

{{3-31-94 p.C-2188}}

[¶10,516] **In the Matter of Bank of Kampsville, Kampsville, Illinois, Docket No. FDIC-92-94b (4-21-92).**

Bank to cease and desist from such unsafe or unsound practices as following hazardous lending and lax collection practices; operating with inadequate capital; operating with excessive volumes of adversely classified assets; operating with inadequate allowance for loan and lease losses; failing to provide adequate supervision over the Bank's affairs; and operating with management whose policies are detrimental to the Bank. *(This order was terminated by order of the FDIC dated 1-14-94; see ¶ 15,789.)*

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

In the Matter of

**BANK OF KAMPSVILLE
KAMPSVILLE, ILLINOIS
(Insured State Nonmember Bank)
ORDER TO CEASE AND DESIST
FDIC-92-94b**

Bank of Kampsville, Kampsville, Illinois ("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 or regulation alleged to have been committed by the Bank, and of its right to a hearing on the charges under section 8(b) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(b), and having waived those rights, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST ("CONSENT AGREEMENT") with counsel for the Federal Deposit Insurance Corporation ("FDIC"), dated April 2, 1992, whereby, solely for the purpose of this proceeding and without admitting or denying the charges of unsafe or unsound banking practices and violations of law or regulation, 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 or regulation. 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 or unsound banking practices and violations of law or regulation:

{{6-30-92 p.C-2189}}A. Engaging in hazardous lending and lax collections practices, including, but not limited to the following:

- the failure to obtain proper loan documentation;
- the failure to obtain adequate collateral;

- the failure to perfect liens on loan collateral;
 - the failure to obtain written agreements with vehicle dealers concerning acquisition of indirect installment contracts and maintenance and use of dealer reserves;
 - the failure to obtain current and complete financial information; and
 - the failure to enforce repayment programs.
- B. Operating with an inadequate level of capital protection for the kind and quality of assets held.
- C. Violating:
- the State of Illinois legal lending limit restrictions as set forth in section 32 of the Illinois Banking Act, ILL. REV. STAT. ch. 17, para. 339(1981);
 - section 7(a)(1) of the Act, 12 U.S.C. § 7(a)(1), and section 304.4 of the FDIC Rules and Regulations, 12 C.F.R. § 304.4, requiring the submission of accurate Reports of Condition and Income.
 - custodial requirements of section 450.4(a)(2)(i), 450.4(c) and 450.4(d) of the Regulations under Title II of the Government Securities Act of 1986, 17 C.F.R. §§ 450.4(a)(2)(i), 450.4(c) and 450.4(d).
- D. Operating with an excessive volume of adversely classified, delinquent, and non-accrual loans.
- E. Operating with an inadequate allowance for loan and lease losses for the volume, kind, and quality of loans and leases held.
- F. Operating with a board of directors which has failed to provide adequate supervision over and direction to the management of the Bank to prevent unsafe or unsound banking practices and violations of law or regulation.
- G. Operating with management whose policies and practices are detrimental to the Bank and which jeopardize the safety of its deposits.

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

[.1] 1. (a) Within 30 days of the close of business on the last calendar day of each calendar quarter following the effective date of this ORDER, the Bank shall determine from its Report of Condition and Income its level of Tier 1 capital as a percentage of its total assets ("capital ratio") for that calendar quarter. If the capital ratio is less than 6.5 percent, as of June 30, 1992, or 7.0 percent for all subsequent calendar quarters the Bank shall, within 60 days of the date of the required determination, increase its capital ratio to not less than 6.5 percent calculated as of June 30, 1992, or 7.0 percent for all subsequent calendar quarters calculated as of the end of that preceding quarterly period. For purposes of this ORDER, Tier 1 capital, the capital ratio, and total assets shall be calculated in accordance with Part 325 of the FDIC Rules and Regulations ("Part 325"), 12 C.F.R. Part 325. The term "close of business" is defined as in the Federal Financial Institutions Examination Council's Instructions for the Reports of Condition and Income.

(b) Any such increase in Tier 1 capital may be accomplished by the following:

- (i) The sale of common stock; or
- (ii) The elimination of all or part of the assets classified "Loss" as of October 11, 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 this ORDER; or
- (iii) The collection in cash of assets previously charged off; or
- (iv) The direct contribution of cash by the directors and/or the shareholders of the Bank; or
- (v) Any other means acceptable to the Regional Director of the Chicago Regional Office of the FDIC ("Regional Director"); or
- (vi) Any combination of the above means.

