

[{{12-31-00 p.C-4488}}](#)

¶11,480] **In the Matter of Washita State Bank, Burns Flat, Oklahoma, Docket No. 97-054b (3-9-98).**

A cease and desist order was issued, based on findings by the FDIC that it had reason to believe that respondent had engaged in unsafe and unsound practices. (*This order was terminated by order of the FDIC dated 10-12-00; see ¶16,268.*)

[\[.1\]](#) **Capital—Increase Required**

[\[.2\]](#) **Assets—Reduction Required**

[\[.3\]](#) **Loan Loss Reserve—Establishment of or Increase in Required**

[\[.4\]](#) **Loans—Extensions of Credit—Curtail to Existing Borrowers**

[\[.5\]](#) **Management—Qualifications Specified**

[\[.6\]](#) **Board of Directors—Committee to Review Compliance with Cease and Desist Order**

Required

[\[.7\]](#) **Board of Directors—Committee to Review Loan Portfolio**

[\[.8\]](#) **Interest Rates—Risk Exposure, Reduction Required**

[\[.9\]](#) **Shareholders—Disclosure of Cease and Desist Order Required**

In the Matter of

WASHITA STATE BANK

BURNS FLAT, OKLAHOMA

(Insured State Nonmember Bank)

ORDER TO CEASE AND DESIST

FDIC-97-054b

The Washita State Bank, Burns Flat, Oklahoma ("Bank"), through its board of directors, having been advised of its right to the issuance and service of a NOTICE OF CHARGES AND OF HEARING detailing the unsafe or unsound banking practices alleged to have been committed by the Bank and of its right to a hearing on the alleged charges under section 8(b) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(b), and having waived those rights, [{{5-31-98 p.C-4489}}](#) entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST ("CONSENT AGREEMENT") with counsel for the Federal Deposit Insurance Corporation ("FDIC") dated March 9, 1998, whereby, solely for the purpose of this proceeding and without admitting or denying the alleged charges of unsafe or unsound banking practices the Bank consented to the issuance of an ORDER TO CEASE AND DESIST ("ORDER") by the FDIC.

The FDIC considered the matter and determined that it had reason to believe that the Bank had engaged in unsafe or unsound banking practices. The FDIC, therefore, accepted the CONSENT AGREEMENT and issued the following:

ORDER TO CEASE AND DESIST

IT IS ORDERED, that the Bank and institution-affiliated parties of the Bank cease and desist from the following unsafe or unsound banking practices:

(a) Operating the Bank with management whose policies and practices are detrimental to the Bank and jeopardize the safety of its deposits;

(b) Operating the Bank without adequate supervision and direction by the board of directors over the management of the Bank;

(c) Operating with an inadequate level of capital protection;

(d) Operating the Bank with an excessive level of adversely classified assets;

(e) Engaging in hazardous lending and ineffective and lax collection practices;

(f) Failing to provide an adequate allowance for loan and lease losses;

(g) Operating the Bank in contravention of written loan policies and procedures;

(h) Renewing or extending credit without adequate and appropriate supporting documentation;

(i) Operating the Bank without adequate liquidity or proper regard for funds management; and

(j) Operating the Bank with inadequate earnings, an excessive level of overhead, and a weak net interest margin.

IT IS FURTHER ORDERED, that the Bank take affirmative action as follows:

[.1] (a) Within 90 days after the effective date of this ORDER, the Bank shall submit a plan acceptable to the Regional Director and the Commissioner to achieve and maintain adjusted Tier 1 capital equal to or greater than 7 percent of its adjusted total assets after establishing an adequate allowance for loan and lease losses as required by paragraph 4. Such capital ratio shall be achieved within one year of the effective date of the Order.

