

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

In the Matter of:)	
)	Adjudicatory Proceeding
DAVID BIJAN MOVTADY,)	No.: AP 09-01
)	
Chairman of the Board, Controlling)	Dated: January 21, 2009
Stockholder, and Institution-Affiliated)	
Party of:)	
GOLDEN FIRST BANK,)	
Great Neck, New York)	
OTS Docket No.: 17974)	

NOTICE OF INTENTION TO REMOVE AND PROHIBIT AND
NOTICE OF CHARGES AND HEARING FOR CEASE AND DESIST ORDER
FOR AFFIRMATIVE RELIEF AND
NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTIES

I. PRELIMINARY STATEMENT

1. The Director of the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1818(b), (e), and (i)(2), issues this Notice of Intention to Remove and Prohibit and Notice of Charges and Hearing for Cease and Desist Order for Affirmative Relief and Notice of Assessment of Civil Money Penalties (Notice). By issuing this Notice, OTS commences administrative adjudicatory proceedings and assesses civil money penalties against David Bijan Movtady (Respondent), Chairman of the Board and controlling stockholder of Golden First Bank, Great Neck, New York.

2. OTS charges that Respondent, while a director, officer, and controlling stockholder of Golden First Bank (Golden First or Bank), engaged in various violations of law, regulation, and/or conditions imposed in writing by OTS in connection with the granting of an application, unsafe or unsound practices, and/or breaches of fiduciary duty, including but not limited to:

- a. Causing or participating in Golden First's failure:
 - (i) to operate within the parameters of its three-year business plan;
 - (ii) to seek the prior written non-objection of the Regional Director for a proposed new senior officer; and
 - (iii) to operate completely separate from its affiliate, Golden First Mortgage Company (Mortgage Company),
in violation of conditions imposed in writing in connection with granting Respondent's Application for Permission to Organize a Federal Savings Bank and in violation of 12 C.F.R. § 568.5;
 - b. Causing or participating in the misapplication of escrow funds entrusted to the Mortgage Company and held in an escrow account at Golden First in violation of 24 C.F.R. § 203.50(j)(4);
 - c. Advancing his personal or business interests and/or the interests of persons with whom he had a business relationship, failing to disclose the existence, nature, and extent of his interests in loan transactions to the Board of Directors of Golden First prior to the approval and/or closing of the loans, and failing to recuse himself from the consideration of the approval of the loans in violation of 12 C.F.R. § 563.200 (conflicts of interest) and in breach of his fiduciary duties to Golden First;
 - d. Causing or participating in Golden First extensions of credit in violation of 12 C.F.R. §§ 563.43, 215.4, 215.5, 215.6, and 215.8 (Regulation O, loans to executive officers, directors, and principal shareholders);
 - e. Causing or participating in Golden First extensions of credit to third parties to finance real estate projects in Respondent's mortgage company, an affiliate of Golden First, and thereby violating 12 U.S.C. §§ 371c(a)(2) and 1468(a) and 12 C.F.R. §§ 223.11 (Regulation W) and 563.41 (limitations on transactions with affiliates); and
 - f. Causing or participating in Golden First violations of 12 C.F.R. § 560.93 and 12 C.F.R. Part 32 (lending limitations).
3. OTS charges that grounds exist to:

- a. Remove Respondent from Golden First and prohibit him from further participation in the affairs of Golden First and other insured depository institutions pursuant to section 8(e) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. § 1818(e);
- b. Require Respondent to cease and desist from violations of law and regulation, to impose limitations on his banking-institution-related activities, and to take other affirmative corrective action pursuant to section 8(b) of the FDI Act; 12 U.S.C. § 1818(b); and
- c. Assess civil money penalties against Respondent, pursuant to section 8(i)(2) of the FDI Act; 12 U.S.C. § 1818(i)(2).

II. JURISDICTION

4. Since about March 2005, Respondent has been the owner of all of the outstanding capital stock of Golden First. Also, commencing in about March 2005, and at all relevant times, Respondent has been a director on, and chairman of, Golden First's Board of Directors, has served as an officer of Golden First, and has participated in the conduct of the affairs of Golden First. By virtue of the foregoing, Respondent is, and at all times relevant to these charges has been, an "institution-affiliated party" of Golden First. *See* 12 U.S.C. § 1813(u). In addition, by virtue of the foregoing, Respondent is, and at all times relevant to these charges has been, an "executive officer," a "principal shareholder," and an "insider" of Golden First for purposes of 12 C.F.R. Part 215 (Regulation O).

5. Golden First is, and at all relevant times has been, a stock-form, federal savings bank with a charter issued under the Home Owners' Loan Act (HOLA), 12 U.S.C. §§ 1461 *et seq.* Golden First maintains its home office in Great Neck, New York, and it engages in banking services at that office. Among other banking services, Golden First accepts deposits, and such deposits are insured by the Federal Deposit Insurance Corporation (FDIC). *See* 12 U.S.C. §§ 1811 *et seq.* Golden First is, and at all relevant times has been, a "savings association" (as

defined by 12 U.S.C. §§ 1462(4) and 1813(b)) and an “insured depository institution” (as defined by 12 U.S.C. § 1813(c)(1)).

6. Pursuant to sections 4 and 5 of the HOLA (12 U.S.C. §§ 1463 and 1464), Golden First is and has been subject to examination, supervision, and regulation by OTS.

7. Pursuant to 12 U.S.C. § 1818(e), (b), and (i)(2); 1813(q)(4) and 1464(d)(1)(A), the Director of OTS is the “appropriate Federal banking agency” with jurisdiction to initiate and maintain removal-and-prohibition, cease-and-desist, and civil money penalty proceedings against Respondent.

8. Because Respondent is, and at all relevant times has been, an institution-affiliated party of Golden First, he is subject to the authority of OTS to initiate and maintain these administrative proceedings against him pursuant to the provisions of section 8 of the FDI Act, 12 U.S.C. § 1818.

III. FACTUAL ALLEGATIONS AND CHARGES

A. Background, Formation of Golden First, and Affiliates

9. On January 2, 2004, Respondent and other individuals (collectively, the Organizers) filed with OTS an application for permission to organize a stock-form federal savings bank to be known as Golden First Bank, OTS Application R1-2004-0001 (the New Charter Application). The New Charter Application indicated that Respondent was the sole stockholder of the Mortgage Company and that Respondent would be the sole stockholder of Golden First.

10. In March 2004, in connection with the New Charter Application, Respondent and the Organizers submitted to OTS a revised Business Plan. Respondent and the Organizers represented therein that, *inter alia*: “The Organizers of the Bank will operate the Bank separately from the operations of Golden First Mortgage.”

11. OTS approved the New Charter Application on August 6, 2004. Approval of Application to Organize a Federal Savings Bank, OTS Order No. 2004-40 (Aug. 6, 2004). OTS Order No. 2004-40 imposed numerous conditions in connection with the granting of the New Charter Application.

12. Golden First commenced operations on March 21, 2005. Since that time, Respondent has been the owner of all of the outstanding capital stock of Golden First.

13. Respondent is, and at all relevant times has been, the sole stockholder of a company known as Smits Structure Corp. (Smits Structure).

