

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION
DEPARTMENT OF THE TREASURY

In the Matter of)
)
)

UNITED FINANCIAL GROUP, INC.,)
Houston, Texas, a Savings and)
Loan Holding Company)
)

Respondent.)
)
)

OTS Order No. AP 95-38

Date: December 13, 1995

**STIPULATION AND CONSENT TO ISSUANCE OF
CONSENT CEASE AND DESIST ORDER FOR AFFIRMATIVE RELIEF**

This Stipulation and Consent to Issuance of Consent Cease and Desist Order for Affirmative Relief ("Stipulation") is made by United Financial Group, Inc. ("UFG"), and is accepted by the Office of Thrift Supervision ("OTS"), an office within the United States Department of the Treasury.

WHEREAS, the OTS, based upon information derived from the exercise of its regulatory responsibilities, is of the opinion that grounds exist to initiate administrative proceedings against UFG for the issuance of an administrative order, pursuant to 12 U.S.C. 1818(b)¹ as a result of UFG's failure to maintain the net worth of United Savings Association of Texas ("USAT");

WHEREAS, UFG desires to avoid the time and expense of such administrative litigation with the OTS.

¹ All references to the U.S.C. are as amended.

NOW, THEREFORE, UFG, without admitting or denying either that the aforesaid grounds exist or the OTS' allegations, findings or conclusions, except those as to Jurisdiction, set forth in paragraph II. below, which are admitted, and before taking any further testimony and without any adjudication of any issue of fact or law, hereby stipulates and agrees as follows:

I. CONSENT

UFG consents to the issuance by the OTS of the Consent Cease and Desist Order for Affirmative Relief (the "Order") in consideration of the settlement, compromise, resolution and disposition of: (i) all allegations, findings and conclusions of the OTS set forth in this Stipulation; and (ii) any and all allegations for monetary and non-monetary administrative relief of any kind that could have been brought by the OTS against UFG and Clarence Mayer, Paul N. Schwartz and James R. Whatley, who are former and/or present directors of UFG (the "Settling Directors"), arising out of UFG's or the Settling Directors' relationship with USAT or the Settling Directors' activities at UFG.

II. JURISDICTION

1. Until August 9, 1989, the Federal Savings and Loan Insurance Corporation ("FSLIC") was the regulatory agency with jurisdiction over federally chartered savings associations, certain federal savings banks, pursuant to Section 407 of the National Housing Act (the "NHA"), former 12 U.S.C. § 1730 (repealed by FIRREA), and holding companies thereof, pursuant to section 408 of the NHA, former 12 U.S.C. § 1730a (repealed by FIRREA). The

Federal Home Loan Bank Board (the "FHLBB") was the operating head of FSLIC. FSLIC and the FHLBB are hereinafter referred to collectively as the FHLBB. The Federal Home Loan Bank of Dallas ("FHLB-Dallas") was at all times relevant hereto the agent and representative of the FHLBB in supervising and examining USAT and UFG.

2. As of August 9, 1989, pursuant to the provisions of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 183, OTS succeeded FSLIC as the regulatory agency charged with the supervision and regulation of both savings associations and savings and loan holding companies pursuant to Section 3(q)(4), 8(b), and 8(e) of the Federal Deposit Insurance Act (the "FDIA"), 12 U.S.C. §§ 1813(q)(4), 1818(b), (e), as amended by FIRREA. OTS, as successor to FSLIC, is the appropriate federal banking agency to maintain a proceeding to determine whether an administrative enforcement action should issue against a savings and loan holding company pursuant to 12 U.S.C. § 1818.

3. At all relevant times, USAT: (a) was a savings association as defined by Sections 2(4) and 10(a)(1)(A) of the Home Owners' Loan Act (the "HOLA"), 12 U.S.C. §§ 1462(4), 1467a(a)(1)(A), and Section 3(b) of the FDIA, 12 U.S.C. § 1813(b), as amended by FIRREA; (b) was an insured depository institution as defined by Section 3(c)(1) of the FDIA, 12 U.S.C. § 1813(c)(1) as amended by FIRREA; and (c) was an insured institution as defined by NHA Section 408(a), former 12 U.S.C. § 1730a(a) (repealed by

FIRREA), whose accounts were insured by FSLIC. At all relevant times, USAT was a savings and loan association chartered by the State of Texas. The eligible deposits of USAT were insured by FSLIC from 1937 through December 30, 1988.