(b) If such ratio is less than 7 percent as determined at an examination by the FDIC or the State banking department ("State"), the Bank shall, within 30 days after receipt of a written notice of the capital deficiency from the Regional Director of the FDIC's Dallas Regional Office ("Regional Director") or the Bank Commissioner for the State of Oklahoma (Commissioner), present to the Regional Director and the Commissioner a plan to increase the Tier 1 Capital of the Bank or to take other measures to bring the ratio to 7 percent. After the Regional Director and Commissioner respond to the plan, the board of directors of the Bank shall adopt the plan, including any modifications or amendments requested by the Regional Director and Commissioner.

Thereafter, the Bank shall immediately initiate measures detailed in the plan, to the extent such measures have not previously been initiated, to increase its Tier 1 capital by an amount sufficient to bring the ratio to 7 percent within 90 days after the Regional Director and commissioner respond to the plan. Such increase in Tier 1 capital and any increase in Tier 1 capital necessary to meet the ratio required by this ORDER may be accomplished by:

- (i) The sale of securities in the form of common stock; or
- (ii) The direct contribution of cash subsequent to June 11, 1997, by the directors and/or shareholders of the Bank; or
- (iii) The direct contribution of cash subsequent to June 11, 1997, by the parent Bank holding company; or
- (iv) Any other method approved by the Regional Director and the Commissioner.

(c) If all or part of the increase in Tier 1 capital required by this ORDER is to be accomplished by the sale of new securities, the board of directors of the Bank shall adopt and implement a plan for the sale of such additional securities, including soliciting proxies and the voting of any shares or proxies owned or controlled by them in favor of [{{5-31-98 p.C-4490}}](#) the plan. Should the implementation of the plan involve a public distribution of the Bank's securities (including a distribution limited only to the Bank's existing shareholders), the Bank shall prepare offering materials fully describing the securities being offered, including an accurate description of the financial condition of the Bank and the circumstances giving rise to the offering, and any other material disclosures necessary to comply with Federal securities laws. Prior to the implementation of the plan, and in any event, not less than 20 days prior to the dissemination of such materials, the plan and any materials used in the sale of the securities shall be submitted to the FDIC, Registration and Disclosure Section, Washington, D. C. 20429, for review. Any changes requested to be made in the plan or the materials by the FDIC shall be made prior to their dissemination. If the increase in Tier 1 capital is to be provided by the sale of noncumulative perpetual preferred stock, then all terms and conditions of the issue shall be presented to the Regional Director for prior approval.

(d) In complying with the provisions of this ORDER and until such time as any such public offering is terminated, the Bank shall provide to any subscriber and/or purchaser of the Bank's securities written notice of any planned or existing development or other change which is materially different from the information reflected in any offering materials used in connection with the sale of the Bank's securities. The written notice required by this paragraph shall be furnished within 10 days after the date such material development or change was planned or occurred, whichever is earlier, and shall be furnished to every purchaser and/or subscriber who received or was tendered the information contained in the Bank's original offering materials.

(e) In addition to the requirements of subparagraphs 1(a)—(b), the Bank shall comply with the FDIC's Statement of Policy on Risk-Based Capital found in Appendix A to Part 325 of the FDIC Rules and Regulations, 12 C.F.R. Part 325, App. A.

(f) For the purposes of this ORDER the terms "allowance for loan and lease losses," "Tier 1 capital," and "total assets" shall have the meanings ascribed to them in Part 325 of the FDIC's Rules and Regulations, respectively subsections 325.2(a), (m), and (n), 12 C.F.R. § 325.2(a), (m), and (n). "Adjusted Tier 1 capital" and "adjusted total assets" shall be calculated according to the methodology set forth in the Analysis of Capital section in a report of examination of the FDIC.

2. While this ORDER is in effect, the Bank shall neither declare nor pay, directly or indirectly, any cash dividend to shareholders without the prior written consent of the Regional Director and the Commissioner.

[.2] 3. (a) upon the effective date of this ORDER, the Bank shall, to the extent that it has not previously

done so, eliminate from its books, by charge-off or collection, all assets or portions of assets classified Loss and one-half of the assets classified Doubtful by the FDIC as a result of its examination of the Bank as of June 11, 1997. Reduction of these assets through proceeds of loans made by the Bank shall not be considered "collection" for the purpose of this paragraph.

