

**FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.**

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In the Matter of	)	
	)	
FRONTIER STATE BANK	)	DECISION AND ORDER
OKLAHOMA CITY, OKLAHOMA	)	TO CEASE AND DESIST
	)	
	)	
	)	
(Insured State Nonmember Bank)	)	FDIC-07-288b
	)	
	)	

I. INTRODUCTION

This matter is before the Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC) following the issuance on November 18, 2010, of a Recommended Decision (Recommended Decision or R.D.) by Administrative Law Judge C. Richard Miserendino (ALJ). The ALJ recommended that Frontier State Bank, Oklahoma City, Oklahoma (Bank) be subject to an order to cease and desist and corrective action plan pursuant to section 8(b) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. § 1818(b). The Board has reviewed the record including the parties' submissions, the Recommended Decision, and the parties' respective Exceptions to the Recommended Decision (Exceptions). The Board agrees with the ALJ's findings that the Bank engaged in unsafe and unsound practices warranting a cease and desist order. Therefore, the Board adopts in full and affirms the Recommended Decision.

II. STATEMENT OF THE CASE

The FDIC initiated this action on October 6, 2008, when it issued a Notice of Charges and of Hearing (Notice) alleging that the Bank, a federally insured state

nonmember bank subject to the FDI Act 12 U.S.C. §§ 1811-31aa, and the Rules and Regulations of the FDIC, 12 C.F.R. §§ 303-71 (FDIC Rules), had engaged in unsafe or unsound practices when operating its leverage strategy investment program (Leverage Strategy). The Notice was prompted by information obtained during a joint examination of the Bank conducted by the FDIC and the Oklahoma State Banking Department (OSBD) in 2008.

On January 15, 2009, the FDIC amended the Notice (Amended Notice) alleging that the Bank engaged in unsafe or unsound banking practices during the 2008 examination period by operating its Leverage Strategy with (1) an excessive level of interest rate risk (IRR) exposure; (2) an inadequate level of capital; (3) inadequate liquidity; and (4) inadequate asset growth plans. In addition, the Amended Notice alleged the Bank's asset/liability management and investment management policies were inadequate and that the Bank has repeatedly failed to follow its own policies. Enforcement Counsel sought in the Amended Notice imposition of a cease and desist and corrective action plan, which it revised on May 28, 2009 (Revised C&D Order), two days before the evidentiary hearing commenced.

The Bank filed its First Amended Answer to the Amended Notice on March 11, 2009, and filed its Second Amended Answer to the Amended Notice on May 11, 2009. In the months leading up to the hearing, the parties engaged in extensive discovery and filed a series of motions. In addition, the Bank, on May 29, 2009, petitioned for interlocutory review (Petition) of two of the ALJ's rulings.¹ Enforcement Counsel

¹ The Petition sought Board review of orders issued by the ALJ on May 19 (May 19th Order) and May 20, 2009 (May 20th Order), respectively. The ALJ's May 19th Order denied the Bank's motion, which was based on charges that Enforcement Counsel had improperly failed to preserve evidence, for sanctions and dismissal. The ALJ based his denial on findings that the Bank had not demonstrated either that the FDIC

opposed the Petition. On September 30, 2009, the FDIC Executive Secretary, pursuant to delegated authority from the Board, issued a decision and order denying the Bank's petition based on his conclusion that the Bank failed to meet the standards for interlocutory review under FDIC Rule 308.28(b)(1), 12 C.F.R. § 308.28(b)(1).

A hearing on the merits was held in Oklahoma City, Oklahoma from June 1, 2009 through June 8, 2009. At the hearing, the ALJ received sworn testimony from FDIC officials, including: Senior Capital Markets/Securities Specialist Darrel Couch (Capital Markets Specialist Couch), Case Manager Moka Caudle (CM Caudle), and Examiner-in-Charge Kerry Jones (EIC Jones). The ALJ also heard from the Bank's Executive Vice President and board Director Jerry Monroe, the Bank's Investment Analyst Lukus Collins, and the Bank's expert witness Keith Geary.

On November 18, 2010, the ALJ issued his Recommended Decision finding that the Bank was operating in an unsafe or unsound manner as to its level of IRR exposure, its capital, its liquidity, and its management. On December 20, 2010, both the Bank and the FDIC filed timely written exceptions to the Recommended Decision.² Along with its Exceptions, the Bank petitioned for oral argument before the Board pursuant to FDIC

failed to preserve relevant evidence or that its due process rights had been violated. The ALJ's May 20th Order -- predicated on findings that the Bank's assertions of due process violations, estoppel and waiver were legally insufficient -- granted Enforcement Counsel's Motion to strike the Bank's affirmative defenses.

² On the same date, the Bank submitted to the Board a Motion for Reconsideration and Enforcement Counsel responded on January 14, 2011. These pleadings, which focused on spoliation of evidence issues previously raised and addressed during the proceedings, were entered on the docket and transmitted to the Board as part of the record on review. The Board notes, however, that the FDIC Rules do not authorize filings such as these. Instead, FDIC Rule 308.39 provides a single avenue -- by way of concurrently filed exceptions -- for parties to raise post-hearing challenges before the Board. Therefore, although the Board has considered the spoliation charges in the context of its review of the administrative record in this proceeding, the Board did not, in rendering this final decision, rely on or refer to the substance of either the Bank's Motion for Reconsideration or the FDIC's response.

Rule 308.40, 12 C.F.R. § 308.40. On January 24, 2011, pursuant to 12 C.F.R. § 308.40(c)(2), the FDIC Assistant Executive Secretary transmitted the record in the case to the Board for final decision.

III. FACTUAL OVERVIEW

Because the ALJ provided a lengthy, detailed and well-reasoned opinion with extensive citations to the record in support of his conclusions, the Board finds it unnecessary to reiterate in full the contents of the Recommended Decision. The discussion below, however, provides a brief overview of the Bank's unsafe and unsound Leverage Strategy practices as alleged in the Amended Notice, corroborated by supporting testimonial and documentary evidence, and recounted in the Recommended Decision.³

A. Background

In 2002, the Bank implemented the Leverage Strategy that formed the basis for the underlying proceedings. Designed to maximize earnings, the Leverage Strategy involved the Bank's practice of funding long-term assets with short term liabilities. Specifically, the Bank invested primarily in long term U.S. government-sponsored collateralized mortgage obligations (CMOs) using a series of short-term FHLB advances and other wholesale funding sources. The spread earned on each leverage transaction was determined by the degree of interest rate risk (IRR) exposure the Bank was willing to tolerate. R.D. at 3.

