

TRANSCRIPT  
OF  
A MEETING OF THE BOARD OF DIRECTORS  
OF THE  
FEDERAL DEPOSIT INSURANCE CORPORATION  
BY CONFERENCE CALL  
CLOSED TO PUBLIC OBSERVATION  
FEBRUARY 14, 1983 - 8:00 P.M.

At 8:00 p.m. on February 14, 1983, the Board of Directors of the Federal Deposit Insurance Corporation met by telephone conference call to consider certain matters which it voted, pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)) to consider in a meeting closed to public observation.

William M. Isaac, Chairman of the Board of Directors; Irvine H. Sprague, Director (Appointive); H. Joe Selby, acting in the place and stead of C. T. Conover, Director (Comptroller of the Currency); Jack E. Edgington, Deputy to the Chairman - Administration; Margaret L. Egginton, Deputy to the Chairman - Public Affairs; John R. Curtis, Deputy to the Director (Appointive); Alan Herlands, Deputy to the Director (Comptroller of the Currency); Laura L. McAuliffe, Special Assistant to the Director (Comptroller of the Currency); Edward T. Lutz, Assistant to the Deputy to the Chairman - Administration; Thomas A. Brooks, General Counsel; James L. Sexton, Director, Division of Bank Supervision; James A. Davis, Director, Division of Liquidation; Stanley C. Silverberg, Director, Division of Research and Strategic Planning; Robert V. Shumway, Director, Division of Accounting and Corporate Services; Hoyle L. Robinson, Executive Secretary; and William H. Roelle, Assistant Director, Division of Accounting and Corporate Services, participated in the meeting.

Chairman Isaac presided at the meeting; Mr. Robinson acted as Secretary of the meeting.

P R O C E E D I N G S

Chairman Isaac: This is a meeting to consider the United American Bank in Knoxville, Tennessee. I move that Corporation business requires its consideration of the matters to be considered in this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest does not require consideration of the matters in a meeting open to public observation; and that the matters may be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Director Sprague: I second.

Mr. Selby: I concur.

Chairman Isaac: We have probably one of the most complicated situations at this point you ever want to deal with. We had eight bids come in. And the eight bids were First Union, \$51,100,000 --

Mr. Selby: I cannot hear you, Bill.

Chairman Isaac: I am sorry, Joe. We had eight bids come in the first time around on this interstate bidding process. First Union bid \$51,100,001.00; C&S, \$65 million; NCNB, \$37.620 million; Union Planters, \$14.1 million; AmSouth, \$22 million; Wachovia, \$15 million; and Third National, \$10.5 million.

In addition, First Tennessee made a proposal, which I will explain a little bit later. But it was different than these. These were all done according to bidding instructions, and these were all premiums, no complications, easy to compare them. First Tennessee's was a deal that was structured along the lines of what we were negotiating with them last night when we were trying to do a deal to keep the bank from closing. Their deal was very difficult to price

because -- and I'll get into it later, but for now, just accept the fact that it was difficult to price, and we arrived at a conclusion that the deal was worth approximately \$57 million to us. We calculated the cost of the bank failure, our losses in the receivership, under the three best proposals, and found that the C&S proposal would cost us, after you deduct the cost of running the failed bank and liquidating its assets, about \$95 million. We calculated that the cost of the First Tennessee proposal would be approximately \$103 million, and the cost of the First Union proposal would be approximately \$109 million.

We decided that the best bid was C&S. It was out-of-state. The other two bids were within fifteen percent of it. We determined we were obliged to go into a rebidding process and allow those three institutions to rebid.

I went back to First Tennessee myself, since I had been having the major dealings with them throughout the night last night, and I instructed Ron Terry that the best bid was out-of-state, and we were allowing those institutions that were within fifteen percent of the best bid to rebid, and that he was one of those who was being permitted to rebid. I told him that the deal he proposed to us was a nonconforming bid. It did not conform to the bidding instructions. It was very difficult to compare the cost of his proposal in any precise way with the cost of the others. And, therefore, I told him that he should submit to us a conforming bid on the next round. I said, "You may also submit your other proposal as an alternative bid, giving us the choice of taking whichever one we want, but you must submit a conforming bid." He understood that. There was no question about it. It was clear.

