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{{11-30-93 p.C-817}}

[¶10,182] In the Matter of First State Bank, Buxton, North Dakota, Docket No. FDIC-91-44b (2-14-91).

Bank to cease and desist from operating with an excessive volume of adversely classified assets; engaging in hazardous lending and lax collection practices; operating with inadequate equity capital; engaging in violations of laws and regulations; operating with management whose policies or practices are detrimental to the Bank; operating with deficient loan documentation: engaging in practices which produce inadequate operating income and excessive loan losses; {{11-30-93 p.C-818}}failing to provide adequate supervision over the affairs of the Bank; paying excessive cash dividends; operating with inadequate allowance for loan and lease losses; operating with unacceptable liquidity; and failing to submit reports as required. *(This order was terminated by order of the FDIC dated 9-24-93; see ¶ 15,733.)*

[.1] Management—Qualifications—Review
[.2] Management—Management Plan—Minimum Requirements—Review
[.3] Board of Directors—Meetings—Frequency—Written Records Required
[.4] Assets—Adversely Classified—Reduce/Eliminate
[.5] Capital—Equity Capital—Increase/Maintain—Methods
[.6] Allowance for Loan and Lease Losses—Maintain—Report
[.7] Loans—Risk Position—Reduce—Written Plan Required
[.8] Loans—Extensions of Credit—Existing Borrowers—Curtail
[.9] Loans—Overdue—Accrual of Interest
[.10] Loan Policy—Written Revisions Required—Review
[.11] Profit Plan—Written Plan—Minimum Requirements—Review
[.12] Funds Management—Written Policy—Minimum Requirements— Review
[.13] Investment Policy—Written Policy Required—Review
[.14] Dividends—Restricted
[.15] Shareholders—Disclosure—Cease and Desist Order
[.16] Technical Exceptions—Correct
[.17] Violations of Law—Eliminate/Correct
[.18] Compliance—Progress Reports—Frequency

In the Matter of

FIRST STATE BANK
BUXTON, NORTH DAKOTA
(Insured State Nonmember Bank)
ORDER TO CEASE AND DESIST

First State Bank, Buxton, North Dakota ("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 alleged to have been committed by the Bank and of its right to a hearing on such alleged charges under section 8(b) of the Federal Deposit Insurance 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 February 12, 1991, whereby solely for the purpose of this proceeding and without admitting or denying any unsafe or unsound banking practices or 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 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 following unsafe and unsound banking practices and violations of law and/or regulations:

A. operating with an excessive volume of adversely classified assets;

B. engaging in hazardous lending and lax collection practices, including maintaining an excessive volume of adversely classified loans;

C. operating with inadequate equity cap- {{4-30-91 p.C-819}}ital and allowance for loan and lease losses for the kind and quality of assets held;

D. engaging in violations of applicable laws and regulations;

E. operating with management whose policies and practices are detrimental to the Bank;

F. operating with deficient or inadequate loan documentation, including but not limited to current financial statements, insurance coverage, title searches or legal opinions, and cash flow and/or operating information;

G. engaging in practices which produce inadequate operating income and excessive loan losses;

H. failing to provide adequate supervision and direction over the affairs of the Bank to prevent unsafe or unsound practices and violations of law and/or regulations;

I. paying excessive cash dividends in relation to the Bank's net income and/or capital position;

J. operating with an inadequate allowance for loan and lease losses for the volume, kind and quality of loans held;

K. operating with unacceptable liquidity for the kind and quality of assets held; and

L. failing to submit Reports of Condition and Income in accordance with prevailing instructions.

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

[.1**]** (a) (i) No more than 30 days from the effective date of this ORDER, the Bank shall have and thereafter retain qualified management. Such management shall include a qualified chief executive officer and a senior lending officer. The chief executive officer shall be given stated written authority by the Bank's board of directors, including responsibility for implementing and maintaining the policies of the Bank. The chief executive officer shall have an appropriate level of experience to perform the duties assigned to that individual by the Bank's board of directors. The senior lending officer shall be given stated written authority by the Bank's board of directors, including responsibility for implementing and maintaining the loan policies of the Bank. The senior lending officer shall have an appropriate level of lending, collections, and loan supervision experience to perform the duties assigned to that individual by the Bank's board of directors. The Bank shall promptly notify the Regional Director of the FDIC's Kansas City Regional Office ("Regional Director") of the identity of said chief executive officer and senior lending officer. Prior to the addition of any individual to the board of directors or the employment of any individual as a senior executive officer, the Bank shall comply with the requirements of section 32 of the Act, 12 U.S.C. § 1831i: and section 303.14 of the FDIC's Rules and Regulations, 54 Fed. Reg. 53040 and 53043 (to be codified at 12 C.F.R. § 303.14).

