

FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

and

TEXAS DEPARTMENT OF BANKING
AUSTIN, TEXAS

_____)	
In the Matter of)	CONSENT ORDER
)	
HERRING BANK)	
AMARILLO, TEXAS)	FDIC-21-0066b
)	
)	COMMISSIONER ORDER No. 2021-015
(INSURED STATE NONMEMBER BANK))	
_____)	

The Federal Deposit Insurance Corporation (“FDIC”) is the appropriate Federal banking agency for HERRING BANK, AMARILLO, TEXAS (“Bank”), under 12 U.S.C. § 1813(q). The Texas Department of Banking (“Department”) is the appropriate state banking agency for the Bank, under Texas Finance Code, Title 3, Subtitle A, §§ 31.001 et. seq.

The Bank, by and through its duly elected and acting board of directors (“Board”), has executed a STIPULATION TO THE ISSUANCE OF A CONSENT ORDER (“STIPULATION”), dated October 4, 2021, that is accepted by the FDIC and the Department. With the STIPULATION, the Bank has consented, without admitting or denying any charges of unsafe or unsound banking practices or violations of law or regulation relating to, among other things, weaknesses in board and management oversight, capital, and liquidity, to the issuance of this CONSENT ORDER (“ORDER”) by the Deputy Regional Director of the Dallas Regional Office of the FDIC (“Regional Director”) and the Texas Banking Commissioner (“Commissioner”).

Having determined that the requirements for issuance of an order under 12 U.S.C. § 1818(b) and Texas Finance Code § 35.002 have been satisfied or waived, the FDIC and the Commissioner hereby order that:

COMPOSITION OF BOARD

1. (a) Within ninety (90) days of the effective date of this Order, the Board shall develop a plan to strengthen the Board by obtaining additional external directors such that the Board will be comprised by a majority of external directors. The plan must include a time frame for onboarding external directors. For purposes of this Order, a person who is an external director shall be any individual:

- i. Who is not an officer of the Bank;
- ii. Who does not own more than 5 percent of the outstanding shares of the Bank;
- iii. Who is not related by blood or marriage to an officer or Director of the Bank or to any shareholder owning more than 5 percent of the Bank's outstanding shares, and who does not otherwise share a common financial interest with such officer, Director, or shareholder; and
- iv. Who is not indebted to the Bank directly or indirectly by blood, marriage, or common financial interest, including the indebtedness of any entity in which the individual has a substantial financial interest in an amount exceeding 5 percent of the Bank's total Tier 1 Capital and Allowance for Loan and Lease Losses; or
- v. Who is deemed to be an external director for purposes of this Order by the Regional Director and the Commissioner.

(b) The plan outlining the specific composition of the proposed Board must be approved by the Regional Director and Commissioner prior to any changes being made.

BOARD SUPERVISION

2. Within thirty (30) days of the effective date of this Order, the Bank's Board shall increase its participation in Bank affairs by assuming responsibility for the approval of the Bank's policies and objectives and for the oversight of the Bank's executive and senior management, including approval of a process to monitor all the Bank's activities and compliance with the Bank's Board-approved policies.

The Board's participation in the Bank's affairs shall include, at a minimum, holding monthly meetings to monitor the overall condition of the Bank, its risk profile, and compliance with internal policies, regulations, statutes, statements of policy, and rules. Board reviews and approvals shall include, but are not limited to:

- a) Regulation W reports;
- b) Audit reports;
- c) Reports of income and expenses;
- d) Waived and Refunded Account fees;
- e) Overdraft reports;
- f) Investment activities;
- g) Operating policies and procedures;
- h) Committee actions;
- i) Bank Secrecy Act / Anti-Money Laundering reports;
- j) Information Technology / Cybersecurity reports; and
- k) Exceptions to law and internal policies.