We just got the next round of bids back in. We gave the three bidders one hour. Ron Terry called me and said that he had decided not to submit a conforming bid. But he was going to submit his other bid again, only he was upping the price by \$10.5 million. C&S submitted a new

bid, which conforms to the bidding instructions, at a flat \$70 million. They upped their bid by \$5 million. First Union kept its bid the same. So it is clearly out of the running. That leaves us with a choice between taking the C&S bid -- it's a premium of \$70 million, which means that this receivership, we would estimate, will cost us about \$90 million. We can take that bid or we can take the First Tennessee bid.

All right, let me explain the First Tennessee bid. They agree that they will take the first \$86.5 million in loan losses.

Director Sprague:

Bill, I can't hear you.

Chairman Isaac:

First Tennessee agrees that it will absorb the first \$86.5 million in loan losses. Anything above that in loan losses the FDIC must absorb, but our liability for loan losses only applies to loans that are on the books today classified loss within the next two years.

If we lay out any funds under this transaction -- if the FDIC is called upon to indemnify them for loan losses above the \$86.5 million -- and there are subsequent collections on any loans that have previously been charged off, all collections go first to the FDIC to repay it in full, and then to First Tennessee. So that the FDIC is last in and first out with loan losses, and we are only responsible, as I said, for loans that we classify loss within the next two years.

The way to calculate the value of this First Tennessee bid is as follows. We can ignore \$52 million of their bid because that represents the capital and reserves of the bank and the subordinated debenture.

Director Sprague:

That's \$52 million.

Chairman Isaac:

That's \$52 million. So you can just ignore that. Take that off their \$86.5 million in other words. That leaves you with \$34.5 million that they are paying as a premium. In addition to that, you

have \$18.2 million in depreciation in the bond portfolio, which they are absorbing that C&S will not be. Now let me explain that. They are taking all the assets at book value. C&S, according to our standard purchase and assumption transaction, which is what they are doing, will be taking the bond portfolio not at book value, but at market. The market value is \$18.2 million less than book value. So, by doing the First Tennessee deal, we are picking up \$18.2 million in depreciation in the bond portfolio that we do not have to absorb. When we add those two together, we get \$52.7 million for their premium. That is still short of \$70 million.

But there are a number of advantages yet to be gained from the First Tennessee proposal. One is that last-in first-out arrangement, that we don't have to absorb any loan losses until they surpass \$86.5 million. And then when there are collections on loans, we get the collections first on all loans, on all the charged-off loans. So that we will come in later and will get out sooner than if we do the standard kind of deal.

Second, on the C&S arrangement, we will go in and remove all of the classified assets or most all the loans, basically. We are going to lay out somewhere in the neighborhood of \$500 million in the transaction. That has a funding cost to it. In the First Tennessee transaction, we will not lay out any money for a period of time. I don't know for how long, but it will be a while before we lay out anything. So we are going to save some funding costs.

Next, in the C&S transaction we are taking over a portfolio, I gather, of about \$500 million worth of loans that we are going to have to try to collect. We have all of the associated collection expenses, the personnel that it takes to supervise it, the lawyers for lawsuits to litigate the claims.

In the First Tennessee situation they are responsible for the entire asset portfolio. We send no liquidators in other than to get an

inventory to begin with. We have no expenses associated with it whatsoever.

Another advantage is that we only have to pick up loans, which are classified loss during the next two years, whereas, if we do the C&S transaction, we will be acquiring all these loans in our own name, and we will have to absorb the losses whenever they occur at any time in the future.

Director Sprague: Bill, was there any misunderstanding, is there any possibility that --

Chairman Isaac: Wait a minute, Irv, I am being talked to here. Oh, yes, there is another one, and that is that when we do the standard P&A transaction, we take all the loans out. We allow the bank to come back and acquire the loans from us, as it may chose.

