

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

EUGENE SCALIA, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

**THE FARMERS NATIONAL BANK
OF DANVILLE and WEDDLE BROS.
CONSTRUCTION CO. INC. EMPLOYEE
STOCK OWNERSHIP PLAN TRUST,**

Defendants.

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Case No.: 1:20-cv-674

CONSENT ORDER AND JUDGMENT

Plaintiff Eugene Scalia, Secretary of Labor, United States Department of Labor ("Secretary") and Defendants The Farmers National Bank of Danville ("Farmers") and Weddle Bros. Construction Co. Inc. Employee Stock Ownership Plan Trust ("Weddle ESOP")¹ (collectively and with the Secretary "the Parties"), by and through their respective attorneys, have negotiated an agreement to settle the matters in controversy in this civil action, and each consents to the entry of this Consent Order and Judgment by the Court as the sole and complete memorialization of the terms of such agreement.

A. The Secretary filed this action against Defendants Farmers and the Weddle ESOP pursuant to his authority under Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, *et seq.*, as amended.

B. Defendants Farmers and the Weddle ESOP hereby acknowledge receipt of

¹ The Weddle ESOP also was named as a defendant herein pursuant to Federal Rule of Civil Procedure 19, solely to assure that complete relief can be granted.

the Secretary's Complaint herein and waive service thereof, having been duly advised in the premises, admit to the jurisdiction of this Court and the subject matter of this action and agree to the entry of this Consent Order and Judgment without contest. Defendants Farmers and the Weddle ESOP neither admit nor deny the allegations of the Secretary's Complaint.

C. The Parties agree to settle this dispute on the terms and conditions hereafter set forth and stipulate and agree to the entry of this Consent Order and Judgment as a full and complete resolution of all of the civil claims, causes of action and issues arising between them in this action without adjudication of any issue of fact or law raised in the Secretary's Complaint in this action.

NOW THEREFORE, in consideration of the mutual covenants set forth in this Consent Order and Judgment and other valuable and sufficient consideration, the Parties have agreed as herein stated. Accordingly, it is ORDERED, ADJUDGED AND DECREED that:

I. JURISDICTION

The Court has jurisdiction over the Parties and subject matter of this action, and is empowered to provide the relief herein.

II. MONETARY RELIEF

A. Within sixty days of the Court's entry of this Consent Order and Judgment, Defendant Farmers shall restore to the Weddle ESOP the sum of \$545,454.55 ("Farmers Settlement Restoration Amount"), consisting of alleged losses and lost opportunity costs, by means of a wire transfer to the Weddle ESOP. The Farmers Settlement Restoration Amount shall be allocated to paragraph IV(A), herein. The Farmers Settlement Restoration Amount shall not be offset in any manner by any payments made to the Selling Shareholders, Weddle, the Weddle ESOP, or any other party, or for debt service.

B. Upon restoration of the Farmers Settlement Restoration Amount in paragraph II(A) above, Defendant Farmers shall be and hereby is assessed a total penalty under ERISA § 502(l), 29 U.S.C. § 1132(l), of \$109,090.91. The Secretary agrees to reduce the amount of penalty to \$54,545.45. Therefore, the Secretary hereby does and will accept, as full satisfaction of the assessed penalty, the amount of \$54,545.45. Defendant Farmers waives its rights to a separate notice of assessment of the penalty under § 502(1), 29 U.S.C. § 1132(1), and the service requirement of 29 C.F.R. § 2570.83, and its right to seek any further reductions of or relief from the penalty under § 502(l), 29 U.S.C. § 1332(l), including any good faith or financial waiver request. Defendant Farmers shall pay \$54,545.45 to the United States Department of Labor within sixty days of the Court's entry of this Consent Order and Judgment by sending a certified or cashier's check to:

U.S. Department of Labor
ERISA Civil Penalty
P.O. Box 6200-36
Portland, OR 97228-6200

The certified or cashier's check shall be made payable to the United States Department of Labor and will reference EBSA Case No. 43-009670.

C. Defendant Farmers shall provide to the Secretary proof of restoration of the Farmers Settlement Amount. Such proof will include wire transfer confirmations of the restoration and such other proof as may be requested by the Secretary. Any proof provided under this paragraph will be sent to the Secretary's representative at the following address:

L. Joe Rivers
Regional Director, Cincinnati Regional Office
Employee Benefits Security Administration
U.S. Department of Labor
1885 Dixie Highway, Ste. 210
Ft. Wright, KY 41011

D. Notwithstanding any other provision of this agreement, the Secretary may

seek any judicial remedy available, including contempt, if any of the responsible Parties fail to pay the amounts as required herein or violate any other terms of this Consent Order and Judgment.

