AICPA projects. When reflecting the margin for imprecision and supporting such estimates, an institution should take into account all available information existing as of the balance sheet date, including credit quality, current trends, existing environmental factors (e.g., industry, geographical, economic, and political factors), and the range of estimated losses on loans.

[3] FASB Statement No. 5, "Accounting for Contingencies," and FASB Statement No. 114, "Accounting by Creditors for Impairment of a Loan."

general overview of existing GAAP that relates to the allowance. The article is available on the FASB's Internet website.[4]

Banking organizations should consider the points noted above when evaluating the impact of the guidance in the article on their overall allowance levels. In addition, other important factors to consider in establishing appropriate allowance levels include the following:

- Most guidance that has preceded the recent FASB article has discussed the allowance in the context of a range of reasonable estimates of probable losses. The article, while not explicitly addressing this topic, is not intended to be inconsistent with this important concept.

- The article recognizes that some loans that are specifically identified for evaluation may be individually impaired, while other loans, that are not impaired individually pursuant to FAS 114, may have specific characteristics that indicate that there would be probable loss in a group of loans with those characteristics. Loans in the first category must be accounted for under FAS 114 and loans in the second category should be accounted for under FAS 5. Under FAS 5, a loss is accrued if characteristics of a loan indicate that it is probable that a group of similar loans includes some losses even though the loss could not be identified with a specific loan.[5] When appropriate, this will permit institutions to use information derived from their internal grading systems and migration analyses in determining the inherent loss in loans in the second category.

- In assessing whether loans are fully collateralized and thus whether there is a need for an allowance on those loans, institutions should consider the reliability and timing of appraisals or other valuations to ensure that the values used for any allowance calculations are realistically and reliably measured. An institution should ensure that an appraisal of collateral reflects a realistic estimate of fair value, which takes into consideration the time it will take the institution to realize the value of the collateral and current market conditions for selling the collateral.

- The FASB article provides clarifying guidance on the interaction between FAS 5 and FAS 114. Allowance estimates under FAS 114 may be based on the expected future cash flows of an impaired loan, which are uncertain and involve significant judgment by an institution. Institutions should take into account all available information existing as of the measurement date (i.e., financial statement date), including credit quality, current trends, existing "environmental" factors (e.g., industry, geographical, economic, and political factors), and the range of estimated losses on such loans. Institutions may need to increase their FAS 114 allowance estimates if management's prior estimates have not appropriately taken into account all of the available information that affects the collectibility of such loans.[6]

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[4] The FASB's Internet website can be accessed at www.fasb.org. The Viewpoints article is entitled, *Application of FASB Statements 5 and 114 to a Loan Portfolio.*

[5] Moreover, current GAAP and the FASB article emphasize that the loss does not have to be virtually certain in order to be recognized.

[6] Banking organizations are also reminded that they should continue to classify and charge off loans in accordance with the policies of the federal banking agencies.

- Consistent with current guidance and the FASB article, if an institution has impaired loans with common risk characteristics that are individually impaired, the organization may *measure* impairment under FAS 114 on those loans on an aggregate basis (e.g., using average recovery periods, average amounts recovered, and a composite effective interest rate).

Other Matters

As mentioned above, this letter addresses the allowance for loan losses in the context of existing accounting standards. Looking ahead over the longer term, and given the fundamental changes that have taken place in credit risk management in recent years, a broader reexamination of accounting standards for loan loss allowances by the banking agencies and accounting standards setters would appear appropriate. The Federal Reserve intends to play an active role in promoting and participating in such an effort to ensure that allowance levels remain conservative and prudent, consistent with safety and soundness considerations.

Richard Spillenkothen
Director

Exhibit D-80A

Title: APPLICATION OF FASB STATEMENTS 5 AND 114 TO A LOAN PORTFOLIO

Issued: April 1999
Revised: September 1999; September 2001
Authored by: Sean Leonard, Tim Lucas, and Leslie Seidman*

The FASB issued Statements No. 5, Accounting for Contingencies, and No. 114, *Accounting by Creditors for Impairment of a Loan*, in 1975 and 1993, respectively. Those Statements provide the general principles a creditor should apply to account for impairment in a loan portfolio. FASB Statement No. 118, *Accounting by Creditors for Impairment of a Loan—Income Recognition and Disclosures*, was issued in 1994. Statement 118 amends Statement 114 to allow a creditor to use existing methods for recognizing interest income on an impaired loan and to require disclosure about the recorded investment in certain impaired loans and about how a creditor recognizes interest income related to those impaired loans.

Recently, the FASB staff has received questions about the detailed application of those Statements to a loan portfolio. Part 1 of this staff announcement describes the requirements of Statements 5 and 114 and how they relate to each other.

This staff announcement also updates a 1993 FASB *Highlights* article (refer to Part 2-Updated Questions). The FASB staff hopes that dissemination of these views will assist constituents in applying the standards in the manner the Board intended.

Overview of Generally Accepted Accounting Principles (GAAP) for Loan Impairment

- Statement 5 has provided GAAP on recognition of losses on receivables (including loans) since 1975. Statement 114 (effective in 1995) amends Statement 5 "to clarify that a creditor should evaluate the collectibility of both contractual interest and contractual principal of all receivables when assessing the need for a loss accrual."
- It is usually difficult, even with hindsight, to identify any single event that made a particular loan uncollectible. However, the concept in GAAP is that impairment of receivables should be recognized when, based on all available information, it is probable that a loss has been incurred based on past events and conditions existing at the date of the financial statements.
- Losses should not be recognized before it is probable that they have been incurred, even though it may be probable based on past experience that losses will be incurred in the future. It is inappropriate to consider possible or expected future trends that may lead to additional losses. Recognition of losses should not be deferred to periods after the period in which the losses have been incurred.

* At the date of issuance of this implementation guide, Sean Leonard was a practice fellow at the FASB. Tim Lucas was the Board's director of research and technical activities. Leslie Seidman was the assistant director of research and technical activities at the FASB. The positions and opinions expressed in this implementation guide were theirs. Revisions to this implementation guide have been made by current members of the FASB staff. Official positions of the FASB are determined only after extensive due process and deliberation.

- GAAP does not permit the establishment of allowances that are not supported by appropriate analyses. The approach for determination of the allowance should be well documented and applied consistently from period to period.
- Under Statement 5, the threshold for recognition of impairment should be the same whether the creditor has many loans or has only one loan. Statement 5, paragraph 22, states, "If the conditions [of paragraph 8] are met, accrual shall be made even though the particular receivables that are uncollectible may not be identifiable."
- Statement 114 is more specific than Statement 5 in that it requires certain methods of measurement for loans that are individually considered impaired, but it does not fundamentally change the recognition criteria for loan losses.

Part 1-Relating Statement 5 and Statement 114

1. Q—In general, how do Statement 5 and Statement 114 fit together?
   A—Statement 5 provides the basic guidance for recognition of impairment losses for all receivables (except those receivables specifically addressed by other accounting literature, such as debt securities). Statement 114 provides more specific guidance on measurement and disclosure for a subset of the population of loans. That subset consists of loans that are identified for evaluation and that are individually deemed to be impaired (because it is probable that the creditor will be unable to collect all the contractual interest and principal payments as scheduled in the loan agreement). It also includes all loans that are restructured in a troubled debt restructuring involving a modification of terms, except for those loans that are excluded from the scope of Statement 114 in paragraphs 6(b)-6(d) (refer to Question 2).

2. Q—What loans are not subject to the accounting and disclosure requirements of Statement 114?
   A—Statement 114 excludes from its scope the following:

   a. Large groups of smaller-balance homogeneous loans that are collectively evaluated for impairment. Those loans may include but are not limited to credit card, residential mortgage, and consumer installment loans.
   b. Loans measured at fair value or at the lower of cost or fair value, for example, in accordance with FASB Statement No. 65, *Accounting for Certain Mortgage Banking Activities*, or specialized industry practice.
   c. Leases as defined in FASB Statement No. 13, *Accounting for Leases*.
   d. Debt securities as defined in FASB Statement No. 115, *Accounting for Certain Investments in Debt and Equity Securities*, including contracts within the scope of paragraph 14 of FASB Statement No. 125, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*. [Revised 9/01.]

   A creditor needs to apply judgment based on individual facts and circumstances to determine what represents large groups of smaller-balance homogeneous loans in (a) above. Statement 5 would apply to those groups of smaller-balance loans as well as loans that are not identified for evaluation or that are evaluated but are not individually considered impaired.

3. Q—Does Statement 114 amend Statement 5?
   A—Yes. Statement 114 amends Statement 5 to clarify that a creditor should evaluate the collectibility of both contractual interest and contractual principal of *all* receivables when assessing the need for a loss accrual. Statement 114 does not change the basic recognition principles in Statement 5.

4. Q—How should a creditor identify loans that are to be individually evaluated for collectibility under Statement 114?
   A—A creditor should apply its normal review procedures in making that judgment. Statement 114 does, however, identify some sources of information that are useful in identifying loans for evaluation including a specific materiality criterion, regulatory reports of examination, internally generated "watch lists," and management reports of total loan amounts by borrower (footnote 1). This process is subjective and requires a creditor to exercise a great deal of judgment.

Recognition

5. Q—When should an impairment loss be recognized under Statement 5?
   A—Statement 5 requires recognition of a loss when (a) information available prior to issuance of the financial statements indicates that it is probable that an asset has been impaired at the date of the financial statements and (b) the amount of the loss can be reasonably estimated. The criteria for recognition under Statement 5 provide that ". . . accrual shall be made even though the particular receivables that are uncollectible may not be identifiable" (paragraph 22). However, "double counting" by applying Statement 114 and then applying Statement 5 to *measure* the same loss again is inappropriate (refer to Questions 11 and 12).

6. Q—What does *can be reasonably estimated* mean under Statement 5?
   A—Whether the amount of loss can be reasonably estimated will normally depend on, among other things, the experience of the creditor, information about the ability of individual debtors to pay, and appraisal of the receivables in light of the current economic environment. In the case of a creditor that has no experience of its own, reference to the experience of other enterprises in the same business may be appropriate. In all cases, Statement 5 requires a reasonable basis for quantifying the amount of loss.

7. Q—When is a loan impaired under Statement 114?
   A—A loan is impaired when, based on current information and events, it is probable that a creditor will be unable to collect all amounts due according to the contractual terms of the loan agreement. *All amounts due according to the contractual terms* means that both the contractual interest payments and contractual principal payments will be collected as scheduled in the loan agreement. Existing "environmental" factors (for example, existing industry, geographical, economic, and political factors) should be considered as part of *current information and events* when assessing a loan that has been identified for evaluation under Statement 114.

8. Q—What does probable mean?

A—The term *probable* is used with the same meaning in both Statements. Statement 5 defines probable as a condition where the future event is "likely to occur." As part of the project that led to Statement 114, the Board considered whether the loss threshold for recognition of loan impairment should be changed from the Statement 5 definition of probable to some other threshold. Some suggested that probable had come to mean *virtually certain* and that the loss threshold should be changed to *more likely than not.* The Board recognized that application of the term probable in practice requires judgment, and to clarify its intent the Board reiterated the guidance in Statement 5 that probable does not mean virtually certain. Probable is a higher level of likelihood than "more likely than not."

9. Q—How should a creditor determine it is probable that it will be unable to collect all amounts due according to the contractual terms of a loan under Statement 114?
   A. The Board decided not to specify how a creditor should determine that it is probable that it will be unable to collect all amounts due according to a loan's contractual terms. A creditor should apply its normal loan review procedures in making that determination.

10. Q—If a creditor concludes that an individual loan specifically identified for evaluation is *not impaired* under Statement 114, may that loan be included in the assessment of the allowance for loan losses under Statement 5?
    A—Yes, but only if specific characteristics of the loan indicate that it is probable that there would be an incurred loss in a group of loans with those characteristics. Characteristics or risk factors must be specifically identified to support an accrual for losses that have been incurred but that have not yet reached the point where it is probable that amounts will not be collected on a specific individual loan. A creditor should not ignore factors and information obtained in the evaluation of the loan's collectibility. For example, if an individual loan specifically identified for evaluation is fully collateralized with risk-free assets, then consideration of that loan as sharing characteristics with a group of uncollateralized loans is inappropriate. Under Statement 5, a loss is recognized if characteristics of a loan indicate that it is probable that a group of similar loans includes some losses even though the loss could not be identified to a specific loan. However, a loss would be recognized only if it is probable that the loss has been incurred at the date of the financial statements and the amount of loss can be reasonably estimated. Refer to Boxes D, E, and F in the flowchart at the end of this article.

11. Q—If a creditor concludes that an individual loan specifically identified for evaluation is *impaired*, may the creditor establish an allowance in addition to one measured under Statement 114?
    A—No. The allowance provided for a specific loan under Statement 114 may not be supplemented by an additional allowance under Statement 5. The Statement 114 allowance should be the sole measure of impairment for that loan. Refer to Boxes C and G in the flowchart at the end of this article.

12. Q—Would the answer to Question 11 above be different if the measurement under Statement 114 of a loan that is deemed to be impaired results in no allowance or loss recognition?

A—No. For a loan that is impaired no additional loss recognition is appropriate under Statement 5 even if the measurement of impairment under Statement 114 results in no allowance. For example, a creditor might conclude for a collateral-dependent loan that it is impaired (because it is probable that the creditor will be unable to collect all the contractual interest and principal payments as scheduled in the loan agreement). The creditor might measure the impairment using the fair value of the collateral, which could result in no allowance if the fair value of the collateral is greater than the recorded investment in the loan. Another example would be when the recorded investment of an impaired loan has been written down to a level where no allowance is required.

13. Q—Under Statement 114, after a loan has been individually identified for evaluation, may a creditor aggregate loans with common risk characteristics when assessing whether loans are impaired?
    A—No. Only if a creditor can identify which individual loans (if any) are impaired (because it is probable that the creditor will be unable to collect all the contractual interest and principal payments as scheduled in the loan agreement) should an allowance be measured for individual loans under Statement 114 (refer to Question 10).

14. Q—May a creditor simply increase (or not decrease) the allowance for loan losses in "good" economic times to provide for losses expected to occur in the future?
    A—No. Under generally accepted accounting principles losses should not be recognized before they have been incurred, even though it may be probable based on past experience that losses will be incurred in the future. It is inappropriate to recognize a loss today for possible or expected future trends that may lead to a loss in the future.

Measurement

15. Q—What is the next step after a creditor determines that a loan is impaired under Statement 114?
    A—When a creditor determines that a loan is impaired, the creditor measures impairment based on the expected future cash flows discounted at the loan's effective interest rate. As a practical expedient, Statement 114 permits a creditor to measure impairment based on the fair value of the collateral of an impaired collateral-dependent loan or to measure impairment based on an observable market price for the impaired loan as an alternative to discounting expected future cash flows. Regardless of the measurement method, a creditor should measure impairment based on the fair value of the collateral when the creditor determines that foreclosure is probable.

16. Q—Should "environmental" factors be considered when measuring an impaired loan using the present value of expected future cash flows under Statement 114?
    A—Yes. Statement 114, paragraphs 12-16, provides accounting guidance for measuring impairment of an impaired loan using the present value of expected future cash flows. A creditor should consider all available information reflecting past events and current conditions when developing the estimate of expected future cash flows. All available information would include existing "environmental" factors (for example, existing industry, geographical, economic, and political factors) that are relevant to the collectibility of that

loan and that indicate that it is probable that an asset had been impaired at the date of the financial statements (refer also to Question 26(d)).

Disclosure and Documentation

17. Q—When a loan is restructured in a troubled debt restructuring into two (or more) loans, should the restructured loans be considered separately or collectively when assessing the applicability of the disclosures about impaired loans that are required by Statement 114, as amended, in years after the restructuring?
A—The restructured loans should be considered separately. Refer to EITF Issue No. 96-22, "Applicability of the Disclosures Required by FASB Statement No. 114 When a Loan Is Restructured in a Troubled Debt Restructuring into Two (or More) Loans," for the EITF discussion, including the consensus reached and SEC Observer comments made.

18. Q—What guidance is provided by GAAP about the extent of documentation and analysis necessary to support the allowance for loan losses?
A—While the extent of documentation is not specifically addressed in Statement 114 or 5, GAAP (such as the AICPA Audit and Accounting Guide, Banks and Savings Institutions, and Financial Reporting Release 28 for SEC registrants) does not permit the establishment of allowances that are not supported by appropriate analyses. The approach for determination of the allowance should be well documented and applied consistently from period to period.

Part 2—Updated Questions

19. Q—Why did the FASB undertake Statement 114?
A—The Board accelerated part of the financial instruments project to address the specific issue of in what circumstances, if any, a creditor should measure impairment of a loan based on the present value of expected future cash flows related to the loans. Previously, some creditors recognized impairment of a loan only when *undiscounted* expected future cash flows were less than the net carrying amount of the loan. Others recognized impairment when *discounted* expected future cash flows were less than the net carrying amount of the loan. The Board did not undertake a comprehensive reconsideration of how a creditor should assess the overall adequacy of the allowance for credit losses. The Board's objective in this project was to resolve a specific inconsistency, not to perfect the guidance for loan accounting.

20. Q—Does Statement 114 require a discounted or undiscounted approach to measuring impairment on certain loans?
A—Statement 114 requires a discounted approach to measuring impairment on certain loans. The Board observed that a creditor's recorded investment in a loan at origination and during the life of the loan, as long as the loan performs according to its contractual terms, is the sum of the present values of the future cash flows that are designated as interest and the future cash flows that are designated as principal discounted at the effective interest rate implicit in the loan. The Board concluded that a loan that becomes impaired (because it is probable that the creditor will be unable to collect all the contractual interest payments and

contractual principal payments as scheduled in the loan agreement) should continue to be carried at an amount that considers the discounted value of all expected future cash flows in a manner consistent with the loan's measurement before it became impaired.

21. Q—Does Statement 114 only apply to financial institutions?
A—No, Statement 114 applies to all creditors. The Board was unable to identify compelling reasons to suggest that different types of creditors should account for impaired loans differently or that financial statement users for a particular industry or size of entity would be better served by accounting that differs from that of other creditors.

22. Q—Why does Statement 114 address only creditors' accounting and not debtors' accounting?
A—The Board recognized that Statement 114 introduced asymmetry between creditors' and debtors' accounting for troubled debt restructurings involving a modification of terms. However, the Board concluded that Statement 114 should address only creditors' accounting because expanding the scope to address debtors' accounting likely would have delayed issuance of the Statement.

23. Q—Statement 114 does not apply to large groups of smaller-balance homogeneous loans that are collectively evaluated for impairment. Does the amendment to Statement 5 change the way creditors measure impairment for those smaller-balance loans?
A—No, Statement 114 does not change the established practice of using a formula approach based on various factors to estimate the allowance for loan losses related to those smaller-balance homogeneous loans. Those factors typically include past loss experience, recent economic events and current conditions, and portfolio delinquency rates. The Board recognized the established practice of using a formula approach for estimating losses related to those types of loans and does not intend for Statement 114 to change that approach.

24. Q—Suppose a debtor is late making a payment. Is that loan automatically "impaired" under Statement 114?
A—Statement 114 indicates that an insignificant delay or insignificant shortfall in amount of payments does not require application of the Statement.

25. Q—Is a creditor required to apply the same measurement method under Statement 114 to all of its individually impaired loans?
A—A creditor may select the measurement method on a loan-by-loan basis. However, the Board expects that the measurement method for an individual impaired loan would be applied consistently to that loan and that a change in method would be justified by a change in circumstances.

