UNITED STATES OF AMERICA

BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

WASHINGTON, D.C.

In the Matter of	)	Docket Nos. 99-030-E-I1 99-030-CMP-I1
OREN L. BENTON and EDWARD D. SCOTT	)	99-030-E-I2 99-303-CMP-I2
Former Institution-Affiliated Parties of THE PROFESSIONAL BANK, Denver, Colorado, a State Member Bank	)	Notice of Intent to Prohibit and Notice of Assessment of Civil Money Penalties Issued Pursuant to the Federal Deposit Insurance Act, as Amended, and the Federal Reserve Act, as Amended

The Board of Governors of the Federal Reserve System (the "Board") is of the opinion that:

A. Oren L. Benton ("Benton"), the former sole shareholder and director of The Professional Bank, Denver, Colorado (the "Bank"), a state-chartered bank that is a member of the Federal Reserve System, and Edward D. Scott ("Scott"), a former executive vice president and director of the Bank, have engaged in violations of law and regulations of the Board, recklessly engaged in unsafe and unsound practices in conducting the affairs of the Bank or breached their fiduciary duties to the Bank in connection with affiliate and insider transactions; which violations, practices or breaches are part of a pattern of misconduct, caused more than a minimal loss to the Bank or resulted in a pecuniary gain or other benefit to Benton and Scott pursuant to section 8(i)(2)(B) of the Federal Deposit Insurance Act, as amended (the "FDI Act"), 12 U.S.C. § 1818(i)(2)(B), and section 29(b) of the Federal Reserve Act, as amended (the "Federal Reserve Act"), 12 U.S.C. § 504(b); and

B. Benton and Scott have, directly or indirectly, violated laws and regulations, engaged or participated in unsafe and unsound practices or have breached their fiduciary duties to the Bank in connection with affiliate and insider transactions, which violations, practices or breaches caused financial loss or other damage to the Bank, prejudiced the interests of the Bank's depositors or resulted in financial gain or other benefits to Benton and Scott, and which violations, practices or breaches involved personal dishonesty or demonstrated a willful or continuing disregard for the safety and soundness of the Bank pursuant to section 8(e)(1) of the FDI Act, 12 U.S.C. § 1818(e)(1).

Accordingly, the Board hereby institutes these proceedings:

(I) for the purpose of determining whether appropriate orders assessing civil money penalties of $1.25 million against Benton and $75,000 against Scott should be issued pursuant to section 8(i)(2)(B) of the FDI Act and section 29(b) of the Federal Reserve Act; and

(II) for the purpose of determining whether appropriate orders permanently barring Benton and Scott from participating in the affairs of a United States depository institution or depository institution holding company should be issued pursuant to section 8(e) of the FDI Act.

In connection with these proceedings, the Board alleges as follows:

JURISDICTION

1. From August 16, 1990 through August 1, 1997, Benton was the sole shareholder of the Bank. From August 16, 1990 through July 12, 1994 and from January 6, 1995 through April 26,

1995, Benton was a director of the Bank and its predecessor, Belcaro Bank ("Belcaro").

2. By reason of his positions as sole shareholder, director and chairman of the Bank, Benton was, at all relevant times, an institution-affiliated party of the Bank within the meaning of section 3(u) of the FDI Act, 12 U.S.C. § 1813(u), and subject to the prohibition and civil money penalty provisions of section 8 of the FDI Act, 12 U.S.C. §§ 1818(e) and (i), and the civil money penalty provisions of section 29(b) of the Federal Reserve Act, 12 U.S.C. § 504(b).

3. From December 1992 through April 10, 1996, Scott was senior vice president and then executive vice president of the Bank and was in charge of the Bank's private banking department. From July 12, 1994 through April 11, 1996, Scott was a director of the Bank.

4. By reason of his positions as senior vice president, executive vice president and director of the Bank, Scott was, at all relevant times, an institution-affiliated party of the Bank within the meaning of section 3(u) of the FDI Act and subject to the prohibition and civil money penalty provisions of section 8 of the FDI Act, 12 U.S.C. §§ 1818(e) and (i), and the civil money penalty provisions of section 29(b) of the Federal Reserve Act, 12 U.S.C. § 504(b).

5. At all relevant times, the Bank was a state-chartered bank and a member of the Federal Reserve System. Accordingly, the Board is the appropriate Federal banking agency to bring charges against former institution-affiliated parties of the Bank within the meaning of section 3(q)(2) of the FDI Act, 12 U.S.C. § 1813(q)(2). Likewise, the Board is the appropriate Federal banking agency to assess and collect civil money penalties against former institution-affiliated parties of the Bank within the meaning of section 29(e)(2) of the Federal Reserve Act, 12 U.S.C. § 504(e)(2).

APPLICABLE LAWS AND REGULATIONS

Sections 23A and 23B of the Federal Reserve Act

6. Section 23A of the Federal Reserve Act, as amended, 12 U.S.C. § 371c ("section 23A"), governs "covered transactions" between a member bank and its affiliates. Section 23A(a)(1), 12 U.S.C. § 371c(a)(1), limits the amount of covered transactions between a member bank and its affiliates to 10 percent of the bank's capital stock and surplus for transactions with any affiliate and 20 percent of the bank's capital stock and surplus for transactions with all affiliates.

7. Section 23B of the Federal Reserve Act, as amended, 12 U.S.C. § 371c-1 ("section 23B"), restricts the terms of certain transactions between a member bank and its affiliates. Section 23B(a)(1)(B), 12 U.S.C. § 371c-1(a)(1)(B), provides that

a member bank may engage in certain transactions with affiliates only if those transactions are on terms and under circumstances, including credit standards, that in good faith would be offered or would apply to non-affiliated companies.

8. Section 23A(b)(1)(C)(i) of the Federal Reserve Act, 12 U.S.C. § 371c(b)(1)(C)(i), defines "affiliate" to include any company that is controlled directly or indirectly by or for the benefit of a shareholder who controls the member bank. Section 23A(b)(7) of the Federal Reserve Act, 12 U.S.C. § 371c(b)(7), defines "covered transaction" to include loans or extensions of credit to affiliates. Section 23A(a)(2) of the Federal Reserve Act, 12 U.S.C. § 371c(a)(2), provides that, for the purposes of section 23A, a transaction by a member bank with any person shall be deemed to be a transaction with an affiliate to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, an affiliate.

Section 22(h) of the Federal Reserve Act and Reg. O

9. Section 22(h) of the Federal Reserve Act, as amended, 12 U.S.C. § 375b ("section 22(h)"), and the Board's Regulation O, 12 C.F.R. Part 215 ("Reg. O"), govern extensions of credit to executive officers, directors or principal shareholders of a member bank and their related interests (collectively "insiders").

10. Section 22(h) and Reg. O provide generally that extensions of credit by a member bank to an insider: (i) must be on substantially the same terms as those prevailing at the time for comparable transactions between the member bank and non-insiders; (ii) must, under certain circumstances, be approved in advance by a majority of the bank's board of directors, with the interested person abstaining; and (iii) must not, when aggregated with all other extensions of credit to that person and his related interests, exceed the lending limits specified in section 22(h) and Reg. O. Section 22(h) and Reg. O prohibit insiders from knowingly receiving, or knowingly permitting their related interests to receive, an extension of credit not authorized under section 22(h) or Reg. O.

11. Section 22(h)(9)(G) of the Federal Reserve Act and Reg. O, 12 C.F.R. § 215.2(n)(1), define "related interests" of a person to include companies controlled by that person. Reg. O, 12 C.F.R. § 215.3(f), provides that an extension of credit is made to an insider if the proceeds are transferred to that person or his related interests or used for the tangible economic benefit of that person or his related interests.

Affiliates, Insiders and Related Interests

12. At all relevant times, Benton directly or indirectly owned or controlled CSI Enterprises, Inc., Denver, Colorado, formerly known as Concord Services, Inc. and Concord

Financial Services, Inc. ("CSI"), First Concord Acceptance Corporation ("FCAC") and ULTRAM International, LLC ("ULTRAM") by virtue of his direct or indirect ownership or control over 25 percent or more of a class of the voting shares of those companies or control over the election of a majority of the directors of those companies. At all relevant times, Benton directly or indirectly owned or controlled Premier Management, Ltd. ("Premier"), a Colorado limited partnership, by virtue of his ownership or control over 25 percent or more of a class of voting securities of Premier's general partner or his exercise of a controlling influence over the management and policies of Premier. At all relevant times, CSI, FCAC, ULTRAM and Premier were affiliates of the Bank for purposes of sections 23A and 23B and related interests of Benton and insiders of the Bank for purposes of section 22(h) and Reg. O.

FACTUAL ALLEGATIONS

Management and Operation of CSI and the Concord Companies

13. In the early 1990's, Benton was a wealthy and visible entrepreneur in Denver. Benton's business investments, primarily in uranium, but also in commercial real estate, advertising, leasing, professional baseball and other areas, were held in a complicated system of interlocking corporations, limited partnerships and family trusts located in Denver and throughout the United States and the world. Benton's business

holdings were sometimes referred to under the umbrella name "the Concord Companies," in reference to CSI, Benton's management services company that provided centralized tax, accounting, legal and other services to the Concord Companies, including the Bank.

14. At all relevant times, the Concord Companies operated under a system of centralized cash management instituted by Benton. Under this system, funds that were not immediately needed by one of the Concord Companies were transferred to one or more centralized bank accounts, primarily demand deposit account # 0003104478 at the Bank, known as the "CSI Advance Account," and then distributed to other Concord Companies that had an immediate need for cash. The system enabled Benton to control the use of funds by the Concord Companies. The cash management system was overseen by one of Benton's six daughters, a vice president of CSI, who reported to Benton ("Benton Daughter"). Benton had ultimate authority over the disbursement of funds into and out of the Concord Companies' bank accounts.

March 1992 Exam

15. Safe and sound banking practices require that banks manage and control concentrations of credit to borrowers involved in a particular business or sector of the economy or to borrowers whose ability to repay loans is dependent on the success of a particular business or individual. Excessive concentrations pose risks to banks because a downturn in a

particular business or sector of the economy can cause a bank to suffer losses in large portions of its loan portfolio. A bank can manage and control concentrations by diversifying its loan portfolio or by increasing its capital.

16. In March 1992, the Federal Reserve Bank of Kansas City (the "Reserve Bank") conducted an examination ("March 1992 Exam") of the Bank's predecessor, Belcaro, which was solely owned by Benton. In its May 19, 1992 Report of Examination, the Reserve Bank criticized Belcaro's concentration of credit to Benton, his family members (who were also employees of CSI), his related interests and other persons or entities dependent on Benton or the Concord Companies for income (the "Concord Concentration"). As of the date of the March 1992 Exam, the Concord Concentration totaled $3 million, or 112 percent of Belcaro's capital. The Reserve Bank also found several violations of sections 23A and 23B and Reg. O and instructed Benton and Belcaro's other directors to submit plans to monitor and control the Concord Concentration.

17. In June 1992, Benton attended a meeting with representatives of the Reserve Bank at which the Concord Concentration and the violations of law listed in the March 1992 Exam report were discussed. Reserve Bank representatives emphasized the risks to Belcaro of an excessive concentration of credit to any group -- even if the individual credits were good -

- and the importance of keeping CSI activities separate from Bank activities. Benton indicated his understanding of the Reserve Bank's concerns and agreed to set parameters and closely monitor the Concord Concentration.

18. At the Reserve Bank's request, Belcaro formulated a revised Policy for Transactions with Affiliates ("Affiliate Policy"). The Affiliate Policy provided that all companies owned and controlled by Benton were affiliates of Belcaro for purposes of sections 23A and 23B and related interests of Benton for purposes of Reg. O. The Affiliate Policy required Belcaro to maintain a log of covered transactions with affiliates, which was to be reviewed monthly by Belcaro's president or executive vice president, and to have all proposed transactions with affiliates reviewed by Belcaro's legal counsel and approved in advance by a majority of its board of directors. The Affiliate Policy was later incorporated, with some modifications, into the Bank's loan policies.

19. All of the Bank's lending officers were provided with copies of the Affiliate Policy as well as copies of sections 23A, 23B and Reg. O, were required to read and be fully familiar with them and to ensure that all loans they originated were in compliance with applicable laws and regulations and the Affiliate Policy.

20. Under the Affiliate Policy, Benton was required periodically to submit to the Bank a listing of all entities he owned or controlled, which he did. In conjunction with their lending responsibilities, all of the Bank's lending officers had access to, and were expected to be familiar with, these lists of affiliated entities.

21. Effective February 15, 1993, the Bank was formed through the merger the Denver Tec Bank and the former Professional Bank of Colorado, Englewood, Colorado, both of which were owned by Benton, into Belcaro. In connection with Belcaro's November 1992 application to merge with Denver Tec Bank and the former Professional Bank ("1992 Merger Application"), Belcaro submitted a copy of the Affiliate Policy to the Reserve Bank and represented that "[a]ffiliate transactions to be engaged in by the merged bank will only be done in accordance with the law and the policy of Belcaro Bank concerning transactions with affiliates."

Loans to Benton Family Members

June 1993 Benton Family Member Loans

22. On or around June 7, 1993, four of Benton's adult children and their spouses ("Benton Family Members") applied for loans at the Bank (the "June 1993 BFM loans"). Two of the couples applied for loans of $400,000 each and two of the couples

applied for loans of $600,000 each. Scott was the originating officer on the loans.

23. The Benton Family Members took the loans out with Benton's knowledge and approval in connection with estate planning by Benton. Benton had gifted and sold substantial assets, consisting mainly of stock, to each of the Benton Family members in April 1993. The Benton Family Members sold some of the stock shortly after receiving it, realizing a substantial capital gain, and took out the loans to make tax-sheltered investments to offset these capital gains. At Benton's suggestion, the Benton Family Members decided to investment in limited partnerships controlled by a long-time business associate of Benton's ("First Business Associate"). One of Benton's sons-in-law, who was a vice president of CSI ("Benton Son-in-Law"), structured the investments under Benton's authority and with his approval and acted as a spokesman on behalf of the other Benton Family Members in obtaining the loans. The other Benton Family Members were only peripherally involved in planning the transactions and obtaining the loans.

24. Benton and First Business Associate had a long history of business dealings including Benton's 1991 purchase of First Business Associate's extensive uranium holdings. In connection with this purchase, Benton pledged 100% of his stock in the Bank to Concord Centurion Finance Limited ("CCFL"), a

limited partnership in which both Benton and First Business Associate had an interest, to secure a $20 million promissory note Benton used to purchase the uranium interests. Benton did not formally disclose his pledge of the Bank's stock to the Bank's board of directors in 1991 or in subsequent years.

25. In conjunction with their business dealings, Benton, through CSI, provided working capital to several limited partnerships controlled by First Business Associate, including Flying Diamond Resources, Ltd., ("Flying Diamond"), E.F. Coal Resources Limited Partnership ("E.F. Coal") and Keystone Gold, Ltd. ("Keystone"). These entities recorded this working capital on their books as interest-bearing cash advances in favor of CSI. As a result of these and other business dealings, as of April 1993, Flying Diamond was indebted to CSI by approximately $5-$6 million.

26. In or around June 1993, Benton, or Benton Son-in-Law on his behalf, contacted First Business Associate and informed him that the Benton Family Members were seeking tax-advantaged investments. Benton or Benton Son-in-Law informed First Business Associate that the Benton Family Members would be sending funds to Flying Diamond and E.F. Coal in exchange for an option to purchase a limited partnership interest or other interest in those entities. First Business Associate agreed to the transactions as an accommodation to Benton. However, because

neither Flying Diamond nor E.F. Coal needed working capital at the time, and because First Business Associate did not want to incur additional interest expenses to CSI, First Business Associate, or an individual working for him, told Benton or Benton Son-in-Law that Flying Diamond and E.F. Coal would return the loan proceeds to CSI and use the proceeds to pay down Flying Diamond's debt to CSI. Benton agreed.

27. Benton Son-in-Law had a number of discussions with Scott regarding the loans. Although Benton Son-in-Law informed Scott that the loan proceeds would be used to make investments connected with estate planning by Benton and the Benton Family Members, he did not tell Scott -- and Scott did not ask -- specifically what investments the Benton Family Members were planning to make or what would ultimately become of the loan proceeds. Scott did not obtain documentation from the Benton Family Members regarding their use of the loan proceeds. In fact, the Benton Family Members never received written option agreements or any other written indicia of their $2 million investment in Flying Diamond or E.F. Coal. The Bank's internal documentation stated only that the loans were for "investment" purposes.

28. The loans were approved by a telephone poll of four members of the Bank's loan committee, including Scott. The loans were not reviewed or ratified at a formal meeting of the

Bank's loan committee until July 9, 1993, almost a month after the loans were made. The loans were unsecured. Despite the fact that the Bank's loan policy provided that unsecured loans must have a maturity of one year or less, Scott provided for a four-year maturity period.

29. On June 8, 1993, the Bank disbursed the loan proceeds to the Benton Family Members. On or about June 10, 1993, the two Benton Family Members who had obtained $400,000 loans ("first Benton Family Member" and "second Benton Family Member") used a portion of their loan proceeds to obtain cashiers checks for $300,000 each made payable to E.F. Coal. On June 10, 1993, E.F. Coal deposited the cashiers checks into its account and wrote a $675,000 check to CSI, which CSI deposited into the CSI Advance Account.

