

{{6-30-92 p.C-2174}}

[¶10,514] **In the Matter of Sunwest Bank, Tustin, California, Docket No. FDIC-92-113b (4-17-92).**

Bank to cease and desist from such unsafe or unsound practices as operating with inadequate capital; operating with an excessive level of poor quality assets; operating without adequate reserve for loan losses; following hazardous lending and lax collection practices; operating with inadequate liquidity; operating without proper internal routine and controls; operating in such a manner as to produce low earnings; and operating in violation of applicable laws or regulations.

[.1] **Management—Qualifications—Review**

[.2] **Capital—Tier 1 Capital—Increase/Maintain—Methods**

[.3] **Assets—Adversely Classified—Eliminate/Reduce**

[.4] **Loans—Extensions of Credit—Existing Borrowers—Curtail**

[.5] **Loan Policy—Written Revision—Minimum Requirements**

[.6] **Allowance for Loan and Lease Losses—Establish/Maintain**

[.7] **Bank Operations—Overhead Expenses—Plan Required**

[.8] **Violations of Law—Eliminate/Correct**

[.9] **Funds Management—Written Policy Required**

[.10] **Bank Operations—Internal Routine and Controls—Written Policy Required**

[.11] **Reports of Condition and Income—Amendment Required**

[.12] **Dividends—Restricted**

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[.13] **Brokered Deposits—Reduction Required**

[.14] **Shareholders—Disclosure—Cease and Desist Order**

[.15] **Compliance Reports—Frequency**

In the Matter of

SUNWEST BANK

TUSTIN, CALIFORNIA

(Insured State Nonmember Bank)

ORDER TO CEASE AND DESIST

FDIC-92-113b

Sunwest Bank, Tustin, California ("Bank"), having been advised of its right to a Notice of Charges and of Hearing detailing the unsafe or unsound banking practices and violations of law and/or regulations alleged to have been committed by the Bank and of its right to a hearing on the alleged charges under section 8(b)(1) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(b)(1), and having waived those rights, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST ("CONSENT AGREEMENT") with counsel for the Federal Deposit Insurance Corporation ("FDIC"), dated April 16, 1992, whereby solely for the purpose of this proceeding and without admitting or denying the alleged charges of unsafe or unsound banking practices and violations of law and/or regulations, the Bank consented to the issuance of an ORDER TO CEASE AND DESIST ("ORDER") by the FDIC.

The FDIC considered the matter and determined that it had reason to believe that the Bank had engaged in unsafe or unsound banking practices and had committed violations of law and/or regulations. The FDIC, therefore, accepted the CONSENT AGREEMENT and issued the following:

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED that the Bank, and any institution-affiliated party as such term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u), cease and desist from the following unsafe or unsound banking practices and violations:

(a) operating with inadequate equity capital and reserves in relation to the volume and quality of assets held by the Bank;

(b) operating with a large volume of poor quality loans;

(c) operating with an inadequate loan valuation reserve;

(d) following hazardous lending and lax collection practices;

- (e) operating with inadequate provisions for liquidity and funds management;
- (f) operating with inadequate routine and controls policies;
- (g) operating in such a manner as to produce low earnings; and
- (h) operating in violation of part 323 of the FDIC Rules and Regulations 12 C.F.R. § 323.

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

[.1] 1. During the life of this ORDER the Bank shall have and thereafter retain qualified management.

(a) Each member of management shall have qualifications and experience commensurate with his or her duties and responsibilities at the Bank. Management should include a chief executive officer with proven ability in managing a financial institution and experience in upgrading low quality assets. Management should also include a senior lending officer with an appropriate level of lending, collection, and loan supervision experience for the type and quality of the Bank's loans. Each member of management shall be provided appropriate written authority from the Bank's board of directors to implement the provisions of this ORDER.

(b) The qualifications of management shall be assessed on its ability to:

- (i) comply with the requirements of this ORDER;
- (ii) operate the Bank in a safe and sound manner;
- (iii) comply with applicable laws and regulations; and
- (iv) restore all aspects of the Bank to a safe and sound condition, including asset quality, capital adequacy, earnings, management effectiveness, and liquidity.

(c) During the life of this ORDER, the Bank shall notify the Regional Director of [{{6-30-92 p.C-2176}}](#) the FDIC's San Francisco Regional Office ("Regional Director") and the Superintendent of Banks for the State of California ("Superintendent") in writing when it proposes to add any individual to the Bank's board of directors or employ any individual as a senior executive officer. The notification must be received at least 30 days before such addition or employment is intended to become effective and should include a description of the background and experience of the individual or individuals to be added or employed.

