FEDERAL RESERVE press release

For immediate release April 22, 1997

The Federal Reserve Board today announced that a public administrative hearing will commence on April 23, 1997, in connection with an enforcement action against Park T. Jones, a former officer of Provident Bancorp of Texas, Inc., the former parent bank holding company of the Provident Bank, Dallas, Texas.

The hearing will be held before an Administrative Law Judge to determine whether Mr. Jones should be ordered to pay a civil money penalty.

A copy of the Board's Amended Notice of Assessment of Civil Money Penalties is attached.

In its Notice, the Board alleges that Mr. Jones participated in violations of the Change in Bank Control Act arising from inaccurate filings with the Federal Reserve in connection with the 1991 acquisition of control of Provident Bancorp of Texas by another individual.

The administrative hearing will commence at 9:00 a.m. on April 23, at the following location:

United States District Court
1100 Commerce Street, Courtroom 13B48
Dallas, Texas

Attachment

UNITED STATES OF AMERICA

BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

WASHINGTON, D.C.

In the Matter of PARK T. JONES A former institution-affiliated party of Provident Bancorp of Texas, Inc.	Docket No. 95-042-B-I3 Amended Notice of Assessment of Civil Money Penalties Pursuant to the Change in Bank Control Act (the "Control Act") and the Federal Deposit Insurance Act (the "FDI Act")

The Board of Governors of the Federal Reserve System (the "Board of Governors") is of the opinion or has reasonable cause to believe that:

I. **[DELETED]**

[DELETED]

II. **[DELETED]**

[DELETED]

III. Jones

Park Jones ("Jones"), a former institution-affiliated party of Provident Bancorp, has violated the Control Act and Regulation Y, 12 C.F.R. § 225.43;

IV. **[DELETED]**

[DELETED]

Accordingly, the Board of Governors hereby institutes these proceedings:

(I) [**DELETED**]; and

(II) For the purpose of assessing civil money penalties against [**DELETED**], Jones and [**DELETED**] for their violations of the Control Act and Regulation Y, pursuant to the Control Act and the FDI Act, 12 U.S.C. § 1818(i)(2).

In connection with this proceeding, the Board of Governors alleges as follows:

JURISDICTION

1. Provident Bancorp was at all times pertinent to the charges herein, a registered one-bank bank holding company under the Bank Holding Company Act, 12 U.S.C. § 1841 et seq., whose only subsidiary was Provident Bank, Dallas, Texas, a state non-member bank insured by the Federal Deposit Insurance Corporation (the "Provident Bank").

2. From 1984, until on or about February 12, 1991, Riddle was a director of Provident Bancorp. Riddle was Chairman of Provident Bancorp from 1987, until on or about February 12, 1991. As such, during those periods, Riddle was an institution-affiliated party of Provident Bancorp pursuant to 12 U.S.C. § 1813(u)(1) and 1818(b)(3).

3. From at least on or about June 1990 through at least on or about February 12, 1991, Averett was a consultant compensated by the law firm of Riddle & Brown, Dallas Texas, of which Riddle was a senior partner. As set forth herein, Averett participated in the conduct of the affairs of Provident Bancorp during that period. From December 14, 1990, to February 1991, Averett was a

member of the board of directors of Provident Bancorp. As such, Averett was an institution-affiliated party of Provident Bancorp, pursuant to 12 U.S.C. § 1813(u)(3) and 1818(b)(3).

4. From before June 1990 through on or about February 12, 1991, Jones was an employee of D.R. Horton, Inc., a firm controlled by Donald R. Horton ("Horton"). In that capacity, Jones represented Horton in connection with negotiations for Horton to acquire a majority interest in Provident Bancorp. From on or about February 4, 1991 through July 1994, Park Jones was Chairman of Provident Bancorp. As such, Jones, was an institution-affiliated party of Provident Bancorp, pursuant to 12 U.S.C. § 1813(u)(1) and 1818(b)(3).

5. From 1984, through on or about February 4, 1991, Ducote was a member of the board of directors and President of Provident Bancorp. As set forth herein, Ducote participated in the conduct of the affairs of Provident Bancorp during that period. As such, Ducote was an institution-affiliated party of Provident Bancorp pursuant to 12 U.S.C. § 1813(u)(1) and 1818(b)(3).

