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{{2-28-97 p.C-4121}}

[¶11,242] In the Matter of Popular Bank of Florida, Coral Gables, Fla., Docket No. FDIC-95-131b (10-20-95).

Bank to cease and desist from such unsafe or unsound practices as failure by the board of directors to provide adequate supervision and direction over the operation of the bank's payables through account; operating with management utilizing policies and practices with regard to PTAs which fail to adequately protect the bank from risks associated with PTAs; failure to ensure that the terms of PTA agreements which require master account holders to obtain certain specified information and documentation about sub-account holders when sub-accounts are opened are performed; failure to utilize appropriate mechanisms for monitoring sub-account transactions to ensure compliance with the Bank Secrecy Act and its implementing regulation; failure to implement effective internal controls and operating systems with regard to PTAs; failure to establish and to implement policies, procedures and systems to establish for each sub-account holder its identity, nature of business, and reliability; failure to document the nature and extent of foreign regulatory oversight of transactions between MAHs and SAHs, and the extent of risk to which the bank is exposed by any potential gaps or weaknesses in such oversight of the MAHs and transactions between MAHs and SAHs. (*This order was terminated by order of the FDIC dated 12-19-96. See ¶16,138.*)

[.1] Deposit Accounts—Payables Through Account—Restricted
[.2] Deposit Accounts—Payables Through Account—Prepare/Implement Action Plan
[.3] Deposit Accounts—Payables Through Account—Prepare/Obtain Descriptions
[.4] Deposit Accounts—Payables Through Account—Oversight Officer
[.5] Deposit Accounts—Payables Through Account—Directors' Committee

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[.6] Deposit Accounts—Payables Through Account—Verify Information
[.7] Deposit Accounts—Payables Through Account—Develop/Implement Termination Policy
[.8] Deposit Accounts—Payables Through Account—Documentation
[.9] Deposit Accounts—Payables Through Account—Documentation
[.10] Deposit Accounts—Payables Through Account—"Know Your Customer Policy"
[.11] Deposit Accounts—Payables Through Account—Develop/Implement Internal Control Procedures
[.12] Deposit Accounts—Payables Through Account—Create/Obtain Data Processing Systems
[.13] Deposit Accounts—Payables Through Account—Amend Audit Policies/ Procedures/Practices
[.14] Shareholders—Disclosure—Cease and Desist Order
[.15] Cease and Desist Order—Compliance Reports

In the Matter of

POPULAR BANK OF FLORIDA
CORAL GABLES,FLORIDA
(Insured State Nonmember Bank)
ORDER TO CEASE AND DESIST
FDIC-95-131b

Popular Bank of Florida, Coral Gables, Florida ("Bank"), having been advised of its right to a written Notice of Charges and of Hearing ("NOTICE") detailing unsafe or unsound banking practices alleged to have been committed by the Bank and of its right to a hearing regarding such alleged charges under section 8(b)(1) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818 (b)(1), and having waived those rights, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST ("CONSENT AGREEMENT") with a representative of the Legal Division of the Federal Deposit Insurance Corporation ("FDIC"), dated September 21, 1995, whereby solely for the purpose of this proceeding and without admitting or denying any of the alleged charges of unsafe or unsound banking practices or violations of law and regulations, the Bank consented to the issuance of an ORDER TO CEASE AND DESIST ("ORDER") by the FDIC.

The FDIC considered the matter and determined that it had reason to believe that the Bank had engaged in unsafe or unsound banking practices.

The FDIC, therefore, accepted the CONSENT AGREEMENT and issued the following:

ORDER TO CEASE AND DESIST

For purposes of this ORDER, the terms specified below shall be defined as follows:

a) The term "affiliate" is defined with respect to the Bank as the term "affiliate" is used with respect to a member bank in section 23A(b)(1) of the Federal Reserve Act, 12 U.S.C. § 371c(b)(1);

b) The terms "related interest," "principal shareholder," and "executive officer" shall have the definitions ascribed to such terms in section 215.2 of the Federal Reserve Board Regulation O, 12 C.F.R. § 215.2;

c) The term "Payable Through Account" (or "PTA") means any deposit account established by the Bank pursuant to any agreement under the terms of which the Bank establishes a master account for a Master Account Holder, subdivides the master account into subaccounts for use by SubAccount Holders, and permits the master account to be accessed via the subaccounts by Sub-Account Holders;

d) The term "Master Account Holder" (or "MAH") means a person or entity in whose name a PTA master account is established or maintained by the Bank; and

e) The term "Sub-Account Holder" (or "SAH") means any person or entity that is assigned to subaccount through which the person or entity is permitted to deposit funds into a PTA, to write checks against a PTA, or to make withdrawals from a PTA.