4. At all relevant times, UFG was a savings and loan holding company as defined by Section 408(a)(1)(D) of the NHA, former 12 U.S.C. § 1730a(a)(1)(D) (repealed by FIRREA) and was a savings and loan holding company, as defined by section 10(a)(1)(D) of the HOLA, 12 U.S.C. § 1467a(a)(1)(D), and section 3(w)(3) of the FDIA, 12 U.S.C. § 1813(w)(3), both as amended by FIRREA, related to the foregoing savings association. At all relevant times, UFG was a corporation organized and existing under the laws of the State of Delaware and authorized to do business in the State of Texas. At all relevant times, UFG owned 100 percent of the voting stock of USAT.

III. OTS CONCLUSIONS

Based on the exercise of its regulatory responsibilities, and solely for the purposes of this Stipulation and the related Order, the OTS has determined that the following allegations and conclusions of the OTS are adequate to support the initiation of an administrative proceeding:

A. Applicable Statutes and Regulations

1. At all relevant times, no savings and loan holding company or other company could acquire control, directly or indirectly, of any insured institution without the prior written approval of the FSLIC or its designee. Former 12 U.S.C. §

1730a(e)(1) (repealed by FIRREA); 12 C.F.R. § 584.4(a), (b), (g)(1) (1983-85).

2. At all relevant times, the FSLIC was required to "take into consideration the financial and managerial resources and future prospects of the [acquiring] company and the institution involved" in rendering its decision to approve or disapprove the acquisition of control of an insured institution. Former 12 U.S.C. § 1730a(e)(2) (repealed by FIRREA). Pursuant to this statutory mandate, the FSLIC was authorized to condition its approval of acquisition of control upon the acquiring company's stipulation or undertaking to maintain the net worth² of the acquired institution as required by statute or regulation.

B. The UFG net worth maintenance obligation

3. On or about October 6, 1982, UFG and USAT entered into agreements with First American Financial of Texas, Inc., Houston Texas ("First American"), a savings and loan holding company, and its wholly owned subsidiary, Houston First American Savings Association of Houston, Texas ("Houston First"), respectively, that culminated in the merger of First American into UFG and the merger of First American's subsidiary, Houston First, into USAT (the "USAT/Houston First merger"). By FHLBB Resolution No. 83-252, dated April 29, 1983, the FHLBB approved UFG's

² Prior to 1987, 12 C.F.R. § 563.13(b) imposed a "net worth requirement." Effective in 1987, the terminology was changed to "regulatory capital requirement" and the method of calculating the minimum required amount was changed. Compare 12 C.F.R. § 563.13(b) (1984-85) with 12 C.F.R. § 563.13(b) (1987).

application for approval of the USAT/Houston First merger, subject to a number of conditions.

4. Among the conditions the FHLBB imposed in connection with the granting of UFG's application for approval of the USAT/Houston First merger was the requirement that UFG stipulate that for as long as UFG controlled USAT, UFG would "cause the net worth of the Resulting Association, [i.e., USAT,] to be maintained at a level consistent with that required by [12 C.F.R. §] 563.13(b) . . . as [then] or [thereafter] in effect, of institutions insured 20 years or longer" (the "UFG Net Worth Maintenance condition"). FHLBB Resolution No. 83-252, ¶ 6. The UFG New Worth Maintenance Condition also required UFG to stipulate that it would "as necessary . . . infuse additional equity capital, in a form satisfactory to the Supervisory Agent, to effect compliance with such requirement." Id.

