

[{{7-31-92 p.C-2250}}](#)

[¶10,531] **In the Matter of Shelby Bank, Bartlett, Tennessee, Docket No. FDIC-92-131b (5-11-92).**

Bank to cease and desist from such unsafe or unsound practices as following hazardous lending and lax collection practices; operating with inadequate capital; operating with excessive volumes of adversely classified assets; operating in such a manner as to produce operating losses; and operating in violation of applicable laws or regulations.

- [.1] **Management—Qualifications—Review**
- [.2] **Capital—Tier 1 Capital—Increase/Maintain—Methods**
- [.3] **Loan Loss Reserve—Establish/Maintain**
- [.4] **Assets—Charge-Offs—Recovery Required**
- [.5] **Profit Plan—Minimum Requirements**
- [.6] **Asset—Adversely Classified—Eliminate/Reduce**
- [.7] **Loans—Extensions of Credit—Existing Borrowers—Curtail**
- [.8] **Loans—Renewal—Collection of Interest**
- [.9] **Loan Policy—Written Revision—Minimum Requirements**
- [.10] **Loan Portfolio—Review and Grading System**
- [.11] **Violations of Law—Eliminate/Correct**
- [.12] **Dividends—Restricted**
- [.13] **Compliance Reports—Frequency**

In the Matter of

**SHELBY BANK
BARTLETT, TENNESSEE
(Insured State Nonmember Bank)
ORDER TO CEASE AND DESIST
FDIC-92-131b**

Shelby Bank, Bartlett, Tennessee ("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)(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 5, 1992, whereby solely for the purpose of this proceeding and without admitting or denying the alleged charges of unsafe or unsound banking practices and 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 committed violations of law 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 directors, officers, employees, agents, successors, assigns, and other institution-affiliated parties of the Bank, cease and desist from the following unsafe or unsound banking practices and violations:

- (a) engaging in hazardous lending and lax collection practices;
- (b) operating with inadequate capital in relation to the kind and quality of assets held by the Bank;
- (c) operating with a large volume of poor quality loans;
- (d) Operating in such a manner as to produce operating losses;
- (e) Operating in violation of Sections 323.3 and 323.4 of the FDIC Rules and Regulations, 12 C.F.R. §§ 323.3 and 323.4; sections 103.22(a)(2)(d), 103.22(f), 103.27(d), 103.29(a) of the Treasury Department Financial Recordkeeping Regulations, 31 C.F.R. §§ 131.22(a)(2)(d), 103.22(f), [{{7-31-92 p.C-2251}}](#)103.27(d), 31 C.F.R. §§ 103.22(a)(d), 103.22(f), 103.27(d); Section 45-2-301, 45-2-401, 45-2-403 and 45-2-1102 of the Tennessee Code Annotated, TENN. CODE ANN. §§ 45-2-301, 45-2-401, 45-2-403, and 45-2-1102 and; Rule 0180-14-.03(6) of the Tennessee Department of Financial Institutions.

IT IS FURTHER ORDERED that the Bank take affirmative action as follows:

[.1] 1. (a) During the life of this ORDER, the Bank shall have management qualified to restore the Bank to a sound condition. Such management shall include a chief executive officer and an experienced senior lending officer responsible for supervising the Bank's overall lending function.

(b) Present management shall be assessed on its ability to:

- (i) Comply with the requirements of this ORDER;
- (ii) Improve the thereafter maintain the Bank in a safe and sound condition, including asset quality, capital adequacy, liquidity adequacy, and earnings adequacy; and
- (iii) Comply with all applicable State and Federal laws and regulations.

(c) (i) During the life of this ORDER, the Bank shall notify the Regional Director of the Memphis Regional Office ("Regional Director") and the Commissioner of Financial Institutions for the State of Tennessee ("Commissioner") in writing of any resignations and/or terminations of any members of its board of directors and/or any of its senior executive officer(s).

