

{{8-31-97 p.C-3386}}

[¶10,863] **In the Matter of The Bank of San Francisco, San Francisco, California, Docket No. FDIC-93-177b (8-19-93).**

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 with less than satisfactory management; operating with inadequate liquidity; operating without proper internal routine and controls; operating in such a manner as to produce operating losses; and operating in violation of applicable laws or regulations. (*This order was terminated by order of the FDIC dated 6-3-97; see ¶16,170.*)

- [.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] **Lending and Collection Policy—Minimum Requirements**
- [.6] **Loans—Concentrations of Credit—Reduction Plan**
- [.7] **Loan Loss Reserve—Establish/Maintain**
- [.8] **Profit Plan—Minimum Requirements**
- [.9] **Bank Operations—Overall Business Plan Required**
- [.10] **Violations of Law—Eliminate/Correct**
- [.11] **Asset/Liability Management—Written Policy—Minimum Requirements**
- [.12] **Bank Operations—Internal Routine and Controls—Written Policy Required**
- [.13] **Dividends—Restricted**
- [.14] **Brokered Deposits—Reduction Required**
- [.15] **Compensation—Bonuses—FDIC Approval Required**
- [.16] **Shareholders—Disclosure—Cease and Desist Order**

In the Matter of

**THE BANK OF SAN FRANCISCO
SAN FRANCISCO, CALIFORNIA
(Insured State Nonmember Bank)
ORDER TO
CEASE AND DESIST
FDIC-93-177b**

The Bank of San Francisco, San Francisco, 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 August 18, 1993, 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 cap- {{10-31-93 p.C-3387}}ital and reserves in relation to the volume and quality of assets held by the Bank;
- (b) operating with a large volume of poor quality assets;
- (c) operating with less than satisfactory management;

- (d) operating with inadequate provisions for liquidity and funds management;
- (e) operating with inadequate internal routine and controls procedures;
- (f) operating in such a manner as to produce operating losses; and
- (g) operating in violation of the following laws and/or regulations:

- (i) Section 23A of the Federal Reserve Act, 12 U.S.C. § 371c, made applicable to state nonmember insured institutions by Section 18(j)(1) of the Act, 12 U.S.C. § 1828(j)(1), as more fully described on Page 6-a-1 of the Report of Examination as of November 30, 1992;

- (ii) Part 323.3(a)(4) of the Rules and Regulations of the Federal Deposit Insurance Corporation, 12 C.F.R. § 323.3(a)(4), as more fully described on Page 6-a of the Report of Examination as of November 30, 1992;

- (iii) Section 772 of the California Financial Code, Cal. Fin. Code § 772 (West 1989), and as more fully described on Page 6-a-1 of the Report of Examination as of November 30, 1992; and

- (iv) Section 1902 of the California Financial Code, Cal. Fin. Code § 1902 (West 1989), and as more fully described on Page 6-a-1 of the Report of Examination as of November 30, 1992.

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

[.1] 1. The Bank shall have and retain qualified management.

(a) Each member of management shall have qualifications and experience commensurate with his or her duties and responsibilities at the Bank. 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 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) By August 31, 1993, the Bank shall increase Tier 1 capital by \$4,000,000. By September 30, 1993, the Bank shall increase Tier 1 capital by \$2,000,000. Thereafter, during the life of this ORDER, the Bank shall maintain Tier 1 capital in such an amount as to equal or exceed seven (7.0) percent of the Bank's total assets.

(b) 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.

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

- (i) contribution of cash from the Bank's holding company;
 - (ii) the sale of common stock; or
 - [[10-31-93 p.C-3388]]
 - (iii) the sale of noncumulative perpetual preferred stock; or
 - (iv) the direct contribution of cash by the board of directors, shareholders, and/or parent holding company; or
 - (v) any other means acceptable to the Regional Director and the Superintendent; or
 - (vi) 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.

(d) 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 of the Bank, 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, 550 - 17th Street, N.W., 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.

(e) In complying with the provisions of Paragraph 2 of this ORDER, the Bank 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.

(f) 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 or allocation to a specific reserve, all assets classified "Loss" and one-half of the assets classified "Doubtful" as of November 30, 1992, that have not been previously collected or charged off or allocated to a specific reserve. Elimination of these assets through proceeds of other loans made by the Bank is not considered collection for the purpose of this Paragraph.

(b) On or before October 31, 1993, the Bank shall have reduced the assets classified "Substandard" and those assets classified "Doubtful" as of November 30, 1992 that have not previously been charged off to not more than \$75,000,000.

(c) On or before December 31, 1993, the Bank shall have reduced the assets classified "Substandard" and those assets classified "Doubtful" as of November 30, 1992 that have not previously been charged off to not more than \$60,000,000.

(d) On or before March 31, 1994, the Bank shall have reduced the assets classified "Substandard" and those assets classified "Doubtful" as of November 30, 1992 that have not previously been charged off to not more than \$50,000,000.

