

{{6-30-96 p.C-2746}}

[¶10,650] **In the Matter of Howard J. Peterka, First State Bank of Miller, Miller, South Dakota, Docket No. FDIC-92-40b (10-2-92).**

Bank and individual respondent to cease and desist from such unsafe or unsound practices as following hazardous lending and lax collection practices; engaging in hazardous securities investment and trading practices; operating with inadequate capital; operating in violation of applicable laws or regulations; operating with management whose policies are detrimental to the Bank; operating with inadequate documentation for securities investments; operating with inadequate loan documentation; engaging in practices which produce inadequate operating income; failing to provide adequate supervision over the Bank's affairs; operating with inadequate allowance for loan and lease losses; and failing to submit Reports of Condition and Income in accordance with instructions. (*This order was terminated by order of the FDIC dated 4-9-96. See ¶16,089.*)

- [.1] Management—Qualifications—Review
- [.2] Management—Management Plan—Minimum Requirements
- [.3] Assets—Adversely Classified—Eliminate/Reduce
- [.4] Allowance for Loan and Lease Losses—Establish/Maintain
- [.5] Capital—Tier 1 Capital—Increase/Maintain—Methods
- [.6] Loans—Risk Position—Reduce—Written Plans Required
- [.7] Loan Policy—Written Revision—Minimum Requirements
- [.8] Profit Plan—Minimum Requirements
- [.9] Funds Management—Written Policy Required

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- [.10] Securities—Restrictions on Investments
- [.11] Investment Policy—Modification Required
- [.12] Audit—External—Written Policy
- [.13] Audit—Procedures Specified
- [.14] Violations of Law—Eliminate/Correct
- [.15] Institution-Affiliated Parties—Contracts With—Recision Required
- [.16] Institution-Affiliated Parties—Transactions With—Restricted
- [.17] Institution-Affiliated Parties—Transactions With—Review Required
- [.18] Covered Transactions—Notice to Shareholders
- [.19] Compensation—Written Analysis Required
- [.20] Dividends—Restricted
- [.21] Shareholders—Disclosure—Cease and Desist Order

**In the Matter of  
HOWARD J. PETERKA,  
Individually and as an  
Institution-Affiliated Party of  
First State Bank of Miller  
Miller, South Dakota  
and  
FIRST STATE BANK OF MILLER  
MILLER,  
SOUTH DAKOTA  
(Insured State Nonmember Bank)  
ORDER TO CEASE AND DESIST  
FDIC-92-40b**

The Federal Deposit Insurance Corporation ("FDIC") on March 10, 1992, issued to First State Bank of Miller, Miller, South Dakota ("Bank"), and to Howard J. Peterka ("Individual Respondent"), individually and as an institution-affiliated party in his capacity as an officer, director and person participating in the conduct of the affairs of the Bank, a NOTICE OF CHARGES AND OF HEARING ("NOTICE") under section 8(b) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(b). The NOTICE charged the Bank and Individual Respondent with having engaged in unsafe or unsound banking practices and having violated certain laws and/or regulations.

The Bank, Individual Respondent and counsel for the FDIC thereafter executed a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST ("CONSENT AGREEMENT"), dated September 28, 1992, whereby solely for the purpose of this proceeding and without admitting or denying any of the allegations in the NOTICE, the Bank and Individual Respondent 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 and Individual Respondent 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 Individual Respondent, 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 of law and/or regulations:

- A. engaging in hazardous lending practices, including maintaining an excessive volume of adversely classified, out-of-territory loans;
- B. engaging in hazardous securities investment and trading practices, including but not limited to acquiring and/or maintaining an excessive volume of securities with distinctly or predominantly speculative characteristics;
- C. operating with inadequate Tier 1 or core capital 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 or engaging in management policies and practices which are detrimental to the Bank;
- F. operating without any or inadequate securities investment documentation, including but not limited to prospectuses and risk analyses;
- G. operating without any or inadequate documentation for purchased loan participations, including but not limited to appraisals, service reports, and risk analyses;
- H. engaging in practices which produce inadequate operating income and excessive losses;
- I. 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;
- J. operating with an inadequate allowance for loan and lease losses for the volume, kind and quality of loans held; and
- K. failing to submit Reports of Condition and Income in accordance with prevailing instructions.

