

{{5-31-95 p.C-213}}

¶10,042] In the Matter of Bank of Louisiana, New Orleans, Louisiana, Docket No. FDIC-89-191b (1-24-90).

Depository Institution to cease and desist from practices such as engaging in hazardous lending and lax collection practices; operating with inadequate primary capital, with a large volume of poor quality loans, with an inadequate loan valuation reserve, with inadequate provisions for liquidity, in such a manner as to produce low earnings, with management whose policies and practices are detrimental to the Depository Institution and with a Board of Directors which has failed to provide adequate supervision over and direction in the active management of the Depository Institution; and violating applicable federal and state laws and regulations. *(This order was terminated by order of the FDIC dated 3-28-95; see ¶ 15,987.)*

[.1] Management—Qualifications—Compliance

[.2] Definition—"Senior Executive Officers"

[.3] Management Policy—Minimum Requirements

{{5-31-95 p.C-214}}

[.4] Board of Directors—Compliance Requirements

[.5] Definition—"Outside Director"

[.6] Primary Capital—Increase—Methods

[.7] Assets—Adversely Classified—Reduce

[.8] Loans—Extensions of Credit—Curtail

[.9] Loan Policy—Loan Documentation—Review

[.10] Loan Portfolio—Periodic Review

[.11] Loan Loss Reserve—Adequacy—Review

[.12] Financial Condition—Amendment—Filing

[.13] Profit Plan—Overhead and Expenses—Review

[.14] Violations of Law—Eliminate/Correct—Compliance

[.15] Liquidity and Funds Management Policy—Minimum Requirements— Review

[.16] Holding Company—Management Fees—Written Policy

[.17] Shareholders—Dividends—Approval

[.18] Shareholders—Disclosure—Cease and Desist Order

[.19] Compliance—Progress Reports—Frequency

In the Matter of

BANK OF LOUISIANA

NEW ORLEANS, LOUISIANA

(Insured State Nonmember Bank)

ORDER TO CEASE AND DESIST

The Federal Deposit Insurance Corporation ("FDIC"), on September 28, 1989, issued to Bank of Louisiana, New Orleans, Louisiana ("Depository Institution"), a NOTICE OF CHARGES AND OF HEARING ("NOTICE") pursuant to section 8(b)(1) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(b)(1), amended by the Financial Institution Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 183, _____ (1989) (to be codified at 12 U.S.C. § 1818(b)(1)). The NOTICE charges the Depository Institution with having engaged in unsafe or unsound banking practices and violations of law and/or regulations.

The Depository Institution and counsel for the FDIC thereafter executed a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST ("CONSENT AGREEMENT") dated January 15, 1990, whereby, solely for the purpose of this proceeding and without admitting or denying the allegations in the NOTICE, the Depository Institution 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 Depository Institution 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 Depository Institution, its directors, officers, employees, agents, successors, assigns, and other institution-affiliated parties of the Depository Institution, cease and desist from the following unsafe or unsound banking practices and violations:

- (a) engaging in hazardous lending and lax collection practices;
- (b) operating with inadequate primary capital;
- (c) operating with a large volume of poor quality loans;
- (d) operating with an inadequate loan valuation reserve;
- (e) operating with inadequate provisions for liquidity;
- (f) operating in such a manner as to produce low earnings;
- (g) operating in violation of section 23A of the Federal Reserve Act 12 U.S.C. § 371c, [4-1-90 p.C-215](#) made applicable to state nonmember banks by section 18(j)(1) of the Act, 12 U.S.C. §1828(j)(1), amended by FIRREA, Pub. L. No. 101-73, 103 Stat. 183, _____ (1989) (to be codified at 12 U.S.C. §1828(j)(1)); section 22(h) of the Federal Reserve Act, as amended, 12 U.S.C. §375b, and section 215.4(b) of Regulation O of the Board of Governors of the Federal Reserve System, 12 C.F.R. §215.4(b), made applicable to state nonmember banks by section 18(j)(2) of the Act, 12 U.S.C. §1828(j)(2), amended by FIRREA, Pub. L. No. 101-73, 103 Stat. 183, _____ (1989) (to be codified at 12 U.S.C. §1828(j)(2)); Part 325.3(b) of the FDIC's Rules and Regulations, 12 C.F.R. 325.3(b); Section 243B of Title 6 of Louisiana Revised Statutes, La. Rev. Stat. Ann. §6:243B (West 1986); and Section 287A of Title 6 of Louisiana Revised Statutes, La. Rev. Stat. Ann. §6:287A (West 1984);
- (h) operating with management whose policies and practices are detrimental to the Depository Institution and jeopardize the safety of its deposits; and
- (i) operating with a board of directors which has failed to provide adequate supervision over and direction to the active management of the Depository Institution.