IT IS HEREBY ORDERED, that the Bank, its institution-affiliated parties, as such term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u), and its successors and assigns {{12-28-97p.C-4123}}cease and desist from the following unsafe or unsound banking practices:

A. Failure by the board of directors of the Bank to provide adequate supervision and direction over the operation of the Bank's PTAs;

B. Operating the Bank with management utilizing policies and practices with regard to the Bank's PTAs which fail to adequately protect the Bank from risks associated with PTAs;

C. Failure to ensure that the terms of PTA agreements which require MAHs to obtain certain specified information and documentation about SAHs when sub-accounts are opened are performed;

D. Failure to utilize appropriate mechanisms for monitoring sub-account transactions to ensure compliance with the Bank Secrecy Act, 31 U.S.C. §§ 5311 through 5330, and its implementing regulation, 31 C.F.R. Part 103;

E. Failure to implement effective internal controls and operating systems with regard to PTAs;

F. Failure to establish and to implement policies, procedures and systems to establish for each SAH their identity, nature of business and reliability, including appropriate "Know Your Customer" procedures for SAHs and data processing systems and procedures adequate to implement such policies, procedures and systems, and failure to maintain staffing which is sufficient in number, competence, and training to ensure implementation of such controls, policies, procedures and systems; and

G. Failure to document the nature and extent of foreign regulatory oversight of transactions between MAHs and SAHs, and the extent of risk to which the Bank is exposed by any potential gaps or weaknesses in such oversight of the MAHs and transactions between MAHs and SAHs.

IT IS FURTHER ORDERED, that the Bank and its successors and assigns take affirmative action as follows:

[.1**]** 1. The Bank shall not: a) execute any new PTA agreements, establish or accept any new master accounts, or establish or accept any new subaccounts unless such new PTA agreements, new master account, and/or new subaccounts conform to the requirements of this ORDER which are required pursuant to the terms of this ORDER to have been implemented on or before the date such new master account or such new sub-account is established or accepted; or b) establish or accept a new subaccount with respect to any PTA agreement or master account existing as of the date of execution of the CONSENT AGREEMENT unless the Bank has created or obtained the documentation described below in Paragraph 9 of the ORDER with respect to the new SAH.

[.2**]** 2. Within 60 days from the effective date of this ORDER, the Bank's management shall prepare a plan of action regarding the operation of the Bank's PTAs ("PTA Action Plan") and shall submit the PTA Action Plan to the Regional Director of the FDIC's Atlanta Regional Office, Division of Supervision (the "Regional Director") and to the Comptroller of the State of Florida ("Comptroller") for review. Upon receipt of the FDIC's comments, if any, the PTA Action Plan and the FDIC's comments, if any, shall be reviewed by the Bank's board of directors. Thereafter, the Bank's board of directors shall approve the PTA Action Plan, which review and approval shall be recorded in the minutes of the Bank's board of directors. Thereupon, the PTA Action Plan shall be implemented by the Bank. At a minimum, the PTA Action Plan shall:

a) Analyze the Bank's staffing as it relates to the operation of the Bank's PTAs, and establish a plan to provide staffing that is adequate in terms of the numbers, experience, training, and organization of Bank personnel to ensure the operation of the PTAs in accordance with the requirements of this ORDER;

b) Define adequate internal controls on the operation of the Bank's PTAs and establish a plan for implementing such internal controls;

c) Define, as appropriate, the responsibilities of each Bank employee regarding PTA transaction processing, oversight of PTA operations, monitoring of PTA activities, and reporting to Bank management of all relevant information regarding PTAs;

d) Analyze the Bank's existing information gathering and data processing systems, policies, and procedures regarding PTAs, evaluate the sufficiency of the Bank's information management in connection with PTAs, and identify such improvements and/or corrections as are appropriate {{12-31-95 p.C-4124}}to the safe and sound operation of the Bank's PTA activities; and

e) Set forth the Bank's plan for complying with this ORDER.