30. On June 8, 1993, Benton Daughter deposited the proceeds of her $600,000 loan into her account and wrote a check to Flying Diamond for $475,000. On June 8, 1993, Flying Diamond deposited the $475,000 check into its account and wrote a check to CSI for $450,000, which CSI deposited into the CSI Advance Account. On June 10, 1993, Benton Daughter wrote a check to E.F. Coal for $100,000, which E.F. Coal deposited into its account. E.F. Coal aggregated this check with the two $300,000 checks described in ¶ 29 above to write the $675,000 check to CSI described in that paragraph.

31. On June 8, 1993, Benton Son-in-Law deposited the proceeds of his $600,000 loan into his account at the Bank. On June 9, 1993, Benton Son-in-Law wired $500,000 to Flying Diamond. On June 9, 1993, Flying Diamond wrote a check for $450,000 to CSI, which CSI deposited into the CSI Advance Account.

32. A financial officer working for First Business Associate recorded the payments described in ¶¶ 29-31 above on Flying Diamond's and E.F. Coal's books as interest-bearing credit balances in favor of the Benton Family Members and simultaneously with the transfer of the loan proceeds back to CSI, deducted the payments from Flying Diamond's outstanding indebtedness to CSI, thereby providing a benefit to Benton and CSI.

33. By means of the transactions described in ¶¶ 29-31 above, .$1,575,000 of the proceeds of the June 1993 BFM loans were transferred to or used for the benefit of a Bank affiliate, making that portion of the loans a covered transaction under section 23A.

34. As the originating officer for the June 1993 BFM loans and the head of the Bank's private banking department, Scott was responsible for ensuring that those loans, and all loans he originated or that originated in the private banking department, complied with all applicable laws and regulations, including sections 23A, 22(h) and Reg. O, the Bank's loan policies and safe and sound banking practices.

35. The circumstances of the June 1993 BFM loans, including the facts that the borrowers were Benton's adult children, that they all requested loans on the same day in similar amounts, that the loan proceeds were to be used to make unspecified investments in connection with estate planning by Benton and the Benton Family Members, and that Benton Son-in-Law acted as a spokesman on behalf of the other Benton Family Members in obtaining the loans, suggested or should have suggested to Scott that the loan proceeds might be used for the benefit of or transferred to a Bank affiliate.

36. Scott thought that the loans might be covered transactions under section 23A loans because all of the Benton Family Members worked for CSI. Accordingly, he consulted with the Bank's in-house attorney ("Bank Counsel") to determine whether the June 1993 BFM loans were covered under section 23A or Reg. O. Bank Counsel informed Scott that the loans would not be covered transactions unless the proceeds were used for the benefit of or transferred to a Bank affiliate. Despite the fact that he did not know how the Benton Family Members intended to use the loan proceeds, Scott assured Bank Counsel that the proceeds would not be so used.

37. Despite Bank Counsel's advice, and circumstances suggesting that the loans could be covered transactions, Scott

approved the loans without ensuring that they complied with sections 23A, 22(h), Reg. O or the Bank's Affiliate Policy.

38. Safe and sound banking practices require that a bank fulfill all conditions precedent to a loan before committing itself to lend funds. Because the June 1993 BFM loans were unsecured and the Bank did not want the Benton Family Members pledging their assets to secure loans at other banks, the Bank required each Benton Family Member to sign a non-pledge agreement as a condition to approving the loans. Despite the fact that the Bank had no security for the loans and could not otherwise ensure that the Benton Family Members would have assets available to repay their loans in the event of a default, Scott did not obtain non-pledge agreements from any of the Benton Family Members until July 6, 1993 -- almost a month after the loan proceeds were disbursed.

November 1993 Benton Family Member Loans

39. On or around November 16, 1993, the Bank extended four additional loans to the Benton Family Members ("November 1993 BFM loans"). The loans were in the same amounts as the June 1993 BFM loans. Scott was again the originating officer. The purpose of the November 1993 BFM loans was largely the same as set forth in ¶ 23 above for the June 1993 BFM loans. Benton and Benton Son-in-Law made arrangements with First Business Associate for the use of the loan proceeds similar to those described in

¶ 26 above. As with the June 1993 BFM loans, Benton understood that First Business Associate did not need working capital at the time and would return the loan proceeds to CSI to pay down Flying Diamond's indebtedness to CSI. Benton and Benton Son-in-Law did the majority of the planning for the loans and the underlying transactions. Benton Son-in-Law, with Benton's approval, acted as a spokesman on behalf of the other Benton Family Members in obtaining the loans from the Bank.

40. In November 1993, Benton Son-in-Law contacted Scott at the Bank to request loans on his behalf and on behalf of the other Benton Family Members. Benton Son-in-Law informed Scott that the loan proceeds would be used in connection with estate planning by Benton and the Benton Family Members. The Bank's internal documentation stated only that the loans were for "investment" purposes. The loans were approved by telephone poll by four members of the Bank's loan committee, including Scott. The loans were not reviewed or ratified at a formal meeting of the Bank's loan committee until November 18, 1993, two days after the first loan proceeds were disbursed.

41. On November 16, 1993, the Bank deposited the $600,000 proceeds of Benton Son-in-Law's loan and the $400,000 proceeds of first Benton Family Member's loan into their respective accounts. The same day, Benton Son-in-Law purchased a $600,000 cashiers check from the Bank made payable to Keystone

and first Benton Family Member purchased a $400,000 cashiers check made payable to Flying Diamond. Both cashiers checks were signed by Scott. On November 16, 1993, the cashiers checks were deposited into Keystone's and Flying Diamond's respective accounts. Keystone and Flying Diamond wrote checks to CSI for $600,000 and $400,000 respectively, which CSI deposited into the CSI Advance Account.

42. On November 17, 1993, the Bank deposited the $600,000 proceeds of Benton Daughter's loan and the $400,000 proceeds of second Benton Family Member's loan into their respective accounts. The same day, Benton Daughter purchased a $600,000 cashiers check made payable to Flying Diamond and second Family Member purchased a $400,000 cashiers check made payable to Keystone. Both of the cashiers checks were signed by Scott. On November 17, 1993, Flying Diamond and Keystone deposited the cashiers checks into their respective accounts and wrote checks to CSI for $600,000 and $400,000 respectively, which CSI deposited into the CSI Advance Account.

43. As with the June 1993 BFM loans, a financial officer working for First Business Associate recorded the payments on Flying Diamond's and Keystone's books as interest-bearing credit balances in favor of the Benton Family Members and simultaneously deducted the payments from Flying Diamond's outstanding indebtedness to CSI, thereby providing a benefit to

Benton and CSI. As with the June 1993 BFM loans, none of the Benton Family Members received any written indicia of their investments in Flying Diamond or Keystone. Prior to year-end 1993, the Benton Family Members transferred their outstanding credit balances at Flying Diamond, E.F. Coal and Keystone to Benton in exchange for stock and other investments. Benton transferred these outstanding credit balances to CSI. In or around August 1994, CSI converted this credit balances along with Flying Diamond's remaining indebtedness to it, which together totaled approximately $7-$8 million, into a limited partnership interest in CSI's name in Flying Diamond.

44. By means of the transactions described in ¶¶ 41-42 above, the $2 million proceeds of the November 1993 BFM loans were transferred to or used for the benefit of a Bank affiliate, making the loans covered transactions under section 23A.

45. As set forth in ¶ 35 above, the circumstances surrounding the November 1993 BFM loans suggested or should have suggested to Scott that the loan proceeds could be transferred to or used for the benefit of a Bank affiliate.

46. Scott was aware that the November 1993 BFM loans could be covered transactions under section 23A. Accordingly, as he had for the June 1993 BFM loans, Scott requested the opinion of Bank Counsel regarding whether the November 1993 BFM loans were covered under section 23A and Reg. O. Bank Counsel informed

Scott that the loans could be covered transactions if the proceeds were used for the benefit of or transferred to a Bank affiliate. Despite the fact that he had not asked the Benton Family Members or Benton Son-in-Law if the loan proceeds would be used for the benefit of or transferred to a Bank affiliate, Scott informed Bank Counsel that he had obtained verbal assurances from the Benton Family Members that the loan proceeds would not be so used. Bank Counsel informed Scott that verbal assurances were not enough and that he should obtain specific documentation from the Benton Family Members regarding their use of the loan proceeds and bring it back to Bank Counsel for further evaluation.

47. Despite Bank Counsel's advice and circumstances, set forth in ¶ 35 above, suggesting that the loan proceeds might be transferred to or used for the benefit of a Bank affiliate, Scott approved the loans without obtaining documentation from the Benton Family Members regarding their use of the loan proceeds and without ensuring that they complied with sections 23A, 22(h), Reg. O or the Affiliate Policy. Scott, who had signed the cashiers checks made payable to Flying Diamond and Keystone, described in ¶¶ 41-42 above, did not ask Benton Son-in-Law or the Benton Family Members whether Flying Diamond or Keystone had any connection to Benton or how these entities planned to use the loan proceeds.

48. Safe and sound banking practices require banks to perfect their security interest in collateral for a loan before the loan is made. At the Bank, the originating officer was responsible for ensuring that the Bank's security interest in collateral for a loan was timely and properly perfected. In the case of stock-secured loans where the borrower was in possession of actual stock certificates, the Bank perfected its security interest by obtaining the original stock certificates and stock powers signed in blank from the borrower. The Bank's standard practice was to record the stock certificate number and CUSIP number of each share certificate pledged as collateral on the loan documents, place a copy of the share certificates and signed stock powers in the customer's collateral file and store the original share certificates and signed stock powers in the Bank's collateral vault. The originating officer on a loan was responsible for ensuring that the Bank's security interest was timely and properly perfected.

49. At the Bank's July 1993 Exam, discussed in ¶ 55 below, examiners criticized the June 1993 BFM loans because they were unsecured. Accordingly, Scott knew that it was important to obtain collateral for the November 1993 BFM loans. As collateral for the loans, first and second Benton Family Members pledged 133,000 shares each, and Benton Daughter and Benton Son-in-Law pledged 175,000 shares each, of the non-restricted common stock

of Phoenix Network, Inc. ("Phoenix Network"), which they had agreed to purchase from Benton. Although the Benton Family Members signed contracts to purchase the Phoenix Network stock from Benton on November 1, 1993, two weeks prior to the loans, certain legal restrictions had to be fulfilled before shares could be transferred from Benton to the Benton Family Members. As of the date the loan proceeds were disbursed, the legal restrictions had not been fulfilled and no Phoenix Network shares had been issued in the names of the Benton Family Members. As a result, the Bank did not have possession of Phoenix Network share certificates as of the date the loans were made and had not perfected its security interest in the collateral for the loans.

50. Despite his failure to perfect the Bank's security interest in the collateral, Scott approved the November 1993 BFM loans and caused or permitted memos to be placed in the Bank's loan files stating that the original Phoenix Network stock certificates serving as security for the loans were in the Bank's safe deposit box, which they were not.

Changes in the Bank's Loan Committee

51. As of November 18, 1993, the Bank's loan committee consisted of Scott, the Bank's president ("Bank President"), a senior Bank loan officer in charge of the Bank's commercial banking department ("Senior Loan Officer"), and three other loan officers. At a November 18, 1993 loan committee meeting at which

the November 1993 BFM loans were discussed, two loan committee members objected to the loans because of the Bank's lack of collateral and because the loans were not adequately documented. Shortly thereafter, at Benton's request or with his approval, the structure of the Bank's loan committee was changed from a six-member committee to a three-member committee consisting of Scott, Bank President and Senior Loan Officer, thereby removing the dissenting loan officers from the loan committee.

Renewal and Consolidation of June and November 1993 BFM Loans

52. In or around March 1994, the Benton Family Members made a total of $500,000 in principal payments on the November 1993 BFM loans. On or around June 8, 1994, the June and November 1993 BFM loans were renewed and consolidated into four loans totaling $3.3 million, one in the name of each of the Benton Family Members. The outstanding balance of Benton Son-in-Law's and Benton Daughter's loans was $1 million each. The outstanding balance of first and second Benton Family Members' loans was $650,000 each. In connection with the renewal and consolidation, each Benton Family member made a $50,000 principal payment on his loan. No further principal payments were made on the loans until after January 27, 1995.

53. Safe and sound banking practices require that banks limit the amount of credit a lending officer may approve or renew individually without the approval of the bank's board or

loan committee. The Bank's loan policy as of February 1994 required each loan officer to obtain prior approval from the Bank's board or loan committee before renewing or making a loan in excess of his individual lending authority. From June 1993 through the fall of 1994, Scott's individual lending authority at the Bank was $250,000. Each of the Benton Family Members' loans exceeded Scott's individual lending authority. Nevertheless, on or about June 8, 1994, Scott approved the renewal of each of the Benton Family Members' loans under his individual lending authority without the prior approval of the Bank's board or loan committee. The Bank's loan committee did not review or approve the renewals until June 15, 1994, a week after the loans were renewed.

54. On or about March 17, 1995, the Bank notified each of the Benton Family Members that his loan was in default for failure to make payments as required under the terms of the promissory notes.

July 1993 Examination

55. Commencing on July 8, 1993, the Reserve Bank and the Colorado Division of Banking conducted a joint examination of the Bank (the "July 1993 Exam"). By letter dated September 8, 1993, the July 1993 Exam report was provided to Benton. The report noted that the Concord Concentration had increased to $6.7

million, or 63.3% of the Bank's capital, which was nearly double the figure at the March 1992 Exam.

56. On August 23, 1993, Benton met with Reserve Bank staff to discuss the preliminary exam findings. Reserve Bank staff informed Benton that they were concerned about the Concord Concentration. Benton indicted that he understood the problem and agreed to limit the Bank's extensions of credit to insiders and their related interests.

Benton's $1.7 Million Line of Credit

57. In 1992, Benton established a $1.5 million unsecured line of credit at the Bank ("Line of Credit"). In 1993, Scott became the loan officer on Benton's Line of Credit. In February 1994, Benton requested a renewal of his Line of Credit.

58. In connection with the renewal, Benton submitted a personal financial statement, dated December 31, 1993 (the "Financial Statement"), to the Bank that greatly overstated Benton's net worth. Contrary to Benton's representation that he had a net worth of over $90 million, Benton was, at the time, more than likely insolvent.

59. In connection with Benton's and CSI's chapter 11 bankruptcy, discussed at ¶ 164 below, the official creditor's committee for Benton's creditors in bankruptcy retained Price Waterhouse LLP ("Price Waterhouse") to undertake a cash tracing

analysis of Benton and CSI and an analysis of Benton's solvency. Price Waterhouse's analysis revealed that in or around July 1993, Benton transferred nearly all of the non-uranium assets of NUEXCO Trading Corporation ("NTC"), Benton's uranium trading company, to himself in exchange for an unsecured promissory note to NTC, the balance of which was approximately $378 million as of July 1993 and $405 million as of December 31, 1993, the date of the Financial Statement. Price Waterhouse concluded that because Benton was more than likely insolvent as of December 31, 1992, the value of the promissory note was significantly less than $378 million and its collectability could not be assured.

60. The transfer of NTC's assets to Benton allowed NTC's operational statements to reflect profitability at a time when the company was almost certainly sustaining losses and enabled Benton greatly to overstate the value of NTC, his largest asset, on his financial statement. Although Benton represented in the Financial Statement that NTC and related companies were "conservatively" valued at $50 million, the companies were almost certainly worth much less, rendering the Financial Statement materially false and misleading. Moreover, Benton's 1993 federal income tax returns reported that he had an adjusted gross income of negative $156 million and passive losses of over $80 million, none of which was disclosed in the Financial Statement. Benton acknowledged on the Financial Statement that the Bank was relying

on the Statement it in deciding whether to grant or continue his Line of Credit, certified that the information in the Statement was true, and agreed to notify the Bank immediately of any material adverse change in the information in the Statement, which he never did.

61. Benton's $1.5 million Line of Credit was six times greater than Scott's individual lending authority at the Bank. Nevertheless, on or about February 28, 1994, Scott approved the renewal of Benton's Line of Credit under his individual lending authority without the prior approval of the Bank's board or loan committee. The Bank's loan committee did not review or approve the renewal of Benton's Line of Credit until March 17, 1994, almost three weeks later.

62. In or around June 1994, the Bank increased Benton's Line of Credit to $1.7 million. The increase was approved by the Bank's board and the Bank's loan committee, including Scott. On July 11, 1994, Benton drew down the entire $200,000 increase and deposited it into his account at the Bank. On the same day, Benton transferred the $200,000 to the CSI Advance Account, making that portion of Benton's Line of Credit a covered transaction under section 23A.

63. Despite the fact that Benton, as the owner of all of the Bank's affiliates, easily could have transferred the $200,000 increase to a Bank affiliate, Scott approved the

increase without determining how Benton planned to use the funds and without ensuring that the increase complied with sections 23A, 22(h), Reg. O or the Affiliate Policy, which it did not.

Benton's June 1994 Plan to Sell the Bank

64. In or around June 1994, Benton devised a plan to sell the Bank to certain directors, key employees and consultants of CSI and the Bank as well as Benton Family Members. One purpose of the plan was to free the Bank form the necessity of complying with laws and regulations regarding insider and affiliate transactions, which Benton believed had become an unreasonable burden on the Bank and the Concord Companies, and to enable the Bank to engage in more transactions with Bank affiliates. In a memo to potential purchasers, Benton stated that he hoped that his stock divestiture would enable the Bank to make more loans to the Concord Companies, take affiliate stock as collateral for Bank loans, purchase blocks of leases from Benton's leasing company, FCAC, and purchase receivables from Bank affiliates.