3. Within ninety (90) days of the effective date of this Order, the Board shall:

- a) Participate in an enhanced training program on their duties and responsibilities as directors in order to ensure the safe and sound operation of the institution;
- b) Attend specialized training regarding Section 23A and Section 23B of the Federal Reserve Act and the Federal Reserve Board's Regulation O;
- c) Document in the Board's meeting minutes the subject matter addressed in the training session, date of training session, and who completed the training after each session.

The Board training program must be ongoing, updated, and conducted at least annually. Annually thereafter, while this Order is in effect, the Board will notify, in writing, the Regional Director and Commissioner of the details of the planned training sessions for the next calendar year.

MANAGEMENT

4. The Bank shall have and retain qualified management. Each member of management shall possess qualifications and experience commensurate with his or her duties and responsibilities at the Bank. The qualifications of management personnel shall be evaluated on their ability to:

- a) Comply with the requirements of the Order;
- b) Operate the Bank in a safe and sound manner;
- c) Comply with applicable laws and regulations; and
- d) Restore all aspects of the Bank to a safe and sound condition, including improve the Banks's capital adequacy, management effectiveness, and liquidity.

5. While this Order is in effect, the Board shall notify the Regional Director and the Commissioner in writing prior to any changes in any of the Bank's directors or Senior Executive Officer. The notification must include the name(s) and background(s) of any replacement personnel and must be provided thirty (30) days prior to the individual(s) assuming the new position(s). For purposes of this ORDER, "Senior Executive Officer" is defined as in § 303.101(b) of the FDIC's Rules and Regulations, 12 C.F.R. § 303.101(b). Prior to the addition of any individual to the Board or the employment of any individual as a Senior Executive Officer, the Bank shall comply with the requirements of Section 32 of the Act, 12 U.S.C. § 1831i, and Subpart F of Part 303 of the FDIC's Rules and Regulations, 12 C.F.R. §§ 303.100 - 303.103. Additionally, the Bank will obtain the written approval of the Commissioner prior to removing any executive officers or directors. Additionally, the Commissioner shall have the power to disapprove the appointments of any proposed new director and any new Senior Executive Officer. However, the lack of disapproval of such of such individual shall not constitute an approval or endorsement of the proposed director or Senior Executive Officer.

AFFILIATE POLICY

6. (a) Within thirty (30) days from the effective date of this Order, the Board must develop and submit for review a written policy that shall govern the relationship between the Bank and its holding company and any other Bank affiliate ("Affiliate Policy"). For purposes of this provision, the term "affiliate" is defined as set forth in Sections 23A and 23B of the Federal Reserve Act and its implementing regulation, Regulation W of the Board of Governors of the Federal Reserve system, 12 C.F.R. Part 223. The Affiliate Policy must limit the payment of any management, consulting, or other fees or funds of any nature, directly or indirectly, to or for the benefit of the Bank's holding company and any Bank affiliate to only those fees or funds paid in

connection with contractual and necessary services actually performed by the holding company or Bank affiliate on behalf, or for the benefit, of the Bank.

(b) The Affiliate Policy must be submitted to the Regional Director and the Department for non-objection or comment. Within thirty (30) days from receipt of non-objection or any comments from the Regional Director and the Department, and after incorporation and adoption of all comments, the Board must approve the Affiliate Policy, which approval must be recorded in the minutes of the Board meeting. Thereafter, the Board must implement and fully comply with the Affiliate Policy.

AFFILIATE TRANSACTIONS

7. The Bank shall not extend credit to or for the benefit of an affiliate, nor purchase assets for, or enter into any contract or agreement with an affiliate to purchase assets unless the transactions are in full compliance with Sections 23A and 23B of the Federal Reserve Act and its implementing regulation, Regulation W of the Board of Governors of the Federal Reserve system, 12 C.F.R. Part 223; the transaction(s) comply with the Bank's policies; the transactions are supported by appropriate credit analysis; the Bank has determined that the customers are creditworthy, the Bank has obtained all necessary documentation prior to approval and consummation of the transaction; terms, and conditions are at prevailing market rates; and the Board has given prior approval, as noted in the minutes, for the transaction.

