

[{{6-30-93 p.C-2051}}](#)

[¶10,477] In the Matter of The Lowell Five Cent Savings Bank, Lowell, Massachusetts, Docket No. FDIC-92-64b (3-12-92).

Bank to cease and desist from such unsafe or unsound practices as operating with excessive volumes of adversely classified assets; following hazardous lending and lax collection practices; operating with inadequate capital; operating in violation of applicable laws or regulations; operating with management whose policies are detrimental to the Bank; operating with inadequate loan documentation; engaging in practices which produce inadequate operating income; failing to submit Reports of Condition and Income in accordance with instructions; failing to provide adequate supervision over the Bank's affairs; operating with excessive interest rate risk exposure; and operating with inadequate routine and controls policies. *(This order was terminated by order of the FDIC dated 4-16-93; see ¶ 15,654.)*

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In the Matter of

**THE LOWELL FIVE CENT SAVINGS
BANK
LOWELL, MASSACHUSETTS
(Insured State Nonmember Bank)
ORDER TO CEASE
AND DESIST**

The Lowell Five Cent Savings Bank, Lowell, Massachusetts ("Bank"), having been advised of its right to a Notice of Charges and of Hearing detailing the unsafe or unsound banking practices and/or violations of [{{6-30-93 p.C-2052}}](#) law and/or regulations alleged to have been committed by the Bank and of its right to a hearing on 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 counsel for the Federal Deposit Insurance Corporation ("FDIC"), dated March 6, 1992, whereby solely for the purpose of this proceeding and without admitting or denying any allegation or implication of fact or the existence of any unsafe or unsound banking practices or violations of law and/or regulations, or any other factual ground for the issuance of an order under section 8(b) of the Act, 12 U.S.C. § 1818(b), the Bank consented to the issuance of this 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 violated laws and/or regulations. The FDIC, therefore, accepted the CONSENT AGREEMENT and issued the following:

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED that the Bank and its institution-affiliated parties, as that term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u) (to the extent such parties are subject to this ORDER pursuant to the Act) cease and desist from the following unsafe or unsound banking practices and violations of law 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 loans;

(c) operating with inadequate capital for the kind and quality of assets held;

(d) engaging in violations of applicable laws and regulations;

(e) operating with management whose policies and practices are detrimental to the Bank;

(f) operating with deficient or inadequate loan documentation, including but not limited to current financial statements, insurance coverage, title searches or legal opinions, and cash flow and/or operating information;

(g) engaging in practices which result in inadequate operating income and excessive loan losses;

(h) failing to provide adequate supervision and direction over the affairs of the Bank to prevent unsafe or unsound practices and violations of law and/or regulations;

(i) failing to submit Reports of Condition and Income in accordance with prevailing instructions;

(j) operating with excessive interest rate risk exposure; and

(k) operating without proper internal routine and controls.

IT IS FURTHER ORDERED, that the Bank and its institution-affiliated parties (to the extent such parties are subject to this ORDER pursuant to the Act), take affirmative action as set forth below. However, for purposes of enforcement of this ORDER by the FDIC pursuant to section 8(i) of the Act, 12 U.S.C. § 1818(i), the Bank and its institution-affiliated parties will not be deemed to have engaged in any unsafe or unsound banking practice or violation of law and/or regulation described in any of the above provisions, except to the extent the Bank is not in compliance with the following provisions:

[.1] 1. Within ninety (90) days from the effective date of this ORDER, the Bank shall have and retain qualified management. Each member of management shall have qualifications and experience commensurate with his or her duties and responsibilities at the Bank. At a minimum, such management shall include a president with proven ability in managing a bank of comparable size and experience in 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 shall be assessed on its ability to take effective action toward the accomplishment of the following goals:

(i) compliance with the requirements of this ORDER,

(ii) operation of the Bank in a safe and sound manner,

(iii) compliance with applicable laws and regulations, and

(iv) restoration and maintenance of all aspects of the Bank to and in a safe

[{{5-31-92 p.C-2053}}](#) and sound condition, including asset quality, capital adequacy, earnings, management effectiveness and liquidity.