14. As the sole stockholder of Smits Structure and of Golden First, respectively, Respondent has control over both Smits Structure and Golden First within the meaning of 12 U.S.C. §§ 1813(w)(5) and 1841(a)(2). Accordingly, Smits Structure is under common control with Golden First and is an affiliate of Golden First within the meaning of 12 U.S.C. §§ 371c, 1468, 1813(w)(6), and 1841(k), 12 C.F.R. § 563.43(d), and 12 C.F.R. Part 223 (Regulation W).

B. Respondent Violated OTS Order No. 2004-40 by Causing Golden First to Violate the Conditions of Approval and the Business Plan Filed with OTS and Engaged in Unsafe or Unsound Practices

15. OTS Order No. 2004-40 (August 6, 2004) set forth eleven conditions of approval of the New Charter Application.

16. Condition Number 6 stated:

The Savings Bank must operate within the parameters of its three-year business plan. The Savings Bank must submit any proposed major deviations or material changes from the plan for the prior, written non-objection of the Regional Director. The request for change must be submitted no later than 60 calendar days prior to the desired implementation date with a copy sent to the FDIC Regional Office.

OTS Order No. 2004-40 at 4, ¶ 6.

17. Condition Number 8 of OTS Order No. 2004-40 stated:

For two years following commencement of operations, the Savings Bank must receive the prior written non-objection of the Regional Director for any proposed new directors or senior executive officers or any significant change in responsibilities of any senior executive officer.

OTS Order No. 2004-40 at 4, ¶ 8.

18. Condition Number 11 of OTS Order No. 2004-40 stated:

For the first three years of operations, the Savings Bank must operate completely separate from its affiliate, Golden First Mortgage Company. If management seeks to integrate operations at a later date, the Savings Bank must seek and obtain prior written approval of the Regional Director.

OTS Order No. 2004-40 at 5, ¶ 11.

19. Respondent was aware of Condition Number 11 described in paragraph 18 above concerning the separate operations of Golden First and the Mortgage Company. Additionally, the revised Business Plan that the Organizers submitted in March 2004 specifically provided that “The Organizers of the Bank will operate the Bank separately from the operations of Golden First Mortgage.”

20. Notwithstanding the conditions of approval and the provisions of the revised Business Plan, Respondent failed to operate Golden First independently from the Mortgage Company.

21. In 2005 through early 2006, an employee of the Mortgage Company, Barbara Bruce (Bruce), provided bookkeeping services for Golden First. Prior to June 2005, Bruce accessed Golden First’s computer system from a physical location within the offices of Golden First. In June 2005, Bruce received a Bank-owned laptop computer and immediately began to access Golden First’s general ledger from her office at the Mortgage Company through a network connection installed in the offices of the Mortgage Company by the Mortgage Company’s Information Technology manager. Bruce accessed Golden First’s computer systems by using Respondent’s user name and password. Bruce monitored Golden First’s general ledger entries

and informed Respondent from time to time of her observations regarding the quality of entries to the general ledger. Bruce continued to access other Golden First electronic data from a location within the offices of the Mortgage Company until April 2006.

22. During the June 20, 2005 examination of Golden First, OTS Examiners noted and criticized Bruce's dual service as an employee of the Mortgage Company and as a provider of bookkeeping services for the Golden First as a violation of the both the Business Plan and the conditions of approval of the New Charter Application.

23. On October 11, 2005, Respondent consented to the assessment of a civil money penalty of \$25,000 on account of his participation in violations of written conditions of approval contained in OTS Order No. 2004-40. *See* OTS Order No. NE 05-15 (Oct. 11, 2005). One of the conditions of approval which Respondent was found to have violated was the requirement that Golden First "operate completely separate from a Respondent-owned company known as Golden First Mortgage (condition 11)." *Stipulation and Consent to Issuance of an Order of Assessment of a Civil Money Penalty* (Oct. 11, 2005) at 2 ¶ 2.

24. During the February 13, 2006 examination, OTS examiners found that Golden First had failed to correct the problems identified with respect to Bruce's continued access to Golden First's computer systems during the June 20, 2005 examination and identified additional violations. The examiners found that Bruce and the Mortgage Company's Information Technology Manager, Manuel Alves (Alves), both had direct access to the Bank's records and systems. Examiners noted that Alves had system administrator access to computer systems for both Golden First and the Mortgage Company and maintained the computer networking systems for both entities. Finally, the examiners observed that then Acting President William Schult, Bruce, and Alves provided either false or misleading responses to the examiners concerning the

involvement of the affiliated mortgage company with the operations of the Bank, including Bruce's access to the Golden First computer system.

25. The examiners further found during the February 13, 2006 examination that Bruce continued to perform bookkeeping services for Golden First using Respondent's username and password. Alves also provided technical assistance to Bank employees. In addition, another employee of the Bank, Assistant Controller Linda Topalian, also performed administrative and bookkeeping functions for the Mortgage Company and Smits Structure.

26. The February 13, 2006 Report of Examination specifically required that the Board of Directors (of which Respondent was the Chairman) immediately "[c]omply with all written conditions contained in the Order approving the bank's charter." *Id.* at 5.

27. Respondent was aware at all material times that Golden First continued to violate the conditions of approval set forth in OTS Order No. 2004-40 by allowing Bruce to provide bookkeeping services to Golden First while she was employed by the Mortgage Company. Notwithstanding his knowledge of the violation, Respondent caused or allowed such violations to continue until at least April 21, 2006, when Bruce resigned her position at the Mortgage Company to become Controller of Golden First.

28. The access to Golden First's financial books and records, including customer financial information in 2005 through early 2006, by Bruce, who was not a Golden First employee, constituted a significant security breach and a violation of 12 C.F.R. § 568.5 (protection of customer information). In addition, such access by Bruce constituted an unsafe or unsound practice that was contrary to the Interagency Guidelines Establishing Information Security Standards, Appendix B of 12 C.F.R. Part 570, which implements Section 501(b) of the Gramm-Leach Bliley Act, 15 U.S.C. § 6801(b).

29. Respondent caused Bruce to be appointed Controller of Golden First on or about April 21, 2006. Bruce continued in that capacity until July 3, 2006.

30. Bruce's appointment to the position of Controller of Golden First took place within two years following commencement of operations of Golden First. Golden First did not seek the OTS Regional Director's prior written non-objection for Bruce's appointment as Controller of Golden First, in violation of Condition 7 of OTS Order No. 2004-40.

31. By his acts and omissions in causing or allowing Bruce to provide services to Golden First while she was an employee of the Mortgage Company, Respondent engaged in unsafe or unsound practices, violated 12 C.F.R. § 568.5, and violated a condition imposed in writing by OTS in connection with the granting of an application within the meaning of 12 U.S.C. § 1818(b)(1).

32. By his acts and omissions in causing or allowing Bruce to be appointed as Controller of Golden First within two years after Golden First commenced operations, Respondent violated a condition imposed in writing by OTS in connection with the granting of an application within the meaning of 12 U.S.C. § 1818(b)(1).