IT IS FURTHER ORDERED, that Individual Respondent, the Bank and 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, including a qualified chief executive officer, senior lending officer, and senior investment 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 an appropriate level of experience to perform the duties assigned to that individual by the Bank's board of directors, including supervising the activities of the senior lending officer and the senior investment officer. The senior lending officer shall 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 to that individual by the Bank's board of directors. The senior investment officer shall be given stated written authority by the Bank's board of directors, including responsibility for implementing and maintaining the investment policies of the Bank. The senior investment officer shall have an appropriate level of experience in managing and supervising bank investments in securities to perform the duties assigned to that individual 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(ies) of such chief executive officer, senior lending officer and senior investment 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 section 303.14 of the FDIC Rules and Regulations, 12 C.F.R. § 303.14.

(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 has an adverse effect on the Bank's asset quality, capital adequacy, earnings, or liquidity.

[.2] (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 in particular the chief executive officer, and staff member to determine whether these individuals possess the [{{12-31-92 p.C-2749}}](#)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 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.

(d) (i) At the next meeting of the shareholders of the Bank, and at each succeeding meeting of the shareholders at which Bank directors are to be elected, the members of the board of directors who are also shareholders shall nominate and support the election of candidates to the board of directors who are independent with respect to the Bank and who have agreed to stand for election to the board of directors, in such number as are necessary to cause a majority of the board of directors to be and to remain independent with respect to the Bank.

(ii) For purposes of this ORDER, an individual who is "independent with respect to the Bank" shall be any individual who:

(A) is not an officer or employee of the Bank, any subsidiary of the Bank, or any of the Bank's affiliated organizations;

(B) does not own, directly or indirectly, more than 5 percent of the outstanding voting stock of the Bank, any subsidiary of the Bank, or any of the Bank's affiliated organizations;

(C) is not related by blood, marriage or common financial interest to any individual who is not independent with respect to the Bank because such individual does not satisfy the criteria described in this paragraph concerning independence (the phrase "common financial interest" means a relationship involving individuals who, directly or indirectly, (1) have an ownership interest in a common enterprise, or (2) are in a debtor/creditor relationship; "common financial interest" does not include common ownership of publicly traded securities registered with the Securities and Exchange Commission, *unless* the individuals involved have filed or are required to file a statement under 15 U.S.C. § 78p); and

(D) is not indebted to the Bank, directly or indirectly (including any "related interest" of the individual, as defined in 12 C.F.R. § 215.2(k), and any member of the individual's "immediate family," as defined in 12 C.F.R. § 215.2(e)), in an amount exceeding 5 percent of the Bank's Tier 1 capital and allowance for loan and lease losses.

(e) Effective the date of this ORDER, the Bank's board of directors shall meet at least monthly. The board shall prepare in advance and shall follow a detailed written agenda at each meeting, which shall include consideration of actions of any committees. Nothing in the foregoing sentence shall preclude the board from considering matters other than those contained in the agenda. Detailed written minutes of all board meetings shall be maintained and recorded on a timely basis.

[.3] 2. No more than 10 days from the effective date of this ORDER, the Bank shall eliminate from its books, by charge-off, collection, or other proper entries, all assets or portions of assets classified "Loss"

and 50 percent of all assets or portions of assets classified "Doubtful" as of March 15, 1991, which have not been previously collected, charged off, or otherwise eliminated by other proper entries. Reduction of these assets [{{12-31-92 p.C-2750}}](#) through use of proceeds of loans made by the Bank does not constitute collection for the purpose of this paragraph.

[.4] 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 December 31, 1990, 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.

[.5] 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(m) of the FDIC Rules and Regulations, 12 C.F.R. § 325.2(m).

(ii) "Noncumulative perpetual preferred stock" means the same as the term in section 325.2(j) of the FDIC Rules and Regulations, 12 C.F.R. § 325.2(j).

(iii) "Total assets" means the same as the term in section 325.2(n) of the FDIC Rules and Regulations, 12 C.F.R. § 325.2(n).

(iv) "Securities" means common and noncumulative perpetual preferred stock.