(ii) The Bank shall comply with section 32 of the Act, 12 U.S.C. § 1831i, and shall notify the Commissioner in writing at least 30 days prior to an individual assuming a new position of any additions to its board of directors and senior executive officers.

(d) (i) To ensure both compliance with this ORDER and qualified management for the Bank, the board of directors, within 90 days from the effective date of this ORDER shall develop a written policy ("Management Policy") which shall incorporate an analysis of the Bank's management and staffing requirements and shall, at a minimum address (1) both the number and type of positions needed to properly manage the Bank, (2) a clear and concise description of the needed experience and pay for each job, (3) an evaluation of present management, (4) a plan to recruit, hire or replace personnel with requisite ability and experience, (5) a periodic evaluation of each individual's job performance, and (6) the establishment of procedures to periodically review and update the Management Policy.

(ii) The Management Policy and any subsequent modification thereto shall be submitted to the Regional Director and the Commissioner for review and comment. Within 30 days from receipt of any comment, and after consideration of such comment, the board of directors shall approve the Management Policy which approval shall be recorded in the minutes of the meeting of the board of directors. Thereafter, the Bank and its directors, officers and employees shall implement and follow the Management Policy and any modifications thereto.

(e) Within 30 days from the effective date of this ORDER, the board of directors shall establish a committee of the board of directors with the responsibility to ensure that the Bank complies with the provisions of this ORDER. At least two-thirds of the members of such committee shall be independent, outside directors as defined herein. The committee shall report monthly to the entire board of directors, and a copy of the report and any discussion relating to the report or the ORDER shall be included in the minutes of the board of directors. Nothing contained herein shall diminish the responsibility of the entire board of directors to ensure compliance with the provisions of this ORDER.

(f) For the purposes of this ORDER, an "outside director" shall be an individual:

- (i) Who shall not be employed, in any capacity, by the Bank or its affiliates other than as a director of the Bank or an affiliate;
- (ii) Who shall own or control less than 10 percent of the voting stock of the Bank or its holding company;
- (iii) Who shall not be indebted to the Bank or any of its affiliates in an amount ~~{{7-31-92 p.C-2252}}~~ greater than 5 percent of the Bank's equity capital and reserves;
- (iv) Who shall not be related to any directors, principal shareholders of the Bank or affiliates of the Bank; and
- (v) Who shall be a resident of, or engage in business in, the Bank's trade area.

[.2] 2. (a) Within 60 days from the effective date of this ORDER, the Bank shall increase its Tier I capital by no less than \$1,200,000. Within 60 days from the effective date of this ORDER, and during the life of this ORDER, the Bank shall maintain adjusted Tier I capital equal to or greater than five and one-half (5.5%) percent of the Bank's adjusted Part 325 total assets.

(b) Any increase in Tier I capital necessary to meet the requirements of Paragraphs 2(a) and 4(b) of this ORDER may be accomplished by the following:

- (i) The sale of new securities in the form of common stock; or
- (ii) The direct contribution of cash by the directors, shareholders, or parent bank holding company of the Bank; or

(iii) Any other method acceptable to the FDIC and the Commissioner.

(c) If all or part of the increase in Tier I capital required by Paragraphs 2(a) and 4(b) of this ORDER is accomplished by the sale of new securities, the board of directors of the Bank shall adopt and implement a plan for the sale of such additional securities, including the voting of any shares owned or proxies held or controlled by them in favor of the plan. Should the implementation of the plan involve a public distribution of the Bank's securities (including a distribution limited only to the Bank's existing shareholders), the Bank shall prepare offering materials fully describing the securities being offered, including an accurate description of the financial condition of the Bank and the circumstances giving rise to the offering, and any other material disclosures necessary to comply with the Federal securities laws. Prior to the implementation of the plan and, in any event, not less than 20 days prior to the dissemination of such materials, the plan and any materials used in the sale of the securities, unless previously submitted prior to the effective date of this Order, shall be submitted to the FDIC, Registration and Disclosure Unit, Washington, D.C. 20429. Any changes requested to be made in the plan or materials by the FDIC shall be made prior to their dissemination.