FACTUAL ALLEGATIONS

Provident Bancorp's Condition in 1990 and Preliminary Efforts to Locate an Acquirer

6. Provident Bancorp and Provident Bank were in a troubled condition during 1990, and in need of additional capital to comply with regulatory requirements. Provident Bancorp owed approximately $14 million to NCNB National Bank Texas ("NCNB"), secured by the common stock of Provident Bank (the "Holding Company Note"). Provident Bank's troubled condition prevented Provident Bancorp from servicing this debt. In addition, Provident Partners, a Texas partnership consisting of Riddle, Ducote, and two other Provident Bancorp shareholders, owed approximately $600,000 to NCNB secured by 66,764 shares of Provident Bancorp stock (7.8% of the outstanding common stock), the partnership's only asset (the "Provident Partners Note"). The stock at the time had a value substantially below the outstanding loan balance. The loan was also personally guaranteed by each of the partners. Because of the troubled condition of Provident Bank and Provident Bancorp, it was likely that the individual partners would have to pay off the Provident Partners loan from their own assets. Of the partners, Riddle had substantial assets and expected that he would be the partner against whom NCNB would enforce the guarantee.

7. In early 1990, Riddle began negotiations with a group represented by a Fort Worth attorney, which was seeking to acquire a majority interest in Provident Bancorp (the "Fort Worth Group"). As part of this negotiation, Riddle and Ducote secured

a commitment from NCNB allowing the Fort Worth Group to satisfy the $14 million holding company note for $1.4 million, if the Provident Partners Note were repaid for the full $600,000. The proposed transaction called for the Fort Worth Group to acquire the two NCNB notes for $2 million which would then be redeemed for newly issued Provident Bancorp stock and the stock owned by Provident Partners, respectively. The Fort Worth Group would also inject new capital into Provident Bancorp by purchasing newly issued Provident Bancorp stock for $1 million. If the transaction were completed, Riddle and Ducote would be released from their $600,000 guarantees of the Provident Partners Note. Although the parties signed a letter of intent, the proposed transaction with the Forth Worth Group never reached fruition. First, Riddle learned that an investor who had been associated with a highly-publicized savings and loan association failure would be financing the Fort Worth Group. Riddle understood that applicable law required disclosure of the source of financing, and that the Federal Reserve and other banking regulators would be unlikely to approve a transaction financed by this individual. Second, the Fort Worth Group failed to provide a $500,000 good faith deposit called for in the letter of intent.

8. After the transaction with the Forth Worth Group foundered, Riddle turned to Horton, a wealthy Fort Worth homebuilder, as a possible acquirer of a majority of Provident Bancorp through a similarly structured transaction. On June 27, 1990, Horton and Ducote, on behalf of Provident Bancorp, entered

into a letter of intent for Horton to acquire a majority of the voting shares of Provident Bancorp for $3 million. Of that amount, $2 million would be used to acquire the Holding Company Note and the Provident Partners Note, and $1 million would be used to provide new capital to Provident Bancorp. In addition, the letter of intent proposed the formation of a "liquidating trust" (sometimes referred to as a "liquidating corporation") which would be a vehicle for Horton to make future capital injections into Provident Bancorp through warrants Horton would be granted as part of the transaction. According to the letter of intent, Horton would contribute to the liquidating trust approximately $10 million worth of real estate, specifically 197 rental properties which Horton and his family owned free and clear (the "rental properties"). Horton would use his own cash balances to pay the $3 million in the initial acquisition of shares. According to the letter of intent, the $3 million would be repaid from cash generated from liquidation of the rental properties or debt placed on them.

9. In addition to the letter of intent, Horton's representatives and Provident Bancorp, entered into a side letter, dated June 27, 1990 (the "June 27, 1990 side letter"). The June 27, 1990 side letter, initialed by Ducote, stated that although the letter of intent "is to be used only for the 'Change in Control' filing and the purchase is subject to a definitive agreement, ... the source of the actual investment will be from a

loan and/or a sale of the assets to be contributed into a self-liquidating company."

10. As demonstrated by the June 27, 1990 side letter, Horton did not intend to close on the acquisition, if he had to use his own cash to fund it. From that time until a definitive stock purchase agreement was signed on December 21, 1990, Horton represented to Jones, Averett, Ducote, Riddle and others that the transaction would not go forward unless Horton either had received a loan commitment to borrow the funds for the acquisition or had actually sold the rental properties before the acquisition occurred. Accordingly, beginning in July 1990, Jones, Ducote, Averett, and Riddle engaged in a wide-ranging search to locate a lender willing to finance Horton's acquisition.

