

DC

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)
DONALD **McG.** WOODS,)
Director and Shareholder of)
Tracy Federal Bank, F.S.B.,)
Tracy, California.)
(OTS No. **07903**))
_____)

Order No.: SF-02-005
Date: April 15, 2002

CONSENT ORDER TO CEASE AND DESIST

WHEREAS, Donald **McG.** Woods (WOODS) has executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist (Stipulation); and

WHEREAS, WOODS, by his execution of the Stipulation, has consented and agreed to the issuance of this Consent Order to Cease and Desist (Order) pursuant to 12 U.S.C.

§ 1818(b).¹

WHEREAS, the Director of the Office of Thrift Supervision (OTS) has delegated to the Regional Directors of the OTS the authority to issue Orders to Cease and Desist on behalf of the OTS where WOODS has consented to the issuance of the Order.

¹ All references to the United States Code (U.S.C.) are as amended, unless otherwise indicated.

Donald **McG.** Woods
Tracy Federal Bank, F.S.B.
Order to Cease and Desist

**NOW THEREFORE, IT IS ORDERED THAT WHILE SERVING AS AN
INSTITUTION-AFFILIATED PARTY OF A BANKING INSTITUTION, WOODS
SHALL:**

1. (a) Cease and desist from engaging in unsafe and unsound practices, breaching his fiduciary duty, or violating laws or regulations in connection with his oversight of or participation in a Banking Institution's financial derivative activities; and

(b) Cease and desist from acting in a managerial capacity at a Banking Institution without **first** obtaining the authorization of such Banking Institution's board of directors together with the board's designation of a formal management title, and shall exercise only those management responsibilities customarily performed in the industry by Banking Institution officers with such titles.

2. Definitions. For purposes of this Order and the Stipulation incorporated herein:

(a) "Banking Institution" refers to any and all of the following: any "insured depository institution" as that term is defined at 12 U.S.C. § 1813(c) (including but not limited to banks and savings associations); any direct or indirect subsidiary of an insured depository institution, whether wholly or partly owned; any "insured credit union" within the meaning of 12 U.S.C. § 1752(7); any "savings and loan holding company" within the meaning of 12 U.S.C. § 1467a(a)(1); any "bank holding company" within the meaning of 12 U.S.C. § 1841; and any direct or indirect subsidiary of any such holding companies, whether wholly or partly owned,

(b) "Institution-Affiliated Party:" shall have the meaning set forth at 12 U.S.C. § 1813(u);

- (c) Any terms used herein that are defined in other paragraphs of this Order or Stipulation shall have the meanings ascribed to them in such paragraphs; and
- (d) Except as otherwise expressly provided in this Order, any terms used herein that are defined in the Home Owners' Loan Act or the Federal Deposit Insurance Act shall have the meanings ascribed to them in said statutes. See, e.g., 12U.S.C. §1813.

3. Stipulation. The Stipulation is made a part hereof and is incorporated herein by this reference.

4. Effectiveness of Order. This Order shall become effective on the date it is issued, as shown in the caption hereof (Effective Date). This Order shall remain in effect until it is terminated, modified, or suspended, which may occur only by formal written action of the OTS, acting by and through its Regional Director, or other authorized representative, provided however that the Order shall automatically terminate five (5) years from ~~the~~ Effective Date of the Order.

OFFICE OF THRIFT SUPERVISION

By: 
Charles A. Deardorff
Regional Director
West Region

(d woods C&D ORD c:jah)

Donald McG. Woods
Tracy Federal Bank, F.S.B.
Order to Cease and Desist

UNITED STATES OF AMERICA
Before **The**
OFFICE OF THRIFT SUPERVISION

| | |
|--------------------------------------|-----------------------------|
| _____) | |
| In the Matter of) | Order No.: <u>SF-02-005</u> |
|) | |
| DONALD McG. WOODS,) | Date: <u>April 15, 2002</u> |
|) | |
| Director and Shareholder of) | |
|) | |
| Tracy Federal Bank, F.S.B.,) | |
| Tracy, California.) | |
| (OTS No. 07903)) | |
| _____) | |

**STIPULATION AND CONSENT TO THE ISSUANCE OF AN
ORDER TO CEASE AND DESIST**

WHEREAS, the Office of Thrift Supervision (OTS), based upon information derived from the exercise of its regulatory responsibilities, has informed Donald **McG.** Woods (WOODS), director and shareholder of Tracy Federal Bank, F.S.B. (Tracy), that grounds exist to initiate an administrative cease and desist proceeding against him pursuant to 12 U.S.C. § 1818(b);¹ and

WHEREAS, WOODS desires to cooperate with the OTS and to avoid the time and expense of such administrative proceeding and, without any adjudication on the merits and solely for the purpose of settling this matter in accordance with Rule 408 of the Federal Rules of Evidence, and without admitting or denying that such grounds exist, or the Findings of Fact or

¹ All references to the United States Code (USC.) are as amended, unless otherwise indicated.

Donald **McG.** Woods
Tracy Federal Bank, F.S.B.
Stipulation to Cease and Desist

opinions and conclusions of the OTS, except as to Jurisdiction, paragraph 1, below, which is expressly admitted, hereby stipulates and agrees to the following:

1. Jurisdiction.

(a) Tracy is a “savings association” within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, it is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c);

(b) WOODS is a director and shareholder of Tracy and is an “institution-affiliated party” as that term is defined in 12 U.S.C. § 1813(u); and

(c) Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the “appropriate Federal Banking agency” to maintain an administrative cease and desist proceeding against an **institution-affiliated party**. Therefore, WOODS is subject to the jurisdiction of the OTS to initiate and maintain a cease and desist proceeding against him pursuant to 12 U.S.C. § 1818(b). The Director of the OTS has delegated to the Regional Director of the West Region of the OTS or his designee (Regional Director) the authority to issue cease and desist orders where the individual has consented to the issuance of the order.