(d) The Bank may not add any individual to its board of directors or employ any individual as a senior executive officer if the Regional Director issues a notice of disapproval pursuant to section 32 of the Act, 12 U.S.C. § 1831i.

[.2] 2. (a) Within 90 days from the effective date of this ORDER, the Bank shall have total Tier 1 capital of not less than \$17,300,000, and shall have Tier 1 capital in such an amount as to equal or exceed six and one half (6.5) percent of the Bank's total assets. Thereafter, during the life of this ORDER, the Bank shall maintain Tier 1 capital in such an amount as to equal or exceed six and one half (6.5) percent of the Bank's total assets. In addition, the Bank shall have total Tier 1 capital of not less than \$18,300,000 on or before December 31, 1992.

(b) Within 60 days from the effective date of this ORDER, the Bank shall develop and adopt a plan to meet the minimum risk-based capital requirements as described in the FDIC Statement of Policy on Risk-Based Capital contained in Appendix A to Part 325 of the FDIC Rules and Regulations, 12 C.F.R. Part 325, Appendix A. The Plan shall be in a form and manner acceptable to the Regional Director as determined at subsequent examinations.

(c) The level of Tier 1 capital to be maintained during the life of this ORDER pursuant to Subparagraph 2(a) shall be in addition to a fully funded loan loss reserve, the adequacy of which shall be satisfactory to the Regional Director and Superintendent as determined at subsequent examinations and/or visitations.

(d) Any increase in Tier 1 capital necessary to meet the requirements of Paragraph 2 of this ORDER may be accomplished by the following:

- (i) the sale of common stock; or
- (ii) the sale or noncumulative perpetual preferred stock; or
- (iii) the direct contribution of cash by the board of directors, shareholders, and/or parent holding company; or
- (iv) any other means acceptable to the Regional Director and the Superintendent; or
- (v) any combination of the above means.

Any increase in Tier 1 capital necessary to meet the requirements of Paragraph 2 of this ORDER may not be accomplished through a deduction from the Bank's loan loss reserves.

(e) If all or part of the increase in Tier 1 capital required by Paragraph 2 of this ORDER is accomplished by the sale of new securities, the board of directors shall forthwith take all necessary steps to adopt and implement a plan for the sale of such additional securities, including the voting of any shares owned or

proxies held or controlled by them in favor of the plan. Should the implementation of the plan involve a public distribution of the Bank's securities (including a distribution limited only to the Bank's existing shareholders), the Bank shall prepare offering materials fully describing the securities being offered, including an accurate description of the financial condition of the Bank and the circumstances giving rise to the offering, and any other material disclosures necessary to comply with the Federal securities laws. Prior to the implementation of the plan and, in any event, not less than fifteen (15) 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 materials by the FDIC shall be made prior to their dissemination. If the increase in Tier 1 capital is provided by the sale of noncumulative perpetual preferred stock, then all terms and conditions of the issue, including but not limited to those terms and conditions relative to interest rate and convertibility factor, shall be presented to the Regional Director and the Superintendent for prior approval.

(f) In complying with the provisions of Paragraph 2 of this ORDER, the Bank ~~{{6-30-92 p.C-2177}}~~ shall provide to any subscriber and/or purchaser of the Bank's securities, a written notice of any planned or existing development or other changes which are materially different from the information reflected in any offering materials used in connection with the sale of Bank securities. The written notice required by this paragraph shall be furnished within ten (10) days from the date such material development or change was planned or occurred, whichever is earlier, and shall be furnished to every subscriber and/or purchaser of the Bank's securities who received or was tendered the information contained in the Bank's original offering materials.

(g) For the purposes of this ORDER, the terms "Tier 1 capital" and "total assets" shall have the meanings ascribed to them in Part 325 of the FDIC Rules and Regulations, 12 C.F.R. §§ 325.2(m) and 325.2(n), as amended at 56 Fed. Reg. 10154, effective April 10, 1991.

[.3] 3. (a) Within 10 days from the effective date of this ORDER, the Bank shall eliminate from its books, by charge-off or collection, all assets classified "Loss" and one-half of the assets classified "Doubtful" as of August 23, 1991, that have not been previously collected or charged off. Elimination of these assets through proceeds of other loans made by the Bank is not considered collection for the purpose of this paragraph.

