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[¶10,764] **In the Matter of Savers Co-operative Bank, Southbridge, Massachusetts, Docket No. FDIC-93-67b (3-22-93).**

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 marginal capital; operating in [{{10-31-94 p.C-3153}}](#) 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 provide adequate supervision over the Bank's affairs; operating with inadequate allowance for loan and lease losses; failing to submit Reports of Condition and Income in accordance with instructions; operating with excessive interest rate risk exposure; and operating without proper internal routine and controls. *(This order was terminated by order of the FDIC dated 8-29-94; see ¶ 15,910.)*

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In the Matter of

**SAVERS CO-OPERATIVE BANK
SOUTHBRIDGE, MASSACHUSETTS
(Insured State Nonmember Bank)
ORDER TO CEASE
AND DESIST
FDIC-93-67b**

Savers Co-operative Bank, Southbridge, Massachusetts ("Bank"), having been advised of its right to a Notice of Charges and of Hearing detailing the unsafe or unsound banking practices and violations of 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 8, 1993, whereby solely for the purpose of this proceeding and without admitting or denying any unsafe or unsound banking practices or violations of law and/or 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 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), 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 marginal capital for the kind and quality of assets held;
- (d) engaging in violations of applicable laws and regulations;
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- (e) engaging in management policies and practices which 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 produce 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) operating with an inadequate allowance for loan and lease losses for the volume, kind and quality of loans held;
- (j) failing to submit Reports of Condition and Income in accordance with prevailing instructions;
- (k) operating with excessive interest rate risk exposure;
- (l) operating without proper internal routine and controls

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

[.1] 1. (a) Within ninety (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 credit analyst with proven ability in documentation and loan review and experience in upgrading a low quality loan portfolio. Such person shall be provided the necessary written authority to implement the applicable provisions of this ORDER. The qualifications of senior management shall be formally 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) restore all aspects of the Bank to a safe 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 FDIC's Boston Regional Office ("Regional Director") and the Commissioner of Banks of the Commonwealth of Massachusetts (Commissioner) in writing of any changes in management. 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] (b) Within thirty (30) 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 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 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 Directors shall approve the written management plan, taking into consideration any regulatory comments, and such approval shall be recorded in the minutes of the Board of Directors. Subsequent modifications to the written management plan 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 submitted by the Regional **{{5-31-93 p.C-3155}}** 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 Directors, and such approval shall be recorded in the minutes of the Board of Directors. The Bank, its directors, officers and employees shall implement and follow the written management plan and/or any subsequent modification thereto.

(d) (i) The written management plan shall also include the requirements that the Board of Directors of the Bank, or a committee thereof consisting of not less than a majority of Board members who are independent with respect to the Bank, provide supervision over lending, investment and operating policies of the Bank sufficient to ensure that the Bank complies with the provisions of this ORDER.

(ii) For purposes of this ORDER, an individual who is "independent with respect to the Bank" shall be any individual (1) who is not an officer of the Bank and (2) who is not related by blood, marriage or common financial interest to an officer of the Bank and (3) who is not indebted to the Bank, directly or indirectly (including the indebtedness of any entity in which the individual has a substantial financial interest), in an amount exceeding five (5.0) percent of the Bank's total equity capital and allowance for loan and lease losses.

(e) 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. A chronological file of all written agendas shall be maintained. Notwithstanding the foregoing, the Board shall not be precluded 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.

[.3] 2. (a) Within ten (10) days from the effective date of this ORDER, the Bank shall increase its allowance for loan and lease losses ("Reserve") existing as of September 30, 1992 by \$908,000 at a minimum.

(b) Immediately after complying with paragraph 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 the FDIC Report of Examination of the Bank as of November 2, 1992 ("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.

(c) Thereafter, 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 sixty (60) days from the effective date of this ORDER, the Bank's Board of Directors shall reestablish 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 non-accrual 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 Directors and adjustments to the Reserve will be made accordingly. Details of these reviews will be incorporated into the minutes of the Board of Directors, including the methodology used to determine the adjustments made.

(d) 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 Directors of the Bank shall: (1) review the adequacy of the Bank's Reserve, (2) ~~{{5-31-93 p.C-3156}}~~ provide for an adequate Reserve, and (3) 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.

[.4] 3. (a) (i) The Bank shall have Tier 1 capital at or in excess of six (6.0) 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.

(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 paragraphs 2(a) and (b) of this ORDER. 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) If, the Tier 1 leverage capital ratio specified in paragraph 3(a)(i), such ratio declines below six (6.0) percent, the Bank, within thirty (30) days after the date on 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 sixty (60) days 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 implement the written plan.

(d) In addition to the requirements of paragraphs 3(a)-(c), 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.

(e) 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 3(a) through 3(d) of this ORDER, including, at a minimum, any action to increase its Tier 1 capital.

[.5] 4. (a) Within sixty (60) days from the effective date of this ORDER, the Board of Directors shall develop 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 \$100,000 and each parcel of other real estate with book value in excess of \$100,000 which was classified "Substandard" or "Doubtful," in whole or in part, as of November 2, 1992. In developing such plan, the Bank shall, at a minimum:

(i) in the case of loans 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; and

(iii) in the case of other real estate evaluate the property and provide cost/ benefit analyses of holding the property versus current liquidation value.

