FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

NEWS RELEASE

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FDIC BOARD VOTES TO DISCLOSE FINAL ENFORCEMENT ACTIONS AGAINST BANKS

The Board of Directors of the Federal Deposit Insurance Corporation today unanimously adopted a policy of routinely disclosing to the public all orders in connection with statutory enforcement actions.* The Board determined that the new policy will promote public understanding of, and confidence in, the banking system by providing significant and meaningful information regarding the condition and practices of banks.

The new policy will go into effect January 1, 1986. The orders that will be made public are normally adopted to correct such problems as inadequate capital, abusive insider dealings, use of brokered deposits to engage in speculative loans, inadequate management, or a variety of violations of law or regulations.

The Board requested public comment on February 11, 1985, on a proposal to disclose enforcement actions. Over 700 comment letters were received, mostly from bankers and mostly negative, although some bankers and a number of public interest groups and other non-banking commenters responded positively.

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* Statutory enforcement actions include actions to terminate insurance under Section 8(a) of the Federal Deposit Insurance Act, cease-and-desist actions under Sections 8(b) and 8(c), actions to remove or suspend officers and directors under Sections 8(e) and 8(g), civil money penalties under Sections 8(i)(2) and 18(j)(3), and capital directives under Section 908(b) of the International Lending Supervision Act of 1983.

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The final policy adopted by the Board takes into account many of the concerns expressed by the commenters. Some supported the proposal in principle but felt that its implementation should be delayed to give banks an opportunity to prepare for it. The Board decided that the new policy should apply to orders issued on or after January 1, 1986.

Some commenters expressed concern about the proposal to release notices of charges, believing that disclosure of notices could cause injury to institutions or people ultimately determined to be innocent of the charges. The Board decided to limit the disclosure to final orders, although it expressed its skepticism about the validity of the commenters' concerns in this area and reserved the option of expanding the policy at a later date to include notices.

Other commenters felt that by disclosing only the existence of an enforcement action and not a description of it, the public would not be given adequate information to determine the nature of the proceeding. The Board was persuaded by this argument and decided to include in the disclosure document a summary of each order. The Board noted that, in addition to the summary, a copy of any order is available upon specific request under the Freedom of Information Act in accordance with longstanding FDIC policy. The Board also adopted a recommendation that the FDIC routinely disclose the termination of final orders.

In the original proposal, the Board requested comment on whether informal enforcement actions, or memorandums of understanding, should be disclosed in addition to formal statutory enforcement actions. Those commenting on

this issue were opposed to the disclosure of informal actions. The Board decided against releasing information on informal actions at this time, believing that banks subject to informal actions have less serious problems and are generally more likely to be voluntarily taking the steps necessary to improve their condition.

The Board considered but found less persuasive a number of other comments. Some commenters expressed concern about the FDIC pursuing a disclosure policy while other bank and thrift regulators do not. The Board noted that the Comptroller of the Currency has under active consideration a proposed disclosure regulation for national banks that is broader than anything yet proposed by the FDIC. The Board supported the Comptroller's initiatives in this area and expressed its belief that public disclosure by all banks and thrifts should be improved and made uniform, by Congressional directive if necessary.

Other commenters expressed the opinion that disclosure of enforcement actions would result in an erosion of public confidence in the financial system. The Board noted that similar concerns were expressed over a decade ago when banks and bank holding companies registered under the securities laws were required to disclose enforcement actions; when the FDIC proposed in 1972 to make available to the public any bank's entire Call Report; and, more recently, when the banking agencies two years ago expanded the Call Report schedules to include information about nonperforming loans and to make that information available to the public. Concerns in all those cases have proved to be unfounded. The Board expressed its belief that public confidence in

the banking system is enhanced when the public receives fair and meaningful disclosure, and confidence is eroded when the public believes it is being deceived or is not receiving all the facts it needs to evaluate a situation.

Some commenters were of the opinion that disclosure of enforcement actions would lead to bank runs, depriving a troubled bank of the opportunity to correct its problems, and result in greater instability in banking. The Board noted that fewer than 400 banks are subject to formal enforcement actions and many of them are already required to disclose the enforcement actions under the securities laws or under a standard provision included in FDIC orders. In addition, the FDIC has made orders available upon specific request under the Freedom of Information Act since 1976. Moreover, a bank may avoid any possible adverse consequences of public disclosure of an enforcement action by conducting its business in a safe and sound manner or by correcting any problems promptly and voluntarily, without the necessity of a formal enforcement action.

The Board expressed its belief that better disclosure will result in a stronger, more stable banking system with fewer and less costly failures. Particularly in a deregulated interest rate environment in which deposits tend to flow to the highest bidder -- which all too often is a troubled bank or thrift -- meaningful disclosure is one of the best protections available to the vast majority of banks that are prudently operated.

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