

[{{10-31-00 p.C-2482.5}}](#)

[¶10,582B]In the Matter of Lurner O. Benton, III, Joe P. Hudson, Nancy T. Benton, J.S. Blackwell, Jr., and Emory Kitchens, Farmers & Merchants Bank, Eatonton, Georgia, Docket No. 92-104k (5-27-92).

Respondents agree to pay civil money penalties assessed by the FDIC. This was an uncontested notice and became a final order by operation of law.

**In the Matter of
LURNER O. BENTON, III,
JOE P. HUDSON,
NANCY T. BENTON,
J.S.BLACKWELL, JR. and
EMORY KITCHENS,
individually, and as institution-affiliated parties of
FARMERS & MERCHANTS BANK
EATONTON, GEORGIA
(Insured State Nonmember Bank)
NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTIES, FINDINGS OF FACT AND
CONCLUSIONS OF LAW, ORDER TO PAY, AND NOTICE OF HEARING**

FDIC-92-104k

NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTIES

The Federal Deposit Insurance Corporation ("FDIC") is of the opinion that Lurner O. Benton, III, Joe P. Hudson, Nancy T. Benton, J.S. Blackwell, Jr. and Emory Kitchens, individually, and as institution-affiliated parties ("Respondents") of the Farmers & Merchants Bank, Eatonton, Georgia ("Bank"), have violated section 22(h) of the Federal Reserve Act, as amended, 12 U.S.C. § 375b, and Regulation O of the Board of Governors of the Federal Reserve System ("Regulation O"), 12 C.F.R. Part 215, promulgated thereunder and made applicable to insured State nonmember banks pursuant to section 18(j)(2) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1828(j)(2), and section 337.3 of the FDIC's Rules and Regulations, 12 C.F.R. § 337.3, respectively; section 349.3(a) of the FDIC's Rules and Regulations, 12 C.F.R. § 349.3(a); sections 7-1-285, 7-1-263, 7-1-286 and 45-8-12 of the *Official Code of Georgia Annotated*; and Chapters 80-1-3 and 80-1-6 of the Rules of the Georgia Department of Banking and Finance.

Wherefore, the FDIC hereby issues this NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTIES, FINDINGS OF FACT AND CONCLUSIONS OF LAW, ORDER TO PAY AND NOTICE OF HEARING ("NOTICE OF ASSESSMENT") pursuant to the provisions of sections 8(i)(2) and 18(j)(4) of the Act, 12 U.S.C. §§ 1818(i)(2) and 1828(j)(4) (1989), and Part 308 of the FDIC Rules of Practice and Procedure, 56 Fed. Reg. 37,968 (1991) (to be codified at 12 C.F.R. Part 308). In support thereof, the FDIC finds and concludes as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. GENERAL

1. At all times pertinent to the charges herein, the Bank was a corporation existing and doing business under the laws of the

[{{10-31-00 p.C-2482.6}}](#)State of Georgia, having its principal place of business in Eatonton, Georgia. The Bank is and has been, at all times pertinent to the charges herein, an insured State nonmember bank subject to the Act, 12 U.S.C. §§ 1811-1831t, the FDIC's Rules and Regulations, 12 C.F.R. Chapter III, and the laws of the State of Georgia.

2. At all times pertinent to the charges herein, Respondent Lurner O. Benton, III was a "director" and an "executive officer" of the Bank within the meaning of sections 215.2(c) and 215.2(d) of Regulation O, 12

C.F.R. §§ 215.2(c) and 215.2(d), and was an "institution-affiliated party" of the Bank within the meaning of sections 3(u), 8(i)(2) and 18(j)(4) of the Act, 12 U.S.C. §§ 1813(u), 1818(i)(2) and 1828(j)(4) (1989).

3. At all times pertinent to the charges herein, Respondent Joe P. Hudson was a "director" or an "executive officer" of the Bank within the meaning of sections 215.2(c) and 215.2(d) of Regulation O, 12 C.F.R. §§ 215.2(c) and 215.2(d), and was an "institution-affiliated party" of the Bank within the meaning of sections 3(u), 8(i)(2) and 18(j)(4) of the Act, 12 U.S.C. §§ 1813(u), 1818(i)(2) and 1828(j)(4) (1989).