65. Although Benton stated that he planned to relinquish his shares of the Bank, the structure of Benton's proposed divestiture made clear that he had no intention of giving up control of the Bank. Benton's proposal called for his 100% financing of the sale by means of three-year, non-recourse, fully-funded promissory notes from Benton to the purchasers,

secured by their pledge of the Bank's stock to Benton. The promissory notes, which Benton described as "tantamount to a stock option," did not require the buyers to contribute any cash toward their purchase and gave Benton the right of first refusal should they decide to sell their Bank stock. The buyers had no personal liability to Benton on the promissory notes and were not required to make any principal payments to Benton for three years, giving them essentially no financial stake in their purchase. Benton's sole remedy should the purchasers default on their promissory notes was foreclosure on the Bank's stock.

66. Benton did not disclose to the potential purchasers until after the purchase that he had pledged 100% of the Bank's stock to CCFL, as set forth in ¶ 24 above. Nor did Benton disclose that he had entered into a revised Pledge, Assignment and Security Agreement with CCFL in June 1994 that granted CCFL the right to vote the Bank's stock and receive Bank dividends in the event that Benton defaulted on his obligations to CCFL.

67. Scott were aware of Benton's plan to sell the Bank and was included in Benton's list of potential purchasers.

68. On or around June 30, 1994, Benton sold his shares of the Bank. By letter dated July 18, 1994, Bank Counsel informed the Reserve Bank that the Bank had been sold. In a letter dated August 19, 1994, the Reserve Bank informed Bank

Counsel of its determination that, based on Benton's 100% financing of the sale and the fact that the purchasers were his relatives and employees, Benton and the purchasers had acted in concert and Benton continued to control the Bank. After learning of the Reserve Bank's decision, Benton rescinded the transaction and took back his shares of the Bank.

July 1994 Exam

69. In July 1994, the Reserve Bank conducted a regularly scheduled examination of the Bank ("July 1994 Exam"). As of the date of the July 1994 Exam, the Concord Concentration had expanded to approximately $9.4 million. Although the Bank received a CAMEL composite rating of "2," the Reserve Bank admonished the Bank's board to closely review all transactions with affiliates to ensure that they complied with applicable regulations.

70. On July 12, 1994, Benton resigned as a director of the Bank and appointed Scott to take his place.

Benton's and CSI's Liquidity Problems

71. In or around 1994, Benton and the Concord Companies began experiencing liquidity problems resulting in part from an embargo on the importation of uranium from the former Soviet republics. Because NTC's uranium trading had provided funding for the other Concord Companies, restrictions on NTC's ability to import low-cost Soviet uranium severely reduced NTC's

profitability and caused liquidity problems at the Concord Companies generally.

72. Benton's and CSI's liquidity problems accelerated in July 1994, when the United States Customs Service raided NTC's Denver headquarters in response to reports that it was illegally importing Soviet uranium. The raid was widely reported in the Denver press and was common knowledge at the Bank. Negative publicity resulting from the raid, along with other factors, intensified cash shortages at the Concord Companies.

73. In or around the summer of 1994, CSI's liquidity problems became increasingly apparent at the Bank. Benton and the Concord Companies maintained over 100 deposit accounts at the Bank (the "Concord Accounts"). In March 1994, the average collected balance in the Concord Accounts was $8,415,000. The average collected balance began to drop in May 1994 and by January 1995, had fallen to $378,000 in all of the Concord Accounts.

74. At around the same time, the number of checks written on the Concord Accounts that were returned to the Bank for non-sufficient or uncollected funds ("NSF") began to increase. By the fall of 1994, the number of returned checks was so great that the Bank and CSI had set up a system whereby a Benton Daughter, or a CSI employee working for her ("CSI Employee"), would make daily calls to an assistant Bank vice

president who operated the Bank's wire room ("Assistant Vice President") to determine the dollar amount of collected funds in each of the Concord Accounts and the amount of checks drawn on each Concord Account. Benton Daughter or CSI Employee would then instruct Assistant Vice President which checks to pay, which checks to hold and how money should be shifted among the various Concord Accounts to enable the Bank to pay on the checks. Bank officers and employees, including Scott, were aware of the frequent NSF situations in the Concord Accounts and were aware that the Concord Accounts were being monitored in this manner.

75. In or around the fall of 1994, the Concord Companies' liquidity problems became so severe that many of the Companies began having difficulty meeting basic, recurrent operating expenses, such as payroll. During the fall of 1994, NSF in CSI's payroll account at the Bank became so frequent that Bank President asked Benton Daughter to move the account to another bank.

76. In a sign of Benton's personal liquidity problems, Benton was at least 30 days late in making the October 1994 interest payment on his Line of Credit. On or around October 31, 1994, Scott became concerned that the delinquency in Benton's interest payment would require him to put Benton's Line of Credit on the monthly report of delinquent loans to the Bank's board. Accordingly, Scott contacted Assistant Vice President and asked

him to warn Benton Daughter that if Benton did not make his interest payment soon, the Line of Credit would be included in the next delinquency report to the Bank's board.

Increasing Affiliate and Insider Transactions at the Bank

77. In or around the fall of 1994, as the Concord Companies' liquidity problems worsened, Benton began searching for ways to raise funds to meet the Concord Companies' financial obligations. Benton considered the Bank to be one such source of funding. However, because Benton's Line of Credit was almost equal to the Bank's lending limit under Colorado law, he could not borrow directly from the Bank. Accordingly, as set forth in ¶¶ 79-131 below, he devised a strategy whereby he would sell assets, usually stock, to his employees and other individuals using loans from the Bank to fund the sales. Once the loans were approved, as they almost always were, Benton, through Benton Daughter, would transfer the loan proceeds to CSI or Premier, making the loans covered transactions under section 23A and insider loans for purposes of Reg. O. Benton used the proceeds of these loans to meet day-to-day operating expenses, including payroll, at the Concord Companies. Indeed, the volume and frequency of these loan requests coinciding with the Concord Companies' need to make payroll became so great during the fall of 1994 that some Bank employees began referring to them as "payroll loans." As set forth in ¶¶ 176 and 178 below, because

the Bank initially violated its 10% and 20% of capital limitations under section 23A in June and November 1993 respectively, and continued to violate those limitation until at least January 1995, each additional affiliate loan constituted a separate and distinct violation of section 23A. As set forth in ¶¶ 175-78 below, as a result of these transactions, by January 1995, the Bank's level of covered transactions was significantly greater than its percentage of capital limits under section 23A.

78. As set forth below, Scott, who was the originating officer or the direct supervisor of the originating officer on all of these loans, was aware of Benton's and the Concord Companies' liquidity problems and was or should have been aware that Benton was transferring loan proceeds to Bank affiliates. In a number of cases, Scott personally signed cashiers checks for loan proceeds made payable to Bank affiliates and transferred loan proceeds directly into the accounts of Bank affiliates, giving him direct evidence that the loans were covered transactions. In other cases, Scott had strong circumstantial evidence that loans were covered transactions. As set forth below, despite his knowledge, Scott originated and approved the loans without ensuring that the Bank had complied with sections 23A, 22(h), Reg. O or the Bank's Affiliate Policy and, in some cases, despite warnings from Bank Counsel and others that the loans might violate section 23A.

Affiliate and Insider Loans from October 1994 through January 1995

Loans to CSI CFO

Draws on CSI CFO's Line of Credit

79. Scott was the Bank officer in charge of the Bank's lending relationship with CSI's Chief Financial Officer ("CSI CFO"). CSI CFO maintained a $500,000 revolving line of credit at the Bank.

80. On or about October 26, 1994, Benton contacted CSI CFO and asked him to draw on his line of credit at the Bank and advance the money to CSI, possibly to enable CSI to meet payroll. CSI CFO agreed. The same day, CSI CFO contacted Scott and instructed him to draw $120,000 on his line of credit and deposit the funds into CSI's account. As instructed, Scott drew $120,000 on CSI CFO's line of credit and used it to purchase a $120,000 cashier's check made payable to CSI, which Scott signed. CSI deposited the $120,000 into the CSI Advance Account.

81. On or about December 2, 1994, Benton or Benton Daughter contacted CSI CFO and again asked him to draw on his line of credit at the Bank to help CSI meet payroll or other expenses. CSI CFO agreed and told Benton or Benton Daughter that he had $90,000 available. The same day, CSI CFO contacted Scott and asked him to draw $90,000 on his line of credit and deposit the funds as directed by Benton or Benton Daughter. Later that

day, Benton or Benton Daughter contacted Scott, or a private banking loan officer working for Scott ("Private Banking Officer"), and instructed him to draw $90,000 on CSI CFO's line of credit and transfer it into Premier's account at the Bank, which Scott or Private Banking Officer did. Later that day, Benton or Benton Daughter transferred $105,000 from Premier's account to the CSI Advance Account.

82. Because CSI CFO's draws on his line of credit were transferred to Premier and CSI, Bank affiliates, they were covered transactions under section 23A. Scott, who personally performed or supervised the transactions, knew that the funds were being transferred to Bank affiliates, but did not inform CSI CFO that the transactions might be covered under section 23A, did not have the transactions reviewed by Bank Counsel or approved by the Bank's board as required by the Bank's Affiliate Policy, did not place the transactions on the Bank's 23A list and did not take steps to ensure that the transactions complied with the percentage of capital limitations or other requirements of sections 23A, 22(h) or Reg. O, which they did not.

October 28, 1994 Loan to CSI CFO

83. During the last week of October 1994, Benton asked CSI CFO to purchase Benton's 50% interest in Fuller & Co., a commercial real estate company, for $1 million. CSI CFO agreed. On or about October 25, 1994, CSI CFO contacted Scott and

requested a $1 million loan to purchase Benton's shares of Fuller & Co. ("October 28, 1994 loan").

84. In connection with the October 28, 1994 loan, Scott instructed a Bank credit analyst working for him ("Credit Analyst") to prepare a credit analysis. By October 26, 1994, Credit Analyst had not completed her analysis and had not received all of the necessary information from CSI CFO. Nonetheless, on October 26, 1994, Scott faxed a commitment sheet containing the loan terms and the credit analysis to CSI CFO. Although the $1 million loan exceeded Scott's individual lending authority and Scott had not obtained the prior approval of the Bank's board or loan committee, Scott indicated on the commitment sheet that he had approved the loan in his individual capacity.

85. On October 28, 1994, Scott was absent from the Bank, but left instructions for Senior Loan Officer or Bank President to close the loan. Because Bank employees were unable to find the original commitment sheet signed by Scott, Bank President signed a second commitment sheet. Bank President or Senior Loan Officer closed the loan and forwarded the loan documentation to Scott.

86. On or about October 28, 1994, the Bank deposited the $1 million loan proceeds into CSI CFO's account. CSI CFO instructed the Bank to disburse the proceeds at Benton's direction in exchange for the Fuller & Co. stock. Later that

day, Benton or a Benton representative instructed the Bank to transfer the proceeds into Premier's account at another bank, which the Bank did, making the loan a covered transaction under section 23A.

87. On or about October 31, 1994, Benton informed CSI CFO that he had reached an agreement with the owners of the other 50% of Fuller & Co. to purchase Benton's interest and asked CSI CFO to rescind the transaction. CSI CFO agreed. The same day, just three days after the loan had been made, Benton or CSI CFO contacted Scott and informed him that CSI CFO would be paying off the October 28, 1994 loan. Scott and Private Banking Officer met Benton and CSI CFO at CSI's offices that day to complete the loan pay off. At the meeting, CSI CFO paid off the loan using a personal check drawn on his account for $1,000,687.50 -- the loan amount plus interest for the intervening three days. In exchange, Scott gave CSI CFO a copy of the promissory note marked "paid EDS 10/31/94." To cover his personal check, which far exceeded the funds available in CSI CFO's account, CSI CFO provided Scott or Private Banking Officer with a check for $1,000,687.50 made payable to him from CSI.

88. When combined with the other extensions of credit to Bank affiliates that were outstanding as of October 28, 1994, set forth in ¶ 177 below, the October 28, 1994 loan violated the Bank's 20% of capital limit on loans to all affiliates under

section 23A. The circumstances of the loan, including the fact that CSI CFO was a CSI employee purchasing stock from Benton, that two days earlier, as described in ¶ 80 above, CSI CFO had instructed Scott to draw on his line of credit at the Bank and transfer the proceeds to CSI, that CSI CFO instructed the Bank to transfer the October 28, 1994 loan proceeds to Premier, a Bank affiliate, and that the $1 million loan was repaid in three days using funds from CSI, a Bank affiliate, indicated or should have indicated to Scott that the loan might be a covered transaction covered under section 23A. Nonetheless, Scott originated and approved the loan. Scott failed to place the loan on the Bank's 23A list, failed to have the loan reviewed by Bank Counsel, failed to have the loan reviewed or approved by the Bank's board or loan committee, and failed to ensure that the loan complied with all of the requirements of section 23A, which it did not.

89. Despite Scott's central role in originating, approving and accepting repayment for the loan, Scott denied in sworn testimony to Board staff that he had any knowledge of or involvement in the loan, that he had any discussions with CSI CFO regarding the loan or that he was involved in the repayment of the loan.

90. During a January 1995 Exam of the Bank, discussed in ¶¶ 157-63 below, Reserve Bank examiners discovered that documents regarding the October 28, 1994 loan were missing from

the Bank's loan files, and asked Scott about the loan and the missing documents. Scott informed Reserve Bank examiners that he had no knowledge of the loan or the whereabouts of the missing loan documents. Scott later informed a bank employee that the missing documents were in his truck.

91. Also in connection with the January 1995 Exam, Scott asked a Bank loan officer to remove a document regarding another loan from the Bank's loan files. The loan officer refused.

November 3, 1994 loan to CSI CFO

92. In or around November 2, 1994, several days after his sale of Fuller & Co. to CSI CFO, Benton offered CSI CFO the opportunity to purchase a 100% interest in First Concord Acceptance Transferor 1993-A, L.P., a limited partnership controlled by FCAC ("Limited Partnership Interest"), for $1.1 million. CSI CFO agreed.

93. On or around November 2, 1994, CSI CFO contacted Scott to request a $1 million loan to purchase the FCAC Limited Partnership Interest ("November 3, 1994 loan"). Scott was the originating officer on the loan and was aware that the loan was being used to purchase the Limited Partnership Interest from FCAC, a Bank affiliate. The loan was approved by several members of the Bank's loan committee, including Scott, by telephone poll. The loan was not reviewed or ratified at a formal meeting of the

Bank's loan committee until November 10, 1994, a week after the loan was made.

94. On or about November 3, 1994, Scott closed the loan at CSI's offices. CSI CFO used the loan proceeds to purchase a $1 million cashier's check, which Scott signed, made payable to FCAC. To enable him to pay the remaining $100,000 of the purchase price, CSI CFO received a $100,000 check from CSI -- representing partial repayment of CSI CFO's draw on his line of credit, discussed in ¶ 80 above -- which he deposited into his account, and then wrote a check for $100,000 to FCAC. FCAC deposited the $1 million cashier's check and the $100,000 personal check into its account, making the loan a covered transaction under section 23A. FCAC later determined that CSI CFO had underpaid for the Limited Partnership Interest by approximately $350,000. Benton provided CSI CFO with the funds to make up the difference from the URI Account at the Bank, discussed at ¶¶ 152-56 below.

95. The circumstances of the loan, including the fact that CSI CFO requested the loan to purchase an asset from an affiliate, that CSI CFO requested the loan just one week after his previous $1 million loan to purchase assets from Benton, discussed in ¶¶ 83-89 above, that the loan proceeds went to a Bank affiliate, and that CSI, an affiliate, supplied a portion of the purchase price, indicated or should have indicated to Scott

that the loan might be a covered transaction. Nevertheless, Scott approved the loan. Scott did not have the loan approved by the Bank's board as required under the Affiliate Policy and did not take steps to ensure that it complied with all of the requirements of section 23A or Reg. O, which it did not.

96. Bank Counsel and an outside attorney representing the Bank reviewed the November 3, 1994 loan to determine if section 23A or Reg. O applied. In a November 8, 1994 memo to Benton, Bank Counsel informed Benton that the loan was likely covered under section 23A but that a good faith argument could be made that section 23A should not apply based on a 1983 OCC interpretive letter. Bank Counsel suggested to Benton that the Bank seek a ruling from the Board regarding the applicability of the OCC interpretive letter before making the loan, and attached a draft letter to the Board for that purpose. Despite Bank Counsel's advice, Benton did not send Bank Counsel's letter to the Board and, indeed, did not even wait for Bank Counsel's advice before selling the Limited Partnership Interest to CSI CFO.

Straw Cattle Loan to CSI CFO

97. In late November 1994, Benton was searching for additional ways to borrow money from the Bank. At the time, Benton's $1.7 million Line of Credit put him at or near the Bank's legal lending limit. Scott informed Benton that under

Colorado law, an exception to the Bank's lending limit existed for loans secured by livestock.

98. Based on his discussions with Scott, Benton formulated a plan to take out a $700,000 loan from the Bank to purchase cattle from Diamond Six D Ranch, a corporation he owned, that owned several hundred head of cattle.

99. Upon hearing of Benton's plan, Bank President, Senior Loan Officer or Bank Counsel determined that such a loan might be covered under section 23A because Benton would be using loan proceeds to purchase an asset from an affiliate, and thought that such a loan might put the Bank over its section 23A limit. Accordingly, Benton decided that rather than purchasing the cattle himself, he would ask CSI CFO to purchase it from him using a loan from the Bank. Scott concurred.

