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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

DAVID G. RAY, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, Plaintiff, v. TIERONE CORPORATION, GILBERT G. LUNDSTROM, EUGENE B. WITKOWICZ, MICHAEL J. FALBO, JAMES A. LAPHEN; AND CHARLES W. HOSKINS; Defendants.	Lead Case No. 8:10-cv-00199 **SECOND AMENDED CONSOLIDATED COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS**
DOUGLAS L. STEJSKAL, Plaintiff, v. GILBERT G. LUNDSTROM, Defendant.	Member Case No. 4:10CV3177
DOUGLAS L. STEJSKAL, Plaintiff, v. JAMES A. LAPHEN, Defendant.	Member Case No. 8:10CV332

Lead Plaintiffs Vincent Valentino, Raoul and Sharon Turcot and Eric Follestad (collectively the "Plaintiffs"), individually and on behalf of all other persons similarly situated, by their undersigned attorneys, allege in this Second Amended Consolidated Complaint (the "Complaint") the following upon knowledge with respect to their own acts, and upon facts obtained through an investigation conducted by their counsel, *inter alia*: (a) review and analysis of relevant filings made by TierOne Corporation ("TierOne" or the "Company") with the United States Securities and Exchange Commission (the "SEC"); (b) review and analysis of defendants' public documents, conference calls and press releases; (c) review and analysis of securities analysts' reports and advisories concerning the Company; (d) information readily obtainable on the Internet; and (e) interviews of several witnesses with personal knowledge of the relevant facts.

Plaintiffs believe that further substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery. Most of the facts supporting the allegations contained herein are known only to defendants or are exclusively within their control.

I. NATURE OF THE ACTION

1. This is a federal securities class action on behalf of all persons and entities other than Defendants, who purchased the common stock of TierOne between August 9, 2007 and May 14, 2010, inclusive (the "Class Period"), seeking to recover damages caused by Defendants' violations of federal securities laws (the "Class").

2. TierOne is a bank holding company. TierOne conducted it principal business through its wholly owned banking subsidiary, TierOne Bank (the "Bank"). Founded in 1907, the Bank became one of the largest banks in Nebraska. While it survived the Great Depression and numerous recessions, the Bank could not overcome the Company's systemic lack of internal controls and false financial reporting which caused the Bank's failure—the largest Bank failure ever in Nebraska.

3. Throughout the Class Period, Defendants repeatedly told investors that the Company had adequate internal controls and that the Company's periodic reports filed with the SEC were

accurate. In reality, the Company was suffering from a host of internal control deficiencies that directly impacted the accuracy of the Company's SEC filings. Among other things, (1) TierOne's senior management delayed recognition of problems loans and losses in order to make loans appear current when in fact they were not; (2) the Bank failed to timely obtain appraisals for collateral on loans and even ignored such requests from its own loan review department; (3) the Bank failed to implement controls for loan quality or underwriting; (4) many loans approved by TierOne violated its own policies; (5) the Board of Directors was willfully blind to the Bank's obvious problems and failed to undertake remedial actions; (6) despite public statements that the Bank was attempting to remedy internal control failures, Senior Management did nothing, hoping that the economy would improve and the need to address internal controls would go away; (7) the Bank was inappropriately rating loan risk; (8) the Bank failed to keep proper loan files; documentation routinely went missing; and (9) the Bank failed to provide regulators, including the Office of Thrift Supervision ("OTS"), adequate documentation about its loans.

4. The Company's financial statements issued during the Class Period were also materially false and misleading as the Company underreported its loan loss reserves, i.e., the Allowance for Loan and Lease Losses ("ALL"), and related Provision for Loan and Lease Losses (the "Provision").

5. ALL and the related Provision are extremely material as they relates directly to the financial health of a bank. ALL is a specified balance-sheet account held to fund potential losses on loans or leases. ALL is a contra-asset account that is an offset to loans receivable. The related Provision is an expense item charged to a bank's earnings when adding to ALL for the current period. The Provision is reported in the statement of operations (or income/loss statement).

Therefore, any increases in the Provision, will generally decrease the net income (or increase net loss) for the period.

6. On April 26, 2010, the Company announced that its auditor, KPMG LLP ("KPMG") had resigned; that KPMG found that the Company's financial statements for the fiscal year ended December 31, 2008 and quarter ended March 30, 2009 could not be relied upon; and that those financial statements contain "material misstatements" and had to be restated.

7. On April 29, 2010, the Company filed an 8-K with the SEC purporting to provide additional information about KPMG's resignation and the material misstatements in the Company's financial statements. KPMG found that material misstatements concerned loan loss reserves, *i.e.* the ALL and the Provision, and that they were caused by a material internal control deficiency. The 8-K also revealed that KPMG had accused the Company of concealing a document created during the second quarter of 2009 that called for additional loan loss reserves. According to the 8-K, KPMG determined they could no longer rely on management's representations.

8. In a letter dated May 12, 2010, filed with the SEC on May 14, 2010, KPMG refuted a number of statements made by the Company in the April 29, 2010 8-K. Among other things, KPMG noted that contrary to management's representations to KPMG that all significant information was provided to KPMG, KPMG did not learn of the document created in the second quarter of 2009 until April 20, 2010—nearly a year after the document was created. Stated another way, management lied to KPMG. The KPMG letter also revealed that contrary to the Company's representation that KPMG was on the verge of completing its review and audit of the Company's financial statements by April 30, 2010, KPMG's actual position was that it was "highly unlikely" such review and audit would be completed by April 30, 2010.

9. While certain restatement adjustments were never released due to the Bank's failure, the restatement adjustments that were announced were significant; revealing an understatement of the Provision ranging as high as 60%.

10. Additionally, the Company violated Generally Accepted Accounting Principles ("GAAP") and the Company's own stated accounting policies relating to ALL and the Provision because the Company failed to obtain current and available information by failing to timely obtain appraisals of collateral, TierOne intentionally delayed recognition of problem loans and losses, and TierOne maintained reckless loan underwriting and risk management..

11. As a consequence of the fraud, on June 4, 2010, the OTS closed the Bank, and the FDIC was named receiver. In connection with the Bank's closing, Great Western Bank, assumed the Bank's deposits and assets. Shortly thereafter the Company's stock became worthless.

12. On June 24, 2010, the Company filed a Chapter 7 Bankruptcy petition with the District of Nebraska Bankruptcy Court, listing $500,000 to $1 million in assets and $10 million to $50 million in liabilities.

13. On or after July 12, 2011 the Office of Inspector General of the U.S. Department of Treasury ("OIG") issued a government mandated audit report, entitled OIG 11-080, Safety and Soundness: Material Loss Review of TierOne Bank (the "MLR"). The purpose of the MLR is to, among other things, explain the reasons for the Bank's failure based on the OIG's independent investigation. The MLR is attached hereto as Exhibit 1 and is incorporated by reference herein, as if fully set forth herein.

14. The MLR corroborates and is consistent with KPMG's observations highlighted above and the testimony of Plaintiffs' named and confidential witnesses. Among other things, the OIG found that: (a) "TierOne's risk management, underwriting, and credit administration were

inadequate;" (b) many of the loans approved by the Bank violated the Bank's own policies; (c) the Bank's largest loan production office ("LPO") in Las Vegas engaged in "reckless, high-risk lending activities, with blatant disregard for prudent credit administration procedures…"; (d) the Bank's board of directors were not independent and dominated by defendant Lundstrom; (e) the Bank's management and board of directors violated their fiduciary duty to the Bank; (f) "TierOne Management Delayed Recognition of Problem Loans and Losses"; and (g) "TierOne's management often failed to order updated appraisals when modifying loans or when material deterioration in property values was evident."

II. JURISDICTION AND VENUE

15. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. § 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5).

16. This Court has jurisdiction over the subject matter of this action pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.

17. Venue is proper in this Judicial District pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1391(b) as a substantial part of the conduct complained of herein occurred in this District.

18. In connection with the acts, conduct and other wrongs alleged herein, defendants either directly or indirectly used the means and instrumentalities of interstate commerce, including but not limited to the United States mails, interstate telephone communications and the facilities of the national securities exchange.

III. PARTIES

19. Court-appointed lead plaintiffs Vincent Valentino, Raoul and Sharon Turcot and Eric Follestad purchased TierOne common stock during the Class Period and have suffered damages as a result. Lead Plaintiffs' certifications were previously filed with the Court, and are incorporated herein by reference.

20. Defendant TierOne was a Wisconsin corporation with it principal executive offices located at 1235 N Street, Lincoln, Nebraska 68508. The Bank was a federally chartered stock savings bank. During the Class Period, TierOne's stock was listed on the NASDAQ under ticker "TONE" until it was delisted on May 7, 2010. Thereafter, the Company's shares traded on the over-the-counter market.

21. At all relevant times herein, the Bank's primary regulator was the OTS. As the Bank's primary regulator, the OTS conducted periodic examinations of the Bank concerning, among other things, the Bank's quality of its assets and liquidity and the related ALL and Provision, and the Bank's internal controls. Such examinations included communications and discussion with senior officers and directors of the Bank concerning the matters being examined. *See* Office of Thrift Supervision Examination Handbook, available at http://www.ots.treas.gov/?p=ExaminationHandbook (last checked February 23, 2011).

22. During the Class Period the Bank was on a minimum 12 month examination cycle with the OTS. More than one examination could be conducted within the 12 month examination cycle.

23. Defendant Gilbert G. Lundstrom ("Lundstrom") was the Company and Bank's Chairman of the Board and Chief Executive Officer until he resigned those positions in January 2010; positions he held at TierOne since April 2002 and at the Bank since October 2001. Prior thereto, Lundstrom served as Chairman of the Board, President and Chief Executive Officer at the

Company and Bank from September 1999. From 1996 to 1999, he served as Director, President and Chief Executive Officer of the Bank. He joined the Bank in 1994. Following his resignation, he remained with the Company as Vice Chairman. In March of 2010, Lundstrom resigned as Vice Chairman.

24. Defendant Michael J. Falbo ("Falbo") was the Company and Bank's Chairman of the Board, and Chief Executive Officer from January 2010 to March 2010--when he abruptly resigned.

25. Defendant Eugene B. Witkowicz ("Witkowicz") was the Company's Chief Financial Officer, Executive Vice President, Corporate Secretary, and Treasurer. Witkowicz also served as the Bank's Executive Vice President, Corporate Secretary, Treasurer and Director of Finance. Witkowicz joined the Bank in 1972.

26. Defendant James A. Laphen ("Laphen") was the Company's Director, President, and Chief Operating Officer since April 2002. He also held those positions at the Bank since 2001. Laphen joined the Bank in September 2000 as Senior Executive Vice President and Chief Operating Officer. On March 30, 2010, Laphen was named President and acting Chief Executive Officer of the Company and Bank. On June 25, 2010, Laphen resigned all his positions.

27. Defendant Charles W. Hoskins ("Hoskins"), at all relevant times herein was the Company's Lead Director and Chairman of the Company's Audit Committee. On March 30, 2010, Hoskins was named as the Company's and Bank's acting Chairman of the Board. While on the Company's Audit Committee Hoskins was noted as the Company's "audit committee financial expert." On June 25, 2010, Hoskins resigned all his positions from the Company.

A. THE AUDIT COMMITTEE

28. According to the Company's proxy statement filed with the SEC during the Class Period, the Audit Committee's primary duties and responsibilities included:

(a) "monitor[ing] the integrity of the financial reporting process and systems of internal controls regarding finance, accounting, legal and regulatory compliance";

(b) "monitor[ing] the qualifications, independent and performance of the independent auditors, internal audit department and internal asset review department"; and

(c) "provid[ing] an avenue of communication among the independent auditors, management, the internal audit department and the Board of Directors."

29. In connection with the Company's audited financial statements issued during the Class Period, the members of the Audit Committee, led by its Chairman, defendant Hoskins, reviewed and discussed: (1) TierOne's audited financial statements with management; (2) management's evaluation of the effectiveness of TierOne's internal controls over financial reporting, including the erroneous conclusion that such internal controls were effective during the Class Period; and (3) TierOne's financial statements with its independent auditor, KPMG, including matters required under Generally Accepted Auditing Standard, AU Section 380, *i.e.*, the scope and results of the audit that may assist the audit committee in overseeing the financial reporting process for which management is responsible; internal controls; significant accounting policies/changes; accounting estimates and management judgments; audit adjustments and misstatements; and difficulties encountered in performing the audit.

30. Lundstrom, Falbo, Witkowicz, Laphen and Hoskins are collectively referred to hereinafter as the "Individual Defendants."

31. Each of the Individual Defendants:

(a) directly participated in the management of the Company;

(b) was directly involved in the day-to-day operations of the Company at the highest levels;

(c) was privy to confidential proprietary information concerning the Company and its business and operations;

(d) was directly or indirectly involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein;

(e) was directly or indirectly involved in the oversight or implementation of the Company and Bank's internal controls;

(f) was aware of or recklessly disregarded the fact that the false and misleading statements were being issued concerning the Company; and/or

(g) approved or ratified these statements in violation of the federal securities laws.

32. TierOne is liable for the acts of the Individual Defendants and its employees under the doctrine of *respondeat superior* and common law principles of agency as all of the wrongful acts complained of herein were carried out within the scope of their employment with authorization.

33. The scienter of the Individual Defendants and other employees and agents of the Company is similarly imputed to TierOne under *respondeat superior* and agency principles.

B. WITNESSES

34. Bernal Quesada ("Quesada") was the 1st Vice President of the Bank's Internal Asset Review Office from December 2008 to February 2010. Prior to joining the Bank, he worked at various banks in roles progressing from Credit Review Specialist to Senior Vice President-Credit Review Manager. Quesada also worked as bank examiner for the U.S. Office of the Comptroller of Currency ("OCC") for approximately eight years. Quesada is currently employed at the FDIC.

35. According to Quesada:

(a) Prior to joining the Bank in December 2008, the Bank did not have an actual loan review department, even though prior to the real estate crash most other banks had loan review departments. Loan reviews had previously been performed by a few employees who were used primarily for other tasks such as collections. Those employees had been instructed by management to focus on other profitable tasks, and the oversight duties were overlooked.

(b) He was hired by the Bank in December 2008 to build a loan review department in connection with an OTS mandate. He stated that mandate was the result of the June 2008 OTS exam, which required all loans be reviewed by March 31, 2009. As a result of the OTS mandate, guidelines were also supposed to be established for how the bank handled the loan portfolio, ALL, and loan underwriting. Bank management and the Board were charged with ensuring the quality of the loan portfolio was properly assessed and determining if the lending officers were assigning proper risk.

(c) Initially he was in the chain of command of CEO Lundstrom. He then reported to the Board of Directors and attended Board meetings. Every ninety days he was required to attend Board a meeting and report his findings and any concerns. Quesada observed that the Board was extremely passive and did not confront management. Based on his interaction with the Board, Quesada believed that the Board was very unwilling to undertake anything difficult.

(d) Shortly after he joined the Bank, he learned that the Bank was going to fail unless something changed drastically. It didn't. He determined that there was no accountability at the Bank. For example, loan officers were rewarded for making loans, but they never had to review the loans after they were made. He attributed problems at the Bank to senior management's denial of problems, a passive board, lack of accountability of loan officers, and the failure to implement controls for loan quality or underwriting.

(e) While he was at the Bank, the Bank did not believe a loan review department was necessary (as it did not generate profits), and Quesada felt that the Bank resented being required to hire him. Senior management believed that the problems at the Bank were simply due to a poor economy. According to Quesada, a person in charge, Chief Credit Officer, Don Langford, never gave any importance to the loan review process. Quesada learned, among other things, that: (1) the Bank had not been rating loan risk appropriately and that the risk profiles were too high; and (2) the Bank could not provide evidence to the OTS that anyone at the Bank was actually reviewing the Bank's loans; what little review evidence that was provided to the OTS revealed that the quality of the reviews were extremely poor.

(f) As to Special Mention loans the Bank had actually worked or reworked some of those accounts when borrowers could not repay them. However, no financial analysis was done and the Bank could not provide evidence to regulators that the borrowers would be able to eventually repay the loans. When borrowers were interviewed for a potential workout agreement, the loan officers should have obtained current appraisals. This did not happen, even when additional financing was extended to borrowers. When regulators discovered this, they instructed the Bank to obtain valuations for the properties. Once the Bank eventually obtained some of the valuations, the values were significantly lower than the value the Bank had on the books.

(g) The Bank did not obtain timely appraisals for collateral on loans because Quesada believed that the Bank wanted to maintain the OTS mandated risk-based capital ratio of 11%. If the appraisals lowered the values of the underlying properties too much, it would have jeopardized compliance with the OTS requirement, and resulted in OTS enforcement proceedings. He learned that senior management was hopeful that the economy was going to recover, and that valuations would come back if they waited longer for the appraisals. Senior management was responsible for making the decision to hold back on appraisals.

(h) Quesada learned of an internal memorandum written by the head of the Bank's workout area that was provided to the OTS during one of the OTS examinations conducted during the time of Quesada's tenure at the Bank. This memorandum outlined numerous issues at the Bank, including, assertions that management of the Bank did not want to obtain appraisals on problem accounts. The head of the Bank's workout area was in a very important position to recommend how to minimize loan losses to senior management.

(i) When Quesada determined that a property required an updated appraisal, Quesada would communicate it to management, but nothing would happen.

(j) Also at the Bank, Quesada had difficulty getting anyone on the lending side to respond to his findings or concerns. The Chief Credit Officer took no interest in his work. He experienced this same frustration when trying to communicate his findings and concerns to all levels of management.

(k) The OTS' October 2009 report of examination revealed the same findings about the Company's loan portfolio and internal controls that Quesada had been reporting to the Bank's management since he had joined the Bank. Among other things, the OTS indicated that: (1) the Bank's files contained no financial analysis proving that borrowers had the ability to pay the loans; (2) the Bank's lending officers had failed to update files or obtain any recent valuations; and (3) OTS took issues with the few valuations that had been obtained.

(l) From the OTS examinations that were conducted while he was at the Bank, Quesada learned that the FDIC and OTS "had no confidence of what was being reported [by the Bank]."

(m) Quesada spent approximately 8 years as a bank examiner with the OCC. According to Quesada, the OCC categorized bank management as one of three types once regulators get involved: (1) executives who believed there was a problem; (2) executives who were starting to recognize the bank had some issues; and (3) executives who accepted there were problems and tried to resolve the issues. Quesada stated that throughout his tenure at the Bank, TierOne executives were always in denial.

36. Confidential Witness No. 1 ("CW1") was a Vice President in the Bank's Lending Department from 2007 to September 2009. CW1's office was at all relevant times located at TierOne's main office location in Lincoln, NE. According to CW1:

(a) CW1's responsibilities were lending and servicing of corporate clients.

(b) In that role, CW1 did have some interaction with the OTS about the Bank.

(c) As to ALL, Lundstrom and Laphen participated in regular meetings to discuss loans that were about to go bad or were bad, with CW1's supervisors, which included Gale Furnas.

(d) Loans generated by the Bank's loan production office, *i.e.* loans that paid commission to the person generating the loan, did not go through a loan review process. Such loans could be approved by senior management without going through any loan review. CW1 learned of a person from the loan production office who was paid over $1 million in commissions, because he was "booking loans like crazy."

(e) CW1 reported to management that loan file maintenance was poor. CW1 indicated that when loan documents were sent to be filed, and later retrieved by CW1 or others, that the retrieved loan files would be missing documents that the file previously did not.

(f) Based upon CW1's tenure and interaction with management, CW1 determined that TierOne never timely disclosed the true nature of the Bank's deteriorating loan portfolio. CW1 believes that the delay by the Company in issuing its financial statements was to "manipulate" the numbers to make the Bank look to investors in better financial condition that it actually was.

IV. THE FALSE AND MISLEADING STATEMENTS

A. SECOND QUARTER ENDED JUNE 30, 2007

37. The Class Period begins on August 9, 2007, when the Company filed with the SEC a 10-Q for the second quarter ended June 30, 2007. The 10-Q was signed by defendants Lundstrom and Witkowicz. The 10-Q falsely stated that the Company's internal controls were "effective." The 10-Q states in relevant part:

> Our management evaluated, with the participation of our Chief Executive Officer and Chief Financial Officer, the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) or 15d-15(e) under the Securities Exchange Act of 1934) as of the end of the period covered by this report. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of the date of such evaluation to ensure that material information relating to us, including our consolidated subsidiaries, was made known to them by others within those entities, particularly during the period in which this report was being prepared. There was no change in our internal control over financial reporting that occurred during the period covered by this report that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

38. Attached to the 10-Q were separately signed Sarbanes-Oxley Act of 2002 ("SOX") certifications of defendants Witkowicz and Lundstrom. In addition to stating that they were each "responsible for establishing and maintaining disclosure controls and procedures and internal control over financial reporting," the certifications falsely stated, in part, that: (1) the 10-Q "does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading…";(2) "[a]ll significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report and report financial information" was disclosed to the Company's auditor, audit committee and board; and (3) "[a]ny fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting" were disclosed to the Company's board, auditors, and audit committee.

39. Defendants' statements about the effectiveness of the Company's internal controls stated in the Q2 2007 10-Q and SOX certifications attesting to the accuracy thereof, are materially false and misleading because at the time the statements were made, Defendants were aware or

recklessly disregarded that the Company did not have adequate internal controls for the following reasons.

(a) According to the MLR, the Bank failed "primarily because of significant losses in its construction and land development loan portfolio, originated largely through LPOs [Loan production offices]." "A majority of TierOne's deficiencies and loan losses were related to loans originated by its Las Vegas LPO", which led to the Bank's failure. Bank examinations conducted by the OTS in 2008, which included period in 2007, noted the following during that time period:

(i) "TierOne's risk management, underwriting, and credit administration were inadequate. Among other things, TierOne did not adequately analyze the financial condition of its borrowers and the appropriateness of loan disbursements. Many of the loans TierOne approved exceeded the supervisory <u>loan-to-value</u> ratio limitations established by the board. Most of TierOne's deficiencies were associated with its Las Vegas LPO." (emphasis in original).

(ii) "[E]xaminers concluded that the Las Vegas LPO engaged in '… reckless, high-risk lending activities, with blatant disregard for prudent credit administration procedures …' while under the control of the regional lending manager.";

(iii) Although the Las Vegas LPO constituted almost one third of TierOne's loan production by the end of 2006, "TierOne's board and management had relinquished managerial and oversight of its Las Vegas LPO to the regional lending manager." At the same time, "TierOne also provided the regional lending manager with a compensation packaged that rewarded loan production volume with no consideration for loan quality and performance." The OTS found in its 2008 ROE that "Regional lending manager's compensation package was excessive and considered a prohibited unsafe and unsound practice." Since the Board had abdicated responsibility for the office producing one third of its loans, while simultaneously incentivizing the manager of the office to produce large numbers of loans, it did not have adequate internal controls.

(iv) "OTS examiners concluded that TierOne's board and management violated their respective fiduciary duty to exercise the highest standard of care in the conduct, management, and oversight of the thrift's affairs."

(v) "TierOne's CEO was dominant and influential over the board and management. According to one OTS official, the board could not be considered independent since the CEO had handpicked the directors." "Furthermore, the board did not actively challenge management even when it seemed to cause to do so." Since the Board did not review the CEO's actions and decisions, TierOne did not have adequate internal controls.

(vi) "TierOne Management Delayed Recognition of Problem Loans and Losses." From the 2008 and 2009 examinations, "OTS examiners found instances where TierOne management modified construction and land development loans to replenish depleted interest reserves, without verifying borrower ability to repay and in spite of material losses in property values. This practice made the loans appear current when, in fact, they were not." Since TierOne allowed management to modify loan documentation, TierOne did not have adequate internal controls.