4. At all times pertinent to the charges herein, Respondents Nancy T. Benton, J.S. Blackwell, Jr. and Emory Kitchens were "directors" of the Bank within the meaning of section 215.2(c) of Regulation O, 12 C.F.R. § 215.2(c), and were "institution-affiliated parties" of the Bank within the meaning of sections 3(u), 8(i)(2) and 18(j)(4) of the Act, 12 U.S.C. §§ 1813(u), 1818(i)(2) and 1828(j)(4) (1989).

5. Putnam-Greene Financial Corporation is, and was at all times pertinent to the charges herein, a bank holding company organized and doing business under section 3(a) of the Bank Holding Company Act, as amended, 12 U.S.C. § 1842(a), and the laws of the State of Georgia, having its principal place of business in Eatonton, Georgia.

6. At all times pertinent to the charges herein, Putnam-Greene Financial Corporation owned and controlled 100 percent of the capital stock of the Bank.

7. At all times pertinent to the charges herein, Putnam-Greene Financial Corporation was the "principal shareholder" of the Bank within the meaning of section 215.2(j) of Regulation O, 12 C.F.R. § 215.2(j).

8. At all times pertinent to the charges herein, the Respondents exercised a controlling influence over the management, policies and practices of the Bank.

9. The FDIC has jurisdiction over the Respondents, the Bank and the subject matter of this proceeding.

B. VIOLATIONS OF REGULATION O

10. Pursuant to section 215.4(a)(1) of Regulation O, 12 C.F.R. § 215.4(a)(1), the Bank may not extend credit to any of its executive officers, directors, or principal shareholders, or to any related interest of such persons, unless the extension of credit is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the Bank with other persons that are not covered by Regulation O and who are not employed by the Bank.

11. On May 15, 1990, the Bank granted an extension of credit to the Bank's executive vice president, Joe P. Hudson, in the amount of \$34,639.

12. The aforementioned extension of credit granted by the Bank to Joe P. Hudson constitutes an "extension of credit" by the Bank to an executive officer within the meaning of section 215.3(a) of Regulation O, 12 C.F.R. § 215.3(a).

13. At the time the Bank granted the extension of credit to Joe P. Hudson described in paragraphs 11 and 12 hereof, persons not affiliated with the Bank were required by the Bank to repay similar extensions of credit at the interest rate of 10 percent per annum. However, the Bank required Joe P. Hudson to repay the aforementioned extension of credit at the rate of only 7 percent per annum, an interest rate which was 3 percent below the prevailing market rate.

14. The Respondents caused or permitted the Bank to grant the extension of credit to Joe P. Hudson described in paragraphs 11 through 13 hereof in violation of section 215.4(a)(1) of Regulation O, 12 C.F.R. § 215.4(a)(1), because the extension of credit was not made on substantially the same terms as those prevailing at the time for comparable extensions of credit to persons not affiliated with the Bank as the result of the below market interest rate.

15. Pursuant to section 215.4(b)(1) of Regulation O, 12 C.F.R. § 215.4(b)(1), the Bank may not extend credit to and/or for the benefit of an executive officer, director or principal shareholder, or any related interest

{{10-31-00 p.C-2482.7}} of such persons, in an amount that, when aggregated with all other extensions of credit by the Bank to and/or for the benefit of the executive officer, director or principal shareholder, or any related interest of such persons, exceeds the greater of \$25,000 or 5 percent of the Bank's unimpaired capital and unimpaired surplus, unless the extension of credit has been approved in advance

by a majority of the Bank's entire board of directors with the interested party abstaining from the voting.

16. From July 1, 1990, through September 30, 1990, five percent of the Bank's unimpaired capital and unimpaired surplus equaled \$266,000 as computed by reference to the Bank's then most recent Consolidated Report of Condition and Income dated June 30, 1990.

17. On July 3, 1990, the Bank granted an extension of credit to its president, Lurner O. Benton, III in the amount of \$428,633.

18. The aforementioned extension of credit granted by the Bank to Lurner O. Benton, III constitutes an "extension of credit" by the Bank to an executive officer within the meaning of section 215.3(a) of Regulation O, 12 C.F.R. § 215.3(a).

19. The extension of credit by the Bank to Lurner O. Benton, III described in paragraphs 17 and 18 hereof exceeded 5 percent of the Bank's unimpaired capital and unimpaired surplus and was not approved in advance by the vote of a majority of the Bank's entire board of directors with Lurner O. Benton, III abstaining from the voting.