³ The Findings of Fact in the Recommended Decision include detailed citations to the voluminous record which includes pleadings, briefs, trial transcripts and exhibits. R.D. at 3-21. In the interest of efficiency and, except where otherwise noted, the Board cites only to the numbered pages in the Recommended Decision rather than to the underlying supporting evidentiary documents or transcripts.

Not long after the Bank first implemented its Leverage Strategy in 2002, the FDIC became concerned about its IRR exposure. R.D. at 3. As early as March 2003, FDIC examiners advised the Bank's board that the Leverage Strategy posed an unacceptable level of IRR exposure. FDIC officials reiterated these concerns in the FDIC's 2004 Report of Examination (ROE). In November 2004, the Bank, the FDIC, and the OSBD entered into a Memorandum of Understanding (MOU) by which the Bank agreed to develop plans and implement procedures aimed at mitigating risks in its Leverage Strategy.⁴ Although the Bank prepared and submitted policies pursuant to the MOU, none of these policies were approved by the FDIC primarily because the Bank's draft policies failed to sufficiently address FDIC concerns. R.D. at 3-4.

The Bank's IRR exposure remained a principal issue of contention in subsequent examination cycles. R.D. at 4. In fact, the FDIC consistently criticized the Leverage Strategy during annual examinations as reflected in ROEs issued for 2005, 2006, and 2007.⁵ Among the FDIC's chief concerns were: the inadequate capture of risk inherent in its CMO portfolio by the Bank's risk measuring models; the model's unsupported IRR assumptions; and the Bank's failure to increase capital in keeping with its continually rising IRR. R.D. at 4. The Bank's repeated failure to acknowledge and respond to the

⁴ The MOU, which remained in effect at the time of the hearing, requires the Bank, among other things, to: (1) develop a capital plan detailing how the Bank would achieve and maintain a minimum 7.43 percent Leverage Capital Ratio; (2) review and formulate asset growth objectives, while considering capital and liquidity positions, and projected earnings; (3) formulate and implement an asset/liability management policy with a strategy to achieve acceptable interest rate sensitivity balance and which required the Bank board to develop an acceptable IRR measurement model; and (4) review overall liquidity objectives and develop plans for improving liquidity and reducing reliance on volatile liability to fund longer term assets. R.D. at 3.

⁵ The 2005 ROE stated "The overall condition of the bank remains less than satisfactory due to the high level of interest rate risk exposure." 2005 ROE, Frontier State Bank Exhibit (FSB Ex.) 4, p. 3. Likewise, the 2006 ROE acknowledged that "[t]he high level of interest rate risk accepted by the Board of Directors (Board) and the maintenance of less than satisfactory capital adequacy results in elevated supervisory concerns." 2006 ROE, FSB Ex. 5 at 3. Finally, the 2007 ROE set forth "[t]he overall condition of the Bank remains less than satisfactory. Interest risk exposure continues to be of utmost importance and is the driving force of the regulatory concern." 2007 ROE, FSB Ex. 6 at 3.

FDIC's concerns led to an increasingly strained working relationship between Bank and agency staff. R.D. at 4.

The standoff was exacerbated in late 2007, when the Bank borrowed \$145,000,000 in FHLB convertible advances (Advances) in an attempt to improve its Net Income Margin (NIM) which by then had narrowed considerably. R.D. at 4. The Advances contained embedded options which ultimately added to the Leverage Strategy's repricing risk, option risk and yield curve risk, and, as a result increased the Bank's IRR exposure. R.D. at 5.

On April 7, 2008, the FDIC and OSBD commenced a joint examination of the Bank covering financial information for the 2007 calendar year and the early part of 2008. R.D. at 5. In the 2008 ROE that followed, the Bank was assigned a composite rating of "3," the same rating it had received in the two prior examinations. For the third consecutive year and despite repeated regulatory criticism and intervention, including comments in the 2004 MOU, the Bank received "3s" for Sensitivity to Market Risk, Capital, and Liquidity. Meanwhile, the Bank received a "4" for Management, which dropped from the "3" it had received in this category for the previous two ROEs. Finally, the Bank received "2s" for Earnings and Asset Quality. R.D. at 5. In short, the 2008 ROE rated the Bank less-than-satisfactory on four of the six CAMELS components. After the 2008 ROE was issued, the FDIC issued the Notice charging that the Bank engaged in specified unsafe and unsound practices in connection with its Leverage Strategy. R.D. at 1.

IV. ANALYSIS

A. The ALJ's Factual and Legal Findings are Fully Supported by the Record.

The Recommended Decision offers extensive evidentiary support for the conclusions that the Bank's Leverage Strategy reflected an ongoing pattern of multiple unsafe or unsound banking practices. R.D. at 21 – 43. Although the FDI Act does not specify what constitutes an unsafe and unsound practice, courts often cite with approval the 9th Circuit's definition of "one which is contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would be abnormal risk or loss or damage to an institution, its shareholders, or the agencies administering the insurance funds and that it is a practice which has a reasonably direct effect on an association's financial soundness." *Simpson v. Office of Thrift Supervision*, 29 F.3d 1418, 1425 (9th Cir. 1994); *see also*, *First National Bank of Eden v. Office of the Comptroller of the Currency*, 568 F.2d 610, 611 (8th Cir. 1978) (unsafe and unsound conduct encompasses practices contrary to accepted standards of prudent operation that might result in abnormal risk or loss to a bank).

Although the threshold for imposing a cease and desist order may be based on a finding of just a single instance of unsafe or unsound conduct, the evidence in this case establishes that the Bank, over a period of years, engaged in multiple unsafe and unsound practices that threatened its stability. *See, e.g., The Greene County Bank v. Federal Deposit Insurance Corporation*, 92 F.3d 633 (8th Cir. 1996) (The FDIC may order an institution to cease and desist from an unsafe or unsound practice even where "it is established that the [bank] has engaged in such a practice on only a single occasion.") Moreover, the Bank's less-than-satisfactory ratings for liquidity and management form independent statutory bases for imposing a cease and desist order under section 8(b).