III. LOAN FORGIVENESS

On behalf of the Weddle ESOP, Farmers has obtained from Lee E. Carmichael, Scott A. Sieboldt, Michael A. Hemmerling, Kelly G. Abel, William J. Ludlow, Steven T. Hunt, Marion S. Mishler, Jr., and Edward C. Zurface (collectively, "Selling Shareholders") restructured versions of their respective loans and promissory notes made in connection with the March 1, 2013 stock purchase transaction, as detailed in Exhibit A attached hereto and made a part hereof.

IV. ESOP PARTICIPANT ACCOUNTS

Within 10 days of receiving the Farmers Settlement Restoration Amount set forth in paragraph II(A) above, the Weddle ESOP shall allocate those monies to participant accounts for participants who were participants of the Weddle ESOP on March 1, 2013. The allocation of the restoration shall specifically include former participants who received a distribution of plan assets prior to the date of entry of this Consent Order and Judgment. The allocation of the restoration to the participant accounts (including former participants) shall be pro rata according to the number of shares that were allocated to each participant account between March 1, 2013, to the date of entry of this Consent Order and Judgment, except that none of the Selling Shareholders shall receive any allocation made to the Weddle ESOP under this Consent Order and Judgment. The restoration shall not replace or be paid in lieu of a contribution to the Weddle ESOP by Weddle for any plan year.

V. NON-MONETARY RELIEF

A. Defendant Farmers agrees that it has not and will not seek contribution or indemnification from Weddle or the Weddle ESOP for any restoration made in connection with this Consent Order and Judgment or with respect to EBSA's investigation into the Weddle ESOP, and explicitly waives any rights it may have to contribution or indemnification from Weddle or the Weddle ESOP.

B. Defendant Farmers may not assert any claims that arose or accrued on or before the date of the entry of this Consent Order and Judgment under ERISA or under any other state or federal law against Weddle or the Weddle ESOP related to the March 1, 2013 Weddle ESOP Stock Purchase Transaction underlying this litigation. Defendant Farmers reserves their rights to bring claims arising after the date of the entry of this Consent Order and Judgment to meet its obligations as required under the terms of the Stock Purchase Agreement and Promissory Notes, as those documents are amended by this Consent Order and Judgment.

C. Defendant Farmers is permanently enjoined to comply with all requirements stated in the Agreement Concerning Process Requirements for Employee Stock Ownership Plan Transactions (the "Process Agreement"), attached hereto and made part hereof as Exhibit B, when it provides services as a fiduciary or trustee to any ESOP or ESOP fiduciary.

VI. RELEASES

A. This Consent Order and Judgment provides full, final, and complete judicial resolution of all of the claims and causes of action alleged in the Secretary's Complaint in this action. Notwithstanding the foregoing, nothing in this Consent Order and Judgment shall be deemed to waive any claim by the Secretary relating to the obligations set forth in

this Consent Order and Judgment. Furthermore, notwithstanding the foregoing, nothing in this Consent Order and Judgment shall be deemed to waive any claim by Defendant Farmers with respect to the Weddle ESOP's obligations under this Consent Order and Judgment.

B. Except for the obligations set forth in this Consent Order and Judgment, the Secretary and his agents, representatives, assigns, predecessors and successors in interest, acting in their official capacities, do hereby waive, release and forever discharge all claims, demands, actions, causes of action, liabilities, or fines (including any payment under Section 502(l) of ERISA) they may have against Defendant Farmers and its directors, officers, agents, attorneys, employees, representatives, assigns, predecessors, and successors in interest based upon the allegations in the Secretary's Complaint in this action related to the Weddle ESOP.

C. Defendant Farmers and its directors, officers, agents, attorneys, trustees, employees representatives, assigns, and predecessors and successors in interest, do hereby release the Secretary and his officers, agents, attorneys, employees, and representatives, both in their individual and corporate/organizational capacities, from all actions, claims and demands of whatsoever nature, including those arising under the Equal Access to Justice Act or any statute, rule, or regulation, that relate in any manner to the investigations, filing, prosecution, and maintenance of the Secretary's Complaint.

D. Except for the claims released by the Secretary in paragraph VI(B) above, the Secretary's claims against any other persons not identified in paragraph VI(B) are expressly preserved. Nothing in this Consent Order and Judgment shall preclude the Secretary from initiating or continuing any audit or investigation, or from pursuing any claims or actions, against any entities or persons (other than the claims stated in the

Secretary's complaint) relating to any ERISA-covered plan. Nothing in this Consent Order and Judgment resolves any claims that have been or may be asserted against Defendant Farmers by the Weddle ESOP or by any other person.