The Horton Group Notice of Change-in-Bank Control

11. On or about July 25, 1990, the Federal Reserve Bank of Dallas (the "FRB-Dallas") received a Notice of Change-in-Bank-Control form (Federal Reserve Form 2081), submitted on behalf of Horton, Terrill J. Horton and Wanda Lee Boyd Martin, Horton's brother and mother-in-law respectively (collectively, the "Horton Group") (the "July 25 Notice"). The July 25 Notice represented that the Horton Group intended to acquire a majority of the common stock of Provident Bancorp, plus warrants to purchase additional stock. Ducote drafted the description of the transaction and was the contact person named on the form.

12. The Control Act, 12 U.S.C. § 1817(j)(6)(D), and Federal Reserve Form 2081, require that the notificant:
1) identify the source of funds to be used in the acquisition, and, 2) if any funds or other consideration for the acquisition have been or will be borrowed, provide all details of the financing, including repayment terms, and any other arrangements, agreements, and understandings between the parties.

13. The July 25 Notice represented that the Horton Group's source of funds would be cash balances in Horton's accounts. The Notificants also represented that Horton's cash would be repaid from the liquidating corporation described in the letter of intent. There was no reference to the statement in the June 27, 1990 side letter insisting that "the source of the actual investment will be from a loan and/or sale of the assets to be contributed into the self-liquidating company."

14. The FRB-Dallas reviewed the July 25 Notice and requested additional information and clarification of the terms of the transaction in a letter, dated August 1, 1990. In that letter, the FRB-Dallas stated that it understood Horton would fund the initial acquisition of Provident Bancorp from cash balances of his affiliated corporations, and would be repaid from the liquidation of the rental properties put into a "liquidating trust." The August 1 letter also requested that copies of relevant loan documents (including loan commitments) be provided. FRB-Dallas also questioned whether the proposal to use the

liquidating trust as a source of additional capital for Provident Bancorp would violate section 4 of the Bank Holding Company Act.

15. On August 6, 1990, Horton, Jones, Riddle, Averett, and Ducote met with the FRB-Dallas staff. At that meeting, the FRB-Dallas staff reiterated its concerns about the use of the liquidating trust concept in the July 25 Notice. On August 10, 1990, Ducote submitted a written response to the August 1, 1990 letter. Jones reviewed the response before it was filed. The August 10, 1990, letter stated that the proposal had been revised in light of FRB-Dallas' concerns. It represented that Horton would use $3 million "from his wholly-owned corporations and other personal sources ... to acquire" the shares. It also represented that the Horton Group would still form a Subchapter S corporation to hold the rental properties and liquidate them in an orderly manner. The proceeds from the liquidation would be used to repay Horton for his initial investment, with the remainder to be distributed to the individuals to exercise the warrants. In response to another query in FRB-Dallas' August 1, 1990 letter, though, the August 10, 1990 response suggested that Horton might borrow against the rental properties either before or after the acquisition was closed. In response to a question requesting the submission of a loan commitment letter from one of Horton's companies, the August 10 letter stated that Horton "can simply withdraw funds at his sole discretion [from his company] without need for loan commitments." No loan documents with respect to a loan from third-party lender were submitted in

response to the specific request in the August 1 letter, nor did the August 10 letter disclose that a commitment for third-party financing was a precondition to the closing of the acquisition.

16. Jones was aware that the description of the transaction in the August 10 letter was inaccurate and so informed Ducote in writing. Jones also stated that FRB-Dallas would need to be informed of changes in the transaction prior to closing, but neither Jones, nor Ducote did anything at that time to inform FRB-Dallas that it was reviewing a misdescribed transaction.

17. Following receipt of the August 10 letter, FRB-Dallas staff contacted Ducote by telephone for further clarification of the conflicting statements regarding Horton's financing and sources of funds. In a letter to the Reserve Bank, dated August 17, 1990, and submitted on August 20, 1990, Ducote represented as follows:

> a. There are no agreements, formal or informal between Horton and Provident Bancorp as to the use of the funds which may be generated by the new corporation (which would hold the single family houses) being formed.
>
> b. Mr. Horton and the other notificants represent that the source of funds to be used in the initial closing shall be cash withdrawals from Mr. Horton's Sub-S corporations.