CODE OF ETHICS

8. Within thirty (30) days of the effective date of this Order, the Board shall amend the Bank's Code of Ethics Policy to include the following:

- a) Full disclosure to the Board of any potential conflicts of interest before any transactions are conducted with insiders, family members, affiliates of insiders, or shareholders;
- b) Prior approval by the Bank's Board of any transaction with an insider (as defined by Regulation O, 12 C.F.R. Part 215) based on a documented analysis of a detailed and current financial statement;
- c) Documentation that the interested party abstained from voting on any extension of credit covered by Regulation O as required by 12 C.F.R. § 215.4;
- d) Documentation to support that insider transactions as well as transactions with family members are performed at arms-length; and
- e) Documentation in the Board minutes of any deliberation that took place in the Board meeting regarding actual or potential insider-related transactions.

AUDIT AND INTERNAL ROUTINES AND CONTROLS

- 9. Within thirty (30) days after the effective date of this Order, the Bank's Board shall:
 - a) Revise its internal control program to address the internal control deficiencies detailed in the Report of Examination as of March 22, 2021; and
 - b) Develop and implement procedures that prevents insiders from circumventing internal routines and controls.

COMPLIANCE COMMITTEE

- 10. Within thirty (30) days of the effective date of this Order, the Bank's Board shall establish a subcommittee of the Bank's Board charged with the responsibility of ensuring that the Bank complies with the provisions of this Order. The subcommittee shall report monthly to the entire Board of Directors of the Bank, and a copy of the report and any discussion related to the

report or the Order shall be included in the minutes of the Bank's Board meetings. The establishment of this committee shall not diminish the responsibility or liability of the entire Bank's Board to ensure compliance with the provisions of this Order.

VIOLATIONS OF LAW AND REGULATIONS

11. (a) Within sixty (60) days of the effective date of this Order, the Board shall eliminate and/or correct, all apparent violations of laws or non-conformance with applicable rules and regulations noted in the Report of Examination of the Bank as of March 22, 2021.

(b) Within sixty (60) days of the effective date of this Order, the Board shall implement procedures to ensure future compliance with all applicable laws and regulations.

BUSINESS PLAN

12. While this Order is in effect, the Board shall not enter into any new line of business without the prior written consent of the Regional Director and the Commissioner.

FINANCIAL REPORTING

13. Within thirty (30) days after the effective date of this Order, the Board shall review Consolidated Reports of Condition and Income filed with the FDIC on or after December 31, 2019, and amend said reports if necessary to accurately reflect the financial condition of the Bank as of the date of each such report. Reports filed after the effective date of this Order shall also accurately reflect the financial condition of the Bank as of the reporting date.

ASSET/LIABILITY MANAGEMENT

14. (a) Within sixty (60) days after the effective date of this Order, the Board shall develop and submit to the Regional Director and the Commissioner for review and comment a written plan addressing asset/liability management. Annually thereafter, while this Order is in effect, the Board shall review this plan for adequacy and, based upon such review, shall make

necessary revisions to the plan to strengthen funds management procedures. The initial plan shall include, at a minimum, provisions:

- i. Limiting the Bank's ratio of loans to total deposits to not more than 85 percent;
- ii. Establishing a reasonable range for its net non-core funding ratio as computed in the Uniform Bank Performance Report;
- iii. Identifying the source and use of borrowed and/or volatile funds;
- iv. Requiring the retention of securities and/or other identified categories of investments that can be liquidated within one day in amounts sufficient (as a percentage of the Bank's total assets) to ensure the maintenance of the Bank's liquidity posture at a level consistent with short- and long-term liquidity objectives;
- v. Establishing a minimum liquidity ratio and defining how the ratio is to be calculated;
- vi. Establishing contingency plans by identifying alternative courses of action designed to meet the Bank's liquidity needs;
- vii. Developing comprehensive stress testing scenarios that capture low, moderate, and severe liquidity events in addition to specifically including a scenario for deterioration in capital levels; and
- viii. Establishing projections of cash flows arising from assets, liabilities, and off-balance sheet items over an appropriate set of time horizons.

