

{{11-30-04 p.C-5705}}

[¶12,025] **In the Matter of Clay County Bank, Inc., Clay, West Virginia**, Docket No. 02-201b (3-3-03).

A cease and desist order was issued, based on findings by the FDIC that it had reason to believe that respondent was engaged in unsafe and unsound practices. *(This order was terminated by order of the FDIC dated 9-1-04; see ¶16,392.)*

[.1] **Management—Qualifications Specified—Changes in, Notification Required**

[.2] **Board of Directors—Independent Director Required**

[.3] **Loan Policy—Unsafe and Unsound Practices—Written Plan Required**

[.4] **Loans—Extensions of Credit—To Borrowers with Existing Aversely Classified Credits**

[.5] **Assets—Charge-off or Collection**

[.6] **Assets—Risk Position—Written Plan Required**

[.7] **Loan Review and Grading System—Establishment of Required**
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[.8] **Loan Loss Reserve—Policy for Determining Adequacy of**

[.9] **Bank Operations—Written Policy Required**

[.10] **Earnings Plan—Written Earnings Plan Required**

[.11] **Capital—Maintain Capital Ratio**

[.12] **Shareholders—Disclosure of Cease and Desist Order Required**

**In the Matter of
 CLAY COUNTY BANK, INC.
 CLAY, WEST VIRGINIA
 (Insured State Nonmember Bank)
 ORDER TO CEASE AND DESIST**

FDIC-02-201b

Clay County Bank, Inc., Clay, West Virginia ("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 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") and with the Commissioner of Banking of the State of West Virginia ("State"), dated February 21, 2003. The State may issue an order to cease and desist pursuant to Chapter 31A-2-4 of the West Virginia Code. Solely for the purpose of this proceeding and without admitting or denying any of the alleged charges of unsafe or unsound banking practices and violations of laws and/or regulations, the Bank consented to the issuance of an ORDER TO CEASE AND DESIST ("ORDER") by the FDIC and the State.

MANAGEMENT

[.1]1. (a) Within 90 days of the effective date of this ORDER, the Board of Directors ("Board") shall have and retain management having qualifications and experience commensurate with his or her duties and responsibilities at the Bank including the following:

- (i) a chief executive officer with the proven ability in managing a bank of comparable size and in effectively implementing lending, investment and operating policies in accordance with sound banking practices; and
- (ii) a senior lending officer with significant appropriate lending, collection, and loan supervision experience, and proven success in upgrading a low quality loan portfolio; and
- (iii) a chief operating officer with significant appropriate experience in managing the operations of a bank of similar size and complexity in accordance with sound banking practices.

(b) The qualifications of management shall be assessed on each person's 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.

(c) During the life of this ORDER, the Bank shall notify the Regional Director of the FDIC's Atlanta Regional Office ("Regional Director") and the State (collectively, "Supervisory Authorities") in writing when it proposes to add any individual to the Bank's Board or make any changes or additions to senior executive staff. 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 shall comply with section 32 of the Act, 12 U.S.C. §1831i.

BOARD OF DIRECTORS

[.2]2. (a) Within 120 days from the effective date of this ORDER, the Bank shall add to its Board two new members who are independent directors. For purposes of this ORDER, a person who is an independent director shall be any individual:

- (i) Who is not an officer of the Bank;
- (ii) Who does not own more than five percent of the outstanding shares of the Bank or its holding company;
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- (iii) Who is not related by blood or marriage to an officer or director of the Bank or to any shareholder owning more than five percent of the outstanding shares of the bank or its holding company, and who does not otherwise share a common financial interest with such officer, director or shareholder; and
- (iv) Who is not indebted to the Bank directly or indirectly by blood, marriage or common financial interest, including the indebtedness of any entity in which the individual has a substantial financial interest in an amount exceeding five percent of the Bank's total Tier I capital and Allowance; or
- (v) Who is deemed to be an independent director for purpose of this ORDER by the Supervisory Authorities.

(b) The addition of any new Bank directors required by this paragraph may be accomplished, to the extent permissible by State statute or the Bank's bylaws, by means of appointment or election at a regular or special meeting of the Bank's Board.

LENDING AND COLLECTION POLICIES

[.3]3. Within 60 days from the effective date of this ORDER, the Bank shall revise, adopt, and implement a written lending and collection policy to provide effective guidance and control over the Bank's lending function, which policy shall include, at a minimum, revisions to address all items of criticism enumerated on pages 44–46 of the Report as well as specific guidelines for placing loans on a nonaccrual basis. In addition, the Bank shall obtain adequate and current documentation for all loans in the Bank's portfolio. Specific procedures shall be included for prior approval of loans to directors, officers and principal shareholders and their related interests in compliance with applicable laws and regulations. The Bank shall adopt changes it considers necessary and appropriate and management shall reaffirm its intent to comply with the policy, as amended. The policy and its implementation shall be in a form and manner acceptable to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

NO ADDITIONAL CREDIT

[.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 classified, in whole or part, "Loss" or "Doubtful" and is uncollected. The requirements of this paragraph shall not prohibit the Bank from renewing (after collection in cash of interest due from the borrowers) any credit already extended to any borrower.