(b) No more than 60 days from the effective date of this ORDER, the Bank shall increase its Tier 1 capital by not less than \$800,000. Such increase in Tier 1 capital may be accomplished by:

(i) the sale of new offerings of common or noncumulative perpetual preferred stock;

(ii) the sale of outstanding shares by the Bank's shareholders to any investor who has the financial capability to make the additions to the Bank's Tier 1 capital required by this paragraph 4(b);

(iii) the direct contribution of cash by the shareholders and/or directors of the Bank;

(iv) the collection of all or part of assets classified "Loss" or "Doubtful" as of March 15, 1991, without loss or liability to the Bank, provided any such collection on a partially charged off asset shall first be applied to that portion of the asset which was not charged off pursuant to paragraph 2 of this ORDER. Collections on loans or leases classified "Loss" or "Doubtful" which have been charged off shall be credited to the Bank's allowance and, if the board of directors' review of the adequacy of the allowance required by paragraph 3 of this ORDER indicates that such allowance has a balance in excess of that required for adequacy, any such excess may only be transferred to Tier 1 capital through the income statement by a negative provision for the allowance;

(v) the collection in cash of assets previously charged off, except that any collections on previously charged off loans or leases shall be accounted for in accordance with the requirements of the second sentence of paragraph 4(iv) above ("assets previously charged off" means any asset charged off other than assets classified "Loss" or "Doubtful" as of March 15, 1991);

(vi) any combination of the above means; or

(vii) any other means acceptable to the Regional Director.

(c) If all or part of the increase in Tier 1 capital required under paragraph 4(b) of this ORDER involves an offering, other than an offering deemed not to be a public [{{12-31-92 p.C-2751}}](#) securities offering pursuant to 17 C.F.R. § 230.506 or as hereafter amended, of the Bank's securities (including a distribution limited only to the Bank's existing shareholders), the Bank shall prepare detailed offering materials fully describing the securities being offered, including an accurate description of the financial condition of the Bank and of this ORDER as well as the circumstances giving rise to the offering, and any other material disclosures necessary to comply with the Federal securities laws. Prior to the sale of the

securities, and, in any event, not less than 20 days prior to the dissemination of such materials, the materials used in the sale of the securities shall be submitted to the FDIC, Registration and Disclosure Section, 550 17th Street, N.W., Washington, D.C. 20429, for review. Any changes requested in the materials by the FDIC shall be made prior to their dissemination. In addition, any terms and conditions of the issue of new securities shall be submitted to the Regional Director for prior approval.

(d) In complying with the provisions of paragraph 4(c) of this ORDER, the Bank shall provide to any subscriber and/or purchaser of Bank stock, 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 Bank securities. The written notice required by this paragraph (d) shall be furnished within 10 days from the date such material development or change was planned or occurred, whichever is earlier, to every purchaser and/or subscriber of Bank stock who received or was tendered the information contained in the Bank's original offering materials.

(e) After appropriate entries for an adequate allowance are made in accordance with the requirements of paragraph 3 of this ORDER, but no later than September 30, 1992, the Bank shall have and maintain Tier 1 capital at or in excess of 6 percent of the Bank's total assets ("Tier 1 capital ratio"). From and after September 30, 1992, for purposes of calculating Tier 1 capital ratio, Tier 1 capital shall be the dollar amount reported in the Bank's most recent Report of Condition and Income.

(f) During the period this ORDER is in effect, if the Tier 1 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 Director of Banking for the State of South Dakota ("State Director") 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 capital ratio to equal or exceed 6 percent in accordance with the approved plan and shall thereafter maintain its Tier 1 capital ratio at or in excess of such level while this ORDER is in effect.

(g) 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) through 4(f) of this ORDER, including, at a minimum, any action to increase its Tier 1 capital by each of the methods specified in paragraphs 4(b)(i) through 4(b)(vii) of this ORDER.

[.6] 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 \$150,000 or more which was classified "Substandard" or "Doubtful" as of March 15, 1991. 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 [\[12-31-92 p.C-2752\]](#) 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 Director 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.

[.7] 6. No more than 30 days from the effective date of this ORDER, the Bank shall review the Bank's written loan policies and shall record the results of such review of the board of directors' minutes. Thereafter, the Bank and its institution-affiliated parties shall follow the written loan policies.

[.8] 7. (a) No more than 30 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 Director 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.

