

{{11-30-93 p.C-1370}}

[¶10,319] **In the Matter of Bank of Bourbonnais, Bourbonnais, Illinois, Docket No. FDIC-91-227b (8-27-91).**

Bank to cease and desist from such unsafe or unsound practices as following hazardous lending and lax collection practices; operating with inadequate capital; operating in violation of applicable laws or regulations; operating with excessive volumes of adversely classified assets; paying excessive cash dividends; operating with inadequate routine and controls policies; operating with inadequate allowance for loan and lease losses; selling loans to FNMA which breach Bank's contractual warranties with FNMA; operating with policies detrimental to the Bank; and failing to provide adequate supervision over the Bank's affairs. *(This order was terminated by order of the FDIC dated 9-3-93; see ¶ 15,728.)*

- [.1] Capital—Tier 1 Capital—Increase/Maintain—Methods
- [.2] Dividends—Restricted
- [.3] Management—Qualifications—Review
- [.4] Loans—Loan Review Committee—Approval Required
- [.5] Loan Policy—Written Revision—Minimum Requirements
- [.6] Loans—Risk Position—Reduce—Written Plan Required
- [.7] Technical Exceptions—Correct/Eliminate
- [.8] Assets—Adversely Classified—Eliminate/Reduce
- [.9] Loans—Special Mention—Correct Deficiencies
- [.10] Loan Loss Reserve—Replenish
- [.11] Violations of Law—Eliminate/Correct
- [.12] Loans—Concentrations of Credit—Reduction Plan
- [.13] Assets—Total Assets—Limit on Increase
- [.14] Conflict of Interest—Written Policy Required
- [.15] Loans—Mortgages Purchased—Review Required
- [.16] Bank Operations—Deficiencies—Correct
- [.17] Loans—Mortgages Sold—Review Required
- [.18] Audit—External Audit—Minimum Requirements
- [.19] Board of Directors—Election—Outside Directors Added

{{10-31-91 p.C-1371}}

- [.20] Shareholders—Disclosure—Cease and Desist Order
- [.21] Compliance Reports—Frequency

In the Matter of

**BANK OF BOURBONNAIS
BOURBONNAIS, ILLINOIS
(Insured State Nonmember Bank)
ORDER TO CEASE AND DESIST**

Bank of Bourbonnais, Bourbonnais, Illinois ("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 regulation alleged to have been committed by the Bank, and of its right to a hearing on the charges under section 8(b) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(b), 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 July 18, 1991, whereby, solely for the purpose of this proceeding and without admitting or denying the charges of unsafe or unsound banking practices and violations of law and regulation, 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 has engaged in unsafe or unsound banking practices and has violated laws and regulations. The FDIC, therefore, accepted the CONSENT AGREEMENT and issued the following:

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED that the Bank, its institution-affiliated parties, as that term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u), and its successors and assigns, cease and desist from the unsafe or unsound banking practices and violations of law and regulation listed below:

- A. Engaging in hazardous lending and lax collection practices;
- B. Operating with an inadequate level of capital for the kind and quality of assets held;
- C. Violating the State of Illinois legal lending limit restrictions as set forth in section 32 of the Illinois Banking Act, ILL. REV. STAT., ch. 17, par. ¶ 339; the statement of related interests requirement of section 215.7 of Regulation O of the Board of Governors of the Federal Reserve System ("Regulation O"), 12 C.F.R. § 215.7; the prior approval requirements of section 215.4(b) of Regulation O, 12 C.F.R. § 215.4(b); the minimum capital requirements of section 325.3 of FDIC Rules and Regulations, 12 C.F.R. § 325.3; and the substantially same terms requirement of section 23B of the Federal Reserve Act, 12 U.S.C. § 371c-1;
- D. Operating with an excessive level of classified assets;
- E. Paying excessive dividends in relation to the Bank's capital position, earnings capacity and asset quality;
- F. Operating without adequate internal controls, including failure to segregate duties of Bank personnel;
- G. Operating with an inadequate allowance for loan and lease losses for the volume, kind, and quality of loans held;
- H. Selling loans to the Federal National Mortgage Association ("FNMA") which breach the Bank's contractual warranties with FNMA;
- I. Operating with a management whose policies and practices are detrimental to the Bank and which jeopardize the safety of its deposits; and
- J. Operating with a board of directors which has failed to provide adequate supervision over and direction to the management of the Bank.

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

[.1] 1. (a) Within 90 days from the effective date of this ORDER, the Bank shall increase the level of Tier 1 capital by \$1,200,000.

(b) Within 30 days from each June 30 and December 31 following the effective date of this ORDER, the Bank's board of directors shall determine the Bank's level of Tier 1 capital as a percentage of its total assets for the quarter preceding the respective June 30 and December 31 dates.