26. Q—For an individual loan that is considered impaired under Statement 114, if a creditor bases its measure of loan impairment on discounted cash flows:

    a. *How should a creditor calculate the effective interest rate?*
    A—The effective interest rate of a loan is the rate of return implicit in the loan (that is, the contractual interest rate adjusted for any net deferred loan fees or costs, premium, or

discount existing at the origination or acquisition of a loan). The effective interest rate for a loan restructured in a troubled debt restructuring also is based on the original contractual rate, not the rate specified in the restructuring agreement.

b. How is the effective interest rate calculated for a loan whose stated interest rate varies based on the prime rate (or another factor)?
A—The loan's effective interest rate may be calculated based on (1) the prime rate as it changes over the life of the loan or (2) the rate may be fixed at the rate in effect at the date the loan meets the impairment definition. Projections of changes in the factor should not be made for purposes of determining the effective interest rate or estimating the expected future cash flows.

c. How does a creditor calculate the effective interest rate of an acquired loan?
A—A loan may be acquired at a discount because of a change in credit quality or interest rates or both. When a loan is acquired at a discount that relates, at least in part, to the loan's credit quality, the effective interest rate is the discount rate that equates the investor's estimate of the loan's future cash flows with the purchase price of the loan.

d. How should a creditor estimate expected future cash flows?
A—The estimate of future cash flows should be a creditor's best estimate based on reasonable and supportable assumptions and projections. All available evidence, including estimated costs to sell if those costs are expected to reduce the cash flows available to repay or otherwise satisfy the loan, should be considered in developing those estimates. The weight given to the evidence should be commensurate with the extent to which the evidence can be verified objectively. The likelihood of the possible outcomes should be considered in determining the best estimate of expected future cash flows (refer also to Question 16).

e. May creditors that currently calculate an allowance for loan losses for groups of similar loans on a pooled basis continue this practice under Statement 114?
A—If impaired loans have risk characteristics in common, a creditor may aggregate those loans and use historical statistics, such as average recovery period and average amount recovered, along with a composite effective interest rate as a means of measuring those impaired loans.

27. Q—Statement 114 requires that estimated costs to sell should be reflected in estimates of expected future cash flows. What if a creditor measures impairment based on an observable market price or the fair value of the collateral?
A—Estimated costs to sell, on a discounted basis, should be considered in all measures of impairment if those costs are expected to reduce the cash flows available to repay or otherwise satisfy the loan.

28. Q—Is the measure of impairment a one-time event?
A—When an asset is carried on a discounted basis, the present value of expected future cash flows will increase from one reporting period to the next as a result of the passage of time. The present value also may change from changes in estimates of the timing or amount of expected future cash flows. Similarly, the observable market price of an impaired loan or

the fair value of the collateral of an impaired collateral-dependent loan may change from one reporting period to the next. Because the Board concluded that the net carrying amount of an impaired loan should be the present value of expected future cash flows (or the observable market price or the fair value of the collateral) not only at the date at which impairment initially is recognized but also at each subsequent reporting period, Statement 114 requires recognition of changes in that measure. However, the net carrying amount of the loan should never exceed the recorded investment in the loan.

29. Q—How does a creditor recognize that change in measurement in its statement of operations?
A—Statement 118 amends paragraph 17 of Statement 114 to allow a creditor to use existing methods for recognizing interest income on impaired loans. While the two income recognition methods in paragraph 17 of Statement 114 are no longer required, Statement 118 does not preclude a creditor from using either of those methods.

30. Q—What disclosures are required by Statement 114?
A—Statement 114, as amended by Statement 118, states that a creditor should disclose the following information about loans that meet the definition of an impaired loan:
   - The total recorded investment in the impaired loans and (1) the amount of that recorded investment for which there is a related allowance and the amount of that allowance and (2) the amount of that recorded investment for which there is no related allowance
   - The activity in the allowance for credit losses related to loans, including the balance in the allowance at the beginning and end of each period, additions charged to operations, direct write-downs charged against the allowance, and recoveries of amounts previously charged off
   - The creditor's policy for recognizing interest income on impaired loans, including how cash receipts are recorded
   - For each period for which results of operations are presented, the average recorded investment in the impaired loans, the related amount of interest income recognized during the time within that period that the loans were impaired, and, unless not practicable, the amount of interest income recognized using a cash-basis method of accounting during the time within that period that the loans were impaired.

31. Q—Does a creditor have to make disclosures for a loan restructured in a troubled debt restructuring that is written down and the present value of the expected future cash flows (or the observable market price or the fair value of the collateral) is equal to or greater than the recorded investment in the loan?
A—Usually, a loan whose terms are modified in a troubled debt restructuring already will be identified as impaired. However, if the creditor has written down a loan and the measure of the restructured loan is equal to or greater than the recorded investment, no impairment would be recognized in accordance with Statement 114. The creditor is required to disclose the amount of the write-down and the recorded investment in the year of the write-down but is not required to disclose the recorded investment in that loan in later years if the two criteria of paragraph 6(i) of Statement 118 are met.

An Illustration

Assume a bank has 20 loans (not considered smaller-balance) to businesses in a town where the principal employer is a major corporation. Some of the loans are secured by bonds or real estate, others are unsecured. The major corporation went bankrupt and fired all of its workers. The bank concludes that the loss of that employer has had a dire effect on the economic health of the community and its businesses. The bank decides to review all 20 of the loans individually.

Two of the loans are not performing, and the bank concludes that it is probable it will be unable to collect all of the cash flows on those loans as scheduled. Another five borrowers have approached the bank for a concession, but those discussions are incomplete. Based on all available information, the bank concludes that each of those five loans also is impaired. The bank is unable to identify any other individual loan among the remaining 13 where it is probable that it will not collect all of the cash flows.

How would the bank assess impairment on the 20 loans?

The bank would measure impairment on the seven loans that are individually impaired under Statement 114 using a method permitted by Statement 114, as appropriate for the loan. The bank would consider all available information to measure the amount of the loss including the value of any collateral. (If the value of the collateral, less selling costs, exceeds the recorded investment in the loan, no allowance would be provided.) The bank would consider its own experience or, to the extent relevant, the industry's collection experience in similar situations as part of the available information. In doing so, the bank would consider the effect of information it possesses about the current economic downturn in making its best estimate of expected future cash flows for those seven loans.

The bank would then assess whether it is probable that any loss has been incurred on the remaining 13 loans. If three of those loans are fully collateralized, no allowance should be provided under Statement 5 for those loans and they should be excluded from the assessment of the remaining 10 loans. The bank would consider the effect of the current economic downturn to assess whether a loss has been incurred in that group of loans at the balance sheet date and to estimate the amount of loss. In doing so, the bank would consider its historical loss experience in collecting loans in similar situations, such as the typical recovery rate, including amount and timing. However, the use of historical statistics alone would be inappropriate if the nature of the loans or current environmental conditions differ from those on which the statistics were based. Any allowance that is recorded under Statement 5 must be reasonably estimable and supported by an analysis of all available and relevant information about circumstances that exist at the balance sheet date.

The total allowance for the 20 loans should be the sum of the above components. A total allowance greater than the sum of the above components would be excessive. A total allowance less than the sum of the above components would be inadequate.

Application of Statements 5 and 114 to a Loan Portfolio

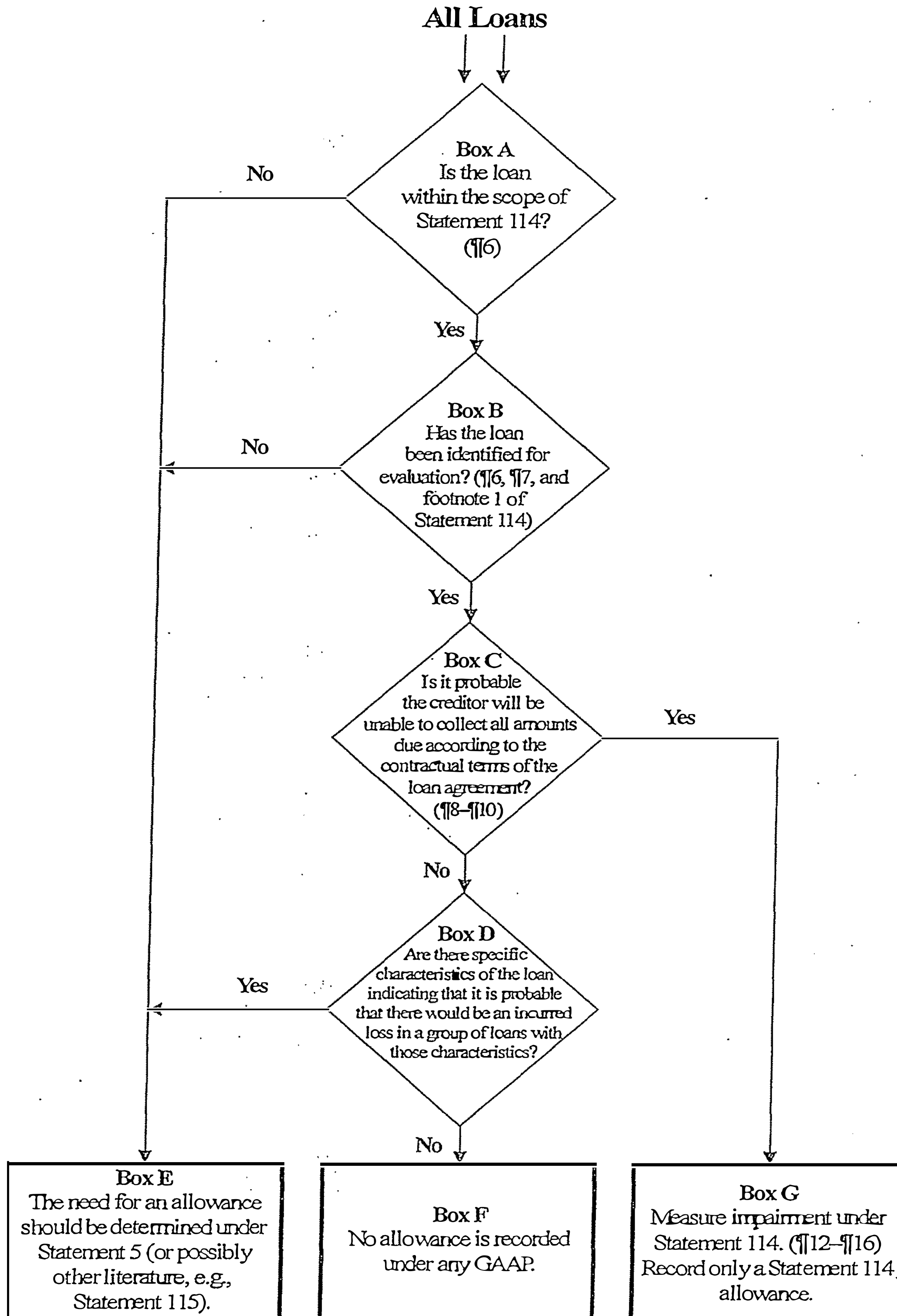

EXHIBIT 5

Exhibit 3

Last Modified on March 10, 2009
Print This Page*

REGIONS Commercial Loan Policies Manual Policies and Communication	Section # 500-8 Section: Appraisal/Evaluation Policy and Procedures Subject: Properties Managed by Special Assets

Valuation of Special Assets

Given the inherent reliance on collateral for repayment of real estate secured loans that are classified as problem assets, enhanced valuation standards for these loans that are managed by the Special Assets Department (SAD) are appropriate for proper risk management. In addition, current valuations of collateral for these loans are an essential requirement for proper accounting and regulatory reporting. The following additional valuation requirements therefore apply to all Non-Performing Loans (NPLs) or Other Real Estate Owned (OREO) secured by real estate, other than 1-4 family residential, that are managed in SAD. These requirements do not apply to substandard loans managed by SAD that are not classified as NPLs. Valuation requirements for these accruing substandard loans managed in SAD are set forth in CLP Section 600-9, Collateral Valuation for Problem Loans. Additional valuation requirements for any 1-4 family residential properties managed in SAD are found in Consumer Loan Policy Section 1100-10, Valuation of Special Assets.

For subsequent transactions such as those involving loan workout and other activities by SAD, regulations allow reliance on existing valuations provided it can be determined the value estimates remain valid[1]. Having an accurate picture of current values of problem asset collateral is particularly critical. The frequency of necessary revaluations of this collateral varies based on the loan amount, the status of the collateral (whether it is securing a Non-Performing Loan (NPL) or on the books as Other Real Estate Owned (OREO), and the volatility of the real estate market in which it is located. Properties deemed to be in such "Markets of Concern," as defined below, warrant more frequent revaluations. The nature of the required revaluation (whether it be by a new outside appraisal or an Internal evaluation) undertaken will also vary based on these factors. On transfer of a loan into SAD, or on transfer of a property into OREO, an evaluation meeting the requirements of CLP Section 500-6, Commercial Evaluation Requirements is to be performed. The following outlines the additional minimum revaluation requirements for loans managed in SAD:

Loan Amount	NPL	NPL In Market of Concern	OREO	OREO in Market of Concern
> $250,000	Annual Evaluation	Semi-Annual Evaluation	Annual Evaluation and Outside Appraisal prepared within preceding 24 months*	Semi-Annual Evaluation and Outside Appraisal prepared within preceding 12 months*

[1] Specific reference is made to FRB SR 94-55 "Interagency Appraisal and Evaluation Guidelines": Valid Appraisals and Evaluations; and FRB SR 05-05 "Interagency FAQs on the Agencies' Appraisal Regulations and Interagency Statement on Independence of Appraisal and Evaluation Functions": Question 27 "What is the useful life of an appraisal?"

* Note that if an outside appraisal was not required on origination of the loan under CLP Section 500-1, Appraisal/Evaluation Policy and Procedures an evaluation meeting the requirements of CLP Section 500-6, Commercial Evaluation Requirements related to new transaction evaluations may be substituted.

Required Evaluations:

Information related to the required documentation and support for required evaluations is detailed in CLP Section 500-6, Commercial Evaluation Requirements. When indicated above, the SAD relationship manager is to prepare an internal evaluation consistent with the requirements outlined in CLP Section 500-6, Commercial Evaluation Requirements for an evaluation supporting a subsequent transaction. The goal of this evaluation process is to

revalidate (if appropriate) the accuracy of the most recent valuation. For income producing properties or properties developed for resale, the projected performance of the property outlined in the appraisal should be compared with the actual performance. Variances should be addressed and assumptions checked to determine if the prior valuation remains accurate. For other property types, comparable sales data or other supporting information should be obtained from knowledgeable brokers, appraisers, or lenders active in the market in which the property is located in order to determine validity of the prior valuation. REVS must approve all evaluations for loan amounts over $2,500,000. A copy of evaluations greater than $2,500,000 should be forwarded to the Special Assets Credit Officer.

Should the information obtained or analysis performed in the evaluation process suggest that a material (5% or more) erosion in the original value estimate may have occurred since the prior valuation, the new evaluation must reflect the current lower estimate of value and must be approved by REVS staff. If the evaluation process suggests a significant erosion in value (10% or more), a new outside appraisal will typically be required unless waived by the Chief Appraiser in concurrence with the SAD Credit Officer. Required approvals of evaluations are summarized as follows:

Loan Amount	No Material Decline In Value	Material (>5%) Decline in Value	Significant (>10%) Decline in Value
<= $1,000,000	SAD RM	SAD RM, REVS	SAD RM, Chief Appraiser
$1,000,001-$2,500,000	SAD RM, REVS	SAD RM, REVS	SAD RM, Chief Appraiser
> $2,500,000	SAD RM, SAD CO, REVS	SAD RM, SAD CO, REVS	SAD RM, SAD CO, Chief Appraiser

Required Appraisals:

When a new outside appraisal is required as outlined above, the SAD relationship manager will work with Real Estate Valuation Services (REVS) to obtain the appraisal and review as outlined previously in CLP Section 500-3, Procedures for Ordering Appraisals. It is incumbent on the relationship manager to ensure that the appraisal is ordered in a timely manner such that the standards related to the age of the appraisal as outlined above are maintained. If the loan is a participation purchased from another institution, then the SAD Relationship Manager will work with REVS and the Capital Markets team to insure the bank has an acceptable appraisal.

In addition to completing a review of such appraisals as outlined in CLP Section 500-3, REVS will also complete a "SAD Addendum" for appraisals related to transactions with a book balance over $1,000,000. This addendum is prepared specifically to assist in the SAD FAS 114 reporting process as outlined in CLP 800-13. Specifically, the SAD Addendum will:

- address changes in value reflected by the most recent appraisal, as well as, potential future trends in value based on the appraisal and any third party data sources considered
- address potential marketing / hold period for the subject real estate based on indications from the appraisal, discussion with the SAD RM and CRE ACO for the area in which the property is located, as well as, any third party data sources considered

Markets of Concern:

The nature of the real estate market subjects it to volatility which may affect property categories to varying degrees on a geographic basis. As a result, market-wide value erosion may occur in various geographic markets. On a quarterly basis, a special meeting will be held to determine which markets are of particular concern warranting the additional valuation due diligence as outlined above. This meeting group will consist of the Chief Credit Officer, Business Services Credit Executive, Consumer Credit Executive, Head of SAD, Chief Appraiser, Manager of Credit Administration, Credit Review representative, and/or any designees. Based on observed market conditions, the group will compile and maintain a list of "Markets of Concern" categorized by geographic location and property type. This list will encompass markets where the potential for material erosion in value is significant. The Chief Appraiser will make the final determination whether an area is deemed to be a market of concern. As outlined above, collateral managed by SAD determined to be in a market of concern will require more frequent and intense valuation due diligence.

Participation Loans:

Notwithstanding the above, for shared credit transactions in which Regions is a participant and not the lead or agent bank, Regions will defer to the lead or agent bank in determining the timing and frequency of revalidating values

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Commercial Loan Policies Manual Policies and Communication	Section # 800-9 Section: Problem Assets Subject: Collateral Valuation for Problem Loans

Loans that have been identified as Classified (Problem Loans) place added reliance on the value of collateral. Special steps are necessary to properly evaluate collateral for these loans.

This collateral evaluation policy should be followed when the problem loan total related debt is over $250,000. Although problem loans under $250,000 are not required to meet the standards of this policy, this does not minimize the importance of accurate collateral evaluation on these loans. The $250,000 threshold should be viewed only as a means of containing cost due to the expense of appraisals and other evaluations.

Immediately upon downgrade of a loan to OLEM, Substandard, or Doubtful rating, the Relationship Manager (RM) /Special Assets Officer should check the status of the collateral and the supporting collateral valuation. ALL CLASSIFIED LOANS WITH TOTAL RELATED DEBT OVER $250,000 MUST HAVE A CURRENT APPRAISAL OR EVALUATION IN FILE. (See the list at the end of this section for a definition of current appraisals for various collateral types.)

There may be occasions when strict compliance with this policy is not necessary to protect the bank from loss. Waiver of this policy may be requested when it is in the best interest of the Bank. Waiver of this policy may be obtained only from a Special Assets Regional Manager, the Special Assets Credit Officer or the Head of Special Assets.

1. Real Estate

Loans secured by real estate may or may not have an appraisal in file depending on when the loan was made, the nature of the real estate, and the amount of the loan. The value of the real property may have been supported by an evaluation in lieu of an appraisal. But when a loan secured by real estate is identified as a problem loan, a Title XI FIRREA qualified appraisal may be required, even though it was not required when the loan was made.

If a loan secured by real estate with total related debt over $250,000 is downgraded to a problem status and a current appraisal is not in file, the Bank should obtain a new appraisal or obtain a waiver from the Special Assets Regional Manager, the Special Assets Credit Officer or the Head of Special Assets. The appropriate value to use for loans secured by real estate is the market value indicated in the most recent appraisal or evaluation.

2. Equipment

Estimates of value should be obtained from third parties, either independent appraisers or equipment manufacturers or other credible sources, such as auctioneers that regularly auction equipment of the nature being valued.

3. Marketable Securities

On publicly traded securities, quotes should be obtained from newspapers or brokerage houses. This will be performed by the responsible Relationship Manager.

4. Privately Held Securities

This type of collateral is usually very difficult to evaluate. Stock in the company that is owned by the borrower normally should not be assigned any value at all. Stock in other companies which are profitable and where reasonable financial information is available may be assigned a value by the relationship manager. The RM's evaluation should be supported by the company's net book value and earnings per share. Where possible, the RM should also identify potential purchasers of the stock.