(ii) The assessment of whether the Bank has "qualified management" shall be based upon management's conduct, both individual and joint, with respect to the Bank in: (A) complying with the requirements of this ORDER: (B) complying with applicable laws and regulations; and (C) not engaging in any unsafe or unsound banking practice which has an adverse effect on the Bank's asset quality, capital adequacy, earnings, or liquidity.

[.2**]** (b) The board of directors shall in no more than 30 days from the effective date of this ORDER develop a written analysis and assessment of the Bank's management and staffing needs ("management plan"), which shall include, at a minimum:

(i) identification of both the type and number of officer positions needed to manage and supervise properly the affairs of the Bank:

(ii) identification and establishment of such Bank committees as are needed to provide guidance and oversight to active management:

(iii) evaluation of each Bank officer, and in particular the chief executive officer, and staff member to determine whether these individuals possess the ability, experience and other qualifications required to perform present and anticipated duties, including adherence {{4-30-91 p.C-820}}to the Bank's established policies and practices, and maintenance of the Bank in a safe and sound condition; and

(iv) a plan of action to recruit and hire any additional or replacement personnel with the requisite ability, experience and other qualifications, which the board of directors determines are necessary to fill Bank officer or staff member positions consistent with the board's analysis, evaluation and assessment as provided in paragraphs 1(b)(i) and 1(b)(iii) of this ORDER

(c) The written management plan and any subsequent modification thereto shall be submitted to the Regional Director for review and comment. No more than 30 days from the receipt of any comment from the Regional Director, and after consideration of such comment, the board of directors shall approve the written management plan and/or any subsequent modification thereto which approval shall be recorded in the minutes of the board of directors. Thereafter, the Bank and its institution-affiliated parties shall implement and follow the written management plan and/or any subsequent modification.

[.3**]** (d) Effective the date of this ORDER, the Bank's board of directors shall meet at least monthly. The board shall prepare in advance and shall follow a detailed written agenda at each meeting, which shall include consideration of actions of any committees. Nothing in the foregoing sentence shall preclude the board from considering matters other than those contained in the agenda. Detailed written minutes of all board meetings shall be maintained and recorded on a timely basis.

[.4**]** 2. No more than 10 days from the effective date of this ORDER, the Bank: (a) shall eliminate from its books, by charge-off, collection, or other proper entries, all assets or portions of assets classified "Loss" as of May 25, 1990, which have not been previously collected, charged off, or other wise eliminated by other proper entries. Reduction of these assets through use off proceeds of loans made by the Bank does not constitute collection for the purpose of this paragraph.

[.5**]**3. (a) (i) As of the effective date of this ORDER, the Bank shall have equity capital, exclusive of the allowance for loan and lease losses required to be maintained in accordance with paragraph 4 of this ORDER, at or in excess of 6 percent of the Bank's total assets ("equity capital ratio") and shall thereafter maintain its equity capital ratio at or in excess of such level as calculated herein while this ORDER is in effect. The terms "total equity capital" and "total assets" shall have the same meaning as those terms have in the prevailing Instructions for Preparation of Reports of Condition ("Instructions").

(ii) For purposes of calculating the Bank's equity capital ratio as of the effective date of this ORDER:

(A) total equity capital shall be computed in accordance with the Instructions as if the effective date of this ORDER were a Report Date;

(B) total assets shall be the average of total assets required to be included in the Bank's Report of Condition for the Report Date immediately preceding the effective date of this ORDER as found in the Call Report Schedule of quarterly averages.