Based on this clarification, FRB-Dallas processed the acquisition as a cash, rather than a financed transaction. Jones, Averett and Riddle reviewed this statement before it was submitted and received copies of it after it was filed. At the time of the August 20 submission, Ducote, Averett, Jones and Riddle were aware that Horton was not willing to proceed with the transaction unless it were financed from a third-party lender.

18. On October 12, 1990, FRB-Dallas issued a notice of intent not to disapprove the proposed Horton Group acquisition. The letter, among other things, requested that the Notificants advise FRB-Dallas "if the terms or conditions of any of the parties to the transaction change...." As of October 12, 1990, FRB-Dallas had not been notified that the Horton Group would proceed with the transaction only if financing could be arranged from a third-party lender.

The Respondents Arranged For DLG Financial Corporation To Lend Funds to Horton for the Acquisition of Provident Bancorp and Contemporaneously for DLG to Sell Mortgage Loans to Provident Bank at Inflated Prices.

19. The Horton Group's acquisition of Provident Bancorp was not consummated during October and November 1990, because third-party financing could not be arranged. Although Jones and Averett, acting on Riddle's instructions, contacted numerous institutional lenders, none would commit to financing the transaction on terms acceptable to Horton.

20. In late November 1990, Ducote learned that DLG Financial Corporation ("DLG"), a previously unknown and recently formed corporation, and its principal, Daniel S. De La Garza, were interested in making bank acquisition loans. Ducote arranged for De La Garza to meet Riddle, Averett, Jones and Horton. At meetings at Provident Bank and at Riddle's office, De La Garza stated that his firm was interested in making an acquisition loan to the Horton Group. However, De La Garza also stated that he wanted Provident Bank to agree to purchase pools of single family mortgage loans from his firm.

21. After the meetings with De La Garza in Dallas, Averett, with Riddle's approval, assisted Jones in soliciting a loan commitment from DLG by furnishing proprietary information about Provident Bank and Provident Bancorp to De La Garza. In addition, Averett and Jones met with De La Garza to discuss the terms of the loan which DLG proposed to the Horton Group.

22. As a consequence of the prospect of a loan commitment from DLG, the Horton Group revived negotiations with Riddle and Averett beginning in early December 1990.

23. On or about December 4, 1990, De La Garza sent a loan commitment letter addressed to Horton concerning the proposed acquisition loan. In that letter, DLG offered to lend Horton $3 million secured by the rental properties and personally guaranteed by Horton so that Horton could acquire Provident Bancorp. The December 4 loan commitment letter also stated that a precondition for making the loan was the purchase by Provident Bank of approximately $10 million in mortgages from DLG, and a further agreement by Provident Bank to enter into a "purchase in/purchase out" agreement with DLG concerning an additional $7.5 million in mortgages.

24. On or about December 6 or 7, 1990, De La Garza sent another signed loan commitment letter addressed to Horton, bearing a date of December 5, 1990. The December 5 loan commitment letter was substantially the same as the December 4 letter, except there was no mention that the purpose of the loan was to acquire Provident Bancorp. The December 5 letter also

stated that Provident Bank's purchase of mortgage loans from DLG was a condition precedent to DLG's making a loan to Horton in the amount of $3 million. Riddle, Averett, and Jones reviewed the December 5 letter from DLG. Riddle instructed Averett to tell Jones that any language conditioning the acquisition loan on the purchase of mortgages by Provident Bank from DLG should be removed from later versions of a loan commitment letter, as the mortgage transaction should be documented in a "separate contract." Averett forwarded Riddle's comments to Jones. Subsequent versions of the loan commitment letter between DLG and Horton deleted references to mortgage loans to be purchased by Provident. By approximately December 7, 1990, the loan terms that DLG was offering to Horton were acceptable in principle to Horton.

25. During the same period, Averett negotiated on behalf of Provident Bank to purchase mortgage loans from DLG in the amounts set forth in the December 4 and 5 loan commitment letters. On or before December 6, 1990, Averett orally agreed that Provident Bank would buy approximately $ 8 million in single family mortgages at a price of 99 percent of face value. He further agreed that Provident Bank would purchase another $ 2 million in mortgages, and that Provident Bank would enter into a "purchase in/purchase out" facility with DLG for an additional $7.5 million in mortgages.