100. On or about December 6, 1994, Benton asked CSI CFO if he would be interested in purchasing cattle from him. CSI CFO agreed as an accommodation to Benton. On or about December 6, 1994, CSI CFO contacted Scott and requested a $700,000 loan to purchase cattle from Benton.

101. As a small community bank in metropolitan Denver, the Bank rarely if ever made loans secured by livestock, and had little or no experience in this specialized field of lending. Nevertheless, on or about December 7, 1994, the Bank made a $700,000 loan to CSI CFO to purchase cattle from Benton ("Cattle

loan"). Scott was the originating officer on the loan. The loan was approved by three members of the Bank's loan committee, including Scott. The Bank's loan committee did not review or ratify the Cattle loan at a formal meeting until December 15, 1994, a week after it was made.

102. On December 7, 1994, the loan proceeds were deposited into CSI CFO's account. CSI CFO used the proceeds to purchase two cashier's checks, for $350,000 each, made payable to Benton. Benton deposited one of the checks into his personal account at the Bank and used it to purchase a $350,000 cashiers check, also dated December 7, 1994, made payable to CSI, which he deposited into the CSI Advance Account, making that portion of the Cattle loan a covered transaction under section 23A. The cashiers checks and related loan documentation were signed by Private Banking Officer at Scott's instruction.

103. The circumstances of the Cattle loan, including the fact that CSI CFO was purchasing assets from Benton, that he had taken out two previous loans to purchase assets from Benton and had drawn twice on his line of credit at Benton's request, that Scott had discussed with Benton the possibility of Benton's taking out a loan to purchase cattle just days before CSI CFO's loan request, and the fact, of which Scott was aware, that Benton had used a portion of the loan proceeds to purchase a cashier's check made payable to a Bank affiliate, indicated or should have

indicated to Scott that the Cattle loan was a covered transaction under section 23A. Nevertheless, Scott approved the loan. Scott failed to place the loan on the Bank's 23A list, did not have it approved in advance by the Bank's board of directors and failed to ensure that it complied with the percentage of capital limitations and other requirements of section 23A and Reg. O, which it did not.

104. As a further indication that Benton, not CSI CFO, was the real party in interest in the Cattle loan, the loan was paid off five weeks after it was made using a $700,000 loan from the Bank to Benton Daughter who purchased the cattle from CSI CFO. Scott originated and approved the loan to Benton Daughter.

Loans to Bank Director

Draws on Bank Director's Line of Credit

105. In or around the summer of 1994, Benton's liquidity crisis spread to certain joint ventures he had with the former Soviet republics. The joint ventures were held under an umbrella holding company, known as ULTRAM, which was a Bank affiliate. Benton had failed to provide funding for the joint ventures as required under contract and his plants in the former Soviet republics had been shut down.

106. In or around September 1994, Benton approached a CSI consultant who worked with the Soviet joint ventures, and was also a director of the Bank ("Bank Director"), and told him that

he was having trouble providing funding for the Soviet joint ventures and asked Bank Director if he would be willing to draw on his line of credit at the Bank to enable Benton to make payroll at ULTRAM and pay expenses on behalf of ULTRAM. Bank Director agreed.

107. In or about September 1994, Bank Director contacted Scott and told him that he wanted to increase his existing line of credit at the Bank to provide funding for some of Benton's joint ventures in the former Soviet republics, including ULTRAM. Bank Director told Scott that he was doing so at Benton's request. Scott agreed and, on or about September 2, 1994, approved an increase in Bank Director's line of credit from $100,000 to $300,000.

108. Between September 29, 1994 and March 16, 1995, a total of 20 draws, amounting to $286,000 in all, were made on Bank Director's line of credit and used to make payroll at ULTRAM or to pay expenses on behalf of ULTRAM. A CSI employee, acting under Benton's authority, would typically call Bank Director and tell him how much funding ULTRAM needed. Bank Director would approve a draw on his line of credit. The CSI employee would then contact Scott or one of his employees in the private banking department and tell him that Bank Director had approved a draw on his line of credit for ULTRAM. Scott or one of his employees would draw the requested amount on Bank Director's line of credit

and deposit the funds into an account established in Bank Director's name for that purpose. The CSI employee would then transfer the funds out of that account and wire them directly to ULTRAM, to meet payroll, or to third parties to pay expenses on ULTRAM's behalf, making the draws covered transactions under section 23A.

109. When combined with the other extensions of credit to Bank affiliates outstanding between September 1994 and March 1995, as set forth in ¶ 177 below, the draws on Bank Director's line of credit, set forth in ¶ 108 above, violated the Bank's 20% of capital limit on loans to all affiliates under section 23A. Despite the fact that Bank Director told Scott that he was using the increase in his line of credit to provide funding to a Bank affiliate, Scott did not indicate on the Bank's internal loan documentation that the line of credit was being used for that purpose and did not tell Bank Director that draws on his line of credit for that purpose could be covered transactions under section 23A. Scott did not have the increase in Bank Director's line of credit approved by the Bank's board or reviewed by Bank Counsel, as required by the Bank's Affiliate Policy, did not place the increase on the Bank's 23A list and did not take steps to ensure that the increase complied with the Bank's percentage of capital limitations under section 23A, which it did not.

November 23, 1994 loan to Bank Director

110. In or around November 1994, Benton Son-in-Law contacted Bank Director and offered him the opportunity to purchase Phoenix Network stock from the Benton Family Members. The Benton Family Members planned to use the proceeds from the sale to pay off certain obligations they had to Benton. Bank Director agreed, both because he considered Phoenix Network to be a good investment and to help Benton out with his cash flow problems.

111. On or before November 23, 1994, Bank Director contacted Scott or Bank President and requested a $500,000 loan ("November 23, 1994 loan") to purchase Phoenix Network stock from the Benton Family Members. Private Banking Officer, working under Scott's supervision, was the originating officer on the loan. The loan was approved by the Bank's board of directors, including Scott, on November 23, 1994.

112. The Bank disbursed the loan proceeds into Bank Director's account on November 23, 1994. As of that date, however, Benton had not yet decided to whom the check for the loan proceeds should be made payable. Accordingly, Benton told Bank Director that he would call Scott and tell him to whom the check should be made payable. Bank Director agreed. Later that day, Benton, or an individual working on his behalf, called Scott and told him to make the check for the loan proceeds payable to

Premier, a Bank affiliate. Scott agreed, and used the proceeds of the November 23, 1994 loan to purchase a $500,000 cashiers made payable to Premier, which Scott signed. Premier deposited the check into its account at the Bank, making the November 23, 1994 loan a covered transaction under section 23A. Benton, or an individual working on his behalf, then transferred $500,000 from Premier's account into the CSI Advance Account.

113. Despite the fact that Scott was aware that Bank Director was using the loan proceeds to purchase Phoenix Network shares from Benton Family Members, having been informed of that fact by Bank Director and having signed stock powers, dated November 23, 1994, transferring Phoenix Network shares from the Benton Family Members to Bank Director, the Bank's internal loan documentation stated only that the November 23, 1994 loan was "to bridge business investments." Scott later stated in sworn testimony to the Board that he did not know what Bank Director planned to do with the loan proceeds.

114. Despite the fact that Bank Director had paid over $500,000 for the stock, Benton Son-in-Law did not contact a securities transfer agent to ask that Phoenix Network shares be issued in Bank Director's name until January 1995, two months after the loan was made, and Bank Director did not receive Phoenix Network shares in his name until February 1995, almost three months after the loan was made, indicating that the

transaction was undertaken primarily as an accommodation to Benton.

115. Despite circumstances indicating that the loan was a covered transaction under section 23A, including the fact that Bank Director was a CSI employee requesting a loan to purchase stock from Benton's children, that Bank Director had previously drawn on his line of credit at the Bank to provide funding for Benton's joint ventures, that Bank Director had agreed to allow the loan proceeds to be disbursed to an entity named by Benton, and that Benton had instructed Scott to make the check for the loan proceeds payable to a Bank affiliate, Scott approved the loan. Despite Scott's knowledge that the loan proceeds were transferred to a Bank affiliate, having signed a $500,000 cashier's check made payable to Premier, Scott did not have the loan reviewed by Bank Counsel and did not place the loan on the Bank's 23A list as required by the Bank's Affiliate Policy. Scott did not take steps to ensure that the loan complied with the Bank's percentage of capital limitations or other requirements of section 23A, which it did not.

January 24 1995 loan to Bank Director

116. In January 1995, Benton approached Bank Director and asked him if he would be interested in purchasing shares of Partrade Corporation ("Partrade"), a Bank affiliate, from him. Bank Director agreed, both because he believed that the shares

were a good investment and as an accommodation to Benton. On or around January 24, 1995, Bank Director contacted Scott or Bank President and requested a $1 million loan ("January 24, 1995 loan") to refinance his November 23, 1994 loan and to purchase 190 shares of Partrade from Benton. Scott and Private Banking Officer, at Scott's instruction, were the loan officers on the loan. Although Bank Director informed them that the loan was to purchase Partrade shares from Benton, the loan documentation stated only that the loan was for "investment purposes."

117. On January 24, 1995, the Bank's board, including Benton, who had rejoined the board on January 6, 1995, and Scott, approved the loan. Despite the fact that Bank Director was using the loan proceeds to purchase stock from Benton, Benton did not abstain from voting in favor of the loan.

118. On January 24, 1995, the Bank disbursed the loan proceeds into Bank Director's account. On January 25, 1995, Bank Director used $500,000 of the loan proceeds to pay off his November 23, 1994 loan from the Bank and wrote a check for the remaining $500,000 to Benton, which Benton deposited into his account at the Bank. Of that $500,000, Benton transferred $350,000 into the account of Mama Rizzo's, a company in which he had an ownership interest. At the direction of Benton, or Benton Daughter acting on his behalf, Mama Rizzo's transferred $250,000 of that amount into the account of another Benton business

associate ("Second Business Associate") at the Bank. On the same day, Second Business Associate used the $250,000 to purchase a cashier's check made payable to Premier, which Premier deposited into its account at another bank. On January 25, 1995, at the direction of Benton, or Benton Daughter on his behalf, Mama Rizzo's transferred the remaining $100,000 into the CSI Advance Account. As a result of these transactions, $350,000 of the proceeds of the January 24, 1995 loan was a covered transaction under section 23A. When combined with the other extensions of credit to Bank affiliates outstanding as of January 25, 1995, set forth in ¶ 177 below, the January 24, 1995 loan violated the Bank's 20% of capital limit on loans to all affiliates under section 23A.

119. Despite circumstances indicating that the loan was a covered transaction, including the fact that the purpose of the loan was to purchase assets from Benton and that Bank Director had previously taken out a loan to purchase assets from Benton Family Members and had drawn on his line of credit to provide funding for Benton's Soviet joint ventures, Scott and Benton approved the loan. Scott failed to place the loan on the Bank's 23A list and failed to have it reviewed by Bank Counsel as required under the Affiliate Policy. Scott failed to take other steps to ensure that the loan complied with the percentage of

capital limitations and other requirements of section 23A, which it did not.

120. The January 24, 1995 loan was to be secured, in part, by the 153,846 shares of Phoenix Network stock that Bank Director had purchased from the Benton Family Members. On January 25, 1995, the day after the loan was made, Benton Son-in-Law returned Phoenix Network shares in the Benton Family Members' names to a securities transfer agent with instructions to reissue 153,846 shares in Bank Director's name. As of the date the loan was made, however, no Phoenix Network shares had been issued in Bank Director's name. A Phoenix Network share certificate was not issued in Bank Director's name until February 22, 1995, almost a month after the loan was made. Accordingly, as of the date the loan was made, the Bank did not have possession of the Phoenix Network stock certificate and had not perfected its security interest in a portion of the collateral for the loan. Notwithstanding the Bank's lack of a portion of the collateral for the loan, Scott and Benton approved the loan. Scott did not tell Bank Director that the Bank could not make the loan without the Phoenix Network share certificate and did not indicate in the Bank's loan files that the Bank had not perfected its security interest in a portion of the collateral for the loan.

Loans to Other Benton Employees

November 22, 1994 Loan to URI President

121. On or about November 22, 1994, Benton approached a CSI employee who was the president of Uranium Resources, Inc. ("URI President"), a publicly traded company in which Benton had an ownership interest, and asked him if he would be interested in purchasing URI shares from Benton. URI President agreed. On or about November 22, 1994, URI President asked Scott to establish a $100,000 unsecured line of credit for him at the Bank for unspecified business investments. Scott, or Private Banking Officer working at his direction, established the line. Scott did not ask URI President what investment he was planning to make. Scott approved the line of credit under his individual lending authority. URI President asked Scott to draw down the entire line and deposit it into his account at the Bank, which Scott did.

122. The same day, at Benton's request, URI President wrote a personal check to Premier for $100,000 in partial payment for the URI shares. On or about November 23, 1994, a CSI employee presented URI President's personal check to the Bank in exchange for a $100,000 cashiers check made payable to Premier. On November 23, 1994, Premier deposited the cashier's check into its account at another bank, making the loan a covered transaction under section 23A.

123. Despite circumstances, including the fact that URI President was a CSI employee and was taking out a loan for unspecified investment purposes, indicating that URI President's draw on his line of credit might be a covered transaction, Scott failed to ascertain how URI President planned to use the loan proceeds, did not have the loan reviewed by Bank Counsel, did not obtain board approval for the loan, did not place the loan on the Bank's 23A list and did not ensure that the loan complied with the percentage of capital limitations and other requirements of section 23A and Reg. O, which it did not.

124. URI president later demanded that the Bank release him from his obligation to repay the line of credit, claiming that Benton had never sent him any shares of URI stock and that the Bank had wrongfully allowed Premier to use the $100,000 to satisfy overdrafts in its accounts.

November 30, 1994 Loan to Benton Nephew and KH&B Holdings

125. In late November 1994, Benton informed Bank President and Scott that he was planning to sell Barnhart Advertising, Marketing and Public Relations, Inc. ("Barnhart"), an advertising company that he owned. In a memo to Bank President, Benton outlined the terms of the prospective sale so that Bank President and Scott could start working on the financing. Benton initially planned to sell Barnhart to its former owner, and provided Scott and Bank President with a draft

sales contract to that effect. However, that proposal was not consummated.

126. Shortly thereafter, Benton asked a CSI officer, who was also Benton's nephew ("Benton Nephew"), to purchase Barnhart from him. Notwithstanding his lack of experience in the advertising business, Benton Nephew agreed and formed a company, KH&B Holdings, Inc. ("KH&B"), for that purpose.

127. On or around November 30, 1994, Benton Nephew contacted the Bank to request a 90-day, $1.2 million loan to purchase Barnhart from Benton ("November 30, 1994 loan"). Scott was the loan officer on the loan. Because Benton Nephew had relatively modest assets for a loan of that size, Scott listed the planned sale of Barnhart to another Denver advertising agency as the primary source of repayment. Scott was aware, however, that Benton Nephew did not have a binding commitment from that advertising agency to purchase Barnhart, but rather only had a non-binding letter of intent between the Denver advertising agency and Benton, not Benton Nephew, to purchase Barnhart. In addition to having relatively few assets, Benton Nephew was indebted to CSI by approximately $1 million as a result of assets conveyed to him by Benton. Accordingly, CSI entered into a subordination agreement with the Bank subordinating Benton Nephew's debt to it to the Bank's loan to Benton Nephew as an inducement to the Bank to enter into the loan.

128. The November 30, 1994 loan was approved by three members of the Bank's loan committee, including Scott. The loan was not reviewed or ratified at a meeting of the Bank's loan committee until December 1, 1994, the day after the loan was made. On November 30, 1994, the Bank disbursed the $1.2 million loan proceeds in the form of a cashiers check, signed by Scott, made payable to KH&B Holdings. Benton Nephew endorsed the check over to Benton, who deposited it into his account at the Bank and immediately transferred the $1.2 million into the CSI Advance Account, making the loan a covered transaction under section 23A. Although the transfer easily could have been detected by reviewing the Bank's internal account records, Scott did not check the Bank's records or take other steps to determine if the loan proceeds had been transferred to a Bank affiliate.

129. Despite circumstances, including the fact that the borrower was Benton's nephew and a CSI employee who was indebted to CSI and who had agreed to buy Barnhart from Benton only after Benton's plan to sell the company to its former owners had fallen through, indicating that the loan was taken out to accommodate Benton and was likely a covered transaction, Scott originated and approved the loan. Scott failed to place the loan on the Bank's 23A list, failed to have it reviewed by Bank Counsel or approved by the Bank's board, and failed to ensure

that the loan complied with the percentage limitations and other requirements of section 23A and Reg. O, which it did not.

130. Shortly after the Bank made the November 30, 1994 loan, several key employees left Barnhart. Barnhart closed in February 1995. Accordingly, the stock of KH&B, which served as the Bank's collateral for the loan, became nearly worthless. Benton Nephew was not able to sell Barnhart, as planned, and was forced to find other sources of funding to repay the loan, including the sale of assets conveyed to him by Benton. In March 1995, the Bank declared the November 30, 1994 loan in default and wrote it off.