(c) If all or part of the increase in capital required by this paragraph is to be accomplished by the sale of new securities, the board of directors of the Bank

[{{6-30-92 p.C-2190}}](#) shall adopt and implement a plan for the sale of such additional securities, including the voting of any shares owned or proxies held by or controlled by them in favor of said plan. Should the implementation of the plan involve public distribution of the Bank 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 the circumstances giving rise to the offering, and any other material disclosures necessary to comply with the Federal securities laws. Prior to the implementation for the plan 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 as Washington, D.C., for its review. Any changes requested to be made in the materials by the FDIC shall be made prior to their dissemination.

(d) In complying with the provisions of paragraph 1(c) of this ORDER, the Bank shall provide to any subscriber and/or purchaser of Bank securities 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 10 calendar days of the date any material development or change was planned or occurred, whichever is earlier, and shall be furnished to every purchaser and/or subscriber of the Bank's original offering materials.

(e) The capital ratio analysis required by this paragraph shall not negate the responsibility of the Bank and its board of directors for maintaining throughout the year an adequate level of capital protection for the kind, quality and degree of market depreciation of assets held by the Bank.

[.2] 2. (a) During the life of this ORDER, the Bank shall have and thereafter retain qualified management. Each member of management shall have the qualifications and experience commensurate with his or her duties and responsibilities at the Bank. 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.

(b) During the life of this ORDER, the Bank shall notify the Regional Director in writing of any changes in the Bank's management. For purposes of this ORDER, "management" is defined as members of the board of directors and "senior executive officers," as that term is defined in section 32 of the Act ("section 32"), 12 U.S.C. § 1831(i), and section 303.14 of the FDIC Rules and Regulations ("section 303.14"), 12 C.F.R. § 303.14. 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 and section 303.14.

[.3] 3. As of the effective date of this ORDER, the Bank shall not declare or pay any cash dividend without the prior written consent of the Regional Director.

[.4] 4. (a) As of 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 is already obligated in any manner to the Bank on any extensions of credit (including any portion thereof) that has been charged off the books of the Bank so long as such credit remains uncollected. Notwithstanding the preceding sentence the Bank may extend additional direct floor plan loans to Calhoun County For and Hurley Dodge consistent with prudent lending practices, if the Bank's board of directors has adopted, prior to such extension of credit, a detailed written statement giving the reasons why such extension of credit is in the best interest of the Bank. A copy of the statement shall be submitted to the Regional Director in conjunction with the reports required by paragraph 18 of this ORDER.

(b) As of the effective date of this ORDER, the Bank shall not extend, directly or indirectly, any additional credit to, or [\[6-30-92 p.C-2191\]](#)for the benefit of, any borrower whose loan or other credit has been classified "Substandard," or is listed for Special Mention and is uncollected unless the Bank's board of directors has adopted, prior to such extension of credit, a detailed written statement giving the reasons why such extension of credit is in the best interest of the Bank. A copy of the statement shall be placed in the appropriate loan file and shall be included in the minutes of the applicable board of directors' meeting.

[.5] 5. As of the effective date of this ORDER, the Bank shall eliminate from its books, by charge-off or collection, all assets or portions of assets classified "Loss" as of October 11, 1991, that have not been previously collected or charged off. Elimination or reduction of these assets with the proceeds of other Bank extensions of credit is not considered collection for the purpose of this paragraph.

[.6] 6. (a) Within 10 days from the effective date of this ORDER, the Bank shall replenish its allowance for loan and lease losses ("ALLL") by an expense entry in an amount equal to those loans required to be charged off by this ORDER.

(b) Within 30 days from the effective date of this ORDER, the Bank shall make an additional provision for loan and lease losses which, after review and consideration by the board of directors, reflects the potential for further losses in the remaining loans or leases classified "Substandard" and all other loans and leases in its portfolio.

(c) Within 30 days from the effective date of this ORDER, Reports of Condition and Income required by the FDIC and filed by the Bank subsequent to October 11, 1991, shall be amended and refiled if they do not reflect a provision for loan and lease losses and an ALLL which are adequate considering the

condition of the Bank's loan portfolio, and which, at a minimum, incorporate the adjustments required by the above paragraphs of this ORDER.

