

{{5-31-95 p.C-2138}}

[¶10,507] **In the Matter of Pavillion Bank, Dallas, Texas, Docket No. FDIC-92-88b (4-2-92).**

Bank to cease and desist from such unsafe or unsound practices as operating with management whose policies are detrimental to the Bank; operating without adequate board supervision over Bank management; operating with inadequate capital; operating with excessive volumes of adversely classified assets; following hazardous lending and lax collection practices; operating with inadequate allowance for loan and lease losses; operating without adequate loan policies; operating in contravention of written loan policies; extending credit which is inadequately secured and without sufficient documentation; operating with inadequate liquidity; creating concentrations of credit; and operating in violation of applicable laws or regulations. *(This order was terminated by order of the FDIC dated 3-14-95; see ¶ 15,978.)*

- [.1] **Capital—Tier 1 Capital—Increase/Maintain—Methods**
- [.2] **Dividends—Restricted**
- [.3] **Assets—Adversely Classified—Eliminate/Reduce**
- [.4] **Allowance for Loan and Lease Losses—Establish/Maintain**
- [.5] **Loans—Extensions of Credit—Existing Borrowers—Curtail**
- [.6] **Management—Qualifications—Review**
- [.7] **Board of Directors—Committee to Review Compliance with Cease and Desist Order**
- [.8] **Lending and Collection Policy—Minimum Requirements**
- [.9] **Board of Directors—Loan Review Committee**
- [.10] **Violations of Law—Eliminate/Correct**
- [.11] **Technical Exceptions—Eliminate/Correct**
- [.12] **Funds Management—Written Policy Required**
- [.13] **Loan Participations—Purchase Restricted**
- [.14] **Loans—Concentrations of Credit—Reduction Plan**
- [.15] **Shareholders—Disclosure—Cease and Desist Order**
- [.16] **Compliance Reports—Frequency**

In the Matter of

**PAVILLION BANK
DALLAS, TEXAS
(Insured State Nonmember Bank)
ORDER TO CEASE AND DESIST
FDIC-92-88b**

The Pavillion Bank, Dallas, Texas ("Bank"), through its board of directors, having been advised of its right to the issuance and service of 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 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 February 25, 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 violated laws and/or regulations. The FDIC, therefore, accepted the CONSENT AGREEMENT and issued the following:

{{6-30-92 p.C-2139}}

ORDER TO CEASE AND DESIST

IT IS ORDERED, that the Bank and institution-affiliated parties of the Bank cease and desist from the following unsafe or unsound banking practices and violations of laws and/or regulations:

(a) Operating the Bank with management whose policies and practices are detrimental to the Bank and jeopardize the safety of its deposits;

- (b) Operating the Bank without adequate supervision and direction by the board of directors over the management of the Bank;
- (c) Operating with an inadequate level of capital protection;
- (d) Operating the Bank with an excessive level of adversely classified assets;
- (e) Engaging in hazardous lending and ineffective and lax collection practices;
- (f) Failing to provide an adequate allowance for loan and lease losses;
- (g) Operating the Bank without adequate written loan policies and procedures;
- (h) Operating the Bank in contravention of written loan policies and procedures;
- (i) Renewing or extending credit which is inadequately secured;
- (j) Renewing or extending the due dates of loans without collection in cash of interest due or obtaining adequate additional collateral to secure credit advanced for the purpose of paying interest;
- (k) Operating the Bank without adequate liquidity or proper regard for funds management;
- (l) Creating concentrations of credit as more fully set forth on page 2-b of the Report of Examination of the Bank as of August 23, 1991;
- (m) Operating the Bank in violation of applicable Federal and State laws and regulations as more fully set forth on page 6-b of the Report of Examination of the Bank as of August 23, 1991.

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

[.1] 1. (a) Within one-hundred-eighty (180) days after the effective date of this ORDER, the Bank shall increase its Tier 1 capital by no less than \$1,000,000; and for so long thereafter as this ORDER is outstanding, the Bank shall maintain adjusted Tier 1 capital, after establishing an adequate allowance for loan and lease losses, equal to or greater than 6.0 percent of the Bank's adjusted total assets. Such increase in Tier 1 capital and any increase in Tier 1 capital necessary to meet the ratio required by this ORDER may be accomplished by:

- (i) The sale of securities in the form of common stock; or
- (ii) The direct contribution of cash subsequent to August 23, 1991 by the parent Bank holding company; or
- (iii) Any other method approved by the Regional Director of the FDIC's Dallas Regional Office ("Regional Director") and the Banking Commissioner for the State of Texas ("Commissioner").