(b) Within 90 days from the effective date of this ORDER, the Bank shall have reduced the assets classified "Substandard" and those assets classified "Doubtful" as of August 23, 1991 that have not previously been charged off to not more than \$33,200,000.

(c) Within 180 days from the effective date of this ORDER, the Bank shall have reduced the assets classified "Substandard" and those assets classified "Doubtful" as of August 23, 1991 that have not previously been charged off to not more than \$24,734,000.

(d) Within 270 days from the effective date of this ORDER, the Bank shall have reduced the assets classified "Substandard" and those assets classified "Doubtful" as of August 23, 1991 that have not previously been charged off to not more than \$21,769,000.

(e) Within 365 days from the effective date of this ORDER, the Bank shall have reduced the assets classified "Substandard" and those assets classified "Doubtful" as of August 23, 1991 that have not previously been charged off to not more than \$16,254,000.

(f) The requirements of subparagraphs 3(a), 3(b), 3(c), 3(d) and 3(e) of this ORDER are not to be construed as standards for future operations and, in addition to the foregoing, the Bank shall eventually reduce the total of all adversely classified assets. Reduction of these assets through proceeds of other loans made by the Bank is not considered collection for the purpose of this paragraph. As used in subparagraph 3(b), 3(c), 3(d), 3(e) and 3(f) the word "reduce" means:

- (i) to collect;
- (ii) to charge-off; or
- (iii) to sufficiently improve the quality of assets adversely classified to warrant removing any adverse classification, as determined by the FDIC.

[.4] 4. Beginning with the effective date of this ORDER, the Bank shall not extend, directly or indirectly, any additional credit to, or for the benefit of, any borrower who has a loan or other extension of credit from the Bank that has been charged off or classified, in whole or in part, "Loss" or "Doubtful" and is uncollected. The requirements of this paragraph shall not prohibit the Bank from renewing (after collection in cash of interest due from the borrower) any credit already extended to any borrower.

[.5] 5. (a) Within 60 days from the effective date of this ORDER, the Bank shall revise, adopt, and implement written lending and collection policies to provide effective guidance and control over the

Bank's lending function, which policies shall include specific guidelines for placing loans on a non-accrual basis. In addition, the Bank shall obtain adequate and current documentation for all loans in the Bank's loan portfolio. Such policies and their implementation shall be in a form and manner acceptable to the Regional Director and the Superintendent as determined at subsequent examinations and/or visitations.

(b) The initial revisions to the Bank's loan policy and practices, required by this {{6-30-92 p.C-2178}}paragraph, at a minimum, shall include the following:

(i) provisions which require complete loans documentation, realistic repayment terms and current credit information adequate to support the outstanding indebtedness of the borrower. Such documentation shall include current financial information, profit and loss statements or copies of tax returns, cash flow projections and a comprehensive review of real estate appraisals.

(ii) provisions which specify the circumstances and conditions under which real estate appraisals must be conducted by an independent third party and describe the requirements of Part 323 of the FDIC Rules and Regulations.

(iii) provisions that directors first determine that the lending staff has the expertise necessary to properly implement the written lending policies and supervise the loan and other real estate portfolios;

(iv) provisions which require the preparation of a loan "watch list" which shall include relevant information on all loans in excess of \$100,000 which are classified "Substandard" and "Doubtful" as of August 23, 1991 or by the FDIC or California State Department of Banking in subsequent Reports of Examination and all other loans in excess of \$500,000 which warrant individual review and consideration by the board of directors as determined by the loan committee or active management. The loan "watch list" shall be presented to the board of directors for review at least monthly with such review noted in the minutes; and

(v) the board of directors shall adopt procedures whereby officer compliance with the revised loans policy is monitored and responsibility for exceptions thereto assigned. The procedures adopted shall be reflected in minutes of a board of directors meeting at which all members are present and the vote of each is noted.

[.6] 6. Within 30 days from the effective date of this ORDER, the Bank shall effective and thereafter maintain an adequate reserve for loan losses.