E. Each party represents and warrants that he, she, or it has not assigned all or part of any claim, demand, debt, or cause of action of any kind or nature released in this Consent Order and Judgment to any other person or third-party prior to executing this Consent Order and Judgment.

VII. RETENTION OF JURISDICTION

This Court shall retain jurisdiction over the Parties and subject matter of this action for the purposes of enforcing and interpreting the terms of this Consent Order and Judgment.

VIII. COST AND EXPENSES

The Parties each shall bear their own costs, expenses, and attorneys' fees in connection with this action, the Secretary's investigation of the March 1, 2013 purchase of Weddle stock by the Weddle ESOP, and this Consent Order and Judgment. The Parties agree not to seek or accept indemnification from Weddle or the Weddle ESOP or use any assets of Weddle or the Weddle ESOP for any payments made or required to be made regarding this matter, or for any expenses, including attorney's fees, associated with the negotiation, consideration, documentation, or implementation of this Consent Order and Judgment.

IX. PARTIES BOUND

By entering into this Consent Order and Judgment, the Parties represent that they have read this Consent Order and Judgment, been informed by counsel of the effect and purpose of this Consent Order and Judgment, and agree to be bound by its terms. This

Consent Order and Judgment is not binding on any governmental agency other than the United States Department of Labor.

X. MULTIPLE ORIGINALS

This Consent Order and Judgment may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument. The date of execution of this Consent Order and Judgment is the date on which it is signed by the Court.

XI. ENTRY OF JUDGMENT

The Court finds that there is no just reason to delay the entry of this Consent Order and Judgment and expressly directs the entry thereof as a final Decree and Order pursuant to Fed. R. Civ. P. 54(a).

IN WITNESS WHEREOF, the Parties through their respective duly authorized representatives have executed this Consent Order and Judgment on the date(s) set forth hereunder.

Date: _____

UNITED STATES DISTRICT COURT JUDGE

FOR THE SECRETARY:

KATE S. O'SCANNLAIN
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

s/ Jing Acosta _____
JING ACOSTA

U.S. Department of Labor
Office of the Solicitor
230 South Dearborn Street, Room 844
Chicago, Illinois 60604
Email: acosta.jing@dol.gov

Attorneys for Eugene Scalia, Secretary of Labor,
U.S. Department of Labor, Plaintiff

FOR THE FARMERS NATIONAL BANK OF DANVILLE:

s/ Dana Howard _____
By Dana Howard _____

s/ Dana Howard _____
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Counsel for The Farmers National Bank of Danville

(continued on next page)

WEDDLE BROS. CONSTRUCTION CO., INC. ESOP

s/ Philip J. Gutwein II

By Philip J. Gutwein II

s/ Philip J. Gutwein II

PHILIP J. GUTWEIN

Faegre Baker Daniels LLP
300 N. Meridian Street
Suite 2500
Indianapolis, IN 46204
Email: philip.gutwein@faegrebd.com

Counsel for Weddle, as sponsor and administrator of the Weddle ESOP

Exhibit A

CONSENT ORDER AND JUDGMENT

Purchase Price Reduction Documents

1. Settlement Agreement dated February 27, 2020, by and among The Farmers National Bank of Danville (“Buyer”); and Lee E. Carmichael, Scott A. Sieboldt, Michael A. Hemmerling, Steven T. Hunt, Kelly G. Abel, William J. Ludlow, Marion S. Mishler and Edward C. Zurface (“Sellers”); and Weddle Bros. Construction Co., Inc. (“Company”).
2. First Amendment to the Stock Purchase Agreement dated February 27, 2020, by and among The Farmers National Bank of Danville (“Buyer”); and Lee E. Carmichael, Scott A. Sieboldt, Michael A. Hemmerling, Steven T. Hunt, Kelly G. Abel, William J. Ludlow, Marion S. Mishler and Edward C. Zurface (“Sellers”); and Weddle Bros. Construction Co., Inc. (“Company”).
3. First Amendment to the Assignment and Assumption Agreement dated March 1, 2013, is dated February 27, 2020, by and among Weddle Bros Construction Co., Inc., an Indiana business corporation (the “*Company*”), The Farmers National Bank Of Danville, not in its individual capacity, but solely as the trustee (the “*Trustee*”) of Weddle Bros. Construction Co., Inc., Employee Stock Ownership Plan and Trust Agreement (the “*Trust*”) and Lee E. Carmichael, Scott A. Sieboldt, Michael A. Hemmerling, Steven T. Hunt, Kelly G. Abel, William J. Ludlow, Marion S. Mishler and Edward C. Zurface (collectively, the “*Sellers*”).
4. Seller Note Modification Agreement by and between Weddle Bros. Construction Co., Inc. and Lee E. Carmichael.
5. Seller Note Modification Agreement by and between Weddle Bros. Construction Co., Inc. and Scott A. Sieboldt.
6. Seller Note Modification Agreement by and between Weddle Bros. Construction Co., Inc. and Edward C. Zurface.
7. Seller Note Modification Agreement by and between Weddle Bros. Construction Co., Inc. and Marion S. Mishler.
8. Seller Note Modification Agreement by and between Weddle Bros. Construction Co., Inc. and William J. Ludlow.
9. Seller Note Modification Agreement by and between Weddle Bros. Construction Co., Inc. and Kelly G. Abel.
10. Seller Note Modification Agreement by and between Weddle Bros. Construction Co., Inc. and Steven T. Hunt.
11. Seller Note Modification Agreement by and between Weddle Bros. Construction Co., Inc. and Michael A. Hemmerling.