5. Crops

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A crop inspection and cash flow projection by the Ag Relationship Manager (AgRM) together with a yield estimate supported by an Inspection report and current market quotes will be satisfactory.

6. Livestock

An evaluation by the AgRM will be satisfactory, provided it is supported by a memo detailing the quantity and quality of the livestock and current market prices.

7. Accounts Receivable/Inventory

The Relationship Manager/Credit Group evaluation is considered satisfactory if it is adequately supported by an aging on accounts receivable and inventory turnover evaluations. Normally, where a proper aging is obtained, a value should be established of 70% to 80% for accounts receivable less than 90 days. For high-quality inventory with relatively fast turns, 30% to 40% values may be used for finished inventory available for sale. Work in process inventory should be given zero value. Values greater than the above assigned to inventory and accounts receivable should be supported by third party evaluations. Little to no value should be assigned if the Relationship Manager/Credit Group cannot obtain the necessary information to properly assign a reliable value.

When managing a problem loan, which is secured primarily by accounts receivable and inventory, it is imperative that the Bank monitor and control the receivables and inventory. If the bank does not maintain control of funds flowing through the working capital cycle and require debt reduction as inventory is liquidated, then no reliance should be given to this collateral in calculating loan to value coverage. It is recommended that if not already in existence that a lockbox be established at Regions and account debtors be notified to send funds to this lockbox.

8. Agricultural Lending (See CLP Section 2300)

9. Miscellaneous Types of Collateral

Normally an evaluation by the relationship manager or an independent source using whatever type of reliable information is available will be satisfactory.

10. Definition of Current Appraisal

A.	Real Estate	Two years or less (original is acceptable if no change)
B.	Equipment	One year or less
C.	Marketable Securities	One month or less
D.	Privately Held Securities	One year or less
E.	Crops	Ninety days or less
F.	Livestock	Ninety days or less
G	Accounts Receivable/Inventory	Thirty days or less
H.	Commodities	Thirty days or less
I.	Miscellaneous	Relationship Manager's judgment

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PROBLEM LOAN REPORT

Period Ending: March 31, 2009

Bank	Consolidated \ Corporate \ General Banking Group \ General Bank Regions \ Florida Banking Group \ Central FL Area \ Orlando City Office \ Orlando Business Services	Date Critic./Class	01/31/2007
Officer	RBR02 - REIMER, RODERICK B. (Rod)	Date Trans. To Special Assets	02/02/2007
Borrower(s)	Designers Choice Cabinetry Inc; R J Properties LLC	Current Outstanding	$ 1,875
Nature of Business	Furniture and Fixtures	Outstanding as of 02/28/2009	$ 1,875
Related Debt in Name Of	c Designers Choice Cabinetry Inc	Total Exposure as of 04/11/2009	$ 3,680
Atty. Assigned	Lewis & Crichton	Legal Fees to Date	$ 0
Original Officer		Amount on Non-Accrual	$ 0
Prior Officer	DAP01 - PREVETT, DOUGLAS A (Doug)	Prior Charge-off	$ 0

I. Critical Policy Exceptions

Other Critical Exceptions Not In LoanSTAR

II. Exposure Recap

Account Number	Risk Code / Accrual Status	Commitment	Outstanding Balance	Days Past Due	Maturity Date	Payment Description (Amounts in this column are actual dollars.)	Interest Description (Amounts in this column are actual dollars.)
CS 92-0001338655-0001006683 (Letter of Credit)	70 -F / A	$ 3,024	$ 0	0	02/15/2010	L/C: (Matures 02/15/2010)	L/C: Fee Basis
CS 92-0001338655-0001214170 (Takedown)	70 -F / A	$ 1,875	$ 1,875	45	04/14/2009	Int Only; Int Monthly Due 04/14/2009; Int Past Due For 02/14/2009; (Matures 04/14/2009)	3.25%: RFC Prime + 0.00%
Total Critic./Class. Debt		$ 4,899	$ 1,875				

III. Risk Rating & Accounting Treatment Justification

:.. Risk Rating Justification ..:

The relationship is being recommended for downgrade to RR75 NPA due to continued operating losses of the company, the Borrower/Guarantor indicating he is out of cash and the Borrower/Guarantor notifying the bank that he can not reimburse the bank the funds advanced for the 3/2/09 $145M scheduled principal bond payment. Collateral coverage currently appears adequate so RR75 NPA will be the appropriate accounting treatment.

:.. Triggers for Risk Rating and Downgrade or Non-Accrual ..:

Upgrade - N/A at the present time

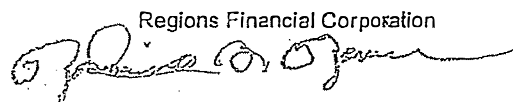
Downgrade - Collateral shortfall resulting in perceived loss for the bank.

:.. Accrual Status Justification ..:

The relationship has been recommended for Non-Accrual.

:.. Carrying Value Justification ..:

Based upon the current collateral values the bank appears to be adequately covered. New appraisals have been ordered on the two commercial/industrial properties.



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IV. Collateral Analysis

Account Number(s)	Description	Full Value	Discount %	Discount Value	Valuation Source	Date
CS 92-0001338655-0001006683	FREM On 91,875 s.f. mfg/warehouse in Rockledge, Florida	$ 4,700	100.00	$ 4,700	Appraisal	04/30/2008
CS 92-0001338655-0001006683	FREM on 23M s.f. mfg/warehouse in Rockledge, Florida	$ 1,175	100.00	$ 1,175	Appraisal	04/30/2008
Total		$ 5,875		$ 5,875		

Collateral Issues — Dragnet Clause Included ☐YES ☑NO

Fully Secured ☑YES ☐NO If No, Please Comment

The remaining LC/VRND's and optionally tendered VRDN and corresponding are secured by FREM's on 22,482 sf warehouse/plant in Rockledge, Fl. market valued at $1,175MM as of 4/30/08 and reviewed by Regions Appraisal Review 6/3/08, and a 91,875 sf warehouse/plant located on 10.86 acres plus 1.46 excess acres in Rockledge, Fl. market valued at $4,700M as of 4/30/08 and reviewed by Regions Appraisal Review 6/5/08, plus a 1st UCC lien on specific equipment - orderly liquidation value of $316M as of 11/05. New appraisals for the two properties have been ordered through REVS.

DCC's LOC is secured by AR and INV. The 2/27/09 Borrowing Base reported $904M in Gross AR and $662M in Gross INV. Advance rates are 80% and 35% Net Eligible amounts.

V. Strategy

☑ Upgrade ☐ Reduce to ☐ Exit | Target Date: 09/30/2009

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VI. Action Plan Last Nine Months

Period Ending	Comments
03/31/2009	:.. Current Strategy ..: The Borrower and the Crisis Manager, Robert Swett, have been working with an investor who is said to have a background in the cabinetry manufacturing business. The investor has Indicated a strong interest in possibly investing in Designers Choice Cabinetry as a % owner. Should this come to fruition, the bank will consider whether a possible restructure is viable, one which would eventually permit the upgrading of the credit facilities. :.. Trigger For Alternative Strategy ..: Borrower and potential investor not being able to reach an agreement. :.. Alternative Strategy ..: If the Borrower and investor would not be able to reach an agreement, the bank would consider having the Borrower assign the assets of the company to an Assignee under a Ch 727 ABC.
02/28/2009	
01/31/2009	
12/31/2008	:.. Current Strategy ..: The Borrower has continued to reduce expenses and is working to return to profitability. Refinancing attempts have been unsuccessful. The strategy is to continue to work with the Borrower and upgrade the facilities when two consecutive quarters of profitability can be achieved. :.. Trigger For Alternative Strategy ..: Monetary default or bankruptcy filing. :.. Alternative Strategy ..: A monetary default would trigger a bankruptcy filing. Due to perceived equity, a Lift Stay would not be an option to pursue. The Bankruptcy Trustee would therefore liquidate the assets and payoff the Bank's debt.
11/30/2008	
10/31/2008	
09/30/2008	:.. Current Strategy ..: Designers Choice Cabineiry (DCC)agreed to engage Gulf Atlantic Capital as a turn around consultant. DCC turned a profit for the month of 8/08. Due to constraints on moving the LC/VRDN and the current Bond market, SA continues to work with the DCC on their turn around and marketing efforts. The strategy is now to upgrade the facilities after two consecutive quarters of profitablity. DCC has consolidated operations into the 91,875 sq. ft. bldg. and is working to market the 23M sq. ft. bldg. and payoff that related portion of the Bonds. :.. Trigger For Alternative Strategy ..: Monetary Default or Bankruptcy Filing. :.. Alternative Strategy ..: A monetary default would most likely trigger a bankruptcy filing. Due to perceived equity, a Lift Stay would not be viable to pursue. The Bankruptcy Trustee would therefore liquidate the assets and payoff the Bank's debt.
08/31/2008	
07/31/2008	

VII. General Comments Last Nine Months

Period Ending	Comments
03/31/2009	The crisis manager currently believes that a agreement is possible between the Borrower and potential Investor. The crisis manager has been working on a budget and 2 year proforma to determine what the cash requirements would be for the profitable operation of the company. Should a restructure be feasible, it would involve having the bonds converted to term debt with an amortizing schedule.
02/28/2009	
01/31/2009	
12/31/2008	One of the tax exempt bonds was tendered and the corresponding LC ($1,875M)funded 10/14/08. Morgan Keegan Is working to re-market the Bond.
11/30/2008	
10/31/2008	

Period Ending	Comments
09/30/2008	To have the Standby Letter of Credit supporting the Bonds moved, another lender would have to have a Moody's Rating of A1P1. When the Borrower sells the 23M sq. ft. bldg. that would payoff proportionate bond debt and free up working capital. This would greatly assist in turn around efforts.
08/31/2008	
07/31/2008	

VIII. Committee Notes Last Nine Months

Period Ending	Comments
03/31/2009	
02/28/2009	
01/31/2009	
12/31/2008	
11/30/2008	
10/31/2008	
09/30/2008	
08/31/2008	
07/31/2008	

IX. Guarantor(s) Financial Information

Guarantor	Stmt. Date	Liquid Assets	R. E. Assets	Total Assets	Total Debt	Net Worth	Gross Income
Murfin, James ◦ Unlimited ◦ Unlimited	02/13/2009	$ 10	$ 6,621	$ 7,201	$ 5,004	$ 2,197	$ 223

Do Guarantor(s) Add Value ☐YES ☑NO If Yes, Please Comment

The Guarantor, James Murfin, has indicated that he has used his liquid assets for the company since his 8/6/08 PFS was prepared. His 2/13/09 PFS reports $4M in cash & marketable securities and $6M in IRA's.

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EXHIBIT 7

Document 3

Regions Commercial Loan Policies Manual Policies and Communication	Section # 800-6 Section: Problem Assets Subject: Non-Accrual Policy & Procedures

Non-Accrual Loan Policy

The Bank generally recognizes income from its earning assets on an accrual basis so long as the full collection of all principal and interest appears reasonably assured. However, earning assets are placed on non-accrual if any of the following conditions occurs:

1. A loan should be placed on non-accrual (even if current) if collection in full of contractual principal and interest becomes doubtful or if the loan is classified "Doubtful" or "Loss" by the Relationship Manager, Area Credit Officer, Senior Credit Officer, or Credit Review.
2. A partial charge-off has occurred, unless the loan has been brought current under its contractual terms (original or restructured terms) and the remaining principal and interest is considered to be fully collectible. Reference Section 800-10, Troubled Debt Restructuring
3. Delinquent on any principal or interest for 90 days or more unless the obligation is both well secured and in the process of collection.

A loan is "well secured" if it is secured by collateral in the form of liens on or pledges of real or personal property, including securities that have a realizable value sufficient to discharge the debt. A loan may be considered well secured by the guaranty of a financially responsible party with the demonstrated willingness and ability to fully satisfy the debt.

A loan is "in the process of collection" if:

1) the collection of the debt is proceeding in due course either through legal action – including lawsuit and/or foreclosure on real estate - or in appropriate circumstances, through actions which are reasonably expected to result in repayment of the loan or in its restoration to a current status.

Credits secured by real estate in the process of foreclosure may properly remain on accrual, when handled in accordance with 500-8, Properties Managed by Special Assets

Or

2) the collection efforts, not involving legal actions, are reasonably expected to result in repayment of the debt. A claim duly filed against the estate of a bankrupt or deceased debtor is considered to be "in the process of collection." Any collection effort should be expected to produce results prior to the credit becoming 180 days past due.

The approval of the Business Services Credit Executive or the Chief Credit Officer will be required to continue accrual on any loan in excess of $250,000 over 180 days past due.

All loans on non-accrual status will be graded substandard (Risk Rating 75) or doubtful (Risk Rating 80). In certain cases, a consumer loan or a loan secured by a one-to four family-residential property may not need to be placed on non-accrual when it meets the above criteria. Please refer to the Line of Business Policies for more details.

Regardless of delinquency status at date of transfer, all loans $250,000 or less and transferring to Special Assets, whether to Business and Community Banking Workout or Commercial Special Assets, will have a 15 day review and assessment period, beginning on the date of transfer, after which all policy timelines will apply. The primary purpose of this review period is for time to determine if the delinquency status is attributable to an operational problem, a technical issue causing a delay in a pending renewal, or some other factor that would not warrant non-accrual status.

Restoration to Accrual Status

A credit on non-accrual status may be returned to accrual if both of the following conditions are met

1. The loan is brought contractually current as to both principal and interest.
2. Future payments are reasonably expected to continue being received in accordance with the terms of the loan and the repayment ability can be reasonably demonstrated.

Non-Accrual Procedures

Non Performing Loan (NPL) processing takes place in the first ten days of each calendar month. Unless approved otherwise by the Special Assets Credit Officer, all Business Services loans $250M and less will be placed on non-accruing status on the first processing period after the date on which the loan becomes 90 days past due. Continued accrual beyond this point will require the following approvals

Approval Authority	Number of Days Past Due
Special Assets Credit Officer	Up to 365 days
Business Services Credit Executive or Chief Credit Officer	Beyond 365 days

Non-Accrual Approval.

The following approval process should be used when placing a loan on non-accrual status or returning a loan to accrual status for loans exceeding $250,000

Approval Authority	Commercial and Business Banking
Special Assets Credit Officer *or* Senior Business and Community Banking Credit Officer and Business Banking Line of Business Executive	≥$250,000≤ $1,000,000
Special Assets Credit Officer or Senior Business and Community Banking Credit Officer with concurrence of the Business Services Credit Executive	> $1,000,000 ≤ $2,500,000
Special Assets Credit Officer or Senior Business and Community Banking Credit Officer, or appropriate Senior Credit Officer and the Business Services Credit Executive	>$2,500,000 ≤ $5,000,000
Special Assets Senior Credit Officer, Head of Special Assets, Business Services Credit Executive or the Chief Credit Officer	> $5,000,000 <$10,000,000
Special Assets Senior Credit Officer, Head of Special Assets, Business Services Credit Executive and the Chief Credit Officer	> = $10,000,000

Note: If circumstances warrant, the Chief Credit Officer or the Business Services Credit Executive may, at his/her sole discretion, approve any level of non-accrual change or charge-off.

Non-Accrual Waivers

Unless the credit in question is well-secured <u>and</u> in the process of collection, the RM is responsible for placing any loan that reaches 90 days past due (whether the delinquency is for payment or maturity) on non-accrual in conformity with procedures outlined in this Section.

Any waiver of this placement on non-accrual must be documented on a properly approved Recommendation to Continue Accrual Status form (found in Lotus Notes under Commercial Banking Loan Forms and Compose Related.

Please see table below for appropriate approvals:

EXHIBIT 8

REGIONS

PROBLEM LOAN REPORT

Period Ending: March 31, 2009

Bank	Consolidated \ Corporate \ General Banking Group \ General Bank Regions \ Midwest Banking Group \ Missouri/Iowa/W Kentucky Area \ Greater St. Louis \ Greater St Louis Business Services	Date Critic./Class	07/10/2008
Officer	M3HX2 - WESTBROOK, DARRELL W	Date Trans. To Special Assets	07/10/2008
Borrower(s)	Eighteen Investments Inc	Current Outstanding	$ 5,858
Nature of Business	Real Estate Agents and Managers	Outstanding as of 02/28/2009	$ 5,863
Related Debt in Name Of	∘ Casey Key Management LLC ∘ Eighteen Investments Inc; Hewlett Investments, Inc ∘ Hackberry LLC ∘ Litz, Michael	Total Exposure as of 04/01/2009	$ 12,365
Atty. Assigned		Legal Fees to Date	$ 0
Original Officer		Amount on Non-Accrual	$ 0
Prior Officer	Y5CP7 - MURPHY, THOMAS J	Prior Charge-off	$ 0

I.	Critical Policy Exceptions

Other Critical Exceptions Not In LoanSTAR

Consolidated \ Corporate \ General Banking Group \ General Bank Regions \ Midwest Banking Group \ Missouri/Iowa/W Kentucky Area \ Greater St. Louis \ Greater St Louis Business Services			
Customer	Eighteen	Officer	M3HX2 - WESTBROOK, DARRELL W

Exposure Recap

Account Number	Risk Code / Accrual Status	Commitment	Outstanding Balance	Days Past Due	Maturity Date	Payment Description (Amounts in this column are actual dollars.)	Interest Description (Amounts in this column are actual dollars.)
CS 53-3788056498-0000000001 (Loan)	70 -F / A	$ 76	$ 76		06/30/2009	Prin Plus; $456.00 Prin Monthly due 01/01/1900; Prin Past Due For 01/17/2009; (Matures 06/30/2009)	3.50%: WSJ Prime + 0.25%
CS 53-3788056498-0000000004 (Loan)	70 -F / A	$ 308	$ 308	89	06/30/2009	Prin Plus; $99,999,999,999.99 Prin Monthly due 01/01/1900; Prin Current (Matures 06/30/2009)	3.50%: WSJ Prime + 0.25%
CS 53-3788056498-0000009001 (Loan)	70 -F / A	$ 154	$ 154	86	06/30/2009	Prin Plus; $950.00 Prin Monthly due 04/04/2009; Prin Past Due For 01/04/2009; (Matures 06/30/2009)	3.75%: WSJ Prime + 0.50%
CS 53-3788056498-0000009003 (Loan)	70 -F / A	$ 140	$ 140	75	06/30/2009	Prin Plus; $1,038.00 Prin Monthly due 04/15/2009; Prin Past Due For 01/15/2009; (Matures 06/30/2009)	3.50%: WSJ Prime + 0.25%
CS 53-3788056498-0000009004 (Loan)	70 -F / A	$ 136	$ 136	71	06/30/2009	Prin Plus; $975.00 Prin Monthly due 01/01/1900; Prin Past Due For 01/19/2009; (Matures 06/30/2009)	3.50%: WSJ Prime + 0.25%
CS 53-3788056498-0000009005 (Loan)	70 -F / A	$ 108	$ 108	76	06/30/2009	Prin Plus; $725.00 Prin Monthly due 04/14/2009; Prin Past Due For 01/14/2009; (Matures 06/30/2009)	3.75%: WSJ Prime + 0.50%
CS 53-3788056498-0000009006 (Loan)	70 -F / A	$ 229	$ 229	64	06/30/2009	P & I; $1,583.00 Monthly due 01/01/1900; Pmt Past Due For 01/26/2009; (Matures 06/30/2009)	3.50%: RFC Prime + 0.25%
CS 53-3788056498-0000009011 (Loan)	70 -F / A	$ 101	$ 101	69	06/30/2009	Int Only; Int Monthly Due 04/21/2009; Int Past Due For 01/21/2009; (Matures 06/30/2009)	3.25%: WSJ Prime + 0.00%
CS 53-3788056498-0000009016 (Loan)	70 -F / A	$ 46	$ 46	59	06/30/2009	Prin Plus; $272.00 Prin Monthly due 01/01/1900; Prin Past Due For 01/31/2009; (Matures 06/30/2009)	3.50%: WSJ Prime + 0.25%
CS 53-3788056498-0000009023 (Loan)	70 -F / A	$ 93	$ 93	80	06/30/2009	Prin Plus; $581.00 Prin Monthly due 04/10/2009; Prin Past Due For 01/10/2009; (Matures 06/30/2009)	3.50%: WSJ Prime + 0.25%
CS 53-3788056498-0000009031 (Loan)	70 -F / A	$ 47	$ 47	72	06/30/2009	Prin Plus; $298.00 Prin Monthly due 01/01/1900; Prin Past Due For 01/18/2009; (Matures 06/30/2009)	3.75%: WSJ Prime + 0.50%