(vii) "TierOne's management often failed to order updated appraisals when modifying loans or when material deterioration in property values was evident. In many instances, the original appraisal report was over 2 years old. OTS and

TierOne's internal auditors identified this issue in 2008 but TierOne management took no corrective action to improve the appraisal practices until prompted again by OTS examiners during the 2009 examination." Since TierOne did not update problem loans despite specific instructions from OTS, TierOne did not have effective internal controls.

(b) On January 15, 2009, the Bank entered into an 18-page Supervisory Agreement, signed by defendant Lundstrom, with the OTS (Docket no. 03309). A copy of the Supervisory Agreement is attached hereto as Exhibit 2, is incorporated herein by reference. According to the OTS, the Supervisory Agreement was "based on the findings set out in the Report of Examination pertaining to the OTS's examination of the Bank commenced on June 2, 2008 (ROE)…"

(c) The Supervisory Agreement stated that "OTS is of the opinion that the Bank violated regulations and engaged in acts and practices that are considered unsafe and unsound." The Supervisory Agreement required the "Bank, through its directors, officers, employees, and agents" to comply with a number of laws and regulations including, but not limited to: (1) "classify assets in accordance with regulatory requirements"; (2) "establish adequate [ALL]"; (3) "establish and maintain adequate loan documentation to allow the Bank to appropriately assessing lending risks and make informed lending decisions"; (4) "establish and maintain loan documentation to allow the Bank to identify all sources or repayment to assess the ability of the borrower(s) and any guarantor(s) to reply the indebtedness in a timely manner"; (5) "properly administer and monitor the Bank's loans"; (6) "obtain adequate loan documentation in light of the size and complexity of some of the

Bank's loans"; (7) "follow regulatory requirements regarding the reporting of … [ALL]…"; and (8) a number of other regulations concerning a wide range of the Bank's operations.

(d) As noted above by Quesada, (1) the Bank did not have an actual loan review department; (2) there were no clear guidelines on how the Bank handled the loan portfolio, ALL and loan underwriting; (3) the Company's Board was passive and would not undertake any difficult actions, and management was in denial of the Bank's problems; (4) there was a lack of accountability at the Bank; (5) the Bank failed to implement controls for loan quality or underwriting; (6) the Bank failed to provide evidence that anyone at the Bank was actually reviewing the Bank's loans to the OTS; (7) the Bank was inappropriately rating loan risk; (8) there was a lack of financial analysis on reworked loans and there was a lack of any evidence that borrowers of reworked loans could pay their loans; and (8) the Bank failed to obtain current appraisals on loans and/or ignored requests for appraisals.

(e) As noted by CW1, the Bank's control of its loan documentation was inadequate, whereby material loan documentation in a file would go missing.

40. The 10-Q was also materially false and misleading in describing the Company's purported compliance with GAAP and its own stated "Critical Accounting Policies" in connection with the Bank's loan loss reserves, i.e. ALL and the related income statement item, the Provision. The 10-Q indicates that the Company's "Critical Accounting Policies" as it relates to ALL and the Provision comported with GAAP. To that end, the Company stated, among other things, the Company takes into account the "changes in the value of collateral securing loans"; and "valuing the underlying collateral securing the loans." However, the Company violated GAAP and its own internal "Critical" accounting policies (which purportedly comported with GAAP) for the following reasons:

(a) GAAP consists of those principles recognized by the accounting profession as the conventions, rules, and procedures necessary to define accepted accounting practice at the particular time. Regulation S-X, § 17 C.F.R. §210.401 (a)(1), provides that financial statements not prepared in compliance with GAAP are presumed to be misleading and inaccurate.

(b) Under Statement of Financial Accounting Standards ("SFAS") No. 5, a loss contingency[1], such as the collectability of a loan, shall be accrued as a charge to income if both of the following conditions are met:

- "Information available prior to the issuance of the financial statements indicate it is probable[2] that an asset had been impaired or a liability had been incurred at the date of the financial statement …"; and
- "The amount of loss can be reasonably estimated."

Whether loss can be reasonably estimated, "will normally depend on, among other things, the experience of the enterprise, information about the ability of individual debtors to pay, and the *appraisal* of the receivables in light of the current economic environment."

(c) SFAS No. 114, states that a "[a] loan is impaired when, based on current information and events, it is probable [same definition as in SFAS No. 5] that a credit will be unable to collect all amounts due according to the contractual terms of the loan agreement. … For a loan that has been restructured in a troubled debt restructuring, the contractual terms

1 [A] contingency is defined as an existing condition, situation, or set of circumstances involving uncertainty as to possible gain (hereinafter "gain contingency") or loss (herein after "loss contingency") to an enterprise that will ultimately be resolved when one or more future events occur or fail to occur. Resolution of the uncertainty may confirm the acquisition of an asset or the reduction of a liability or the loss or impairment of an asset or the incurrence of a liability." SFAS No. 5.

of the loan agreement refers to the contractual terms specified by the original loan agreement, not the contractual terms specified by the restructuring agreement."

(d) The Company's failure to timely obtain appraisals or in some instances to obtain any appraisals at all on the underlying properties during the Class Period violated SFAS Nos. 5 and 114, as the Company did not have the requisite current information. Yet the Company continued to carry the loans on its books without impairing them.

(e) The Company also violated Staff Accounting Bulletin 102 ("SAB"), Selected Loan Loss Methodology and Documentation Issues by failing to obtain appraisals because SAB 102 states that a company should, among other things:

- Consider all known and relevant and external factors that may affect loan collectability;
- Ensure that the loan loss methodology be applied consistently;
- Ensure that the loan loss methodology be based on current and reliable data; and
- Ensure that financial statements include a systematic and logical method to consolidate the loss estimate and ensure the loan loss allowance balance is recorded in accordance with GAAP.

(f) The Company violated SAB 102 because it failed to maintain adequate documentation. SAB 102 stated in this regard, among other things:

- "The staff believes that appropriate written supporting documentation for the loan loss provision and allowance facilitates review of the loan loss allowance process and reported amounts builds discipline and consistency into the loan loss allowance determination process, and improves the process for estimating loan losses by

2 SFAS No. 5 defines "probable" as "[t]he future event or events are likely to occur."

helping to ensure that all relevant factors are appropriately considered in the allowance analysis."

(g) The Company was also in violation of SAB 102 in the following additional ways:

- The system of internal controls used to ensure that loan loss process was not maintained in accordance with GAAP; and
- The loan review process was not effective because: (1) differing risk characteristics and loan quality problems were not identified in a timely manner and did not prompt appropriate administrative actions by the Bank; and (2) relevant loan review information, i.e. appraisals, were not considered in estimating losses.

B. THIRD QUARTER ENDED SEPTEMBER 30, 2007

41. On November 7, 2007 the Company filed a 10-Q with the SEC for the third quarter ended September 30, 2007. The 10-Q, signed by defendants Lundstrom and Witkowicz, falsely stated that the Company's internal controls were "effective" for the third quarter, which in sum and substance, was identical to the Company's statements about it Q2 2007 internal controls.

42. Filed with the Q3 2007 10-Q, were materially false SOX certifications separately executed by Lundstrom and Witkowicz, that were, in sum and substance, identical to their SOX certifications they executed at the start of the Class Period.

43. Defendants' statements about the effectiveness of the Company's internal controls and the SOX certifications filed with Q3 2007 10-Q were materially false and misleading for the same reasons such identical statements and SOX certifications filed with the Company's Q2 2007 10-Q were materially false and misleading as set forth in ¶¶ 39-40, above.

44. The 10-Q is also materially false and misleading in describing the Company's purported compliance with GAAP and its own stated "Critical Accounting Policies" in connection with ALL and the Provision. The 10-Q indicates that the Company's "Critical Accounting Policies" as it relates to ALL and the Provision comported with GAAP. To that end, the Company stated, among other things, the Company's takes into account the "changes in the value of collateral securing loans"; and "valuing the underlying collateral securing the loans." For the reasons set forth in ¶¶ 39-40, the 10-Q was materially false and misleading as the Company failed to timely obtain appraisals or any appraisals at all, TierOne intentionally delayed recognition of problem loans and losses, and TierOne maintained reckless loan underwriting and risk management.

C. FISCAL YEAR ENDED DECEMBER 31, 2007

45. On March 11, 2008 the Company filed with the SEC a 10-K for the fourth quarter and fiscal year ended December 31, 2007. The 10-K, signed by defendants Lundstrom, Witkowicz, and Hoskins, falsely stated that the Company's internal controls were effective and identified no material deficiencies. The 10-K states in relevant part:

> Our management has evaluated, with the participation of our Chief Executive Officer and Chief Financial Officer the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) or 15d-15(e) under the Securities Exchange Act of 1934) as of the end of the period covered by this report. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of the date of such evaluation to ensure that material information relating to us, including our consolidated subsidiaries, was made known to them by others within those entities, particularly during the period in which this report was being prepared. There was no change in our internal control over financial reporting that occurred during the period covered by this report that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.
>
> * * *
>
> Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, an evaluation was conducted of the effectiveness of our internal control over financial reporting as of December 31, 2007 using the criteria set forth in Internal Control — Integrated Framework issued

> by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this assessment, our management believes that, as of December 31, 2007, our internal control over financial reporting was effective based on those criteria.

46. Attached to the 10-K were false SOX certifications signed by Lundstrom and Witkowicz, that in sum and substance were nearly identical to the SOX certifications noted above.

47. Defendants statements about the effectiveness of the Company's internal controls and the SOX certifications (attesting to the accuracy of the Company's financial statements and assessment of internal controls in the 10-K) filed with 2007 10-K were materially false and misleading for the same reasons such statements and SOX certifications filed with the Company's Q2 and Q3 2007 10-Q's were materially false and misleading as set forth in ¶¶ 39-40, above.

48. Like the two prior 10-Qs, the 2007 10-K was also materially false and misleading in describing the Company's purported compliance with GAAP and its own stated "Critical Accounting Policies" in connection with ALL and the Provision. The 10-K stated as to the "Provision and Allowance Loan Losses": "We review the loan portfolio not less frequently than quarterly … . Our review includes … the value of the collateral securing loans." The 10-K also states that the Company uses "available information to recognize probable losses on loans inherent in the portfolio." These statements are materially false and misleading for the same reasons the Company's two prior 10-Qs were, as set forth ¶¶ 39-40, above; because the Company did not timely obtain appraisals or obtain any appraisals at all, TierOne intentionally delayed recognition of problem loans and losses, and TierOne maintained reckless loan underwriting and risk management.

D. FIRST QUARTER ENDED MARCH 31, 2008

49. On May 12, 2008 the Company filed a 10-Q with the SEC for the first quarter ended March 31, 2008. The 10-Q, signed by defendants Lundstrom and Witkowicz, falsely stated that the Company's internal controls were "effective" for the first quarter, which in sum

and substance, was identical to the Company's statements about its internal controls in its prior quarterly reports, above.

50. Filed with the Q1 2008 10-Q, were materially false SOX certifications separately executed by Lundstrom and Witkowicz, that were, in sum and substance, identical to their SOX certifications they executed at the start of the Class Period.

51. Defendants' statements about the effectiveness of the Company's internal controls and the SOX certifications filed with Q1 2008 10-Q were materially false and misleading for the same reasons identical SOX and statements were false and misleading, as set forth in ¶¶ 39-40, above.

52. The 10-Q is also materially false and misleading in describing the Company's purported compliance with GAAP and its own stated "Critical Accounting Policies" in connection with ALL and the Provision. The 10-Q indicates that the Company's "Critical Accounting Policies" as it relates to ALL and the Provision comported with GAAP. To that end, the Company stated, among other things, the Company's takes into account the "changes in the value of collateral securing loans"; and "valuing the underlying collateral securing the loans." For the reasons set forth in ¶¶ 39-40, the 10-Q was materially false and misleading as the Company failed to timely obtain appraisals or any appraisals at all, TierOne intentionally delayed recognition of problem loans and losses, and TierOne maintained reckless loan underwriting and risk management.

E. SECOND QUARTER ENDED JUNE 30, 2008

53. On August 8, 2008 the Company filed with the SEC a 10-Q for the second quarter ended June 30, 2008. The 10-Q, signed by defendants Lundstrom and Witkowicz, falsely stated that the Company's internal controls were "effective" for the second quarter, which in sum and

substance, was identical to the Company's statements about its internal controls in its prior quarterly reports, above.

54. Filed with the Q2 2008 10-Q, were materially false SOX certifications separately executed by Lundstrom and Witkowicz, that were, in sum and substance, identical to their SOX certifications they executed at the start of the Class Period.

55. Defendants' statements about the effectiveness of the Company's internal controls and the SOX certifications filed with Q2 2008 10-Q were materially false and misleading for the same reasons such statements and SOX certifications set forth above were materially false and misleading as set forth in ¶¶ 39-40, above.

56. The 10-Q also made the same representations, noted above, about the Company's purported compliance with GAAP and its own stated "Critical Accounting Policies" in connection with ALL and the Provision. For the reasons set forth in ¶¶ 39-40, the 10-Q was materially false and misleading as the Company failed to timely obtain appraisals or any appraisals at all, TierOne intentionally delayed recognition of problem loans and losses, and TierOne maintained reckless loan underwriting and risk management.

F. THIRD QUARTER ENDED SEPTEMBER 30, 2008

57. On November 10, 2008 the Company filed a 10-Q with the SEC for the third quarter ended September 30, 2008. The 10-Q, signed by defendants Lundstrom and Witkowicz, falsely stated that the Company's internal controls were "effective" for the third quarter, which in sum and substance, was identical to the Company's statements about its internal controls in its prior quarterly reports, above.

58. Filed with the Q3 2008 10-Q, were materially false SOX certifications separately executed by Lundstrom and Witkowicz, that were, in sum and substance, identical to their SOX certifications they executed at the start of the Class Period.

59. Defendants' statements about the effectiveness of the Company's internal controls and the SOX certifications filed with Q3 2008 10-Q were materially false and misleading for the same reasons such statements and SOX certifications set forth above were materially false and misleading as set forth in ¶¶ 39-40, above.

60. The 10-Q also made the same representations, noted above, about the Company's purported compliance with GAAP and its own stated "Critical Accounting Policies" in connection with ALL and the Provision. For the reasons set forth in ¶¶ 39-40, the 10-Q was materially false and misleading as the Company failed to timely obtain appraisals or any appraisals at all, TierOne intentionally delayed recognition of problem loans and losses, and TierOne maintained reckless loan underwriting and risk management.

G. FOURTH QUARTER AND FISCAL YEAR ENDED DECEMBER 31, 2008

61. On March 13, 2009 the Company filed with the SEC its annual report for the fiscal year ended December 31, 2008 on Form 10-K. The 10-K, signed by defendants Lundstrom, Witkowicz, and Hoskins, falsely stated that the Company's internal controls were effective and identified no material deficiencies. The 10-K states in relevant part:

> Our management has evaluated, with the participation of our Chief Executive Officer and Chief Financial Officer the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) or 15d-15(e) under the Securities Exchange Act of 1934) as of the end of the period covered by this report. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of the date of such evaluation to ensure that material information relating to us, including our consolidated subsidiaries, was made known to them by others within those entities, particularly during the period in which this report was being

> prepared. There was no change in our internal control over financial reporting that occurred during the period covered by this report that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.
>
> * * *
>
> Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, an evaluation was conducted of the effectiveness of our internal control over financial reporting as of December 31, 2008 using the criteria set forth in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this assessment, our management believes that, as of December 31, 2008, our internal control over financial reporting was effective based on those criteria.

62. Attached to the 10-K were false SOX certifications signed by Lundstrom and Witkowicz, that in sum and substance were nearly identical to the SOX certifications noted above.

63. Defendants statements about the effectiveness of the Company's internal controls and the SOX certifications (attesting to the accuracy of the Company's financial statements and assessment of internal controls in the 10-K) filed with 2008 10-K were materially false and misleading for the same reasons such statements and SOX certifications were materially false and misleading as set forth in ¶¶ 39-40, above; and for the following additional reasons:

(a) On April 26, 2010, the Company issued a press release announcing, *inter alia*: (1) that the Company's independent auditor, KPMG had resigned effective April 23, 2010; (2) that KPMG had withdrawn its unqualified or clean audit opinion and internal control assessment at and for the fiscal year ended December 31, 2008 as well KPMG's review of the Company's financial statements at and for the three months ended March 31, 2009; and (3) that the aforementioned financial statements "contain material misstatements and should not be relied upon by investors." The April 26, 2010 press release states in relevant part:

TierOne Corporation Reports Resignation of KPMG LLP as Its Auditors

Business Wire LINCOLN, Neb. -- April 26, 2010

TierOne Corporation (NASDAQ:TONE) ("Company"), the holding company for TierOne Bank, today reported that KPMG LLP has orally submitted its resignation effective April 23, 2010 as the Company's independent auditors. In addition, KPMG has orally informed the Company's Audit Committee that it has withdrawn its audit opinion and internal control assessment relating to the Company's financial statements at and for the year ended December 31, 2008 as well as its review of the Company's financial statements at and for the three months ended March 31, 2009. KPMG has orally indicated to the Company that those financial statements contain material misstatements and should not be relied upon by investors. The Company's Audit Committee is reviewing the statements made by KPMG and intends to commence a search for new independent auditors.

(b) On April 29, 2010, the Company filed with the SEC an 8-K, signed by defendant Laphen, dated April 23, 2010, concerning the Company's prospective restatement. According to the announcement, KPMG had withdrawn its clean audit opinion on the Company's fiscal 2008 financial statements and assessment of internal controls due to a "material weakness in internal control over financial reporting related to material misstatements" concerning the Company's loan loss reserves, also known as ALL. The 8-K states in relevant part:

<u>Item 4.02. Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review</u>.

KPMG has advised the Company and the Company's Audit Committee orally that (1) it has withdrawn its audit opinion relating to the Company's financial statements at and for the year ended December 31, 2008 contained in the 2008 Form 10-K because such financial statements contain material misstatements related to certain out of period adjustments for loan loss reserves; and (2) that it has withdrawn its internal control assessment relating to the Company's financial statements at and for the year ended December 31, 2008 contained in the 2008 Form 10-K due to a material weakness in internal control over financial reporting related to the material misstatements. As a result, KPMG has advised the Company and the Company's Audit Committee orally that these financial statements should no longer be relied upon. In addition, KPMG has advised the Company orally that the financial statements as of and for the three-month period ended March 31, 2009 contained in the Quarterly Report on Form 10-Q filed by the Company on May 8, 2009 should no longer be relied upon and that KPMG was withdrawing its review of such financial statements. As previously reported by the Company, the Audit Committee of the Company determined that the financial statements as of and for the three-month and six-month periods ended June 30, 2009 contained in the Quarterly Report on Form 10-Q filed by the Company on August 10, 2009 should not be relied upon.

Other Information

The Company is currently delinquent in the filing of its Form 10-Q for the fiscal quarter ended September 30, 2009 and its Form 10-K for the fiscal year ended December 31, 2009. As previously reported by the Company, these delinquencies have been caused by the Company's need to reevaluate its loan loss provisions for the quarter ended June 30, 2009, in response to an examination by the OTS.

(c) The April 29, 2010 8-K also provided additional information concerning the circumstances of KPMG's resignation, which purportedly was the result of issues raised by the OTS during an examination of the Bank in the second quarter of 2009, and a document that KPMG did not timely receive setting forth additional specific reserves. The announcement also revealed that KPMG determined that it could "no longer rely on management's representations." In an effort to minimize the gravity of these revelations, the Company stated that it had been informed by KPMG on April 19, 2010 that KPMG would be in a position to issue its audit opinion by April 30, 2010. The 8-K states in relevant part:

Item 4.01. Changes in Registrant's Certifying Accountant

Resignation of Independent Auditors

On April 23, 2010, TierOne Corporation (the "Company") was advised orally by KPMG LLP ("KPMG"), the Company's independent registered public accounting firm, that KPMG was resigning from its position as the independent auditors of the Company and of the TierOne Bank Savings Plan, effective immediately. The oral resignation was subsequently confirmed in writing. A copy of the letters of resignation are attached to this Current Report on Form 8-K as Exhibit 99.1 and Exhibit 99.2.

Prior to April 23, 2010, KPMG had not previously advised management or the Company's Audit Committee of its intention to resign its engagement as the Company's independent registered public accounting firm. The resignation was not sought or recommended by the Company's Audit Committee. The Audit Committee is in the process of commencing an immediate search for a new independent accountant.

It is the Company's understanding that **KPMG has resigned as a culmination of factors related to an examination by the Office of Thrift Supervision (OTS), TierOne Bank's**

primary regulator, which required the Company to reevaluate its loan loss provisions for the quarter ended June 30, 2009. Specifically, on April 25, 2010, KPMG orally advised the Company (through the Company's Audit Committee) that KPMG requested on multiple occasions, and did not timely receive, a document estimating potential additional needs for specific reserves (the "document"), which was provided to the OTS and referenced in an OTS examination report, and that the Company allegedly asserted to the OTS, after the OTS had requested an additional copy of it, that the document had been destroyed. KPMG further indicated that the document, and management's alleged actions related to it, lead KPMG to conclude that it is no longer able to rely on management's representations.

Contrary to KPMG's position, the Company had previously provided the document to KPMG. Moreover, the document was provided electronically to the OTS and was not destroyed by the Company. The Company also notes that at no point did KPMG inform the Company's Audit Committee of the failure to receive the document, and that as recently as April 19, 2010, KPMG had affirmed (without absolute assurance) that it believed it could be in a position to issue its audit opinion in time for the Company to file its Annual Report on Form 10-K for the year ended December 31, 2009, amended Form 10-Q for the quarter ended June 30, 2009 and Form 10-Q for the quarter ended September 30, 2009 by April 30, 2010.

Reportable Events and Disagreements with the Independent Auditors

The report of KPMG on the financial statements of the Company for the fiscal year ended December 31, 2008 contained no adverse opinions or disclaimer of opinion and was not qualified or modified as to uncertainty, audit scope or accounting principles (KPMG did not issue a report for the fiscal year ended December 31, 2009). For the fiscal years ended December 31, 2008 and December 31, 2009 and through the date of this report, there were no disagreements with KPMG on any matter of accounting principles or practices, financial statement disclosure or audit scope or procedure which, if not resolved to the satisfaction of KPMG, would have caused it to make reference to the subject matter of such disagreement in its reports on the financial statements for such fiscal years. Nor, except to the extent described below in this Form 8-K, were there any reportable events within the meaning of Item 304(a)(1)(v) of Regulation S-K for the fiscal years ended December 31, 2008 and December 31, 2009 and through the date of this report. **In connection with KPMG's resignation, KPMG advised the Company orally that it had concluded that it is no longer able to rely on management's representations and that it was withdrawing its audit opinion relating to the Company's financial statements at and for the year ended December 31, 2008 contained in the Annual Report on Form 10-K filed by the Company on March 13, 2009 (the "2008 Form 10-K") because such financial statements contain material misstatements related to certain out of period adjustments for loan loss reserves; and that it was withdrawing its internal control assessment relating to the Company's financial statements at and for the year ended December 31, 2008 contained in the 2008 Form 10-K due to a material weakness in internal control over financial reporting related to the material misstatements.**

(d) According to a KPMG letter to the Company dated May 12, 2010, attached as an exhibit to an 8-K/A the Company filed with the SEC on May 14, 2010, KPMG refuted a number of representations made by the Company. Not only did the letter reveal that the Company falsely described the circumstances leading to KPMG's resignation, but the letter indicates that the Company lied to, or concealed material information from KPMG when "management represented to KPMG that all significant board and committee actions were included in the Board minutes and Board of directors materials provided to KPMG" yet the document created in the second quarter of 2009 setting forth additional reserves was not included in those materials. The letter states in relevant part:

The Company's statement in the third paragraph that KPMG resigned as a culmination of factors related to an examination by the OTS, which required the Company to reevaluate its loan loss provisions for the quarter ended June 30, 2009. **While KPMG did describe a culmination of factors leading to its decision to resign, the factors were not limited to matters related to the OTS examination, and the Company's reference to a "document estimating potential additional needs for the specific reserves" is incomplete.** KPMG told the Chair of the Company's Audit Committee that KPMG had learned of the existence of a document (the "document") showing an internal analysis of estimates of potential additional needs for specific reserves that appeared to have been created in the second quarter of 2009 and was told by a representative of the OTS that the document had been presented to the Company's Board of Directors during the second quarter of 2009. KPMG also told the Chair of the Company's Audit Committee that the document had not been produced timely to **KPMG, nor had it been included in the Board of Director materials provided to KPMG and that the Board of Director minutes did not include any reference of the presentation of the document or a discussion of it by the Board, and that management had represented to KPMG that all significant board and committee actions were included in the Board minutes provided to KPMG.** KPMG told the Chair of the Company's Audit Committee that as a consequence KPMG believed it could not rely on prior representations by management, and was terminating its auditor relationship with the Company.