5. On October 31, 1983, UFG submitted to the FHLB-Dallas a written stipulation (the "UFG Net Worth Maintenance Stipulation"), signed by its Chairman, that "as long as United Financial Group Inc. controls United Savings Association of Texas it will cause the net worth of the United Savings to be maintained at a level consistent with that required by [12 C.F.R. §] 563.13(b) . . . as [then] or [thereafter] in effect, of institutions insured 20 years or longer and as necessary will infuse additional equity capital, in a form satisfactory to the Supervisory Agent, to effect compliance with such requirement." The obligations of UFG under the Net Worth Maintenance Condition and the Net Worth Maintenance

Stipulation are collectively referred to as the "UFG New Worth Maintenance Obligations."

C. USAT's failure to meet the regulatory capital requirements

6. As of December 31, 1987, USAT failed to meet the applicable regulatory minimum capital requirements by at least \$45.6 million. USAT's regulatory capital was \$196.9 million and the regulatory minimum capital required was \$242.5 million. Accordingly, on or about February 17, 1988, USAT, made a written application for capital forbearance to the FHLB-Dallas.

7. On or about March 16, 1988, the FHLB-Dallas informed USAT that its application for capital forbearance would be deemed incomplete until the completion of an ongoing regulatory examination. On July 29, 1988, the FHLB-Dallas returned the forbearance application to USAT for revision. USAT ultimately withdrew its request for capital forbearance in or about August 1988.

8. In the interim, FHLB-Dallas determined that as of December 31, 1987, USAT had failed to meet its minimum regulatory capital requirement. In a letter dated May 13, 1988, the FHLB-Dallas Supervisory Agent directed the Board of Directors of UFG to advise the Supervisory Agent not later than May 31, 1988 of "the steps that [would] be taken to infuse capital into [USAT]." By letter dated June 3, 1988, the Board of Directors of UFG acknowledged receipt of the Supervisory Agent's May 13, 1988 letter, and requested a meeting so as to advise the FHLB-Dallas of the steps it intended to take in an attempt to augment USAT's

capital. By letter dated December 8, 1988, the Supervisory Agent directed the Board of Directors "in conformance with . . . Resolution No. 83-252," "to infuse additional equity capital into [USAT]." The December 8, 1988 letter required "immediate" compliance with the directive to infuse additional capital.

9. UFG disclosed USAT's failure to comply with the applicable minimum capital requirements on and after December 31, 1987 in filings with the Securities and Exchange Commission ("SEC") in 1988, including its 1987 annual report and Form 10-K for the fiscal year ended December 31, 1987, as well as quarterly reports on Forms 10-Q for the quarters ended March 31, June 30, and September 30, 1988. In those Forms 10-Q UFG also disclosed that it might be required by the FHLB-Dallas to contribute additional capital to USAT. UFG disclosed that, as of September 30, 1988, USAT had a negative capital of \$165 million, \$380 million less than the regulatory capital requirements of \$215 million.

10. On December 30, 1988, the FHLBB declared USAT insolvent and appointed the FSLIC as receiver. The FSLIC accepted its appointment as receiver on December 30, 1988. Immediately thereafter, USAT's deposits and liabilities were assumed by, and substantially all of its assets were transferred to, a new federally chartered savings bank organized by an unaffiliated third party.

11. As of December 30, 1988, the date of receivership, USAT failed to meet its regulatory capital minimum by approximately \$534 million.

12. UFG publicly disclosed that as of September 30, 1995, it had approximately \$11.4 million in total assets.

13. UFG continues to retain and benefit from assets that it was otherwise obligated to pay to USAT under its net worth maintenance obligation.

14. From on or about December 31, 1987 through the present, UFG has not made any capital infusion into USAT as required by both the Capital Maintenance Obligation and the Capital Maintenance Agreement.

D. UFG's Failure to comply with its net worth maintenance obligation

15. The UFG Net Worth Maintenance Condition, contained in FHLBB Resolution No. 83-252, is a "condition imposed in writing by the agency in connection with the granting of any application or other request by the depository institution" as that phrase is used in 12 U.S.C. § 1818(b)(1) (1988 & Supp. IV 1992).

