

{{10-31-01 p.C-4977}}

[¶11,731] **In the Matter of The Kansas State Bank Overbrook Kansas, Overbrook, Kansas**, Docket No. 00-079b (8-15-00).

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 was terminated by order of the FDIC dated 8-13-01; see ¶16,287.*)

[.1] **Board of Directors—Written Plan Required**

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

[.3] **Assets—Charge-off or Collection**

[.4] **Loans—Risk Position—Reduction of Adversely Classified Lines of Credit Required**

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

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

[.7] **Board of Directors—Review Written Loan Policies**

[.8] **Board of Directors—Committee to Review Loan Portfolio**

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

[.10] **Dividends—Dividends Restricted**

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

In the Matter of

**THE KANSAS STATE
BANK OVERBROOK KANSAS
OVERBROOK, KANSAS
(Insured State Nonmember Bank)
ORDER TO CEASEAND DESIST**

FDIC-00-079b

The Kansas State Bank Overbrook Kansas, Overbrook, Kansas ("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 regulations alleged to have been committed by the Bank and of its right to a hearing on such charges under section 8(b) of the Federal Deposit Insurance Act ("Act"), 12 {{10-31-01 p.C-4978}} 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"), whereby solely for the purpose of this proceeding and without admitting or denying any unsafe or unsound banking practices or violations of 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 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 and unsound banking practices and violations:

- A. engaging in management policies and practices which are detrimental to the Bank;
- B. failing to provide adequate supervision and direction over the affairs of the Bank to prevent unsafe or unsound practices and violations of regulations;
- C. engaging in hazardous lending and lax collection practices, including extending credit which is inadequately secured, extending credit without complete and current financial information, and failing to establish and enforce programs for repayment of loans;
- D. failing to adhere to the Bank's loan policy;
- E. operating with an excessive volume of loans subject to adverse classification;
- F. operating with excessive net loan losses;
- G. operating with an excessive volume of past due and delinquent loans;
- H. operating with inadequate internal loan review policies and procedures;
- I. operating with an excess volume of non-earning assets; and
- J. engaging in violations of applicable regulations.

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

BOARD OF DIRECTORS

[.1] 1. (a) Within 60 days from the effective date of this ORDER, the board of directors shall develop a written analysis and assessment of the composition and functions of the board of directors ("directors' plan"), which shall include, at a minimum:

(i) an evaluation of each member of the board of directors to determine whether these individuals and the board as a whole have the ability, experience, independence, and other qualifications which the board determines are necessary to perform the duties of the board, including providing effective oversight and guidance of management and staff to ensure adherence to the board's policies and to maintain the Bank in a safe and sound condition; and

(ii) a written plan of action to enhance the effectiveness of the board by either adding new members to the board with the necessary ability, experience, independence and other qualifications, or requiring additional education and training for existing members of the board, or both.

(b) The directors' plan and any subsequent modification thereto shall be submitted to the Regional Director and the Kansas State Bank Commissioner ("Commissioner") for review and comment. Within 30 days from the receipt of any comment from the Regional Director or the Commissioner, and after considering such comment, the board of directors shall approve the directors' plan and/or any subsequent modification thereto, which approval shall be recorded in the minutes of the board of directors. Thereafter, the board of directors of the Bank shall implement and follow the directors' plan and/or any subsequent modification thereto.

MANAGEMENT

[.2] 2. (a) (i) Within 60 days from the effective date of this ORDER, the Bank shall have and thereafter retain qualified management. Each member of management shall have qualifications and experience commensurate with his or her duties and responsibilities at the Bank.

(ii) The assessment of whether the Bank has "qualified management" shall be based [{{10-31-00 p.C-4979}}](#) 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 has an

adverse effect on the Bank's asset quality, capital adequacy, earnings, liquidity, or sensitivity to market risk.

(b) Within 30 days from the effective date of this ORDER, the board of directors shall develop a written analysis and assessment of the Bank's management and staffing needs ("management plan"), which shall include, at a minimum:

(i) identification of both the type and number of officer positions needed to manage and supervise properly the affairs of the Bank;

(ii) identification and establishment of such Bank committees as are needed to provide guidance and oversight to active management;

(iii) an evaluation of each Bank officer, and in particular the senior loan 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 2(b)(i) and 2(b)(iii) of this ORDER.

(c) The management plan and any subsequent modification thereto shall be submitted to the Regional Director and the Commissioner for review and comment. Within 30 days from the receipt of any comment from the Regional Director or the Commissioner, and after consideration of such comment, the board of directors shall approve the 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 management plan and/or any subsequent modification.