January 1995 draw on NTC President's line of credit

131. On or about January 20, 1995, at the request of Benton, the president of NTC ("NTC President"), a customer of Scott's, contacted Scott and asked to draw $250,000 on his line of credit. At Scott's instruction, a Bank employee advanced $250,000 on NTC President's line of credit and deposited it into NTC President's account at the Bank. NTC President used the funds to purchase a cashier's check for $250,000 made payable to Dakota Gold Joint Venture ("Dakota Gold"), a limited partnership in which Benton and First Business Associate had an interest. Premier was the general partner of Dakota Gold. Private Banking Officer signed the check at Scott's instruction. On January 20, 1995, the check was deposited into Dakota Gold's account at the

Bank. The same day, at the request of Benton Daughter, who had previously discussed the transaction with Scott, Dakota Gold transferred the $250,000 into Premier's account at the Bank, which then transferred the $250,000 into the CSI Advance Account, making the draw on NTC President's line of credit a covered transaction under section 23A.

December 20, 1994 Board meeting

132. By December 1994, Senior Loan Officer had become so concerned about Benton's deteriorating financial condition and the volume of loan requests from CSI-related individuals that she discussed with Bank Counsel and Bank President the possibility of asking the Bank's board to review and approve any such loan requests in the future. Senior Loan Officer, Bank President and Bank Counsel decided to speak to the Bank's board about its responsibilities under Reg. O and section 23A and to urge the board to take a more active role in the management of Benton-related loan requests.

133. Senior Loan Officer had also become increasingly concerned about the collectability of Benton's $1.7 million Line of Credit, given his liquidity crisis, as well as an unsecured, $675,000 loan to a business associate of Benton ("Third Business Associate's loan"). The primary source of repayment for Third Business Associate's loan was a consulting contract with Benton. When Benton failed to make payments to Third Business Associate

under the consulting contract, Third Business Associate did not make loan payments to the Bank. By late December 1994, Third Business Associate, having not received payments from Benton for several months, had not made payments on his loan from the Bank and the loan was seriously delinquent. When Third Business Associate originally approached the Bank about obtaining a loan, Benton personally vouched for his creditworthiness.

134. Third Business Associate subsequently defaulted on his loan and the Bank filed a collection action against him. Third Business Associate filed a counterclaim against the Bank, claiming that he was not obligated to make payments on his loan because Benton had breached his obligations to Third Business Associate under the consulting contract. The Bank subsequently collected approximately $300,000 from Third Business Associate, leaving it with a loss of approximately $375,000, plus interest and collection costs.

135. Senior Loan Officer decided to document for the Bank's board the problems with Benton's Line of Credit and Third Business Associate's loan in hopes that the board would restructure or classify the loans.

136. At a December 20, 1994 meeting of the Bank's board, at which Scott was present, Bank Counsel informed the board that the Bank had recently made a number of large, high visibility loans to individuals dependent on Benton or CSI for

income for the purpose of purchasing assets from Benton, and that an issue had arisen regarding the use of the proceeds of these loans. Bank Counsel told the Bank's board that if the proceeds of the sale of an asset were used by Benton to provide funding or cash flow to an affiliate, the loan might need to be included in the Bank's 23A list. Bank Counsel informed the board that the Bank had a strong risk of being in violation of section 23A and that great prudence should be used in reviewing any such loan requests in the future. Bank Counsel told the Bank's board that the Bank should avoid granting any new loans for the purpose of purchasing assets from Benton if possible. The Bank's outside counsel, who attended the December 20, 1994 board meeting, concurred with Bank Counsel's statements.

137. Despite Bank Counsel's warnings, the Bank's board, including Scott, did not take steps to determine if the Bank was in compliance with section 23A or to ensure that it did not commit additional violations of section 23A in the future. To the contrary, as set forth in ¶¶ 116-20 and 131 above, just one month after Bank Counsel's warnings, the Bank's board approved a loan to Bank Director to purchase assets from Benton and allowed NTC President to draw on his line of credit, the proceeds of which were transferred to CSI.

138. At the December 20, 1994 board meeting, the board also discussed Benton's unsecured $1.7 million Line of Credit.

The board did not downgrade or classify the Line. However it agreed that in light of Benton's liquidity crisis, of which the board was aware, the Bank should request updated financial information from Benton including a new financial statement, tax return, cash flow information, list of contingent liabilities, and collateral that could be pledged to the Bank to secure the Line of Credit.

139. Benton never provided the Bank with updated financial information. Despite the Bank's significant exposure to him, the unsecured nature of the Line of Credit and his deteriorating financial condition, Benton did not take steps to protect the Bank's interests in collecting on the Line of Credit, such as pledging collateral or paying down the Line. Despite the unsecured nature of the Line of Credit and increasing indications, including Benton's failure timely to make interest payments, that Benton might be unable to perform under the terms of the Line of Credit, Scott, the loan officer on the Line of Credit and a member of the Bank's board, did not take steps to protect the Bank's interests in collecting on the Line of Credit.

140. Despite the gravity of the discussions at the Bank's December 20, 1994 board meeting, the Bank's official minutes contain no discussion of Reg. O, section 23A or Benton's Line of Credit. Although Senior Loan Officer, who served as secretary to the Bank's board, placed a detailed discussion of

these items in her draft of the minutes, Bank President, who prepared the final minutes, reduced the discussion to one sentence. Bank President's version of the minutes was unanimously approved by the Bank's board at its January 24, 1995 meeting.

Restructuring of the Bank; Bonuses; Dividends

141. Shortly after the Bank's December 20, 1994 board meeting, at the request or with the approval of Benton, the Bank was restructured to merge the community banking group, headed by Senior Loan Officer, into the private banking group, headed by Scott. Although he had little or no experience with commercial lending, Scott was put in charge of the new "banking group," which controlled the majority of the Bank's lending operations. The majority of Senior Loan Officer's lending responsibilities were taken away and she left the Bank shortly thereafter. There was little or no discussion of the reorganization before it occurred. Bank President was unaware of the restructuring until shortly before it occurred.

142. By January 1995, the Bank faced a high probability of loss on its $675,000 unsecured loan to Third Business Associate, which was 90 days delinquent, and a probability of loss on Benton's unsecured $1.7 million Line of Credit. On January 6, 1995, Benton rejoined the Bank's board. Despite his mounting liquidity problems and their ramifications

for the Bank, on or about January 11, 1995, Benton instructed Bank President to pay each of the Bank's directors a $10,000 "bonus" for serving the Bank well. The bonuses were paid out of an account normally reserved for employee bonuses.

143. Despite Benton's and CSI's mounting liquidity problems and the Bank's high probability of loss on Benton's Line of Credit and the loan to Third Business Associate, on or about January 6, 1995, the day he rejoined the Board, Benton asked the Bank's directors to declare a dividend of $350,000, which they did. The dividend was paid to Benton, as sole shareholder, and was used to meet operating expenses at CSI.

Other Unsafe and Unsound Practices and Affiliate Transactions

Withholding of Lease Service Payments from the Bank

144. In the early 1990's, the Bank entered into a lease referral program with FCAC, a leasing company controlled by Benton. Under the program, FCAC would refer lease applications to the Bank. The Bank would review the applications and, if an applicant was deemed creditworthy, the Bank would fund the lease through a loan to the vendor of the equipment. By so doing, the Bank became the lessor of the equipment and the lessee would make periodic lease service payments (the "Lease Service Payments") to the Bank.

145. In conjunction with this lease referral program, in 1990, the Bank entered into a lease service agreement ("Lease

Service Agreement") with FCAC whereby FCAC would collect the Lease Service Payments on behalf of the Bank and otherwise service the Bank's lease portfolio.

146. In or around December 1994, under Benton's authority, Benton Daughter, who was the treasurer of FCAC, began withholding Lease Service Payments from the Bank and using the funds to meet CSI's cash needs. By late December 1994, FCAC had withheld over $400,000 in Lease Service Payments from the Bank. CSI remitted the $400,000 to the Bank in late 1994.

147. On or about December 15, 1994, Bank President amended the Lease Service Agreement to extend the amount of time FCAC had to remit Lease Service Payments to the Bank from 10 days after the payments were collected to the end of the month following the month during which the payments were collected -- in effect granting FCAC an unsecured, undocumented, interest-free loan for up to 60 days after the Lease Service Payments were collected. As a result of these overly favorable remittence terms, FCAC was indebted to the Bank by approximately $702,900 as of February 7, 1995. On or about February 7, 1995, the Bank amended the Lease Service Agreement to require FCAC to remit Lease Service Payments to the Bank by wire transfer on a daily basis on the business day following the day it collected the payments.

CSI Billing of the Bank for Expenses

148. At the March 1992 Exam, the Reserve Bank criticized Belcaro for paying management fees to CSI without documentation and without determining the market value of the services rendered. During the March 1992 Exam, CSI reimbursed Belcaro for the fees it had paid. In connection with the 1992 Merger Application, Benton represented to the Reserve Bank that CSI did not plan to charge the Bank fees for management services, but that if fees were charged, they would be based on fees that would be cnarged by unaffiliated third parties providing the same services to the Bank.

149. Despite Benton's representations, in or around December 1994, CSI submitted a bill to the Bank for approximately $140,000 for professional services rendered during 1994. The bill was accompanied by little or no documentation and neither the Bank nor CSI could substantiate that the Bank had actually received $140,000 worth of services or that CSI's fees were consistent with market rates. Bank President informed the Bank's chief financial officer that he would only authorize payment of $70,000 to CSI. Without Bank President's authorization, the Bank's chief financial officer obtained authorization from the Bank's chairman and Benton to pay CSI the full $140,000.

150. On or about December 30, 1994, the Bank wrote a check to CSI for the full $140,000, which CSI deposited into its operating account at the Bank.

Management of Concord Deposit Accounts

151. As set forth in ¶ 73 above, at all relevant times, Benton and the Concord Companies maintained over 100 deposit accounts at the Bank. From at least May 1994 through at least January 1995, Assistant Vice President spent approximately 40 to 50 percent of his time monitoring these accounts, as described in ¶ 74 above and ¶ 152 below. At no time did the Bank charge CSI a fee for these services. Although the substantial balances in the Concord Accounts prior to May 1994 may have justified provision of these services without a fee, the diminished balances since that time did not. The Bank's no-fee services to the Concord Accounts cost the Bank at least $38,000 from June 1994 through January 1995.

Improper Transfer of Funds from the URI Account

152. As set forth in ¶ 74 above, by the fall of 1994, the number of returned checks on the Concord Accounts became so great that Benton Daughter, acting under Benton's authority, would call Assistant Vice President on a daily basis to determine the amount of collected funds in each of the Concord Accounts. Benton Daughter or CSI Employee would then instruct Assistant Vice President how funds should be transferred among the various

Concord Accounts to cover all outstanding checks. By mid-January 1995, CSI's financial situation had deteriorated to the point that Benton Daughter was unable to provide sufficient funds out of the accounts of Benton's privately held companies to cover the increasing amount of NSF in the various Concord Accounts.

153. In addition to his privately held Concord Companies, Benton owned stock in a number of public companies including URI. Unlike funds in the accounts of his privately-held companies, which Benton could transfer at will, Benton had to follow procedures authorized by the company's board of directors in order to transfer money out of the accounts of the public companies.

154. URI maintained a deposit account at the Bank (the "URI Account"). In early January 1995, the authorized signatories on the URI Account were URI President and URI's controller. By resolution of URI's board, the signature of one of these individuals was required to transfer funds out of the URI Account. The signatures of both of these individuals were required to transfer funds in excess of $20,000. By resolution of URI's board, Benton and URI's chief financial officer were added as signatories to the URI Account in mid-January 1995. However, Benton and URI's chief financial officer never filled out signature cards at the Bank for the URI Account and therefore were not authorized to transfer funds out of the URI Account.

URI never entered into a wire transfer agreement with the Bank authorizing funds to be transferred by telephone out of the URI Account.

155. Despite Benton's lack of authority to transfer funds out of the URI Account, for a four-day period between January 17 and January 20, 1995, Benton Daughter, acting under Benton's authority, directed Assistant Vice President to transfer over $1 million out of the URI Account and into the accounts of other Concord Companies or CSI-related individuals to cover NSF or other CSI-related obligations. These transfers virtually erased the cash balance in the URI Account and were done without notice to, or approval by, URI's board.

156. URI later sued the Bank, claiming that the Bank, at Benton's direction, had transferred funds without authorization out of the URI Account, and sought recovery of over $1 million from the Bank. The Bank ultimately settled the lawsuit for $575,000.

January 1995 Examination, Benton's Bankruptcy

157. On January 30, 1995, in response to allegations of insider abuse by present and former Bank employees, Reserve Bank examiners and examiners from the State of Colorado commenced a surprise examination of the Bank ("January 1995 Exam"). The examination concluded on March 14, 1995.

158. Examiners discovered that the Concord Concentration had almost doubled since the July 1994 Exam to $17.8 million and represented over 150% of the Bank's capital. The Bank's asset quality had deteriorated dramatically since the July 1994 Exam. Adversely classified assets totaled $9.87 million at the January 1995 Exam -- an increase of nearly 800% since the July 1994 Exam -- and totaled 83.7% of the Bank's capital. Examiners attributed the increase in classified assets primarily to insider-related credits extended since the July 1994 Exam and a substantial deterioration in existing insider-related credits.

159. The Bank was required to charge off $4.9 million in loans, including: Benton's $1.7 million Line of Credit and $19,470 in accrued interest; the loan to Third Business Associate; portions of the June and November 1993 BFM loans; and the November 30, 1994 loan to Benton Nephew, and to make an immediate provision of $6.1 million to its loan loss reserve.

160. As a result, as of March 1, 1995, the Bank's prompt corrective action capital category was downgraded to "significantly undercapitalized," resulting in certain mandatory statutory restrictions on the Bank's operations, including restrictions on its asset growth, a reduction in its lending limit, which adversely affected a portion of its customer base, and restrictions on its ability to expand through acquisitions,

branching or new lines of business. The Bank's management was required to craft and submit to the Reserve Bank a plan to restore the Bank's capital to acceptable levels.

161. By tracing the proceeds of loans to Benton-related individuals and entities, a process not normally undertaken at bank examinations, examiners discovered that the Bank had engaged in numerous violations of law, set forth in ¶¶ 175-83 below, and unsafe and unsound practices relating to insider and affiliate transactions. Examiners concluded that abusive insider practices by Benton as well as unsatisfactory management and inadequate board supervision had resulted in the dramatic deterioration in the Bank's condition. At Benton's direction, Bank President's employment at the Bank was terminated in March 1995. Benton instructed Scott to go to Bank President's office and tell him he was fired and to collect his telephone, computer and Bank credit cards, which Scott did. Despite Scott's involvement in the Bank's violations of law and unsafe and unsound practices, set forth below, Benton retained Scott as a Bank officer and a member of Bank's board for as long as possible.

162. Uncertainty over Benton's financial condition and adverse publicity surrounding insider lending at the Bank prompted a liquidity crisis at the Bank. From mid-January 1995 through early March 1995, the Bank experienced an outflow of

nearly $32 million in uninsured deposits. Because the Bank did not have adequate excess liquidity to cover these withdrawals, it obtained additional funds by purchasing high interest rate certificates of deposit ("CDs") at interest rates significantly in excess of prevailing interest rates in the Denver market and the national average. As a result, the Bank's level of high interest rate CDs increased from $19 million as of January 27, 1995 to $51 million on March 6, 1995. As of April 1995, high interest rate CDs represented 41 percent of the Bank's deposits.

163. The Bank was assigned a CAMEL composite rating of "5" at the January 1995 Exam, which is reserved for institutions with an extremely high immediate or near-term probability of failure. Examiners pointed to inadequate internal controls over insider-related loans, Benton's and other board member's self dealing practices, expedited loan-approval procedures for insider-related loans, loans closed without complete documentation, non-specific loan purpose statements, and management's failure to reduce the Concord Concentration despite repeated warnings to do so, as contributing factors in the Bank's near-failure.

164. On February 23, 1995, Benton, CSI and a number of Benton-related entities filed for bankruptcy under chapter 11 of the United States Bankruptcy Code. Benton was forced to sell the Bank in order to restore it to financial health, however, he had

difficulty doing so because the Bank's stock was an asset of the bankruptcy estate and potentially was subject to the claims of his multiple creditors. In addition, Benton's creditors in bankruptcy objected to the sale of assets by the BFMs and Benton Nephew to repay their loans to the Bank, claiming that Benton had fraudulently conveyed those assets to his children and nephew. The Bank was only ultimately able to secure repayment of the loans to Benton's children and nephew through a special agreement with Benton's creditors and the bankruptcy court that allowed Benton's children and nephew to sell the assets to repay their loans. This arrangement was made primarily in order to preserve the Bank's value as an asset in Benton's bankruptcy estate.

165. On November 14, 1995, the Bank filed a $1,724,744.44 claim against Benton in bankruptcy for its loss on the Line of Credit plus accrued interest.

166. The Bank subsequently recovered only nominal amounts on the Line of Credit. On August 1, 1997, Benton sold the Bank to Vectra Bank of Colorado ("Vectra"). Vectra waived any claims against Benton's bankruptcy estate on the Line of Credit as a condition of the sale. As of August 1, 1997, the Bank's total loss on the Line of Credit, including interest, was approximately $2,131,626.64.