(b) Within thirty (30) days after the receipt of all such comments from the Regional Director and the Commissioner, and after revising the plan as necessary, the Board shall

adopt the plan, which adoption shall be recorded in the minutes of a Board meeting. Thereafter, the Board shall implement the plan.

CAPITAL MAINTENANCE

15. (a) Within sixty (60) days after the effective date of this Order and while this Order is in effect, the Board, after establishing an Allowance for Loan and Lease Losses, shall maintain its Tier 1 Leverage Capital ratio equal to or greater than 10 percent of the Bank's Average Total Assets, and shall maintain its Total Risk-Based Capital ratio equal to or greater than 13 percent of the Bank's Total Risk Weighted Assets.

(b) Should the Board elect to opt into the Community Bank Leverage Ratio framework, as defined in 12 C.F.R. §324.12, the minimum leverage ratio will be greater than 9 percent and will be replaced with the minimum described in provision (a) above, and as long as the leverage ratio is maintained then it will be assumed that the Bank is in compliance with the Total Capital ratio and there will be no requirement for the Bank to calculate. Regardless, these ratios shall be achieved and maintained through retention of earnings, collection of charged-off assets, reduction in total assets, sale of new equity, or any combination thereof. Any increase in Tier 1 Capital necessary to meet the capital maintenance requirements of this Order may not be accomplished through a deduction from the Bank's Allowance for Loan and Lease Losses.

(c) If any such capital ratios are less than required by the Order, as determined as of the date of any Report of Condition and Income or at an examination by the FDIC or the Department, the Board shall, within thirty (30) days after receipt of a written notice of the capital deficiency from the Regional Director or the Commissioner, present to the Regional Director and the Commissioner a plan to increase the Bank's Tier 1 Capital of the Bank or to take such other measures to bring all the capital ratios to the percentages required by this Order. After the Regional

Director and the Commissioner respond to the plan, the Bank's Board shall adopt the plan, including any modifications or amendments requested by the Regional Director and the Commissioner.

(d) Thereafter, to the extent such measures have not previously been initiated, the Board shall immediately initiate measures detailed in the plan, to increase its Tier 1 Capital by an amount sufficient to bring all the Bank's capital ratios to the percentages required by this Order within thirty (30) days after the Regional Director and the Commissioner respond to the plan. Such increase in Tier 1 Capital and any increase in Tier 1 Capital necessary to meet the capital ratios 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 January 31, 2021, by the directors and/or shareholders of the Bank or by the Bank's holding company; or
- iii. Receipt of an income tax refund or the capitalization subsequent to January 31, 2021, of a bone fide tax refund certified as being accurate by a certified public accounting firm; or
- iv. Any other method approved by the Regional Director and the Commissioner.

DIVIDEND RESTRICTION

16. As of the effective date of this Order, the Board shall not declare or pay any cash dividend without the prior written consent of the Regional Director and the Commissioner.

LOANS TO INSIDERS

17. As of the effective date of this Order, no new loan(s) or other extension(s) of credit

should be granted to or for the benefit of Bank directors, executive officers, principal shareholders, or their "related interests," (as such terms are defined in section 215.2 of Regulation O of the Board of Governors of the Federal Reserve System, 12 C.F.R. § 215.2), referred to collectively as "insiders", without first providing the Regional Director and the Commissioner with 15 days prior written notice of the anticipated action, and unless the new loan(s) or other extension(s) of credit is/are in full compliance with the Bank's loan, Code of Ethics, and other applicable policies; underwriting and documentation requirements; and this Order. For purposes of this section, "for the benefit of" includes loans or extensions of credit to third parties where the proceeds of the loan or extension of credit flows to, or tangibly benefits, an insider. The Board must review and give prior approval for all new loan(s) and other extension(s) of credit, and this review and approval must be documented in the applicable Board minutes. The minutes must document that the new loan(s) or other extension(s) of credit is/are in full compliance with the Bank's loan, ethics, and other applicable policies; underwriting and documentation requirements; and the requirements of this Order.

