

{{5-31-96 p.C-3687}}

¶11,002] In the Matter of First Bank of Eva, Eva, Alabama, Docket No. FDIC-94-71b (6-30-94).

Bank to cease and desist from such unsafe or unsound practices as failing to provide adequate supervision over the Bank's affairs; operating with management whose policies are detrimental to the Bank; operating with excessive volumes of adversely classified assets; following hazardous lending and lax collection practices; operating with inadequate capital; engaging in practices which produce inadequate operating income; operating with inadequate allowance for loan and lease losses; and operating in violation of applicable laws or regulations. (*This order was terminated by order of the FDIC dated 3-8-96. See ¶16,081.*)

- [.1] Management—Qualifications—Review
- [.2] Capital—Tier 1 Capital—Increase/Maintain—Methods
- [.3] Allowance for Loan and Lease Losses—Establish/Maintain
- [.4] Assets—Adversely Classified—Eliminate/Reduce
- [.5] Loans—Extensions of Credit—Existing Borrowers—Curtail
- [.6] Loans—Overdue—Accrual of Interest
- [.7] Loan Policy—Written Revision—Minimum Requirements
- [.8] Budget and Earnings Forecast—Preparation Required
- [.9] Dividends—Restricted
- [.10] Violations of Law—Eliminate/Correct
- [.11] Technical Exceptions—Eliminate/Correct
- [.12] Loans—Special Mention—Correct Deficiencies
- [.13] Funds Management—Written Policy Required
- [.14] Audit—Internal—Written Procedures Required
- [.15] Bank Operations—Internal Routine and Controls—Correct Deficiencies
- [.16] Shareholders—Disclosure—Cease and Desist Order

{{8-31-94 p.C-3688}}

In the Matter of
FIRST BANK OF EVA
EVA, ALABAMA
(Insured State Nonmember Bank)
ORDER TO CEASE AND DESIST
FDIC-94-71b

First Bank of Eva, Eva, Alabama ("Bank"), having been advised of its right to a written Notice of Charges and of Hearing detailing unsafe or unsound banking practices and violations of applicable laws and regulations alleged to have been committed by the Bank and of its right to a hearing regarding such alleged charges under section 8(b)(1) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(b) (1), and having waived those rights, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST ("CONSENT AGREEMENT") with a representative of the Legal Division of the Federal Deposit Insurance Corporation ("FDIC"), dated May 18, 1994, whereby solely for the purpose of this proceeding and without admitting or denying any of the alleged charges of unsafe or unsound banking practices and violations of applicable laws and regulations, 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 and had committed violations of applicable laws and regulations.

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 such 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 violations of laws and regulations:

- A. Failing to provide adequate supervision and direction over the affairs of the Bank by the board of directors of the Bank to prevent unsafe or unsound practices and violations of laws and regulations;
- B. Operating the Bank with management whose policies and practices are detrimental to the Bank and

jeopardize the safety of its deposits;

C. Operating the Bank with an excessive volume of adversely classified assets, nonearning assets, and overdue loans;

D. Engaging in hazardous lending and ineffective and lax collection practices, including but not limited to: (i) failing to establish and/or enforce repayment programs; (ii) extending credit to borrowers with inadequate repayment ability and/or without establishing the borrower's means and methods of repayment; (iii) continuing to accrue interest on loans that are 90 days or more delinquent in principal or interest payments and which are not both well secured and in the process of collection; (iv) extending credit in contravention of the Bank's written loan policy and procedures; (v) extending credit with inadequate collateral security or secured by collateral of unknown or undocumented value; and (vi) extending credit with inadequate financial information to support the extensions of credit;

E. Operating the Bank with equity capital that is inadequate for the kind and quality of assets held by the Bank;

F. Engaging in practices which produce inadequate operating income and excessive loan losses;

G. Failing to provide and maintain an adequate allowance for loan and lease losses for the volume, kind and quality of loans held by the Bank; and

H. Engaging in violations of applicable laws and regulations, as more fully described on pages 6-b through 6-b-6 of the joint FDIC and Alabama State Banking Department ("State") Report of Examination of the Bank as of October 25, 1993.