12. First Amendment to the ESOP Loan Agreement by and between Farmers National Bank of Danville (the “*Trustee*”), in its capacity as trustee of Weddle Bros. Construction Co., Inc. Employee Stock Ownership Plan and Trust Agreement (the “*Trust*”), a trust established in connection with Weddle Bros. Construction Co., Inc. Employee Stock Ownership Plan (the “*ESOP*”) (the Trustee and the Trust are collectively referred to herein as the “*Borrower*”); and Weddle Bros. Construction Co., Inc. (the “*Company*”), a corporation organized under the laws of the State of Indiana.
13. ESOP Note Modification Agreement by and between Farmers National Bank, the Trustee of Weddle Bros. Construction Co., Inc. Employee Stock Ownership Plan and Trust Agreement (the “*Trust*”) which implements and forms a part of Weddle Bros. Construction Co., Inc. Employee Stock Ownership Plan (the “*Borrower*”), and Weddle Bros. Construction Co., Inc. (the “*Company*”), an Indiana business corporation with an address of 1201 W. 3rd Street, Bloomington, IN 47404.
14. Weddle Internal ESOP Loan – Amortization Schedule dated 08/18/2019 – 08/20/2019.

EXHIBIT B

**AGREEMENT CONCERNING PROCESS REQUIREMENTS FOR
EMPLOYEE STOCK OWNERSHIP PLAN TRANSACTIONS**

The Farmers National Bank of Danville d/b/a WealthSouth (“Farmers”), a subsidiary of Boyle Bancorp, Inc. (“Boyle”), agrees to apply the following policies and procedures whenever Boyle, Farmers or any affiliated entities (collectively referred to as “FNB”) serves as trustee or other fiduciary of an employee stock ownership plan (“ESOP”) subject to Title I of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq. (“ERISA”) in connection with a transaction involving the direct or indirect purchase, sale, or redemption of employer securities that are not publicly traded (“Transaction”).

A. Selection and Use of valuation advisor - General. FNB shall do the following:

1. Prudently investigate the valuation advisor's qualifications;
2. Take reasonable steps to determine that the valuation advisor receives complete, accurate, and current information necessary to value the plan sponsor's securities;
3. Contemporaneously document the steps FNB took – including who at FNB took those steps – to determine that the valuation advisor received complete, accurate, and current information and to ensure FNB understood the advice of the valuation advisor; and
4. Prudently determine that its reliance on the valuation advisor's advice is reasonable before entering into any Transaction in reliance on the advice.

B. Selection of valuation advisor - Conflicts of Interest. FNB shall not use a valuation advisor for a Transaction that has previously performed work for any party to the Transaction other than the ESOP or its trustee, including but not limited to a

"preliminary valuation" for or on behalf of the plan sponsor (as distinguished from the ESOP), a committee of employees of the plan sponsor, any counterparty to the ESOP or plan sponsor involved in the Transaction, or any other entity that is structuring the Transaction (such as an investment bank). FNB shall not use a valuation advisor for a Transaction that has a familial or corporate relationship (such as a parent-subsidiary relationship) to any of the aforementioned persons or entities. FNB shall obtain written confirmation from the valuation advisor selected that none of the above-referenced relations exist.