(d) As long as this ORDER remains in effect, the Bank shall comply with the requirements of section 32 of the Act, 12 U.S.C. § 1831i, and section 303.102 of the FDIC Rules and Regulations, 12 C.F.R. § 303.102, prior to adding or replacing any member of its board of directors, employing any person as a senior executive officer of the Bank, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive officer position. The Bank shall also send a copy of the notice required by section 32 of the Act to the Commissioner.

CHARGE-OFF (LOSS)

[.3] 3. Within 10 days from the effective date of this ORDER, the Bank shall eliminate from its records, by charge-off, collection, or other proper entries, all assets or portions of assets classified "Loss" as of March 14, 2000.

REDUCTION OF SUBSTANDARD AND DELINQUENT LOANS

[.4] 4. (a) Within 30 days from the effective date of this ORDER, the Bank shall adopt and implement a written plan to lessen the Bank's risk position in each line of credit aggregating \$45,000 or more which was classified "Substandard" as of March 14, 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 plan shall: (A) establish target dollar levels to which the Bank shall reduce the aggregate dollar volume of "Substandard" 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 [{{10-31-00 p.C-4980}}](#) to warrant removal of any adverse classification by the FDIC.

(b) Within 30 days from the effective date of this ORDER, the Bank shall adopt and implement a written plan for the reduction and collection of delinquent and past due loans. The plan shall include, at a minimum, provisions which:

(i) establish target dollar levels to which the Bank shall reduce delinquencies within 6 and 12 months from the effective date of this ORDER; and

(ii) establish procedures whereby compliance with the collection provisions of the Bank's loan policy is monitored and responsibility for exceptions to the policy is assigned.

(c) The plans described in paragraphs 4(a) and 4(b) and any subsequent modification thereto shall be submitted to the Regional Director and the Commissioner for review and comment.

LENDING TO BORROWERS WITH ADVERSELY CLASSIFIED LOANS

[.5] 5. 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 4 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.

CORRECTION OF TECHNICAL DEFICIENCIES

[.6] 6. Within 60 days from the effective date of this ORDER, the Bank shall correct the technical deficiencies on loans noted on pages 73 through 76, "Assets with Credit Data or Collateral Documentation Exceptions," of the FDIC's Report of Examination of the Bank dated March 14, 2000.

CORRECTION OF SPECIAL MENTION WEAKNESSES

7. Within 60 days from the effective date of this ORDER, the Bank shall correct the cited weaknesses in the loans listed for "Special Mention" on pages 68 through 70 of the FDIC's Report of Examination of the Bank dated March 14, 2000.

LENDING POLICIES

[.7] 8. (a) Within 30 days from the effective date of this ORDER, the board of directors shall review the Bank's written loan policies to ensure that such policies provide effective guidance and control over the Bank's lending function. Such review shall include specific consideration of the weak underwriting and administration practices noted on pages 24 through 26 of the FDIC's Report of Examination of the Bank dated March 14, 2000. The results of such review shall be recorded in the minutes of the board of directors.

(b) Within 30 days from the effective date of this ORDER, the board of directors shall adopt and implement policies and procedures for monitoring officer compliance with the Bank's loan policies, assigning responsibility for exceptions thereto, and reporting noncompliance to the board of directors.

INTERNAL LOAN REVIEW

[.8] 9. Within 30 days from the effective date of this ORDER, the board of directors shall adopt and implement a loan review process and internal grading system that identifies credit risk in individual loans and in the whole loan portfolio. The process shall include, at a minimum (a) review of individual loans independent of the loan officer responsible for the day-to-day servicing of such loan, (b) risk reporting to the Bank's board of directors on a monthly basis, and (c) policies and procedures for identifying and reporting loans which warrant individual review and consideration by the Bank's board of directors.

VIOLATIONS

[.9] 10. Within 60 days from the effective date of this ORDER, the Bank shall eliminate and/or correct all violations of regulations committed by the Bank as described on pages 33 and 34 of the FDIC's Report of

DIVIDENDS

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

SHAREHOLDER DISCLOSURE

[.11] 12. 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 of the description, communication, notice, or statement.

PROGRESS REPORTS

13. The Bank shall furnish written progress reports to the Regional Director and the Commissioner detailing the form and manner of any action taken to secure compliance with this ORDER and the results thereof every 3 months, beginning at the end of the second full month following the effective date of this ORDER. In addition, the Bank shall furnish such reports on request of either the Regional Director or the Commissioner. All progress reports and other written responses to this ORDER shall be reviewed by the board of directors of the Bank and made a part of the minutes of the board of directors.

DEFINITIONS

14. 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 15th day of August, 2000.