20. The Respondents caused or permitted the Bank to grant the extension of credit to Lurner O. Benton, III described in paragraphs 17 through 19 hereof in violation of section 215.4(b)(1) of Regulation O, 12 C.F.R. § 215.4(b)(1), because a majority of the Bank's entire board of directors failed to approve in advance the granting of the extension of credit.

C. VIOLATIONS OF FDIC REGULATION

21. Section 349.3(a) of the FDIC's Rules and Regulations, 12 C.F.R. § 349.3(a), requires that, among others, the Bank's principal shareholder must make a written report to the Bank's board of directors if, during any calendar year, the Bank's principal shareholder has outstanding an extension of credit from a correspondent bank of the Bank.

22. Continuously since July of 1988, the Bank has had a correspondent banking relationship with Bank South, N.A., Atlanta, Georgia, within the meaning of section 349.3(a) of the FDIC's Rules and Regulations.

23. During the years 1989 and 1990, Putnam-Greene Financial Corporation, the Bank's principal shareholder, had outstanding at Bank South, N.A. an extension of credit in the approximate amount of \$4,000,000.

24. The Respondents failed to require the Bank to obtain from Putnam-Greene Financial Corporation a written report concerning the extension of credit described in paragraphs 22 and 23 hereof for calendar year 1990 in violation of section 349.3(a) of the FDIC's Rules and Regulations, 12 C.F.R. § 349.3(a).

D. VIOLATIONS OF STATE LAWS AND REGULATIONS

25. Section 7-1-263 of the *Official Code of Georgia Annotated* provides, in pertinent part, that a bank may only acquire and hold property for the purpose of avoiding loss upon the determination by a majority of bank's board of directors at least annually that it is advisable for the bank to retain such property.

26. As of October 29, 1990, the Bank held four parcels of real estate which the Bank had previously acquired to avoid loss. The retention of these parcels of real estate by the Bank had not, as of the aforementioned date, been approved by the Bank's board of directors for calendar year 1990.

27. The Respondents violated section 7-1-263 of the *Official Code of Georgia Annotated* by failing to approve the retention of the aforementioned parcels of real estate by the Bank for calendar year 1990.

28. Section 7-1-285 of the *Official Code of Georgia Annotated* provides in pertinent part that a bank shall not directly or indirectly make loans to any one person which in aggregate exceed 15 percent of the statutory capital base of the bank, unless the entire amount of such loans is secured by good collateral or other ample security and does not exceed 25 percent of the statutory capital base.

29. On August 14, 1990, the Bank granted an extension of credit to ____, a Georgia corporation, in the amount of \$1,150,000. At [\[10-31-00 p.C-2482.8\]](#) the time the Bank granted the extension of credit, 15 percent of the Bank's

statutory capital base equaled \$660,000.

30. On August 14, 1990, and subsequent thereto, the value of the collateral recognized under applicable state law and regulation as security for the aforementioned extension of credit granted by the Bank to ____, equaled \$994,200.

31. The Respondents caused or permitted the Bank to grant the extension of credit to ____ described in paragraphs 29 and 30 hereof in violation of section 7-1-285 of the *Official Code of Georgia Annotated* because the extension of credit exceeded 15 percent of the Bank's statutory capital base and was not secured by collateral having a value equal to or greater than the entire amount of the extension of credit.

32. Section 7-1-286 of the *Official Code of Georgia Annotated* provides in pertinent part that a bank doing business in the State of Georgia may only make a single maturity extension of credit secured by improved or unimproved real estate where the amount of such extension of credit does not exceed 75 percent of the fair market value of the collateral real estate.

33. On July 2, 1990, the Bank granted a single maturity extension of credit secured by real estate to ____ in the amount of \$112,035. At the time the aforementioned extension of credit was granted, the fair market value of the collateral real estate equaled \$142,000, 75 percent of which value equaled \$106,500.

34. The Respondents caused or permitted the Bank to grant the aforementioned extension of credit to ____ in violation of section 7-1-286 of the *Official Code of Georgia Annotated* because the amount of the extension of credit exceeded 75 percent of the fair market value of the collateral real estate.

35. On May 17, 1990, the Bank granted a single maturity extension of credit secured by real estate to ____ in the amount of \$42,000. At the time the aforementioned extension of credit was granted, the fair market value of the collateral real estate equaled \$47,500, 75 percent of which value equaled \$35,625.