Consolidated \ Corporate \ General Banking Group \ General Bank Regions \ Midwest Banking Group \ Missouri/Iowa/W Kentucky Area \ Greater St. Louis \ Greater St Louis Business Services			
Customer	Eighteen Investments Inc.	Officer	M3HX2 - WESTBROOK, DARRELL W

Account Number	Risk Code / Accrual Status	Commitment	Outstanding Balance	Days Past Due	Maturity Date	Payment Description (Amounts in this column are actual dollars.)	Interest Description (Amounts in this column are actual dollars.)
CS 53-3788056498-0000009033 (Loan)	70 -F / A	$ 43	$ 43	83	06/30/2009	Int Only; Int Monthly Due 04/07/2009; Int Past Due For 01/07/2009; (Matures 06/30/2009)	3.25%: WSJ Prime + 0.00%
CS 53-3788056498-0000009034 (Loan)	70 -F / A	$ 31	$ 31	65	06/30/2009	Prin Plus; $195.00 Prin Monthly due 01/01/1900; Prin Past Due For 01/25/2009; (Matures 06/30/2009)	3.50%: WSJ Prime + 0.25%
CS 53-3788056498-0000009037 (Loan)	70 -F / A	$ 77	$ 77	67	06/30/2009	Prin Plus; $481.00 Prin Monthly due 01/01/1900; Prin Past Due For 01/23/2009; (Matures 06/30/2009)	3.50%: WSJ Prime + 0.25%
CS 53-3788056498-0000009038 (Loan)	70 -F / A	$ 31	$ 31	84	06/30/2009	Int Only; Int Monthly Due 04/06/2009; Int Past Due For 01/06/2009; (Matures 06/30/2009)	3.25%: WSJ Prime + 0.00%
CS 53-3788056498-0000009039 (Loan)	70 -F / A	$ 39	$ 39	86	06/30/2009	Int Only; Int Monthly Due 04/04/2009; Int Past Due For 01/04/2009; (Matures 06/30/2009)	3.25%: WSJ Prime + 0.00%
CS 53-3788056498-0000009040 (Loan)	70 -F / A	$ 68	$ 68	72	06/30/2009	Prin Plus; $422.00 Prin Monthly due 01/01/1900; Prin Past Due For 01/18/2009; (Matures 06/30/2009)	3.75%: WSJ Prime + 0.50%
CS 53-3788056498-0000009041 (Loan)	70 -F / A	$ 100	$ 100	62	06/30/2009	Int Only; Int Monthly Due 04/28/2009; Int Past Due For 01/28/2009; (Matures 06/30/2009)	3.25%: WSJ Prime + 0.00%
CS 53-3788056498-0000009043 (Loan)	70 -F / A	$ 112	$ 112	62	06/30/2009	Int Only; Int Monthly Due 04/28/2009; Int Past Due For 01/28/2009; (Matures 06/30/2009)	3.25%: WSJ Prime + 0.00%
CS 53-3788056498-0000009044 (Loan)	70 -F / A	$ 26	$ 26	62	06/30/2009	Int Only; Int Monthly Due 04/28/2009; Int Past Due For 01/28/2009; (Matures 06/30/2009)	3.25%: WSJ Prime + 0.00%
CS 53-3788056498-0000009046 (Loan)	70 -F / A	$ 27	$ 27	75	06/30/2009	Int Only; Int Monthly Due 04/15/2009; Int Past Due For 01/15/2009; (Matures 06/30/2009)	3.25%: WSJ Prime + 0.00%
CS 53-3788056498-0000009047 (Loan)	70 -F / A	$ 115	$ 115	74	06/30/2009	Int Only; Int Monthly Due 04/16/2009; Int Past Due For 01/16/2009; (Matures 06/30/2009)	3.25%: WSJ Prime + 0.00%
CS 53-3788056498-0000009048 (Loan)	70 -F / A	$ 29	$ 29	74	06/30/2009	Int Only; Int Monthly Due 04/16/2009; Int Past Due For 01/16/2009; (Matures 06/30/2009)	3.25%: WSJ Prime + 0.00%

dollars in thousands

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Account Number	Risk Code / Accrual Status	Commitment	Outstanding Balance	Days Past Due	Maturity Date	Payment Description (Amounts in this column are actual dollars.)	Interest Description (Amounts in this column are actual dollars.)
CS 53-3788056498-0000009051 (Loan)	70 -F / A	$ 119	$ 119	74	06/30/2009	Int Only; Int Monthly Due 04/16/2009; Int Past Due For 01/16/2009; (Matures 06/30/2009)	3.50%: WSJ Prime + 0.25%
CS 53-3788056498-0000009052 (Loan)	70 -F / A	$ 119	$ 119	74	06/30/2009	Int Only; Int Monthly Due 04/16/2009; Int Past Due For 01/16/2009; (Matures 06/30/2009)	3.50%: WSJ Prime + 0.25%
CS 53-3788056498-0000009053 (Loan)	70 -F / A	$ 95	$ 95	74	06/30/2009	Int Only; Int Monthly Due 04/16/2009; Int Past Due For 01/16/2009; (Matures 06/30/2009)	3.50%: WSJ Prime + 0.25%
CS 53-3788056498-0000009057 (Loan)	70 -F / A	$ 19	$ 19	66	06/30/2009	Int Only; Int Monthly Due 04/24/2009; Int Past Due For 01/24/2009; (Matures 06/30/2009)	3.25%: WSJ Prime + 0.00%
CS 53-3788056498-0000009058 (Loan)	70 -F / A	$ 111	$ 111	59	06/30/2009	Int Only; Int Monthly Due 04/30/2009; Int Past Due For 01/31/2009; (Matures 06/30/2009)	3.50%: RFC Prime + 0.25%
CS 53-3788056498-0000009061 (Loan)	70 -F / A	$ 37	$ 37	69	06/30/2009	Int Only; Int Monthly Due 04/21/2009; Int Past Due For 01/21/2009; (Matures 06/30/2009)	3.25%: RFC Prime + 0.00%
CS 53-3788056498-0000009063 (Loan)	70 -F / A	$ 86	$ 86	69	06/30/2009	Int Only; Int Monthly Due 04/21/2009; Int Past Due For 01/21/2009; (Matures 06/30/2009)	3.25%: RFC Prime + 0.00%
CS 53-3788056498-0000009065 (Loan)	70 -F / A	$ 106	$ 106	69	06/30/2009	Int Only; Int Monthly Due 04/21/2009; Int Past Due For 01/21/2009; (Matures 06/30/2009)	3.25%: WSJ Prime + 0.00%
CS 53-3788056498-0000009067 (Loan)	70 -F / A	$ 47	$ 47	69	06/30/2009	Int Only; Int Monthly Due 04/21/2009; Int Past Due For 01/21/2009; (Matures 06/30/2009)	3.25%: RFC Prime + 0.00%
CS 53-3788056498-0000009070 (Loan)	70 -F / A	$ 71	$ 71	69	06/30/2009	Int Only; Int Monthly Due 04/21/2009; Int Past Due For 01/21/2009; (Matures 06/30/2009)	3.25%: RFC Prime + 0.00%
CS 53-3788056498-0000009071 (Loan)	70 -F / A	$ 57	$ 57	69	06/30/2009	Int Only; Int Monthly Due 04/21/2009; Int Past Due For 01/21/2009; (Matures 06/30/2009)	3.25%: RFC Prime + 0.00%
CS 53-3788056498-0000009073 (Loan)	70 -D / A	$ 28	$ 28	61	06/30/2009	Int Only; Int Monthly Due 04/29/2009; Int Past Due For 01/29/2009; (Matures 06/30/2009)	3.25%: WSJ Prime + 0.00%

Account Number	Risk Code / Accrual Status	Commitment	Outstanding Balance	Days Past Due	Maturity Date	Payment Description (Amounts in this column are actual dollars.)	Interest Description (Amounts in this column are actual dollars.)
CS 53-3788056498-0000030003 (Loan)	70 -J / A	$ 74	$ 74	61	06/30/2009	Int Only; Int Monthly Due 04/29/2009; Int Past Due For 01/29/2009; (Matures 06/30/2009)	3.50%: WSJ Prime + 0.25%
CS 53-3788056498-0000030006 (Loan)	70 -J / A	$ 1,204	$ 1,204	65	06/30/2009	Int Only; Int Monthly Due 04/25/2009; Int Past Due For 01/25/2009; (Matures 06/30/2009)	3.25%: WSJ Prime + 0.00%
CS 53-3788056498-0000741561 (Loan)	70 -J / A	$ 130	$ 130	76	06/30/2009	Int Only; Int Monthly Due 04/14/2009; Int Past Due For 01/14/2009; (Matures 06/30/2009)	3.50%: RFC Prime + 0.25%
CS 53-3788056498-0000749077 (Loan)	70 -J / A	$ 159	$ 159	82	06/30/2009	Int Only; Int Monthly Due 04/08/2009; Int Past Due For 01/08/2009; (Matures 06/30/2009)	3.50%: RFC Prime + 0.25%
CS 53-3788056498-0000749176 (Loan)	70 -J / A	$ 79	$ 79	85	06/30/2009	Int Only; Int Monthly Due 04/05/2009; Int Past Due For 01/05/2009; (Matures 06/30/2009)	3.50%: RFC Prime + 0.25%
CS 53-3788056498-0000749226 (Loan)	70 -J / A	$ 103	$ 103	85	06/30/2009	Int Only; Int Monthly Due 04/05/2009; Int Past Due For 01/05/2009; (Matures 06/30/2009)	3.50%: RFC Prime + 0.25%
CS 53-3788056498-0000749333 (Loan)	70 -J / A	$ 57	$ 57	85	06/30/2009	Int Only; Int Monthly Due 04/05/2009; Int Past Due For 01/05/2009; (Matures 06/30/2009)	3.50%: RFC Prime + 0.25%
CS 53-3788056498-0000749507 (Loan)	70 -J / A	$ 49	$ 49	85	06/30/2009	Int Only; Int Monthly Due 04/05/2009; Int Past Due For 01/05/2009; (Matures 06/30/2009)	3.50%: RFC Prime + 0.25%
CS 53-3788056498-0000768622 (Loan)	70 -F / A	$ 125	$ 125	79	06/30/2009	Int Only; Int Monthly Due 04/11/2009; Int Past Due For 01/11/2009; (Matures 06/30/2009)	3.25%: RFC Prime + 0.00%
CS 53-3788056498-0000770644 (Loan)	70 -F / A	$ 94	$ 94	72	06/30/2009	Int Only; Int Monthly Due 04/18/2009; Int Past Due For 01/18/2009; (Matures 06/30/2009)	3.50%: WSJ Prime + 0.25%
CS 53-3788056498-0000772129 (Loan)	70 -F / A	$ 0	$ 0	38	06/30/2009	Int Only; Int Monthly Due 04/21/2009; Int Past Due For 02/21/2009; (Matures 06/30/2009)	3.25%: RFC Prime + 0.00%
CS 53-3788056498-0000772236 (Loan)	70 -F / A	$ 114	$ 114	69	06/30/2009	Int Only; Int Monthly Due 04/21/2009; Int Past Due For 01/21/2009; (Matures 06/30/2009)	3.25%: RFC Prime + 0.00%

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Account Number	Risk Code / Accrual Status	Commitment	Outstanding Balance	Days Past Due	Maturity Date	Payment Description (Amounts in this column are actual dollars.)	Interest Description (Amounts in this column are actual dollars.)
CS 53-3788056498-0000775999 (Loan)	70 - F / A	$ 104	$ 104	62	06/30/2009	Int Only; Int Monthly Due 04/28/2009; Int Past Due For 01/28/2009; (Matures 06/30/2009)	3.50%: WSJ Prime + 0.25%
(Loan)	70 - F / A	$ 131	$ 131	76	06/30/2009	Int Only; Int Monthly Due 04/14/2009; Int Past Due For 01/14/2009; (Matures 06/30/2009)	3.25%: WSJ Prime + 0.00%
CS 53-3788056498-0000778225 (Loan)	70 - F / A	$ 57	$ 57	80	06/30/2009	Int Only; Int Monthly Due 04/10/2009; Int Past Due For 01/10/2009; (Matures 06/30/2009)	3.25%: WSJ Prime + 0.00%
CS 53-3788056498-0000782631 (Loan)	70	$ 40	$ 40	82	06/30/2009	Int Only; Int Monthly Due 04/08/2009; Int Past Due For 01/08/2009; (Matures 06/30/2009)	3.50%: WSJ Prime + 0.25%
CS 53-3788056498-0000782664 (Loan)	70 - F / A	$ 60	$ 60	82	06/30/2009	Int Only; Int Monthly Due 04/08/2009; Int Past Due For 01/08/2009; (Matures 06/30/2009)	3.50%: WSJ Prime + 0.25%
CS 53-3788056498-0000782755 (Loan)	70 - F / A	$ 94	$ 94	82	06/30/2009	Int Only; Int Monthly Due 04/08/2009; Int Past Due For 01/08/2009; (Matures 06/30/2009)	3.25%: WSJ Prime + 0.00%
CS 53-3788056498-0000784389 (Loan)	70 - F / A	$ 71	$ 71	78	06/30/2009	Int Only; Int Monthly Due 04/12/2009; Int Past Due For 01/12/2009; (Matures 06/30/2009)	3.25%: WSJ Prime + 0.00%
CS 53-3788056498-0000794834 (Loan)	70 - F / A	$ 30		86	06/30/2009	Int Only; Int Monthly Due 04/04/2009; Int Past Due For 01/04/2009; (Matures 06/30/2009)	3.25%: WSJ Prime + 0.00%
53-3788056498-0000796375 (Loan)	70 - F / A	$ 53	$ 53	80	06/30/2009	Int Only; Int Monthly Due 04/10/2009; Int Past Due For 01/10/2009; (Matures 06/30/2009)	3.50%: WSJ Prime + 0.25%
Total Critic/Class. Debt		$ 5,858	$ 5,858				

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Risk Rating & Accounting Treatment Justification

:.. Risk Rating Justification ..:
Risk rating of 70 is justified due to the depressed real estate market. Borrower purchases foreclosed homes and attempts to resell at higher price. Many of the properties are rented. It appears that cash flow has been impared.

:.. Triggers for Risk Rating and Downgrade or Non-Accrual ..:
Failure to make payments and keep loans from becoming 90 days past due.

:.. Accrual Status Justification ..:
Non-accrual is not yet warranted because payments are being made and we believe that they will continue. We are working on obtaining appraisals on all of the properties.

:.. Carrying Value Justification ..:
N/A

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Collateral Analysis

Account Number(s)	Description	Full Value	Discount %	Discount Value	Valuation Source	Date
CS 53-3788056498-0000000001		$ 100	100.00	$ 100	Appraisal	03/18/2009
CS 53-3788056498-0000000004		$ 375	100.00	$ 375	Appraisal	03/19/2009
CS 53-3788056498-0000009001		$ 250	100.00	$ 250	Appraisal	03/17/2009
CS 53-3788056498-0000009003		$ 183	100.00	$ 183	Appraisal	03/17/2009
CS 53-3788056498-0000009004		$ 150	100.00	$ 150	Appraisal	03/20/2009
CS 53-3788056498-0000009005		$ 152	100.00	$ 152	Appraisal	03/17/2009
CS 53-3788056498-0000009006		$ 293	100.00	$ 293	Appraisal	03/17/2009
CS 53-3788056498-0000009011		$ 120	100.00	$ 120	Appraisal	03/17/2009
CS 53-3788056498-0000009016		$ 85	100.00	$ 85	Appraisal	02/24/2006
CS 53-3788056498-0000009023		$ 119	100.00	$ 119	Appraisal	03/17/2009
CS 53-3788056498-0000009031		$ 80	100.00	$ 80	Appraisal	03/17/2009
CS 53-3788056498-0000009033		$ 47	100.00	$ 47	Appraisal	03/17/2009
CS 53-3788056498-0000009034		$ 47	100.00	$ 47	Appraisal	03/17/2009
53-3788056498-0000009037		$ 101	100.00	$ 101	Appraisal	03/19/2009
CS 53-3788056498-0000009038		$ 60	100.00	$ 60	Appraisal	03/17/2009
CS 53-3788056498-0000009039		$ 38	100.00	$ 38	Appraisal	03/17/2009
CS 53-3788056498-0000009040		$ 78	100.00	$ 78	Appraisal	03/19/2009
CS 53-3788056498-0000009041		$ 160	100.00	$ 160	Appraisal	03/24/2009
CS 53-3788056498-0000009043		$ 114	100.00	$ 114	Appraisal	03/17/2009
CS 53-3788056498-0000009044		$ 30	100.00	$ 30	Appraisal	03/17/2009
CS 53-3788056498-0000009046		$ 60	100.00	$ 60	Appraisal	03/17/2009
CS 53-3788056498-0000009047		$ 120	100.00	$ 120	Appraisal	03/17/2009
CS 53-3788056498-0000009048		$ 55	100.00	$ 55	Appraisal	03/20/2009
CS 53-3788056498-0000009051		$ 120	100.00	$ 120	Appraisal	03/18/2009
CS 53-3788056498-0000009052		$ 104	100.00	$ 104	Appraisal	03/17/2009
CS 53-3788056498-0000009053		$ 79	100.00	$ 79	Appraisal	03/17/2009

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Account Number(s)	Description	Full Value	Discount %	Discount Value	Valuation Source	Date
CS 53-3788056498-0000009057		$ 38	100.00	$ 38	Appraisal	03/17/2009
CS 53-3788056498-0000009058		$ 123	100.00	$ 123	Appraisal	03/17/2009
CS 53-3788056498-0000009061	18	$ 80	100.00	$ 80	Appraisal	03/17/2009
CS 53-3788056498-0000009063	3	$ 106	100.00	$ 106	Appraisal	03/17/2009
CS 53-3788056498-0000009065		$ 130	100.00	$ 130	Appraisal	03/17/2009
CS 53-3788056498-0000009067		$ 85	100.00	$ 85	Appraisal	03/23/2009
CS 53-3788056498-0000009070		$ 85	100.00	$ 85	Appraisal	03/23/2009
CS 53-3788056498-0000009071		$ 116	100.00	$ 116	Appraisal	03/17/2009
CS 53-3788056498-0000009073		$ 60	100.00	$ 60	Appraisal	03/17/2009
CS 53-3788056498-0000030003		$ 75	100.00	$ 75	Appraisal	03/16/2009
CS 53-3788056498-0000030003		$ 42	100.00	$ 42	Appraisal	03/17/2009
CS 53-3788056498-0000030003		$ 84	100.00	$ 84	Appraisal	03/16/2009
CS 53-3788056498-0000030006	6	$ 135	100.00	$ 135	Appraisal	03/20/2009
CS -3788056498-0000030006	6	$ 75	100.00	$ 75	Appraisal	03/17/2009
S 53-3788056498-0000030006	H	$ 128	100.00	$ 128	Appraisal	03/17/2009
CS 53-3788056498-0000030006	2 M	$ 210	100.00	$ 210	Appraisal	03/20/2009
CS 53-3788056498-0000030006	2 6	$ 125	100.00	$ 125	Appraisal	03/17/2009
CS 53-3788056498-0000030006	2 M	$ 235	100.00	$ 235	Appraisal	03/20/2009
CS 53-3788056498-0000030006	3 6	$ 60	100.00	$ 60	Appraisal	03/17/2009
CS 53-3788056498-0000030006	4 6	$ 75	100.00	$ 75	Appraisal	03/17/2009
CS 53-3788056498-0000030006	4 F	$ 58	100.00	$ 58	Appraisal	03/17/2009
CS 53-3788056498-0000030006	4 6	$ 100	100.00	$ 100	Appraisal	03/17/2009
CS 53-3788056498-0000030006	5 M	$ 119	100.00	$ 119	Appraisal	03/17/2009
CS 53-3788056498-0000030006	69 63	$ 20	100.00	$ 20	Appraisal	03/17/2009
CS 53-3788056498-0000741561	20	$ 154	100.00	$ 154	Appraisal	03/17/2009
CS 53-3788056498-0000749077	10	$ 215	100.00	$ 215	Appraisal	03/18/2009
CS 53-3788056498-0000749176	63	$ 95	100.00	$ 95	Appraisal	03/18/2009
CS 53-3788056498-0000749226	72	$ 95	100.00	$ 95	Appraisal	03/18/2009