(b) If the ratio of adjusted Tier 1 capital to adjusted total assets is less than 6.0 percent as determined at an examination by the FDIC or the State banking department ("State"), the Bank shall, within 30 days after receipt of a written notice of the capital deficiency from the Regional Director or the Commissioner, present to the Regional Director and the Commissioner a plan to increase the Tier 1 capital of the Bank or to take other measures to bring the ratio to 6.0 percent. After the Regional Director and Commissioner respond to the plan, the board of directors of the Bank shall adopt the plan, including any modifications or amendments requested by the Regional Director and Commissioner. Thereafter, the Bank shall immediately initiate measures detailed in the plan, to the extent such measures have not previously been initiated, to increase its Tier 1 capital by an amount sufficient to bring the ratio to 6.0 percent within 30 days after the Regional Director and the Commissioner respond to the plan.

(c) If all or part of the increase in Tier 1 capital required by this ORDER is to be 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 soliciting proxies and the voting of any shares or proxies owned 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 [{{6-30-92 p.C-2140}}](#) 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 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 shall be submitted to the FDIC, Registration and Disclosure Section, Washington, D.C. 20429, for review. Any changes requested to be made in the plan or the materials by the FDIC shall be made prior to their dissemination. If the increase in Tier 1 capital is to be provided by the sale of noncumulative perpetual preferred stock, then all terms and conditions of the issue shall be presented to the Regional Director for prior approval.

(d) In complying with the provisions of this ORDER and until such time as any such public offering is terminated, 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 change which is materially different from the information reflected in any offering materials used in connection with the sale of the Bank's securities.

The written notice required by this paragraph shall be furnished within 10 days after the date such material development or change was planned or occurred, whichever is earlier, and shall be furnished to every purchaser and/or subscriber who received or was tendered the information contained in the Bank's original offering materials.

(e) In addition to the requirements of subparagraphs 1(a) - (b), the Bank shall comply with the FDIC's Statement of Policy on Risk-Based Capital found in Appendix A to Part 325 of the FDIC Rules and Regulations, 12 C.F.R. Part 325, App. A.

(f) For the purposes of this ORDER, the terms "allowance for loan and lease losses," "Tier 1 capital," and "total assets" shall have the meanings ascribed to them in Part 325 of the FDIC's Rules and Regulations, respectively subsections 325.2(a), (m), and (n), 12 C.F.R. § 325.2(a), (m), and (n). "Adjusted Tier 1 capital" and "adjusted total assets" shall be calculated according to the methodology set forth in the Analysis of Capital section in a report of examination of the FDIC.

[.2] 2. While this ORDER is in effect, the Bank shall neither declare nor pay, directly or indirectly, any cash dividend to shareholders without the prior written consent of the Regional Director and the Commissioner.

[.3] 3. (a) Upon the effective date of this ORDER, the Bank shall, to the extent that it has not previously done so, eliminate from its books, by charge-off or collection, all assets or portions of assets classified Loss and one-half of the assets classified Doubtful by the FDIC as a result of its examination of the Bank as of August 23, 1991. Reduction of these assets through proceeds of loans made by the Bank shall not be considered "collection" for the purpose of this paragraph.

(b) Within 60 days after the effective date of this ORDER, the Bank shall submit a written plan to the Regional Director and the Commissioner to reduce the remaining assets classified Doubtful and Substandard as of August 23, 1991. At a minimum, the plan shall include the following:

(i) A schedule providing quarterly goals to reduce the remaining adversely classified assets as of August 23, 1991 to levels representing not more than a specified percentage of total equity capital and reserves as reported each quarter by the Bank in its Consolidated Reports of Condition and Income and shall include no less than six consecutive quarterly target dates;

(ii) An explanation showing the complete rationale used by the Bank in constructing the reduction schedule; and,

(iii) A provision requiring, at a minimum, quarterly reviews by the Bank's board of directors whereby the extent of the Bank's compliance with the plan is expressly addressed, with the results of each review to be recorded in the corporate minutes of the board of directors.

(c) Upon written notice from the Regional Director or the Commissioner that the submitted plan is not acceptable, the Bank shall, within 30 days after receipt of [{{6-30-92 p.C-2141}}](#) such notice, submit amendments to the plan to the Regional Director and the Commissioner, including any modifications or amendments requested by the Regional Director or Commissioner. Upon written notice that the plan is accepted, it shall be adopted by the board of directors of the Bank. The Bank shall then immediately initiate measures detailed in the plan to the extent such measures have not been initiated.