(b) Additionally, during the life 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 in part, "Substandard" and is uncollected. The requirements of this paragraph shall not prohibit the Bank from renewing (after collection in case of interest due from the borrowers) any credit already extended to any borrower.

(c) Paragraph 4(b) shall not apply if the Bank's failure to extend further credit to a particular borrower would be detrimental to the best interest of the Bank. Prior to the extension of any additional credit pursuant to this Paragraph, either in the form of a renewal, extension, or further advance of funds, such additional credit shall be approved by a majority of the Board or a designated committee thereof, who shall certify in writing as follows:

(i) why the failure of the Bank to extend such credit would be detrimental to the best interests of the Bank;

(ii) that the Bank's position would be improved thereby; and

(iii) how the Bank's position would be improved.

The signed certification shall be made a part of the minutes of the Board or its designated committee and a copy of the signed certification shall be retained in the borrower's credit file.

CHARGE-OFF

[.5]5. (a) Within ten days from 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" in the Report, that have not been previously
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collected or charged-off. Reduction of these assets through proceeds of other loans

made by the Bank is not considered collection for purposes of this paragraph.

(b) Within ten days from the effective date of this ORDER, the Bank shall eliminate from its books, by collection, charge-off, or other proper entries, 50 percent of those assets classified "Doubtful" in the Report that have not been previously collected or charged off. If an asset classified "Doubtful" is a loan or a lease, the Bank may, in the alternative, increase its Allowance by an amount equal to 50 percent of the loan or lease classified "Doubtful."

(c) Additionally, while this ORDER remains in effect, the Bank shall, within 30 days of the receipt of any official Report of Examination of the Bank from either of the Supervisory Authorities, eliminate from its books, by collection, charge-off, or other proper entries, the remaining balance of any assets classified "Loss" and 50 percent of those classified "Doubtful" unless otherwise approved in writing by the Supervisory Authorities. If an asset classified "Doubtful" is a loan or lease, the Bank may, in the alternative, increase its Allowance by an amount equal to 50 percent of the loan or lease classified "Doubtful."

(d) The requirements of subparagraphs 5(a), 5(b), and 5(c) of this ORDER are not be construed as standards for future operations and, in addition to the foregoing, the Bank shall eventually reduce the total of all adversely classified assets. Reduction of these assets through proceeds of other loans made by the Bank is not considered collection for the purpose of this paragraph.

SPECIAL MENTION

6. Within 60 days from the effective date of this ORDER, the Bank shall correct the cited deficiencies in the loans listed for "Special Mention" on pages 41 through 43 of the Report.

REDUCTION OF CLASSIFIED ASSETS

[.6]7. (a) Within 60 days from the effective date of this ORDER, the Bank shall adopt and implement a written plan to reduce the Bank's position in each asset in excess of \$50,000 which was classified "Substandard" or "Doubtful" in the Report. Such plan shall be submitted to the Supervisory Authorities for their review and comment. 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 three months from the effective date of this ORDER; and

(ii) Provisions for the submission of monthly written progress reports to the Bank's Board for review and notation in the minutes of the meeting of the Board.

(c) As used in this paragraph, reduce means to:

(i) collect;

(ii) charge-off; or

(iii) improve the quality of such assets so as to warrant removal of any adverse classification by the Supervisory Authorities.

(d) Following the receipt of any comment from the Supervisory Authorities, and after the adoption of any recommended changes, the Bank shall approve the written plan,

which approval shall be recorded in the Board's minutes. Thereafter, the Bank shall implement and follow this written plan.

INTERNAL LOAN REVIEW

[.7]8. Within 60 days from the effective date of this ORDER, the Bank shall adopt and implement an internal loan review and grading system to provide for the periodic review of the Bank's loan portfolio in order to identify and categorize the Bank's loans, and other extensions of credit which are carried on the Bank's books as loans, on the basis of credit quality. The Bank shall also within 60 days from the effective date of this ORDER, submit the written internal loan review and grading system to the Supervisory Authorities for review. Such system and its implementation shall be satisfactory to the Supervisory Authorities as determined at their initial review and at subsequent examinations and/or visitations. At a minimum, the grading system shall provide for:

(a) specification of standards and criteria for assessing the credit quality of the Bank's loans;

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(b) application of loan grading standards and criteria to the Bank's loan portfolio;

(c) categorization of the Bank's loans into groups based on the varying degrees of credit and other risks which may be presented under the applicable grading standards and criteria, but in no case, will a loan be assigned a rating higher than that assigned by examiners at the last examination or visitation of the Bank unless approved in writing by the Supervisory Authorities;

(d) assessment of the likelihood that each loan exhibiting credit and other risks will not be repaid according to its terms and conditions;

(e) identification of any loan that is not in conformance with the Bank's loan policy;

(f) identification of any loan which presents any unsafe or unsound banking practice or condition or is otherwise in violation of any applicable State or Federal law, regulation, or statement of policy; and

(g) requirement of a written report to be made to the Bank's Board and Audit Committee, not less than quarterly after the effective date of this ORDER. The report shall identify the status of those loans which exhibit credit and other risks under the applicable grading standards/criteria and the prospects for full collection and/or strengthening of the quality of any such loans.

