

{{7-31-93 p.C-1394}}

[¶10,324] In the Matter of Spring Hill State Bank, Longview, Texas, Docket No. FDIC-91-274b (9-5-91).

Bank to cease and desist from such unsafe or unsound practices as failing to provide adequate supervision over the Bank's affairs; operating with inadequate capital; operating with excessive volumes of adversely classified assets; operating with inadequate allowance for loan and lease losses; extending additional credit to borrowers in weak financial positions without improving collateral margins; extending credit which is inadequately secured and without sufficient documentation; failing to submit Reports of Condition and Income in accordance with instructions; and operating in violation of applicable laws or regulations. *(This order was terminated by order of the FDIC dated 5-10-93; see ¶ 15,668.)*

- [.1] Capital—Tier 1 Capital—Increase/Maintain—Methods
- [.2] Dividends—Restricted
- [.3] Assets—Adversely Classified—Eliminate/Reduce
- [.4] Allowance for Loan and Lease Losses—Establish/Maintain
- [.5] Loans—Extensions of Credit—Existing Borrowers—Curtail
- [.6] Loans—Overdue—Nonaccrual Status
- [.7] Management—Qualifications—Review
- [.8] Board of Directors—Election—Outside Directors Added
- [.9] Violations of Law—Eliminate/Correct
- [.10] Technical Exceptions—Correct/Eliminate
- [.11] Shareholders—Disclosure—Cease and Desist Order
- [.12] Compliance Reports—Frequency

In the Matter of

**SPRING HILL STATE BANK
LONGVIEW, TEXAS
(Insured State Nonmember Bank)
ORDER TO CEASE AND DESIST**

The Spring Hill State Bank, Longview, Texas ("Bank"), through its board of directors, having been advised of its right to the issuance and service of a NOTICE OF {{11-30-91 p.C-1395}}CHARGES AND OF HEARING detailing the unsafe or unsound banking practices and violations of law and/or regulations alleged to have been committed by the Bank and of its right to a hearing on the alleged charges under section 8(b) 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 25, 1991, whereby, solely for the purpose of this proceeding and without admitting or denying the alleged charges of unsafe or unsound banking practices and violations of law and/or regulations, the Bank consented to the issuance of an ORDER TO CEASE AND DESIST ("ORDER") by the FDIC.

The FDIC considered the matter and determined that it had reason to believe that the Bank had engaged in unsafe or unsound banking practices and had violated laws and/ or regulations. The FDIC, therefore, accepted the CONSENT AGREEMENT and issued the following:

ORDER TO CEASE AND DESIST

IT IS ORDERED, that the Bank and institution-affiliated parties of the Bank cease and desist from the following unsafe or unsound banking practices and violations of laws and/or regulations:

- (a) Operating the Bank without adequate supervision and direction by the board of directors over the management of the Bank;
- (b) Operating with an inadequate level of capital protection;
- (c) Operating the Bank with an excessive level of adversely classified assets;
- (d) Failing to provide an adequate allowance for loan and lease losses;
- (e) Extending additional credit to borrowers in weak financial positions without improving collateral margins or establishing structured repayment programs;

(f) Renewing or extending credit which is inadequately secured;
(g) Renewing or extending credit without adequate and appropriate supporting documentation;
(h) Failing to accurately reflect the condition of the Bank in published statements and Consolidated Reports of Condition and Income;

(i) Operating the Bank in violation of applicable Federal and State laws and regulations as more fully set forth on pages 6-b of the Report of Examination of the Bank as of March 22, 1991.