CONFIDENTIAL
TREATMENT REQUESTED

Consolidated \ Corporate \ General Banking Group \ General Bank Regions \ Midwest Banking Group \ Missouri/Iowa/W Kentucky Area \ Greater St. Louis \ Greater St Louis Business Services

Customer	Eighteen Investments inc	Officer	M3HX2 - WESTBROOK, DARRELL W

Account Number(s)		Full Value	Discount %	Discount Value	Valuation Source	Date
CS 53-3788056498-0000749333		$ 70	100.00	$ 70	Appraisal	03/18/2009
CS 53-3788056498-0000749507		$ 36	100.00	$ 36	Appraisal	03/24/2009
CS 53-3788056498-0000768622		$ 113	100.00	$ 113	Appraisal	03/17/2009
CS 53-3788056498-0000770644		$ 90	100.00	$ 90	Appraisal	03/24/2009
CS 53-3788056498-0000772129		$ 100	100.00	$ 100	Appraisal	03/17/2009
CS 53-3788056498-0000772236		$ 158	100.00	$ 158	Appraisal	03/17/2009
CS 53-3788056498-0000775999		$ 135	100.00	$ 135	Appraisal	03/17/2009
CS 53-3788056498-0000776484		$ 198	100.00	$ 198	Appraisal	03/20/2009
CS 53-3788056498-0000778225		$ 85	100.00	$ 85	Appraisal	03/20/2009
CS 53-3788056498-0000782631		$ 40	100.00	$ 40	Appraisal	03/24/2009
CS 53-3788056498-0000782664		$ 145	100.00	$ 145	Appraisal	03/24/2009
CS 53-3788056498-0000782755		$ 150	100.00	$ 150	Appraisal	03/17/2009
CS 53-3788056498-0000784389		$ 73	100.00	$ 73	Appraisal	03/17/2009
CS -3788056498-0000794834		$ 45	100.00	$ 45	Appraisal	03/17/2009
S 53-3788056498-0000796375		$ 79	100.00	$ 79	Appraisal	03/17/2009
Total		$ 7,558		$ 7,558		

Collateral Issues — Dragnet Clause Included ☑YES ☐NO

Fully Secured ☑YES ☐NO If No, Please Comment

One Hewlett loan is unsecured but we are taking the net sale proceeds and are reducing this loan. It started at $482,866. and has a current balance of $217,803.

V. Strategy

☐ Upgrade ☐ Reduce to ☑ Exit | Target Date: 06/30/2009

CONFIDENTIAL TREATMENT REQUESTED

Regions_041212SECSubpoena 0000221

Action Plan Last Nine Months

Period Ending	Comments
03/31/2009	
02/28/2009	
01/31/2009	
12/31/2008	:.. Current Strategy ..: Consist of 61 loans that 60 loans are secured with residential real estate. Locations include St Louis City, St Louis County, Memphis, TN Phoenix, AZ and Kansas City, MO. We are working on a forbearance agreement that will charge a fee of $55,000. We will waive $15,000. if the obligations are reduced $2.0MM by 1/31/09 and will waive another $2.0MM by 4/30/09 and will waive another $15,000. if all remaining balances are paid by 6/30/09. :.. Trigger For Alternative Strategy ..: If loans become 90 days past due and are placed on non-accrual. :.. Alternative Strategy ..: Foreclose on the 60 properties that are secured with deeds of trust or mortgages.
11/30/2008	:.. Current Strategy ..: Our attorney is preparing a forbearance agreement that will require a $2.0MM reduction by 1/29/09 and another $2.0MM by 4/30/09 and the balance by 6/30/2009. We will charge a fee of $55,000. and will waive $45,000. if they meet the above schedule. The agreement will require that the 2006 real estate taxes be paid by 12/31/08 and that the 2007 taxes be paid by 2/27/09 and that the 2008 taxes be paid by 4/30/09. Interest rates will be fixed at 5%. :.. Trigger For Alternative Strategy ..: Failure to keep loan payments within 90 days past due :.. Alternative Strategy ..: Start foreclosure on properties that secure the 63 loans that make up this relationship. One loan has 12 properties.
10/31/2008	
09/30/2008	:.. Current Strategy ..: We have made demand and are now working on a forbearance agreement. The agreement will require a fee of $55,000. $15,000. will be waived if loan balances are reduced 2.0MM by 12/31/08. Another $15,000. will be waived if loan balances are reduced another 2.0MM by 3/31/09. Then if the remaining balances are paid in full by 6/30/09 another $15,000. will be waived. :.. Trigger For Alternative Strategy ..: Failure to keep payments within 90 days past due. :.. Alternative Strategy ..: Foreclosure
08/31/2008	:.. Current Strategy ..: We have made demand on all of our notes due to delinquent payments. Principal of borrower has proposed that we enter into a forbearance agreement. We have requested additional information and are still waiting on some of this additional information. We expect the borrower to enter into sales of the pledged properties and pay off our loans. We have reduced the outstanding debt by $899,429. and cancelled availability of $651,348. since loans were transferred to SAD. :.. Trigger For Alternative Strategy ..: Failure to keep payments within 90 day past due. :.. Alternative Strategy ..: Foreclose on our deeds of trust and mortgages.
07/31/2008	

VII. General Comments Last Nine Months

Period Ending	Comments
03/31/2009	
02/28/2009	
01/31/2009	

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Period Ending	Comments
12/31/2008	Most of the properties are listed for sale. They are working on an arrangement that a block of the Memphis properties will be sold to one party. Also working on a similar arrangement on the Arizona properties.
11/30/2008	Working on obtaining evaluations on the properties.
10/31/2008	
09/30/2008	Loans have payments due for August '08. All 2006 taxes are to be paid by 10/30/2008 and 2007 taxes are to be paid by 12/31/2008 and 2008 taxes are to be paid by 3/31/2009.
08/31/2008	20 properties are located in Memphis TN. 31 are located in the St. Louis area and the others are in Gulfport MS, Phoenix AZ, and Kansas City MO area. Related debt is with Casey Key and Hackberry.
07/31/2008	

VIII. Committee Notes Last Nine Months

Period Ending	Comments
03/31/2009	
02/28/2009	
01/31/2009	
12/31/2008	
11/30/2008	
10/31/2008	
09/30/2008	
08/31/2008	
07/31/2008	

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Regions_041212SECSubpoena
0000223

Guarantor(s) Financial Information

Guarantor	Stmt. Date	Liquid Assets	R. E. Assets	Total Assets	Total Debt	Net Worth	Gross Income
FOX, CAROL o Unlimited	02/08/2007	-	-	-	-	-	-
Fox, Carol A o Unlimited	07/01/2005		-				
FOX, MICHAEL o Unlimited	02/28/2007				-		

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0000224

Guarantor	Stmt. Date	Liquid Assets	R. E. Assets	Total Assets	Total Debt	Net Worth	Gross Income
Litz, Michael							
o Unlimited							
o Unlimited							
o Unlimited							
o Unlimited							
o Unlimited							
o Unlimited							
o Unlimited							
o Unlimited							
o Unlimited							
o Unlimited							
o Unlimited							
o Unlimited							
o Unlimited							
o Unlimited							
o Unlimited							
o Unlimited							
o Unlimited							
o Unlimited							
o Unlimited							
o Unlimited	02/28/2007	-	-	-	-	-	-
Do Guarantor(s) Add Value ☐YES ☑NO If Yes, Please Comment							

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TREATMENT REQUESTED
Regions_041212SECSubpoena
0000225

Executive Financial Statement

Eighteen Investments Inc
SIC Code 65300 - Real Estate Agents and Managers

All dollar amounts in thousands

Statement Date	12/06/2005		12/30/2005		02/28/2007	
Months Covered	6		12		12	
Quality	Company Prepared		Compiled		Compiled	
Highlights Entered By	-		-		VdS	
Statement Type	FYTD		FYE		FYE	
	$	%	$	%	$	%
ASSETS						
Cash & Deposits	-	-	-	-	707	0.7
Net Accounts / Notes Receivable	-	-	-	-	15,329	15.9
Income Tax Receivable	-	-	-	-	-	-
Inventory	-	-	-	-	66,083	68.5
Other Current Assets	-	-	-	-	638	0.7
TOTAL CURRENT ASSETS	-	-	-	-	82,757	85.8
Net Fixed Assets	-	-	-	-	1,855	1.9
Long Term Receivables And Investments	-	-	-	-	11,732	12.2
Other Non-Current Assets	-	-	-	-	99	0.1
Net Intangibles	-	-	-	-	-	-
TOTAL NON-CURRENT ASSETS	-	-	-	-	13,686	14.2
TOTAL ASSETS	-	-	-	-	96,443	100.0
LIABILITIES & NET WORTH						
Short Term Loans Payable	-	-	-	-	79,695	82.6
Current Portion Long Term Debt	-	-	-	-	-	-
Accounts Payable	-	-	-	-	-	-
Accrued Liabilities	-	-	-	-	114	0.1
Taxes Payable	-	-	-	-	-	-
TOTAL CURRENT LIABILITIES	-	-	-	-	80,834	83.8
Long Term Debt	-	-	-	-	-	-
Other Non-Current Liabilities	-	-	-	-	15,224	15.8
TOTAL NON-CURRENT LIABILITIES	-	-	-	-	15,224	15.8
TOTAL LIABILITIES	-	-	-	-	96,058	99.6
TOTAL NET WORTH	-	-	-	-	385	0.4
TOTAL LIABILITIES AND NET WORTH	-	-	-	-	96,443	100.0
INCOME STATEMENT						
Net Sales / Revenues	-	-	-	-	100,330	100.0
Cost Of Sales / Revenues	-	-	-	-	95,240	94.9
GROSS PROFIT	-	-	-	-	5,090	5.1
Net Operating Expense	-	-	-	-	3,986	4.0
Depreciation & Amortization	-	-	-	-	302	0.3
NET OPERATING PROFIT	-	-	-	-	802	0.8
Interest Income (Expense)	-	-	-	-	(2,080)	(2.1)
Other Income (Expense)	-	-	-	-	3,468	3.5
PROFIT BEFORE TAXES	-	-	-	-	2,190	2.2
Income Taxes	-	-	-	-	(11)	(0.0)
Minority Interest	-	-	-	-	-	-
PROFIT BEFORE EXTRAORDINARY ITEMS	-	-	-	-	2,179	2.2
After Tax Income (Expense)	-	-	-	-	-	-
NET PROFIT	-	-	-	-	2,179	2.2
Other Comprehensive Income	-	-	-	-	-	-
COMPREHENSIVE INCOME	-	-	-	-	2,179	2.2
Dividends Withdrawals	-	-	-	-	3,203	3.2
Adjustment To Retained Earnings	-	-	-	-	-	-

CONFIDENTIAL
TREATMENT REQUESTED

Regions_041212SECSubpoena
0000226

EXHIBIT 9

Document 3

REGIONS

PROBLEM LOAN REPORT

Period Ending: March 31, 2009

Bank	Consolidated \ Corporate \ General Banking Group \ General Bank Regions \ Florida Banking Group \ South FL Area \ Miami-Dade City \ Miami-Dade Business Services	Date Critic./Class	10/08/2008
Officer	G5YJ9 - CARRIGAN, JAMES P (Patrick)	Date Trans. To Special Assets	10/27/2008
Borrower(s)	First West Cutler Gardens, LLC	Current Outstanding	$ 10,928
Nature of Business	Real Estate - Not Elsewhere Classified	Outstanding as of 02/28/2009	$ 10,928
Related Debt in Name Of	o Lago, Julio	Total Exposure as of 04/16/2009	$ 11,414
Atty. Assigned	Steven Goldman & Marlene Silvermana; Greenberg, Taurig, PA	Legal Fees to Date	$ 125
Original Officer		Amount on Non-Accrual	$ 0
Prior Officer	R5YN6 - GARCIA, JESUS R	Prior Charge-off	

I. Critical Policy Exceptions

Other Critical Exceptions Not In LoanSTAR.

II. Exposure Recap

Account Number	Risk Code / Accrual Status	Commitment	Outstanding Balance	Days Past Due	Date	Payment Description (Amounts in this column are actual dollars.)	Interest Description (Amounts in this column are actual dollars.)
CS 92-2550001019-0000030001 (Takedown)	70 -D / A	$ 10,928	$ 10,928	54	03/27/2009	Int Only; Int Monthly Due 04/27/2009; Int Past Due For 02/05/2009; (Matured 03/27/2009)	3.27%: LIBOR-1 MO BBA2 DAY FORWARD+ 2.75%
Total Critic./Class. Debt:		$ 10,928	$ 10,928				

III. Justification

:.. Risk Rating Justification ..:
Borrower is risk rated 75 Substandard Nonaccrual. Classification is justified by Borrower's default conveying 49 individual collateral units to third parties without Regions' knowledge or approval. Borrower used the sale proceeds to satisfy other debt obligations not related to the collateral project. Loan is past due for principal due to maturity and past due for interest payments since February. We accelerated the loan due to the defaults, filed foreclosure action and requested appointment of a receiver. We are in discussions with Fidelity Title regarding a settlement for tne net sales proceeds we did not receive.

:.. Triggers for Risk Rating and Downgrade or Non-Accrual ..:
New appraisal indicates a valuation shortfall exists.

:.. Accrual Status Justification ..:
NA

:.. Carrying Value Justification ..:
Based on rent rolls and financial information on hand, property continues to be managed as rental apartment complex generating sufficient income for debt service. Current appraisal has valued 149 units at $8.2MM and REVS review concludes that the 49 sold units can be included in collateral valuation due to foreclosure rights and would increase valuation to $12.4MM

IV Collateral Analysis

Account Number(s)		Full Value	Discount %	Discount Value	Valuation Source	
CS 92-2550001019-0000030001			100.00	$ 16,500	Appraisal	03/18/2007
Total				$ 16,500		

Collateral Issues
While the Borrower has sold 49 units, Regions' mortgage is still in place and we have a claim against buyers who did not obtain releases from the bank. Buyers have claims against the title policies written on the title company based on the actions of their agent in underwriting title policies without obtaining the releases from the Bank.

Dragnet Clause Included ☐ YES ☑ NO

Fully Secured ☑ YES NO **No, Please Comment**
First mortgage on 198-unit, Class B/C, Paradise Point Apartments, appraisal as of 3/2/2007 estimated the FMV at $16,500,000, resulting in an LTV of 67%. Received new appraisal which values the 149 units at $8.2 million. REVS review has adjusted to reflect collateral interest in the 49 sold units, concluding aggregate value is $12.4 million.

V. Strategy

☐ Upgrade ☐ Reduce to ☑ Exit Target Date: 09/30/2009

VI. Action Plan Last Nine Months

Period Ending	Comments
03/31/2009	:.. Current Strategy ..: Pursue foreclosure litigation to obtain summary judgment and title to collateral property for subsequent sale to recover debt. Move for appointment of receiver to manage property. Amend foreclosure complaint to include owners of 49 condo units sold without bank permission or releases. :.. Trigger For Alternative Strategy ..: Ongoing :.. Alternative Strategy ..: Sell note & mortgage to third party investor.
02/28/2009	
01/31/2009	
12/31/2008	:.. Current Strategy ..: Foreclose on property in order to have direct recourse to rental cash flow to service debt by 06/30/2009. Concurrent Workout Strategy: Negotiate with Fidelity Title for either payment of net sales proceeds for the 49 units for which they underwrote title insurance or purchase of our note and mortgage at par. Following foreclosure, sell property to third party investor by 12/31/2009. Pursue deficiency judgment against guarantors if applicable. :.. Trigger For Alternative Strategy ..: Protracted litigation prevents timely foreclosure on property and Fidelity Title fails to negotiate reasonable settlement with Regions Bank. :.. Alternative Strategy ..: Sell note and mortgage to third party investor, price to be negotiated, by 12/31/2009.
11/30/2008	:.. Current Strategy ..: On 10/30/2008, demand for full repaymentwas made and foreclosure complaint was filed on 11/6/2008 as well as request for appointment of a receiver. Concurrent Strategy: Regions has approached Fidelity Title to pay off Regions' debt to avoid facing 49 claims for insuring title for the purchases of the individual units without the release of the Regions' mortgage. The aggregated claims would approximate $9,500,000. :.. Trigger For Alternative Strategy ..: Failure to settle with title company. :.. Alternative Strategy ..: Filing individual claims on 49 unit purchases.

VII. General Comments Last Nine Months

Period Ending	Comments
03/31/2009	Borrower is contesting foreclosure but loan has now matured and interest payments have not been made since January. Amended foreclosure action is to be filed by April 8th together with new motion for appointment of receiver.
02/28/2009	
01/31/2009	
12/31/2008	Borrower has admitted to selling units without consent from Regions Bank and to diverting proceeds to pay obligations owed to Great Florida Bank. The fraudulent conveyance of units, the misappropriation of funds owed to Regions Bank and suspicious activity flowing through the borrower's and several other related deposit accounts have been reported to SAD Legal Counsel, Corporate Security and BSA Compliance.
11/30/2008	Relationship was transferred to SAD on 10/27/2008 after Regions became aware that 49 units had been sold by the Borrower without the Bank's knowledge or permission.

CONFIDENTIAL TREATMENT REQUESTED Regions_041212SECSubpoena_0001291

VIII.	Committee Notes Last Nine Months
Period Ending	**Comments**
03/31/2009	
02/28/2009	
01/31/2009	
12/31/2008	
11/30/2008	

IX. Guarantor(s) Financial Information

Guarantor	Stmt. Date	Liquid Assets	R. E. Assets	Total Assets	Total Debt	Net Worth	Gross Income
Cecchini, Anthony o Unlimited				-			-
Cecchini, Mary L o Unlimited							-
Lago, Anays o Unlimited							
Lago, Juan C o Unlimited			-	-		-	
Lago, Julio o Unlimited	-	-	-	-	-	-	-
Lago, Zaida o Unlimited			-	-	-		
Perez, Mr. Felix H o Unlimited				-			
Perez, Mrs. Beatriz J o Unlimited	-	-			-		
odriguez, Brenda M o Unlimited	-	-					-
Rodriguez, Julio A o Unlimited	-			-			-
Torres, Mr. Francisco o Unlimited	-			-		-	
Torres, Rosa o Unlimited							

Do Guarantor(s) Add Value ☑YES ☐NO If Yes, Please Comment
There are 12 guarantors: Julio & Anays Lago, Juan Carlos and Zaida Lago, Francisco and Rosa Torres, Julio and Brenda Rodriquez, Anthony and Mary Cecchini, and Felix H. and Beatriz Perez.

