

{{4-1-90 p.C-176}}

[¶ 10,035] **In the Matter of State Bank of Cyrus, Cyrus, Minnesota, Docket No. FDIC-89-237b (12-21-89).**

Bank to cease and desist from practices such as operating with an excessive volume of adversely classified assets; engaging in hazardous lending and lax collection practices; operating with inadequate allowance for loan and lease losses for the kind and quality of assets held, with management whose policies and practices are detrimental to the Bank, and with deficient or inadequate loan documentation; engaging in practices which produce inadequate operating income and excessive loan losses; and failing to provide adequate supervision and direction over the affairs of Bank to prevent unsound practices and violations of law. *(This order was terminated by order of the FDIC, dated 7-11-95; see [¶ 16,020]).*

- [.1] **Management—Qualifications—Compliance**
- [.2] **Board of Directors—Frequency of Meetings—Review**
- [.3] **Assets—Adversely Classified—Reduce**
- [.4] **Equity Capital—Increase—Calculation**
- [.5] **Loans—Allowance for Losses—Review**
- [.6] **Loan Policy—Minimum Requirements—Review**
- [.7] **Loans—Extension of Credit—Curtail**
- [.8] **Profit Plan—Minimum Requirements—Review**
- [.9] **Funds Management Policy—Minimum Requirements—Review**
- [.10] **Shareholders—Dividends—Approval**
- [.11] **Shareholders—Disclosure—Cease and Desist Order**
- [.12] **Technical Exceptions—Correct**
- [.13] **Violations of Law—Eliminate and/or Correct**
- [.14] **Compliance—Progress Reports—Frequency**

{{4-1-90 p.C-177}}

In the Matter of

**STATE BANK OF CYRUS
CYRUS, MINNESOTA
(State Nonmember Insured Bank)
ORDER TO CEASE AND DESIST**

State Bank of Cyrus, Cyrus, Minnesota ("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 such alleged charges under section 8(b) of the Federal Deposit Insurance Act, as amended by sections 901 and 902 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, §§ 901 and 902, 103 Stat. 183, _____ (sections 901 and 902 to be codified in relevant part at 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 December 18, 1989, whereby solely for the purpose of this proceeding and without admitting or denying any unsafe or unsound banking practices or 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:

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED, that the Bank, its Institution-Affiliated Parties, as that term is defined in the Act, as amended by section 204(f)(6) of FIRREA, Pub. L. 101-73, § 204(f)(6), 103 Stat. 183, _____ (to be codified at 12 U.S.C. § 1813(4)), successors and assigns cease and desist from the following unsafe and unsound banking practices and violations of law and regulations:

- A. operating with an excessive volume of adversely classified assets;

- B. engaging in hazardous lending and lax collection practices, including maintaining an excessive volume of adversely classified loans;
 - C. engaging in violations of applicable laws and regulations;
 - D. engaging in management policies and practices which are detrimental to the Bank;
 - E. operating with deficient or inadequate loan documentation, including but not limited to current financial statements, insurance coverage, title searches or legal opinions, and cash flow and/or operating information;
 - F. engaging in practices which produce inadequate operating income and excessive loan losses;
 - G. 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;
 - H. operating with an inadequate allowance for loan and lease losses for the volume, kind and quality of loans held; and
 - I. failing to submit Reports of Condition and Income in accordance with prevailing instructions.
- IT IS FURTHER ORDERED, that the Bank, its Institution-Affiliated Parties, successors and assigns, take affirmative action as follows:

[.1] 1. (a) No more than 90 days from the effective date of this ORDER, the Bank shall have and thereafter retain a qualified senior lending officer who 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 Bank shall promptly notify the Regional Director of the FDIC's Kansas City Regional Office ("Regional Director") of the identity of said senior lending officer. The Bank shall promptly notify the Regional Director in writing of changes in the identity of the Bank's senior lending officer. The notification shall include the name and background of any replacement senior lending officer and shall be submitted prior to ~~{{4-1-90 p.C-178}}~~ the date the individual assumes the position.

(b) The board of directors shall in no more than 30 days from the effective date of this ORDER, and not later than December 31 of each year thereafter commencing with the calendar year 1990, 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 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.

[.2] (d) 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: (1) shall eliminate from its books, by charge-off, collection, or other proper entries, all assets or portions of assets classified "Loss" as of June 16, 1989; and (2) shall either (A) eliminate from its books by charge-off, collection, or

other proper entries, or (B) if the asset is an extension of credit or lease, increase its allowance for loan and lease losses by an amount equal to, 50 percent of those assets or portions of assets classified "Doubtful" as of June 16, 1989, which have not been previously collected, charged off, or otherwise eliminated by other proper entries. Reduction of these assets through use of proceeds of loans made by the Bank does not constitute collection for the purpose of this paragraph.

