

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-22-0140b
	)	
	)	COMMISSIONER ORDER No. 2022-022
(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 December 22, 2022, 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 of the information technology function, to the issuance of this CONSENT ORDER (“ORDER”) by the Acting 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:

INFORMATION TECHNOLOGY RESOURCES

1. (a) Within thirty (30) days of the effective date of this Order, the Board shall develop a Staffing Analysis Plan (“Staffing Plan”) to ensure sufficient resources are available with the knowledge, prerequisite skills commensurate with the risk profile and complexity of the Bank’s information technology (“IT”) function, and the necessary authority to address the identified weaknesses noted in the October 4, 2021 Consent Order and June 22, 2022 Information Technology Report of Examination (“IT Report”) conducted jointly by the Department and FDIC. The Staffing Plan shall include actions to address known staffing and operational deficiencies noted in the IT Report.

(b) The Staffing Plan shall identify the number of full-time, part-time, or contract employees, including job descriptions and minimum qualifications for each role, that are needed to sustain the Bank’s ongoing IT resource needs and remediate weaknesses within the IT Department at the Bank.

(c) The Staffing Plan must be submitted to the Regional Director and Commissioner for non-objection or comment. Within thirty (30) days following receipt of no supervisory objection to the Staffing Plan, the Board shall adopt the Staffing Plan with approval documented in the minutes, and Bank management shall immediately implement and thereafter adhere to the Staffing Plan. The Board shall review and document the effectiveness of the Staffing Plan at least annually.

FINANCIAL PAYMENTS - VENDOR MANAGEMENT

2. (a) Within thirty (30) days after the effective date of this Order, the Board shall develop a written contract (“Contract”) between the Bank and Financial Payments, LLP (“Financial Payments”), an affiliate of the Bank, that complies with Section 23B of the Federal Reserve Act. Terms of the Contract must ensure that transactions with Financial Payments comply with all applicable law, including without limitation sections 23A and 23B of the Federal Reserve Act, and must support the financial and business interests of the Bank. The Contract shall also include an intercompany service agreement and statement of work. The Contract with supporting documentation must be presented to the Regional Director and Commissioner for review and approval.

(b) The Board shall ensure the Contract incorporates provisions for escrowing the source code for all applications developed by Financial Payments with the Bank having the right to obtain access to the source code in the event that Financial Payments does not fulfill its contractual obligations.

(c) The Board shall ensure the Contract defines the roles and responsibilities for the Bank and Financial Payments and incorporates prudent service level agreements.

(d) Within ninety (90) days after the effective date of this Order, the Board shall ensure that critical vulnerabilities associated with end-of-life systems noted in the IT Report are fully remediated.

(e) As of the effective date of this Order, the Board or IT Committee Minutes shall be strengthened to accurately report on the level of risk in the technology environment, including end-of-life systems, high-risk vulnerabilities, and other related risks and their impact to the operational risk of the Bank.

(f) Within sixty (60) days after the effective date of this Order, the Board shall conduct a cost benefit analysis for the continued development of the applications referenced on page six (6) within the Vendor Management section of the June 6, 2022 Joint Report of Examination of Information Technology. This includes, but is not limited to, developing a project plan, budget, and timeline of when the application will become operational to determine its ongoing viability.

(g) After the effective date of this Order, the following restrictions shall apply until the Bank has been notified in writing by the Regional Director and Commissioner that compliance with items (a) through (f) of this provision have been achieved:

- i. no invoices shall be paid to Financial Payments for the development of the applications referenced on page six (6) of the Vendor Management section of the June 6, 2022 Joint Report of Examination of Information Technology;
- ii. no expenses, including work performed by internal programmers, shall be incurred for the further development of the software/systems referenced above; and
- iii. no expenses, including work performed by internal programmers, shall be incurred for the development of any new software/systems.

The word “development” used in this subsection of the Order means the creation or acquisition of additional software for a new product or service not currently provided by software already in production. “Development” does not include maintenance of existing software in production to correct problems, enhance security, improve performance, or address user requirements for current products and services.

IT ORGANIZATION CHART

3. Within thirty (30) days after the effective date of this Order, the Board shall develop and document an IT Organization Chart that specifically conveys the roles, responsibilities, and relationships between individuals overseeing the Bank's IT ecosystem. The IT Organization Chart shall also be updated in accordance with the Staffing Plan.

PROGRESS REPORTS

4. (a) 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 released the Board in writing from making additional Progress Reports.

SHAREHOLDER NOTIFICATION

5. 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 holding company Herring Bancorp, Inc.'s shareholders (1) in conjunction with that entity's next shareholder communication, and (2) in conjunction with its notice or proxy statement preceding that entity'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 Acting Deputy Regional Director, pursuant to delegated authority.

Issued and made effective this 22 day of December, 2022.

/s/
Cynthia E. Scott
Acting Deputy Regional Director
Federal Deposit Insurance Corporation

/s/
Charles G. Cooper
Banking Commissioner
Texas Department of Banking