26. On or about December 6, 1990, Averett, acting on behalf of Provident Bank, retained a consulting firm, Pinnacle Financial

Group, Houston, TX, ("Pinnacle"), to review the documentation of the mortgage loans to be purchased by Provident Bank. Pinnacle's review revealed that many of the loans had imperfect payment histories, the loan documents were not in standard form, and many of the loan files were missing documents. Pinnacle was not asked to provide an appraisal of the market value of the loan package. After DLG and Averett agreed on the price, and Pinnacle's due diligence review was completed, Riddle assigned the legal work on the transaction to the law firm of which he was the managing director, Riddle & Brown, P.C., Dallas, Texas.

27. DLG did not own the mortgages involved in this purchase at this time. FGMC, Inc., a subsidiary of General Homes Corp., a then bankrupt Houston, Texas homebuilder, owned the mortgages. In November 1990, FGMC had agreed to sell a larger pool of loans to Interamericas Investments, Inc. (then known as Holdcon, Inc.)("Interamericas") pursuant to a publicized bidding process. Interamericas' winning bid was 63 percent of face value for the entire pool. Interamericas and FGMC, though, did not enter into a definitive agreement obligating Interamericas to buy the mortgages until shortly after Averett had orally agreed that Provident Bank would buy from DLG the bulk of the loans at a price of 99 percent of face value. Subsequently, Interamericas assigned its rights to purchase the FGMC loans to DLG. Interamericas was DLG's financial backer and provided office space to De La Garza. De La Garza also had represented Interamericas in negotiating with FGMC.

28. On December 17, 1990, the directors of Provident Bank were summoned to a special board meeting. At that meeting, Averett sought the board's approval of the transaction in which Provident would purchase $8 million in mortgages from DLG at a price of 99 percent of face value, would agree to purchase an additional $2 million in mortgages by March 31, 1991, and would agree to a "purchase in/purchase out" arrangement in the amount of $7.5 million. The board members were all management employees of Provident Bank, effectively subordinates of Riddle and Averett, whom Riddle had designated earlier to oversee the management of Provident Bank. The board voted to approve the agreements Averett had negotiated. However, Averett did not disclose to the directors at or before the special meeting (1) that DLG was also planning to lend funds to Horton so that the Horton Group could acquire a majority interest in Provident Bancorp; (2) that the mortgage transaction with Provident Bank had been a precondition to making the acquisition loan; and (3) that consummation of the Horton Group's acquisition would facilitate Ducote's and Riddle's release from their potential $600,000 guaranty on the Provident Partners Note.

29. On December 18, 1990, Provident Bank entered into agreements with DLG, as outlined in Paragraphs 23-25, and 28, and transferred approximately $8 million to DLG. FGMC transferred approximately 188 single-family mortgage loans to DLG, which immediately endorsed approximately 131 of the mortgages to Provident Bank. In December 1990, the fair market value of the

loan pool purchased by Provident Bank from DLG was between 68 percent and 83 percent of face value. Accordingly, Provident Bank overpaid by approximately $1.3 to $2.5 million.

30. While preparations progressed for the closing on the Provident Bank-DLG mortgage loan transaction, Jones negotiated technical terms of DLG's loan commitment to Horton with De La Garza and DLG's attorney. Jones and Averett kept each other informed of the progress of the negotiations between the Horton Group and DLG concerning DLG's proposed loan, and between DLG and Provident regarding the mortgage loan transaction. On December 18, 1990, Averett wrote to Jones that DLG was in the process of selling mortgages to Provident Bank and that Provident Bank had entered into the other agreements with DLG set forth above. Jones countersigned that letter, acknowledging its receipt on behalf of the Horton Group.

31. On December 20, 1990, Horton countersigned a loan commitment letter which DLG had transmitted approximately one week earlier. That December 20 letter committed DLG to lending Horton $3 million for one year at an interest rate of the Chemical Bank prime rate plus 2 percent. The rental properties would be the security for the loan. The borrower would be a newly formed limited partnership, DRH Investment Limited Partnership ("DRH"). Horton was the general partner of DRH and would also personally guarantee the loan from DLG.

Failure to Notify FRB-Dallas of the Financing of the Horton Group Acquisition by DLG and the Contemporaneous Provident Bank Mortgage Loan Purchase from DLG.