16. The UFG Net Worth Maintenance Stipulation is a "written agreement entered into with the agency" as that phrase is used in 12 U.S.C. § 1818(b)(1) (1988 & Supp. IV 1992).

17. By failing to cause the net worth of USAT to be maintained at the levels required by the applicable capital requirements, UFG engaged in an unsafe or unsound practice, violated a written agreement entered into with the agency, and violated a condition imposed in writing by the agency in connection with the granting of an application, within the meaning of 12 U.S.C. § 1818(b) (1988 & Supp. IV 1992).

18. UFG's violations and practice satisfy the requirements of 12 U.S.C. § 1818(b)(1) and (b)(6) and justify payment in the amount provided in the Order.

E. Injury

19. As a consequence of UFG's actions and omissions, USAT and the federal insurance fund have suffered actual losses.

IV. FINALITY.

The Order is issued under Section 8(b) of the FDIA, 12 U.S.C. § 1818(b). Upon its issuance by the OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i), provided, however, that the obligation of UFG to pay the settlement amount to the FDIC as set forth in paragraph 1 of the Order shall not become effective until approved by a Bankruptcy Court in the manner provided in paragraph 4 of the Order.

V. WAIVERS

1. UFG waives the right to an administrative hearing provided by Section 8(b)(1) of the FDIA, 12 U.S.C. § 1818(b)(1);
2. UFG waives any right to seek judicial review of the Order, including any such right provided by Section 8(h) of the FDIA, 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order, except that nothing in the Order shall limit the right of UFG to appeal any order of the Bankruptcy Court confirming a plan of reorganization of UFG described in paragraph 4 of the Order; and

3. UFG waives any and all claims for the award of fees, costs or expenses relating to this OTS enforcement matter and/or the Order, including any claims under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

VI. OTHER ACTIONS NOT AFFECTED

UFG acknowledges and agrees that the consent to entry of the Order is for the purpose of resolving this OTS administrative matter as well as the claims of the FDIC and other creditors in the bankruptcy proceeding described in the Order and does not release, compromise, settle, dismiss, resolve, affect, preclude or in any way limit the ability of: (i) the OTS to assert in administrative or other proceedings allegations for monetary or non-monetary relief of any kind that the OTS has or may have against any person or entity other than UFG or the Settling Directors; or (2) any government entity, other than the OTS, to bring an action of any kind whatsoever against UFG, the Settling Directors or any other person or entity.

VII. PAYMENT PROCEDURES

UFG agrees to pay the amount set forth in the Order according to the procedures set forth in the Order.

VIII. MISCELLANEOUS

1. UFG consents, solely by virtue of this Stipulation and not by any adjudication on the merits, to the issuance of the Order in the form attached hereto and incorporated by reference. The Stipulation and the Order, or the relief consented to by virtue of this Stipulation, shall not be used for any other purpose. The

execution of this Stipulation by UFG, the payment of the amount set forth in paragraph 1 of the Order, and the other terms and conditions of the Stipulation do not constitute and shall not be deemed to constitute evidence of or an admission by UFG as to any liability, fault, or wrongdoing. Negotiations of the terms of the Order and the Offer of Settlement, including conduct and statements made in connection therewith, shall not be admissible in accordance with Rule 408 of the Federal Rules of Evidence.

2. The construction and validity of this Stipulation and the Order shall be governed by the laws of the United States of America.

3. All references to the OTS in this Stipulation and the Order shall also mean any of the OTS' predecessors, successors and assigns.

4. The section and paragraph headings in this stipulation and in the Order are for convenience only, and such headings shall not affect the interpretation of this Stipulation and Order.

5. This Stipulation and the Order represent the final written agreement of the parties with respect to the subject matters set forth in paragraph III above, and constitute the sole agreement of the parties with respect to such subject matters.