Director Sprague: Right.

Chairman Isaac: They will reject anything that has any credit problems in it naturally. But they will also either reject or require us to mark down to market any loans that bear low interest rates, whereas, in the First Tennessee situation, they are taking all the assets at their book value, and they are not being marked to market.

Now it is extremely difficult to put a pencil to all this. I went around the room with our management group, and I had three votes -- Edgington, Davis, and Shumway -- for going with the C&S transaction on the ground that they submitted the only conforming bid. I had four votes -- Brooks, Silverberg, Egginton and Sexton -- for going with the First Tennessee transaction on the basis that it is clearly superior financially, and it is our obligation to take the best deal irrespective of whether it conforms to the bidding instructions. The three people who voted for the C&S deal, all three acknowledge that the First Tennessee deal is clearly superior financially. So that is our pickle.

Director Sprague: Bill, was there any misunderstanding between you and this fellow on what the ground rules were? Is there any possible way he could have misunderstood you when you said that --

Chairman Isaac: Not the last time when I called him, he could not have misunderstood me. We were all in the room when I made the call, and it was very clear that I told him that I had to have a bid that conformed to the bidding instructions because I just couldn't make the cost comparisons otherwise.

Mr. Selby: Wouldn't it be patently unfair then to C&S if you said, "You have conformed to the bid," that, "First Tennessee does not," if we were to accept First Tennessee?

Chairman Isaac: That's the argument of those three people who would take the C&S bid. They say it would be unfair to C&S, that they obeyed the bidding instructions and First Tennessee did not. However, I would point out that we negotiated the First Tennessee transaction -- the way it is structured is our idea, not theirs. We came up with it last night.

Mr. Selby: And that was on an open bank basis.

Chairman Isaac: Right. We proposed it to them last night when we were trying to do a deal in advance of the bank closing. They got wedded to it, and they kept on pursuing it all day long with our full knowledge and blessing. It was not until later today that I told First Tennessee that we simply could not accept a nonconforming bid. Well, I did not say that we could not accept it. I said "I have got to have a conforming bid," and then, "If you want to submit your nonconforming bid as an alternative, then we can take our choice." But I said, "We have got to have a conforming bid." But that came late in the day. This entire proposal started last night at our suggestion.

Director Sprague: Well, that didn't work though, Bill, that fell apart. It seems to me what we are faced with is, we have got one bid of 70 and one of 52.7 plus

all these advantages to us if we take it, which you are telling me our staff people say will probably add up to more than 70.

Chairman Isaac: Substantially more.

Director Sprague: I guess we better talk about it some more because it strikes me that it would be indefensible not to take the high bid. I don't see how we could explain --

Chairman Isaac: Which is the high bid?

Director Sprague: -- 52.7 plus --

Chairman Isaac: Which is the high bid? You say it would be indefensible not to take the high bid. Our staff believes that the high bid is First Tennessee.

Mr. Selby: But you really don't know that.

Chairman Isaac: Yes, we know that. We cannot prove it to a dollar amount. But we know it is.

Mr. Selby: Well, what about -- wouldn't the same argument go then to go back to C&S and say, "Submit a bid on the same basis as First Tennessee"?

Chairman Isaac: I don't have the time unfortunately. I would love to go back to C&S --

Director Sprague: The problem is you would open the bank tomorrow, wouldn't you, Bill?

Chairman Isaac: That's the problem. The bank has got to be open tomorrow morning, and I don't have time to go explain this deal to C&S and ask them if they want to make a bid on the same basis. It seems to me we have got three choices. We take C&S, we take First Tennessee, or we go back to them both and give them one more shot at it and give them twenty minutes to get a new bid in.

Director Sprague: I thought we agreed this would be the last round.

Chairman Isaac: We did.



Director Sprague: What do you think we ought to do?

Mr. Selby: Who are you asking?

Director Sprague: Bill.