Complaints were filed against all guarantors on 11/6/2008. Extent to which guarantors add value may be limited given investments in real estate sector, which include properties mortgaged to Great Florida Bank, which is also pursuing foreclosure actions for reasons similar to ours.

CONFIDENTIAL TREATMENT REQUESTED
Regions_041212SECSubpoena_0001292

Consolidated \ Corporate \ General Banking Group \ General Bank Regions \ Florida Banking Group \ South FL Area \ Miami-Dade Cty \ Miami-Dade Business Services			
Customer	First West Cutler Gardens, LLC	Officer	G5YJ5 - CARRIGAN, JAMES P (Patrick)

cutive Financial Statement

First West Cutler Gardens, LLC
SIC Code 65000 - Real Estate - Not Elsewhere Classified

All dollar amounts in thousands

Statement Date		
Months Covered		
Quality		
Highlights Entered By		
Statement Type		
ASSETS		
Cash & Deposits		
Net Accounts / Notes Receivable		
Income Tax Receivable		
Inventory		
Other Current Assets		
TOTAL CURRENT ASSETS		
Net Fixed Assets		
Long Term Receivables And Investments		
Other Non-Current Assets		
Net Intangibles		
TOTAL NON-CURRENT ASSETS		
TOTAL ASSETS		
LIABILITIES & NET WORTH		
Short Term Loans Payable		
ent Portion Long Term Debt		
ounts Payable		
Accrued Liabilities		
Taxes Payable		
TOTAL CURRENT LIABILITIES		
Long Term Debt		
Other Non-Current Liabilities		
TOTAL NON-CURRENT LIABILITIES		
TOTAL LIABILITIES		
TOTAL NET WORTH		
TOTAL LIABILITIES AND NET WORTH		
INCOME STATEMENT		
Net Sales / Revenues		
Cost Of Sales / Revenues		
GROSS PROFIT		
Net Operating Expense		
Depreciation & Amortization		
NET OPERATING PROFIT		
Interest Income (Expense)		
Other Income (Expense)		
PROFIT BEFORE TAXES		
Income Taxes		
Minority Interest		
PROFIT BEFORE EXTRAORDINARY ITEMS		
After Tax Income (Expense)		
NET PROFIT		
Other Comprehensive Income		
COMPREHENSIVE INCOME		
Dividends Withdrawals		
ustment To Retained Earnings		

CONFIDENTIAL TREATMENT REQUESTED

EXHIBIT 10

CONFIDEN[redacted] TREATMENT REQUESTED

JOB: [redacted]

Cost Code	Description	Revised Cost to Complete
01	GENERAL REQUIREMENTS	
01-0101-100	Project Manager	27,692.32
01-0101-105	Superintendent	19,038.46
01-0101-110	Asst. Superintendent	31,306.23
01-0101-120	Field Office Asst.	2,318.20
01-0101-125	Business Consultant	-
01-0101-130	Incentive Bonus	-
01-0101-140	Payroll Taxes	7,706.70
01-0101-150	Insurance	8,600.00
01-0101-160	Principal	-
01-0101-180	Office Asst.	-
01-0101-190	Truck Allowance	5,769.24
01-0101-192	Travel	20,998.91
01-0105-100	Office Rental	947.00
01-0105-110	Office Supplies	930.77
01-0105-118	Copier	250.00
01-0105-129	Fax	250.00
01-0105-140	Telephone	1,165.02
01-0105-150	Communications	2,763.00
01-0105-160	Construction Photographs	320.00
01-0105-162	Small Tools	2,000.00
01-0105-168	Storage Trailer	(103.22)
01-0109-110	Construction Schedules	-

Regions_041212SECSubpoena_0003855

CONFIDENTIAL TREATMENT REQUESTED

JOB:

Cost Code	Description	Revised Cost to Complete
01-0109-120	Survey & Layout	12,000.00
01-0109-130	Reproductions & Blueprints	500.00
01-0109-150	Soils Testing	5,000.00
01-0109-160	Concrete Testing	(2,088.50)
01-0109-180	As Built Survey	10,000.00
01-0109-190	Construction Schedule	-
01-0112-110	Trash Shute	-
01-0112-120	Dump Truck Rental	-
01-0112-140	Elevators & Hoists	(8,116.99)
01-0112-150	Fuel Expense	(2,042.84)
01-0112-170	Misc Rental	36,000.00
01-0115-100	Temporary Signage	-
01-0119-100	Trash Removal	12,000.00
01-0120-100	Electricity	12,000.00
01-0120-110	Water	3,119.43
01-0120-130	Toilets	1,200.00
01-0120-150	Temporary Fire Protection	-
01-0121-100	Interior Clean	25,000.00
01-0125-100	Exterior Clean	12,000.00
01-0126-100	General Labor	(11,727.39)
01-0127-100	Traffic Control	-
01-0129-100	Punchout Labor	30,500.00
01-0129-110	Punchout Materials	12,200.00
01-0130-100	Job Security	9,240.00
01-0130-110	Temporary Fence	0.00

Regions_041212SECSubpoena_0003856

CONFIDEN [redacted] EATMENT REQUESTED Regions_041212SECSubpoena_0003857

JOB: [redacted]

Cost Code	Description	Revised Cost to Complete
01-0137-100	Glass Replacement	6,200.00
01-0137-120	Misc	6,000.00
01-0139-100	Building Permit	-
01-0140-100	Builder's Risk Insurance	4,082.00
01-0140-110	Liability Insurance	-
01-0140-120	Bonds	-
	DIVISION 01 TOTALS	305,018.34
02	SITE WORK	
02-0205-100	Gut Interior of building	-
02-0205-110	Structure Knockdown	-
02-0205-120	Material Haul off	-
02-0205-130	Abestos Abatement	-
02-0205-150	Slab Crushing	-
02-0210-100	Demolition	-
02-0210-110	Clearing	-
02-0210-120	Grading	(3,000.00)
02-0210-130	Export Soil	-
02-0210-150	Crushing	-
02-0215-100	Silt Fence	-
02-0215-150	Misc Erosion Control	-
02-0217-150	Other Adverse Site Conditions	20,000.00
02-0220-100	Storm System	7,500.00
02-0220-110	Bay Saver	-
02-0222-120	Sewer System	-

CONFIDENTIAL TREATMENT REQUESTED Regions_041212SECSubpoena_0003858

JOB:

Cost Code	Description	Revised Cost to Complete
02-0224-120	Domestic	-
02-0225-100	Mobilization & Design	-
02-0225-110	Micropile Installation	-
02-0240-110	Curb Inlet	-
02-0240-130	Concrete Curb & Gutter	34,000.00
02-0240-150	Parking Stops	3,875.00
02-0245-100	Temporary Road	(745.63)
02-0245-110	Base Stabilization	15,360.00
02-0245-120	Binder	20,200.00
02-0245-130	Top Coat	12,444.00
02-0245-170	Stripe	7,000.00
02-0270-100	Sidewalks	56,000.00
02-0270-110	Concrete Steps	2,500.00
02-0283-120	Backfill Curb	-
02-0283-130	Final Grade	5,000.00
02-0287-120	Landscaping Subcontractor	10,000.00
	DIVISION 02 TOTALS	190,133.37
03	CONCRETE & FOUNDATION	
03-0301-100	Pest Control	-
03-0335-100	Elevated Concrete	(6,226.05)
03-0335-105	Extra Work	-
03-0335-112	Wing Walls	-
03-0335-201	CONTINGENCY	80,000.00
03-0335-202	PO 9513-SITEWORKS	-

CONFIDENTIAL TREATMENT REQUESTED Regions_041212SECSubpoena_0003859

JOB:

Cost Code	Description	Revised Cost to Complete
03-0335-203	PO#9521-SWIFT	-
03-0335-204	PO #9522 - SWIFT	-
03-0335-205	PO #9532 - MARATHON	-
03-0335-206	PO #9298 - MARATHON	-
03-0335-207	PO #9297 - MARATHON	-
03-0335-208	PO #9306 - SITEWORKS	-
03-0335-209	PO #9536 - SUPERIOR DRAIN	-
03-0335-210	LABOR	-
03-0335-211	PO #9303 - UNITED RENTALS	(0.00)
03-0335-212	AMERISTEEL CO#3-6	(0.00)
03-0335-213	RINKER - PO 9562	0.00
03-0335-214	DIESEL FUEL	-
03-0335-215	GERDAU AMERISTEEL/SONOTUBE	-
03-0335-216	BACKFILL OPERATION	-
03-0335-217	METRO WATERPROOFING-PO 9314	-
03-0335-218	SONOTUBES	-
03-0335-219	ALUMA SYSTEMS/WALL FORMS	-
03-0335-220	RAM ROCK & EXCAVATE PILE CAPS	-
03-0335-221	CONCRETE R-1 AGC GROUP	-
03-0335-222	PO 9380-MARATHON EXTRA WORK	-
03-0345-100	Concrete Slab Subcontractor	-
03-0395-100	Interior Lightweight	80,870.15
03-0395-110	Exterior Lightweight	86,419.00
	DIVISION 03 TOTALS	241,063.10

CON█ █REATMENT REQUESTED Regions_041212SECSubpoena_0003860

Cost Code	Description	Revised Cost to Complete
04	MASONRY	
04-0440-100	Brick	82,685.81
04-0440-110	Stone	(25,943.53)
04-0440-120	Block	2,417.18
04-0440-130	Grouting	-
	DIVISION 04 TOTALS	59,159.46
05	METAL	
05-0510-130	Stairs	213,000.00
05-0510-140	Rails	(74,760.05)
	DIVISION 05 TOTALS	138,239.95
06	LUMBER & FRAMING	
06-0637-110	Other Fasteners	-
06-0639-100	Framing Material Supplier	(21,451.37)
06-0639-101	Framing Fasteners	-
06-0639-102	Framing Material Supplier	-
06-0639-103	Misc Framing Materials	6,000.00
06-0639-104	OSB Material	-
06-0639-105	OSB Installation	-
06-0640-100	Framing Labor Subcontractor	79,208.03
06-0645-100	Metal Studs	-
06-0645-110	Framing Specialties	-
06-0650-110	Floor Trusses	-
06-0650-120	Roof Trusses	-

JOB: [redacted]

Cost Code	Description	Revised Cost to Complete
06-0650-130	LVL Beams	0.00
06-0660-100	Cement Siding	(10,171.82)
06-0660-110	Aluminum Siding\Fascia	-
06-0670-100	Architectural Columns	-
	DIVISION 06 TOTALS	53,584.84
07	THERMAL & MOISTURE PROTECTION	
07-0707-100	Caulking	10,000.00
07-0707-110	Sound Caulk	-
07-0710-100	Flashing Material Supplier	1,390.20
07-0720-100	Batt Insulation Subcontractor	42,456.01
07-0760-100	Roofing-Shingles	605.20
07-0760-110	Roofing Metal Seam	-
07-0770-100	Gutters & Downspouts	-
	DIVISION 07 TOTALS	54,451.41
08	EXT DOORS & WINDOWS	
08-0810-100	Metal Entry Doors	41,553.00
08-0810-110	Metal French Doors	28,285.65
08-0810-120	Common Entry Doors	3,629.06
08-0810-130	Special Function Doors	-
08-0810-140	Metal Framed Storefronts	-
08-0850-100	Windows Supplier	-
	DIVISION 08 TOTALS	73,467.71

CONFIDENTIAL TREATMENT REQUESTED Regions_041212SECSubpoena_0003861

JOB:

Cost Code	Description	Revised Cost to Complete
09	INT & EXT FINISHES	
09-0925-100	Drywall Subcontractor	421,762.31
09-0930-100	Interior Trim Subcontractor	103,613.01
09-0930-110	Six Panel Doors	82,965.58
09-0930-130	Ornamental Grills	-
09-0930-140	Interior Columns	-
09-0930-150	Base	34,403.85
09-0930-160	Crownmolding	27,193.80
09-0930-170	Common Area Trim	11,380.35
09-0937-100	Unit Entry	-
09-0937-110	Common Entry	18,559.51
09-0937-120	Unit Interior.	30,714.28
09-0960-120	Shower\Bath Surrounds	172,871.04
09-0960-125	Hardwood	422,681.83
09-0960-130	Carpet	45,848.94
09-0960-140	Floor Tile	61,258.85
09-0960-150	Common Area Carpet	69,383.71
09-0960-160	Common Area Tile	5,809.03
09-0985-100	Painting Interior	107,400.00
09-0985-110	Painting Exterior	5,746.15
09-0985-120	Common Area Painting	46,830.00
09-0995-100	Blinds Subcontractor	53,000.00
	DIVISION 09 TOTALS	1,721,422.24

10	ACCESSORIES	

CONFIDENTIAL TREATMENT REQUESTED Regions_041212SECSubpoena_0003862

CONFIDENT[redacted]TMENT REQUESTED Regions_041212SECSubpoena_0003863

JOB: [redacted]

Cost Code	Description	Revised Cost to Complete
10-1010-110	Mirrors	31,362.60
10-1010-120	Unit Shelving	20,754.16
10-1010-130	Unit Accessories	1,783.27
	DIVISION 10 TOTALS	53,900.03
11	CABINETS & APPLIANCES	
11-1110-100	Kitchen Cabinets	101,194.90
11-1120-100	Countertops	133,221.47
11-1140-150	Kitchen Appliances	252,008.19
	DIVISION 11 TOTALS	486,424.56
12	FIREPLACES	
12-1230-100	Special Fire Requirements	15,000.00
12-1230-110	Fire Exinguishers	9,601.28
	DIVISION 12 TOTALS	24,601.28
14	CONVEYOR SYSTEM	
14-1410-100	Elevator	55,677.55
	DIVISION 14 TOTALS	55,677.55
15	MECHANICAL	
15-1510-100	Rough HVAC	253,394.38
15-1510-101	HVAC Air Handling	231,244.00
15-1510-102	Misc HVAC	12,500.00
15-1510-103	HVAC PARKING	1,100.00

JOB: [redacted]

Cost Code	Description	Revised Cost to Complete
15-1520-110	Rough Plumbing	146,382.00
15-1520-120	Plumbing Fixtures	-
15-1530-100	Submeter	10,723.32
15-1550-100	Annunciator Panel	-
15-1550-110	Fire Alarm System	6,588.00
15-1550-120	Sprinkler System	48,579.00
	DIVISION 15 TOTALS	710,510.70
16	ELECTRICAL	
16-1610-100	Unit Wiring	297,900.51
16-1620-110	Unit Lighting Fixtures	23,842.78
16-1620-120	Common Area Light Fixtures	0.00
16-1620-130	Hardscape Lighting	-
16-1630-100	Telephone	8,745.00
16-1640-100	Cable	10,000.00
16-1650-100	Site Electric	10,000.00
16-1680-100	Security Wiring	10,505.00
	DIVISION 16 TOTALS	360,993.29
19	LEASING - ACTIVITY CENTER	
19-1910-100	Leasing Office Allowance	10,380.78
19-1920-100	Gazebo	-
19-1930-100	Hardscape Lighting	-
19-1930-110	Planters\Walls	-
19-1930-120	Sidewalks	35,000.00

CONFIDENTIAL TREATMENT REQUESTED Regions_041212SECSubpoena_0003864

CONFIDENT█ █MENT REQUESTED Regions_041212SECSubpoena_0003865

JOB: █

Cost Code	Description	Revised Cost to Complete
19-1930-125	Pavers	61,992.80
19-1930-130	Landscape	-
19-1930-140	Membrane	10,035.56
	DIVISION 19 TOTALS	117,409.14
20.	AMENITIES	
20-2140-100	Swimming Pool Subcontractor	18,300.00
20-2140-110	Pool Concrete	7,364.92
20-2140-120	Pavers	-
20-2150-100	Compactor	19,040.00
20-2150-110	Compactor Enclosure	2,000.00
20-2156-100	Arbors	10,000.00
20-2156-120	Bicycle Sheds	2,000.00
20-2163-100	Entry Gate Subcontractor	-
20-2164-130	Monument	-
20-2165-108	Mail Boxes	824.10
20-2180-100	Picnic Area	-
20-2197-100	Signage	6,120.08
	DIVISION 20 TOTALS	65,649.10
22	MARINA	
22-2200-100	Bank Stabilization	14,181.09
22-2200-110	Dredging	(0.00)
22-2200-120	Piers\Slips\Walkways	529,041.06
22-2200-130	Marina Utilities	91,360.00

CONFIDEN█ ███TMENT REQUESTED Regions_041212SECSubpoena_0003866

JOB: ██████

Cost Code	Description	Revised Cost to Complete
	DIVISION 22 TOTALS	634,582.15
23	TIF	
23-2300-100	TIF - Internal Costs	-
23-2300-101	TIF - Demolition	(10,000.00)
23-2300-102	TIF - Clearing & Grading	(52,300.00)
23-2300-103	TIF - Erosion Control	5,500.00
23-2300-104	TIF - Environmental	34,849.20
23-2300-105	TIF-Bank Stabilization	13,351.24
23-2300-110	TIF - Western Boundary	-
23-2300-120	TIF - Blount Avenue	-
23-2300-125	TIF - Rocky Shore/Cityside	151,172.00
23-2300-130	TIF - Riverwalk	564,515.00
23-2300-140	TIF - Design	(5,072.49)
23-2300-150	TIF - Interest	(10,000.00)
	DIVISION 23 TOTALS	692,014.95
30	NON-CONSTRUCTION COSTS	
30-3090-100	Contractor's Fee	254,692.88
	DIVISION 30 TOTALS	254,692.88
40	CONTINGENCY	
40-4010-100	Contingency	250,000.00
40-4010-200	Construction Contringency	-
	DIVISION 40 TOTALS	250,000.00

CONFIDENTIAL TREATMENT REQUESTED

JOB: [redacted]

Cost Code	Description	Revised Cost to Complete
	JOB 20040 TOTALS	6,542,996.05

CONTRACT SUMMARY

Original
Pending Changes
Approved Changes
Revised

COST SUMMARY

JTD Cost
Cost To Complete
Projected Cost

Projected Profit

Regions_041212SECSubpoena_0003867

EXHIBIT 11

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9490 / December 4, 2013

SECURITIES EXCHANGE ACT OF 1934
Release No. 70983 / December 4, 2013

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3514 / December 4, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15635

In the Matter of FIFTH THIRD BANCORP and DANIEL POSTON Respondents.	ORDER INSTITUTING PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTIONS 4C AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND CEASE-AND-DESIST ORDERS AND PENALTIES

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Fifth Third Bancorp ("Fifth Third") and Daniel Poston ("Poston") (collectively, "Respondents"), and that public administrative proceedings be, and hereby are, instituted against Poston pursuant to Section 4C of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Public

Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Orders and Penalties ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

SUMMARY

This proceeding results from Fifth Third's failure to record substantial losses during the financial crisis by not properly accounting for a portion of its commercial real estate loan portfolio. In the third quarter of 2008, Fifth Third decided to sell large pools of non-performing commercial loans. When Fifth Third decided to sell the loans, Generally Accepted Accounting Principles ("GAAP") required the company to reclassify them from "held for investment" to "held for sale," and to carry them at fair value.[2] Because the fair values of these loans were significantly below Fifth Third's carrying values, classifying them as held for sale would have resulted in a $169 million impairment, and increased Fifth Third's pretax loss in the third quarter of 2008 by 132 percent. Fifth Third's Chief Financial Officer Daniel Poston was familiar with the company's loan sale efforts and understood the relevant accounting rules. Nevertheless, he failed to direct that Fifth Third classify the loans as required, and made statements in a Fifth Third management representation letter to Fifth Third's auditors that, in light of the company's loan sale activities, were not true. Fifth Third's and Poston's accounting violations operated to deceive investors during a time of significant upheaval and financial distress for the company.