{{10-31-91 p.C-1372}}If that percentage is less than 6.50 percent, the Bank shall, within 60 days from the date of that determination, increase the capital/asset relationship to not less than 6.50 percent. For the purpose of this ORDER, the terms "Tier 1 capital" and "total assets" utilized in computing the relationship shall be defined and calculated in accordance with the provisions of Part 325 of FDIC Rules and Regulations, 12 C.F.R. Part 325 (as amended, effective April 11, 1991).

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

- (i) The sale of equity securities allowed as Tier 1 capital under 12 C.F.R. Part 325; or
- (ii) The collection in cash of assets previously charged off; or
- (iii) The direct contribution of cash by the directors and/or the shareholders of the Bank;
- (iv) Any other means acceptable to the Regional Director and Commissioner; or
- (v) Any combination of the above means.

(d) If all or part of the increase in Tier 1 capital required by this paragraph is to be accomplished by the sale of new securities, the board of directors of the Bank shall forthwith adopt and implement a written 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 Securities, including a distribution limited only 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 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 20 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, Washington, D.C. 20429, for its review. Any changes requested to be made in the plan or materials by the FDIC shall be made prior to their dissemination.

(e) In complying with the provisions of subparagraph (d) of this paragraph, the Bank shall provide to any subscriber and/ or purchaser of the Bank Securities 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 10 calendar days of the date any 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.

(f) The formal capital ratio analysis required by this paragraph shall not negate the responsibility of the Bank and its board of directors for maintaining throughout the year an adequate level of capital protection for the kind, quality and degree of market depreciation of assets held by the Bank.

[.2] 2. As of the effective date of this ORDER, the Bank shall pay no cash dividends when Tier 1 capital plus the allowance for loan and lease losses falls below 8% of total assets without the prior written consent of the Regional Director of the Chicago Regional Office of the FDIC ("Regional Director") and the Commissioner of Banks and Trust Companies for the State of Illinois ("Commissioner").

[.3] 3. (a) If the contract for sale of the Bank has not been signed within 90 days from the effective date of this ORDER, the Bank shall have, and thereafter retain, within 120 days from the effective date of this ORDER, a qualified chief executive officer.

(b) If a contract for sale of the Bank has been signed within 120 days from the effective date of this ORDER, the Bank shall have, and thereafter retain, a qualified chief executive officer immediately upon the effective date of the change in control.

(c) The chief executive officer shall have qualifications and experience commensurate with his or her duties and responsibilities at the Bank. During the life of this

[{{10-31-91 p.C-1373}}](#) ORDER, the Bank shall promptly notify the Regional Director and Commissioner of any changes in any of the Bank's executive officers not otherwise required by section 32 of the Act ("section 32"), 12 U.S.C. § 1831(i), and shall submit to the Regional Director and Commissioner a written statement of the qualifications of any new executive officer. The notification must include the name and background of any replacement personnel and must be provided prior to the individual assuming the new position. For the purposes of this paragraph, "executive officer" shall have the meaning ascribed that term in section 215.2(d) of Regulation O, 12 C.F.R. 215.2(d). (d) The qualifications of the chief executive officer shall be assessed on his/ her 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 effective internal control.

[.4] 4. During the period from the effective date of this ORDER until the retention of a qualified chief executive officer, approval of any loans exceeding \$25,000 shall be subject to final approval by the Bank's Loan Committee, which shall meet at least once monthly. A majority of the Loan Committee members shall be directors who are not officers of the Bank.

[.5] 5. (a) Within 90 days from the effective date of this ORDER, and annually thereafter, the board of directors of the Bank shall review the Bank's loan policy and procedures for adequacy and, based upon this review, shall make all appropriate revisions to the policy necessary to strengthen lending procedures and abate additional loan deterioration. The minutes of the board of directors' meeting at which such reviews are undertaken shall include the findings of the reviews and a description of any revisions made.

(b) The initial revisions to the Bank's loan policy and procedures required by this paragraph, at a minimum, shall reflect consideration of the criticisms and incorporate the suggestions for improvement included on page 6-a of the November 16, 1990 Report of Examination ("Report").

(c) Within 90 days from the effective date of this ORDER, the Bank shall adopt and implement a written, comprehensive loan review program designed to monitor and ensure compliance with the Bank's loan policy and procedures. The loan review program shall, at a minimum, comply with the guidelines provided in FDIC Bank Letter 27-89 dated June 20, 1989, and shall provide for a loan grading system which requires annual review of loans or lines of credit of \$30,000 or more. A written report shall be provided to the board of directors at least monthly identifying the loans reviewed and the grades assigned, and outlining the reasons for the grades assigned. The minutes of the board of directors' meetings shall reflect consideration of these reports and describe any action taken as a result thereof.

