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[¶11,934] In the Matter of Genesee Regional Bank, Rochester, New York,
Docket No. 02-037b (5-22-02).

A cease and desist order was issued, based on findings by the FDIC that it had reason to believe that respondent had engaged in unsafe and unsound practices. *(This order was terminated by order of the FDIC dated 8-2-05; see ¶16,430.)*

[.1] Business Plan—Preparation Required

[.2] Management—Qualifications Specified

[.3] Management—Management Report Required

[.4] Board of Directors—Written Plan Required

[.5] Loan Loss Reserve—Establishment of or Increase Required

[.6] Capital—Increase Required

[.7,.9] Loan Policy—Preparation or Revision of Policy Required

[.8] Interagency Guidance on Subprime Lending—Compliance with Policy Required

[.10] Assets—Charge-off or Collection

[.11] Loans—Special Mention

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[.12] Loans—Extensions of Credit—To Borrowers with Existing Adversely Classified Credits

[.13] Violations of Law—Correction of Violations Required

[.14] Bank Operations—Internal Controls, Correction of Weaknesses Required

[.15] Funds Management and Liquidity—Preparation or Revision of Funds Management Policy Required

[.16] Reports of Condition and Income—Amendment Required

[.17] Dividends—Dividends Restricted

[.18] Golden Parachute Payments—Prohibited

[.19] Board of Directors—Committee to Review Compliance with Cease and Desist Order Required

**In the Matter of
GENESEE REGIONAL BANK
ROCHESTER, NEW YORK
(Insured State Nonmember Bank)
ORDER TO CEASE AND DESIST**

FDIC-02-037b

GENESEE REGIONAL BANK, Rochester, New York ("Insured Institution"),

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 Insured Institution 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 May 17, 2002, 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 Insured 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 Insured 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 Insured Institution, its successors and assigns, its directors, officers, employees, agents, and other "institution-affiliated parties," (as that 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) Engaging or entering into hazardous lending and loan administration practices;
- (b) Operating the Insured Institution with inadequate capital in relation to the kind and quality of assets held and anticipated growth of the Insured Institution;
- (c) Operating the Insured Institution with an excessive volume of poor quality assets;
- (d) Operating the Insured Institution with an inadequate allowance for loan and lease losses;
- (e) Operating the Insured Institution with inadequate loan review;
- (f) Operating the Insured Institution with inadequate internal routine and controls and unsatisfactory risk management policies and procedures;
- (g) Operating the Insured Institution in such a manner as to produce unsatisfactory earnings;
- (h) Operating the Insured Institution in such a manner as to produce operating losses;
- (i) Operating the Insured Institution with management whose policies and practices are detrimental to the Insured Institution and jeopardize the safety of its deposits;
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- (j) Operating the Insured Institution with a board of directors which has failed to provide adequate supervision over and direction to the active management of the Insured Institution;
- (k) Operating the Insured Institution with an excessive concentration of credit in its subprime indirect automobile loan portfolio;
- (l) Operating the Insured Institution without a board of director approved

subprime lending program;

(m) Failing to employ proper accounting methods;

(n) Failing to provide the Insured Institution with operational personnel who have experience that is adequate to ensure safe and sound operation of the Insured Institution and to ensure compliance with applicable laws and regulations; and

(o) Engaging in violations of applicable Federal and State laws and/or regulations, as more fully set forth on pages 15-17 of the Joint Report of Examination of the Insured Institution by the FDIC and the New York State Banking Department ("NYSBD") as of December 31, 2001 (the "Joint Report of Examination").

IT IS FURTHER ORDERED that the Insured Institution take AFFIRMATIVE action as follows:

[.1]1. (a) Within 45 days from the effective date of this ORDER, the board of directors of the Insured Institution shall develop and submit to the Regional Director of the New York Regional Office of the FDIC ("Regional Director") and the Superintendent of Banks, New York State Banking Department ("Superintendent") a three-year Strategic Business Plan ("Business Plan"), which includes at a minimum:

(i) objectives and specific strategies with respect to the Insured Institution's indirect motor vehicle lending program;

(ii) strategies for managing the various types of risks facing the Insured Institution;

(iii) a minimum of three years of pro-forma quarterly financial statements, supported by the underlying financial and economic assumptions;

(iv) projections as to growth, capital, deposit sources, and general investment plans;

(v) a plan for achieving, and a realistic estimate of the date by which the Insured Institution shall achieve, satisfactory profitability (earnings that are sufficient to support operations and maintain adequate capital and allowance levels after consideration is given to asset quality, growth, and other factors affecting the quality, quantity, and trend of earnings).