Administrative Action Against the Bank

167. As a result of the dramatic deterioration in the Bank's condition and serious violations of law and unsafe and unsound practices uncovered at the January 1995 Exam, on or about April 25, 1995, the Board served the Bank with a Notice of Charges ("1995 Notice") and a Temporary Cease and Desist Order ("Temporary Order") under section 8(c)(1) of the FDI Act, 12 U.S.C. § 1818(c)(1), which is reserved for situations in which violations of law or unsafe and unsound practices are likely to cause insolvency or significant dissipation of the assets of a depository institution. Among other things, the Temporary Order required the Bank: to take steps to meet its capital and liquidity needs, including the sale of the Bank; to reduce the Concord Concentration; to limit its additional lending to criticized borrowers; to correct outstanding violations of sections 23A and 23B and Reg. O; and to take steps, including obtaining all necessary information and documentation, to ensure that loan proceeds were not transferred to affiliates and that future extensions of credit complied with sections 23A, 23B and Reg. O. The Board alleged in the 1995 Notice that the Bank had engaged in the violations of sections 23A, 23B, 22(h) and Reg. O set forth in ¶¶ 175-83 below.

168. The Bank did not file an answer to, or contest the allegations of, the 1995 Notice and did not contest the

requirements of the Temporary Order. Accordingly, on December 7, 1995, the 1995 Notice became final and unreviewable and the Board issued a Final Cease and Desist Order by default against the Bank.

Events Subsequent to the January 1995 Exam

Compensation and Bonuses Paid to Scott

169. In or around March 1995, Scott became dissatisfied with his employment at the Bank and informed Benton that he was considering leaving. As the head of the Bank's banking department, Scott controlled a large number of the Bank's core deposits. In light of the Bank's liquidity and capital crisis, Benton feared that Scott's departure could threaten the viability of the Bank. Shortly after his discussion with Scott, Benton called the Bank's new president, who replaced Bank President ("Second Bank President"), and informed Second Bank President that the Bank would pay Scott a $125,000 forbearance payment ("Forbearance Payment") in addition to his regular 1995 salary and bonuses, in exchange for Scott's agreement to stay until year-end 1995. Second Bank President, the Bank's outside counsel, some of the Bank's newly appointed outside directors, and the Reserve Bank objected to the Forbearance Payment because it was excessive in light of Scott's responsibilities, the Bank's near-insolvency and the pending administrative action against the Bank, and tried to dissuade Benton from it. Nevertheless, at

Benton's insistence, on or about April 20, 1995, the Bank's board approved an agreement with Scott incorporating the Forbearance Payment.

170. In early 1996, the Bank paid Scott the $125,000 Forbearance Payment. Because the Bank had no special fund set aside for such payments, the money came out of the Bank's earnings.

171. On March 28, 1995, the Bank's board approved a schedule of bonuses for its senior officers for calendar year 1994, including a $25,000 bonus for Scott. By letter dated April 13, 1995, the Reserve Bank informed the Bank that due to the large size of Scott's bonus and that of another Bank officer, payment of those bonuses would not be in the Bank's interests until the Bank became adequately capitalized. Accordingly, the Bank withheld Scott's 1994 bonus payment until regulatory approval could be obtained.

172. Scott informed Benton that he was unhappy with the delay in payment of his 1994 bonus. Benton passed this information along to First Business Associate, who had taken a more active role in the Bank's management in light of Benton's bankruptcy and First Business Associate's security interest in the Bank's stock. Benton told First Business Associate that it was in the Bank's best interest to keep Scott happy. In light of his discussions with Benton, First Business Associate offered to

pay Scott the $25,000 in exchange for Scott's agreement to repay him when he received his bonus from the Bank. Scott agreed and asked First Business Associate to make checks totaling $25,000 payable to his children, which First Business Associate did. Later in 1995, Scott received his $25,000 bonus from the Bank. Despite his agreement to do so, Scott did not repay First Business Associate, electing instead to keep both $25,000 payments. Scott later stated at a June 15, 1995 meeting of the Bank's board that First Business Associate's $25,000 payment to him was in addition to his 1994 Bank bonus, which was not the case.

173. During 1995, Scott's compensation relating to his employment at the Bank, including a $95,400 salary, his $10,000 director's bonus, set forth in ¶ 142 above, the $25,000 payment from First Business Associate, his $25,000 Bank bonus, and the $125,000 Forbearance Payment, totaled approximately $279,500, or more than twice that of any other Bank officer.

Termination of Scott's Employment at the Bank

174. On April 10, 1996, the Bank terminated Scott's employment. Subsequent to his termination, the Bank discovered irregularities in the loan files of several of Scott's former customers. Among them was a loan Scott had approved individually that was above his lending authority and a loan for which Scott had released the collateral prior to repayment without the

approval of the Bank's board or loan committee. The Bank also discovered that in March 1996, Scott instructed a Bank officer to waive the $250 origination fee on a loan because the customer was Scott's personal accountant and Scott had agreed not to charge him loan fees in exchange for the customer's doing Scott's income taxes for free. The Bank discovered one case in which Scott had failed to obtain an appraisal as required under the terms of a line of credit and two cases in which Scott had failed to record deeds of trust securing extensions of credit. The Bank discovered that information, including tax returns and financial statements, was missing from the loan files of several of Scott's former customers. When the Bank contacted these customers, some of them recalled delivering the missing information personally to Scott at the Bank. In other cases, Bank officers remembered placing the missing information in the Bank's files. Nonetheless, upon Scott's departure, the information was not in the Bank's files.

THE BANK'S VIOLATIONS OF LAW AND REGULATION

Section 23A of the Federal Reserve Act

175. As of January 27, 1995, the Bank's limit on covered transactions with one affiliate under section 23A(a)(1)(A) of the Federal Reserve Act, 12 U.S.C. § 371c(a)(1)(A), was $1,240,000, or 10 percent of the Bank's capital stock, surplus, retained earnings and loan loss reserve.

(a) As of that date, the Bank's loans and extensions of credit to or for the benefit of CSI, which included: the June and November 1993 BFM loans; $200,000 of Benton's Line of Credit; CSI CFO's draws on his line of credit; $350,000 of the Cattle loan; the November 23, 1994 loan to Bank Director; the November 30, 1994 loan to Benton Nephew; and the January 20, 1995 draw on NTC President's line of credit, totaled at least $6,553,600, or more than five times the Bank's legal limit under section 23A(a)(1)(A).

(b) As of that date, the Bank's loans and extensions of credit to or for the benefit of FCAC, which included the November 3, 1994 loan to CSI CFO and $702,900 in Lease Service Payments, totaled at least $1,880,200, or $640,200 more than the Bank's legal limit under section 23A(a)(1)(A).

176. Between March 31, 1993 and December 31, 1993, the Bank's limit on covered transactions with one affiliate under section 23A(a)(1)(A) was between $1,122,000 and $1,184,000. Between December 31, 1993 and January 27, 1995, the Bank's limit on covered transactions with one affiliate was between $1,184,000 and $1,240,000. Between June 10, 1993 and November 16, 1993, the Bank's total extensions of credit to or for the benefit of CSI totaled at least $1,575,000, and exceeded the Bank's legal limit by at least $391,000. As of November 17, 1993, the Bank's total extensions of credit to or for the benefit of CSI increased to at

least $3,575,000 -- or more than triple the Bank's limit at that time -- and did not fall significantly below that level before reaching at least $6,553,600 on January 27, 1995, as set forth in ¶ 175(a) above. Accordingly, the Bank's extensions of credit to or for the benefit of CSI exceeded the Bank's legal limit on transactions with one affiliate from June 10, 1993 through at least January 27, 1995, a period of 597 days.

177. As of January 27, 1995, the Bank's limit on covered transactions with all affiliates under section 23A(a)(1)(B) of the Federal Reserve Act, 12 U.S.C. § 371c(a)(1)(B), was $2,484,000, or 20 percent of the Bank's capital stock, surplus, retained earnings and loan loss reserve. In addition to the transactions set forth in ¶¶ 175(a) and (b) above, as of January 27, 1995, the Bank had at least $1,281,000 in covered transactions to or for the benefit of all affiliates including: the November 22, 1994 loan to URI President; two loans secured by affiliate stock; and an additional loan to one of the Benton Family Members. As of January 27, 1995, the total of the Bank's covered transactions with all affiliates was at least $9,714,800 million, or almost four times the Bank's legal limit under section 23A(a)(1)(B).

178. Between September 30, 1993 and December 31, 1993, the Bank's limit on covered transactions with all affiliates under section 23A(a)(1)(B) was between $2,352,000 and $2,368,000.

Between December 31, 1993 and January 27, 1995, the Bank's limitation on covered transactions with all affiliates was between $2,368,000 and $2,484,000. As of November 17, 1993, the total of the Bank's covered transactions with all affiliates was at least $3,650,400, which exceeded the Bank's legal limit by over $1,000,000. As of June 8, 1994, the Bank's total of covered transactions with all affiliates was at least $2,950,400, which exceeded the Bank's legal limit by approximately $600,000. The Bank's total of covered transactions with all affiliates increased thereafter until reaching at least $9,714,800 on January 27, 1995, as set forth in ¶ 177 above. Accordingly, the Bank's extensions of credit to or for the benefit of all affiliates exceeded the Bank's legal limit on transactions with all affiliates from November 17, 1993 through at least January 27, 1995, a period of 437 days.

179. Section 23A(c) of the Federal Reserve Act, 12 U.S.C. § 371c(c), requires that loans and extensions of credit to an affiliate be secured at the time of the transaction by collateral having a market value equal to a specified percentage of the loan, depending on the type of collateral. As of January 27, 1995, the Bank had at least $5,984,000 million in outstanding loans and extensions of credit that did not meet the collateral requirements of section 23A(c) including: the June and November 1993 BFM loans; the November 22, 1994 loan to URI President; the

November 30, 1994 loan to Benton Nephew; the $200,000 increase in Benton's Line of Credit; CSI CFO's draws on his line of credit; NTC President's January 20, 1995 draw on his line of credit; and the $702,900 in Lease Service Payments withheld by FCAC.

180. Section 23A(a)(4) of the Federal Reserve Act, 12 U.S.C. § 371c(a)(4), requires that covered transactions between a member bank and an affiliate must be on terms and conditions that are consistent with safe and sound banking practices. Because the transactions described in ¶¶ 175-79 above were not consistent with safe and sound banking practices, the Bank violated section 23A(a)(4).

Section 23B of the Federal Reserve Act

181. Section 23B(a)(1)(B) of the Federal Reserve Act, 12 U.S.C. § 371c-1(a)(1)(B), requires that covered transactions between a member bank and an affiliate be conducted on terms and under circumstances, including credit standards, that in good faith would be offered, or would apply, to non-affiliated companies. As of January 27, 1995, the Bank had entered into at least three covered transactions with affiliates on terms and under circumstances that would not, in good faith, have been offered to non-affiliated companies, as follows:

(a) the Bank's Lease Service Agreement with FCAC, under which the Bank paid FCAC fees for services, was a covered transaction under section 23B(a)(2)(D) of the Federal

Reserve Act, 12 U.S.C. § 371c-1(a)(2)(D). As set forth in ¶¶ 144-47 above, between December 15, 1994 and February 7, 1995, the Lease Service Agreement contained overly favorable remittance terms which would not, in good faith, have been offered to a non-affiliate in violation of section 23B(a)(1)(B). As a result of these overly favorable remittance terms, by February 7, 1995, the Bank had made unsecured extensions of credit to FCAC of $702,900. The overly favorable terms of the Lease Service Agreement, and Benton's withholding of approximately $400,000 in Lease Service Payments prior to the amendment of the Lease Service Agreement, as set forth in ¶ 146 above, also resulted in violations of section 22(h)(2) of the Federal Reserve Act, 12 U.S.C. § 375b(2), and Reg. O, 12 C.F.R. § 215.4(a), because the Bank's unsecured, undocumented, interest-free extensions of credit to FCAC were made on more favorable terms, and followed less stringent credit underwriting procedures, than would have been offered to a non-insider;

(b) CSI's provision of legal, tax, accounting and other services to the Bank for a fee, discussed in ¶¶ 148-50 above, was a covered transaction under section 23B(a)(2)(D) of the Federal Reserve Act, 12 U.S.C. § 371c-1(a)(2)(D). CSI's December 30, 1994 bill to the Bank for $140,000 for services rendered was not substantiated by documentation

setting forth the type and amount of services performed and the market value of these services, was paid without the authorization of Bank President, and the services performed were not differentiated from services that would be expected to be performed by Bank management. These terms would not, in good faith, have been offered to a non-affiliate, and violated section 23B(a)(1)(B);

(c) the Bank's provision of account monitoring and funds transfer services to the Concord Companies, discussed in ¶ 151 above, was a covered transaction under section 23B(a)(2)(C) of the Federal Reserve Act, 12 U.S.C. § 371c-1(a)(2)(C). Because these services would not, in good faith, have been offered to a non-affiliate free of charge, they violated section 23B(a)(1)(B).

Section 22(h) of the Federal Reserve Act and Reg. O

182. Section 22(h)(3) of the Federal Reserve Act, 12 U.S.C. § 375b(3), and Reg. O, 12 C.F.R. § 215.4(b), require that extensions of credit to insiders of a member bank be approved in advance by a majority of the bank's board of directors. As of January 27, 1995, the Bank had made at least 12 extensions of credit, the proceeds of which were transferred to related interests of Benton, that were not approved in advance by a majority of the Bank's board in violation of section 22(h)(3) and Reg. O. Those extensions of credit included: the June and

November 1993 BFM loans; CSI CFO's draws on his line of credit; NTC President's January 20, 1995 draw on his line of credit; the November 23, 1994 and January 24, 1995 loans to Bank Director (which were approved in advance for Bank Director but not for Benton); the November 30, 1994 loan to Benton Nephew; the November 22, 1994 loan to URI President; and the Lease Service Payments withheld by FCAC.

183. Section 22(h)(4) of the Federal Reserve Act, 12 U.S.C. § 375b(4), and Reg. O, 12 C.F.R. § 215.4(c), provide that, with certain exceptions, no member bank may extend credit to an insider in an amount, when aggregated with all other extensions of credit to that person and related interests of that person, exceeds 15 percent of the bank's unimpaired capital and unimpaired surplus in the case of loans that are not fully secured. An additional 10 percent of the bank's capital and surplus is permitted for loans that are fully secured by readily marketable collateral.

(a) As of January 27, 1995, the Bank had at least $4,988,000 in extensions of credit to Benton and his related interests that were not fully secured, or almost three times the Bank's 15 percent of capital limit of $1,872,000, in violation of section 22(h)(4) and Reg. O. Those extensions of credit included: Benton's $1.7 million Line of Credit; portions of the June and November 1993 BFM loans; CSI CFO's

draws on his line of credit; the November 22, 1994 loan to URI President; the November 30, 1994 loan to Benton Nephew, NTC President's January 20, 1995 draw on his line of credit; and the unsecured Lease Service Payments withheld by FCAC.

(b) As of January 27, 1995, the Bank's extensions of credit to Benton and his related interests that were fully secured by marketable collateral, including portions of the June and November 1993 BFM loans and the November 23, 1994 and January 24, 1995 loans to Bank Director, totaled at least $3,550,000, or more than twice the Bank's additional 10 percent of capital limit for loans fully secured by marketable collateral of $1,248,000, in violation of section 22(h)(4) and Reg. O.

VIOLATIONS OF LAW AND REGULATIONS, UNSAFE AND UNSOUND PRACTICES AND BREACHES OF FIDUCIARY DUTY BY INDIVIDUALS

Second Tier Civil Money Penalty Actions

184. Section 8(i)(2)(B) of the FDI Act, 12 U.S.C. § 1818(i)(2)(B), permits the Board to assess civil money penalties against any institution-affiliated party who: (i)(I) violates any law or regulation; (II) recklessly engages in an unsafe or unsound practice in conducting the affairs of an insured depository institution; or (III) breaches any fiduciary duty; (ii) which violation, practice or breach - (I) is part of a pattern of misconduct; (II) causes or is likely to cause more

than a minimal loss to the depository institution, or (III) results in a pecuniary gain or other benefit to such party.

185. Alternatively, section 29(b) of the Federal Reserve Act, 12 U.S.C. § 504(b), permits the Board to assess civil money penalties against any institution-affiliated party of a member bank who: (1)(A) commits any violation of sections 23A, 23B or 22(h) of the Federal Reserve Act, among other provisions, or any regulation issued pursuant thereto; (B) recklessly engages in an unsafe or unsound practice in conducting the affairs of the member bank; or (C) breaches any fiduciary duty; (2) which violation, practice or breach: (A) is part of a pattern of misconduct; (B) causes or is likely to cause more than a minimal loss to the member bank; or (C) results in pecuniary gain or other benefit to the party.

186. Under sections 8(i)(2)(B) of the FDI Act and 29(b) of the Federal Reserve Act, the Board may assess penalties of up to $25,000 a day for each day a violation, practice or breach continues.

187. Section 3(v) of the FDI Act, 12 U.S.C. § 1813(v), and section 29(h) of the Federal Reserve Act, 12 U.S.C. § 504(h), define the term "violate" to include any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding and abetting a violation.