(iii) For purposes of maintaining the Bank's equity capital ratio after the effective date of this ORDER, the equity capital ratio shall be calculated as of Report Date. For the purpose of calculating the equity capital ratio as of a given Report Date:

(A) total equity capital shall be the amount of total equity capital required to be included in the Bank's Report of Condition for the Report Date;

(B) total assets shall be the average of total assets required to be included in the Bank's Report of Condition for the Report Date and is found in the Call Report Schedule of quarterly averages:

(C) total equity capital and total assets reported in the Bank's Report of Condition are to be calculated in accordance with the prevailing Instructions; and

(D) the Bank shall have an adequate allowance for loan and lease losses in accordance with paragraph 4 of this ORDER.

(b) If, during the period this ORDER is in effect, the equity capital ratio, exclusive of the allowance for loan and lease {{4-30-91 p.C-821}}losses, declines below 6 percent, the Bank, within 30 days after the date on which the said ratio so declined, shall develop and implement a written plan to increase such ratio up to or in excess of 6 percent. No more than 60 days after the implementation of the written plan, the Bank's equity capital ratio, exclusive of the allowance for loan and lease losses, shall equal or exceed 6 percent and the Bank shall thereafter maintain its equity capital ratio at or in excess of such level as calculated herein while this ORDER is in effect.

(c) The Bank's board of directors shall maintain in its minutes a written record of all actions taken by the Bank to comply with the capital requirements of paragraphs 3(a) and 3(b) of this ORDER.

(d) Nothing in this ORDER shall operate to subject any individual director of the Bank to a Federal District Court order of enforcement pursuant to section 8(i)(1) of the Act, 12 U.S.C. § 1818(i)(i), or imposition of civil money penalties pursuant to section 8(i)(2) of the Act, 12 U.S.C. § 1818 (i)(2), for failure to utilize such director's personal assets to satisfy the capital requirement of paragraphs 3(a) and 3(b) of this ORDER; provided, however, that the sale of new offerings of common stock or perpetual preferred stock in an effort to maintain the Bank's equity capital ratio in compliance with this ORDER shall not be considered to be a utilization of such director's personal assets, even if such sale may result in the diminution in value of stock held by any director.

[.6**]** 4. (a) The Bank shall maintain an allowance for loan and lease losses in accordance with the prevailing requirements of the Instructions.

(b) Reports of Condition and Income required to be submitted by the Bank as of Each Report date, as that term is used in the Instructions, between and including *May 25, 1990*, and the effective date of this ORDER, shall, at a minimum, reflect an allowance for loan and lease losses that should have been maintained in accordance with the Instructions. If necessary to comply with this paragraph, the Bank shall file amended Reports of Condition and Income within 10 days from the effective date of this ORDER.

(c) Prior to the submission of any Report of Condition or Report of Income required to be filed by the Bank after the effective date of this ORDER, the board of directors of the Bank shall: (i) review the adequacy of the Bank's allowance for loan and lease losses, (ii) provide for an adequate allowance, and (iii) accurately report the allowance in any such Report of Condition and Income. The minutes of the board meeting at which such review is undertaken shall indicate the results of the review, including any increases in the allowance, and the basis for determining the amount of allowance provided.

[.7**]** 5. (a) Within 60 days from the effective date of this ORDER, the board of directors shall develop a written plan of action to lessen the Bank's risk position in each line of credit aggregating $50,000 or more which was classified "Substandard" as of May 25, 1990. 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.

Based upon such review and evaluation, the written plan of action shall: (A) establish target dollar levels to which the Bank shall reduce the aggregate dollar volume of "Substandard" classifications within 6 and 12 months from the effective date of this ORDER; and (B) provide for the submission of written monthly progress reports to the Bank's board of directors for review and notation in the board minutes. As used in this paragraph, "reduce" means to (1) collect, (2) charge off, or (3) improve the quality of such assets so as to warrant removal of any adverse classification by the FDIC.

(b) The written plan of action described by paragraph 5(a) and any subsequent modification thereto shall be submitted to the Regional Director and the Commissioner of Banking and Financial Institutions for the State of North Dakota ("Commissioner") for review and comment. No more than 30 days after the receipt of any comment from the Regional Director, the board of directors shall approve the written plan of action, which approval shall {{4-30-91 p.C-822}}be recorded in the minutes of the board of directors. Thereafter, the Bank and its institution-affiliated parties shall follow the written plan of action and/or any subsequent modification.