C. Misapplication of Escrow Funds for the Benefit of Respondent

33. From at least as early as November 1, 2002, the Mortgage Company originated loans for the rehabilitation of one- to four-family residential housing units that were insured by HUD pursuant to Section 203(k) of the National Housing Act (NHA), 12 U.S.C. § 1709(k).

34. At all material times, the proceeds of rehabilitation loans insured pursuant to NHA Section 203(k) were required to be held in an interest bearing account, trust, or escrow for the benefit of the mortgagor pending advancement to the mortgagor or his creditors as provided in the rehabilitation loan agreement. 24 C.F.R. § 203.50(j)(4); *see* 12 U.S.C. § 1709(k)(3)(D).

35. In 2005, the Mortgage Company maintained a rehabilitation escrow account (Rehabilitation Escrow Account) at Golden First in connection with rehabilitation loans originated by the Mortgage Company and insured pursuant to NHA Section 203(k). In addition, the Mortgage Company maintained an operating account (Operating Account) at Golden First.

36. In 2005, Bruce administered the Rehabilitation Escrow Account and the Operating Account in her capacity as Controller of the Mortgage Company. As Controller of the Mortgage Company, Bruce was an authorized signatory on the Rehabilitation Account. From time to time during 2005, with Respondent's knowledge and at Respondent's direction or with Respondent's acquiescence, Bruce transferred funds, or caused employees of Golden first to transfer funds, from the Rehabilitation Escrow Account to the Operating Account in order to meet operating expenses of the Mortgage Company or to fund other aspects of businesses owned by Respondent.

37. From time to time during 2005, Bruce transferred, or caused employees of Golden First to transfer, sufficient funds from the Mortgage Company Operating Account or other accounts of businesses owned by Respondent to the Rehabilitation Escrow Account to replace the funds previously misapplied to fund ongoing operations of the Mortgage Company.

38. The Rehabilitation Loan Agreement governing the use of escrowed rehabilitation loan proceeds did not provide for the borrowing or misapplication of funds from the Rehabilitation Escrow Account.

39. For example, on May 23, 2005, acting as Controller of the Mortgage Company, Bruce caused \$600,000 to be transferred from the Rehabilitation Escrow Account to the Operating Account. Of the amount transferred, \$400,000 was used for the purpose of funding new mortgage loans originated by the Mortgage Company. The remaining \$200,000 was transferred

to another account and used to cover an overdraft caused by the Mortgage Company's payment of principal and interest on certain Government National Mortgage Association (GNMA) mortgage-backed securities serviced by the Mortgage Company.

40. On May 31, 2005, Bruce caused employees of Golden First to transfer \$600,000 from the Operating Account to the Rehabilitation Escrow Account to replace the misapplied funds.

41. In addition, on August 1, 2005, Bruce caused employees of Golden First to transfer \$400,000 from the Rehabilitation Escrow Account to the Operating Account. The proceeds of the transfer were then wired to a Mortgage Company account at JP Morgan Chase. Upon receipt of the wire transfer from Golden First, JP Morgan Chase wired \$400,000 to a commodities firm for the account of Smits Structure, a Bank affiliate owned and controlled by Respondent.

42. By his acts and omissions in causing or allowing Bruce to transfer funds from the Rehabilitation Escrow Account to meet operating expenses of the Mortgage Company or to fund other aspects of businesses owned by Respondent, Respondent violated 24 C.F.R. § 203.50(j)(4) and breached his fiduciary duties to the borrowers whose escrowed funds were entrusted to the Mortgage Company.

D. The Maryam Broukhim Loan: Respondent Violated Federal Regulations and Breached His Fiduciary Duties in Connection with Golden First's Third-Lien \$350,000 Loan to M. Broukhim and Spouse

43. Prior to the formation of Golden First in March 2005, Respondent maintained a financial relationship with Maryam Broukhim, M.D. (Broukhim) whereby Broukhim borrowed money from other sources and lent those borrowed funds to Respondent or his wholly-owned companies.

44. During the summer of 2002, the Mortgage Company brokered to M&T Bank a \$300,000 second-lien home equity line of credit (HELOC) for Broukhim and her husband, Alvin

Hershfeld (Hershfeld). The HELOC from M&T Bank to Broukhim and Hershfeld closed on October 1, 2002.

45. On October 8, 2002, Broukhim lent the Mortgage Company \$200,000. The M&T Bank Line of Credit Statement for the Broukhim/Hershfeld HELOC for the period October 7, 2002 through November 5, 2002 reflects a line of credit advance of \$200,000 that was posted on October 10, 2002. The Mortgage Company repaid the loan in full in or about December 2003.

46. On January 9, 2004, Broukhim and Hershfeld applied through the Mortgage Company for a new HELOC to refinance the \$300,000 M&T Bank HELOC. The new HELOC was to be a cash-out refinance, and the proceeds were allegedly to be used to purchase a medical practice and associated clinic for \$350,000.

47. On January 21, 2004, the Mortgage Company issued a loan commitment to Broukhim and Hershfeld in the amount of \$800,000 and brokered the HELOC to Signature Bank.

48. In or about February 2004, Broukhim and Hershfeld obtained a cashier's check or checks in the aggregate amount of \$350,000.

49. On March 5, 2004, Signature Bank sent a HELOC application kit to Broukhim and Hershfeld. The amount of the proposed HELOC had been reduced to \$500,000 from \$800,000.

50. On March 22, 2004, Respondent caused Smits Structure to borrow \$350,000 from Broukhim.

51. On June 25, 2004, Broukhim and Hershfeld closed the Signature Bank HELOC in the amount of \$500,000. The \$300,000 M&T Bank HELOC was paid off in conjunction with the settlement of the Signature Bank HELOC.

52. From April 1 until December 1, 2004, Smits Structure paid interest to Broukhim and reduced the principal amount of the loan from Broukhim from \$350,000 to \$36,000.

53. On December 6, 2004, Respondent caused Smits Structure to borrow an additional \$151,000 from Broukhim. As of December 6, 2004, Smits Structure owed Broukhim a total of \$187,000 in principal.

54. On March 23, 2005, nine days after Golden First commenced operations, Broukhim opened a checking account at Golden First.

55. On June 22, 2005, Broukhim and Hershfeld applied to Golden First for a new HELOC in the amount of \$850,000. Respondent took the loan application and was listed as the "Account Officer" on the Golden First Credit Approval Request. The new HELOC was to refinance the existing Signature Bank HELOC. Respondent referred the loan application to Golden First's lending staff.

56. On July 6, 2005, Golden First President Paul Settlemeyer (Settlemeyer) and then-Chief Financial Officer Schult approved Broukhim and Hershfeld's application for an \$850,000 second-lien HELOC.

57. Subsequent to July 6, 2005, Broukhim and Hershfeld amended their Golden First application and requested a \$350,000 third-lien HELOC to wrap around the existing \$500,000 HELOC in lieu of the previously requested \$850,000 second-lien HELOC.

58. Notwithstanding the fact that Golden First did not customarily make third-lien HELOC loans, Respondent recommended approval of the amended application, and Settlemeyer and Schult approved the amended application on August 26, 2005.

59. On September 2, 2005, Golden First closed the \$350,000 third-lien HELOC to Broukhim and Hershfeld. On September 26, 2005, Broukhim and Hershfeld drew the entire \$350,000 from the Golden First HELOC.