Civil Money Penalty Action Against Benton

Violations of Law and Regulation by Benton

188. Benton violated sections 23A(a)(1)(A), 23A(a)(1)(B) and 23A(c) of the Federal Reserve Act by causing, bringing about, participating in, counseling or aiding and abetting the Bank's violations of those provisions, set forth in ¶¶ 175-80 above, by: (i) asking, or causing or permitting others to ask, individuals to purchase stock or other assets from him, his family members or his related interests, which they did using loans from the Bank, and then causing or permitting the proceeds of those loans to be transferred to or used for the benefit of a Bank affiliate; (ii) asking, or causing or permitting others to ask, individuals to draw on their lines of credit at the Bank and then causing or permitting the proceeds of those draws to be transferred to or used for the benefit of a Bank affiliate; (iii) asking, or causing or permitting others to ask, members of his family to take out loans from the Bank for estate planning purposes and then causing or permitting the proceeds of those loans to be transferred to or used for the benefit of a Bank affiliate; (iv) obtaining an increase in his Line of Credit at the Bank and then causing or permitting the proceeds of that increase to be used for the benefit of or transferred to a Bank affiliate; (v) causing or permitting FCAC, a Bank affiliate, to withhold Lease Service Payments from the Bank; (vi) influencing

or attempting to influence the decisions of Bank officers, directors or employees to approve or acquiesce in transactions that violated these provisions; (vii) failing to make full and timely disclosure to the Bank and its regulators that loan proceeds were being transferred to or used for the benefit of Bank affiliates; and (viii) falsely representing to the Reserve Bank in connection with the 1992 Merger Application that all insider or affiliate transactions engaged in by the merged Bank would be conducted in accordance with the law and the Bank's Affiliate Policy, which they were not.

189. Benton violated section 23A(a)(4) of the Federal Reserve Act because his actions described in ¶ 188 above were not consistent with safe and sound banking practices.

190. Benton violated section 23B(a)(1)(B) of the Federal Reserve Act by causing, bringing about, participating in, counseling or aiding and abetting the Bank's violations of that provision, set forth in ¶ 181 above, by: (i) causing or permitting the Bank and FCAC to enter into a Lease Service Agreement on terms and under circumstances that would not, in good faith, have been offered to a non-affiliate; (ii) causing or permitting FCAC to withhold Lease Service Payments from the Bank, and thereby receive extensions of credit from the Bank on terms and under circumstances that would not, in good faith, have been offered to a non-affiliate; (iii) causing or permitting CSI to

charge, and the Bank to pay, fees for management services on terms and under circumstances that would not, in good faith, have been offered to a non-affiliate; (iv) causing or permitting the Bank to provide, and the Concord Companies to accept, account monitoring and funds transfer services on terms and under circumstances that would not, in good faith, have been offered to a non-affiliate.

191. Benton violated section 22(h)(2) of the Federal Reserve Act and section 215.4(a) of Reg. O by causing or permitting the Bank to make, and FCAC to receive, extensions of credit that were on more favorable terms, and followed less stringent credit underwriting procedures, than would have been offered to a non-affiliate, as set forth in ¶ 181(a) above.

192. Benton violated section 22(h)(3) of the Federal Reserve Act and section 215.4(b) of Reg. O by causing or permitting the Bank, in the manner described in ¶ 188 above, to make at least 12 extensions of credit, as set forth in ¶ 182 above, to insiders that were not approved in advance by a majority of the Bank's board of directors.

193. Benton violated section 22(h)(4) of the Federal Reserve Act and section 215.4(c) of Reg. O by causing or permitting the Bank, in the manner described in ¶ 188 above, to make at least 10 extensions of credit to insiders that exceeded the Bank's 15 percent of capital limit and at least 6 extensions

of credit to insiders that exceeded the Bank's additional 10 percent of capital limit for loans that were fully secured, as set forth in ¶ 183 above.

194. Section 22(h)(7), 12 U.S.C. § 375b(7), and Reg. O, 12 C.F.R. § 215.6, provide that no insider of a member bank shall knowingly receive (or knowingly permit his related interests to receive) from a member bank, directly or indirectly, any extension of credit not authorized under section 22(h) or Reg. O. By knowingly receiving and permitting his related interests to receive loans not authorized under section 22(h) Reg. O, as set forth in ¶¶ 191-93 above, Benton violated section 22(h)(7) and Reg. O.

195. Reg. O, 12 C.F.R. § 215.12, requires each executive officer and director of a member bank, the shares of which are not publicly traded, to report annually to its board of directors the outstanding amount of any credit extended to the executive officer or director that was secured by shares of the member bank. By failing annually to disclose to the Bank's board his pledge of 100% of the Bank's stock to CCFL, as set forth in ¶ 24 above, Benton violated section 215.12 of Reg. O.

Unsafe and Unsound Practices and Breaches of Fiduciary Duty by Benton

196. As the sole shareholder and a director of the Bank, Benton and had an obligation to ensure that the Bank's operations were conducted in a safe and sound manner in

compliance with all applicable laws and regulations and owed a fiduciary duty to act honestly, fairly and in the best interests of the Bank. As set forth below, Benton failed to meet these obligations and breached his fiduciary duty to the Bank.

197. Benton recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by causing or permitting the Bank to make numerous extensions of credit, comprising a substantial portion of the Bank's loan portfolio, to or for the benefit of companies he owned or controlled in violation of sections 23A, 23B and 22(h) and Reg. O, which exposed the Bank to an abnormal risk of loss or harm and the possibility of adverse regulatory action, despite his familiarity with laws and regulations regarding insider and affiliate transactions and his knowledge of the risks his actions posed to the Bank.

198. Benton recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by causing or permitting the proceeds of Bank loans to be transferred to Bank affiliates without making complete and timely disclosure of those transfers to the Bank, which hindered the Bank's and the Bank's regulators' ability to monitor the Bank's compliance with laws and regulations regarding affiliate and insider transactions.

199. Benton recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by causing or permitting the Bank to hold in its loan portfolio the Concord Concentration, which placed the Bank at significant risk of loss if Benton or CSI suffered financial problems, as eventually they did, despite warnings by the Reserve Bank of the risks to the Bank of this course of action and assurances by Benton that the Bank would monitor and control the Concord Concentration.

200. Benton recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by causing or permitting the Bank to engage in transactions that violated the Bank's Affiliate Policy, despite his familiarity with the Affiliate Policy and his knowledge of the risks his actions posed to the Bank.

201. Benton recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by attempting, in or around June 1994, to transfer nominal control of the Bank to his employees and relatives while retaining actual control of the Bank in order to enable the Bank to engage in affiliate and insider transactions in amounts and under circumstances that would be unlawful if he controlled the Bank and that exposed the Bank to an abnormal risk of harm or loss.

202. Benton recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by causing

or permitting the Bank to make numerous loans to individuals and entities that were dependant on him or the Concord Companies for income, despite his and the Concord Companies' liquidity problems and the resulting possibility that these individuals or entities might be unable to repay their loans to the Bank.

203. Benton recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by causing or permitting the Bank to make the extensions of credit described in ¶ 202 above without making complete and timely disclosure to the Bank of his and the Concord Companies' liquidity problems, which failure prevented the Bank from properly managing and classifying its assets.

204. Benton recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by causing or permitting the Bank to make the extensions of credit described in ¶ 202 above and by failing to make the disclosures set forth in ¶ 203 above at a time when Benton, because of his own liquidity problems, might be unable to restore the Bank's capital to acceptable levels in the event that it became under-capitalized, as eventually it did.

205. Benton recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by failing to pay off, pay down or pledge collateral for his $1.7 million unsecured Line of Credit, or to provide the Bank with updated

information regarding his personal finances, despite his and the Concord Companies' liquidity problems and the likelihood that the Bank would be unable to collect on the Line of Credit, as eventually it was.

206. Benton recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by submitting a materially false and misleading financial statement to the Bank in connection with the renewal of his Line of Credit.

207. Benton recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by causing the Bank, in January 1995, to make a $350,000 dividend payment, which went to him as sole shareholder, and a $10,000 bonus payment to each of the Bank's directors, which exposed the Bank to an abnormal risk of harm or loss in light of his and the Concord Companies' liquidity problems and the probability that the Bank would suffer losses on his Line of Credit and the loan to Third Business Associate, as eventually it did.

208. Benton recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by causing the Bank to pay Scott a $125,000 Forbearance Payment, that was excessive in light of Scott's responsibilities at the Bank, the Bank's near failure and the pending regulatory action against the Bank.

209. Benton recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by causing or permitting the Bank: to extend credit to Bank affiliates; to pay fees for services from Bank affiliates; and to provide services to Bank affiliates on terms and under conditions that would not in good faith have been offered to non-affiliates and that exposed the Bank to an abnormal risk of harm or loss.

210. Benton recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by causing the Bank to make unauthorized transfers totaling over $1 million out of the URI Account that exposed the Bank to an abnormal risk of loss or harm in the event that URI should seek to recover those funds from the Bank, as eventually it did.

211. Benton engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by influencing or attempting to influence the decisions of Bank officers, directors or employees to extend or renew credit to his employees, relatives, business associates or related interests based on criteria other than those ordinarily used by bank officers, directors or employees in making credit decisions.

212. Benton breached his fiduciary duty to the Bank by failing to abstain from voting in favor of the Bank's January 24, 1995 loan to Bank Director despite having a personal interest in

that loan in that a portion of the loan proceeds was used to buy stock from Benton and was transferred to a Bank affiliate.

Pattern of Misconduct by Benton

213. Benton's violations, practices and breaches, described in ¶¶ 188-212 above, are part of a pattern of misconduct in that: (i) Benton's violations of section 23A and his associated unsafe and unsound practices and breaches of fiduciary duty involved at least 20 separate extensions of credit to Bank affiliates -- all of which were owned or controlled by Benton -- over a period of 19 months, from June 1993 through January 27, 1995; (ii) Benton caused or permitted the Bank to engage in at least 3 separate violations of section 23B of the Federal Reserve Act; (iii) Benton caused or permitted the Bank to make at least 12 extensions of credit over a period of 19 months that violated the prior approval requirements of section 22(h)(3) of the Federal Reserve Act and section 215.4(b) of Reg. O; (iv) over a period of 19 months, Benton caused or permitted the Bank to make at least 10 extensions of credit that violated the Bank's 15 percent of capital limit and at least 6 extensions of credit that violated the Bank's additional 10 percent of capital limit under section 22(h)(4) of the Federal Reserve Act and section 215.4(c) of Reg. O; (v) Benton engaged in at least 2 additional violations of Reg. O; (vi) Benton engaged in at least 16 unsafe

and unsound practices and at least 17 breaches of his fiduciary duty to the Bank.

More Than Minimal Financial Loss to the Bank

214. In the alternative, Benton's violations, practices or breaches caused more than a minimal financial loss, totaling over $3 million, to the Bank in that: (i) the Bank lost approximately $2,131,626.64 on Benton's Line of Credit, which was a contributing factor in his violations of sections 23A, 23B and 22(h) of the Federal Reserve Act, Reg. O and the unsafe and unsound practices and breaches of fiduciary set forth in ¶¶ 188-212 above; (ii) the Bank lost approximately $375,000, plus interest, attorneys fees and other costs, when Third Business Associate, for whose creditworthiness Benton had personally vouched and who claimed that he was not obligated to repay his loan to the Bank in the absence of payments from Benton under a consulting contract, defaulted on his loan; and (iii) the Bank lost approximately $575,000 plus attorneys fees and other costs, when it settled litigation arising out of Benton's unauthorized transfer of funds out of the URI Account at the Bank.

Pecuniary Gain or Other Benefit to Benton

215. In the alternative, Benton's violations, practices or breaches resulted in pecuniary gain or other benefit to Benton in that: (i) the proceeds of Bank loans made in violation of laws and regulations and in contravention of safe

and sound banking practices were transferred to or used for the benefit of entities controlled by Benton, to the ultimate benefit of Benton; (ii) entities owned or controlled by Benton received services from the Bank, or received payment for services from the Bank, on terms and under circumstances that would not have been offered to non-affiliates, to the ultimate benefit of Benton; (iii) Benton failed to repay his $1.7 million Line of Credit from the Bank, plus $431,626.64 in interest accrued as of August 1, 1997, resulting in pecuniary gain to Benton; (iv) Benton received at least $350,000 in dividend payments from the Bank that were unsafe, unsound and contrary to the best interests of the Bank, resulting in pecuniary benefit to Benton; and (v) entities controlled by Benton, or individuals indebted to Benton-controlled companies, received funds that were transferred without authorization out of the URI Account at the Bank, to the ultimate benefit of Benton.

Civil Money Penalty Assessment Against Benton

216. As set forth in ¶ 176 above, Benton's violations of section 23A(a)(1)(A) of the Federal Reserve Act, and the associated unsafe and unsound practices and breaches, were outstanding for a period of at least 597 days. As set forth in ¶ 178 above, Benton's violations of section 23A(a)(1)(B) of the Federal Reserve Act, and the associated unsafe and unsound practices and breaches, were outstanding for a period of at least

437 days. Benton's violations of sections 23B, 22(h) and Reg. O relating to the preferential Lease Service Agreement with FCAC and withholding of Lease Service Payments from FCAC, and the associated unsafe and unsound practices and breaches, were outstanding from at least December 15, 1994 through February 7, 1995, a period of 54 days. Accordingly, the Board could assess civil money penalties against Benton of $25,000 a day for at least 1,088 days, or $27,200,000.

217. Having taken into account the size of his financial resources and good faith, the gravity of the violations, the history of previous violations, the economic benefit derived by Benton from his misconduct and such other factors as justice may require, the Board hereby assesses a civil money penalty against Benton of $1.25 million.

Civil Money Penalty Action Against Scott

Violations of Law and Regulation by Scott

218. Scott violated sections 23A(a)(1)(A), 23A(a)(1)(B) and 23A(c) of the Federal Reserve Act by causing, bringing about, participating in, counseling or aiding and abetting the Bank's violations of those provisions, set forth in ¶¶ 175-79 above, by: (i) in his capacity as a loan officer and a member of the Bank's board and loan committee, originating and approving loans that violated section 23A; (ii) in his capacity as a loan officer and a member of the Bank's board and loan

committee, failing to take adequate steps to ensure that loans that he originated or approved complied with the requirements of section 23A and the Bank's Affiliate Policy, despite his knowledge of circumstances indicating, or that should have indicated, to Scott that the loans might be covered transactions under section 23A; (iii) in his capacity as a loan officer and a member of the Bank's board and loan committee, failing to make full and timely disclosure to the Bank and its regulators that loan proceeds were being or possibly were being transferred to or used for the benefit of Bank affiliates; and (iv) in his capacity as a member of the Bank's board, failing to take adequate steps to ensure that the Bank complied with section 23A.

219. Scott violated section 23A(a)(4) of the Federal Reserve Act because the transactions described in ¶ 218 above were not consistent with safe and sound banking practices.

220. Scott violated section 22(h)(3) of the Federal Reserve Act, and section 215.4(b) of Reg. O, by causing or permitting the Bank, in the manner described in ¶ 218 above, to make at least 9 extensions of credit to insiders, as set forth in ¶ 182 above, that were not approved in advance by a majority of the Bank's board of directors.

221. Scott violated section 22(h)(4) of the Federal Reserve Act, and section 215.4(c) of Reg. O, by causing or permitting the Bank, in the manner described in ¶ 218 above, to

make at least 9 extensions of credit to insiders that exceeded the Bank's 15 percent of capital limit and at least 6 extensions of credit to insiders that exceeded the Bank's additional 10 percent of capital limit for loans that were fully secured, as set forth in ¶ 183 above.

Unsafe and Unsound Practices and Breaches of Fiduciary Duty by Scott

222. In his capacity as executive vice president and director of the Bank and the head of the Bank's private banking department, and later its banking department, Scott had the obligation to ensure that all loans that he originated or that originated in the Bank's private banking department, and later its banking department, complied with all applicable laws and regulations and safe and sound banking practices and owed a fiduciary duty to act honestly, fairly and in the best interests of the Bank. Scott failed in those obligations and breached his fiduciary duties to the Bank as set forth below.

223. Scott recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by causing or permitting the Bank to make numerous extensions of credit that violated sections 23A and 22(h) of the Federal Reserve Act and Reg. O, which exposed the Bank to an abnormal risk of loss or harm and the possibility of adverse regulatory action, despite his knowledge of laws and regulations governing affiliate and insider transactions and his knowledge of circumstances

indicating, or that should have indicated, to Scott that those loans might be covered transactions for purposes of section 23A and insider loans for purposes of section 22(h) and Reg. O.

224. Scott recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by failing adequately to ascertain or document the use of loan proceeds, and by failing to disclose to the Bank and its regulators the fact that loan proceeds were being or possibly were being transferred to or used for the benefit of Bank affiliates, which failure hindered the Bank's and the Bank's regulators' ability to monitor and ensure the Bank's compliance with laws and regulations regarding affiliate and insider transactions.

225. Scott recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by failing to take adequate steps to protect the Bank's interests in obtaining repayment of Benton's Line of Credit, despite his knowledge of circumstances indicating that Benton might be unable to repay the Line of Credit, which eventually he was.

226. Scott recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by causing or permitting the Bank to make loans and extensions of credit that did not comply with the Bank's loan policies, including the Affiliate Policy.

227. Scott recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by failing to perfect the Bank's security interest in collateral for loans that he originated or approved and by releasing collateral for at least one loan prior to repayment without the approval of the Bank's board or loan committee.

228. Scott recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by failing to fulfil conditions precedent to granting loans, such as obtaining non-pledge agreements and appraisals or recording deeds of trust, before committing the Bank to lend funds.

229. Scott recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by making loans or extensions of credit in excess of his individual lending authority at the Bank without the prior approval of the Bank's board or loan committee.

230. Scott recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by waiving loan fees on at least one loan in exchange for personal services rendered to Scott by a Bank customer.

