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FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

May 24, 1984

Mr. R. Bruce LaBoon
Liddell, Sapp, Zivley, Brown & LaBoon
Texas Commerce Tower
Houston, Texas 77002-3095

Re: Request for Staff Opinion - Regulation O

Dear Mr. LaBoon:

In your letter dated April 27, 1984, you requested on behalf of your Firm's client, Texas Commerce Bank National Association (the "Bank"), the opinion of the Staff of the Board of Governors of the Federal Reserve System (the "Board") concerning the application of the Board's Regulation O (12 C.F.R. 215) to the restructuring by the Bank of a loan transaction involving an individual director of the Bank and its parent holding company, as well as another individual director of another of the holding company's banking subsidiaries. Your letter and the accompanying letter from Mr. Lloyd L. Bolton, Vice Chairman of the Board of Directors of the Bank, presented the history, present status and proposed restructuring of the loan transaction.

As we have discussed by telephone, as General Counsel of the Federal Reserve Bank of Dallas, I am not a member of the Board's Legal Staff. However, I have reviewed your request and the information submitted in the letters referenced above and have involved the appropriate members of the Board's Legal Staff, and this letter represents our concurring views.

In your letters you and Mr. Bolton represented that the terms of the restructuring of the subject loan reflect the terms upon which a comparable workout of a loan secured by distressed property would be structured if no directors or other insiders of the Bank or its affiliates were involved. Your letters also contained representations that the advance authorizations required under the provisions of Regulation O had been secured from the appropriate boards of directors, and in our telephone discussion you indicated that the involved directors had refrained from participating in any action of the board of directors with respect to the subject transactions.

You are correct that the provisions of Regulation O would apply to the subject transaction to the extent of any involvement of the renewal of a loan guaranteed by directors of the Bank, its parent holding company, and an affiliate bank. You are equally correct that the provisions of Regulation O require that the restructuring of the transaction, involving insiders, be non-preferential, that is, be made on the same terms extended with reference to a transaction of like type and amount but lacking involvement of directors or other insiders. Regulation O, however, does not require that the terms of a workout situation involving insiders, in order to be considered non-preferential, be extended on terms prevailing for similar types of new extensions of credit with no distress record made to non-insiders; it is enough that the restructuring involving insiders be made on the same terms offered in workout situations involving non-insiders. Of course, compliance with Regulation O does not relieve the Bank from its duty to make every extension of credit in a prudent business manner and in full conformity in all respects with sound banking practice.

The general proscriptions of Regulation O, as set forth in Section 215.4(a), not only require that extensions of credit to insiders be made on substantially the same terms as those prevailing for comparable transactions with non-insiders but also prohibit any extension of credit to insiders that involves more than the normal risk of repayment or that presents other unfavorable features. These latter two considerations necessarily turn on factual determinations relating to the soundness of the Bank's business decisions and banking practices, but in my opinion those determinations should be made in the context of standards applied by the Bank to comparable workout situations and not measured against the standards applied to initial extensions of credit.

Such determinations, however, require full study and would be made best in the context of the examination processes rather than the more restricted confines of our limited communications. Since it is my understanding that similar inquiries have been sent to the offices of the Comptroller of the Currency, the Bank's primary regulator, I would defer to that agency's reply with regard to these issues.

Based on the information contained in your letters and the representations set forth therein, and within the limitations expressed in the paragraphs above, it is therefore my opinion that the proposed restructuring of the subject transaction as described in the letters sent for review would not involve an apparent violation of the provisions of Regulation O. Of course, this opinion reflects an individual interpretation of law and is not intended to represent a determination on the fact questions upon which a

finding on the question of a violation would ultimately be based, and, while the appropriate members of the Board's Legal Staff have communicated their concurrence, my opinion would not be binding on the Board or upon a court of competent jurisdiction. As a corollary matter, this opinion should not be construed as any form of approval or affirmation of any of the proposed forms of restructuring as a sound or prudent banking practice.

I hope that this fully responds to your inquiry. Should you have further questions regarding this matter, please do not hesitate to contact me.

Very Truly Yours,

(signed)

Millard E. Sweatt, Jr.
Vice President and General Counsel