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

[.1] 1. (a) During the life of this ORDER, the Depository Institution shall have management qualified to restore the Depository Institution to a sound condition. Such management shall include a chief executive officer and an experienced senior lending officer responsible for supervising the Depository Institution's overall lending function.

(b) Present management shall be assessed on its ability to:

- (i) Comply with the requirements of this ORDER;
- (ii) Improve and thereafter maintain the Depository Institution in a safe and sound condition, including asset quality, capital adequacy, liquidity adequacy, and earnings adequacy; and
- (iii) Comply with all applicable State and Federal laws and regulations.

(c) (i) During the life of this ORDER, the Depository Institution shall notify the Regional Director of the Memphis Regional Office ("Regional Director") and the Commissioner of Financial Institutions for the State of Louisiana ("Commissioner") in writing of any resignations and/or terminations of any members of its board of directors and/or any of its senior executive officers.

(ii) The Depository Institution shall comply with section 914(a) of FIRREA, Pub. L. No. 101-73, §914(a), 103 Stat. 183, _____ (1989) (to be codified at 12 U.S.C. §1842), which includes a requirement that the Depository Institution shall notify the Regional Director and the Commissioner in writing of any additions to its board of directors and/or to its senior executive officers. The notification must include the identity, personal history, business background and experience, including the individual's business activities and affiliations during the past five (5) years, and a description of any material pending legal or administrative proceedings in which the individual is a party and any criminal indictment or conviction of such individual by a State or Federal court. The notification shall be provided at least 30 days prior to the individual assuming the new position and the Depository Institution may not add such individual if the Regional Director issues a notice of disapproval of such addition before the end of the 30 day period beginning on the date the Regional Director receives notice of the proposed action.

[.2] (d) For purposes of this ORDER the term "senior executive officers" shall mean the chairman and vice-chairman of the board of directors, the president, each vice president and the senior lending officer of the Depository Institution. The term shall also include any persons who have the functions, duties or responsibilities normally associated with those titles but are not specifically so named.

[.3] (e)(i) To ensure both compliance with this ORDER and qualified management for the Depository Institution, the board of directors, within 60 days from the effective date of this ORDER shall develop a

written policy ("Management Policy") which shall incorporate an analysis of the Depository Institution's management and staffing requirements and shall, at a minimum, address (i) both the number and type of positions needed to [{{4-1-90 p.C-216}}](#) properly manage the Depository Institution, (ii) a clear and concise description of the needed experience and pay for each job, (iii) an evaluation of present management, (iv) a plan to recruit, hire or replace personnel with requisite ability and experience, (v) a periodic evaluation of each individual's job performance, and (vi) the establishment of procedures to periodically review and update the Management Policy.

(ii) The Management Policy and any subsequent modification thereto shall be submitted to the Regional Director and the Commissioner for review and comment. Within 30 days from receipt of any comment, and after consideration of such comment, the board of directors shall approve the Management Policy which approval shall be recorded in the minutes of the meeting of the board of directors. Thereafter, the Depository Institution and its directors, officers and employees shall implement and follow the Management Policy and any modifications thereto.

[.4] (f) Within 30 days from the effective date of this ORDER, the board of directors shall establish a committee of the board of directors with the responsibility to ensure that the Depository Institution complies with the provisions of this ORDER. At least two-thirds of the members of such committee shall be independent, outside directors as defined herein. The committee shall report monthly to the entire board of directors, and a copy of the report and any discussion relating to the report or the ORDER shall be included in the minutes of the board of directors. Nothing contained herein shall diminish the responsibility of the entire board of directors to ensure compliance with the provisions of this ORDER.

[.5] (g) For the purposes of this ORDER, an "outside director" shall be an individual:

- (i) Who shall not be employed, in any capacity, by the Depository Institution or its affiliates other than as a director of the Depository Institution or an affiliate;
- (ii) Who shall not own or control more than 5 percent of the voting stock of the Depository Institution or its holding company;
- (iii) Who shall not be indebted to the Depository Institution or any of its affiliates in an amount greater than 5 percent of the Depository Institution's primary capital;
- (iv) Who shall not be related to any directors, principal shareholders of the Depository Institution or affiliate of the Depository Institution; and
- (v) Who shall be a resident of, or engage in business in, the Depository Institution's trade area.