(b) The board of directors of the Insured Institution shall assess, on at least a quarterly basis, the Insured Institution's performance in relation to its Business Plan, shall determine the cause and implications of any substantial deviations therefrom, and shall amend the Business Plan on an ongoing basis as appropriate.

(c) During the life of this ORDER, the Insured Institution shall immediately notify the Regional Director and the Superintendent in writing of any material adverse developments affecting the Insured Institution's condition, performance or substantial deviation from its Business Plan.

[.2]2. (a) The Insured Institution shall have and retain qualified management. Each member of management shall have qualifications and experience commensurate with his or her duties and responsibilities at the Insured Institution. Such management shall include a chief executive officer and an experienced senior lending officer responsible for supervising the Insured Institution's lending and the workout of problem credits. The qualifications of management shall be assessed on its ability to:

(i) comply with the requirements of this ORDER;

(ii) improve and thereafter maintain the Insured Institution in a safe and sound manner;

(iii) comply with all applicable Federal and State laws and regulations, and FDIC, Interagency and FFIEC policy statements;

(iv) restore all aspects of the Insured Institution to a safe and sound condition, including capital adequacy, asset quality, management effectiveness, earnings and liquidity; and

(v) successfully implement the Business Plan prepared in accordance with paragraph 1.

(b) During the life of this ORDER, the Insured Institution shall notify the Regional Director and the Superintendent in writing of any resignations and/or terminations of

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any members of its board of directors and/or any of its executive officers. In addition, the Insured Institution shall comply with section 32 of the Act, 12 U.S.C. §1831i, which includes a requirement that the Insured Institution shall notify the Regional Director in writing at least 30 days prior to any individual assuming a new position as a senior executive officer or any additions to the board of directors of the Insured Institution.

[.3]3. (a) To ensure both compliance with this ORDER and to facilitate having and retaining qualified management, the board of directors of the Insured Institution shall, within 60 days from the effective date of this ORDER, undertake an in-depth analysis and review of the Insured Institution's managerial requirements and make a written report ("Management Report") on the Insured Institution's management needs. The Management Report shall incorporate an analysis of the Insured Institution's management and staffing requirements and shall, at a minimum:

(i) provide a review of the composition, policies and practices of the Insured Institution's current operating management;

(ii) provide a recommendation of whether current operating management should be changed, or the terms and conditions under which current operating management should be continued;

(iii) provide an evaluation of each Insured Institution officer indicating whether these officials possess the ability, experience and other qualifications required to perform present and anticipated duties, including adherence to the Insured Institution's established policies and practices and maintenance of the Insured Institution in a safe and sound condition;

(iv) identify both the number and type of positions needed to properly supervise the Insured Institution's lending functions, giving appropriate consideration to the Insured Institution's loan volume, customer base and the number of problem credits;

(v) provide a clear and concise description of the general duties and responsibilities for each Insured Institution officer and their key support staff;

(vi) identify the skills, experience and compensation required for each position;

(vii) establish a plan to recruit, hire and/or replace personnel based on ability and experience;

(viii) establish a plan providing for periodic evaluation of each individual's job performance; and

(ix) provide for periodic review of the Insured Institution's management and updating of lending policies and procedures.

(b) The board of directors of the Insured Institution shall obtain the services of an outside consultant, acceptable to the FDIC and the NYSBD, who is knowledgeable in the area of bank management, lending, collections and personnel evaluation to assist the board of directors in reviewing the Insured Institution's management needs and preparing the Management Report. The acceptability of the consultant shall be based on the consultant's ability to advise the Insured Institution in each of the areas identified in paragraph 3(a) of this ORDER.