(d) Prior to submission or publication of all Reports of Condition and Income required by the FDIC after the effective date of this ORDER, the board of directors of the Bank shall review the adequacy of the Bank's ALLL and accurately report the same. The minutes of the board meeting at which such review is undertaken shall indicate the findings of the review, the amount of increase in the reserve recommended, if any, and the basis for determination of the amount of reserve provided.

[.7] 7. (a) Within 90 days from the effective date of this ORDER, the Bank shall adopt and implement a written plan to reduce the Bank's risk position in each asset in excess of \$35,000 which is classified "Substandard" in the FDIC's Report of Examination of October 11, 1991 ("Report"). A copy of the written plan shall be submitted to the Regional Director. 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.

(b) Such plan shall include, but not be limited to, the following:

- (i) dollar levels to which the Bank shall reduce each asset within 6 and 12 months from the effective date of this ORDER; and
- (ii) provisions for the submission of monthly written progress reports to the Bank's board of directors for review and notation in minutes of the meetings of the board of directors.

(c) As used in this paragraph, "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.

[.8] 8. Within 120 days from the effective date of this ORDER, the Bank shall correct all deficiencies in the loans listed for "Special Mention" in the Report.

[.9] 9. Within 120 days from the effective date of this ORDER, the Bank shall correct the technical exceptions listed in the Report.

[.10] 10. Within 60 days from the effective date of this ORDER, the Bank shall adopt and implement a written loan collection policy. Said policy shall include, at a minimum, provisions which: (1) prohibit the [\[6-30-92 p.C-2192\]](#) extension of credit for the payment of interest; (2) delineate areas of responsibility for lending and collection officers; (3) establish acceptable guidelines for the collection of delinquent credits; and (4) require the submission of monthly written progress reports to the Bank's board of directors for review and notation in minutes of the meetings of the board of directors. A copy of the written policy shall be submitted to the Regional Director for review and opportunity to comment.

[.11] 11. As of the effective date of this ORDER, the Bank's loan committee shall meet at least twice monthly, and shall include at least two directors who are "independent." For purposes of this ORDER, a person who is an independent director shall be any individual (a) who is not an officer of the Bank; (b) who does not own more than 5 percent of the outstanding shares of the Bank; (c) who is not related by blood or marriage to an officer or director of the Bank or to any shareholder owning more than 5 percent of the Bank's outstanding shares, and who does not otherwise share a common financial interest with such officer, director or shareholder; and (d) who is not indebted to the Bank directly or indirectly through blood relation, marriage or common financial interest, including the indebtedness of any entity in which the individual has a substantial financial interest in an amount exceeding 5 percent of the Bank's total Tier 1 capital and allowance for loan and lease losses.

12. The loan committee shall, at a minimum, perform the following functions:

(a) Evaluate, grant, and/or approve loans in accordance with the Bank's loan policy. The loan committee shall provide a thorough written explanation of any deviations from the loan policy, which statement shall address how said exceptions are in the Bank's best interest.

(b) Review and monitor the status of repayment and collection of overdue and maturing loans, as well as all other loans that were classified "Substandard" in the Report, or that are included on the Bank's internal watch list.

(c) Review and give prior written approval or denial for all advances, renewals, or extensions of credit to any borrower or the borrower's related interests when the aggregate volume of credit extended to the borrower and the borrower's related interests exceeds \$50,000. For purposes of this ORDER the term

"related interest" is defined pursuant to section 215.2(k) of Regulation O of the Board of Governors of the Federal Reserve System, 12 C.F.R. § 215.2(k).

(d) Maintain written minutes of the committee meetings which include a record of the review and status of the aforementioned loans.

[.12] 13. (a) Within 90 days from the effective date of this ORDER, and annually thereafter, the board of directors of the Bank shall review the Bank's loan policy and procedures for adequacy and, based upon this review, shall make all appropriate revisions to the policy necessary to strengthen lending procedures and abate additional loan deterioration. The revised written loan policy and any subsequent modifications shall be submitted to the Regional Director for review and comment.

(b) The initial revisions to the Bank's loan policy required by this paragraph, at a minimum, shall include provisions:

(i) establishing review and monitoring procedures for compliance with the FDIC's regulation on appraisals, 12 C.F.R. Part 323.

(ii) establishing review and monitoring procedures to ensure that all lending personnel are adhering to the established procedures and that the directorate is receiving timely and fully documented reports.