32. No one notified FRB-Dallas that the Horton Group was financing its acquisition with a loan from DLG, or that DLG was contemporaneously selling mortgage loans to Provident Bank. As set forth in detail below, Riddle, Averett, and Jones consciously advised that DLG's loan to Horton not be disclosed to FRB-Dallas.

33. Horton, Jones, other employees of Horton's companies, and Horton's attorneys met on December 6, 1990 at Horton's offices. At that meeting and thereafter prior to closing, one of Horton's attorneys recommended that the proposed loan commitment from DLG be disclosed to FRB-Dallas. Jones, based on advice from Riddle communicated by Averett, advised Horton not to disclose the loan to the FRB-Dallas. Horton followed the advice not to disclose the DLG loan.

34. During the week prior to December 21, Horton's outside law firm also recommended that the FRB-Dallas be informed in writing of various technical changes in the structure of the transaction. Riddle was opposed to Horton's outside law firm approaching FRB-Dallas about these changes. Averett communicated Riddle's opposition to the Horton Group. Instead, Riddle arranged a meeting with officials of FRB-Dallas on December 20, 1990, about technical changes in the transaction. At that meeting, Riddle represented that the Horton acquisition was a "cash" transaction, and confirmed that the "liquidating trust" originally proposed was no longer part of the acquisition.

Although aware that Horton had been negotiating for financing from DLG, Riddle did not disclose that DLG would be lending Horton $3 million for the acquisition. Nor did Riddle disclose to FRB-Dallas that DLG had just sold $8 million in mortgages to Provident Bank, and entered into other agreements concerning the future purchase of mortgages by Provident Bank from DLG.

35. Riddle was aware that the Control Act required the disclosure to the Federal Reserve of the sources of financing for the change in control of a banking institution. Riddle also knew that the source of financing was an important factor in the evaluation of a Control Act Notice.

Consummation of the Horton Group's Acquisition of Provident Bancorp

36. On December 21, 1990, a stock purchase agreement was signed by the Horton Group and Provident Bancorp. The Horton Group concurrently purchased the Holding Company Note and the Provident Partners Note from NCNB for $2 million. Under a separate concurrent agreement with Provident Partners, the Horton Group agreed to accept the 66,764 shares of Provident Bancorp stock securing the Provident Partners note in full satisfaction of the obligation, thereby releasing Provident Partners from further liability, and releasing Riddle, Ducote, and the two other partners from any personal liability on the approximately $600,000 debt outstanding.

37. On December 31, 1990, there was an additional closing into escrow under the stock purchase agreement. Horton paid

$1 million to Provident Bancorp for additional newly issued stock. On the same day, DLG wired $1 million to Horton.

38. On January 7, 1991, DLG wired the additional $2 million to Horton to satisfy its loan commitment of $3 million.

39. On February 4, 1991, the escrow was dissolved and the Horton Group took control of Provident Bancorp. Shortly thereafter, Riddle and Averett resigned from the board of Provident Bancorp. Jones was elected chairman in Riddle's place and became President of Provident Bank in April 1991.

Mortgage Loan and Other Transactions Between Provident Bank and DLG after the Horton Group Assumed Control of Provident

40. To implement the understandings made in December 1990 in connection with the loan from DLG to the Horton Group, Provident Bank and DLG entered into several additional transactions beginning in March 1991. In each of these transactions, Jones personally negotiated the transactions with De La Garza, who was acting for DLG.

41. On April 5, 1991, Provident Bank lent DLG approximately $2 million, secured by condominium mortgages which DLG had recently purchased, and De La Garza's personal guarantee (the "Warehouse Line"). Although DLG paid approximately 60 percent of the face amount of the mortgages, Provident Bank lent DLG 85 percent of the face amount of the mortgages.

42. On or about June 26, 1991, Provident Bank purchased for approximately $6 million several mortgage pools which DLG had agreed to purchase from the Resolution Trust Corporation, acting as conservator of the failed Travis Federal Savings & Loan (the

"Travis pools"). The agreement between DLG and Provident Bank provided that Provident Bank would pay DLG the amount DLG was required to pay the RTC, and upon any future resales of the mortgages in the Travis pools, DLG would receive 50 percent of the profits.