During the life of this ORDER, the Bank shall notify the Regional Director of the Boston Regional Office ("Regional Director") and the Commissioner of Banks, Commonwealth of Massachusetts ("Commissioner") in writing of any changes in management in the manner and to the extent required by section 303.14 of the FDIC's Rules and Regulations, 12 C.F.R. § 303.14, with a copy of such notice to the Commissioner. The notification must include the names and background of any replacement personnel and must be provided prior to the individual's assuming the new position.

[.2] 2. (a) The Bank shall eliminate from its books, by charge-off or collection, all assets or portions of assets classified "Loss" and fifty (50.0) percent of all assets or portions of assets classified "Doubtful" in FDIC Report of Examination of the Bank as of August 19, 1991 ("Examination"), which have not been previously collected or charged off. Reduction of these assets through use of proceeds of loans made by the Bank, other than to qualified third party borrowers, does not constitute "collection" or "elimination" for the purpose of this paragraph.

(b) The Bank shall maintain its Reserve in accordance with the prevailing requirements of the Instructions for the Reports of Condition and Income ("Instructions"). Toward this end, within ninety (90) days from the effective date of this ORDER, the Bank's Board of Trustees shall review the Bank's policy for determining the adequacy of the Bank's Reserve and make any appropriate changes to such policy necessary to result in a comprehensive policy for determining the adequacy of the Bank's Reserve. The policy shall provide for a review of the Reserve at least once each calendar quarter. The review should focus on the results of the Bank's internal loan review, loan loss experience, trends of delinquent and nonaccrual loans, an estimate of potential loss exposure on significant credits, concentrations of credit, and present and prospective economic conditions. Review of other real estate and exposure therein shall be undertaken along the same lines as the aforementioned loan portfolio review. The adequacy of the Reserve in relation to the loss potential in the loan portfolio will be reviewed by the Board of Trustees and

adjustments to the Reserve will be made accordingly. Details of these reviews will be incorporated into the minutes of the Board of Trustees, including the methodology used to determine the adjustments made.

(c) Prior to the submission of any Report of Condition or Report of Income required to be filed by the Bank after the effective date of this ORDER, the Board of Trustees of the Bank shall: (1) review the adequacy of the Bank's Reserve, (2) cause the Bank to provide for an adequate Reserve, and (3) cause the Bank to accurately report the Reserve 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 Reserve, and the basis for determining the amount of allowance provided.

[.3] 3. (a) (i) Within six (6) months from the effective date of this ORDER, the Bank shall have Tier 1 capital at or in excess of six (6) percent of the Bank's total assets ("Tier 1 leverage capital ratio") and shall continue to maintain its Tier 1 leverage capital ratio at or in excess of such level as calculated herein while this ORDER is in effect. Toward this end, the Bank shall develop a Capital Plan which will be submitted to the Regional Director and the Commissioner for approval within ninety (90) days from the effective date of this ORDER. The Capital Plan should address both internal and external sources of capital augmentation, including capital infusions, retention of earnings, restrictions of asset growth and asset sales.

(ii) For purposes of this ORDER, the terms "Tier 1 capital" and "total assets" shall have the meanings ascribed to them in the revised Part 325 of the FDIC's Rules and Regulations, 12 C.F.R. Part 325, which became effective April 10, 1991.

(b) In calculating the Bank's Tier 1 leverage capital ratio under paragraph 3(a) initially, the Bank shall first comply fully with paragraph 2(a) of this ORDER.

[\[5-31-92 p.C-2054\]](#) Thereafter, such ratio and its component parts shall be determined only after the Bank has made such additions to its Reserve so as to bring the Reserve into compliance with the prevailing requirements of the Instructions and charged off any losses identified subsequent to the Examination.