In this case, the ALJ found significant failings in the Bank's Leverage Strategy. For example, the Bank's improper use of and reliance on two separate but deficient IRR models, illustrate core deficiencies in the program. Notably, the Bank's Internal Earnings Model failed to adhere to the procedures outlined in the Bank's own policies and relied on Bloomberg default analytics which the Bank itself considers flawed. R.D. at 24, 26 - 27. Moreover, the ALX model, conducted by ALX Consulting, Inc., produced data that was inconsistent, at odds with the Internal Earning Model's data, and inadequate for measuring the effect of embedded options. R.D. at 30. In addition, the Leverage Strategy was poorly operated because a significant repricing mismatch between assets and liabilities in the Bank's portfolio made the Bank vulnerable to interest rate changes; the Dependency Ratio was excessive and poorly calculated; and, the Bank failed to satisfy principles and practices identified in the Joint Agency Statement of Policy on IRR issued in 1996 by federal bank regulators. R.D. at 33, 39, 42.

Likewise, the record supports the ALJ's findings that the Bank engaged in unsafe or unsound practices by maintaining inadequate capital. R.D. at 43 – 51. In the Recommended Decision, the ALJ carefully explained why the Bank's current capital ratios were insufficient even though its Tier 1 Leverage Capital Ratio exceeded both the regulatory minimum and the MOU capital requirements. As the ALJ pointed out, the Bank's capital was inadequate in light of its high IRR exposure, high economic value of equity (EVE), high Dependency Ratio, deficient and inaccurate models and high level of liquidity risk. R.D. at 46-50. Based on his findings, accompanied by thoughtful analysis, the ALJ concluded that the 10 percent ratio sought in the FDIC's Revised C&D Order was reasonable and appropriate under the totality of circumstances. R.D. at 43 – 49.

Similarly, the record supports the ALJ's findings that the Bank engaged in unsafe or unsound practices by failing to maintain adequate liquidity. R.D. at 51 – 55.

Specifically, the ALJ concluded that the Bank's heavy reliance on public funds posed unreasonable risk because sources could become limited or dry up altogether during an economic downturn. R.D. at 52. The ALJ observed too that the Bank's concentration of wholesale funding sources raised additional concerns because two of its six sources, FHLB advances and brokered deposits, presented the same types of accessibility problems during periods of economic uncertainty. R.D. at 53. A further risk factor identified by the ALJ was the absence of a contingency funding plan. Although the Bank's policy indicated that the Bank would plan for contingency funding to meet large and unexpected withdrawals, the Bank neither confirmed that it had actually developed such plans nor explained what the proposed plans were. R.D. at 54.

Finally, the record supports the ALJ's findings regarding less-than-satisfactory oversight and compliance by Bank management. R.D. at 55 – 57. The record shows that the Bank's board and management are one in the same. R.D. at 55. While crediting Bank officials for conducting extensive pre-purchase analysis with respect to its CMOs and noting that its policies have yielded a profit (albeit diminishing over the years), the ALJ found undisputed evidence demonstrating that management ignored cautionary signs of potential high IRR and marginalized the importance of potential high risk indicators, such as the Dependency Ratio and EVE. R.D. at 57. For example, by routinely exceeding its asset growth policy limitations, the Bank management subjected its Leverage Strategy portfolio to significant IRR exposure. R.D. at 51.

Significantly, in addition to each of the detailed findings expounded on above, the Bank's less-than-satisfactory ratings for two critical components provide an independent basis for the ALJ to conclude that the Bank engaged in unsafe or unsound practices. Pursuant to the explicit language of section 8(b)(8) of the FDI Act, the FDIC may determine that a bank has engaged in unsafe or unsound practices when it has a less-than-satisfactory rating in asset quality, management, earnings or liquidity in its most recent ROE. 12 U.S.C. § 1818(b)(8). In the 2008 ROE, the last ROE issued before these proceedings commenced, the Bank was assigned less-than-satisfactory ratings of "4" and "3," respectively, for two identified components—management and liquidity. Thus, in light of the ALJ's detailed findings as well as the statutory threshold, the Bank cannot credibly assert that the deficiencies cited do not constitute unsafe and unsound practices warranting a cease and desist order.

B. The Requirements in the Proposed C&D Order are Reasonable.

Congress has empowered the FDIC with broad discretionary authority under section 8 of the FDI Act to initiate various types of enforcement actions and to fashion remedies appropriate to the nature of such actions. In the case of a cease-and-desist action, the authority of the FDIC includes the power to craft a remedy requiring that affirmative action be taken to correct the conditions resulting from cited unsafe or unsound practices. 12 U.S.C. § 1818(b)(6). Further, it is clear that a reviewing court will extend substantial deference to the expertise of administrative agencies in designing an appropriate remedy, and that the only basis upon which the courts will overturn the agency's remedy is where the terms of the order are not reasonably related to the legislative purpose of the statute under which the action was initiated. Thus, the

appropriate inquiry here is whether the remedy proposed by the ALJ is reasonably related to and in accordance with the legislative purpose of section 8(b) of the FDI Act.

In this case, the ALJ found, based on FDIC testimony and supporting documents that the Bank engaged in 17 unsafe or unsound practices. In light of these findings, the Recommended Decision included affirmative provisions requiring that the Bank implement policies and procedures designed to mitigate risk and promote safe and sound operations. Enforcement Counsel submitted evidence – including detailed financial information and opinions from the 2008 ROE and sworn statements from experienced FDIC officials – establishing that the corrective action plan in the Recommended Decision was appropriate. Notably, the ALJ pointedly excluded certain provisions based on his determination that Enforcement Counsel had not met its burden of proof. R.D. at 59 – 60. In sum, the Board finds that the affirmative provisions in the ALJ’s Recommended Decision are reasonably crafted to mitigate the unsafe or unsound practices identified in the Recommended Decision.

V. THE PARTIES’ EXCEPTIONS AND THE BANK’S REQUEST FOR ORAL ARGUMENT

After considering the Bank’s Request for Oral Argument and the entire record in this matter, the Board finds that (1) the factual and legal arguments are fully set forth in the parties’ submissions, (2) no benefit will be derived from oral argument, and (3) the Bank will not be prejudiced by the lack of oral arguments. The Board, therefore, declines to exercise its discretion under section 308.40 of the FDIC’s Rules, 12 C.F.R. § 308.40, and denies Request for Oral Argument.

