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[¶11,932] **In the Matter of Cross Country Bank, Wilmington, Delaware**, Docket No. 02-035b (5-15-02).

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 modified by order of the FDIC dated 3-5-04; see ¶16,372.)

[\[.1\]](#) **Loans—Subprime Lending Allowed—Restrictions Specified**

[\[.2\]](#) **Loan Policy—Credit Underwriting Standards—Preparation or Revision of Policy Required**

[\[.3\]](#) **Assets—Charge-off or Collection**

[\[.4\]](#) **Loan Loss Reserve—Establishment of or Increase Required**

[\[.5\]](#) **Capital Plan—Minimum Requirements**

[\[.6\]](#) **Board of Directors—Oversee Implementation of Capital Plan**

[\[.7\]](#) **Management—Qualifications Specified**

[\[.8\]](#) **Dividends—Dividends Restricted**

[\[.9\]](#) **Assets—Total Assets, Limitations Imposed on Increase of**

[\[.10\]](#) **Brokered Deposits—Restricted**

[\[.11\]](#) **Bank Operations—New Lines of Business Restricted**

[\[.12\]](#) **Bank Operations—Transactions—Restricted**

[\[.13\]](#) **Risk Management Program—Minimum Requirements**

[\[.14\]](#) **Residual Asset Valuation Model—Preparation of Required**

[\[.15\]](#) **Interagency Guidance on Subprime Lending—Compliance with Policy Required**

[\[.16\]](#) **Interagency Guidelines Establishing Standards for Safety and Soundness—Compliance with Policy Required**

[\[.17\]](#) **Funds Management and Liquidity—Preparation of Report Required**

[\[.18\]](#) **Board of Directors—Responsible for Compliance with Cease and Desist Order**

**In the Matter of
CROSS COUNTRY BANK
WILMINGTON, DELAWARE
(Insured State Nonmember Bank)
ORDER TO CEASE AND DESIST**

FDIC-02-035b

Cross Country Bank, Wilmington, Delaware ("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 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 15, 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 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 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 Bank, its successors, assigns, directors, officers, employees, [{{5-31-04 p.C-5452}}](#)

agents, and other "institution-affiliated parties," as 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 as follows:

- (a) engaging in hazardous lending and underwriting practices;
- (b) operating with a large volume of poor quality loans;
- (c) operating with an inadequate allowance for loan and lease losses;
- (d) operating with inadequate capital in relation to the kind and quality of assets held by the Bank;
- (e) operating in violation of section 23B of the Federal Reserve Act, 12 U.S.C. §371c-1, made applicable to State nonmember banks by section 18(j)(1) of the Act, 12 U.S.C. §1828(j)(1); and
- (f) operating with policies and practices that are detrimental to the Bank and jeopardize the safety of its deposits.

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

[.1]1. The Bank may continue to engage in "subprime lending," only as long as:

- (a) the Bank complies with paragraph 2 and subparagraphs (a) through (d) of paragraph 3 herein; and
- (b) the Bank:
 - (i) has achieved a sufficient level of capital to provide for a Total Risk-Based Capital Ratio of eight (8.0) percent, calculated in accordance with the risk-weighting of subprime assets specified in paragraph 6(a); or
 - (ii) has filed, and the Regional Director has approved, the Bank's Capital Plan in accordance with paragraph 6.

(c) As used in this ORDER, the terms:

(i) "subprime lending" is extending credit to borrowers who exhibit characteristics indicating a significantly higher risk of default than traditional bank lending customers, as defined in the March 1, 1999 Interagency Guidance on Subprime Lending and the January 31, 2001 Interagency Expanded Guidance for Subprime Lending Programs, including:

- (1) issuing new credit cards to any subprime borrower;
- (2) renewing existing credit cards to any subprime borrower;
- (3) providing credit line increases to any existing subprime borrower; and
- (4) issuing any new subprime credit card program for, or on behalf of any third parties.

(ii) "extension of credit" is used as the term is defined in section 215.3 of Regulation O of the Board of Governors of the Federal Reserve System, 12 C.F.R. §215.3 ("Regulation O").