36. The Respondents caused or permitted the Bank to grant the aforementioned extension of credit to ____ in violation of section 7-1-286 of the *Official Code of Georgia Annotated* because the amount of the extension of credit exceeded 75 percent of the fair market value of the collateral real estate.

37. Section 45-8-12 of the *Official Code of Georgia Annotated* provides that a bank doing business in the State of Georgia must provide a surety bond and/or pledge assets to secure public funds on deposit for any period of time in excess of 10 days. The aggregate value of the surety bond and/or assets pledged must equal not less than 110 percent of the amount of the public funds being secured after deduction of the amount of FDIC deposit insurance.

38. As of September 30, 1990, the Bank had accepted deposits in the cumulative amount of \$1,573,140 from the Putnam County Board of Commissioners, a public body, and pledged assets having a value of \$1,009,000 to secure the deposits.

39. At the time the Bank accepted the deposits from the Putnam County Board of Commissioners described in paragraph 38 hereof, and continuing for more than 10 days thereafter, the value of the surety bond and/or assets pledged by the Bank was less than 110 percent of the amount of the public funds being secured after deduction of the amount of FDIC deposit insurance.

40. The Respondents caused or permitted the Bank to accept the deposits from the Putnam County Board of Commissioners described in paragraphs 38 and 39 hereof in violation of section 45-8-12 of the *Official Code of Georgia Annotated* because the Bank failed to secure the deposits with a surety bond and/or pledge of assets equal to 110 percent of the public funds being secured after deduction of the amount of FDIC deposit insurance.

41. As of September 30, 1990, the Bank had accepted deposits in the cumulative amount of \$2,741,329 from the City of Eatonton, Georgia, a public body, and pledged assets having a value of \$2,863,000 to secure the deposits.

42. At the time the Bank accepted the deposits from the city of Eatonton, Georgia, described in paragraph 41 hereof, and continuing for more than 10 days thereafter, the value of the surety bond and/or assets pledged by the Bank was less than 110 percent of the amount of the public funds being secured after deduction of the amount of FDIC deposit insurance.

43. The Respondents caused or permitted the Bank to accept the deposits from the

[{{10-31-00 p.C-2482.9}}](#)City of Eatonton, Georgia, described in paragraphs 41 and 42 hereof in violation of section 45-8-12 of the *Official Code of Georgia Annotated* because the Bank failed to secure the deposits with a surety bond and/or pledge of assets equal to 110 percent of the public funds being secured after deduction of the amount of FDIC deposit insurance.

44. Chapter 80-1-3 of the Rules of the Georgia Department of Banking and Finance provides in pertinent part that each bank doing business in the State of Georgia must maintain a Daily Statement for each business day which is supported by a General Ledger showing the daily activity of each asset, liability and capital account. Various subsidiary ledgers, including a Liability Ledger, must also be maintained by the bank and must be balanced to the General Ledger at least monthly.

45. During calendar year 1990, the Bank failed to maintain a separate Liability Ledger for each of its loan customers.

46. The Respondents caused or permitted the Bank to conduct its business in violation of Chapter 80-1-3 of the Rules of the Georgia Department of Banking and Finance because the Bank failed to maintain a Liability Ledger for each of the Bank's loan customers which could be balanced to the Bank's General Ledger on a monthly basis.

47. Chapter 80-1-6 of the Rules of the Georgia Department of Banking and Finance provides in pertinent part that each director shall maintain a complete and accurate financial statement on file with the chief executive officer of the bank doing business in the State of Georgia for which the director serves.

48. Director Lurner O. Benton, III submitted a financial statement to the Bank pursuant to Chapter 80-1-6 of the Rules of the Georgia Department of Banking and Finance which is incomplete and does not fully disclose the director's net worth and annual income.

49. Director Lurner O. Benton, III violated Chapter 80-1-6 of the Rules of the Georgia Department of Banking and Finance by failing to submit to the Bank a complete and accurate financial statement.

50. Pursuant to section 3(v) of the Act, 12 U.S.C. § 1813(v), the term "violation" includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling or aiding or abetting a violation.