[.3**]** 3. (a) Within 60 days from the effective date of this ORDER, with regard to each PTA existing as of the effective date of this ORDER, the Bank shall: (i) prepare or obtain with regard to each MAH a written description of the institutions, mechanisms, systems, and procedures through which such MAH, the agents of such MAH, or the affiliates of such MAH obtain and process funds that are ultimately deposited into the Bank's PTAs; (ii) take reasonable steps to verify the accuracy of such descriptions; (iii) obtain certification from an authorized officer of each MAH that the MAH and the MAH's agents operate in conformity with the applicable laws and regulations of all foreign jurisdictions in which the MAH and/or its agents obtain and/or process funds that are ultimately deposited in the Bank's PTAs; and (iv) obtain with regard to each MAH a written description of the extent to which regulatory oversight by the foreign countries in which such MAH is chartered or is otherwise subject to supervision by bank regulatory authorities applies to the institutions, mechanisms, systems, and procedures through which MAHs, agents of MAHs, or affiliates of MAHs obtain and process funds that are ultimately deposited into the Bank's PTAs. Within 90 days from the effective date of this ORDER, based on the information provided in such written descriptions and any other relevant and reliable information regarding such supervision that is reasonably available to the Bank, the Bank shall prepare a written assessment of the adequacy of such foreign government regulatory oversight as a protection against the risks associated with the operation of the Bank's PTAs, and such written risk assessment shall be submitted to the Regional Director and to the Comptroller for review. Upon receipt of the FDIC's comments, if any, such written risk assessment and the FDIC's comments, if any, shall be reviewed by the Bank's board of directors. Thereafter, the Bank's board of directors shall approve the written risk assessment, which review and approval shall be recorded in the minutes of the Bank's board of directors.

(b) Prior to the creation of any new PTA after the effective date of this ORDER, the Bank shall fulfill with regard to each new MAH the requirements of paragraph 3(a), except that a written risk assessment with regard to each such new MAH need not be submitted to the Regional Director or to the Comptroller for review.

[.4**]** 4. Within 60 days from the effective date of this ORDER, the Bank shall designate a senior bank officer, who possesses appropriate experience and training, to oversee the Bank's PTA activities. Such officer shall have sufficient authority to ensure the safe and sound operation of the Bank's PTA activities, including unrestricted access to all information that is possessed by the Bank, or is accessible to the Bank, regarding MAHs, SAHs, and all PTA transactions.

[.5**]** 5. Within 30 days from the effective date of this ORDER, the Bank's board of directors shall establish a directors' committee to oversee the Bank's PTA activities. Such directors' committee shall receive from Bank management monthly reports regarding the Bank's PTA activities, including an assessment of the risks involved or reflected in the Bank's PTA activities at the time of each such report. Such directors' committee shall present a report regarding the Bank's PTA activities to the Bank's board of directors at each regularly scheduled meeting of the Bank's board of directors. Such reports shall be recorded in appropriate minutes of the Bank's board of directors and shall be retained in the Bank's records.

[.6**]** 6. Within 60 days from the effective date of this ORDER, the Bank shall develop and implement procedures for independently verifying information that is provided to the Bank by MAHs regarding MAHs and SAHs. Thereafter, the Bank shall routinely conduct periodic verification of MAH and SAH information that is provided to the Bank by each MAH.

[.7**]** 7. Within 90 days from the effective date of this ORDER, the Bank shall develop and implement a policy regarding the termination of PTA master accounts and/or subaccounts in instances in which MAH and/or SAH information that has been provided to the Bank is found to be materially inaccurate or materially incomplete.