(iii) requiring that all extensions of credit originated or renewed, including indirect contracts purchased, be supported by current credit information and collateral documentation, including lien searches and the perfection of security interests; have a clearly defined and stated purpose; and have a predetermined and realistic repayment source and schedule. Documentation for commercial and agricultural loans shall include current financial information, profit and loss statements or copies of tax returns, and cash flow projections, and shall be maintained throughout the term of the loan with loan officer notations and comments.

(iv) requiring loan committee review and monitoring of the status of repayment and collection of overdue and maturing loans, as well as those loans

{{3-31-94 p.C-2193}}which were classified "Substandard" in the Report.

(v) requiring the establishment and maintenance of a loan grading system and internal loan watch list.

(vi) requiring a written plan to lessen the risk position in each line of credit identified as a problem credit on the Bank's internal loan watch list or which are adversely classified by the FDIC or State authority at subsequent examinations.

(vii) requiring accurate reporting of past due loans to the loan committee on at least a monthly basis.

(viii) incorporating limitations on the amount that can be loaned in relation to established collateral values, including indirect installment contracts purchased.

(ix) establishing guidelines for contents of written agreements between the Bank and dealers from whom indirect installment contracts will be purchased, including maintenance or use of dealer reserve accounts.

(x) establishing specific criteria for the curtailment of automobile floor plan loans.

(c) Within 30 days from the receipt of any comments from the Regional Director and after the adoption of any recommended changes the board of directors shall approve and implement the written loan policy and any subsequent modification thereto. The approvals shall be recorded in the minutes of a board of directors' meeting.

[.13] 14. Within 90 days from the effective date of this ORDER, the Bank shall undertake all prudent banking measures to eliminate and/or correct all violations of law or regulation listed on page 6 of the Report. In addition, the Bank shall implement procedures to ensure future compliance with all applicable laws and regulations. To the extent the Bank is unable to correct or eliminate all violations relating to the indirect automobile financing contracts, it shall submit to the Regional Director, in conjunction with the reports required by paragraph 18, a statement summarizing the status of actions taken to correct the violations and anticipated progress in correcting the same.

[.14] 15. (a) Within 90 days from the effective date of this ORDER, the Bank shall adopt and implement a written profit plan and a realistic, comprehensive budget for all categories of income and expense for calendar year 1992. The plan required by this paragraph shall contain formal goals and strategies, consistent with sound banking practices to improve the Bank's overall earnings and shall contain a description of the operating assumptions that form the basis for major projected income and expense components. A copy of the plan shall be submitted to the Regional Director.

(b) Prior to the end of each calendar quarter, the Bank's board of directors shall evaluate the Bank's actual performance in relation to the plan and budget required by this paragraph and record the results of the evaluation, and any actions taken by the Bank, in the minutes of the board of directors' meeting at which such evaluation is undertaken.

[.15] 16. Following the effective date of this ORDER, the Bank shall send to its shareholder or otherwise furnish a description of this ORDER: (1) in conjunction with the Bank's next shareholder communication; and (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, notice, or statement shall be sent to the FDIC in Washington, D.C. for review at least 20 days prior to dissemination to shareholders. Any changes requested to be made by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement.

[.16] 17. Within 30 days from the effective date of this ORDER, the Bank shall establish a compliance committee comprised of at least three directors who are not officers of the Bank. The committee shall monitor compliance with this ORDER, and, within 60 days from the effective date of this ORDER, and every 30 days thereafter, shall submit to the board of directors for consideration at its regular monthly meeting a written report detailing the Bank's compliance with this ORDER. The compliance report shall be incorporated in the minutes of the board of directors' meeting. Establishment of this committee does not in any way diminish the responsibility of the entire
[{{3-31-94 p.C-2194}}](#) board of directors for ensuring that compliance with the provisions of this ORDER is achieved.

[.17] 18. Within 10 days of the end of each calendar quarter following the effective date of this ORDER, the Bank shall furnish to the Regional Director written progress reports signed by each member of the Bank's board of directors, detailing the actions taken to secure compliance with the ORDER and the results thereof. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the Regional Director has, in writing, released the Bank from making further reports.

The effective date of this ORDER shall be a 10 days after its issuance by the FDIC.

The provisions of this ORDER shall be binding upon the Bank, its institution-affiliated parties, and any successors and assigns thereof.

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: April 21, 1992.

Pursuant to delegated authority.