(c) Any increase in the Tier 1 leverage capital ratio made by the Bank in order to meet the requirements of paragraph 3(a) of this ORDER may be accomplished by:

- (i) the sale of new offerings of common stock or perpetual preferred stock;
- (ii) the collection of all or part of assets classified "Loss" within the Examination without loss or liability to the Bank. Reductions to loans and leases classified "Loss" shall first be credited to the Bank's Reserve and, if the Board of Trustees' review of the adequacy of the Reserve required by paragraph 2 of this ORDER indicates that such Reserve has a balance in excess of that required for adequacy, any such excess may be transferred to equity capital through a negative provision to the Reserve;
- (iii) the collection in cash of assets previously charged off;
- (iv) the reduction of the overall size of the Bank through the sale of assets or other means;
- (v) any combination of the above means; or
- (vi) any other means acceptable to the Regional Director and the Commissioner.

(d) If, after having achieved the Tier 1 leverage capital the ratio specified in paragraph 3(a)(i), such ratio declines below six (6.0) percent, the Bank, within thirty (30) days after the end of the month within which said ratio so declined, shall submit a written plan to the Regional Director and the Commissioner for increasing such ratio up to or in excess of six (6.0) percent within six months after the written plan is implemented. Thereafter, the Bank shall continue to maintain its Tier 1 leverage capital ratio at or in excess of such level as calculated herein while this ORDER is in effect. Upon approval by the Regional Director and the Commissioner, the Bank shall immediately begin implementation of the written plan.

(e) In addition to the requirements of paragraphs 3(a)-(d), 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) If all or part of any increase in capital made by the Bank in order to meet the requirements of this paragraph 3 involves an offering, other than an offering deemed not to be a public securities offering pursuant to 17 C.F.R. section 230.506 or as hereafter amended, of the Bank's securities (including a distribution limited only 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 the Federal securities laws. Prior to the sale of the

securities, and, in any event not less than twenty (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, Washington, D.C. 20429, for review. Any changes requested to be made in the materials by the FDIC shall be made prior to their dissemination.

(g) In complying with the provisions of paragraph 3(f) of this ORDER, the Bank shall provide to any subscriber and/or prospective purchaser of Bank stock prior to the sale of such stock, 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 3(g) shall be furnished within ten (10) calendar days from the date such material development or change was planned or occurred, whichever is earlier, to every prospective purchaser and/or subscriber of Bank stock who received or was tendered the information contained in the Bank's original offering materials.

(h) The Bank's Board of Trustees shall maintain in its minutes a written record of all actions taken by the Bank to comply with the capital requirements of paragraphs 3(a) through 3(g) of this ORDER, ~~{{5-31-92 p.C-2055}}~~ including, at a minimum, any action to increase its Tier 1 capital by each of the methods specified in paragraphs 3(c)(i) through 3(c)(vi) of this ORDER.

[.4] 4. (a) Within sixty (60) days from the effective date of this ORDER, the Board of Trustees shall cause to be developed a written plan of action to lessen the Bank's risk position with respect to each borrower who or which had outstanding principal debt owing to the Bank in excess of \$200,000 which was classified "Substandard" or "Doubtful," in whole or in part, in the Examination. In developing such plan, the Bank shall, at a minimum:

- (i) review the financial position of each such borrower, including source of repayment, repayment ability, and alternative repayment sources; and
- (ii) evaluate the available collateral for each such credit, including possible actions to improve the Bank's collateral position.

Based upon such review and evaluation, the written plan of action shall: (A) establish target dollar levels to which the Bank shall reduce the aggregate dollar volume of "Substandard" or "Doubtful" classifications in the Examination within six (6) and twelve (12) months from the effective date of this ORDER; and (B) provide for the submission of written quarterly progress reports to the Bank's Board of Trustees for review and notation in the Board minutes and written monthly status updates on such classified assets. Exhibit A provides the form for the progress report. As used in this paragraph 4, "reduce" means to (1) collect, (2) charge off or create a specific reserve against, or (3) improve the quality of such assets so as to warrant removal of any adverse classification by the FDIC and the Commonwealth of Massachusetts Department of Banking. Payment of loans with the proceeds of the other loans made by the Bank, other than loans to qualified third party borrowers, will not constitute "reduction" or "collection" for purposes of this ORDER.