[.6] 2. (a) Within 120 days from the effective date of this ORDER, the Depository Institution shall increase its primary capital by no less than \$2,550,000. Within 120 days from the effective date of this ORDER, and during the life of this ORDER, the Depository Institution shall maintain adjusted primary capital equal to or greater than seven and one-half (7.5) percent of the Depository Institution's adjusted Part 325 total assets.

(b) Any increase in primary capital necessary to meet the requirements of Paragraph 2(a) of this ORDER may be accomplished by the following:

- (i) The sale of new securities in the form of common stock or perpetual preferred stock; or
- (ii) The direct contribution of cash by the directors, shareholders, or parent bank holding company of the Depository Institution; or
- (iii) The collection in cash of assets classified "Loss" without loss or liability to the Depository Institution; or
- (iv) The collection of assets previously charged-off; or
- (v) Any other method acceptable to the FDIC.

(c) If all or part of the increase in primary capital required by Paragraph 2(a) of this ORDER is accomplished by the sale of new securities, the board of directors of the Depository Institution shall 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 Depository Institution's securities (including a distribution limited only to the Depository Institution's existing shareholders), the Depository Institution shall prepare offering materials fully describing the securities being offered, including an accurate description of the financial condition of the Depository Institution and [{{4-1-90 p.C-217}}](#) 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 20 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 Unit, Washington, D.C. 20429. Any changes requested to be made in the

plan or materials by the FDIC shall be made prior to their dissemination.

(d) In complying with the provisions of Paragraph 2 of this ORDER, the Depository Institution shall provide to any subscriber and/or purchaser of the Depository Institution's 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 Depository Institution securities. The written notice required by this paragraph shall be furnished within 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 Depository Institution's securities who received or was tendered the information contained in the Depository Institution's original offering materials.

(e) For purposes of this ORDER the terms "primary capital", "total capital" and "Part 325 total assets" shall have the meanings ascribed to them in Part 325 of the FDIC's Rules and Regulations at subsections 325.2(h), 325.2(l) and 325.2(k) respectively, 12 C.F.R. 325.2(h), (l) and (k), respectively. The "Analysis of Capital" schedule on page 3 of the FDIC Report of Examination provides the method for determining the ratio of adjusted primary capital to adjusted Part 325 total assets as required by this ORDER.

[.7] 3. (a) Within 10 days from the effective date of this ORDER, the Depository Institution shall eliminate from its books, by charge-off or collection, all assets which were classified "Loss" and one-half of the assets classified "Doubtful" as of June 16, 1989 and which have not been previously collected or charged-off. Loans outstanding to Liberty Financial Services, Inc., which totaled \$655,000 in principal as of June 16, 1989 (of which \$8,000 was classified "Loss" and \$647,000 was classified "Doubtful") are specifically excluded from this requirement. Reduction of these assets through proceeds of other loans made by the Depository Institution is not considered collection for the purpose of this paragraph.

(b) Within 90 days from the effective date of this ORDER, the Depository Institution shall have reduced the assets classified "Substandard" as of June 16, 1989 and those assets classified "Doubtful" that have not previously been charged-off pursuant to this ORDER to not more than \$9,000,000.

(c) Within 180 days from the effective date of this ORDER, the Depository Institution shall have reduced the assets classified "Substandard" as of June 16, 1989 and those assets classified "Doubtful" that have not previously been charged-off pursuant to this ORDER to not more than \$8,250,000.

(d) Within 270 days from the effective date of this ORDER, the Depository Institution shall have reduced the assets classified "Substandard" as of June 16, 1989 and those assets classified "Doubtful" that have not previously been charged-off pursuant to this ORDER to not more than \$7,500,000.

(e) Within 360 days from the effective date of this ORDER, the Depository Institution shall have reduced the assets classified "Substandard" as of June 16, 1989 and those assets classified "Doubtful" that have not previously been charged-off pursuant to this ORDER to not more than \$6,750,000.

(f) Within 450 days from the effective date of this ORDER, the Depository Institution shall have reduced the assets classified "Substandard" as of June 16, 1989 and those assets classified "Doubtful" that have not previously been charged-off pursuant to this ORDER to not more than \$6,000,000.