[.9] 8. (a) No more than 30 days from the effective date of this ORDER, the Bank shall develop a written funds management policy which shall include, at a minimum:

- (i) establish adequate recordkeeping systems to track the volume of (A) rate-sensitive assets and (B) rate-sensitive liabilities (rate-sensitive assets and liabilities are generally defined as those that either mature or can be repriced during a specified time period (90 days, 180 days, 1 year));
- (ii) establish a range of acceptable ratios for rate-sensitive assets to rate-sensitive liabilities sufficient to protect the Bank against excessive interest-rate risk and ensure that an adequate net interest margin is maintained;
- (iii) establish adequate recordkeeping systems to track the volume of (A) stable or core deposits and (B) volatile deposits;
- (iv) establish guidelines for offsetting a substantial portion of the Bank's volatile deposits and borrowings with liquid, shortterm assets;
- (v) establish investment guidelines for funds derived from negotiable-rate certificates of deposit and borrowings, including a maximum large liability dependency ratio (a large liability dependency ratio means the percentage of loans plus other long-term earning assets that may be funded by negotiable-rate certificates of deposit and borrowings);
- (vi) establish a range of acceptable loan-to-deposit ratios, taking into account seasonal deposit fluctuations;
- (vii) establish a borrowing policy which addresses: (A) when or under what conditions the Bank may borrow, (B) maximum amounts that may be borrowed, (C) a list of acceptable creditors, and (D) which officers are authorized to borrow;
- (viii) establish contingency plans for meeting large, unexpected withdrawals, which should include: (A) curtailing lending activity with priority given to specific types of credit and (B) establishing lines of credit with other financial institutions which will advance funds on short notice; and
- (ix) establish a funds-management committee to meet at least monthly to determine how best to allocate the Bank's available funding sources among various asset categories after reviewing: (A) the Bank's liquidity position, (B) outstanding commitments such as loan commitments and letters of credit, and (C) the Bank's rate-sensitivity position and net interest margin.

(b) The funds management policy shall be coordinated with the Bank's loan, investment, operating, and budget and profit planning policies.

(c) The written funds management policy and any subsequent modification thereto shall be submitted to the Regional Director and the State Director 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 funds 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 funds management policy and/or any subsequent modification thereto.

[.10] 9. (a) Any securities activity engaged in by the Bank is subject to and shall be conducted in strict compliance with the recommendations and requirements of the FDIC Statement of Policy entitled "Supervisory Policy Statement on Securities Activities," 57 Fed. Reg. 4029 (1992), reprinted in 1 Federal Deposit Insurance Corporation Law, Regulations and Related Acts (P-H) at 5293 (1992) ("FDIC Securities Policy"), a copy of which is attached as "Appendix A" and incorporated herein by reference.

(b) No more than 30 days from the effective date of this ORDER, the Bank's board of directors shall

develop a written investment policy in strict compliance with the recommendations and requirements of the FDIC Securities Policy.

[.11] (c) The written investment policy and any subsequent modification thereto shall be submitted to the Regional Director and the State Director 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 investment plan and any subsequent modification thereto which approval shall be recorded in the minutes of the board. Thereafter, the Bank, and its institution-affiliated parties shall follow the written investment policy and/or any subsequent modification thereto.

[.12] 10. (a) No more than 60 days from the effective date of this ORDER, the Bank shall develop a written auditing procedure in accordance with the FDIC "Statement of Policy Regarding Independent External Auditing Programs of State Nonmember Banks," 53 Fed. Reg. 47,871 (1988), reprinted in 1 Federal Deposit Insurance Corporation Law, Regulations and Related Acts (P-H) at 5299 (1989), and the FDIC "Statement of Policy Providing Guidance on External Auditing Procedures for State Nonmember Banks" 55 Fed. Reg. 2142 (1990), reprinted in 1 Federal Deposit Insurance Corporation Law, Regulations and Related Acts (P-H) at 5302.01 (1990) ("Procedures"), a copy of each of which is attached to this ORDER as Appendices "B" and "C," respectively, and which are incorporated herein by reference. The written auditing procedures shall at a minimum provide that the Bank follow the "Basic External Auditing Procedures" prescribed under the headings "Loans," "Allowance for Loan Losses," "Securities," "Insider Transactions," "Internal Controls," and "Electronic Data Processing Controls" and "Auditor's Report to the Bank's Board of Directors" of the Procedures.