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

[.1] 1. (a) Within 120 days after the effective date of this ORDER, the Bank shall increase its Tier 1 capital by no less than \$750,000; and for so long thereafter as this ORDER is outstanding, the Bank shall maintain adjusted Tier 1 capital, after establishing an adequate allowance for loan and lease losses, equal to or greater than 6.0 percent of the Bank's total assets. Such increase in Tier 1 capital and any increase in Tier 1 capital necessary to meet the ratio required by this ORDER may be accomplished by:

- (i) The sale of securities in the form of common stock; or
- (ii) The direct contribution of cash subsequent to March 22, 1991 by the directors and/or shareholders of the Bank; or
- (iii) Any other method approved by the Regional Director of the FDIC's Dallas Regional Office ("Regional Director") and the Banking Commissioner for the State of Texas (Commissioner).

(b) If the ratio of adjusted Tier 1 capital to adjusted total assets is less than 6.0 percent as determined at an examination by the FDIC or the State banking department ("State"), the Bank shall, within 30 days after receipt of a written notice of the capital deficiency from the Regional Director or the Commissioner, present to the Regional Director and the Commissioner a plan to increase the Tier 1 capital of the Bank or to take other measures to bring the ratio to 6.0 percent. After the Regional Director and Commissioner respond to the plan, the board of directors of the Bank shall adopt the plan, including any modifications or amendments requested by the Regional Director and Commissioner. Thereafter, the Bank shall immediately initiate measures detailed in the plan, to the extent such measures have not previously been initiated, to increase its

[{{11-30-91 p.C-1396}}](#) Tier 1 capital by an amount sufficient to bring the ratio to 6.0 percent within 90 days after the Regional Director and the Commissioner respond to the plan.

(c) If all or part of the increase in Tier 1 capital required by this ORDER is to be accomplished by the sale of new securities, the board of directors of the Bank shall adopt and implement a plan for the sale of such additional securities, including soliciting proxies and the voting of any shares or proxies owned or controlled by them in favor of the plan. Should the implementation of the plan involve a public distribution of the Bank's securities (including soliciting proxies and the voting of any shares or proxies owned or controlled by them in favor of the plan. Should the implementation of the plan involve a public distribution of the Bank's securities (including a distribution limited only to the Bank's existing shareholders), the Bank shall prepare offering materials fully describing the securities being offered, including an accurate description of the financial condition of the Bank and the circumstances giving rise to the offering, and any other material disclosures necessary to comply with 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 review. Any changes requested to be made in the plan or the materials by the FDIC shall be made prior to their dissemination. If the increase in Tier 1 capital is to be provided by the sale of noncumulative perpetual preferred stock, then all terms and conditions of the issue shall be presented to the Regional Director for prior approval.

(d) In complying with the provisions of this ORDER and until such time as any such public offering is terminated, the Bank shall provide to any subscriber and/ or purchaser of the Bank's securities written notice of any planned or existing development or other change which is materially different from the information reflected in any offering materials used in connection with the sale of the Bank's securities. The written notice required by this paragraph shall be furnished within 10 days after the date such material development or change was planned or occurred, whichever is earlier, and shall be furnished to every purchaser and/or subscriber who received or was tendered the information contained in the Bank's original offering materials.

(e) In addition to the requirements of subparagraphs 1(a)-(b), the Bank shall comply with the FDIC's Statement of Policy on Risk-Based Capital found in Appendix A to Part 325 of the FDIC Rules and Regulations, 12 C.F.R. Part 325, App. A.

(f) For the purposes of this ORDER, the terms "allowance for loan and lease losses," "Tier 1 capital," and "total assets" shall have the meanings ascribed to them in Part 325 of the FDIC's Rules and

Regulations, respectively subsections 325.2(a), (m), and (n), 12 C.F.R. § 325.2(a), (m), (n). "Adjusted Tier 1 capital" and "adjusted total assets" shall be calculated according to the methodology set forth in the Analysis of Capital section in a report of examination or visitation of the FDIC.

[.2] 2. While this ORDER is in effect, the Bank shall neither declare nor pay, directly or indirectly, any cash dividend to shareholders without the prior written consent of the Regional Director and the Commissioner.