(e) The May 12, 2010 KPMG letter reveals that it was not until April 20, 2010 that KPMG received the document, which was created during the *second quarter of 2009*, and directly refutes the Company's assertion in the April 29, 2010 8-K that such information had been provided to KPMG earlier. The letter states in relevant part:

> The Company's statement in the fourth paragraph that it had previously provided the document estimating potential additional needs for specific reserves to KPMG. KPMG was provided an electronic download of information from the Company's counsel on December 8, 2009, and has performed an electronic search of such electronically-provided information and has been unable to locate the aforementioned document that it obtained from the Company on April 20, 2010.

(f) Finally, the May 12, 2010 letter demonstrates that the Company was apparently attempting to minimize the gravity of these revelations by telling investors that KPMG was on the verge of issuing an audit opinion by April 30, 2010. However, according to KPMG "on April 19, 2010 [KPMG] told the Audit Committee Chair and management that it was highly unlikely KPMG would be in a position to complete its reviews of the quarterly financial information and its audit of the consolidated 2009 financial statements by April 30, 2010."

(g) Because the 10-K contained "material misstatements" concerning the Company's loan loss reserve, i.e. that ALL and thus related Provision, and had to be restated, the 10-K was false when made.

- Restatements are required for material accounting errors that existed at the time financial statements were prepared. *See* SFAS 154.
- An accounting "error" is a term of art, and results from (i) mathematical mistakes, (ii) mistakes in the application of GAAP, or (iii) oversight or misuse of facts that existed at the time the financial statements were prepared. SFAS 154.

64. Like the Company's prior reports set forth above, the 2008 10-K was also materially false and misleading in describing the Company's purported compliance with GAAP and its own

stated "Critical Accounting Policies" in connection with ALL and the Provision. The 10-K stated as to the "Provision and Allowance Loan Losses": "We review the loan portfolio not less frequently than monthly … . Our review includes … the value of the collateral securing loans." The 10-K also states that the Company uses "available information to recognize probable losses on loans inherent in the portfolio." These statements are materially false and misleading for the same reasons set forth in ¶¶39,-40, 63, above; because the Company did not timely obtain appraisals or obtain any appraisals at all, TierOne intentionally delayed recognition of problem loans and losses, and TierOne maintained reckless loan underwriting and risk management.

D. FIRST QUARTER ENDED MARCH 31, 2009

65. On May 8, 2009, the Company filed a 10-Q with the SEC for the first quarter ended March 31, 2009. The 10-Q, signed by defendants Lundstrom and Witkowicz, falsely stated that the Company's internal controls were "effective" for the first quarter, which in sum and substance, was identical to the Company's statements about its internal controls set forth above.

66. Filed with Q1 2009 10-Q, were materially false SOX certifications separately executed by Lundstrom and Witkowicz, that were, in sum and substance, identical to their SOX certifications set forth above.

67. Defendants' statements about the effectiveness of the Company's internal controls and the SOX certifications (attesting to the accuracy of the Company's financial statements and assessment of internal controls in the 10-Q) were materially false and misleading for the same reasons set forth in ¶¶39-40, 63.

68. The 10-Q is also materially false and misleading in describing the Company's purported compliance with GAAP and its own stated "Critical Accounting Policies" in connection with ALL and the Provision. The 10-Q indicates that the Company's "Critical Accounting Policies"

as it relates to ALL and the Provision comported with GAAP. To that end, the Company stated, among other things, the Company takes into account the "changes in the value of collateral securing loans"; and "valuing the underlying collateral securing the loans. These statements are materially false and misleading for the same reasons set forth in ¶¶39-40, 63, above; because the Company did not timely obtain appraisals or obtain any appraisals at all, TierOne intentionally delayed recognition of problem loans and losses, and TierOne maintained reckless loan underwriting and risk management.

E. SECOND QUARTER ENDED JUNE 30, 2009

69. On August 7, 2009 the Company issued a materially false and misleading press release announcing the Company's second quarter ended June 30, 2009 financial results. In the announcement, the Company reported a net loss of $16.1 million and a Provision of $21.7 million for the second quarter. The Company also reported ALL of $59.4 million at June 30, 2009. The Company repeated these figures in the Company's second quarter 10-Q, signed by defendants Lundstrom and Witkowicz, filed with the SEC on August 10, 2009.

70. In addition to the reasons set forth above in ¶¶ 39-40, 63, the Company's Provision and related ALL set forth in the press release and 10-Q were materially false and misleading for the following additional reasons.

(a) On October 14, 2009, the Company filed an 8-K with the SEC, signed by defendant Lundstrom, dated October 13, 2009, revealing that the Company understated its Provision for Q2 by $13.9 million, or 64%, in the Q2 2009 10-Q (and press release). The 8-K also revealed that the "the financial statements as of and for the three-month and six-month periods ended June 30, 2009 contained in the Quarterly Report on Form 10-Q filed by the Company on August 10, 2009 should not be relied upon." The Company stated that is "plans to restate its financial statements for such periods and will present the restated financial statements in an amendment to its Quarterly Report on Form 10-Q of the quarter ended June 30, 2009 as soon as practicable." An accounting restatement is a term of art and means the financial statements to be restated were materially false when made.

(b) The October 14, 2009 announcement itself is materially false and misleading because, on November 10, 2009 the Company filed an 8-K with SEC, signed by defendant Lundstrom, revealing additional misstatements concerning the Company's Provision for Q2 2009. According to the 8-K, the Company determined that it had to increase the $21.7 million Provision initially reported in the 10-Q for the second quarter by $17.4 million. Three million higher than what the Company stated less than a month before in the October 14, 2009 8-K.

(c) While the Company never filed a restated Q2 2009 10-Q as it promised in the October 14, 2009 8-K ("The Company plans to restate its financial statements for [Q2 2009] as soon as practicable"), it did file an amended Thrift Financial Report ("TFR") for Q2 2009 with the OTS on November 5, 2009. The TFR revealed that the Company's Provision for Q2 2009 was in fact $39 million. The TFRs are required to be prepared in compliance with GAAP.

(d) Additionally, falsity of the Company's Q2 2009 10-Q is further demonstrated by KPMG's assertions that the Company concealed from KPMG a document setting forth additional specific reserves that was created during the second quarter of 2009.

71. The Q2 2009 10-Q also falsely stated that the Company's internal controls were "effective" for the second quarter, which in sum and substance was identical to the Company's statements about it internal controls in the 10-Qs set forth above.

72. Filed with the Q2 2009 10-Q, were materially false SOX certifications separately executed by Lundstrom and Witkowicz, that were, in sum and substance, identical to their SOX certifications set forth above.

73. The statements about the effective internal controls and related SOX certification are materially false and misleading for the reasons set forth in ¶¶ 39-40, 63, and 70.

74. The 10-Q is also materially false and misleading in describing the Company's purported compliance with GAAP and its own stated "Critical Accounting Policies" in connection with ALL and the Provision. The 10-Q indicates that the Company's "Critical Accounting Policies" as it relates to ALL and the Provision comported with GAAP. To that end, the Company stated, among other things, the Company takes into account the "changes in the value of collateral securing loans"; and "valuing the underlying collateral securing the loans." These statements are materially false and misleading for the same reasons set forth in ¶¶39-40, 63, and 70, above; because the Company did not timely obtain appraisals or obtain any appraisals at all, TierOne intentionally delayed recognition of problem loans and losses, and TierOne maintained reckless loan underwriting and risk management.

V. THE TRUTH SLOWLY EMERGES /LOSS CAUSATION

75. During the Class Period, the Individual Defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated the Company's stock price and operated as a fraud or deceit on purchasers of TierOne common stock by misrepresenting the Company's financial condition and business prospects. Once the Individual Defendants' misrepresentations and fraudulent conduct were disclosed to the market, the Company's stock price reacted negatively as the artificial inflation was removed from it. As a result of their purchases of TierOne common stock during the Class Period, Plaintiffs and other members of the Class suffered economic loss.

76. On January 15, 2009, after the market closed, the Company announced that it had entered into an 18-page Supervisory Agreement with the OTS (Ex. 2); revealing a number of material internal control weaknesses. This adverse information caused the Company's stock to fall on January 16, 2009 from a prior closing price of $3.38 per share to $2.10 per share, a 37.8% decline.

77. On October 14, 2009, after the market closed, the Company filed an 8-K with the SEC announcing, among other things, that the Company's Provision and ALL for Q2 2009 had to be restated. The announcement stated that the Provision for Q2 2009 had to be increased by $13.9 million. The announcement states in relevant part:

> Item 2.06 Material Impairments
>
> TierOne Corporation ("Company") is the holding company for TierOne Bank ("Bank"). In connection with an examination of the Bank which commenced after the Company filed its second quarter 2009 Form 10-Q, the Office of Thrift Supervision ("OTS"), the Bank's primary regulator, directed the Bank to establish additional loan loss provisions for the quarter ended June 30, 2009 because of differences of opinion and the timeliness of credit information used in estimating the fair value assessment of collateral on five individual credits. As a result of the OTS examination, the Bank also was directed to effect, retroactive to June 30, 2009, certain loan grading changes. In particular, the OTS directed the Bank to reclassify $82.3 million in loans previously designated as "special mention" into adverse classifications.
>
> In light of the foregoing, on October 13, 2009, the Company's Audit Committee, in consultation with the Company's management and independent registered public accountants, determined that the Company will record an additional loan loss provision of approximately $13.9 million (which includes a total charge-off of approximately $10.6 million) for the three months ended June 30, 2009 to reflect, as directed by the OTS, an adjustment to its allowance for loan losses as of June 30, 2009. As noted in Item 4.02 below, the Company intends to file an amended Form 10-Q for the quarter ended June 30, 2009 (including restated financial statements) as soon as practicable to reflect the effects of the above-referenced charge-offs, loan grading changes and increase in the allowance for loan losses.
>
> The Bank is currently subject to a supervisory agreement that it entered into with the OTS on January 15, 2009. Among other things, the supervisory agreement requires the Bank to maintain enhanced minimum capital requirements in excess of those required of an

institution deemed to be "well capitalized" by the OTS. As a result of the above-referenced restatement, the Company expects that the Bank's minimum core capital ratio, as of June 30, 2009, will be adjusted to approximately 8.11%, which is below the elevated ratio of 8.50% required by the supervisory agreement (the regulatory core capital ratio normally required to be deemed "well capitalized" is 5.00%). The Bank's total risk-based capital ratio, as of June 30, 2009, is expected to be adjusted to approximately 10.85%, which is below the 11.00% required by the supervisory agreement (the regulatory total risk-based capital ratio normally required to be deemed "well capitalized" is 10.00%). The Bank's failure to comply with the supervisory agreement could result in, among other actions, the initiation of additional enforcement actions by the OTS.

As part of the Bank's efforts to maintain enhanced minimum capital requirements pursuant to its supervisory agreement with the OTS, on September 4, 2009, the Company announced that the Company and the Bank had entered into a definitive agreement ("Agreement") to transfer deposits and sell selected loans and other assets associated with 32 of the Bank's branch offices to Great Western Bank, a South Dakota-based subsidiary of National Australia Bank. The Bank believes the consummation of the transactions contemplated by the Agreement, which are subject to, among other conditions, the receipt of regulatory approval, will result in the Bank's capital position exceeding the enhanced OTS minimum capital requirements imposed by the supervisory agreement. There can be no assurances, however, that the Bank will be in compliance with these enhanced minimum capital requirements upon consummation of the transactions contemplated by the Agreement due to unforeseen or intervening events nor can there be any assurance that the Agreement will receive all regulatory and other approvals and the transactions thereunder consummated. The parties to the Agreement are seeking to consummate the transactions contemplated by the Agreement as early as late 2009 but there are no assurances that such schedule will be achieved.

The Bank continues to evaluate its loan portfolio as well as its loan loss reserves. Depending on future circumstances and events, additional loan loss provisions may be required for periods subsequent to June 30, 2009.

Item 4.02(a) Non-Reliance on Previously Issued Financial Statements or Related Audit Report or Completed Interim Review

On October 13, 2009, as a result of the matters described in Item 2.06 hereof (which disclosure is incorporated herein by reference), the Audit Committee of the Company determined that the financial statements as of and for the three-month and six-month periods ended June 30, 2009 contained in the Quarterly Report on Form 10-Q filed by the Company on August 10, 2009 should not be relied upon. The Company plans to restate its financial statements for such periods and will present the restated financial statements in an amendment to its Quarterly Report on Form 10-Q for the quarter ended June 30, 2009 as soon as practicable. The Bank will likewise file an amended Thrift Financial Report for the period ended June 30, 2009.

78. This announcement caused the Company's stock to fall from $3.27 per share on October 14, 2009 to $2.98 per share on October 15, 2010, an 8.8% decline. On October 16, 2009, the Company's stock continued to fall and closed at $2.69 per share.

79. On November 10, 2009, the Company filed an 8-K making additional corrections to the Company's Provision and ALL for Q2 2009. This announcement states in relevant part:

> Item 2.06. Material Impairments.
>
> TierOne Corporation (the "Company") is the holding company for TierOne Bank (the "Bank"). On a quarterly basis, the Bank is required to file Thrift Financial Reports ("TFRs") with the Office of Thrift Supervision (the "OTS"). The OTS is the Bank's primary regulator. The TFR requires the Bank to report various information, including financial statement and supplemental data regarding the Bank's performance and financial condition for and as of the quarter covered by the TFR.
>
> On November 5, 2009, the Bank filed its TFR for the quarter ended September 30, 2009. The TFR reflected a loan loss provision of approximately $120.2 million (which includes a total charge-off of $109.8 million) for the three months ended September 30, 2009. The loan loss provision and the charge-offs for the third quarter reflect (i) the results of the ongoing OTS examination of the Bank; (ii) the receipt of recent, updated appraisals which show continued deterioration of property values in selected markets; (iii) aggressive steps undertaken by management to dispose of the Bank's problem assets; and (iv) management's subjective judgment as to continued deterioration in the Bank's loan portfolio resulting from ongoing economic challenges generally and, in particular, challenges in the real estate market.
>
> In a Form 8-K filing dated October 13, 2009, the Company had previously disclosed that it would be restating its financial statements as of and for the three-month and six-month periods ended June 30, 2009. In the Form 8-K filing, the Company reported that it expected an additional loan loss provision of $13.9 million (including a total charge-off of $10.6 million) for the three months ended June 30, 2009. On November 5, 2009, the Bank filed an amended TFR for the quarter ended June 30, 2009 and reported an increase to $17.4 million (including a total charge-off of $14.1 million) in the additional loan loss provision for such quarter. The $3.3 million increase in the additional loan loss provision resulted from the further review of the Bank's loan portfolio that is being undertaken as the Company continues to prepare its restated financial statements for inclusion in an amended Form 10-Q for the quarter ended June 30, 2009.
>
> The Bank is currently subject to a supervisory agreement that it entered into with the OTS on January 15, 2009. Among other things, the supervisory agreement requires the Bank to maintain enhanced minimum capital requirements in excess of those required of an

institution deemed to be "well capitalized" by the OTS. As a result of the financial performance reported in the above-referenced TFRs, the Bank's minimum core capital ratio, as of June 30, 2009, was approximately 7.95%, which is below the elevated ratio of 8.50% required by the supervisory agreement (the regulatory core capital ratio normally required to be deemed "well capitalized" is 5.00%). The Bank's total risk-based capital ratio, as of June 30, 2009, was approximately 10.66%, which is below the 11.00% required by the supervisory agreement (the regulatory total risk-based capital ratio normally required to be deemed "well capitalized" is 10.00%). With the additional loan loss provisions discussed above, as of September 30, 2009, the Bank's core capital and total risk-based capital ratios were approximately 4.00% and 6.09%, respectively.

The Bank, as of September 30, 2009, is below both the enhanced capital requirements set forth in the supervisory agreement as well as the ratios normally required to be deemed "well capitalized" by the OTS. The Bank's total risk-based capital ratio of 6.09% as of September 30, 2009 results in the Bank being classified as "undercapitalized." As a result of being undercapitalized as of September 30, 2009, the Bank is required to submit a capital restoration plan and is subject to various additional restrictions provided by the terms of the Prompt Corrective Action regulations. It is possible that the OTS may take additional actions as a result of the Bank’s capital status and the ongoing examination of the Bank by the OTS. The Company cannot currently predict what impact it may experience as a result of the actions that may be taken by the OTS.

As part of the Bank’s efforts to increase its capital, as previously disclosed the Company and the Bank entered into a definitive agreement, dated September 3, 2009 (the "Agreement"), to transfer deposits and sell selected loans and other assets associated with 32 of the Bank’s branch offices to Great Western Bank, a South Dakota-based subsidiary of National Australia Bank. The increased capital expected to result from the consummation of the transactions contemplated by the Agreement (which Agreement is subject to, among other conditions, the receipt of regulatory approval), combined with a reduction in risk-based assets due to the sale, is expected to result in the Bank being deemed "adequately capitalized," but below the levels required to be "well capitalized" or to be in compliance with the supervisory agreement. In addition, there can be no assurances that the Bank will be at least "adequately capitalized" upon consummation of the transactions contemplated by the Agreement due to unforeseen or intervening events, including possible further regulatory actions as a result of the OTS examination, nor can there be any assurance that the Agreement will receive all necessary regulatory and other approvals in order to be able to consummate the transaction. The Bank is currently seeking to consummate the transactions contemplated by the Agreement in the first quarter of 2010 but there are no assurances that such schedule will be achieved. The closing of the transaction is subject to customary conditions precedent, including regulatory approval, several of which are beyond the Company’s ability to control.

* * *

Item 8.01. Other Events.

> As previously reported, the Company is in the process of preparing an amended Form 10-Q for the quarter ended June 30, 2009. The amended Form 10-Q will include restated financial statement as of and for the three-month and six-month periods ended June 30, 2009. The restated financial statements are required because the OTS directed the Bank to establish additional loan loss provisions for the 2009 second quarter. The Company intends to file the amended Form 10-Q as soon as practicable after management has completed its reassessment of the Bank's loan portfolio. The delay in the preparation of the amended second quarter Form 10-Q has also resulted in a delay in filing of the Company's Form 10-Q for the quarter ended September 30, 2009, which filing was due on November 9, 2009. The Company is working diligently to file both the amended second quarter Form 10-Q and the third quarter Form 10-Q as promptly as possible. The Company will not, however, be able to make such filings within the five calendar day grace period potentially available pursuant to Rule 12b-25 under the Securities Exchange Act of 1934, as amended.

80. The November 10, 2009 announcement, issued after the market closed, caused the Company's stock to fall on November 11, 2009 from a prior closing price of $1.71 per share to $1.07 per share, or 37.4%.

81. On March 31, 2010, the Company issued a press release announcing that it had entered into a Consent to Issuance of Prompt Corrective Action Directive (the "PCA") with the OTS and announced a number of management changes. A copy of the PCA is attached hereto as Exhibit 3. The announcement states in relevant part:

> TierOne Bank Executes Consent to Issuance of Prompt Corrective Action Directive with Federal Regulator; Announces Board and Management Changes
>
> Business Wire
>
> LINCOLN, Neb. -- March 31, 2010
>
> TierOne Corporation (NASDAQ: TONE) ("Company"), the holding company for TierOne Bank ("Bank"), announced today that the Bank has executed a Stipulation and Consent to a Prompt Corrective Action Directive ("PCA Directive") with the Office of Thrift Supervision ("OTS"), the Bank's primary federal regulator, setting forth certain required recapitalization mandates and additional business and operational restrictions. The PCA Directive will become effective upon the acceptance of the Consent by the OTS and the issuance of the PCA Directive.

Under the PCA Directive, among other things, the Bank will be required to be recapitalized prior to May 31, 2010, by either merging with or being acquired by another financial institution or by the sale of all or substantially all of the Bank's assets and liabilities to another financial institution. The PCA Directive further requires the Bank to submit a binding merger or acquisition agreement to the OTS by April 30, 2010, unless extended in writing by the OTS.

The Company and the Bank cannot provide assurance that the deadlines and other terms of the PCA Directive can be satisfied. The Bank's consent to the PCA Directive follows the OTS' denial of the Bank's capital restoration plan.

The Company and the Bank also announced today that Charles W. Hoskins has been named acting Chairman of the Board and James A. Laphen has been named President and acting Chief Executive Officer of the Company and the Bank effective immediately. Hoskins, 73, has been serving as the Company's lead director. Laphen, 61, had previously been President and Chief Operating Officer of the Company and the Bank.

The appointments of Hoskins and Laphen follow the resignation of Michael J. Falbo as Chairman and Chief Executive Officer and as a director of the Company and the Bank. Samuel P. Baird, Gilbert G. Lundstrom, James E. McClurg and James W. Strand also resigned from the Board of Directors of the Company and the Bank. These resignations follow ongoing discussions with the OTS regarding the terms of the PCA Directive, particularly with respect to the deadlines for compliance set forth in the PCA Directive. The directors who resigned did not indicate any disagreement with the Company or the Bank's operations, policies or practices.

Falbo was named Chairman and Chief Executive Officer on January 28, 2010. Lundstrom, who was named Vice Chairman following his retirement as Chairman and Chief Executive Officer in January, has been with TierOne Bank since 1994.

Baird joined the Company's and the Bank's Boards in 2008 and both McClurg and Strand joined the Boards in July 2009.

82. This adverse information caused the Company's stock to fall from $.62 per share to $.32 per share on March 31, 2010, or 48.4%.

83. On April 26, 2010 the Company issued a press release announcing that KPMG had resigned. The announcement states in relevant part:

TierOne Corporation Reports Resignation of KPMG LLP as Its Auditors

LINCOLN, NE – April 26, 2010 - TierOne Corporation (NASDAQ: TONE) ("Company"), the holding company for TierOne Bank, today reported that KPMG LLP has orally submitted

> its resignation effective April 23, 2010 as the Company's independent auditors. In addition, KPMG has orally informed the Company's Audit Committee that it has withdrawn its audit opinion and internal control assessment relating to the Company's financial statements at and for the year ended December 31, 2008 as well as its review of the Company's financial statements at and for the three months ended March 31, 2009. KPMG has orally indicated to the Company that those financial statements contain material misstatements and should not be relied upon by investors. The Company's Audit Committee is reviewing the statements made by KPMG and intends to commence a search for new independent auditors.
>
> The Company intends to file a current report on Form 8−K with the United States Securities and Exchange Commission ("SEC") to report these events within the timeframe required by SEC regulations.