(e) On or before September 30, 1994, the Bank shall have reduced the assets [{{10-31-93 p.C-3389}}](#) classified "Substandard" and those assets classified "Doubtful" as of November 30, 1992 that have not previously been charged off to not more than \$40,000,000.

(f) The requirements of Subparagraphs 3(a), 3(b), 3(d), 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 or all adversely classified assets. Reduction of these assets through proceeds of other loans made by the Bank to the original borrower is not considered collection for the purpose of this Paragraph; loans to third party borrowers to facilitate the sale of classified assets shall not be considered if such loans remain classified as determined at the next regulatory examination. 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. (a) 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" and is uncollected. Subparagraph 4(a) of this ORDER shall not prohibit the Bank from renewing or extending the maturity of

any credit in accordance with the Financial Accounting Standards Board Statement Number 15 ("FASB 15"). In addition, the foregoing is not intended to prohibit the Bank from extending credit to, or for the benefit of, any unrelated borrower who has not been the subject of a loan or other extension of credit from the Bank that has been charged off or classified, in whole or in part, "Loss" and is uncollected.

(b) 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 classified, in whole or part, "Substandard" or "Doubtful" without the prior written approval of a majority of the Board of Directors or the loan committee of the Bank.

[.5] 5. Within 60 days from the effective date of this ORDER, the Bank shall revise, adopt, and implement written lending and collection policy to provide effective guidance and control over the Bank's lending function, which policy shall include specific guidelines for unsecured loans and limits on loan types. Such 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.

[.6] 6. Within 90 days from the effective date of this ORDER, the board shall develop and implement a plan to reduce the concentrations of credit listed on Page 2-b of the Report. 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.

[.7] 7. During the life of this ORDER, the Bank shall maintain an adequate reserve for loan losses. Within 30 days from the effective date of this ORDER, the Board of Directors shall review the adequacy of the reserve for loan losses and establish 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.

[.8] 8. Within 60 days from the effective date of this ORDER, the Bank shall formulate and implement a written profit plan. This plan shall be forwarded to the Regional Director and to the Superintendent for review and comment and shall address, at a minimum, the following:

(a) goals and strategies for improving the sustaining the earnings of the Bank, including:

(i) an 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) coordination of the Bank's loan, investment, and operating policies, and budget and profit planning, with the funds management policy.

[.9] 9. Within 60 days from the effective date of this ORDER, the Bank shall prepare and submit to the Regional Director and Superintendent a written business plan covering the overall operation of the Bank. The plan shall be in a form and manner acceptable to the Regional Director and Superintendent as determined at subsequent examinations and/or visitations.

[.10] 10. Within 60 days from the effective date of this ORDER, the Bank shall eliminate and/or correct all violations of law and/or regulations which are more fully set out on Pages 6-a and 6-a-1 of the Report of Examination of the Bank as of November 30, 1992. In addition, the Bank shall take all necessary steps to ensure future compliance with all applicable laws and regulations.

[.11] 11. Within 60 days from the effective date of this ORDER, the Board of Directors shall implement

an asset/liability management policy which establishes a range for the Bank's volatile liability dependency ratio, as computed by the FDIC in its Reports of Examination, and which ratio shall, within 120 days from the effective date of this ORDER, be reduced to not more than twenty-five (25.0) percent; and within 240 days from the effective date of this ORDER, be reduced to not more than fifteen (15.0) percent. The requirements of this Paragraph shall not be construed as standards for future operations, and the Bank's volatile liability dependency ratio shall be maintained at a level consistent with prudent banking practices.

[.12] 12. 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. Such policy shall, at a minimum, eliminate and/or correct all internal routine and control deficiencies as more fully set forth on Pages 6-b, 6-b-1, and 6-b-2 of the Report of Examination of the Bank as of November 30, 1992. Such policy and its implementation shall be satisfactory to the Regional Director and the Superintendent as determined at subsequent examinations and/or visitations.

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

[.14] 14. 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 sixty (60) 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 first day 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 337.6(a)(1) of the FDIC Rules and Regulations.

[.15] 15. The Bank shall not do any of the following without the prior written approval of the FDIC: (i) pay any bonus to any [{{10-31-93 p.C-3391}}](#) senior executive officer; (ii) provide compensation to any senior executive officer at a rate exceeding that officer's average rate of compensation (excluding bonuses, stock options, and profit-sharing) during the 12 calendar months preceding the calendar month in which the Bank became undercapitalized. The FDIC shall not grant any approval under Paragraph 15 if the Bank has failed to submit an acceptable capital plan to the FDIC.

[.16] 16. 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. 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 Section, 550 - 17th Street, N.W., Washington, D.C. 20429, at least fifteen (15) 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.

17. Within 45 days of the end of the first quarter following the effective date of this ORDER, and within 45 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 may be discontinued when the corrections required by this ORDER have been accomplished and the Regional Director and the Superintendent has 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 19th day of August, 1993.

Pursuant to delegated authority.