43. On or about July 3, 1991, Provident Bank purchased $3 million in mortgage loans from DLG for approximately $2 million. Simultaneously, DLG agreed to repurchase these mortgages on or before September 1991 for the original $2 million purchase price (the "DLG Financial Facility Pool").

44. In addition, Jones provided other services of a questionable nature to DLG and De La Garza. Specifically, in June and July 1991, Jones executed an escrow agreement, signed a verification of deposit form, and orally verified to an insurance department examiner that falsely represented that DLG had $5 million on deposit at Provident Bank. Jones also did not investigate when DLG engaged in an apparent $5 million check kite involving Provident Bank and another bank. In addition, in late August 1991, Jones facilitated the evasion of regulatory restrictions on transactions between DLG and an insurance company by permitting DLG to sell a $5 million pool of mortgages to Provident Bank, which were then immediately sold to the insurance company.

Refinancing of the DLG-Horton Acquisition Loan and Contemporaneous Mortgage Loan Transaction between DLG and Provident Bank.

45. In approximately mid-September 1991, Horton decided to seek refinancing of the loan DRH owed to DLG. He sought this refinancing because he no longer wished to encumber the rental properties while his homebuilding firms were in the process of preparing for a public stock offering. In addition, Horton sought to be released from personal liability on the loan to DLG. Finally, the loan was due to mature in December 1991, and would shortly need to be refinanced or paid-off. On Horton's behalf, Jones initiated discussions with De La Garza concerning refinancing the acquisition loan. At the same time, negotiations between Jones and De La Garza began concerning several possible mortgage loan and other transactions between DLG and Provident Bank. Jones simultaneously negotiated both the refinancing of the acquisition loan between DLG and the Horton Group, and various transactions between DLG and Provident Bank involving the mortgage pools described above. In the course of those negotiations, the terms of the refinancing loan improved for Horton, while the terms of the transactions with Provident Bank improved for DLG. On October 3, 1991, the refinancing was completed with Horton pledging his majority interest in Provident Bancorp to secure a new $3 million loan from DLG.

VIOLATIONS OF LAW AND REGULATION

[Deleted], Jones, and [Deleted] violated the Change-in-Bank Control Act, 12 U.S.C. § 1817(j), and Implementing Regulations of Regulation Y, 12 C.F.R. § 225.43(a)(1)

46. The Control Act, 12 U.S.C. § 1817(j)(1) and Regulation Y, 12 C.F.R. § 225.41(a)(1), prohibit any person, acting directly or indirectly or through or in concert with one or more persons, from acquiring control of a bank holding company without giving the Federal Reserve sixty days prior notice. Notice to the Federal Reserve requires, among other items, information disclosing, "[t]he identity, source and amount of funds or other consideration used or to be used in making the acquisition, and, if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons. 12 U.S.C. § 1817(j)(6)(D); 12 C.F.R. § 225.43(a)(1).

47. The responses to the FRB-Dallas' August 1 letter filed by Ducote on behalf of the Horton Group on August 10 and August 20, 1990, violated the Control Act in that they did not accurately state that Horton would not proceed with the acquisition unless he had secured third-party financing before closing.

48. The Control Act was also violated by Horton's failure to disclose to the FRB-Dallas that DLG was financing the Horton Group's acquisition, and that Provident Bank engaged in mortgage

transactions with DLG related to DLG's acquisition loan to Horton.

49. **[DELETED]**

50. **[DELETED]**

51. As alleged above, Jones aided and abetted the violations of the Control Act, 12 U.S.C. § 1817(j) and Regulation Y, 12 C.F.R. § 225.43(a)(1).

52. **[DELETED]**

REQUESTED RELIEF

Cease and Desist Actions

53. **[DELETED]**

54. **[DELETED]**

Civil Money Penalty Assessment Actions

55. Sections 7(j)(16)(C) and 8(i)(2)(B) of the FDI Act (12 U.S.C. §§ 1817(j)(16)(C) & 1818(i)(2)(B)) authorize the assessment of civil money penalties.

56. **[DELETED]**

57. **[DELETED]**

58. **[DELETED]**

59. **[DELETED]**

60. Jones committed violations of the Control Act, 12 U.S.C. § 1817(j) and Regulation Y, 12 C.F.R. § 225.43(a)(1), and such violations were part of a pattern of misconduct, caused more than a minimal loss to Provident Bancorp or Provident Bank, or resulted in pecuniary gain or other benefit to Jones.