(d) For purposes of the plan, the reduction of the level of adversely classified assets as of August 23, 1991, to a specified percentage of total equity capital and reserves may be accomplished by:

(i) charge-off;

(ii) collection;

(iii) sufficient improvement in the quality of adversely classified assets so as to warrant removing any adverse classification, as determined by the FDIC; or

(iv) increase of total equity capital and reserves.

(e) While this ORDER is in effect, the Bank shall eliminate from its books, by charge-off or collection, all assets or portions of assets classified Loss as determined at any examination conducted by the FDIC or the State at such time as the report of examination is received by the Bank.

[.4] 4. (a) Within 10 days after the effective date of this ORDER, the Bank shall establish and thereafter maintain an adequate allowance for loan and lease losses. Such allowance shall be funded by charges to current operating income. Prior to the end of each calendar quarter, the board of directors of the Bank shall review the adequacy of the Bank's allowance for loan and lease losses. Such reviews shall include, at a minimum, the Bank's loan loss experience, an estimate of potential loss exposure in the portfolio, trends of delinquent and nonaccrual loans and prevailing and prospective economic conditions. The

minutes of the board meetings at which such reviews are undertaken shall include complete details of the reviews and the resulting recommended increases in the allowance for loan and lease losses.

(b) Within 30 days after the effective date of this ORDER, the Bank shall review Consolidated Reports of Condition and Income filed with the FDIC on or after June 30, 1991, and amend said reports if necessary to properly reflect the financial condition of the Bank as of the date of each such report. In particular, such reports shall contain an adequate allowance for loan and lease losses. Reports filed after the effective date of this ORDER shall also accurately reflect the financial condition of the Bank as of the reporting date.

[.5] 5. (a) While this ORDER is in effect, the Bank shall not extend, directly or indirectly, any additional credit to or for the benefit of any borrower who has an extension of credit with the Bank that has been classified Loss, either in whole or in part, and is uncollected, or to any borrower who is already obligated in any manner to the Bank on any extension of credit, including any portion thereof, that has been charged off the books of the Bank and remains uncollected. The requirements of this paragraph shall not prohibit the Bank from renewing credit already extended to a borrower after full collection, in cash, of interest due from the borrower.

(b) While this ORDER is in effect, the Bank shall not extend, directly or indirectly, any additional credit to or for the benefit of any borrower whose extension of credit is classified Doubtful and/or Substandard, either in whole or in part, and is uncollected, unless the Bank's board of directors has signed a detailed written statement giving reasons why failure to extend such credit would be detrimental to the best interests of the Bank. The statement shall be placed in the appropriate loan file and included in the minutes of the next board of directors' meeting.

[.6] 6. The Bank shall have and retain qualified management. At a minimum, such management shall include a chief executive officer. Such officer shall have an appropriate level of lending, collection and loan supervision experience for the type and quality of the Bank's loans. Such person shall be provided the necessary written authority to implement the provisions of this ORDER. The qualifications of management shall be assessed on its ability to: (i) comply with the requirements of the ORDER, (ii) operate the Bank in a safe and sound manner, (iii) comply with applicable laws and regulations, [{{6-30-92 p.C-2142}}](#) 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 the ORDER, the Bank shall notify the Regional Director and the Commissioner in writing of any changes in management. The notification must include the name(s) and background(s) of any replacement personnel and must be provided prior to the individual(s) assuming the new position(s).

[.7] 7. Within 60 days after the effective date of this ORDER, the board of directors shall establish a committee of the board of directors charged with the responsibility of ensuring that the Bank complies with the provisions of this ORDER. At least 50 percent of the members of such committee shall be directors not employed in any capacity by the Bank other than as a director. The committee shall report monthly to the full board of directors; and, a copy of the report and any discussion relating to the report or the ORDER shall be noted in the records of the board of directors. The establishment of this committee shall not diminish the responsibility or liability of the entire board of directors to ensure compliance with the provisions of this ORDER.