84. On April 29, 2010, the Company filed an 8-K with SEC providing additional detail about the circumstances of the KPMG's resignation; KPMG's withdrawal of its clean audit opinions on the Company's fiscal 2008 annual report and related assessment of internal controls, the identification of material internal control weaknesses, information about the purported document setting forth additional reserves the Company made in the second quarter of 2009, and KPMG's finding that management's representations could no longer be relied upon. The announcement states in relevant part:

> Item 4.01.Changes in Registrant's Certifying Accountant.
> *Resignation of Independent Auditors*
>
> On April 23, 2010, TierOne Corporation (the "Company") was advised orally by KPMG LLP ("KPMG"), the Company's independent registered public accounting firm, that KPMG was resigning from its position as the independent auditors of the Company and of the TierOne Bank Savings Plan, effective immediately. The oral resignation was subsequently confirmed in writing. A copy of the letters of resignation are attached to this Current Report on Form 8-K as Exhibit 99.1 and Exhibit 99.2.
>
> Prior to April 23, 2010, KPMG had not previously advised management or the Company's Audit Committee of its intention to resign its engagement as the Company's independent registered public accounting firm. The resignation was not sought or recommended by the Company's Audit Committee. The Audit Committee is in the process of commencing an immediate search for a new independent accountant.
>
> It is the Company's understanding that KPMG has resigned as a culmination of factors related to an examination by the Office of Thrift Supervision (OTS), TierOne Bank's

primary regulator, which required the Company to reevaluate its loan loss provisions for the quarter ended June 30, 2009. Specifically, on April 25, 2010, KPMG orally advised the Company (through the Company's Audit Committee) that KPMG requested on multiple occasions, and did not timely receive, a document estimating potential additional needs for specific reserves (the "document"), which was provided to the OTS and referenced in an OTS examination report, and that the Company allegedly asserted to the OTS, after the OTS had requested an additional copy of it, that the document had been destroyed. KPMG further indicated that the document, and management's alleged actions related to it, lead KPMG to conclude that it is no longer able to rely on management's representations.

Contrary to KPMG's position, the Company had previously provided the document to KPMG. Moreover, the document was provided electronically to the OTS and was not destroyed by the Company. The Company also notes that at no point did KPMG inform the Company's Audit Committee of the failure to receive the document, and that as recently as April 19, 2010, KPMG had affirmed (without absolute assurance) that it believed it could be in a position to issue its audit opinion in time for the Company to file its Annual Report on Form 10-K for the year ended December 31, 2009, amended Form 10-Q for the quarter ended June 30, 2009 and Form 10-Q for the quarter ended September 30, 2009 by April 30, 2010.

Reportable Events and Disagreements with the Independent Auditors

The report of KPMG on the financial statements of the Company for the fiscal year ended December 31, 2008 contained no adverse opinions or disclaimer of opinion and was not qualified or modified as to uncertainty, audit scope or accounting principles (KPMG did not issue a report for the fiscal year ended December 31, 2009). For the fiscal years ended December 31, 2008 and December 31, 2009 and through the date of this report, there were no disagreements with KPMG on any matter of accounting principles or practices, financial statement disclosure or audit scope or procedure which, if not resolved to the satisfaction of KPMG, would have caused it to make reference to the subject matter of such disagreement in its reports on the financial statements for such fiscal years. Nor, except to the extent described below in this Form 8-K, were there any reportable events within the meaning of Item 304(a)(1)(v) of Regulation S-K for the fiscal years ended December 31, 2008 and December 31, 2009 and through the date of this report. In connection with KPMG's resignation, KPMG advised the Company orally that it had concluded that it is no longer able to rely on management's representations and that it was withdrawing its audit opinion relating to the Company's financial statements at and for the year ended December 31, 2008 contained in the Annual Report on Form 10-K filed by the Company on March 13, 2009 (the "2008 Form 10-K") because such financial statements contain material misstatements related to certain out of period adjustments for loan loss reserves; and that it was withdrawing its internal control assessment relating to the Company's financial statements at and for the year ended December 31, 2008 contained in the 2008 Form 10-K due to a material weakness in internal control over financial reporting related to the material misstatements.

> Item 4.02. Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review
>
> *Previous Reports on Financial Statements Disagreements with the Auditors*
>
> KPMG has advised the Company and the Company's Audit Committee orally that (1) it has withdrawn its audit opinion relating to the Company's financial statements at and for the year ended December 31, 2008 contained in the 2008 Form 10-K because such financial statements contain material misstatements related to certain out of period adjustments for loan loss reserves; and (2) that it has withdrawn its internal control assessment relating to the Company's financial statements at and for the year ended December 31, 2008 contained in the 2008 Form 10-K due to a material weakness in internal control over financial reporting related to the material misstatements. As a result, KPMG has advised the Company and the Company's Audit Committee orally that these financial statements should no longer be relied upon. In addition, KPMG has advised the Company orally that the financial statements as of and for the three-month period ended March 31, 2009 contained in the Quarterly Report on Form 10-Q filed by the Company on May 8, 2009 should no longer be relied upon and that KPMG was withdrawing its review of such financial statements. As previously reported by the Company, the Audit Committee of the Company determined that the financial statements as of and for the three-month and six-month periods ended June 30, 2009 contained in the Quarterly Report on Form 10-Q filed by the Company on August 10, 2009 should not be relied upon.
>
> *Other Information*
>
> The Company is currently delinquent in the filing of its Form 10-Q for the fiscal quarter ended September 30, 2009 and its Form 10-K for the fiscal year ended December 31, 2009. As previously reported by the Company, these delinquencies have been caused by the Company's need to reevaluate its loan loss provisions for the quarter ended June 30, 2009, in response to an examination by the OTS.
>
> The Company has provided KPMG a copy of this Form 8-K and requested KPMG to furnish a letter addressed to the Securities and Exchange Commission stating whether it agrees with the statements made in both Item 4.01 and this Item 4.02 of this Form 8-K, and, if not, stating the respects in which it does not agree. The Company has requested that KPMG provide such letter as soon as possible, so that the Company can file such letter as an Exhibit to this Current Report on an amended Form 8-K within the time period prescribed by the Securities and Exchange Commission.

85. On May 4, 2010, the Company issued a press release, after the market closed, that the Company received a delisting determination letter from the NASDAQ because the Company had failed to file its overdue quarterly and annual reports with the SEC. The announcement stated that

the Company did not plan to appeal the delisting determination and that upon delisting, on May 7, 2010 the Company's stock would trade over the counter on the Pink Sheets. This announcement caused the Company stock to fall to $.29 per share on May 5, 2010 from a prior closing price of $.40 per share, or a 27.5%.

86. On May 14, 2010, the Company filed a Form 8-K/A amending the April 29, 2010 8-K, attaching a letter, dated May 12, 2010, from KPMG to the SEC, revealing that that Company's April 29, 2010 8-K was materially false and misleading. The letter states as follows:

> May 12, 2010
> Securities and Exchange Commission
> Washington, DC 20549
>
> Ladies and Gentlemen:
>
> We were previously engaged as principal accountants for TierOne Corporation (the Company). On April 23, 2010, we resigned. We have read the Company's statements included under Items 4.01 and 4.02 of its Form 8-K dated April 29, 2010, and we agree with such statements, except for the following under Item 4.01:
>
> I. We are not in a position to agree or disagree with:
>
> a. the Company's statement in the second paragraph that it is in the process of commencing an immediate search for a new independent accountant; and
>
> b. the Company's statement in the fourth paragraph that a document estimating potential additional needs for specific reserves was provided electronically to the Office of Thrift Supervision (OTS).
>
> II. We do not agree with:
>
> a. The Company's statement in the third paragraph that KPMG resigned as a culmination of factors related to an examination by the OTS, which required the Company to reevaluate its loan loss provisions for the quarter ended June 30, 2009. While KPMG did describe a culmination of factors leading to its decision to resign, the factors were not limited to matters related to the OTS examination, and the Company's reference to a "document estimating potential additional needs for the specific reserves" is incomplete. KPMG told the Chair of the Company's Audit Committee that KPMG had learned of the existence of a document (the "document") showing an internal analysis of estimates of potential additional needs for specific reserves that appeared to have been created in the second quarter of 2009 and was told by a representative of the OTS that the document had been presented to the

Company's Board of Directors during the second quarter of 2009. KPMG also told the Chair of the Company's Audit Committee that the document had not been produced timely to KPMG, nor had it been included in the Board of Director materials provided to KPMG and that the Board of Director minutes did not include any reference of the presentation of the document or a discussion of it by the Board, and that management had represented to KPMG that all significant board and committee actions were included in the Board minutes provided to KPMG. KPMG told the Chair of the Company's Audit Committee that as a consequence KPMG believed it could not rely on prior representations by management, and was terminating its auditor relationship with the Company.

b. The Company's statement in the fourth paragraph that it had previously provided the document estimating potential additional needs for specific reserves to KPMG. KPMG was provided an electronic download of information from the Company's counsel on December 8, 2009, and has performed an electronic search of such electronically-provided information and has been unable to locate the aforementioned document that it obtained from the Company on April 20, 2010.

c. The Company's statement in the fourth paragraph that as recently as April 19, 2010, KPMG had affirmed (without absolute assurance) that it believed it could be in a position to issue its audit opinion in time for the Company to file its Annual Report on Form 10-K for the year ended December 31, 2009, amended Form 10-Q for the quarter ended June 30, 2009 and Form 10-Q for the quarter ended September 30, 2009 by April 30, 2010. KPMG on April 19, 2010 told the Audit Committee Chair and management that it was highly unlikely that KPMG would be in a position to complete its reviews of the quarterly financial information and its audit of the consolidated 2009 financial statements by April 30, 2010

Very truly yours,
/s/ KPMG LLP

87. On June 4, 2010, the Company filed an 8-K with SEC attaching, among other things, Orders to Cease and Desist separately entered into by the Company and the Bank with the OTS; both of which were entered into pursuant to stipulation. The Bank's Order to Cease and desist identified a number of internal control deficiencies and required the Bank to cease and desist from violating a number of laws and regulations, including but not limited to, regulations "regarding classification of assets"; "regarding [ALL] and valuation allowances"; "regarding appraisals"; and "regarding loan administration." A copy of the Bank's Order and Cease to Desist is attached hereto as Exhibit 4.

88. Later that day, the FDIC issued a press release announcing that the Bank was closed by the OTS, which appointed the FDIC as receiver. In connection with the Bank's closing, Great Western Bank, assumed the Bank's deposits and assets. These events caused the Company's stock to fall from $.16 per share on June 4, 2010 to $.076 per share on June 7, 2010, a more than 50% decline. Shortly thereafter the stock became worthless.

89. On June 24, 2010, the Company filed a Chapter 7 Bankruptcy petition with the District of Nebraska Bankruptcy Court, listing $500,000 to $1 million in assets and $10 million to $50 million in liabilities.

90. On or after July 12, 2011 the OIG issued MLR providing findings about the misconduct at the Bank as detailed throughout this Complaint.

VI. ADDITIONAL ALLEGATIONS DEMONSTRATING FALSITY AND SCIENTER

91. Defendants had knowledge and/or recklessly disregarded the Company's true financial condition and lack of internal controls. According to the Interagency Policy Statement on the Allowance for Loan and Lease Losses, dated December 21, 1993, issued by the Office of Comptroller of the Currency, FDIC, Federal Reserve Board, and OTS:

- "It is the responsibility of the board of directors and management of each institution to maintain the [ALL] at an adequate level."
- [W]hen determining the appropriate [ALL], management's analysis should be conservative…"
- "the board of directors and management are expected to:
    - Ensure that the institution has an effective loan review system and controls (which include an effective credit grading system) that identify, monitor, and address asset quality problems in an accurate and timely manner. To be effective, the institution's loan review system and controls must be responsive to changes in internal and external factors affecting the level of credit risk in the portfolio.

    - Ensure the prompt charge-off of loans, or portions of loans, that available information confirms to be uncollectible.

- Ensure that the institution's process for determining an adequate level for the [ALL] is based on a comprehensive, adequately documented, and consistently applied analysis of the institution's loan and lease portfolio that considers all significant factors that affect the collectibility of the portfolio and supports the range of credit losses estimated by this process."

92. In addition to the specific GAAP violations noted above, the Defendants violated the following fundamental GAAP.

(a) SEC Rules 13a-13 requires issuers to file quarterly reports. SEC Rule 12b-20 requires that period reports contain such further information as is necessary to make, the required statements, in light of the circumstances under which they are made, not misleading.

(b) The SEC has explained, in Securities Act Release No. 6349 (September 8, 1981), that:

> ... it is the responsibility of management to identify and address those key variables and other qualitative and quantitative factors which are peculiar to and necessary for an understanding and evaluation of the individual company.

(c) In addition, as explained by the SEC in Accounting Series Release 173:

> ... it is important that the overall impression created by the financial statements be consistent with the business realities of the company's financial position and operations.

(d) The principle that financial reporting should provide information that is useful to present and potential investors and creditors and other users in making rational investment, credit and similar decisions (Financial Accounting Standards Board ("FASB") Statement of Concepts No. 1, ¶34);

(e) The principle that financial reporting should provide information about the economic resources of an enterprise, the claims to these resources, and the effects of transactions, events and circumstances that change resources and claims to these resources (FASB Statement of Concepts No.1, ¶40);

(f) The principle that financial reporting should provide information about how management of an enterprise has discharged its stewardship responsibility to owners (stockholders) for the use of enterprise resources entrusted to it; to the extent that management offers securities of the enterprise to the public, it voluntarily accepts wider responsibilities for accountability to prospective investors and to the public in general (FASB Statement of Concepts No. 1, ¶50);

(g) The principle that financial reporting should be reliable in that it represents what it purports to represent; that information should be reliable as well as relevant is a notion that is central to accounting (FASB Statement of Concepts No. 2, ¶¶58-59);

(h) The principle that contingencies and other uncertainties that affect the fairness of presentation of financial data at an interim date shall be disclosed in interim reports in the same manner required for annual reports (Accounting Principles Board ("APB") Opinion No. 28, ¶ 22);

(i) The principle of completeness, which means that nothing is left out of the information that may be necessary to insure that it validly represents underlying events and conditions (FASB Statement of Concepts No. 2 ¶79); and

(j) The principle that conservatism be used as a prudent reaction to uncertainty to try to ensure that uncertainties and risks inherent in business situations are adequately considered; the best way to avoid injury to investors is to try to ensure that what is reported represents what it purports to represent (FASB Statement of Concepts No. 2, ¶¶95, 97).

93. Defendants issued false reassurances to investors about their purported efforts to resolve issues concerning the Bank's compliance with OTS requirements.

(a) On January 15, 2009, the Company filed an 8-K, signed by defendant Lundstrom, falsely stating that senior management and the board was committed to resolve the material deficiencies outlines in the Supervisory Agreement (Ex. 2). The announcement states in relevant part:

> "The Board of Directors and senior management of the Company and the Bank are committed to thoroughly and expeditiously addressing and resolving all issues raised in the supervisory agreement on a timely basis. The Bank has already fulfilled many of the obligations set forth in the supervisory agreement and is in the process of undertaking several actions to comply with the remaining requirements imposed by the supervisory agreement. Compliance with the supervisory agreement is not expected to have a material adverse effect on the Company's or the Bank's business or operations."

However, as noted by Quesada, above, among other things (1) there was no accountability at the Bank, (2) the Board was passive and did not want to make difficult decisions; (3) the Bank resented Quesada for being required to hire him pursuant to the Supervisory Agreement; (4) senior management was in denial and merely thought they could wait it out until the economy would recover; (5) the Bank failed to obtain timely or any appraisals at all, even when Quesada himself recommended them; (6) the Bank failed to implement controls for loan quality or underwriting; (7) the Bank failed to provide evidence that anyone at the Bank was actually reviewing the Bank's loans to the OTS; (8) the Bank was inappropriately rating loan risk; (9) There was a lack of financial analysis on reworked loans and there was a lack of any evidence of that borrowers of reworked loans could pay their loans; and (10) the OTS reported in ROEs the same findings that Quesada had complained to management about since he had been at the Bank. Quesada's testimony is corroborated and consistent with the MLR.

(b) The Company issued misleading and/or false assurance concerning the closure of its Las Vegas loan production office. On June 30, 2008, the Company issued a press release announcing that that its Las Vegas loan production office and others were to close in late summer. In the announcement, the Company failed to disclose the true reason for the closure of this and the other loan production offices, i.e., reckless risk management, underwriting, and credit administration and deliberate conduct to delay recognition of problem loans.

94. Management and director departures at the Company and Bank support a strong inference of scienter.

(a) On October 2, 2009, the Company announced that Gale Furnas, the Bank's executive Vice President and Director of Lending Resigned. Furnas was CW1's boss.

(b) On January 28, 2010, less than two weeks after the Supervisory Agreement was announced, defendant Lundstrom "retired" as the Chairman and CEO of the Company and Bank. Lundstrom would remain as the Vice Chairman and Director of the Bank and Company. Defendant Falbo replaced Lundstrom as CEO and Chairman of the Bank and Company.

(c) On April 2, 2010, the Company announced that defendant Falbo had resigned his positions at the Company and Bank, and that Lundstrom along with three other directors James McClurg, James Stand, and Samuel Baird resigned. Upon information and belief, these individuals were forced out of the Company in connection with the fraud. The April 2, 2010 announcement states "[t]hese resignations, all of which were effective on March 30, 2010, followed ongoing discussions with the OTS regarding the terms of the PCA Directive applicable with the Bank, particularly with respect to the deadlines for compliance set forth in the PCA Directive."

95. The ongoing investigations of TierOne and certain of its senior management also support a strong inference of scienter. TierOne and certain of its senior management are subject to ongoing formal civil investigations by the SEC and OTS. Upon information and belief, TierOne and/or certain of its senior management are under criminal investigation by the Department of Justice.

96. Nearly a third of the Company's loan production came from the Las Vegas loan production office, therefore this LPO was a core component of the Bank's business. Yet the Board consciously abdicated responsibility for this LPO, and provided its head with a compensation package that depended on the volume of loans produced.

VII. NO SAFE HARBOR

97. The statutory safe harbor provided for certain forward-looking statements does not apply to any of the false statements alleged in this Complaint. None of the statements alleged herein are "forward-looking" statements and no such statement was identified as a "forward-looking statement" when made. Rather, the statements alleged herein to be false and misleading all relate to facts and conditions existing at the time the statements were made. Moreover, cautionary statements, if any, did not identify important factors that could cause actual results to differ materially from those in any forward-looking statements.

98. In the alternative, to the extent that the statutory safe harbor does apply to any statement pleaded herein which is deemed to be forward-looking, the Individual Defendants are liable for such false forward-looking statements because at the time each such statement was made, the speaker actually knew and/or recklessly disregarded the fact that such forward-looking

statements were materially false or misleading and/or omitted facts necessary to make statements previously made not materially false and misleading, and/or that each such statement was authorized and/or approved by a director and/or executive officer of TierOne who actually knew or recklessly disregarded the fact that each such statement was false and/or misleading when made. None of the historic or present tense statements made by the Individual Defendants was an assumption underlying or relating to any plan, projection, or statement of future economic performance, as they were not stated to be such an assumption underlying or relating to any projection or statement of future economic performance when made, nor were any of the projections or forecasts made by the Individual Defendants expressly related to or stated to be dependent on those historic or present tense statements when made.

VIII. RELIANCE PRESUMPTION: FRAUD-ON-THE-MARKET DOCTRINE

99. At all relevant times, the market for TierOne's common stock was an efficient market for the following reasons, among others:

(a) TierOne's common stock met the requirements for listing, and was listed and actively traded on the NASDAQ and over-the-counter, highly efficient and automated markets;

(b) During the class period, on average, 879,402 shares of TierOne's common stock were traded on a weekly basis. Approximately 4.89% of all outstanding shares were bought and sold on a weekly basis, demonstrating a very strong presumption of an efficient market. Additionally, 6.88% of the float were bought and sold on a weekly basis;

(c) As a regulated issuer, TierOne filed with the SEC periodic reports and was eligible to file a short-form registration statement on Form S-3 with the SEC during the Class Period;

(d) TierOne regularly communicated with public investors via established market communication mechanisms, including regular disseminations of press releases on the national circuits of major newswire services and other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services;

(e) TierOne was followed by several securities analysts employed by major brokerage firms who wrote reports that were distributed to the sales force and certain customers of their respective brokerage firms during the Class Period. Each of these reports was publicly available and entered the public marketplace;

(f) Numerous NASD member firms were active market-makers in TierOne stock at all times during the Class Period; and

(g) Unexpected material news about TierOne was rapidly reflected in and incorporated into the Company's stock price during the Class Period.

100. As a result of the foregoing, the market for TierOne's common stock promptly digested current information regarding TierOne from all publicly available sources and reflected such information in TierOne's stock price. Under these circumstances, all purchasers of TierOne's common stock during the Class Period suffered similar injury through their purchase of TierOne's common stock at artificially inflated prices, and a presumption of reliance applies.

IX. PLAINTIFFS' CLASS ACTION ALLEGATIONS

101. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all persons who purchased the common stock of TierOne during the Class Period and who were damaged thereby. Excluded from the Class are Defendants, the current and former officers and directors of the Company, members of

their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

102. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, TierOne's common stock was actively traded on the NASDAQ and over-the-counter. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are at least hundreds of members in the proposed Class. Members of the Class may be identified from records maintained by TierOne or its transfer agent and may be notified of the pendency of this action by mail, using a form of notice customarily used in securities class actions.

103. Plaintiffs' claims are typical of the claims of the members of the Class, as all members of the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is complained of herein.

104. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation.

105. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by Defendants' acts as alleged herein;

(b) whether the misstatements and omissions alleged herein were made with scienter;

(c) whether statements made by the Individual Defendants to the investing public during the Class Period misrepresented and/or omitted material facts about the business, prospects, sales, operations and management of TierOne; and

(d) to what extent the members of the Class have sustained damages and the proper measure of damages.

106. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to redress individually the wrongs done to them. There will be no difficulty in the management of this action as a class action.

X. FIRST CLAIM

Violation of Section 10(b) of
The Exchange Act Against and Rule 10b-5
<u>Promulgated Thereunder Against Defendants TierOne, Lundstrom, Witkowicz, and Hoskins</u>

107. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

108. This First Claim is asserted against defendants TierOne, Witkowicz, Lundstrom, and Hoskins (collectively "First Claim Defendants").

109. During the Class Period, First Claim Defendants carried out a plan, scheme and course of conduct which was intended to, and throughout the Class Period, did: (1) deceive the investing public, including Plaintiffs and other Class members, as alleged herein; and (2) cause Plaintiffs and other members of the Class to purchase and/or sell TierOne securities at artificially

inflated and distorted prices. In furtherance of this unlawful scheme, plan and course of conduct, First Claim Defendants, individually and as a group, took the actions set forth herein.

110. First Claim Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, operations and future prospects of TierOne as specified herein.

111. First Claim Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of TierOne's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about TierOne and its business operations and future prospects in light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business that operated as a fraud and deceit upon the purchasers of TierOne's securities during the Class Period.

112. Each of the First Claim Defendants' primary liability, and controlling person liability, arises from the following facts: (1) individual First Claim Defendants were high-level executives, directors, and/or agents at the Company during the Class Period and members of the Company's management team or had control thereof; (2) each of the First Claim Defendants, by virtue of his responsibilities and activities as a senior officer and/or director of the Company, was privy to and participated in the creation, development and reporting of the Company's financial condition; (3) each of the First Claim Defendants enjoyed significant personal contact and familiarity with the other defendants and was advised of and had access to other members of the Company's

management team, internal reports, and other data and information about the Company's finances, operations, and sales at all relevant times; (4) each of the First Claim Defendants was aware of the Company's dissemination of information to the investing public that they knew or recklessly disregarded was materially false and misleading; and (5) each of the First Claim Defendants culpably participated in the wrongful conduct alleged herein.