Chairman Isaac: Well, I am very torn. I want to go with the best deal financially, and First Tennessee, I am convinced, is the best deal financially. There is another big factor. We have had a number of bank failures, and the First Tennessee deal doesn't require any personnel. We are going to be criticized no matter what decision we make. There are a lot of people who will criticize us for going out-of-state unnecessarily. There are people, if we take the First Tennessee offer, who will criticize us for not taking the only offer that conformed to the bidding procedures, and what, on its face, in terms of hard, provable dollars appears to be a better offer. We are going to be criticized no matter what we do here, I reckon.

Director Sprague: Well, you know, we knew that going in.

Mr. Selby: My only concern is the fairness of your bidding package, and, you know, I understand what your concern is, Bill, and the cost, too. But, you know, if everybody plays by the same game, and we set the game I thought, I find it is hard to think you can go with someone that didn't play that game. That's my own thought. And, apparently, First Tennessee was told.

Director Sprague: Bill, what insurmountable problems do you see if we go with C&S?

Chairman Isaac: There are no insurmountable problems if we go with C&S that I am aware of unless First Tennessee tries to sue us to enjoin us. But I can't imagine they'd be doing that. They know --

Mr. Selby: Unless they what, sue you?

Chairman Isaac: Unless they tried to sue us to block us from doing it. But I can't believe that they would do that. They are much more responsible than that.

Director Sprague: It seems to me that's a lot more defensible. I would hate to have us on the first time we have gone through this process not go with what appears to be the best number, even though the appearances may not be reality.

Mr. Selby: They also make it very difficult in the future, if you have to go through --

Director Sprague: Well, that's what I am talking about.

Chairman Isaac: I don't put much credence in that. I don't think it is going to be much more difficult in the future. I think this deal can be explained as being thoroughly more attractive financially. The only criticism anybody can have is First Tennessee got away with submitting a nonconforming bid. But I don't think that is all that serious, and people are going to bid in the future. The bidding in this situation has been very aggressive, and it is not because they are trying to do us a favor. It is because they want to buy a bank in Tennessee across state lines.

But the reason why I wanted to call a meeting and have this lengthy discussion is, I consider this to be a terribly close call. I don't think it's an obvious decision. I think any way we go we are going to be criticized. Any way we go is wrong. Any way we go is right. I haven't expressed an opinion, because I wanted to hear what you thought of it. I have tried to give you, as best I can, all the sides of it. That's where we are, and I guess what I need are your opinions. Joe?

Mr. Selby: Well, I feel very uncomfortable about switching out of the bidding stream and not going with C&S. And I really don't -- I don't quite understand why C&S wants it, you understand. But they did bid \$70 million in the first bid package, and put the dollars to it. That's what comes in the top.

Chairman Isaac: Irv?

Director Sprague: I agree with you that it is very, very close. But I think, on balance, that we have to go with C&S.

Chairman Isaac: All right, I will make it unanimous. We will go with C&S on the basis that their bid is the only conforming bid we got, that First Tennessee violated clear bidding instructions, and we just have no choice. I so move.

Director Sprague: I second.

Mr. Selby: I concur.

Chairman Isaac: The meeting is adjourned.

(Whereupon, at 8:30 p.m., the meeting was recessed.)

(The meeting was reconvened at 8:50 p.m.)

P R O C E E D I N G S

Chairman Isaac: Board meeting -- I don't think I need a Sunshine motion. I just wanted to inform you of what is happening. I called Ron Terry and gave him the bad news. There is media camped out all around his bank, and he said, "What can I tell them, I can't get out of the bank without them seeing me?" I said, "I guess you are going to have to tell them that you believe that C&S is going to buy it, but we are just not going to confirm it for a while."

So that settled that, and we called the Atlanta people, and I asked them to bring John Poelker from C&S in the room to talk to me, because I wanted to encourage him to get the deal done quickly and get the bank opened. They delayed in bringing him in, and we found out that the delay is because the Comptroller's Office has some concern about how the bid will be capitalized or the goodwill amortized or something. So, I immediately called Ron Terry back and, fortunately, he had not said anything to anybody. So we are on hold.