[.3] 3. (a) Upon the effective date of this ORDER, the Bank shall, to the extent that it has not previously done so, eliminate from its books, by charge-off or collection, all assets or portions of assets classified Loss and one-half of the assets classified Doubtful by the FDIC as a result of its examination of the Bank as of March 22, 1991. Reduction of these assets through proceeds of loans made by the Bank shall not be considered "collection" for the purpose of this paragraph.

(b) Within 60 days after the effective date of this ORDER, the Bank shall submit a written plan to the Regional Director and the Commissioner to reduce the remaining assets classified Doubtful and Substandard as of March 22, 1991. At a minimum, the plan shall include the following:

(i) A schedule providing quarterly goals to reduce the remaining adversely classified assets as of March 22, 1991 to levels representing not more than a specified percentage of Tier 1 capital [{{11-30-91 p.C-1397}}](#) and reserves as reported each quarter by the Bank in its Consolidated Reports of Condition and Income and shall include no less than six consecutive quarterly target dates;

(ii) An explanation showing the complete rationale used by the Bank in constructing the reduction schedule; and,

(iii) A provision requiring, at a minimum, quarterly reviews by the Bank's board of directors whereby the extent of the Bank's compliance with the plan is expressly addressed, with the results of each review to be recorded in the corporate minutes of the board of directors.

(c) Upon written notice from the Regional Director or the Commissioner that the submitted plan is not acceptable, the Bank shall, within 30 days after receipt of such notice, submit amendments to the plan to the Regional Director and the Commissioner, including any modifications or amendments requested by the Regional Director or Commissioner. Upon written notice that the plan is accepted, it shall be adopted by the board of directors of the Bank. The Bank shall then immediately initiate measures detailed in the plan to the extent such measures have not been initiated.

(d) For purposes of the plan, the reduction of the level of adversely classified assets as of March 22, 1991, to a specified percentage of total capital may be accomplished by:

(i) charge-off;

(ii) collection;

(iii) sufficient improvement in the quality of adversely classified assets so as to warrant removing any adverse classification, as determined by the FDIC; or

(iv) increase of total capital.

(e) While this ORDER is in effect, the Bank shall eliminate from its books, by charge-off or collection, all assets or portions of assets classified Loss as determined at any examination conducted by the FDIC or the State at such time as the report of examination is received by the Bank.

[.4] 4. (a) Within 10 days after the effective date of this ORDER, the Bank shall establish and thereafter maintain an adequate allowance for loan and lease losses. Such allowance shall be funded by charges to current operating income. Prior to the end of each calendar quarter, the board of directors of the Bank shall review the adequacy of the Bank's allowance for loan and lease losses. Such reviews shall include, at a minimum, the Bank's loan loss experience, an estimate of potential loss exposure in the portfolio, trends of delinquent and nonaccrual loans and prevailing and prospective economic conditions. The minutes of the board meetings at which such reviews are undertaken shall include complete details of the reviews and the resulting recommended increases in the allowance for loan and lease losses.

(b) Within 20 days after the effective date of this ORDER, the Bank shall review Consolidated Reports of Condition and Income filed with the FDIC on or after December 31, 1990, and amend said reports if necessary to properly reflect the financial condition of the Bank as of the date of each such report. In particular, such reports shall contain an adequate allowance for loan and lease losses. Reports filed after the effective date of this ORDER shall also accurately reflect the financial condition of the Bank as of the reporting date.

[.5] 5. (a) While this ORDER is in effect, the Bank shall not extend, directly or indirectly, any additional credit to or for the benefit of any borrower who has an extension of credit with the Bank that has been classified Loss, either in whole or in part, and is uncollected, or to any borrower who is already obligated in any manner to the Bank on any extension of credit, including any portion thereof, that has been charged off the books of the Bank and remains uncollected. The requirements of this paragraph shall not prohibit the Bank from renewing credit already extended to a borrower after full collection, in cash, of interest due from the borrower.