[.8**]** 8. Within 60 days from the effective date of this ORDER, the Bank shall obtain or prepare, as the case may be, the following {{12-31-95 p.C-4125}}information regarding each MAH; thereafter shall retain such information in the Bank's records for a period ending five years after the closing of the PTA involving such MAH; and shall periodically update documentation reflecting such information:

a) Articles of Incorporation or other organizational or chartering documents for each MAH ("Organizational Documents")'
b) Current by-laws or equivalent of each MAH which has by-laws or their equivalent;
c) Documents which establish the scope of the authority of each individual who transacts PTA activity with the Bank on behalf of any MAH;
d) Each MAH's current policies and procedures for opening subaccounts;
e) Biographical information regarding the experience, education, capacity, and integrity of each MAH officer or employee who is authorized to open subaccounts or who is authorized to conduct transactions involving subaccounts;
f) Current credit information on each MAH which is of the type that would be relied upon in the ordinary course of the Bank's business if it were extending credit to the MAH;
g) Appropriate credit analysis performed by the Bank regarding each MAH if the PTA agreement between the Bank and that MAH provides for the possibility of an extension of credit to the MAH;
h) For each MAH, an unaudited financial statement for the most recent fiscal quarter, and an audited financial statement for the most recent fiscal year, to be obtained in each case within a reasonable time following its preparation; and
i) Corporate resolution by the MAH relating to the existence and operation of the PTA.

[.9**]** 9. Within 180 days from the effective date of this ORDER, the Bank shall create or obtain the following documentation regarding each SAH, or, if such documentation regarding any SAH has not been obtained by the end of such 180 day period, the Bank shall deactivate the subaccount of such SAH until such documentation has been obtained:
a) Photo identification, such as a copy of a passport, registration card, national identification document, or driver's license, of each person who is authorized to transact business with regard to any subaccount;
b) If available to the SAH, and not otherwise shown on the identification contained in paragraph a) above, government identification number, such as a passport number, or national identification card number;
c) Copy of the MAH's signature card for each SAH;
d) SAH's postal address and, if the SAH resides in a locale where a reliable street address system is utilized, the SAH's complete street address;
e) Description of SAH's business, employment or occupation if SAH is a natural person;
f) A document, executed by the SAH, which has the effect of subjecting the operation of the subaccount to state and federal laws and regulations applicable to bank accounts in the state of Florida in spite of any banking secrecy or confidentiality laws of any foreign jurisdiction that would otherwise apply to any matter related to the PTA, and which specifically authorizes the MAH to disclose to the Bank all information known to the MAH relating to the SAH or to the PTA, which the Bank may request in connection with the Bank's discharge of its own legal or regulatory duties in the United States;
g) For each sub-account that is established after the effective date of this ORDER, and for each sub-account that exists as of the effective date of this ORDER and is held by an SAH of the type described in subparagraph 9(i) or 9(j) of this ORDER, a document, executed by the SAH, which obligates the SAH to provide an up-to-date financial statement to the MAH if the Bank should so request;
h) An estimate of the expected PTA activity as anticipated by the SAH;
i) For SAH's that are not natural persons and which are actively engaged in a trade or business:

i. Evidence of legal status, including articles of incorporation, or other Organizational Documents, by-laws of each SAH which has by-laws, and if the SAH is a corporation, a corporate resolution {{12-31-95 p.C-4126}}by the SAH relating to the existence and operation of the subaccount for the SAH;
ii. Two commercial or banking references;
iii. Description of the SAH's principal line of business;
iv. Description of the SAH's trade area and of the anticipated level of international transactions involving the subaccount, where applicable;
v. Estimate of the expected volume of cash transactions as anticipated by the SAH; and

vi. Identification of signatories authorized to conduct PTA transactions on behalf of the SAH; and

j) For SAHs that are not natural persons and are not actively engaged in a trade or business other than the ownership of assets and/or investments for the benefit of one or more natural persons (each such natural person is hereinafter denominated as a "Beneficial Owner"):

i. Evidence of legal status, including articles of incorporation or other Organizational Documents, by-laws of each SAH which has by-laws, and if the SAH is a corporation, a corporate resolution by the SAH relating to the existence and operation of the subaccount for the SAH;
ii. Two commercial, banking or character references covering each Beneficial Owner;
iii. The documentation and information described in subparagraph (a), (d) and (e) of this paragraph 9 for each Beneficial Owner; and
iv. Identification of signatories authorized to conduct PTA transactions on behalf of the SAH.

Documentation obtained pursuant to this paragraph 9 of the ORDER shall be reviewed and updated as needed by the Bank. Such documentation shall be retained in the Bank's records for a period of at least five years after the closing of the subaccount of the SAH.