Mr. Selby: Good.

Chairman Isaac: Ron is sitting there. The Comptroller's Office may resolve this however they wish, and I only hope that they will resolve it very quickly

because we have got a deal to cut with one or the other of these two parties. So, I just wanted to inform you of where we are and to let you know that the evening may not be over.

Mr. Selby:

Well, I cannot imagine why there was any misunderstanding on C&S's part.

Chairman Isaac:

I don't know, Joe, and I am not trying to blame anybody.

Mr. Selby:

No, I know. Should we be giving C&S a time limit?

Chairman Isaac:

I think we must have this resolved within a few minutes, Joe, if you can.

Mr. Selby:

Well, I am prepared to go forward if they want to give us a yes or no now.

Chairman Isaac:

Pardon?

Mr. Selby:

I think we ought to require a yes, they are going to go forward with it or no.

Chairman Isaac:

I do not know what it is all about. I am not in on those discussions.

Director Sprague:

Bill, do they have to put up some more money tonight, is that the deal?

Chairman Isaac:

I do not know what the deal is. I do not know what they are arguing about.

Mr. Selby:

I think I know what the deal is.

Director Sprague:

Well, tell us.

Mr. Selby:

I think what they were counting on, Bill, is that the premium to the FDIC was all they had to put up. They considered that the capitalization of the bank.

Chairman Isaac:

They never felt that they had to put any new capital in?

Mr. Selby:

The capital to capitalize the bank.

Chairman Isaac: Are you talking about at the holding company level, Joe, that you wanted them to raise some more capital or in the bank or what?

Mr. Selby: At the bank level.

Chairman Isaac: But we are furnishing --

Mr. Selby: Well, I wonder if they understand that.

Chairman Isaac: Well, who understands that?

Mr. Selby: C&S.

Chairman Isaac: Yes, they have asked for the FDIC to furnish what we said we would, which is a \$30 million, ten-year loan, to their holding company, which will be downstreamed as equity into the bank.

Mr. Selby: I really do not know what their concern is then.

Chairman Isaac: It is my understanding that it has something to do with the amount of goodwill that is being booked.

Mr. Selby: Oh, it is not.

Chairman Isaac: What?

Mr. Selby: I just assumed that was it.

Chairman Isaac: The amount of goodwill that is being booked, I am told, is of concern to Herman. Who Herman is talking with I do not know. Joe, I guess what I would ask you is, can you somehow find out what is happening and get it off the dime soon?

Mr. Selby: I can certainly call, I certainly can.

Chairman Isaac: And, as I say, however you want to work it out is fine with me. I just need something done.

Mr. Selby: You need something to go on. But the understanding, Bill, is you will loan \$30 million to the holding company who will downstream it to the bank in the form of capital?

Chairman Isaac: Right.

Mr. Selby: And the goodwill --

Chairman Isaac: And our loan to the holding company is a ten-year loan.

Mr. Selby: A ten-year loan to the holding company. Well, I don't know what the big deal is.

Director Sprague: That was the deal offered everybody.

Chairman Isaac: That is correct.

Mr. Selby: Well, I will attempt to find out from Herman, and you want me to get back to you?

Chairman Isaac: Now you are going to be booking a heck of a lot of goodwill. I don't know what, but --

Mr. Selby: \$70 million, I guess.

Chairman Isaac: Well, yes, and I do not know what else. There may be something else besides the \$70 million that gets booked.

Mr. Selby: Yes.

Chairman Isaac: And maybe it has to do with the charge-off of goodwill. Maybe C&S had a misunderstanding about the charge-off period.

Mr. Selby: Well, all I know is we have always, we have required a flat capital, and then allowed them to book the goodwill over a period of years with a write-off.

Chairman Isaac: O. K. Joe?

Mr. Selby: Yes.

Chairman Isaac: Herman is in our Atlanta Regional Office --

Mr. Selby: Yes.