ORDER TO PAY

By reason of the violations set forth in the NOTICE OF ASSESSMENT, the FDIC has concluded that civil money penalties should be assessed against each Respondent pursuant to sections 8(i)(2) and 18(j)(4) of the Act, 12 U.S.C. §§ 1818(i)(2) and 1828(j)(4) (1989). After taking into account the appropriateness of the penalties with respect to the size of financial resources and the good faith of each Respondent, the gravity of the violations, the history of previous violations, and such other matters as justice may require, it is:

ORDERED, by reason of the violations set forth in paragraphs 10 through 50 hereof, that a penalty of \$5,000.00 be, and hereby is assessed against Lurner O. Benton, III; a penalty of \$1,000.00 be, and hereby is, assessed against Nancy T. Benton; a penalty of \$1,000.00 be, and hereby is, assessed against J.S. Blackwell, Jr.; a penalty of \$1,000.00 be, and hereby is, assessed against Joe P. Hudson; and a penalty of \$1,000.00 be, and hereby is, assessed against Emory Kitchens, pursuant to sections 8(i)(2) and 18(j)(4) of the Act, 12 U.S.C. §§ 1818(i)(2) and 1828(j)(4) (1989).

FURTHER ORDERED, that the effective date of this ORDER TO PAY be, and hereby is, stayed with respect to each Respondent until twenty (20) days after the date of receipt of the NOTICE OF ASSESSMENT by the Respondent, during which time each Respondent may file an answer and request a hearing pursuant to section 8(i)(2)(H) of the Act, 12 U.S.C. § 1818(i)(2)(H) (1989), and section 308.19 of the FDIC Rules of Practice and Procedure, 56 Fed. Reg. 37,968, 37,980 (1991) (to be codified at 12 C.F.R. § 308.19). An original and one copy of the answer, any such request for a hearing, and all other documents in this proceeding must be filed in writing with the Office of Financial Institution Adjudication, 1700 G Street, N.W., Washington, D.C. 20552, pursuant to section 308.10 of the FDIC Rules of Practice and Procedure, 56 Fed. Reg. 37,968, 37,978 (1991) (to be codified at 12 C.F.R. § 308.10). also, copies of all papers filed in this proceeding shall be served upon the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street,

[{{10-31-00 p.C-2482.10}}](#)N.W., Washington, D.C. 20429; Arthur L. Beamon, Associate General Counsel, Compliance and Enforcement, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429; and John J. Rubin, Regional Counsel (Supervision), Federal Deposit Insurance Corporation, 245 Peachtree Center Avenue, N.E., Suite 1200, Atlanta, Georgia 30303.

If any Respondent fails to file a request for a hearing within twenty (20) days from the date of receipt of this NOTICE OF ASSESSMENT, the penalty assessed against the Respondent, pursuant to this ORDER TO PAY, will be final and shall be paid within sixty (60) days after the date of receipt of this NOTICE OF ASSESSMENT.

NOTICE OF HEARING

IT IS FURTHER ORDERED that, if any Respondent requests a hearing with respect to the charges alleged in the NOTICE OF ASSESSMENT, the hearing shall commence one hundred and twenty (120) days from the date of receipt of this NOTICE OF ASSESSMENT at Macon, Georgia, or at such other date or place upon which the parties to this proceeding and the Administrative Law Judge mutually agree.

The hearing will be public and shall be conducted in accordance with the provisions of the Act, 12 U.S.C. §§ 1811-1831t, the Administrative Procedure Act, 5 U.S.C. §§ 551-559, and the FDIC Rules of Practice and Procedure, 56 Fed. Reg. 37,968 (1991) (to be codified at 12 C.F.R. Part 308). The hearing will be held before an Administrative Law Judge to be appointed by the Office of Financial Institution Adjudication pursuant to 5 U.S.C. § 3105. The exact time and location of the hearing will be determined by the Administrative Law Judge.

In the event any Respondent requests a hearing, the Respondent shall also file an answer to the charges in this NOTICE OF ASSESSMENT within twenty (20) days after the date of receipt of the NOTICE OF HEARING in accordance with section 308.19 of the FDIC Rules of Practice and Procedure, 56 Fed. Reg. 37,968, 37,980 (1991) (to be codified at 12 C.F.R. § 308.19).

Failure of any Respondent to request a hearing shall render the civil money penalty assessed in this NOTICE OF ASSESSMENT final and unappealable pursuant to section 8(i)(2)(E)(ii) of the Act, 12 U.S.C. § 1818(i)(2)(E)(ii), and section 308.19(c)(2) of the FDIC Rules of Practice and Procedure, 56 Fed. Reg. 37,968, 37,980 (1991) (to be codified at 12 C.F.R. § 308.19(c)(2)).

Pursuant to delegated authority.

Dated at Washington, D.C., this 27th day of May, 1992.