60. Broukhim and Hershfeld made various payments on the HELOC between October 28, 2005 and December 31, 2005. On May 4, 2006, Broukhim and Hershfeld reduced the outstanding balance on the \$350,000 Golden First HELOC to zero.

61. At all times after December 6, 2004 until September 2, 2005, Smits Structure was indebted to Broukhim on account of the loans made on March 22, 2004 and December 6, 2004. Respondent failed to inform the officers and directors of Golden First of the indebtedness of Smits Structure to Broukhim and of Respondent's interest in Smits Structure at any time prior to the closing of the \$350,000 third-lien HELOC to Broukhim and Hershfeld on September 2, 2005.

62. By his failure to disclose Smits Structure's pre-existing indebtedness to Broukhim to the directors and officers of Golden First prior to the approval and/or closing of the \$350,000 third-lien HELOC and his failure to recuse himself from the consideration of the approval of the HELOC, Respondent violated 12 C.F.R. § 563.200 (conflicts of interest) and breached his fiduciary duties to Golden First.

E. The Suarez-related Loans: Respondent Violated Federal Regulations and Breached His Fiduciary Duties in Connection with Loans He Caused Golden First to Make to 95 Matsu Corporation and NGO & NGO Realty, Ltd.

63. Beginning in January 2006, Respondent caused Golden First to engage in a series of transactions involving companies owned and operated by Silvia and Rodolfo Suarez, a married couple.

64. Silvia Suarez (S. Suarez) was a real estate broker and developer who had referred home buyer customers to the Mortgage Company. From and after May 1995, S. Suarez was the owner of 100% of the shares of 95 Matsu Corporation (95 Matsu).

65. Rodolfo Suarez (R. Suarez) was the husband of S. Suarez. From and after April 2003, R. Suarez was the owner of 100% of the shares of NGO & NGO Realty, Ltd. (NGO).

66. 95 Matsu and NGO shared a common address, the home of S. and R. Suarez in Jackson Heights, New York.

67. Although 95 Matsu and NGO were nominally separate corporations with separate owners, R. and S. Suarez conducted business for both companies. S. Suarez dealt with Respondent, Golden First, and Smits Structure regarding the financial arrangements for the purchase of properties for renovation for both 95 Matsu and NGO.

1. The 95 Matsu Corporation Loan

68. In January 2006, S. Suarez was interested in buying through 95 Matsu a residential investment property in Ridgewood, New York (the Ridgewood Property), which had a purchase price of \$835,000. S. Suarez intended to improve the Ridgewood Property and then sell it at a profit.

69. In January 2006, S. Suarez contacted Respondent to seek a loan in an amount exceeding \$1 million to finance the acquisition and improvement of the Ridgewood Property. Respondent told S. Suarez that Golden First would be interested in considering her loan application, but that it could not make the loan in the amount she sought in view of the federal lending limit regulation, 12 C.F.R. § 560.93. Pursuant to 12 C.F.R. § 560.93, Golden First's Loans-to-One-Borrower (LTOB) limit in March 2006 was \$831,600. In view of this and following discussions, S. Suarez applied for a smaller loan from Golden First. S. Suarez and Respondent agreed orally that 95 Matsu would obtain second-lien financing for the development costs from Smits Structure. S. Suarez and Respondent agreed that the second-lien loan would include a profit-sharing provision.

70. On January 13, 2006, S. Suarez caused 95 Matsu to open a checking account at Golden First with a deposit of a check in the amount of \$42,000 drawn on Smits Structure's "Business Checking" account at Golden First.

71. On January 14, 2006, 95 Matsu, acting through S. Suarez, entered into a written contract to buy the Ridgewood Property for \$835,000. 95 Matsu made a down payment of \$40,000 on the Ridgewood Property by means of a check drawn on the account it had opened at Golden First on January 13, 2006, funded by Smits Structure.

72. On February 9, 2006, S. Suarez, on behalf of 95 Matsu, met with the Bank's loan processing staff following a referral by Respondent. On February 9, 2006, Golden First's staff prepared a Retail Loan Registration form documenting that S. Suarez was seeking a loan for 95 Matsu to purchase the Ridgewood Property. On February 9, 2006, 95 Matsu applied for a real estate purchase loan in the amount of \$648,000, which amount was less than the Bank's \$831,600 lending limit and was equal to 80% of the proposed purchase price, which was listed as \$810,000, instead of \$835,000, on the Retail Loan Registration form. Respondent's name was listed as the loan officer on the Retail Loan Registration.

73. Between February 9, 2006 and March 15, 2006, the requested loan terms were revised to reflect a loan amount of \$751,500, and the proposed loan was recharacterized as a HELOC instead of a purchase mortgage. On March 15, 2006, Respondent personally approved the revised loan application. On March 17, 2006, Golden First issued a loan commitment for \$751,500, which amount was equal to 90% of a proposed purchase price of \$835,000.

74. On March 20, 2006, 95 Matsu closed on its purchase of the Ridgewood Property. The entire proceeds of the HELOC were disbursed in connection with the purchase of the Ridgewood Property. S. Suarez executed the HELOC agreement and associated documentation

as President of 95 Matsu and in her individual capacity, as a co-borrower. The HUD-1 Settlement Statement for the purchase of the Ridgewood Property indicated that 95 Matsu was required to pay \$49,992.57 at settlement.

75. Simultaneously, on March 20, 2006, Smits Structure and 95 Matsu entered into a written agreement whereby Smits Structure would lend 95 Matsu sufficient funds to complete the purchase and renovation of the Ridgewood Property in exchange for 50% of the net profit from the sale of the Ridgewood Property.

76. On March 20, 2006, in order to fund the completion of the purchase and renovation, Smits Structure and 95 Matsu entered into a HELOC Agreement whereby Smits Structure would advance up to \$700,000 to 95 Matsu. The initial advance was \$50,000, an amount almost exactly the same as the amount 95 Matsu was required to pay at settlement on the Ridgewood Property.

77. Respondent failed to arrange for 95 Matsu's application to be considered by Golden First's entire Board of Directors as required by 12 C.F.R. § 563.200(b) and Golden First's conflict of interest policy.

78. At no time prior to the closing of Golden First's loan to 95 Matsu did Respondent disclose to any director or officer of Golden First that he had caused Smits Structure to lend \$42,000 to 95 Matsu. Respondent also failed to disclose that the Smits Structure loan to 95 Matsu was the source of funds for 95 Matsu's down payment for the purchase of the Ridgewood Property.

79. At no time prior to the closing of Golden First's loan to 95 Matsu did Respondent disclose to any Golden First director or officer that, simultaneously with the closing of the Golden First loan to 95 Matsu, Smits Structure would enter into a second-lien HELOC to fund

the borrower's required payment at closing. Respondent also failed to disclose to any Golden First director or officer that as part of the financing arrangement with 95 Matsu, Smits Structure would receive 50% of the net profit on the sale of the Ridgewood Property.

a. Conflicts of Interest and Breach of Fiduciary Duty

80. OTS's Conflict of Interest regulation, 12 C.F.R. § 563.200, provides:

If you are a director, officer, or employee of a savings association, or have the power to direct its management or policies, or otherwise owe a fiduciary duty to a savings association:

(a) You must not advance your own personal or business interests, or those of others with whom you have a personal or business relationship, at the expense of the savings association; and

(b) You must, if you have an interest in a matter or transaction before the board of directors:

(1) Disclose to the board all material nonprivileged information relevant to the board's decision on the matter or transaction, including:

(i) The existence, nature and extent of your interests; and

(ii) The facts known to you as to the matter or transaction under consideration;

(2) Refrain from participating in the board's discussion of the matter or transaction; and

(3) Recuse yourself from voting on the matter or transaction (if you are a director).