[.4] 3. (a) (i) Effective the date of this ORDER, the Bank shall have equity capital, exclusive of the allowance for loan and lease losses, at or in excess of 6 percent of the Bank's average total assets ("equity capital ratio") and shall thereafter maintain its equity capital ratio at or in excess of such level as calculated herein while this ORDER is in effect.

(ii) For the purposes of calculating the equity capital ratio required by paragraph 3(a)(i) of this ORDER: (A) The Bank's average total assets shall be the quarterly average of total assets reported in the Bank's Report of Condition for the quarter ending June 30 or December 31, whichever nearest precedes the date of calculation; and (B) The terms "equity capital", "allowance for loan and lease losses" and "total assets" shall have the same meaning as those terms have in the prevailing Instructions for Preparation of Reports of Condition. Subsequent to the effective date of this ORDER, the equity capital ratio shall be computed as of June 30 and December 31, as appropriate.

(b) If, during the period this ORDER is in effect, the equity capital ratio, exclusive of the allowance for loan and lease losses, declines below 6 percent, the Bank, within 30 days after the date on which the said ratio so declined, shall develop and implement a written plan to increase such ratio up to or in excess of 6 percent. No more than 60 days after the implementation of the written plan, the Bank's equity capital ratio, exclusive of the allowance for loan lease losses, shall equal or exceed 6 percent and the Bank shall thereafter maintain its equity capital ratio at or in excess of such level as calculated herein while this ORDER is in effect.

(c) 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 3(a) through 3(b) of this ORDER.

[.5] 4. (a) The Bank shall maintain an allowance for loan and lease losses in accordance with the prevailing requirements of the Instructions for the Reports of Condition and Income ("Instructions").

(b) 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 June 16, 1989, and the effective date of this ORDER, shall, at a minimum, reflect an allowance for loan and lease losses that should have been maintained in accordance with the Instructions. If necessary to comply with this paragraph 4(b), the Bank shall file amended Reports of Condition and Income within 10 days from the effective date of this ORDER.

(c) Prior to the submission of any Report of Condition or Report of Income required to be filed by the Bank after the effective date of this ORDER, the board of directors of the Bank shall: (1) review the adequacy of the Bank's allowance for loan and lease losses, (2) provide for an adequate allowance, and (3) 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.

[.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 \$50,000 or more which was classified "Substandard" or "Doubtful" as of June 16, 1989. 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 5, "reduce" means to (1) collect, (2) charge off, or (3) improve the quality of 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 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. Effective the date of this ORDER, 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 (1) determines that such advance is in the best interest of the Bank, (2) determines that the Bank has satisfied the requirements set out in paragraph 5 of this ORDER as to such borrower, and (3) approves such advance. A written record of the board of directors' determination and approval of any advance [{{4-1-90 p.C-180}}](#) under the terms of this paragraph 6 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 6 do not prohibit the Bank from renewing any credit already extended to the borrower.

7. 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 in the board of directors' minutes. Thereafter, the Bank and its Institution-Affiliated Parties shall follow the written loan policies.

[.8] 8. (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 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] 9. (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) goals and strategies for managing and/or improving the Bank's interest rate risk exposure;
- (ii) monitoring of the interest rate sensitivity of present investments and deposits and projections of the types of investments and deposits to improve such liquidity position; and
- (iii) coordination of the Bank's loan, investment, operating, and budget and profit planning policies with the written funds management policy.

(b) The written funds management policy 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, 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] 10. The Bank shall not declare or pay any cash dividends unless:

(a) such declarations and payments are made in accordance with applicable State and Federal laws and regulations;

(b) after payment of such dividends, the equity capital ratio specified in paragraph 3(a) shall not be less than 6 percent and the Bank's allowance for loan and lease losses shall be adequate as described in paragraph 4 of this ORDER;

(c) such declaration and payment of dividends shall be approved in advance by the board of directors of the Bank; and

(d) the Bank provides written Notice of such dividend to the Regional Director 30 days in advance of its payment.

[.11] 11. Following the effective date of this ORDER, the Bank shall send to its shareholders 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. 20429, 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.

[{{3-31-94 p.C-181}}](#)

[.12] 12. No more than 60 days from the effective date of this ORDER, the Bank shall correct the technical exceptions on loans noted on pages 2-d through 2-d-2 of the FDIC's Report of Examination of the Bank as of June 16, 1989. Failure to correct any such technical exception due to lack of cooperation from the borrower shall not constitute a violation of this provision, provided the Bank does not renew any existing extension of credit or extend additional credit after the effective date of this Order until the Bank has obtained all necessary documentation from the borrower.

[.13] 13. 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-c of the FDIC's Report of Examination of the Bank as of June 16, 1989.

[.14] 14. The Bank shall furnish written progress reports to the Regional 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 the ORDER. In addition, the Bank shall furnish such reports on request of either the Regional 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.

15. This ORDER shall become effective ten (10) days from the date of its issuance.

The provisions of this ORDER shall be binding upon the Bank, 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.

Date of issuance: December 21, 1989