REDUCTION OF ADVERSELY CLASSIFIED LOANS TO INSIDERS

18. (a) Within thirty (30) days after the effective date of this Order, the Board shall prepare and submit to the Regional Director and the Commissioner for review and comment a written plan to fully eliminate the loans or other extensions of credit advanced, directly or indirectly, to or for the benefit of Bank directors, executive officers, principal shareholders, or their related interests which were adversely classified in the Report of Examination as of March 22, 2021. For purposes of the plan, these terms shall be defined pursuant to Section 215.2 of Regulation O, 12 C.F.R. §215.2. Such plan shall include, but not be limited to:

i. Dollar levels to which the Bank shall reduce each extension of credit within three (3) months after the effective date of this Order; and

ii. Provisions for the submission of monthly progress reports to the Bank's Board for review and notation in minutes of the meetings of the Board. As used in this paragraph, "reduce" means to:

- A. Charge-off,
- B. Collect, or
- C. Improve the quality of such assets to warrant removal of any adverse classification by the FDIC and the Department.

(b) After the Regional Director and the Commissioner have responded to the plan, the Bank's Board shall adopt the plan as amended or modified by the Regional Director and the Commissioner. The plan will be implemented immediately to the extent that such provisions are not already in effect at the Bank.

ALLOWANCE FOR LOAN AND LEASE LOSSES

19. Within thirty (30) days after the effective date of this Order, the Board must use Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Numbers 450 and 310 for determining the Bank's Allowance for Loan and Lease Losses reserve adequacy. Provisions for loan losses must be based on the inherent risk in the Bank's loan portfolio. The directorate must document with written reasons any decision not to require provisions for loan losses in the Board minutes.

INFORMATION TECHNOLOGY

20. Effective immediately, the Board shall remove non-Bank employees' user access rights to the entire Bank's network system including databases. In addition, anyone with access

to the Bank's network via a personal account that is not fully supported and documented for a valid business need must be removed.

21. Within ninety (90) days after the effective date of this Order, the Board shall perform a risk assessment for each of the Bank's information technology systems. This assessment shall include, at a minimum, the main banking serviced application, the Local Area Network (LAN) (including firewall and intrusion protection systems), the Internet banking application and other electronic banking products, and payments systems including but not limited to the wire transfer and ACH systems. Furthermore, the risk assessment for each item listed shall identify all controls in place to mitigate the inherent risks. This assessment shall be presented to the Board and maintained for review by auditors and examiners.

22. Within sixty (60) days after the effective date of this Order, the Board shall develop and formalize comprehensive policies and procedures to address security and operational controls of the Bank's Information Technology area. Formal policies should at a minimum address:

- a) Operations;
- b) User access security administration and periodic access level reviews;
- c) Controls and monitoring of remote user activity;
- d) Establish clear assignments of duties;
- e) Segregation of duties and controls;
- f) Management oversight and monitoring of automated activities;
- g) Align with management's information security strategy; and
- h) Audit of the main banking application activities, the Bank's network (LAN), microcomputers, wire transfer systems, and electronic, PC, and telephone banking applications.