(b) The written plan of action described by paragraph 4(a) shall be submitted to the Regional Director and the Commissioner for review and comment within sixty (60) days from the effective date of this ORDER. No sooner than thirty (30) days, but under no circumstances more than sixty (60) days after such submission, the Board of Trustees shall approve the written plan of action, taking into consideration any written responsive comments received from the Regional Director or the Commissioner during such 30-day period, and such approval shall be recorded in the minutes of the Board of Trustees. Subsequent modifications to the written plan may be made only after giving the Regional Director and the Commissioner written notice of the proposed modification, and after consideration of any written responsive comments received from the Regional Director and/or the Commissioner within thirty (30) days from their receipt of the notice of proposed modification. No such modification shall become effective until approved by the Board of Trustees, and such approval shall be recorded in the minutes of the Board of Trustees. The Bank, its trustees, officers and employees shall follow the written plan of action and/or any subsequent modification thereto.

[.5] 5. The Bank shall not extend or renew, directly or indirectly, credit to, or knowingly for the benefit of, any borrower who or which has a loan or other extension of credit with the Bank that has been charged off or classified in the Examination, in whole or in part, "Loss," "Doubtful," or "Substandard," and is uncollected, unless a majority of the Bank's Board of Trustees first (1) determines that such extension or renewal is in the best interest of the Bank, (2) determines that the Bank has satisfied the requirements set out in paragraph 4(a) of this ORDER as to such borrower, and (3) approves such extension or renewal, either individually or as part of the Bank's work out plan for the borrower. A written record of the Board of Trustees' determination and approval of any advance under the terms of this paragraph 5 shall be

maintained in the credit file of the affected borrower(s) as well as the minutes of the Board of Trustees. For purposes of this paragraph 5, an extension of credit shall be deemed to have been made "knowingly" for the benefit of a borrower if the Bank knew or, upon reasonable inquiry, could have known that the extension of credit would be for the benefit of that borrower. Notwithstanding the foregoing, this ORDER shall not require such approvals by the Board of Trustees for extensions of credit made pursuant to legally binding contractual commitments entered into by the Bank prior to the effective date of this ORDER.

[.6] 6. (a) Within thirty (30) days from the effective date of this ORDER, the Bank shall revise its written loan policy, which revision shall include, to the extent it does not already do so, at a minimum:

- (i) the guidelines under which unsecured loans will be granted;
- (ii) the guidelines for rates of interest and terms of repayment for unsecured loans and secured loans, with the exception of consumer loans;
- (iii) appropriate and adequate collection procedures, including, but not limited to, the actions to be taken against borrowers who fail to make timely payments;
- (iv) guidelines establishing limitations on the maximum volume of loans in relation to total assets;
- (v) appropriate limitations on extension of credit through overdrafts and cash items;
- (vi) procedures regarding internal classifications of nonaccrual loans;
- (vii) procedures for identifying, supervising, and collecting problem loans;
- (viii) periodic review of the overdue, problem and/or adversely classified or special mention loans by the Board of Trustees, so as to monitor management's administration of such distressed credits, and to provide guidance; and
- (ix) appropriate limitations on concentrations of credit in relation to capital.

(b) The revised written loan policy shall be submitted to the Regional Director and the Commissioner for review and comment within thirty (30) days from the effective date of this ORDER. No sooner than thirty (30) days, but under no circumstances more than sixty (60) days after such submission, the Board of Trustees shall approve the revised written loan policy, taking into consideration any written responsive comments received from the Regional Director or the Commissioner within such 30-day period, and such approval shall be recorded in the minutes of the Board of Trustees. Subsequent modifications to the revised written loan policy may be made only after giving the Regional Director and the Commissioner written notice of the proposed modification, and after consideration of any written responsive comments received from the Regional Director and/or the Commissioner within thirty (30) days from their receipt of the notice of proposed modification. No such modification shall become effective until approved by the Board of Trustees, and such approval shall be recorded in the minutes of the Board of Trustees. The Bank, its trustees, officers and employees shall follow the revised written loan policy and/or any subsequent modification thereto.