113. Each of the First Claim Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such First Claim Defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing TierOne's financial condition and future business prospects from the investing public and supporting the artificially inflated or distorted price of its securities. As demonstrated by First Claim Defendants' overstatements and misstatements of the Company's financial condition and business prospects throughout the Class Period, First Claim Defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

114. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price for TierOne's common stock was artificially inflated during the Class Period. In ignorance of the fact that market prices of TierOne's publicly-traded common stock was artificially inflated or distorted, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the Company's common stock trades, and/or on the absence of material adverse information that was known to or recklessly disregarded by defendants but not disclosed in public

statements by defendants during the Class Period, Plaintiffs and the other members of the Class acquired and/or sold TierOne common stock during the Class Period at artificially high prices and were damaged thereby.

115. At the time of said misrepresentations and omissions, Plaintiffs and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiffs and the other members of the Class and the marketplace known the truth regarding TierOne's financial results, which were not disclosed by First Claim Defendants, Plaintiffs and other members of the Class would not have purchased or otherwise acquired TierOne common stock, or, if they had acquired such common stock during the Class Period, they would not have done so at the artificially inflated prices or distorted prices at which they did.

116. By virtue of the foregoing, the First Claim Defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

117. As a direct and proximate result of the First Claim Defendants' wrongful conduct, Plaintiffs and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's common stock during the Class Period.

118. This action was filed within two years of discovery of the fraud and within five years of Plaintiffs' purchases of common stock giving rise to the cause of action.

XI. SECOND CLAIM

Violation of Section 20(a) of
The Exchange Act Against Lundstrom, Witkowicz, Falbo, Laphen and Hoskins (the "Individual Defendants")

119. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

120. This Second Claim is asserted against each of the Individual Defendants.

121. The Individual Defendants acted as controlling persons of TierOne within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, agency, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of aspects of the Company's revenues and earnings and dissemination of information to the investing public, the Individual Defendants had the power to influence and control, and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements that Plaintiffs contend are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by Plaintiffs to be misleading prior to and/or shortly after these statements were issued, and had the ability to prevent the issuance of the statements or to cause the statements to be corrected.

122. In particular, each of these defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

123. As set forth above, TierOne violated Section 10(b) and Rule 10b-5. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act as they culpably participated in the fraud alleged herein. As a direct and proximate result of defendants' wrongful conduct, Plaintiffs and other members of the Class suffered damages in connection with their purchases of the Company's common stock during the Class Period.

124. This action was filed within two years of discovery of the fraud and within five years of each plaintiff's purchases of securities giving rise to the cause of action.

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

(a) Determining that this action is a proper class action, designating Plaintiffs as class representative under Rule 23 of the Federal Rules of Civil Procedure and Plaintiffs' counsel as Class Counsel;

(b) Awarding compensatory damages in favor of Plaintiffs and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(c) Awarding Plaintiffs and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

Dated: August 15, 2011

Respectfully submitted,

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EXHIBIT 1

Audit Report

OIG-11-080

SAFETY AND SOUNDNESS: Material Loss Review of TierOne Bank

July 12, 2011

Office of Inspector General

Department of the Treasury

Contents

Appendices

Abbreviations

ALLL	allowance for loan and lease losses
C&D order	cease and desist order
FDIC	Federal Deposit Insurance Corporation
MLR	material loss review
MRBA	matter requiring board attention
OIG	Treasury Office of Inspector General
OTS	Office of Thrift Supervision
PCA	prompt corrective action
OREO	other real estate owned
ROE	report of examination
TFR	thrift financial report

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OIG

Audit Report

The Department of the Treasury
Office of Inspector General

July 12, 2011

John E. Bowman, Acting Director
Office of Thrift Supervision

This report presents the results of our review of the failure of TierOne Bank (TierOne), of Lincoln, Nebraska, and of the Office of Thrift Supervision's (OTS) supervision of the institution. OTS closed TierOne and appointed the Federal Deposit Insurance Corporation (FDIC) as receiver on June 4, 2010. This review was mandated by section 38(k) of the Federal Deposit Insurance Act because of the magnitude of TierOne's estimated loss to the Deposit Insurance Fund.[1] As of April 30, 2011, FDIC estimated that the loss to the Deposit Insurance Fund would be $313.8 million. FDIC also estimated a loss of $4.7 million to the Transaction Account Guarantee Program.

Our objectives were to determine the causes of TierOne's failure; assess OTS's supervision of the bank, including implementation of the prompt corrective action (PCA) provisions of section 38; and make recommendations for preventing such a loss in the future. To accomplish these objectives, we reviewed the supervisory files and interviewed OTS and FDIC officials. We conducted our fieldwork from August 2010 through November 2010. Appendix 1 contains a more detailed description of our review objectives, scope, and methodology. Appendix 2 contains background information on TierOne's history and OTS's assessment fees and examination hours. Definitions of certain terms, which are underlined where first used in this report, are available in a separate document, OIG-11-065, on the Treasury Office of Inspector General's (OIG) website.

In brief, TierOne failed primarily because of significant loan losses from its concentration of construction and land development loans. While

[1] At the time of TierOne's failure, Section 38(k) defined a loss as material if it exceeded the greater of $25 million or 2 percent of the institution's total assets. Effective July 21, 2010, section 38(k) defines a loss as material if it exceeds $200 million for calendar years 2010 and 2011, $150 million for calendar years 2012 and 2013, and $50 million for calendar years 2014 and thereafter (with a provision that the threshold can be raised temporarily to $75 million if certain conditions are met).

pursuing a strategy of increasing these loans, TierOne's board and management did not provide effective oversight or establish adequate credit underwriting and administration controls, particularly at the thrift's Las Vegas, Nevada, loan production office (LPO). The Las Vegas LPO was responsible for a majority of these losses.

OTS, in its supervision of TierOne, did not identify problems with the thrift from 2002 through 2007, rating the thrift a CAMELS composite 1 during this period. In January 2009, after OTS identified excessive concentrations, deficient credit underwriting and administration practices, and poor board and management oversight, OTS executed a supervisory agreement requiring TierOne to correct these problems. As TierOne reported falling capital levels, OTS used its authority under PCA, issuing a PCA directive in March 2010 and a cease and desist (C&D) order in June 2010 to require the thrift to increase its capital levels. By then it was too late to save the thrift.

It should be noted that certain matters at TierOne are under further review by OTS and other agencies. We referred these matters to the Treasury Inspector General's Office of Investigations.

We are not making any new recommendations in this report, but are reaffirming two recommendation made in a previous material loss review (MLR) of an OTS-regulated thrift, where we identified similar causes of failure and made similar findings regarding OTS's supervision. In a written response, OTS stated that it has implemented the actions recommended in prior OIG MLR reports and internally prepared assessments of other thrift failures. OTS's response is provided as appendix 3. It should be noted that pursuant to P.L. 111-203, the functions of OTS are to transfer to other federal banking agencies on July 21, 2011.

Causes of TierOne's Failure

TierOne failed primarily because of significant losses in its construction and land development loan portfolio, originated largely through LPOs. TierOne concentrated its growth in these loans without ensuring adequate risk management, underwriting, and credit administration practices. A majority of TierOne's deficiencies and loan losses were related to loans originated by its Las Vegas LPO. The loan losses greatly diminished earnings and eroded capital, which led to TierOne's failure.

TierOne's LPO Strategy Resulted in a Concentration of High-Risk Construction and Land Development Loans

From 2002 through 2005, TierOne opened or acquired nine LPOs in six states for the purpose of originating construction and land development loans, a strategy which OTS considered high-risk. Production from the LPOs created a concentration in construction and land development loans as TierOne's loan portfolio grew from $1.9 billion in 2002 to its peak of $3.7 billion by 2006. From its opening in December 2005 through December 2006, the Las Vegas LPO produced over $262 million in loans equaling almost 30 percent of TierOne's 2006 loan production.

Beginning in 2008, TierOne's board and management reduced lending in response to the economic downturn but by then it was too late for the thrift to mitigate the risk already present in its loan portfolio. This excessive concentration resulted in substantial losses for the thrift when conditions in the real estate market deteriorated. TierOne sustained a net loss of $284.1 million from 2007 through 2009. By 2009, losses from the Las Vegas LPO's loans had reached $131 million.

TierOne's Board and Management Did Not Establish Adequate Risk Management, Underwriting, and Credit Administration Practices

TierOne's risk management, underwriting, and credit administration practices were inadequate. Among other things, TierOne did not adequately analyze the financial condition of its borrowers and the appropriateness of loan disbursements. Many of the loans TierOne approved exceeded the supervisory loan-to-value ratio limitations established by the board. Most of TierOne's deficiencies were associated with its Las Vegas LPO.

In the 2008 report of examination (ROE), OTS examiners concluded that the Las Vegas LPO engaged in "...reckless, high-risk lending activities, with blatant disregard for prudent credit administration procedures..." while under the control of the regional lending manager. TierOne's board and management had relinquished managerial and oversight of its Las Vegas LPO to the regional lending manager. TierOne also provided the regional lending manager with a compensation package that rewarded loan production volume with no consideration for loan quality and performance. In the 2008 ROE, examiners stated that the regional lending manager's compensation package was excessive and was considered a prohibited unsafe and unsound practice as loans originated through the Las Vegas LPO were directly responsible for TierOne's significant financial loss.[2]

In the 2008 ROE, OTS examiners also concluded that TierOne's board and management violated their respective fiduciary duty to exercise the highest standard of care in the conduct, management, and oversight of the thrift's affairs. According to OTS regional officials, TierOne's CEO was dominant and influential over the board and management. According to one OTS official, the board could not be considered independent since the CEO had handpicked the directors. Furthermore, the board did not actively challenge management even when it seemed to have cause to do so. For example, the board approved $525,000 in bonuses to executive management and $33.9 million in dividends to its holding company in December 2007,[3] despite incurring a $9 million net loss for the year and $36.7 million in loan loss provisions for the quarter ended December 2007. In 2008, when directed to do so by OTS, the holding company returned $29.1 million of the $33.9 million in dividends to TierOne. OTS, however, did not require any of the executive bonuses to be returned.

In May 2010, OTS initiated a formal investigation of the board, senior management, and the manager of the Las Vegas LPO after suspecting TierOne's board and management were engaged in apparent unsafe or unsound practices.

[2] Appendix A to 12 C.F.R. Part 570, Interagency Guidelines Establishing Standards For Safety and Soundness, states that excessive compensation is prohibited as an unsafe and unsound practice if it could lead to material financial loss to an institution. Compensation is considered excessive when it is unreasonable and disproportionate to the services performed considering such factors as compensation practices at comparable institutions, and the financial condition of the institution.
[3] TierOne paid the dividends in 2007 and bonuses in 2008.

TierOne Management Delayed Recognition of Problem Loans and Losses

In the 2008 and 2009 ROEs, OTS examiners determined TierOne's management of the ALLL balance was unsafe and unsound due to its untimely recognition of problem loans and losses.

OTS examiners found instances where TierOne management modified construction and land development loans to replenish depleted interest reserves, without verifying borrower ability to repay and in spite of material losses in property values. This practice made the loans appear current when, in fact, they were not.

Also, TierOne's management often failed to order updated appraisals when modifying loans or when material deterioration in property values was evident. In many instances, the original appraisal report was over 2 years old. OTS and TierOne's internal auditors identified this issue in 2008 but TierOne management took no corrective action to improve the appraisal practices until prompted again by OTS examiners during the 2009 examination. After obtaining updated appraisals, TierOne management recorded $120 million in loan loss provisions and $10.8 million in other real estate owned (OREO) write-downs.

OTS's Supervision of TierOne

OTS performed timely examinations of TierOne in accordance with examination guidelines and, in 2005 and 2007, rated the thrift a CAMELS composite 1. OTS did not identify problems with TierOne until 2008, when OTS found excessive concentrations, deficient credit underwriting and administration practices, and poor board and management oversight. As TierOne reported falling capital levels, OTS took enforcement action and appropriately used its authority under PCA. In January 2009, OTS executed a supervisory agreement with the thrift which treated TierOne as less than well-capitalized and required the thrift to correct its problems. By then, the loan portfolio was incurring significant deterioration and losses. In February 2010, OTS issued a PCA directive and in June 2010 a cease and desist (C&D) order to require the thrift to increase its capital levels. However, these actions were too late to save the thrift.

Table 1 summarizes the results of OTS's examinations of TierOne from 2005 until its closure in June 2010.

Table 1. Summary of OTS's Examinations of and Enforcement Actions Against TierOne

		Examination Results			
Examination start date and type	**Total assets (in billions)**	**CAMELS rating**	**No. of MRBAs**	**No. of recommendations/ corrective actions**	**Enforcement actions**
11/07/2005 (full-scope)	$3.2	1/221111	0	1	None
2/26/2007 (full-scope)	$3.4	1/121111	0	0	None
4/28/2008 (limited-scope)	$3.4	3/332311	NA	NA	None
6/02/2008 (full-scope)	$3.2	4/344421	20	20	Supervisory agreement effective 1/2009
8/17/2009 (limited-scope)	$3.2	N/A	N/A	N/A	None
10/05/2009 (full-scope)	$2.9	5/555543	15	15	PCA directive effective 3/2010 C&D effective 6/2010

Source: OTS ROEs and enforcement actions.

OTS Did Not Identify Issues at TierOne's Las Vegas LPO Until 2008

In 2005 and 2007, TierOne was largely concentrated in high-risk construction and land development loans outside its traditional geographic market. Due in part to strong earnings, OTS assigned TierOne a CAMELS composite rating of 1. However, in 2008 OTS downgraded the thrift to a 4 when examiners identified excessive concentrations, deficient credit underwriting and administration practices, and poor board and management oversight.

A major cause of TierOne's deteriorating condition were the loans originated from the thrift's Las Vegas LPO. From its opening in 2005, the Las Vegas LPO quickly grew into TierOne's top producer, financing large and high-risk Nevada construction and land development projects. By December 2006, the LPO's average loan was many times larger than the average for other loans, a loan average of $5.7 million for the LPO as compared with $0.2 million for the rest of TierOne's loans. OTS examiners did not express concern about this until June 2008.

Despite the volume of activity at the Las Vegas LPO, OTS examiners never made an onsite visit. Instead, they only conducted an offsite review of a sample of high-risk loans, some of which included loans from the Las Vegas LPO. The offsite review did not identify any significant credit underwriting and administration deficiencies. An OTS official questioned whether a visit to the LPO would have made a difference because OTS examiners reviewed the same loan files, only in a different location. However, he did state that it would have been helpful for examiners to determine the lending culture of that office and to observe its actual operations. It should be noted that OTS's internal review of the failure, which is discussed later in this report, recommended that periodic onsite reviews be made to LPOs in major locations. In this regard, OTS's guidance did not require such visits. We believe such visits would be prudent and in the case of TierOne could have identified problems earlier, allowing OTS to take actions to potentially prevent the significant losses it incurred.

OTS Took Enforcement Action and PCA as TierOne's Financial Condition Deteriorated

As TierOne's financial condition deteriorated in 2008 to 2010, OTS responded with several supervisory actions under its enforcement and PCA guidelines. These actions included a supervisory agreement in 2009 and both a PCA directive and C&D order in 2010. We concluded that OTS took the required PCA actions in a timely manner as capital levels fell below adequately capitalized. Ultimately, however, these actions were unable to save the thrift.

The purpose of PCA is to resolve problems of insured depository institutions with the least possible long-term loss to the Deposit Insurance Fund. PCA requires federal banking agencies to take certain actions when an institution's capital drops to certain levels. PCA also gives regulators flexibility to supervise institutions based on criteria other than capital levels to help reduce deposit insurance losses caused by unsafe and unsound practices.

OTS took the following key actions related to TierOne in accordance with PCA requirements:

- On January 15, 2009, OTS executed a Supervisory Agreement with TierOne. Based on the 2008 ROE, OTS determined that a higher level of capital was required given TierOne's risk profile.

The Supervisory Agreement required TierOne to maintain a Core Capital ratio of 8.5 percent and a Total Risk-Based Capital ratio of 11 percent. Although TierOne's capital ratios reflected the well-capitalized category for PCA purposes, as a result of the Supervisory Agreement's capital requirement, the thrift was no longer considered well-capitalized.

- On November 13, 2009, OTS notified TierOne that the thrift was undercapitalized based upon its September 30, 2009, TFR. The required restrictions for an undercapitalized thrift were stipulated in the OTS notification, including the requirement to file a capital restoration plan no later than December 28, 2009.

- On February 19, 2010, OTS notified TierOne that the thrift was significantly undercapitalized based on its December 31, 2009, TFR filing and now subject to the restrictions for that capital category.

- On March 31, 2010, OTS issued a PCA directive requiring recapitalization of TierOne through merger, acquisition or sale. The PCA directive was triggered by the denial of the Capital Restoration Plan which TierOne filed on December 23, 2009 and supplemented on February 16, 2010.

- On June 3, 2010, OTS executed a C&D order directing TierOne to cease and desist from engaging in unsafe and unsound practices and violations of law and regulations cited in the 2009 ROE.

OTS Internal Failed Bank Review

In accordance with its policy, OTS completed an internal failed bank review of TierOne and concluded similar to our material loss review that the thrift's failure resulted primarily from the deterioration of its loan portfolio, largely originated by its Las Vegas LPO. According to the internal review, TierOne failed due to losses in its high-risk loans, especially construction and land development loans. Contributing to the failure was a lack of management oversight and control of the Las Vegas LPO and construction loan purchases in Florida, as well as the significant real estate market decline. The internal review recommended that (1) OTS examination and supervisory staff consider higher capital requirements as well as absolute limitations of higher-risk lending concentrations, (2) thrifts be required to submit a notice and a business plan when opening LPOs at remote locations and that examiners conduct onsite reviews at major locations on a periodic basis, and (3) OTS examination and supervisory staff ensure that thrifts have appropriate controls in place to balance risks and rewards. The internal review findings are consistent with the results of our material loss review.

Recommendations

We are not making any new recommendations in this report, but we are reaffirming recommendations made in OTS's internal review and in a previous MLR report of an OTS-regulated thrift regarding concentration limits.

In our June 2009 MLR report for PFF Bank and Trust[4] we reported that a primary cause of failure was its high concentration in construction and land loans and related credit losses. In this report, we recommended that OTS direct examiners to closely review and monitor thrifts that refuse to establish appropriate limits for concentrations that pose significant risk and pursue corrective action when concentration limits are not reasonable. We also recommended that OTS assess the need for more guidance for examiners on determining materiality of concentrations and determining appropriate examiner response to high-risk concentrations. The failure of TierOne was another case in which a thrift failed primarily because its loans were highly concentrated. Therefore, we also reaffirm the recommendations made in this MLR report.

With respect to the OTS internal failed bank review recommendation that examiners conduct onsite reviews at major locations (in the case of TierOne, the Las Vegas LPO) on a regular basis, we believe that is a prudent action. However, given that pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the functions of OTS are to be transferred to other federal banking agencies in July 2011, we are not making a specific recommendation to OTS regarding an onsite review policy in this report.

[4] *Safety and Soundness: Material Loss Review of PFF Bank and Trust*, OIG-09-038 (June 12, 2010).

* * * * *

We appreciate the cooperation and courtesies extended to our staff during the audit. If you wish to discuss the report, you may contact me at (617) 223-8640 or Lisa Ginn, Audit Manager, at (617) 223-8624. Major contributors to this report are listed in appendix 4.

/s/
Donald P. Benson
Audit Director

We conducted this material loss review of TierOne Bank (TierOne), of Lincoln, Nebraska, in response to our mandate under section 38(k) of the Federal Deposit Insurance Act.[5] This section provides that if the Deposit Insurance Fund incurs a material loss with respect to an insured depository institution, the inspector general for the appropriate federal banking agency is to prepare a report to the agency that

- ascertains why the institution's problems resulted in a material loss to the insurance fund;
- reviews the agency's supervision of the institution, including its implementation of the prompt corrective action provisions of section 38; and
- makes recommendations for preventing any such loss in the future.

At the time of TierOne's failure, on June 4, 2010, section 38(k) defined a loss as material if it exceeded the greater of $25 million or 2 percent of the institution's total assets. We initiated a material loss review of TierOne based on the loss estimate by the Federal Deposit Insurance Corporation (FDIC). As of February 28, 2011, FDIC estimated that the loss to the Deposit Insurance Fund from TierOne's failure would be $313.8million.[6] FDIC also estimated a loss of $4.7 million to the Transaction Account Guarantee Program.

Our objectives were to determine the causes of TierOne's failure and assess the Office of Thrift Supervision's (OTS) supervision of the bank. To accomplish our review, we conducted fieldwork at OTS's central region office in Chicago, Illinois and conducted telephone interviews of OTS personnel at OTS's headquarters in Washington, D.C., western region office in Irving, Texas, and field office in Lincoln, Nebraska. We also performed work and interviewed officials at FDIC's Division of Resolutions and Receiverships in Dallas, Texas and interviewed officials at FDIC's regional office in Kansas City, Missouri. We conducted our fieldwork from August 2010 through November 2010.

[5] 12 U.S.C. § 1831o(k).
[6] At closing, the loss estimate to the Deposit Insurance Fund was $289.7 million.

To assess the adequacy of OTS's supervision of TierOne, we performed the following work.

- We reviewed OTS's supervisory files and records for TierOne from 2005 through June 2010. We analyzed examination reports, supporting workpapers, and related supervisory correspondence to gain an understanding of the problems identified, the approach and methodology OTS used to assess the bank's condition, and the regulatory action OTS used to compel bank management to address deficient conditions.

- We interviewed and discussed various aspects of the supervision of TierOne with OTS officials and examiners to obtain their perspective on the bank's condition and the scope of the examinations. We also interviewed FDIC officials responsible for monitoring TierOne for federal deposit insurance purposes.

- We interviewed personnel from FDIC's Division of Resolutions and Receiverships involved in the receivership process, which was conducted before and after TierOne's closure and appointment of a receiver.

- We assessed OTS's actions based on its internal guidance and requirements of the Federal Deposit Insurance Act (12 U.S.C. § 1811 et seq.).

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

History of TierOne

Established in 1907, TierOne Bank (TierOne) began operations as First Federal Savings and Loan Association headquartered in Lincoln, Nebraska. In 1995, the thrift changed its name to First Federal Lincoln Bank and also reorganized to a mutual savings bank charter. In 2002 the thrift changed its name to TierOne Bank, established itself as a wholly owned subsidiary of TierOne Corporation. TierOne completed a mutual-to-stock conversion and shares of TierOne Corporation began to sell in an initial public offering. TierOne Corporation began trading on the NASDAQ stock exchange under the symbol TONE.

TierOne used the capital obtained from the stock conversion to expand its operations into areas outside of the thrift's traditional geographical market. From 2002 through 2005, TierOne opened or acquired nine loan production offices (LPO) covering six states. The primary purpose of the LPOs was to originate construction and land development loans.

At the time of its failure on June 4, 2010, TierOne had 69 branch offices in Nebraska, Kansas, and Iowa, and over $2.8 billion in total assets.

