

{{10-31-00 p.C-4479}}

[11,476] **In the Matter of Stutsman County State Bank, Jamestown, North Dakota, Docket No. 97-26c&b (2-18-98)**

Bank to cease and desist from such unsafe and unsound practices. *(This order was terminated by order of the FDIC dated 2-18-99; see ¶16,212A.)*

- [.1] **Management—Qualifications Specified**
- [.2] **Assets—Adversely Classified Assets—Reduction Required**
- [.3] **Assets—Tier 1 Capital**
- [.4] **Credit Card Operations—Written Policy, Minimum Requirements**
- [.5] **Audit—Written Policy Required**

{{10-31-00 p.C-4480}}

In the Matter of

**STUTSMAN COUNTY STATE BANK
JAMESTOWN, NORTH DAKOTA
(Insured State Nonmember Bank)
ORDER TO CEASE AND DESIST
FDIC-97-26c&b**

The Federal Deposit Insurance Corporation ("FDIC") on April 14, 1997, issued to Stutsman County State Bank, Jamestown, North Dakota, ("Bank"), a Notice of Charges and of Hearing ("NOTICE") under Section 8(b) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(b). The NOTICE charged the Bank with having engaged in unsafe or unsound banking practices.

The Bank and counsel for the FDIC thereafter executed a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST ("CONSENT AGREEMENT"), dated February 4, 1998, whereby, solely for the purpose of this proceeding and without admitting or denying any of the allegations in the NOTICE, 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 HEREBY ORDERED that the Bank, its institution-affiliated parties, as that term is defined in Section 3(u) of the Act, 12 U.S.C. § 1813(u), and its successors and assigns, cease and desist from the following unsafe or unsound banking practices and violation of laws and/or regulations:

- (A) operating with an excessive volume of adversely classified assets;
- (B) engaging in hazardous lending and lax collection practices, including maintaining an excessive volume of adversely classified credit card loans and issuing credit cards without adequate controls;
- (C) operating with inadequate Tier 1 capital and allowance for loan and lease losses for the kind and quality of assets held;
- (D) operating with management whose policies and practices are detrimental to the Bank;
- (E) operating with management that has inadequate experience, qualifications, knowledge and training for the operation of secured and unsecured credit card program;
- (F) operating with deficient or inadequate credit card loan documentation, including but not limited to documentation on borrower repayment ability;
- (G) engaging in practices which produce inadequate operating income and excessive credit card loan losses;
- (H) failing to provide adequate supervision and direction over the affairs of the Bank to prevent unsafe or unsound practices; and
- (I) failing to submit Reports of Condition and Income in accordance with prevailing instructions.

IT IS FURTHER ORDERED, that the Bank, its institution-affiliated parties, and its successors and assigns, take affirmative action as follows:

- [.1] 1. (a) (i) No more than 90 days from the effective date of this ORDER, the Bank shall have and

thereafter retain qualified management. Such management shall include a qualified chief executive officer and a qualified senior credit card administrator and senior lending officer. The chief executive officer shall be given stated written authority by the Bank's board of directors, including responsibility for implementing and maintaining the policies of the Bank. The chief executive officer shall have an appropriate level of experience to perform the duties assigned to that individual by the Bank's board of directors. The senior credit card administrator and senior lending officer shall also be given stated written authority by the Bank's board of directors, including, the implementation and maintenance of the Bank's credit card lending policies and the supervision of the Bank's credit card practices. The senior credit card administrator and senior lending officer shall have an appropriate level of experience in credit card operations, including lending, collecting, and account supervision, to perform the duties assigned by the Bank's board of directors. The Bank shall promptly notify the Regional Director of the FDIC's Kansas City Regional Office ("Regional Director") and the Commissioner of the North Dakota Department of Banking and Financial Institutions ("Commissioner") of the identity of said chief executive officer and senior credit card administrator and senior lending officer. Prior to the addition of any individual ~~{{4-30-98 p.C-4481}}~~ to the board of directors or the employment of any individual as a senior executive officer, the Bank shall comply with the requirements of section 32 of the Act, 12 U.S.C. § 1831i, and section 303.14 of the FDIC's Rules and Regulations, 12 C.F.R. § 303.14.

(ii) The assessment of whether the Bank has "qualified management" shall be based upon management's conduct, both individual and joint, with respect to the Bank in: (A) complying with the requirements of this ORDER; (B) complying with applicable laws and regulations; and (C) not engaging in any unsafe or unsound banking practice which has an adverse effect on the Bank's asset quality, capital adequacy, earnings, liquidity, and sensitivity to market risk.