(b) Within 30 days after the effective date of this ORDER, the Bank shall submit a written plan to the Regional Director and the Commissioner to reduce the remaining assets classified Doubtful and Substandard as of June 11, 1997. The plan shall address each asset so classified with a balance of \$30,000 or greater and provide the following:

- (i) The name under which the asset is carried on the books of the Bank;
- (ii) Type of asset;
- (iii) Actions to be taken in order to reduce the classified asset;
- (iv) Timeframes for accomplishing the proposed actions.

(c) The Bank shall present the plan to the Regional Director and the Commissioner for review. Within 30 days after their response, the plan, including any modifications or amendments requested by the Regional Director and the Commissioner, shall be adopted by the board of directors of the Bank. The Bank shall then immediately initiate measures detailed in the plan to the extent such measures have not been initiated.

(d) For purposes of the plan, the reduction of the level of adversely classified assets as of June 11, 1997, to a specified percentage of total equity capital and reserves may be accomplished by:

- (i) charge-off;
- (ii) collection;
- [{{5-31-98 p.C-4491}}](#)
- (iii) Sufficient improvement in the quality of adversely classified assets so as to warrant removing any adverse classification, as determined by the FDIC; or
- (iv) increase of total equity capital and reserves.

(e) While this ORDER is in effect, the Bank shall eliminate from its books, by charge-off or collection, all assets or portions of assets classified Loss as determined at any examination conducted by the FDIC or the State at such time as the report of examination is received by the Bank.

[.3] 4. (a) Within 10 days after the effective date of this ORDER, the Bank shall establish and thereafter maintain an adequate allowance for loan and lease losses. Such allowance shall be funded by charges to current operating income. Prior to the end of each calendar quarter, the board of directors of the bank shall review the adequacy of the Bank's allowance for loan and lease losses. Such reviews shall include, at a minimum, the Bank's loan loss experience, an estimate of potential loss exposure in the portfolio, trends of delinquent and nonaccrual loans and prevailing and prospective economic conditions. The minutes of the board meetings at which such reviews are undertaken shall include complete details of the reviews and the resulting recommended date.

[.4] 5. (a) While this ORDER is in effect, the Bank shall not extend, directly or indirectly, any additional credit to or for the benefit of any borrower who has an extension of credit with the Bank that has been classified Loss, either in whole or in part, and is uncollected, or to any borrower who is already obligated in any manner to the Bank on any extension of credit, including any portion thereof, that has been charged off the books of the Bank and remain uncollected. The requirements of this paragraph shall not prohibit the Bank from renewing credit already extended to a borrower after full collection, in cash, of interest due from the borrower.

(b) While this ORDER is in effect, the Bank shall not extend, directly or indirectly, any additional credit to or for the benefit of any borrower whose extension of credit is classified Doubtful and/or Substandard, either in whole or in part, and is uncollected, unless the Bank's board of directors has signed a detailed written statement giving reasons why failure to extend such credit would be detrimental to the best interests of the Bank. The statement shall be placed in the appropriate loan file and included in the minutes of the applicable board of directors' meeting.

[.5] 6. (a) The Bank shall have and retain qualified management. Each member of management shall possess qualifications and experience commensurate with his or her duties and responsibilities at the Bank. The qualifications of management personnel shall be evaluated on their ability to:

- (i) comply with the requirements of the ORDER;
- (ii) operate the Bank in a safe and sound manner;

(iii) comply with applicable laws and regulations, and
(iv) restore all aspects of the Bank to a safe and sound condition, including asset quality, capital adequacy, earnings, management effectiveness, sensitivity to market risk, and liquidity. During the life of the ORDER, the Bank shall notify the Regional Director and the Commissioner in writing of any changes in management. The notification must comply with the requirements of Part 303.14 of the FDIC Rules and Regulations, 12 C.F.R. Part 303.14.

