

[{{3-31-03 p.C-4970}}](#)

[¶11,728] **In the Matter of The First State Bank of Munich, Munich, North Dakota**, Docket No. 00-086b (7-19-00)

A cease and desist order was issued, based on findings by the FDIC that it had reason to believe that respondent had engaged in unsafe and unsound practices. (*This order terminated by order of the FDIC dated 1-31-03; see ¶16,328.*)

[.1] **Management—Qualifications Specified**

[.2] **Assets—Adversely Classified Assets—Reduction Required**

[.3] **Loan Loss Reserve—Establishment of or Increase Required**

[.4] **Capital—Increase Required**

[.5] **Board of Directors—Risk Position in Lines of Credit—Written Plan Required**

[.6] **Loans—Extensions of Credit—To Borrowers with Existing Adversely Classified Credits**

[.7] **Loan Policy—Preparation or Revision of Policy Required**

[.8] **Strategic Plan—Preparation of Required**

[.9] **Profit Plan—Preparation of Plan Required**

[.10] **Asset/Liability Management—Preparation or Revision of Asset/Liability Management Policy Required**

[.11] **ATM Network—Written Policy Required**

[.12] **ATM Network—Acquisition of and Relocation of ATMs Restricted**

[.13] **Dividends—Dividends Restricted**

[.14] **Technical Exceptions—Correction of Technical Exceptions Required**

[.15] **Violations of Law—Correction of Violations Required**

[.16] **Shareholders—Disclosure of Cease and Desist Order Required**

In the Matter of

**THE FIRST STATE BANK OF MUNICH
MUNICH, NORTH DAKOTA
(Insured State Nonmember Bank)
ORDER TO CEASE AND DESIST**

FDIC-00-086b

The First State Bank of Munich, Munich, North Dakota ("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 the alleged charges under section 8(b) of the Federal Deposit Insurance Act ("Act"), 12 [{{9-30-00 p.C-4971}}](#) U.S.C. §1818(b), 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 July 12, 2000, 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, 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 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, but not limited to, extending credit without established or enforced repayment programs, extending credit without adequately assessing the borrower's ability to repay, and operating with an inadequate loan policy;
- C. operating with inadequate Tier 1 capital and allowance for loan and lease losses 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 produce inadequate operating income and excessive asset 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 keep adequate and accurate records of the Bank's automated teller machine ("ATM") operations; and
- J. 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 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 the appropriate level of experience to perform the duties assigned to that individual by the Bank's board of directors. The senior lending officer shall also be given stated written authority by the Bank's board of directors, including responsibility for implementing and maintaining the lending policies of the Bank. The senior lending officer shall have an appropriate level of lending, collections, and loan supervision experience 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") of the identity of said chief executive officer and senior lending officer. Prior to the addition of any individual 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 sections 303.100-303.104 of the FDIC Rules and Regulations, 12 C.F.R. §§303.100-303.104.

(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

[\[\[9-30-00 p.C-4972\]\]](#) has an adverse effect on the Bank's asset quality, capital adequacy, earnings, liquidity, or sensitivity to market risk.

(b) No more than 60 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 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 the North Dakota Commissioner of Banking and Financial Institutions ("State Commissioner") for review and comment. No more than 30 days from the receipt of any comment from the Regional Director, 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.

[.2] 2. No more than 10 days from the effective date of this ORDER, the Bank: (a) shall eliminate from its records, by charge-off, collection, or other proper entries, all assets or portions of assets classified "Loss" on February 28, 2000; and (b) shall either (i) eliminate from its records by charged-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" on February 28, 2000, 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] 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 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 required to be submitted by the Bank as of each Report date, as that term is used in the Instructions, between and including March 31, 2000, 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 the 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.

[.4] 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

(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 August 1, 2000, the Bank shall have and maintain Tier 1 capital at or in excess of 6 percent of the Bank's total assets ("Tier 1 leverage capital ratio"). From and after August 1, 2000, for purposes of calculating the Tier 1 leverage 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 leverage capital ratio declines below 6 percent, the Bank shall, within 60 days after the date on which the said ratio so declined, submit a written plan to the Regional Director and the State 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 leverage capital ratio to equal or exceed 6 percent in accordance with the approved plan and shall thereafter maintain its Tier 1 leverage 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] 5. (a) Within 30 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 in each line of credit aggregating \$50,000 or more which was classified "Substandard" or "Doubtful" as of February 28, 2000. 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 within 6 and 12 months from the effective date of this ORDER; and (B) provide for the submission of written monthly progress reports to the Bank's board of directors for review and notation in the board minutes. As used in this paragraph, "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.

(b) The written plan of action described by paragraph 5(a) and any subsequent modification thereto shall be submitted to the Regional Director and the State Commissioner for review and comment. No more than 30 days after the receipt of any comment from the Regional Director, the board of directors shall approve the written plan of action, 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 of action and/or any subsequent modification.