C. Selection of valuation advisor - Process.

1. In selecting a valuation advisor for a Transaction, FNB shall prepare a written analysis addressing the following topics:
 - a. The reason for selecting the particular valuation advisor;
 - b. A list of all the valuation advisors that FNB considered;
 - c. A discussion of the qualifications of the valuation advisors that FNB considered;
 - d. A list of at least three references checked and discussion of the references' views on the valuation advisor;
 - e. Whether the valuation advisor was the subject of prior criminal, civil, or regulatory proceedings/investigations related to its previous valuation work and the outcome of such proceedings or investigations; and
 - f. A full explanation of the basis for concluding that FNB's selection of the valuation advisor was prudent.
2. If FNB selects a valuation advisor from a roster of valuation advisors that it has previously used, FNB need not undertake anew the analysis outlined

above if the following conditions are satisfied:

- a. FNB previously performed the analysis described above in connection with a prior engagement of the valuation advisor;
- b. The previous analysis was completed within the prior calendar year immediately preceding FNB's selection of the valuation advisor;
- c. FNB documents in writing that it previously performed the analysis, the date(s) on which FNB performed the analysis and the results of the analysis;
- d. FNB's files contain the valuation advisor's confirmation that the information it previously provided pursuant to item (C)(1)(e) above is still accurate.

D. Oversight of valuation advisor – Required Analysis. Prior to approving a Transaction, FNB shall request that the valuation advisor document the following items in its Valuation Report¹ and, if the valuation advisor does not so document, FNB shall prepare or require the preparation of supplemental documentation of the following items to the extent they were not documented by the valuation advisor:

1. Use of Projections: Conduct reasonable inquiry into projections given by individual(s) responsible for providing any projections reflected in the Valuation Report, such reasonable inquiry shall include:
 - a. Whether those individuals have or reasonably may be determined to have any conflicts of interest in regard to the ESOP including but not limited to any interest in the purchase or sale of the plan sponsor's stock being considered;
 - b. Whether those individuals serve as agents or employees of persons with such conflicts, and the precise nature of any such conflicts; and

¹ All references to the term "Valuation Report" refer to the valuation advisor's report on which FNB relies prior to the Transaction in deciding whether to approve or reject the Transaction.

c. How FNB and the valuation advisor considered such conflicts in determining the value of the plan sponsor's securities.

2. An opinion as to the reasonableness of any projections considered in connection with the Transaction that explains in writing why and to what extent the projections are or are not reasonable. At a minimum, the analysis shall consider how the projections compare to, and whether they are reasonable in light of, the plan sponsor's five-year historical averages and/or medians and the five-year historical averages and/or medians of a group of comparable public companies (if any exist) for the following metrics, unless five-year data are unavailable (in which case, the analysis shall use averages extending as far back as possible):

- a. Return on assets;
- b. Return on equity;
- c. EBIT and EBITDA margins;
- d. Ratio of capital expenditures to sales;
- e. Revenue growth rate; and
- f. Ratio of free cash flows (of the enterprise) to sales.

3. If it is determined that any of these metrics should be disregarded in assessing the reasonableness of the projections, document in writing both the calculations of the metric (unless calculation is impossible) and the basis for the conclusion that the metric should be disregarded. The use of additional metrics to evaluate the reasonableness of projections other than those listed in section (D) (2) (a)-(f) above is not precluded as long as the appropriateness of those metrics is documented in writing.

4. If comparable companies are used for any part of a valuation -

whether as part of a guideline company method of valuation or any other method of valuation, to gauge the reasonableness of projections, or for any other purpose, explain in writing the basis for concluding that the comparable companies are actually comparable to the plan sponsor being valued, including on the basis of size, customer concentration (if such information is publicly available), and volatility of earnings. If a guideline company analysis is performed, explain in writing any discounts applied to the multiples selected, and if no discount is applied to any given multiple, explain in detail the reasons.

5. If the plan sponsor is projected to meet or exceed its historical performance or the historical performance of the group of comparable public companies on any of the metrics described in paragraph (D) (2) above, document in writing all material assumptions supporting such projections and why those assumptions are reasonable.

6. To the extent that FNB or its valuation advisor considers any of the projections provided by the plan sponsor to be unreasonable, document in writing all adjustments made to the projections.

7. If adjustments are applied to the plan sponsor's historical or projected financial metrics in a valuation analysis, determine and explain in writing why such adjustments are reasonable.

8. Describe the risks facing the plan sponsor that could cause the plan sponsor's financial performance to fall materially below the projections relied upon by the valuation advisor.

9. If greater weight is assigned to some valuation methods than to others, explain in writing the weighting assigned to each valuation method and the basis for the weightings assigned.

10. Consider, as appropriate, how the ESOP document provisions regarding stock distributions, the duration of the ESOP loan, and the age and tenure of the ESOP participants, may affect the plan sponsor's prospective repurchase obligation, the prudence of the Transaction or the fair market value of the stock.