The Board now turns to each party's Exceptions to the Recommended Decision. The Bank's Exceptions, which include 38 specific objections, can be broadly categorized as either: (1) objections to specific findings, or (2) challenges to various aspects of the proceedings including the ALJ's legal conclusions, and evidentiary rulings. Meanwhile, the primary theme emerging from Enforcement Counsel's Exceptions is that the Recommended Decision's proposed cease-and-desist order is insufficient to restore the Bank to a safe and sound condition because it does not include certain provisions set forth in the Revised C&D Order. The Board finds that the parties' Exceptions are, by and large, unconvincing, repetitious, and, in some instances, merely reargue issues raised below and adequately disposed of by the ALJ. As such, most do not justify further analysis. Although the Board finds that none of the exceptions raised by either party is compelling, the Board discusses below the exceptions that might, at first glance, prompt a closer look. In addition, the exceptions addressed are representative of the nature of each party's challenges to the proceedings and the Recommended Decision. Any exceptions not specifically discussed are denied.⁶

A. Bank's Exceptions

⁶ Both parties in their Exceptions include suggested corrections to the Recommended Decision. Based on our review of the record and the parties' proposed corrections, the Board finds that only one correction is warranted. Specifically because the final word "risk" is omitted from the phrase "(o) Operating the Bank with excessive economic value of equity" in the proposed C&D Order (R.D. at Appendix A, p. 2) it is corrected in the Board's final order to read "(o) Operating the Bank with excessive economic value of equity risk." The Board finds that the parties' remaining exceptions in this regard are without merit. See, e.g., Bank's Exceptions, p. 4 -7 (challenging the ALJ's findings that the Bank's earnings were a direct result of the amount of risk it was willing to tolerate) and Enforcement Counsel's Exceptions, p. 50 (arguing that the correct depreciation of the Bank's portfolio, in the event of a 200 basis point rate increase is \$82 million, not \$76 million, based on the 2008 ROE). That is, even if the parties are correct in their respective assertions, none of these alleged factual inaccuracies are material to the ALJ's factual findings or legal conclusions. Therefore, they require no further consideration. See *In the Matter of Michael D. Landry and Alton B. Lewis*, 1999 WL 440608 at *30 petition for review denied, *Landry v. FDIC*, 204 F.3d 1125 (D.C. Cir.), cert. denied, 531 U.S. 924 (2000).

The Bank's brief supporting its Exceptions discussed in depth its disagreement with several of the ALJ's evidentiary determinations. Specifically, the Bank asserts that the ALJ's findings with respect to its Internal Earnings Model, Dependency Ratio, and Tier 1 Leverage Capital Ratio were flawed and unsupported by the record. In addition, the Bank raised broad general exceptions that challenged many of the ALJ's evidentiary rulings and credibility assessments. As discussed below, the Board is not persuaded by the Bank's arguments on any of these issues.

Internal Earnings Model Exceptions

First, contrary to the ALJ's findings, the Bank claims that its Internal Earnings Model was accurate and effective. Bank's Exceptions at 7-17. However, the Recommended Decision provided ample evidence demonstrating that the Bank imprudently operated its Leverage Strategy with an excessive level of IRR exposure, in part, because it relied on deficient IRR models including the Bank's Internal Earnings Model. As found by the ALJ, the Internal Earnings Model failed to perform the types of ramp scenarios required by the Bank's own policies. R.D. at 23-24. The ALJ also considered the Bank's model inaccurate and ineffective because it relied on Bloomberg default analytics which the Bank itself considered flawed. R.D. at 24, 26-27. Although, the Bank does not dispute this characterization of its view of the Bloomberg data, it asserts that the FDIC required that it rely on Bloomberg. The ALJ addressed this point directly when he determined that the testimony at trial never established such a mandate by the FDIC. Notably, the ALJ credited Capital Markets Specialist Couch's testimony in this regard before finding that the Bank's model relied on inaccurate data. R.D. at 26, n. 33.

Dependency Ratio Exceptions

Likewise, the Board is not persuaded by the Bank's claim that the ALJ provided inadequate support for his findings and proposed remedies regarding the Bank's Dependency Ratio. First, the ALJ provided a detailed analysis of trial testimony and exhibits when determining that the Bank's 62.36 percent Dependency Ratio exceeded both the 45 percent limit set by the FDIC and the 50 percent limit set by the Bank's own policies. R.D. at 36. Moreover, the ALJ also observed that the Bank's Dependency Ratio exceeded the average Dependency Ratio for community banks in Oklahoma (16-20 percent), for all national banks (44.56 percent), for all banks (48.87 percent) and for all national banks in Oklahoma (49 percent). R.D. at 37, 38, n. 44. Significantly, the ALJ noted that FDIC examiners were advocating the 45 percent Dependency Ratio as early as 2006. R.D. at 36, n. 42.

Although he further observed that Enforcement Counsel did not offer hard figures to support the proposed 45 percent Dependency Ratio at trial, the ALJ accorded appropriate deference to the FDIC examiners' views on this topic. Courts have long recognized that bank examiners' unique experience leads to the conclusion that their determinations are entitled to great deference and cannot be overturned unless shown to be arbitrary and capricious or outside a "zone of reasonableness." *Sunshine State Bank v. FDIC*, 783 F.2d 1580, 1582-83 (11th Cir. 1986). The Board too has repeatedly recognized the great deference due to the opinions and conclusions of FDIC examiners. *See, e.g., In the Matter of First Bank of Jacksonville*, 1998 WL 363852 at *11 (FDIC), *aff'd mem.*, *First Bank of Jacksonville v. FDIC*, 180 F.3d 269 (11th Cir. 1999); *In the*

Matter of Bank 1st, Albuquerque, New Mexico, 2010 WL 1936984, at *3 (FDIC); In *the Matter of American Bank of the South, Merritt Island, Florida*, 1992 WL 813377, at *12-13 (FDIC). In this case, Enforcement Counsel presented expert testimony from Capital Markets Specialist Couch, a highly experienced FDIC examiner with more than 20 years of relevant experience, who explained that a Dependency Ratio is an indicator of potential liquidity risk and as a rule of thumb, the lower the Dependency Ratio the better. R.D. at 36. Under the standard described above, the findings, conclusions and predictive judgments of the FDIC's expert witnesses are entitled to considerable deference both in determining whether the practices at issue were unsafe and unsound and in what specific corrective action is appropriate.

Thus, the ALJ properly relied on the testimony of FDIC examiners, comparable statistics data, and other documentary evidence in the record in accepting Enforcement Counsel's recommendation for the lower, 45 percent Dependency Ratio limit. Likewise, the Board will not, in this regard, overlook Bank management's continuing failure over a period of many years to respond to FDIC's entreaties to reduce its IRR exposure. For all of these reasons, the Board finds that the Dependency Ratio provisions in the Recommended Decision are reasonable.

Tier 1 Leverage Capital Ratio Exceptions

Based on the reasoning above, the Board rejects the Bank's claim of insufficient evidence in support of the affirmative provision requiring that it maintain a 10 percent Tier 1 Leverage Capital Ratio. Before arriving at the 10 percent ratio sought in the Revised C&D Order, the ALJ carefully considered significant, available evidence including: the Bank's current Tier 1 Leverage Capital Ratio (8.61 percent), the expert

opinions at trial regarding the Bank's existing risk profile, and expert best estimates for potential Tier 1 Leverage Capital Ratio in light of the Bank's risk profile (11.5 percent).