[.6] 6. Within 90 days from the effective date of this ORDER, the Bank shall formulate, adopt, and submit to the Regional Director and Commissioner for review and comment, a written plan of action to lessen the Bank's risk position in each asset in excess of \$30,000 which is classified "Substandard" in the

Report. Such plan shall include, but not be limited to, the following:

- (a) Projected dollar levels to which the Bank shall take all steps necessary to reduce each asset within 6 and 12 months from the effective date of this ORDER; and
- (b) Provisions for the submission of monthly written progress reports to the Bank's board of directors for review and notation in minutes of the meetings of the board of directors.

[.7] 7. Within 60 days from the effective date of this ORDER, the Bank shall correct the technical exceptions listed on pages 2-e and 2-e-1 of the Report.

[.8] 8. Within 30 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 with the exception of the loan for \$110,000 to Howard Gust and the loan for \$34,000 to Fred Vagt. ~~{{10-31-91 p.C-1374}}~~ Reduction of these assets with proceeds of other loans made by the Bank is not considered collection for the purpose of this paragraph.

[.9] 9. Within 90 days from the effective date of this ORDER, the Bank shall correct the deficiencies noted on the loans listed for Special Mention on page 2-c and 2-c-1 of the Report.

[.10] 10. (a) Within 20 days from the effective date of this ORDER, the Bank shall replenish its allowance for loan and lease losses by an expense entry in an amount equal to those loans required to be charged off by paragraph 8 of this ORDER.

(b) Within 30 days from the effective date of this ORDER, the Bank shall make a provision to the allowance for loan and lease losses which, after careful review and consideration by the board of directors, reflects the potential for further losses in the "Substandard" loan classifications and all other loans in the portfolio. In no event, shall the allowance for loan and lease losses represent less than 1.75 percent of total loans and leases.

(c) Within 30 days from the effective date of this ORDER, Reports of Condition and Reports of Income required by the FDIC and filed by the Bank subsequent to November 16, 1990, shall be amended and refiled if they do not reflect an allowance for loan and lease losses which is adequate considering the condition of the Bank's loan portfolio and which, at a minimum, incorporates the adjustments required by this paragraph.

(d) Prior to the submission or publication of all Reports of Condition and Reports of Income required by the FDIC after the effective date of this ORDER, the board of directors of the Bank shall review the adequacy of the Bank's allowance for loan and lease losses and accurately report the same. The minutes of the board meeting at which such review is undertaken shall indicate the results of the review, the amount of increase in the allowance recommended, if any, and the basis for determination of the amount of allowance provided.

[.11] 11. Within 30 days from the effective date of this ORDER, the Bank shall eliminate and/or correct all violations of regulations described on pages 6-b, 6-b-1 and 6-b-2 of the Report. In addition, the Bank shall implement procedures to ensure future compliance with all applicable regulations.

[.12] 12. Within 60 days from the effective date of this ORDER, the Bank shall formulate, adopt and submit to the Regional Director and Commissioner for review and comment a written plan of action to reduce the loan concentrations of credit as of November 16, 1990. The construction loan concentration of credit and the out-of-territory loan concentration of credit are each to be reduced to not more than 100 percent of the Bank's Tier 1 capital and reserves. The Charles Austen Associates/David Hooten loan concentration of credit and the Howard Gust/Oaks Group loan concentration of credit are each to be reduced to not more than 25 percent of the Bank's Tier 1 capital and reserves. The plan shall prohibit any additional advances which would increase the concentrations except for the purpose of financing the sale of Other Real Estate owned by the Bank or to finance the sale of collateral which secures a loan in default when the collateral is located out-of-territory, and shall detail:

- (a) dollar levels to which the Bank will reduce the concentrations within 6, 12 and 18 months from the effective date of this ORDER, and
- (b) provisions for the submission of monthly written progress reports to the Bank's board of directors for review and notation in the board of directors' minutes.

[.13] 13. Following the effective date of this ORDER, the Bank shall not increase its total assets by more than three percent during any consecutive three-month period without first submitting, at least 30 days prior to its implementation, a growth plan to the Regional Director and Commissioner. Such growth

plan shall identify and explain the funding source to support the projected growth, as well as the anticipated use of funds. This growth plan shall not be implemented without the prior written consent of the Regional Director and Commissioner and in no event shall the Bank increase its total assets by more than twelve percent annually. For the purpose of this paragraph, "total assets" has the meaning ascribed to that term by the Federal Financial Institutions Examination Council's Instructions for the Consolidated Reports of Condition and Income.

[.14] 14. Within 30 days from the effective date of this ORDER, the Bank shall adopt and fully implement a conflict of interest policy. This policy shall, at a minimum, include the following:

(a) Provisions which prohibit the involvement of Bank officers and directors, directly or indirectly, in the granting or supervision of loans to any persons related to such officers and directors by blood or marriage or to any related interest of these relatives with the exception of those loans presently sold to FNMA and serviced by the Bank.