11. Analyze and document in writing:

- a. Whether the plan sponsor will be able to service the debt taken on in connection with the Transaction (including the ability to service the debt in the event that the plan sponsor fails to meet the projections relied upon in valuing the stock);
- b. Whether the Transaction is fair to the ESOP participants from a financial point of view;
- c. Whether the Transaction is fair to the ESOP participants relative to all the other parties to the Transaction;
- d. Whether the terms of the financing of the Transaction are market-based, commercially reasonable, and in the best interests of the ESOP participants;
- e. Whether both seller financing and financial institution financing was considered and whether the loans sought from financial institutions were within the amounts the financial institution was willing to loan;
- f. Whether the terms of any loan the ESOP receives in connection with the Transaction are as favorable as the terms of any loans between the plan sponsor and any executive of the plan sponsor made within the two years preceding the Transaction; and
- g. The financial impact of the Transaction on the plan sponsor, and document in writing the factors considered in such analysis and conclusions drawn therefrom.

12. Explain any material differences between the present valuation and the most recent prior valuation of the plan sponsor performed within the past 24 months by any valuation firm for any purpose (if any exist). For valuations obtained exclusively by the sellers in connection with the Transaction within the past 12 months, FNB should at a minimum obtain information on when the valuation was performed and who prepared the valuation.

E. Financial Statements.

1. FNB shall request that the plan sponsor provide FNB and its valuation advisor with unqualified audited financial statements for the preceding five fiscal years, unless unqualified audited financial statements extending back five years are unavailable (in which case, FNB shall request unqualified audited financial statements extending as far back as possible).

2. If the plan sponsor provides to FNB or its valuation advisor unaudited or qualified audited financial statements for any of the preceding five fiscal years (including interim financial statements that update or supplement the last available unqualified audited financial statement), FNB shall determine whether it is prudent to rely on these financial statements notwithstanding the risk posed by using unaudited or qualified audited financial statements.

3. If FNB proceeds with the Transaction notwithstanding the lack of unqualified audited financial statements (including interim financial statements that update or supplement the last available unqualified audited financial statement), FNB shall document the basis for FNB's belief that it is prudent to rely on the financial statements, and explain in writing how FNB accounted for any risk posed by using financial statements other than unqualified audited financial statements. If FNB does not believe that it can reasonably

conclude that it would be prudent to rely on the financial statements used in the Valuation Report, FNB shall not proceed with the Transaction. While FNB need not audit the financial statements themselves, it must carefully consider the reliability of those statements in the manner set forth herein.

4. FNB may approve a Transaction notwithstanding the lack of unqualified audited financial statements (including interim financial statements that update or supplement the last unqualified audited financial statement) only if the stock purchase agreement includes a provision requiring the selling or purchasing shareholder(s) who is(are) an officer, manager, or member of the board of directors of the plan sponsor to compensate the ESOP for any losses or other harms caused by or related to financial statements that did not accurately reflect the plan sponsor's financial condition.

F. Fiduciary Review Process - General. In connection with any Transaction, FNB agrees to do the following:

1. Ensure that sufficient time is allowed to fully, completely, and accurately review and analyze the contemplated Transaction prior to agreeing to a redemption transaction or a closing date for the Transaction;
2. Take reasonable steps necessary to determine the prudence of relying on the plan sponsor's financial statements provided to the valuation advisor, as set out more fully in paragraph E above;
3. Critically assess the reasonableness of all projections (particularly management projections), and if the Valuation Report does not document in writing the

reasonableness of such projections to FNB's satisfaction, FNB shall prepare supplemental documentation explaining why and to what extent the projections are or are not reasonable;

4. If FNB believes the projections are unreasonable, FNB shall ask the valuation advisor to account for the unreasonable projections in its valuation, request new and reasonable projections from management, or reject the Transaction. FNB must document the basis for its decision.

5. Ensure that the information the valuation advisor obtains from the plan sponsor and purchasing or selling shareholder(s) includes the following, to the extent it exists:

a. All prior attempts by the purchasing or selling shareholder(s) to purchase or sell their stock in the plan sponsor within the proceeding two (2) years;

b. All prior defaults within the past five years by the plan sponsor under any lending or financing agreement;

c. All management letters provided to the plan sponsor by its accountants within the past five years; and

d. All information related to a valuation of the plan sponsor provided to the Internal Revenue Service within the past five years.

