

{{9-30-96 p.C-3334}}

[¶10,851] In the Matter of Provident Bank, Dallas, Texas, Docket No. FDIC-93-82PCAS (7-28-93).

Bank agrees to take prompt corrective action to increase its capitalization. (*This directive was modified by order of the FDIC dated 1-30-96, see ¶16,069, and terminated pursuant to an order of the FDIC dated 7-30-96. See ¶16,110.*)

[.1] Capital—Capital Restoration Plan

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

{{9-30-93 p.C-3335}} [.3] Compensation—Directors/Executives—Restrictions

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

[.5] Prompt Corrective Action—Statutory Requirements

In the Matter of

Provident Bank

Dallas, Texas

(Insured State Nonmember Bank)

SUPERVISORY PROMPT

CORRECTIVE ACTION DIRECTIVE

FDIC-93-82PCAS

Provident Bank, Dallas, Texas ("Bank"), being a significantly undercapitalized depositor institution as that term is defined in section 38(b)(1) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1831o(b) (1), and section 325.103 of the FDIC Rules and Regulations, 12 C.F.R. § 325.103, based upon the Consolidated Report of Condition and Income of the Bank as of December 31, 1992, and having received a NOTICE OF INTENT TO ISSUE A PROMPT CORRECTIVE ACTION DIRECTIVE ("NOTICE") detailing the actions that will be required to be taken by the Bank and/or the proscriptions that will be imposed on the Bank pursuant to section 38 of the Act, 12 U.S.C. § 1831o, and section 308.201(a) of the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.201(a), and the Bank having filed a response to the NOTICE pursuant to section 308.201(c) of the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.201(c), and the Federal Deposit Insurance Corporation ("FDIC") having considered said response, the FDIC hereby issues this PROMPT CORRECTIVE ACTION DIRECTIVE to the Bank pursuant to the provisions of section 38 of the Act, 12 U.S.C. § 1831o, and section 308.201(d) of the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.201(d).

PROMPT CORRECTIVE ACTION
DIRECTIVE

[.1] 1. IT IS HEREBY ORDERED, that the Bank shall file a revised capital restoration plan within thirty days of the effective date of this Directive. The Bank's revised capital restoration plan shall specifically address the items determined by the FDIC, pursuant to section 38(e)(2)(C) of the Act, 12 U.S.C. § 1831o(e)(2)(C), to be unacceptable in the Bank's original, first submitted and revised capital restoration plan and not in compliance with section 38(e)(2)(B) of the Act, 12 U.S.C. § 1831o(e)(2)(B).

[.2] 2. FURTHER DIRECTED, pursuant to subsections 38(f)(2)(A)(i) and 38(f)(3)(A) of the Act, 12 U.S.C. § 1831o(f)(2)(A)(i) and (f)(3)(A), that within 60 days of the effective date of this DIRECTIVE, the Bank shall increase its Tier 1 capital by not less than \$7,000,000 and shall achieve and maintain a leverage ratio of Tier 1 capital to total assets of not less than 6.0 percent.

3. FURTHER DIRECTED, that the required increase in Tier 1 capital and any increase in Tier 1 capital necessary to achieve and maintain the leverage ratio required by this DIRECTIVE may be accomplished by the following:

- i. The sale of new securities in the form of common stock or noncumulative perpetual preferred stock; or
- ii. The direct contribution of cash by the directors and/or shareholders of the Bank; or
- iii. The direct contribution of cash by the Bank's parent holding company; or
- iv. Any other method acceptable to the FDIC.

4. FURTHER DIRECTED, (a) that if all or part of the increase in Tier 1 capital required by this DIRECTIVE is accomplished by the sale of new securities, the board of directors of the Bank shall adopt and implement a plan for the sale of such additional securities, including soliciting proxies and the voting of any shares or proxies owned 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 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 ~~9-30-93 p.C-3336~~ materials used in the sale of the securities shall be submitted to the FDIC, Registration and Disclosure Section, 550 17th Street, N.W., Washington, D.C. 20429, for review. Any changes requested to be made in the plan or the materials by the FDIC shall be made prior to their dissemination. If the increase in Tier 1 capital is to be provided by the sale of noncumulative perpetual preferred stock, then all terms and conditions of the issue shall be presented to the Regional Director for the Division of Supervision of the FDIC's Dallas Region for prior approval.

(b) In complying with the provisions of this DIRECTIVE and until such time as any such public offering is terminated, the Bank shall provide to any subscriber and/or purchaser of the Bank's securities written notice of any planned or existing development or other change which is materially different from the information reflected in any offering materials used in connection with the sale of the Bank's securities. The written notice required by this paragraph shall be furnished within 10 days after the date such material development or change was planned or occurred, whichever is earlier, and shall be furnished to every purchaser and/or subscriber who received or was tendered the information contained in the Bank's original offering materials.

(c) For the purposes of this DIRECTIVE, the terms "leverage ratio," "Tier 1 capital," and "total assets" shall have the meanings ascribed to them in Part 325 of the FDIC Rules and Regulations, respectively subsections 325.2(k), (m), and (n), 12 C.F.R. § 325.2(k), (m), and (n).