The Recommended Decision provides substantial evidence establishing that the Bank's existing Tier 1 Leverage Capital Ratio of 8.61 percent was inadequate. The ALJ correctly credited EIC Jones, who opined that the Bank was operating with inadequate capital in light of its risk profile during the 2008 examination. R.D. at 47. Also, the ALJ acknowledged Capital Markets Specialist Couch's opinion that the Bank's Tier 1 Leverage Capital Ratio of 8.61 percent would be adequate if the Bank had been properly adhering to the Dependency Ratio and EVE limits specified as acceptable to the FDIC. R.D. at 49. In light of the 2008 ROE and the informed judgment and analyses of the FDIC officials that existing capital was inadequate, the Board sees no reason to second guess the ALJ's conclusion that a 10 percent Tier 1 Leverage Capital Ratio would be more "reasonable and appropriate" than the existing ratio. R.D. at 49. *See In the Matter of Marsha Yessick*, FDIC Enforcement Decisions and Orders ¶ 5270, A-3278 (2003); *In the Matter of Anderson County Bank, Clinton, Tennessee*, FDIC Enforcement Decisions and Orders ¶ 5165A, A-1734.4 (1991) (considerable deference and weight should be given to the opinions and conclusions of FDIC examiners); *accord Sunshine State Bank v. FDIC*, 783 F.2d 1580, 1582-83 (11th Cir. 1986); *Independent Bankers Ass'n of America v. Heimann*, 613 F. 2d 1164, 1169 (D.C. Cir. 1979).

The Bank's General Exceptions

Finally, the Board rejects the general arguments included in paragraphs 30 and 31 of the Bank's Exceptions challenging, among other things, the ALJ's reliance on FDIC witness testimony as well as his failure to rule in its favor in a series of motions. In this

regard, the Bank signals its continuing objections to the ALJ's May 19 and 20, 2009 orders that were the subject of the Bank's petition for interlocutory review. Although these exceptions raise no specific issue requiring review, the Board makes the following observations. First, the Board notes that FDIC Rule 308.5 confers upon the ALJ broad powers to conduct hearings in a fair, impartial and efficient manner. 12 C.F.R. § 308.5. Accordingly, it is well within the ALJ's discretion to make evidentiary rulings regarding the admission of evidence and the credibility of testimony. Moreover, under the standard discussed above, the findings, conclusions and predictive judgments of the FDIC's expert witnesses are entitled to considerable weight and deference in determining whether the Bank operated its Leverage Strategy with an unacceptable level of risk. *See, e.g., Sunshine State Bank*, 783 F.2d at 82-83; *Bank 1st*, 2010 WL 1936984, at *3 (FDIC). Finally, the Bank's claims that the proceedings were tainted or that it was denied due process as a result of the ALJ's evidentiary rulings—including his May 19, 2009 Order rejecting the Bank's spoliation of evidence arguments—is unfounded. The Board sees no reason to second guess the ALJ's conclusion that the Bank failed to demonstrate that it was denied access to any materially relevant records. Moreover, it bears repeating that parties do not have a constitutional right to discovery in administrative proceedings. *See, e.g., Sims v. National Transportation Safety Board v. Lopez*, 662 F. 2d 668, 6711 (10th Cir. 1981).

B. Enforcement Counsel's Exceptions

Enforcement Counsel's Exceptions focus principally on the affirmative provisions in the Recommended Decision's cease and desist order. Arguing that the Recommended Decision omits necessary affirmative requirements needed to return the Bank to safe and

sound operation, Enforcement Counsel submits that the Board should accept verbatim the affirmative provisions included in the Revised C&D Order. The Board disagrees and finds, in fact, that the ALJ's refusal to adopt wholesale each finding, conclusion and remedy set forth in the Amended Decision and Revised C&D Order is a testament to the fair-minded and careful approach he took in rendering his decision. The analysis in the Recommended Decision reflects the ALJ's thoughtful and objective evaluation of the evidence offered by both parties.

Therefore, the ALJ expressly declined to adopt in the Recommended Decision portions from the Revised C&D Order for which Enforcement Counsel failed to sustain its burden of proof. For example, the ALJ rejected the proposed provision preventing the Bank from paying dividends without the express approval of the Regional Director, because "[n]othing in the record suggests anything improper or unreasonable about dividends at all." R.D. at 59.⁷ Likewise, the ALJ found that the provision requiring a Management Staffing Study was inappropriate absent "an allegation or evidence that the Bank's management staff is inadequate or incapable of fulfilling its duties and responsibilities." R.D. at 59. He also omitted a recommended provision limiting salaries and bonuses, because the Amended Notice "does not allege, nor does the evidence show, that any officer or director has been paid an excessive salary or awarded an excessive bonus." R.D. at 59. As yet another example, the ALJ rejected a corrective action provision urged by Enforcement Counsel because "there is no allegation or evidence to support a provision requiring the Bank to develop a 'written analysis and assessment of the Bank's succession management strategy.'" R.D. at 60. Each of these examples

⁷ While restricting dividend payments may be one avenue for the Bank to increase its capital ratios as required, it may achieve this goal through a variety of other options including the sale of securities, direct cash contributions, or retained earnings.

illustrate that the ALJ conducted a careful review and analysis of the record before crafting affirmative provisions to apply to the Bank under these circumstances. Because the Board fully endorses the ALJ's balanced and measured approach, the Board finds no merit to Enforcement Counsel's complaints regarding the inadequacy of the affirmative provisions in the Recommended Decision. To the contrary, the Board finds that the affirmative provisions are thoughtfully tailored to address the unsafe or unsound practices identified in the Recommended Decision.

VI. CONCLUSION

Based upon its review of the record, the Board finds a preponderance of evidence supporting findings and conclusions that the Bank operated its Leverage Strategy in an unsafe and unsound manner. Because the Board agrees that all of the elements of section 8(b) have been proven, the Board concludes that a formal cease and desist order with affirmative action is justified. Although the FDIC has clear authority to issue a cease and desist order based on just a single finding of unsafe or unsound conduct, in this case a clear pattern of risky practices emerges from the record. In addition, the Board finds it significant that risky practices persisted over a period of years despite ongoing regulatory efforts to correct them and assurances from Bank management that it would comply.

