STATEMENT ON

THE FAILURE OF GOLDEN
PACIFIC NATIONAL BANK

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE

OF THE

COMMITTEE ON BANKING, FINANCE AND
URBAN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

BY

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occur that week. Our New York staff had to be augmented by persons pulled from other important assignments in San Juan, Dallas, San Francisco, Washington and elsewhere. A number of employees were able to reach New York late Saturday, and others arrived as quickly as travel arrangements could be made. By Monday, we had approximately 200 employees in the bank's main office and its three branches working around the clock at the arduous task of preparing for a payoff of the bank's insured depositors.

This leads to the first of several areas of controversy: the decision to pay depositors' claims up to the $100,000 insurance limit rather than arrange a merger, an approach that would have protected depositors with claims above the insurance limit.

There have been inflammatory charges by some parties in the Chinatown community that the FDIC's decision to pay off insured depositors constituted discriminatory treatment. They claim the bank was singled out for this treatment because it was a minority-owned bank serving a minority community.

We can understand and sympathize with the emotional reaction to the bank's failure, but irresponsible statements such as this -- particularly in the face of our repeated explanations of the facts and the law -- are insulting and do a disservice to those individuals who have been adversely affected by the bank's closing. For the record, I want to state as clearly as I can that the FDIC's actions in this failure have been guided, as they always are, solely by the law and a desire to be as fair as possible.

The existence of substantial evidence of fraud in the bank's activities and of an undetermined volume of liabilities that did not appear on the bank's books, made it impossible to quantify the potential losses and therefore impossible to determine that a merger would be less costly to the FDIC than a deposit payoff. In short, we could not satisfy the "cost test" in the FDI Act and had no choice but to pay off insured depositors.

Upon entering the bank that Friday night, our personnel found that many bank records were incomplete or missing. Indeed, the bank's books would still be out of balance by over $4 million six days later. Some documents were in Chinese, and many of the bank's employees spoke and read only Chinese. The bank's computer systems were outdated and inadequate. Attempts to develop account listings were further hampered by the absence of social security numbers on about one-third of the bank's 21,000 active deposit accounts and by the fact that many of the bank's customers had identical surnames.

In the face of this daunting challenge, our employees adopted a round-the-clock schedule that permitted little sleep; most meals consisted of take-out orders from neighborhood fast food establishments. When I visited the bank on June 27 to observe our operations and thank our employees for their efforts, I was moved by the determination and professionalism they exhibited despite the long hours, grueling pace and unfavorable working conditions.

Tension was heightened by concerns for the safety of our personnel. On Monday, the sidewalks outside the bank were filled with an unruly crowd of over 200 people, shouting imprecations, shaking their fists and waving placards accusing the FDIC of "murdering" the community, comparing the FDIC to Stalin and Hitler and warning the FDIC to "beware the violence to come."

At the peak of the demonstration, the crowd attempted to force its way into the bank. The metal frame around the bank's door was twisted and the door was damaged by their rush. Only the willingness of security personnel and FDIC employees to block the entrance with their bodies kept the crowd from entering and attempting to take over the bank. That unnerving confrontation lasted for a short period until the police arrived and restored some semblance of order. Daily follow-up demonstrations kept the tension level high throughout the remainder of the week.

Our original objective, given the chaotic state of the bank's records, was to attempt to have checks prepared for distribution to insured depositors by the following Friday. By

Monday, however, our staff had made sufficient progress in analyzing the records that it began to appear feasible to transfer insured deposits to another bank, which could reopen the failed bank's offices and resume banking services with only minimal interruption. We immediately began to develop a "bid package," and invited 36 banks, including seven located in Chinatown, to participate in a competitive bidding process for the right to receive the insured deposits.

On Wednesday, June 26, the FDIC approved the transfer of approximately $117 million in deposits known to be insured or fully secured to The Hongkong and Shanghai Banking Corporation. Two days later, the failed bank's main office and three branches reopened as branches of Hongkong and Shanghai, and the insured deposits of Golden Pacific once again were available to their owners. This transaction resulted in the FDIC's receipt of a $6.4 million premium from Hongkong and Shanghai, measurably increasing funds available for ultimate distribution to the uninsured creditors of Golden Pacific.

At the time the bank closed, its book liabilities amounted to approximately $157.1 million, including about $9.8 million in 170 accounts that exceeded the insurance limit. Categories of funds whose eligibility for deposit insurance coverage could not be immediately determined included approximately $13.1 million placed through the bank's five domestic loan production offices, $6.9 million of international banking facility funds and $14.2 million of unbooked transactions.

On July 11, the FDIC announced its determination that the $13.1 million in deposits accepted by Golden Pacific at its loan production offices in Houston, Chicago, Boston, San Mateo and Monterey Park were eligible for deposit insurance coverage. By law, such offices are not authorized to accept or disburse funds, but may only process documentation in connection with loan transactions.