IT IS FURTHER ORDERED that the Bank and its successors and assigns take affirmative action as follows:

[.1] 1. (a) Within 90 days from the effective date of this ORDER, the Bank shall have and retain qualified management. At a minimum, such management shall include a chief executive officer with proven ability in managing a bank of comparable size and with an appropriate level of lending, collection and loan supervision experience necessary for upgrading a low quality loan portfolio. Such person shall be provided the necessary written authority to implement the provisions of this ORDER. The qualifications of management [{{8-31-94 p.C-3689}}](#) shall be assessed on its ability to (i) comply with the requirements of this ORDER, (ii) operate the Bank in a safe and sound manner, (iii) comply with applicable laws and regulations, and (iv) maintain all aspects of the Bank in, or restore all aspects of the Bank to, a safe and sound condition, including asset quality, capital adequacy, earnings, management effectiveness, and liquidity. As long as this Order remains in effect, the Bank shall notify the Regional Director of the FDIC's Atlanta Regional Office ("Regional Director") and the Superintendent of Banks of the State of Alabama ("Superintendent") in writing of any changes in management. Such notification shall be in addition to any application and prior approval requirements established by section 32 of the Act, 12 U.S.C. § 1831i, and implementing regulations; must include the names and qualifications of any replacement personnel; and must be provided at least 30 days prior to the individual assuming the new position.

(b) To facilitate compliance with paragraph 1(a) of this ORDER, the Bank's board of directors shall in no more than 30 days from the effective date of this ORDER 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) evaluation of each Bank officer, and in particular the chief executive officer, and staff member 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

(iii) 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 analysis, evaluation and assessment as provided in paragraphs 1(b)(i) and 1(b)(ii) of this ORDER.

(c) The written management plan and any subsequent modification thereto shall be submitted to the Regional Director and the Superintendent for review and comment. No more than 30 days from the receipt of any comment from the Regional Director and the Superintendent, 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 shall implement and follow the written management plan and/or any subsequent modification thereto as adopted by the Bank's board of directors.

[.2] 2. (a) Within 30 days after the effective date of this ORDER, and within 30 days after each March 31, June 30, September 30, and December 31 date thereafter while this ORDER remains in effect, the Bank's board of directors shall calculate the Bank's Tier 1 capital as a percentage of its total assets ("capital ratio") as of the nearest preceding March 31, June 30, September 30, and December 31 date. If such capital ratio is less than 6.0 percent, the Bank shall, within 90 days from the date of such calculation, increase its Tier 1 capital by an amount sufficient to raise its capital ratio to not less than 6.0 percent as of the nearest preceding March 31, June 30, September 30, or December 31 date. Any such increase in Tier 1 capital required by this paragraph 2(a) of the ORDER may be accomplished by any one or more of the following:

- (i) The sale of new securities in the form of common stock;
- (ii) The collection in cash of all or part of the assets other than loans classified "Loss" as of October 25, 1993, and charged off in accordance with paragraph 4 of this ORDER;
- (iii) The direct contribution of cash by the directors and/or shareholders of the Bank;
- (iv) The collection in cash of assets other than loans previously charged off; or
- (v) Any other means acceptable to [{{8-31-94 p.C-3690}}](#) the Regional Director and the Superintendent.

(b) (i) If all or part of the increase in the Bank's Tier 1 capital required under paragraph 2(a) of this ORDER is accomplished by the sale of new securities, the board of directors shall take all necessary steps to adopt and implement a plan for the sale of such additional securities, including the voting of any shares owned or proxies held or controlled by them in favor of the plan. Should the implementation of the plan involve a public distribution of the Bank's securities (including a distribution limited to the Bank's existing shareholders), the Bank shall prepare detailed offering materials fully describing the securities being offered, including an accurate description of the financial condition of the Bank and of this ORDER as well as the circumstances giving rise to the offering, and any other material disclosures necessary to comply with applicable Federal securities laws. Prior to the sale of such securities, and, in any event, not less than 20 days prior to the dissemination of such materials, the materials used in the sale of the securities shall be submitted to the FDIC, Registration and Disclosure Section, 550 17th Street, N.W., Washington, D.C. 20429, and to the Superintendent for review. All changes requested by the FDIC or by the Superintendent to be made in such offering materials shall be made prior to their dissemination.