81. By his actions and omissions, Respondent advanced his personal or business interests and those of 95 Matsu, a party with which he had a personal or business relationship, over the interests of Golden First and at the expense of Golden First, in that he caused Golden First to violate laws and regulations as set forth below at paragraphs 83 to 102.

82. By his advancement of his personal or business interests and those of 95 Matsu, his failure to disclose Smits Structure's prior loan to 95 Matsu, Smits Structure's pre-existing

agreement to lend additional funds to 95 Matsu, and Smits Structure's 50% profit participation in the future sale of the Ridgewood Property to the directors and officers of Golden First prior to the approval and/or closing of the \$751,500 HELOC and his failure to recuse himself from the consideration of the approval of the HELOC. Respondent violated 12 C.F.R. § 563.200 and breached his fiduciary duties to Golden First.

b. Violations of Regulation O

83. Regulation O, 12 C.F.R. Part 215, as made applicable to savings associations by 12 C.F.R. § 563.43, governs extensions of credit to executive officers, directors, and principal shareholders of savings associations.

84. Section 215.4(b) of Regulation O provides, *inter alia*, that:

No [savings association] may extend credit (which term includes granting a line of credit) to any insider of the [savings association] or insider of its affiliates in an amount that, when aggregated with the amount of all other extensions of credit to that person and to all related interests of that person, exceeds the higher of \$25,000 or 5 percent of the [savings association's] unimpaired capital and surplus, unless:

- (i) The extension of credit has been approved in advance by a majority of the entire board of directors of that [savings association]; and
- (ii) The interested party has abstained from participating directly or indirectly in the voting.

12 C.F.R. § 215.4(b).

85. Extensions of credit to "executive officers" are further limited by 12 C.F.R. § 215.5. Unless an extension of credit qualifies for an exception, no extension of credit to an executive officer may exceed \$100,000. 12 C.F.R. § 215.5(c)(4).

86. Section 215.3(f) of Regulation O provides that "[a]n extension of credit is considered to be made to an insider [*i.e.*, an executive officer, director, principal shareholder or a related

interest of such a person] to the extent that the proceeds ... are used for the tangible economic benefit of the insider.” 12 C.F.R. § 215.3(f); *see* 12 C.F.R. § 215.2(h) (definition of “insider”).

87. Section 215.8 of Regulation O requires that savings associations maintain records necessary for compliance with the requirements of Regulation O. 12 C.F.R. § 215.8.

88. In addition, Regulation O prohibits any executive officer, director, or principal shareholder from knowingly receiving, or knowingly permitting his related interests to receive, directly or indirectly, any extension of credit not authorized by Regulation O. 12 C.F.R. § 215.6.

89. Golden First’s unimpaired capital and surplus, as of December 31, 2005, was \$5,544,000; 5 percent of unimpaired capital and surplus as of December 31, 2005 was \$277,200. Section 215.4(b) required prior approval by Golden First’s entire Board of Directors (with Respondent’s recusal) to make any loan exceeding \$277,200 for the direct or indirect benefit of Respondent or his related interests. The \$751,500 HELOC loan to 95 Matsu exceeded the \$277,200 Regulation O prior approval threshold.

90. Golden First’s Board of Directors neither considered nor approved the \$751,500 HELOC loan to 95 Matsu. In addition, Respondent participated in, rather than recused himself from, the approval of the \$751,500 HELOC loan to 95 Matsu.

91. As the holder, through his ownership of Smits Structure, of a 50% profit participation in the future sale of the Ridgewood Property, Respondent received a tangible economic benefit from Golden First’s extension of credit to 95 Matsu within the meaning of 12 C.F.R. § 215.3(f).

92. As Chairman of the Board, Respondent was and is an executive officer and insider of Golden First. 12 C.F.R. § 215.2(e)(1). Consequently, extensions of credit to him were subject to additional restrictions set forth at 12 C.F.R. § 215.5. The \$751,500 HELOC loan to 95 Matsu did not meet the requirements for any exception to the \$100,000 limit imposed by Regulation O

for loans to executive officers. Accordingly, the grant of the \$751,500 HELOC violated the \$100,000 limit on loans to executive officers set forth at 12 C.F.R. § 215.5(c)(4).

93. As the principal shareholder, as well as a director and executive officer, of Golden First, Respondent was prohibited from knowingly receiving or knowingly permitting his related interests to receive any extension of credit not authorized by Regulation O. 12 C.F.R. § 215.6.

94. By his failure to disclose Smits Structure's prior loan to 95 Matsu, Smits Structure's pre-existing agreement to lend additional funds to 95 Matsu, and Smits Structure's 50% profit participation in the future sale of the Ridgewood Property to the directors and officers of Golden First prior to the approval and/or closing of the \$751,500 HELOC and without prior approval of the Golden First Board of Directors, Respondent violated 12 C.F.R. §§ 563.43, 215.4, 215.5, and 215.8 (Regulation O, Loans to Executive Officers, Directors, and Principal Shareholders).

95. By his actions and omissions, Respondent knowingly received, or knowingly permitted his related interests, Smits Structure and 95 Matsu, to receive, an extension of credit in violation of 12 C.F.R. § 215.6 (Regulation O, Loans to Executive Officers, Directors, and Principal Shareholders).

c. Violations of Regulation W

96. Section 11(a) of HOLA, 12 U.S.C. § 1468(a), as implemented by 12 C.F.R. § 563.41, requires that savings associations comply with sections 23A and 23B of the Federal Reserve Act, 12 U.S.C. § 371c and 371c-1, and the implementing regulations at 12 C.F.R. Part 223 (Regulation W).

97. Section 23A(a)(2) of the Federal Reserve Act, 12 U.S.C. § 371c(a)(2), and section 223.16 of Regulation W require that a transaction must be treated as a transaction with an affiliate "to the extent that the proceeds are used for the benefit of ... an affiliate." 12 C.F.R.

§ 223.16. Section 223.14 of Regulation W prohibits an affiliate from benefitting from any extension of credit secured by real estate unless the real estate collateral securing the loan has a market value no less than 130 percent of the amount of the extension of credit. 12 C.F.R. § 223.14(b)(iv).

98. Section 23A(c)(1)(A) of the Federal Reserve Act, 12 U.S.C. § 371c(a)(1)(A), prohibits the extension of credit to an affiliate if the aggregate amount of “covered transactions” (which includes extensions of credit) will exceed 10 percent of the capital stock and surplus of the financial institution. Section 223.11 of Regulation W provides that the aggregate amount of “covered transactions” with a single affiliate may not exceed 10 percent of the capital stock and surplus of a savings association. 12 C.F.R. § 223.11.