The present circumstances illustrate a compelling need for both an order prohibiting the identified risky conduct and a corresponding plan to correct the resulting conditions. The affirmative provisions in the Recommended Decision were clearly designed to address each of the cited unsafe or unsound practices. The Board endorses the plan proposed by the ALJ because it clearly targets the Bank's operational and managerial deficiencies and provides what appears to be a reasonable, workable plan for

rehabilitation. The Board further observes that the order and corrective action plan are necessary because the record clearly demonstrates that Bank management, although operating under an MOU since 2004, failed to either develop suitable policies pursuant to the agreement or meaningfully respond to subsequent regulatory criticism.

Based on the foregoing, the Board affirms the Recommended Decision and adopts in full the findings of fact and conclusions of law therein; and issues the following Order implementing its Decision.

ORDER TO CEASE AND DESIST

The Board of the FDIC, having considered the entire record of this proceeding and finding that Frontier State Bank, Oklahoma City, Oklahoma (Bank), by act or omission, engaged in unsafe or unsound banking practices, hereby ORDERS and DECREES that the Bank, institution-affiliated parties of the Bank, as that term is defined in section 3(u) of the FDI Act, 12 U.S.C. § 1813(u), and its successors and assigns, cease and desist from the following unsafe or unsound banking practices:

- (a) Operating the Bank with inadequate level of capital protection for the inherent market risk in the assets held by the Bank;
- (b) Operating the Bank with inadequate investment management policies;
- (c) Operating the Bank with inadequate asset/liability funds management policies;
- (d) Operating the Bank with an inadequate contingency funding plan;
- (e) Operating the Bank with an inadequate funding strategy;
- (f) Failing to adhere to the Bank's Asset Growth Plan;
- (g) Operating the Bank with inadequate policies to monitor and control asset growth;
- (h) Operating the Bank with a heavy reliance on potentially volatile liabilities as a source for funding longer-term investments;
- (i) Operating the Bank without adequate liquidity in light of the Bank's asset and liability mix;
- (j) Operating the Bank without proper regard for funds management in light of the Bank's asset and liability mix;
- (k) Operating the Bank with an excessive level of interest rate risk;
- (l) Operating the Bank with inadequate interest rate risk measurement models;
- (m) Operating the Bank with inadequate interest rate risk measurement modeling;

- (n) Operating the Bank with excessive net non-core funding dependence ratio;
- (o) Operating the Bank with excessive economic value of equity risk;
- (p) Operating inconsistently with the Joint Agency Statement of Policy on Interest Rate Risk (June 26, 1996); and
- (q) Failure of the Bank's Board of Directors/Asset Liability Committee to adhere to Bank policies and to adequately manage and mitigate interest rate risk.

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

CAPITAL PLAN

1. (a) Within 30 days after the effective date of this ORDER, and for so long thereafter as this ORDER is outstanding, the Bank shall achieve and maintain, after establishing an Allowance for Loan and Lease Losses (ALLL) as required herein, Tier 1 Leverage Capital Ratio equal to or greater than 10 percent of its average Total Assets (Tier 1 Leverage Capital Ratio);

(b) If the Tier 1 Leverage Capital Ratio is less than 10 percent as determined anytime by the Federal Deposit Insurance Corporation (FDIC), the Oklahoma State Banking Department (State) or in a Call Report, the Bank shall, within 10 days, after receipt of a written notice of capital deficiency from the Regional Director, Dallas, Regional Office, FDIC (Regional Director) submit to the Regional Director and the Oklahoma State Banking Department Commissioner (Commissioner), a Capital Plan to increase the Capital Ratio to comply with paragraph 1 (a). Within 10 days after the Regional Director responds to the Capital Plan, the Bank shall adopt the Capital Plan, including any modifications or amendments requested by the Regional Director.

(c) To the extent such measures have not previously been initiated, the Bank shall immediately initiate measures detailed in the Capital Plan so that, within 10 days after the Regional Director responds to the Bank regarding the Capital Plan, the Capital Ratio addressed in paragraph 1(a) is at or above the minimum level. Any increase in capital necessary to meet the Capital Ratio required by this ORDER may be accomplished by:

- (i) The sale of securities in the form of common stock; or
- (ii) The direct contribution of cash subsequent to this ORDER by the directors and/or shareholders of the Bank; or
- (iii) The retention of the Bank's earnings subsequent to this ORDER;
or
- (iv) Receipt of an income tax refund or the capitalization subsequent to this ORDER of a bona fide tax refund certified as being accurate by a certified public accounting firm; or
- (v) Any other method approved by the Regional Director.

(d) If all or part of the increase in capital required by this ORDER is to be accomplished by the sale of new securities, the Bank shall adopt and implement a plan for the sale of such additional securities, including soliciting proxies and the voting of any shares or proxies owned or controlled by them in favor of the plan. Should the implementation of the plan involve a public distribution of the Bank's securities (including a distribution limited only to the Bank's existing shareholders), the Bank shall prepare offering materials fully describing the securities being offered, including an accurate description of the financial condition of the Bank and the circumstances giving

rise to the offering, and any other material disclosures necessary to comply with Federal securities laws. Prior to the implementation of the Capital Plan, and in any event, not less than 20 days prior to the dissemination of such materials, the Capital Plan and any materials used in the sale of the securities shall be submitted for review to the FDIC, Accounting and Securities Disclosure Section, Washington, D.C. 20429. The Bank shall make any changes requested by the FDIC prior to dissemination of the Capital Plan or the materials. If the increase in capital is to be provided by the sale of non-cumulative perpetual preferred stock, the Bank shall present all terms and conditions of the issue to the Regional Director for prior approval.

(e) In complying with the provisions of this ORDER and until such time as any such public offering is terminated, the Bank shall provide to any subscriber and/or purchaser of the Bank's securities written notice of any planned or existing development or other change which is materially different from the information reflected in any offering materials used in connection with the sale of the Bank's securities. The Bank shall furnish the written notice required by this paragraph within 10 days after the date such material development or change was planned or occurred, whichever is earlier. The Bank shall furnish such notice to every purchaser and/or subscriber who received or was tendered the information contained in the Bank's original offering materials.

(f) For the purposes of this ORDER, all terms relating to capital shall be as defined in Part 325 of the FDIC's Rules and Regulations, respectively sections 325.2(a), (v), and (x), 12 C.F.R. §§ 325.2(a), (v), and (x) and shall be calculated according to the methodology set forth in the April 7, 2008, Report of Examination of the Bank and/or Part 325 of the FDIC Rules and Regulations.