6. UFG states that a duly authorized representative of UFG has read the foregoing Stipulation and declares that no promise or inducement of any kind has been made by OTS or its staff other

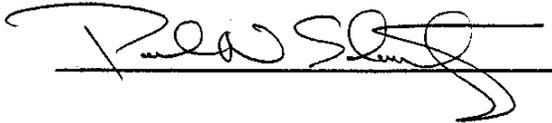
than those contained herein and in the OTS Order to induce UFG to tender this Stipulation, and that the submission of this Stipulation is a free and voluntary act of UFG.

WHEREFORE, UFG executes this Stipulation intending to be legally bound thereby.

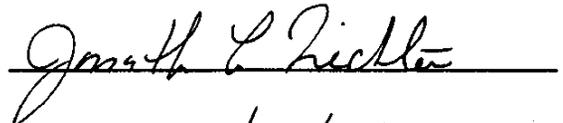
Accepted by:

United Financial Group, Inc.
By:

Jonathan Fiechter
ACTING DIRECTOR



Dated: 11-20-95



Dated: 12/13/95

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION
DEPARTMENT OF THE TREASURY

In the Matter of

UNITED FINANCIAL GROUP, INC.,
Houston, Texas, a Savings and
Loan Holding Company

Respondent.

OTS Order No. AP-38

Date: December 13, 1995

**CONSENT CEASE AND DESIST
ORDER FOR AFFIRMATIVE RELIEF**

WHEREAS, the Office of Thrift Supervision ("OTS") has conducted an investigation of United Financial Group, Inc., ("UFG"), regarding certain claims arising out of UFG's alleged failure to maintain the net worth of United Savings Association of Texas ("USAT");

WHEREAS, pursuant to that investigation OTS has concluded that grounds exist for initiating enforcement proceedings against UFG seeking an order for affirmative relief, pursuant to 12 U.S.C. § 1818(b)(1) and (6);

WHEREAS, in order to avoid the cost of litigation and for the purpose of resolving the potential claims of OTS arising out of the investigation, UFG has executed a Stipulation and Consent to the

Entry of Cease and Desist Order for Affirmative Relief ("Stipulation");

WHEREAS, in the Stipulation UFG agreed to the issuance of the Consent Cease and Desist Order for Affirmative Relief ("OTS Order"), pursuant to 12 U.S.C. § 1818(b)¹;

WHEREAS, an involuntary petition for relief under Chapter 11 of the Bankruptcy Code was filed against UFG on November 25, 1992, in In re: United Financial Group, Inc., Case No. 92-1503-HSB, in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") which is still pending;

WHEREAS, the OTS believes that its potential enforcement claims against UFG for UFG's failure to maintain the net worth of USAT as described in the Stipulation is a deficit under a commitment by UFG that is subject to being "immediately cured" in a Chapter 11 proceeding pursuant to Section 365(o) of the Bankruptcy Code; and

WHEREAS, the OTS has agreed to compromise its claims against UFG through the payment by UFG to the FDIC of an amount no less than \$9,450,000;

NOW THEREFORE, upon consideration, the OTS has determined to accept the Stipulation and solely on the basis of the consent

¹ In the Stipulation, without admitting or denying the allegations, facts or conclusions set forth in the Stipulation, UFG admits the jurisdiction of OTS with respect to the matters set forth in the Stipulation; waives a hearing, all post-hearing procedures, and judicial review of OTS's Order by any court; and stipulates that the record basis for this proceeding consists of the Stipulation.

evidenced by the Stipulation and OTS Order, and without any adjudication on the merits, OTS HEREBY ORDERS THAT:²

1. UFG shall pay to the FDIC as receiver for USAT the sum of \$9,450,000 (the "settlement amount"). Within ten (10) days of the expiration of the appeals period for any order of the Bankruptcy Court confirming a plan of reorganization of UFG that provides for the payment to the FDIC of an amount no less than the settlement amount, UFG shall pay the settlement amount required by this paragraph by wire transfer of immediately available funds pursuant to written instructions to be provided by the FDIC. UFG shall promptly notify the OTS that the payment pursuant to this paragraph has been made to the FDIC.