After an investigation, the FDIC concluded that these funds were clearly identified and entered on the books of the bank as deposits and that the bank had paid deposit insurance premiums on them. Accordingly, while the bank was prohibited by law from accepting deposits in these offices, the FDIC decided that, given the unusual circumstances of the case, the bank's illegal branch-banking activities should not affect the insured deposit status of the funds.

Factual and legal determinations with respect to funds placed with Golden Pacific's International Banking Facility and in unbooked certificates have proven to be much thornier. As you know, Mr. Chairman, under the law IBF deposits are not entitled to FDIC insurance, and no FDIC assessments are paid on them.

The $14.2 million in unbooked certificates were not entered on the bank's books, no FDIC assessments were paid on them and at least some of them stated on the face they were not deposits and not insured by the FDIC. Questions about these unbooked certificates, which became known as "yellow certificates" because of the color of paper on which they were printed, have been particularly troublesome to resolve. We understand from the Comptroller's office that the bank began offering these instruments in 1980 or 1981 when interest rate ceilings on deposits were still in effect. They appear to initally have been issued in relatively large denominations to a limited clientele. According to the Comptroller's office, the proceeds of these certificates were pooled and invested in the bank's own banker's acceptances and were reflected on the bank's books as liabilities. This practice, we understand, was discontinued sometime in 1981. At this or some later point, the bank began issuing the certificates in a much larger volume, and the use of these certificates was taken off the bank's books and deliberately concealed from examiners.

The interest rate paid on the yellow certificates was generally higher than permitted by law for deposits. No form of identification was required, information required for tax purposes was not taken and no tax reporting was done. Investments in the certificates were not included either in reports to the bank regulatory agencies or in currency transaction reports. On the basis of these circumstances and interviews with Golden Pacific employees, it seems reasonable to presume that at least some of the persons investing in these certificates may have been well aware that such advantageous features were not indicative of an insured deposit.

The last sentence of each yellow certificate states that it is subject to an agreement between the customer and the bank as of a date to be filled in on the certificate. Some certificates bore the following stamp on their face: "Funds held by the Bank are not 'deposits'. Therefore, not insured by the FDIC." However, the stamp is faint.

Senior officers of Golden Pacific have claimed that purchasers of the certificates signed the agreement referred to on the certificate, but we have not turned up any signed agreements. In any event, the documents appear to be contradictory. The certificate states that the customer is entitled to payment on a date certain with a certain rate of interest, while the agreement purports to absolve the bank of all liability.

Bank officers have taken the position that the bank was acting in an agency capacity and that the certificates do not represent liabilities or deposits of the bank. The Comptroller determined on June 21 that the certificates were indeed liabilities of the bank and that assets to "match" those liabilities did not appear on the bank's books, thus resulting in the bank's insolvency and failure.

Holders of the certificates who have filed claims with us assert that, despite assertions to the contrary by bank officers, investors were misled by bank employees into thinking the yellow certificates were insured deposits. They claim they did not see, receive or sign any agreement. Many certificate holders have little or no grasp of the English language. Many of the claimants have presented certificates that were not stamped with the notice that their funds were not FDIC insured.

Funds acquired by Golden Pacific through the sale of yellow certificates apparently were used by one or more insiders of the bank to finance projects in which they had an interest. The exact path of the funds from the customers' hands into those investments is still unclear.

From this outline, it should be apparent that we have been confronted with a perplexing jumble of contradictory claims and records. It is possible that at least some purchasers of the certificates may have been defrauded into believing that they were purchasing an insured deposit. It also seems that others may have been aware they were not investing in an insured deposit. They may have been motivated by a desire to evade payment of income taxes, by a desire to avoid currency transaction reporting requirements, by a desire to obtain a higher interest rate or by some combination of these or other motives. Whatever the motivation, the FDIC has no statutory authority whatsoever to grant insurance coverage where the parties did not intend to create a deposit relationship.

The FDIC is moving as quickly as possible in its analysis of the facts and circumstances surrounding these transactions and hopes to reach some conclusions in the not-too-distant future. At the same time, we are making a concerted effort to keep the community and the failed bank's customers informed of developments. Senior FDIC officials have taken part in a number of meetings with community leaders and are continuing to participate in weekly meetings with the community at large to answer questions.

The failure of Golden Pacific National Bank and its aftermath have been painful for many people and a shock to the bank's community. We at the FDIC have strived to minimize that pain by working as diligently as humanly possible to protect the bank's insured depositors and to resolve questions of entitlement to insurance coverage.

In closing, I want to express again my deep appreciation for the long hours and incredible personal sacrifice contributed by many FDIC employees from throughout the country. I also want to thank Congressman Bill Green and his staff for their valuable help in opening up lines of communication between the FDIC and community leaders in Chinatown at a time when communication was absolutely vital.

I will be pleased to respond to any questions members of the subcommittee might have.