[.6] 6. 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 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 (a) determines that such advance is in the best interest of the Bank, (b) determines that the Bank has satisfied the requirements set out in paragraph 5 of this ORDER as to such borrower, and (c) approves such advance. A written record of the board of directors' determination and approval of any advance under the terms of this paragraph shall be maintained in the credit file of the affected borrower(s) as well as the minutes of the board of directors. The requirements of this paragraph do not prohibit the Bank from renewing any credit already extended to the borrower.

[.7] 7. No more than 60 days from the effective date of this ORDER, the Bank shall revise its written loan policy to correct the deficiencies cited on pages 35 and 36 of the FDIC's February 28, 2000 Report of Examination of the Bank. The revised written loan policy and any subsequent modification thereto shall be submitted to the Regional Director and the State Commissioner for review and comment. No more than 30 days after the receipt of any comment from the [{{9-30-00 p.C-4974}}](#) Regional Director, the board of directors shall approve the written loan 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 loan policy and/or any subsequent modification thereto.

[.8] 8. (a) No more than 90 days from the effective date of this ORDER, the Bank shall develop a written strategic plan, which shall establish specific defined goals and provide direction for management to achieve those goals. Consideration should be afforded to establishing goals for capital maintenance, earnings, the ATM operations, the avoidance of risks associated with hazardous lending and lax collection practices, and other recommendations detailed in the FDIC's February 28, 2000 Report of Examination;

(b) The written strategic plan and any subsequent modification thereto shall be submitted to the Regional Director and the State Commissioner for review and comment. No more than 30 days after the receipt of any comment from the Regional Director, the board of directors shall approve the written Strategic Plan, 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 Strategic Plan and/or any subsequent modification thereto.

[.9] 9. (a) No more than 60 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 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;

(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 and any subsequent modification thereto shall be submitted to the Regional Director and the State Commissioner for review and comment. No more than 30 days after the receipt of any comment from the Regional Director, the board of directors shall approve the written profit plan 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 profit plan and/or any subsequent modification thereto.

[.10] 10. No more than 90 days from the effective date of this ORDER, the Bank shall revise its written asset/liability management policy to correct the deficiencies cited on page 37 of the FDIC's February 28, 2000, Report of Examination of the Bank. The revised written asset/liability management policy and any subsequent modification thereto shall be submitted to the Regional Director and State Commissioner for review and comment. No more than 30 days after the receipt of any comment from the Regional Director, the board of directors shall approve the written asset/liability 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 asset liability management policy and/or any subsequent modification thereto.

[.11] 11. (a) No more than 30 days from the effective date of this ORDER, the Bank shall develop a written policy for the operation of its ATM network consistent with safe and sound banking practices, which shall include, at a minimum:

(i) identification of recordkeeping systems to assess ATM network operations;

(ii) acceptable performance criteria for the ATMs in the Bank's network;

(iii) the requirement that a performance review of each ATM in the Bank's network be conducted within 90 days of approval of the ATM network policy and every 90 days thereafter;

(iv) a plan for disposition of ATMs determined not to meet established performance criteria, including the requirement that any such ATM be accounted for on the Bank's books at the lower of cost or current market value in accordance with Generally Accepted Accounting Principles; and

(v) a description of the roles and responsibilities of all ATM committees of the Bank, including preparation of minutes of meetings for review monthly by the board of directors.

(b) The written ATM network policy and any subsequent modification thereto shall be submitted to the Regional Director and the State Commissioner for review and comment. No more than 30 days from the receipt of any comment from the Regional Director, the board of directors shall approve the written ATM network 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 ATM network policy and/or any subsequent modification thereto.

[.12] 12. The Bank shall not acquire or relocate any ATM without 10 days' prior written notice to the Regional Director and the State Commissioner.

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

[.14] 14. No more than 60 days from the effective date of this ORDER, the Bank shall correct the technical exceptions on loans noted on pages 69 to 73 of the FDIC's February 28, 2000, Report of Examination of the Bank.

15. No more than 60 days from the effective date of this ORDER, the Bank shall formulate and implement a plan to reduce all concentrations noted on pages 74 and 75 of the FDIC's February 28, 2000, Report of Examination of the Bank to less than 25 percent of Tier 1 capital.

[.15] 16. No more than 30 days from the effective date of this ORDER, the Bank shall eliminate and/or correct all violations of law and regulations committed by the Bank as described on pages 44 to 51 of the FDIC's February 28, 2000, Report of Examination of the Bank.

[.16] 17. 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 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. (F-6043), Washington, D.C. 20429-9990, for review at least 20 days prior to dissemination to shareholders. Any changes requested to be made by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement.

18. The Bank shall furnish written progress reports to the Regional Director and the State 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 State 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.

All technical words or terms used in this ORDER, for which meanings are not specified or otherwise provided for by the provisions of this ORDER, shall, insofar as applicable, have meanings as defined in Chapter 3 of Title 12 of the *Code of Federal Regulations* or the Act, as such definitions may be amended after the execution of this ORDER, and any such technical words or terms used in this ORDER and undefined in said *Code of Federal Regulations* of the Act shall have meanings that accord with their best custom and usage in the banking industry.

This ORDER shall become effective 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 19th day of July, 2000.

Last Updated 6/6/2003

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