(d) In complying with the provisions of Paragraph 2(c) of this ORDER, the Bank shall provide to any subscriber and/or purchaser of the Bank's securities written notice of any planned or existing development or other changes which are 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 shall be furnished within 10 days from the date such material development or change was planned or occurred, whichever is earlier, and shall be furnished to every subscriber and/or purchaser of the Bank's securities who received or was tendered the information contained in the Bank's original offering materials.

(e) For purposes of this ORDER the terms "Tier I capital", "total capital" and "Part 325 total assets" shall have the meanings ascribed to them in Part 325 of the FDIC's Rules and Regulations, respectively, subsections 325.2(m) and 325.2(n), 56 Fed. Reg. 10154, 10161 (1991) (to be codified at 12 C.F.R. 325.2(m) and (n)). The "Analysis of Capital" schedule on page 3 of the FDIC Report of Examination provides the method for determining the ratio of adjusted Tier I capital to adjusted Part 325 total assets as required by this ORDER.

(f) The Insured Institution shall not lend funds directly or indirectly, whether secured or unsecured, to any purchaser of insured institution stock or to any investor by any other means for any portion of any increase in Tier I capital required herein.

[.3] 3. (a) Within 30 days from the effective date of this Order, the Bank shall establish and shall thereafter maintain, through charges to current operating income, an adequate valuation reserve for loan and lease losses. In determining the adequacy of the valuation reserve for loan and lease losses, the board of directors of the Bank shall at a minimum consider the following:

(1) Prevailing instructions contained in the Federal Financial Institutions Examination Council booklet entitled "Instructions-Consolidated Reports of Condition and Income";

(2) The volume and mix of the existing loan portfolio, including the volume and severity of nonperforming loans and adversely classified credits, as well as an analysis of net charge-offs experienced on previously adversely classified loans;

(3) The extent to which loan renewals and extensions are used to maintain loans on a current basis and the degree of risk associated with such loans;

(4) The trend in loan growth, including any rapid increase in loan volume within a relatively short time period;

(5) General and local economic conditions affecting the collectibility of the bank's loans;

(6) Previous loan loss experience by loan type, including the trend of net charge-offs as a percent of average loans over the past several years;

(7) Off balance sheet credit risks;

(8) The overall risk associated with each concentration of credit together with the degree of risk associated with each related individual borrower; and

(9) Any other factors appropriate in determining future valuation reserves.

(b) Prior to the submission of any Report of Condition or Report of Income, the board of directors of the Bank shall review the adequacy of the Bank's valuation reserve for loan and lease losses. The minutes of the board meetings at which each review is undertaken shall indicate the results of the review, the amount of any increase to the reserve, and the basis for the amount of the valuation reserve. The criteria for the review shall be as set forth in Paragraph 3(a).

(c) In the event that the Regional Director and/or the Commissioner determine, at subsequent examinations and/or visitations, that the Bank's valuation reserve for loan and lease losses is inadequate, the Bank shall amend its Consolidated Reports of Condition and Income in accordance with Paragraph 3(b).

[.4] 4. (a) Within 60 days from the effective date of this Order, the Bank shall recover \$500,000 in charged-off assets.

(b) Should the Bank fail to comply with the requirements of paragraph 4(a) above, the Bank shall, in addition to the increase required by paragraph 2(a), increase its Tier I capital by \$500,000 on or before September 30, 1992.

(c) During the life of this Order, the Bank shall not transfer any funds from the loan loss reserve to undivided profits without the prior written permission of both the Regional Director and the Commissioner.