99. The proceeds of the \$751,500 HELOC were used for the benefit of Smits Structure in that the purchase of the Ridgewood Property enabled Smits Structure to obtain a 50% profit participation in the future sale of the Ridgewood Property. Accordingly, the \$751,500 HELOC was a transaction with an affiliate within the meaning of 12 U.S.C. §§ 371c(a)(2) and 1468(a) and 12 C.F.R. §§ 223.16(a) and 563.41. In order to meet the requirements of 12 C.F.R. § 223.14(b)(iv), the \$751,500 HELOC was required to be secured by first lien mortgage on real property having a value of no less than \$976,950. As of March 2006, the market value of the Ridgewood Property was no more than \$835,000.

100. As of December 31, 2005, Golden First’s capital stock and surplus was \$5,544,000. Accordingly, Golden First’s aggregate amount of outstanding loans to or for the direct or indirect benefit of an affiliate was limited to \$554,400. The \$751,500 HELOC loan to 95 Matsu, which was for the direct or indirect benefit of Smits Structure, exceeded the allowable

aggregate amount of extensions of credit to a single affiliate in violation of 12 U.S.C. § 371c(a)(1)(A) and 12 C.F.R. § 11.

101. By his actions and omissions, Respondent caused or participated in causing Golden First to violate 12 U.S.C. §§ 371c(a)(1)(A) and 1468(a) and 12 C.F.R. §§ 223.11, 223.14(b)(iv) (Regulation W) and 563.41 (limitations on transactions with affiliates).

d. Loans-to-One-Borrower Violations

102. Aggregation of the \$751,500 HELOC with a subsequent transaction caused Golden First to violate applicable statutes and regulations governing loans to one borrower, as described at paragraphs 129 through 132 below.

2. The NGO & NGO Realty, Ltd. Loan

103. In April 2006, S. Suarez approached Respondent to obtain a loan from Golden First to finance the purchase of a property located in College Point, New York (the College Point Property) and had a purchase price of \$500,000. Due to regulatory lending limitations, Golden First could not make an additional loan to S. Suarez or 95 Matsu. Accordingly, NGO would buy the College Point Property so that NGO could improve it and then sell it at a profit. The total amount of financing sought was \$705,000.

104. Although the \$705,000 of financing sought by NGO was less than the Bank's lending limit as of April 2006, Respondent determined that Golden First would only provide the acquisition financing with a first-lien loan having a loan-to-value ratio of roughly 80%. S. Suarez arranged with Respondent to have the other costs, including development costs, financed by Smits Structure.

105. On or about April 6, 2006, R. Suarez, on behalf of NGO, submitted a signed Personal Financial Statement to Golden First's loan processing staff following a referral by Respondent.

106. On April 25, 2006, NGO opened a checking account at Golden First with a deposit of a check in the amount of \$30,000 drawn on Smits Structure's "Business Checking" account at Golden First.

107. On May 12, 2006, Golden First completed a Retail Loan Registration form that indicated that NGO had applied for a twelve-month balloon payment adjustable rate mortgage loan in the amount of \$405,000, which amount was less than the Bank's \$831,600 lending limit and was equal to 81% of the proposed purchase price of \$500,000 listed on the Retail Loan Registration.

108. On June 29, 2006, Bank director Edna Mashaal and Bank officer Ivan C. Miller approved the loan application, and the Bank issued its loan commitment to NGO.

109. NGO closed on its purchase of the College Point Property on July 12, 2006. The loan was characterized as an adjustable rate balloon payment HELOC. R. Suarez executed the HELOC agreement and associated documentation as President of NGO and in his individual capacity. The entire proceeds of the HELOC were disbursed in connection with the purchase of the College Point Property. The HUD-1 Settlement Statement for the purchase of the College Point Property indicated that NGO was required to pay \$118,665.37 at settlement.

110. Simultaneously, on July 12, 2006, Smits Structure and NGO entered into a written agreement whereby Smits Structure would lend NGO sufficient funds to complete the purchase and renovation of the College Point Property in exchange for 50% of the net profit from the sale of the College Point Property.

111. On July 12, 2006, in order to fund the completion of the purchase and renovation, Smits Structure and NGO entered into a Home Equity Line of Credit Agreement whereby Smits Structure would advance up to \$300,000 to NGO. The required initial advance was \$25,000. On July 12, 2006, Smits Structure transferred \$145,000 to NGO's Golden First checking account, an amount sufficient to fund NGO's required payment at closing on the College Point Property.

112. Respondent failed to arrange for NGO's application to be considered by Golden First's entire Board of Directors.

113. At no time prior to the closing of Golden First's loan to NGO did Respondent disclose to any director or officer of Golden First that he had caused Smits Structure to lend \$30,000 to NGO.

114. At no time prior to the closing of Golden First's loan to NGO on July 12, 2006 did Respondent disclose to any Golden First director or officer that, simultaneously with the closing of the Golden First loan to NGO, Smits Structure would enter into a second-lien HELOC to fund the borrower's required payment at closing. Respondent also failed to disclose to any Golden First director or officer that, as part of the financing arrangement with NGO, Smits Structure would receive 50% of the net profit on the sale of the College Point Property.

a. Conflicts of Interest and Breach of Fiduciary Duty

115. By his actions and omissions, Respondent advanced his personal or business interests and those of NGO, a party with which he had a personal or business relationship, over the interests of Golden First and at the expense of Golden First, in that he caused Golden First to violate laws and regulations as set forth below at paragraphs 117 to 132.

116. By his advancement of his personal or business interests and those of NGO, his failure to disclose Smits Structure's prior loan to NGO, Smits Structure's pre-existing agreement

to lend additional funds to NGO, and Smits Structure's 50% profit participation in the future sale of the College Point Property to the directors and officers of Golden First prior to the approval and/or closing of the \$405,000 HELOC, and his failure to recuse himself from the consideration of the approval of the HELOC, Respondent violated 12 C.F.R. § 563.200 and breached his fiduciary duties to Golden First.

b. Violations of Regulation O

117. Golden First's unimpaired capital and surplus, as of June 30, 2006, was \$5,516,200; 5 percent of unimpaired capital and surplus as of June 30, 2006 was \$275,800. Section 215.4(b) required prior approval by Golden First's entire Board of Directors (with Respondent's recusal) to make any loan exceeding \$275,800 for the direct or indirect benefit of Respondent or his related interests. The \$405,000 HELOC loan to NGO exceeded the \$275,800 Regulation O prior approval threshold.

118. Golden First's Board of Directors neither considered nor approved the \$405,000 HELOC loan to NGO. In addition, Respondent participated in, rather than recused himself from, the approval of the \$405,000 HELOC loan to NGO.

119. As the holder, through his ownership of Smits Structure, of a 50% profit participation in the future sale of the College Point Property, Respondent received a tangible economic benefit from Golden First's extension of credit to NGO within the meaning of 12 C.F.R. § 215.3(f).