(b) The written auditing procedures and any subsequent modification thereto shall be submitted to the Regional Director for review and comment. No more than 30 days from the receipt of comment from the Regional Director, the board of directors shall approve the written auditing procedure and any subsequent modifications thereto, which approval shall be recorded in the minutes of the board of directors. From and after the audit required by paragraph 11 of this ORDER, the Bank shall: (i) have an audit at least once during each 12-month period, and (ii) shall have each such audit conducted in accordance with the Bank's written auditing procedures and/or any subsequent modification thereto.

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(c) While this ORDER is in effect, the Bank shall provide the Regional Director with a copy of any auditor's report and any management letter received from the auditor. The Bank shall notify the Regional Director at least 7 days in advance of the time and date of any meetings between management and the auditor at which any auditing findings are to be discussed and/or presented so that a representative of the FDIC may attend. No more than 90 days after receipt of any auditor's report and any management letter, the Bank shall provide the Regional Director with a written statement detailing the form and manner of any action taken, or to be taken, by the Bank to correct any deficiencies noted in the auditor's report and/or management letter.

[.13] 11. Within 120 days from the effective date of this ORDER, the Bank shall engage an independent public accounting firm, experienced in banking, to perform a "qualified" opinion audit of the Bank's financial statements as of December 31, 1992, in accordance with the following parts of the "Basic External Auditing Procedures" prescribed in the Procedures, including all subparts unless indicated otherwise:

- (a) under "Loans," procedures 2, 7, 8, 9, 10 (with direct positive verification), and 12;
- (b) under "Allowance for Loan and Lease Losses," procedure 1;
- (c) under "Securities," procedures 2, 3, 4, 5, 7, 8 (the "testing" portion), and 8(a), (b), (c), (d) and (e);
- (d) under "Insider Transactions," procedures 1, 2, 3, and 4;
- (e) under "Internal Controls," procedures 1, 2, 3, 4, 5, and 6;
- (f) under "Electronic Data Processing Controls," procedure 1 (not including subparts), and procedure 2; and
- (g) under "Auditor's Report to the Bank's Board of Directors," the preparation of an auditor's report meeting the stated requirements.

A copy of the engagement letter provided by the selected accounting firm shall be provided to the Regional Director for review and comment at least 30 days prior to commencing the audit.

[.14] 12. No more than 60 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 6-1 through 6-1-b of the FDIC's Report of Examination of the Bank as of March 15, 1991.

[.15] 13. (a) Effective the date of this ORDER, the Bank shall rescind that certain "Agreement" entered into between the Bank and First Financial Computer Service, Inc. ("FFCS"), an affiliate of the Bank and a related interest of Individual Respondent, which was executed on August 15, 1990, to replace an earlier agreement dated May 15, 1987.

(b) As of the effective date of this ORDER, Individual Respondent shall immediately pay restitution to the Bank in the amount of \$252,297 owed as a result of the Bank's transactions with FFCS from May 1987 through October 1991. Such restitution shall: (i) be made or provided from Individual Respondent's personal assets; (ii) not be paid for or funded in any manner whatsoever from or by the use of the Bank's assets, including, without limitation, by means of any extension of credit from the Bank; and (iii) not be included in or applied towards any increase in Tier 1 capital required by paragraph 4(b) of the ORDER. The Bank shall immediately notify the Regional Director of its receipt of restitution or reimbursement from Individual Respondent. The prohibition against the use of Bank assets to pay for or fund the restitution or reimbursement required shall not include the regular and customary payment by the Bank of salaries and directors' fees for work performed for participation in the conduct of the affairs of the Bank. As used in this ORDER, "extension of credit" means the same as defined in section 215.3 of Regulation O of the Board of Governors of the Federal Reserve System, 12 C.F.R. § 215.3.

[.16] 14. (a) The Bank shall not engage in any transactions with or for the benefit of any subsidiary or affiliated organization, or any institution-affiliated party or any such party's related interest, except (i) on terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to the Bank as those prevailing at the time for comparable transactions with or involving other nonaffiliated companies, or (ii) in the absence of comparable transactions, on terms and under circumstances, including credit standards, that in good faith would be offered to, or would apply to nonaffiliated companies.