(ii) In complying with the provisions of paragraph 2(b)(i) of this ORDER, the Bank shall provide to each 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 Bank securities. The written notice required by this paragraph 2(b)(ii) of the ORDER shall be furnished within 10 calendar days from the date that such material development or change was planned or occurred, whichever is earlier, and shall be furnished to every purchaser and/or subscriber of Bank securities who received or was tendered the information contained in the Bank's original offering materials.

(c) In addition to the requirements of paragraph 2(a) of this ORDER, for as long as this ORDER remains in effect, the Bank shall meet the minimum ratio requirements established for "risk-based capital" as set forth in Appendix A of Part 325 of the FDIC's Rules and Regulations, 12 C.F.R. Part 325, which Appendix A is entitled "Statement of Policy on Risk-Based Capital," and/or any subsequent amendments or modifications thereto.

(d) For the purposes of this ORDER, the terms "Tier 1 capital" and "total assets" shall have the meanings ascribed to them in sections 325.2(t) and 325.2(v), respectively, of the FDIC's Rules and Regulations, 12 C.F.R. §§ 325.2(t) and 325.2(v).

[.3] 3. (a) Within 30 days from the effective date of this ORDER, and concurrently with compliance with the requirements of paragraph 4 of this ORDER, the Bank shall establish and thereafter continually maintain an adequate allowance for loan and lease losses in accordance with the prevailing requirements of the Instructions for the Reports of Condition and Income, by charges against current operating income. In complying with the requirements of this paragraph 3(a) of the ORDER, the Bank's board of directors shall, at a minimum, review the adequacy of the Bank's allowance for loan and lease losses prior to the end of each calendar quarter. The minutes of the board meeting at which such review is undertaken shall indicate the results of the review, the amount of any recommended increases in the allowance, and the basis for determining the amount of allowance provided.

(b) Reports of Condition and Income required to be filed by the Bank prior to the effective date of this ORDER shall reflect a provision for the allowance for loan and lease losses necessary to

comply with paragraph 3(a) of this ORDER. If necessary to comply with this paragraph 3(b) of the ORDER, the Bank shall file amended Reports of Condition and Income within 30 days from the effective date of this ORDER.

[.4] 4. Within 30 days from the effective date of this ORDER, the Bank shall eliminate from its books, by collection, chargeoff or other proper entries, all assets or portions of assets classified "Loss" and one-half of all assets or portions of assets classified "Doubtful" by the FDIC as a result of its examination of the Bank as of October 25, 1993, which have not been previously collected or charged off, unless otherwise approved in writing by the Regional Director and the Superintendent. Reduction of assets through use of proceeds of loans made by the Bank does not constitute collection for the purpose of this paragraph 4 of the ORDER.

5. (a) Within 90 days from the effective date of this ORDER, the Bank shall submit to the Regional Director and the Superintendent a written plan of action to reduce each line of credit which was adversely classified by the FDIC and the State as of October 25, 1993, and which aggregated \$25,000 or more as of that date. Such plan of action shall thereafter be implemented by the Bank and monitored, and progress reports thereon shall be submitted by the Bank to the Regional Director and the Superintendent concurrently with the other reporting requirements set forth in paragraph 18 of this ORDER.

(b) As used in this paragraph 5 of the ORDER, "reduce" means to (i) collect, (ii) charge off, or (iii) improve the quality of such assets sufficiently to warrant removal of any adverse classification by the FDIC.

[.5] 6. (a) Effective the date of this ORDER, the Bank shall not extend, directly or indirectly, any additional credit to or for the benefit of any borrower who has a loan or other extension of credit with the Bank that has been charged off or classified, in whole or in part, "Loss" or "Doubtful", and is uncollected.

(b) Effective the date of this ORDER, the Bank shall not extend, directly or indirectly, any additional credit to or for the benefit of any borrower who has a loan or other extension of credit with the Bank that has been classified, in whole or in part, "Substandard", and is uncollected, unless a majority of the Bank's board of directors first: (i) determines that such advance is in the best interest of the Bank; (ii) determines that the Bank has satisfied the requirements set out in paragraph 5(a) of this ORDER as to such borrower; (iii) determines that such advance is in full compliance with the Bank's loan policy; (iv) determines that all necessary loan documentation supporting such advance has been obtained, including but not limited to, current financial and cash flow information and adequate appraisal, title and lien documents; and (v) approves such advance. A written record of the board of directors' determination and approval of any advance under this paragraph 6(b) of the ORDER shall be maintained in the credit file(s) of the affected borrower(s) as well as the minutes of the board of directors.