[.5] 5. (a) Within 120 days from the effective date of this ORDER, and within the first 30 days of each calendar year thereafter, the board of directors shall develop a written profit plan consisting of goals and strategies for improving the earnings of the Bank for each calendar year. The 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 on not less than a quarterly basis; and
- (iv) A description of the operating assumptions that form the basis for, and adequately support, major projected income and expense components.

(b) Such written profit plan and any subsequent modification thereto shall be submitted to the Regional Director and the 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 which approval shall be recorded in the minutes of the board of directors. Thereafter, the Bank, its directors, officers, and employees shall follow the written profit plan and/or any subsequent modification.

[.6] 6. (a) Within 10 days from the effective date of this ORDER, the Bank shall eliminate from its books, by charge-off or collection, all assets classified "Loss" as of December 6, 1991, that have not been previously collected or charged-off. Reduction of these assets through proceeds [{{7-31-92 p.C-2254}}](#) of other loans made by the Bank is not considered collection for the purpose of this paragraph.

(b) Within 60 days from the effective date of this ORDER, the Bank shall formulate and submit to the Regional Director and the Commissioner for review and approval a written plan of action directed at lessening the Bank's risk position in each line of credit which was classified "Substandard" as of December 6, 1991 and which aggregated \$100,000 or more. Such plan shall include but not be limited to, the following:

- (i) Target dollar levels to which the Bank will reduce each line of credit or other asset within three months, six months, and twelve months from the effective date of this ORDER; and
- (ii) Provisions for the submissions of monthly written progress reports under this Paragraph 6(b) to the Bank's board of directors for review and recordation in the board minutes.

(c) As used in Paragraph 6(a) the word "reduce" means (1) to collect, (2) to charge off, or (3) to sufficiently improve the quality of assets adversely classified to warrant removing any adverse classification, as determined by the board of directors and the Commissioner.

[.7] 7. (a) Beginning with the effective date of this ORDER, the Bank shall not extend, directly or indirectly, any additional credit to, or for the benefit of, any borrower who has a loan or other extension of credit with the Bank that has been charged off or classified, in whole or in part, "Loss" and is uncollected. The requirements of this paragraph shall not prohibit the Bank from renewing (after collection in cash of interest due from the borrower) any credit already extended to any borrower. Furthermore, the requirements of this paragraph shall not prohibit the Bank from restructuring the debt of Petroleum Sales, Inc./Flowers after having received the prior approval of the Bank's board of directors utilizing the method described in paragraph 7(b) below.

(b) Beginning with the effective date of this ORDER, the Bank shall not make any further extensions of credit, directly or indirectly, to any borrower whose loans are adversely classified "Substandard" or "Doubtful" as of December 6, 1991, without prior approval by the Bank's board of directors after the

board's affirmative determination, as reflected in the minutes of the meeting, that the extension of credit is in full compliance with the Bank's loan policy, that the extension of credit is necessary to protect the Bank's interest or is adequately secured, that credit analysis has determined the customer to be creditworthy, and that all necessary loan documentation is on file, including current financial and cash flow information and satisfactory appraisal, title and lien documents.

[.8] 8. Beginning with the effective date of this ORDER, the Bank shall not renew any loan without the full collection of interest due. The issuance of separate notes to the borrowing customer or a third party, the proceeds of which pay interest due, shall not satisfy the requirements of this paragraph unless these separate notes receive prior board approval in the same manner as outlined in Paragraph 7(b).