(c) Within 60 days from the effective date of this ORDER, the board of directors of the Insured Institution, with the assistance of the outside consultant, shall prepare a written plan of implementation ("Plan") addressing the findings of the Management Report. The Plan shall specify the actions to be taken by the board of directors and the time frames for each action.

(d) Within 90 days from the effective date of this ORDER, the board of directors of the Insured Institution shall prepare a written report ("Written Report") which shall contain (i) a recitation identifying the recommendations made by the outside consultant which have been incorporated in the Management Report and Plan; (ii) a recitation identifying the recommendations made by the outside consultant which were not incorporated in the Management Report and Plan and the reasons for not including such recommendations; and (iii) a copy of any report prepared by the outside consultant.

(e) Promptly after preparation of the Management Report, Plan, and Written Report, but no later than 95 days from the effective date of this ORDER, a copy of the Management Report, Plan, and Written Report shall be submitted to the Regional Director and the Superintendent for review and comment. Within 30 days from receipt of any comments, and after consideration of such comments, the board of directors of the Insured Institution shall approve the Management Report [{{7-31-02 p.C-5466}}](#)

and Plan, which approval shall be recorded in the minutes of the meeting of the board of directors. It shall remain the responsibility of the board of directors to fully implement the Plan within the specified time frames. In the event the Plan, or any portion thereof, is not implemented, the board of directors shall immediately advise the Regional Director and the Superintendent, in writing, of the specific reasons for deviating from the Plan.

[.4]4. (a) Within 90 days from the effective date of this ORDER, the board of directors shall develop a written analysis and assessment of the composition and functions of the board of directors ("Directors' Plan"), which shall include, at a minimum:

(i) an evaluation of each member of the board of directors to determine whether those individuals and the board as a whole have the ability, experience, independence, and other qualifications which are necessary to perform the duties of the board, including providing effective oversight and guidance of management and staff to ensure adherence to the board's policies and to maintain the Insured Institution in a safe and sound condition; and

(ii) a written plan of action to enhance the effectiveness of the board by either adding new members to the board with the necessary ability, experience, independence and other qualifications, or requiring additional education and training for existing members of the board, or both.

(b) The board of directors of the Insured Institution shall obtain the services of an outside consultant, acceptable to the FDIC and Superintendent, who is knowledgeable in the area of bank management, to assist in evaluating the board

of directors and preparing the Directors' Plan. This consultant may be the same consultant employed to prepare the Management Report required by paragraph 3(a). In the event that recommendations made by the consultant are not included in the Directors' Plan, the board of directors shall immediately advise the Regional Director and Superintendent, in writing, of the specific reasons for which the recommendations were excluded from the Directors' Plan.

(c) The Directors' Plan and any subsequent modifications thereto shall be submitted to the Regional Director and Superintendent for review and comment. Within 30 days from the receipt of any comment from the Regional Director and Commissioner, and after considering such comment, the board of directors shall approve the Directors' Plan and/or any subsequent modification thereto, which approval shall be recorded in the minutes of the board of directors. Thereafter, the board of directors of the Insured Institution shall implement and follow the Directors' Plan and/or any subsequent modifications thereto.

[.5]5. (a) Within 30 days from the effective date of this ORDER, the Insured Institution shall establish and shall thereafter maintain, through charges to current operating income, an adequate valuation reserve for loan and lease losses. In determining the adequacy of the valuation reserve for loan and leases losses, the board of directors of the Insured Institution shall at a minimum consider the following:

(i) Prevailing instructions contained in the Federal Financial Institutions Examination Council booklet entitled "Instructions—Consolidated Reports of Condition and Income", together with guidance contained in the Interagency Policy Statement on the Allowance for Loan and Lease Losses, dated December 21, 1993, and the FDIC Policy Statement on Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions, dated July 2, 2001;

(ii) The volume and mix of the existing loan portfolio, including the volume and severity of nonperforming loans, and adversely classified credits, as well as an analysis of net charge-offs experienced on previously adversely classified loans (with respect to subprime loans, the Insured Institution shall comply with the further requirements set forth in paragraph 6 of this ORDER);

(iii) The extent to which loan renewals and extensions are used to maintain loans on a current basis and the degree of risk associated with such loans;

(iv) The trend in loan growth, including any rapid increase in loan volume within a relatively short time period;

(v) General and local economic conditions affecting the collectibility of the Insured Institution's loans;

(vi) Previous loan loss experience by loan type, including the trend of net charge-offs as a percent of average loans over the past several years;
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(vii) Off balance sheet credit risks;

(viii) The overall risk associated with each concentration of credit together with the degree of risk associated with each related individual borrower; and

(ix) Any other factors appropriate in determining future valuation reserves.