(d) This paragraph shall not apply to the issuance of any credit card or the increase of any credit line that the Bank is contractually or legally obligated to honor to the extent that the contractual or legal commitment accrued prior to the effective date of this ORDER, that evidence of such accrual is maintained, and that minutes of the Bank's board of directors document the amount and nature of any such extensions of credit.

[.2]2. Within ten (10) days from the effective date of this ORDER, the Bank's board of directors shall approve credit underwriting standards that are to be incorporated into the Bank's written loan policy that are acceptable to the Regional Director. At a minimum, the loan policy must include the following:

(a) minimum acceptable credit criteria for approvals. The minimum factors to be considered shall include the applicant's credit history, minimum income, employment history, residency, and co-borrower qualifications;

(b) portfolio targets and limits for each credit grade or class; and

(c) a framework for pricing decisions and profitability analysis that considers all costs associated with the loan, including origination costs, administrative/servicing costs, expected charge-offs, and capital.

(d) Until such time as new credit underwriting standards acceptable to the Regional Director are approved, reinstatement of the credit underwriting standards adopted and in effect as of December 18, 2000, shall be deemed to satisfy the requirements contained herein.

3. Within ten (10) days from the effective date of this ORDER, the Bank shall comply with subparagraphs (a) through (d) below, and within thirty (30) days from the effective date of this ORDER, the Bank shall

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comply with subparagraphs (e) through (f) below:

[.3]3. (a) eliminate from its books, by charge-off, collection, or specific reserve, all credit card receivables past due 120 days or more;

(b) eliminate from its books, by charge-off or collection, all first payment default accounts past due 60 days or more;

(c) restore the allowance for loan and lease losses to an amount ranging from \$450 million to \$500 million, after deducting the principal portion of the credit card accounts specified in (a) and (b) of this paragraph;

(d) establish a reserve for uncollectible accrued fees and finance charges in an amount ranging from \$50 million to \$75 million, after reversing the accrued fees and finance charges associated with the accounts specified in (a) and (b) of this paragraph;

(e) amend its December 31, 2001, and March 31, 2002, Reports of Condition and Income to reflect that all credit card receivables past due 120 days or more and all first payment default accounts past due 60 days or more as of the respective report dates had been charged off or specifically reserved for as of the respective report dates, including the reversal of all accrued fees and finance charges associated with those accounts; and

(f) amend its December 31, 2001, and March 31, 2002, Reports of Condition and Income to reflect that any expenses necessary to establish the allowance and/or reserves required by Subparagraphs 3(c) and 3(d) had been taken as of the respective report dates.

[.4]4. Within thirty (30) days from the effective date of this ORDER, the Bank shall submit to the Regional Director for review and prior supervisory non-objection, a description of its methodology for maintaining an adequate allowance for loan and lease losses and an adequate reserve for uncollectible accrued fees and finance charges. The methodology required by this paragraph shall provide for an allowance for loan and lease losses sufficient to absorb estimated principal losses over a 12-month

period as well as a separate reserve sufficient to offset that portion of accrued fees and finance charges on the Bank's books that are likely uncollectible. The methodology shall be consistent with the prevailing instructions for the Consolidated Reports of Condition and Income, the March 1, 1999 Interagency Guidance on Subprime Lending, the January 31, 2001 Interagency Expanded Guidance for Subprime Lending Programs, and the July 25, 2001 Interagency Policy Statement on Allowance for Loan and Lease Losses Methodologies.

5. After satisfying the requirements of paragraphs 3 and 4, the Bank, through charges to current operating income, shall thereafter maintain an allowance for loan and lease losses sufficient to absorb estimated principal losses over a 12-month period and a reserve for uncollectible accrued fees and finance charges sufficient to offset that portion of fees and finance charges accrued on the Bank's books that are likely uncollectible. Prior to the submission of the Bank's Consolidated Reports of Condition and Income, the Bank's board of directors shall review the adequacy of the Bank's allowance for loan and lease losses and the Bank's reserve for uncollectible accrued fees and finance charges. 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 allowance and/or reserve, and the basis for the amounts of the allowance and reserve.