(b) Provisions which prohibit Bank officers and directors from acquiring title to any Bank assets or to collateral pledged to the Bank for the debts of persons other than such Bank officers and directors. The policy required by this paragraph shall be submitted to the Regional Director and Commissioner for review and comment.

[.15] 15. Within 60 days from the effective date of this ORDER:

(a) The Bank shall formulate and fully implement specific procedures for reviewing loans purchased from Presidential Mortgage Company to determine the creditworthiness of the borrowers.

(b) The Bank shall obtain written contracts with all mortgage companies from which it purchases loans specifying the rights and obligations of the Bank when purchasing mortgage loans, and the terms of such purchases.

[.16] 16. Within 90 days from the effective date of this ORDER, the Bank shall conduct a comprehensive review and assessment of all internal routines and controls. Within 150 days from the effective date of this ORDER, the Bank shall correct any deficiencies discovered in such review and all deficiencies discussed on page 6-e of the Report. The board shall provide reasonable justification, included in the minutes of the board meeting, for any deficiency which is not corrected.

[.17] 17. (a) Within 120 days from the effective date of this ORDER, the Bank shall perform a comprehensive audit of loans sold to FNMA since February 10, 1989 which the Bank continues to service. At a minimum, the audit shall include:

- (i) borrowers with more than one loan sold to FNMA;
- (ii) borrowers who have not a loan sold to FNMA and a loan(s) retained by the Bank;
- (iii) borrowers who have a loan(s) sold to FNMA in their individual name and also have borrowings at the bank in a corporate capacity; and
- (iv) a random sample of all other loans to FNMA.

(b) The audit should verify that all documents required by FNMA are in the audit file, and that the borrower meets underwriting standards.

(c) The Bank shall resolve any breaches of the contract with FNMA discovered during the audit or listed on page 6-c of the Report.

(d) The written audit report shall be maintained by the Bank for review by the examiners.

[.18] 18. Within 60 days from the effective date of this ORDER, the Bank shall provide for an External Audit. At a minimum, the audit shall include:

- (a) positive verification of the loan portfolio; and
- (b) a reconciliation of all general ledger and deposit accounts associated with servicing of the loans sold.

[.19] 19. (a) If the contract for sale of the bank is not signed within 120 days from the effective date of this ORDER, the Bank's board of directors shall include and shall thereafter continue to include at least two "independent" members. As used in this ORDER, the term "independent" is defined as an individual who is not: (1) an employee or officer of the Bank or an employee, officer or director of Presidential Holding,

Inc. ("Holding Company") or of any other Bank affiliate as that term is defined in section 23A of the Federal Reserve Act, 12 U.S.C. § 371c; a stockholder owning 5 percent of the outstanding shares of stock of the Bank or Holding Company; related by blood or marriage to and officer or director of the Bank, Holding Company, any other Bank affiliate, or any stockholder owning more than 5 percent of the Bank's or Holding Company's outstanding shares; or (2) indebted to the Bank or to any Bank affiliate, directly or indirectly (including the indebtedness of any "related interest," as that term is defined at 12 C.F.R. [{{10-31-92 p.C-1376}}](#) § 215.2(k)), in an amount exceeding 5 percent of the Bank's capital and unimpaired surplus as defined at 12 C.F.R. § 215.2(f). Changes to the structure of the board required by this paragraph may be accomplished, to the extent permissible by State statute or the Bank's bylaws, by means of appointment or by election at a regular or special meeting of the Bank's shareholders. During the life of this ORDER, the Bank shall promptly notify the Regional Director and Commissioner of any changes in the membership of the Bank's board of directors as required by section 32, 12 U.S.C. § 1831(i).

[.20] 20. Following the effective date of this ORDER, the Bank shall send to its shareholders or otherwise furnish a description of this ORDER: (1) in conjunction with the Bank's next shareholder communication; and (2) in conjunction with its notice or proxy statement preceding the Bank's next shareholders 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 at Washington, D.C. for review at least 20 days prior to dissemination to shareholders. Any changes requested to be made by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement.

[.21] 21. Within 15 days of the end of each calendar quarter, the Bank shall furnish written progress reports to the Regional Director and Commissioner signed by each member of the Bank's board of directors detailing the form and manner of any actions taken to secure compliance with the 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 Commissioner have in writing released the Bank from making further reports.

The effective date of this ORDER shall be 10 days after its issuance by the FDIC.

The provisions of this ORDER shall be binding upon the Bank, its institution-affiliated parties, and any successors and assigns thereof.

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: August 27, 1991.

Pursuant to delegated authority.