OTS Assessments Paid by TierOne

OTS funds its operations in part through semiannual assessments on thrifts. OTS determines each institution's assessment by adding together three components, the size, condition and complexity of an institution. OTS computes the size component by multiplying an institution's total assets as reported on the thrift financial report by the applicable assessment rate. The condition component is a percentage of the size component and is imposed on institutions that have a 3, 4, or 5 CAMELS composite rating. OTS imposes a complexity component if (1) a thrift administers more than $1 billion in trust assets; (2) the outstanding balance of assets fully or partially covered by recourse obligations or direct credit substitutes exceeds $1 billion;[7] or (3) the thrift services over $1 billion of loans

[7] Direct credit substitutes arise from an arrangement in which a bank assumes, in form or in substance, credit risk associated with an on- or off-balance sheet asset or exposure that was not

for others. OTS calculates the complexity component by multiplying set rates times the amounts by which an association exceeds each particular threshold. Table 2 shows OTS's paid assessments for TierOne for 2005 through 2010.

Table 2: Assessments Paid by TierOne to OTS 2005—2010

Billing period	Exam rating	Amount paid
1/1/2005–6/30/2005	1	$237,829
7/1/2005–12/31/2005	1	251,918
1/1/2006–6/30/2006	1	273,870
7/1/2006–12/31/2006	1	278,645
1/1/2007–6/30/2007	1	291,830
7/1/2007–12/31/2007	1	299,071
1/1/2008–6/30/2008	1	315,950
7/1/2008–12/31/2008	3	453,564
1/1/2009–6/30/2009	4	589,745
7/1/2009–12/31/2009	4	609,727
1/1/2010–6/30/2010	4	557,015

Source: OTS Electronic Continuing Examination Folder system.

Number of OTS Staff Hours Spent Examining TierOne

Table 3 shows the number of OTS staff hours spent examining TierOne from 2005 through 2010.

Table 3: OTS Hours Spent Examining TierOne, 2005–2010

Examination Start Date	Exam Type	Number of Examination Hours
11/7/2005	Full-scope	1,557.0
2/26/2007	Full-scope	1,303.0
4/28/2008	Limited-scope	275.0
6/2/2008	Full-scope	1,761.5
8/17/2009	Limited-scope	250.5
10/5/2009	Full-scope	2,154.5

previously owned by the bank (that is, it was a third-party asset), and the risk assumed exceeds the pro-rata share of the bank's interest in the third-party asset.

Office of Thrift Supervision
Department of the Treasury

Thomas A. Barnes
Deputy Director, Examinations, Supervision, and Consumer Protection

1700 G Street, N.W., Washington, DC 20552 • (202) 906-5650

July 8, 2011

MEMORANDUM FOR: Donald P. Benson
Audit Director
Office of Inspector General
U.S. Department of Treasury

FROM: Thomas A. Barnes /s/
Deputy Director

SUBJECT: Draft Audit Report on the Material Loss Review (MLR) of TierOne Bank

Thank you for the opportunity to comment on your draft audit report entitled "Material Loss Review of TierOne Bank." The report focuses on the causes of the failure of TierOne Bank (TierOne) and the oversight responsibility of the Office of Thrift Supervision (OTS) for TierOne.

The Inspector General's report for TierOne contains no new recommendations but reaffirms recommendations made in previous MLR reports of OTS-regulated thrifts regarding concentration limits.

OTS has been responsive to prior Office of Inspector General (OIG) MLR reports and internally prepared assessments of other thrift failures, and has implemented actions for the recommendations in prior reports.

Thank you again for the opportunity to review and respond to your draft report of TierOne. We appreciate the professionalism and courtesies provided by the staff of the Office of the Inspector General.

Boston Audit Office

Lisa Ginn, Audit Manager
Jenny Hu, Auditor-in-Charge
Jason Madden, Auditor
Jim Shepard, Auditor

Washington

James Lisle, Referencer

Department of the Treasury

Deputy Secretary
Office of Strategic Planning and Performance Management
Office of Accounting and Internal Control

Office of Thrift Supervision

Acting Director
Liaison Officer

Office of Management and Budget

OIG Budget Examiner

U.S. Senate

Chairman and Ranking Member,
Committee on Banking, Housing, and Urban Affairs

Chairman and Ranking Member
Committee on Finance

U.S. House of Representatives

Chairman and Ranking Member
Committee on Financial Services

Federal Deposit Insurance Corporation

Acting Chairman
Inspector General

U.S. Government Accountability Office

Comptroller General of the United States

EXHIBIT 2

SUPERVISORY AGREEMENT

This Supervisory Agreement ("Agreement") is made as of January 15, 2009 (the Effective Date), by and between TierOne Bank, Lincoln, Nebraska (Bank) (OTS Docket No. 03309), a federally chartered savings bank, and the Office of Thrift Supervision (OTS), a federal banking regulatory agency within the United States Department of the Treasury, acting through its Midwest Regional Director or his designee (Regional Director).

WHEREAS, OTS is the primary federal regulator of the Bank pursuant to the Home Owners' Loan Act, 12 USC §§ 1461 *et seq*., and is the Bank's appropriate Federal banking agency for purposes of the Federal Deposit Insurance Act, 12 USC §§ 1811 *et seq*.; and

WHEREAS, based on the findings set out in the Report of Examination pertaining to OTS's examination of the Bank commenced on June 2, 2008 (ROE), OTS is of the opinion that the Bank violated regulations and engaged in acts and practices that are considered to be unsafe and unsound; and

WHEREAS, OTS is of the opinion that grounds exist for the initiation of administrative proceedings against the Bank pursuant to 12 USC §§ 1464(d) and 1818(b); and

WHEREAS, OTS is of the view that it is appropriate to take measures intended to ensure that the Bank will comply with applicable laws and regulations and engage in safe and sound practices; and

WHEREAS, the Bank, acting through its Board of Directors (Board), without admitting or denying that such grounds exist except those as to jurisdiction, which are admitted, wishes to cooperate with OTS and to evidence the intent to (i) comply with applicable laws and regulations and (ii) engage in safe and sound practices.

NOW THEREFORE, in consideration of the above premises and the mutual undertakings set forth herein, the parties hereto agree as follows:

1. Compliance with Laws and Regulations.

The Bank, through its directors, officers, employees, and agents, shall comply with the following regulations:

A. 12 CFR § 560.160(a)(1) (classify assets in accordance with regulatory requirements);

B. 12 CFR § 560.160(b) (establish adequate allowances for loan and lease losses (ALLL));

C. 12 CFR § 560.170(a) (establish and maintain adequate loan documentation to allow the Bank to appropriately assess lending risks and make informed lending decisions);

D. 12 CFR § 560.170(b) (establish and maintain loan documentation to allow the Bank to identify all sources of repayment and to assess the ability of the borrower(s) and any guarantor(s) to repay the indebtedness in a timely manner);

E. 12 CFR § 560.170(d) (properly administer and monitor the Bank's loans);

F. 12 CFR § 560.170(e) (obtain adequate loan documentation in light of the size and complexity of some of the Bank's loans);

G. 12 CFR § 562.1(b)(2) and § 562.2(b) (follow regulatory requirements regarding the reporting of classified assets, allowance for loan and lease losses (ALLL), and specific valuation allowances (SVAs) on its thrift financial reports (TFRs);

H. 12 CFR § 564.4(a) and (c) (conform appraisals to generally accepted appraisal standards and analyze and report appropriate deductions and discounts);

I. 12 CFR § 564.8 (management's review of appraisals to ensure that appraisers follow the required procedures);

J. 12 CFR § 229.10(c)(1)(i), § 229.13(b), and § 229.13(e)(1) (proper deposit hold requirements);

K. 12 CFR § 226.18(n) and (o) (disclosure form requirements);

L. 24 CFR § 3500.8(b) (HUD-1 disclosure form requirements);

M. Appendix to 12 CFR § 560.101 (adequately monitor loans with high loan-to value ratios); and

N. Interagency Guidelines Establishing Standards for Safety and Soundness, Appendix A to 12 CFR Part 570 (conform to the safety and soundness guidelines with respect to (i) operational and managerial standards (Section II.A), (ii) loan documentation (Section II.C), (iii) credit underwriting (Section II.D), (iv) asset quality (Section II.G), and (v) compensation programs that could lead to material financial loss (Sections II.I and III).

2. <u>Capital.</u>

A. Effective immediately, the Bank shall continue to maintain a core capital ratio of 8.50 percent and a risk-based capital ratio of 11.00 percent.

B. Within 45 calendar days of the end of each calendar quarter, beginning with the quarter ending December 31, 2008, the Board shall review a report (Capital Report), which shall reflect the Bank's regulatory capital for the immediately preceding quarter end, from the Bank's management that:

(i) sets forth the Bank's capital ratios;

(ii) addresses the steps that the Bank will take to maintain the capital requirements set forth in Paragraph 2A hereof; and

(iii) summarizes its other capital raising activities including, but not limited to, requests for capital infusions from its holding company, TierOne Corporation, Lincoln, Nebraska (Holding Company); contacts with investment bankers and parties undertaking due diligence; contacts with third parties regarding the purchase of debt and equity securities; the receipt of offers to engage in a merger with, or acquisition of, the Bank; the execution of letters of intent, a merger agreement, or an investment agreement by the Bank or the Holding Company; or the termination of negotiations with parties considering a merger of the Bank, the acquisition of the Bank, the purchase of subordinated debt, or the acquisition of five (5) percent or more of common or preferred stock of the Holding Company.

C. The Board's review of the matters required by this Paragraph shall be fully detailed in the Board meeting minutes. Within 15 calendar days after the Board meeting, the Bank shall submit a copy of management's Capital Report to OTS.

3. Strategic Plan.

A. By January 31, 2009, the Bank shall submit to OTS the 2009-2011 Corporate Strategic Plan (Strategic Plan) adopted by the Board for OTS's review and a written notice of non-objection. The Strategic Plan shall specifically address the Bank's operations with or without the Bank's participation in any federal government program for which the Bank is specifically eligible.

B. The Board shall review the Strategic Plan at least semi-annually and make appropriate amendments. At least 30 days prior to the implementation of an amendment to the Strategic Plan or the adoption of a revised Strategic Plan, the Board shall submit the revised or amended Strategic Plan, including the pro forma financial statements and supporting assumptions, to OTS for a notice of prior written non-objection, unless OTS waives such time period.

C. The Board shall direct management to implement the Strategic Plan, including any amendment thereto, after receiving a written notice of non-objection from OTS.

D. By January 31, 2009, the Board shall approve and submit to OTS pro forma financial statements for calendar years 2009 through 2011 that: (i) reflect the implementation of the Strategic Plan; (ii) set forth quarterly projections, utilizing TFR reporting categories and line items; (iii) set forth balance sheet composition, operating projections, and core and risk-based capital ratios; and (iv) are based on realistic and well-supported assumptions. The submission to OTS shall also include a detailed description of all assumptions used to prepare the pro forma statements, including, but not limited to: (i) the assumed interest rate scenarios; (ii) assumptions used for non-interest income and non-interest expense; (iii) assumptions for forecasting loan losses or charge-offs and the disposition of problem assets; (iv) assumptions used for loan origination rates, taking into consideration current national and regional economic conditions; (v) assumptions used to determine the appropriate portfolio mix, including the consideration of credit, liquidity, interest rate, operational, reputation, and compliance risks; (vi) assumptions for the start-up costs, volumes, and expected returns on any new branches or new products or services; and (vii) assumptions used to measure the Bank's liquidity position, including, but not limited to, the solicitation of deposits in accordance with 12 CFR § 337.6(a)(5)(iii), and its borrowing capacities at, and collateral requirements of the Federal Home Loan Bank and the Federal Reserve Bank.

E. Within 60 days of the end of each calendar quarter, beginning with the quarter ending March 31, 2009, management shall prepare and submit to the Board, with a copy to OTS, quarterly variance reports on the Bank's compliance with the Strategic Plan and the Bank's operating results in comparison with its pro forma financial statements. Such variance reports shall: (i) compare actual operating results with projected results; (ii) compare actual balance sheet composition with projections; (iii) discuss any changes required in the Bank's business strategy due to a change in market conditions or other factors; and (iv) include detailed explanations of any material deviations from the Strategic Plan or the pro forma financial statements and the corrective actions or measures implemented, proposed, or under consideration to correct any material deviation. The Board, on at least a quarterly basis, shall also review and address the external and internal risks that may affect the Bank's ability to implement the Strategic Plan. This review shall include, but not be limited to, adverse scenarios relating to asset or liability mixes, interest rates, staffing levels and expertise, operating expenses, marketing costs, and economic conditions in the markets where the Bank is operating.

F. A deviation shall be considered material under this Paragraph 3 when the Bank engages in (i) any material activity, business line, or operation that is inconsistent with the Strategic Plan or (ii) any new activity, business line, or operation that is inconsistent with the Strategic Plan and the corresponding pro forma financial statements. A deviation also shall be considered material if the Bank (i) exceeds the level of any activity or growth contemplated in the pro forma financial statements by more than 10 percent, or (ii) falls below or fails to meet targets established in the pro forma financial statements by more than 10 percent.

G. Notwithstanding the foregoing, none of the following deviations shall be deemed to be material: (i) a change of 10 percent or less in any balance sheet category or (ii) a change of 10 percent or less in any income statement category. For purposes of this Paragraph, a balance sheet category is defined as cash, investments, 1-4 family permanent mortgage loans, consumer loans, nonhomogeneous loans, mortgage-backed securities, other investment securities, fixed assets, retail deposits, wholesale deposits, advances from the Federal Home Loan Bank, other borrowed money, other liabilities, and equity capital. For purposes of this Paragraph, an income statement category is defined as interest income, interest expense, noninterest income, noninterest expense, and extraordinary items. In addition, a change of 20 percent or less in net income or 20 percent or less in the amount of real estate owned shall not be deemed to be material for purposes of Paragraph 3 hereof.

H. The Board's review of the Strategic Plan, pro forma financial statements, and related variance reports shall be fully documented in the Board minutes.

4. Brokered Deposits Restriction.

A. The Bank shall not accept brokered deposits, including deposits covered by 12 CFR § 337.6(a)(5) except in compliance with 12 CFR § 337.6(b)(2), unless a waiver is granted by the Federal Deposit Insurance Corporation (FDIC).

B. The Bank shall provide to OTS: (i) written notice if the Bank requests a waiver from the FDIC, and (ii) a copy of the FDIC's correspondence indicating its disposition of any request for such a waiver.

5. Capital Distributions.

A. The Bank shall not declare or pay a capital distribution, as defined in 12 CFR § 563.141, without the written prior approval of OTS.

B. The Bank shall not declare or submit an application to make a capital distribution unless at the time of such declaration or application (i) the Bank has or exceeds a core capital ratio of 8.50 percent and a risk-based capital ratio of 11.00 percent, and (ii) the Bank can demonstrate that it will have or exceed these core capital and risk-based capital ratios after the payment of the capital distribution.

6. Commercial Real Estate and Commercial Loan Risk Analysis.

A. By January 31, 2009, the Board shall adopt a plan (CRE Stress Test Plan) for the commencement of the stress testing of its commercial real estate portfolio in accordance with the guidelines in OTS CEO Letter No. 252, entitled "Guidance on Commercial Real Estate (CRE) Concentration Risks", and dated December 14, 2006 (CEO Letter No. 252). The Plan shall, at a minimum, address the following:

(i) Completion of portfolio level stress tests or sensitivity analyses to quantify the impact of changing economic conditions, including, but not limited to those affecting certain relevant industries or sectors on asset quality, earnings, and capital; and

(ii) Revisions to the Bank's commercial real estate loan policy and the internal asset review function, to the extent necessary, to reflect the results of the risk analysis and the guidelines set forth in CEO Letter No. 252.

B. By January 31, 2009, the Board shall submit to OTS the CRE Stress Test Plan.

7. Diversification of Loan Portfolio.

By January 31, 2009, the Board shall adopt and submit to OTS for a written notice of non-objection a policy (Loan Concentration Policy) that establishes: (i) specific limits by loan type for each geographic market, with a discussion of the pertinent external and internal factors and risks, and (ii) a review process for monitoring the conditions in the geographic markets to ensure the limits remain appropriate and the Bank's loan policies continue to be appropriate for the current market conditions. After receipt of OTS's written notice of non-objection, the Bank shall implement the Loan Concentration Policy.

8. High Loan-to-Value Loans.

A. By December 31, 2008, the Board shall adopt and submit to OTS a certified resolution stating that: (i) management reviewed the loan portfolio and identified all high loan-to-value loans, as defined in Appendix to 12 CFR § 560.101, and presented the list of such loans to the Board for its review, and (ii) the Board will require management to submit an accurate list of high loan-to-value loans to the Board for review each quarter.

B. By December 31, 2008, the Board shall adopt and submit to OTS a written plan for the establishment of a system of internal controls, including the designation of responsible personnel and the provision of quarterly reports to the Board, to ensure that the Bank complies with the Appendix to 12 CFR § 560.101.

9. Asset Classification.

A. Effective immediately, the Bank shall establish reserves for losses on impaired loans either by establishing a specific valuation allowance or recording a charge-off in accordance with SFAS 114.

B. By November 30, 2008, the Board shall adopt a system of internal controls to verify that management is timely recognizing losses on impaired loans in accordance with SFAS 114 and submit documentation of the implementation of such system to OTS.

C. By October 31, 2008, the Board shall review the requirements and guidelines set forth in: (I) 12 CFR § 560.160, (ii) Section 260 (Classification of Assets) of the OTS Examination Handbook, (iii) Section II.G of Appendix A to 12 CFR Part 570, and (iv) OTS CEO Letter No. 250, dated December 13, 2006, and entitled "Interagency Policy Statement on the Allowance for Loan and Lease Losses and Questions and Answers on Accounting for Loan and Lease Losses" (CEO Letter No. 250). By December 31, 2008, the Board, by a certified resolution, shall direct enhancements to the Bank's asset classification process to ensure compliance with 12 CFR § 560.160, Section 260 (Classification of Assets) of the OTS Examination Handbook, Section II.G of Appendix A to 12 CFR Part 570, OTS CEO Letter No. 250, and generally accepted accounting principles, including but not limited to the requirements of SFAS Nos. 5 and 114, with respect to troubled debt restructuring. Within five (5) business days of the adoption of the resolution, the Board shall submit a copy of the certified board resolution to OTS.

D. By the forty-fifth (45th) calendar day after the end of each calendar quarter, beginning with the quarter ending March, 2009, the Board shall review and submit to OTS a quarterly report (ALLL Report) analyzing the adequacy of the Bank's ALLL based on the factors noted in: (I) the Bank's asset classification policy, (ii) 12 CFR § 560.160, (iii) Section 261 (Adequacy of Valuation Allowances) of the OTS Examination Handbook, (iv) Section II.G of Appendix A to 12 CFR Part 570, (v) OTS CEO Letter No. 250, and (vi) generally accepted accounting principles. The ALLL Report shall set forth all assumptions used to determine the adequacy of the ALLL. The Board's review of the ALLL Report and approval of the adequacy of the Bank's ALLL shall be fully documented in the Board meeting minutes.

10. Internal Asset Review Program.

A. By December 31, 2008, the Board shall adopt and submit to OTS for written notice of non-objection a revised written Internal Asset Review (IAR) Program that is consistent with: (i) CEO Letters No. 140, dated May 31, 2001 and entitled "Effective Internal Asset Review Systems"; (ii) CEO Letter No. 250; and (iii) CEO Letter No. 280, dated September 17, 2008, and entitled "Documentation and Underwriting Standards". The IAR Program shall: (i) assess the overall asset quality; (ii) determine problem assets; (iii) identify weaknesses in the Bank's loan underwriting, documentation, and administration policies and procedures; (iv) violations of applicable regulations or the Bank's policies; (v) assess the adherence to internal loan policies; (vi) provide information in determining the adequacy of the ALLL; (vii) identify relevant trends that affect the collectability of the portfolio; and (viii) review the lending personnel's activities.

B. The IAR Program shall be conducted by either a qualified independent third party consultant and/or an adequately staffed department of qualified and independent personnel.

C. The IAR Program shall: (i) set forth the frequency, scope, and depth of the reviews; (ii) require a review by senior executive management and the Board of the IAR findings; and (iii) require the oversight of follow-up corrective actions by a committee composed of Outside Directors (as defined in Paragraph 19C hereof) or the Audit Committee. Management shall not change or alter the findings of an IAR report.

11. Underwriting and Documentation Plan.

A. By December 31, 2008, the Board shall adopt and submit to OTS for notice of written non-objection a plan (Underwriting and Documentation Plan) to address the credit underwriting and administration deficiencies noted in the exception sheets and the loan review findings provided to management during the June 2, 2008 examination, including, but not limited to, the following:

(i) Documentation of disbursements and a review to determine whether the conditions for the disbursements have been satisfied;

(ii) Preparation of progress inspection reports that fully document the percentage of completion of development or construction activities, and compliance with plans and specifications;

(iii) Establishment of procedures to appropriately monitor third-party inspectors or review third-party inspection reports for accuracy;

(iv) Establishment of procedures for the appropriate oversight of the construction budgeting process, including the implementation of procedures to ensure the prevention of the use of budgeted hard cost funds to enhance or replenish the soft costs budget;

(v) Review of excessive front-end fees (soft costs) in construction loans paid to the borrower for job organization and setup, general and administrative expense, supervision, marketing, and undocumented contingencies to ensure that they were commensurate with the work performed;

(vi) Prohibition of the payment of interest due to the Bank from loan proceeds, when an appraised loss exists;

(vii) Establishment of procedures to appropriately analyze periodic financial and operating information;

(viii) Establishment of procedures to maintain current financial data on borrowers and guarantors;

(ix) Establishment of procedures to require current collateral property lease agreements;

(x) Performance of global analyses and analyses of contingent liabilities for certain borrowers/guarantors;

(xi) Establishment of procedures that require the reliance upon appraisals based on gross sales valuations instead of discounted cash flow valuations for credit underwriting and for valuation of certain projects where development or construction has ceased;

(xii) Establishment of procedures that require current and well-supported appraisals on applicable loans;

(xiii) Establishment of procedures that require appraisals to document (a) conclusions regarding the reasonableness and (b) the existence of independent documented reviews in other cases;

(xiv) Establishment of procedures requiring the performance of internal loan reviews;

(xv) Establishment of procedures that require agreed-upon performance standards be satisfied as a condition to pre-approved loan extensions;

(xvi) Establishment of procedures for the formal extension or modification of matured loans;

(xvii) Establishment of procedures to ensure that loan terms on the loan information systems that are consistent with the terms set forth in the loan documents; and

(xviii) Establishment of procedures that require that any volume driven compensation program for loan officers considers the asset quality of the loans in establishing the level of compensation thereunder.

B. The Board shall require monthly reports from a designated senior executive officer regarding the implementation of the Underwriting and Documentation Plan until each deficiency is resolved or the relevant activity is terminated or ceased. The Board's review of these reports shall be fully documented in the Board meeting minutes.

12. Loan Review.

A. Management shall complete a comprehensive review of each nonhomogeneous loan or loan relationship exceeding $1,000,000. The review of approximately 50% of such loans and loan relationships will be completed by January 31, 2009, with the review of the remainder being completed by March 31, 2009. This evaluation, at a minimum, shall: (i) identify significant loan underwriting, documentation, or administration deficiencies, if any; (ii) set forth the most recent collateral or appraisal valuations; (iii) determine the appropriate asset classification category; (iv) effectively identify the risks with respect to the asset; (v) identify whether the loan is impaired and, if impaired, provide an estimate of the loan impairment; (vi) recommend any required SVAs, charge-offs, or ALLL allocation; and (vii) provide a resolution plan, if appropriate.