[.5]6. Within thirty (30) days from the effective date of this ORDER, the Bank shall submit to the Regional Director, for review and approval, a Capital Plan in compliance with Part 325 of the FDIC's Rules and Regulations, 12 C.F.R. Part 325. The Capital Plan shall include:

(a) specific plans to achieve, by September 30, 2002, and thereafter maintain, a Total Risk-Based Capital Ratio (as defined in 12 C.F.R. Part 325) of 8.0 percent or greater after the Bank's subprime assets, excluding securitized credit card receivables not owned by the Bank, are risk-weighted at 300 percent (the FDIC will consider documentation submitted by the Bank to support the use of a different risk weighting for specific assets), consistent with the January 31, 2001 Interagency Expanded Guidance for Subprime Lending Programs;

(b) specific plans to achieve, by March 31, 2003, and thereafter maintain, a Total Risk-Based Capital Ratio (as defined in 12 C.F.R. Part 325) of 10.0 percent or greater after the Bank's subprime assets, excluding securitized credit card receivables not owned by the Bank, are risk-weighted [{{7-31-02 p.C-5454}}](#)

at 300 percent (the FDIC will consider documentation submitted by the Bank to support the use of a different risk weighting for specific assets), consistent with the January 31, 2001 Interagency Expanded Guidance for Subprime Lending Programs;

(c) specific plans by the Bank for compliance by December 31, 2002, with the FDIC's regulatory capital treatment in 12 C.F.R. Part 325 of recourse, direct credit substitutes and residual interests in asset securitizations (66 Fed. Reg. 59614, November 29, 2001), especially with respect to compliance with

(1) the leverage capital requirements for credit-enhancing interest-only strips ("IO strips") in 12 C.F.R. §325.5(f), and

(2) the risk-based capital standards in Appendix A of Part 325 including, but not limited to, the concentration limit on IO strips and the dollar-for-dollar capital treatment of IO strips and other residual interests in section II.B.5(f) of Part 325, Appendix A;

(d) projections for growth and capital requirements based upon a detailed analysis of the Bank's assets, liabilities, earnings, fixed assets, off-balance sheet activities, as well as the impact of an early amortization of any securitizations outstanding and the risk inherent in any litigation against the Bank;

(e) the primary sources and timing from which the Bank will obtain additional capital to meet the Bank's current and future capital needs as well as secondary sources should the primary sources not be available;

(f) analysis of the bank's projected capital position under different scenarios by stress testing, among other things, delinquency rates, charge-off rates, and utilization rates; and

(g) a Contingency Plan detailing alternative proposals identified by the Bank to minimize losses to insured depositors in the event of the Bank's failure to successfully implement its Capital Plan.

[.6]7. Upon receipt of the Regional Director's notice of approval under paragraph 6, the Bank shall adopt, implement, and adhere to the Capital Plan. The Bank's board of directors shall ensure that the Bank has processes, personnel, and control systems sufficient to ensure implementation of, and adherence to, the Capital Plan. The Bank's board of directors shall review the Bank's implementation of, and adherence to, the Capital Plan on a monthly basis with copies of the reviews provided to the Regional Director. If the FDIC determines, after taking into consideration any information provided to the FDIC by the Bank, that the Bank has failed to implement or adhere to the Capital Plan, then, within ten (10) business days of receiving written notice from the Regional Director of such fact, the Bank's board of directors shall direct that one or more of the proposals recommended in the Contingency Plan required under paragraph 6(g) be implemented.

[.7]8. Within sixty (60) days from the effective date of this ORDER, the Bank's board of directors shall cause to be undertaken an in-depth analysis and review of the Bank's managerial requirements and cause to be provided a written report to the Regional Director regarding the Bank's management needs. The board of directors' review and report shall, at a minimum, assess the sufficiency of Bank management, in both number and expertise, to:

(a) comply with the requirements of this ORDER;

(b) improve and thereafter maintain the Bank in a safe and sound condition, including asset quality, capital adequacy, liquidity adequacy, and earnings adequacy; and

(c) comply with all applicable State and Federal laws and regulations.