[.8] 8. Within 60 days after the effective date of this ORDER, the Bank shall revise, adopt, and implement written lending and collection policies and procedures to provide effective guidance and control over the Bank's lending function. Such policies and their implementation shall be in a form and manner acceptable to the Regional Director, as determined at subsequent examinations, and shall include, at a minimum, the following:

- (a) A provision that deviations from the written lending policies and procedures require prior approval of the board of directors of the Bank;
- (b) A provision that establishes the lending limit of each loan officer;
- (c) A requirement that extensions of credit shall not be refinanced, reworked or renewed unless current financial information and documentation have been obtained;
- (d) Standards setting forth appropriate limitations on concentrations of credit;
- (e) A requirement that all loans shall have written repayment understandings;
- (f) Standards under which unsecured loans may be granted including extensions of credit by overdraft;
- (g) Guidelines under which loans are renewed or have their due dates extended (i) without full collection of interest thereon, (ii) by acceptance of separate notes in payment of interest, or (iii) by

capitalization of interest to the balance of the note;

(h) Limitations on the amount advanced in relation to the value of the collateral securing the credit and the documentation required by the Bank for each type of secured credit;

(i) A provision specifically outlining the collection procedures to be taken by the Bank when borrowers fail to make timely payments;

[.9] 9. Within 60 days after the effective date of this ORDER, the board of directors shall establish a loan review committee to periodically review the Bank's loan portfolio and identify and categorize problem credits. The committee shall file a report with the board of directors. This report shall include the following information:

(a) The overall quality of the loan portfolio;

(b) The identification, by type and amount, of each problem or delinquent loan;

(c) The identification of all loans not in conformance with the Bank's lending policy; and

(d) The identification of all loans to officers, directors, principal shareholders or their related interests.

At least 50 percent of the members of the loan review committee shall be directors not employed in any capacity by the Bank other than as a director.

[.10] 10. After the effective date of this ORDER, the Bank, consistent with sound banking practices, shall eliminate and/or correct all violations of laws and/or regulations existing in the Bank as of August 23, 1991, as more fully set forth on page 6-b of the August 23, 1991 Report of Examination. In addition, the Bank shall ensure its future compliance with all applicable laws and regulations.

[.11] 11. Within 60 days after the effective date of this ORDER, the Bank, to the best of its ability using reasonable effort, shall eliminate and/or correct all technical exceptions with regard to loan documentation existing in the Bank as of August 23, 1991, as more fully set out on pages 2-e through 2-e-4 of the August 23, 1991 Report of Examination.

[.12] 12. Within 60 days after the effective date of this ORDER, the Bank shall amend its written funds management policy. The Bank shall immediately initiate the measures detailed in the policy to the extent such measures have not been initiated. The funds management policy and its implementation shall be in a form and manner acceptable to the Regional Director, as determined at subsequent examinations and shall include, at a minimum, procedures which will enable the board and management to monitor the Bank's liquidity position and maintain liquidity at an adequate level.

[.13] 13. While this ORDER is in effect, the Bank shall not repurchase any loan participations unless legally obligated to do so if (a) the loan has been adversely classified at an examination conducted by the FDIC, the State, or any appropriate Federal depository institution regulatory agency and remains classified by that agency as of the date of repurchase, or (b) the loan exhibits any of the following characteristics:

(i) The loan is in nonaccrual status or should be in nonaccrual status as defined in the instructions for preparation of Consolidated Reports of Condition and Income; or

(ii) The principal or interest payments on the loan are more than 30 days past due; or

(iii) The terms of the loan have been renegotiated or compromised due to the deteriorating financial condition of the borrower.

[.14] 14. Within 60 days after the effective date of this ORDER, the Bank shall submit a plan to the Regional Director and the Commissioner to reduce the concentrations of credit as reported on page 2-b of the Report of Examination dated August 23, 1991.

[.15] 15. After the effective date of this ORDER, the Bank shall send to its shareholders or otherwise furnish a description of this ORDER, (1) in conjunction with the Bank's next shareholder communication, and also (2) 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 Unit, Washington, D.C. 24029, 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.

[.16] 16. Within 30 days after the end of the first calendar quarter following the effective date of this ORDER, and within 30 days after the end of each successive calendar quarter, the Bank shall furnish written progress reports 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 the Commissioner have released the Bank in writing from making additional reports.

17. The effective date of this ORDER shall be 10 days after the date of its issuance. This ORDER shall be binding upon the Bank and all institution-affiliated parties of the Bank.

The provisions of this ORDER shall remain effective and enforceable except to the extent that, and until such time as, any provision of this ORDER shall have been modified, terminated, suspended, or set aside by the FDIC.

Dated at Dallas, Texas, this 2nd day of April, 1992.

Pursuant to delegated authority.