B. By February 28, 2009, the Board shall review results of management's loan portfolio review completed by January 31, 2009 pursuant to Paragraph 12A hereof, approve the resolution plans, and submit to OTS: (i) a certified board resolution stating the loan review has been completed in accordance with the requirements of this Paragraph, and (ii) a copy of a report containing a summary of the findings of the comprehensive review and the actions taken to address potential or actual losses, if any, on the loans. By April 30, 2009, the Board shall review results of management's loan portfolio review completed by March 31, 2009 pursuant to Paragraph 12A hereof, approve the resolution plans, and submit to OTS: (i) a certified board resolution stating the loan review has been completed in accordance with the requirements of this Paragraph, and (ii) a copy of a report containing a summary of the findings of the comprehensive review and the actions taken to address potential or actual losses, if any, on the loans.

C. By the sixtieth (60^{th}) calendar day after the close of each calendar quarter, commencing with the December 31, 2008 quarter, the Board shall review and submit to OTS a status report from the Bank's management on all nonhomogeneous special mention, classified assets, and nonperforming assets that are $500,000 or greater in amount. The status reports, at a minimum, shall set forth: (i) the date(s) of next payment due and the last payment made; (ii) the amount of interest reserve remaining; (iii) the contractually required debt service; (iv) most recent appraised value of the collateral and the date of this valuation; (v) the borrower's and/or guarantor's current financial condition at least annually; (vi) the asset classification and any allocated allowances; (vii) the rationale for the classification; and (viii) information regarding the current status of the asset..

D. The Board's review of the quarterly problem asset report shall be fully documented in the Board meeting minutes.

E. By the sixtieth (60th) calendar day after the close of each calendar quarter, commencing with the December 31, 2008 quarter, the Board shall review and submit to OTS a report from management on all delinquent loans categorized by the type of loan and the geographic market or state. The report also shall delineate trends in delinquencies and set forth any recommendations whether a modification of the Bank's Loan Concentration Policy adopted pursuant to Paragraph 7 hereof or the Bank's loan policies is appropriate.

13. Board Oversight of Management.

A. By February 28, 2009, the Outside Directors (as defined in Paragraph 19C) shall prepare and submit to the Board a written report (Corporate Governance Report) that evaluates:

(i) The performance of the Bank's senior executive officers that includes an assessment of the responsibility and involvement of each senior executive officer for, in the opinion of OTS, the violations and unsafe and unsound practices set forth in the ROE;

(ii) The ability of the management team to effectively address the concerns disclosed in the ROE and to operate the Bank in a safe and sound manner in compliance with all applicable laws and regulations; and

(iii) The performance of the Board in overseeing the activities of senior executive officers and the Bank's compliance with applicable laws and regulations and engagement in practices about which regulatory concerns were set forth in the ROE.

B. Based on the findings of the review, the Corporate Governance Report shall set forth recommendations, if any, for improving the Board's oversight and the Bank's compliance with applicable laws and regulations, safe and sound practices, and its policies.

C. After reviewing the findings of the Corporate Governance Report and by March 31, 2009, the Board shall submit to OTS, for review and written notice of non-objection, an acceptable written plan designed: (i) to ensure management's observance of sound lending and credit administration practices and adherence to regulatory requirements for lending, asset classification, maintenance of ALLL, and incentive compensation (Compliance Oversight Plan); and (ii) to strengthen and improve the Board's oversight of the Bank's operations, including, but not limited to, its oversight of the Bank's lending activities and senior executive officers' performance of their duties and responsibilities.

D. In adopting the Compliance Oversight Plan, the Board shall consider: (i) whether the Board should receive training on corporate governance, oversight of lending and asset classification practices, and business planning; (ii) whether any changes in management personnel and management's duties and responsibilities are appropriate, subject to the requirements of Paragraph 15 hereof; (iii) whether the composition and the term of the charter of any Board Committee should be revised and whether additional Board Committees should be formed to enhance the Board's oversight of the Bank's operations; (iv) whether the Bank's compensation policy, including incentive compensation, should be revised; and (v) whether the Bank's information systems should be enhanced to ensure that comprehensive and accurate information is available for the Board in its deliberations. To be acceptable to OTS, the Compliance Oversight Plan must (i) set forth specific actions with corresponding due dates and (ii) assign an Outside Director (as defined in Paragraph 19C) to monitor compliance with each corrective action.

E. The Board's review of the Corporate Governance Report shall be fully documented in the Board meeting minutes. The Bank shall submit to OTS a copy of the Corporate Governance Report.

F. To assist in the preparation of the Corporate Governance Report, the Outside Directors may consider the utilization of the services of a qualified third party consultant that is independent of management (as defined in Paragraph 19B) and acceptable to OTS pursuant to Paragraph 18 hereof.

G. Immediately following receipt of written notice of non-objection from OTS to the Compliance Oversight Plan (with such revisions as may be required by OTS), the Bank and its Board shall implement and adhere to the Compliance Oversight Plan.

H. Effective immediately, the Board shall require Board minutes and Board Committee minutes are complete and accurate descriptions of all matters presented to, and discussed by the Board at all Board and Committee meetings, in accordance with 12 CFR § 563.170(c). Each Board and Committee member shall ensure that the minutes clearly and accurately reflect his or her actions, discussions, dissensions, abstentions, absences, presence, and votes before approving the minutes. The Board and Board Committee members shall review and approve or modify the minutes of each meeting at the next regular Board or Board Committee meeting and submit a copy of such minutes to OTS within ten (10) business days after such meeting.

14. <u>Employment Contracts and Compensation Arrangements.</u>

A. Effective immediately, the Bank shall not enter into, renew, extend, or revise any contractual arrangement relating to compensation or benefits for any senior executive officer or director of the institution, unless it first provides OTS with not less than thirty (30) days prior written notice of the proposed transaction.

B. Notwithstanding the foregoing, the Bank may amend: (i) any compensation or benefit arrangement which is subject to the provisions of Section 409A of the Internal Revenue Code of 1986, as amended, by December 31, 2008, provided such amendment is solely to achieve compliance with Section 409A or this Agreement and will not result in an increase in the benefits due the individual(s) subject to such compensation arrangement or (ii) any tax-qualified benefit plan in order to comply with changes in applicable law or regulations, in each case without the prior non-objection of OTS. A copy of any such amendment adopted by the Bank will be provided to the OTS with fifteen (15) days of the adoption of such amendment.

C. Effective immediately, the Bank's notice to OTS shall include a copy of the proposed employment contract or compensation arrangement, or a detailed, written description of the compensation arrangement to be offered to such officer or director, including all benefits and perquisites. The Board shall ensure that any contract, agreement, or arrangement submitted to OTS fully complies with the requirements, to the extent applicable, of: (i) 12 CFR Part 359, (ii) 12 CFR § 563.39, (iii) 12 CFR § 563.161(b), (iv) the guidelines set forth in Sections II.I and III of Appendix A to 12 CFR Part 570, and (v) Section 310 of the OTS Examination Handbook.

D. By February 28, 2009, the Board shall review the bonuses that they authorized for executive officers in 2007 and provide to OTS a detailed written analysis regarding the appropriateness of the bonuses in light of the Bank's significant asset quality problems and poor financial performance. The written report shall address: (i) the specific factors considered by the Board, and (ii) whether the Board considered the financial condition of the Bank; the combined value of all cash and noncash benefits provided to the officer, and the involvement, if any, of the officer with respect to any of the matters about which concerns were raised in the ROE.

E. Effective immediately, the Board shall not increase the directors' compensation for attendance at Board and Committee meetings during the term of this Agreement. The Board shall review and determine the appropriateness of management's receipt of fees to attend Board and Committee meetings, and at no time shall such fees exceed what was set forth in the ROE. By January 31, 2009, the Board shall submit to OTS the results of its review.

F. Effective immediately, the Board shall limit the directors' remuneration to (i) no more than $56,250 annually (excluding therefrom the value (a) of the payment of life, health and dental premiums (or the equivalent cash value thereof) as provided in subclause (ii) hereof and (b) resulting from the vesting or exercise of stock option and restricted stock awards granted prior to October 1, 2008) and (ii) the continued payment (with respect to non-employee directors) of life, health and dental premiums (or the equivalent cash value thereof with respect to those non-employee directors covered by other employer plans) in accordance with existing policy and practice; *provided, however,* no individual director's remuneration will exceed the amount of remuneration received thereby for the year ended December 31, 2007, except for the most recently appointed director whose remuneration will not exceed $56,250.

15. Changes in Management and Directorate.

A. Effective immediately, the Bank shall comply with the prior notification requirements for changes in its directors and senior executive officers, including changes in responsibilities of senior executive officers, as set forth in 12 CFR Part 563, Subpart H.

B. By February 28, 2009, the Board shall review the current board composition in light of the findings of the ROE and the Bank's current financial condition and shall adopt and submit to OTS either (i) a written plan to expand the current board membership to add directors with community banking, financial management, or accounting experience and who are independent of management (as defined in Paragraph 19B hereof), or (ii) a justification as to why the Board should not be expanded. The appointment of new directors shall be subject to the requirements of Paragraph 15A hereof. The Outside Directors (as defined in Paragraph 19C hereof) shall be responsible for identifying and nominating candidates who have community banking, financial management, or accounting experience.

16. Transactions with Affiliates.

Effective immediately, the Bank shall not engage in any transactions or enter into any contracts or agreements with affiliates or insiders, except in compliance with 12 CFR §§ 563.41, 563.43, 563.200, and 563.201. The Board shall ensure the Bank complies with this restriction and the Bank's senior executive officers shall provide such documentation and information as the Board requests.

17. Severance and Indemnification Payments.

Effective immediately, the Bank shall not make any golden parachute payment or prohibited indemnification payment unless, with respect to each such payment, the Bank has complied with the requirements of 12 CFR Part 359 and, as to indemnification payments, also with 12 CFR § 545.121.

18. Third Party Contracts.

Effective immediately, the Bank shall not enter into any third party contract outside the normal course of business, as defined in OTS Thrift Bulletin 82a, unless, with respect to each such contract, the Bank has (i) provided OTS with a minimum of thirty (30) days prior written notice of such contract, and (ii) received written notice of non-objection from OTS.

MISCELLANEOUS

19. Definitions.

For purposes of this Agreement, the terms referenced below have the meanings as set out below:

A. The term "acceptable" means the Regional Director, the Regional Deputy Director, or assigned Assistant Director, has stated in writing that it is acceptable or has provided a written notice of non-objection to it.

B. The term "independent of management" means that the person: (i) is not, and within the preceding three (3) years has not served as, a consultant, advisor, or legal counsel to the Bank, its affiliates or subsidiaries, excepted as approved by OTS; (ii) is not, either by blood or marriage, related to any existing or former Bank officer or their attorneys or consultants; (iii) does not have a business or professional relationship with any existing or former Bank officers or their attorneys or consultants, except as approved by OTS; and (iv) to the extent not inconsistent with the foregoing, meets the criteria set forth at 12 CFR Part 363 and Appendix A thereof.

C. The term "Outside Director" means that the director (i) is not, and within the preceding three years has not been, an officer or employee of the Bank or any subsidiary or affiliate or the Bank; or (ii) is not related by blood or marriage to any officer or employee of the Bank or any subsidiary thereof.

D. The term "Regional Director" means the OTS "Regional Director for the Midwest Region, and includes any OTS official designated by him to act on his behalf with respect to matters relating to this Agreement.

E. The term "senior executive officer" shall have the meaning set forth in 12 CFR § 563.555.

20. Compliance with Agreement.

A. All policies, procedures, corrective actions, plans, programs, systems of internal controls, and reviews required by this Agreement (collectively referred to as Plans and Policies) shall conform to all applicable statutes, regulations, and written OTS policy and guidance that has been published by OTS or distributed by OTS to OTS-related institutions. The Board shall revise such Plans and Policies as required by OTS. The Bank shall comply with all Plans and Policies required by this Agreement, including any revisions or amendments required by OTS or which OTS provided written notice of non-objection. The Bank's failure to comply with a Plan or Policy required by this Agreement is considered a violation of this Agreement.

B. The Board and management of the Bank shall take immediate action to cause the Bank to comply with the provisions of this Agreement.

C. This Agreement requires the Bank to receive approval, a notice of non-objection, or a notice of acceptability from OTS for certain Board actions. The Board affirms that such regulatory oversight does not derogate or supplant each individual member's continuing fiduciary duty. The Board shall have the ultimate responsibility for overseeing the safe and sound operation of the Bank.

D. By the sixtieth (60^{th}) calendar day after the end of each calendar quarter, beginning with the quarter ending December 31, 2008, the Board shall adopt and submit to OTS a certified copy of a board resolution formally resolving that, following a careful review of relevant information (including a report from Bank's management regarding the Bank's compliance with each provision of this Agreement), to the best of its knowledge and belief, during the immediately preceding calendar quarter, the Bank complied with each provision of this Agreement currently in effect, except as otherwise stated. The Compliance Resolution shall: (i) specify in detail how, if at all, full compliance was found not to exist; and (ii) identify all notices of exemption or non-objection issued by OTS that were outstanding as of the date of its adoption. In the event that one or more directors do not agree with the representations set forth in a Compliance Resolution, such disagreement shall be noted in the Board meeting minutes.

E. With respect to any plan, policy, or procedure that is timely filed and prepared by the Bank, but nevertheless requires modification to address OTS's comments occurring after the due date, no violation will be found to exist for so long as the Bank (i) incorporates such modifications and (ii) implements the modified plan, policy, or procedures.

21. Submissions and Notices.

A. All submissions, including progress reports, to OTS that are required by or contemplated by this Agreement shall be submitted within the specified timeframes;

B. Except as otherwise provided herein, all submissions, requests, communications, consents or other documents relating to this Agreement shall be in writing and sent by first class U.S mail (or by reputable overnight carrier, electronic facsimile transmission or hand delivery by messenger) addressed as follows:

(i) To OTS:
Regional Director
Attn: Tony Jardieu, Assistant Director
Office of Thrift Supervision
225 E. John Carpenter Freeway, Suite 500
Irving, TX 75062
Phone: (972) 277- 9547
Fax: (972) 277- 9596

(ii) To Bank:
Gilbert G. Lundstrom
Chairman of the Board
TierOne Bank
P.O. Box 83009
Lincoln, NE 83009
Fax: (402) 435-0427

22. Successor Statutes, Regulations, Guidance, Amendments.

Reference in this Agreement to provisions of federal and state statutes, regulations, and published OTS guidance shall be deemed to include references to all amendments to such provisions that have been made as of the Effective Date and references to successor provisions as they become applicable.

23. Time Calculations.

A. Calculation of time limitations for compliance with the terms of this Agreement run from the Effective Date and shall be calendar based, unless otherwise noted; and

B. The Regional Director, Regional Deputy Director, or assigned Assistant Director may extend any of the deadlines set forth in the provisions of this Agreement upon written request by the Bank that includes reasons in support for any such extension. Any OTS extension shall be made in writing.

24. OTS Review of Actions Required.

The Regional Director, Regional Deputy Director, or assigned Assistant Director may request additional information and provide a written notice of non-objection or objection to any submission required by this Agreement.

25. Rules of Interpretation.

A. Nothing in this Agreement shall be construed as allowing the Bank to violate any law, rule, regulation, or policy statement to which it is subject.

B. The paragraph headings herein are for convenience only and shall not affect the construction hereof.

C. In case any provision in this Agreement is ruled to be invalid, illegal, or unenforceable by the decision of any court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless OTS determines otherwise in the exercise of its discretion.

26. Integration Clause.

This Agreement represents, as of the Effective Date, the final written agreement of the parties with respect to the subject matter hereof and constitutes the sole agreement of the parties, as of the Effective Date.

27. Successors in Interest/Benefit.

The terms and provisions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest. Nothing in this Agreement, expressed or implied, shall give to any person or entity, other than the parties hereto, the Federal Deposit Insurance Corporation, and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim under this Agreement.

28. Enforceability of Agreement; Director Attestation.

The Bank represents and warrants that this Agreement has been duly authorized, executed, and delivered, and constitutes, in accordance with its terms, a valid and binding agreement of the Bank. Each director signing this Agreement attests, by such act, that she or he, as the case may be, voted in favor of the Board resolution (a copy of which shall be submitted to OTS) authorizing the execution of this Agreement by the Bank.

29. Effective Date; Duration; Termination or Suspension of Agreement.

This Agreement shall be effective and enforceable as of the Effective Date, which appears on the first page of this Agreement. This Agreement shall remain in effect until terminated, modified, or suspended in writing by OTS, acting by and through its Regional Director or other authorized representatives. OTS may suspend any or all provisions of this Agreement by providing written notice of such action to the Bank.

30. No Bar or Estoppel.

The provisions of this Agreement shall not bar, estop, or otherwise prevent OTS from taking any other action (including, without limitation, any type of supervisory, enforcement, or resolution action) affecting the Bank or any of its current or former institution-affiliated parties that is appropriate in fulfilling the responsibilities placed upon it by law.

31. Statutory Basis for Agreement.

This Agreement is a "written agreement" for purposes of Section 8 of the Federal Deposit Insurance Act, 12 USC § 1818.

32. Counterparts.

This Agreement may be executed in separate counterparts, each of which shall be an original and all of which, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, OTS, acting by and through the Regional Director, and the Bank hereby executes this Agreement as of the Effective Date of this Agreement.

OFFICE OF THRIFT SUPERVISION

By: /s/
C. K. Lee
Regional Director, Midwest Region

Date: The Effective Date shown on page 1

TIERONE BANK, LINCOLN, NEBRASKA

/s/
Gilbert G. Lundstrom
Chairman & CEO

/s/
James A. Laphen, President & Director

/s/
Campbell R. McConnell, Director

/s/
Joyce Person Pocras, Director

/s/
Samuel P. Baird, Director

/s/
Charles W. Hoskins, Director

EXHIBIT 3

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:	)	
	)	
TierOne Bank	)	OTS Order No.: CN 10-14
Lincoln, Nebraska	)	
	)	
OTS Docket No. 03309	)	Effective Date: March 31, 2010
	)	

STIPULATION AND CONSENT TO
PROMPT CORRECTIVE ACTION DIRECTIVE

1. The Office of Thrift Supervision (OTS) has informed TierOne Bank, Lincoln, Nebraska, OTS No. 03309 (Institution) that grounds exist to issue a Prompt Corrective Action Directive (PCA Directive) pursuant to Section 38 of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1831o, and Section 565.7 of the OTS Regulations, 12 C.F.R. § 565.7, against the Institution. The Institution, in the interest of cooperation and to avoid the time and expense of pursuing further OTS administrative procedures for the issuance of a PCA Directive, stipulates and consents to the terms set forth in this Stipulation and Consent.

2. The Institution stipulates it is a federal savings association subject to the supervision and regulation of the OTS. The Institution is a "savings association" as that term is used in the Home Owners' Loan Act (HOLA), 12 U.S.C. §§ 1461 et seq., and an "insured depository institution" as defined in 12 U.S.C. §§ 1813(b) and 1813(c)(2). The Institution stipulates, as such, that it is subject to the authority of the OTS to issue a directive to take prompt corrective action pursuant to Section 38 of FDIA, 12 U.S.C. § 1831o, and Section 565.7 of the OTS Regulations, 12 C.F.R. § 565.7.

3. The Institution consents, by execution of this Stipulation and Consent, to the issuance by the OTS of the accompanying PCA Directive. The Institution further agrees to comply with the terms of the PCA Directive.

4. The Institution, by execution of this Stipulation and Consent, authorizes the OTS to provide otherwise confidential information about the Institution to third parties to facilitate the possible acquisition of the Institution by a qualified buyer, sale of the Institution's assets or the purchase of the Institution's branches, or the possible merger of the Institution with a qualified merger partner.

5. The attached PCA Directive is effective upon issuance. The Institution acknowledges that the PCA Directive is enforceable pursuant to Section 5(d) of HOLA, 12 U.S.C. § 1464(d), and Section 8 of FDIA, 12 U.S.C. § 1818.

6. The Institution hereby waives the following:

   (a) its rights to pursue the OTS's administrative process for issuance of the accompanying PCA Directive pursuant to 12 C.F.R. § 565.7;

   (b) any and all rights it might otherwise have pursuant to federal law or regulations (including, but not limited to, 12 U.S.C. § 1831o and 12 C.F.R. § 565.7) in connection with issuance of the PCA Directive;

   (c) its right to seek judicial review of the PCA Directive, including, but not limited to, any such right provided by Section 8(h) of FDIA, 12 U.S.C. § 1818(h); and

   (d) its right to challenge or contest in any manner the basis, issuance, validity or enforceability of the PCA Directive or any provision thereof.

7. The Supervisory Agreement effective January 15, 2009 in connection with the Institution remains in effect.

8. (a) The laws of the United States of America shall govern the construction and validity of this Stipulation and Consent and the PCA Directive.

   (b) All references to the OTS in this Stipulation and Consent and the PCA Directive also shall mean any of the OTS's predecessors, successors, and assigns.

   (c) To the extent this Stipulation and Consent and the PCA Directive may be deemed an agreement, the written terms herein and in the accompanying PCA Directive represent the final and sole binding written terms of such agreement with respect to the subject matters addressed therein.

[Remainder of Page Intentionally Left Blank]

9. Each Director signing this Stipulation attests that s/he voted in favor of the resolution authorizing the execution of this Stipulation. This Stipulation may be executed in counterparts by the directors after approval of execution of the Stipulation at a duly called board meeting.

TierOne Bank
Lincoln, Nebraska

By: /s/
Charles W. Hoskins, Chairman

/s/
James A. Laphen, Director

/s/
Campbell R. McConnell, Director

/s/
Joyce Person Pocras, Director

Accepted By:
Office of Thrift Supervision

By: /s/
Daniel T. McKee
Regional Director, Central Region

Date: See Effective Date on page 1

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:	)	
	)	
TierOne Bank	)	OTS Order No.: CN 10-14
Lincoln, Nebraska	)	
	)	
OTS Docket No. 03309	)	Effective Date: March 31, 2010
	)	

PROMPT CORRECTIVE ACTION DIRECTIVE

WHEREAS, TierOne Bank, Lincoln, Nebraska (Institution), is a federally chartered savings association that is regulated by the Office of Thrift Supervision (OTS);

WHEREAS, Section 38 of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1831o, and Part 565 of the OTS Regulations, 12 C.F.R. Part 565, require insured depository institutions that are undercapitalized to file a capital restoration plan specifying the steps the insured depository institution will take to become at least "adequately capitalized" and remain "adequately capitalized" for four consecutive quarters;

WHEREAS, Section 38 of FDIA, 12 U.S.C. § 1831o, requires the OTS to take prompt corrective action to resolve the problems of insured depository institutions at the least possible long-term loss to the Deposit Insurance Fund;

WHEREAS, Section 565.7 of the OTS Regulations, 12 C.F.R. § 565.7, provides for the OTS's issuance of directives to take prompt corrective action to resolve the problems of insured depository institutions and to restore their capital;

WHEREAS, the OTS, on November 13, 2009, notified the Institution that it was "Undercapitalized" for purposes of the prompt corrective action provisions of Section 38 of FDIA, 12 U.S.C. § 1831o, and was required to submit a Capital Restoration Plan no later than December 28, 2009;

WHEREAS, the Institution also is not in compliance with the capital standards required by Section 5(t) of the Home Owners' Loan Act (HOLA), 12 U.S.C. § 1464(t);

WHEREAS, Section 5(t)(6)(B)(ii) of HOLA, 12 U.S.C. § 1464(t)(6)(B)(ii), requires any institution not in compliance with the capital standards to comply with a capital directive issued by the OTS;

WHEREAS, on December 23, 2009, the OTS received the Institution's capital restoration plan (Capital Restoration Plan);

WHEREAS, the OTS issued a Notice of Intent to Issue this Prompt Corrective Action Directive (PCA Directive) on February 19, 2010 (Notice of Intent); has considered the Institution's response dated March 5, 2010; and has determined to issue this PCA Directive in order to carry out the purposes of Section 38 of FDIA, 12 U.S.C. § 1831o, and to resolve the Institution's problems at the least long term cost to the deposit insurance fund;

WHEREAS, the Institution has not submitted a Capital Restoration Plan that is acceptable under Section 567.10 of the OTS Regulations, 12 C.F.R. § 567.10, and Section 38(e)(2) of the FDIA, 12 U.S.C. § 1831o(e)(2); and

WHEREAS, the Institution and its Board of Directors, by execution of the attached Stipulation and Consent (Stipulation) to the issuance of this PCA Directive, the terms of which are incorporated herein by this reference, have stipulated and consented to the issuance of the PCA Directive.