9. During the life of this ORDER, the Bank shall:

(a) notify the Regional Director in writing of any resignations and/or terminations of any members of its board of directors and/or any of its senior executive officer(s); and

(b) comply with Section 32 of the Act, 12 U.S.C. §1831i, regarding the proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer of the Bank.

[.8]10. Until such time as the Bank achieves the Total Risk-Based Capital Ratio of 10.0 percent or greater as described in paragraph 6(b), the Bank shall not, without the prior approval of the Regional Director, make any capital or dividend distributions, pay any management fee to any person having control of the Bank, pay compensation to any senior executive officer at a rate exceeding {{7-31-02 p.C-5455}}

that officer's average rate of compensation (excluding bonuses, stock options, and profit-sharing) during the 12 calendar months preceding the calendar month of issuance of this ORDER, or pay, award, or issue any bonus, stock option, or profit-sharing to any senior executive officer.

[.9]11. While this ORDER is in effect, the Bank shall not permit its average Total Assets or average Total Deposits to increase by more than one (1.0) percent during any consecutive three month period unless both the Bank's resulting Total Risk-Based Capital Ratio (as defined in 12 C.F.R. 325), calculated in accordance with paragraph 6(a), and the proposed growth are consistent with the Bank's Capital Plan approved by the Regional Director for purposes of paragraph 6. The Regional Director may grant a waiver to the restrictions in this paragraph after review and consent to a request received not less than 30 days prior to such anticipated growth. Any request shall detail the Bank's funding plans as well as the anticipated use of the funds.

[.10]12. While this ORDER is in effect, the Bank shall not renew Brokered deposits or obtain new brokered deposits without the prior written approval of the Regional Director. Any request for approval to renew brokered deposits or obtain new brokered deposits shall be made in accordance with the waiver provision of Section 337.6(c) of the FDIC Rules and Regulations, 12 C.F.R. §337.6(c). For purposes of this ORDER, brokered deposits are defined as described in Section 337.6(a) of the FDIC Rules and Regulations, 12 C.F.R. §337.6(a).

[.11]13. While this ORDER is in effect, the Bank shall not, without the prior written approval of the Regional Director, directly or indirectly, acquire any interest in any company (other than permissible investment grade securities) or engage in any new line of business. The FDIC's consideration of any proposal under this paragraph shall be based on whether or not such proposal is consistent with the

Bank's Capital Plan approved by the Regional Director for purposes of paragraph 6.

[.12]14. While this ORDER is in effect, the Bank shall not enter into or renew any transaction, contract or agreement, written or otherwise, with any of its affiliates, as defined in 12 U.S.C. §371c, without documenting compliance with sections 23A and 23B of the Federal Reserve Act, 12 U.S.C. 371c and 371c-1, and without providing 30 days advance notice of an details regarding such proposed transaction to the Regional Director.

[.13]15. Within sixty (60) days from the effective date of this ORDER, the Bank's board of directors shall cause to be developed, and thereafter adopt, cause to be implemented, and ensure Bank adherence to a written risk management program including, at a minimum, the following:

(a) policies, procedures or standards that limit the degree of risk the Bank is willing to incur, consistent with the Bank's financial condition including, but not limited to, an analysis which limits the risks associated with any new lines of business. The program shall ensure that strategic direction and risk tolerances are effectively and appropriately limited and communicated to appropriate Bank personnel and describe the actions to be taken when noncompliance with risk policies is identified; and

(b) measurement systems to measure and control risks within the Bank by product, marketing initiative, delinquency status and vintage. The Bank shall generate reports to analyze asset quality in terms of portfolio dimensions, composition, and performance. Reports shall include risk levels and trends relating to product profitability, volumes, delinquencies, charge-offs, recoveries, bankruptcies, fraud, overlimits, credit line increases, re-issues, renewals, re-agings, debt management programs, aggregation, and other appropriate areas.