(b) Prior to the submission of any Report of Condition or Report of Income, the board of directors of the Insured Institution shall review the adequacy of the Insured Institution's valuation reserve for loan and lease losses. The minutes of the board meetings at which each review is undertaken shall indicate the results of the review, the amount of any increase to the reserve, and the basis for the amount of the

valuation reserve. The criteria for the review shall be as set forth in Paragraph 3(a).

(c) All increases in the allowance for loan and lease losses, with the exception of recoveries credited directly to the allowance, shall be accomplished by charges to operating earnings through the provision for loan and lease losses.

[.6]6. (a) Within 90 days from the effective date of this and during the life of this ORDER thereafter, the Insured Institution shall establish and maintain a total risk-based capital ratio equal to or greater than eight (8) percent.

(b) The total risk-based capital ratio shall be calculated utilizing the framework set forth in the FDIC Statement of Policy on Risk-Based Capital, Appendices A and B to Part 325 of the FDIC's Rules and Regulations, 12 C.F.R. Part 325, Appendices A and B, except that the following risk weights shall be utilized with respect to the Insured Institution's asset category of indirect automobile loans:

(i) a 150 percent risk weight shall apply to the indirect automobile loan category where the respective borrower had a Fair, Isaac & Company ("FICO") score greater than 660;

(ii) a 300 percent risk weight shall apply to indirect automobile loans for which the credit file does not contain a FICO score for the borrower or where the FICO score is below 660.

(c) The total risk-based capital ratio shall be determined quarterly by the Insured Institution as part of its capital analysis conducted in accordance with the guidance provided in the Interagency Expanded Guidance for Subprime Lending Programs and pursuant to paragraph 7 of this ORDER.

(d) The Insured Institution shall not lend funds directly or indirectly, whether secured or unsecured, to any purchaser of Insured Institution stock or to any investor by any other means for any portion of any increase in risk-based capital required herein.

[.7]7. (a) Within 30 days from the effective date of this ORDER, the Insured Institution shall revise, adopt and implement written lending and collection policies and procedures to provide effective guidance and control over the subprime lending activities of the Insured Institution and shall include a review of the adequacy of the Insured Institution's allowance for loan and lease losses.

(b) For the purpose of this ORDER, the term "subprime" shall have the meaning and characteristics as described in the Interagency Expanded Guidance for Subprime Lending Programs.

(c) The policies and procedures shall, at a minimum, include provisions which will bring the Insured Institution's loan policy into conformance with the standards and guidance set forth in the Interagency Guidance on Subprime Lending Programs and the FFIEC Uniform Retail Credit Classification and Account Management Policy. The Insured institution's revised subprime lending policies and procedures and their implementation shall be in a form and manner acceptable to the Regional Director and the Superintendent. At a minimum, the policies shall include the following:

(i) establishment of risk management policies and procedures including procedures to classify subprime loans in accordance with (1) the Interagency Guidance on Subprime Lending, (2) the Interagency Expanded Guidance for Subprime Lending Programs, and (3) the FFIEC Uniform Retail Credit Classification and Account Management Policy;

(ii) establishment of policies and procedures for the timely review and analysis of the adequacy of the Insured Institution's allowance for loan and lease losses and the regulatory capital allocated to support the Insured Institution's subprime lending program. The Insured Institution shall fully

document the methodology and analysis utilized to support the allowance
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for loan and lease losses and the regulatory capital allocated to support the Insured Institution's subprime lending program. The Insured Institution's capital adequacy analysis and procedures should include stress and shock testing as such terms are described in the Interagency Expanded Guidance for Subprime Lending Programs and an estimation of the subprime indirect automobile loan portfolio's susceptibility to deteriorating economic, market and business conditions;