Chairman Isaac: -- talking with C&S right now. Our Atlanta Regional Office's number is --

Mr. Selby: O. K.

Chairman Isaac: I want to give you that Atlanta number.

Mr. Selby: We have got it. We have got it.

Chairman Isaac: Oh, you have it, Joe. You are at the office?

Mr. Selby: Let me call him and talk to him.

Chairman Isaac: Do you have it? I have it right here.

Mr. Selby: Well, give it to me then.

Chairman Isaac: All right. Area Code (404) 221-6631.

Mr. Selby: O. K.

Chairman Isaac: There is an FTS number. I don't know if you use that.

Mr. Selby: Yes.

Chairman Isaac: 242-6631.

Mr. Selby: 6631.

Chairman Isaac: Right.

Mr. Selby: O. K., I will call him right now and call you back.

Chairman Isaac: Thank you.

Mr. Selby: O. K.

Chairman Isaac: Bye-bye.

(Whereupon, the meeting was recessed, and then reconvened at 9:40 p.m.)

Chairman Isaac: We are continuing our Board meeting, Part III. It is my understanding that the Comptroller's Office and C&S have reached what appears to be an impasse on the issue of the proper capitalization of the bank and the handling of the goodwill in connection with this transaction. I do not know

whether the Fed is satisfied or is still agreeing with the Comptroller. Joe, you may have that information.

Mr. Selby: The Fed is satisfied with our decision.

Chairman Isaac: The Fed is satisfied with your decision?

Mr. Selby: Yes.

Chairman Isaac: O. K. It appears there is an impasse. I do not know whether it could be worked out if we continued to let this go into the night, but we simply do not have that option. We have to go ahead and get a transaction done. I move that we accept the First Tennessee bid because C&S does not appear to be able to get regulatory approval for its transaction.

Director Sprague: I will second the motion. But before the vote, can I ask Joe two questions? Joe, in simple English, what is the problem is the first question. The second one is, why the heck didn't you tell us before we voted for the deal instead of after?

Mr. Selby: Well, let me answer the second part, Irv. Because you all would not let any of us participate in the bid package in Atlanta. We were excluded from any conversation. We did not see C&S's bid until 6:30. The Fed, however, was allowed to see it much earlier than that. And were the first to arrive at the condition for capital. That is in answer to your second question. O.K.? And I think that is something that needs to be talked about in the future because we were specifically excluded from it, and we might have been able to point this out a hell of a lot sooner if we had seen the bid.

Director Sprague: But you did not even know about it when we were talking at our Board meeting?

Mr. Selby: No, sir, I did not.

Director Sprague: All right.



Mr. Selby: And I thought the C&S bid was coming into our previous discussion.

Chairman Isaac: Joe, I am astounded that you say that you were not able to see the bid package. You were invited to these meetings and I understand that your people attended.

Mr. Selby: Bill, sure, we saw the bid package, as it was explained yesterday. And tonight, when the bids were coming in, Bob Herman was asked to stay outside the room. So we did not see C&S's bid.

Chairman Isaac: Oh, you saw the bid package, but you did not see C&S's bid because Herman was not in the room when the bids came in.

Mr. Selby: That is correct.

Chairman Isaac: Oh, o.k. Well, that's fine. I think the normal procedure is to have bids come in with only FDIC personnel present.

Director Sprague: Well, in the first place is what is the essence of the dispute? They are trying to put too much goodwill?

Mr. Selby: Too much goodwill and not enough capital, right.

Director Sprague: O. K.

Mr. Selby: They are not coming up with anything is what they are doing.

Director Sprague: All right. Well, I second the motion.

Mr. Selby: I concur.

Chairman Isaac: O. K. It is unanimous. I will inform Mr. Terry that we are ready to proceed with his deal. And, Jim, if you would inform whomever is on the Atlanta line that we are switching to First Tennessee.

Thank you. The meeting is adjourned.

(Whereupon, at 9:50 p.m., the meeting was adjourned.)

*Margaret M. Olson*  
Assistant Executive Secretary