GROWTH PLAN

2. As of the effective date of this ORDER, and for so long thereafter as

this ORDER is outstanding, the Bank shall not increase its Total Assets by more than five (5) percent during any consecutive six-month period without obtaining the prior written consent of the Regional Director and without submitting an Asset Growth Plan to the Regional Director for review and comment. Such plan shall also be forwarded to the Commissioner. At a minimum, the Asset Growth Plan shall include the funding source to support the projected growth, as well as the anticipated use of funds and shall be submitted at least 60 days before implementation. Within 10 days after the Regional Director responds to the Asset Growth Plan, the Bank shall adopt the Asset Growth Plan, including any modification or amendments requested by the Regional Director. In no event shall the Bank increase its Total Assets by more than ten (10) percent annually.

INVESTMENT MANAGEMENT POLICY

3. (a) Within 30 days after the effective date of this ORDER, the Bank shall revise the Bank's Investment Management Policy (IM Policy) to provide effective guidelines and control over the Bank's investment portfolio. At a minimum, the IM Policy shall:

(i) Establish ratios sufficient to protect the Bank against excessive interest rate risk, including a Dependency Ratio equal to or less than 45 percent; and Economic Value of Equity Limits equal to or less than the following:

(1) +/- 100 bps – 20 percent

(2) +/- 200 bps – 40 percent

(3) +/- 300 bps – 70 percent

(ii) Establish procedures for securities risk analysis;

- (iii) Identify position limits;
- (iv) Require performance review of investment portfolio;
- (v) Develop a contingency funding plan;
- (vi) Establish procedures for purchasing and analyzing, on an ongoing basis, non-agency CMO's (also frequently referred to as private label mortgage backed securities PLMBS);
- (vii) Require the assessment by an independent third party of whether the Bank has the necessary quantitative tools, valuation models and stress tests of sufficient complexity in place before purchasing additional nonagency CMO's; and
- (viii) Adopt formal portfolio and individual bond limits for specific credit criteria such as acceptable credit support levels, mortgage loan type, geographic concentrations, coverage ratios, loan documentation standards, credit scores, and loan- to-value.

(b) The IM Policy should also be consistent with the Federal Financial Institutions Examination Council's instructions for Consolidated Reports of Condition and Income, Generally Accepted Accounting Principles, and in compliance with FDIC Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities (May 26, 1998).

(c) The Bank shall submit the IM Policy to the Regional Director for review and comment. Within 10 days after the Regional Director responds to the IM Policy, the Bank shall adopt the IM Policy, including any modification or amendments requested by the Regional Director.

(d) To the extent the IM Policy, including any modifications or amendments requested by the Regional Director, has not previously been initiated, the Bank shall immediately initiate measures detailed in the IM Policy. The minutes of the Bank's board of directors' meeting shall fully describe any discussion of the IM Policy, its modifications or amendments.

(e) For so long as this ORDER is outstanding, the Bank shall review the IM Policy, annually, for adequacy and, based upon such review, shall make necessary revisions to the Policy.

(f) Within 10 days from the effective date of this ORDER, the Bank shall review their interest rate risk models and the attendant modeling process. This review shall encompass criticisms noted in the Recommended Decision or FDIC Final Decision. The current models utilized by the Bank are insufficient in measuring both risk to earnings and economic value of equity (EVE) given the complexity of the Bank's balance sheet; thus, subsequent to this review, the Bank will procure and implement interest rate risk models that are capable of measuring both risk to earnings and EVE given the complexity of the Bank's balance sheet. The Bank will also implement an effective control process that will insure the integrity of the modeling process and conform to the requirements discussed in the Joint Agency Statement of Policy on Interest Rate Risk (June 26, 1996).

STRATEGIC PLAN

4. (a) Within 30 days after the effective date of this ORDER, the Bank shall prepare and adopt a comprehensive written Strategic Plan. The Strategic Plan required by this paragraph shall contain an assessment of the Bank's current financial condition and

market area, and a description of the operating assumptions that form the basis for major projected income and expense components.

(b) The Strategic Plan shall address, at a minimum:

- (i) Strategies for pricing policies and asset/liability management;
- (ii) Plans for sustaining adequate liquidity, including backup lines of credit to meet any unanticipated deposit withdrawals;
- (iii) Goals for reducing interest rate risk exposure and volatile liability dependence;
- (iv) Financial goals, including pro forma statements for asset growth, capital adequacy, and earnings; and
- (v) Formulation of a mission statement and the development of a strategy to carry out that mission.

(c) The Bank shall submit the Strategic Plan to the Regional Director for review and comment. Within 10 days after the Regional Director responds, the Bank shall adopt the Strategic Plan, including any modifications or amendments requested by the Regional Director.

(d) To the extent the Strategic Plan, including any modifications or amendments requested by the Regional Director, has not previously been initiated, the Bank shall immediately initiate measures detailed in the Strategic Plan. The minutes of the Bank's board of directors' meeting shall fully describe any discussion of the Strategic Plan, its modifications or amendments.

(e) Within 15 days from the end of each calendar quarter following the effective date of this ORDER, the board of directors shall evaluate the Bank's

performance in relation to the Strategic Plan required by this paragraph, and record the results of the evaluation, and any actions taken by the Bank, in the minutes of the board of directors' meeting at which such evaluation is undertaken.

(f) While this ORDER is in effect, the Strategic Plan required by this ORDER shall be revised and submitted to the Regional Director for review and comment within 15 days after the end of each calendar year. Within 10 days after the Regional Director responds, the Bank shall adopt the revised Strategic Plan, including any modifications or amendments requested by the Regional Director.

(g) To the extent the Strategic Plan, including any modifications or amendments requested by the Regional Director, has not previously been initiated, the Bank shall immediately initiate measures detailed in the Strategic Plan. The minutes of the Bank's board of directors' meeting shall fully describe any discussion of the Strategic Plan, its modifications or amendments.

INTEREST RATE RISK POLICY

5. (a) Within 30 days after the effective date of this ORDER, the Bank shall submit to the Regional Director, for review and comment, a written Interest Rate Risk Policy and Procedures (IRR Policy).

(b) The IRR Policy shall include, at a minimum:

(i) Measures designed to control the nature and amount of interest rate risk the Bank takes, including those that specify risk limits and define lines of responsibility and authority for managing risk;

(ii) An effective system to identify and measure interest rate risk;

(iii) An effective system to monitor and report risk exposures;

(iv) Effective interest rate risk measurement models (earnings and economic value of equity);

(v) Effective interest rate risk measurement modeling (earnings and economic value of equity);

(vi) Effectively measure risk to net interest income and net income by conducting:

(a) An immediate interest rate shock analysis;

(b) An interest rate stress analysis;

(c) A 100 basis point parallel and non-parallel rate change analysis;

(d) A 200 basis point parallel and non-parallel rate change analysis;

(e) A 300 basis point parallel and non-parallel rate change analysis; and

(vii) A system of internal controls, reviews, and audits to ensure the integrity of the overall risk management process.