[.9] 9. Within 60 days from the effective date of this ORDER, the Bank shall review its written loan policy and make whatever changes may be necessary to provide for the safe and sound administration of all aspects of the lending function. Policy changes shall include, but not be limited to, setting forth specific procedures for establishing (1) the terms under which unsecured loans will be granted; (2) guidelines for interest rates and the terms of repayment for loans; (3) requirements for obtaining and reviewing real estate appraisals as well ordering reappraisals in accordance with the requirements of Part 323 of the FDIC Rules and Regulations, 12 C.F.R. § 323; (4) limitations on the maximum volume of loans made by the Bank in relation to total assets; (5) goals for portfolio mix and risk diversification; (6) procedures for monitoring concentrations of credit; (7) guidelines for floor-plan lending, including requirements for regular inspections and the establishment and enforcement of curtailment procedures; and (8) guidelines for the purchase of participation loans. The Bank shall adopt changes it considers necessary and appropriate and management shall reaffirm its intent to comply with the policy, as amended. Evidence of management's reaffirmation shall be reduced to writing. The policy and its implementation shall be in a form and manner acceptable to the Regional Director and Commissioner as determined at subsequent examinations and/or visitations.

[{{7-31-92 p.C-2255}}](#)

[.10] 10. (a) Within 30 days of the effective date of this ORDER, the board shall establish an internal loan review and grading system ("System") to periodically review the Bank's loan portfolio and identify and categorize problem credits. At a minimum the System shall provide for:

- (i) The identification of the overall quality of the loan portfolio;
- (ii) The identification and amount of each delinquent loan;
- (iii) An identification or grouping of loans that warrant the special attention of management;
- (iv) For each loan identified, a statement of the amount and an indication of the degree of risk that the loan will not be fully repaid according to its terms and the reason(s) why the particular loan merits special attention;
- (v) An identification of credit and collateral documentation exceptions;
- (vi) The identification and status of each violation of law, rule or regulation;
- (vii) An identification of loans not in conformance with the Bank's lending policy, and exceptions to the Bank's lending policy;
- (viii) An identification of insider loan transactions; and
- (ix) A mechanism for reporting periodically, no less than quarterly, to the board of directors on the status of each loan identified and the action(s) taken by management.

(b) A copy of the reports submitted to the board, as well as documentation of the action taken by the Bank to collect or strengthen assets identified as problem credits, shall be kept with the minutes of the board of directors.

(c) Within 60 days from the effective date of this ORDER the Bank's board of directors shall establish and appoint a loan committee to review and approve in advance all extensions of credit, and/or renewals that when aggregated with all other extensions of credit to that borrower, either, directly or indirectly, exceed or would exceed \$50,000. The review should include financial, income, and cash flow information, collateral values and lien information, repayment terms, past performance by the borrower, the purpose of the extension, and whether the extension complies with the Bank's loan policy and applicable laws, rules and regulations. The loan committee shall meet at least twice monthly and shall maintain written minutes which detail the information reviewed by the loan committee, its conclusions, approvals, denials, recommendations, and reasons for the approval of any credit which does not fully comply with the review requirements set forth in this paragraph. At least monthly, the loan committee shall submit its written minutes to the board of directors. At least two-thirds of the members of the loan committee shall be independent, outside directors as defined in Paragraph 1(f) of this ORDER.

[.11] 11. Within 60 days from the effective date of this ORDER, the Bank shall eliminate and/or correct all violations of law and regulations which are set out on pages 6-b, 6-b-1, 6-b-2 and 6-b-3 of the FDIC Report of Examination of the Bank as of December 6, 1991. In addition, the Bank shall henceforth comply with all applicable laws and regulations.

[.12] 12. While this ORDER is in effect, the Bank shall not declare or pay any cash dividends on its capital stock without the prior written approval of the Regional Director and the Commissioner.

[.13] 13. Following the effective date of this ORDER, the Bank shall furnish written progress reports, each April 30, July 30, October 30, and January 30, to the Regional Director and the Commissioner detailing the form and manner of any actions taken to secure compliance with this ORDER and the results thereof. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the Regional Director and Commissioner have released the Bank in writing from making further reports.

The provisions of this ORDER shall be binding upon the Bank, its directors, officers, employees, agents, successors, assigns, and other institution-affiliated parties of the Bank.

This ORDER shall become effective 10 days from the date of its issuance.

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: May 11, 1992

Pursuant to delegated authority.