(b) No more than 45 days from the effective date of this ORDER, the board of directors shall develop a written analysis and assessment of the Bank's management and staffing needs ("management plan"), which shall include, at a minimum:

(i) identification of both the type and number of officer positions needed to manage and supervise properly the affairs of the Bank;

(ii) identification and establishment of such Bank committees as are needed to provide guidance and oversight to active management;

(iii) evaluation of each Bank officer and staff member, and in particular the chief executive officer and the senior credit card administrator and senior lending officer, to determine whether these individuals possess the ability, experience and other qualifications required to perform present and anticipated duties, including adherence to the Bank's established policies and practices, and maintenance of the Bank in a safe and sound condition; and

(iv) a plan of action to recruit and hire any additional or replacement personnel with the requisite ability, experience and other qualifications, which the board of directors determines are necessary to fill Bank officer or staff member positions consistent with the board's analysis, evaluation and assessment as provided in paragraphs 1(b)(i) and 1(b)(iii) of this ORDER.

(c) The written management plan and any subsequent modification thereto shall be submitted to the Regional Director and Commissioner for review and comment. No more than 30 days from the receipt of any comment from the Regional Director or Commissioner, and after consideration of such comment, the board of directors shall approve the written management plan and/or any subsequent modification thereto which approval shall be recorded in the minutes of the board of directors. Thereafter, the Bank and its institution-affiliated parties shall implement and follow the written management plan and/or any subsequent modification.

(d) Effective the date of this ORDER, the Bank's board of directors shall meet at least monthly. The board shall prepare in advance and shall follow a detailed written agenda at each meeting, which shall include consideration of actions of any committees and a detailed review of the status of the Bank's compliance with the terms of this ORDER. Nothing in the foregoing sentence shall preclude the board from considering matters other than those contained in the agenda. Detailed written minutes of all board meetings shall be maintained and recorded on a timely basis.

[.2] 2. No more than 10 days from the effective date of this ORDER, the Bank shall eliminate from its records, by charge-off, collection, or other proper entries, all assets or portions of assets classified "Loss" as of March 17, 1997; and (b) shall either (i) eliminate from its records by charge-off, collection, or other proper entries, or (ii) if the asset is an extension of credit or lease, increase its allowance for loan and lease losses by an amount equal to 50 percent of those assets or portions of assets classified "Doubtful" as of March 17, 1997, which have not been previously collected, charged off, or otherwise eliminated by other proper entries. Reduction of these assets through use of proceeds of loans made by the Bank does

not constitute collection for the purpose of this paragraph.

3. (a) As used in this ORDER, "allowance for loan and lease losses" ("allowance") means the same as the term in section 325.2(a) of the FDIC's Rules and Regulations, 12 C.F.R. § 325.2(a), and in the Instructions for Preparation of Reports of Condition and Income ("Instructions").

(b) The Bank shall have and maintain an adequate allowance in accordance with the requirements of the Instructions.

(c) Reports of Condition and Income re- [{{4-30-98 p.C-4482}}](#) required to be submitted by the Bank as of each Report date, as that term is used in the Instructions, between and including March 17, 1997, and the effective date of this ORDER, shall, at a minimum, reflect an allowance maintained in accordance with the Instructions. If necessary to comply with this paragraph, the Bank shall file amended Reports of Condition and Income within 10 days from the effective date of this ORDER.

(d) Prior to the submission of any Report of Condition and Income required to be filed by the Bank after the effective date of this ORDER, the board of directors of the Bank shall: (i) review the adequacy of the Bank's allowance, (ii) provide for an adequate allowance, and (iii) accurately report all allowance in any such Report of Condition and Income. The minutes of the board meeting at which such review is undertaken shall indicate the results of the review, including any increases in the allowance, and the basis for determining the amount of allowance provided.

[.3] 4. (a) As used in this ORDER:

(i) "Tier 1 or core capital" ("Tier 1 capital") means the same as the term in section 325.2(t) of the FDIC's Rules and Regulations, 12 C.F.R. § 325.2(t).

(ii) "Total assets" means the same as the term in section 325.2(v) of the FDIC's Rules and Regulations, 12 C.F.R. § 325.2(v).

(b) After appropriate entries for an adequate allowance are made in accordance with the requirements of paragraph 3 of this ORDER, but no later than March 31, 1998 the Bank shall have and maintain Tier 1 capital at or in excess of 6 percent of the Bank's total assets ("Tier 1 capital ratio"). From and after March 31, 1998, for purposes of calculating Tier 1 capital ratio, Tier 1 capital and total assets shall be the dollar amount reported in the Bank's most recent Report of Condition and Income.