G. Fiduciary Review Process - Documentation of Valuation Analysis.

FNB shall document in writing its analysis of the Valuation Report relating to a Transaction. FNB's documentation shall specifically address each of the following topics and shall include FNB's conclusions regarding the Valuation Report's treatment of each topic and explain in writing the basis for its conclusions:

1. Marketability discounts;

2. Minority interests and control premiums;
3. Projections of the plan sponsor's future financial performance and the reasonableness or unreasonableness of such projections, including, if applicable, the basis for assuming that the plan sponsor's future financial performance will meet or exceed historical performance or the expected performance of the relevant industry generally;
4. Analysis of the plan sponsor's strengths and weaknesses, which may include, as appropriate, personnel, plant and equipment, capacity, research and development, marketing strategy, business planning, financial condition, and any other factors that reasonably could be expected to affect future performance;
5. Specific discount rates chosen, including whether any weighted average cost of capital used by the valuation advisor was based on the plan sponsor's actual capital structure or that of the relevant industry and why the chosen capital structure weighting was reasonable;
6. All adjustments to the plan sponsor's historical financial statements;
7. Consistency of the general economic and industry-specific narrative in the Valuation Report with the quantitative aspects of the Valuation Report;
8. Reliability and timeliness of the historical financial data considered, including a discussion of whether the financial statements used by the valuation advisor were the subject of unqualified audit opinions, and if not, why it would nevertheless be prudent to rely on them;
9. The comparability of the companies chosen as part of any analysis based on the plan sponsor's comparable companies;
10. Material assumptions underlying the Valuation Report and all testing and

analysis of these assumptions;

11. Where the Valuation Report made choices between averages, medians, and outliers (e.g., in determining the multiple(s) used under the guideline company method of valuation), the reasons for the choices;

12. Treatment of corporate debt;

13. Whether the methodologies employed were standard and accepted methodologies and the basis for any departures from standard and accepted methodologies;

14. The plan sponsor's ability to service all debt or liabilities to be taken on in connection with the Transaction, including but not limited to, its ability to meet any repurchase obligations and the state of its solvency post-Transaction;

15. The Transaction's reasonably foreseeable risks as of the date of the Transaction; and

16. All other material considerations or variables that could have a significant effect on the price of the plan sponsor's securities.

H. Fiduciary Review Process - Reliance on Valuation Report.

1. FNB, through its employees who are primarily responsible for the proposed Transaction, including all employees who participated in decisions on whether to proceed with the Transaction or the price of the Transaction, shall do the following, and document in writing its work with respect to each:

- a. Read and understand the Valuation Report;
- b. Identify and question the valuation report's underlying assumptions;
- c. Make reasonable inquiry as to whether the information in the

Valuation Report is materially consistent with information in FNB's possession;

d. Analyze whether the Valuation Report's conclusions are consistent with the data and analysis; and

e. Analyze whether the Valuation Report is internally consistent in material aspects.

2. FNB shall document in writing the following: (a) how it made its determination to close the Transaction, including the internal process it normally uses and whether this process was followed for this transaction; (b) the identities of its employees who were primarily responsible for the proposed Transaction, including all employees who participated in decisions on whether to proceed with the Transaction or the price of the Transaction; (c) all material points on which such employee disagreed and why; and (d) whether all such employees concluded or expressed the belief prior to FNB's approval of the Transaction that the Valuation Report's conclusions were inconsistent with the data and analysis therein or that the Valuation Report was internally inconsistent in material aspects.

3. If the employees who were primarily responsible for the Transaction, including all employees who participated in decisions on whether to proceed with the Transaction or the price of the Transaction, believe that the Valuation Report's conclusions are not consistent with the data and analysis or that the Valuation Report is internally inconsistent in material respects, FNB shall not proceed with the Transaction.

4. FNB shall independently determine whether a Fairness Opinion is required and, if so, shall not proceed without one.

I. Preservation of Documents. In connection with any Transaction approved by FNB, FNB will create a Transaction folder and preserve for at least six (6) years the

following:

1. The full name, business address, business telephone number and email address at the time of FNB's consideration of the Transaction of each employee who was primarily responsible for the Transaction, including any employee who participated in decisions on whether to proceed with the Transaction or the price of the Transaction, and any other FNB employee who made any material decision(s) on behalf of FNB in connection with the Transaction;
2. All relevant notes and records created by FNB in connection with its consideration of the Transaction, including all documentation required by this Consent Order and Judgment;
3. The vote (yes or no) of each employee of FNB who voted on the proposed Transaction and a signed certification by each voting employee, in his or her representative capacity, and all other FNB employees who made any material decision(s) on behalf of FNB in connection with the proposed Transaction that they have read the valuation report, identified its underlying assumptions, and considered the reasonableness of the valuation report's assumptions and conclusions;
4. All relevant documents FNB and the employees identified in paragraph (I)(1) above relied on in making the decisions;
5. All relevant electronic or other written communications FNB and the employees identified in paragraph (I)(1) above had with service providers (including any valuation advisor), the plan sponsor, any non-ESOP counterparties, and any advisors retained by the plan sponsor or non-ESOP counterparties;

J. Debt and Fair Market Value. The principal amount of the debt financing the

Transaction, irrespective of the interest rate, cannot exceed the plan sponsor's securities' fair market value. Accordingly, FNB shall not cause an ESOP to engage in a leveraged stock purchase Transaction in which the principal amount of the debt financing the Transaction exceeds the fair market value of the plan sponsor's securities acquired with that debt, irrespective of the interest rate or other terms of the debt used to finance the Transaction.