[.7] 7. (a) Within ninety (90) 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, which written profit plan may be a part of the Capital Plan referred to in paragraph 3(a)(1) above. The written profit plan shall include, at a minimum:

- (i) identification of the major areas in, and means by, which the Board of Trustees will seek to improve the Bank's operating performance;
- (ii) realistic and comprehensive budgets;
- (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 shall be submitted to the Regional Director and the Commissioner for review and comment within ninety (90) days from the effective date of this ORDER. No sooner than thirty (30) days, but under no circumstances more than sixty (60) days after such submission, the Board of Trustees shall approve the written profit plan, taking into consideration any written responsive comments received from the Regional Director or the Commissioner within such 30-day period, and such approval shall be recorded in the minutes of the Board of Trustees. Subsequent modifications to the written profit plan may be made only after giving the Regional Director and the Commissioner written notice of the proposed modification, and after consideration of any written responsive comments received from the Regional Director and/or the Commissioner within thirty (30) days from their receipt of the notice of proposed modification. No such modification shall become effective until approved by the Board of

Trustees, and such approval shall be recorded in the minutes of the Board of Trustees. The Bank, its trustees, officers, and employees shall follow the written profit plan and/or any subsequent modification thereto.

[.8] 8. (a) Within ninety (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) the Bank's liquidity needs and plans for ensuring that such needs are met on an ongoing basis;
- (ii) goals and strategies for managing and/or improving the Bank's interest rate risk exposure;
- (iii) monitoring of the interest rate sensitivity of present investments and deposits and projections of the types of investments and deposits to improve such liquidity position; and
- (iv) coordination of the Bank's loan, investment, operating, and budget and profit planning policies with the written funds management policy.

(b) The written funds management policy shall be submitted to the Regional Director and the Commissioner for review and comment within ninety (90) days from the effective date of this ORDER. No sooner than thirty (30) days, but under no circumstances more than sixty (60) days after such submission, the Board of Trustees shall approve the written funds management policy, taking into consideration any written responsive comments received from the Regional Director or the Commissioner within such 30-day period, and such approval shall be recorded in the minutes of the Board of Trustees. Subsequent modifications to the written funds management policy may be made only after giving the Regional Director and the Commissioner written notice of the proposed modification, and after consideration of any responsive comments received from the Regional Director and/or the Commissioner within thirty (30) days from their receipt of the notice of proposed modification. No such modification shall become effective until approved by the Board of Trustees, and such approval shall be recorded in the minutes of the Board of Trustees. The Bank, its trustees, officers and employees shall follow the written funds management policy and/or any subsequent modification thereto.

[.9] 9. (a) Within ninety (90) days from the effective date of this ORDER, the Bank shall correct the remediable technical exceptions on loans noted on pages 2-d through 2-d-5 of the Examination.

(b) Within (60) days from the effective date of this ORDER, the Bank shall formulate and begin implementation of a plan to reduce all concentrations as noted on page 2-b of the Examination to less than twenty-five (25.0) percent of the Bank's Tier 1 capital.

[.10] 10. Within sixty (60) days from the effective date of this ORDER, the Bank shall eliminate and/or correct all remediable apparent violations of law and regulations cited on pages 6-1 through 6-1-b of the Examination.

[.11] 11. Within forty (40) days from the effective date of this ORDER, and, thereafter, within forty (40) days from the end of each calendar quarter commencing after the effective date of this ORDER, 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 and/or maintain compliance with this ORDER and the results thereof. 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 Trustees of the Bank and made a part of the minutes of the Board meeting.

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, to the extent such parties are subject to this ORDER pursuant to the Act.

The provisions of this ORDER shall remain effective and enforceable except to [{{1-31-93 p.C-2058}}](#) 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 Needham, Massachusetts this 12th day of March, 1992.

Pursuant to delegated authority.