231. Scott recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by placing or causing or permitting the placement of incomplete, misleading or false information in the Bank's files.

232. Scott recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by causing or permitting the removal of documents from the Bank's files.

233. Scott recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by giving false information to, or concealing or attempting to conceal information from, federal and state bank examiners.

234. Scott recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by voting in favor of the Bank's $350,000 dividend payment to Benton in January 1995, despite the fact that the Bank faced a probability of loss on Benton's unsecured Line of Credit, for which Scott was the loan officer, and a high probability of loss on its loan to Third Business Associate.

235. Scott recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by requesting and accepting the $125,000 Forbearance Payment from the Bank, which was excessive in light of his responsibilities at the Bank, the Bank's near-failure and the pending regulatory action against the Bank.

236. Scott recklessly engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by accepting a $25,000 payment in lieu of his 1994 Bank bonus, and

later accepting his 1994 bonus from the Bank, as if the previous payment had never been made.

Pattern of Misconduct by Scott

237. Scott's violations, practices and breaches, described in ¶¶ 218-36 above, are part of a pattern of misconduct in that: (i) Scott's violations of section 23A and his associated unsafe and unsound practices and breaches of fiduciary duty involved at least 20 separate extensions of credit to Bank affiliates over a period of 19 months, from June 1993 through January 27, 1995; (ii) Scott caused or permitted the Bank to make at least 9 extensions of credit over a period of 19 months that violated the prior approval requirements of section 22(h)(3) of the Federal Reserve Act and section 215.4(b) of Reg. O; (iii) over a period of 19 months, Scott caused or permitted the Bank to make at least 9 extensions of credit that violated the Bank's 15 percent of capital limit and at least 6 extensions of credit that violated the Bank's additional 10 percent of capital limit under section 22(h)(4) of the Federal Reserve Act and section 215.4(c) of Reg. O; (iv) Scott engaged in at least 10 additional unsafe and unsound practices and at least 10 breaches of his fiduciary duties to the Bank.

More Than Minimal Financial Loss to the Bank

238. In the alternative, Scott's violations, practices or breaches caused more than a minimal financial loss to the Bank

in that the Bank lost approximately $2,131,626.64 on Benton's Line of Credit, which was a contributing factor in Scott's violations of sections 23A and 22(h) of the Federal Reserve Act, Reg. O and the unsafe and unsound practices and breaches of fiduciary set forth in ¶¶ 218-36 above.

Pecuniary Gain or Other Benefit to Scott

239. In the alternative, Scott's violations, practices or breaches resulted in pecuniary gain or other benefit to Scott in the form of continued employment, excessive compensation and increased responsibilities for Scott at the Bank. As set forth in ¶¶ 51, 70, 141 and 161 above, Benton terminated or lessened the responsibilities of Bank officers or employees who called attention to, objected to or refused to participate in his violations of law, unsafe and unsound practices and breaches of fiduciary duty. Benton did not terminate or lessen the responsibilities of Scott, who participated in the Bank's violations, practices and breaches, but rather placed Scott on the Bank's board of directors, gave Scott responsibility over the majority of the Bank's lending operations and permitted or encouraged Scott to continue his employment at the Bank, even after the January 1995 Exam uncovered widespread insider abuse and mismanagement at the Bank, thereby enabling Scott to earn compensation and bonuses in 1995 totaling approximately $279,500. As set forth in ¶¶ 169-72 above, as a result of his violations,

practices and breaches, Scott received a $125,000 Forbearance Payment from the Bank, which was excessive in light of Scott's experience and responsibilities, the Bank's near-failure and the pending regulatory action against the Bank, and a $25,000 payment in lieu of his Bank bonus, which he kept despite the fact that he later received his bonus from the Bank.

Civil Money Penalty Assessment Against Scott

240. As set forth in ¶ 176 above, Scott's violations of section 23A(a)(1)(A) of the Federal Reserve Act, and his associated unsafe and unsound practices and breaches, were outstanding for a period of at least 597 days. As set forth in ¶ 178 above, Scott's violations of section 23A(a)(1)(B) of the Federal Reserve Act, and his associated unsafe and unsound practices and breaches, were outstanding for a period of at least 437 days. Accordingly, the Board could assess a civil money penalty against Scott of $25,000 a day for at least 1,034 days, or $25,850,000.

241. Having taken into account the size of his financial resources and good faith, the gravity of the violations, the history of previous violations, the economic benefit Scott derived from his misconduct, and such other factors as justice may require, the Board hereby assesses a civil money penalty against Scott of $75,000.

Prohibition Actions

242. Section 8(e)(1) of the FDI Act, 12 U.S.C. § 1818(e)(1), permits the Board to issue an order permanently barring an institution-affiliated party from participating in the affairs of any insured depository institution if it determines that: (i) the party has violated any law or regulation, engaged or participated in any unsafe or unsound practice or committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty; (ii) the depository institution has suffered or will probably suffer financial loss or other damage, the interests of its depositors have been prejudiced or the party has received financial gain or other benefit by reason of the violation, practice or breach; and (iii) the violation, practice or breach involved personal dishonesty or a willful or continuing disregard for the safety or soundness of the depository institution. As set forth below, both Scott and Benton have met the standards for a prohibition under section 8(e). Accordingly, Benton and Scott and are hereby and henceforth prohibited from participating in the banking industry.

Prohibition Action Against Benton

Misconduct by Benton

243. As set forth in ¶¶ 188-212 above, Benton engaged in violations of law or regulation, unsafe and unsound practices and breached his fiduciary duty to the Bank.

Effect of Benton's Misconduct

Financial Loss or Other Damage to the Bank; Prejudice to the Bank's Depositors

244. As set forth in ¶ 214 above, by reason of Benton's violations, practices or breaches, the Bank suffered financial losses exceeding $3 million.

245. By reason of Benton's violations, practices or breaches, the Bank suffered financial loss or other damage or the interests of its depositors were prejudiced when it was not compensated for account monitoring and funds transfer services provided free of charge to the Concord Companies and when FCAC wrongfully withheld $702,900 in Lease Service Payments from the Bank.

246. By reason of Benton's violations, practices or breaches, the Bank suffered financial loss or other damage or the interests of its depositors were prejudiced when the Bank experienced an 800% increase in adversely classified assets from June 1994 through January 1995, primarily resulting from insider and affiliate loans, and was required to charge off $4.9 million in substandard credits in March 1995, most of which were insider or affiliate loans.

247. By reason of Benton's violations, practices or breaches, the Bank suffered financial loss or other damage or the interests of its depositors were prejudiced when the Bank suffered an outflow of approximately $32 million in uninsured

deposits from mid-January 1995 through March 1995 as a result of uncertainty over Benton's financial condition and adverse publicity surrounding insider and affiliate lending at the Bank, and was forced to obtain funds by purchasing high interest rate CDs at interest rates well in excess of the national average and the prevailing rates in Denver at the time.

248. By reason of Benton's violations, practices or breaches, the Bank suffered financial loss or other damage or the interests of its depositors were prejudiced when, as of March 1, 1995, the Bank's prompt corrective action capital category was downgraded to "significantly undercapitalized", subjecting the Bank to mandatory and discretionary restrictions on its activities, including restrictions on its asset growth and its ability to expand or enter into new lines of business and a reduction in its lending limit, which adversely affected a portion of its customer base.

249. By reason of Benton's violations, practices or breaches, the Bank suffered financial loss or other damage or the interests of its depositors were prejudiced when the Bank was served with a Notice of Charges and a Temporary Order, dated April 25, 1995, and a Permanent Cease and Desist Order, dated December 7, 1995, which further restricted the business operations of the Bank.

250. The Bank suffered financial loss or other damage or the interests of its depositors were prejudiced when, in 1995, by reason of Benton's violations, practices and breaches, it faced an extremely high immediate or near-term probability of failure.

Financial Gain or Other Benefit to Benton

251. In the alternative, as set forth in ¶ 215 above, as a result of his violations, practices or breaches, Benton received financial gain or other benefits.

Benton's Culpability

Personal Dishonesty

252. Benton's misconduct involved personal dishonesty in that Benton falsely represented to the Reserve Bank staff in connection with the March 1992 and July 1993 Exams that the Bank would monitor and control the Concord Concentration, when, in fact, the Concord Concentration increased. Benton's misconduct involved personal dishonesty in that he falsely represented to Reserve Bank staff in connection with the 1992 Merger Application that all insider and affiliate transactions engaged in by the merged Bank would be conducted in accordance with the law and the Bank's Affiliate Policy, which they were not, and that any management fees CSI might charge the Bank would be based on fees that would be charged by unaffiliated third parties for the same services, which they were not.

253. Benton's misconduct involved personal dishonesty in that he failed to disclose to the Bank that he was causing or permitting the proceeds of Bank loans to be transferred to Bank affiliates, making the loans subject to laws and regulations regarding insider and affiliate transactions. Benton's misconduct involved personal dishonesty in that he caused or permitted his employees or relatives to take out loans from the Bank to purchase assets from him as a means of indirectly obtaining extensions of credit from the Bank, which he and the Concord Companies could not obtain directly.

254. Benton's misconduct involved personal dishonesty in that he failed to disclose to the Bank the magnitude of his and the Concord Companies' liquidity problems, including the fact that he and some of the Concord Companies might declare bankruptcy, while at the same time causing or permitting the Bank to maintain a $1.7 million unsecured Line of Credit to him and to extend and maintain numerous loans to individuals or entities dependant on him or the Concord Companies for income, which failure diminished the Bank's ability properly to manage and classify its assets.

255. Benton's misconduct involved personal dishonesty in that he submitted a false and misleading personal financial statement to the Bank in February 1994 in connection with the renewal of his Line of Credit.

256. Benton's misconduct involved personal dishonesty in that he failed to disclose to the Bank's board and failed timely to disclose to potential purchasers of the Bank's stock the fact that he had pledged 100% of the Bank's stock to CCFL.

Willful or Continuing Disregard

257. In the alternative, Benton's misconduct involved a willful disregard for the safety and soundness of the Bank because Benton intentionally caused or permitted the Bank to make numerous extensions of credit to insiders and affiliates of the Bank and to engage in other transactions that violated sections 23A, 23B and 22(h) of the Federal Reserve Act and Reg. O or that were not consistent with safe and sound banking practices, despite his knowledge of laws and regulations governing affiliate and insider transactions and the danger to the Bank of his conduct.

258. Benton's misconduct involved a continuing disregard for the safety and soundness of the Bank because Benton engaged in these violations, practices and breaches on numerous occasions over a 19-month period from at least June 1993 through at least January 27, 1995.

Prohibition Action Against Scott

Misconduct by Scott

259. As set forth in ¶¶ 218-36 above, Scott engaged or participated in violations of law or regulation, unsafe and unsound practices and breached his fiduciary duty to the Bank.

Effect of Scott's Misconduct

Financial Loss or Other Damage to the Bank; Prejudice to the Bank's Depositors

260. By reason of Scott's violations, practices or breaches, the Bank suffered financial loss of approximately $2,131,626.64 on Benton's Line of Credit, which was a contributing factor in Scott's misconduct. By reason of Scott's violations, practices or breaches, the Bank suffered financial loss or other damage or the interests of its depositors were prejudiced as set forth in ¶¶ 246-50 above.

Financial Gain or Other Benefit to Scott

261. By reason of his violations, practices or breaches set forth above, Scott received financial gain or other benefit as set forth in ¶ 239 above.

Scott's Culpability

Personal Dishonesty

262. Scott's misconduct involved personal dishonesty because Scott: (i) failed fully and timely to disclose to the Bank and its regulators that the proceeds of Bank loans were

being or possibly were being transferred to or used for the benefit of Bank affiliates, when Scott was aware that they were; (ii) caused or permitted the Bank's files to contain incomplete, misleading or false information; (iii) caused or permitted the removal of documents from the Bank's files; (iv) made false statements to, or withheld information or documents from, bank examiners; (v) asked at least one Bank employee to make false statements to, or withhold documents or information from, bank examiners; (vi) made false statements under oath to a Board representative; (vii) accepted a $25,000 advance on his 1994 Bank bonus on the understanding that it would be repaid, and then later refused to repay the advance; and (viii) made false statements to the Bank's board in connection with the $25,000 advance.

Willful or Continuing Disregard

263. In the alternative, Scott's misconduct demonstrated a willful disregard for the safety and soundness of the Bank because Scott intentionally caused or permitted the Bank to make loans that violated sections 23A and 22(h) of the Federal Reserve Act and Reg. O despite his knowledge of laws and regulations governing insider and affiliate transactions and his knowledge of circumstances that indicated or should have indicated to Scott that the loans might be affiliate or insider transactions and despite the danger posed to the Bank by his

conduct. Scott's misconduct demonstrated a willful disregard for the safety and soundness of the Bank because he intentionally engaged in unsafe and unsound practices and breached his fiduciary duty to the Bank by, among other things: failing to perfect the Bank's security interest in collateral for loans; causing or permitting the removal of documents from the Bank's files; causing or permitting the Bank's files to contain incomplete, misleading or false information; causing or permitting the Bank to make loans without fulfilling the preconditions for those loans; and making loans in excess of his individual lending authority without prior approval, despite the danger posed to the Bank by his misconduct.

264. Scott's misconduct demonstrated a continuing disregard for the safety and soundness of the Bank because Scott engaged in these violations, practices and breaches on numerous occasions over a 19-month period from at least June 1993 through at least January 27, 1995.

PROCEDURAL MATTERS

Procedures Applicable to Civil Money Penalties

265. The civil money penalties assessed in this Notice are assessed by the Board pursuant to section 8(i) of the FDI Act, section 29 of the Federal Reserve Act and the Rules of Practice for Hearings of the Board of Governors (the "Rules of Practice") (12 C.F.R. Part 263, Subparts A, B and C). Remittance

of the penalties set forth herein shall be made within 60 days of the date of this Notice in immediately available funds, payable to the order of the Secretary of the Board of Governors, Washington, D.C. 20551, who shall make remittance of the same to the United States Treasury.

266. Notice is hereby given, pursuant to section 8(i) of the FDI Act, section 29 of the Federal Reserve Act and the Rules of Practice, that Benton and Scott are afforded an opportunity for a formal hearing before the Board concerning these assessments. As required under section 263.19(a) of the Rules of Practice, 12 C.F.R. § 263.19(a), a request for a hearing must be filed within 20 days of service of this Notice with the Office of Financial Institution Adjudication ("OFIA"), 1700 G Street, N.W., Sixth Floor, Washington, D.C. 20552. Pursuant to section 263.11(a) of the Rules of Practice, 12 C.F.R. § 263.11(a), a request for a hearing filed with OFIA shall also be served on the Secretary of the Board.

267. In the event that Benton or Scott fail to request a hearing within 20 days of service of this Notice, they or he shall be deemed to have waived the right to a formal hearing pursuant to section 263.19(c)(2) of the Rules of Practice, 12 C.F.R. § 263.19(c)(2), and this Notice shall constitute a final and unappealable order assessing civil money penalties against

them and may be the subject of a collection action in United States District Court.

Procedures Generally

268. Notice is hereby given that, pursuant to section 8(e) of the FDI Act and the Rules of Practice, a hearing will be held commencing on March 20, 2000 at the Federal Reserve Bank of Kansas City, Denver Branch, or at such time and place as designated by the presiding administrative law judge, for the purpose of taking evidence on the charges set forth above to determine whether an appropriate order should be issued pursuant to section 8(e) of the FDI Act to prohibit Benton's and Scott's future participation in the affairs of any insured depository institution or other entity described in section 8(e)(7)(A) of the FDI Act, or other activities set forth in section 8(e)(6) of the FDI Act, without the prior written approval of the Board. Such a hearing shall be combined with the hearing on the assessment of civil money penalties, set forth in ¶ 266 above, if one is requested.

269. The combined hearing referred to in ¶ 268 above will be held before an administrative law judge to be appointed by OFIA, pursuant to section 263.54 of the Rules of Practice, 12 C.F.R. § 263.54. The hearing will be public, unless the Board determines that a public hearing would be contrary to the public interest, and in all other aspects will be conducted in

compliance with the provisions of the FDI Act, the Federal Reserve Act and the Rules of Practice.

270. Benton and Scott may submit, within 20 days of service of this Notice, to the Secretary of the Board, a written statement detailing the reasons why the hearing described in ¶ 268 above should not be public. The failure of these individuals to submit such a statement within the aforesaid period shall constitute a waiver of any objection to a public hearing.

Answer to Notice

271. Benton and Scott are hereby directed to file an answer to this Notice within 20 days of its service, as provided by section 263.19 of the Rules of Practice, 12 C.F.R. § 263.19, with OFIA, with a copy to be served on the Secretary of the Board. As provided in section 263.19(c) of the Rules of Practice, 12 C.F.R. § 263.19(c), the failure to file an answer shall constitute a waiver of the right to appear and contest the allegations of this Notice. If no timely answer is filed, a motion may be filed for entry of an order of default. Upon a finding that no good cause has been shown for the failure timely to file an answer, the administrative law judge shall file with the Board a recommended decision containing the findings and the relief sought by this Notice. Any final order issued by the

Board based upon a Respondent's failure to answer is deemed to be an order issued by consent.

Delegation of Authority

272. Authority is hereby delegated by the Board to the Secretary of the Board 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 by the OFIA as provided herein.

Dated at Washington, D.C. this 24th day of January 2000.

Board of Governors of the
Federal Reserve System

By: Jennifer J. Johnson
Secretary of the Board