23. Within ninety (90) after the effective date of this Order, the Board shall develop a Cybersecurity Program to ensure mitigating controls are implemented and determine the Bank's level of preparedness and resiliency for cyber-attack risk. The Board should select a risk assessment framework that is suitable to the Bank's risk profile to determine its level of readiness and ensure appropriate mitigating controls are in place. The Cybersecurity Program shall be submitted to the Regional Director and the Commissioner for review and comment upon its completion. Within thirty (30) days from the receipt of any comments from the Regional Director and the Commissioner, and after the adoption of any recommended changes, the Board shall approve the Cybersecurity Program and record its approval in the minutes of the Board's meeting.

24. Within ninety (90) days after the effective date of this Order, the Board shall develop and implement a risk-based audit program which also includes systems and databases in which the risk assessment results are integrated into the audit program annually. The audit program must identify the scope, type, and frequency of various types of IT audits that will be performed.

25. Within ninety (90) days after the effective date of this Order, the Board shall engage a qualified, independent forensic firm to conduct an extensive audit on the Bank's systems including databases to identify changes that may have been made and to identify the legitimacy of the reason for the changes.

26. Within sixty (60) days after the effective date of this Order, the Board shall formalize a process to identify and evaluate the business needs of the assigned users, including new employees, IT outsourcing relationships, and contractors. The Board shall schedule and complete an independent review of user access rights ensuring assigned access rights are in alignment with job roles and responsibilities, and based upon the principle of least privilege.

27. Within ninety (90) days after the effective date of this Order, the Board shall implement secure control authorizations for privilege users. Furthermore, the Board shall implement effective monitoring procedures for user activity, including independent reviews of transaction logs and activity logs on critical systems. Finally, the Board or Board approved committee shall review system generated reports to identify any unusual or unauthorized activities by users and immediately report those activities to the Board or appropriate committee to initiate the Bank's Incident Response Plan.

28. Within sixty (60) days after the effective date of this Order, the Board shall develop policies addressing detection of unauthorized insider activities within the Bank's Production Incident Response Policy. Additionally, the Board shall define procedures to declare and respond to unauthorized insider activity.

29. Within one-hundred and twenty (120) days after the effective date of this Order, the Board shall formally develop a project management program and procedures to define requirements for development procedures, scope, responsible parties, change controls, testing, backup technics, and detail the process for cost estimation and containment, quality assurance, and certification stages for projects. In addition to addressing quality assurance for individual projects, written standards should also be developed to address quality assurance enterprise-wide.

PROGRESS REPORTS

30. Within thirty (30) days after the end of the first calendar quarter following the effective date of this Order, and within thirty (30) days after the end of each successive calendar quarter, the Board shall furnish written progress reports ("Progress Reports") to the Regional Director and the Commissioner detailing the form and manner of any actions taken to achieve compliance with this Order and the results thereof. Such Progress Reports may be discontinued

when the corrections required by the Order have been accomplished and the Regional Director and Commissioner have released the Board in writing from making additional Progress Reports.

SHAREHOLDER NOTIFICATION

31. After the effective date of this Order, the Board shall send a copy of this Order, or otherwise furnish a description of this Order, to its shareholders (1) in conjunction with the Bank's next shareholder communication, and (2) 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 Accounting and Securities Disclosure Section, Washington, D.C. 20429, for review at least twenty (20) days prior to dissemination to shareholders. Any changes requested by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement.

OTHER ACTIONS

The provisions of this Order shall not bar, stop, or otherwise prevent the FDIC, the Department, or any other federal or state agency or department from taking any other action against the Bank or any of the Bank's current or former institution-affiliated parties.

This Order shall be effective upon its issuance by the FDIC and Commissioner.

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

The provisions of this Order shall remain in effect and enforceable except to the extent that any provision has been modified, terminated, suspended, or set aside by the FDIC and the Commissioner.

This Order is signed by the FDIC Dallas Deputy Regional Director, pursuant to delegated

authority.

Issued and made effective this 6th day of October, 2021.

Serena L. Owens
Deputy Regional Director
Federal Deposit Insurance Corporation

Charles G. Cooper
Banking Commissioner
Texas Department of Banking