

{{5-31-92 p.C-531}}

[¶10,111] In the Matter of First Exchange Bank, Mannington, West Virginia, Docket No. FDIC-90-183b (9-7-90).

Bank to cease and desist from such practices as operating with management whose policies and practices are detrimental to the Bank and jeopardize the safety of its deposits; operating with board of directors who failed to adequately supervise and direct the affairs of the Bank; operating with excessive volume of adversely classified assets; engaging in hazardous lending and ineffective and lax collection practices; operating with inadequate capital; failing to provide and maintain adequate loan loss reserve; operating with inadequate internal controls and accounting systems; and engaging in practices which produce inadequate

{{8-31-92 p.C-532}}operating income and excessive loan losses. *(This order was terminated by order of the FDIC dated 6-1-92; see ¶ 15,456.)*

- [.1] Management—Qualifications—Compliance
- [.2] Loan Policy—Revise—Minimum Requirements
- [.3] Technical Exceptions—Correct and/or Eliminate
- [.4] Loans—Extension of Credit—Existing Borrowers—Reduce
- [.5] Assets—Adversely Classified—Reduce
- [.6] Capital—Adjustment
- [.7] Loan Loss Reserve—Adequacy—Review
- [.8] Primary Capital—Increase—Methods
- [.9] Dividends—Restricted
- [.10] Budget and Earnings Forecast—Prepare—Minimum Requirements
- [.11] Bank Operations—Internal Routine and Control Procedures
- [.12] Securities Transactions—Approval—Board of Directors
- [.13] Securities Transactions—Written Study—Approval
- [.14] Shareholders—Disclosure—Cease and Desist Order
- [.15] Compliance—Progress Reports

In the Matter of

**FIRST EXCHANGE BANK
MANNINGTON, WEST VIRGINIA
(Insured State Nonmember Bank)
ORDER TO CEASE AND DESIST FDIC-90-183b**

First Exchange Bank, Mannington, West Virginia ("Bank"), having been advised of its right to a written NOTICE OF CHARGES AND OF HEARING detailing unsafe or unsound banking practices alleged to have been committed by the Bank and of its right to a hearing regarding such 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 a representative of the legal Division of the Federal Deposit Insurance Corporation ("FDIC"), dated September 7, 1990, whereby solely for the purpose of this proceeding and without admitting or denying any of the alleged charges of unsafe or unsound banking practices, 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.

The FDIC, therefore, accepted the CONSENT AGREEMENT and issued the following:

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED, that the Bank and its institution-affiliated parties, 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:

A. Operating the Bank with management whose policies and practices are detrimental to the Bank and jeopardize the safety of its deposits;

B. Failing to provide adequate supervision and direction over the affairs of the Bank by the board of directors of the Bank to prevent unsafe or unsound practices;

C. Operating the Bank with an excessive volume of adversely classified assets;

D. Engaging in hazardous lending and ineffective and lax collection practices, including but not limited to: (i) failing to provide an adequate loan policy for the Bank; (ii) failing to properly implement an effective system of loan documentation and credit information; and (iii) failing to provide adequate guidelines for loan extensions, renewals and repayment programs;

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E. Operating the Bank with equity capital that is inadequate to support the kind and quality of assets held by the Bank;

F. Failing to provide and maintain an adequate reserve for loan losses for the volume, kind and quality of loans held;

G. Failing to operate with adequate internal controls and accounting systems to prevent unsafe and unsound practices; and

H. Engaging in practices which produce inadequate operating income and excessive loan losses.

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

[.1] 1. Within 120 days from the effective date of this ORDER, the Bank shall have and retain qualified management. At a minimum, such management shall include a chief executive officer with proven ability in managing a bank or comparable size and a qualified operations officer. Such persons shall be provided the necessary written authority to implement the provisions of this ORDER. 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, and management effectiveness. So long as this ORDER remains in effect, the Bank shall notify the Regional Director of the FDIC's Atlanta Regional Office ("Regional Director") and the West Virginia Commissioner of Banking ("Commissioner") in writing of any changes in management. Such notification shall be in addition to any application and prior approval requirements established by section 32 of the Act, 12 C.F.R. § 1831(i), and implementing regulations; must include the names and qualifications of any replacement personnel; and must be provided as least thirty (30) days prior to the individual assuming the new position.

[.2] 2. Within 60 days from the effective date of this ORDER, the Bank shall review and revise its written Loan Policy. The board of directors shall approve the revised written Loan Policy and/or any subsequent modification thereto, which approval shall be recorded in the minutes of the board of directors. Therefore, the Bank and its institution-affiliated parties shall implement and follow the written Loan Policy and/or any subsequent modification thereto. The Bank's written Loan Policy, as revised, shall include, but not necessarily be limited to, the following:

- (a) Specific guidelines for extensions, renewals, and repayment programs;
- (b) Appropriate limitations on the extensions of credit through overdrafts;
- (c) Description of the general fields of lending in which the Bank shall engage, the types of loans and collateral considered desirable and the types of loans and collateral considered undesirable;
- (d) A specific geographical trade area;
- (e) Specific limitations and guidelines for loans made outside of the Bank's identified geographical trade area;
- (f) Guidelines enumerating the specific responsibilities of the board of directors in reviewing and approving loans and periodically reviewing major lines of credit;
- (g) Specific identification of the types of supporting documentation required by the Bank for each type of secured and unsecured loan;
- (h) Maintenance and review of complete and current credit files on each borrower;
- (i) Establishment of repayment plans based upon documented cash flows of the borrower; and
- (j) Appropriate and adequate collection procedures including, but not limited to, the actions to be taken against borrowers who fail to make timely payments.