[.10**]** 10. Within 90 days from the effective date of this ORDER, the Bank shall develop a policy (the "Know Your Customer Policy") and procedures for identifying, with regard to each SAH, the type and dollar volume of transactions that the Bank anticipates each SAH to conduct within defined time periods. The Bank shall implement all aspects of such Know Your Customer Policy and procedures within such 90 day period, except the internal control procedures and the data processing systems to be developed and implemented pursuant to paragraphs 11 and 12 hereof.

[.11**]** 11. Within 180 days from the effective date of this ORDER, the Bank shall develop and implement internal control procedures that shall include, but shall not be restricted to, regular periodic comparison of actual PTA activity in each subaccount against expected or anticipated activity in each subaccount. Such internal control procedures shall include routinized and/or automated procedures and systems for documenting variances between anticipated PTA activity and actual PTA activity, and for reporting such variances to Bank management and, when appropriate, to federal regulatory and/or federal law enforcement authorities.

[.12**]** 12. Within 180 days from the effective date of this ORDER, the Bank shall create or obtain data processing systems that include the following capacities:

a) To maintain and operate a database that includes comprehensive current information on all MAHs and SAHs, including name, address, account identifiers, and appropriate indicators to signify if a MAH is an affiliate of the Bank or a related interest of a Bank executive officer, director, or principal shareholder;
b) To create and maintain for a period of five years a record of every Bank transaction involving any PTA;
c) To identify SAHs that hold more than one subaccount;
d) To identify transactions that involve multiple subaccounts;
e) To identify persons who are authorized signatories for more than one subaccount; and
f) To generate periodic reports and, as needed, ad hoc reports, that identify any PTA account activity that:
i. Occurs within a specified time period with regard to any specific master account or any subaccount;
ii. Varies significantly from the account activity with regard to any MAH or SAH that is anticipated pursuant to the Bank's Know Your Customer Policy {{12-31-95 p.C-4127}}as described above in paragraph 10 of this ORDER;
iii. Appears to reflect a pattern of activity related to check kiting or any other form of fraud;
iv. Might indicate the structuring or layering of transactions to avoid or circumvent currency transaction reporting requirements; and/or
v. Might require the Bank to create a financial recordkeeping entry or to file a Currency Transaction Report or any other report in order to comply with the Department of the Treasury's Regulation entitled Financial Recordkeeping and Reporting of Currency and Foreign Transactions, 31 C.F.R. Part 103.

[.13**]** 13. Within 60 days from the effective date of this ORDER, the Bank shall amend its audit policies, procedures, and practices, both with regard to internal audits and with regard to external audits, so that the Bank's PTA activities become subject to periodic review as part of the Bank's routine auditing. As long as this ORDER shall remain in effect, the Bank's internal and external audits shall include reviews of the Bank's PTA activities.

[.14**]** 14. Following the effective date of this ORDER, the Bank shall send to its shareholders or otherwise furnish a description of this ORDER (a) in conjunction with the Bank's next shareholder communication, and also (b) in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The description shall fully describe the ORDER in all material respects. The description and any accompanying communication, statement, or notice shall be sent to the FDIC, Registration and Disclosure Section, 550 17th Street, N.W., Washington, D.C. 24029, for review at least 20 days prior to dissemination to shareholders. Any changes requested to be made by the FDIC shall be made prior to dissemination of the description, communication, notice or statement.

[.15**]** 15. The Bank shall furnish written progress reports to the Regional Director and to the Comptroller detailing the form and manner of any action taken to secure compliance with this ORDER and the results thereof every 90 days, beginning 90 days from the effective date of this ORDER. In addition, the Bank shall furnish within a reasonable time such additional reports as the Regional Director may request. All progress reports and other written responses to this ORDER shall be reviewed by the board of directors of the Bank and made a part of the minutes of the board meeting at which such review occurs.

16. This ORDER shall become effective 10 days from the date of its issuance.

The provisions of this ORDER shall be binding upon the Bank and its institution-affiliated parties, successors and assigns.

The provisions of this ORDER shall remain effective and enforceable except to the extent that, and until such time as, any provisions of the ORDER shall have been modified, terminated, suspended, or set aside by the FDIC.

Date this 20th day of October, 1995.