NOW THEREFORE, pursuant to Section 38 of FDIA, 12 U.S.C. § 1831o, including but not limited to subsection (f) thereof, Section 5(t)(6)(B)(ii) of HOLA, 12 U.S.C. § 1464(t)(6)(B)(ii), and Section 565.7 of the OTS Regulations, 12 C.F.R. § 565.7, the OTS directs the Institution and its Board of Directors to do the following[1]:

PART I – IMPROVING CAPITAL

Section 1.1 <u>Required Recapitalization through Merger, Acquisition, or Sale.</u>

Pursuant to 12 U.S.C. §§ 1831o(f)(2)(A)(iii) and (e)(5), the Institution must be recapitalized prior to May 31, 2010, by (a) merging with or being acquired by another financial institution, financial holding company, or other entity[2], or (b) the sale of all or substantially all of the Institution's assets and liabilities to another financial institution, financial institution holding company, or other entity, whereby the resulting depository institution would be at least "adequately capitalized," as defined at 12 C.F.R. § 565.4(b), and remain so for four (4) consecutive quarters. The Institution shall submit a binding merger or acquisition agreement to the OTS by April 30, 2010, unless extended in writing by the OTS. The Institution's management and Board of Directors shall take appropriate steps to accomplish such merger, acquisition, or sale.

[1] The OTS must impose one or more of the presumptive restrictions set forth in 12 U.S.C. § 1831o(f), especially 12 U.S.C. §§ 1831o(f)(3) and (4) if the Institution: (1) is significantly or critically undercapitalized, (2) is undercapitalized and did not submit an acceptable capital restoration plan, or (3) fails to implement an approved capital restoration plan.

[2] For purposes of this PCA Directive, "other entity" may include but is not limited to an individual, a group of individuals, a partnership, a corporation, or any other form of business organization that may, under applicable statutes and regulations, merge with or acquire the Institution or purchase all or substantially all of its assets and liabilities.

Section 1.2 <u>Efforts to Obtain Capital.</u>

The Board of Directors of the Institution shall at all times make diligent and good faith efforts to cause the Institution to become "adequately capitalized." The OTS requires this action pursuant to 12 U.S.C. § 1831o(e)(5) and (f)(2)(J) having determined that such actions will better carry out the purposes of 12 U.S.C. § 1831o.

Section 1.3 <u>Prior Notice Required.</u>

(a) The Institution and any subsidiary or holding company thereof shall not issue any securities or enter into any agreement, letter of intent, or understanding to merge, consolidate, sell all or substantially all of its assets and liabilities, or otherwise be acquired, or enter into any agreement or understanding to reorganize unless (i) the Institution has provided the OTS with prior written notice of its intention to take such action, and (ii) following such notice, the OTS has provided the Institution with prior written notice of its non-objection to the proposed action by the Institution.

(b) The OTS requires this action pursuant to 12 U.S.C. § 1831o(e)(5) and (f)(2)(J) having determined that such actions will better carry out the purposes of 12 U.S.C. § 1831o.

Section 1.4 <u>Ongoing Monitoring of Capital Category Required.</u>

(a) The Institution must monitor its own PCA capital ratios and if the Institution should improve from a lower to a higher PCA capital category, it must continue to comply with each provision of this PCA Directive except to the extent the provision shall be modified, terminated, suspended or set aside by the OTS in writing.

(b) If the Institution falls into a lower PCA capital category, it must comply immediately with the appropriate additional restrictions contained in 12 U.S.C. § 1831o and 12 C.F.R. § 565.6.

(c) The OTS requires this action pursuant to 12 U.S.C. § 1831o(f)(2)(J) and based upon a determination by the OTS that such action will better carry out the purposes of Section 38 of the FDIA.

Section 1.5 <u>Reports of Compliance.</u>

No later than the close of business on the 20th day of each month following the Effective Date of this PCA Directive:

(a) The Institution shall submit to the OTS, in a format acceptable to the OTS, a summary of actions taken, during the immediately preceding month, by the Institution and its Board of Directors and executive officers in furtherance of the Institution's efforts to become "adequately capitalized."

(b) The management of the Institution shall prepare a written report concerning the Institution's compliance with each of the requirements of this PCA Directive during the preceding month. The report shall include confirmation that the Institution is in compliance with: (i) all restrictions that apply automatically to an institution that is "Significantly Undercapitalized" and (ii) with the other restrictions and requirements contained in this PCA Directive.

(c) The Institution shall continue to provide status reports required by Section 1.5 (a) and (b) until directed otherwise by the Regional Director. The OTS requires this action pursuant to 12 U.S.C. § 1831o(e)(5) and (f)(2)(J) and based upon a determination by the OTS that such action will better carry out the purposes of Section 38 of the FDIA.

Section 1.6 <u>Adequate Progress.</u>

If the OTS, in its sole discretion, determines that the Institution is failing to make adequate progress towards achieving the requirements set forth in Sections 1.1, 1.2, and 1.3 of this PCA Directive, the OTS may take such further supervisory, enforcement or resolution action as it deems appropriate.

PART II - OPERATING RESTRICTIONS

Section 2.1 <u>Compliance with Mandatory Restrictions.</u>

The Institution shall comply with all of the mandatory prompt corrective action provisions set forth in 12 U.S.C. § 1831o and 12 C.F.R. § 565.6 that automatically apply to the Institution based upon the Institution's prompt corrective action capital category. These provisions are set forth as follows:

(a) No capital distributions shall be made without the prior written approval of the OTS. 12 U.S.C. § 1831o(d)(1); 12 C.F.R. §§ 565.6(a)(1) and (a)(2)(i).

(b) No management fees shall be paid to any person having control of the Institution if: (i) the Institution is not adequately capitalized or (ii) after making the payment, the Institution would be undercapitalized. 12 U.S.C. § 1831o(d)(2); 12 C.F.R. §§ 565.6(a)(1) and (a)(2)(i).

(c) The Institution shall not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding quarter unless (i) the OTS has accepted the Institution's capital restoration plan, (ii) the increase in total assets is consistent with the plan, and (iii) the Institution's ratio of tangible equity to assets increases during the calendar quarter at a rate sufficient to enable the Institution to become adequately capitalized within a reasonable time. 12 U.S.C. § 1831o(e)(3); 12 C.F.R. § 565.6(a)(2)(iv).

(d) The Institution shall not, directly or indirectly, acquire any interest in any company or insured depository institution, establish or acquire any additional branch office, or engage in any new line of business, unless (i) the OTS has accepted the Institution's capital restoration plan, the Institution is in compliance with the plan, and the OTS determines that the action is consistent with, and will further achievement of the plan, or (ii) the FDIC Board of Directors approves the action. 12 U.S.C. § 1831o(e)(4); 12 C.F.R. § 565.6(a)(2)(v).

(e) The Institution shall not, without the OTS's prior written approval, (i) pay any bonus to any Senior Executive Officer, as that term is defined in 12 C.F.R. § 563.555, or (ii) provide compensation to any Senior Executive Officer exceeding that Officer's average rate of compensation (excluding bonuses, stock options, and profit-sharing) during the 12 calendar months preceding the calendar month in which the Institution became undercapitalized. 12 U.S.C. § 1831o(f)(4); 12 C.F.R. § 565.6(a)(3).

Section 2.2 Affiliate Transactions.

(a) The Institution shall not engage in any new transaction with any subsidiary, affiliate or institution-affiliated party, as that term is defined in Section 3(u) of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(u), without the prior written non-objection of the Regional Director.

(b) The OTS is imposing these restrictions pursuant to 12 U.S.C. §§ 1831o(f)(2)(B)(ii) and (f)(2)(J) based on its determination that the restriction is necessary to carry out the purpose of 12 U.S.C. § 1831o.

Section 2.3 Restrictions on Activities Posing Excessive Risk.

The OTS imposes these restrictions pursuant to 12 U.S.C. §§ 1831o(e)(5), (f)(2)(E), and (J), having determined that these activities pose excessive risk to the Institution in view of its current financial condition. The Institution, directly or indirectly, shall not do any of the following without prior written approval from the OTS:

(a) release any borrower or guarantor from personal or corporate liability on any loan or extension of credit granted by the Institution, except when the outstanding balance of the loan and other outstanding loans to the borrower or guarantor have been paid in full;

(b) make or commit to make any investment in any service corporation, finance subsidiary, or operating subsidiary, or any subsidiary of a service corporation;

(c) enter into any joint venture or limited partnership agreement, directly or indirectly;

(d) engage in forward commitment (except for firm commitments not exceeding sixty (60) days for the sale of conforming mortgage loans), futures transaction, or financial options transaction;

(e) enter into any new contract or agreement for the purchase, sale, or lease of goods, materials, equipment, supplies, services or capital assets where the amount of each contract or agreement exceeds twenty-five thousand dollars ($25,000);

(f) enter into any renewals or modifications of existing contracts or agreements to be entered into in the normal course of business where the amount of each contract or agreement exceeds one hundred thousand dollars ($100,000);

(g) enter into any lease or contract for the purchase or sale of real estate or of any interest therein, except that this restriction does not apply to such contracts to be entered into in the ordinary course of business for the purchase or sale of real estate owned due to foreclosure (REO) where the consideration for the contact does not exceed one million dollars ($1,000,000);

(h) encumber any of its property or other assets, except that the Institution may pledge its assets in connection with borrowings necessary to meet liquidity needs;

(i) incur any material obligation or contingent liability, except as otherwise permitted by this PCA Directive;

(j) establish any loan production office or agency office;

(k) accept any non-cash capital contribution;

(l) accept, renew, or rollover any deposits not fully insured by the FDIC;

(m) purchase any new bank-owned life insurance (BOLI);

(n) extend any credit to executive officers, directors, or principal shareholders; and

(o) originate or participate in any loan or line of credit, except for the origination of owner-occupied, Qualifying Mortgage Loans, as defined in 12 CFR § 567.1, underwritten in accordance with the criteria established, at the time of loan origination, for loans:

- (i) purchased by Federal Home Loan Mortgage Corporation (FHLMC) or Federal National Mortgage Association (FNMA);
- (ii) guaranteed by the Department of Veterans Affairs against default (VA Mortgage); or
- (iii) insured by the Federal Housing Administration against default (FHA Mortgage).

For purposes of complying with this lending restriction, the Institution may: (i) enter into extensions, refinancings, assumptions or modifications of existing loans or lines that do not involve the granting of new funds provided that for any extension, refinancing, assumption, or modification of an existing loan or line, the Institution shall maintain documentation sufficient to demonstrate that such a transaction was in the best interest of the Institution; and (ii) make disbursements pursuant to legally binding commitments made prior to the Effective Date of this PCA Directive.

Section 2.4 Liquidity Reporting.

The Institution shall submit electronically to the Regional Director or his authorized representative a liquidity status report each week in a format acceptable to the Regional Director. The OTS imposes this requirement pursuant to 12 U.S.C. §§ 1831o(e)(5) and (f)(2)(J) based on its determination that the restriction is necessary to carry out the purpose of 12 U.S.C. § 1831o.

PART III - RELIEF FROM RESTRICTIONS

Section 3.1 Waiver Requests.

The Institution may submit written requests to the OTS, requesting the OTS to issue a notice of non-objection for the purpose of either relieving the Institution from certain restrictions hereunder or requesting OTS to provide notice of supervisory non-objection with respect to a particular specifically identified transaction, loan, or investment.

PART IV - GENERAL PROVISIONS

Section 4.1 Jurisdiction.

This PCA Directive constitutes a final order under 12 U.S.C. § 1831o and is enforceable under 12 U.S.C. § 1818(i).

Section 4.2 Definitions.

(a) All technical words or terms used in this PCA Directive, for which meanings are not specified or otherwise provided by the provisions of this PCA Directive, shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, HOLA, FDIA, OTS Bulletins, or OTS Examination Handbook. Any such technical words or terms used in this PCA Directive and undefined in Code of Federal Regulations, HOLA, FDIA, OTS Bulletins or OTS Examination Handbook shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.

(b) Reference in this PCA Directive to provisions of statutes and regulations shall be deemed to include references to all amendments to such provisions as have been made as of the Effective Date and references to successor provisions as they become applicable.

(c) The term "Effective Date" has the meaning set forth in Section 4.10 of this PCA Directive.

Section 4.3 Notices.

Except as otherwise provided herein, any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by the PCA Directive to be made upon, given or furnished to, delivered to, or filed with the OTS or the Institution shall be in writing and sent by first class U.S. mail (or by reputable overnight courier, electronic facsimile transmission, or hand delivery via messenger) addressed as follows:

OTS: Regional Director
Office of Thrift Supervision
One South Wacker Drive, Suite 2000
Chicago, Illinois 60606
Facsimile: (312) 917-5001

Institution: Chief Executive Officer
TierOne Bank
1235 N Street
Lincoln, Nebraska 68508
Facsimile: (402) 435-0427

Section 4.4 <u>Duration, Termination or Suspension of the PCA Directive.</u>

(a) The terms and provisions of this PCA Directive shall be binding upon the Institution, its directors, officers, employees, agents, successors, assigns, and other persons participating in the affairs of the Institution.

(b) The PCA Directive shall remain in effect until terminated, modified or suspended in writing by the OTS.

(c) The OTS, in its discretion, may, by written notice, suspend any or all provisions of the PCA Directive, except for Section 2.1 (Mandatory Restrictions).

Section 4.5 <u>Effect of Headings.</u>

The Part and Section headings herein are for convenience only and shall not affect the construction hereof.

Section 4.6 <u>Separability Clause.</u>

In case any provision in this PCA Directive is ruled to be invalid, illegal or unenforceable by the decision of any court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby unless the OTS, in its sole discretion, determines otherwise.

Section 4.7 <u>No Violations Authorized; Consequences of PCA Directive.</u>

Nothing in this PCA Directive, including, without limitation, any of the timeframes for actions set forth in Part I, shall be construed as: (i) allowing the Institution to violate any law, rule, regulation, or policy statement to which it is subject or (ii) restricting the OTS from taking such actions as are appropriate in fulfilling the responsibilities placed upon it by law, including, without limitation, actions pursuant to 12 U.S.C. § 1831o, or taking any other type of supervisory, enforcement, or resolution action that the OTS determines to be appropriate.

Section 4.8 Other Enforcement Document.

(a) The Supervisory Agreement issued against the Institution effective January 15, 2009, remains in effect.

(b) Nothing contained in this PCA Directive shall affect or limit the OTS's ability to take enforcement action in connection with any violation of this enforcement document.

Section 4.9 Incorporation of Stipulation.

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

Section 4.10 Effective Date of This PCA Directive.

The provisions of this PCA Directive are effective immediately upon the issuance of the PCA Directive by the Regional Director, which is the date indicated on the first page of this PCA Directive (Effective Date).

IT IS SO ORDERED.

OFFICE OF THRIFT SUPERVISION

By:__________/s/__________
Daniel T. McKee, Regional Director
Central Region

Date: See Effective Date on page 1

EXHIBIT 4

EX-10.2 3 v187352_ex10-2 htm

Exhibit 10.2

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION

In the Matter of	)	Order No.: CN 10-21
TIERONE BANK	)	Effective Date: June 3, 2010
Lincoln, Nebraska OTS Docket No. 03309	)	

ORDER TO CEASE AND DESIST

WHEREAS, TierOne Bank, Lincoln, Nebraska, OTS Docket No. 03309 (Association), by and through its Board of Directors (Board), has executed a Stipulation and Consent to Issuance of an Order to Cease and Desist (Stipulation); and

WHEREAS, the Association, by executing the Stipulation, has consented and agreed to the issuance of this Order to Cease and Desist (Order) by the Office of Thrift Supervision (OTS) pursuant to 12 U.S.C. § 1818(b); and

WHEREAS, pursuant to delegated authority, the OTS Regional Director for the Central Region (Regional Director) is authorized to issue Orders to Cease and Desist where a savings association has consented to the issuance of an order.

NOW, THEREFORE, IT IS ORDERED that:

Cease and Desist.

1. The Association and its directors, officers, and employees shall cease and desist from any action (alone or with others) for or toward, causing, bringing about, participating in, counseling, or aiding and abetting the unsafe or unsound practices that resulted in the Association operating with: (a) an excessive level of adversely classified and delinquent loans, (b) an inadequate level of capital for the volume, type and quality of assets held by the Association, and (c) inadequate earnings to fund growth and augment capital as described in the OTS Report of Examination of the Association dated October 5, 2009 (2009 ROE).

2. The Association and its directors, officers, and employees shall cease and desist from any action (alone or with others) for or toward, causing, bringing about, participating in, counseling, or aiding and abetting the violations of law and regulation cited in the 2009 ROE, including:

(a) 12 C.F.R. § 560.160(a) (regarding classification of assets);

(b) 12 C.F.R. § 560.160(b) (regarding allowance for loan and lease losses (ALLL) and valuation allowances);

(c) 12 C.F.R. §§ 564.3(a), 560.170(a), 560.170(b), and 560.170(e) (regarding appraisals); and

(d) 12 C.F.R. § 560.170(b) (regarding loan administration).

Asset Quality.

3. (a) By June 30, 2010, the Association shall develop an individual written specific workout plan for each adversely classified asset and asset designated as special mention (Criticized Asset) or group of such Criticized Assets to any one borrower or loan relationship of five hundred thousand dollars ($ 500,000) or greater (collectively, Asset Workout Plans).

(b) Within forty-five (45) days after the end of each quarter, beginning with the quarter ending June 30, 2010, the Association shall submit a quarterly written asset status report (Quarterly Asset Report) to the Board. The Board's review of the Quarterly Asset Report shall be documented in the Board meeting minutes. The Quarterly Asset Report shall include, at a minimum:

(i) the current status of all Asset Workout Plans;

(ii) a comparison of classified assets to Tier 1 (Core) capital plus ALLL;

(iii) a comparison of Criticized Assets to Tier 1 (Core) capital plus ALLL;

(iv) a comparison of classified assets and Criticized Assets at the current quarter end with the preceding quarter;

(v) a breakdown of Criticized Assets by type and risk factor;

(vi) a discussion of the actions taken during the preceding quarter to reduce the Association's level of Criticized Assets; and

(vii) any recommended revisions or updates to the Asset Workout Plans.

(c) Within fifty (50) days after the end of each quarter beginning with June 30, 2010, a copy of the Quarterly Asset Report shall be provided to the Regional Director.

Appraisals.

4. (a) Effective immediately, the Association shall comply with the amended appraisal policy approved at the October 27, 2009 Board meeting (Appraisal Policy).

(b) By June 30, 2010, the Association shall submit to the Regional Director a written plan for compliance with the Appraisal Policy that requires a monthly appraisal tracking report be submitted for Board review.

Concentrations of Credit.

5. (a) By June 30, 2010, the Association shall revise its written policy for identifying, monitoring, and controlling risks associated with concentrations of credit (Credit Concentration Policy) to ensure that it addresses all corrective actions set forth in the 2009 ROE relating to concentrations of credit. The Credit Concentration Policy shall comply with all applicable laws, regulations and regulatory guidance and establish comprehensive concentration limits expressed as a percentage of Tier 1 (Core) Capital plus ALLL based on the Association's risk profile.

(b) Immediately after Board approval of the Association's revised Credit Concentration Policy, the Association shall implement and adhere to the Credit Concentration Policy. A copy of the Credit Concentration Policy shall be provided to the Regional Director within five (5) days of adoption by the Board.

Board Oversight of Compliance with Order and Supervisory Agreement.

6. Effective immediately, the Board shall monitor and coordinate the Association's compliance with the provisions of this Order and the Supervisory Agreement entered into between the Association and the OTS effective January 15, 2009 (Supervisory Agreement). The Board shall review and adopt all policies and procedures required by this Order prior to submission to the OTS and shall monitor and coordinate completion of all corrective actions required in the 2009 ROE.

7. Within twenty (20) days after the end of each month, beginning with the month ending May 31, 2010, the Association shall prepare a written compliance progress report for the Board (Compliance Tracking Report). The Compliance Tracking Report shall, at a minimum:

(a) separately list each corrective action required by this Order and the 2009 ROE;

(b) separately list each corrective action required by the Supervisory Agreement;

(b) identify the required or anticipated completion date for each corrective action; and

(c) discuss the current status of each corrective action, including the action(s) taken or to be taken to comply with each corrective action.

8. Within thirty (30) days after the end of each month, beginning with month ending May 31, 2010, the Board shall review the Compliance Tracking Report and all reports required to be prepared by this Order and the Supervisory Agreement. Following its review, the Board shall adopt a resolution: (a) certifying that each director has reviewed the Compliance Tracking Report and all required reports; and (b) documenting any corrective actions adopted by the Board. A copy of the Compliance Tracking Report and the Board resolution shall be provided to the Regional Director within five (5) days after the Board meeting.

Effective Date, Incorporation of Stipulation.

9. This Order is effective on the Effective Date as shown on the first page. The Stipulation is made a part hereof and is incorporated herein by this reference.

Duration.

10. This Order shall remain in effect until terminated, modified, or suspended, by written notice of such action by the OTS, acting by and through its authorized representatives.

Time Calculations.

11. Calculation of time limitations for compliance with the terms of this Order run from the Effective Date and shall be based on calendar days, unless otherwise noted.

12. The Regional Director or an OTS authorized representative may extend any of the deadlines set forth in the provisions of this Order upon written request by the Association that includes reasons in support for any such extension. Any OTS extension shall be made in writing.

Submissions and Notices.

13. All submissions, including any reports, to the OTS that are required by or contemplated by this Order shall be submitted within the specified timeframes.

14. Except as otherwise provided herein, all submissions, requests, communications, consents, or other documents relating to this Order shall be in writing and sent by first class U.S. mail (or by reputable overnight carrier, electronic facsimile transmission, or hand delivery by messenger) addressed as follows:

(a) **To the OTS:**

Regional Director
Office of Thrift Supervision
One South Wacker Drive, Suite 2000
Chicago, Illinois 60606
Facsimile: (312) 917-5001

(b) **To the Association:**

President
TierOne Bank
1235 "N" Street
Lincoln, Nebraska 68508-2008
Facsimile: (402) 435-0427

No Violations Authorized.

15. Nothing in this Order or the Stipulation shall be construed as allowing the Association, its Board, officers, or employees to violate any law, rule, or regulation.

IT IS SO ORDERED.

OFFICE OF THRIFT SUPERVISION

By: /s/ Daniel T. Mckee
Daniel T. McKee
Regional Director, Central Region
Date: See Effective Date on page 1

TierOne Bank
Order to Cease and Desist
Page 6 of 6

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of August 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to all CM/ECF participants and counsel of record.

In addition, I certify that on August 24, 2011 copies of the foregoing documents were mailed via United States first class regular mail to the following non CM/ECF participants:

Douglas J. Stejskal
PO Box 1222
Columbus, NE 68602

By: /s/ Phillip Kim