[.3] 3. Within 90 days from the effective date of this ORDER, the Bank shall establish an effective system of loan documentation and shall take all necessary steps to correct and/or eliminate all technical exceptions on loans noted on pages 2-d through 2-d-1 of the FDIC's Report of Examination of the Bank as of February 26, 1990. In addition and so long as this ORDER remains in effect, the Bank shall ensure that all necessary documentation, or evidence

{{12-31-90 p.C-534}}thereof, is obtained and evaluated before any further credit is extended by the Bank.

[.4] 4. (a) Within 90 days from the effective date of this ORDER, the Bank shall submit to the Regional Director and the Commissioner a written plan of action to reduce each line of credit which was adversely classified "Substandard" by the FDIC as of February 26, 1990, and which aggregated \$50,000 or more as of that date. Such plan of action shall thereafter be implemented by the Bank and monitored, and progress reports thereon shall be submitted by the Bank to the Regional Director and the Commissioner at 90-day intervals concurrently with the other reporting requirements set forth in paragraph 14 of this ORDER.

(b) As used in this paragraph 4, the word "reduce" means (i) to collect, (ii) to charge off, or (iii) to improve the quality of such assets sufficiently to warrant removal of any adverse classification by the FDIC.

[.5] 5. (a) Within 30 days from the effective date of this ORDER, the Bank shall eliminate from its books by collection, charge off or other proper entries, all assets or portions of assets classified "Loss" by the FDIC in the examination of the Bank as of February 26, 1990, which have not been previously charged off or collected, unless otherwise approved in writing by the Regional Director and the Commissioner. Reduction of these assets through use of proceeds of loans made by the Bank does not constitute collection for purposes of this paragraph 5.

[.6] (b) Within 30 days from the effective date of this ORDER, the Bank shall make an adjustment to capital in an amount equal to the net adjustment to capital resulting from the trading account losses for 1988 and 1989 not properly accounted for on the Bank's books, as identified by the FDIC in the examination of the Bank as of February 26, 1990.

[.7] 6. (a) Within 30 days from the effective date of this ORDER, and concurrently with compliance with the requirements of paragraph 5 of this ORDER, the Bank shall establish and thereafter continually maintain an adequate reserve for loan losses in accordance with the prevailing requirements of the Instructions for the Reports of Condition and Income by charges against current operating income. In complying with the requirements of this paragraph 6(a), the Bank's board of directors shall, at a minimum, review the adequacy of the Bank's reserve for loan losses prior to the end of each calendar quarter. The minutes of the board meeting at which such review is undertaken shall indicate the results of the review, the amount of any recommended increases in the reserve, and the basis for determining the amount of reserve provided.

(b) Reports of Condition and Income required to be filed by the Bank prior to the effective date of this ORDER and subsequent to September 30, 1989, shall reflect a provision for loan loss reserve necessary to comply with paragraph 6(a) of this ORDER. If necessary to comply with this paragraph 6(b), the Bank shall file amended Reports of Condition and Income within 30 days from the effective date of this ORDER.

[.8] 7. (a) By December 31, 1990, the Bank's primary capital as a percentage of its total assets ("capital ratio") shall equal or exceed 7 percent. Any increase in primary capital required to attain such capital ratio may be accomplished by one or more of the following:

- (i) The sale of new securities in the form of common stock or perpetual preferred stock; or
- (ii) The collection in cash of all or part of the assets classified "Loss" as of February 26, 1990, and charged off in accordance with paragraph 5 of this ORDER; or
- (iii) The direct contribution of cash by the directors and/or shareholders of the Bank; or
- (iv) The collection in cash of assets previously charged off; or
- (v) Any other means acceptable to the Regional Director and the Commissioner.

(b) (i) If all or part of the increase in the Bank's primary capital required under paragraph 7(a) of this ORDER involves a public distribution of the Bank's securities (including a distribution limited 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 of this ORDER as well as the circumstances giving rise to the offering, materials fully describing the securities being offered, including an accurate description of the financial condition of the Bank and of this ORDER as well as the

{{5-31-93 p.C-535}}and any other material disclosures necessary to comply with applicable Federal securities laws. Prior to the sale of such securities, and, in any event, not less than twenty (20) days prior to the dissemination of such materials, the materials used in the sale of the securities shall be submitted

to the FDIC, Registration and Disclosure Unit, Washington, D.C. 20429 and to the Commissioner for review. Any changes in such offering materials requested by the FDIC or the Commissioner shall be made prior to their dissemination.