[.14]16. Within sixty (60) days from the effective date of this ORDER, the Bank's board of directors shall adopt and implement a residual asset valuation model that comports with industry practice, prevailing instructions for the Consolidated Reports of Condition and Income, Generally Accepted Accounting Principles, and the December 13, 1999 Interagency Guidelines on Asset Securitization. The Bank shall prepare policies, procedures, and controls for use with the residual asset valuation model to fully document and maintain every quantitative and qualitative assumption used to determine residual asset valuation. Any deviations from the policy's calculation process
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shall be fully documented and maintained by the Bank. The policies, procedures, and controls shall, at a minimum, also require:

(a) a back-testing procedure to validate the accuracy of estimates relative to actual performance;

(b) a written analysis of the results of each such back-testing;

(c) the retention of all documentation pertaining to each such back-testing; and

(d) formal approval by Bank senior management before making changes to the residual asset valuation assumptions.

[.15]17. The Bank shall comply with the March 1, 1999 Interagency Guidance on Subprime Lending, and the January 31, 2001 Interagency Expanded Guidance for Subprime Lending Programs.

[.16]18. The Bank shall comply with the Interagency Guidelines Establishing Standards for Safety and Soundness set forth at Appendix A to Part 364 of the FDIC's Rules and Regulations, 12 C.F.R. Part 364, Appendix A.

[.17]19. Immediately, and until further notice, the Bank shall prepare and submit to the Regional Director, a bi-weekly liquidity report that reflects the amount of deposit and other liabilities coming due in the next thirty (30) days, together with any unfunded credit card commitments, and the level of liquid assets available for payment of these deposit and other liabilities. The liquidity report shall also identify all potential securitization early amortization triggers and assess the financial impact on the Bank arising from early amortization or any securitization, including, but not limited to, scenario analyses in which total cash collections on the affected securitization are directed to the master trust while new advances on the credit card accounts are required to be funded by the Bank.

20. Within thirty (30) days from the effective date of this ORDER, and monthly for the next three months and then quarterly thereafter, the Bank's board of directors shall submit a written progress report to the Regional Director setting forth, in detail, any actions taken to comply with each paragraph of this ORDER and the results of those actions. The Bank shall continue to submit the quarterly progress reports until notice from the Regional Director in writing.

21. All correspondence related to this ORDER, and any information, reports or documentation required herein shall be sent to:

Daryl P. Stum
Regional Director
Federal Deposit Insurance Corporation
20 Exchange Place
New York, New York 10005

A complete copy of any submission shall be sent to:

Federal Deposit Insurance Corporation
Risk Management and Applications
Section
Room 5092
550 17th Street N.W.
Washington, D.C. 20429

22. Although the Bank's board of directors is, by this ORDER, required to submit certain proposed actions and programs for the review or approval of the Regional Director, the Bank's board of directors has the ultimate responsibility for proper and sound management of the Bank.

23. Nothing contained in this ORDER shall in any way inhibit, estop, bar or otherwise prevent the FDIC from pursuing any supervisory, administrative and/or enforcement action authorized by law.

24. Any time limitations imposed by this ORDER shall begin to run from the effective date of this ORDER. Such time limitations may be extended in writing by the Regional Director for good cause shown upon written application by the Bank.

[.18]25. All members of the Bank's board of directors shall ensure adherence to, and compliance with, each and every obligation contained in this ORDER. This responsibility shall include, but not be limited to:

(a) authorizing and adopting, on behalf of the Bank, such actions as may be necessary for the Bank to accomplish all obligations and/or undertakings required by the terms of this ORDER;

(b) requiring timely reporting by Bank management of all action taken, pursuant to board direction, to assure compliance with the terms of this ORDER;

(c) timely monitoring for any non-compliance; and

(d) requiring corrective action when any non-compliance occurs.

26. This ORDER shall be effective immediately upon issuance and shall remain effective and enforceable except to the extent that, and until such time as, any provisions
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of this ORDER shall have been modified, terminated, suspended, or set aside by the Regional Director. The provisions of this ORDER shall be binding upon the Bank, its successors, assigns, directors, officers, employees, agents, and other institution-affiliated parties.

Pursuant to delegated authority.

Dated this 15th day of May, 2002.