61. After taking into account the size of Jones's financial resources, his good faith, the gravity of the violations, the history of previous violations, and such other matters as justice may require, the Board of Governors hereby assesses a civil money penalty of $50,000 against Jones for the violations of law set forth in this Notice. Jones shall forfeit and pay the penalty as hereinafter provided.

62. **[DELETED]**

63. **[DELETED]**

64. The penalties set forth in Paragraphs 57, 59, and 61, and 63 hereof, are assessed by the Board of Governors pursuant to section 8(i) of the FDI Act (12 U.S.C. § 1818(i)), and Subparts A and B of the Board of Governors' Rules of Practice. Remittance of the penalties set forth herein shall be made within 30 days of the date of this Notice, in immediately available funds, payable to the order of the Secretary of the Board of Governors, Washington, DC 20551, who shall make remittance of the same to the Treasury of the United States.

65. Notice is hereby given, pursuant to section 8(i)(2) of the FDI Act and section 263.19 of the Board of Governor's Rules of Practice, that **[DELETED]**, Jones and **[DELETED]** are afforded an opportunity for a formal hearing before the Board of Governors concerning this assessment. As required by section 263.19(a) of the Rules of Practice, a request for such a hearing must be filed with OFIA within 20 days after the issuance and service of this Notice. Pursuant to section 263.11(a) of the Rules of Practice,

any request for a hearing filed with OFIA shall be served on the Secretary of the Board of Governors. A hearing, if requested, will be public unless the Board of Governors shall determine that a public hearing would be contrary to the public interest, and in all other respects will be conducted in compliance with the provisions of the FDI Act and the Board of Governor's Rules of Practice before an administrative law judge. The hearing described above may, in the discretion of the Board of Governors, be combined with any other hearing to be held on the matters set forth in this Notice, including those concerning the issuance of a cease and desist order.

66. In the event that any respondent shall fail to request a hearing within the aforementioned 20-day period, that respondent shall be deemed, pursuant to section 263.19(c)(2) of the Board's Rules of Practice (12 C.F.R. § 263.19(c)(2)), to have waived the right to a formal hearing, and this Notice shall, pursuant to section 8(i)(2) of the FDI Act, constitute a final an unappealable assessment order against, and may be referred for collection to the United States Department of Justice.

Procedures Generally

67. Except as set forth in Paragraph 68, hereof, **[DELETED]**, Jones and **[DELETED]** are hereby directed to file with OFIA, Washington, DC 20552, an answer to this Notice within 20 days of service of this Notice, as provided in section 263.19(a) of the Rules of Practice (12 C.F.R. § 263.19(a)). Pursuant to section 263.11(a) of the Rules of Practice (12 C.F.R. § 263.19(a)), any

answer filed with OFIA shall be served on the Secretary of the Board. As provided in the Board's Rules of Practice (12 C.F.R. § 263.19(c)), the failure to file answers as required by this Notice within the time provided herein shall constitute a waiver of that respondent's rights to appear and contest the allegations of this Notice, and authorization for the presiding officer, upon motion of the Board of Governors, and without further proceedings, to find the facts to be as alleged in this Notice and to file with the Secretary of the Board of Governors a recommended decision containing such findings and appropriate conclusions. Any final order issued by the Board based upon a failure to answer is deemed to be an order issued by consent.

It is further ORDERED, pursuant to Rule 263.20(a) of the Board's Rules of Practice, 12 C.F.R. 263.20(a), for good cause, that no

amended answer may be filed as a result of the issuance of this amended Notice of Assessment of Civil Money Penalties.

68. **[DELETED]**, Jones, and **[DELETED]** may submit, within 20 days after the issuance and service of this Notice, to the Secretary of the Board of Governors, written statements detailing reasons why the hearings described should not be public. The failure to submit such a statement within the aforesaid period will be deemed a waiver of any interest they may have to a private hearing.

69. Authority is hereby delegated to the Secretary of the Board of Governors to designate the time and place and presiding officer for any hearing that may be conducted on this Notice and to take any and all actions that the presiding officer would be authorized to take under the Rules of Practice with respect to this Notice and any hearing to be conducted hereon until such time as a presiding officer shall be designated.

Dated at Washington, DC, this 8th day of December, 1995, as amended, this 22nd day of April, 1997.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

By: William W. Wiles

William W. Wiles
Secretary of the Board