(iii) establishment of subprime lending policies and procedures that include minimum credit standards and loan review, including portfolio and transaction level testing, loan classification guidelines, and a provision to the effect that deviations from the written lending policies and procedures shall require the prior approval of the board of directors of the Insured Institution;

(iv) a requirement that a schedule of all loans approved, including loan modifications, extensions and renewals shall be reviewed by the board of directors of the Insured Institution on a monthly basis;

(v) a provision ensuring that delinquencies and charge-offs are accurately reported to the board of directors on a monthly basis;

(vi) a provision specifically outlining the collection procedures to be taken by the Insured Institution when borrowers fail to make timely payments; and

(vii) procedures for obtaining, maintaining and reviewing complete and current credit files on each borrower.

(d) Within 30 days from the effective date of this ORDER, the board of directors of the Insured Institution shall adopt and implement a written program for an accurate accounting of the Insured Institution's indirect motor vehicle loan category, including motor vehicle repossessions and subsequent motor vehicle sales. The written program shall include, but not be limited to, hiring a qualified loan officer for the workout of problem credits; developing management information systems to monitor subprime loan activity; developing internal and external audit functions and accounting policies to accurately account for repossessed motor vehicle assets and gains and/or losses on sales of Insured Institution-financed motor vehicles; and the elimination of residual loan balances.

[.8]8. Immediately upon the effective date of this ORDER, the Insured Institution shall not extend, either directly or indirectly, any new or additional credit, with respect to subprime lending activities until such time that the Insured Institution complies with the Interagency Expanded Guidance for Subprime Lending Programs and receives the prior written consent of the Regional Director and the Superintendent.

[.9]9. Within 60 days from the effective date of this ORDER, the Insured Institution shall review its written loan policy and make whatever changes may be necessary to provide for the safe and sound administration of all aspects of the lending function. Loan documentation, repayment programs, collection and charge-off procedures and internal loan review shall also be included as a part of the review. Changes relative to subprime lending will comply with paragraph 7 of this ORDER. The Insured Institution 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 Regional Director and the Superintendent as determined at subsequent examinations and/or visitations.

[.10]10. (a) Within 10 days from the effective date of this ORDER, the Insured Institution shall eliminate from its books, by collection or charge-off, all assets

classified "Loss" and one-half of the assets classified "Doubtful" as of December 31, 2001. Reduction of these assets through proceeds of other loans made by the insured institution is not considered collection for the purposes of this paragraph.

(b) Within 30 days from the effective date of this ORDER, the Insured Institution shall develop and submit to the Regional Director and the Superintendent an acceptable "workout" strategy for those certain commercial loans aggregating \$882,000 discussed more fully on pages 26-27 of the Report of Examination, which shall include a timetable for the repayment, sale or other liquidation of such loans.

[.11]11. Within 90 days of the effective date of this ORDER, the Insured Institution shall sufficiently reduce or otherwise improve assets listed for Special Mention as of December 31, 2002.

[.12]12. (a) Beginning with the effective date of this ORDER, the Insured Institution

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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 with the Insured Institution that has been charged off or classified, in whole or in part, "Loss" or "Doubtful" and is uncollected. The requirements of this paragraph shall not prohibit the Insured Institution from renewing (after collection in cash of interest due from the borrower) any credit already extended to any borrower.

(b) Beginning with the effective date of the ORDER, the Insured Institution shall not make any further extensions of credit, directly or indirectly, to any borrower whose loans are adversely classified "Substandard" as of December 31, 2001, without prior approval by the Insured Institution's board of directors after the board's affirmative determination, as reflected in the minutes of the meeting, that the extension of credit is in full compliance with the Insured Institution's loan policy, that the extension of credit is necessary to protect the Insured Institution's interest or is adequately secured, that credit analysis has determined the customer to be creditworthy, and that all necessary loan documentation is on file, including current financial and cash flow information and satisfactory appraisal, title and lien documents.

[.13]13. Within 90 days from the effective date of this ORDER, the Insured Institution shall eliminate and/or correct all violations of law and/or regulations, as described on pages 15-17 of the Joint Report of Examination of the Insured Institution. In addition, the Insured Institution shall take all steps necessary to ensure future compliance with all applicable Federal and State laws and regulations and FDIC, Interagency and FFIEC guidance and policy statements.