[.8**]** 6. The Bank shall not extend, directly or indirectly, credit to, or for the benefit of, any borrower who has a loan or other extension of credit with the Bank that has been charged off or classified, in whole or in part, "Loss," "Doubtful," or "Substandard," and is uncollected, unless a majority of the Bank's board of directors first (a) determines that such advance is in the best interest of the Bank, (b) determines that the Bank has satisfied the requirements set out in paragraph 5 of this ORDER as to such borrower, and (c) approves such advance. A written record of the board of directors' determination and approval of any advance under the terms of this paragraph shall be maintained in the credit file of the affected borrower(s) as well as the minutes of the board of directors. The requirements of this paragraph do not prohibit the Bank from renewing any credit already extended to the borrower.

[.9**]** 7. Effective the date of this ORDER, the Bank shall not accrue interest on any loan that is, or becomes, 90 days or more delinquent as to principal or interest, unless the loan is both well secured and in the process of collection: "well secured" and "in the process of collection" shall have the same meaning as those terms have in the prevailing Instructions. The Bank shall reverse on its books all previously accrued but uncollected interest on any loan that has ceased to accrue interest pursuant to this provision.

[.10**]** 8. No more than 30 days from the effective date of this ORDER, the Bank shall revise its written loan policies. The revised written loan policies and any subsequent modification thereto shall be submitted to the Regional Director and the Commissioner for review and comment. No more than 30 days after the receipt of any comment from the Regional Director, the board of directors shall approve the written loan policies and/or any subsequent modification thereto which approval shall be recorded in the minutes of the board of directors. Thereafter, the Bank and its institution-affiliated parties shall follow the written loan policies and/or any subsequent modification thereto.

[.11**]** 9. (a) No more than 60 days from the effective date of this ORDER, the Bank shall develop a written profit plan consisting of goals and strategies for improving the earnings of the Bank, which written profit plan shall include, at a minimum:

(i) identification of the major areas in, and means by, which the board of directors will seek to improve the Bank's operating performance;
(ii) realistic and comprehensive budgets;
(iii) a budget review process to monitor the income and expenses of the Bank to compare actual figures with budgetary projections; and
(iv) a description of the operating assumptions that form the basis for, and adequately support, major projected income and expense components.

(b) The written profit plan and any subsequent modification thereto shall be submitted to the Regional Director and the Commissioner for review and comment. No more than 30 days after the receipt of any comment from the Regional Director, the board of directors shall approve the written profit plan and any subsequent modification thereto, which approval shall be recorded in the minutes of the board of directors. Thereafter, the Bank and its institution-affiliated parties shall follow the written profit plan and/or any subsequent modification thereto.

[.12**]** 10. (a) No more than 30 days from the effective date of this ORDER, the Bank shall develop a written funds management policy which shall, at a minimum:

(i) establish adequate recordkeeping systems to track the volume of (A) rate-sensitive assets and (B) rate-sensitive liabilities. Rate-sensitive assets and liabilities are generally defined as those that either mature or can be repriced during a specified time period (90 days, 180 days, one year);
(ii) establish a range of acceptable ratios for rate-sensitive assets to rate-sensitive liabilities sufficient to protect the Bank against excessive interest-rate risk and ensure that an adequate net interest margin is maintained;
(iii) establish adequate recordkeeping systems to track the volume of (A) stable or core deposits and (B) volatile deposits;
(iv) establish guidelines for offsetting a substantial portion of the Bank's {{7-31-92 p.C-823}}volatile deposits and borrowings with liquid, short-term assets;
(v) establish investment guidelines for funds derived from negotiable-rate certificates of deposit and borrowings, including a maximum large liability dependency ratio. A large liability dependency ratio means the percentage of loans plus other long-term earning assets that may be funded by negotiable-rate certificates of deposit and borrowings;
(vi) establish a range of acceptable loan-to-deposit ratios, taking into account seasonal deposit fluctuations;
(vii) establish a borrowing policy which addresses: (A) when or under what conditions the Bank may borrow, (B) maximum amounts that may be borrowed, (C) a list of acceptable creditors, and (D) which officers are authorized to borrow;
(viii) establish contingency plans for meeting large, unexpected withdrawals, which should include: (A) curtailing lending activity with priority given to specific types of credit and (B) establishing lines of credit with other financial institutions which will advance funds on short notice; and
(ix) establish a funds-management committee to meet at least monthly to determine how best to allocate the Bank's available funding sources among various asset categories after reviewing: (A) the Bank's liquidity position, (B) outstanding commitments such as loan commitments and letters of credit, and (C) the Bank's rate-sensitivity position and net interest margin.