As the real estate market declined in 2007 and 2008, Fifth Third's non-performing assets ("NPAs") increased substantially. In the third quarter of 2008, it became clear that Fifth Third would no longer be able to rely on its collections and related "work-out" efforts to significantly reduce its NPAs. The only alternative the company meaningfully considered was selling some of its non-performing loans. In July 2008, Poston and the other members of Fifth Third's Corporate Credit Committee authorized the head of Fifth Third's commercial banking division ("the EVP") to determine the likely sales prices for certain pools of non-performing loans. At the time, Fifth Third was carrying these loans at about 75 percent of unpaid balances (as a result of allowances for incurred credit losses and charge-offs taken against the unpaid principal balances). Loan brokers

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1 The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

2 GAAP prescribes that loans held for sale must be reported at the lower of cost or fair value. Because the fair values of all the loans in this matter were below cost, references herein to such reclassification only refer to fair value. See SOP 01-6, *Accounting by Certain Entities (Including Entities With Trade Receivables) That Lend to or Finance the Activities of Others.*

told Fifth Third that the loans would likely sell, on average, for 30 to 41 percent of unpaid balances.

With Fifth Third's NPAs continuing to increase, the company's senior management decided to pursue a large sale of non-performing commercial loans. In September 2008, Fifth Third executed engagement agreements with two loan brokers to market and sell loans with combined balances of $1.5 billion.[3] Poston was aware that the company's commercial banking division had engaged the loan brokers.

Despite all of the actions that Fifth Third had taken with respect to these loans – including signing engagement agreements with brokers to sell the loans – the company did not classify the loans as held for sale and record them accordingly in its Form 10-Q for the third quarter of 2008. Instead, Fifth Third continued to classify the loans as "held for investment," which incorrectly suggested that the company had not made the decision to sell the loans. Poston certified the accuracy and completeness of Fifth Third's Form 10-Q for the third quarter of 2008 despite his knowledge of the company's loan sales activities and the relevant accounting rules.

In addition, Poston represented to the company's auditors in Fifth Third's November 7, 2008 management representation letter for the third quarter of 2008 that the company had no plans or intentions that may affect the classification of loans, and that the loans Fifth Third had classified as held for investment were those that the company had the intent and ability to hold until maturity or for the foreseeable future. In light of Fifth Third's intent to sell the loans, these representations were not true. Fifth Third began receiving and accepting bids for loans that the brokers marketed about two weeks after Fifth Third's management representation letter was submitted to the company's auditor.

In December 2008, Fifth Third senior management consulted with the company's board of directors about management's decision to sell the non-performing commercial real estate loans discussed above, as well as additional loans that Fifth Third decided in December 2008 to sell. Fifth Third did not disclose the impairments resulting from the reclassification of all the loans until January 22, 2009. The reclassifications resulted in a cumulative $800 million loss. Fifth Third sold most of the loans at issue in December 2008 and in 2009.

RESPONDENTS

1. Fifth Third Bancorp, a diversified financial services company, is an Ohio corporation headquartered in Cincinnati, Ohio. With $121 billion in assets, Fifth Third is the twenty-second largest bank holding company in the United States. Fifth Third's common stock is registered with the Commission pursuant to Exchange Act Section 12(b) and trades on NASDAQ.

2. Daniel Poston, 55, is a resident of Cincinnati, Ohio, and was Fifth Third's CFO from 2009 to October 2013. Poston was previously Fifth Third's interim CFO (May 2008 to

[3] After receiving bids, Fifth Third had the option not to sell any of the loans at issue. Fifth Third began receiving bids on those loans in November 2008.

November 2008), Controller (August 2007 to May 2008 and November 2008 to September 2009), and Director of Audit (October 2001 to August 2007). Before joining Fifth Third, Poston was a partner with a large public accounting firm. Poston was a licensed CPA in Ohio until he left public accounting in September 2001.

FACTS

Fifth Third Considers Loan Sales as NPAs Rise and then Takes Steps to Prepare for a Sale

3. From the third quarter of 2007 through the second quarter of 2008, Fifth Third considered selling pools of non-performing commercial real estate loans.[4] Though it had generally held its commercial loans until maturity, Fifth Third considered selling certain of these loans to deal with a substantial increase in its NPAs.[5] By selling these loans, Fifth Third would save the carrying costs of the loans, such as maintaining the properties and paying property taxes; mitigate the need for additional impairments if workout strategies failed or real estate values continued to decline; avoid the expenses and delays of foreclosure; and allow Fifth Third to report a stronger balance sheet. Fifth Third chose not to sell the loans during this period, however, because it deemed the prices it expected to receive from such sales too low.

4. In the third quarter of 2008, it became clear that Fifth Third's efforts to work out the non-performing loans with the borrowers would not be sufficient to significantly reduce the company's NPAs, and that the company needed to pursue a large loan sale. In July 2008, Poston and the other members of Fifth Third's Corporate Credit Committee authorized the EVP to determine the likely sales prices for four pools of non-performing loans and review the results with the Committee. That day, the EVP instructed his staff to prepare for loan sales. The EVP's direct report and the head of the commercial bank's Special Assets Group ("SAG VP"), then told commercial bank employees, "[o]ur intention is to do a large sale using [loan] brokers ...." By the end of July 2008, Fifth Third had decided to use two loan brokers ("Broker A" and "Broker B") to handle a potential sale of loans with combined balances of $700 million.

Fifth Third's Interim Controller Informs Poston of Potential
Accounting Consequences from Fifth Third's Loan Sale Activities

5. In July and August 2008, Broker A and Broker B both discussed with Fifth Third the potential accounting consequences of the company obtaining "indicative pricing" – i.e. the brokers' expert opinions of what the sales prices were likely to be for the loans. Broker A told the

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4 All of the loans discussed in this matter involved commercial properties in Michigan and Florida. During the relevant period, the value of the collateral securing these loans, which were primarily homebuilder-related properties, was declining at a significant rate.

5 Fifth Third's NPAs were loans on which the ultimate collectability of the full amount of principal and interest was uncertain or that had been renegotiated to provide for a reduction or deferral of interest or principal because of a deterioration in the financial position of the borrower. At year-end 2006, Fifth Third had $271 million in commercial NPAs. By year-end 2007, commercial NPAs had more than doubled to $672 million.

SAG VP that one of Fifth Third's competitors had told Broker A that an audit firm had required the competitor to re-classify loans from held for investment to held for sale when it had obtained indicative pricing from a loan broker, and, consistent with the GAAP requirement to report the loans at fair value, to mark the loans down to the indicative prices it had received from the loan broker, regardless of whether the company sold the loans. After learning of this development, an employee in Fifth Third's risk group sought advice from Fifth Third's interim Controller, noting "[a]s we continue to work on potential commercial loan sales ... we want to be sure that if we go out to get indicative prices from brokers that we do not need to mark those loans to market based on those bids."

6. Broker B asked the SAG VP whether Fifth Third "even wanted [indicative] pricing" on the loans it was considering selling. Broker B told the SAG VP that their "early indications are very low" and that Fifth Third's "peers have not wanted this info, because of the accounting rulings." Broker B also asked the SAG VP whether Fifth Third "had the budget set forth for such a large potential [charge-off]."[6] The risk group employee forwarded an email from the SAG VP summarizing this discussion to the interim Controller, and again asked for "confirmation from Accounting before we have the vendor send the pricing information that we will not be forced to take a mark on the loans based on indicative pricing quotes."

7. In the same email chain, the risk group employee expressed his understanding to the interim Controller that Fifth Third should not have to classify these loans as held for sale because the company had not decided to sell them, and would be using the indicative pricing to help it decide whether to proceed with a sale.

8. On August 4, the interim Controller recommended to his colleagues that they "**hold off** on receiving any specific pricing information since it may imply an intent to sell, [and] thereby require us to classify them as [held for sale] and take a mark to adjust the loans to those prices. . . " (emphasis in original). The interim Controller then forwarded the emails to Poston, who was serving as Fifth Third's Chief Financial Officer on an interim basis, and explained that he had "provided verbal/tentative guidance to [the risk group employee] that the receipt of bids on specific loans or pools of loans may be viewed as being inconsistent with the positive intent to hold a loan to maturity and therefore might call into serious question the classification of such loans to the extent they remained [classified as held for investment]."[7]

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6 The reference to potential charge-off refers to the impairment that Fifth Third would need to recognize to record the loans at fair value upon the reclassification of the loans from held for investment to held for sale.

7 The interim Controller also indicated that he and his team would research the issue and report back. The interim Controller and his team consulted, among other things, Fifth Third's draft policy regarding loan classification, which mirrors the Interagency Guidance on Certain Loans Held for Sale (2001) and a 2007 speech by an SEC accounting fellow on loan classification, which conveys the SEC staff's belief that the classification of loans as held for investment or held for sale is dependent on management intent, and that management should make a positive assertion regarding its ability and intent to hold or sell loans and classify them accordingly. The interim Controller, who believed that the company continued to have the intent to hold the loans until maturity or for the foreseeable future, concluded that a receipt of indicative bids was not, by itself, a bright light indicator that an issuer had decided to sell loans.

9. Fifth Third subsequently obtained indicative pricing only *orally* from the two loan brokers. On August 5, Broker A prepared two pricing analyses for Fifth Third: one containing Broker A's most current pricing analysis and a second "that we can send to Fifth Third[]. Pricing information has been removed. . . ." The following day, one of Broker A's principals informed his colleagues that he had given Fifth Third pricing orally, by broad categories. On August 5, Broker B sent the SAG VP a list of loans that Broker B recommended for sale that included the unpaid customer balances for each loan, but no pricing information. In an August 7 email, the SAG VP stated he received "verbal numbers" from Broker B.

10. Poston, who had previously served as Fifth Third's Controller and would return to that role in November 2008, understood the relevant accounting rules.

Fifth Third Retains Loan Brokers to Sell Loans

11. During the August 15 meeting of the Fifth Third Enterprise Committee (which was comprised of Fifth Third's Chief Executive Officer and his direct reports, including Poston and the EVP, but not the interim Controller), the EVP's team presented an analysis of the potential loan sales estimating that, based on the brokers' indicative pricing, selling the $700 million of loans they had identified would result in Fifth Third recording a $272 million impairment. The Enterprise Committee decided to delay a decision on whether to proceed with the contemplated loan sales until the following week's meeting.

12. As it saw its commercial NPAs continuing to increase, Fifth Third began considering an even larger loan sale. Bank executives considered two options: proceeding with the $700 million loan sale they had been contemplating or pursuing a $2 billion loan sale, which would include the $700 million in loans they had already been discussing with the brokers.

13. During the August 22 Enterprise Committee meeting that Poston and other senior executives attended, Fifth Third decided to pursue a larger sale than the company had been discussing with the loan brokers. After identifying additional loans to include in a larger sale, Fifth Third entered into engagement agreements with Broker A and Broker B in September 2008, which evidenced that the company had formed the intent to sell the loans. The agreements provided that the brokers would help Fifth Third market and sell loans totaling about $1.5 billion. Poston was aware that the company's commercial banking division had engaged the loan brokers.[8]

Fifth Third Fails to Reclassify Loans as Required

14. Though Fifth Third had entered into engagement agreements with the brokers to facilitate a sale, which evidenced that the company had formed the intent to sell the loans, the company did not reclassify the loans from held for investment to held for sale prior to the filing of its Form 10-Q for the quarter ended September 30, 2008.

[8] In October 2008, Fifth Third received additional pricing information from the brokers and authorized them to begin marketing the loans and soliciting bids from potential buyers.

15. During its earnings call in October 2008 and in the Form 10-Q that it filed in November 2008 – which occurred during a time of significant economic upheaval and financial distress for Fifth Third – Fifth Third reported a pretax loss of $128 million for the third quarter of 2008. Had Fifth Third reclassified the loans that were the subject of the engagement agreements as required by GAAP, it would have reported a pretax loss of $297 million.[9] As Fifth Third's Chief Financial Officer, Poston signed the company's Form 10-Q for the quarter ended September 30, 2008 and certified the accuracy and completeness of its contents.

Poston Makes Representations to Fifth Third's Auditors
<u>that, in Light of the Company's Loan Sale Activities, were Not True</u>

16. Though he was familiar with Fifth Third's loan sale activities and understood that another audit firm may have required a competitor to reclassify loans based on having received indicative pricing, neither Poston, nor anyone else at Fifth Third, sought advice from the company's outside auditor, Deloitte & Touche, regarding the appropriate classification of the loans at issue.

17. On November 7, Poston signed Fifth Third's management representation letter to Deloitte, which states, "[t]he Bancorp has no plans or intentions that may affect the carrying value or classification of assets and liabilities" and "[t]he Bancorp has properly classified loans on the condensed consolidated balance sheets as held for sale or held for investment, based on the Bancorp's intent with respect to those loans." In light of Fifth Third's intent to sell the loans, these representations were not true.

18. Fifth Third began receiving and accepting bids for loans that the brokers marketed about two weeks after Fifth Third's management representation letter was submitted to Deloitte. Fifth Third's senior management consulted with the company's board of directors in December 2008 about its decision to sell the loans discussed above along with additional loans that Fifth Third decided in December 2008 to sell. Fifth Third did not disclose the impairment resulting from the reclassification of all the loans until January 22, 2009, when it released its earnings for the fourth quarter of 2008. Fifth Third sold most of the loans at issue in December 2008 and in 2009.

VIOLATIONS

19. Securities Act Section 17(a)(2) prohibits any person from obtaining money or property in the offer or sale of securities by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

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9 The impairment from the reclassification was $169 million. This was less than the $272 million expected impairment as of August 15 because Fifth Third increased its partial charge-offs and reserves for the loans at issue between then and September 30.

20. Securities Act Section 17(a)(3) prohibits any person from engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser in the offer or sale of securities.

21. Exchange Act Section 13(a) and Rule 13a-13 thereunder require that every issuer of a security registered pursuant to Exchange Act Section 12 file with the Commission, among other things, quarterly reports as the Commission may require, and, pursuant to Rule 13a-14, mandate, among other things, that an issuer's principal financial officer certify each periodic report.

22. Exchange Act Section 13(b)(2)(A) requires reporting companies to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

23. Exchange Act Section 13(b)(2)(B) requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP.

24. Exchange Act Rule 13b2-1 prohibits any person from directly or indirectly falsifying or causing to be falsified any book, record or account subject to Exchange Act Section 13(b)(2)(A).

25. Exchange Act Rule 13b2-2 prohibits, among other things, officers of issuers from directly or indirectly making or causing to be made a materially false or misleading statement, or omitting to state any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with any quarterly review or the preparation or filing of any document or report required to be filed with the Commission.

26. As a result of the conduct described above, Fifth Third violated Securities Act Sections 17(a)(2) and 17(a)(3), and Exchange Act Sections 13(a) and Rule 13a-13 because its financial statements failed to record its commercial real estate loans appropriately under GAAP.

27. As a result of the conduct described above, Fifth Third violated Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B) because it failed to make and keep appropriate books and records and devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that it valued its commercial real estate loans in accordance with GAAP.

28. As a result of the conduct described above, Poston willfully violated Securities Act Section 17(a)(3) and Exchange Act Rules 13a-14, 13b2-1, and 13b2-2 and caused and willfully aided and abetted Fifth Third's violations of Securities Act Sections 17(a)(2) and 17(a)(3) and Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) and Rule 13a-13 because he failed to ensure that Fifth Third appropriately recorded its commercial real estate loans; certified that Fifth Third's financial statements were prepared in accordance with GAAP; and made representations in

a Fifth Third management representation letter to Fifth Third's auditors regarding the company's classification of commercial loans that, in light of Fifth Third's intent to sell loans, were not true.[10]

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Fifth Third Bancorp's and Respondent Daniel Poston's Offers.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Fifth Third Bancorp shall cease and desist from committing or causing any violations and any future violations of Securities Act Sections 17(a)(2) and 17(a)(3) and Exchange Act Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) and Rule 13a-13 thereunder.

B. Daniel Poston shall cease and desist from committing or causing any violations and any future violations of Securities Act Sections 17(a)(2) and 17(a)(3) and Exchange Act Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) and Rules 13a-13, 13a-14, 13b2-1, and 13b2-2 thereunder.

C. Daniel Poston is denied the privilege of appearing or practicing before the Commission as an accountant.

D. After one year from the date of this order, Respondent Poston may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent Poston's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent Poston, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

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[10] This use of the word "willful" does not reflect a finding that Poston acted with the intention to violate the law or knowledge that he was doing so. As used in the governing provisions of law, "willfully" means only that the actor "intentionally committed the act which constitutes the violation." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965); *see also Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000). "There is no requirement that the actor also be aware that he is violating one of the Rules or Acts . . . ." *Tager*, 344 F.2d at 8.

(b) Respondent Poston, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;

(c) Respondent Poston has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Respondent Poston acknowledges his responsibility, as long as Respondent Poston appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

E. The Commission will consider an application by Respondent Poston to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent Poston's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

F. Respondent Fifth Third shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $6,500,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofin.htm; or
(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch

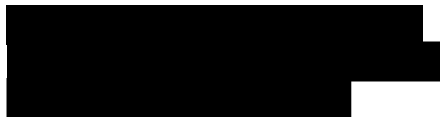
Payments by check or money order must be accompanied by a cover letter identifying Fifth Third as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Stephen L. Cohen, Esq., Associate

Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

G. Respondent Daniel Poston shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $100,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or
(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch



Payments by check or money order must be accompanied by a cover letter identifying Poston as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Stephen L. Cohen, Esq., Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

H. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, the Commission may order that any civil money penalty paid by Fifth Third and Poston be used to create a Fair Fund for the benefit of injured investors. If the Commission does not create a Fair Fund, the Commission will order the transfer of any civil money penalty paid by Respondents to the United States Treasury in accordance with Section 21F(g) of the Securities Exchange Act of 1934 for the Investor Protection Fund. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payments of civil penalties in this action ("Penalty Offsets"). If the court in any Related Investor Action grants such Penalty Offsets, Respondents agree that they shall, within 30 days after entry of a final order granting Penalty Offsets, notify the Commission's counsel in this action and pay the amounts of Penalty Offsets to the United States Treasury or as the Commission directs. Such payments shall not be deemed additional civil penalties and shall not be deemed to change the amounts of the civil penalties imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action"

means a private damages action brought against either Fifth Third or Poston by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Elizabeth M. Murphy
Secretary

EXHIBIT 12

OCC BULLETIN 1998-21

Subject: Shared National Credit Program
Date: May 5, 1998

To: Chief Executive Officers of all National Banks, Department and Division Heads | Personnel

Description: SNC Program Description and Guidelines

PURPOSE

This circular describes the Shared National Credit (SNC) Program and the manner in which it is administered by the Office of the Comptroller of the Currency (OCC). OCC Bulletin 95-9 dated February 14, 1995, is rescinded and replaced by this issuance.

POLICY

The SNC Program is governed by an interagency agreement among the three federal bank regulatory agencies - the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and the OCC. The OCC's policies and procedures for administering the SNC program are outlined in PPM 5100-2 (Revised), "Shared National Credit Program," dated May 5, 1998. The PPM delineates the roles and responsibilities of the Supervision Support Department, the Large Bank Department, and the OCC's six districts. The OCC's policies for the analysis and classification of individual credits are set forth in section 215 of the Comptroller's Handbook for National Bank Examiners.

BACKGROUND

The SNC Program is an interagency program designed to review and assess risk in the largest and most complex credits shared by multiple financial institutions. The program originated in 1975 and was expanded to an interagency basis in 1977. The program provides uniform treatment of and increases efficiencies in SNC risk analysis and classification.

DEFINITION

Shared National Credit: Currently, a SNC is defined as any loan(s) and/or formal loan commitment(s) extended to a borrower by a supervised institution or any of its subsidiaries and affiliates which aggregates $20 million or more and, 1) is shared by two or more institutions under a formal lending agreement; or, 2) a portion of which is sold to one or more institution(s), with the purchasing institution(s) assuming its pro rata share of the credit risk. Effective December 31, 1998, the definition will change to include only those credits that are shared by three or more institutions under a formal lending agreement, or a portion of which is sold to two or more institutions, with the purchasing institutions assuming their pro-rata share of the credit risk.