(c) During the period this ORDER is in effect, if the Tier 1 capital ratio declines below 6 percent, the bank shall, within 45 days after the date on which the said ratio so declined, submit a written plan to the Regional Director and the Commissioner for approval describing the means and timing by which the Bank shall increase such ratio up to or in excess of 6 percent. Upon receiving written notification of the approval of the plan, the Bank shall increase its Tier 1 capital ratio to equal or exceed 6 percent in accordance with the approved plan and shall thereafter maintain its Tier 1 capital ratio at or in excess of such level while this ORDER is in effect.

(d) The Bank's board of directors shall maintain in its minutes a written record of all actions taken by the Bank to comply with the capital requirements of paragraphs 4(b) and 4(c) of this ORDER.

5. Effective the date of this ORDER, the Bank shall not extend, directly or indirectly, credit to, or for the benefit of, any borrower who has a credit card loan with the bank that has been charged off or classified, in whole or in part, "Loss" and is uncollected.

6. The Bank may (i) establish new credit card accounts or (ii) modify the terms of existing credit card accounts, *provided* any such new account or modification of an existing account is done in strict compliance with the policies and practices required by the terms and conditions of this ORDER.

[.4] 7. No more than 45 days from the effective date of this ORDER, the Bank shall develop and/or revise its written loan policies, with special emphasis on its credit card lending. The loan policies shall include appropriate practices for the granting, supervision and collection of its credit card loans and shall include:

(a) specific limitations on the total dollar volume of secured and unsecured credit card credit in relation to (i) the Bank's Tier 1 capital, (ii) the Bank's total loans, and (iii) identified geographic areas targeted for marketing the Bank's credit cards;

(b) underwriting and credit scoring criteria and procedures;

(c) collection procedures, with special emphasis on the administration and collection of over limit, past due, and charged off accounts; and

(d) internal procedures and controls, including but not limited to, procedures (i) ensuring that secured credit card accounts, including increases in the credit limit, are fully collateralized by cash or collected funds, and (ii) requiring monthly management reports to the Bank's board of directors detailing the activities and performance of the Bank's credit card operation. The revised written lending policies and any subsequent modification thereto shall be submitted to the Regional Director and the Commissioner

for review and comment. No more than 30 days after the receipt of any comment from the Regional Director or Commissioner, the board of directors shall approve the written lending policies and/or any subsequent modification thereto which approval shall be recorded in the minutes of the board of directors. Thereafter, the Bank and its institution-affiliated parties shall follow the written lending policies and/or subsequent modification thereto.

[.5] 8. Within 45 days from the effective date of this ORDER, the Bank shall develop and/or revise its written internal and external audit procedures to expressly include audits of the Bank's credit card operations at stated periodic intervals. The revised written audit procedures and any subsequent modification thereto shall be submitted to the Regional Director and the Commissioner for review and comment. No more than 30 days after the receipt of any comment from the Regional Director and the Commissioner, the Bank's board of directors shall approve the written audit procedure and/or any subsequent modification thereto which approval shall be recorded in the minutes of the Bank's board of directors. Thereafter, the bank and its institution-affiliated parties shall follow the written internal and external audit procedures and/or subsequent modification thereto.

9. (a) No more than 30 days from the effective date of his ORDER, the Bank shall hire a qualified, certified public accounting firm to conduct an audit of the Bank's credit card operation in accordance with subparagraph (i) below, and to conduct or supervise a study of the Bank's contractual arrangements and transactions with the Harrison Companies as explained in, and in accordance with, subparagraph (ii) below.

(i) The audit shall be limited to the Bank's credit card operation and shall include, in addition to such other matters as are, as a matter of custom and practice, regularly included in an audit, the following: (A) whether the financial records for such operation are true and accurate, and properly reflect the operation's financial condition; and (B) directly verify, by means of a recognized and statistically supportable methods, that the credit card accounts, including the initial 25,000 credit card accounts established at the inception of the Bank's credit card operation, are bona fide and legitimate in that, among other things, the named account holders exist and in fact applied for such accounts.

(ii) The study shall include, at a minimum, an evaluation of whether the contractual arrangements and the transactions between the Bank and Ralph Harrison, Mark Harrison, and any of their related interests or their affiliated organizations, including, without limitation, The Harrison Company, Inc., International Telebanking Center, L.L.C., and Card Marketing of America, ("Harrison Companies"), were or are by their terms, conditions, and/or effect, adverse to the safety or soundness of the Bank.