(b) The funds management policy shall be coordinated with the Bank's loan, investment, operating, and budget and profit planning policies.
(c) The written funds management policy and any subsequent modification thereto shall be submitted to the Regional Director and the Commissioner for review and comment. No more than 30 days from the receipt of any comment from the Regional Director, the board of directors shall approve the written funds management policy and any subsequent modification thereto, which approval shall be recorded in the minutes of the board of directors. Thereafter, the Bank and its institution-affiliated parties shall follow the written funds management policy and/or any subsequent modification thereto.

[.13**]** 11. No more than 30 days from the effective date of this ORDER, the Bank shall revise its written investment policy setting forth specific guidelines, goals, and strategies for improving the investments of the Bank. The written investment policy and any subsequent modification thereto shall be submitted to the Regional Director and the Commissioner for review and comment. No more than 30 days from the receipt of any comment from the Regional Director, the board of directors shall approve the written investment plan and any subsequent modification thereto, which approval shall be recorded in the minutes of the board. Thereafter, the Bank and its institution-affiliated parties shall follow the written investment plan and/or any subsequent modification thereto.

[.14**]** 12. The Bank shall not declare or pay any cash dividends unless:

(a) such declarations and payments are made in accordance with applicable State and Federal laws and regulations;
(b) after payment of such dividends, the equity capital ratio specified in paragraph 3(a)(i) shall not be less than 6 percent and the Bank's allowance for loan and lease losses shall be adequate as described in paragraph 4 of this ORDER;
(c) such declaration and payment of dividends shall be approved in advance by the board of directors of the Bank; and
(d) such declaration and payment of dividends shall be approved in advance, in writing, by the Regional Director and the Commissioner, which approval shall not be unreasonably withheld.

[.15**]** 13. Following the effective date of this ORDER, the Bank shall send to its shareholders a description of this ORDER, (A) in conjunction with the Bank's next shareholder communication, and also (B) in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The description shall fully describe the ORDER in all material respects. 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, Washing- {{7-31-92 p.C-824}}ton, 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.

[.16**]** 14. No more than 60 days from the effective date of this ORDER, the Bank shall correct the technical exceptions on loans noted on pages 2-c to 2-c-4 of the FDIC's Report of Examination of the Bank as of May 25, 1990, except for the following cited deficiencies:

(a) Debtor: * * *
Amount: $218,000
Excepted Deficiencies: All cited deficiencies.
(b) Debtor: * * *
Amount: $47,000
Excepted Deficiency:Vehicular
insurance on vehicles valued at
less than $2,000.

[.17**]** 15. No more than 60 days from the effective date of this ORDER, the Bank shall eliminate and/or correct all violations of law and regulations committed by the Bank as described on pages 6-1 to 6-1-f of the FDIC's Report of Examination of the Bank as of May 25, 1990, except as follows:
(a) The state lending limit violation cited for debtors * * * , set forth on page 6-1-a in the above-cited Report of Examination, shall be eliminated or corrected no later than July 1, 1991; and
(b) The state lending limit violation cited for debtors * * * , set forth on page 6-1-c of the above-cited Report of Examination, shall be eliminated or corrected no later than April 1, 1991.

[.18**]** 16. The Bank shall furnish written progress reports to the Regional Director and the Commissioner detailing the form and manner of any action taken to secure compliance with this ORDER and the results thereof every 90 days, beginning 90 days from the effective date of this ORDER. In addition, the Bank shall furnish additional such reports on request of either the Regional Director or the Commissioner. All progress reports and other written responses to this ORDER shall be reviewed by the board of directors of the Bank and made a part of the minutes of the board meeting.
17. This ORDER shall become effective 10 days from the date of its issuance.
The provisions of this ORDER shall be binding upon the Bank and its institution-affiliated parties, successors and assigns.
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 this 14th day of February, 1991.