ALLOWANCE FOR LOAN AND LEASE LOSSES

[.8]9. Within 60 days from the effective date of this ORDER, the Bank shall review the adequacy of the Allowance and establish a comprehensive policy for determining the adequacy of the Allowance. For the purpose of this determination, the adequacy of the Allowance shall be determined after the charge-off of all loans or other items classified "Loss." The policy shall provide for a review of the Allowance at least once each calendar quarter. Said review should be completed in order that the findings of the Board with respect to the Allowance 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 and lease 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, and may include such other factors as the Board deems relevant. A deficiency in the Allowance shall be remedied in the calendar quarter it is discovered, prior to submitting the Report of Condition and Income, by a charge to current operating income earnings. The minutes of the Board meeting at which such review is undertaken shall indicate the results of the review. The Bank's policy for determining the adequacy of the Allowance and its implementation shall be satisfactory to the Supervisory Authorities

as determined at subsequent examinations and/or visitations.

INTERNAL CONTROLS

[.9]10. (a) Within 60 days from the effective date of this ORDER, the Bank shall cause all internal routine and control deficiencies cited in the Report on pages 49–50 to be corrected.

(b) Within 60 days from the effective date of this ORDER, the Bank shall adopt and implement a written policy for the operation of the Bank in such a manner as to provide internal routine and controls consistent with safe and sound Bank practices. Such policy and its implementation shall be satisfactory to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

(c) The Bank's Board shall conduct a review of the internal audit program to ensure it contains the proper control environment and promotes the accuracy and efficiency in the operations of the Bank. The Bank's Board shall also ensure that the internal auditor receives any additional training necessary or advisable. Any actions taken by the Board under this paragraph shall be noted in the minutes of the Board.

BUDGET

[.10]11. Within 60 days from the effective date of this ORDER, the Bank shall formulate and fully implement a written plan to improve earnings for each calendar year. This plan shall be forwarded to the Supervisory Authorities for review and comment and shall, at a minimum:

(a) Identify the major areas in, and means by which, the Board shall seek to improve the Bank's operating performance;

(b) Require realistic and comprehensive budgets;

(c) Require a budget review process to monitor the income and expenses of the [{{5-31-05 p.C-5710}}](#)

Bank to compare the actual figures with budgetary projections on not less than a quarterly basis; and

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

Following the end of each calendar quarter, the Board shall evaluate the Bank's actual performance in relation to the plan required by this paragraph and shall record the results of the evaluation, and any actions taken by the Bank, in the minutes of the Board meeting at which such an evaluation is undertaken.

CAPITAL

[.11]12. Within 60 days from the effective date of this ORDER, the Bank shall develop and adopt a capital plan designed to maintain an adequate level of capital protection for the kind and quality of assets held by the Bank. The Plan should address both internal and external sources of capital augmentation, including capital infusions and retention of earnings. The Plan shall be in a form and manner acceptable to the Supervisory Authorities as determined at subsequent examinations.

CASH DIVIDENDS

13. The Bank shall not pay cash dividends without the prior written consent of the Supervisory Authorities.

VIOLATIONS OF LAW

14. Within 60 days from the effective date of this ORDER, the Bank shall eliminate and/or correct all violations of law which are set out on pages 20–22 of the Report. In

addition, the Bank shall henceforth comply with all applicable laws and regulations.

NOTICE TO SHAREHOLDERS

[.12]15. 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 15 days prior to dissemination to shareholders. A copy of the description and any accompanying communication, statement, or notice shall also be sent to the State. Any changes requested to be made by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement.

PROGRESS REPORTS

16. Within 30 days of the end of the first quarter following the effective date of this ORDER, and within 30 days of the end of each quarter thereafter, the Bank shall furnish written progress reports to the Supervisory Authorities detailing the form and manner of any actions taken to secure compliance with this ORDER and the results thereof. Such reports shall include a copy of the Bank's Report of Condition and the Bank's Report of Income. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the Supervisory Authorities have released the Bank in writing from making further reports.

This ORDER shall become effective 10 days from the date of its issuance.

Pursuant to delegated authority.

Dated at Atlanta, Georgia, this 3rd day of March, 2003.

Last
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