(g) The requirements of Paragraphs 3(a), 3(b), 3(c), 3(d), 3(e) and 3(f) above are not to be construed as standards for future operations and, in addition to the foregoing, the Depository Institution shall eventually reduce the total of all adversely classified assets. As used in Paragraphs 3(b), 3(c), 3(d), 3(e), 3(f) and 3(g) the word "reduce" means (1) to collect, (2) to charge-off, or (3) to sufficiently improve the quality of assets adversely classified to warrant removing any adverse classification, as determined by the FDIC.

[\[4-1-90 p.C-218\]](#)

[.8] 4. (a) Beginning with the effective date of this ORDER, the Depository Institution shall not make any further extension of credit to any borrower whose loans are charged-off, in whole or in part, or are adversely classified "Loss" or "Doubtful" as of June 16, 1989 and remain uncollected.

(b) Beginning with the effective date of this ORDER, the Depository Institution shall not make any further extension of credit to any borrower thereof whose loans in the aggregate exceed \$50,000 and are adversely classified "Substandard" as of June 16, 1989 unless such extension has been approved by a majority of the Depository Institution's board of directors in advance and the Depository Institution's board of directors has detailed in the written minutes of the meeting how it has affirmatively determined all of the following: (i) that the extension of credit is in full compliance with the Depository Institution's loan policy, (ii) that it is necessary to protect the Depository Institution's interest or that the extension of credit is adequately secured, (iii) that based upon credit analysis the customer is deemed to be creditworthy, and (iv) that all necessary loan documentation is on file, including current financial and cash flow information and satisfactory appraisal, title, and lien documents. The minutes shall also include the following information about the extension of credit: (i) the amount adversely classified as of June 16, 1989, (ii) the current balance, (iii) the amount of credit requested, (iv) a description of the collateral and its value securing the credit, and (v) a full description of the documentation presented to the board of directors including the date of the borrower's most recent financial information and the borrower's current income or cash flow data.

(c) Beginning with the effective date of this ORDER, the Depository Institution shall not renew any loan without the full collection of interest due. The capitalization of interest or the issuance of separate notes to the borrowing customer or a third party, the proceeds of which pay interest due, shall not satisfy the requirements of this paragraph unless the capitalization of interest or the issuance of separate notes receives prior board approval in the same manner as outlined in Paragraph 4(b).

(d) Beginning with the effective date of this ORDER, the Depository Institution shall not extend credit to any borrower where the outstanding aggregate debt to that borrower would then exceed \$50,000 unsecured and/or \$100,000 secured unless the extension of credit receives prior board approval in the same manner as outlined in Paragraph 4(b).

[.9] 5. Within 60 days from the effective date of this ORDER, the Depository Institution shall revise, adopt, and implement written lending and collection policies to provide effective guidance and control over the Depository Institution's lending function, which policies shall include specific guidelines for placing loans on a nonaccrual basis and for complying with Paragraph 4 of this ORDER. In addition, the Depository Institution shall obtain adequate and current documentation for all loans in the Depository Institution's loan portfolio. Such policies shall be submitted to the Regional Director and the Commissioner for review and comment.

[.10] 6. (a) Within 30 days of the effective date of this ORDER, the board shall establish an internal loan review and grading system ("System") to periodically review the Depository Institution's loan portfolio and identify and categorize problem credits. At a minimum the System shall provide for:

- (i) Identifying the overall quality of the loan portfolio;
- (ii) The identification and amount of each delinquent loan;
- (iii) An identification or grouping of loans that warrant the special attention of management;
- (iv) For each loan identified, a statement of the amount and an indication of the reasons(s) why the particular loan merits special attention;
- (v) Credit and collateral documentation exceptions;
- (vi) The identification and status of each violation of law, rule or regulation;
- (vii) Loans not in conformance with the Depository Institution's lending policy, and exceptions to the Depository Institution's lending policy;
- (viii) Insider loan transactions; and
- (ix) A mechanism for reporting periodically to the board of directors on the status of each loan identified and the action(s) taken by management.

(b) A copy of the reports submitted to the board, as well as documentation of the action taken by the Depository Institution to [{{12-31-92 p.C-219}}](#) collect or strengthen assets identified as problem credits, shall be kept with the minutes of the board of directors.