5. FURTHER DIRECTED, that in the event that the Bank does not increase its Tier 1 capital as required by provisions 1-4 of this DIRECTIVE, then pursuant to subsections 38(f)(2)(A)(iii) and 38(f)(3)(A) of the Act, 12 U.S.C. § 1831o(f)(2)(A)(iii) and (f)(3)(A), within 120 days of the effective date of this DIRECTIVE, the Bank will immediately take the necessary action so as to result in the Bank's acquisition by another depository institution holding company, or other party acceptable to the FDIC, or so as to result in the Bank's merger with another insured depository institution.

6. FURTHER DIRECTED, pursuant to subsections 38(f)(2)(B)(i) and 38(f)(3)(B) of the Act, 12 U.S.C. § 1831o(f)(2)(B)(i) and (f)(3)(B), that upon the effective date of this DIRECTIVE, the Bank shall comply with section 23A of the Federal Reserve Act, 12 U.S.C. § 371c, with respect to all transactions with affiliates of the Bank; and the provisions at subsection 23A(d)(1), 12 U.S.C. § 371c(d)(1), concerning "Exemptions" shall not be applicable.

[.3] 7. FURTHER DIRECTED, (a) pursuant to section 38(f)(4) of the Act, 12 U.S.C. § 1831o(f)(4), that upon the effective date of this DIRECTIVE, the Bank shall not pay any bonus to any senior executive officer and/or shall not pay any compensation to any senior executive officer that exceeds the rate as provided in section 38(f)(4)(A)(ii) of the Act, 12 U.S.C. § 1831o(f)(4)(A)(ii), without the prior written approval of the FDIC.

(b) This provision of this DIRECTIVE concerning payment of a bonus and rate of compensation for a senior executive officer shall not apply with respect to any senior executive officer who accepted employment in his or her current position at the Bank on or before December 19, 1991, and whose contract of employment has not been renewed or renegotiated by the Bank:

- i. After December 19, 1991, or
- ii. To evade section 38(f)(4) of the Act, 12 U.S.C. § 1831o(f)(4).

(c) For purposes of this DIRECTIVE and pursuant to section 38(b)(2)(H) of the Act, 12 U.S.C. § 1831o(b)(2)(H), the term "senior executive officer" shall have the same meaning ascribed to it as the term "executive officer" as defined in section 22(h)(9)(C) of the Federal Reserve Act, 12 U.S.C. § 375b(9)(C), and section 215.2(d) of Regulation O of the Board of Governors of the Federal Reserve System, 12 C.F.R. § 215.2(d).

[.4] 8. FURTHER DIRECTED, that upon the effective date of this DIRECTIVE, the Bank shall send to its shareholders or otherwise furnish a description of the DIRECTIVE, (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 DIRECTIVE in all material respects. The description and any accompanying communication, statement, or notice shall be sent to the FDIC, Registration and Disclosure Section, 550 17th Street, N.W., [{{5-31-95 p.C-3337}}](#) 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.

[.5] 9. FURTHER DIRECTED, that the Bank shall comply with the additional mandatory prompt corrective action provisions in section 38 of the Act, 12 U.S.C. § 1831o, as follows:

(a) Restriction on capital distributions pursuant to section 38(d)(1) of the Act, 12 U.S.C. § 1831o(d)(1), as "capital distribution" is defined in section 38(b)(2)(B) of the Act, 12 U.S.C. § 1831o(b)(2)(B);

(b) Restriction on payment of management fees pursuant to section 38(d)(2) of the Act, 12 U.S.C. § 1831o(d)(2), as "management fee" is defined in section 325.2(1) of the FDIC Rules and Regulations, 12 C.F.R. § 325.2(1);

(c) Restriction on asset growth pursuant to section 38(e)(3) of the Act, 12 U.S.C. § 1831o(e)(3); and

(d) Requisite prior approval by the FDIC before the Bank directly or indirectly:

- i. Acquires any interest in any company or insured depository institution;
- ii. Establishes or acquires any additional branch office; or
- iii. Engages in any new line of business pursuant to section 38(e)(4) of the Act, 12 U.S.C. § 1831o(e)(4).

10. FURTHER DIRECTED, that on the fifteenth day of the second month following the effective date of this DIRECTIVE, and on the fifteenth day of every third month thereafter, the Bank shall provide written reports of the Regional Director of the Division of Supervision for the FDIC's Dallas Region specifically detailing the Bank's noncompliance with this DIRECTIVE and further specifically detailing the required corrective actions being taken by the Bank to secure compliance with this DIRECTIVE.

11. FURTHER DIRECTED, that this DIRECTIVE shall become effective immediately upon its receipt by the Bank.

12. FURTHER DIRECTED, that each provision of this DIRECTIVE shall be binding upon the Bank, its directors, officers, employees, agents, successors, assigns, and other institution-affiliated parties of the Bank.

13. FURTHER DIRECTED, that each provision of this DIRECTIVE shall remain effective and enforceable except to the extent that, and until such time as, any provision of this DIRECTIVE shall have been modified, terminated, suspended, or set aside by the FDIC.

Dated at Washington, D.C., this 28th day of July, 1993.

Pursuant to delegated authority.