(b) The certified public accounting firm shall be experienced in, and knowledgeable of, credit card lending and operations, and shall be independent with respect to the Bank, as defined in subparagraph (c) below. Prior to hiring any firm, the Bank shall submit in writing its name, qualifications and data concerning the firm's independence with respect to the Bank to the Regional Director and the Commissioner for review. At the same time the Bank shall also submit in writing a detailed outline of the scope and methodology for conducting the audit and study to the Regional Director and Commissioner for review. Within 20 days from receipt of the written submissions, the Commissioner and the Regional Director may submit comments and/or objections regarding any of the materials submitted for review. Failure by the Regional Director and/or the Commissioner to comment on any submission does not constitute approval or endorsement of such certified public accounting firm, or the proposed audit and study.

(c) For the purposes of this ORDER, "independent with respect to the Bank" means any entity or individual, as applicable, that:

(i) is not, an officer, an employee, or a director of the Bank, of any subsidiary of the Bank, or of any entity affiliated with the Bank or of with which the Bank is affiliated;

(ii) does not own, directly or indirectly, any of the outstanding voting stock of the Bank, of any subsidiary of the Bank, or of entity affiliated with the Bank or with which the Bank is affiliated;

(iii) is not related by blood, marriage, or common financial interest to any individual who, or entity that, is not independent with respect to the Bank because such individual or entity does not satisfy the criteria described in this paragraph concerning independence. The phrase "common financial interest" means any business relationship involving any individual who, or entity that, directly or indirectly, (A) has an ownership interest in a common enterprise, or (B) is in a debt/creditor relationship. "Common financial interest" does not include common ownership of publicly traded securities registered with the Securities and Exchange Commission, *unless* the

individual or entity involved has filed or is required to file a statement under 15 U.S.C. § 78p;

(iv) is not indebted to the Bank, directly or indirectly (including (1) any "affiliate" of their entity, as defined in 12 U.S.C. § 371c, (2) any "related interest" of the individual, as defined in 12 C.F.R. § 215.2(n), or (3) any of members of an individual's "immediate family," as defined in 12 C.F.R. § 215.2(g)); and

(v) has not been employed or retained for any purpose by the Bank; by any subsidiary of the Bank; or any officer, director, or affiliate of the Bank at any time within the past 5 years from the date of this ORDER.

(d) Upon completion of the audit and study, the certified public accounting firm shall immediately submit a copy of the audit and study to the Regional Director and the Commissioner for review and comment. Any draft opinions or reports prepared by the certified public accounting firm in connection with the audit or study and provided to the Bank, shall also be provided to the Regional Director and Commissioner.

(e) Within 30 days of receipt of the study, the Bank's board of directors shall rescind any contract which in the opinion of the firm conducting the study is adverse to the safety or soundness of the Bank.

10. (a) As of the effective date of this ORDER, the Bank shall not make any payments to, or for the benefit of, Harrison Companies *unless* such payments are: (i) made pursuant to a contractual agreement which the certified public accounting firm determined was or is not adverse to the safety and soundness of the Bank; and (ii) approved by the Bank's board of directors. The Bank shall give the Regional Director and the Commissioner 20 days prior written notice of such board approval before making any such payments.

(b) If, as a result of any court or arbitration proceeding or any settlement negotiations, the Bank is found liable for breach of any contract ("award") or agrees to settle any contract claims ("settlement"), the Bank:

(i) shall immediately notify the Regional Director and the Commissioner in writing of such award or settlement; and

(ii) shall not make any payment pursuant to such award or settlement for a period of 90 days from the date such written notice is received by the Regional Director, *provided* that the Regional Director may approve any such payment, in whole or in part, in writing prior to the expiration of the 90 day period.

11. Within 45 days of the date of this ORDER, the Bank shall develop and submit to the Regional Director and to the Commissioner, a written plan to correct the deficiencies cited in the FDIC Report of Examination-Information Systems, for the Bank, dated March 17, 1997. Such plan shall address, without limitation, the Bank's: physical security, staff expertise, password controls, contingency and emergency plans, operational audits of the bank's credit card division, and "Year 2000" computer issues. No more than 30 days after the receipt of any comment from the Regional Director or Commissioner, the board of directors shall approve the written plan which approval shall be recorded in the minutes of the board of directors. Thereafter, the Bank and its institution-affiliated parties shall follow the written plan.