Based upon such review and evaluation, the written plan of action shall: (A) within six (6) and twelve (12) months from the effective date of this ORDER, establish target dollar levels to which the Bank shall reduce the aggregate dollar volume of "Substandard" or "Doubtful" classifications as of November 2, 1992 as well as any additional assets that are in need of criticism according to internal Bank review; and (B) provide for the submission of written monthly progress reports to the Bank's Board of Directors for review and notation in the minutes of the Board of Directors. Exhibit A provides the form for the progress reports. As used in this paragraph 4, "reduce" means to (1) collect, (2) charge off, or (3) improve the quality of such assets so as to warrant removal of any adverse classification by the FDIC and the State banking department. Payment of loans with the proceeds [{{5-31-93 p.C-3157}}](#) 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 paragraph.

(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 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 Directors shall approve the written plan of action, taking into consideration any regulatory comments, and such approval shall be recorded in the minutes of the Board of Directors. 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 responsive comments submitted by 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 Directors, and such approval shall be recorded in the minutes of the Board of Directors. The Bank, its directors, officers and employees shall follow the written plan of action and/or any subsequent modification thereto.

[.6] 5. The Bank shall not extend or renew, directly or indirectly, credit to, or 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 whole or in part, "Loss," "Doubtful," or "Substandard," and is uncollected, unless a majority of the Bank's Board of Directors 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 of this ORDER as to such borrower, and (3) approves such extension or renewal. A written record of the Board

of Directors' determination and approval of any extension or renewal 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 Directors.

[.7] 6. Within sixty (60) days from the effective date of this ORDER, the Bank shall revise its written loan policy. The revised written loan policy shall be submitted to the Regional Director and the Commissioner for review and comment within a thirty-day period. No sooner than thirty (30) days, but under no circumstances more than sixty (60) days after such submission, the Board of Directors shall approve the revised written loan policy, taking into consideration any regulatory comments, and such approval shall be recorded in the minutes of the Board of Directors. 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 responsive comments submitted by 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 Directors, and such approval shall be recorded in the minutes of the Board of Directors. The Bank, its directors, officers, and employees shall follow the revised written loan policy and/or any subsequent modification thereto.

[.8] 7. Within thirty (30) days from the effective date of this ORDER, the Bank shall revise its written investment policy consisting of goals and strategies for improving the quality of the Bank's investment portfolio as described in the Examination Report. The revised investment policy shall be submitted to the Regional Director and the Commissioner for review and comment within such thirty-day period. No sooner than thirty (30) days, but under no circumstances more than sixty (60) days after such submission, the Board of Directors shall approve the revised investment policy, taking into consideration any regulatory comments, and such approval shall be recorded in the minutes of the Board of Directors. Subsequent modifications to the revised investment 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 submitted by 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 Directors, and such approval shall be recorded in the minutes of the Board of Directors. The Bank, its directors, officers and [{5-31-93 p.C-3158}](#)employees shall follow the written investment policy and/or any subsequent modification thereto.

[.9] 8. Within thirty (30) days from the effective date of this ORDER, the Bank shall develop a written appraisal policy which complies with the requirements of Part 323 of the FDIC Rules and Regulations and the comments noted on page 1–6 of the Examination relative to internal real estate evaluations. The appraisal policy shall be submitted to the Regional Director and the Commissioner for review and comment within such thirty-day period. No sooner than thirty (30) days, but under no circumstances more than sixty (60) days after such submission, the Board of Directors shall approve the appraisal policy, taking into consideration any regulatory comments, and such approval shall be recorded in the minutes of the Board of Directors. Subsequent modifications to the appraisal 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 submitted by 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 Directors, and such approval shall be recorded in the minutes of the Board of Directors. The Bank, its directors, officers and employees shall follow the written appraisal policy and/or any subsequent modification thereto.

[.10] 9. (a) Within sixty (60) days from the effective date of this ORDER, the Bank shall correct the remediable technical exceptions on loans noted on page 2-e of the Examination.

(b) Within sixty (60) days from the effective date of this ORDER, the Bank shall correct the cited remediable deficiencies in the loans listed for "Special Mention" on pages 2-c of the Examination.

[.11] 10. Within sixty (60) days from the

effective date of this ORDER, the Bank shall eliminate and/or correct all violations of regulation committed by the Bank as described on page 6-a of the Examination.

[.12] 11. The Bank shall submit amended Reports of Condition and Income for the period December 31, 1990 through September 30, 1992 as required on page 1–7 of the Examination Report.

12. Within thirty (30) days from the end of each calendar quarter, 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. The progress reports shall include copies

of the most recent monthly criticized asset reports described in paragraph 4(a) and Exhibit A 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.

[.13] 13. Within ninety (90) days from the effective date of this ORDER, the Bank shall correct the exceptions and deficiencies noted in the electronic data processing examination conducted as of November 2, 1992.

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.

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 Westwood, Massachusetts this 22nd day of March, 1993.

Pursuant to delegated authority.