(c) The requirements of this paragraph 6 of the ORDER shall not prohibit the Bank from renewing or extending the maturity of any credit already extended to the borrower, provided such action is in accordance with both Federal and state laws, rules and regulations, and with the Bank's written loan policy, and further provided all interest due at the time of such renewal or extension is collected in cash from the borrower.

[.6] 7. (a) Within 30 days from the effective date of this ORDER, and in accordance with the Instructions for the Reports of Condition and Income, the Bank shall reverse on its books all accrued and unpaid interest on any loan that is 90 days or more delinquent in principal or interest payments and is not both well secured and in the process of collection.

(b) Effective the date of this ORDER, the Bank shall not: (i) accrue interest on any loan that is, or becomes, 90 days or more delinquent in principal or interest payments unless the loan is both well secured and in the process of collection; (ii) add uncollected interest to the unpaid principal balance of any loan on which interest is due unless such addition is supported by additional tangible collateral which adequately and completely secures the loan; (iii) extend credit by means of a new note for uncollected interest due on any loan unless such new extension of credit is supported by additional tangible collateral which adequately and completely secures the loan; or (iv) book uncollected interest by any other means in contravention of the Instructions for Reports of Condition and Income.

(c) For purposes of this paragraph 7 of the ORDER, "well secured" and "in the process of collection" shall have the same meanings as those terms have in the prevailing Instructions for the Reports of Condition and Income.

[.7] 8. (a) Within 60 days from the effective date of this ORDER, the Bank shall review and revise its written loan policy as necessary to provide for the safe and sound administration of all aspects of the Bank's lending function. The Bank's loan policy shall, at a minimum, be revised to address the deficiencies in the policy described on pages 1-a and 6 of the joint FDIC and State Report of Examination of the Bank as of October 25, 1993.

(b) The revised written loan policy and any subsequent modification thereto shall be submitted to the Regional Director and the Superintendent for review and comment. No more than 30 days after the receipt of any comment from the Regional Director and the Superintendent, the board of directors shall approve the written loan policy and/or any subsequent modification thereto, which approval shall be recorded in the minutes of the board of directors. Thereafter, the Bank shall implement and follow the written loan policy and/or any subsequent modification thereto.

[.8] 9. (a) Within 30 days from the effective date of this ORDER, the Bank shall prepare a realistic and comprehensive budget and earnings forecast for calendar year 1994 and shall submit this budget and earnings forecast to the Regional Director and the Superintendent for review and comment.

(b) As long as this ORDER remains in effect, the Bank shall prepare realistic and comprehensive calendar year budgets and earnings forecasts on a consolidated basis as of January 1 of each year subsequent to 1994 and shall submit them to the Regional Director and the Superintendent for review and comment no later than January 31 of the budget year.

(c) In preparing the budgets and earnings forecasts required by this paragraph 9 of the ORDER, the Bank shall, at a minimum:

(i) Identify the major areas in, and means by, which the board of directors will seek to improve the Bank's operating performance; and

(ii) Describe the operating assumptions that form the basis for, and adequately support, major projected income and expense components.

(d) In preparing the budgets and earnings forecasts, particular emphasis shall be given to limiting overhead expenses and increasing the Bank's net interest margin.

(e) Progress reports comparing the Bank's actual income and expense performance with budgetary projections shall be submitted to the Regional Director and the Superintendent concurrently with the other reporting requirements set forth in paragraph 18 of this ORDER. The Bank's board of directors shall review such progress reports, which review shall be recorded in the minutes of the board of directors.

[.9] 10. As of the effective date of this ORDER, the Bank shall not pay any cash or property dividends without the prior written consent of the Regional Director and the Superintendent.

[.10] 11. Within 30 days from the effective date of this ORDER, the Bank shall take all necessary steps, consistent with sound banking practices, to eliminate and/or correct all alleged violations of law and regulations committed by the Bank, as described on pages 6-b through 6-b-6 of the joint FDIC and State Report of Examination of the Bank as of October 25, 1993. In addition, the Bank shall adopt appropriate procedures to ensure its future compliance with all applicable laws and regulations.