SNCs are drawn from all loans administered by a domestic office of a supervised institution. This includes all domestic commercial and real estate loans and all international loans to borrowers in the private sector, denominated in any currency. It also includes assets taken for debts previously contracted such as other real estate owned, closely held or nonmarketable stocks, notes, bonds, debentures, and other large credits designated by the supervisory agencies as meeting the general intent or purpose of the SNC Program. The definition encompasses acceptances; commercial letters of credit; standby letters of credit or similar bonds or guarantees; note issuance facilities; revolving underwriting facilities; lease financing receivables; and Eurodollar facilities, syndications, and similar extensions or commitments.

A supervised institution is one that is subject to supervision by one of the federal bank regulatory agencies. Supervised institutions include all FDIC-insured banks, their branches, subsidiaries, and affiliates. They also include bank holding companies and their nonbank subsidiaries and affiliates and federally and state-licensed branches and agencies of foreign banks.

Reporting Requirements: SNCs are reported by the agent bank or an institution acting as administrative agent. Each U.S. branch or agency of a foreign bank should report SNCs for which it is the responsible agent. "Unagented" credits, including those originated or administered by an entity other than a supervised institution, should be reported by each participant. Unagented credits are those governed by a formal loan agreement, but for which an agent is not identified. The OCC will determine how and where these credits will be reviewed. If there is no agent bank but one institution acts in a lead capacity, that institution should report the credit.

All loans or formal loan commitments, regardless of size, that are governed by a common loan agreement are combined to meet the $20 million threshold and should be reported as separate credits (i.e., a revolver and a term loan should be reported as two credits). Individual loans or formal loan commitments less than $20 million in size that are governed by separate loan agreements are not combined to meet the $20 million threshold, unless the participants under both loan agreements are identical. Loans or commitments adversely rated during the previous SNC review that have been reduced to less than $20 million (but more than $10 million) should be reported as SNCs.

Certain financing arrangements are not included in the SNC program:

- Credits shared solely between affiliated supervised institutions;
- Private sector loans that are 100 percent guaranteed by a sovereign entity;
- International loans or commitments administered in a foreign office;
- Direct loans to sovereign borrowers; and,
- Credits below $10 million, even if previously adversely rated under the SNC program.

Arrangements known as "club credits" and collateral pooling agreements are not treated as SNCs. A "club credit" is one in which the borrower negotiates individual loan agreements with multiple lenders. Generally, the terms are similar but not identical. Collateral pooling agreements vary in detail, but involve sharing a "pool" of collateral among participating lenders.

Further instructions on specific assets which should be included in the SNC program accompany the annual request letter to participating banks. A national bank that is uncertain about whether to report a credit as a SNC, should report it. OCC reserves the right to review any credits it believes may help it fulfill the program's objectives.

RESPONSIBILITIES

The Deputy Comptroller for Supervision Support establishes policies and procedures for the administration of the SNC Program and plans and oversees the annual SNC review cycle.

Deputy Comptrollers for Large Banks and District Deputy Comptrollers assign appropriate personnel to participate in the SNC review and budget funds to cover the SNC travel expenses of their examiners.

SNC Program Manager establishes procedures for the administration of the SNC Program consistent with the interagency agreement and OCC's mission, goals, and objectives. Through the SNC Analysts and Large Bank EICs, the SNC program manager plans and oversees the annual SNC review cycle and administers the SNC Appeals Process, in accordance with established OCC policy.
SNC Analysts work closely with the large bank EICs and district personnel to coordinate the annual planning process and to facilitate the administration of reviews at SNC sites. They serve as members of the SNC management team and provide liaison with FRB and FDIC SNC contacts for their assigned districts.
Resident Examiners-In-Charge (EICs) are responsible for the examination of their assigned banks and for all the bank's SNC activities.
Review location supervisors are responsible for large bank locations other than the head office or for SNC reviews at banks that do not have resident EICs. They manage one or more teams of examiners and report to the EIC or his/ her designee. These positions are usually filled by examiners with significant SNC voting experience.
Voters review file work, conduct discussions with bank account officers, assign the appropriate disposition of each assigned SNC, and prepare final write-ups. Voters are usually commissioned NBEs with significant experience in evaluating credit risk of the larger and more complex credits at large banks. In many locations, voters read their own credit files. Some locations utilize separate file readers who do not vote on the credit.

PROCEDURE

Normally, credits are reviewed in the lead or agent institution, with exceptions made by representatives of the primary federal regulator. For credits having a national bank and a state bank as co-agents, the determination of the appropriate review location is made by representatives of the primary federal regulators. Credits agented by supervised institutions located in a city that has less than five SNCs are usually reviewed at the largest participating supervised institution which already is a SNC review location. The OCC supervises the review of SNCs where the lead or agent is a national bank; the FRB carries out the examination of SNCs led or agented by state member banks; and the FDIC is primarily responsible for credits at state nonmember banks.
Review Teams: Review teams, which may consist of three examiners, analyze and rate credits. For a particular institution, the EIC or review location supervisor is an examiner representing the primary federal regulator. To the extent possible, each team will include at least one examiner from any other participating agency. Team participation by the third agency is accommodated on an ad hoc basis. Teams at the largest institutions should include representatives from all three agencies. Participating agencies must be consulted any time the primary federal regulator is considering a change in a credit disposition decided by an interagency review team.
Review Cycle: Review dates are established by mutual agreement of the Interagency SNC Committee in accordance with the interagency agreement. The calendar for the cycle is:

- Mid December - The interagency request for SNC information as of December 31 is mailed to banks.
- Late January - Information from the banks is due in the Washington office, where it is processed for distribution to the review teams.
- Late March - Materials are forwarded to the SNC EIC for the May review.
- Late April - Reporting banks update the information to March 31 reflecting new facilities, pay-offs, pay-downs, etc., and provide it to the review teams upon their arrival. Examiners may begin reading credit files at the larger review locations.
- First Monday - This is the official interagency SNC review in May date.
- Late June - Preliminary classifications are finalized and the agent bank is notified of any decision.
- Mid August - Official notification of the results of the SNC review are distributed to participating banks.
- Mid September - The list of credits selected for re-review is finalized.
- Early October - Examiners begin reading credit files for re-reviews.
- Late October - Voting on re-reviews is completed.
- Early December - Re-review results are distributed.

Review Instructions: The "SNC Field Review Procedures" outline the SNC examination process and include specific instructions on duties and responsibilities, SNC files, loan discussions, disputes, procedures for prescreening certain credits for limited review, write-ups, and re-reviews. Any additional instructions are communicated to voting teams by electronic mail or through the OCC SNC intranet site.
Voting Process: SNC dispositions are decided by a majority vote of the team members, with each member having one vote. The review team may schedule formal discussions with bank management for any of four reasons: 1) credits are potentially classified or special mention, 2) the three voters do not agree, 3) the bank's internal risk rating is inconsistent with the voting team's initial conclusion, or 4) to clarify factual information.
The EIC or supervisor should notify the review bank of the preliminary disposition upon completion of the review and vote and before the loan write-ups are distributed. The review bank is advised that the preliminary disposition is confidential and is being provided only for its internal use. The review bank may, at its option, notify participating supervised institutions sharing in the credit. If the review bank elects to do so, it must advise the participants that the disposition is preliminary, and that the final notification will be issued by the appropriate regulatory authority once all the SNC results have been finalized and compiled.
Classified and Special Mention Loan Write-ups: SNC write-ups are to be uniformly prepared according to the "SNC Field Review Procedures." A SNC write-up is the written presentation of pertinent comments regarding classified or special mention credit risk.
The write-up includes four parts: 1) a heading, with details about the borrower, guarantors, credit type, and credit history; 2) a description of the terms of each facility; 3) the reasons for an adverse rating; and 4) any required accounting treatment, such as accrual status, and an explanation of the required treatment.
Uniform Treatment: All examiners will rely on SNC ratings for OCC reporting purposes until the credit is re-reviewed under the SNC program. SNCs are not reviewed at each individual participating bank. However, the examiner of each participating bank should consider the material improvement or deterioration of an individual loan, and the resulting effect on asset quality, ALLL adequacy, earnings, and the overall condition of the bank.
Interim Internal Risk Rating Changes: Participating banks are encouraged to revise their internal risk ratings of SNCs between SNC reviews to properly reflect the risk profile of the borrower. When there is a significant change that could affect OCC's rating of a credit, the agent national bank should immediately notify the deputy comptroller for Supervision Support and the bank's resident EIC, if any. That notification should include financial and other supporting data that could help OCC to decide if an interim supplemental review is warranted. SNCs that

do not merit a formal, supplemental SNC review will be reviewed during the participating banks' normal examination. Examiners will use this information to evaluate the effectiveness and timeliness of the banks' internal risk rating systems and to determine ALLL allocations. The official SNC disposition, however, remains in effect until the next official SNC review.

Unreported SNCs: If a regularly scheduled examination discloses credits that qualify as SNCs but are not included in the SNC program, they should be reviewed during that examination. The EIC should forward the following information to the Deputy Comptroller for Supervision Support: a description of the credit, a list of participants, and the disposition of the credit. If the bank being examined is the agent and the examination team has adequate resources, the credit should be reviewed in accordance with SNC program procedures.

Appeals: When bank management does not agree with the voters' rating of a credit, the EIC or supervisor should attempt to mitigate differences through further discussion and review of any new information. The SNC analyst must be notified. The final decision for a preliminary rating is determined by a majority vote of the voting team. Neither EICs nor SNC analysts can overrule the decision of a voting team. When differences cannot be resolved, the voting team must notify bank management of the OCC appeal process.

Banks may appeal the disposition of a SNC under procedures outlined in OCC Bulletin 96-18, "National Bank Appeals Process," dated February 23, 1996. SNC appeals may be submitted by the agent bank directly, or on behalf of any of the participating national banks. If the agent bank refuses to file the appeal on behalf of the bank group, Supervision Support will accept an appeal from any one participating bank. Whenever possible, an interagency appeals panel will review all appeals. Participating OCC examiners will be designated by the deputy comptroller for Supervision Support, or his/her designee. The entire appeals process should normally be completed within 30 days from receipt of the appeal.

Re-reviews: The primary objective of the re-review process is to determine if there is any material deterioration or improvement in the credit risk of borrowers selected for re-review. The re-review process usually takes place six months after the annual review. Credits may be re-reviewed outside of this normal time frame if they contain significant exposure or if some event(s) has occurred that is so significant examiners believe it may cause a major rating change.

Normally credits are re-reviewed if they are more than $50 million and if some portion of the credit was classified doubtful or loss at the previous review. Other circumstances may warrant the re-review of credits. These circumstances include when a credit is internally downgraded by the agent bank, or when a credit is subject to significant media attention, or when a credit was not reviewed, for whatever reason, at the annual review. In some cases, a sample of credits within an industry may also be selected for re-review due to industry conditions or economics.

Re-review of an individual credit may be triggered by five primary events: 1) EIC, supervisor, or voting team recommendation; 2) SNC Analyst recommendation; 3) other field examiner recommendation; 4) other agency request, and 5) bank request, usually the agent or review institution. Final selection of credits for re-review is determined by the SNC Program Manager after consulting with the SNC Analysts and resident EICs.

Processing: SNC results for national banks are processed by OCC and for state banks by the FRB. Specific time frames, standards, and responsibilities for processing and exchange of information are incorporated in a separate agreement between the agencies. The primary supervisory agencies exchange loan write- ups as soon as possible after the conclusion of the field review.

Notification of Results: At the conclusion of the annual SNC review, a Report of Shared National Credits is distributed to all participating national banks. This contains a Report of Lenders and Their Borrowers, which lists all credits in which a participating bank has been identified as holding a participation. The Report of Shared National Credits also includes write-ups on credits classified or rated special mention during the review, if any.

Information Security: The Report of Shared National Credits is the property of OCC and is furnished to the banks for their confidential use. Under no circumstances shall a bank, or any of its directors, officers, or employees disclose in any manner the contents of that report to any person or organization not officially connected with the bank as officer, director, employee, attorney or auditor. Any other disclosure or use of this information, except as expressly permitted by the OCC, may be subject to the penalties provided in 18 USC 641.

Agencies have full discretion to determine internal distribution of the material generated under the program, as long as the confidentiality of the data is maintained. Except for responses required by the Freedom of Information Act, the materials may not be distributed externally by any agency without prior consultation of the other agencies. SNC information may be made available to appropriate state supervisory authorities or other federal supervisory authorities that agree to be bound by the same standards of confidentiality and other limitations and conditions respecting the use of such information.

ORIGINATING OFFICE

For further information, contact the Supervision Support Department at (202) 649-6670.

Ann F. Jaedicke
Deputy Comptroller
Supervision Support

EXHIBIT 13

Exhibit 6

JOHN C. ("JACK") HAM

PROFESSIONAL EXPERIENCE

2002, 2009-2010, 2014 — Problem Resolution Strategies, Birmingham, Alabama

Proprietor

Formed and operated a consulting service to financial institutions and other professionals assisting in the development and implementation of problem-loan resolving strategies and commercial credit training (2002). Provided consulting services to two OCC-regulated banks related to the development and implementation of commercial loan policies and problem-loan resolving strategies and addressing changes in lending policies and procedures to enhance institutional safety and soundness (2009-2010). Participated on a due-diligence team evaluating the commercial loan portfolio of a small community bank; reviewed collateral documentation, performed valuation research, and conducted a UCC-compliant auction sale of a portfolio of classic cars for an asset-based lender; provided expert testimony regarding commercial note provisions in a borrower vs. lender fraud and breach of contract lawsuit (2014); conducted a risk rating and policy compliance review of a $160 million commercial loan portfolio (2014).

2010-2013 — First National Bank of Central Alabama, Tuscaloosa, Alabama

Credit Risk Manager

Following a six-month consultancy agreement became an employee of this six-office $250 million community bank with responsibility for correction of lending practices found to be unsafe and unsound by the OCC, the Bank's primary regulator. Successfully implemented a commercial loan risk rating system, including loan officer training that resulted in the proper risk classification of commercial credits while underwriting all large commercial loan relationships. Identified, managed and resolved a portfolio of problem commercial loans and non-performing assets which peaked at 116% of total capital and has been reduced to its current level of 46%. Implemented and performed a program of commercial appraisal review and underwriting for the largest of the Bank's loans to reduce the degree of uninformed and unintended collateral risk that had been traditionally assumed by the Bank's loan officers. Performed various legal tasks assigned by executive management as needed.

2008-2009 New South Federal Savings Bank
Birmingham, Alabama

Manager, Residential Construction Lending

Managed this approximately $250 million national problem residential construction (25%) and land, lot, and land development (75%) loan portfolio during a downsizing of the portfolio and lending staff covering the Texas, Arizona, Nevada, Virginia, North Carolina, Georgia, Tennessee, and Alabama markets. Supervised five construction and land development loan officers and three credit administration personnel during the difficult transition from active lending to loss minimization and recovery activities.

2007- 2008 Southern States Bank
Birmingham, Alabama

Jefferson and Shelby Counties President

Solicited equity investors, hired staff, and opened Birmingham-market branch of de novo state-chartered, three-office commercial bank. Branch attracted $25 million in deposits and $8 million in loans in first year of operation.

2004-2006 Capmark Finance Inc. (formerly GMAC Commercial Mortgage Corporation) Birmingham, Alabama

Senior Vice President and Asset Manager

Managed and substantially resolved a $137 million portfolio of higher risk seniors housing and healthcare loans. Activities: performed detailed credit analysis; developed, implemented, and reported status to executive management of recommended resolution strategies; worked extensively with and managed the activities of outside counsel and negotiated directly with customers and others to restructure credit facilities. Participated in the marketing of a portfolio of approximately $80 million of performing and non-performing loans. Developed and delivered commercial loan documentation training to approximately 20 employees.

2002-2004 Superior Bank (formerly known as The Bank)
Birmingham, Alabama

Executive Vice President and Senior Credit Risk Manager

Introduced company-wide system of on-line credit manual and underwriting templates developed by and licensed from a North Carolina-based credit process consultant to accelerate the establishment of a company-wide credit culture. Served as one of two senior commercial loan underwriters with joint authority up to $2 million. Personally uncovered extensive failure of a senior officer to follow bank policy regarding approval of related loans and later testified at his federal criminal trial.

1998- 2001 AuburnBank
Auburn, Alabama

Executive Vice President, Senior Credit Officer, and General Counsel

Recommended and implemented changes in loan policies and loan approval procedures to improve asset quality and to establish an institutional credit culture. Served as chairman of senior management loan

approval and policy committee. Personally managed bank's largest problem loan relationships, reviewed and administered bank's insurance coverage, coordinated employment of outside attorneys and provided daily "front-line" legal advice to employees. Temporarily served as bank's investment manager. Worked with outside corporate counsel and external consultants in the formation of a tax-savings private REIT. Analyzed, recommended, and administered the bank's investment in a low income housing tax credit development entity yielding an ROE of 85%.

1980- 1998

AmSouth Bank
Birmingham, Alabama

Various Positions including Senior Vice President and Commercial Real Estate Senior Credit Officer

Coordinated low income housing lending and investments with responsibility for recommending and drafting LIHTC lending and investment policies and for training commercial real estate loan officers in those policies and related procedures (1 year). Served as bank-wide Commercial Real Estate Senior Credit Officer with approval authority of $10 million for non-owner occupied real estate-related loans (2 years). Served as Corporate Banking Division Credit Officer, approving credits ($5 million authority) of specialized commercial lending units, including leasing, health care, commercial real estate, regional and national corporate banking (1 year). Served as Birmingham Division's Credit Administration Officer approving credits and supporting specialized lending areas listed above plus Birmingham branch system's small business and executive and professional consumer lending activity (2 years). Managed AmSouth's largest commercial real estate lending unit, approximate doubling financing commitments to a level in excess of $500 million (16% of bank's commercial loan portfolio) while maintaining asset quality standards—portfolio rated second of sixteen southeastern CRE loan portfolios intensively examined by Office of the Comptroller of the Currency in 1990-91 (6½ years). Served in various credit-administration related capacities including loan review, workout loan officer, credit administration manager, and regional credit approval officer (5½ years).

EDUCATION

J. D. and MBA degrees awarded December, 1978

University of North Carolina at Chapel Hill

B.S.B.A. awarded June, 1973

Auburn University

PAST PROFESSIONAL MEMBERSHIPS

American Bar Association (Business Law; Real Property, Trust and Probate, and Construction Law Sections); Alabama and North Carolina State Bars; Risk Management Association; Turnaround Management Association.

EXHIBIT 14

JOHN C. ("JACK") HAM

PRIOR EXPERT TESTIMONY

(1) *Warrior Lighthouse, Inc. et al. v. Drummond Company, Inc.*
(Circuit Court for Jefferson County, Alabama, Bessemer Division,
Civil Action No. CV-2011-900009)

Reviewed/analyzed plaintiff's financial history and gave deposition testimony directed to the issue of how a commercial loan underwriter should reasonably assess the credit worthiness of the plaintiff relative to hypothetical loan applications that might have been submitted before and after the event that damaged the plaintiff's physical facilities and its revenues.

(2) *Ryan Creek Acquisitions, Inc., Alabama Boating Centers, Inc., et al. v. Renasant Bank, N.A. et al.*
(Circuit Court for St. Clair County, Alabama, Pell City Division,
Civil Action No. CV-1997-000978)

Gave deposition testimony for the plaintiff concerning the interpretation of provisions in a commercial note and mortgage, and the defendant bank's application/treatment of loan payments made by the plaintiffs pursuant to the note and mortgage over a three-year time period.

(3) *United States v. Jed Hiers*
(U. S. District Court for the Northern District of Florida,
Case No. 4:11-cr-00042-RH-WCS)

Gave trial testimony for the prosecution as a hybrid fact/expert witness regarding discovery of defalcations on the loan policies and procedures at the financial institution where I was then employed as Executive Vice President and Credit Risk Manager.