(b) within 90 days after the effective date of this ORDER, the Bank shall prepare a plan for submission to the shareholders at their next meeting to reorganize the board of directors either by increasing the number of directors or by appointing new directors so that for so long as this ORDER is outstanding at least 3 of the members of the board shall be independent, outside directors as defined herein. At least 20 days prior to submission of the proposed board of directors to the shareholders, the Bank shall submit the names and qualifications of all candidates to the Regional director and the Commissioner for their review and approval. This submission shall be in addition to any application required by the Act.

(c) For the purposes of this ORDER, an "independent, outside director" shall be an individual:

- (i) Who shall not be employed by the Bank;
- (ii) who shall not own or control more than 5 percent of the voting stock of the Bank or its holding company;
[{{5-31-98 p.C-4492}}](#)
- (iii) Who shall not be indebted to the Bank or any of its affiliates in an amount greater than \$30,000.
- (iv) Who shall not be related to any director or principal shareholder of the Bank; and
- (v) Who shall be a resident of, or engage in business in, the Bank's trade area.

[.6] (7) (a) Within 60 days after the effective date of this ORDER, the board of directors shall establish a committee of the board of directors charged with the responsibility of ensuring that the Bank complies with the provisions of this ORDER. The committee shall report monthly to the entire board of directors, and a copy of the report and any discussion relating to the report or the ORDER shall be included in the minutes of the board of directors. Nothing contained herein shall diminish the responsibility of the entire board of directors to ensure compliance with the provisions of this ORDER.

[.7] 8. Within 60 days after the effective date of this ORDER, the board of directors shall establish a loan review committee to periodically review the Bank's loan portfolio and identify and categorize problem credits. The committee shall file a report with the board of directors. This report shall include the following information:

- (a) The overall quality of the loan portfolio;
- (b) The identification, by type and amount, of each problem or delinquent loan;
- (c) The identification of all loans not in conformance with the Bank's lending policy; and
- (d) The identification of all loans to officers, directors, principal shareholders or their related interests.

[.8] 9. Within 90 days of the effective date of this Order, the Board shall revise the funds management policy to address the deficiencies and recommendations on page 22 of the Report. The Board shall also strive to ensure that a more evenly matched interest rate risk position is maintained to minimize the effects of interest rate fluctuations.

10. Within 90 days of the effective date of this Order, the Board shall strive to improve the Bank's liquidity posture and to minimize the dependency on potentially volatile funding sources.

11. Within 90 days of the date of this Order, the Board shall develop a written profit plan which includes a projected budget for at least twelve consecutive quarters. The plan shall require that the Board periodically review all general ledger items to determine methods for expense reduction or income enhancement. The Board's consideration of these areas shall be recorded in the official minutes.

[.9] 12. After the effective date of this ORDER, the Bank shall send to its shareholders or otherwise furnish a description of this ORDER, (1) in conjunction with the Bank's next shareholder communication, and also (2) in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The description shall fully describe the ORDER in all material respects. The description and any accompanying communication, statement, or notice shall be sent to the FDIC, Registration and Disclosure Unit, Washington, D.C. 20429, for review at least 20 days prior to dissemination to shareholders. Any changes requested to be made by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement.

13. Within 30 days after the end of the first calendar quarter following the effective date of this ORDER, and within 30 days after the end of each successive calendar quarter, the Bank shall furnish written progress reports to the Regional Director and the Commissioner detailing the form and manner of any actions taken to secure compliance with this ORDER and the results thereof. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the Regional Director and the Commissioner have released the Bank in writing from making additional reports.

14. The effective date of this ORDER shall be 10 days after the date of its issuance. This ORDER shall be binding upon the Bank and all institution-affiliated parties of the Bank. The provisions of this ORDER shall remain effective and enforceable except to the extent that, and until such time as, any provision of this ORDER shall have been modified, terminated, suspended, or set aside by the FDIC. Pursuant to delegated authority.

Dated at Dallas, Texas, this 9th day of March, 1998.