120. As Chairman of the Board, Respondent was an executive officer of Golden First. Therefore, extensions of credit to Respondent were subject to additional restrictions set forth at 12 C.F.R. § 215.5. The \$405,000 HELOC loan to NGO did not meet the requirements for any exception to the \$100,000 limit imposed by Regulation O for loans to executive officers.

121. In addition to the restrictions noted above at paragraphs 83 to 88 above, Regulation O provides that the maximum amount of loans to an executive officer, director, or principal shareholder of a savings association may not exceed 15 percent of the savings association's unimpaired capital and surplus, unless secured by readily marketable collateral, such as financial instruments. 12 C.F.R. §§ 215.2(i), 215.4(c); *see* 12 C.F.R. § 32.2(n) ("readily marketable collateral").

122. Golden First's unimpaired capital and surplus, as of June 30, 2006, was \$5,516,000; 15 percent of unimpaired capital and surplus as of June 30, 2006 was \$827,400. Following the July 12, 2006 closing of the \$405,000 HELOC loan, the aggregate amount of Golden First loans made to the Suarezes and their related entities for the direct or indirect benefit of Respondent and Smits Structure was \$1,156,500 (\$751,500 to 95 Matsu and \$405,000 to NGO). This aggregate amount exceeded the \$827,400 limit on loans to executive officers, directors, or principal shareholders.

123. As the principal shareholder, as well as a director and executive officer, of Golden First, Respondent was prohibited from knowingly receiving or knowingly permitting his related interests to receive any extension of credit not authorized by Regulation O. 12 C.F.R. § 215.6.

124. By Respondent's failure to disclose Smits Structure's prior loan to NGO, Smits Structure's pre-existing agreement to lend additional funds to NGO, and Smits Structure's 50% profit participation in the future sale of the College Point Property to Golden First's directors and officers prior to the approval and/or closing of the \$405,000 HELOC and without prior board approval, Respondent caused or participated in causing Golden First to violate 12 C.F.R. §§ 563.43, 215.4, 215.5, and 215.8 (Regulation O, Loans to Executive Officers, Directors, and Principal Shareholders).

125. By his actions and omissions, Respondent knowingly received, or knowingly permitted his related interests, Smits Structure and NGO, to receive, an extension of credit in violation of 12 C.F.R. § 215.6 (Regulation O, Loans to Executive Officers, Directors, and Principal Shareholders).

c. Violations of Regulation W

126. The proceeds of the \$405,000 HELOC extended on July 12, 2006 were used for the benefit of Smits Structure in that the purchase of the College Point Property enabled Smits Structure to obtain a 50% profit participation in the future sale of the College Point Property. Accordingly, the \$405,000 HELOC was a transaction with an affiliate within the meaning of 12 U.S.C. §§ 371c(a)(2) and 1468(a) and 12 C.F.R. §§ 223.16(a) and 563.41. In order to meet the requirements of 12 C.F.R. § 223.14(b)(iv), the \$405,000 HELOC was required to be secured by first lien mortgage on real property having a value of no less than \$526,500. As of March 2006, the market value of the College Point Property was no more than \$500,000.

127. As of June 30, 2006, Golden First's capital stock and surplus was \$5,516,000. Accordingly, Golden First's aggregate amount of outstanding loans to or for the direct or indirect benefit of an affiliate was limited to \$551,600. The \$405,000 HELOC loan to NGO, when aggregated with the \$751,500 HELOC loan to 95 Matsu, both of which loans were for the direct or indirect benefit of Smits Structure, exceeded the allowable aggregate amount of extensions of credit to a single affiliate in violation of 12 U.S.C. § 371c(a)(1)(A) and 12 C.F.R. § 223.11.

128. By his actions and omissions, Respondent violated 12 U.S.C. §§ 371c(a)(1)(A) and 1468(a) and 12 C.F.R. §§ 223.11, 223.14(b)(iv) (Regulation W) and 563.41 (limitations on transactions with affiliates).

d. Loans-to-One-Borrower Violations

129. OTS Regulations set forth at 12 C.F.R. § 560.93 limit extensions of credit to third parties by savings associations. Loans to third parties that are not fully secured by “readily marketable collateral” may not exceed 15% of unimpaired capital and surplus. *Id.*

§ 560.93(c)(1); *see* 12 C.F.R. § 32.3. “Readily marketable collateral” is defined by regulation to include only “financial instruments and bullion that are salable under ordinary market conditions with reasonable promptness at a fair market value determined by quotations based upon actual transactions on an auction or similarly available daily bid and ask price market.” 12 C.F.R. § 32.2(n).

130. At all material times, R. Suarez, S. Suarez, 95 Matsu, and NGO constituted a “common enterprise” within the meaning of 12 C.F.R. § 32.5 and a “person” within the meaning of 12 C.F.R. § 32.2(*l*), and constituted one borrower within the meaning 12 C.F.R.

§ 560.93(b)(1). The total amount of loans to R. Suarez, S. Suarez, 95 Matsu, and NGO outstanding as of July 12, 2006 was \$1,156,500, an amount in excess of Golden First’s lending limit. The loans to R. Suarez, S. Suarez, 95 Matsu, and NGO were secured by real estate, which is not readily marketable collateral within the meaning of 12 C.F.R. §§ 32.3 and 560.93.

Accordingly, the total loans to R. Suarez, S. Suarez, 95 Matsu, and NGO were limited by regulation to 15% of Golden First’s unimpaired capital and surplus. 12 C.F.R. § 560.93(c)(1).

131. In July 2006, 15% of Golden First’s unimpaired capital and surplus was \$827,400. Pursuant to 12 C.F.R. § 560.93, Golden First’s Loans-to-One-Borrower (“LTOB”) limit in July 2006 was \$827,400. The total loans to R. Suarez, S. Suarez, 95 Matsu, and NGO exceeded the allowable amount by \$321,900.

132. By his failure to disclose the relationships among R. Suarez, S. Suarez, 95 Matsu, and NGO, Respondent caused or participated in causing Golden First to violate 12 C.F.R. § 560.93 (lending limitations).

IV. STATUTORY CHARGES UNDER 12 U.S.C. §§ 1818(e) and 1818(b)

Count I: Respondent's Regulatory Violations, Unsafe or Unsound Practices, and Breaches of Fiduciary Duty Provide Grounds for an Order of Prohibition under Section 8(e) of the FDI Act

133. Each of the foregoing paragraphs is incorporated herein by this reference.

134. Respondent: (i) engaged in unsafe or unsound practices; (ii) engaged in breaches of his fiduciary duty owed to Golden First or others; and (iii) violated and/or participated in violations of the laws and regulations described in paragraphs 15 to 132 above.

135. By reason of Respondent's violations and/or participation in violations, the interests of Golden First's depositors have been or could be prejudiced and/or Respondent has received financial gain or other benefit.

136. The above-mentioned violations, practices, and/or breaches: (i) involve personal dishonesty on the part of Respondent; and/or (ii) demonstrate willful or continuing disregard by Respondent for the safety or soundness of Golden First.

Count II: Respondent's Regulatory Violations and Unsafe or Unsound Practices Provide Grounds for an Order to Cease and Desist Under Section 8(b) of the FDIA Act, and Such Order May Include Provisions Requiring Affirmative Corrective Action

137. Each of the foregoing paragraphs is incorporated herein by this reference.

138. Respondent: (i) engaged in unsafe or unsound practices in conducting the business of Golden First; (ii) engaged in breaches of his fiduciary duty owed to Golden First or others; and (iii) violated and/or participated in violations of the laws and regulations described in paragraphs 15 to 132 above.