12. (a) No more than 30 days from the effective date of this ORDER, the Bank shall develop a written profit plan consisting of goals and strategies for improving the earnings of the Bank, with special emphasis on and detailed analysis of the Bank's credit card operation. The Bank's written profit plan shall include, at a minimum:

(i) identification of the major areas in, and means by which, the board of directors will seek to improve the Bank's operating performance, with a detailed assessment and projection for the Bank's credit card operation;

(ii) realistic and comprehensive budgets, including a cost benefit analysis of the overhead expenses and losses associated with the Bank's credit card operation;

(iii) a budget review process to monitor the income and expenses of the Bank to compare actual figures with budgetary projections; and

(iv) a description of the operating assumptions that form the basis for, and adequately support, major projected income and expense components.

(b) The written profit plan and any subsequent modification thereto shall be submitted to the Regional Director and the Commissioner for review and comment. No more than 30 days after the receipt of any comment from the Regional Director, the certified public accounting firm shall approve the written profit plan and any subsequent modification thereto, which approval shall follow the written profit plan and/or any subsequent modifications thereto.

13. (a) No more than 30 days from the effective date of this ORDER, the Bank shall develop a written funds management policy which shall, at a minimum:

- (i) establish adequate recordkeeping systems to track the volume of (A) rate-sensitive assets and (B) rate-sensitive liabilities (rate-sensitive assets and liabilities are generally defined as those that either mature or can be repriced during a specified time period (90 days, 180 days, 1 year));
- (ii) establish a range of acceptable ratios for rate-sensitive assets to rate-sensitive liabilities sufficient to protect the Bank against excessive interest-rate risk and ensure that an adequate net interest margin is maintained;
- (iii) establish adequate recordkeeping systems to track the volume (A) stable or core deposits and (B) volatile deposits;
- (iv) establish guidelines for offsetting a substantial portion of the Bank's volatile deposits and borrowings with liquid, short-term assets;
- (v) establish investment guidelines for funds derived from negotiable-rate certificates of deposit and borrowings, including a maximum large liability dependency ratio (a large liability dependence ratio means the percentage of loans plus other long-term earning assets that may be funded by negotiable-rate certificates of deposit and borrowings);
- (vi) establish a range of acceptable loan-to-deposit ratios, taking into account seasonal deposit fluctuations;
- (vii) establish a borrowing policy which addresses: (A) when or under what conditions the Bank may borrow, (B) maximum amounts that may be borrowed, (C) a list of acceptable creditors, and (D) which officers are authorized to borrow;
- (viii) establish contingency plans for meeting large, unexpected withdrawals, which should include: (A) curtailing lending activity with priority given to specific types of credit and (B) establishing lines of credit with other financial institutions which will advance funds on short notice; and
- (ix) establish a funds-management committee to meet at least monthly to determine how best to allocate the Bank's available funding sources among various asset categories after reviewing: (A) the Bank's liquidity position, (B) outstanding commitments such as loan commitments and letters of credit, and (C) the Bank's rate-sensitivity position and net interest margin.

(b) The funds management policy shall be coordinated with the Bank's loan, investment, operating, and budget and profit planning policies.

(c) The written funds management policy and any subsequent modification thereto shall be submitted to the Regional Director and the Commissioner for review and comment. No more than 30 days from the receipt of any comment from the Regional Director, the certified public accounting firm shall approve the written funds management policy and any subsequent modification thereto, which approval shall be recorded in the minutes of the board of directors. Thereafter, the Bank and its institution-affiliated parties shall follow the written funds management policy and/or any subsequent modification thereto.

14. The Bank shall not pay or declare any cash dividends without the prior written consent of the Regional Director and the Commissioner.

15. Following the effective date of this ORDER, the Bank shall send to its shareholders a description of this ORDER, (a) in conjunction with the Bank's next shareholder communication, and also (b) in conjunction with its notice or proxy statement [{{5-31-98 p.C-4486}}](#) 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 Section, 550 17th Street, N.W., Washington, D.C. 20429, at least fifteen (15) 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.

16. The Bank shall furnish written progress reports to the Regional Director and the Commissioner detailing the form and manner of any action taken to secure compliance with this ORDER and the results thereof every 90 days, beginning 90 days from the effective date of this ORDER. In addition, the Bank shall furnish such reports on request of either the Regional Director or the Commissioner. All progress reports and other written responses to this ORDER shall be reviewed by the board of directors of the Bank and made a part of the minutes of the board meeting.

17. This ORDER shall become effective ten (10) days from the date of its issuance.

The provisions of this ORDER shall be binding upon the Bank and its institution-affiliated parties, successors and assigns.

The provisions of this ORDER shall remain effective and enforceable except to the extent that, and until such time as, any provisions of this ORDER shall have been modified, terminated, suspended, or set aside by the FDIC.

Pursuant to delegated authority.

Dated this 18th day of February, 1998.