2. The OTS Order constitutes the final disposition of: (i) all allegations contained in the OTS Order and the Stipulation; and (ii) any and all allegations for monetary and non-monetary administrative relief of any kind that could have been brought by the OTS against UFG and Clarence Mayer, Paul N. Schwartz and James R. Whatley, who are former and/or present directors of UFG (the "Settling Directors"), arising out of or relating in any way to

² Solely by virtue of the Stipulation and not by an adjudication on the merits, this OTS Order may be used in any proceeding brought by the OTS to enforce this OTS Order. The Stipulation and this OTS Order, or the relief consented to by virtue of the Stipulation, shall not be used for any other purpose. The Stipulation, the payment of the amount set forth in paragraph 1 of this OTS Order, and the other terms and conditions of the Stipulation and OTS Order do not constitute and shall not be deemed to constitute evidence of or an admission by UFG as to any liability, fault, or wrongdoing. Negotiations of the terms of this OTS Order and the Stipulation, including conduct and statements made in connection therewith, shall not be admissible in accordance with Rule 408 of the Federal Rules of Evidence.

UFG's or the Settling Directors' relationship with USAT or the Settling Directors' activities at UFG. All further OTS proceedings with respect to UFG and the Settling Directors are hereby terminated, and no further administrative or other proceedings arising out of or relating in any way to UFG's or the Settling Directors' relationship with USAT or the Settling Directors' activities at UFG shall be commenced by the OTS against UFG or the Settling Directors. The OTS Order does not dispose of, discharge, compromise, settle, release or in any way limit the ability of: (i) the OTS to assert in administrative or other proceedings allegations for monetary or non-monetary relief of any kind that the OTS has or may have against any person or entity other than UFG or the Settling Directors; or (2) any government entity, other than the OTS, to bring an action of any kind whatsoever against UFG, the Settling Directors or any other person or entity.

3. All notices, requests, demands and other communications required by or given pursuant to the OTS Order shall be in writing and shall be hand delivered to the individual identified below, mailed by certified or registered mail, postage prepaid, return receipt requested, and delivered or addressed as follows:

If to the OTS:	Office of Thrift Supervision 1700 G Street, NW Washington, DC 20552 Attn: Chief Counsel
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If to UFG:	United Financial Group, Inc. 5847 San Felipe, Suite 2600 Houston, Texas 77057 Attn: Paul N. Schwartz
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4. The OTS Order shall become effective on the date of execution by the Acting Director, except that the obligation of UFG to pay the settlement amount to the FDIC under paragraph 1 of the OTS Order shall not become effective until the expiration of the appeals period for any order of the Bankruptcy Court confirming a plan of reorganization of UFG that provides for the payment to FDIC of not less than the settlement amount required under paragraph 1. In the event the Bankruptcy Court does not enter such an order within six (6) months of the date of the OTS Order the OTS has the option to give written notice to UFG to withdraw the OTS Order. Moreover, if a plan of reorganization is confirmed by the Bankruptcy Court that provides for the payment of less than the settlement amount required under paragraph 1 to be paid by UFG to the FDIC, the OTS has the option to give written notice to UFG within 30 days of the entry of any such order or plan by the Bankruptcy Court to withdraw the OTS Order. In the event the OTS withdraws the OTS Order pursuant to this paragraph, the OTS in its discretion, may pursue any potential enforcement claims it may wish to assert against UFG and/or the Settling Directors.

A copy of this OTS Order shall be served upon Respondent
UFG at the address set forth above.


Jonathan L. Flechter
Acting Director
Office of Thrift Supervision

Dated 12/13/95

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of December 1995, a copy of the foregoing OTS Order No. Ap 95-38 was served by hand delivery, and first class mail on the following:

By Hand Delivery

Richard C. Stearns, Esquire
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552

By First Class Mail

Richard M. Alexander, Esquire
Arnold & Porter
555 Twelfth Street, N.W.
Washington, D.C. 20004-1202



Helene Brecher
Secretary for Adjudicatory Proceedings
Office of Thrift Supervision