139. Grounds exist to issue a cease-and-desist order against Respondent (with affirmative corrective action provisions and provisions imposing limitations on activities), pursuant to 12 U.S.C. § 1818(b) (including paragraphs (b)(6) and (b)(7)).

V. REQUESTED RELIEF and NOTICE OF HEARING

140. Notice is hereby given that a hearing will be held in the Federal judicial Eastern District of New York, for the purpose of taking evidence on the charges specified above in order to determine:

- a. Whether an appropriate removal-and-prohibition order should be issued under section 8(e) of the FDI Act, 12 U.S.C. § 1818(e), to prohibit the future participation by Respondent in the affairs of, *inter alia*, any insured depository institution, or any holding company thereof; and
- b. Whether an appropriate order to cease and desist should be issued under section 8(b) of the FDI Act, 12 U.S.C. § 1818(b), to require Respondent to cease and desist from the violations and unsafe or unsound practices charged above in this Notice, whether such an order should include:
 - i. Affirmative corrective action provisions under 12 U.S.C. § 1818(b)(6); and/or
 - ii. The imposition of limitations on the activities or functions of Respondent with respect to the operations, activities, and affairs of savings associations and other banking-related institutions, pursuant to 12 U.S.C. § 1818(b)(7).

VI. STATUTORY CHARGES UNDER 12 U.S.C. § 1818(i)(2)

Count Three: Assessment of Civil Money Penalties

Second-Tier Civil Money Penalties Assessed Against Respondent Under Section 8(i)(2)(B) of the FDIA based on Violations relating to the Broukhim, 95 Matsu and NGO Loans and Violations or Written Conditions Set Out in OTS Order No. 2004-40

141. Each of the foregoing paragraphs is incorporated herein by this reference.

142. Respondent: (i) recklessly engaged in unsafe or unsound practices in conducting the business of Golden First; (ii) engaged in breaches of his fiduciary duty owed to Golden First or others; and (iii) violated and/or participated in violations of the laws and regulations described in paragraphs 15 to 132 above.

143. Respondent's violations: (i) are part of a pattern of misconduct; and/or (ii) resulted in pecuniary gain or other benefit to Respondent.

Aggregate Amount of Assessed Civil Penalties

144. Based on the foregoing, the grounds exist, pursuant to 12 U.S.C. § 1818(i)(2), to assess second-tier civil penalties against Respondent in the maximum aggregate amount of about \$50,000. After taking into account the size of Respondent's financial resources, good faith considerations, the gravity of the violations, the history of previous violations, and such other matters as justice may require, OTS hereby assesses against Respondent second-tier civil money penalties aggregating \$50,000.

Civil Penalty Payment Directions and Procedural Matters

145. It is hereby ordered that Respondent shall forfeit and pay the civil money penalties assessed above, as hereinafter provided.

146. The civil money penalties set forth in this Notice are assessed by OTS pursuant to sections 8(i)(2) of the FDI Act, 12 U.S.C. § 1818(i)(2). Except as OTS may otherwise order in writing, remittance of the payment of the penalties set forth herein shall be made by delivering to OTS Financial Operations at 1700 G Street, N.W., Washington, DC 20552 a cashier's check or official bank check in the amount of \$50,000 payable to the order of the Treasurer of the United States.

147. Notice is given, pursuant to section 8(i)(2)(H) of the FDI Act, 12 U.S.C. § 1818(i)(2), that Respondent is afforded an opportunity for a formal hearing, if requested, concerning the above assessment of civil money penalties. A hearing will be held with respect to the assessment against Respondent, provided that within twenty (20) days after issuance and service of this Notice, Respondent files a written request for a hearing concerning the assessment. Any request for such a hearing must be filed with the Office of Financial Institution Adjudication (OFIA), 3501 North Fairfax Drive, Suite D8116, Arlington, VA 22226, and with OTS, c/o Sandra Evans, Secretary for Adjudicatory Proceedings (sandra.evans@ots.treas.gov), 1700 G Street, N.W., Washington, D.C. 20552, within 20 days after issuance and service of this Notice on Respondent. **Respondent is encouraged to file any request for a hearing electronically with the Office of Financial Institution Adjudication at ofia@fdic.gov.**

Respondent shall also serve a copy of any such request upon Susan L. Chomicz, Deputy Chief Counsel – Enforcement (susan.chomicz@ots.treas.gov) and upon Margaret E. McPartlin, Senior Attorney-Enforcement (meg.mcpartlin@ots.treas.gov), Office of Thrift Supervision, 1700 G Street, N.W. Washington, D.C. 20552.

148. Any hearing held concerning the civil money penalty assessments, as described above, shall be combined with the hearing of the other matters set forth in the foregoing Notice, including those concerning the issuance of cease-and-desist and prohibition orders.

149. If Respondent fails to file a request for a hearing within the aforementioned twenty-day (20-day) period, the above assessment of civil money penalties in the aggregate amount of \$50,000 shall constitute a final and unappealable assessment order of OTS against Respondent as provided by 12 U.S.C. § 1818(i)(2)(E). *See also* 12 C.F.R § 509.19(c)(2). Any

final and unappealable assessment order may be referred to the United States Department of Justice for collection against the subject of the assessment order.

VII. PROCEDURES GENERALLY

150. OTS hereby appoints Administrative Law Judge C. Richard Miserendino (ALJ) of the Office of Financial Institution Adjudication to preside over the hearing for the removal and prohibition and cease-and-desist orders referred to above (in Part V) of this Notice. Unless otherwise set by the ALJ or by agreement of the parties, the hearing should commence sixty (60) days following service of this Notice. The exact time of day and any change in location will be announced at a later time by the ALJ. The hearing will be conducted before the ALJ in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 554-557, as made applicable by 12 U.S.C. § 1818(h) and 12 C.F.R. Part 509.

151. Respondent is directed to file an Answer to this Notice within twenty (20) days of service. Section 509.10 of the OTS rules, 12 C.F.R. § 509.10, governs the filing of papers in this proceeding. Except as otherwise provided by that rule, any papers required to be filed shall be filed with the Office of Financial Institution Adjudication, Attn: Honorable C. Richard Miserendino, ALJ, 3501 North Fairfax Drive, Suite VS-D8116, Arlington, VA 22226-3500. The requirements of the Answer and the consequences of failing to file an Answer are set forth at 12 C.F.R. § 509.19. **Respondent is encouraged to file any answer electronically with the Office of Financial Institution Adjudication at ofia@fdic.gov.** Failure to answer within this time period shall constitute a waiver of the right to appear and contest the allegations set forth in this Notice and shall, upon OTS's motion cause the ALJ or OTS to find the facts in this Notice to be as alleged and to issue an appropriate order.

152. Respondent also shall serve a copy of each and every of its filings on OTS, c/o Sandra Evans, Secretary for Adjudicatory Proceedings (sandra.evans@ots.treas.gov), 1700 G