K. Control. This section only applies when the ESOP intends to buy a controlling interest in the company whose stock it intends to acquire. To the extent permissible under state and federal law, FNB will only approve a Transaction where the ESOP pays for a controlling interest if, in fact, the ESOP obtains the right to control the company whose stock it acquires. The right to control the company includes all of the unencumbered rights that a shareholder would have that acquired the shares to be purchased by the ESOP, and the right to control the company's direction, including, but not limited to: the unencumbered ability to vote its shares; the ability to appoint and remove the company's officers; the ability to appoint and remove the majority of the members of the company's board of directors; the ability to set management compensation and perquisites; the ability to acquire, lease, or liquidate the company's assets; the ability to liquidate, dissolve, sell, or recapitalize the company; decision-making authority over mergers, acquisitions; and sales of company stock; authority to decide whether the company incurs significant debt or engages in debt refinancing; the ability to authorize or veto major capital expenditures; the ability to decide whether to sell or acquire Treasury shares and whether to declare and pay cash and/or stock dividends; the ability to determine whether to call warrants or other significant company obligations, and the ability to modify or amend the company's articles of incorporation or bylaws. If FNB is asked to consider a Transaction in which the ESOP does not acquire the

degree of control of the company commensurate with the ownership interest it is acquiring, or that restrictions are placed on the ESOP's ability to exercise its right to control the company, FNB will ensure that the purchase price paid by the ESOP will reflect the ESOP's lack of control. Accordingly, where the ESOP's rights of control are limited, restricted or substantially reduced, FNB will ensure that the valuation of the stock the ESOP is purchasing does not include a control premium, and includes an appropriate lack of control discount, to the extent that the ESOP's rights of control are diminished, and FNB will ensure that the purchase price paid by the ESOP is adjusted accordingly. If the ESOP is not acquiring control or its rights of control are limited, restricted or substantially reduced, FNB will ensure that the normalized earnings of the subject company do not include adjustments based on anticipated actions that only a controlling, unencumbered, shareholder can execute. In all transactions it approves, FNB will document its determination of whether and to what extent the ESOP has obtained the right to control the company and how and to what degree those rights may be limited, reduced or restricted, and document how that determination affects the valuation of the stock the ESOP is acquiring, the price the ESOP is paying for the stock, and why that price is fair to the ESOP in light of any limitations on the ESOP's control rights.

L. Consideration of Claw-Back. In evaluating a proposed Transaction, FNB shall consider whether it is appropriate to request a claw-back arrangement, limitation agreement (requiring shareholder to reprice the Transaction if the DOL finds it paid more than the fair market value), or other purchase price adjustment(s) to protect the ESOP against the possibility of adverse consequences in the event of significant corporate events or changed circumstances. FNB shall document in writing its consideration of the appropriateness of a claw-back or other purchase price adjustment(s).

M. Other Professionals. FNB may, consistent with its fiduciary responsibilities under ERISA, employ, or delegate fiduciary authority to qualified professional service providers to aid FNB in the exercise of its powers, duties, and responsibilities in the Transaction as long as it is prudent to do so.

N. Indemnification. FNB will not enter into any agreement providing that it will be indemnified by the ESOP or by an ESOP-owned company (irrespective of whether the ESOP owns some or all of the company's stock) against and from any damages, expense, liabilities, and losses resulting from claims of fiduciary breach and/or prohibited transactions related to the Transaction or that otherwise would be in violation of ERISA. Specifically, FNB will not agree to indemnification provisions by the ESOP or the ESOP-owned company that result in advancement of defense fees and expenses unless an entirely independent third-party determines that there has been no breach of fiduciary duty. Under those circumstances, a prudent arrangement must be in place that guarantees, through the posting of collateral or otherwise, a refund of the entirety of the advanced fees and costs should a fiduciary breach be determined by a court. Any appreciable settlement amount of claims of fiduciary breach and/or prohibited transaction, i.e. more than a nuisance settlement, must result in a full refund of any fees and expenses. Fees and expenses includes all liabilities incurred after a voluntary compliance letter is issued by the Department of Labor, plan participant, or plan fiduciary, or other measurable allegation of a violation.

O. This Agreement is not intended to specify all of the FNB's obligations as an ERISA fiduciary with respect to the purchase or sale of employer stock under ERISA, and in no way supersedes any of the FNB's obligations under ERISA or its

implementing regulations.