[.11] 12. (a) Within 90 days from the effective date of this ORDER, the Bank shall take all necessary steps to correct the technical exceptions on loans listed on pages 2-d and 2-d-1 of the joint FDIC and State Report of Examination of the Bank as of October 25, 1993.

(b) Effective the date of this ORDER, the Bank shall not extend or renew any secured credit until all required collateral documentation, or evidence of the required collateral documentation, has been obtained and reviewed by a loan officer or by the board of directors.

(c) Effective the date of this ORDER, the Bank shall not extend any credit, whether secured or unsecured, without first obtaining and analyzing credit information sufficient to identify the borrower's source of repayment and to support a scheduled repayment plan. The Bank's [{{8-31-94 p.C-3693}}](#) analysis shall be documented in the Bank's credit files by a credit memorandum which sets forth the analysis and rationale for extending each credit.

[.12] 13. Within 90 days from the effective date of this ORDER, the Bank shall correct the cited deficiencies in the assets listed for "Special Mention" on page 2-b of the joint FDIC and State Report of Examination of the Bank as of October 25, 1993. Thereafter, the Bank shall service those loans in accordance with its written loan policy and in accordance with safe and sound banking practices.

[.13] 14. (a) Within 90 days from the effective date of this ORDER, the Bank shall develop a written funds management policy which shall include, at a minimum:

(i) Provisions addressing the concerns and adopting the recommendations contained on pages 1-a-2 and 4-b-1 of the joint FDIC and State Report of Examination of the Bank as of October 25, 1993;

(ii) Goals and strategies for monitoring and managing the Bank's liquidity needs and interest rate risk and reducing the ratio of total loans to total deposits; and

(iii) Periodic monitoring by the Bank's board of directors of the Bank's performance in meeting the requirements and goals established pursuant to paragraph 14(a)(ii) of this ORDER.

(b) The written funds management policy and/or any subsequent modification thereto shall be submitted to the Regional Director and the Superintendent for review and comment. No more than 30 days after the receipt of any comment from the Regional Director and the Superintendent, the board of directors shall approve the written funds management policy and/or any subsequent modification thereto, which approval shall be recorded in the minutes of the board of directors. Thereafter, the Bank shall implement and follow the written funds management policy and/or any subsequent modification thereto, and shall report its funds management performance to the Regional Director and the Superintendent concurrently with the other reporting requirements specified in paragraph 18 of this ORDER.

[.14] 15. Within 90 days from the effective date of this ORDER, the Bank shall develop written internal audit procedures which shall include, at a minimum, provisions addressing the concerns and adopting the recommendations contained on pages 1-a-2 and 6-a of the joint FDIC and State Report of Examination of the Bank as of October 25, 1993. Within 120 days from the effective date of this ORDER, the written internal audit procedures, and any subsequent modification thereto, shall be approved by the board of directors, which approval shall be recorded in the minutes of the board of directors. Thereafter, the Bank shall implement and follow the written internal audit procedures and any subsequent modification thereto.

[.15] 16. Within 90 days from the effective date of this ORDER, the Bank shall take all necessary steps to correct all internal routine and control deficiencies cited on pages 6-c, 6-c-1, 6-d and 6-d-1 of the joint FDIC and State Report of Examination of the Bank as of October 25, 1993.

[.16] 17. Following 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 this 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, and to the Superintendent, for review at least 20 days prior to dissemination to shareholders. Any changes requested to be made by the FDIC or the Superintendent shall be made prior to dissemination of the description, communication, notice or statement.

18. Within 90 days from the effective date of this ORDER, and within 30 days following the end of each calendar quarter thereafter, the Bank shall furnish written progress reports to the Regional Director and the Superintendent 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 Superintendent have released [9-30-94 p.C-3694](#) the Bank in writing from making further reports. 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 appropriate board meeting.

19. The provisions of this ORDER shall become effective ten (10) days from the date of its issuance and shall be binding upon the Bank, its institution-affiliated parties, and its successors and assigns. Further, 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.

Dated at Atlanta, Georgia, this 30th day of June, 1994.

Pursuant to delegated authority.