Additionally, within 30 days from the effective date of this ORDER, the board of directors shall develop or revise, adopt and implement a comprehensive policy for determining the adequacy of the reserve for loan losses. For the purpose of this determination, the adequacy of the reserve shall be determined after the charge-off of all loans or other items classified "Loss." The policy shall provide for a review of the reserve at least once each calendar quarter. Said review should be completed at least ten (10) days prior to the end of each quarter, in order that the findings of the board of directors with respect to the loan loss reserve may be properly reported in the quarterly Reports of Condition and Income. The review should focus on the results of the Bank's internal loan review, loan loss experience, trends of delinquent and non-accrual loans, an estimate of potential loss exposure of significant credits, concentrations of credit, and present and prospective economic conditions. A deficiency in the reserve shall be remedied in the calendar quarter it is discovered, prior to submitting the Report of Condition, by a charge to current operating earnings. The minutes of the board of directors meeting at which such review is undertaken shall indicate the results of the review. Upon completion of the review, the Bank shall increase and maintain its loss reserve consistent with the loan loss reserve policy established. Such policy and its implementation shall be satisfactory to the Regional Director and Superintendent as determined at subsequent examinations and/or visitations.

[.7] 7. Within 60 days from the effective date of this ORDER, the Bank shall develop and adopt a plan to control overhead and other expenses and improve the Bank's profitability. The plan shall be in a form and manner acceptable to the Regional Director and the Superintendent as determined at subsequent examinations and/or visitations.

[.8] 8. Within 60 days from the effective date of this ORDER, the Bank shall, to the extent legally possible, eliminate and/or correct all violations of law which are more fully set out on page(s) 6-a of the Report of Examination of the Bank as of August 23, 1991. In addition, the Bank shall take all necessary steps to ensure future compliance with all applicable laws and regulations.

[.9] 9. Within 60 days from the effective date of this ORDER, the Bank shall develop or revise, adopt, and implement a written liquidity and funds management policy. Such {{9-30-94 p.C-2179}}policy and its implementation shall be in a form and manner acceptable to the

Regional Director and the Superintendent as determined at subsequent examinations and/or visitations.

[.10] 10. Within 60 days from the effective date of this ORDER, the Bank shall adopt and implement a policy for the operation of the Bank in such a manner as to provide adequate internal routine and control policies consistent with safe and sound banking practices. At a minimum the policy should address and correct the accounting issues described on page 6-b of the August 23, 1991 FDIC Report of Examination. Such policy and its implementation shall be satisfactory to the Regional Director and the Superintendent as determined at subsequent examinations and/or visitations.

[.11] 11. Within 30 days after eliminating from its books any asset in compliance with Paragraph 3 of this ORDER, the Bank shall file with the FDIC amended Consolidated Reports of Condition and Income which shall accurately reflect the financial condition of the Bank as of December 30, March 31, and June 30, 1991. Thereafter, during the life of this ORDER, the Bank shall file with the FDIC Consolidated Reports of Condition and Income which accurately reflect the financial condition of the Bank as of the end of the period for which the Reports are filed, including any adjustment in the Bank's books made necessary or appropriate as a consequence of any California State Department of Banking or FDIC examination of the Bank during that reporting period.

[.12] 12. The Bank shall not pay cash dividends without the prior written consent of the Regional Director and the Superintendent.

[.13] 13. Upon the effective date of this ORDER, the Bank shall not increase the amount of brokered deposits above the amount outstanding on that date. Within ten (10) days of the effective date of this ORDER, the Bank shall submit to the Regional Director and the Superintendent a written plan for eliminating its reliance on brokered deposits. The plan should contain details as to the current composition of brokered deposits by maturity and explain the means by which such deposits will be paid or rolled over. The Regional Director and the Superintendent shall have the right to reject the Bank's plan. On the tenth and twenty-fifth days of each month, the Bank shall provide a written progress report to the Regional Director and the Superintendent detailing the level, source, and use of brokered deposits with specific reference to progress under the Bank's plan. For purposes of this ORDER, brokered deposits are defined as described in section 29 of the Federal Deposit Insurance Act.

[.14] 14. Following the effective date of this ORDER, the Bank shall send to its shareholders or otherwise furnish a description of this ORDER in conjunction with the Bank's next shareholder communication and also in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting.

[.15] 15. Within 30 days of the end of the first quarter following the effective date of this ORDER, and within thirty (30) days of the end of each quarter thereafter, the Bank shall furnish written progress reports to the Regional Director and the Superintendent detailing the form and manner of any actions taken to secure compliance with this ORDER and the results thereof. Such reports shall include a copy of the Bank's Report of Condition and the Bank's Report of Income. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the Regional Director and the Superintendent have released the Bank in writing from making further reports.

The provisions of this ORDER shall be binding upon the Bank, its directors, officers, employees, agents, successors, assigns, and other persons participating in the conduct of the affairs of the Bank.

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

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

Dated at San Francisco, California, this 17th day of April, 1992.

Pursuant to delegated authority.