(b) While this ORDER is in effect, the Bank shall not extend, directly or indirectly, any additional credit to or for the benefit of any borrower whose extension of credit is classified Doubtful and/or Substandard, either in whole or in part, and is uncollected, unless the Bank's board of directors has signed a detailed written statement giving reasons why failure to extend [{{11-30-91 p.C-1398}}](#) such credit would be detrimental to the best interests of the Bank. The statement shall be placed in the appropriate loan file and include in the minutes of the applicable board of directors' meeting. The requirements of this paragraph shall not prohibit the Bank from renewing credit already extended to a borrower after full collection, in cash, of interest due from the borrower.

[.6] 6. Within 30 days after the effective date of this Order the Bank shall adopt and implement a written policy and procedures to assure that any loans meeting the definition of "nonaccrual", as contained in the Instructions for Preparation of Consolidated Reports of Condition and Income, are placed on nonaccrual status. Such policy and its implementation shall be in a form acceptable to the Regional Director, as determined at subsequent examinations.

[.7] 7. The Bank shall have and retain qualified management. Each member of management shall possess qualifications and experience commensurate with his or her duties and responsibilities at the Bank. The qualifications of management personnel shall be evaluated on their ability to: (i) comply with the requirements of this ORDER, (ii) operate the Bank in a safe and sound manner, (iii) comply with applicable laws and regulations, and (iv) restore all aspects of the Bank to a safe and sound condition, including asset quality, capital adequacy, earnings, management effectiveness, and liquidity. During the life of the ORDER, the Bank shall notify the Regional Director and the Commissioner in writing of any changes in management. The notification must include the name(s) and background(s) of any replacement personnel and must be provided prior to the individual(s) assuming the new position(s).

[.8] 8. (a) Within 60 days after the date of this ORDER, the Bank shall prepare a plan for submission to the shareholders, at their next meeting, to reorganize the board of directors either by increasing the number of directors or by appointing new directors so that for so long as this ORDER is outstanding at least 50 percent of the members of the board shall be independent, outside directors as defined herein.

(b) For the purposes of this ORDER, an "outside director" shall be an individual:

(i) Who shall not be employed by the Bank or its affiliates other than as a director of the Bank or an affiliate;

(ii) Who shall not own or control more than 10 percent of the voting stock of the Bank or its holding company;

(iii) Who shall not be related to any director, principal shareholder of the Bank or to any director or principal shareholder of any affiliate of the Bank; and

(iv) Who shall be a resident of, or engage in business in, the Bank's trade area.

[.9] 9. After the effective date of this ORDER, the Bank, consistent with sound banking practices, shall eliminate and/or correct all violations of law and/or regulations existing in the Bank as of March 22, 1991, as more fully set forth on pages 6-a of the March 22, 1991 Report of Examination. In addition, the Bank shall ensure its future compliance with all applicable laws and regulations.

[.10] 10. Within 60 days after the effective date of this ORDER, the Bank, to the best of its ability using reasonable effort, shall eliminate and/or correct all technical exceptions with regard to loan documentation existing in the Bank as of March 22, 1991, as more fully set out on pages 2-d through 2-d-2 of the March 22, 1991 Report of Examination.

[.11] 11. After 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 also (2) 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 Unit, Washington, D.C. 20429, 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.

[.12] 12. Within 30 days after the end of the first calendar quarter following the effective date of this ORDER, and within 30 days after the end of each successive calendar quarter, the Bank shall furnish written progress reports to the Regional Director and [{{3-31-94 p.C-1399}}](#) 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 additional reports.

13. The effective date of this ORDER shall be 10 days after the date of its issuance. This ORDER shall be binding upon the Bank and all institution-affiliated parties of the Bank.

The provisions of this ORDER shall remain effective and enforceable except to the extent that, and until such time as, any provision of this ORDER shall have been modified, terminated, suspended, or set aside by the FDIC.

Dated at Dallas, Texas, this 5 day of September, 1991.

Pursuant to delegated authority.