[.14]14. Within 90 days from the effective date of this ORDER, the Insured Institution's board of directors shall revise, adopt and implement written policies and procedures to provide effective guidance and control over the internal routine and controls of the Insured Institution, in accordance with safe and sound banking practices. Among other provisions, the revised policies and procedures shall specifically provide for correction of all internal routine and controls deficiencies scheduled in the Joint Report of Examination of the Insured Institution. 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.

[.15]15. Within 60 days from the date of this ORDER, the Insured 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 Superintendent for review and comment.

[.16]16. (a) Within 30 days from the effective date of this ORDER, the Insured Institution shall review all Reports of Condition and Income filed with the FDIC on and after December 31, 2001 and shall amend and file with the FDIC amended Reports of Condition and Income which accurately reflect the financial condition of the Insured Institution as of the date of each such report.

(b) In addition to the above and during the life of this ORDER, the Insured Institution shall file with the FDIC, Reports of Condition and Income which accurately reflect the financial condition of the Insured Institution as of the reporting period. In particular such reports shall include any adjustment in the Insured Institution's books made necessary or appropriate as a consequence of any FDIC or NYSBD examination of the Insured Institution during that reporting period and the results of the Joint Report of Examination of the Insured Institution.

[.17]17. The Insured Institution shall not declare or pay either directly or indirectly any dividends, whether in cash, stock, or otherwise, on any class of its stock, without the prior written consent of the Regional Director and the Superintendent.

[.18]18. Immediately upon the effective date of this ORDER, the Insured Institution shall:

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(a) Not enter into any agreements with present and former officers of the Insured Institution which constitute "golden parachute payments", as defined in section 18(k)(4) of the Act, 12 U.S.C. §1828(k)(4);

(b) Rescind all agreements or portions of agreements with present and former officers of the Insured Institution which constitute "golden parachute payments";

(c) Cease making any payments to present and former officers of the Insured Institution which constitute "golden parachute payments"; and

(d) Take whatever legal steps are necessary to obtain reimbursement from all former officers of the Insured Institution of any payments which have already been made to them and which constitute "golden parachute payments".

[.19]19. The board of directors of the Insured Institution shall appoint a committee (the "Compliance Committee") composed of at least three directors who are not now and have never been involved in the daily operations of the Insured Institution, and whose composition is acceptable to the Regional Director and the Superintendent, to monitor the Insured Institution's compliance with this ORDER. Within 30 days from the effective date of this ORDER, and at monthly intervals thereafter, such Compliance Committee shall prepare and present to the Insured Institution's board of directors a written report of its findings, detailing the form, content, and manner of any action taken to ensure compliance with this ORDER and the results thereof, and any recommendations with respect to such compliance. Such progress reports shall be included in the minutes of the meeting of the Insured Institution's 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.

20. By the 15th day of each month the Insured Institution will provide to the Regional Director and Superintendent reports for the prior month as follows:

(a) Insured Institution statements of condition and income;

(b) Report of performance indicators for the month including:

- (i) calculations providing Tier 1 leverage capital leverage and Tier 1 and total risk-based capital ratios;
- (ii) return on average assets (annualized to date);
- (iii) net interest margin (annualized to date).

(c) Loan portfolio reports of delinquency and charge-off activity.

(d) The term "Tier 1 capital" shall have the meaning ascribed to it in Part 325 of the FDIC's Rules and Regulations, section 325.2(t), 12 C.F.R. 325.2(t).

21. By the 30th day after the end of the calendar quarter following the effective date of this ORDER, and by the 15th day after the end of every calendar quarter thereafter, the Insured Institution shall furnish written progress reports to the Regional Director and the Superintendent detailing the form, content, and manner of any actions taken to secure compliance with this ORDER, and the results thereof.

The effective date of this ORDER shall be immediately upon the date of issuance.

The provisions of this ORDER shall be binding upon the Insured Institution, its successors, assigns, directors, officers, employees, agents, and other institution-affiliated parties.

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.

Pursuant to delegated authority.

Dated: May 22, 2002.

Last
Updated legal@fdic.gov
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