(c) Within 10 days after the Regional Director responds, the Bank shall adopt the IRR Policy, including any modifications or amendments requested by the Regional Director.

(d) The Bank shall immediately initiate measures detailed in the IRR Policy, as amended or modified to the extent the IRR Policy has not previously been initiated. The minutes of the board of directors' meeting shall fully describe any discussion of the IRR

Policy, its modifications or amendments.

(e) For so long as this ORDER is outstanding, the Bank shall review the IRR Policy, annually, for adequacy and, based upon such review, shall make necessary revisions to the IRR Policy to strengthen funds management procedures.

DEPENDENCY PLAN

6. (a) Within 30 days after the effective date of this ORDER, the Bank shall submit to the Regional Director, for review and comment, a written Dependency Plan that describes the means and timing by which the Bank shall achieve and maintain a net non-core funding dependency ratio equal to or less than 45 percent (Dependency Plan). The methodology the Bank shall use for computing the dependency ratio is set forth in the Uniform Bank Performance Report User Guide, Page II-5, March 2006. The Dependency Plan shall state that the Bank's dependency ratio as noted in this paragraph is a maximum ratio for compliance with this ORDER. The Bank shall continue to reduce the Bank's dependency ratio below 45 percent.

(b) The Bank shall submit the Dependency Plan to the Regional Director for review and comment. Within 10 days after the Regional Directors responds, the Bank shall adopt the Dependency Plan, including any modifications or amendments requested by the Regional Director.

(c) The Bank shall immediately initiate measures detailed in the Dependency Plan, as amended or modified, to the extent the Bank has not initiated such measures. The minutes of the Bank's board of directors' meeting shall fully describe any discussion of the Dependency Plan its modifications or amendments.

ECONOMIC VALUE OF EQUITY PLAN

7. (a) Within 30 days after the effective date of this ORDER, the Bank shall submit, for review and comment, a written plan to the Regional Director reflecting the means and timing by which the Bank shall achieve and maintain the following EVE limits in both a parallel and non-parallel interest rate change: 1) for a 100 basis point increase or decrease in interest rates, the Bank's EVE cannot vary more than 20 percent or be less than 5.6 percent Tier I Leverage Capital; 2) for a 200 basis point increase or decrease in interest rates, the Bank's EVE cannot vary more than 40 percent or be less than 4.2 percent Tier I Leverage Capital; 3) for a 300 basis point increase or decrease in interest rates, the Bank's EVE cannot vary more than 70 percent or be less than 2.1 percent Tier I Leverage Capital (EVE Plan).

(b) Within 10 days after the Regional Director responds, the Bank shall approve the EVE Plan, including any modifications or amendments requested by the Regional Director.

(c) The Bank shall immediately initiate measures detailed in the EVE Plan, as amended or modified, to the extent the Bank has not initiated such measures. The minutes of the Bank's board of directors' meeting, shall fully describe any discussion of the EVE Plan, its modifications or amendments.

(d) Annually thereafter, while this ORDER is in effect, the Bank shall review the EVE Plan for adequacy and, based upon such review, shall make necessary revisions to the Plan.

ASSET/LIABILITY MANAGEMENT POLICY

8. (a) Within 30 days after the effective date of this ORDER, the Bank shall submit to the Regional Director for review and comment a revised Asset/Liability Management Policy (ALM Policy) addressing rate sensitivity objectives, liquidity and

asset/liability management.

(b) The ALM Policy shall, at a minimum:

- (i) Establish a net non-core funding dependency ratio in accordance with paragraph 6 of this ORDER;
- (ii) Establish an EVE range in accordance with paragraph 7(a) of this ORDER;
- (iii) Identify the source and use of borrowed and/or volatile funds;
- (iv) Address the use of borrowed funds and provide for reasonable maturities commensurate with the use of the borrowed funds;
- (v) Address concentration of funding sources;
- (vi) Address pricing and collateral requirements with specific allowable funding sources;
- (vii) Establish procedures for managing the Bank's sensitivity to interest rate risk that complies with the Joint Agency Statement of Policy on Interest Rate Risk (June 26, 1996);
- (viii) Establish contingency plans by identifying alternative course of action designed to meet the Bank's liquidity needs; and
- (ix) Encompass the provisions listed in the FDIC Risk Management Manual of Examination Policies, Section 6.1, Liquidity and Funds Management, Liquidity Contingency Plan and in FIL-84-2008 Liquidity Risk Management (Contingency Funding Plans).

(c) Within 10 days after the Regional Director responds, the Bank shall adopt the ALM Policy, including any modifications or amendments requested by the Regional Director.

(d) The Bank shall immediately initiate measures detailed in the ALM Policy, as amended or modified, to the extent the Bank has not initiated such measures. The minutes of the board of directors' meeting shall fully describe any discussion of the ALM Policy, its modifications or amendments.

(e) Annually thereafter while this ORDER is in effect, the Bank shall review the ALM Policy for adequacy and, based upon such review, shall make necessary revisions to the ALM Policy to strengthen funds management procedures.

PROGRESS REPORTS

9. Within 15 days after the end of the first calendar quarter following the effective date of this ORDER, and within 15 days after the end of each successive calendar quarter, the Bank shall furnish written progress reports to the Regional Director detailing the form and manner of any actions taken to secure compliance with this ORDER and the results thereof. The Bank may discontinue submitting the reports when the Bank accomplishes the corrections required by the ORDER and the Regional Director has released the Bank in writing from making additional reports.

IT IS FURTHER ORDERED that copies of this Decision and Order shall be served on the Bank; counsel for all parties; the ALJ; and the Commissioner, Oklahoma State Banking Department.

This ORDER shall become effective thirty (30) days after it is served upon the

Bank. The Bank, its successors and assigns, and all institution-affiliated parties of the Bank are bound by this ORDER. The provisions of this ORDER shall remain effective and enforceable except to the extent, and until such time that, the FDIC modifies, terminates, supersedes or sets aside any provision of this ORDER.

By direction of the Board of Directors.

Dated at Washington, D.C. this 12th day of April, 2011.

/s/

Robert E. Feldman
Executive Secretary

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