2. OTS Findings of Fact. The OTS finds that WOODS acted as a de facto manager, instead of just an outside board member, when he, with the approval of the other members of Tracy’s board of directors, permitted the head of Tracy’s mortgage banking division to report directly to him (his “direct report”). Even though WOODS was a director of Tracy and Chief Executive **Officer** of its holding company, he was not an officer of Tracy and therefore had no formal day-to-day management role in Tracy at the time. WOODS knew or should have known **that his direct report was using** financial derivatives to hedge Tracy’s mortgage pipeline in an

unsafe and unsound manner that exposed Tracy to increased risk, but failed to stop him until Tracy suffered a large financial loss due to the aggressive hedging activity, although Tracy realized a net gain from its overall hedging activities. Thus, the OTS finds that WOODS engaged in unsafe and unsound practices, breached his fiduciary duty of care, and violated 12 C.F.R. § 563.172 due to his actions.

3. ~~WOODS~~ consents to the issuance by the OTS of the accompanying Order to Cease and Desist (Order). WOODS further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

4. Finality. The Order is issued under 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 12 U.S.C. §1818(i)(1).

5. ~~WOODS~~ waives the following:

(a) the right to be served with a written notice of the OTS's charges against him as provided by 12 U.S.C. §1818(b);

(b) the right to an administrative hearing of the OTS's charges against him as provided by 12 U.S.C. § 1818(b);

(c) the right to seek judicial review of the Order, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order;

(d) any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law, the Equal Access to Justice Act,

5 U.S.C. § 504, or 28 U.S.C. § 2412; and

(e) the right to assert this proceeding, his consent to issuance of the Order, and the issuance of the Order, as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity.

6. Indemnification. WOODS represents that he has not received, directly or indirectly, any sums from Tracy for the purpose of indemnifying or reimbursing him for any expenses incurred by him in connection with the OTS investigation. WOODS shall neither cause nor permit Tracy (or any successor institution, holding company, subsidiary or service corporation thereof) to incur, directly or indirectly, any expense for any legal or other professional services rendered to WOODS relative to the negotiation and issuance of the Order, nor obtain any indemnification (or other reimbursement) from Tracy (or any successor institution, holding company, subsidiary or service corporation thereof) with respect to such expenses. In the event that any such payments are received by or on behalf of WOODS in connection with this action, WOODS agrees promptly to notify the OTS of the receipt of such payments and to return such payments without delay to Tracy (or the successor institution, holding company, subsidiary or service corporation thereof).

7. Other Governmental Actions Not Affected. WOODS acknowledges and agrees that his consent to the issuance of the Order is for the purpose of resolving this OTS enforcement matter only, arising from the OTS Findings of Fact set forth in paragraph 2 herein, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of WOODS that might otherwise arise and that may be or have been brought by the OTS or another governmental entity.

8. Agreement for Continuing Cooperation. WOODS agrees that, at the OTS's written request, on reasonable notice and without service of a subpoena, he will provide discovery and

testify truthfully at any deposition or at any judicial or administrative proceeding related to any investigation, litigation, or other proceeding maintained by the OTS relating to Tracy, its holding company, service corporation or subsidiaries or its institution-affiliated parties, except that WOODS does not waive any privilege against self-incrimination under the Fifth Amendment of the United States Constitution or any attorney-client privilege. If WOODS invokes his privilege against self-incrimination under the Fifth Amendment of the United States Constitution and the OTS obtains a grant of immunity pursuant to 18 U.S.C. § 6001 et seq., WOODS agrees, consistent with any such grant of immunity, to provide discovery and testify truthfully at any deposition and at any judicial, administrative, or investigative proceeding on the matter for which immunity is given subject to applicable attorney-client privilege.

9. Miscellaneous.

(a) The construction and validity of this Stipulation and the Order shall be governed by the laws of the United States of America;

(b) All references to the OTS in this Stipulation and the Order shall also mean any of the OTS's predecessors, successors, and assigns;

(c) The section and paragraph headings in this Stipulation and the Order are for convenience only, and such headings shall not affect the interpretation of this Stipulation ~~or~~ the Order;

(d) The terms of this Stipulation and the Order represent the final written agreement of the parties with respect to the subject matters hereof, and constitute the sole **agreement of the** parties with respect to such subject matters; and

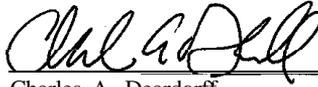
(e) This Stipulation and the Order shall remain in effect until terminated, **modified**, or suspended in writing by the OTS, acting through its Director, Regional Director, or other authorized representative provided, however, that the Stipulation and Order shall automatically terminate **five (5)** years from the Effective Date of the Order as the term "Effective Date" is defined in the Order.

WHEREFORE, WOODS, executes this Stipulation and Consent to the Issuance of an Order to Cease and Desist, intending to be legally bound hereby.

Accepted by:

OFFICE OF THRIFT SUPERVISION

By: 
DONALD McG. WOODS


Charles A. Deardorff
Regional Director
West Region

Dated: April 12, 2002

Dated: April 15, 2002

(d woods C&D STIP cjah)