[.11] 7. (a) Within 30 days from the effective date of this ORDER, the Depository Institution shall establish and there-after maintain an adequate reserve for loan losses. Such reserve shall be established by charges to current operating income, together with collection of assets previously charged-off. In complying with the provisions of this paragraph, the board of directors of the Depository Institution shall review the adequacy of the Depository Institution's reserve for loan losses prior to the end of each quarter. The minutes of the board meeting at which such review is undertaken shall indicate the results of the review, the amount of any increase in the reserve, and the basis for determination of the amount of the reserve provided.

[.12] (b) Within 30 days from the effective date of this ORDER, the Depository Institution shall review all Reports of Condition and Income filed with the FDIC on and after June 16, 1989 and shall amend and file with the FDIC amended Reports of Condition and Income which accurately reflect the financial condition of the Depository Institution as of the date of each such Report. At a minimum each such Report shall be amended to reflect elimination of all assets classified "Loss" and one-half of the assets classified "Doubtful" as required by Paragraph 3 of this Order and shall incorporate an adequate reserve for loan losses accurately reflecting the Depository Institution's loan portfolio as of June 16, 1989, as required by Paragraph 7(a).

[.13] 8. Within 60 days from the effective date of this ORDER, the Depository Institution shall develop, adopt, and implement a written plan to control overhead and other expenses and restore the Depository Institution's profitability. The plan and its implementation shall be in a form and manner acceptable to the Regional Director as determined at subsequent examinations and/or visitations.

[.14] 9. Within 60 days from the effective date of this ORDER, the Depository Institution shall eliminate and/or correct all violations of law which are set out on pages 6-b, 6-b-1 and 6-b-2 of the Report of Examination of the Depository Institution as of June 16, 1989. In addition, the Depository Institution shall henceforth comply with all applicable laws and regulations.

[.15] 10. Within 60 days from the effective date of this ORDER, the Depository Institution shall formulate and adopt a written liquidity and funds management policy. Such policy shall include the establishment of acceptable ranges of ratios in the following areas: volatile liability dependence, total loans to total deposits and temporary investments to volatile liabilities. In addition, the liquidity policy shall incorporate a funds management program which designates acceptable levels for: volatile liabilities, including borrowings; asset mix, including temporary funds and investments, long-term investment securities and classes of obligors, and loans to deposits; and rate-sensitive assets as a percent of rate-sensitive liabilities. The written liquidity and funds management policy shall be submitted to the Regional Director and the Commissioner for review and comment.

[.16] 11. Within 60 days from the effective date of this ORDER, the Depository Institution shall develop, adopt, and implement a written policy satisfactory to the Regional Director, which policy shall govern the relationship between the Depository Institution and its holding company, and shall limit the payment of any management, consulting, or other fees or funds of any nature, directly or indirectly, to or for the benefit of the Depository Institution's holding company to only those fees or funds paid in connection with services performed by the Depository Institution's holding company on behalf of or for the benefit of the Depository Institution.

[.17] 12. While this ORDER is in effect, the Depository Institution shall not declare or pay any cash dividends on its common stock without the prior written approval of the Regional Director and the Commissioner unless;

- (i) the Depository Institution has achieved the 7.5% adjusted primary capital ratio set forth in Paragraph 2;
- (ii) such dividends would not reduce the Depository Institution's adjusted primary capital ratio below the 7.5% maintenance level required by this Order; and
- (iii) the amount of the dividends declared and/or paid on an annual basis does not exceed fifty (50) percent of net income as may be determined by using the Instructions for Preparation of Reports of Condition and Income published by the Federal Financial Institutions Examination Council.

[.18] 13. Following the effective date of this ORDER, the Depository Institution shall send to its shareholders or otherwise furnish a description of this ORDER, (i) in conjunction with the Depository Institution's next shareholders communication, and also (ii) in conjunction with its notice or proxy statement preceding the Depository Institution's next shareholder meeting. The description shall fully describe the ORDER in all material respects. The description and any accompany 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.

[.19] 14. On the fifteenth day of the second month following the effective date of this ORDER, and on the fifteenth day of every third month thereafter, the Depository Institution shall furnish written progress reports to the Regional Director and the Commissioner detailing the form and manner of any actions taken to secure compliance with this 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 released the Depository Institution in writing from making further reports.

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

This ORDER shall become effective 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:

Pursuant to delegated authority.