(ii) In complying with the provisions of paragraph 7(b)(i) of this ORDER, the Bank shall provide to any subscriber and/or purchaser of Bank securities, written notice of any planned or existing development of other change which is 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 7(b)(ii) of the ORDER shall be furnished within ten (10) calendar days from the date that such material development or change was planned or occurred, whichever is earlier, and shall be furnished to every purchaser and/or subscriber of the Bank securities who received or was tendered the information contained in the Bank's original offering materials.

(c) Within 30 days after June 30, 1991, and within 30 days after each December 31 and June 30 thereafter while this ORDER remains in effect, the Bank's board of directors shall calculate the Bank's primary capital as a percentage of its total assets ("capital ratio") as of the nearest preceding December 31 or June 30 date. If such capital ratio is less than 7 percent, the Bank shall, within 120 days from the date of such calculation, increase its primary capital by an amount sufficient to raise its capital ratio to not less than 7 percent as of the nearest preceding June 30 or December 31 date.

(d) As used in this paragraph 7, the terms "primary capital" and "total assets" shall have the meanings ascribed to them in sections 325.2(h) and 325.2(k), respectively, of the FDIC's Rules and Regulations, 12 C.F.R. §§ 325.2(h) and 325.2(k).

[.9] 8. Effective date of this ORDER, the Bank shall not pay any cash or property dividends without the prior written consent of the Regional Director and the Commissioner.

[.10] 9. (a) Within 30 days from January 1, 1991, the Bank shall prepare and approve a realistic and comprehensive calendar year budget and earnings forecast for the Bank for calendar year 1991.

(b) The Bank shall prepare realistic and comprehensive calendar year budgets and earnings forecasts on a consolidated basis as of January 1 of each subsequent year for as long as this ORDER remains in effect.

(c) In preparing the budgets and earnings forecasts, required by this paragraph 9, the Bank shall, at a minimum:

(i) Identify the major areas in, and means by, which the board of directors will seek to improve the Bank's operating performance, with particular emphasis on increasing the Bank's net interest margin; and

(ii) Describe the operating assumptions that form the basis for, and adequately support, major projected income and expense components.

(d) Progress reports comparing the Bank's actual income and expense performance with the budgetary projections shall be submitted to the Regional Director and the Commissioner concurrently with the other reporting requirements set forth in paragraph 14 of this ORDER. The Bank's board of directors shall review such progress reports monthly, which review shall be recorded in the minutes of the board of directors.

[.11] 10. Within 120 days from the effective date of this ORDER, the Bank shall correct the internal routine and control deficiencies described on page 6-b of the FDIC's Report of Examination of the Bank as of February 26, 1990.

[.12] 11. (a) As of the effective date of this ORDER, all securities investment transactions by the Bank shall require the prior approval of the Bank's board of directors or the Executive Committee of the Bank's board of directors ("Executive Committee").

(b) All investments required by paragraph 11(a) of this ORDER to be submitted to the board or the Executive Committee for review and approval shall be supported by a written summary that provides information sufficient for the board or the Executive Committee to make a prudent decision.

[.13] 12. (a) As of the effective date of this ORDER, the Bank shall not participate in any trading account activity within the Bank's securities portfolio unless, prior to such participation: (i) a written comprehensive study has been conducted to determine how such trading account activity will benefit the Bank; (ii) the written study has been submitted to and reviewed and approved by the Bank's board of

directors; and (iii) the written study has been submitted to the Regional Director and the Commissioner for review and comment at least 30 days prior to the commencement of such activity.

(b) Any trading account activity engaged in by the Bank in conformance with paragraph 12(a) of this ORDER shall be properly reflected in the Reports of Condition and Income required to be filed by the Bank.

(c) For the purposes of this paragraph 12, "trading account activity" shall have the meaning ascribed to it in the Instructions for the Reports of Condition and Income.

[.14] 13. Following the effective date of this ORDER, the Bank shall send to its shareholders or otherwise furnish a description of this ORDER (a) in conjunction with the Bank's next shareholder communication and also (b) in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The description shall fully describe this ORDER in all material respects. The description and any accompanying communication, statement or notice shall be sent to the FDIC, Registration and Disclosure Unit, Washington, D.C. 24029, and to the Commissioner, for review at least 20 days prior to dissemination to shareholders. Any changes requested to be made by the FDIC or the Commissioner shall be made prior to dissemination of the description, communication, notice or statement.

[.15] 14. Within 90 days from the effective date of this ORDER, and every 90 days thereafter, unless and until each and every corrective action required by this ORDER has been accomplished, the Bank 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 and the Commissioner have released the Bank in writing from making further reports. All progress reports and other written responses to this ORDER shall be reviewed by the board of directors of the Bank and made a part of the minutes of the appropriate board meeting.

15. The provisions of this ORDER shall become effective ten (10) days from the date of its issuance and shall be binding upon the Bank and its institution-affiliated parties. Further, 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 Atlanta, Georgia, this 7th day of September, 1990.

Pursuant to delegated authority.