(b) The Bank shall support the basis for any such transactions covered by paragraph 14(a) with written documentation which shall be made a permanent part of the minutes of the board of directors' meeting at which such transactions were authorized, including, but not limited to, the following:

- (i) an itemization of the goods or services to be furnished by the subsidiary, affiliated organization, institution-affiliated party or such party's related interest;
- (ii) a comparison of the cost for obtaining the same, or substantially similar, goods or services from other non-affiliated parties; and
- (iii) a written analysis supporting the transactions.

(c) With respect to any and all transactions covered by paragraph 14(a) of this ORDER, complete details of each proposed transaction, including the documentation required by paragraph 14(b) and evidence of the prior approval of the entire board of directors of the Bank shall be submitted to the Regional Director and the State Director. Such information shall be received by the Regional Director and the State Director at least 30 days prior to consummation of the proposed transaction for purposes of review and opportunity to comment. A written record of the board of directors' consideration, prior to consummation of any such transaction, of any comment received from the Regional Director and/or the State Director during the 30-day period shall be included in the minutes of the board of directors.

[.17] 15. In the event the Bank has entered into any agreements with any affiliate, subsidiary, institution-affiliated party or a related interest of an institution-affiliated party between March 15, 1991, and the effective date of this ORDER, the Bank shall review each such agreement for compliance with the standards for terms and circumstances set forth in paragraph 14(a) of this ORDER. The basis for any such agreements shall be documented in accordance with paragraph 14(b) of this ORDER and reported to the Regional Director and State Director within 30 days after the effective date of this ORDER. Any such agreement failing to meet the standards for terms and circumstances set forth in paragraph 14(a) of this ORDER shall be immediately rescinded.

[.18] 16. The Bank's shareholders and, if the Bank is controlled by a bank holding company, the holding company's shareholders shall be notified in writing of each of the Bank's transactions covered by paragraphs 13, 14, and 15 of this ORDER. Such notification shall include a statement of payments made to the subsidiary, affiliate, institution-affiliated party, or other related interest, and any other expenses incurred by the Bank in connection with any such transaction. The first such notification shall be made in conjunction with the dissemination of a description of this ORDER as prescribed in paragraph 19 of this ORDER. Thereafter, such notification shall be on an annual basis to the Bank's shareholders and may be made in conjunction with the Bank's notice or proxy statement for its annual shareholders' meeting. In

any event, such notification shall be delivered to the Bank's shareholders prior to January 31 of each calendar year. Such notification to any bank holding company shareholders shall be made by direct mail and at the same time as the notification for the Bank's shareholders.

[.19] 17. No more than 60 days from the effective date of this Order, the Bank shall complete a comprehensive written review and analysis ("written report") of salaries and other direct and indirect compensation paid to, or for the benefit of, the Bank's directors, officers, and employees. At a minimum, such written report shall include:

(a) a statement of the duties and responsibilities of, and the actual services performed for the Bank by each director, officer and employee; and

(b) an evaluation of the appropriate level of compensation necessary to retain qualified individuals to perform satisfactorily the duties, responsibilities and services as a director, officer and employee.

The written report shall be reviewed and approved by a majority of the Bank's directors and made a part of the board of directors' minutes. A copy of the written report shall be provided to the Regional Director within 10 days after its approval by the Bank's board of directors.

[.20] 18. The Bank shall not pay or declare any cash dividends without the prior written consent of the Regional Director and the State Director. The Regional Director's [{{6-30-95 p.C-2756}}](#) consent under this paragraph 18 shall not be unreasonably withheld.

[.21] 19. Following the effective date of this ORDER, the Bank shall prepare a description of this ORDER for dissemination (a) to the Bank's shareholders, (b) to the shareholders of any bank holding company controlling the Bank and (c) to the participants in the Profit Sharing Plan. 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., Washington, D.C. 20429, for review at least 20 days prior to dissemination. Dissemination of this description to the Bank's shareholders shall be (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. Dissemination to shareholders of a bank holding company that controls the Bank shall be by direct mail simultaneous with the disclosure to the Bank's shareholders. Dissemination of this description to participants in the Profit Sharing Plan shall be (a) in the next participant communication and (b) in the next annual report to said participants.

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

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

The provisions of this ORDER shall be binding upon Individual Respondent, 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.

Dated this 2nd day of October, 1992.

Pursuant to delegated authority.